

## **A Game Changer**

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### **The news**

The responsibility of business towards society is heading into a new era. On June 15, 2011, the "UN Guiding Principles for Business and Human Rights" (henceforth UNGPs) was supported and endorsed unanimously by the UN Human Rights Council.

### **Private sector support**

Bob Corcoran, director of General Electric's initiatives on corporate citizenship, states that they (the UNGP's) certainly will "act as a beacon of lights for companies that wish to increase the sales of their services and products, all along respecting human rights." Corcoran visited Denmark as a keynote speaker at the presentation of the Danish Export Credit Agency's CSR strategy in 2008, where he emphasized the importance of companies taking responsibility for human rights to the Agency's customers and other stakeholders. Along the same lines, the principles have received considerable support from companies from around the world from Malaysian Simes Darby, Chinese Flextronics, Indian JSL Stainless Ltd., to French Total, American Coca Cola and Colombian Cerrejon.

In Denmark, Novo Nordisk has, not surprisingly, taken a leading position in the field. The company was among the first to support the UNGPs when the first draft was published in November 2010. The Danish CSR front runner declared its commitment as early as December 2010. The draft is similar to the final version that was unanimously endorsed by the Human Rights Council.

It should be noted that working with human rights is not new for Novo Nordisk. Even before the UN Global Compact was established in 2000, Novo was working on implementing human rights in the core of the people bottom line under CSR. With its current participation in the Global Business Initiative on Human Rights and in the UN Global Compact Lead project, the company will, along with other socially responsible companies, start sharing its vast experiences working with human rights and the coming work with the UNGPs.

The fact that the UN, for the first time in history and after several unsuccessful attempts since the 1970's, has now described and specified basic expectations in regard to how companies should address human rights issues has also been an advantage for another Danish Pharmaceutical company. Initiated due to their unfortunate relationship to death row cases in America, Lundbeck writes on their website: "We define our responsibility to address the risk of human rights impacts, in relation to the activities of the company, by following the UNGPs".

By integrating the UNGPs, the two pharmaceutical companies have made a demanding commitment. As it is briefly described below, the UNGP's set fairly high standards for how companies should address human rights. They imply a basic expectation that employees in a company have knowledge of human rights: a competence that is rarely seen among employees.

### **UNGPs international role**

"But there are numerous guidelines and frameworks for CSR already in use, why should this one make a difference?" Such critique is often aired when the role of the new principles is discussed. It is important to note that the UNGPs have been adopted as a part of global politics. The fact that they have been unanimously endorsed by the Human Rights Council is in itself extraordinary. The UNGPs have greater authority and will receive greater influence than any

other guideline in the CSR field. It must be expected that all multi-stakeholder, industry or company initiatives will now be revised in the light of the UNGPs. The OECD Guidelines for Multinational Enterprises already undergo such revision, as did the International Finance Corporation's sustainability policy.

Even the United States of America voted in support for the adaptation of the UNGPs, despite the UNGPs' implicit recognition of social and economical rights as universal. Daniel Baer from the US Ministry of Foreign Affairs, stated: "It is important for states to lead responsibly and effectively so that individuals are not only protected against the actions of the state, but also from non-government-actors, including companies".

When the UNGPs were adopted in June the Vice President of the EU said "I welcome the adoption a great deal. Many European companies are world leading, when it comes to human rights and have played a constructive role in Professor Ruggie's work. The UN principles will be an important focus for the revised CSR policy that we (red. The EU) expect to adopt later this year". Indeed the UNGPs play a central role in the newly published EU CSR strategy. The EU Commission leaves voluntariness as the denominator for CSR and changes its definition to the 'impacts on society that enterprises have'. The responsibilities include *both* positive contributions *and* avoiding negative impacts.

