

THE U.N. GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: THE LEGAL CONTEXT AND OPERATIONAL IMPLICATIONS

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In June 2011, the U.N. Human Rights Council¹ unanimously approved the U.N. Guiding Principles on Business and Human Rights (“Guiding Principles”), which were developed over the course of six years of consultations with businesses, governments, and non-governmental organizations (“NGOs”) held around the world. The Guiding Principles are the first human rights standards for companies approved at the global level.

The primary aim of the Guiding Principles is to ensure that companies respect the human rights of individuals who might otherwise be negatively affected by business activities. The Guiding Principles have a secondary benefit as well: companies that follow them are likely to significantly reduce their legal risk, while also safeguarding their reputations and operations. The Guiding Principles lay out a “due diligence” process—in essence, a management system approach—through which companies can identify their potential impacts on human rights, and avoid or mitigate them. This article outlines briefly the range of risks the Guiding Principles can help companies manage.

THE CONTEXT: LEGAL, OPERATIONAL, AND REPUTATIONAL RISK

The position of U.N. Special Representative on Business and Human Rights was created in 2005, at a time when multinational companies, especially those headquartered in the U.S., were facing an increasing number of legal cases alleging their involvement in human rights abuses around the world. The legal venues have continued to expand, along with regulations encouraging corporate respect for human rights. This means that companies face increasing incentives and requirements to develop systems that address their potential impacts on human rights.

U.S. Litigation

Starting in the 1990s, numerous cases have been brought under the Alien Tort Statute² (“ATS”), a federal statute from 1789 that enables aliens to bring tort cases in federal court against persons for violations of the laws of nations and U.S. treaty obligations.³ In the first ATS case against a corporation, *Doe v. Unocal Corp. (Doe v. Unocal)*,⁴ Burmese villagers claimed that Unocal had aided and abetted the Burmese military in crimes including forced labor, torture, and rape.⁵ Although the case settled, it was the harbinger of lawsuits to come. The bulk of the cases have been brought against oil, gas, and mining companies, but food and beverage firms,⁶ pharmaceutical companies,⁷ and large equipment manufacturers⁸ also have faced claims.

The future of the ATS is currently uncertain. In October, the Supreme Court of the United States reheard the case *Kiobel v. Royal Dutch Petroleum Co.*, and is expected to rule on the extraterritorial effect of the ATS, as well as whether corporate entities can be subject to liability under the statute.⁹ The Supreme Court’s decision could affect corporate liability under the ATS in a number of ways. The Court could rule that foreign companies cannot be liable under the ATS, but U.S. companies are subject to suit. Or it might follow the reasoning of the Second Circuit and determine that companies are not subject to liability under the ATS while corporate personnel are, in which case senior company officers might face such lawsuits.¹⁰ In short, although liability for corporate involvement in human rights abuses under the ATS may become more limited in scope, that does not necessarily imply that it would disappear altogether.



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Moreover, other substantial – albeit less-heralded – legal risks will remain, even in the unlikely event that the Supreme Court rejects both corporate liability and the statute's extraterritorial application. Plaintiffs can turn to other laws such as the Torture Victim Protection Act, which establishes a cause of action for both citizens and non-citizens to sue individuals, including officials and employees of corporations, for complicity in torture and extrajudicial killing.¹¹

Additionally, if jurisdiction under the ATS is limited, plaintiffs may bring cases against companies in state court. In fact, a number of ATS cases already include claims under state tort law; indeed, in some instances, plaintiffs have brought actions in state and federal court simultaneously.¹² Plaintiffs also have brought claims of unfair competition and false advertising against companies in state court. For instance, Nike was sued under California's Unfair Competition Law¹³ for unfair and deceptive practices. The plaintiff alleged that Nike made false statements about its labor practices and working conditions in its factories in an attempt to induce customers to continue to purchase Nike products.¹⁴ The case eventually settled, and plaintiffs have brought few, if any, similar cases, but the risk of such suits remains.¹⁵

