



In this issue

A4ID sets standard with new human rights policy

Law firms' implementation of the Guiding Principles

Interview with John Sherman

Developments in the regulation of the extractive industries

Helping local communities seek redress

editorial



Welcome to our new newsletter.

You will notice that it has changed slightly from previous issues. This is because we now have lots of events going on, resources being prepared and projects undertaken, and wanted to share these with even more people. Each issue of our newsletter will now be based around one of our six core themes; climate change, intellectual property, governance, socio-economic rights, trade debt & finance, and the theme of our first issue, responsible business.

At the moment, it seems hard to escape from discussions about the role business plays in development. The UK government's Department for International Development's (DfID) strategy on the private sector and development emphasises the need to ensure that there are the structures and conditions in place in developing countries that can allow local business to flourish, while elsewhere there is increased talk of impact investing and promotion of the 'triple bottom line.' Discussions of how the private sector can push forward development are everywhere.

But the involvement of the private sector is more than just a matter of money. It is also an issue of responsibility, particularly in ensuring that multinational businesses contribute positively through their work in developing countries and build rather than impede development.

The role of multinationals in respecting human rights has received considerable attention since the UN's Guiding Principles on Business and Human Rights were agreed last year. These highlight companies' responsibility to 'know and show' that they respect human rights and have led to changes to many other frameworks including the OECD Guidelines for Multinational Enterprises and the Global Compact.

At A4ID, we have taken a great interest in the Principles and their impact on development. We recognise that where businesses negatively impact on human rights they also impede development, and believe that the Principles provide a unified approach to ensure that the private sector can help drive

forward development through the protection of human rights.

This is particularly important in light of the Rio +20 conference on sustainable development at the end of June. According to Oliver De Schutter, the UN's Special Rapporteur on the right to food, new global commitments for sustainable development must be grounded in human rights and accountability to prevent them from drifting off course. Given the potential impact of business on human rights, especially in developing countries, the private sector must surely be viewed as a crucial stakeholder in taking these commitments forward.

This is why we are continuing the work we started in November 2011 with regards to the Guiding Principles on Business and Human Rights, and in particular their implementation by law firms. The next step of this project that considers the implementation of the Principles by law firms is due to be completed and disseminated in September 2012.

In anticipation of this work, this first issue of our new newsletter focuses on some of our previous work in the field of responsible business. Inside, you will find articles on subjects such as changes to the regulation of extractive companies working in areas of weak governance, an interview with John Sherman on the production of the Guiding Principles and the role of law firms in promoting them, and examples of our projects that have supported responsible business practices.

Many of the articles in this newsletter are edited versions of papers or seminar recordings that are available in full on our online resource centre, accessible via our website. The resource centre is where A4ID and our partners can share information about the role of law in international development. If you would like to contribute to the resource centre or any future issues of the newsletter, please let me know.

Yasmin Batliwala

Chief Executive, A4ID
yasmin.batliwala@a4id.org

A4ID at a glance

44

legal partners committed to using law to support international development

A global network of

39,000

lawyers from Europe, US, Africa, Middle East and Australasia

More than

440

development organisations and social enterprises able to access free legal advice

1,000

projects circulated to our legal network

Projects have impacted on

114

countries

Free legal advice worth more than

\$20 million

provided to those furthering the aims of the Millennium Development Goals

A growing group of legal and development professionals, keen to explore how they can work together to combat global poverty

A4ID would like to thank Noemi Bouet, Peter Linden and Aasima Jameel for their assistance with producing this publication.

Cover: Female workers at Liberty & Justice's fair trade clothing factory in Liberia. Courtesy of Liberty & Justice.

A4ID sets the standard with new human rights policy

In March 2012 we launched our new human rights policy, bringing us in line with our obligations under the UN's Guiding Principles on Business and Human Rights.

The Guiding Principles were unanimously endorsed by the UN Human Rights Council in June 2011 and set out the obligation of business enterprises to respect human rights.

Developing an overarching human rights policy that brings in different policy strands

"A4ID is committed to supporting internationally recognised human rights."

relating to human rights is one way that A4ID is seeking to ensure that our actions support the Guiding Principles.

Under Guiding Principle 16, business enterprises are expected to express their commitment to respect human rights through a statement of policy that is approved at the senior level; that stipulates the enterprises' human rights expectations of personnel, business partners and other parties linked to its operations; and is publicly available.

A4ID is committed to supporting internationally recognised human rights and seeks to avoid complicity in human rights abuses. Our new policy not only sets out what actions we will take to ensure our own operations do not cause adverse human rights impacts, but also outlines the steps we will take to ensure that we are not adversely impacting on human rights through our business relationships.

