BSR

Applying the Guiding Principles on Business and Human Rights to the ICT Industry

Version 2.0: Ten Lessons Learned

A Briefing Paper from BSR
September 2012

About This Briefing Paper

This briefing paper has been written to provide insight for information and communications technology (ICT) companies on how to apply the Guiding Principles on Business and Human Rights.

The briefing paper is not static, but is being updated with new versions upon further learning and discussions with ICT companies and stakeholders. This second version (hence the "version 2.0" qualifier) is being published in August 2012, one year after the first version.

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1. Introduction

In June 2011, the United Nations Human Rights Council approved new Guiding Principles on Business and Human Rights. This decision represented a significant milestone in the history of business and human rights: More clarity exists today than ever before on governments' duty to protect human rights and the business responsibility to respect human rights.

At the same time, the ICT industry is playing an increasingly significant role in today's world. Vast ICT infrastructures and extensive flows of information have become natural features of modern life. Rapidly growing online services—everything from social media to ecommerce and virtual collaboration—have come to define our day-to-day lives in ways unimaginable just a decade ago. And seemingly innocuous changes to the ICT landscape—such as altering the internet domain name system to allow non-roman characters, or massively increasing the number of IP addresses—can have significant social implications. A world in which a car is also a computer and household devices are connected to the internet (the so-called "internet of things") will be a very different place.

> Two developments combine into a striking implication for the ICT industry: The consensus around the human rights responsibilities of business has arisen at precisely the same moment in history as developments in technology make the human rights impact of ICT much more significant.

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Purpose of This Briefing

The key human rights question faced by companies today is this: *How should companies apply the Guiding Principles to business strategy and operations?*

The Guiding Principles are a basic expectation for all businesses of all sizes in all industries. There are many briefings that interpret the relevance of the Guiding Principles to large corporations in general, but this briefing doesn't seek to repeat that good advice. Rather, this briefing highlights those parts of the Guiding Principles of greatest significance to the ICT industry and provides a BSR point of view on how ICT companies can address these aspects.

As the Introduction to the Guiding Principles describes, the Principles are "not intended as a tool kit, simply to be taken off the shelf and plugged in… [W]hen it comes to implementation, therefore, one size does not fit all." BSR seeks to work with ICT companies to explore what size fits them.

> Given the increasingly prominent role played by ICT in the world today, *how* can ICT companies implement the Guiding Principles effectively?

So the question for ICT companies addressed by this briefing is this: *Given the increasingly prominent role played by ICT in the world today, how can ICT companies implement the Guiding Principles effectively?*

Version 2.0: Ten Lessons Learned

Since we published the original version of this briefing in August 2011, we have undertaken a significant volume of work to apply the Guiding Principles with ICT companies.

We have advised on the writing of human rights policies, facilitated engagements with human rights stakeholders, and undertaken human rights impact assessments for companies at the corporate, country, and product level. We have actively participated in collaborative activities to address human rights issues in the ICT industry—such as the Electronic Industry Citizenship Coalition (EICC) to advance improved labor standards and the Organisation for Economic Co-operation and Development (OECD) to tackle conflict minerals—and followed the work of the Global Network Initiative (GNI) on privacy and freedom of expression. We have also run workshops on ICT and human rights with companies in France, the United States, and Japan and have established a BSR Human Rights Working Group to which many ICT companies belong.

During this time we have learned a great deal about applying the Guiding Principles in the ICT industry. For this reason, version 2.0 brings together two things: our original advice from 12 months ago and the 10 most important lessons we have learned since then. We have deliberately taken this approach so that companies applying the Guiding Principles can quickly identify the lessons learned by others and rapidly improve the impact and effectiveness of their human rights strategies.

We should note that we have rarely been able to name specific companies and incidents in this report owing to the confidentiality agreements committed to during the course of our work. That said, we plan to include company case studies and more detailed human rights impact assessment (HRIA) methodologies in version 3.0 of this paper, which we expect to publish in 2013.

2. Ten Lessons Learned

One year after the original version of this paper was published, a group of BSR staff gathered to consider the lessons learned applying the Guiding Principles with ICT companies since then. During the discussion we uncovered 10 key lessons we have learned, which are summarized here and described in more depth in the body of the report.

1. The speed of innovation in the ICT industry presents a daunting practical challenge for human rights impact assessments (HRIAs). We have found it helpful to think in terms of categories of product, rather than individual products, which can change even during the course of an assessment.

2. Convergence, mergers, and acquisitions can significantly alter the human rights risk profile of individual companies. It is important to reassess a company's human rights risk profile following a significant event.

3. A tree structure (i.e. that branches out to other issue-specific policies) works well for human rights policies in the ICT industry.

4. HRIAs at the level of the product, service, or technology can be especially important for ICT companies.

5. Stakeholders can significantly contribute to helping identify human rights risks, but many (though not all) ICT companies consistently undervalue them.

