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Conference report

The UN framework for business and human rights

Thursday 13 – Saturday 15 January 2011 | WP1074

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Summary

Following publication of the draft Guiding Principles (GPs) for the implementation of the UN framework for business and human rights, Wilton Park held an informal consultation with a broad cross-section of major stakeholders: representatives of governments from all global regions, from intergovernmental organisations, national human rights institutions, business and civil society, together with the author of the draft principles, the UN Secretary-General's Special Representative (SRSG) on business and human rights, Professor John Ruggie.

Key questions discussed include:

- the interdependence of the three pillars of the framework;
- whether the due diligence process the GPs envisage companies should undertake needs to be more detailed, for example by providing quality criteria and a strong mechanism for international quality control;
- the extent to which extra-territorial jurisdiction, the application of national laws to govern activities in another country, is constrained by either legal or political considerations, and whether it should not be utilised more frequently in relation to overseas activities of multinational companies;
- the feasibility, or desirability, of drafting a new international instrument to close the governance gap which has allowed companies to operate in what some see as 'law-free' zones in conflict affected areas;
- how a strong follow-up mechanism, engaging all stakeholders, may be established at the conclusion of the SRSG's mandate to drive better practice by states and companies;
- whether a sectoral approach represents a useful way forward to implement the GPs;
- and how a major 'marketing campaign', particularly among companies, may be conducted to disseminate information about the GPs, once these are endorsed, to ensure they become embedded in both corporate as well as government culture.

Context

Over five years ago, the business and human rights agenda had reached a stalemate. On the one side governments were unwilling to let go of their sovereignty and businesses felt state obligations were being forced upon them; on the other, civil society organisations considered businesses were acting with impunity and were unaccountable in a rapidly globalising world where economic liberalisation was moving at a faster pace than the capacity of states to regulate companies. Businesses, large and small, felt that their voluntary initiatives towards acting in a socially responsible manner were sufficient to show their concern for and acknowledgement of international human rights standards. Civil society groups remained unconvinced; they sought legal accountability at the international level, and campaigned for such a change. An attempt to elaborate standards, the Draft Norms on the Responsibilities for Transnational Corporations and Other Business Enterprises with regard to Human Rights, had sharpened the divide. In that environment, the UN Secretary-General appointed John Ruggie as Special Representative (SRSG) for business and human rights, under a tightly-defined mandate[1].

A Wilton Park Conference on this topic in late 2005, at the outset of the SRSG's mandate, sought to capitalise on this new opportunity[2]. In the intervening years, the SRSG has published a large number of reports[3] and conducted 47 consultations in all parts of the world. His "Protect-Respect-Remedy Framework" (Framework), unanimously endorsed in 2008 by the UN Human Rights Council (Council), underscores the state duty to protect human rights; corporate responsibility to respect human rights; and the need for appropriate remedies – judicial and non-judicial – where gaps exist and violations occur. The SRSG has recently drafted Guiding Principles (GPs)[4] that advise the state and business of the steps they should take to ensure that they act according to the Framework.

While states, businesses, and civil society groups have welcomed the "Protect-Respect-Remedy" Framework, some civil society groups, and others, have argued that the GPs need strengthening. In particular, some companies exploit a regulatory vacuum, in conflict-affected or high-risk areas, treating it as a 'law-free' zone.

The Framework has acquired a life of its own, even before the GPs for its implementation are endorsed. It has been used within the UN human rights system, and has played a significant role in shaping standards at the Organisation for Economic Cooperation and Development (OECD) and the International Organisation of Standards[5]. Export credit agencies are also taking an interest in it.

The SRSG's goal is to maximise reduction of corporate-related harm to human rights in the minimum amount of time. While the approach is incremental and can be termed 'principled pragmatism', it is transparent and has involved all stakeholders.

