

UNGPs10+ survey questions: IPIECA response

30 November 2020

The responses below are based on feedback provided by IPIECA's Human Rights Working Group members, including a consultation call held on 4th November 2020.

1. Where has progress taken place in UNGPs implementation over the course of the last decade? What are the promising developments and practices (by governments, businesses, international organizations, civil society organizations, etc.) that can be built on?

In the oil and gas industry, IPIECA and a number of its member companies were involved in very helpful consultations with Professor Ruggie's team leading up to the finalisation and launch of the UNGPs. The UNGPs framework has helped to foster awareness and understanding of human rights within businesses. It has provided the industry with valuable clarity about what all parties are expected to do so that human rights are protected and respected, and so that remedy is applied when needed. It has also provided useful guidance on how to integrate human rights considerations into risk and impact management processes and practices.

Since 2011, many oil and gas companies have made progress in respecting human rights. Using the UNGPs framework as their guide, oil and gas companies have developed policies, inserted or updated management system requirements on a range of topics, enhanced or incorporated human rights considerations into risk and impact assessments, improved worker and community grievance and remedy processes, and included human rights in their external reporting. In addition, many have introduced new or enhanced performance checks into activities such as supply chain management, security arrangements, environmental and social performance, the management of labour rights and working conditions, health and safety, ethics and compliance, relationships with communities and business risk processes.

An example of progress is screening new oil and gas projects from a human rights perspective, as well as through long-established viewpoints such as return on investment, business risk, health and safety, security, ethics, compliance, and reputation.

Applying the UNGPs framework has sharpened the industry's awareness that human rights issues are context specific. For example, communities differ enormously in their culture, expectations, socio-economic and political circumstances, and the vulnerability of specific groups. Human rights assessment and processes for interacting with communities have increasingly been tailored to be sensitive to these different contexts. In this respect the sector was able to apply learnings on operating in difficult contexts from its leading role in creating and implementing the Voluntary Principles on Security and Human Rights, some years before the UNGPs.

The oil and gas sector is now making significant increases in lower-carbon energy investments. It is aware of two important points. Firstly, companies are considering whether and how their long-established processes, such as risk and impact assessments, could be adapted or leveraged to maximise their suitability for impacts by lower-carbon businesses which may differ from those associated with oil and gas projects. Secondly, the sector is aware of the active debate among many actors on 'just transition'. Definitions of 'just transition' vary, but many share similar perspectives, for example that

governments, business and society all have a role to play in supporting a ‘just transition’ to lower-carbon global energy supplies.

However, the sector understands that even with the measures that it takes to respect human rights, it is on a journey of continuous learning and improvement. This involves sharing learnings between oil and gas companies and monitoring the changing expectations of civil society and the progress of other industrial sectors in respecting human rights. The UN and other multi-lateral institutions also promote continuous improvement.

For the oil and gas industry, IPIECA has provided a particularly valuable learning platform. Since the launch of the UNGPs, IPIECA has produced guidance and implementation tools on topics such as community grievance mechanisms, the role of community liaison officers, labour rights, the rights of Indigenous Peoples, security and human rights, indicators for external reporting (recently revised), and human rights due diligence (currently being revised). IPIECA’s role has been to help members operationalise the UNGPs framework by distilling their shared experiences into practical guidance that they can then adapt to accommodate their respective sizes, business activities and geographies. It also provides opportunities for members to share lessons learned with one another.

States have been active too. Many national and regional legislators have made or initiated changes to policy and/or legal frameworks to clarify and mandate aspects of the UNGPs’ expectations of business. Well-crafted legislation can have multiple benefits, in particular improved outcomes for communities and workers, and clarity and level playing fields for companies. Other benefits include clearer societal expectations about how businesses should behave, thus helping them to prioritise their human rights work. For example, legislation on modern slavery that some governments have implemented or are proposing helps to increase human rights awareness and outcomes.

Collaboration between governments and key multilateral institutions on the communication and implementation of the UNGPs framework has been beneficial. The UNGPs have also promoted efforts by businesses and civil society organisations to create a greater space and appetite for collaboration. This has helped companies by improving their understanding and management of context-specific risks to people, for example to workers in globalised product supply chains.