6. Outside corporate HQ, such as at the country or business unit level, the standard of human rights expertise in a company can be very low. Training and guidance is required to embed human rights due diligence throughout a company.

7. ICT companies often find themselves in positions with limited room for maneuvering on human rights; they need to think creatively about their use of leverage.

8. Dialogue and discussion with key departments, executives, and managers about potential human rights scenarios are effective methods for integrating human rights into company operations—and must be used alongside refreshed management systems and processes.

9. With some notable exceptions, ICT companies rarely report sufficient information on human rights, or produce low-quality reports. Innovation in reporting is a significant priority.

10. Transparency around human rights means both reporting to the public and communicating with users.

Companies seeking to apply the Guiding Principles are advised to build these lessons into their human rights programs and strategies.

3. Guiding Principles on Business and Human Rights

The "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, and Remedy' Framework" were unanimously endorsed by the UN's Human Rights Council in June 2011 and represent the culmination of a six-year-long multi-stakeholder discussion.
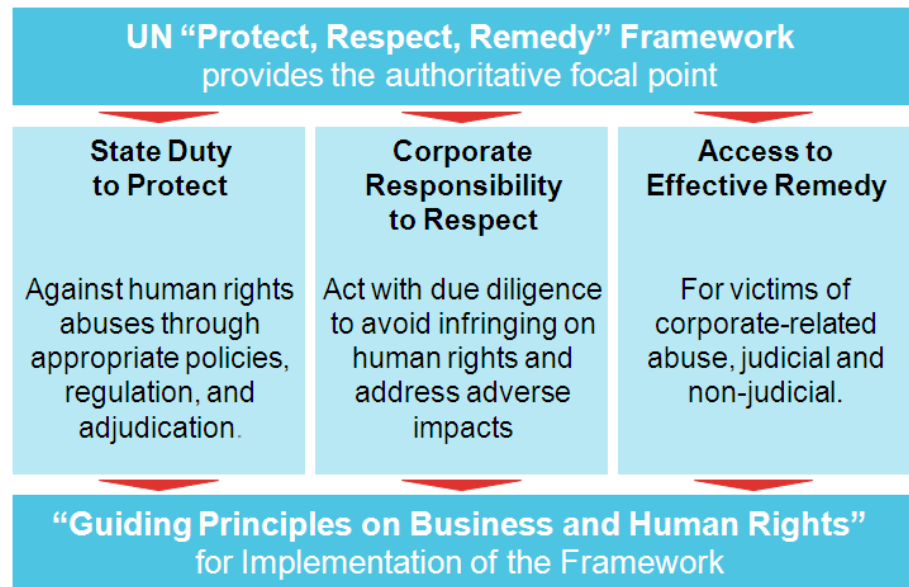
History

The process of creating the Guiding Principles began in 2005 when UN Secretary General Kofi Annan appointed Professor John Ruggie as the "Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises." The appointment of the Special Representative resulted from a failed and acrimonious attempt by the UN Human Rights Commission to define the human rights responsibilities of business (the so-called "Draft Norms").

A significant milestone took place in 2008 when the Human Rights Council unanimously welcomed the Special Representative's proposed "Protect, Respect, Remedy" Framework (see below) and extended his mandate for three years to recommend how to "operationalize" the Framework. That final phase resulted in the publication of the Guiding Principles in June 2011.

A New Global Standard

The Guiding Principles were endorsed by the UN Human Rights Council and have received the support of a wide range of business, labor, and human rights organizations. Governments, businesses and investors have begun applying the framework and principles in their human rights work. As such, the Guiding Principles represent a new global standard on business and human rights. The standard can be summarized as follows:

UN "Protect, Respect, Remedy" Framework
provides the authoritative focal point

State Duty to Protect	**Corporate Responsibility to Respect**	**Access to Effective Remedy**
Against human rights abuses through appropriate policies, regulation, and adjudication.	Act with due diligence to avoid infringing on human rights and address adverse impacts	For victims of corporate-related abuse, judicial and non-judicial.

"Guiding Principles on Business and Human Rights"
for Implementation of the Framework

As a result of the Framework and Guiding Principles, there exists today a near-global consensus among governments, businesses, civil society organizations, and investors on the respective duties and responsibilities of states and businesses towards human rights. Organizations as varied as the International Trade Union Confederation, the International Chamber of Commerce, EarthRights International, Coca-Cola, Total, and investors representing more than US$2.7 trillion in assets have all voiced their support for the Guiding Principles.

Some advocacy groups, including Human Rights Watch and Amnesty International, have voiced important criticism, suggesting that the principles' standards for government and business are too low; but even these organizations are likely to invoke the Guiding Principles in their efforts with business, while advocating at the UN level for more stringent standards.

Guiding Principles Overview

It is important to note that the Guiding Principles do not create any new legal obligations for states of business. Rather, the Guiding Principles:

» Elaborate the implications of existing human rights standards.
» Provide guidance on how states and companies can better meet their duties and responsibilities respectively.
» Identify gaps in human rights protections and where improvements might be made.

