



Time to rethink company grievance mechanisms

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UK and other governments have been beating the drum to persuade companies to endorse key business and human rights standards – the most prominent being the UN Guiding Principles on Business and Human Rights (GPs) and, for the extractive industry, the Voluntary Principles on Security and Human Rights (VPSHR). But what’s in it for the companies?

A new briefing by Rights and Accountability in Development (RAID), released to coincide with the Plenary Meeting of the Voluntary Principles in London on 17–18 March 2015, shows how the GPs and the VPSHR allow companies to privatise and control the implementation of human rights. This is particularly important when alleged human rights abuses come to light: a company deflects criticism – and, potentially, even legal liability – if it can demonstrate that it has undertaken human rights due diligence, assessed the risk of human rights impacts, sought to use its influence upon recalcitrant states, and offered redress under its own grievance mechanism, as specified in the relevant principles.

RAID points out that while there are numerous examples of failures to adhere to these standards, little has been said about how companies, by carefully following the steps advocated in the Guidelines and Principles, can exonerate themselves when human rights violations occur.

“An undoubted attraction of the GPs for many companies is that they are non-binding and there is no expert body to monitor their application”, says Patricia Feeney, RAID’s Executive Director.

A major topic for discussion at the London Plenary is how to align the Voluntary Principles with the GPs and provide affected communities with access to remedy. Says Patricia Feeney:

Before the UK and other governments take further steps to roll out company grievance mechanisms, the deficiencies and gaps in the guidance and principles need to be urgently rectified and addressed. Otherwise they will simply be spreading bad practice that further undermines the rights of the victims of corporate-related abuses.

Companies will also be encouraged to draw up memoranda of understanding (MoUs) between companies and state security forces on which they depend to protect their facilities. But MoUs appear to justify continued reliance on public forces that violate human rights.

Among the problems identified in RAID’s briefing are:

- **Lack of Transparency:** neither the GPs nor the VPSHR specifically require the publication of human rights reports or impact assessments.
- **Obstacles to redress:** operational-level grievance mechanisms were promoted as a means of overcoming barriers to accessing judicial redress, but obstacles – control of information, legal

waivers, confidentiality clauses – have been re-introduced. The underlying problem – the power differential between complainants and companies – has not been addressed.

- **Self-exoneration:** in-house grievance mechanisms allow companies to investigate, determine culpability and exonerate themselves from any responsibility. The GPs have enabled companies to deploy such grievance mechanisms not to *prevent* violations occurring, but simply to deal with serious violations *after* they have occurred

In the absence of robust oversight, company involvement in the remedy processes can result not in remedy but in an additional violation of human rights. The recent cases in the Democratic Republic of the Congo and Tanzania examined in RAID's paper demonstrate that there are significant omissions and gaps in the GPs and VPSHR which urgently need to be addressed in order to prevent their misuse and misapplication.

The briefing summarises RAID's forthcoming report, *Principles without justice – the corporate takeover of human rights*, and ends with a number of recommendations including:

- Operational-level grievance mechanisms – justified on the grounds that they would nip grievances in the bud so that they do not escalate – should not be used in cases of serious crimes and human rights violations.
- MOUs and contractual arrangements with public and private security providers should be disclosed. Companies should explain what steps they will take in the face of breaches of such agreements.

ENDS

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Notes for Editors

1. HM Government 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights', September 2013. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf.
2. The Voluntary Principles provide a framework for oil, gas and mining companies to manage security-related human rights risks. In February 2015 the membership of the initiative consisted of 28 companies, 10 NGOs, 9 governments and 7 observers.
3. RAID bases its criticism on a detailed analysis of two recent case studies concerning Glencore plc and its Congolese subsidiaries; and Acacia Mining plc (formerly African Barrick Gold, ABG) operating in Tanzania.
4. Bread for All, Fastenopfer and RAID, *PR or Progress? Glencore's Corporate Responsibility in the Democratic Republic of the Congo*, June 2014; available at <http://www.raid-uk.org/sites/default/files/glencore-report-June2014.pdf>.
5. MiningWatch Canada and RAID 'Violence Ongoing at Barrick Mine in Tanzania: MiningWatch Canada and RAID (UK) Complete Human Rights Assessment', 5 August 2014, <http://www.raid-uk.org/sites/default/files/pr-barrick-mara-violence.pdf>; MiningWatch Canada and RAID 'Privatized Remedy and Human Rights: Re-thinking Project-Level Grievance Mechanisms', December 2014.