Roger Leese, Chair of A4ID Board of Directors said, "It is exciting to see A4ID taking a lead in the field of business and human rights by turning its obligation under the Guiding Principles to have a human rights policy commitment, into a concrete, operational policy.

"By having this high-level policy A4ID is not only making a public declaration about its respect for human rights, but is setting the standard for the charity sector, and we hope that it encourages others to think about doing the same." •



Garment workers at a factory in South East Asia

Law firms' implementation of the Guiding Principles on Business and Human Rights

In November 2011 A4ID launched its report 'Law Firms' Implementation of the Guiding Principles on Business & Human Rights' which considers what the Principles mean for law firms as business entities.

As a result, A4ID is now working with law firms to devise a model human rights policy that relates to employment, supply chains and client representation, and can be fully integrated into the firm's corporate governance structure.

We are also working with our legal partners on producing an analysis of the application of operational level grievance mechanisms for law firms; a survey of

the relationship between the Guiding Principles and professional legal codes of conduct worldwide; and a series of case studies giving practical illustrations of when firms may or may not be seen as complicit in their clients' human rights impacts in order to support firms' decision-making in accepting and retaining clients.

To download our report 'Law firms' implementation of the Guiding Principles on Business and Human Rights', please visit <http://www.a4id.org/resource/report/guidingprinciples> •

interview

The responsibility to respect

At the end of 2011 John Sherman, General Counsel and Senior Advisor to the SHIFT Project, an independent non-profit centre for business and human rights, chaired A4ID's roundtable with leading law firms to discuss their responsibilities to respect human rights.

In this interview John Sherman explains his involvement in the production of the Guiding Principles and why it is so important for law firms to actively support them.

What was your role in the development of the Guiding Principles on business and human rights?

"As a member of John Ruggie's team - responsible for advising the former United Nations Secretary General's Special Representative for Business and Human Rights on the production of the UN Guiding Principles on Business and Human Rights - I focused on human rights due diligence.

"I had been a corporate lawyer for many years and I used that background to take concepts of risk management, due diligence and other areas besides human rights to try to make sure that rights due diligence has traction with other lawyers."

Although the focus is on human rights, in what ways can the Guiding Principles help to support international development?

"Human rights are essential to sustainability just as attention to the environment is essential to sustainability.

"Development can easily be unsustainable and you need to pay attention to the impact business can have on human rights or development processes will not work."

What are the obligations of law firms under the Guiding Principles, and are these mentioned explicitly within the Guiding Principles?

"Law firms are not explicitly mentioned as business enterprises that have responsibility to respect human rights. Rather the responsibility to respect human rights applies to all business enterprises wherever they located, whatever their sector, whatever their size.

"Law firms are not excluded, they are covered by fairly specific guidelines for all business enterprises that apply to law firms as well in terms of having policies, conducting human rights due diligence and providing appropriate processes to remedy problems that they may have directly or indirectly caused."

Why do you think that up until now there have been relatively few discussions

about law firms' responsibilities under the Guiding Principles?

"This is an evolving process. There started to be discussions about the corporate responsibility of law firms about six years ago and since then there have been a number of publications on this subject.

"I think that initially law firms focused on diversity, then on environmental issues, and then their pro bono activities because clients expected that. But it has not been until very recently in connection with the 'Protect, Respect and Remedy' framework that corporate responsibility has been on the agenda.

"The Guiding Principles, which implement this framework, were not approved until June 2011 and since then businesses all over the world have been checking if they align with the Guiding Principles. Law firms are now playing a major role in helping companies to figure out whether they align with the Guiding Principles, so it is just natural for them to wonder if they align as well."

What unique challenges do law firms face when trying to align themselves with the Guiding Principles?

"Law firms are businesses just like any other with employees and supply chains, doing business in many different countries. But law firms do have three things that make them unique.

"Firstly, the principle of neutrality which means lawyers should represent their clients to the best of their ability, even if they disagree with their policies for example.

"Secondly, the concept of advocacy that ensures that once a lawyer represents a client, they are obliged to advocate, making sure that the client achieves their objectives within the bounds of law.

"Human rights are essential to sustainability just as attention to the environment is essential to sustainability."

"And thirdly, the concept of confidentiality which is attached to legal privilege, and enables clients to have confidential conversations with their attorneys to get legal advice.

"Those three principles are recognitions by society that lawyers play unique roles but they do not represent obstacles to the Guiding Principles."

To make sure that they take their responsibilities under the Guiding



Principles seriously, can law firms build on their existing CSR initiatives?

"There are a lot of areas that law firms can develop, including their employment practices as, clearly, diversity and work-life balance are issues with human rights impacts that need to be addressed.

