

European Commission Guidance on the Implementation of the UN Guiding Principles

Report of the First ICT Sector Multistakeholder Roundtable

31st May 2012 – Brussels

Background to the Project

The [European Commission](#) identified the development of guidance for three industry sectors on the corporate responsibility to respect human rights under the [UN Guiding Principles on Business and Human Rights](#) as one of its priority actions in its recent [Communication on Corporate Social Responsibility](#). The Institute for Human Rights and Business (IHRB) and Shift (the Project Team) [were selected](#) to carry out the project of developing the three sector guides over the course of 2012.

In February 2012, the Commission announced that guidance would be developed for the Employment & Recruitment Agencies, Information and Communications Technologies (ICT), and Oil & Gas sectors. The selection of the three sectors was informed by analysis carried out by Shift and IHRB against a set of [publicly available objective criteria](#) and consideration of submissions from business, NGOs and other stakeholders. Together, the sectors face a wide range of significant human rights challenges that could benefit from guidance focused on the corporate responsibility to respect human rights. Guidance to be developed under the project will also have added value to businesses from other sectors facing similar human rights-related issues. The guides should serve as a reference for businesses from the sector in question for the development of their own human rights policies and processes and should also serve as a basis for further constructive engagement with other stakeholders.

While the guides will take account of the experiences of EU business, they aim to be as globally relevant as possible, and their development will be informed by the views of a wide range of stakeholders, including representatives from business, civil society, trade union, and government, as well as other experts. The project team will conduct baseline research, extensive interviews with diverse stakeholders (75+ per sector), and facilitate two multistakeholder roundtables per sector. The team will also seek to draw on the guidance of the European Commission's [Expert Advisory Committee](#) and three multistakeholder [Sector Advisory Groups](#), convened specifically for the project.

The Project Team welcomes comments or questions regarding the project from organisations or individuals at any time via sectorguidance@ihrb.org. Key documents and updates will be posted to the project's portal at <http://www.ihrb.org/project/eu-sector-guidance/index.html>.

First Multistakeholder Roundtable on the ICT Sector

This report summarises the discussion at the first multistakeholder roundtable for the ICT sector held in Brussels on 31 May 2012. The purpose of the roundtable was to elicit a broad range of perspectives on the leading issues, challenges and opportunities faced by the ICT sector in meeting the responsibility to respect human rights in line with the UN Guiding Principles on Business and Human Rights.

Participants in the roundtable were provided with a short [Discussion Paper](#) outlining a range of stakeholder perspectives on the key human rights impacts, contextual factors and process

challenges in implementing the corporate responsibility to respect human rights, as identified through interviews and research conducted under the project to date. The Discussion Paper was intended to stimulate, not constrain, focused discussion.

The roundtable began with a welcome from the Project Team and from representatives from the European Commission Directorate-General for Enterprise and Industry, who reminded the participants that one of the invitees to the roundtable, Bahraini human rights defender Mr. Nabeel Rajab, had recently been arrested and imprisoned for his activities, as a reminder of the issues at stake.¹ Representatives from the Directorate-General for Communications Networks, Content and Technology then outlined the EC's "No Disconnect Strategy"², highlighting that using information and communications technologies to promote and defend human rights, while avoiding adverse human rights impacts, is high on the Commission's agenda.

There were four substantive sessions, starting with a discussion of the range of potential impacts on rights holders and then moving on to explore some of the key elements of implementing the responsibility to respect: embedding respect for human rights within the company, meeting the responsibility to respect in business relationships including through the exercise of leverage, and the importance of engagement with stakeholders and the role that can be played by operational-level grievance mechanisms.

The roundtable was held under the Chatham House Rule. A list of participants is attached as [Appendix A](#).

Session 1: The Nature and Assessment of Human Rights Impacts in the ICT Sector

The first session explored the nature of human rights impacts within the sector, including those most frequently identified by stakeholders in the research to date (see Section 3 of the Discussion Paper). These included impacts related to: freedom of expression (including through blocking, filtering and removing content, and blocking and disconnecting users and access to networks); freedom of assembly and association; the right to privacy (including through storing and sharing user data; the preclusion of anonymity and enabling surveillance); labour rights (including on freedom of association and those occurring in situations of temporary employment); and other impacts occurring in the value chain (from conflict minerals through to "e-waste").

