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THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

*By Jeffrey S. Collins**

THE RESPONSIBILITY TO RESPECT

Three years have passed since the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights. A frequent area of discussion on the Guiding Principles surrounds the extent to which transnational business enterprises have bought into and made operational the idea of an independent responsibility to respect human rights. Today I will describe what I believe has been significant “uptake” of the Guiding Principles by companies, and then explore the challenges and opportunities for us to continue to move forward on business and human rights.

Chevron’s Journey on Human Rights

Like most of today’s integrated multinational oil and gas companies, Chevron’s business is truly global in scope. We have operations on six continents and a global workforce of over 61,000 employees plus 200,000 contract employees. By the very nature of the business, we are involved in complex projects, with many partners, in areas where there are heightened risks to human rights. Our industry has seen its share of human rights-related problems. Analysis by Professor John Ruggie concluded that from 2005–2007, 28% of allegations against companies for human rights violations were against extractive companies. Chevron has not been immune from these human rights issues and allegations.

The company learned a great deal from its experiences in high-risk areas, and as new concepts of corporate social responsibility were developed and became mainstreamed, the company sought to modernize its own policies and practices in this area. Chevron adopted a human rights statement in 2006 that set forth its commitment to upholding the highest standards on human rights. In the ensuing years, as Professor Ruggie was doing his consultations as UN Special Representative for Business and Human Rights, we undertook a process to turn our statement into a full-fledged company policy on human rights. To do so, we spent a great deal of time considering the experiences in our industry, reflecting on our own standards, performance, and responsibilities, and evaluating the way forward.

We learned that properly to meet our duties to respect human rights, we would need to do several critical things:

- Adopt an enterprise-wide policy for clarity of expectations and consistency;
- Assess the actual, potential, or unintended impacts to human rights from our business;
- Integrate findings into project management;
- Undertake local community engagement;
- Provide local grievance mechanisms;
- Address special issues, such as indigenous peoples;
- Report, review, and constantly try to improve;
- Hold ourselves accountable to these commitments;
- Engage in multilateral initiatives to help frame standards that are doable and that drive better performance.

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With these ideas in mind, we developed a Human Rights Policy that was adopted in 2009. It aligns with the UN framework and expresses our commitment to respecting human rights and sets forth specific principles our employees must follow in four areas where human rights issues are most likely to arise in our business: employees, security, community, and supply chain. We also introduced several new concepts and tools, often integrating them into our already well-developed risk assessment and business ethics practices, including:

- Human rights due diligence—one of the Guiding Principles’ fundamental concepts;
- Contract language setting forth standards and expectations on key human rights issues, such as security, labor, and resettlement;
- Internal guidance for practitioners on topics such as resettlement, indigenous peoples, and community engagement.

To turn our Human Rights Policy into practice, we spent several years sending training teams around the world to educate company leaders as well as labor, security, community engagement, and supply chain management experts. We have seen multiple instances of the positive effects of our efforts. For example, we have had a decline in security incidents, despite facing some tense protests. We also have used our influence—or ‘leverage’ in the language of the Guiding Principles—to bring about improved practices with our business partners.

Industry Efforts on Human Rights

The wider oil and gas industry has made significant progress on business and human rights. Consider, as a starting point, a recently published report from the Harvard Kennedy School’s Corporate Social Responsibility Initiative, entitled “Building the Foundations for a Long-Term Development Partnership—The Construction Phase of ExxonMobil’s Papua New Guinea Liquid Natural Gas Project.” The nearly 100-page report, by scholars Jane Nelson and Kara Valikai, documents how ExxonMobil has managed the social aspects of this project, including the massive amount of time and money spent on participatory community engagement; human rights due diligence; development and implementation of grievance mechanisms; investment in local content; local and cross-sector partnerships, including with an array of environmental and social NGOs; and transparency in all of these efforts. The report gives ExxonMobil, typically considered *the* global corporate leviathan, high marks in terms of carrying out this extremely large, complex project in alignment with the Guiding Principles. For me, this is indicative of industry progress on human rights issues.

Moving on from individual companies, it is instructive to look at the work of the International Petroleum Industry Environmental Conservation Association (IPIECA), the global oil and gas industry association for environmental and social issues. IPIECA was founded in 1974 and is the industry’s principal channel of communication with the UN. It has 36 member companies—all the supermajors as well as some national oil companies, such as Statoil, Petrobras, and Petronas. Its members account for over half of the world’s oil production. IPIECA has been deeply influenced by the Guiding Principles. Through its Social Responsibility Working Group, IPIECA has undertaken a whole host of projects to help companies understand and operationalize the UNGPs. For example, IPIECA has:

- Produced guidance for the oil and gas sector on how to carry out human rights due diligence; how to implement the Voluntary Principles on Security and Human Rights; and how to develop policies on engagement with indigenous peoples;

- Worked with civil society experts to conduct dozens and dozens of workshops to train company representatives and governments on these issues;
- Carried out a grievance mechanism pilot project with civil society experts.

