

European Commission Guidance on the Implementation of the UN Guiding Principles

Report of the First Oil and Gas Sector Multistakeholder Roundtable

1st June 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, 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 Oil & Gas Sector

This report summarises the discussion at the first multistakeholder roundtable for the Oil & Gas (O&G) sector held in Brussels on 1 June 2012. The purpose of the roundtable was to elicit a broad range of perspectives on the leading issues, challenges and opportunities faced by the O&G 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 European Commission Directorate-General for Enterprise & Industry and from the Project Team. The Commission confirmed that the proposed guidance will not be submitted for prior approval to the European Parliament or the Council. Relevant services of the European Commission will be involved in the development of the guidance according to the Commission's own internal procedures.

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 O&G 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: the right to property and an adequate standard of living, the right to free, prior and informed consultation and/or consent, the right to freedom of movement and cultural rights, the rights to health, clean water and food, the rights to life, security of the person and freedom from torture, labour rights, the right to freedom of expression and the rights of vulnerable groups.

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 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.

It was recognised that the O&G sector has extensive experience in the development and implementation of environmental and social impact assessment (ESIA) processes. Discussion focused on the suitability of existing impact assessment processes for identifying and assessing human rights impacts, including the similarities and differences between human rights impact assessment (HRIA) and ESIA processes.

A number of participants from different stakeholder groups agreed that ESIA processes, if done well, can go a long way towards meeting the demands of the Guiding Principles in the prevention, identification and mitigation of adverse human rights impacts. Some expressed a concern about seeing the development of HRIAs “for the sake of it”, while others noted the “binding” character of ESIA processes compared to HRIAs. Points meriting further attention included: the need to focus ESIA processes at the individual (rather than household/community level), and the potential for HRIAs to be a useful lens across all the main areas of impact that companies currently assess (ie, community/employees/suppliers/security).

Participants debated the issue of transparency, both regarding impact assessment methodologies and the outcomes of individual assessments. Some participants urged that no limits should be placed on transparency, including regarding outcomes. Others cited a range of factors that may place limits on the feasibility and desirability of broad transparency, including: government sensitivities when impact assessments reveal the extent to which they have, or have not, met their legal obligations; legal restrictions in investor-state and joint venture agreements; the risks to individual stakeholders; and the capacity of local stakeholders to interpret complex technical information.

The role of governments (home and host) was emphasised as being particularly important in this sector and occurred throughout the discussion during the day. Civil society participants stressed the importance of home state legislative frameworks in setting clear standards for transparency in the sector. Some called for greater policy coherence within companies regarding their human rights commitments when it came to adopting lobbying positions. Some participants suggested that decisions about transparency should be driven by whether enough information is being disclosed to ensure that affected stakeholders are adequately informed.

Participants identified meaningful stakeholder engagement and consultation within the impact assessment process as crucial, as well as its role in ongoing monitoring and mitigation processes (including in relation to a grievance resolution mechanism). Some participants pointed out the challenges that arise when governments do not allow for sufficient time for thorough ESAs and/or do not routinely require them. Where impact assessment and/or consultation processes are carried out by governments, this can pose challenges for local communities where there is a history of actual or perceived abuses by government or where local actors are not seen as genuinely representing the communities' interests. Others felt that difficulties arise when companies "replace" governments in consultation processes, heightening the importance of capacity-building for local communities, joint monitoring and respect for traditional (especially indigenous) decision-making processes. A key question was how to build trust around the quality of consultation if transparency is difficult. The importance of managing stakeholder expectations around the expected benefits of projects was also highlighted.

One company participant shared their experience of undertaking an HRIA for a significant project and their view that corporate culture was the most important factor in its effective implementation. Other relevant learning included: the need to undertake assessments as early as possible in a project's lifecycle, the importance of aligning HRAs with ESAs and other relevant processes to avoid duplication of consultation, and the need to be flexible in the extent to which the language of human rights is used depending on the comfort level stakeholders have with it. The issue of language was picked up by other participants with one commenting on the need for a "language of dignity" when it comes to discussing human rights-related impacts to try and deepen understanding within companies and "de-mystify" the concept of human rights for operational staff.

Session 2: Embedding and Integrating Human Rights in Companies in the O&G Sector

The second session focused on 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 three concepts: integrating human rights due diligence processes into existing systems as compared to developing new/stand-alone approaches; communicating about human rights effectively within the company, including between corporate and site levels; and developing metrics.

