



# **BUSINESS AND HUMAN RIGHTS: THE ROLE OF BUSINESS IN WEAK GOVERNANCE ZONES**

*Business proposals for  
effective ways of addressing dilemma situations  
in weak governance zones*

**December 2006**



## OVERVIEW

1. This paper has been prepared by the International Organisation of Employers (IOE), in collaboration with the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee (BIAC) to the OECD. It is the response to the invitation from Professor John Ruggie, the Special Representative of the UN Secretary-General (SRSG) to identify “effective ways for companies to deal with dilemma situations encountered in weak governance zones”. The first part of the paper identifies the range of issues associated with weak governance zones and the reality faced by companies that operate or are contemplating operating in them. In the second part, it identifies actions that companies can take individually and in collaboration with others in order to respond effectively to dilemma situations.
2. The role of business in promoting respect for human rights is an important issue and the international business community welcomes the invitation of the SRSG to contribute to his work. We believe that ongoing dialogue and collaborative responses to human rights concerns provide the best hope for lasting change, and the business community is committed to constructive engagement in the process initiated by the SRSG.
3. However, the dynamic surrounding the role of business is extremely complex. It provides opportunities for positive contributions, but it also requires recognition of the legal and practical limitations faced by any non-state actor. This recognition is implicit in such leading initiatives as the OECD Guidelines for Multinational Enterprises, the ILO MNE Declaration and the Global Compact, which can provide guidance to both multinational and domestic companies. In this context, many company and sector specific initiatives have been developed and implemented by business.
4. There is much that business has done and will continue to do to help promote respect for human rights. These efforts must be seen as complementing the role of States in implementing and enforcing national laws on human rights. The SRSG has already helped to advance the discussion through work focussed on clarifying legal issues, on providing an objective assessment of the opportunities and limitations of business efforts to promote respect for human rights, and on establishing an open and constructive dialogue with the global business community and other stakeholders. In his statement to the UN Human Rights Council on 25 September 2006, he mapped out a plan of action that will enable him to fulfil his mandate. We strongly support that endeavour, as well as his emerging thinking on the concept of shared responsibility with its focus on joint actions or actions in partnership.

## **BUSINESS IN SOCIETY**

5. Companies are as diverse in nature as the communities from which they come and in which they operate. They are one of the key building blocks of society and the vast majority is committed to operating in a responsible and sustainable manner. This emphasises managing their roles in society – as producer, employer, marketer, customer, taxpayer and neighbour. Through these roles, companies make an invaluable contribution by creating jobs and generating economic growth, raising living standards and helping to lift people out of poverty.
6. Responsible corporate conduct has legal compliance as its foundation and as the basis of corporate strategy. This involves a company's approach to the production and marketing of goods and services, business ethics, health and safety, environmental practices, treatment of employees, community engagement and human rights - all of which form part of integrated management systems. It may also include voluntary corporate responsibility (CR) initiatives over and above legal requirements that are rooted in the principles and objectives of the company. There is a wide range of such initiatives, some of which are global, others are regional or sectoral, or they may be specific to the individual company.

## **BUSINESS AND HUMAN RIGHTS**

7. The international business community strongly supports respect for human rights not only because it is the right thing to do, but also because protecting human rights benefits all actors in society. To flourish, both domestic and international companies require the same basic principles, government policies and national institutions to protect human rights. These include democracy, the rule of law, the protection of property rights, effective anti-corruption policies, independent courts, free speech, individual liberty, freedom from discrimination, and freedom from arbitrary government action.
8. Business and human rights are not conflicting concepts – indeed they are mutually supportive. As the SRSG stated in his interim report, “It is generally believed that economic development coupled with the rule of law is the best guarantor for the entire spectrum of human rights.” To this end, business has worked consistently to promote effective national frameworks based on good governance, open markets, and sound economic, social and environmental policies.

