

Comment on draft Guidance for the oil and gas sector on implementing the UN Guiding Principles, following 29 January 2013 meeting

Dr Emma Wilson
International Institute for Environment and Development

The guidance is comprehensive and well-written and incorporates consideration of a wide range of key issues for the sector. The following comments are intended to indicate where the guidance can be tightened and where certain aspects can be clarified.

1. Overall, the guidance should focus specifically on how to make the GPs more relevant to the oil and gas sector:
 - a. What are the specific human rights challenges? (e.g. land and resource rights, pollution risks, construction worker camp conditions, right to information, freedom of association/speech, and so on);
 - b. What are the existing/emerging policies and tools being used in the industry? How can they be supplemented/adapted/improved? (e.g. impact assessment, stakeholder consultation, community liaison officers, grievance mechanisms, Code of Conduct, Business Principles, and so on);
 - c. What is the structure of the industry? Who are the key players with key responsibilities for human rights (including the government)?
 - d. What is a typical project cycle and what are the key risk points or leverage points in that cycle? A diagram may be useful for this purpose

p.5 Focus of the guidance would be clearer if you state 'it focuses on upstream' (rather than 'mainly'). There may also be an added recommendation that separate guidance would be required to cover the full range of downstream activities in sufficient detail.

p.5 The list of companies that the guidance relates to: It may be more accurate to state up front that the guidance applies mainly to IOCs along with their key business partners (NOCs, exploration companies, EPC contractors, smaller-scale subcontractors and supplier companies, including security suppliers). This wording would explain the IOC lens through which issues tend to be viewed throughout. In any case, all the types of company named in this section could be referenced in the text more directly, with responsibilities allocated to them where appropriate, rather than the responsibility being for the IOC or operating company to 'include provisions in contracts' or 'make sure they do certain things' (which are also important responsibilities, but not the full story).

p.6 There could be more detail on the structure of the industry, including how it has evolved over recent years (e.g. more outsourcing) and how this has affected the risk profile of the industry. It would be helpful to have a visual impression of the key issues and how they align with the industry structure:

- p.6 You might want to add in a table, including the range of different contractors (baseline research, impact assessment, exploration, construction, materials supply, security and so on) and other key partners (NOCs, regulators), possibly also including the kinds of human rights issues that are associated with their activities.

- p.6 Alternatively, the activity-stakeholder matrix could also be brought forward from Annex B, perhaps in a more concise form, and perhaps adapted from the original by inserting the key players (operator, JV partner/NOC, contractors/subcontractors) who are responsible for the particular areas of activity in column one.

p.6 Despite the paragraph on 'host state governance', the paper could offer more clarity on relative roles and responsibilities of government and companies. The guidance could provide more to help build understanding of the "state duty to protect human rights" (host and home nations) and how state capacities and the enabling environment affect company responsibilities (positively and negatively). The guidance should also address how companies can engage with government to overcome key challenges and/or strengthen governance. The discussion of these relative roles and how to engage with government could be inserted at relevant points throughout the guidance, not only in Section 2.

p.6 It is probably also worth having a fairly comprehensive coverage of the full range of issues that constitute 'human rights risks' in the context of oil and gas sector development.

p.6 The question of the terms of investment agreements is somewhat glossed over in the contextual section. From the discussion at the 29 January meeting, this is because the EC cannot address issues of state responsibilities in this guidance. However, contracts are negotiated by two parties, and there are ways that companies can approach contract negotiations with an eye on respect for human rights. Assuming that this would be too complicated to address in the context of this guidance, Section 2 should probably include a note to the effect that this matter has not be ignored but lies outside the scope of the guidance (for specific reasons also noted).

p.7 It may be useful to have a table on p.6/7 with the key multistakeholder initiatives (including OGP) and the work that they have done on Human Rights/why they are relevant to this guidance. This may address the question of whether or not to include EITI at a later stage.

p.7 While it requires more space, I think a paragraph or two about the UN Guiding Principles before the 'key concepts' box would be useful. This would explain why companies need to be aware of them and in what way this guidance can help to understand them better.

p.7 It would be good to have a list of 'vulnerable or marginalised groups', so as to clarify who they might be (women, youth, the disabled, indigenous peoples, other ethnic minorities, migrant workers, etc.)

pp.8, 15, etc. What the Guiding Principles Require. There was some discussion about use of the word require. An alternative would be 'recommend'. It is also important to note that the GPs do use the 'should' terminology, which inside the boxes is unarguable. Where it is used outside of these boxes you may wish to emphasise that this is GP terminology.

