

Corporate Human Rights Advocacy: Proposal for a Good Practice Note

For discussion by the HRWG, 9 June 17:00-17:45, Istanbul

Please see Good Practice Note for background information

For some time now, businesses, governments, academia and civil society have engaged in dialogue and debate regarding the human rights responsibilities of corporations, and the notion that businesses have a responsibility to respect human rights has been widely accepted throughout civil society and the business community. The work of the Special Representative of the Secretary-General on Business and Human Rights has reinforced this notion by including the responsibility to respect human rights within the three part framework that he proposed to the United Nations Human Rights Council, and which they have since welcomed. Respect and support for human rights are also part of Global Compact Principle 1.

Despite elaboration of the responsibility to respect human rights to mean essentially acting with due diligence to avoid infringing human rights, companies are frequently expected to and often want to do more to help support human rights. Having influence may not be commensurate with responsibility, however, where there is actual or perceived influence, business is sometimes called upon to get involved in human rights issues in a country where they are operating, including in some instances to raise concerns - whether in private or in public, individually or collectively - with the government of the country. Of course, in some instances, even in the absence of a call from civil society, some businesses may wonder whether and, if so, how they might raise such human rights concerns.

In some, but not all, such instances, calls for human rights advocacy are based on a belief that the business is complicit (whether legally, or more often morally)¹ in the human rights abuse. The claims of complicity may be based on the company's contribution to the abuse at issue or the fact that the company benefits or is perceived to benefit in some way from the abuse.

However, in many other situations, it is simply the presence of influence or capacity to act rather than any connection between the abuse and the company that drives such calls. The degree of leverage and influence corporations have over governments is seen as placing a moral obligation on them to use their political clout to advocate for human rights. The more severe the human rights abuse and the greater the influence the company is perceived to have, the louder such calls are likely to be. Further, some human rights activists point to the preamble of the UDHR, and insist that corporations, as "organs of society", have a responsibility to "*promote* respect" for human rights.

In many instances, business is loathe to get involved in human rights advocacy of this type feeling that it is not their role nor within their expertise and there may be concerns about the implications for the company (commercial suicide), including its own staff, of such activities. The issue of whether such advocacy is effective is also unclear.

Preliminary research has revealed that while this is a challenge that many businesses face, very little in the way of existing guidance for business on this particular topic. If a good practice note were to be prepared on this topic drawing on a wide variety of perspectives, its aim could be to offer some practical guidance for business on approaching the difficult question of human rights advocacy, including whether to get involved at all and, in the event that a business or group of businesses decide to engage in advocacy, what might be the most effective approach. Such a note should consider best practices and lessons learned by companies that have and that have not elected to get involved in human rights advocacy in the face of such calls. A suggested starting point for examination of this topic is a couple of slides (attached) on possible criteria for involvement. The slides were circulated at a Global Compact US Network event on business and human rights held at Harvard in April 2008 and were prepared by Harvard Business School.

¹ A/HRC/8/5 para. 77: The SRSG work has noted that "Mere presence in a country, paying taxes, or silence in the face of abuses is unlikely to amount to the practical assistance required for legal liability."

Possible Criteria for 'Involvement'

How strong is my connection to the injury or harm?

- Is there a causal contribution between our actions and the harm? Do we enjoy benefits as a result of the situation?

How vulnerable are the parties at risk?

- How competent are the parties to contend with the situation? What freedom do they have to address it? How much access do they have to relevant information? What avenues of recourse do they have?

How serious is the injury or harm?

- What is the nature of the injury or harm? Scope? Are there any offsetting benefits to injured parties?

What resources do I have to bring to bear on the problem?

- How directly can we influence the situation through action? What are the costs of action, in absolute terms and given our level of resources? Are we within our rights to pursue the action? Have we secured the necessary inputs, approvals, and consents?

What is the connection between the concern and our organization's values and purpose?

Is the societal concern a legitimate societal expectation/demand of our organization?

Beyond sentimentality or ideology

Rigorous analysis of situation in economic, ethical, and legal terms

- How does each party involved in the situation see it
 - ‘framing’ of the issues
 - ‘facts’
 - Harms and benefits... rights and duties
- Likely alliances... necessary alliances

Soundness of the strategy and action plan

- Are they consistent with the firm’s (1) mission, (2) guiding values, (3) objectives in addressing the specific situation, and (4) the economic, legal, and ethical imperatives?
- Are they a legitimate exercise of the firm’s authority? Does the proposed action infringe on the legitimate authority of others?
- Does the strategy or plan recognize likely competitive and/or legal responses? the likely resistance and support within and outside of the firm?
- Is there a clear definition of ‘success’? Are there clear measures, an effective monitoring system, appropriate incentives, and clear accountability?
- Does the firm have the resources and the will required to carry out the plan?