

The Arc of Corporate Responsibility: Public Relations Art to Legal Science

This blog is focused on the future of corporate responsibility. It is a transformation that is swiftly emerging and whose implications are significant for businesses and stakeholders alike. For businesses, the risks have multiplied and sharpened. For stakeholders, a new language of expectation and accountability has emerged. For the discipline of corporate responsibility as a whole, the evolution marks the need for more precise and structured due diligence, refined stakeholder engagement, and principled prioritization of corporate responsibility spend. ***And it marks the taming of that much-cherished and amorphous pillar of corporate responsibility: social license to operate.***

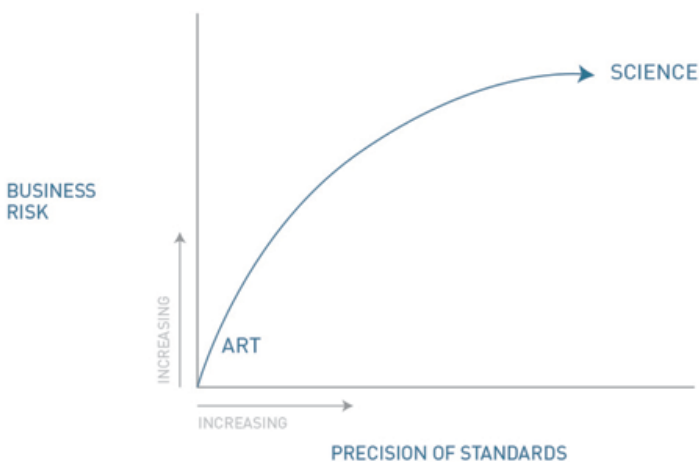
We trace the outlines of these implications below. In coming papers, we will delve deeper into specific, practical issues when it comes to addressing corporate responsibility risks and capturing emerging opportunities.

THE ARC OF CORPORATE RESPONSIBILITY: FROM ART TO SCIENCE

Traditional corporate responsibility is an impressionistic discipline driven by public relations and stakeholder perception. The new model of corporate responsibility is a precise discipline based on clear standards and legal definitions. Human rights are the motive force for, and centerpiece of, this transition. While human rights have long been central to corporate responsibility, until recently, there was no framework by which to apply them to the private sector. The Guiding Principles on Business and Human Rights have provided such a framework. Their wide endorsement fundamentally reshapes the corporate responsibility landscape.

IMPLICATIONS OF THE GUIDING PRINCIPLES FOR CORPORATE RESPONSIBILITY

The Guiding Principles reframe corporate responsibility as a science by imposing structure and precision on its social dimension.¹ The structure is built on two legal concepts:



¹ We will not focus here on the substance of the Guiding Principles, but on their implications for corporate responsibility strategy. For a more detailed discussion of the Guiding Principles see, e.g., *Emerging Legal Implications of the Guiding Principles on Business and Human Rights*, Enodo Rights, <http://enodorigths.com/wp-content/uploads/2015/09/Human-Rights-Risk-Primer.pdf>.

rights and causal links. This structure transforms corporate responsibility from a stakeholder-driven exercise to a standard-driven one. That is, companies are not responsible by default for any social impacts that stakeholders are concerned about or that they choose to ascribe to the business. Rather, the scope of business's social responsibility is defined by (1) the practical definitions of rights themselves and (2) the practical definitions of causal links to any rights impact. This responsibility is **independent of stakeholder** perception. There are, in other words, legitimate and illegitimate grievances. And business is empowered, and expected, to distinguish between them.

CORPORATE RESPONSIBILITY AND LEGAL RISK

This clarity of expectation comes with heightened risk. Structure and definition allow for the emergence of legal risk based on two concepts. **First, rights are not fuzzy feelings shaped by perception.** They are clearly defined legal concepts that courts are willing and able to protect. **Second,** the causal links used by the Guiding Principles to define business responsibility for rights are legal concepts with well-understood boundaries. **As a result, when businesses fail to align their practices with the Guiding Principles, they risk liability before courts and international tribunals—particularly in resource nationalism cases, international tort suits, project financing disputes, and director and officer liability suits.**² That risk persists no matter how happy the community in which they operate and no matter how much “social license” they have banked.