"For the supply chain area, law firms, like any other businesses, are expected to have monitoring systems. Although these areas have been addressed by the big firms, we still need to pay more attention.

"The area that really needs the biggest concentration is the lawyers' relationships with

"Lawyers need to think about how they manage their impact and how they communicate impact to their stakeholders."

clients. Difficult questions can come up, such as, 'Under what circumstances would a lawyer want to raise to a client the potential of that client's involvement in a human rights issue?' 'How severe is the potential impact of a clients' actions on human rights?'

And what should you do if the client does not follow your advice?

"These are not easy issues, and require transparency and systematisation rather than a rethink.

"Lawyers need also to think about how they manage their impact and how they communicate impact to their stakeholders. Because they are not publicly traded, they do not have the same reporting obligations, but there will likely be changes over the next few years."

Do you think it is appropriate for NGOs to begin to hold law firms to account on these kinds of issues?

"Certainly, that is the job of civil society. Their approach has traditionally been to identify companies that have been engaged in facilitating practices that violate human rights, which could include law firms. But the Principles aim to change that game into one of 'knowing and showing,' the company knows what its' impacts are and shows that it's taking appropriate actions to remedy them." •

Developments in the regulation of the extractive industries



Young girl gold panning in Madagascar. © IRIN/Guy Oliver.

Katherine Tyler

The new UN Guiding Principles have increased the standards of due diligence and accountability required of extractive companies. In this article, Katherine Tyler, a barrister specialising in criminal law, public international law and human rights, considers some of the recent changes to the regulation of the behaviour of extractive corporations operating in weak governance zones.

The past year has seen a number of significant developments in the field of business and human rights. Perhaps the best known developments have been the adoption of the United Nations Guiding Principles on Business and Human Rights and the subsequent revision of the Organisation for Economic Co-operation and Development's (OECD) Guidelines on Multinational Enterprises which now features, for the first time, a stand-alone human rights chapter.

These developments have attracted a lot of attention from human rights groups, governments and also from business. However, there are other, lesser-known, developments particularly affecting the extractive industries that also merit consideration.

Non-financial disclosure

One area of regulation that has come under particular scrutiny has been the non-financial disclosure obligations of companies, specifically the extractive industries.

The Dodd Frank Wall Street Reform Act 2010 (the DFWSR Act) is an excellent example of how changes to the non-financial disclosure obligations of companies can increase standards of human rights due diligence and accountability amongst extractive companies.

Firstly, it requires all extractive industry companies (oil, gas and mining) registered with the Securities and Exchange Commission

to publicly report payments to foreign governments. In addition, companies trading in 'conflict minerals' (as defined within the DFWSR Act) are required to include a description in their company report of all measures taken to exercise due diligence on the source and supply chain of such minerals.

The implementation of these provisions has been criticised, but they demonstrate one way in which extractive industries are being increasingly expected to take account of their human rights impacts, especially when operating abroad and in areas of weak governance.

“Non-financial disclosure obligations of companies can increase standards of human rights due diligence and accountability amongst extractive companies.”

Global change

The USA is not alone in making changes to company law in this respect. As far back as 2007, the Swedish Government required that all state-owned companies issue a sustainability report (in line with guidelines issued by the Global Reporting Initiative) which must include a human rights chapter.

In November 2010, the European Commission launched an online public consultation to gather views on the disclosure of non-financial information by companies. This was followed by a similar initiative by the UK's Department of Business, Innovation

and Skills in September 2011 that expressly addressed the inclusion of human rights impacts in company reports. And more recently in October 2011, the European Commission announced a package of measures designed to encourage responsible business and transparency.

These developments suggest a shift towards an increased awareness of corporate conduct and accountability, particularly in relation to human rights impacts, and particularly for the extractive industries, which have been singled out in both the DFWSR Act and in the European Commission's proposals of October 2011.

Problem of enforcement

However, these developments should be approached with caution. There are many problems with the enforcement of narrative reporting requirements, which are set out in Client Earth's excellent 'The Future of Narrative Reporting' and Adrian Henriques's 'The reporting of non-financial information in annual reports by the FTSE100'.

Raising awareness through company law reporting requirements is a step in the right direction, but when viewed against a background of continued allegations against extractive companies and cuts to the funding of cases brought against companies for human rights harm committed abroad, it is clear that it is not sufficient on its own. •

Katherine Tyler spoke with Rachel Chambers on the regulation of the extractive industries at our Responsible Business meeting in March 2012. A recording of their talk can be found on our resource centre www.a4id.org/resources



Young children panning for gold in Madagascar. © IRIN/Guy Oliver.

case study

A4ID assists with production of new mining code

The Environmental Mining Education Foundation (EMEF) is a non-profit organisation based in Canada providing technical and strategic advice to inform and empower communities affected by mineral development, and supports efforts to protect their interests and those of future generations.