The Guiding Principles require that companies know and show that they respect human rights by:

» Having a human rights policy
» Conducting human rights due diligence
» Assessing actual and potential human rights impacts
» Integrating findings across the company
» Tracking and communicating performance

The Guiding Principles note that individual company implementation of these aspects should be shaped by issues of context, such as the company's size, geographical presence, and industry. This briefing paper focuses on the context of the ICT industry and provides BSR's analysis of how the Guiding Principles can be applied by ICT companies using four key dimensions:

» Policy
» Impact assessment
» Strategy
» Integration

4. Distinguishing Features of the ICT Industry

In order to understand the relevance of the Global Principles for ICT companies, it is important to highlight a few key characteristics and distinguishing features of the ICT industry. First, there are a number of characteristics of the ICT industry relevant to human rights that are similar to characteristics of many other industries:

» **Employment:** The industry is a significant direct employer, and so the human rights of employees will be highly relevant

» **Manufacturing:** The industry is characterized by complex global manufacturing supply chains, so the human rights of workers in supply chains and manufacturing settings will be highly relevant.

» **Raw Materials Extraction:** The industry is a significant user of raw materials, including some of very high value and/or located in conflict zones, so the human rights of workers and communities in mining zones will be highly relevant.

Second, and perhaps more important for this briefing, there are distinguishing features of the ICT industry that are somewhat different than many other sectors. These distinguishing features have significant implications for how best to respect human rights in the ICT industry. They are described in detail in BSR's "Protecting Human Rights in the Digital Age" report (February 2011), and are summarized here:

Distinguishing Feature	Implications for Human Rights
End User	» The role of the product or service end user in human rights is more significant in the ICT industry than other sectors. Whether exposing human rights abuses online, using the internet as a platform for political discourse, or having privacy rights violated, the end user plays a particularly significant role in the human rights impact of ICT. » End users are increasingly innovating with ICT products and services in unexpected ways that may be beyond company control.
Legal Frameworks	» New technologies, products, services, and business models tend to be introduced much faster than laws can be enacted to regulate them. Regulatory processes often move more slowly than ICT product and service development. » Governments around the world are making increasing demands on ICT companies—some positive and some negative—that impact human rights. » Laws that are enacted for ICT can sometimes conflict with internationally recognized human rights.
Jurisdictional Complexity	» The internet is global, but laws and regulations governing ICT companies are often national. » The evolutions in ICT use are raising important questions about legal jurisdiction, especially regarding data as it flows across international borders or is stored in multiple jurisdictions. Human rights risks can vary depending on which country personal information is stored in, and how a company's network is structured.

Distinguishing Feature	Implications for Human Rights
Technological Complexity	» New technology can be complex to understand, and new product functionalities are rapidly introduced. » New products and services bring new risks and opportunities all the time, sometimes with unpredictable consequences. » Rapid global communications can magnify the impact and significance of important events and incidents.
B2B and B2G: Relationships With Enterprise and Government Customers	» While ICT companies have little control over the actions of individual end users, they do have closer relationships with enterprise and public sector customers. ICT companies often co-innovate and co-design products and services with their major customers. » These enterprise and public sector customers can use ICT products, services, and technology for a variety of purposes—some good, some detrimental (known as the "dual use" dilemma).

Lesson 1: The speed of innovation in the ICT industry presents a daunting practical challenge for HRIAs.

When undertaking HRIAs for ICT companies, we have found the sheer pace of product, service, and technology innovation to be a constant challenge. For example, the following have been real-life scenarios for us:

» By the time a product has been in the marketplace long enough to assess impact, the product has been updated, refreshed, or even phased out.

» During the course of an HRIA, significant alterations may be made to the underlying technology or network architecture.

» During the course of an HRIA, new patterns of customer use of the product can emerge, or new social or political perspectives on the product can arise.

All three of these scenarios can significantly alter a product's human rights risk profile and have a significant impact on the relevance of the HRIA's recommendations.

For this reason, we have found it helpful to think in terms of categories of product (rather than individual products), and to use lessons learned from existing product categories to apply a human rights lens during the design phase of new products. Unlike in many other industries, the product design phase can be where the human rights impact of an ICT company is shaped, and there are innovative approaches—such as testing products with high-risk users prior to product release—that are open to companies. We have also found it important to understand the relevance of the direction and trajectory of product and technology innovation for human rights to identify future product impact trends.

Despite these challenges, we have found HRIAs at the product level to be especially helpful in understanding how to respect human rights in the ICT industry, reinforcing our original conclusions about the sector's distinguishing features. The sector's rapid innovation also underscores the importance of due diligence as an ongoing process, rather than a one-time exercise.

Lesson 2: Convergence, mergers, and acquisitions can significantly alter the human rights risk profile of individual companies.