Reporting frameworks – including the recently updated IPIECA, the American Petroleum Institute (API) and International Association of Oil and Gas Producers (IOGP) Sustainability reporting guidance – have helped companies to understand what to report about their human rights performance. For example, in recent years investors have clarified what human rights performance information they consider to assess and manage enterprise risk, and to understand whether companies’ human rights performance is improving. This helps companies to adjust internal data collection and performance reporting accordingly.

However, there are still considerable challenges in the oil and gas industry, in business more generally, and among governments and civil society. Our responses to subsequent questions set out some of these.

2. Where do gaps and challenges remain? What has not worked to date?

The UNGPs call for companies to “know and show” respect for human rights through due diligence. Despite the progress set out above, IPIECA member companies are constantly reviewing and improving human rights due diligence implementation and sharing experiences with other members.

As human rights management is complex and involves multiple functions, human rights is still not always fully understood inside companies. For example, human rights may still be viewed as primarily the responsibility of the social/sustainability, procurement, or security teams. Health and safety, environment, human resources, ethics and compliance, and legal disciplines all share a role in respecting human rights.

In addition, human rights professionals in companies are occasionally still asked to justify their proposals by explaining whether and how respecting human rights is ‘good for business’. This is not the case for

health and safety or legal compliance, where it is established that sound and compliant practices are not an option but an imperative, regardless of whether they are 'good for business'. Human rights are on a journey to a similar place, where companies see UNGPs-aligned practices as the norm.

Improving the situation in supply chains is a key aspect of delivering the UNGPs worldwide. Despite the oil and gas industry's considerable strides on responsible procurement in the past decade, progress is a continuing long-term need, particularly on long, complex supply chains with multiple sub-contractors and suppliers in countries where labour rights are not fully understood and may frequently be infringed. Governments and SMEs (small and medium sized enterprises) need to supplement and support actions by companies at the top of the supply chain.

While external stakeholders expect the larger, higher-profile companies in all industries to set an example, the human rights performance of these large businesses' supply chains depends on the actions of thousands of SMEs down the whole supply chain. External expectations on these smaller companies may be less demanding than those on global companies; but on a global scale, their impacts on the daily conditions of millions of workers and communities are significant. Their performance can also create material risks to other companies in the value chain.

There are several possible reasons why smaller companies may find it difficult to fulfil their human rights responsibilities. For example; a lack of capacity (for example, lack of personnel with the expertise to identify and manage human rights issues, or financial constraints); low internal awareness of the UNGPs; and occasionally respect for human rights is viewed as a 'nice to have' rather than a 'must do', with lower priority than other topics, because health and safety, technical and commercial obstacles or community opposition often have more immediate and quantifiable consequences.

In addition, suppliers and partners in some countries may be operating in a legal environment where there are fewer human rights obligations. This could be because governments may have supported the creation of the UNGPs, but their national policy, legislation and enforcement mechanisms may not yet fully reflect their 'protect' role and companies' 'respect' role. Among the reasons for this may be that some geographies and industrial sectors are still not fully engaged in debate and efforts on the implementation of the UNGPs, particularly in supply chains. Broadening the effort to engage with these countries and industrial sectors is an important step to increase human rights awareness and fulfil the aims of the UNGPs framework.

Governance is an important factor in making progress. Governments may face considerable domestic challenges and are not always able to fulfil their primary duty to protect human rights. In addition to limited or unenforced human rights-related legislation, a government and its citizens may be at odds over a proposed development; there may be a legacy of generalised civil and political conflict; or the government may not be able to fully control the army, security forces, police, judiciary and other government departments. Corruption, poverty, limited education opportunities and impediments to open public debate can also enable or hide human rights infringements and hinder government efforts. There is increasing concern about the pressures restricting 'civic space' for public consultation and freedom of speech, which reduces government accountability and threatens democratic processes.

Where these challenges make it hard for governments to fulfil their primary UNGPs duty to protect human rights, it can be difficult for companies to implement practices to identify and address potential human rights risks. For example, if the government stipulates that state security personnel must protect company sites, but these personnel infringe the rights of peacefully protesting local residents, and the courts are unable to provide proper recourse to remedy, companies can find it hard to improve the situation. Even concerted business action on human rights cannot – and should not – close all governance gaps. For business actions to be effective and sustainable, government support is key, including effective protection of human rights, regulation of business activity and recourse to remedy through the courts.

