Securing human rights in business

The guiding principles presented to the UN on Monday should be embedded into South-east Asia's corporate psyche

By MAHDEV MOHAN and DELPHINA LIM

On 30 May, John Ruggie of Harvard University made his final presentation to the United Nations Human Rights Council in his capacity as special representative of the UN Secretary-General for business and human rights.

Professor Ruggie's mandate was to develop principles beyond what had been a divisive debate on human rights responsibilities of companies. At the time, many thought that businesses should not be concerned with human rights complexities, regardless of the fact that they too constitute or contribute to gross violations of international human rights, and labour and environmental laws and standards.

Professor Ruggie's goal was to build shared understanding among stakeholders on the prevention and remediation of business-related human rights abuses, regardless of the diverse and competing interests among those stakeholders from around the world and by conducting extensive research. Out of that process came the “Protect, Respect and Remedy” Framework, which was unanimously welcomed by the Human Rights Council in 2008.

The council then asked Professor Ruggie to continue working to operationalise the Framework. After three years of work, he presented his Guiding Principles (GPs) on the prevention of, and remedy for, business-related human rights violations, in Geneva on Monday.

Whereas the Framework addressed, in Professor Ruggie's words, the "what" question - what do states and businesses need to do to ensure human rights - the GPs address the "how" question: how do we move from concept to practical, positive results?

Professor Ruggie's efforts have been rewarded by establishing a baseline responsibility of businesses to respect human rights. Recently, non-governmental organisations such as the OECD and the International Labour Organisation of Standards (ILO) endorsed this framework, providing guidelines and performance standards. Scores of large companies, leading corporate governance firms and institutional investors have followed suit and taken the unusual step of issuing public statements of support for the GPs and embedding them into their operations.

Uniform implementation

In his final report, Professor Ruggie noted that multilateralism - that is, finding common ground across a particular action - works. Yet the council (which is alluding to the gaps) should find a way in mind that the GPs' legacy depends on their effective and sustained implementation, especially since a multinational is unlikely to be uniform in mind and action.

As such, while in South-east Asia, there needs to be a level of respect for the developments here, and sustained action to embed the GPs and clarify their legal implications.

In the lead-up to the adoption of the Asean Charter in November 2007, the 10-member regional body moved towards becoming a single polity. Efforts are underway in laying the groundwork to facilitate free flow of information based on each country's laws; combating corruption; and co-operation on the rule of law and standards.

In short, the time is ripe for region-wide co-operation to embed the GPs.

Research and analysis

Civil society organisations have been increasingly involved in their efforts to document business-related human rights abuses and influence policy-making.

In short, the time is ripe for region-wide stakeholders to embed the GPs into Asean's shared norms and values. Also key in the region's human rights landscape is the emergence of credible civil society organisations (CSOs), which share knowledge, experience and training.

A fair deal:

Recognising that workers everywhere deserve protection, the UN Human Rights Council endorsed the "Protect, Respect and Remedy" Framework in 2008. And this week, Guiding Principles for the Framework were presented, requiring companies to respect human rights laws and standards, not allowing them to cherry-pick only those issues they feel comfortable with.

To this end, it is vital that academics, authors and human rights practitioners here conduct extended research on the business landscape in the region; they should also engage with business and think-tank representatives of human rights.

Clarity and certainty

It is crucial for businesses that there be more certainty in relation to applicable legal protection against business-related human rights abuses in conflict-afflicted, post-conflict and fragile states where human rights enforcement may be weak or non-existent.

South-east Asia's history of conflict and evolving transitions towards respect for the rule of law and human rights has many lessons to offer to this regard. We believe that these lessons will contribute to the formulation of regional and international best practices for business conduct in the aftermath.

Absent a binding legal treaty, best practices will tend much needed clarity and certainty to these businesses, and enable them to conduct effective corporate governance.

Professor Ruggie ended his speech to the council by reminding them that "human rights are at stake - and so, too, is the social sustainability of enterprises and companies as we know them". We hope that the council and governments and businesses in South-east Asia - will heed this timely refrain and honour the GPs.

Mahdev Mohan is an assistant professor of law at Singapore Management University, and Delphina Lim is a senior associate at Arena to Justice Asia LLP.