## **THE ROLE OF GOVERNMENTS**

9. Governments have a clear obligation to protect human rights. They are the primary duty bearers under international law. There needs to be a clear and well-understood principled differentiation between, on the one hand, the objectives and responsibilities of governments and, on the other, those of non-state actors, including business. Business can never be, nor should it be expected to become, a surrogate government. Efforts by companies to promote and support human rights should not divert attention from the urgent need for national governments to create the underlying legal framework for protecting human rights and to take action when those rights are denied.
10. We believe the long-term objective of the international community should be to encourage and assist governments in developing the institutions, managerial capacity and financial resources necessary to implement and enforce their laws protecting human rights. This is the best way to address the detrimental impact of non-compliance. The international community needs to insist on and help governments to apply national human rights law in a manner that is consistent with their international obligations. This includes effective government-to-government dialogue, international co-ordination and collaboration, including through intergovernmental institutions, and, when necessary, pressure from the international community. Effective action will also require working relationships between governments, business, and other non-state actors to produce, as far as possible, a coordinated approach to failed states.

## **WEAK GOVERNANCE ZONES**

11. These issues are particularly pressing in weak governance zones, which can be defined as those states, as well as regions or sub-regions within states, in which governments cannot or will not assume their roles in protecting rights - including human rights - providing basic public services and ensuring that public sector management is efficient and effective. Characteristics of such zones are likely to include areas of conflict and areas where serious violations of international human rights occur, often in the absence of accountability and with a broad failure of the rule of law. This is very much in keeping with the OECD's definition of weak governance zones and it is one we support. The OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones is also helpful in this regard.<sup>1</sup>
12. Weak governance zones are not easily corrected by any outside party, including the United Nations and its peace-keeping forces. In most instances where weak governance zones have been improved, it has taken many years of national negotiations and consistent international support. The application of a process or mechanism to help bring about a resolution of the problem at the national level is vital. Such a process requires the time and full commitment of many different actors, as weak governance zones affect all members of the society living within the zone, not only companies.

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<sup>1</sup> <http://www.oecd.org/dataoecd/26/21/36885821.pdf>

13. Representative business organisations can contribute to that engagement on behalf of their constituents. Trades unions and civil society groups can similarly engage to address some of the issues that arise from the failure or inaction of governments. Care should be taken, however, by all actors in society to ensure that they themselves act responsibly, are accountable and representative, and are not merely involved in profiling allegations or campaigns that have little or no basis in fact.
14. Any attempt to address weak governance zones in an effective manner is complicated by the issues and problems in specific locations that can differ widely across a number of critical factors. These might include:
  - war and other armed conflicts
  - the nature of the actors involved and the level of political freedoms
  - political repression, government abuses and the type of government failure
  - systemic corruption
  - arbitrary justice and the lack of the rule of law
  - the lack of capacity or will to implement or enforce national laws effectively
  - economic management failures and restrictions
  - the lack of capacity to use available resources to best effect
  - civil conflicts, including indigenous rights
  - the level of personal security and safety.
15. All companies have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent. It is important not to focus solely on those multinational enterprises that may have operations within such zones, but also to consider the domestic companies operating there. Existing practices and culture at corporate level may mean that the gap between international and local social standards is narrower for multinationals than for domestic companies. The needs and means of response of multinationals and domestic companies facing the same dilemmas arising from operating in these zones may therefore be different.

## **POSSIBLE BUSINESS RESPONSES TO DILEMMA SITUATIONS**

16. Action by a company will not of itself resolve the problems and issues of a weak governance zone; only governments have the ability to achieve that. We believe, however, that all company responses must be based upon a commitment to promote and support human rights. Those responses may vary from the immediate to the medium or long term, but no company should look to take advantage of operating in a weak zone of governance. In very extreme circumstances, some multinationals may choose to close their operations where that is possible and exit the zone as a last resort. Other multinationals or domestic companies will not have this option.
17. We recognise that the SRSG's mandate includes clarification of issues surrounding the concept of sphere of influence, which may limit the ability of a company to affect the human rights environment. Emerging thinking suggests that this sphere will vary according to the company size and capacity, but most usually includes the individuals to whom the company has certain political, contractual, economic or geographical proximity. It includes employees and, to varying degrees, contractors,

suppliers joint venture partners and local communities. Sphere of influence does not, however, establish a basis for imposing legally binding obligations on companies.