The ICT industry is diverse—a software or internet services company has a very different human rights risk profile than a hardware or consumer electronics company has, for example. However, the ICT industry is also experiencing rapid convergence through mergers, acquisitions, and investments in new product lines, and ICT companies' business model, products, and structure can change quickly.

For this reason, we have spent significant time over the past year helping companies reassess their human rights risk profile following a significant event— hardware companies who have acquired a software service provider, for example, or internet companies entering the telecommunications industry. This reassessment often reveals that the new part of the business is a source of significant new human rights risk for which legacy policies and management systems can be poorly suited.

5. How to Implement the Guiding Principles

BSR recommends that businesses use the Guiding Principles to create a human rights strategy based on four features:

» A **human rights policy** that expresses a commitment to respect human rights and provides a focal point for internal and external communication on human rights

» A corporate-wide **human rights impact assessment** that identifies key human rights risks and prioritizes areas requiring deeper assessment

» A **human rights action plan** to eliminate abuses, mitigate or avoid risk, and capitalize on opportunities for positive impact. Implementation of the action plan should be integrated into key corporate functions and overseen by some type of cross-functional body.

» **Report and communicate** human rights impacts and how they are being addressed.

There are a number of briefings that describe how businesses in general should implement this four-part human rights strategy. This briefing does not seek to repeat that advice; rather this briefing highlights those parts of the Guiding Principles of greatest significance to the ICT industry across the same four-part human rights strategy structure.

Human Rights Policy

A human rights policy is the starting point for a human rights strategy and, among other elements, should include a commitment to avoid human rights abuses and complicity in the abuses of others, and a summary of the company's biggest human rights risks and opportunities. For ICT companies, the biggest human rights-related risks and opportunities will likely include, but not be limited to:

» Labor rights in manufacturing and service settings

» Raw materials sourcing in conflict zones

» Privacy and security

» Freedom of expression

» Relationships with law enforcement agencies

» Protection of children

» Access to health and education

» Participation in cultural life and access to the benefits of scientific progress

The exact human rights risk and opportunity profile, and therefore the content of the human rights policy, will vary from company to company.

However, a close reading of the Guiding Principles in the context of key characteristics and distinguishing features of the ICT industry suggests that one particular responsibility of business merits very careful consideration in an ICT company's human rights policy. This becomes clear in Foundational Principle 13 of the Guiding Principles:

> *"The responsibility to respect human rights requires that business enterprises: a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts as they*

*occur; and b) seek to prevent or mitigate adverse human rights impacts that are **directly linked to their operations, products, or services by their business relationships,** even if they have not contributed to those impacts."* [Our emphasis]

It is significant to note the reference to products, services, and business relationships, the latter being defined by the Guiding Principles as including "relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products, or services."

This brings into relevance the B2B/B2G relationships (see table on pages 6-7) that ICT companies have with enterprise and government customers, and the risk that these customers may use ICT products and services in ways that may violate human rights. ICT products and services are often "dual use" in nature and can be used for both public good and to do harm—for example, to protect public safety on the one hand, or to invade user privacy through surveillance on the other.

This will be particularly relevant for enterprise software, data storage, network equipment, and IT/telecoms services companies, who frequently co-create products and services with customers, or provide consulting advice on how to use their products. Many of the human rights impacts that ICT companies need to identify and mitigate are those that arise not from direct operations, but from business relationships with those who may misuse their products. Recognition of this link should be made in an ICT company's human rights policy.

Lesson 3: A tree structure works well for human rights policies in the ICT industry.

Many of the human rights impacts relevant to ICT companies will be the subject of existing company policies, such as privacy, labor standards, or equality. For this reason, we have found that a tree structure—in other words, a policy that makes broad human rights commitments then branches out to other preexisting company policies—to be simple and effective. That said, there are two areas of innovation in these tree structure policies:

» ICT companies often need new policy commitments on the topic of product use and misuse, as referenced above in version 1.0 of this briefing.
» A point of view on how ICT can be used to support human rights, such as encouraging freedom of expression in closed societies, can add an important opinion, direction and perspective to the policy.

Human Rights Impact Assessment

A human rights impact assessment uses the "International Bill of Rights" (the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; and the eight core conventions of the ILO Declaration on Fundamental Principles and Rights at Work) to identify and prioritize human rights impacts for a company to address.

Operational Principle 18 of the Guiding Principles makes the following statement with respect to assessing human rights impact:

Many of the human rights impacts that ICT companies need to identify and mitigate are those that arise not from direct operations, but from business relationships with those who may misuse their products. Recognition of this link should be made in an ICT company's human rights policy.

Human Rights Impact Assessment and Relevance to ICT

» Make sure human rights risks arising from business relationships are assessed and understood.
» Engage with stakeholders and human rights experts with insights into the human rights impacts of ICT products and services in high-risk markets and geographies.
» Consider "deeper dive" human rights impact assessments at the product or market level.