It is also important to note that in some locations people are not aware of their rights. They may not understand when their rights are infringed or how to claim them. When specific developments are being planned, it is important that both government and companies consider whether the affected people

understand what their rights are and how these could be affected; and if not, how to provide them with this information and with the means to advocate for the protection and respect of their rights.

3. What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?

Within companies, human rights due diligence (HRDD) is not yet always formally required by their management systems. Integration into management system requirements is important, so that HRDD is seen internally as the norm rather than a voluntary act of goodwill that can play against competitiveness and efficiency. Ingraining HRDD into management systems also helps apply high-level commitments in human rights policies or codes of conduct consistently across the company, and it promotes thoroughness in HRDD regardless of what legislation or governance is in place where the company operates.

An emerging challenge is that while most companies have well-established impact assessment processes and are integrating human rights into them, these processes can be quite lengthy, as they are adapted to the long lifecycles of oil and gas projects. Lower-carbon projects often have a much shorter lifecycle, meaning a reduced time for impact assessment processes. Companies will need to adapt their current processes to be nimbler while maintaining thoroughness. As an example, companies that are devoting increasing amounts of investment capital to lower-carbon energy may decide that it is desirable to incorporate or leverage current human rights practices into the specific corporate governance and strategy processes that govern these investments.

Government requirements for human rights impact assessment and other aspects of HRDD are not always keeping pace with the increases in the number of lower-carbon energy projects. This is important because the potential human rights impacts of such projects may vary from those associated with oil and gas projects, and lower-carbon projects may need further clarity on what is expected of them.

Among some governments, a continuing obstacle is difficulty in creating and implementing National Action Plans (NAPs). It would be helpful if the development of NAPs could be done in consultation with business and civil society, so that all parties know what legislative changes are being considered or likely over the next decade and can plan for them. Consultation about NAPs can also improve trust between actors and raise human rights awareness among businesses.

A number of multilateral institutions have created human rights standards. The development of human rights standards has been valuable in many respects, but there is a limit to the number of standards that companies, particularly SMEs, can follow and report on. Further proliferation of differing human rights standards could be an obstacle. Additionally, it is important to allow for flexibility: in some cases it is more effective and efficient to incorporate human rights into environmental, social, health and safety requirements and processes, as this can leverage existing mechanisms and promote a holistic, comprehensive and efficient approach.

Regarding the UNGPs themselves, further discussion would be helpful on the topic of companies and their 'contribution' to human rights impacts. This is a complex area. As a purely theoretical example, the human rights infringements of state security forces around company sites could be viewed as a company contribution to human rights abuse; but the presence and conduct of government-mandated state security personnel is a governance matter for governments to manage. The extractive industries, through the Voluntary Principles on Security and Human Rights, took a leading role in developing approaches to this specific and challenging issue.

4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

Businesses can contribute to sustainable development with respect for human rights by implementing the business responsibility measures called for in the UNGPs framework. Governments have the primary duty of delivering protection for human rights as they institute sustainable development. However, as

discussed earlier, some governments may encounter governance challenges in fulfilling their primary duty to protect human rights.

An important factor in delivering human rights-compatible sustainable development is a governance framework of appropriate human rights legislation, and effective enforcement. Additionally, it should provide support and education to organisations who are expected to implement it ethically and transparently, including government-controlled entities such as army, police and inspectorates for health and safety and labour rights. It is also important for state-owned companies to be subject to the same human rights laws, enforcement, and standards of reporting transparently as private companies.

Corruption is an important additional contributor to human rights abuse. Many governments are taking action to address it, and this will support improvements in both governments' and businesses' human rights performance.

Where governments are unable to wholly fulfil their primary duty to protect human rights, businesses can struggle to respect human rights as called for in the UNGPs framework. However, there is evidence to show that in countries where the government implements coherent, evidence-based policy, well-designed and effectively-enforced legislation, administrative support and use of the state's convening power, human rights infringements are less frequent and less severe (although constant monitoring is still a necessity). Such an environment encourages businesses to implement effective human rights management processes or practices.

Lastly, going back to the topic of 'contributing to human rights impacts' as mentioned in the section above, further debate on this concept would be helpful in the context of structural challenges. This concept becomes very complicated when conflated with the larger, systemic societal issues such as climate change, gender inequality and corruption. Such issues have complex causes and effects, but these should not conflate governments' duty to protect and companies' duty to respect.