Non-U.S. Litigation

The web of liability for company involvement in human rights abuses continues to grow outside the U.S. Under the emerging doctrine of foreign direct liability, a suit can be brought in a corporation's home country for a tort or human rights violation that occurred in another jurisdiction. The British-registered arm of Trafigura, a Dutch multinational commodity trading company, as well as its Dutch business, faced a civil suit in London courts for negligence regarding the dumping of toxic oil residue and waste in the Ivory Coast, allegedly leading to deaths and thousands of illnesses.¹⁶ In October 2012, a Dutch court is expected to hear a case brought under a similar theory against Royal Dutch Petroleum for the alleged environmental impacts of its Nigerian subsidiary.¹⁷ Such cases are also a possibility in other European countries. The European Community's Brussels Convention provides a basis for suits based on tort, negligence, or crimes "in the courts for the place where the harmful event occurred or may occur, and interprets the tort to have occurred in the country where corporate decision-making took place."¹⁸

Plaintiffs are also increasingly availing themselves of Canadian courts. For example, three lawsuits were filed in

2010 and 2011 against a single Canadian mining company for its alleged complicity in abuses committed by security forces in Guatemala.¹⁹

Corporations and their officers also face claims in the countries in which the alleged abuses occur, even where the rule of law is not always firmly embedded. For instance, Pfizer settled a series of civil and criminal suits in Nigeria claiming that it had conducted its drug trials irresponsibly, allegedly leading to the deaths of several children.²⁰ Trafigura not only was sued in the U.K., as described above, but also faced charges in Ivory Coast in relation to its alleged dumping of toxic materials. The Ivorian government held three Trafigura executives in jail for six months who were released only after the company agreed to settle the suit for U.S. \$198 million.²¹

Regulations Related to Corporate Respect for Human Rights

In addition to lawsuits, companies are subject to a number of new U.S. state and federal regulations and policies that incentivize companies to operate in a manner that respects human rights. For example, section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act²² amends the Securities Exchange Act of 1934 to direct the SEC to adopt regulations requiring companies to conduct due diligence on their supply chains in order to identify whether certain minerals in their products originate from the Democratic Republic of the Congo or adjoining countries.²³

Additionally, the federal and state governments have put into place new requirements for companies related to human trafficking. President Obama signed an Executive Order in September 2012 that prohibits federal contractors from engaging in trafficking activities and requiring them to put into place a program to ensure compliance.²⁴ The California Transparency in Supply Chains Act, which went into effect on January 1, 2012, requires retailers and manufacturers with annual worldwide gross receipts exceeding U.S. \$100 million to publicly disclose what actions, if any, they are taking to ensure their supply chains are free from slavery and human trafficking.²⁵

The E.U. has also taken steps to encourage its members to respect human rights abroad. In 2011, the European Commission published a CSR Directive²⁶ that states that the E.U. will issue periodic reports on its member states' implementation of the Guiding Principles, and it is developing sector-specific guidance on implementation of the Guiding Principles. The CSR Directive also asks E.U. countries to report on their national

implementation plans by the end of 2012, which may lead to governments encouraging or requiring companies to take human rights into greater account in their activities.

Reputational and Operational Risks

Beyond legal liabilities and regulatory requirements, companies that are involved in human rights problems, or are perceived to be, may face reputational challenges. Apple's troubles with its major supplier in China serve as the most recent example.²⁷ Such publicity crises require the attention of high-level executives, and detract from the ability of companies to carry out their day-to-day business. In some instances, negative publicity can even affect stock price.²⁸

Moreover, companies might find themselves unable to operate if communities believe corporate projects have affected their human rights. In a growing number of instances, companies suffer costly project delays. Shootings at the Marikana mine in South Africa, owned by Lonmin, the world's third largest platinum producer, shut down that project for over a month,²⁹ and related protests in South Africa's mining sector caused AngloAmerican Platinum to stop operations at four of its mines.³⁰ In yet another example, in 2011, due to protests against mining projects, the Peruvian government declared a state of emergency near several mines, thus restricting the right to protest and also causing the companies to further postpone their operations.³¹ These operational disruptions can have enormous costs. It has been estimated that a major, world-class mining operation with capital expenditures between U.S. \$3-5 billion loses approximately U.S. \$20 million per week due to delayed production in net present value terms, while an exploration project loses around U.S. \$10,000 every day.³² Moreover, in some cases, companies have been unable to access their concessions at all and have relinquished them back to the government, resulting in billions of dollars of lost profits.³³

In sum, companies face substantial and growing risks if they are involved in, or perceived to be linked to, human rights abuses.

