

HANDBOOK GUIDE

on BUSINESS and HUMAN RIGHTS.

Embracing the **UN** Guiding Principles.

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Embracing the UN Guiding Principles. Handbook-Guide on Business and Human Rights.

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TABLE OF CONTENTS

Pág.

Introduction	06
--------------	----

1 Cause and effect of the Guiding Principles. Towards obligatory respect for human rights.	07
--	----

2 The main contributions of the Guiding Principles to the defence of human rights in economic activities.	13
--	----

3 The Guiding Principles in detail: the specific obligations to Protect, Respect, and Remedy.	19
3.1 Proteger	20
3.2 Respetar	26
3.3 Remediar	35

4 Every actor before the Guiding Principles. Responses to business-related human rights risks and impacts.	41
4.1 Estado	42
4.2 Empresa	45
4.3 Sociedad civil y personas afectadas	48

5 Reflections on the implementation of the Guiding Principles. From today onward.	51
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Other documents on the Guiding Principles.	53
--	----

Notes.	56
--------	----

It is a fact that businesses enterprises have become development actors in the 21st century. They have significant capacity to create jobs, innovate, and create opportunities for development.

However, there are also risks of adverse impacts associated with certain business activities and practices. In an increasingly globalized world, it is necessary to enhance the positive impacts and minimize the adverse effects of business activity through global rules. This idea is at the core of the new international standards developed to address the globalization of economic activities and their effects, in order to protect and guarantee respect for human rights. The need to congregate all social agents involved in managing the human rights impacts of business activities has meant that State, business enterprises, and civil society, in general, have established effective rules of the game and adequately promote enforcement.

The Spanish Agency for International Development Cooperation (AECID) has supported this process in line with its ultimate aim of contributing to sustainable human development, poverty eradication, and the full realization of rights. It has done so in particular through its “inclusive economic growth” line of action, under the 2013-2016 Master Plan for Spanish Cooperation. It has thus promoted the implementation of the most recent normative development on this issue: the United Nations Guiding Principles on Business and Human Rights (2011), the result of the efforts of the team led by former Special Representative of the Secretary-General, John Ruggie.

Colombia has been designated a priority country for cooperation from the Spanish government. In the Country Partnership Framework (MAP 2011-2014) between both countries, Spain committed to “contribute to strengthening the rule of law for conflict prevention and peacebuilding, through projects to promote sustainable human development, gender equality, institutional strengthening, citizen participation, and assistance to address the effects of violence.” One of the components of the MAP is Business and Human Rights, which demonstrates its commitment and support to the implementation of the Guiding Principles in Colombia.

In this context, AECID is pleased to reiterate and renew its commitment to support the formulation of a National Human Rights Policy in Colombia and, in particular, the chapter on business activities. We also wish to continue to support activities related to knowledge creation, awareness-raising, training, and technical assistance, and especially the realization of the Guiding Principles, as a way to find common solutions in the areas of protection, prevention, and the full realization of human rights.

The publication “Embracing the UN Guiding Principles. Handbook-Guide on Business and Human Rights” is one of the final outputs of the project “Training and Dialogue on the business and human rights framework in Colombia”, implemented in 2012 and 2013 with funding from AECID and the collaboration of the Colombian government’s Presidential Program on Human Rights and International Humanitarian Law (IHL).

This document transcends the national experience and is intended to be “replicable”. It is an easily comprehensible introduction to the Principles that facilitates the implementation of this new international norm by all countries, with concrete measures and in coordination with national legislation. The document encourages States, business enterprises, and civil society to work together to protect and remedy human rights abuses linked to business activities.

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INTRODUCTION

The “Handbook-Guide on the United Nations Guiding Principles on Business and Human Rights: A Gateway” is the most recent document produced by Sustentia Innovación Social, in the framework of the project “Training and Dialogue on the business and human rights framework in Colombia”. This project is funded by AECID and implemented by Sustentia Innovación Social and Fundación DIS.

Both the wording and the content of this Handbook-Guide make it a global document that can facilitate the understanding of the UN Guiding Principles (GP) and enable their rapid and effective implementation. This document calls attention to the fact that the level of consensus and legitimacy achieved with this UN document represents a great opportunity. It also underscores the importance of the effective implementation of the Guiding Principles.

The implementation of the GP will require generating the means and materials to make them known them to States and business enterprises, as well as to those for whom the “Protect, Respect, and Remedy” Framework was actually designed: the rights-holders.

This document discusses the major milestones, challenges, and contents of the GP and explains the expected results of their implementation. It is intended, therefore, to facilitate implementation, in a way that is comprehensible, motivational and that resolves the questions and difficulties encountered.

This Handbook-Guide contributes to the effective implementation of the Guiding Principles.

