

Guiding Principles on Business and Human Rights: Do They Provide Enough Guidance for Sustainable Business?

*Surya Deva**

On 16 June 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights (GPs) drafted by the UN Secretary General's Special Representative on the issue of human rights and transnational corporations. This paper will critically evaluate the extent to which the GPs provide a framework conducive to promoting sustainable business, i.e., doing business without trampling human rights or the environment.

The GPs advance some commendable regulatory ideas. GP No. 3, for instance, provides that states should not only ensure that 'laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights' but also encourage (and require, where appropriate) 'business enterprises to communicate how they address their human rights impacts.' Moreover, the GPs envisage several steps that companies should take (e.g., adopting policy commitment, carrying out due diligence and conducting impact assessment) to avoid causing or contributing to adverse human rights impacts through their activities.

Nevertheless, as this paper will highlight, the GPs suffer from several serious shortcomings. First of all, the formulation of business responsibilities in terms of 'responsibility to respect' is quite narrow. It is also fragile because companies are not subjected to any legally binding duties. Second, the normative basis for the corporate responsibility to respect – i.e., it is the basic expectation that society has of business – is unsound for a number of reasons. Third, the corporate responsibility is to respect 'internationally recognised human rights', but this term does not explicitly include environmental rights. Fourth, although the GPs recognise the problem of allocating legal responsibility within a corporate group, they do not unfortunately offer any solution to this problem.

I will argue that the GPs do not provide a sound normative basis to ground corporate human rights responsibilities, canvass these responsibilities in a narrow way, and do not offer solutions to some of the obstacles experienced in enforcing the human rights responsibilities against multinational companies.

* Associate Professor, School of Law, City University of Hong Kong.