

**Oil & Gas Sector Discussion Paper for Public Comment**

Produced by The Institute for Human Rights and Business (IHRB) & Shift, 24 May 2012

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**NOTICE: Public Posting of all Written Comments**

Unless expressly requested otherwise, submission of written feedback will be posted on the Project's web portal (<http://www.ihrb.org/project/eu-sector-guidance/index.html>) with each commentator's submitted name and organisational affiliation.

**Key Questions for Written Comments**

The [Project Team](#) welcomes written comments by all interested stakeholders on the following questions in particular. Please send comments to [sectorguidance@ihrb.org](mailto:sectorguidance@ihrb.org) by **30 June 2012**. □

- Does the discussion paper identify the most serious and the most likely impacts that companies in this sector may have on human rights?
- Does the discussion paper identify the major challenges that companies in this sector are facing in respecting human rights?
- Are there good practices in addressing these human rights challenges that could be built on in developing the forthcoming guidance on the corporate responsibility to respect in this sector?
- What form should the forthcoming guidance take in order to add greatest value in advancing respect for human rights in this sector?

**1. INTRODUCTION**

This discussion paper is intended to help frame and stimulate discussion around key issues, challenges and opportunities regarding the implementation of the corporate responsibility to respect human rights under the [UN Guiding Principles on Business and Human Rights](#) (the UN Guiding Principles) in the Oil and Gas (O&G) sector.

Three important points concerning the scope of the project should be noted. First, in line with the UN Guiding Principles, the focus is on ensuring that businesses respect human rights – that they take action to avoid infringing on human rights and address any adverse impacts with which they are involved. This discussion paper therefore starts by identifying the most likely and/or most severe negative impacts that businesses in O&G sector may have on human rights. This in no way implies that all businesses have or will have these negative impacts, nor does it imply that businesses can have only negative impacts on human rights – it is well 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 is the focus of this paper and sector guidance project.

Second, the corporate responsibility to respect is only one of the three pillars in the UN “Protect, Respect and Remedy” Framework and the Guiding Principles that implement it. The Guiding Principles recognise states’ existing obligations to respect, protect and fulfill human rights and fundamental freedoms and seek to elaborate on the policy implications of these obligations for states (referred to as the state duty to protect or first pillar of the Framework). This includes regulating corporate actions where appropriate. The UN Guiding Principles also recognise the need for appropriate and effective remedies for victims when their rights are violated (the third pillar on access to effective remedy). While this project is focused on the corporate responsibility to respect human rights (the second pillar), the guidance will seek to take into account the various implications of the state’s role in business’ efforts to meet their corporate responsibility to respect, as well as

businesses' responsibilities in access to remedies (third pillar). Nothing in this paper is intended to detract from the interconnected nature of the three pillars of the UN Framework.

Third, while the final guidance will take particular account of the situation and experiences of EU business, it aims to be as globally relevant as possible – informed by research and the views of a wide range of stakeholders, including representatives from business, civil society, trade union, and government, and experts – in order to contribute to a harmonised approach to the implementation of the UN Guiding Principles.

Please see [Annex A](#) for more background on the project, its timeline, and the UN Guiding Principles.

### **1.1 The Research and Consultation Process**

This paper outlines the emerging issues arising from early-stage interviews with stakeholders representing business, industry association, trade union, civil society and expert perspectives, as well as input from individual members of the O&G [Sector Advisory Group](#) and European Commission [Expert Advisory Committee](#). However, this input does not constitute an endorsement of the views summarised in this paper by any individual member of the these advisory groups, or their organisations. Nor does this paper represent fixed conclusions on the part of the Shift and IHRB Project Team, but instead highlights a number of key emerging issues for further exploration and enquiry as part of the ongoing research and analysis process. Further stakeholder interviews will be conducted after the Oil and Gas Sector Roundtable in Brussels on 1 June 2012. In addition, the discussion paper will be posted for public comments on the project web portal<sup>i</sup> and accepted up until June 30.

## **2. DEFINING THE SECTOR**

This section attempts to identify some of the key features that define the Oil and Gas (O&G) sector and is, through necessity, brief.

The O&G sector encompasses companies that are engaged in the exploration, extraction, refining, and distribution of oil and gas, involving both upstream (pre-exploration, exploration, production, decommissioning) as well as downstream (transmission, refining, distribution, consumption) operations. Stakeholders disagreed about the extent to which downstream activities and/or actors in the sector should be included within the scope of the guidance.

