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JOHN RUGGIE'S 'THE GUIDING PRINCIPLES'

A LEGAL GUIDE TO 'THE GUIDING PRINCIPLES' ON BUSINESS AND HUMAN RIGHTS

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John Ruggie's Guiding Principles

Background

John Ruggie currently serves as the United Nations Secretary-General's Special Representative for Business and Human Rights. In 2008 John Ruggie proposed his business and human rights Framework, "Protect, Respect and Remedy", to the UN Human Rights Council. He subsequently produced draft **Guiding Principles** which outline how businesses should implement that UN Framework and how States should play a part in this. The Guiding Principles will be presented before the UN Human Rights Council at its June 2011 session.

The Guiding Principles

Aims

The intention behind the Guiding Principles is not to create new international legal obligations. Rather, their aim is to establish a common global standard for preventing and addressing the adverse human rights impact of business activity. Both state and corporate responsibilities are addressed by the Guiding Principles.

Key Features

The Guiding Principles follow the three pillars of the UN "Protect, Respect and Remedy" Framework:

1. the **State Duty to Protect** against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication;
2. the **Corporate Responsibility to Respect** human rights, meaning corporations should act with due diligence to avoid violating the rights of others and to address adverse effects with which they are involved; and the need for greater **Access to Remedy** for victims of business-related abuse, both judicial and non-judicial

Implication for Businesses

The fundamental purpose of these Guiding Principles is to make businesses more accountable for human rights abuse and corporate-related harm. The more significant guidance points are set out below:

- Businesses should respect human rights, having an obligation to avoid infringing on the human rights of others and tackle any adverse human rights impacts arising from actions with which they are involved (*Principle 11*). They are responsible both for human rights within their own establishment and

those directly linked to services arising from their business relationships (*Principle 13(b)*).

- The responsibility to respect human rights applies fully and equally to all businesses, regardless of their size, sector, operational context, ownership and structure. Policies and processes will likely vary amongst different businesses, but the end obligation is the same (*Principle 14*).
- Businesses should draw up a statement of policy embedding their commitment to respect human rights, which stipulates the human rights expectations of the business's personnel, business partners and other parties directly linked to its operations, products or services. The statement should be publicly available and communicated to all those linked to the business, including shareholders (*Principle 16*).
- Businesses should carry out human rights due diligence. This should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are assessed. Due diligence should be commenced as early as possible in a new activity/relationship (*Principle 17*).

Implication for States

States are given two main areas of responsibility regarding human rights within their territory or jurisdiction: (1) to protect individuals against human rights abuses by third parties, including business enterprises; and (2) to encourage business enterprises to respect human rights. Guidance on the latter includes the following:

- States should encourage, and where appropriate require, businesses to communicate how they address their human rights impacts. Communication can range from informal discussion with affected shareholders to formal public reporting (*Principle 3*).
- State-based institutions and agencies which assist business enterprises, such as by providing finance or equipment, should act in a manner compatible with the Government's human rights obligations (*Principle 4*).
- When engaging in commercial transactions with businesses, States should promote their respect for human rights, including through the terms of contracts (*Principle 6*).
- States should provide governmental departments, agencies and other State-based institutions with the information, training and support they need to observe the State's human rights obligations when shaping business practices (*Principle 8*).

Remedies

Where businesses identify human rights violations that they have caused or contributed to, they should provide for or cooperate in remediation. States must ensure that when a human rights infringement takes place within their territory, those affected have access to effective remedy. States should also address any

barriers to remedy such as refused access to the State's court, the cost of bringing claims or difficulties securing legal representation.

Development implications and practical challenges NGOs may face when following the Guiding Principle

The Guiding Principles focus attention on the human rights responsibilities of States and businesses alike. NGOs will be able to use them as a pressure point in ongoing campaigns to secure both State and corporate actions.

Leading NGOs have expressed concern that the Guiding Principles in their current form do not go far enough to promote human rights. A key concern is that they are too vague, referring to "appropriate steps" and "appropriate actions" which States should take to ensure corporate respect of human rights, without giving examples. It has been proposed that these steps include independently monitored mandatory human rights due diligence for both private and state-owned companies.

The requirement in the Guiding Principles that States "encourage" business respect is vague. States have been reluctant to pass regulation which controls their corporations' activities abroad and some NGOs anticipate little change in this attitude. Several NGOs have suggested that the guidance should be clearer on how States and businesses should address vulnerable individuals, such as women and children, perhaps by using defined examples taken from relevant treaties and declarations.

The main worry is that vague guidance will undermine the authority of its proposals. Despite the increasing focus on human rights abuse and the move towards greater corporate responsibility, without specific guidance on how to end human rights contraventions, NGOs may struggle to rely on the Guiding Principles.

Conclusion

It remains to be seen whether John Ruggie will amend his Guiding Principles before presenting them to the UN Human Rights Council in June 2011. In any event, the Guiding Principles usefully elaborate on due diligence procedures and remedies as well as contributing to the international pressure on States and businesses to respect and protect human rights.

For more information, visit:

www.business-humanrights.org/.../ruggie/ruggie-guiding-principles-21-mar-2011.pdf
(advance edited version of the draft Guiding Principles)

<http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples/Submissions> (joint Civil Society statement on the draft Guiding Principles)

<http://blogs.law.harvard.edu/corpgov/2011/04/09/un-guiding-principles-for-business-human-rights/> (Post by John Ruggie on Harvard Law School Forum)