Participants identified several challenges around embedding and integration. These included the translation of high-level corporate human rights commitments to the site level; the communication of information (including “bad news”) from site back to corporate; and the often complicated organisational structure of O&G companies, which can have multiple subsidiaries and work in joint venture structures, often composed of one or more international oil companies (IOCs) and a national oil company (NOC).

At site level, impacts may not be framed using human rights language; however, the concept of “challenging contexts” is well understood. One reason identified for the difficulty in translating corporate commitments to site level was the lack of incentives and structures that would reward “prudence” over expedience and budgetary considerations. The importance of exploring the potential for “reverse engineering” existing management systems (planning, resource allocation, reporting, etc.) to include human rights was stressed, and the current work being done by IPIECA was raised as being particularly relevant in this regard. However, one participant cautioned against the difference between “retro-fitting” and “rethinking”, if the latter is really what is needed.

Company participants emphasised that companies in the sector contain both processes and people, or both “hard wiring and soft wiring”, so while understanding systems is important, understanding individuals’ mind sets and competencies is just as critical. A number of participants referred to the relevance of the way health and safety has been embedded in corporate cultures and management systems and the potential lessons that could be learnt from that experience on both the hard wiring and soft wiring fronts. One participant observed that the health and safety journey has been a long one and its success was built on placing responsibility into the hands of local managers and setting up appropriate incentives. A number of company participants cautioned that adapting systems was a slow process but that O&G companies are “compliance and learning organisations” that are capable of improving systems to address systemic issues.

Additional opportunities for embedding concern for human rights within O&G companies included experiences with Global Framework Agreements between a number of companies and global union federations (for example, Statoil, Lukoil, Eni, GDF Suez and Petrobras) as well as other partnership agreements, including with NGOs.

A number of participants suggested that the guidance should address particular contexts that involve heightened risk of adverse human rights impacts (such as conflict, large-scale acquisition of land, or environmental pollution). The distinct challenges that arise at different stages of the project cycle were also highlighted, including the importance of putting human rights expertise on the ground before or at the same time as technical teams.

Differences between NOCs and IOCs were raised by some participants, while others stressed that the differences should not be over-stated. The need to include NOCs in the research and guidance development process was highlighted by many participants.

Session 3: Business Relationships and Leverage within the O&G Sector

The third session focused on the steps companies within the O&G sector can take in their business relationships to ensure they are meeting their responsibility to respect, including

the issue of exercising leverage.¹ Discussion was framed around four areas: constraint and opportunities in contracts; leverage in joint ventures; specific implications of and for state owned enterprises; and supply chain relationships.

Participants agreed that the business-to-government relationship was crucial to the sector, and indeed to O&G activity per se. Joint venture relationships were also highlighted as key, as were supply chain relationships. A few participants argued in favour of the inclusion of downstream activities, in particular retail, in the guidance; however, a number of others argued that the scope of the guidance should be confined to addressing upstream and midstream activities (which would include transport/pipelines) as downstream activities are not characterised by the same types of business relationships.

Participants discussed the difference in the actual leverage businesses in the sector have in their various relationships and perceptions of the extent of that leverage. Opportunities for leverage were generally agreed to exist in the negotiation of contracts, including investor-state agreements, operating agreements and supplier contracts (though participants noted the difference between the large, established international actors and local suppliers). However, there was a perceived need for greater guidance on what good practice looks like in contracting.

Transparency within business relationships emerged as a central issue, in particular, in relationships with host governments. A number of participants commented that companies' leverage may diminish where a host government does not demonstrate a strong commitment to human rights, where there is significant corruption, or limited state capacity. It was noted that companies have greater leverage when they are acting as operators than when they are non-operators within a joint venture in such an environment; however, one participant stressed that IOCs still bring capital/access to capital markets regardless of whether they are operators or not, which may affect their leverage.

Some participants pointed out that where local law is in conflict with international standards, companies need to search for creative ways to seek to meet human rights standards; conversely, where local law is silent, companies may have significant discretion in terms of what they can do to respect rights – in one participant's words, they are "often allowed, if not required, to do the right thing".² One example cited was where local law prohibits the disclosure of information on financial transactions; however, civil society participants observed that some leading O&G companies had nevertheless chosen to disclose in such situations.