Finally, industry progress can be seen in the participation of numerous companies in an array of multi-stakeholder efforts. To name but a few:

- UN Working Group on Business and Human Rights' conferences and consultations;
- The American Bar Association Center for Human Rights' new Business and Human Rights Project;
- OECD multi-stakeholder groups, such as a current project to produce a guide on stakeholder engagement in the extractive industries;
- The Extractive Industries Transparency Initiative;
- The Voluntary Principles on Security and Human Rights.

Challenges

Despite the traction I have described, there remain major challenges. I will highlight four.

First, we need to work together to reach more companies. In our industry, this means small-to-medium sized companies that may not have the resources to develop and implement human rights policies in the manner larger companies do. It also means reaching national oil companies, which control 90% of proven reserves and 75% of global oil production. A study of more than 100 oil and gas companies that was discussed in the March 2013 issue of the *Journal of World Energy Law and Business* found that:

- Of the 54 publicly traded companies, most had heard of the Guiding Principles, and 35 had a human rights policy;
- Of the 43 NOCs, only six had a human rights policy. Most of these companies had never heard of the Guiding Principles.

Second, the size, global reach, and complexity of large organizations like Chevron make it difficult to develop a new company policy, and then ensure that it is followed globally. We must work diligently and leverage the expertise and resources of outside groups and experts, such as IPIECA.

Third, there is a persistent challenge in translating human rights language into understandable terms. Our company is made up largely of colleagues with engineering and financial backgrounds. Our human rights experts must consciously and continuously develop accessible language for our policies, guidance, and instructions. This might mean, for example, avoiding academic jargon and using business risk assessment frameworks with which practitioners are familiar.

Fourth, we must overcome general skepticism that has arisen across many industries surrounding the term "human rights NGO," which has arisen as a response to the tactics of some NGOs that masquerade as human rights defenders but in reality pursue "ends-justifies-the-means" strategies that undermine human rights and the rule of law. The human rights community, including human rights lawyers, should hold NGOs to the same standards they expect of the business community. Unfortunately, very few have.

Moving Forward, Not Backward

Professor Ruggie, through patient and diligent work, developed consensus among groups that had often been at odds on human rights issues: business, civil society, and government.

Recently, we have seen signs of cracks in this consensus. A nascent effort by some countries and organizations to push for a treaty covering transnational companies and human rights is misplaced, and risks inhibiting progress.

Enacting an international treaty is not realistic due to the enormous complexities that would come with trying to create one framework to govern multiple countries with different legal systems, and different rules governing human rights issues and corporate behavior. It also likely would deny companies the ability to tailor policies to work inside a complex, global business operation. Moreover, there is no evidence to indicate that a new treaty would in any way alter the behavior of countries that already are signatories to a panoply of human rights treaties, yet that fall short in protecting human rights. Making progress now requires pragmatic steps, not another treaty. To that end, we should:

- Expose and educate more companies and their lawyers on the Guiding Principles, using real-world examples;
- Better coordinate the proliferation of overlapping initiatives and programs on business and human rights;
- Devote more focus to governments' duty to protect—always bearing in mind that corporations can complement, but never replace, the state's duty.

Moving forward with consensus-based initiatives in this manner may not bring about change as fast as all would like, and it may not always be smooth. But, as Professor Ruggie correctly concluded after years of study and consultations, such an approach is what will move us forward, not backward.

REMARKS BY SARA L. SECK*

The 2011 UN Guiding Principles on Business and Human Rights rest on three interrelated pillars: the state duty to protect, the corporate responsibility to respect, and access to remedy. Their normative content is described as lying:

not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved.¹

The Guiding Principles thus offer a common ground from which to begin the work of implementation. A key piece of this is better understanding of the relationship between pillars.

BUSINESS RESPONSIBILITY

The corporate responsibility to respect rights is described in the Commentary to Principle 11 as:

a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

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¹ Rep. of the Special Representative of the Secretary-General on the Issues of Human Rights and Transnat'l Corp. and Other Bus. Enter., *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, at 5 (para. 14), UNHRC, 17th Sess., UN. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie).