

Businesses' human rights responsibilities

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There is no international human rights law standard that expressly prohibits businesses' arbitrary displacement of persons. Businesses do, however, have the responsibility to avoid infringements of human rights that could lead to displacement and also to take actions to remedy their human rights violations that might lead to displacement.

It is accepted wisdom that companies can significantly contribute to alleviating poverty, creating new jobs, improving roads and sanitation, facilitating greater access to water and enhancing health services in communities. However, greater attention is now being given to the negative impacts of companies' operations on communities, including those that can lead to displacement. Pollution from factories and mining projects, for example, has deprived people of their livelihoods, water sources and access to religious and cultural sites. Even where a company is not causing damage to the environment, its mere presence can alter the social composition of the local community or create tensions among different groups and lead to displacement of individuals, families or whole communities.

More and more, throughout all their operations and regardless of the size and nature of the business, companies are being required to respect human rights. The principle of corporate respect for human rights was articulated in a document submitted in 2008 to the UN Human Rights Council by the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie. His 'Protect, Respect and Remedy' Framework for Business and Human Rights¹ (the Framework) was welcomed by the Human Rights Council.

The Framework rests on three pillars. The first pillar concerns the duty of states to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication. The second pillar is the corporate responsibility to respect human rights and the third is the need for greater access by victims of human rights violations to an effective remedy.

In 2011, businesses were provided with operational guidance on the implementation of their corporate responsibility to protect human rights in the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework² (the Guiding Principles on B&HR), which were fully endorsed by the UN Human Rights Council. The Guiding Principles on B&HR, like the Guiding Principles on Internal Displacement, are not legally binding but are consistent with international human rights and humanitarian law standards.

The Framework and the Guiding Principles on B&HR are playing a key part in precipitating a transformation in the view of businesses' relationship to human rights. They provide a new foundation for companies to be accountable for respecting human rights and, consequently, for companies to take steps

to ensure that their actions do not lead to human rights violations that could result in displacement.

Although respect for human rights remains a voluntary obligation for companies, it is receiving wide support. The Organisation for Economic Co-operation and Development included the principle in its 2011 updated Guidelines for Multinational Enterprises.³ The International Finance Corporation (part of the World Bank Group), which provides loans to businesses in developing countries to advance economic development and reduce poverty, acknowledges the responsibility of the private sector to respect human rights in the 2012 edition of its Policy on Environmental and Social Sustainability.⁴ In October 2011 the European Commission issued a new corporate social responsibility policy that expresses the expectation that European companies will meet the responsibility to respect human rights.⁵ Around the same time the Association of Southeast Asian Nations (ASEAN) announced that the first thematic study of its new Intergovernmental Commission on Human Rights would address the issue of business and human rights. In the private sector, industry organisations such as IPIECA (a global oil and gas industry association for environmental and social issues) and the International Council on Mining and Metals (established to improve sustainable development) promote and provide guidance on implementation of a human rights-oriented approach to their member companies. In addition, investment funds are increasingly evaluating the human rights practices of companies in which they invest.

Steps businesses should take

While business enterprises have obligations under national laws, the corporate responsibility to respect human rights provides for a responsibility over and above national law standards. Thus, even where states are unwilling or do not have the capacity to properly regulate, supervise and hold businesses accountable for violations of national laws that protect human rights, businesses remain responsible for respecting human rights.

The Guiding Principles on B&HR establish two major steps companies should take to ensure they respect human rights. First, the business must establish a policy that articulates its responsibility to respect human rights. The policy serves to let employees, investors and the public, among others, know that the company has made a commitment to respect human rights. Even the process of creating the policy can foster a greater integration of the principle of respect for human rights into the company's day-to-day practices and operations.

The second step is the establishment of a human rights 'due diligence process' – a term borrowed and extended from a usage in the corporate world

to refer to investigation of a company to ensure that it has no hidden liabilities, including financial, legal, health and safety or environmental problems – which should include four components.