18. Any response to the dilemmas of weak governance zones needs to be relevant and dependent on the characteristics of the individual companies involved, as well as on the specific conditions in the location. This includes the affordability, costs and consequences on the company's economic activity, together with its degree of influence. The list of issues we propose for companies to consider are not in a particular order and, with the variety of companies concerned, some will be more suitable than others to individual circumstances. Given the fluid nature of these zones, the responses may also need to be adjusted to meet new or changing situations. The one exception is compliance with the law, which for all companies forms the basis of responsible corporate conduct
19. Detailed below is a list of issues and approaches which is based on the experience of companies operating in weak governance zones:

### ***Compliance with legal and regulatory requirements***

- Determine national legal obligations and structure operations to ensure compliance. If there are no such obligations or structures, reference to international human rights instruments may provide guidance. The national employers' organisation or other business organisations may be able to give advice.
- Identify legal gaps. Determine whether a company can fill them with its own policy or good practice. Companies need information on national circumstances and local business organisations can play a value added role in providing advice. Many different organisations can also hold such information, but it may not be consolidated or easily available to companies. More needs to be done to ensure that such information is collated, kept current in the face of changing circumstances and made accessible to companies as a resource to enable them to respond appropriately within their sphere of influence.
- Promote the ILO's 1998 Declaration on Fundamental Principles and Rights at Work in its operations and in its relationship with suppliers. Other relevant sources may include the ILO Multinational Enterprises Declaration and the OECD Guidelines.

### ***Internal management controls***

- Integrate human rights observance within management systems, including human rights impacts as a key factor in decision making and managing risk. The OECD recently produced its Risk Awareness Tool that aims to address risk and ethical dilemmas for companies.<sup>2</sup>
- Establish formal review mechanisms to assess impacts and monitor the human rights situation in relation to business operations.
- Manage security in accordance with the Voluntary Principles on security and human rights.<sup>3</sup>

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<sup>2</sup> <http://www.oecd.org>

<sup>3</sup> <http://www.voluntaryprinciples.org>

### ***Political activities***

- Remain politically neutral to avoid risks of accusations of complicit behaviour. This does not mean a company cannot talk to government or political parties, but it needs to avoid being politically linked.
- Seek advice on the national political situation and how to dialogue with government including through national employers' and other business organisations.
- Recognise that the SRSG's mandate aims to clarify further the concept of complicity.

### ***Clients and business partners***

- Perform due diligence, which should include a human rights assessment and impact project to determine the national human rights situation. This can utilise tools and information provided by various existing operations and initiatives such as the Human Rights and Business Project of the of the Danish Institute for Human Rights, Human Rights Watch, Amnesty International, UN High Commissioner for Human Rights, home country governments and diplomatic posts, national employers and other business organisations. Other tools are evolving, such as the Business Anti-Corruption Portal, which has been jointly developed by business and the Danish Development Agency (DANIDA), and the International Finance Corporation's Human Rights Impact Assessment Tool.<sup>4</sup>
- Dialogue with suppliers over the company's human rights expectations. Gain a commitment to reflect the company's policies and practices. Support training and other capacity building efforts to improve the ability of suppliers and other business partners to avoid dilemma situations, including training on anti-corruption, support for basic education, and recognition of the rule of law.
- Involve suppliers in monitoring respect for human rights within their operations and own supply chain, including training, company building and tailored assistance as appropriate.
- Work with the wider business community to show how respect for human rights, including basic labour rights, can help move up the value chain and improve performance.