p.9 If you include a table with the range of human rights issues in Section 2, then you can delete the first paragraph of Section (a). The second paragraph of Section (a) can be merged with paragraph 4 on pp.6-7.

p.10 As a general point you could reduce number of words by deleting phrases such as 'In terms of additional external sources of information and expertise' ...

p.10 I don't feel entirely comfortable with the terms 'hard wiring' and 'soft wiring', but it is good to have a way of making this distinction.

p.10 I think it would be useful to have a slightly more comprehensive list of existing key policies used by the oil and gas industry at present. It may also be good to highlight the key departments – or generic 'functions' – that need to be aware of human rights as a direct part of their work in addition to environment/social/external affairs (such as 'procurement', 'construction managers', 'contract lawyers', 'senior management', etc.)

p.13 I agree that throughout the guidance the questions are more useful if there are measurable in some way, or clear enough for someone to know whether they have done it or not. On p.13 most of them already are:

- The first bulleted question on p.13 is quite a difficult one to answer, though a relevant topic, and difficult to know how to make it more specific. Perhaps you could word it something like this – i.e. providing examples of the policy flexibility rather than the contextual changes: 'Does our policy commitment have the flexibility to deal with changes in the operating context or available technology, through additional clauses, expansion of scope or other relevant amendments?'
- Perhaps bullet 2 could be reworded 'Have we engaged closely with other key departments internally?'
- Re testing the proposed policy – it may be useful to suggest how to test it (what techniques – consultation?)
- The questions relating to business partners are good – this addresses the concern of one participant that not all contractors need to have everything included in their contracts – i.e. it will be a case-by-case matter. You may also wish to add 'contract holders' in the list of business partners, to emphasise that it is not just the operating company perspective.

p.13 First paragraph of 'human rights due diligence' box is good in emphasising the scale and complexity of HR issues depend on size of company.

p.14 I'm not sure I really find Figure 1 useful. The alternative wording suggested by Frank Vanclay may help a little (i.e. 'do' = implementation; 'check' = monitor; 'act' = reflect, review and act). I also found it useful to have the explanation about the yellow lines being interlinkages. Perhaps a final version of the diagram would benefit from one or two lines of explanation of the diagram to help understand it better.

p.15 last paragraph – this is rather a long list of example processes and it would probably be easier for the reader if these had been listed beforehand in a table that could be referenced there.

p.16 I'm not sure of the continuum notion relating to SIA and HIA, but Frank Vanclay seemed ok with it. I don't think you would lose anything by deleting that first bullet, though. By contrast, I like the use of the term 'human rights implications' of environmental and social issues. Having worked with health impact assessment experts I have found it useful to talk about 'the determinants of health' (these may be environmental or social).

p.16 Box 3. I agree with Valentin Zhovtun who I think mentioned the need for an additional 'why' question. There are a few other points. For example, under 'who' you mention the

'rights and perspectives', which should go under 'what'. And under 'what' you have the reference to 'potentially vulnerable groups' which is not mentioned under 'who'. I suggest making sure there is a reference to 'vulnerable or marginalised groups' (following standard term established in Box A on p.7). Under 'who' you also make a rare mention of 'financial or in-kind compensation' which is not really picked up elsewhere. There is a slight point about standardised terminology: is it 'meaningful consultation with [potentially] [affected] stakeholders [or their representatives]'.

p.17 The point about the GPs not expressing a preference between stand-alone and integrated has already been made. You could cut that paragraph down a bit, by starting 'Whether companies choose stand-alone or integrated ...

p.17 What is the source of Box 4. It seems as though it should be one of the guidance sets of questions. If it comes from another source, it should be referenced.

p.19 The FPIC box: In my opinion:

- It needs to be in there. FPIC is a hot topic and companies need to be aware of it
- There should not be an suggestion that companies ought to do one thing or another
- You can make reference to key documents and the ICMM and IPIECA websites for people to get further guidance on this evolving topic

p.22 Box at the top. A bigger risk is when operating companies make promises and contractors fail to carry them out. So whoever makes promises needs to tell whoever is going to be responsible for carrying them out.

More general points (as I have run out of time):

- Grievance mechanisms – bigger reference further forward, in line with recommendation at the bottom of p.22
- Broader coverage of the 'remedy' or 'remediation' sphere. There needs to be more discussion of compensation if possible.
- Offsetting is also an area with potential human rights risks, as offset areas often have the impacts on human activity in the offset area. A good reference for this is:
<http://bbop.forest-trends.org/>

References

These are cut and pasted from our upcoming publication on FPIC – you may find some useful references that you don't already have ...

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