Firstly, a company must either augment its current due diligence process or create a new process to identify the people who may be affected by its activities and what rights are being or might be affected by the company's activities. The company then needs to determine what actions to take to remedy its adverse human rights impacts and to prevent or mitigate potential impacts. The company will also need to track or monitor how it responds to actual and potential human rights impacts in order to gauge and improve the effectiveness of its responses. Fourthly, and finally, the company needs to communicate information about the actions it has taken, or intends to take, regarding affected or potentially affected persons to these persons and others, such as shareholders and the public.

A company should initiate due diligence with an assessment of its own actual and potential adverse effects on human rights. The company should then evaluate whether it is involved in any adverse human rights impacts through its business relationships with, for example, suppliers of goods such as raw materials, workers' uniforms, computers and other equipment, and services such as technology assistance and security. For example, when purchasing a mined mineral for use in its manufacturing process, a company should verify its supplier's respect for human rights and thus determine whether the supplier has adverse human rights impacts, including displacement. Where the supplier does have significant human rights impacts then the company should assess whether it has leverage over the supplier to influence its actions or whether the company should terminate the relationship.

While a company should regularly undertake human rights assessments of its business activities and relationships, evaluations are particularly required when a significant change in the operating environment occurs, whether due to political or other causes, and prior to undertaking a new transaction or activity. For example, when a company plans to acquire another company it should carry out due diligence to ascertain to what extent the target company has had or is currently having adverse impacts on the human rights of individuals and communities where it operates. This information will not only reveal whether individuals were displaced by the company's operations but also whether there are current risks to human rights that might cause displacement in the future.

In conducting human rights assessments, companies need to pay particular attention to land ownership and use issues, including how the government acquired land that is leased or purchased by the company, customary land rights and community use rights. In Odisha, India, when a company enclosed forest lands within its factory premises and failed to provide access for tribal and other villagers, it was found by a high-level committee commissioned by the Ministry of Environment and Forests to have acted in contempt of the law and with the collusion

of the officials concerned. Additionally, companies need to be sensitive to ways in which their operations might create pollution, monopolise water sources and alter ecosystems and thereby provoke displacement. The Niger Delta provides a glaring example of how environmental degradation caused by oil production techniques can create population displacement.

The Guiding Principles on B&HR encourage companies to engage in dialogue with persons potentially affected in order to better understand the underlying problems and to formulate appropriate remedies. They also suggest that companies consider the creation of a grievance mechanism accessible to potentially affected persons to raise concerns and allow the company to address them before problems reach such a severity that they cause displacement. Any grievance mechanism established must be an effective one rather than a mere formality. The company in charge of the 250-sq-km Dawei deep-sea port and industrial project in southern Burma has failed to provide villagers with information and an opportunity to be consulted. The villagers therefore have had no influence on the project and the impact it will have on their lives and fear confiscation of their land, which will result in their displacement. Frequently, where local communities have not been consulted on development projects that affect them, companies encounter opposition to the project and incur expensive delays. A federal appeals court in Brazil ordered suspension of construction of the Belo Monte dam on the Xingu River in August 2012, until people whose health, quality of life and cultural patrimony would be affected had been consulted.

Conclusion

The corporate responsibility to respect human rights does not absolve states of their responsibilities to ensure respect for human rights by third parties, including businesses. Principle 1 of the Guiding Principles on B&HR provides that states are to "take steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication". States therefore remain primarily responsible for preventing and addressing human rights abuses by businesses.

However, with the principle of businesses' duty to respect human rights set out in the Framework and elaborated upon in the Guiding Principles on B&HR, non-governmental organisations, investors and the public now have a standard that can be used to demand that businesses avoid infringing the rights of persons and thereby diminish the causes of displacement. The key ongoing challenge now facing such groups is how to enforce such standards and ensure that businesses are held accountable for their adverse human rights impacts.

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1. 'Protect, Respect and Remedy' Framework for Business and Human Rights <http://tinyurl.com/UN-BusinessHRFramework>
2. <http://tinyurl.com/UN-Guiding-Principles-on-B-HR>
3. <http://tinyurl.com/OECD-MultinationalGuidelines>
4. <http://tinyurl.com/IFC-Sustainability>
5. <http://tinyurl.com/EC-CorpSocialResp>