The state duty to protect

The Framework rests on the principle that the state has the primary duty to protect human rights, a duty which it cannot abdicate. There are, however, serious questions about the state's role. In conflict zones and in times of natural disaster, for example, the state is often unable to play its role to respect, protect, and fulfil human rights. In other instances, the state may be unwilling to play such a role. In such areas of weak governance, companies often substitute for the state de facto while not de jure, raising concern among some governments and civil societies about the power of companies. Some companies are themselves concerned at situations in developing countries where the legislative framework on health and safety issues is entirely inadequate. An analysis of the risk factors involved in operating there would clearly argue against their presence. Should the GPs elaborate in greater detail what states must ensure in legislative provision? A powerful incentive would be for companies to exert collective leverage on such states, though in a competitive environment some question whether this could occur.

Companies can influence governmental decisions. Developing countries are often perceived to lack the power or capacity to regulate large transnational corporations (TNCs). Yet the nature of the TNC is evolving; small and medium sized companies are also accused of committing human rights abuses. Furthermore, a large TNC today is as likely to have its origins in one of the BRIC[6] countries, as in an OECD state. The domestic record of companies from emerging economies is often poor in the area of industrial safety. TNCs domiciled in emerging economies and other large local companies may have serious problems regarding discrimination based on ethnicity, treatment of workers, and, in some instances, complicity with armed groups. There is growing interest in developing an international regulatory framework over the longer term because of dissatisfaction over the current state of affairs, including corporate reliance on voluntary initiatives, which are sometimes necessary but never sufficient.

Is it possible for the GPs to be made stronger to change corporate behaviour? Civil society groups draw on their research to emphasise the state's failure in meeting its obligation to protect. They explain this on the basis of the nature of the state-corporation relationship and mutual interdependence, including business involvement in how it is regulated; the culture of complicity that emerges through such collusion; and the struggle that human

rights law has in keeping pace with the challenges of globalisation. Human rights law is state-centric, but international economic law recognises the global space, and protects certain economic interests beyond states' jurisdictions. The GPs were not designed to fix that problem, and therefore cannot deal with such structural issues beyond the SRSG's mandate. Civil society groups in particular believe the GPs should shift from "encouraging" businesses and states to act responsibly to "requiring" them to do so. Human rights due diligence should be legally-mandated, so that the GPs apply to all companies, and not only those companies that are willing to implement them. Quality criteria guiding what due diligence means in human rights terms is also necessary.

More challenging is the reach of one state's law, and extending it to another jurisdiction. Extraterritorial application of law is often controversial. Creative thinking is needed to narrow the governance gap where domestic legislation lags behind economic globalisation. States should be encouraged to exercise their political will, and prosecute where necessary. Governments recognise the problem but feel uneasy about the extraterritorial applicability of their laws when regulating TNCs. Civil society groups suggest the UN could play a role, or a convention or treaty might regulate corporate behaviour; while treaty bodies offer authoritative interpretation of the law, most states parties do not consider these interpretations as international law.

The central challenge is applying the Framework in areas suffering from weak governance, such as conflict zones (see also section below on 'Business in conflict areas'). Many businesses say they do not like operating in 'law-free' zones. They need an international framework and have called for clearer responsibilities and boundaries. In reality the web of liabilities for companies operating in zones of conflict has been widening. Some argue the need to create an international instrument to govern business conduct in conflict zones. Such an instrument could be modelled on anti-bribery and anti-corruption conventions, with extra-territorial provisions. Whether or not such an instrument should be a treaty remains a debatable issue. Yet a common understanding of the issue is necessary, otherwise courts in different jurisdictions will give a variety of interpretations, and that diversity of judgments could undermine the purpose of eliminating the perception of 'law-free' zones. While states may accept the principle, they sometimes resist taking on new responsibilities over concerns of extraterritoriality.