5. In concrete terms, what will be needed in order to achieve meaningful progress with regard to those obstacles and priority areas? What are actionable and measurable targets for key actors in terms of meeting the UNGPs' expectations over the coming years?

It is important for oil and gas companies to continue raising human rights awareness among the various internal functions and business units that contribute to their overall human rights performance. This applies both to independent and state-owned companies. It is also advisable that they continue developing data collection and performance reporting, to track their management of human rights and monitor performance as they do with health and safety. For example, investors want data to help them assess whether companies' actions to improve human rights performance are well-directed, effective, and cost-effective.

Measuring performance can help companies to identify what improvements to make. However, experience shows that it can be challenging to create and populate human rights performance metrics that are not just about processes but are outcome-based and leading (rather than lagging). To help the oil and gas industry further develop its human rights performance measurement and reporting, the revised *Sustainability reporting guidance* published in spring 2020 by IPIECA, API and IOGP includes additional human rights reporting indicators. Over time these indicators can be reviewed and further developed as appropriate.

Another area which companies could develop further is acting together in particular geographies (on non-competitive matters) to further human rights. For example, there could be opportunities to collaborate on methods of assessing and educating companies in the local supply chain. In this way local companies could receive consistent messages about what their oil and gas customers expect of them regarding human rights, and they could provide similar data to all customers. On certain topics there could also be opportunities for companies to approach governments as a group to suggest collaboration for everyone's benefit, for example on outreach to the local business community about what standards and expertise the oil and gas industry expects in its supply chain.

The oil and gas sector could also consider additional outreach and collaboration, for example with the OHCHR and other UN bodies, and with other sectors. This would enable it to explain the work it has done on human rights to date, share its learnings, and learn from other sectors.

Regarding plans for human rights legislation, it is helpful for all parties if governments and regional institutions develop these in a holistic way to prevent unintended consequences. For example, legislation to increase company directors' criminal liability should avoid the unintended consequence of discouraging companies from improving public reporting of their human rights performance. Additionally, at the drafting stage it is important to review whether a new regulation will be practically possible for companies to apply on the ground. Clear and targeted regulation can avoid creating excessive administrative burden or conflicts of interests that companies, particularly SMEs with limited resources, would find hard to manage.

Harmonisation of legislative approaches between different governments – and between different regional law-making institutions - can promote an overall improvement in human rights performance. Convergence of required standards has several advantages: it creates a level playing field for companies; it reduces the effort of demonstrating compliance to the differing legal requirements of multiple jurisdictions; and it can incentivise those governments that have not yet incorporated the UNGPs into their regulations to do so.

The convening and influencing role of multilateral organisations is also key. These organisations are a valuable source of human rights knowledge and expertise, and they can add further value by continuing to advocate for and support international progress in all geographies on both protecting and respecting human rights. Conversely, a fractured approach among these organisations could slow down overall progress.

The roles of the UN and other multilateral institutions are also beneficial for fostering trust between the various actors. Low trust between business and relevant NGOs, between government and business, or between NGOs and government can hinder collaboration. Improving mutual trust, fostering mutually supportive efforts and exchanging learnings and good practices could be one of the game-changers in improving human rights performance. Collaboration can help to fulfil not only the objectives of the UNGPs but also the Sustainable Development Goals, and this will ultimately benefit rightsholders.

As an example of collaboration, there is room for further joint efforts between government, businesses, and NGOs to educate and support SMEs to respect human rights.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

IPIECA's publications are based on the realities of the industry's operating contexts and provide practical guidance for companies to design and implement their human rights activities. Through IPIECA, our members have collaborated to operationalize the UN Guiding Principles by developing guidance on human rights due diligence, impact assessments, grievance mechanisms, responsible security, engagement with Indigenous Peoples, and company and supply chain labour rights, as well as a human rights training tool, to help the industry advance its human rights performance. For a summary of IPIECA's external publications on human rights to date – please view the factsheet (https://www.ipieca.org/media/4995/hr_fact_sheet_2019_update_v4.pdf) or visit our website for further information (<https://www.ipieca.org/>).

IPIECA is in the process of updating its 2012 guidance on *Human rights due diligence process*, which we aim to launch at the start of 2021. The next phase of work will focus on developing contractor training for labour rights, and work on an industry definition for the 'just transition' to a global low-carbon economy including human rights aspects.