In contrast to some other sectors, the O&G sector is characterised by long-term (40 – 50 years) in-country investments. Although historically the majority of companies operating in the sector were international oil and gas companies (IOCs), more recently the number of national oil companies (NOCs) has significantly exceeded the number of private enterprises. Industry stakeholders estimated that of companies currently operating in the sector, approximately 80% are NOCs. Of these NOCs, some operate only within their home state but others have multinational characteristics and operate in multiple foreign states.

The majority of O&G operations are undertaken by joint venture (JV) partnerships between multiple IOC partners and between IOCs and NOCs. IOCs enter into joint bidding agreements with other IOCs to bid for the management of a certain asset. If they are successful they broker a joint operating agreement to share the operational and financial burdens and risks associated with that management. In forming this joint venture, one partner will be designated as the operating partner.<sup>ii</sup> This may be the partner with the most significant financial investment, but this is not always the case. When operating in host states, IOCs are usually required to form joint venture partnerships with the relevant NOC where the NOC may then act as the operator with the IOC providing technical or other expertise and/or financial support.

The O&G sector is characterised by a significant number of contractor and supply chain relationships both internationally and in-country. Activity usually takes place either on or off-shore, and often in remote areas. O&G activity is usually self-financed through the stock market, particularly at the early, high-risk exploration phases.

### **3. KEY HUMAN RIGHTS IMPACTS**

This section sets out a range of adverse human rights impacts that may result from the activities or relationships of companies in the O&G sector, as identified through multistakeholder interviews and research to date. The term “adverse human rights impact”, in line with the definition used in the UN Guiding Principles, is used to mean an action that removes or reduces the ability of an individual to enjoy his or her human rights. Under the UN Guiding Principles, the responsibility of business enterprises to respect human rights encompasses all internationally recognised human rights – understood, at a minimum, as those expressed in the [International Bill of Human Rights](#) (the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the principles concerning fundamental rights set out in the [International Labour Organization’s Declaration on Fundamental Principles and Rights at Work](#). The commentary to Guiding Principle 12 also makes clear that, depending on circumstances, businesses may need to consider additional international standards, for example, where they may impact upon individuals belonging to groups or populations at heightened risk of vulnerability or marginalization.

The extent to which companies are involved with these impacts will be heavily influenced by both their operating context (see further section 4) and the effectiveness of the processes that they already have in place to prevent, identify, mitigate and address such impacts (see section 5). Stakeholders also stressed the relevance of the different phases of the project cycle to both the types of potential impacts and the particular systems that are relevant to managing them.

With that in mind, a number of potential human rights impacts were highlighted by different stakeholders. Those most frequently raised include the following:

#### **3.1 Impacts on the rights to property and an adequate standard of living**

These rights may be at risk of adverse impacts in particular when O&G companies acquire or use land, and in particular where this leads to the displacement and relocation of communities. The rights are likely to be impacted where these processes involve involuntary relocation and economic displacement of populations or where they are carried out without free, prior and informed consultation of affected communities (and, at least in some circumstances, their consent), the provision of compensation and restoration or improvement of livelihoods that are affected, in line with international standards. Some stakeholders mentioned that communities that rely on subsistence agriculture, hunting or fishing may also be at particular risk. The acquisition or accessing of community land is a particular feature of the pre-exploration, exploration and operations phases of O&G company activities. Where host governments do not recognise informal land rights of communities, or traditional land rights of indigenous communities, individuals may be at heightened risks of impacts due to a lack of legal protection and corresponding inability to access effective remedies for violations of their rights. The construction and operation of O&G infrastructure, especially pipelines, can impact the rights of numerous communities located along the associated corridor of land, which may extend over several countries.

#### **3.2 Impacts on the rights to free, prior and informed consultation and/or consent**

The nature and application of the right to free, prior and informed consent remains contested. At a minimum it applies to indigenous peoples with regard to various activities regarding land that they

traditionally own, use or occupy including sites of cultural heritage. Many stakeholders contend that it applies to any communities that legally or traditionally use or occupy land. Governments also underline legal rights of eminent domain. Regardless, it is widely accepted that in all circumstances, communities whose lands and/or livelihoods are impacted by O&G operations should, at a minimum, be engaged in meaningful free, prior and informed consultation (without prejudice to internationally-recognised additional rights for indigenous communities).

It is typically seen as the primary duty of governments to conduct such consultations, although it is also widely viewed as a responsibility of O&G companies to conduct equivalent consultations where government has not done so, or where it is seen as having failed to do so to an acceptable standard (see section 4.1.1 below). This is particularly relevant at the exploration and operations stages of O&G activities. Some stakeholders said that during exploration, oil and gas discovery is not guaranteed and community engagement is often limited in order to manage community expectations. Other stakeholders noted that such engagement processes may not capture the full range of actual and potential impacts or include all those who need to be consulted. Such challenges can inhibit the early identification and mitigation of potential human rights impacts from exploration and the early management of those impacts if production goes ahead.

