How Business Can Encourage Governments to Fulfil their Human Rights Obligations

A *Good Practice Note* endorsed by the United Nations Global Compact Human Rights Working Group

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A 'Good Practice Note'

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First in an ongoing series of notes on good business practices on human rights endorsed by the Global Compact's Human Rights Working Group.

Good Practice Notes

- Seek to identify general approaches recognized as being good for business and good for human rights

- Are drawn from company experiences, and developed in consultation with companies and stakeholders

Anyone can propose a Good Practice Note for consideration. Other Notes in development consider due diligence processes; stakeholder consultation processes; and supply chain management.

Project Aims & Method

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Businesses are increasingly being called upon, or are otherwise prompted, to raise human rights concerns with the governments of the countries in which they operate.

But…
- Business intervention in policy processes is a sensitive topic, particularly regarding human rights or conflict-related issues.
- There is a lack of available guidance for companies

"*How Business Can Encourage Governments to Fulfil their Human Rights Obligations*" aims to provide an initial orientation to issues, processes and practices in government engagement. **Not** explicit guiding principles for companies to follow.

Drawn from interviews in 2009/10 with business executives and human rights practitioners, builds on PhD research undertaken 2006-2009.

Structure

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The Note considers **actions** and **lessons learned** by companies that have and have not attempted to encourage governments to fulfil their human rights obligations. It;

1. Introduces the context for engagement

2. Identifies key questions for consideration in a company's decision-making process

3. Presents potential courses of action, including
    - direct engagement approaches
    - alternative approaches
    - bolstering governance capacity
    - refraining from engagement

4. Highlights important issues for consideration by companies that elect to engage

Key Messages

1. Corporations are increasingly expected, and motivated, to take action to encourage governmental integrity.

When governments fail to uphold their responsibility to *protect* human rights, a company's ability to *respect* human rights may be reduced, prompting the company to engage with the government on human rights concerns.

2. There are options beyond staying silent or leaving.

Companies may initially consider inaction or divestment/disinvestment as the only courses of action. However, there is a wide spectrum of opportunities for constructive corporate engagement.

Innovative and effective engagement strategies have included forms of *public lobbying* to generate political will, and/or *efforts to support governance capabilities* to address human rights concerns.

Key Messages

3. Effective decision-making around whether, and if so how, to engage strategically requires a holistic approach.

Cross-functional internal co-ordination, and careful assessment of the external political, social and economic context both locally and internationally, to establish;

(i) what it determines to be a legitimate role for business in the context in question, based on legal, business and ethical considerations, and

(ii) the opportunities and risks of **both action and inaction**.

4. Transparency is challenging, but central to successful engagement.

Being transparent about the form, content and process of government relations is key to achieving legitimacy with civil society stakeholders, but may be limited by legal and strategic concerns.

Collective initiatives are useful for mitigating risks from these concerns.

Context: Drivers for Human Rights Engagement

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- Clarification of the respective responsibilities of business and government for human rights [i.e. in the 'Protect, Respect, Remedy' framework of the SRSG on Business and Human Rights]
- Recognition of a role for business in respecting and supporting Human Rights [i.e. UNGC principles 1 & 2, company CoCs]
- Legal precedents regarding complicity [e.g. 'Red Flags'] and voluntary initiatives supporting engagement [e.g. Voluntary Principles/EITI]
- Context-specific concerns and events [e.g. staff arrest, legislative changes, outbreak conflict or civil strife]
- Civil society, and possibly home-government pressure

Context: Calls for Human Rights Engagement

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Calls for human rights involvement come from a variety of stakeholders;

- Civil society seeking leverage to promote governmental integrity
- Investors considering ESG impacts, particularly in SRI funds
- Company Employees who are concerned or directly affected
- Home Governments to promote foreign policy priorities

The rationale behind civil society calls varies, but is often based on;

- Perceived influence or capacity to act, and/or
- A belief that the business is somehow complicit (either legally or, more often, morally) in a human rights abuse

The Debate on Human Rights Engagement

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Sovereignty, the Myth of Neutrality & the Legitimate Role of Business

Some companies express concern that human rights engagement
- breaches sovereignty - 'interfering in political affairs'
- risks withdrawal of government license to operate

Other companies argue that in many situations
- they are already political actors
- inaction presents multiple legal and reputational risks
- there is a broader moral imperative

Balancing the Corporate and 'Social' Charters to Operate

Executives reported a disconnect between civil society perceptions of the company's capacity and ability to influence, and their legal restrictions or lack of traction with governments.

Managing the Decision Making Process: Who's involved?

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The following aspects of managing the decision making process were reported;

- Formal engagement protocols are generally absent. Some companies have a policy against any kind of political activity; others began with a risk assessment
- Various departments may be consulted and involved, giving rise to conflicts of interest due to their different objectives
- CEO involvement varies, reflecting the seriousness of the concern, connection to the business and scope of the requested action
- Advice from external parties sought, including consultants, civil society groups, other companies, home government, and local embassies and industry associations.