Could a new treaty be an effective regulatory mechanism? Civil society groups think so and advocate a broad treaty to cover corporate accountability in all aspects. The process of negotiating a new treaty is arduous, however, and many treaties do not get universally ratified. The case of many key International Labour Organisation (ILO) conventions necessary to guide business conduct, but not ratified, is noteworthy in this regard[7]. While states may decide to negotiate and sign a treaty, obligations arise only after states have ratified the instrument, and passed enabling domestic legislation to implement their obligations. Human rights treaties are not self-enforcing, and states have routinely added caveats and reservations, which dilute key treaty provisions. International treaties in human rights law have no enforcement, except in national courts[8]. If there were to be a corporate accountability convention, what more should it say, beyond stressing and reiterating the state's duty to protect human rights?

While laws requiring prosecution for truly egregious acts – genocide, war crimes, and crimes against humanity – exist, there is no subsequent hierarchy of norms governing human rights. This arises from the principles of human rights law being "universal and inalienable, interdependent and indivisible, equal and non-discriminatory, and (include) rights and obligations[9]". When states have turned to investment tribunals because the bilateral investment treaties they have signed impede them from performing their obligations under human rights law, the tribunals have asked the states to decide on the hierarchy themselves[10]. In any case, such tribunals should be required to be more transparent. Part of the problem is that states often want to keep laws on trade and human rights distinct. Judges at investment tribunals are not trained in human rights law, nor do they have jurisdiction in human rights matters. Tribunal judges should be trained so that when they adjudicate on an investment treaty, they are required to consider other obligations. Academics and civil society groups should build an argument to explain the

nature of different obligations. An international supreme court, if it existed, could have clarified the issue, but that matter is beyond the realm of current possibilities.

In addition to legal obligations to protect against human rights abuses by third parties, such as business, states also have the responsibility to ensure policy coherence. This requires all government departments involved in shaping business practices are aware of the state's human rights obligations and the implications as applied to their own area of work. A national audit or assessment of legislation and its implementation in relation to the GPs, can be useful in this respect to identify potential gaps or deficiencies.

Corporate responsibility to respect

The SRSG has focused on steps companies should take to build a culture of preventative measures to avoid potential human rights violations. In the UN Framework, "respect" is a positive responsibility, for which a company should undertake rigorous due diligence[11]. This requires setting policies and tracking performance to ensure that harm to potential victims is reduced, if not eliminated, arguably a victim-centric approach. Due diligence requires operational level grievance procedures within a company. The due diligence process should be communicated, both to demonstrate what is being done, and to obtain greater effect. At the same time, it is suggested that if reporting obligations are too precise, this may impact adversely on small companies being able to fulfil these. Undertaking due diligence should obviate the need to bring cases to court, which is often costly for all concerned, and can be ineffective in situations of weak judicial systems. Civil society groups which 'name and shame' companies considered to be violating human rights would argue this approach is not sufficient.

Several companies have been exploring the nature, meaning, and scope of the corporate responsibility to respect. Nearly 300 companies have adopted human rights policies, and a few among them have conducted human rights impact assessments. Several companies have shared their experience of implementing human rights due diligence[12]. While this is encouraging, such companies constitute only a small proportion of companies globally[13].

The experience of one large company in the oil industry shows that the GPs have helped the company identify unintended consequences. It has updated its code of conduct and appointed an external review committee. Paying close attention to human rights issues makes business sense. The cost of getting things wrong for the sector runs into tens of billions of dollars[14]. This presents a strong economic rationale to take human rights due diligence seriously, because human rights due diligence is meant to identify and anticipate potential problems, so that companies can take corrective steps before the problem escalates. Due diligence takes time, and once a company begins a consultation process it raises expectations among stakeholders. The risks that companies face vary by location and sector. In the experience of companies that have begun working with the GPs, investment of time and resources, including training, is hugely important. Engagement at a senior, if not chief executive, level is needed.

A plantation company with operations in Asia and Africa faces different social challenges: access for women and caste discrimination issues in South Asia; indigenous communities in Southeast Asia; and livelihood and security issues in conflict-affected countries. While companies from emerging economies are beginning to address the human rights agenda, some argue this is another form of a "western non-tariff barrier". It is not; respecting human rights is an essential component of social development, a way to treat people with respect and dignity.