It was underlined that this in no way implies that all businesses have or will have these negative impacts, nor that businesses can have only negative impacts on human rights – it was recognised that businesses can play a significant role in supporting human rights. However, respecting rights is the baseline expectation of all companies under the corporate

¹ Nabeel Rajab, President of the Bahrain Institute for Human Rights was charged with using social networking sites "to incite rallies and defaming Bahrain's security forces" after posting critical messages about the government on Twitter. Shortly after the roundtable, Mr. Rajab was released on bail; he was subsequently re-arrested. See <http://www.bbc.co.uk/news/world-middle-east-18345796>. He was released on bail again, facing four different cases against him. See <http://www.bbc.co.uk/news/world-middle-east-18611222>. At the time of writing Mr Rajab had just been re-arrested after receiving a 3-month prison sentence. See <http://www.ibtimes.co.uk/articles/360914/20120709/nabeel-rajab-bahrain-prison-three-months-twitter.htm>.

² See speech by Commissioner Neelie Kroes, Vice-President of the European Commission responsible for the Digital Agenda: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/873&format=HTML&aged=1&language=EN&guiLanguage=en>

responsibility to respect and accordingly that was the focus of the discussion. The session was framed around three areas: the prevalence and severity of impacts; contextual issues exacerbating the risks of adverse impacts to human rights; and the assessment of impacts.

Participants discussed the challenges, and opportunities, in developing guidance that seeks to address the full range of actors and activities within the sector - from upstream (manufacturing of ICT products) to downstream (service delivery and end-use). There was broad agreement that the guidance should seek to address all aspects of the sector's potential impacts (both upstream and downstream), but would need to distinguish the particular roles played by very different business actors within the sector. Participants noted that those roles can overlap (for example, "original equipment manufacturers" may design and manufacture some products through wholly owned factories while outsourcing the majority of the production of others), enhancing the complexity of efforts to develop guidance for the sector as a whole.

Initial comments focused on the importance of drawing out a wider range of labor rights-related impacts and recognising that they may occur throughout the sector (i.e. not just upstream). Additional labor rights seen as needing further attention included those relating to health and safety, working hours and non-discrimination regarding pay and working conditions. The importance of seeing freedom of association as an enabling right was emphasised by a number of participants. Conversely, it was stressed that constraints on freedom of association can heighten the risk of other adverse impacts. Civil society participants stressed that adverse labor rights impacts, including some acute impacts, occur throughout the sector, not just in the supply chain and not only in developing countries. They also supported the importance of looking at impacts arising in the context of temporary work arrangements within the sector, and linking this to the [separate sector guidance being developed for employment and recruitment agencies](#) under the project.

Some participants suggested that the guidance should be clear about those impacts that are specific to ICT companies and those which are more general and may occur in a range of industries, such as the challenges of addressing conflict minerals or endemic labor rights problems in the supply chain. The need to constantly scan for additional or new impacts within the sector was also highlighted, including potential impacts arising from the company's products, services, use of certain technologies, engagement in certain markets and also its business relationships.

The varied roles played by government within the sector was a recurring theme throughout the discussion. Governments may be regulator, service provider, buyer or all of these at different times, and can support or hinder respect for human rights by companies in the sector (this is discussed further below in Session 3 in the context of business relationships). The Project Team noted that there were four collaborative initiatives represented in the room: the Global Network Initiative (GNI)³, the Global e-Sustainability Initiative (GeSI)⁴, the

³ The GNI is a multistakeholder initiative established to advance freedom of expression and privacy in the ICT sector. The GNI Principles, Implementation Guidelines and Governance, Accountability and Learning Framework can be accessed here: <http://globalnetworkinitiative.org/>

⁴ GeSI is a collaboration of company members and associate members dedicated to ICT sustainability through innovation. GESI initiatives can be accessed here: www.gesi.org

telecommunications Industry Dialogue⁵ and Electronic Industry Citizenship Coalition (EICC).⁶ However, none involve governments.