### ***Speaking out***

- Maintain an open and effective channel of communication with government.
- Report instances of bribe solicitation to the authorities or to international anti-corruption organisations.
- Support human rights jointly with the wider business community, for example by joining the appropriate employers' or other national business organisations. This provides representative strength to local company efforts to improve governance and human rights. Such an engagement allows companies to speak through a recognised organisation on these issues.

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<sup>4</sup> <http://www.humanrightsbusiness.org>, <http://www.business-humanrights.org>, <http://www.hrw.org>, <http://www.amnesty.org>, <http://www.ohchr.org>, <http://www.business-anti-corruption.com>



### ***Support the protection of human rights***

- Express the company's public support for universal human rights, particularly those of its employees, the parties with whom it does business and the communities within which they operate.
- Engage in human rights promotion through the activities of their national employers' organisation and other business organisations, especially where such engagement can contribute to advancing international debates and responses.
- Support local or international initiatives to raise awareness of human rights within the country as appropriate.
- Privately encourage other organisations to use their influence to address the human rights situation in a positive manner with government and other actors, for example through local or international labour and civil society organisations.
- Engage with local communities and other stakeholder groups affected by a company's operations in ensuring the respect for human rights. Preferably, this should also involve the local employers' organisation in order to help ensure effective communication and knowledge sharing.

## **THE ROLE OF ORGANISED BUSINESS**

20. Weak governance zones are not just an issue for governments and individual companies. They are an issue for all social actors, including trades unions, business organisations, and civil society organisations. All suffer when the rule of law and respect for human rights is missing. This can hamper their development and influence as representative voices and as champions for the respect for human rights. As already mentioned, companies can help by joining the employers' organisation in order to give greater voice to the concerns of employers. Similarly, promotion of the ILO Declaration of Fundamental Principles and Rights at Work, the OECD Guidelines and the Global Compact can help in the development of responsible and representative trades unions that can assist companies to meet their human rights objectives.
21. Although weak governance zones cannot be remedied or prevented from occurring by companies, engagement in a process with governments and intergovernmental organisations can help to improve a situation or to prevent a situation from deteriorating further. Business acting collectively through its representative organisations, in particular at local level, can help to provide an impetus to make governments more accountable to their own citizens. A focus on improving public governance and capacity building is particularly relevant.
22. This is where the international and sectoral voices of business can and do play a role. Through their representative networks, the IOE, ICC, BIAC and other business organisations are able to assist in raising awareness, disseminating best practice and, depending on the context, may:
  - bring the concerns of business operating in weak governance zones to the attention of a variety of intergovernmental organisations, including but not limited to ILO, OECD, UNDP, World Bank and IFC;

- speak out publicly, on behalf of their constituents, so as to raise awareness of the human rights dilemmas faced by business, as well as highlighting the efforts companies have made;
  - engage with their networks and through them with national governments to make them aware of the international concern which exists with regards to government failures, as well as to offer support to initiatives to resolve the dilemmas posed by weak governance zones;
  - liaise with donors and aid agencies to help in the design and delivery of initiatives to alleviate or improve the human rights situation on the ground.
  - work within intergovernmental organisations to support initiatives to bring government human rights failures to the attention of the appropriate UN bodies so that such failures are addressed;
  - assist in the capacity building efforts and greater understanding of key issues by national business organisations where appropriate;
  - establish national or regional support mechanisms through employer organisations to assist companies who find themselves in dilemma situations, including identified contacts within employer organizations on human rights issues and communication links to relevant government agencies;
  - establish and maintain contacts with trades unions, civil society organisations and human rights organisations to share information, undertake collaborative projects, work jointly, and speak out together on issues of common concern.
23. The issues and approaches identified in this paper reflect a great deal of what business is already doing to help promote the respect for human rights and to address dilemma situations. We are committed to continuing our work together and with our member companies with a view to making a positive contribution to the evolving issues that the SRSG's mandate identifies.

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