

Working Group on the issue of human rights and transnational corporations and other business enterprises

Managing human rights risk in the garment sector supply chain – what lessons learned from the perspective of the UN Guiding Principles on Business and Human Rights?

Summary report of panel discussion held during the 5th session of the Working Group
20 June 2013

This is an unofficial summary of the views of participants expressed during the discussions, and does not necessarily reflect the views of the Working Group or OHCHR.

Background

On 24 April 2013, the Rana Plaza garment factory building collapsed in Bangladesh, resulting in significant loss of life. The Rana Plaza incident has served as a catalyst for action on the part of governments, trade unions and industry alike to address systemic human rights issues in the garment sector. To reflect on the lessons learned from past and current attempts to manage human rights risks in the sector, and to discuss how effective implementation of the UN Guiding Principles on Business and Human Rights¹ by States, local and international businesses can help prevent and address such risks, the Working Group on Business and Human Rights decided to hold an panel discussion open to all stakeholders, during its fifth regular session, on 20 June 2013².

Specific questions for consideration during the panel discussion included what key lessons can be identified in relation to human rights due diligence and implementation of the Guiding Principles on Business and Human Rights in complex global supply chains, including with regards to access to remedy for victims; and how the momentum behind the Accord on Fire and Building Safety in Bangladesh can be extended to other countries or sectors with similar challenges.

Alexandra Guáqueta, Vice-Chair of the Working Group, moderated the discussion. An expert panel was invited to offer reflections and share practical experiences. The panellists were:

- Ms. Jenny Holdcroft, Director, Policy, Trade & Development, IndustriALL
- Mr. Aleix Gonzalez Busquets, Senior CSR and Supply Chain Manager, Inditex
- Mr. Peter McAllister, Director, Ethical Trading Initiative
- Ms. Caroline Rees, President, Shift
- Mr. Daniel Rees, Director, Better Work Programme, ILO
- Mr. Andy York, Ethical Trading Manager, JD Williams / N Brown Group
- Mr. Kamran Rahman, former president of the Bangladesh Employer's Federation, and VP of the Metropolitan Chamber of Commerce and Industry of Dhaka (MCCI)

The panel discussion was attended by around 70 representatives from States, international and regional organizations, business, trade unions and employer organizations and civil society organizations.

¹ HR/PUB/11/04.

² Further information, including submissions received by the Working Group, are available at <http://www.ohchr.org/EN/Issues/Business/Pages/WGSessions.aspx>

Summary of discussions

The State duty to protect

Under the Guiding Principles, the State has the primary duty to protect human rights against abuses by business actors. Fulfilling this duty requires the State to enact—and enforce in practice—legislation and regulations that have the effect of requiring businesses to respect human rights. In discussing the response to the Rana Plaza building collapse, participants noted that the ILO and the tripartite partners of Bangladesh had negotiated a package of labour reforms to address current gaps in the labour law that – if successfully enacted and implemented – would enhance both state protection and business respect for human rights. Some State delegations present expressed support for these reform processes. The commitments include a range of amendments to the labour code, including making it easier for workers to form independent unions and significantly increasing the assessment and inspection of buildings. In this context, it was emphasised that there is a need not only to hire more labour inspectors, but to also ensure that these are adequately trained. The tripartite partners also agreed on the need for compensation and remedy for victims and the families of victims, including a commitment on the part of the government to provide skills training and assistance to injured workers to find alternative employment.

Participants also stressed the need to increase transparency and accountability of the health and safety inspection process. It was noted that the owner of the Rana Plaza building allegedly obtained a document certified by the government, stating that the building was safe, only the day before the collapse—and despite the fact that the building was showing visible cracks. Other participants also raised the need to increase the minimum wage in order to ensure a living wage for workers.

Guiding Principle 2 stipulates that States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. Several participants highlighted the role that home States of international clothing companies could play in addressing conditions in the sector. Supportive actions in this respect could include clear guidance by home States to the brands operating in high-risk environments on what is expected of them, as well as practical guidance and advice on supply chain due diligence and on best practices.

Participants noted that all three pillars of the Guiding Principles (the State duty to protect, the business responsibility to respect, and access to remedy for victims) are equally important, mutually reinforcing and inseparable: if any actor is missing, progress will not be achieved.

The business responsibility to respect human rights

Under the Guiding Principles, the business responsibility to respect human rights entails that companies both avoid causing or contributing to adverse impacts through their own activities, and that they seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships³ (Guiding GP13). The commentary to Guiding Principle 13 makes clear that “activities” can be understood as both actions and omissions. The panel discussion raised a number of points with respect to how companies can meet this responsibility, including by elaborating on some of the shortcomings of traditional auditing approaches to identifying and addressing supply chain risks.

³ The implications of this responsibility are further elaborated in “the Corporate Responsibility to Respect Human Rights: An Interpretive Guide” published by OHCHR in 2012. HR/PUB/12/02.

In response to the collapse of the Rana Plaza building, participants noted that garment sector employers in Bangladesh have developed a 10-point roadmap for addressing the most urgent issues in the sector, including a proposal to classify factories as “high risk”, “risky” and “low risk”, and to prioritise audits accordingly. Employers are also recognising the need to strengthen cooperation with workers.

Participants emphasised that the Guiding Principles require all companies to conduct on-going human rights due diligence to identify, prevent, mitigate and account for how they address their adverse impacts on human rights (GP15), and that this responsibility also applies to the companies sourcing from low-countries. In this context, participants noted that companies should identify and address how their own processes may contribute to adverse working conditions in their supply chains, including through pricing strategies and purchasing behaviours (such as short lead times and last-minute changes to orders). It was noted that corporate business models start in the boardroom – setting the tone at the top is crucial to how the business understands its responsibilities.