A4ID has been working with EMEF to find lawyers to assist them in reviewing their new draft Mining Code.

The Code will be an important tool for the future protection of and engagement with First Nations (indigenous communities in Canada). It compares British Columbia's mining laws with the world's leading legal standards associated with mining activities on indigenous lands.

A4ID has placed lawyers from various countries including Indonesia, China, Timor Leste, Malaysia, Colombia, Zimbabwe, India and Chile who are reviewing the

Code to ensure the laws referred to from their jurisdictions are accurate, including mining, aboriginal, land use planning, and environmental laws.

The Code will provide a resource of mining best practices from around the world to empower indigenous communities to seek more sustainable mining operations on their traditional territories by helping them identify what rules they want incorporated into land use plans and codes, resource policies, and alternative dispute resolution processes with governments and mining companies.

EMEF will also be using the Code as a basis to seek reform of British Columbia's century-old mining laws and set a good example of socially and environmentally responsive mining requirements for other jurisdictions to follow. •



Young artisanal miner in Madagascar. © IRIN/Guy Oliver.

Helping local communities seek redress

Joseph Croft

Increasingly local people in the Niger Delta are holding to account those companies responsible for harmful environmental and social impacts in their communities.

This article, based on a talk given by Joseph Croft from the Stakeholder Democracy Network to the A4ID Responsible Business Knowledge Group, considers the legal changes necessary to ensure there is remedy for companies' harmful effects so that natural resource wealth can benefit all.

The extraction of minerals and resources very often occurs in areas of weak governance where, far from increasing the prosperity of local communities, it can contribute to conflict, corruption and poverty.

Stakeholder Democracy Network (SDN) works with communities in the Niger Delta who are most acutely affected by the activities of the extractive industry, helping them seek redress for the harm caused by the oil industry there. Billions of dollars flow out of this region every year as a result of oil, but the majority of the local population still live on less than one dollar a day.

Pollution

Ninety per cent of Nigeria's oil and gas reserves are found in the Niger Delta region but the pipelines in the area are often poorly maintained and there are an estimated four oil spills every day contaminating local farm land and water sources, and severely impacting on people's livelihoods.

In addition, gas flaring, which was made illegal in Nigeria in 1985, continues to affect many local communities. In the Niger Delta, the equivalent amount of gas used by Brazil on an annual basis is 'flared' every year, with individual flares burning 24 hours a day, 365 days a year and in many cases for over 20 years, and blighting the communities that live next to them. However, there have been no assessments as to the implications for individuals' health or the impact on their crops.



A woman gather water from a river in Nigeria. © IRIN/Kate Holt.

Rights awareness

Yet slowly, things are changing. Whereas before local communities considered the levels of pollution in their community normal and did not seek redress, thanks to organisations such as SDN they are now more aware of their rights and more inclined to hold corporations to account.

In addition, the past few years has seen an increase in the accessibility of technology

"Ensuring that local legislation is based on international best practice will improve the prospects of those affected by any future spills to seek redress."



Mine in South Africa

and widespread use of mobile phones with cameras which means that local people are now able to document their own evidence of abuses, something that the government does not have the resources to be able to do.

Building local laws

However, for people hoping for legal remedy for the impact of companies on their community the best route is still through foreign courts. Local laws are weak and levels of compensation remain unchanged since

1963, providing the equivalent of less than 1p for every cassava stem lost; a community member might therefore receive just \$20 to compensate for the destruction of a cassava field, and with it their livelihood. Reviewing existing legislation and ensuring that it is based on international best practice will improve the prospects of those affected by future spills, and even those affected by past damage, when seeking redress

The impact of pollution caused by oil spills lasts a long time and the effects hugely costly to remedy. A report by the United Nations Environment Programme (UNEP) in 2011 estimates that the cost of cleaning up the impact of oil spills in just ten per cent of the Niger Delta region could be as much as \$1 billion for the first five years.

Importantly for communities and corporations, changes in domestic law mean that there will likely be an increase in the use of litigation to bring cases against corporations in respect to historic harm and future liability. And in light of UNEP's estimated costs of returning the land to the state it was in before the oil spill, the size of the pay-outs could be massive.