### **3.3 Impacts on the right to freedom of movement and cultural rights**

Closely related to impacts on the right to property are potential adverse impacts on the right to freedom of movement and on cultural rights arising from the inability to access sacred and/or cultural sites, traditional grazing lands or other important physical locations that are essential to the maintenance and preservation of traditional culture and/or spiritual or religious traditions. These impacts may be particularly acute for indigenous peoples and may impact, additionally, upon their distinct cultural rights, including in relation to archaeological and historical sites.

### **3.4 Impacts on the rights to health, clean water and food**

Significant pollution-related risks for local communities' rights to health, clean water and food can arise, particularly during the construction and operations phases. These may directly affect individuals, for example through potential health and safety emergencies (such as explosions or spills), or may affect them via environmental degradation including the pollution of water sources and land that affects their health, as well as the health of animals and/ or crops. In the decommissioning phase, such impacts may arise or be compounded through the lack of, or inadequate, long-term remediation of land. Communities "downstream" from the particular site may be less at risk of direct impacts as they are more removed from the operations, but still notably at risk of negative human rights impacts related to environmental harm.

Adverse health and water/food-related impacts can also occur when in-migration of construction or other workers leads to an increase in demands on social infrastructure (including hospitals and public services), possible inflation (leading to potential food insecurity) as well as potential increases in the use of drugs, alcohol and prostitution and the exploitation of children in local communities.

### **3.5 Impacts on the rights to life, security of person and freedom from torture, cruel, inhuman or degrading treatment**

Adverse impacts may arise where private or public security forces are employed to protect O&G facilities during construction or operations phases, without, among other things, adequate clarity on the extent and limits of permissible action, including the use of force, or full training on human rights and in other relevant skill areas. The response to security breaches against the O&G asset (for example community protest, theft, or trespass) could lead to violent clashes between affected communities and public or private security forces, potentially resulting in the loss of life through the lethal use of force. Potential incarceration of those committing security breaches could lead to the

risk of unjustified imprisonment, cruel, inhuman or degrading treatment or, in extreme instances, even torture and sexual violence. These risks may be exacerbated in conflict-affected and other challenging contexts.

### **3.6 Impacts on labour rights**

The construction phase is the most labour-intensive phase of O&G activity and can require the significant recruitment of private sector employment and/or recruitment agency workers. This is usually undertaken through third party agencies. The ‘triangular’ nature of the relationship between a company, agency and worker may leave workers outside the scope of protection of local labour laws due to lack of clarity over which organisation is the legal employer. Where migrants have been recruited or employed by agencies or hired directly by companies, they may be particularly vulnerable to adverse human rights impacts, including on their freedom of movement (where agencies sometimes retain identity documents or make illegal deductions to wages or illegally impose fees associated with securing their employment). In the worst cases, this might include forms of bonded or even forced labour. Migrant workers can also find it particularly difficult to access effective remedies through the domestic legal system.

Although some of the most significant human rights risks arise in relation to recruited or agency workers during construction, some stakeholders noted that adverse impacts on O&G company employees also occur when labour rights are not upheld, particularly in relation to collective bargaining and freedom of association. Stakeholders reflected that trade unions were not much in evidence within the O&G sector in some parts of the world.

### **3.7 Impacts on the right to freedom of expression**

Some stakeholders noted that individuals and communities affected by O&G projects may lack access to information concerning the full impact of such activities on their lives and livelihoods. Impacts on the ability to seek, receive and impart information under the right to freedom of expression may inhibit the ability of affected individuals or communities to effectively participate in decision-making processes – which may be a particular issue in relation to indigenous peoples’ rights in this regard.

### **3.8 Impacts on the rights of vulnerable groups**

A number of stakeholders emphasized that individuals from vulnerable groups or populations (which may include children, ethnic minorities, women and/or indigenous peoples) may be at heightened risk of not only the kinds of negative human rights impacts identified above but that those adverse impacts may fall disproportionately on them. Some noted that they may also be disadvantaged in the sharing of any benefits or opportunities arising from company operations. In part, this can arise because such groups may be marginalised in engagement or consultation/consent processes aimed at communities in general, lack protection under national or traditional laws, and often suffer from discrimination and thus the particular risks they face are not adequately taken into account in efforts to prevent, mitigate or remediate adverse impacts. There may also be a heightened risk of adverse impacts on the right to self-determination. The UN Declaration on the Rights of Indigenous Peoples<sup>iii</sup> was highlighted by some stakeholders as having particular relevance to the O&G sector.