THE GUIDING PRINCIPLES: WHAT THEY MEAN FOR COMPANIES

From a business perspective, the Guiding Principles are highly relevant because they help companies avoid risk and meet shareholder expectations that companies will follow internationally accepted procedures to avoid committing or being complicit in human rights abuses. The Guiding Principles have been incorporated rapidly into other international standards,

demonstrating their acceptance as the most recognized human rights guide for companies. For example, they are now included in the OECD Guidelines for Multinational Enterprises, under which complaints may be brought against companies domiciled in any one of 42 adhering countries, as well as ISO 26000, the new standard on Social Responsibility adopted by the International Standards Organization.³⁴ Additionally, the Environmental and Social Performance Standards of the World Bank Group's International Finance Corporation ("IFC"), which apply to a wide array of companies and projects in which the IFC invests, contain an enhanced focus on human rights due diligence, including explicit reference to the Guiding Principles.³⁵ The Equator Banks, a group of more than 75 large financial institutions, also use the IFC Performance Standards to guide the assessment and management of social and environmental risk in project financing.³⁶ A brief summary of the Guiding Principles follows.

The State Duty to Protect Human Rights

The Guiding Principles rest on three pillars. The first is the obligation of governments under international law to respect, protect, and fulfill human rights.³⁷ To meet their duty to protect human rights against abuses by third parties, including companies, governments are required to prevent, investigate, punish, and redress such abuses through their policies, legislation, regulations, and judicial system.³⁸ The new regulations listed above serve as recent instances of governments implementing their duty to protect human rights. In a clear example of how the Guiding Principles are affecting national regulation, the U.S. now requires its companies making sizeable investments in Burma (Myanmar) to report on human rights aspects of their activities, and refers the companies to the Guiding Principles for assistance in that process.³⁹ As governments continue to implement the Guiding Principles, the pressure for companies to conduct adequate human rights due diligence will mount.

The Corporate Responsibility to Respect Human Rights

The second pillar of the Guiding Principles is the corporate responsibility to respect human rights.⁴⁰ This is intended to help companies identify and mitigate human rights risks—not only risks that would affect the companies, but those that would affect rights-holders, including workers, community members, and consumers. The responsibility to respect human rights requires that companies avoid causing or contributing to adverse human rights impacts through their own activities, and address such

impacts when they do occur. Moreover, companies should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships.

On a practical level, what does the responsibility to respect human rights mean for companies? First, they should develop a policy that commits them to respecting human rights.⁴¹ The development of such a policy should include approval by upper levels of management to ensure that there is sufficient willpower for companies to implement it effectively.⁴²

Second, companies should conduct human rights “due diligence” in order to identify, prevent, mitigate, and account for how they address their impacts on human rights. This due diligence has a broader meaning than its transactional usage in traditional legal parlance. It means that companies should have in place systems to identify their potential and actual human rights impacts, drawing on human rights expertise and in consultation with relevant stakeholders, such as communities.⁴³ Companies should then integrate the findings into their business processes by, for instance, assigning responsibility to address specific impacts, revising their procedures as needed, and allocating sufficient funds and authority to enable the relevant business units to implement effective responses.⁴⁴ Moreover, the effectiveness of those responses should be tracked using performance indicators.⁴⁵ In short, companies should prevent and mitigate human rights impacts as they would other business challenges—by identifying risks and using their management systems to address them.

Companies should conduct due diligence not only on their own operations, but should also seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations through their business relationships. The relationships upon which companies should conduct due diligence include business partners, entities in their value chains, and any other entity directly linked to their business operations, products, or services. This presents one of the most challenging aspects of implementing the corporate responsibility to respect human rights, since companies do not always have control over the entities committing the abuses.

The Guiding Principles acknowledge that the actions companies can take to prevent or mitigate human rights abuses will depend on whether they cause or contribute to the abuse, or whether their only connection to the impact is through a direct link to their operations, products, or services. When the

company causes or contributes to the abuse, it should take steps to cease or prevent the impacts.

If the company does not contribute to the impact, but is directly linked to it, the company should exercise whatever leverage it has to cease or mitigate the impact. The specific course of action will be context-specific. For example, where a company’s contractor is found to use forced labor, even if the company itself is not contributing directly to the abuse, it may have significant leverage because, if nothing else, it presumably can end the relationship. In contrast, if a company’s sole supplier of a rare commodity is implicated in human rights abuses, the company may possess less leverage. In both instances, however, company systems should identify such impacts, and the company should take steps to prevent or mitigate the impact, or consider ending its relationship with the culpable party.