“Training and Dialogue on the business and human rights framework in Colombia”, an AECID project implemented by Sustentia Innovación Social and Fundación DIS.

Sustentia Innovación Social, together with Fundación DIS, implemented the project “Training and Dialogue on the business and human rights framework in Colombia 2012-2013”. The project was carried out in the cities of Bogotá, Cali, and Medellín. The purpose of the project is to provide support to build the capacity of the productive actors in Colombia to implement the Business and Human Rights Framework and the Guiding Principles, as well as to help define and promote the responsibilities of each actor in this process in Colombia. Approximately 120 people from government, businesses, civil society organisations, academia, and international cooperation agencies in the country participated in this project.

The initial training phase sought to facilitate the rapport between the different actors and joint reflection on the “Protect, Respect, and Remedy” Framework and the Guiding Principles, by providing on-site and online technical training and promoting debate and reflection.

Based on the construction of a common technical vocabulary and knowledge, the participants joined two technical Working Groups (WG) to discuss the tools necessary to comply with the Guiding Principles, in both the public and private spheres. The work of the two groups also produced guidelines for the practical implementation of the Guiding Principles in the Colombian context. This is all contained in the final document “Training and Dialogue on the business and human rights framework in Colombia: Working Group Discussions and Conclusions (WG1 and WG2)”. This document was presented to the Colombian government’s Presidential Program on Human Rights and IHL as input for the formulation of the comprehensive policy on human rights and IHL.

The Handbook to the United Nations Guiding Principles on Business and Human Rights: A Gateway is one of the final outputs of this project and is published with the intention of becoming a comprehensive guide to the practical and successful implementation of the UN document.

01

Cause and effect of the Guiding Principles. Towards obligatory respect for human rights.



The basic obligation of all economic activity to protect and respect human rights (HR) has changed significantly in the past twenty years, in terms of regulation and the conduct of business enterprises. The past two decades have been crucial, as shown by the fact that during this period stakeholders have progressively sought ways to meet their responsibility to respect human rights.

Business and human rights became implanted on the global policy agenda in the 1990s. This issue gained increasingly greater relevance for several reasons, related primarily to the dramatic globalisation of the private sector and the corresponding rise in transnational economic activity. The increased adverse human rights risks and impact of these practices heightened the interest of society in protecting HR, of the business sector in respecting HR, and, consequently, of States and international agencies in guaranteeing the realisation of these rights.



A result of this growing interest was the “Norms on Transnational Corporations and Other Business Enterprises”ⁱ, drafted by the former UN Commission on Human Rights and published in 2003. Essentially, these norms sought to impose on companies the same range of obligations of human rights duties that States have assumed

under international law. The Norms were unsuccessful due to lack of consensus among the stakeholders and never had the support necessary to effectively protect HR in environments affected by business decisions and activities.

Since then and until 2011, States, business community, and civil society embarked on extensive discussions and debates in defence of HR. John Ruggie, the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, attempted to compile the conclusions of this process, first in the UN “Protect, Respect, and Remedy” Framework (2008)ⁱⁱ and then in 2011 in the “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy Framework”ⁱⁱⁱ (hereinafter, Guiding Principles).

Unanimously endorsed by UN Human Rights Council Resolution 17/4, the Guiding Principles is a document that establishes responsibilities and provides guidance for effectively implementing the previously approved international framework, with the purpose of preventing and addressing the adverse human rights impacts of business activity. A Working Group was established, which is still operating today, charged with promoting the GP dissemination and implementation, on one hand, and the identification and exchange of best practices, on the other.

The process leading up to the adoption of the Guiding Principles by the UN Human Rights Council was marked by an increasingly broad consensus reached as a result of extensive consultations by the team of the former Special Representative, both for the elaboration of the UN Framework^{iv} and for the Guiding Principles, through meetings, online consultations and public

presentations^v. The debate and socialisation undertaken during this process has had a decisive impact on the level of legitimacy of the resulting document and the commitment to incorporate and develop the guidelines in national regulations and international initiatives^{vi}.

What are the Guiding Principles?

The Guiding Principles should be read as a set of guidelines agreed by the international community, which materialise in more concrete national laws and international and multilateral agreements. They are based on existing international law and practices to protect, guarantee, and realise human rights in the context of business activities. The Guiding Principles contain the explicit obligation to protect, respect and remedy, under existing international human rights law. They are a group of clear universally applicable guidelines, integrated into a single coherent and inclusive, individual and collective, whole, but that at the same time identify weaknesses and aspects that could be improved in the future.

This universal nature, however, does not imply that they are a standardised solution to addressing human rights challenges in all countries, in every business enterprise, and in all contexts. According to the former Representative, the Guiding Principles are not intended as a “toolkit” to be applied equally in all cases. Instead, given the heterogeneity of business activities and country contexts, it is understood that there is no “one size fits all” when it comes to means of implementation.