The issues faced by communities in the Niger Delta bring into question the role of corporations in the development agenda. Ultimately, not only does the law need to change to ensure access to justice and remedy for the aggrieved, but there also needs to be a procedural change in the way communities hold the government and corporations to account, and in the way the state and corporations work together to ensure the respect, protect, remedy framework is honoured. •

This is an extract from a talk given by **Joseph Croft** at our Responsible Business meeting in March a full recording of which can be downloaded from our resource centre, www.a4id.org/resources

case study

Legal support grows Africa's first fair trade clothing business

After almost two decades of violent conflict, infrastructure in the West African country of Liberia remains limited with many people unable to access basic services such as clean water, electricity, healthcare or education.

Poverty and unemployment in the country are rife especially amongst women who are often excluded from work in the more productive timber and extractive industries. However, signs of economic recovery and hopes for financial inclusion for Liberia's women can be found amongst emerging small and medium sized enterprises (SMEs) who offer hope for a job and a stable income.

Economic opportunities for women

Liberty & Justice is Africa's first fair trade certified clothing company and serves as a model for entrepreneurial SMEs in Liberia. Liberty & Justice is committed to creating stable and productive employment opportunities for women and to creating a supply chain that

works in favour of poverty eradication, protection of the environment and empowerment of its workers.

Supporting local enterprise

The Eleos Foundation is one of A4ID's development partners and supports social entrepreneurs in developing countries who have business models that work towards the eradication of poverty, and the provision of healthcare and education.

Through A4ID, Eleos has been working with lawyers from the firm Dechert LLP to set up a structure that allows it and other investors to fund the growth of Liberty & Justice.

Local impact

Liberty & Justice bridges the gap between large multinational clothing retailers in the developed world and small fair trade certified factories in West Africa. They agree large orders for clothing, manage the supply chain and production, and implement a number of

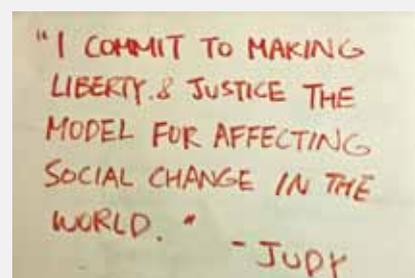
social programmes.

The workforce of Liberty & Justice is made up predominantly of women who own shares in the company. All profits are channelled to the Liberty & Justice Foundation which provides vocational training programmes for women, as well as health clinics and schools for local communities.

Eleos, with assistance from pro bono lawyers provided by A4ID, established an investment vehicle through which the Eleos Foundation and its co-investors could jointly invest in Liberty & Justice. Its first investment was a \$1.1million preferred equity investment in the \$2.4M Series A round to get the operation to scale in Liberia and further expand the work into Ghana. This financing has allowed for the expansion of the factory in Liberia, increasing the number of workers from 35 to 600, and providing even more women with the opportunity to earn a stable income. •



Female workers in Africa's first fair trade clothing manufacturer in Liberia.
© Liberty & Justice





Young boy in Nepal carries goods on his back. © IRIN/ David Longstreath.

Human rights, supply chains and due diligence: changes to the OECD Guidelines for Multinational Enterprises

Professor Peter Muchlinski

This is an edited version of a paper 'Human Rights, Supply Chains and the "Due Diligence" Standard for Responsible Business' produced for A4ID by Peter Muchlinski which is available on our resource centre.

The OECD Guidelines for Multinational Enterprises have gone through several revisions since the 1970s, the latest of which was in June 2011, partly as a result of the work done by Professor John Ruggie, the Special Representative of the UN Secretary General on Business and Human Rights (SRSG).

Three key issues raised during the work of the SRSG and reflected in the Guiding Principles have been included in the 2011 Revision of the OECD Guidelines. For the first time, the Guidelines now contain a chapter on the human rights responsibilities of multinationals enterprises (MNEs) and guidance on supply chain responsibility as well as the addition of corporate due diligence as a general operational principle of the OECD Guidelines.

Human rights

The new guideline on human rights is heavily influenced by the UN Guiding Principles on Business and Human Rights; it asserts that while states have a duty to protect human rights, MNEs have a responsibility to respect human rights, stressing that they must

mitigate any adverse human rights impacts that are directly or indirectly related to their operations.

Importantly, MNEs are also expected to respect human rights independently of a state's ability or willingness to fulfil their own human rights obligations. Therefore the lack of local law in areas of weak governance is not a 'get out' clause and in these situations enterprises should ensure they adhere to international human rights standards.

The new guidelines also set out a number of recommendations for MNEs to demonstrate their commitment to respect human rights including producing a statement of policy,

"While states have a duty to protect human rights, MNEs have a responsibility to respect human rights."

carrying out human rights due diligence and having processes in place to enable remediation. In some situations operational level grievance mechanisms are seen as an effective means for such a process but the Commentary notes that they 'should not... preclude access to judicial and non-judicial grievance mechanisms, including the National

Contact Points under the Guidelines.'