## **4. CONTEXTUAL FACTORS**

All stakeholders emphasised that the activities of O&G companies must be understood within the wider contexts in which they operate, and which may increase the risk of some of the above human rights impacts occurring. Different stakeholders highlighted a range of contextual factors, including:

#### **4.1 Host state governance**

The exploitation of natural resources can generate large revenues that enable states to foster growth, reduce poverty and help ensure the realization of human rights. However, in states where governance is weak, such exploitation may instead contribute to poverty, corruption, crime and conflict with all the associated negative impacts on individuals' human rights. This was a major theme across all stakeholder groups. A number of stakeholders stressed that there is a very relevant difference between EU and some other countries with O&G operations in this regard, which in turn has a bearing on the scope and scale of the kinds of adverse impacts identified above and may also influence the appropriate responses by industry and by governments.

Issues of host state governance with particular relevance to the O&G sector include the following:

- The terms of the investment agreements brokered between IOCs, NOCs and the national government and the extent to which they consider potential human rights impacts of the project, the extent to which there is transparency about those terms and the capacity of the government when negotiating contracts;
- The degree of government commitment to revenue transparency, for example through adherence to the principles of the Extractives Industry Transparency Initiative (EITI), in order to strengthen accountability for the use of those revenues in ways that support the effective protection and promotion of human rights. Some stakeholders questioned whether the EITI is sufficient in this regard;
- The nature and extent of regulation of public security forces, and levels of training on the proportionate use of force. This is of particular relevance for companies obliged to employ public security forces to protect assets as part of their contract with host governments. Stakeholders noted the relevance of the level of compliance with the Voluntary Principles on Security and Human Rights in this regard;<sup>iv</sup> and
- Existing approaches to land issues, including the extent of recognition and protection in domestic law of informal or customary land rights, and the way in which the government develops and implements concession agreements with local communities, particularly in relation to engagement and consultation/consent processes prior to concessions being awarded.

#### **4.2 Conflict situations**

If an O&G company is operating, or seeking to operate, within a conflict-affected area then the risks of human rights impacts resulting from its activity may increase, in part because the context itself poses a greater risk of human rights abuses, but also because of the potential links that could arise between the company and the conflict itself either through the company's own activities or through its relationships. For example, where contracts with host governments demand it, O&G companies may have to rely on public security forces that are already engaged in the conflict. Some commented that, in a zone of weak governance, including countries affected by conflict, resource revenues, such as taxes and royalties that the O&G company pays the state, might raise or be seen to raise the risk of exacerbating conflict.

#### **4.3 Legacy issues**

If a company acquires an O&G asset where previous owners have failed to mitigate or remediate adverse human rights impacts on local communities that can pose particular challenges for the new owner. The new owner may inherit legal obligations, or may be seen by local communities as inheriting responsibility, for addressing any outstanding historical impacts. If the new owner does not see this as a responsibility that it has inherited, this can lead to tension and even conflict in its relationships with community members, with the attendant risks of adverse impacts which that poses.

## **5. KEY PROCESS CHALLENGES**

The UN Guiding Principles set out a number of process steps companies are expected to take as part of their responsibility to respect human rights. Stakeholders were asked to identify challenges, barriers and opportunities in relation to each of these steps, taking account of adverse human rights impacts that may arise through O&G companies' own activities or through their business relationships. As noted above, the project cycle was consistently emphasized as a relevant lens through which to consider the process challenges summarised below.

A range of issues were identified in stakeholder interviews:

### **5.1 Embedding respect for human rights in a company**

*The UN Guiding Principles observe that a business's policy commitment to respect human rights should be embedded from the top of the enterprise through all its functions, which otherwise may act without regard for human rights. This requires coherence between the human rights policy and other policies and procedures that govern its wider business activities and relationships.*

Issues identified by different stakeholders included the following:

