



Human Rights Responsibility of MNEs in national law Part 2

14 December 2011

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Autumn Term 2011



Overview

- Ruggie Framework: Critical voices
- Switzerland's general policy on business, human rights and corporate social responsibility
 - Policy strategy and coherence; current situation
 - Existing policy instruments to reinforce business responsibility to respect human rights
- Areas and options for political and legal improvement to foster business and human rights policies in Switzerland



Ruggie Framework – problem solved? Not quite.

- Need for substance
- Right priorities?
 - [Nicaraguan NHRI Delegate](#) (Conference of NHRIs in Edinburgh 2010; 2:00)
 - Privatization
 - „Outsourcing responsibilities“
 - Reply by John Ruggie (7:37)
- Too close to business?
- Who needs to do what next?



Switzerland's general policy on human rights, business and corporate social responsibility (1/2)

- Intense international engagement
 - Political and financial support of the “protect, respect and remedy” framework
 - Involvement in several voluntary initiatives to foster human rights compliance by the business sector
 - International initiatives in the area of transnational corporations and their responsibility under international humanitarian law (Montreux Document, Code of Conduct for private and military security companies)
 - Policy dialogues with third countries
 - Encouraging and supporting international frameworks outside the UN (e.g. OECD, ILO)



Switzerland's general policy on human rights, business and corporate social responsibility (2/2)

➤ Policy coherence

- No unified, integrated and public policy on human rights, business and corporate social responsibility
 - Lack of an overarching strategy on corporate social responsibility
 - Interdepartmental core group with the mandate of coordinating human rights policy, yet no special consideration of business and human rights
 - Government reports to the parliament do not contain a systematic evaluation of the impact of human rights policies relating to corporate social responsibility
- Sustainable Development strategy adopted by the Federal Council (period 2008-2011) seeks to frame corporate social responsibility as an element of sustainability and recommends to limit state intervention to the absolute minimum



Existing policy instruments to reinforce business responsibility to respect human rights (1/2)

➤ Diplomatic activities

➤ Public Procurement

- Adherence to the eight ILO core labour conventions as minimum criterion for services rendered abroad
- More ambitious proposal: to include more human rights and social policy related issues as criteria for public procurement

➤ Swiss export risk insurance

- Requirement of respecting the principles of Swiss foreign affairs policy (Art. 6 ERG) which might include the promotion of human rights
- Reference to Switzerland's obligations under international law contained in Art. 13 ERG which might include human rights obligations



Existing policy instruments to reinforce business responsibility to respect human rights (2/2)

➤ Trade and investment

- Agreements on the promotion and reciprocal protection of investments: international human rights mechanisms are mentioned in a broad way; no suspension clauses in case of massive human rights violations
- Free trade agreement EFTA - Hong Kong with side agreement on labour standards (subject to referendum in 2012; Message of the Federal Council in BBl 2011, 7865).



Other approaches

- Norwegian Ministry of Foreign Affairs, Corporate social responsibility in a global society, Report to the Storting, 2009
- Netherlands: "[Motie van het lid Peters C.S.](#)" [original in Dutch], Peters, Timmermans, Hachchi, Van Bommel, Dutch Parliament, 28 Jun 2011: Motion requesting the government to provide a plan on how it intends to implement the UN Guiding Principles
- European Commission: A renewed EU strategy 2011-2014 for Corporate Social Responsibility, 26 October 2011 COM (2011) 681/2



Areas and options for political and legal improvement to foster a business and human rights policy (1/5)

- Creating a process to reach a coherent national policy on corporate social responsibility
- Policy to promote and ensure respect for human rights
 - Coordinating mechanisms (establishing specific corporate social responsibility bodies or organs with monitoring and promotional functions)
 - Public procurement
 - Internal corporate social responsibility policy that includes human rights
 - Monitoring and sanctions mechanisms (e.g. negative findings by the NCP should affect the company's access to public procurement)



Areas and options for political and legal improvement to foster a business and human rights policy (2/5)

- (contd.) Policy to promote and ensure respect for human rights
 - Export insurance
 - Due diligence
 - Compliance with OECD Guidelines
 - Monitoring and sanctions mechanisms
 - Agreements on the promotion and reciprocal protection of investments should require human rights compliance
 - Social labelling



Areas and options for political and legal improvement to foster a business and human rights policy (3/5)

- Corporate liability for human rights impacts
 - Extension of both the corporations' and directors' civil and criminal liability
 - Enhancement of companies' legal duty of care for subsidiaries' and suppliers' impacts abroad ("Home country control")
 - Across the board regime of strict liability of parent companies for the wrongdoings of their subsidiaries not feasible
 - Proposal of exhausting the existing duties of care under Swiss law
 - Mandatory corporate social responsibility and human rights impacts reporting
 - Reporting parameters crucial
 - Enforceability of reports



Areas and options for political and legal improvement to foster a business and human rights policy (4/5)

- Monitoring, grievance and enforcement institutions
 - Establish a National Human Rights Institution according to the Paris Principles
 - Independent Ombudsperson
 - Judicial control
 - governmental actions and
 - private actors
 - support for victims



Areas and options for political and legal improvement to foster a business and human rights policy (5/5)

- (contd.) Monitoring, grievance and enforcement institutions
 - NCPs (see last week's lecture)
- The judiciary and access to justice
 - Legal standing
 - Costs and burden of proof
 - Extraterritoriality