A key element of the responsibility to respect human rights is the ability of companies to “know and show” that they are identifying and addressing their human rights impacts. The responsibility to respect creates an expectation that companies whose operations or operating contexts pose risks of severe human rights impacts should report formally—for example through their annual reports—on how they address them. Moreover, impacts or the risks thereof in some instances are material to investors, in which case they should be included in SEC reporting.

The Guiding Principles are a compass, not an instruction book. Companies should consider the full spectrum of internationally recognized human rights when implementing their responsibility to respect human rights. But they may find that certain rights are particularly relevant to their situation, depending on industry sector as well as their region of operation. Moreover, the precise manner in which human rights are integrated into company operations depends on the company’s structure and culture. Therefore, there is no one-size-fits-all approach to human rights due diligence. Rather, companies must devote time and resources to identify their potential impacts and determine how to best adjust their systems to address them.

Access to Remedy

The third pillar of the Guiding Principles is the right to a remedy for human rights abuses that do occur.⁴⁶ Governments should provide for remedies through their judicial, administrative, legislative, or other systems. Companies, meanwhile, should establish operational-level grievance mechanisms for individuals

and communities that might be adversely affected by their activities. There are two practical advantages to doing so. First, grievance mechanisms support the ability of companies to identify their human rights impacts, thus strengthening their due diligence. Second, when impacts are identified early, they can be addressed before they fester or explode into conflict.

Grievance mechanisms might differ significantly by sector. For instance, mining and oil companies sometimes have grievance mechanisms at the project site available to community members. A consumer-facing company, on the other hand, might establish hotlines to receive consumer complaints or concerns from workers in its supply chain. A company might also work with other members of the industry to establish a shared grievance mechanism.⁴⁷ In all instances, the mechanism should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of learning, and based on dialogue with affected stakeholders.

CONCLUSION

Companies face a web of human rights-related legal risks, as well as increasing home country regulations to encourage or require them to respect human rights in their operations abroad. The Guiding Principles set forth a human rights due diligence process that helps companies avoid legal liabilities and meet regulatory requirements, while also demonstrating to investors and other stakeholders that they are operating responsibly. Human rights due diligence is not easy and requires companies to think and act in innovative ways regarding issues that may be new for many of them. But the Guiding Principles are framed within an approach that can be incorporated into ongoing risk management systems in order to provide a valuable addition to company safeguards—and to doing the right thing. ■

ENDNOTES

1 The United Nations Human Rights Council is an inter-governmental body within the United Nations system. It is responsible for strengthening the promotion and protection of human rights around the globe. See <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>.

2 28 U.S.C. § 1350.

3 *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004) (explaining that recognized causes of action should “rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the

18th-century paradigms we have recognized.”).

4 395 F.3d 932 (9th Cir. 2002), *appeal dismissed per stipulation and district court opinion vacated en banc* 395 F.3d 978 (9th Cir. 2003).

5 *Doe v. Unocal*, 395 F.3d at 936.

6 See, e.g., *Doe v. Nestle*, 748 F. Supp. 2d 1057 (C.D. Cal. 2010); *Sinaltrainal v. Coca-Cola*, 578 F.3d 1252 (11th Cir. 2009).

7 See, e.g., *Abdullahi v. Pfizer*, 562 F.3d 163 (2d Cir. 2009).

8 See, e.g., *Corrie v. Caterpillar*, 503 F.3d 974 (9th Cir. 2007).

9 621 F.3d 111, 120 (2d Cir. 2010), *cert granted*, 132 S. Ct. 472 (Oct. 17, 2011), *reargument ordered*, 132 S. Ct. 1738 (2012) (Mar. 5, 2012) (No. 10-1491).

10 *Kiobel*, 621 F.3d at 120.

11 Torture Victim Protection Act of 1991, Pub.L. 102-256, 106 Stat. 73 (enacted March 12, 1992). See *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702 (2012) (holding the TVPA applies only to “natural persons” thus precluding liability for corporations).