Supply chains

During his preparation of the Guiding Principles, the SRSG identified supply chains as a major source of potential human rights infringements, and therefore, MNEs are encouraged to support responsible supply chain management, in respect of existing internationally recognised standards.

Where it is identified that another entity has infringed human rights, the enterprise should use its "leverage" to stop it. While it is acknowledged that there may be practical limitations on the ability of enterprises to change the behaviour of suppliers, it is also suggested that the use of a contractual arrangement can be an effective tool. Further to this, the enterprise may consider whether it is appropriate to terminate the relationship with the supplier.

Other recommendations in the new OECD Guidelines include the suggestion for industry-wide collaborative efforts between enterprises that share common suppliers in order to coordinate risk management strategies.

Due diligence

The addition of the due diligence concept in the OECD Guidelines is important as it offers a general principle of corporate action that forms the basis of corporate obligations to act in a socially responsible manner and may lead to the development of corporate duties of care.

According to the Commentary on the OECD Guidelines, the due diligence process must go beyond identifying risks to the enterprise itself and must also include risks to rights-holders. As such the due diligence process should assess actual and potential human rights impacts, integrating and acting on findings, tracking responses and communicating how impacts are addressed.

Step forward

The revisions to the OECD Guidelines for Multinational Enterprises are a remarkable development, taking them beyond issues connected with economic operations and employment practices by the inclusion of human rights, supply chain and due diligence. This is in part a response to the work of John Ruggie which is having a considerable impact on the development of a social dimension to International Economic Law. It also reflects a vision for a reformed approach to MNE operations that seeks to balance their economic interests with their social responsibilities.

And despite a need to clarify the meaning and impact of these new provisions, they are important steps in the right direction. •

Professor Muchlinski is Professor in International Commercial Law at SOAS and author of "Multinational Enterprises and the Law."

What are the OECD Guidelines for Multinational Enterprises?

What are the OECD Guidelines for Multinational Enterprises?

The Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises provide non-binding principles and standards for businesses operating in a global context and cover a number of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology.

The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. Although they relate to the operations of multinational enterprises they need the support of the business community, labour representatives and non-governmental organisations (NGOs) to be effective.

They are part of a package and are one part of the OECD Declaration on International Investment and Multinational Enterprises made up of four instruments: the Guidelines for Multinational Enterprises, the National Treatment Instrument, the instrument on Conflicting Requirements and the instrument on International Investment Incentives and Disincentives.

What is the mechanism for implementing the Guidelines?

The institutional set-up for promoting and implementing the Guidelines consists of three main elements: the National Contact Points (NCPs); the OECD Investment Committee; and the Business and Industry Advisory Committee.

NCPs are government offices responsible for encouraging adherence to the Guidelines within their jurisdiction and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties.

The OECD Investment Committee includes all OECD member countries and observers, and is the OECD body responsible for overseeing the functioning of the Guidelines.

What role do business, labour and civil society representatives play?

The Investment Committee regularly consults with the Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) and OECD Watch, an international network of civil society organisations, on matters relating to the Guidelines and on other

“The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.”

issues concerning international investment and multinational enterprises.

These bodies may request consultations with NCPs on issues related to the Guidelines and can also raise such issues directly with the Investment Committee. In addition, they are responsible for informing their member federations about developments in the Guidelines and for seeking their members' inputs into implementation procedures on the Guidelines.

What part do NGOs play?

Non-governmental organisations (NGOs) were first involved in the Guidelines process after the 2000 review. NGOs may request consultations with NCPs on issues related to the Guidelines and may participate in promotional activities organised by NCPs or by the Committee on a national, regional or multilateral basis.

Investing in change

Where once business was seen by many as a barrier to development, there is now a growing recognition that engagement with the private sector is perhaps inevitable if the world is to realise the Millennium Development Goals. This line of thinking holds that market based solutions to development challenges are the only way to ensure sustainable access to affordable housing, healthcare and water.

However, the challenge still remains of ensuring that capital is available to invest in the growth of the private sector in developing countries. This is where impact investing has found its niche. Operating between traditional charity and profit maximisation, impact investing provides capital for enterprises that generate positive social or environmental impacts, as well as a financial return; the triple bottom line.

Impact investment funds support local social enterprises that are working to address the needs of the communities where they are based, but who also have the potential to scale up and increase their reach. For investors this is not a quick win; the enterprises may need significant nurturing, the financial returns may be limited and exit plans uncertain. But there is also the potential to create positive outcomes that are sustainable and at a scale that traditional charity models would struggle to match.