- Industry stakeholders highlighted that once a human rights policy is developed by an O&G company, the operational implications still must be developed and understood both at the board level (to ensure leadership) as well as at the operational level (to ensure implementation) – without this it will be hard to implement in practice.
- Integrating human rights risk assessment and management into current social performance processes in O&G companies is seen as a good way to meet a company's responsibility to respect. However, industry stakeholders report concern as to how to avoid duplication of efforts in relation to existing social performance processes when introducing human rights due diligence processes. For example, some questioned the rationale of undertaking a social impact assessment as well as a human rights impact assessment as many of the same issues are covered by the two separate assessments.
- Some stakeholders raised concerns about organisational human rights "silos," noting that human rights "champions" are often unable to communicate effectively internally about the value of adopting a human rights approach – either at the board or operational level. It was noted that if human rights become associated solely with individual human rights champions who then leave the organisation, there is a risk that the impetus and commitment around the integration of human rights will be lost. Others observed that human rights champions should not be seen as a replacement for full cross-functional integration of human rights concerns.
- Some stakeholders said that challenges can arise when companies do not extend internal human rights commitments to the management and remediation of human rights risks inherited through the purchase or acquisition of assets.
- Challenges may also arise within the hierarchy of management priorities with industry stakeholders commenting that, for example, project schedules may be stronger drivers than human rights concerns.
- There was a suggestion that when determining how respect for human rights can be embedded within an organisation much could be learnt from companies' experience of embedding respect for the management of health and safety risks.
- Civil society stakeholders raised the importance of communicating with shareholders about the importance of managing human rights risks, not only as a form of financial risk but as integral to operations.

### **5.2 Assessing risks to human rights**

*The UN Guiding Principles state that businesses should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This includes assessing the human rights context prior to a*

*proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. Importantly, human rights risks to people impacted as a result of the business's activities or its relationships should be considered separately from any risks to the business that may flow from its involvement with human rights impacts. However, the two are increasingly related.*

Issues identified by different stakeholders included the following:

- Interviews suggest that while human rights due diligence may be well understood within some major O&G companies, this is not the case with all companies in the sector. Some industry stakeholders felt that many O&G companies have yet to see the practical implementation value of these processes even though there now exists a significant amount of guidance and external expertise on how to undertake human rights risk/impact assessments. Industry stakeholders referenced the work of the global oil and gas industry association for environmental and social issues, IPIECA, in this regard.<sup>v</sup>
- Some stakeholders suggested that the concept of human rights due diligence is still not well understood in two particular regards: first, in how it differs from social and environmental due diligence, and second, in terms of its focus on risk to individuals and their human rights, rather than just risks to the company itself. It was also suggested that the severity of human rights impacts could be lessened if impact assessment processes focused explicitly on the individual rather than just at the level of households or communities.
- Some stakeholders stressed the importance of linking risk assessment processes to impact mitigation and remediation processes, stressing that assessment and management actions need to be on-going throughout the project cycle.
- Some commented on the challenges arising from the fact that projects may be assessed in isolation and not on an on-going basis (i.e. from operation to post decommissioning).
- Some civil society stakeholders noted that if affected individuals and communities are unable to access and/or unable to fully understand technical information regarding the impacts of project activity, this can limit their ability to fully and meaningfully engage in any consultation processes associated with risk assessment. It was suggested that participatory processes provide an opportunity for enhancing the effectiveness of risk assessment.
- Some stakeholders pointed to other risk management processes (e.g. for health and safety) which often include a description of risk indicators that allow operational users to anticipate impacts before they occur. Companies have used incident prevention and risk management systems for human rights issues but in some cases have yet to identify the context and behaviours that might anticipate diverse human rights impacts.
- Some stakeholders stressed the importance of human rights due diligence taking account of risks associated with the operational context, including the extent to which the host government is protecting rights that are most at risk of being impacted by O&G activity.

### **5.3 Integrated, cross-functional decision-making to address human rights impacts**

*The UN Guiding Principles state that in order to prevent and mitigate adverse human rights impacts, businesses should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action in order to prevent and mitigate the impacts identified. Integration requires internal decision-making, budget allocations and oversight processes that enable effective responses to such impacts.*

Issues identified by different stakeholders included the following:

- Stakeholders noted that community relations teams in many O&G companies face constraints on their ability to implement high-level human rights policy commitments on the ground. Such constraints may include limits on the number of staff within community relations teams,



restricted budgets, and/or a lack of knowledge of human rights best practice. These constraints can mean that the operational aspects of human rights policies (e.g. thorough community engagement, impact identification and management, and grievance redress) are not fully implemented on the ground.

- Some industry stakeholders also reported that there was often a lack of cross functional/departmental understanding of which operational issues can have impacts on human rights and how. For example, they cited on-going challenges (and opportunities) around better coordination between security and community relations functions.
- Some stakeholders said that cross-functional integration needs to be led from the board or senior management level, and that without strong direction from senior leadership such integration will not happen.
- One definition of integration that was advanced was “everyone within an organisation taking functional responsibility for policy implementation”.