*"In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities **or as a result of their business relationships**. This process should: a) draw on internal and/or independent **external human rights expertise**; and b) involve meaningful consultation with **potentially affected groups** and other relevant stakeholders…"* [Our emphasis]

Operational Principle 18 suggests that ICT companies would be well served to pay specific attention to three concepts that are particularly relevant given the key characteristics and distinguishing features of the ICT industry (described on pages 6-7):

» Business relationships
» Use of external human rights expertise
» Engagement with potentially affected groups

First, on business relationships, the dual use nature of ICT products and services—they can be used for the public good or to cause public harm—increases the significance of identifying and assessing potential human rights impacts that arise from their use. For example, as part of a human rights impact assessment, an ICT company might ask itself:

» What does our due diligence look like at the level of the country (i.e. market entry or exit) and at the level of the customer (i.e. customers we might choose not to sell to)?
» Do we assess the risk that customers—especially government clients, law enforcement agencies or certain categories of enterprise customer—will use our products or services to violate human rights?
» Are we present in any specific markets that might be in the high-risk category today?
» Do we know of any existing customers—or whole customer segments—that might fall into this high-risk category today?
» What human rights are at risk from these business relationships?

Second, on the use of external human rights expertise, one of the distinguishing features of the ICT industry (described in the table on pages 6-7) is its technological complexity. New technology can be complex to understand and new products and services are rapidly introduced all the time, often bringing with them new and unpredictable human rights risks and opportunities.

This unpredictability means that engagement between ICT companies (who typically understand the technology, but less about its human rights impact) and stakeholders (who typically know less about the technology, but more about possible human rights consequences) becomes particularly important. With ICT increasingly pervasive in 21st century society, deeper interaction between these two communities—at local, national, and international levels—will be critical to our ability to protect human rights in the digital age.

Third, on potentially affected groups, it is important to note from the table on pages 6-7 the role of the end user and the sometimes unpredictable consequences that arise from the introduction of a new ICT product or service. These distinguishing features of the ICT industry suggest that it will be important for ICT companies to consider "deeper dive" human rights impact assessments at the level of the product, service, or market. An ICT product launch, for

example, or the introduction of a new ICT service to a high-risk country, can result in significant human rights impacts.

Lesson 4: HRIAs at the level of the product, service, or technology can be especially important for ICT companies.

The conventional approach to HRIAs has been informed by the need to undertake assessments at the level of a site (such as a mine) or of a particular geography (such as the route of a pipeline). However, we have found that in the ICT industry HRIAs at the level of the product, service, or technology are much more effective at addressing key human rights impacts, and this finding has necessarily involved designing new HRIA tools and approaches. Some details about how to shape and implement these tools include:

» A thorough understanding of the product—its functionality, technology, and architecture—is critical before commencing the HRIA. The company's technical and product knowledge must be harnessed for the HRIA to be relevant.

» Out of the whole universe of product users, it is important to prioritize the relatively small number of relatively high-risk users, such as human rights defenders and political activists. The biggest human rights impacts can reside in a very small subset of product users.

» Some of the biggest human rights risks can occur when a product is delivered through a business partner or in certain high-risk geographies. For this reason, product-level HRIAs should encompass business partner and geography dimensions. Certain human rights risks may be specific to certain types of business partners.

» While product-level HRIAs imply a high level of specificity and detailed analysis, the final recommendations for action should include broad activities that outlast the lifetime of the specific product being assessed.

» Product impact assessments should be revisited when material changes occur, such as additional product functionality, a new network architecture, or expanded target geographies.

Lesson 5: Stakeholders can significantly contribute to helping identify human rights risks, but ICT companies consistently undervalue them.

There is no easy way to say this: With a few honorable exceptions, the lack of stakeholder engagement in HRIAs is a big problem in the ICT industry. It has been our experience that most ICT companies remain fearful of stakeholder engagement and reluctant to discuss major impacts and human rights dilemmas openly with those outside the company. This is a big problem because—as highlighted above in version 1.0—engagement between ICT companies (who typically understand the technology, but not necessarily its human rights impact) and stakeholders (who typically know less about the technology, but more about possible human rights consequences) is especially important to make an HRIA effective. Only through a combination of company and stakeholder inputs can an HRIA be complete. This lack of engagement can result in the following:

» Human rights risks remaining unidentified

» Missed opportunity to enhance the business-specific understanding and fluency of stakeholders

» Incomplete understanding of the human rights context in key geographies

» Lack of HRIA process credibility

Lesson 6: Outside corporate HQ, such as at the country or business unit level, the standard of human rights expertise in a company can be very low. Training and guidance is required to embed human rights due throughout the company.