Managing the Decision Making Process: Questions to Consider

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Deciding whether or not to get involved benefits from rigorous (even if sometimes necessarily rapid) analysis of the situation in economic, ethical and legal terms.

Questions:

• How strong is the company's connection to the injury or harm?

• Is the human rights situation fully understood?

• How would involvement impact business?

• What is the connection between the concern and the company's values and purpose?

• What impact could the company have?

• Is the company's 'own house in order'?

Options for Action: Direct Approaches

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When companies choose to raise human rights concerns directly with host governments, to encourage them to fulfil their human rights obligations.

Direct engagement approaches spanned

• Private and Public i.e. publicly stating overarching position on human rights, and/or engaging privately with government actors on concerns and their possible resolution.

• Individual and Collective i.e. independently and/or through local or regional/ international collective initiatives (industry associations,

Considerations

• Combinations of these strategies may be most effective

• Transparency challenges

• Intended impact and appropriate strategy

Options for Action:
Alternative Approaches

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When companies address concerns indirectly by raising them with a third party, i.e.

- Home Governments On the assumption that such issues are best addressed between governments
- Intergovernmental Bodies such as the UN Security Council or regional bodies (i.e. ASEAN, the African Union). In the absence of sanctions or other direction, companies are often reluctant to act. In some instances look for advice from international governing bodies (i.e. OECD on Guidelines)
- International initiatives on responsible enterprise such as the EITI, Global Compact local networks and the OHCHR as alternative forums to promote shared understanding of benefits of stronger governance systems for business and human rights.

Options for Action:
Bolstering Governance Capacity

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When companies attempt to enhance a government's capacity to meet its human rights obligations.

- Building capacities of host governments through
  - human rights training programs (e.g. funding training of the judiciary or government security forces)
  - initiatives to foster transparency and accountability in governance systems (e.g. EITI)
  - and supporting government in meeting the social and economic needs of the population (e.g. health and education programmes, economic development initiatives etc)
- & Civil Society, on occasion, to ensure it has the necessary resources, skills to participate in governance mechanisms.

Reported to be a particularly powerful and appropriate way to facilitate governmental integrity, & a more 'comfortable' corporate strategy.

Options for Action:
Refrain from Involvement

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When, after careful consideration, a company chooses not to engage on a human rights issue, due to

- Lack of necessary information such that intervening may do more harm than good
- Concern judged insufficiently serious to merit intervention, given the broader cultural or political context
- Lack of company capacity including perceived necessary influence, resources or skills to engage with government

Key Issues for Consideration

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Organisation Management
- Recognising the business case– short and long-term benefits from well-structured and executed action, risks from inaction
- Understanding the root causes of the human rights situation – including political and historical context
- Internal coherence – departmental communication in both decision and execution
- Identifying outcomes - for organisation (reputation, culture and morale), and for operating context (governance systems and conflict, with associated risks)

External Relations
- Transparency – when not able to share their exact approach for legal and strategic reasons companies found they could, at a minimum, share their goals and concern for the human rights issue
- Stakeholder engagement –when credible and consistent, reduced reputational risks

Key Issues for Consideration

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Government Relations

- Home Government– may provide valuable advice/support; communication important for coherent messages
- Host Government
  - Character (top-down, hierarchical, military, democratic etc) is central factor
  - No government is homogenous; individual relationships are key
  - Engagement can be at different levels (local, municipal, central) on different issues
  - Use established mechanisms if possible (i.e. business-roundtables)
- Tone – Human rights is not always the best/most effective language
- Conveying the business case to government - presenting shared interests of government and business in resolving human rights situation (e.g. individually or through multistakeholder forums).

Relevance for CEO Water Mandate Engagement Guidance

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The experiences of business reported in the Good Practice Note resonate strongly with the approach taken in the Guide to Responsible Business Engagement with Water Policy. Revisiting the key messages;

1. Corporations are increasingly expected, and motivated, to take action to encourage governmental integrity.

   - Clarifying, navigating and supporting the respective obligations of business and government v.v. human rights, through policy engagement
   - Building from and promoting the business case for engagement

2. There are options beyond staying silent or leaving.

   - A broad definition of constructive corporate engagement in policy processes (local/national/In'l levels, on will/capacity shortfalls)
   - Benefits of a multi-stakeholder approach

Relevance for CEO Water Mandate Engagement Guidance

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3. Effective decision-making around whether, and if so how, to engage strategically requires a holistic approach.

- Importance internal co-ordination, external engagement (to assess risk, align action, deliver strategy)
- Timing (proactive preferable)

4. Transparency is challenging, but central to successful engagement.

- To avoid political capture, perception of collusion

Challenges

- Metrics (especially around governance impact)
- Time-lines and resource commitments
- Multiple demands on business, requisite skills/orientation
- Weak evidence/research base

Thank you

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