Several participants noted that the companies involved in developing and selling technologies intended solely for mass surveillance or mass interception (as opposed to lawful interception, discussed further below), which were often associated with some of the most severe adverse impacts in the sector and are typically SMEs, were not present in the room. Participants discussed ways in which such companies could be engaged in conversations about the sector's impacts and responsibilities.

Session 2: Embedding And Integrating Human Rights In Companies in the ICT Sector

The second session focused on the key steps companies can take internally to embed respect for human rights throughout the organisation and to integrate and take action on the specific findings from impact assessments. Discussion was framed around four concepts: developing human rights due diligence policies and procedures at an early stage; ensuring cross-functional coordination on human rights within the company; handling government/law enforcement requests; and measuring the effectiveness of the company's responses to its adverse impacts.

The wide range of companies in the ICT sector face different challenges in embedding human rights. Several company participants noted that embedding a human rights policy effectively requires support from the very top of the organisation, at Board level, as well as continued oversight and leadership. Participants agreed on the importance of a cross-functional approach to implementation of such policies, while simultaneously noting the challenges in achieving alignment across a range of functions with differing objectives (for example procurement, supply chain, sustainability/CSR, legal and sales). One participant commented that cross-functional coordination was supported in their company by a process of defining objectives, documenting them, communicating these objectives internally and updating them regularly (at the point of design, acquisition, implementation, configuration of software and management of own processes).

Turning to the supply chain, another participant suggested that a company should be careful not to demand more of its supply chain than it demands of itself. The trend away from engaging with suppliers through auditing alone towards a capacity-building approach was seen as having the potential to generate a more sustainable response to supply chain challenges. However, the importance of building capacity on human rights within the company's own team responsible for supply chain management was also flagged.

Discussion also focused on the particular challenges for staff involved in responding to government requests to share specific information or to take certain actions. There was a perceived need to establish appropriate processes and structures in advance, given the quick response time that is usually required. Company participants highlighted the difficulties in knowing what latitude relevant laws actually allow companies. The work that

⁵ The Industry Dialogue is collaboration between twelve telecommunications companies to address human rights impacts and share best practices.

⁶ The EICC is a coalition of the world's leading electronics companies working together to improve efficiency and social, ethical, and environmental responsibility in the global supply chain. The EICC Code of Conduct can be accessed here: http://www.eicc.info/eicc_code.shtml

GNI has done to develop guidance on how to respond to such requests was noted. One company participant highlighted the position of small SMEs that have a base in one country but global reach and are unlikely to be prepared to deal appropriately with government requests, including determining the validity or otherwise of the request.

Attention was drawn to the need to reference relevant existing standards as well as legal protections in the guidance. One participant suggested that the existing Council of Europe guidelines on video gaming may provide a potentially relevant model for the guidance.

Session 3: Business Relationships and Leverage Within the ICT Sector

The third session focused on the steps companies within the ICT sector can take in their business relationships to ensure they are meeting their responsibility to respect, including the issue of exercising leverage.⁷ Discussion was framed around four areas: constraint and opportunities in contracts; government contracts and license agreements; supply chain relationships; and collective responses to particular human rights challenges.

The discussion acknowledged the very different operating contexts of various companies within the ICT sector: for example, telecommunications companies often have a government as their business partner and have significant staff and assets in-country, whereas other companies provide global services from a single home country or from “the cloud”. For companies in both groups, participants generally agreed that pulling out of a country is not the preferred option where governments make inappropriate requests or demands because all leverage is then lost, as are the positive benefits that the company’s presence may bring, including to respect for human rights. One participant pointed out that, in line with the Guiding Principles, where there is nothing that prevents a company from developing approaches in line with international human rights standards over and above those established via legislation, then the company should do so.

Participants highlighted particular challenges in relationships with military and intelligence services. For example, surveillance technology is primarily intended and used for law enforcement purposes by enabling “lawful interception” by governments of communications; however, the same equipment can be used to monitor/track civilians for purely political purposes. Participants discussed the feasibility of greater company transparency around sales of “dual use” technologies, which might enable human rights defenders to protect themselves online. A similar question was raised about heightened transparency regarding actions taken by third parties on company-owned networks that might adversely impact freedom of expression.

Governments are not usually transparent about their requests to block or take down content. Participants discussed actions that companies could take to respond to this reality, including greater transparency around the processes companies themselves use to respond to government requests. The approach to transparency challenges in the sector was contrasted with the situation in other sectors such as extractives, where the Extractive

⁷ The commentary to Guiding Principle 19 states that “leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.” It observes that a business should use its leverage where (a) it contributes to an adverse impact in order to mitigate any remaining impact (after it has ceased or prevented its own contribution) to the greatest extent possible or (b) an adverse impact is directly linked to its operations, products or services by a business relationship and the business has leverage to prevent or mitigate the impact or can increase its leverage to do so.

Industries Transparency Initiative was set up to specifically reconcile data from government and companies on royalty and other payments.

Some company participants suggested that governments could be prompted to play a useful role in supporting business respect for human rights by, for example, providing information, publicly or otherwise, about high risk countries. A recent EU initiative to fund the provision of advice to companies on ethical and human rights considerations in the design of surveillance products and services - EU Surveillance⁸ - was highlighted as an interesting model. One participant commented that companies can assist themselves by telling their own governments what they need to know in order to better support such companies in their relationships with host state governments.

Relationships with consumers online usually take the form of a “terms of service” agreement. One participant noted that terms of service tend to cover a wide range of issues to give the company maximum flexibility, although it may not intend to enforce them in their entirety. However, governments may interpret the ability to enforce the terms of service, for example to block/filter certain content, as meaning that the company is obliged to do so. One participant raised concerns over government reliance and/or pressure on business to regulate the online environment in this way, given that companies then become responsible for the regulation of third parties and may incur “intermediary liability”.

In terms of business relationships within the supply chain, participants expressed differing views on the actual leverage that companies in the sector have in relation to suppliers. Company participants pointed to challenges in exercising leverage beyond tier one suppliers given the sheer number of tier two (and beyond) suppliers, the absence of contractual relationships, and the fact that the relationship is usually not a crucial one from the company’s perspective. On the other hand, in the first tier of the electronics manufacturing supply chain there are roughly five major assemblers who own hundreds of factories that supply much of the sector.

Discussion turned to how a company can prioritise human rights issues in their supply chain. Journalists and NGOs were seen as critical in bringing issues to the company’s attention. At least one company participant expressing a desire for a tool to initiate and assist with this engagement process. The relevance of the Interpretive Guide on the UN Guiding Principles put out by the Office of the UN High Commissioner for Human Rights was cited, and especially the decision-making matrix it contains. One participant commented that these kinds of decisions should be made, wherever possible, with stakeholder input.

On the issue of anti-trust as a potential barrier to collective solutions, it was pointed out that anti-trust issues have arisen before in other industries (such as apparel) and have not been an obstacle to appropriate collective action by companies. One company participant noted that freedom of expression and privacy-related impacts should certainly be capable of being dealt with through collective initiatives, provided price is not at issue. Another pointed out that this was not currently the way in which companies in the sector approach challenges with common suppliers and that there was clearly room for improvement.

⁸ See <http://www.surveille.eu>

Participants also highlighted other business relationships that may be helpful to explore, for example payment providers, such as PayPal and credit card companies, who facilitate payment for products and services online.

Session 4: Stakeholder Engagement and Grievance Mechanisms

The fourth session focused on stakeholder engagement as an essential component of human rights due diligence processes and on the role that operational-level grievance mechanisms can play as both an early warning and response system. Discussion was framed around four areas: modes and purposes of stakeholder engagement; distinctions between human rights-related and other grievances; and grievance mechanisms in the supply chain.

Participants agreed that stakeholder engagement is essential to preventing and addressing adverse human rights impacts particularly given the complex and fast-moving nature of the sector. Some companies rely on a group of trusted stakeholders to flag problems, serving as a “light-touch” early warning system that feeds into the human rights due diligence process. However, the importance of addressing longer term, systemic problems was also noted.

A number of participants stressed that stakeholder engagement is a “two-way street” with communication and outreach flowing in both directions. One company participant stated that it is important for companies to proactively raise public awareness about the implications of the personal data they collect and store. Another noted that grievance mechanisms need to be promoted among businesses as an opportunity to resolve conflict, and not be perceived as a threat. Participants noted the need to find the right balance between confidentiality and transparency in designing grievance mechanisms.

Civil society participants discussed recent and current research into operational-level grievance mechanisms in the electronics sector. An initiative by electronics companies and local NGO actors to deliver an effective mechanism to electronics workers in Guadalajara in Mexico was discussed. Some observations from civil society participants based on that experience included: the challenge in obtaining structural solutions as well as resolution of individual cases, the importance of having an external institution as a “check” on outcomes, and the ways in which robust trade union structures can assist in addressing grievances early. The potential role of Global Framework Agreements between companies and global union federations was also noted in this regard. In all cases, the Guiding Principles’ requirement that such mechanisms should not undermine judicial mechanisms or legitimate collective bargaining processes should be born in mind.

In closing, the Project Team and European Commission expressed thanks to all the participants for their constructive contributions and noted that a short public report would be produced summarising the day’s discussions. In terms of process going forward, the Project Team confirmed that the research and interview process would be continuing to gather stakeholder inputs in preparation for the drafting phase, and that a second multistakeholder roundtable would be held to consult on a first draft of the guidance.

Appendix A

Participants List:

- Richard Allan – Facebook
- Jim Baker – Council of Global Trade Unions
- Kerstin Born – Bernard Brunhes International
- Patrice Chazerand – DIGITAL Europe
- Katrina Cochran Destree – Alcatel Lucent
- Giovanni Colombo – Hill Knowlton Strategy
- Steve Crown – Microsoft
- Anthony D’Arcy – Nokia Siemens Networks (representing the Industry Dialogue)
- Birte Dedden – UNI Europa
- Patrik Fältström – Netnod
- Susana Gallego – Telefonica S.A.
- Jenny Holdcroft – International Metalworkers Federation
- Rohan Jayasekara – Index on Censorship
- Eric King – Privacy International
- Yukako Kinoshita – Hitachi Europe
- Anne Lindsay – CAFOD
- Joe McNamee – European Digital Rights Initiative
- Viraf Mehta – Centre for Responsible Business
- Susan Morgan – Global Network Initiative
- Luis Neves – Deutsche Telekom (representing the Global e-Sustainability Initiative (GeSI))
- Joris Oldenzijl – Centre for Research on Multinational Corporations (SOMO)
- Marco Pancini – Google
- Geneviève Paul – International Federation for Human Rights (FIDH)
- John Plyler – Research in Motion (RIM)
- Anita Ramasastry – University of Washington, Seattle
- Jan-Willem Scheijgrond – Philips
- Salil Tripathi – Institute for Human Rights and Business (IHRB)
- Ben Wagner – University Institute, Florence
- Elaine Weidman-Grunewald – Ericsson

Observers:

- Antonella Calvia – European Investment Bank
- Sonja Nouwe – European Investment Bank
- Enrica Voena – European Investment Bank
- Marc van der Ham – European Parliament, Assistant to Marietje Schaake

European Commission:

- Ajnacksa B.Nagy – Directorate General (DG) Enterprise & Industry
- Giuseppe Busini – European External Action Service
- Maria Carbone – DG Communications Networks, Content and Technology
- Christina Dahlman – DG Development and Cooperation
- Tom Dodd – DG Enterprise & Industry
- Nieves Fernandez del Coto Secades – European External Action Service
- Andrea Glorioso – DG Communications Networks, Content and Technology
- Phyllis Kong – DG Enterprise & Industry
- Iris Kroening – DG Enterprise & Industry
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- Caroline Rees – Shift
- Haley St. Dennis – IHRB
- Margaret Wachenfeld – IHRB

Apologies:

- Philip Eder – Business Software Alliance
- Cornelia Heydenreich – GermanWatch
- Jeremy Rollinson – European Digital Media Association