For a HRIA to be thorough, it is often necessary to secure the input of company executives at the country level or inside business units. We have found that the level of human rights knowledge and expertise at these levels can be quite low, and consequently that guidance, information, and training before beginning the HRIA can be critical to its impact and success. After this guidance has been provided, the quality of HRIAs increases significantly as their purpose and content is much more familiar to employees.

Human Rights Action Plan

A human rights action plan is where the company seeks to prevent negative human rights impacts by eliminating, mitigating, or avoiding human rights abuses, and integrating human rights considerations into key corporate functions. This should include oversight by some type of cross-functional body with responsibility for human rights, such as a corporate responsibility committee or a specially constituted working group.

A reading of the Guiding Principles in the context of key characteristics and distinguishing features of the ICT industry suggests that companies will be well served to pay specific attention to one specific concept given some prominence: the concept of *leverage*. As stated in Operational Principle 19 of the Guiding Principles:

> *"In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action … b) Appropriate action will vary according to … (ii) **the extent of its leverage** in addressing the adverse impact."* [Our emphasis]

Given the characteristics of the ICT industry, some of its most important human rights impacts are likely to be found in circumstances where the ICT company has leverage and influence, but not control. These situations may relate to human rights impacts arising from business relationships—via customer misuse of an ICT product or service, for example, or via a supplier relationship—or because the local law conflicts with human rights and the ICT company is required to comply with that law. These scenarios are described further in BSR's "Protecting Human Rights in the Digital Age" report (February 2011).

For this reason, the concept of "leverage" in the Guiding Principles will be an important one for ICT companies to explore and understand as they integrate human rights considerations into key corporate functions. For example, leverage may arise through:

» The sales or procurement contracting process, such as requiring certain standards of suppliers, or specifying that raw materials sourced should be conflict-free

» Public policy activities, such as advocating for privacy and freedom of expression laws that are consistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

Human Rights Action Plan and Relevance to ICT

» Consider options for leverage in situations where the company has influence but not control over human rights impact.

» Integrate human rights considerations into contracting processes and public policy positioning.

» Consider a challenge when government demands (such as for personal information) seem inconsistent with human rights.

» Collaborate with other ICT companies and stakeholders to address shared challenges.

> » Using available legal mechanisms to challenge the law or its application when governments make law enforcement demands of ICT companies that conflict with human rights
>
> » Collaborating with other companies or stakeholders to address a shared human rights challenge, such as conflict minerals or manufacturing labor standards

Interestingly for the ICT industry, the Guiding Principles point toward a couple of methods of exercising leverage ("capacity building … or collaborating with other actors") that the industry is beginning to implement through efforts such as the EICC, the Global e-Sustainability Initiative (GeSI), and GNI. Given the networked characteristic of the ICT industry, progress on human rights can be made through the expansion of existing collaborative efforts, as well as the creation of new ones.

Lesson 7: ICT companies often find themselves in positions with limited room for maneuvering on human rights; they need to think creatively about their use of leverage.

We have often found ourselves working with companies in situations where the key human rights violations arise as a result of government rather than business action. Some examples include overly broad demands for personal information, surveillance of political activists, or under-enforcement of labor, health, and safety regulations. To cite a particularly difficult example, telecommunications companies are bound by license agreements over which they have very little control; they are almost powerless to prevent local law enforcement agencies from undertaking surveillance in ways that lead to human rights violations. These circumstances require imaginative responses. Some companies' most effective approaches have been:

> » Using the home government to put diplomatic pressure on the host government concerning its abuse human rights
>
> » Raising human rights issues at international and bilateral trade and industry forums
>
> » Building coalitions with other companies that face similar challenges

Lessons 8: Dialogue and interactive discussion with key departments, executives, and managers about different potential human rights scenarios are important methods for integrating human rights into company operations.

When applying the Guiding Principles inside a company, it is very easy to be trapped by the familiar lure of policies, processes, and procedures. These reforms are known, easy to understand, and work with the grain of existing company management systems.

However, over the past year the biggest breakthroughs we have made on human rights have been while discussing potential future human rights scenarios with managers and executives and brainstorming about how the company may respond to these scenarios. These discussions have taught us our biggest lessons and inspired changes of approach. Techniques such as workshops, seminars, and discussion forums with key decision makers should form a critical part of human rights strategy—it's not all about policies and processes. Human rights are more likely to be respected if key people outside the traditional HQ circle are engaged in dialogue.

Reporting and Communications

The Guiding Principles make clear that companies should be prepared to communicate their human rights efforts externally. Operational Principle 21 states:

> *"In order to account for how they address their human rights impacts, enterprises should be prepared to communicate this externally … Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should **report formally** on how they address them … [and] **provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved**."* [Our emphasis].

One of the key principles underpinning best practice in corporate responsibility reporting is "comparability," the idea that report users should be able to compare one company report with another and make decisions based on the information presented. However, because the ICT sector was not the focus of the early wave of corporate responsibility enthusiasm in the 1990s, and owing to the fairly recent growth in awareness around the human rights impact of the ICT sector, there has only been slow progress toward a common approach in the industry on how to report human rights impacts. Lack of comparability still rules the day.