Why have traditional audits failed?

In this context, participants discussed some of the shortcomings of traditional audit-based approaches to identifying and addressing human rights risk in global supply chains. Some participants noted that companies have increasingly seen how traditional compliance-based auditing approaches fail to address systemic risks. One lesson is that audits provide a snapshot of conditions (often of a small sample of a company’s suppliers), but that if audits are not followed up with sustained action, including capacity building, there is a tendency that improvements are short-lived and the same issues emerge again and again. Another contributing factor is corruption, which can affect the integrity of the auditing process. Furthermore, when issues are systemic to a country, sector, or both, collaborative (often cross-stakeholder) approaches are needed.

Partnering with labour

Some participants noted that the workers in the Rana Plaza garment factories were not unionised. If workers had been unionised, collective bargaining agreements would have given workers more collective leverage to resist going to work in an unsafe building. Union, civil society and corporate representatives at the panel discussion all emphasised the need to partner with workers in order to address systemic health and safety issues.

The Accord on Fire and Building Safety in Bangladesh – a unique example of collective action to address human rights risks

Panellists and participants discussed in detail the Accord on Fire and Safety in Bangladesh⁴ as a unique and highly interesting example of collaboration between unions and companies to address human rights risks. As of 20 June 2013, over 50 international companies had signed up to the Accord, a legally binding agreement between global trade unions and clothing brands from a number of countries. The Accord has received much attention worldwide, and a number of organizations have expressed their support for it, including the Secretary-General of the United Nations.

⁴ Available at e.g. <http://www.laborrights.org/creating-a-sweatfree-world/resources/bangladesh-fire-and-building-safety-agreement>

Various participants highlighted the very strong—perhaps unprecedented—cooperation between participating brands to address a sectoral issue, and between companies and unions. It was emphasised that the Accord had been negotiated and signed by more than 50 companies in less than two months. The development of the Accord reflects a lesson on the part of both unions and brands that it is necessary to work closely together to address the systemic health and safety failures in the garment sector. According to participants, the Accord opens up a dialogue about how to approach factory monitoring, and some noted that it gives practical effect to the UN Guiding Principles.

Business representatives in particular noted the increased leverage that results from the close cooperation between the brands that have signed the Accord. This is particularly important for small- and mid-size companies, which may otherwise have limited leverage with garment factories (as their orders typically represent only a small part of a factory’s business). It was emphasised that the process of developing this Accord is unique in terms of achieving collaboration between brands and unions, and in the speed with which the agreement was reached.

Participants also emphasised the legally binding nature of the Accord, as well as the commitments to supplier incentives, pricing strategies that enable factories to operate safely, and public reporting on progress. Some participants noted that the Accord also opens the door to further activities and stronger collaboration, including potential future capacity-building outside of safety issues, or replicating the model in other sectors or countries.

However, participants also noted that while the Accord is an important part of an overall piece, it is not the whole piece, and will not cover all factories. In order to have the desired impact on the ground, some participants noted that the Accord actors should engage and collaborate with the tripartite partners on the ground. Some participants also noted that there are alternative or complementary efforts underway among other industry partners. One such initiative is the Bangladesh Worker Safety Initiative, launched in early July 2013 by a group of 17 North American retailers calling themselves the Alliance for Bangladesh Worker Safety. The binding five-year commitment involves drawing up factory-safety standards, inspecting plants used by alliance members and backing elected worker committees at each plant. Alliance members also commit to collectively contribute to a safety fund and to make available low-cost capital to factory owners to implement improvements.

Ensuring effective remedy

Guiding Principle 25 clarifies that the State has a duty to ensure that victims have effective access to remedy. In addition to ensuring remedy, including compensation, for victims, the State duty in this regard also includes investigating possible criminal conduct and bringing charges against relevant persons. Guiding Principle 22 states that businesses that have caused or contributed to harm have the responsibility to provide for, or cooperate in, the remediation of this harm. In the context of the garment sector, some participants highlighted that victims of previous disasters have sometimes struggled to obtain effective compensation, and that there is a lack of agreement among different actors about how to divide responsibilities for providing compensation. While various actors have expressed a commitment to provide compensation for the victims (and families of victims) of the Rana Plaza disaster, concern was expressed by some by some participants that many victims have reportedly not been provided with support or compensation, and that there is a lack of transparency and accountability for this process.

Several participants stressed that effective remedy also means addressing the underlying causes of the situation, in order to prevent recurrences. As the discussions highlighted, an essential element to prevent repeat incidents would be to ensure strong protection for workers' rights.

In public communications to the Working Group following the session, some concerned civil society participants stressed that an important aspect of effective remedy is to urgently address the victims' most immediate needs. In this context they stressed that those individuals left without a source of income from the disaster, and with no means of providing for the basic needs of their families, must be prioritised in remedy efforts.

Next steps – potential areas for further action

Participants discussed potential roles for the Working Group to contribute further in this space, including by providing guidance and assistance to States in implementing the Guiding Principles effectively; clarifying the obligations of home States of international companies; and providing guidance on access to remedy. Some participants emphasised the need for further study, including identifying typical barriers that prevent both States and business enterprises from translating “good intentions” into concrete practices. In this context, participants suggested that the Working Group could help build capacity and engagement. Suggestions were also made for further study of the key features of the Accord, including identifying generally applicable criteria for effective collective action.

The Working Group stated that it would continue to assess the issues raised in the discussions. In particular, the Working Group will consider the role it can play in collecting and disseminating lessons from the Accord, and in making recommendations to all relevant actors on implementation of the Guiding Principles, including on the interplay between the three pillars of the Guiding Principles.