12 For example, after the federal court chose not to exercise pendant jurisdiction in *Doe v. Unocal*, the plaintiffs brought a case in California state court alleging tort claims such as battery, false imprisonment, and negligent supervision of security providers. The case settled before it went to trial. Meredith Dearborn, *Enterprise Liability: Reviewing and Revitalizing Liability for Corporation Groups*, 97 CAL. L. Rev. 195, 197 (2009). Such tort claims also played an important role in *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011).

13 California Business and Professions Code §§17200-17209 protects consumers and competitors against unlawful, fraudulent, or unfair business acts and practices, and § 17500 prohibits false advertising.

14 *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 945 (2002).

15 It is unclear why plaintiffs have not brought more such citizen suits, although some claim that: (1) it is now more difficult to establish standing in California; (2) there is concern that the U.S. Supreme Court might establish a new test that is more protective of commercial speech if given an opportunity; and (3) some activists are concerned that these types of lawsuits will prevent companies from making commitments to social standards and reporting on them. See Julia Fisher, *Free Speech to Have Sweatshops? How Kasky v. Nike Might Provide a Useful Tool to Improve Sweatshop Conditions*, 26 B.C. THIRD WORLD L.J. 267 (Spring 2006); Michael Sutton, *Between a Rock and a Hard Place:*

Corporate Social Responsibility Reporting and Potential Legal Liability Under Kasky v. Nike, 72 UMKC L. REV. 1159 (Summer 2004).

16 See, e.g., Luke Baker & Loucoumane Coulibaly, *Trafigura Finalizes Ivory Coast Toxic Waste Payout*, REUTERS, Sept. 23, 2009, <http://reliefweb.int/node/325411> (regarding the allegations and settlement of the case in the U.K.); Yao Essaié *Motto & Others v. Trafigura Ltd. & Trafigura Beheer BV*, [2011] EWCA (Civ) 1150 (Eng.), http://www.paragoncosts.com/cms/document/Moto_v_Trafigura_COA_12_10_11.pdf (regarding the litigants in the case); Toby Sterling, *Dutch Trafigura Settles Toxic Waste Case*, Washington Post, Feb. 16, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/02/16/AR2007021600707_pf.html (regarding the settlement in Ivory Coast). Another case, *Lubbe v. Cape PLC*, confirmed the ability of foreign claimants to use British courts to bring suit against a parent company for the tortious acts of a subsidiary. *Lubbe and Others and Cape Plc. and Related Appeals* [2000] UKHL 41 (July 20, 2000), available at <http://www.bailii.org/uk/cases/UKHL/2000/41.html>.

17 Press Release, Friends of the Earth, Nigeria: Key Hearing in Court Case On Oil Giant Shell's Nigerian Oil Pollution (Sept. 26, 2012), <http://allafrica.com/stories/201209261287.html>.

18 Council Regulation No. 44/2001, art. 5(3), 2001 O.J. (L 012) (EC). Because the European Court of Justice has interpreted "place" to mean both the place of the damage and the place of the decision-making that caused the damage, there may be grounds for jurisdiction if a company's decision made in an E.U. country resulted in damage in another state outside the E.U. Nicola M.C.P. Jägers & Marie-José van der Heijden, *Corporate Human Rights Violations: The Feasibility of Civil Resource in the Netherlands*, 33 BROOK. J. INT'L L. 847 (2008). Jurisdiction under the Brussels Convention is also broad, allowing a corporation domiciled in the E.U. to be sued under local law at the company's seat, as well as where it has a branch office. *Id.* See also Liesbeth F.H. Enneking, *Crossing the Atlantic? The Political and Legal Feasibility of European Foreign Direct Liability Cases*, 40 GEO. WASH. INT'L L. REV. 903 (2009).

19 See, e.g., *German Chub Choc v. Hudbay Minerals, Inc.*, CV-11-435841 (Can. Ont. Sup. Ct. J.) (filed Feb. 6, 2012).

20 Business & Human Rights Resource Center, *Case Profile: Pfizer Lawsuit*, <http://business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/PfizerlawsuitreNigeria>.

21 Business & Human Rights Resource Center, *Case Profile: Trafigura Lawsuit*, <http://business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TrafiguralawsuitsreCtedIvoire>.