For this reason, the ICT industry would benefit from a deliberate effort to identify common human rights impacts on which to report. These might include, for example, disclosures relating to privacy, security, freedom of expression, relationships with law enforcement agencies, conflict minerals, labor standards in manufacturing, and the protection of vulnerable groups, such as children.

The GNI Principles and the little-known GRI Telecommunications Sector Supplement from 2003 provide places for ICT to start on privacy and freedom of expression, while the recent Dodd-Frank regulations in the United States will require reporting on conflict minerals. There is also the potential to use the ICT industry's convergence of supply chain management around the EICC's code of conduct to create common disclosures.

Lesson 9: With some notable exceptions, ICT companies rarely report sufficient information on human rights, or produce low-quality reports. Innovation in reporting is a significant priority.

ICT companies' reporting on human rights has improved in limited ways over the past year. Companies are steadily improving their description of human rights policies, impacts, and processes, but these are often a "checking the right boxes" management systems approach rather than a way to provide report readers with a flavor of the nature, scale, or character of human rights risks.

Companies have great potential to expand case studies on human rights—such as a decision made differently for human rights reasons or a risk significantly mitigated as a result of a human rights strategy—and to consider what types of data and metrics might be suitable for human rights reporting. The Google and Twitter Transparency Reports, which quantify and describe their response to government demands for content removal and personal information—demonstrate the huge opportunities for innovation in human rights reporting.

Unfortunately, the GRI sustainability reporting guidelines remain very weak on the topic of ICT and human rights, with no immediate signs that they will cover the issues described in this briefing paper. Two mutually reinforcing things need

to happen: The GRI needs to more actively consider the impacts of ICT on what sustainability issues are material to all companies, and ICT companies need to constructively propose disclosures that are increasingly relevant to the evolving industry.

That said, we also note that there are many occasions where human rights activities are best kept secret: There are times when a company's power during the exercise of leverage would be significantly reduced if they embarrassed the government in question by making their actions or lobbying positions public. Human rights may be the one area where greater transparency by companies is not always helpful to the cause.

Lesson 10: Transparency around human rights means both reporting to the public and communicating with users.

Transparency around human rights means more than integrating human rights considerations into a corporate responsibility report—it also means being significantly more proactive when communicating with users, especially high-risk users, about how to use specific company products and services more safely. Many of the most at-risk users of ICT products—the human rights defenders and political activists—are often also the most unaware of the risks they face from using products in certain ways. Engaging, proactive, and targeted communications with at-risk users can have a significant impact on human rights.

6. Conclusion: Proactively Respecting Human Rights

The Guiding Principles represent an authoritative statement about the business responsibility to respect human rights; they provide clarity where there was previously uncertainty, and consensus where previously there was discord.

As a result, BSR anticipates that governments, civil society, and consumers will, over the coming years, increasingly expect large companies to be proactive and deliberate in their efforts to respect human rights. For the ICT industry, a key premise of BSR's thinking is that two separate but related trends are taking place simultaneously: The scale of human rights expectations of business is on the rise, just as developments in technology make human rights risks and opportunities far more significant for the ICT industry.

So what does this mean for ICT companies? As this briefing paper describes, ICT companies need to undertake four core activities:

» Publish a **human rights policy** expressing a commitment to respect all human rights
» Undertake a corporate-wide **human rights impact assessment** to identify key human rights risks and prioritize areas requiring deeper assessment
» Create a **human rights action plan** to eliminate abuses, mitigate or avoid risk, and capitalize on opportunities for positive impact
» **Report and communicate** human rights impacts and how they are being addressed

However, we believe there are four specific priorities for the ICT industry to pursue in support of these core activities:

» Create human rights due diligence tools tailored to ICT companies
» Engage with employees, users, consultants, and stakeholders
» Engage with governments
» Make operational changes

Create Human Rights Due Diligence Tools Tailored to ICT Companies

The dual-use nature of ICT products and services increases the significance of due diligence processes for ICT companies. Depending on specific product, service, or operational profiles, important due diligence questions for ICT companies to address include:

» How can we assess the risk that customers will use our products and services to violate human rights?
» What strategies can we put in place to mitigate that risk?
» What would due diligence look like at the level of the country (e.g. market entry or exit), at the level of the customer (e.g. customers a company may choose not to sell to), or at the level of the product or service (e.g. mitigating the human rights impact of a particular new product)?
» Are there certain customers (e.g. public security customers in certain high-risk locations) that we might choose not to sell to? How can we decide?

»   How can we assess if a new product or service will result in negative human rights impacts? How can we reduce that risk?

Questions such as these and others need to be brought together into practical due diligence tool for use by ICT companies.

Lessons 2, 4, and 8 are especially relevant.