Companies have traditionally viewed human rights through the lens of corporate philanthropy. While they may seem compatible, they are not necessarily inter-related. Companies active in the human rights sphere have often begun their journey through corporate social responsibility. Companies have few systems or assurance mechanisms in place to demonstrate their conduct: they need processes "to know and to show". Human rights due diligence[15], it is argued, can play that role.

It is as yet unclear the extent to which ongoing corporate efforts to mainstream human rights are influenced by the GPs. It is also too early to know if the GPs are being disseminated by large companies to their suppliers, although some companies have begun including specific clauses in their contracts with them. More companies need to standardise their efforts. The supply chain can constitute an Achilles heal for a major corporate.

Trade unions agree that the Framework is an improvement on corporate social responsibility (CSR) practices, and propose the GPs be decoupled from terminology prevalent in the CSR sphere. The GPs should not let companies self-define responsibility, in order to ensure that standards are not diluted.

Developing remedies

The GPs outline both judicial and non-judicial remedies, the latter drawn from research on a range of dispute settlement mechanisms[16]. The latter do not replace existing law, nor do they imply suspending prosecutions for grave abuses. They are intended to settle grievances at an early stage, so that small problems do not grow into large crises. The mechanisms do not replace the judicial function of the state. Existing mechanisms are often drawn from the experience of the extractive sector, which frequently operates in difficult environments, where the state's presence is minimal. Human rights abuses in such areas have sometimes gained wide visibility, and victims' groups have sued some of the companies in different jurisdictions, claiming corporate responsibility for the abuses.

Several cases have been filed in the United States under the Alien Tort Statute (ATS)[17], although a survey of some 150 lawsuits against businesses on human rights grounds shows that cases filed under the ATS form only a small number. Other cases against companies include those filed in the Constitutional Court in South Africa, through public interest litigation in India, under labour laws in Argentina, and using environmental law in the United States. It should be noted though that only a few of these cases have resulted in judgments against companies. Judicial remedies are often cumbersome. Lawsuits are expensive and time-consuming, and courts are overburdened. Access to the law is particularly hard for poor and marginalised communities, although lawyers do take cases on a pro bono basis. Gathering evidence can be difficult. Judicial systems in many countries need extensive reform. Victims continue to suffer, and some argue that in cases of state failure alternatives at the UN level should be explored[18].

Can non-judicial mechanisms provide an alternative? National human rights institutions (NHRIs) in developing countries have begun to play a useful role by exploring non-judicial mechanisms, through monitoring how effective remedies are in practice. Few NHRIs have the resources, however, to take on cases involving business and human rights. They may, however, help to educate local companies on the GPs, and encourage them to advocate improvements in the justice system generally, beyond a concern with the financial sector.

Some have suggested the OECD's National Contact Points (NCPs) as possible avenues for remedies[19]. Yet there are concerns too about relying on NCPs, since they do not operate in a uniform manner with common standards. An audit of the NCPs is perhaps necessary, as well as examining if they are fit for purpose.

Non-judicial remedies may be effective in identifying and remedying cases at an early stage, but they are inappropriate for grave or large-scale abuses. One such case involves the killing of some 70 peasants in the Democratic Republic of Congo[20]. Civil society groups express frustration over denial of justice in such cases, and believe the SRSG's mandate should have included examination of specific cases.

For a company's grievance mechanism to be effective, it should first recognise the nature of the problem. Even if the grievance mechanism identifies the problem, it may not be designed to address structural issues and human rights problems. Grievance mechanisms may run the risk of being perceived as an exercise in CSR. Yet by questioning, or even opposing, non-judicial means or remedies, civil society groups may in fact make it harder to secure justice for victims. A study the SRSG supervised of some 400 major public

allegations against companies showed that a substantial majority of these cases did not begin as a major crisis, but as lesser disputes which were not addressed in time.