And yet there are also concerns about the potential harm done by short term investments, the need for strict social and environmental assessments, and the fact that these initiatives are unlikely to benefit the very poorest in society.

Over the coming months A4ID will be running a number of events as part of our Responsible business, and Trade, debt and finance Knowledge Groups that will be looking at impact investing and private equity in developing country contexts in more detail.

These sessions will consider what legal changes are necessary to encourage further impact investing, how it is possible to ensure and assess the social and environmental impacts of these funds, and will look at examples of impact investments to date.

To accompany these sessions our Responsible business group will also be considering the financial reporting obligations of multinational companies, looking at new EU proposals that will oblige all extractive companies to release details of all payments made in country.

If you would like to be involved in these events, please drop us an email. To keep up to date about all our events sign up to receive our monthly email updates via our website. •

Why are the Equator Principles important for development?



Loading barrels onto a ship in Nigeria. © IRIN/ Daniel Hayduk.

As part of A4ID's Annual Law and International Development Training Programme, Helena Anderson, Senior Associate at Herbert Smith discussed the importance of sustainable project financing for developing countries and in particular how standards such as the Equator Principles have helped change the behaviour of banks and developers.

But what are the Equator Principles and what role do they play in ensuring that development is truly sustainable?

The Equator Principles are a voluntary benchmark developed by the International Finance Corporation (IFC). They are used by the financial industry for assessing and managing environmental and social risk when providing loans to finance the construction of large-scale projects, such as gold mines or dams, in developing or emerging countries.

Developing countries frequently have less advanced environmental and social standards within their legal systems and may not be able to provide adequate recourse or compensation to those affected by projects. By adopting these principles, lenders can hope to avoid the negative impacts on the environment and affected communities by promoting responsible environmental stewardship and socially responsible development.

Where negative impacts are unavoidable, there is a requirement that harm be reduced

as far as possible or compensated for appropriately.

Currently 76 financial institutions in 28 countries have officially adopted the Equator Principles, covering over 70 per cent of international project finance debt in emerging markets. Institutions, so-called 'Equator banks,' who have signed up commit to not providing loans to projects where the borrower will not or is unable to comply with their respective social and environmental policies and procedures that implement the Principles.

Assessing social impact

Under the Equator Principles projects are labelled as Category A, B or C according to their potential social and environmental impacts. For all Category A, certain Category B projects and all projects in countries defined as low- and middle-income by the World Bank, an Environmental and Social Impact Assessment (ESIA) must be carried out.

The social impact assessments consider: compliance with the requirements of host country laws and regulations, and applicable international treaties and agreements; socio-economic impacts; land acquisition and land use; involuntary settlement; and impact on indigenous peoples and communities. There are also requirements for meaningful consultation with groups affected by the project including indigenous peoples and NGOs.

“By adopting the Equator Principles lenders can hope to avoid the negative environmental and social impacts of new projects in developing countries.”

An Environmental Management Plan (EMP) is also required. The EMP takes into account the consultation with indigenous peoples and NGOs, and also addresses mitigation of adverse consequences, action plans to improve impacts, monitoring of effects and management of risks.

Questions of effectiveness

The major criticism of the Equator Principles is that because they are non-binding there is no enforcement or accountability, and there is therefore inconsistency in the method of application. However, in theory, if a borrower does fail to comply with its contractual covenants regarding the Principles, the relevant bank working with them can force them to back into complying.

If the default continues after an applicable cure period has elapsed, the lender generally has a number of means of redress. These could include enforcing their security over the borrower's assets and selling the project assets to one or more third parties, or even requiring the borrower or sponsors to be replaced by third parties of its choice.

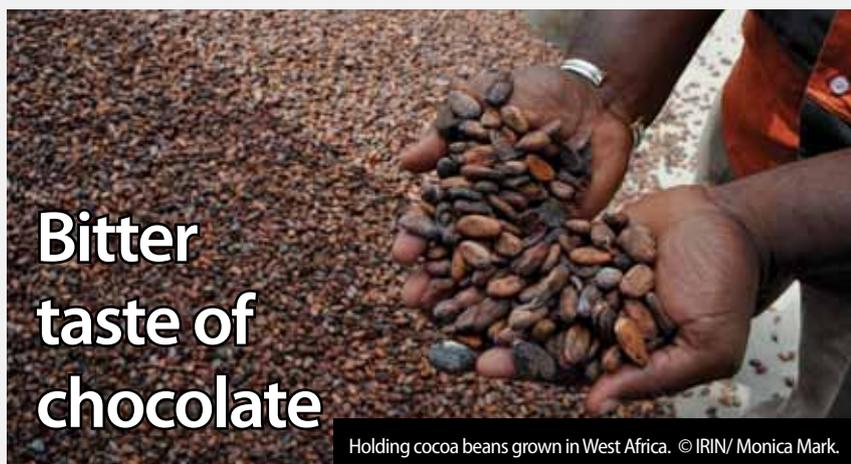
In general the Principles are perceived to have had a positive effect by introducing social and environmental standards to privately-funded large-scale projects, helping to reduce certain of the negative impacts such projects may otherwise have had. While continued scrutiny of the finance industry's performance by NGOs, green groups, development charities and other interested parties may help to fine-tune the future aims and achievements of the Principles. •