CORPORATE RESPONSIBILITY AND BUSINESS OPPORTUNITY



The structure of the Guiding Principles is also the source of tremendous business opportunity. Traditional, stakeholder-driven corporate responsibility keeps business on the back foot. Corporate responsibility risks are identified only once they have materialized—when NGOs, community groups, employees, or media raise a grievance. And businesses have no basis on which to distinguish between relevant and irrelevant grievances. The result is a reactive, crisis-focused, and fundamentally inefficient corporate responsibility approach with limited strategy.

The Guiding Principles remedy these issues. The very structure and precision that create legal risk provide the framework for business to anticipate corporate responsibility risks, mitigate them efficiently, and to engage proactively and effectively with stakeholders. The specific definitions of rights and causal links allow businesses to identify precisely which types of impacts they need to mitigate or remedy and how to do so most efficiently. **While stakeholder engagement remains essential to corporate responsibility, its scope and meaning are fundamentally different under the Guiding Principles.** Rather than defining relevant social impacts, stakeholder engagement takes place using the language of rights and causal links. It is structured within the framework of clear definitions.³ Businesses can therefore treat corporate responsibility risks in a business-like manner. They can adopt a corporate responsibility strategy with targeted spend to minimize risk exposure.

EFFECTIVE CORPORATE RESPONSIBILITY STRATEGY

The evolution from art to science has significant implications for corporate responsibility strategy. The Guiding Principles have reframed the social dimension of corporate responsibility in the language of rights. To mitigate the risks, and seize the opportunities, of this structured framework, businesses need to implement due diligence and response systems based on precise definitions of core terms: rights and causal links. Neither of these elements is self-explanatory. Both are critical to identify relevant impacts, engage stakeholders effectively, and respond efficiently.

² See, e.g., Yousuf Aftab, *Beyond Social License: Corporate Responsibility Strategy for Mining Companies* (2013), Enodo Rights, <http://enodorights.com/wp-content/uploads/2015/09/4-Beyond-Social-License.pdf>; Yousuf Aftab, Choc v. Hudbay: *The Emerging Standard of Care for International Human Rights Due Diligence and Response*, 2 C.L.A.R. 4, 49-54 (Nov. 2013), available at <http://enodorights.com/wp-content/uploads/2015/09/5-Transnational-Tort-Risk.pdf>.

³ *The Language of Rights Due Diligence: Structured Stakeholder Engagement Based on the Guiding Principles and the Children's Principles*, Enodo Rights, <http://enodorights.com/wp-content/uploads/2015/05/Rights-Based-Stakeholder-Engagement.pdf>.

The precise nature of corporate responsibility strategy will necessarily turn on the specific business and its operating context. But the Guiding Principles provide the blueprint for an overarching structure of progressive prioritization for due diligence and response that all businesses should follow. That process has three stages:

1. **Define Rights**
2. **Define and Apply the Causal Filter to Business Operations**
3. **Prioritize Response Based on Impact**

We will turn to the specific content of these stages in subsequent papers. For now, there are three points to bear in mind.

- **First, this is not old-school corporate responsibility:** (i) business need not wait for grievances in order to identify risks; (ii) business need not simply accept all grievances as legitimate rights impacts; (iii) business need not be a passive participant in stakeholder engagement; and (iv) business need not respond in the same way to all rights impacts no matter the severity or causal link to business operations.
- **Second, definitions are critical to implementing an effective system:** because the Guiding Principles system asks businesses to look beyond stakeholder perception to understand relevant impacts, efficiency and efficacy require that businesses proceed based on clear definitions of rights and the relevant causal terms; without such definitions, it will be impossible to mitigate the legal risks or engage in structured stakeholder engagement.
- **Third, businesses need to develop their own definitions:** no central authority or court is going to define the relevant terms, and particularly the relevant causal links, of the Guiding Principles (and related standards); businesses can and should play an active role in building corporate responsibility language of business and human rights by adopting clear and reasonable definitions of core terms—otherwise, the terms will be defined for them by stakeholders.

These issues are not theoretical. They have ever-growing implications for business risk and the practical implementation of effective corporate responsibility strategy. We hope to use this platform to explore those implications, and practical ways to address them.