Engage with Employees, Users, Consultants, and Stakeholders

There are all sorts of people who use ICT—end users innovating with new ICT products and services, company employees devising tailored solutions for enterprise or government customers, or consultants trained in various ICT applications advising clients on how to make the most of ICT. As the table on pages 6-7 suggests, all these users have significant potential to affect the human rights impacts of ICT companies, products, and services.

This diversity highlights the need to raise awareness and fluency among the user population about the human rights impacts of ICT. It will be important to continue the development of two new communities of experts at the intersection of ICT and human rights: communities inside ICT companies who are expert in human rights issues, and communities inside human rights organizations who are expert in new technologies. With ICT increasingly pervasive in 21st century society, deeper interaction between these two communities—at local, national, and international levels—will be critical for our collective ability to protect human rights in the digital age.

Lessons 4, 5, 6, and 10 are especially relevant.

Engage with Governments

While this briefing paper has focused on the responsibility of business to respect human rights, the Guiding Principles also clearly describe the duty of governments to protect human rights through appropriate policies, regulations, and adjudication.

However, it is well known that governments can put in place laws that are inconsistent with human rights (such as freedom of expression), go beyond the law in ways that infringe on human rights (such as privacy and security), or fail to use laws available to them to protect the human rights of their citizens (such as equality or labor rights). These scenarios are especially prevalent when issues of national security are at stake, in conflict zones, or in manufacturing regions.

For these reasons, an important dimension of an ICT company's approach to human rights should be to engage with the relevant government authorities—be that labor law regulators, justice departments, or national security services—on how the law and its enforcement can be made consistent with human rights. By encouraging governments to uphold their duty to protect human rights, companies will be able to more effectively uphold their responsibility to respect human rights, and they are less likely to be undercut by unscrupulous competitors.

Lessons 4, 7, and 9 are especially relevant.

Make Operational Changes

This briefing paper sets out the four components of a human rights strategy: policy, impact assessment, action plan, and reporting. However, our experience suggest that for these elements to be successful, a significant amount of effort needs to be invested in understanding the nuts-and-bolts operational changes that must be made within a company to reduce the risk of human rights abuse. And while this briefing paper has sought to focus on the ICT industry, that industry is itself diverse—the operational changes required in a telecommunications provider may be very different than those required in a consumer electronics company or an enterprise software business.

For this reason, we recommend that as part of human rights strategy ICT companies clearly identify operations that need to be brought into conformance with human rights. For example, this might include:

» Product and service marketing and sales
» Procurement processes and vendor selection
» Product and service research and design
» Business partner selection and contracting
» Processes for responding to law enforcement requests or demands
» Government and regulatory affairs

All of these elements should be included in a human rights action plan and communicated through the company's corporate responsibility report.

Lessons 1-4, 7, and 8 are especially relevant.

7. Working with BSR

BSR has 20 years of experience working with businesses and their stakeholders to address a wide range of human rights challenges. Our involvement in the protection of human rights has spanned topics as diverse as labor standards in manufacturing settings, the privacy and free expression rights of internet users, and the human rights compliance of security forces at extraction sites.

The approval of the Guiding Principles on Business and Human Rights represents a new era in our human rights work. The consensus that now exists around a common framework offers the opportunity to move much more rapidly from the "why" to the "how" of business and human rights. We look forward to working with BSR members and our wider network to apply the Guiding Principles and share lessons learned across companies and sectors.

ICT Practice

BSR's ICT Practice has extensive experience on the topic of human rights in the information and communications technology industry. We facilitated the creation and launch of both the EICC (established to protect human rights in electronics supply chains) and the GNI (established to protect the human rights of internet users). We have also played a significant role in industry efforts to address conflict minerals, and we have worked with a number of companies to undertake human rights impact assessments and establish human rights strategies and action plans.

Further Reading from BSR

BSR has written a number of reports and articles about ICT and human rights that provide more in-depth analysis on the topics covered in this briefing paper.

- » Taking Ethics to the Cloud (Article, April 2012)
- » Avoiding Complicity in Human Rights (Article, December 2011)
- » What Conflict Minerals Regulation Means on the Ground (Article, March 2011)
- » Protecting Human Rights in the Digital Age (Report, Feb. 2011)
- » Egypt and the Realization of Human Rights in the Digital Age (Blog, Feb. 2011)
- » Egypt and the Complicated Ethics of the Telecommunications Industry (Blog, Feb. 2011)
- » The Path to "Conflict Free": Risk Management or Responsibility? (Article, Sept. 2010; BSR member login required)
- » Protecting Human Rights in a Networked Age (Blog, Aug. 2010)
- » Conflict Minerals and the Democratic Republic of Congo (Report, June 2010)
- » Google and China: When Should Business Leave on Human Rights Grounds? (Blog, March 2010)
- » Human Rights in a Wired World (Report, June 2009)

In addition, you can read BSR's perspective on the Guiding Principles on Business and Human Rights here.