Some civil society groups claim that training in human rights for company officials operating in the field has not been effective. The third pillar does not adequately address power imbalances and the engagement of business is limited, they argue. Some suggest addressing the perceived power asymmetry between states and corporations by the state incorporating the GPs into investment contracts.

Business in conflict areas

The worst human rights abuses occur in conflict zones. So should there be special conditions which apply to companies operating in such areas? What standards are needed and what is required to ensure these standards are met? There is an emerging set of standards[21] now available to businesses about their responsibilities in high-risk areas, and there is growing consensus that corporations are exposed to legal risks when they operate in such areas and have not taken adequate precautions through due diligence[22].

Conflict-prone and conflict-affected countries often have several common characteristics, such as frail state institutions and serious socio-economic problems at the same time as abundant and valuable natural resources. The annual budget of many of the TNCs operating in these countries surpasses that of the host country, while the TNCs may also exert considerable influence in the country in which they are domiciled. In these challenging circumstances, the host country is unable to regulate or otherwise act effectively; there needs to be much greater cooperation between the host and home government of TNCs. While there are sensitive sovereignty issues involved, developing regular bilateral communication would be of benefit to both. This is particularly important with regard to security arrangements.

Home governments could play a stronger advisory role to companies. They could communicate more actively the standards and processes companies are expected to meet, such as the OECD's Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas. There could be 'white-listing' for government procurement on the basis of robust due diligence. Governments could recommend caution in particularly difficult situations, a sort of 'travel advisory' to companies. Government officials in the capital and diplomats in the field dealing with trade and investment promotion could be better trained in human rights and humanitarian law, and encouraged to provide advice.

States should also warn companies that take undue risks, and enforce laws. This includes seizing shipments, delisting companies and launching investigations. These activities form a continuum, from advising and informing companies, to promoting good practices, collaborating, incentivising good behaviour, warning of risks, preventing illegal activities, and prosecuting where necessary[23]. Other recommended measures could include specifying laws that prohibit violent and predatory crimes, strengthening and clarifying existing provisions that prohibit collusion, and exploring new laws that disallow handling of conflict commodities.

Companies need to undertake conflict analysis. The problem in conflict zones is compounded because in some instances security forces protecting company facilities are inadequately trained and live in constant fear of being attacked by heavily-armed irregular forces. The company needs to take particular care to ensure that its security forces have adequate human rights training. Companies are also increasingly aware of the 'economic sparks' their presence may generate, including driving up costs of local products that can create scarcity of an essential resource. Even providing benefits might cause grievance. Company officials were surprised when in one West African country the hospital it had built for a community was burned down because it was not provided with the same services as another hospital built nearby. Operating in an area lacking basic infrastructure, companies

should be aware that local communities living around its operations have high expectations that the company should provide basic services.

Companies should engage all actors to work collaboratively. This can be done, for example, by entering into a memorandum of understanding with development councils and local communities establishing a process through which the communities determine the nature and priority of their social programmes. Some suggest there should also be a corporate social responsibility fund established to help strengthen state structures in areas of weak governance so that the state could be helped to build capacity to exercise its authority in relation to TNCs.

Governments, international regulators and companies need a new framework when working in conflict-affected areas. Even in strong legal jurisdictions, there is a gap in the effectiveness of the existing law. There is a need to clarify prohibitions, and how these apply to businesses. A new law passed in the United States[24] requires companies to assure investors that they are not importing conflict minerals. The Economic Community of West African States (ECOWAS) has issued a Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector. Its first objective is to "ensure high standards of accountability for mining companies and governments, promoting human rights, transparency and social equity as well as providing protection for local communities and the environment." Such a sectoral approach is considered a useful way forward. A combination of approaches may be necessary, including the UN, other domestic regulatory and legal measures, and market-based responses. The potential of reporting through the Universal Periodic Review at the HRC should be examined.