#### **5.4 Human rights impacts of business relationships in the sector**

*The responsibility to respect human rights under the UN Guiding Principles encompasses adverse human rights impacts that may occur as a result of a company’s business relationships with third parties. This includes adverse impacts that are directly linked to its operations, products or services by a business relationship, even where it has neither caused nor contributed to the impact itself. When identifying how best to address impacts that result from its business relationships, the company’s leverage will be a significant factor. Leverage refers to the ability of the company to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact. Using leverage may involve working with the entity most directly responsible for the impact and/or with others who can help.*

Issues identified by different stakeholders included the following:

- Stakeholders noted that companies in the O&G sector typically have a significant number of third-party business relationships both with other companies and with home and host governments. Key relationship challenges identified by stakeholders included:
- The ability of any O&G company to exert leverage over other joint venture partners. This is seen to depend in large part on two factors:
  - (a) the level of control the company has within the JV. For example, if a company is not the operational partner, its ability to influence how operations are conducted will be reduced;
  - (b) the extent to which the values of partners in the JV are aligned and reflect respect for human rights.

Operational control and shared values may be particularly important with regard to aspects of operations that can have significant human rights impacts such as security, employment and contracting, and land management.

- The extent to which an IOC can integrate human rights conditions into its contracts with government varies significantly between different contexts and depends on local law and the willingness of the host government to engage in dialogue about human rights. The extent to which these conditions are upheld in practice often depends upon formal and informal relationship brokering between the IOC’s in-country staff and key governmental personnel, which will often include military and police, especially where legal enforcement is weak. Additional factors include the level of competition that an IOC faces from other IOCs as well as NOCs, which may have less rigorous requirements around social risk management and human rights.
- There appears to be a perception amongst industry stakeholders that leverage within relationships with host governments is limited. However this has been challenged by some other stakeholders who perceive that companies are able to wield more leverage than they do in practice.

- The ability of an O&G company to manage human rights risks within its supply chain depends in part upon its ability to include human rights conditions in all supplier contracts, to monitor implementation of those conditions, and to apply pressure to contractors to address human rights risks and impacts when they occur, including through education and training. Stakeholders observed that where a contract with the host government stipulates levels of ‘local content’ – meaning contracts that must go to local suppliers or service providers – this can bring with it increased risks of non-compliance with contracting conditions if local businesses are not familiar or experienced with international good practice.
- Linked to this, some stressed the importance of engagement and capacity building for local suppliers with one industry stakeholder noting that the benefits of building the capacity of local companies to understand and respect human rights far outweighed the costs of doing so.. While supporting this approach, some industry stakeholders said that communicating about human rights risks with local suppliers poses real challenges.
- A few stakeholders raised relationships with financial institutions as a key business relationship, including investors, and in particular the impact of social and environmental performance standards included in debt financing agreements with development banks such as the European Bank for Reconstruction and Development and the International Finance Corporation.<sup>vi</sup>

### **5.5 Measuring effectiveness of company responses to human rights impacts**

*The UN Guiding Principles underline the need for companies to track the effectiveness of their responses to adverse human rights impacts (whether actual or potential impacts) in order to verify whether the impacts are being addressed effectively. Tracking should be based on appropriate qualitative and quantitative indicators and draw on feedback from both internal and external sources, including affected stakeholders.*

Issues identified by different stakeholders included the following:

- Several industry stakeholders noted that there is a lack of understanding and methodologies for how to quantify human rights impacts of O&G companies and measure the extent to which a company is respecting human rights. Some stressed that there is emerging experience that individual companies are currently seeking to capture. One stakeholder noted that the inability to demonstrate the effectiveness of a human rights policy in practice can seriously hinder support for it internally.
- Industry stakeholders noted a lack of space for companies to accurately ‘show’ – that is, publicly disclose – material human rights risks and specifically outline what problems they are having, due to: (a) the lack of any mechanism to do so (b) internal restraints, notably from legal departments concerned about legal liability and (c) the genuine risks of external legal claims.
- Some stakeholders noted that the effectiveness of a company’s response to human rights impacts is often measured by the completion of procedural stages within the internal reporting process rather than by measuring whether a human rights impact has actually been mitigated.
- It was reported that the lack of internal recognition in many O&G companies of the financial value to the company of avoiding human rights impacts through effective human rights risk management processes is undermining the internal traction for addressing human rights in general. Civil society stakeholders cautioned that addressing human rights risks should never be based on a cost benefit analysis.