22 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

23 Securities Exchange Act of 1934 § 13(p) (codified as amended at 15 U.S.C. § 78(m)(p) (2012)). The final rule was issued in August 2012. SEC Release No. 34 – 67717 (Aug. 22, 2012) (codified as amended at 17 C.F.R. § 240, 17 C.F.R. § 249). On September 16, 2011, the California Legislature passed S.B. 861, which requires public companies that contract with the State of California to ensure their supply chains are free of "conflict minerals" sourced from the Democratic Republic of the Congo. S.B. 861, 2011-1012 Reg. Session (Cal. 2011) (to be codified as § 10490 of the California Public Contract Code).

24 Executive Order – Strengthening Protections Against Trafficking in Persons in Federal Contracts (Sept. 25, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>.

25 California Transparency in Supply Chains Act, S.B. 657 (2010), codified as § 1714.43 of the California Civil Code and § 19547.5 of the California Revenue and Taxation Code. See Peter M. Menard, *California Transparency in Supply Chains Act*, BUS. LAW NEWS (State Bar of California, S.F., Cal.), Issue 3, 2011.

26 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Renewed EU Strategy 2011-14 for Corporate Social Responsibility*, COM (2011) 681 final (Oct. 25, 2011).

27 See, e.g., David Barboza & Keith Bradsher, *Riot at Foxconn Factory Underscores Rift in China*, N.Y. TIMES, Sept. 28, 2012, <http://www.nytimes.com/2012/09/25/business/global/foxconn-riot-underscores-labor-rift-in-china.html>.

28 See, e.g., Vivien Kappel, Peter Schmidt & Andreas Ziegler, *Human Rights Abuse and Corporate Stock Performance – An Event Study* (Dec. 21, 2009), <http://feemdeveloper.net/attach/Peter%20Schmidt.pdf>.

29 *South Africa shootings: Marikana mine inquiry begins*, BBC News, Oct. 1, 2012, <http://www.bbc.co.uk/news/world-africa-19781993>.

30 Siphwe Sibeko & David Dolan, *South Africa Mine Protests Hit Top World Platinum Firm*, REUTERS, Sept. 12, 2012,

<http://www.reuters.com/article/2012/09/12/us-safrica-mines-idUS.B.RE88B09C20120912>.

31 Naomi Mapstone, *Peru Says Leftists to Blame for Mines Paralysis*, FINANCIAL TIMES, May 29, 2012, <http://www.ft.com/intl/cms/s/0/5cc3e3a0-a9ab-11e1-a6a7-00144feabdc0.html#axzz28BPo9Z7l>.

32 Rachel Davis & Daniel M. Franks, *The Costs of Conflict with Local Communities in the Extractive Industry*, at 3 (Oct. 2011) (paper presented at SR Mining Conference, Oct. 19-21, 2011, Santiago, Chile).

33 See World Resources Institute, *Development Without Conflict: The Business Case for Community Consent*, May 2007, http://pdf.wri.org/development_without_conflict_fpic.pdf.

34 Organization for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises*, OECD Publishing (2011), available at <http://dx.doi.org/10.1787/9789264115415-en>; International Organization for Standardization, *ISO 26000 – Social Responsibility* (2010), available at <http://www.iso.org/iso/home/standards/iso26000.htm>.

35 The IFC is part of the World Bank Group and lends to the private sector, as opposed to the World Bank, which primarily lends to governments.

36 Equator Principles Association, *Equator Principles III*

– *Draft & Summary of Key Changes*, Aug. 13, 2012, <http://www.equator-principles.com/index.php/about-ep3>.

37 See Special Representative of the Secretary-General, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (“Guiding Principles”), http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

38 *Id.* at ¶¶ 1-10.

39 Media Note, U.S. Dep’t of State, UN Guiding Principles on Business and Human Rights Workshop (July 31, 2012), <http://www.state.gov/r/pa/prs/ps/2012/07/195901.htm>.

40 Guiding Principles at ¶¶ 11-24.

41 *Id.* at ¶ 15.

42 *Id.* at ¶ 16.

43 *Id.* at ¶¶ 17-18.

44 *Id.* at ¶ 19.

45 *Id.* at ¶ 20.

46 *Id.* at ¶¶ 25-31.

47 For instance, a number of apparel and manufacturing companies are members of the Fair Labor Association, and workers in their supply chains can submit complaints to the Fair Labor Association.

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