Next steps

The SRSG has identified four key functions that need to be addressed in following up the SRSG's mandate: embed and disseminate the GPs; sustain multi-stakeholder dialogue and support; build the capacity of all relevant actors; and foster improved conflict management and dispute resolution. One early idea is for a High Level Task Force (HLTF) reflecting both geographical diversity from the five UN regional groups and sectoral diversity from government, business and civil society in each region, selected on the basis of expertise on the issue of business and human rights.[25]

A continued role for the Office of the High Commissioner for Human Rights (OHCHR) and the HRC is foreseen. OHCHR needs to be properly resourced, however, if it is to be given the task to sustain and develop this work. Some point out, for example, that the Global Compact, as presently constituted is not a sufficiently accountable body to play a major role in undertaking the next steps. Some suggest companies have signed up to its requirements in spirit only and little is done to ensure these are implemented. Whatever follow-up mechanisms are agreed need to be effectively linked to existing UN procedures, such as the Universal Periodic Review, including for monitoring purposes. There needs to be engagement with other multi-stakeholder initiatives, for example in the OECD, as well as mainstreaming within the UN system, to advance work through the International Labour Organisation, and take up in the General Assembly.

Some are of the view there should be greater emphasis at the national level for implementation of the GPs. Any new mechanisms to be created should thus focus on supporting the work of national human rights institutions, community organisations, non-governmental organisations, labour organisations, and networks of small and medium-sized enterprises, which do not have the capacity of larger companies. Additionally in the next phase a massive effort is needed to increase the capacity of governments, businesses and civil society groups to advance the business and human rights agenda. Adequate funding for this is considered important. Some also feel a voice for victims is absent from the GPs, and a forum to pursue individual or collective complaints is needed, as well as consideration to such cross-cutting issues as gender.

Some underline the need for a major marketing campaign, which should be aimed at the most senior level in companies. The message needs to be taken to key business decision-makers, for example using economic forum events, and to major industry associations. Governments can organise roundtables to explain the UN Framework to senior executives, and the complementarity of the three pillars. Governments can also force the pace through making corporate reporting mandatory. Export credit agencies have a huge role to play, as does the investment community, disseminating information to sovereign wealth funds. There is also work to be done with regional development banks.

The draft GPs may not reflect the concerns of all, but they do not close options and open new possibilities. The prevailing mood among many is to consolidate and build on the work achieved to-date. There is a need to keep up the momentum, and the consideration of the GPs by the HRC at its session in June 2011 will be crucial in this regard.

Salil Tripathi
February 2011

[1] The Mandate in 2005 asked the SRSG to:
(a) Identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;
(b) Elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
(c) Research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence";
(d) Develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises; and,
(e) Compile a compendium of best practices of States and transnational corporations and other business enterprises. See E/CN.4/2005/69.
[2] 'Business and human rights: advancing the agenda' 10 to 12 October 2005, WP05/33 – see link http://www.wiltonpark.org.uk/en/reports/?view=Report&id=581594282
[3] See http://www.business-humanrights.org/SpecialRepPortal/Home for the materials on the SRSG's work.
[4] See Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework http://baseswiki.org/en/File:Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf
[5] The OECD is examining the Framework's applicability in the context of drafting its Guidelines for Multinational Enterprises. ISO26000, recently adopted on social responsibility guidance, takes into account human rights concerns drawn from the Framework.
[6] Brazil, Russia, India, China, but other emerging economies, such as South Africa and Indonesia, could be included.
[7] One example cited was of ILO Convention 121, which deals with workplace injury, which only 24 countries have ratified. See http://www.ilo.org/ilolex/cgi-lex/convde.pl?C121 for the text of the Convention and http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byConv.cfm?hdroff=1&conv=C121&Lang=EN for the list of countries that have ratified it.
[8] Complaints mechanisms at individual level exist under some international human rights treaties, but few states have familiarized themselves or their citizens with those provisions.
[9] See http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx
[10] See the SRSG's statement to the United Nations Commission on International Trade Law (UNCITRAL) at its 41st session in New York, June 16-July 3, 2008. Available at http://www.reports-and-materials.org/Ruggie-statement-to-UNCITRAL-Jun-2008.pdf
[11] According to SRSG's 2010 report to the HRC, the four components of due diligence are: a statement of policy articulating the company's commitment to respect human rights; periodic assessment of actual and potential human rights impacts of company activities and relationships; integrating these commitments into internal control and oversight systems; and tracking and monitoring performance.
[12] See The State of Play of Human Rights Due Diligence: Anticipating the Next Five Years (The Institute for Human Rights and Business, 2010). Available at:
http://www.institutehrb.org/pdf/The_State_of_Play_of_Human_Rights_Due_Diligence.pdf
[13] See Setting Boundaries: Clarifying the Scope and Content of the Corporate Responsibility to Respect Human Rights (The Institute for Human Rights and Business, 2009). Available at:
http://www.institutehrb.org/pdf/Setting_Boundaries-Clarifying_Scope_and_Content_of_Corporate_Responsibility_to_Respect_Human_Rights.pdf