### **UNGPs role on a national level- the case of Denmark**

The Danish Council for Corporate Social Responsibility, with Mads Øvlisen in the forefront, and The Danish Center for Corporate Social Responsibility state that they are positive towards the UNGPs, even though a few members of council were of the opinion that it could be too big a mouthful for many companies. The Confederation of Danish Industry has argued along similar lines, that it should be sufficient that companies address the principles of the UN Global Compact. It is important to note that the UNGPs cover only part of the UN Global Compact principles coverage. The UNGPs should therefore be seen as a considerable support for companies when they seek to implement the 'compliance' or 'respect' aspect of principles 1-6 of the UN Global Compact. Until now, information on how to implement the principles has been very sparse. With the UNGP's, the basic and pragmatic expectations towards the systems and approaches of companies are much more comprehensively defined and described with authority and global reach.

Professor Ruggie states that his principles are a "game changer"; and he is right. In fact, the UNGPs suggest that all the tools that different companies, institutions and clusters have developed throughout the years, should be revised; this applies to national initiatives such as the CSR Compass of the Danish Center for Corporate Social responsibility, the "UN Global Compact self assessment" tool of the Danish Institute for Human Rights, the base code of the Danish Initiative for Ethical Trade, and also international multi stakeholder initiatives such as ETI, IPIECA, SA8000 and BSCI. Indeed a long line of codes of conduct, certification standards and audit frameworks needs alignment; a huge, but needed task. If the revision is not undertaken, the providers of the frameworks, or the consultants who apply them, can fall liable should the given company be criticized for not living up to the UNGPs. As a minimum precaution, consultants must ensure that the company explicitly has refused to adopt the UNGPs.

### **So, what are the UNGPs all about?**

When Professor Ruggie commenced his work in 2005, nobody predicted that he would be able to establish global agreement on a framework for business and human rights. This became a reality in 2008. States, business and civil society all supported the three pillars proposed by the UN Special Representative.

1. The state duty to protect human rights
2. The corporate responsibility to respect human rights
3. Access to remedy

The recently adopted UNGPs shall ensure implementation under these three pillars. The UNGPs have been underway for three years, and it goes without saying that many companies have been expecting their completion. Worldwide implementation has now commenced on a large scale. The UNGPs are of a somewhat abstract nature, but from a practitioner's point of view, they are fully sufficient for practical application. It is worth mentioning that a few principles that take into account the size and context of the company in relation to its responsibility into account when assessing its responsibility render the UNGPs practically applicable to companies of all sizes.

The UNGPs are process oriented rather than content oriented. This means that they do not define a human rights standard for every single human right, but instead prescribe a wide range of basic elements for the management systems, that all companies should establish to live up to their responsibilities towards human rights.

In short, all companies should in the future ensure that they have a management system that continuously minimizes and eliminates their direct or indirect negative human rights impacts. If an adverse human rights impact is identified, the company should seek to provide remedy. The elements of the corporate responsibility to respect human rights fall under the following three headlines:

1. A policy commitment
2. A human rights due diligence process
3. A process that enables access to remedy.

Under each category, the principles describe the key elements every company should act in compliance with. For larger companies, documentation is required, for smaller companies, application in practice is sufficient.

### **What now?**

With the UNGPs, global endorsement has been achieved in regard to a challenging issue. The tremendous support gives the UNGPs considerable authority. Even though Professor Ruggie cannot continue his groundbreaking work, the process will not stop here. Simultaneously with the endorsement of the UNGPs, the Human Rights Council has decided to continue the mandate for the next three years. A working group has been assigned to ensure the global dissemination and implementation of the UNGPs. The working group has also been assigned to establish a forum of business and human rights, with representatives from all relevant stakeholder groups that function as a sounding board. The subject receives extraordinary attention in the UN. Twelve states act as 'funders' of the mandate. The Nordic countries are strongly represented with Denmark, Norway and Sweden; but also Argentina, Canada, Guatemala, India, Nigeria, Peru, Russia, Turkey and Austria actively support the mandate.

The Human Rights Principles are the foundation of social sustainability. All thirty human rights are of great importance in terms of how the business world contributes to, while avoiding being a barrier to, sustainable development. The UNGPs give us highly anticipated and authoritative guidance to the compliance systems of organisations. With a sudden strike, it finally makes sense for a company to state that it is in compliance with the UN Global Compact Principles 1 through 6. This opens a window of opportunity enabling the UN Global Compact to focus their efforts on how companies can best contribute to the realisation of the principles for social sustainability.

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