### **5.6 Stakeholder engagement in addressing human rights impacts**

*Stakeholder engagement is a cross-cutting theme within the UN Guiding Principles, particularly in the context of assessing impacts, tracking responses, providing for adequate communication about how impacts are addressed, as well as in the remediation of impacts. The UN Guiding Principles recognise that not all companies will be able to consult directly with those groups who may be impacted (for*

*instance due to legitimate resource limitations), but that where this is not possible, other avenues should be sought to understand their likely perspectives and human rights concerns.*

Issues identified by different stakeholders included the following:

- Some industry stakeholders highlighted a lack of clarity as to what transparent and meaningful stakeholder engagement looks like. Others commented on the challenge of ensuring credibility and political independence when engaging with high-risk or high-profile stakeholders such as the military or the police.
- A number of stakeholders noted that operational teams often lack knowledge of good practice and lack responsibility for carrying out meaningful consultation. In many cases the first teams on the ground are technical (e.g. seismologists) and do not have responsibility for engaging communities even though they often cause initial impacts. By the time community relations teams arrive on the ground, opportunities for meaningful engagement may have been undermined by these initial experiences.
- Concerns were raised that in many instances governments either fail to or do not adequately consult communities likely to be affected by O&G activities prior to the concession bidding process. As a result, companies enter environments where affected communities have yet to be engaged. The problems likely to result from this omission, including heightened risks of conflict, are often not recognised by the government, or sometimes by the companies involved. Some stakeholders raised the importance of companies therefore undertaking their own risk assessment about levels of prior governmental engagement with communities likely to be affected by their activity.
- Civil society stakeholders identified a number of considerations seen as important in developing processes around free, prior and informed consent, including: starting engagement early, ensuring that engagement is on-going, basing engagement on the provision of objective and adequate information, employing participatory impact assessment processes, and ensuring that all consultation is culturally appropriate.

## **5.7 Complaints handling/grievance mechanisms (by a company)**

*The UN Guiding Principles state that where businesses identify that they have caused or contributed to adverse human rights impacts, they should provide for or cooperate in their remediation through legitimate processes. They also provide that business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted, in order that grievances may be addressed early and remediated directly.*

Issues identified by different stakeholders included the following:

- One of the key challenges raised by industry stakeholders was how to determine when a social impact identified through a company's grievance process constitutes a human rights impact in order to ensure that it is identified and managed appropriately. It was noted that often affected individuals and communities do not raise grievances using "human rights language" but that it is important to ensure nonetheless that responses are in line with international human rights standards.
- Industry stakeholders also highlighted the challenge of figuring out how to address grievances for which the company is not solely responsible but for which it may share responsibility with the government or another business partner, for instance where security forces are involved or the action of a contractor.
- Civil society stakeholders suggested that industry grievance mechanisms should be located and administrated outside a company in order to provide for third party verification of due process. Some industry stakeholders raised questions about the implications of locating such a process outside the company.

- Civil society stakeholders stressed that company mechanisms should not restrain people from using state-based judicial and non-judicial grievance mechanisms.
- Stakeholders across all groups emphasised the value in addressing grievances in a timely way and the importance of the mechanism’s accessibility to all affected parties.
- Industry stakeholders referenced IPIECA’s current work on operational-level grievance mechanisms.

## **6. NATURE OF THE GUIDANCE**

Initial research and interviews with stakeholders have identified a range of views on the potential focus and form for the forthcoming guide, including:

### **6.1 General insights**

There were some broad areas of agreement among stakeholders in this regard. Stakeholders requested that the guidance should:

- be practical, uncomplicated and useful for all individuals regardless of where they operate within a company, ranging from senior managers operating at the global/corporate level to those working at the field/operational level;
- be concise;
- use business language rather than academic human rights language to ensure all entities within an organisation are able to use it;
- use definitions of human rights as they appear in the Universal Declaration of Human Rights and other key international human rights conventions;
- draw on existing guidance that is aligned to with the UN Guiding Principles;
- be of practical use and relevance for large and as well as smaller companies; and
- also be targeted to governments (or particular departments of governments) as a potential audience.

There were strong objections from some stakeholders to the idea that the guidance might combine prescriptive and interrogative approaches to create an ‘auditable standard’, while others supported this concept.

### **6.2 Objectives**

As highlighted above during the consultation process to date, stakeholders identified some of the key challenges that they face or see O&G companies facing in implementing the responsibility to respect human rights. In line with this, stakeholders proposed a range of objectives for the guidance, including that it should address:

- how to integrate human rights into an organization while allowing for a variety of organizational structures and different current approaches to social performance management;
- the integration of human rights provisions into KPIs;
- the integration of human rights provisions into contracts with host governments;
- how to communicate the business value of human rights to both internal and external stakeholders;
- how to communicate the business value of human rights to companies and organisations not yet engaged with human rights risk management
- how to integrate respect for human rights into the supply chain;
- the difference between a human rights impact and a socio-environmental impact, clearly outlining how a “human rights sensitive” approach is different to simply managing general impacts in line with international best practice;
- how to determine when a grievance reflects a human rights impact and how to assess the severity of that impact;

- how companies can meaningfully report on material human rights risks, without facing either internal legal inhibitors or external legal implications and how external auditors could be included within the process;
- how to demonstrate that companies have a culture respectful of human rights;
- how to manage relationships with host governments while undertaking human rights due diligence which could pose difficult political challenges to the relationship including how and when companies should use leverage with host governments when they are not playing an operational role in the project.

