

Guiding Principles for the Implementation of the UN ‘Protect, Respect and Remedy’ Framework:

ICMM response to the Special Representative of the Secretary-General on the issue of Business and Human Rights

Overall comment

Firstly, ICMM is very grateful to John Ruggie for his unstinting commitment to develop a clear and comprehensive framework that clarifies and untangles the state-business human rights nexus. We recognize the professional and personal investment (and sacrifices) that his work has entailed, and the strong emphasis throughout on multi-stakeholder engagement. We believe that the outcomes will be of lasting benefit to all with an interest in ensuring that business supports, rather than hinders, the realization and enjoyment of human rights.

ICMM and its members welcome the SRSG’s latest report, which sets out ‘Guiding Principles’ for the Implementation of the United Nations ‘Protect, Respect and Remedy Framework’. Collectively, the Guiding Principles offer a coherent and comprehensive basis for ensuring that the distinctive yet complimentary responsibilities of states and business with respect to human rights can be understood and effectively discharged.

Regarding the state duty to protect, ICMM welcomes the emphasis on the need to address legal and policy incoherence at the state level. Guiding Principles 1 – 11 constitute a comprehensive set of inter-related requirements which, if properly implemented, should reinforce the ability of states to protect against abuses by business as well as by State and other non-state actors. ICMM shares the view expressed in John Ruggie’s 2008 report to the Human Rights Council that *“governments should not assume that they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impacts of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business.”* The twin objectives of protection of human rights while fostering greater respect for human rights can be served by full, rather than selective, implementation of the Guiding Principles that relate to the State Duty to Protect, in an integrated manner.

We also welcome the clear and comprehensive articulation of the corporate responsibility to respect set out in Guiding Principles 12 – 21. The emphasis on policies and processes appropriate to size and circumstances and on the identification of human rights risks and impacts is considered and balanced, as is the implied hierarchy of response (prevention, mitigation, remediation). ICMM shares the SRSG’s view that policies and supporting procedures provide the basis for effectively discharging the corporate responsibility to respect, with a strong emphasis on effective due diligence. ICMM also welcomes the clear articulation of the elements of a robust due diligence approach set out in Guiding Principles 15 – 22.

The Guiding Principles pertaining to access to remedy set out the expectations that states and business should provide effective avenues of redress, which meet a comprehensive set of effectiveness criteria. ICMM is supportive of the concept of effective redress at the local level, as a basis for tracking human rights performance and for addressing a broad range of legitimate concerns that may be raised by local communities. We are also supportive of the need for appropriate and effective remedies where business infringes upon the rights of individuals or groups.

Finally, ICMM is mindful that the SRSG's mandate will come to an end in June 2011. Some of the factors that have underpinned the success of his work to date include: a capacity to listen and openness to ideas and input from disparate sources; a strong commitment to multi-stakeholder engagement at all stages; a commitment to balance the perspectives and interests of all parties; and an explicit recognition of the central role of states in promoting and protecting human rights, which underpins the 'Protect, Respect and Remedy's' dynamic system of preventative and remedial measures. ICMM urges the SRSG to encourage the Human Rights Council to ensure that the same attributes apply to whatever institutional arrangements are put in place to take forward his mandate.

Specific comments:

In addition to the overall comment above, ICMM suggests the following specific changes for the SRSG to consider prior to the 'Guiding Principles' being finalised.

Principles 14.e: Suggest that "policies and procedures" be replaced by "standards and procedures", as this layering of policies beneath an overall policy statement could be confusing

Principle 19: Suggest that the term 'relevant stakeholders' be substituted by 'affected stakeholders', as this is consistent with the approach adopted in the current consultation drafts of the IFC Performance Standards on Social and Environmental Sustainability.

Suggest that the word 'subject' be replaced by 'sensitive' under **19.b**

Suggest adding the following language at the end of the third sentence in the third paragraph in the commentary (to appear after '...potential adverse impacts on human rights'):

"Business enterprises should consider using or adapting existing reporting frameworks (e.g. such as the Global Reporting Initiative's Sustainability Reporting Guidelines) for this purpose, rather than establishing separate reporting requirements."

Definitions section: Suggest that the definition of grievance in the Guiding Principles report be revisited. The term 'entitlement' is too strongly associated with access to benefit (which may be interpreted as compensation in all instances). In many cases, what is more important is the acknowledgment that an individual or group has suffered hardship or been wronged, and that this should be redressed – but redress will often not involve monetary benefit. An alternative option might read as follows:

A **grievance** is understood as a perceived injustice evoking an individual's or a group's sense of having been wronged or suffered hardship, which may be based on law, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.

ICMM Secretariat, 27 January 2011