Finally, existing multistakeholder initiatives (such as the Extractive Industries Transparency Initiative and the Voluntary Principles on Security and Human Rights) were seen as providing potential avenues for business to pool and exert leverage within their relationships, particularly vis-à-vis governments.

¹ 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.

² Guiding Principle 23 states that "in all contexts, business enterprises should (a) comply with all applicable laws and respect internationally human rights, wherever they operate; (b) seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements."

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: timing and purpose of stakeholder engagement; skill sets for stakeholder engagement; handling grievances involving multiple actors; and distinctions between human rights-related and other grievances.

Civil society participants stressed that there are no “off-sets” for adverse human rights impacts and that robust stakeholder engagement and grievance mechanisms should seek to capture the full perspective of those affected (or potentially affected) by O&G company activities.

Turning first to stakeholder engagement, participants identified some challenges. One participant commented that when companies “define” who their stakeholders are, they may exclude the more critical voices from the process, and that companies sometimes engage with representatives of communities without confirming that they are indeed “representative”. A lack of transparency in the selection of representatives can also undermine trust in the engagement/consultation/consent process. An example was given of one company policy which required that all opinions and interests within a community be heard as part of the engagement process. One participant stressed that the focus should always be first on rights-holders and then on broader stakeholders.

A number of points were made in relation to grievance mechanisms:

- that they can offer the chance for early and effective resolution of complaints, but that they must not undermine legitimate legal and trade union processes;
- that the pilot work that IPIECA is commencing on grievance mechanisms should be of particular interest and that duplication be avoided by sharing information between the two projects;
- that companies need to review and learn from the performance of their grievance mechanisms, but that caution needs to be exercised in interpreting metrics related to the number of complaints (for example, that no complaints does not mean that there are no problems, but may mean that there is a lack of trust in the mechanism);
- that there is a need for a degree of transparency about the process and potential outcomes in order to engender trust in the mechanism;
- that there are risks inherent in the disparity in levels of information between companies and affected individuals, which grievance mechanisms may either perpetuate or help address; and
- that grievance mechanisms have the potential to build relationships with the local community by not ending up with a “winner/loser” situation.

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 forwards, 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:

- Jim Baker – Council of Global Trade Unions
- Rachel Bonfante – OGP Europe
- Jim Catterson – International Chemical, Energy, Mining and General Workers Union (ICEM)
- Paul de Clerck – Friends of the Earth Europe
- Julia Eschenbruch – E.ON Ruhrgas
- Luis Fernando de Angulo – Gestion Responsable
- Bert Fokkema – Shell
- Audrey Gaughran – Amnesty International
- Yasuhiko Kamakura – International Labour Organisation
- Jonathan Kaufman – EarthRights International
- Mumo Kivuitu – Ufadhili Trust
- Andie Lamb – Global Witness
- Nikolina Manova – Makpetrol AD
- Viraf Mehta – Centre for Responsible Business
- Anton Mifsud-Bonnici – BP
- Anupama Mohan – Statoil
- Eduardo Garcia Moreno – REPSOL
- Tam Nguyen – IPIECA
- Khin Ohmar – Burma Partnership
- Edward O’Keefe – Synergy Consulting
- Geneviève Paul – International Federation for Human Rights (FIDH)
- Astolfo Riotta – Eni
- Salil Tripathi – Institute for Human Rights & Business (IHRB)
- Egbert Wesselink – IKV Pax Christi
- Julie Vallat – Total
- Valentin Zhovtun – Sakhalin Energy

European Commission:

- Marta Abrantes – Directorate General (DG) for Energy
- Ajnacska B.Nagy – DG Enterprise & Industry
- Tom Dodd – DG Enterprise & Industry
- Anton Jensen – Directorate General for Development

- Phyllis Kong – DG Enterprise & Industry
- Iris Kroening – DG Enterprise & Industry
- Martin Muller – DG Energy

Observer:

- Enrica Voena – European Investment Bank

Project Team:

- Rachel Davis – Shift
- John Morrison – IHRB
- Caroline Rees – Shift
- Emily Richards – Shift
- Haley St. Dennis – IHRB
- Margaret Wachenfeld – IHRB

Apologies:

- Hege Røttingen – Norwegian National Contact Point for the OECD Guidelines
- Mark Taylor – Fafo
- Joseph Whittal – Commission on Human Rights and Administrative Justice, (Ghana)
- Dr Emma Wilson – International Institute for Environment & Development