### **6.3 Existing Initiatives and Guidance**

Various stakeholders drew attention to particular initiatives and/or guidance including:

- Extractive Industry Transparency Initiative
- International Council on Mining and Metals (ICMM)
- International Finance Corporation Sustainability Framework and Performance Standards
- IPIECA
- Voluntary Principles on Security and Human Rights

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## ANNEX A

### Project Background

In October 2011, the [European Commission](#) adopted a new [Communication on Corporate Social Responsibility](#) that defined corporate social responsibility as “the responsibility of enterprises for their impacts on society”. As one of the priority actions in the business and human rights field, the European Commission committed to developing guides for three industry sectors on the corporate responsibility to respect human rights under the [UN Guiding Principles on Business and Human Rights](#). After a brief public consultation requesting input on the sector selection according to a set of [publicly available and objective criteria](#), the Commission selected the Employment & Recruitment Agencies, Information & Communication Technology, and Oil & Gas sectors as the focus of the guides.

While the guides will take particular account of the situation and experiences of EU business, they aim to be as globally relevant as possible in order to contribute to a harmonised approach to the implementation of the Guiding Principles. The development of the guides will mirror, on a smaller scale, the approach taken in developing the Guiding Principles: being global in approach and informed by relevant evidence and the views of a wide range of stakeholders, including representatives from business, civil society, trade unions, government, and other experts. The guides will be based on research, extensive interviews with diverse stakeholders (75+ per sector), and inputs from two multistakeholder roundtables per sector. The European Commission's [Expert Advisory Committee](#) and three multistakeholder [Sector Advisory Groups](#), convened specifically for the project, are providing strategic advice and feedback.

### Project Timeframe

- January – March 2012: Consultation on and finalisation of sector selection, formalisation of EC Expert Advisory Committee and Sector Advisory Groups; appointment of sector-specific researchers.
- April – August 2012: Ongoing consultation with broad range of stakeholders through in-depth confidential interviews (including select country visits) and first set of multistakeholder sector Roundtables hosted by the EC, as well as additional desk-based research.
- September – November 2012: Guide drafting phase, further specific research as needed, and second set of multistakeholder sector Roundtables hosted by the EC to discuss the draft guides.
- December 2012: Submission of the three guides to the EC and finalisation for publication.

### The UN Protect, Respect, Remedy Framework and the UN Guiding Principles on Business and Human Rights

In June 2011 the UN Human Rights Council unanimously endorsed the UN Guiding Principles, establishing the first authoritative global standard on the respective roles of business and governments in helping ensure that companies respect human rights in their own operations and through their business relationships. They spell out the implications of the three pillars of the [UN 'Protect, Respect, Remedy Framework'](#) on business and human rights. The UN Guiding Principles were developed by the Special Representative to the UN Secretary-General for Business and Human Rights, Professor John Ruggie, over the six years of his mandate. Based on extensive research and consultations with representatives from government, business, civil society, trade unions and legal and academic experts across all continents, the UN Framework and UN Guiding Principles gained broad acceptance and support. The responsibility of business enterprises to respect human rights encompasses all internationally recognised human rights – understood, at a minimum, as those expressed in the [International Bill of Human Rights](#) and the principles concerning fundamental rights set out in the [International Labour Organization's Declaration on Fundamental Principles and Rights at Work](#).

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<sup>i</sup> See: <http://www.ihrb.org/project/eu-sector-guidance/index.html>

<sup>ii</sup> See Ernst and Young, 'Navigating Joint Ventures in the Oil and Gas Sector' (2001).

<sup>iii</sup> UN Declaration on the Rights of Indigenous Peoples as adopted by the General Assembly on 13 September 2007.

<sup>iv</sup> [http://www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf)

<sup>v</sup> Including current work on human rights due diligence processes but also past guidance such as IPIECA, 'A Guide to Social Impact Assessment in the Oil and Gas Industry' (2004).

<sup>vi</sup> See, in particular, International Finance Corporation, "Performance Standards on Environmental and Social Sustainability and Guidance Notes" (2012).