[14] A study by an investment bank of 190 oil and gas projects has shown that only 21% of project delays are due to technical issues; some 73% of work stoppages are due to political factors.
[15] According to the SRSG's 2010 report, the four components of due diligence are: a statement of policy articulating the company's commitment to respect human rights,; periodic assessment of actual and potential human rights impacts of company activities and relationships; integrating these commitments into internal control and oversight systems; and tracking and monitoring performance.
[16] See Rees, C. Grievance Mechanisms for Business and Human Rights; Strengths, Weaknesses, and Gaps (Harvard Kennedy School, Working Paper 40, 2008).
[17] See §1350 Alien's action for tort. "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."
[18] The SRSG's mandate was not designed to receive complaints, and its remit was to identify and clarify standards, as noted earlier. The SRSG has worked closely with the special rapporteur on the right to food, the independent expert on the right to water and sanitation, the special rapporteurs for toxic waste, human rights defenders and indigenous people.
[19] The National Contact Point is a government office responsible for enforcing the observance of the OECD Guidelines for Multinational Enterprises in a national context.
[20] A mining company provided trucks for the armed forces, which were sent to quell an uprising. The military brought mortars and rockets and bombarded village, and the incident was covered up. A foreign television company exposed the incident, and now another foreign court is hearing a class action suit.
[21] See for example the Red Flags Initiative (www.redflags.info), research at Global Witness (www.globalwitness.org), the conflict and portal at the Business and Human Rights Resource Centre website (http://www.business-humanrights.org/ConflictPeacePortal/Home), the work on complicity at the International Commission of Jurists website, Business and Human Rights Resource Centre (address), the work of the Panel of the International Commission of Jurists on complicity (http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=22851), and Tripathi, S. in Business in Armed Conflict Zones: How to Avoid Complicity and Comply with International Standards (Politorbis, 3:2010, Swiss Federal Department of Foreign Affairs, available at http://www.institutehrb.org/news/2011/business_in_armed_conflict_zones.html).
[22] See Business and International Crimes, a project at Fafo in Oslo, Norway. (http://www.fafo.no/liabilities/project-descr.htm)
[23] Other recommended measures include specifying laws that prohibit violent and predatory crimes, strengthening and clarifying existing provisions that prohibit collusion, and exploring new laws that disallow handling of conflict commodities.
[24] Dodd-Frank Wall Street Reform and Consumer Protection Act.
[25] The SRSG's proposal for a HLTF, contained in 'Some preliminary thoughts on the follow-up to the mandate of the SRSG for business and human rights', 7 January 2011, http://www.wiltonpark.org.uk/resources/en/pdf/misc/wp1074-post-mandate-note, has since been superseded by 'Recommendations for follow-up to the mandate' issued by the SRSG on 11 February 2011, http://www.globalgovernancewatch.org/docLib/20110218_GGW_-_Ruggie.pdf