© IRIN/ Kate Holt.

For more information about the Equator Principles visit our website: <http://www.a4id.org/resource/guide/equator-principles>

case study



Bitter taste of chocolate

Holding cocoa beans grown in West Africa. © IRIN/ Monica Mark.

Ten years ago the world's leading chocolate manufacturers pledged to eliminate child trafficking from the cocoa industry in West Africa. But according to the charity Stop the Traffik very little progress has been made.

West Africa is the world's largest cocoa growing region, with Cote d'Ivoire alone producing around 35 per cent of the world's crop. Many children work in this industry, often on their families' farms but in some cases in conditions akin to slavery.

According to Stop the Traffik an estimated 12,000 children have been trafficked to work in Cote d'Ivoire's cocoa plantations, often being brought from neighbouring countries such as Mali, Burkina Faso and Togo.

Stop the Traffik is calling for an end to the trafficking of children into the cocoa production industry and is pushing

chocolate manufacturers to ensure all their products are 'traffik free' as soon as possible.

A4ID assisted Stop the Traffik in their aims by providing them with access to lawyers who advised them on the intellectual property risks associated with the latest campaign.

Support from lawyers at Ashurst in the UK and Australia, and NI Jacobs & Associates in New York has meant they have been able to mitigate any risks associated with using the names of chocolate manufacturers in their campaign, allowing them to continue to push for new laws that bring an end to the trafficking of children in the chocolate industry. •

For more information about the work of Stop the Traffik please visit www.stopthetraffik.org

upcoming events

As part of our DfID funded 'Lawyers in Development' programme, A4ID runs six Knowledge Groups that offer lawyers, and individuals with an interest in the law, the opportunity to gain a deeper understanding of key areas of law and international development.

The Knowledge Groups meet to discuss issues related to six core development themes; climate change, responsible business, intellectual property, socio-economic rights, governance, and trade, debt and finance. All sessions are free and offer participants the chance to hear from development and legal experts and academics, as well as providing a forum for discussion.

We have two Knowledge Groups coming up in June. To register please visit www.a4id.org/events-upcoming

Save the seed!

Time: 6pm – 8pm

Date: 26 June 2012

Venue: Linklaters LLP, London

On Tuesday 26 June 2012, the intellectual property group will be joined by Teresa Anderson (The Gaia Foundation) and Dr Mike Adcock (Department of Law, Durham University) who will lead a

discussion on the impact of seed patenting on the lives of developing country farmers, and how the law might develop to protect commercial interests while recognising farmers' rights.

A short film 'Seeds of Freedom' will be shown from 6pm – 6.30pm.



Climate change litigation: a matter of justice

Time: 6.30pm – 8pm

Date: Thursday 28 June 2012

Venue: Herbert Smith LLP, London

On Thursday 28 June 2012, the climate change group will welcome Richard Lord QC (Brick Court Chambers) and Stephen Humphreys (London School of Economics) to consider future developments in climate change liability, including the use of human rights courts as a forum in which to seek climate change justice.

All recordings from our Knowledge Groups are available to download free on our online resource centre www.a4id.org/resources



Show your support

Do you believe in the power of the law to bring about global change? We do. That is why we are committed to ensuring the law is used as a tool in the fight against poverty.

Without the protection of rights, access to justice, good governance and the rule of law sustainable international development will not be possible. Without the law the Millennium Development Goals will remain out of reach.

The law and lawyers have a vital role to play in making sure the world is fairer and

that everyone, no matter where they live, has the opportunity to build a better life.

If you share our ideas and support our work, then join us as an A4ID member.

Our members allow us to continue our work to provide free legal advice to all those working towards the eradication of poverty. They support our desire to engage the international legal community in creating innovative legal solutions that meet long-term development needs.

To join A4ID as a member please visit www.a4id.org/membership

Contact us

Website: www.a4id.org

Email: info@a4id.org

Telephone: +44 (0)20 3116 2799

Find us on Facebook

Follow us on Twitter @a4id