Thus, the Guiding Principles are not themselves binding but instead assemble and interpret the human rights standards already set out by international law, with their mechanisms to monitor implementation, complaints, sanctions, and judgments. The GP establish guidelines for compliance in the context of the relationship between business and human rights. They do not create new obligations nor are they a new normative framework. Therefore, they do not include a system of sanctions or penalties for non-compliance. They do recognise, however, that these penalties could refer to a breach of relevant international law. However, they do point to the need to formulate laws, norms, and international agreements that are binding on the States, as a way to exercise their obligation to effectively protect against human rights abuses by business enterprises and guarantee access to justice by the affected individuals.

Thus, the GP constitute a baseline on which to continue building, which is why it does not cover all problems related to human rights and business, nor does it provide all of the solutions. It does, however, interpret, specify, and explore existing responsibilities and obligations of business enterprises and the State under international law, without creating new laws or restricting existing legislation.

What rights must be protected and respected under the Guiding Principles?

In a 2008 report, John Ruggie provided “a summary of the scope and types of alleged human rights abuses committed by business enterprises in a sample of 320 cases between February 2005 and December 2007”. After analysing the data, the report concluded that all human rights can be affected by business activities⁵⁰.

The complaints of abuse were examined in light of the right or rights violated, referring to following norms which served as a point of reference for both the Framework and the subsequent Guiding Principles:

- The International Bill of Human Rights, which includes:
 - The Universal Declaration of Human Rights
 - The International Covenant on Civil and Political Rights (ICCPR)
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - Two Protocols
- The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work

Also taken into account were complaints related to cases of corruption and environmental impact, as both affect the enjoyment of HR.

The Guiding Principles (GP 3) identify the need for States to provide specific guidance to business enterprises on “how to consider effectively issues of gender, vulnerability and/or marginalisation, recognising the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.”

For this reason, special attention should be placed on the UN Conventions that refer to these groups and situations, and to those related to conflict and post conflict situations.

The following is a not necessarily all-encompassing list of the rights protected under international law:

Topics	Rights
I. LABOUR	
Working conditions	Right to favourable working conditions
	Right to work
Child labour	Prohibition of the worst forms of child labour
Non discrimination	Non discrimination
	Equal pay for work of equal value
	Freedom of religion
Freedom of association, union freedoms, right to collective bargaining	Freedom of association
	Right to join a trade unions
	Right to strike
	Right to collective bargaining
Fair salary	Right to fair remuneration
	Right to paid vacation
	Right to an adequate standard of living

II. SECURITY	
Forced labour	Eradication of forced or compulsory labour
Violence and coercion	Right to life, liberty and security of person
	No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
	No one shall be subjected to arbitrary arrest, detention or exile
Freedom of opinion and expression / no intimidation	Freedom of thought
	Freedom of opinion and expression
	Freedom of peaceful assembly and of association

III. HEALTH / ENVIRONMENT	
Environment	Right to a suitable supply of water
	Right to a clean environment/air
	Right to a standard of living adequate for the health and well-being of himself and his family
	Right to health

Topics	Rights
IV. PROPERTY / ECONOMY	
Housing	Freedom of movement and residence
	Right to housing
Livelihood	Right to an adequate standard of living
Property	Right to own property
Privacy	No one shall be subjected to arbitrary interference with his privacy
Food	Right to food
V. EDUCATION	
Education	Derecho a la educación
Children	Derechos de los niños
VI. POLITICS	
Corruption	Rights of the Child
VI. RIGHTS OF INDIGENOUS PEOPLES	
Consent	Right to self-determination, natural resources, right to individual means of subsistence
Culture	Right freely to participate in the cultural

How are the Guiding Principles structured?

The Guiding Principles rest on three pillars or blocks - Protect, Respect, and Remedy – and consist of 31 Principles (GP), each accompanied by a commentary. The three pillars or blocks each contain a section on Foundational Principles (which introduce and explain the obligation) and Operational Principles (which introduce and explain the measures to be adopted by the stakeholders to fulfil each pillar).

	FOUNDATIONAL	OPERATIONAL
PROTECT	GP 1 and 2	GP 3 to 10
RESPECT	GP 11 to 15	GP 16 to 24
REMEDY	GP 25	GP 26 to 31

The following chapter of this Handbook-Guide reviews the main content of each Principle.

02

The main contributions of the Guiding Principles to the defence of human rights in economic activities.



The Guiding Principles represent a milestone in a generalised global movement. They establish responsibilities, obligations, and guidelines for States and business enterprises to respect, protect, and remedy the human rights impacts caused by business activities. They should therefore be considered the starting point – not the end – of a process that seeks to effectively implement the Framework previously developed by the United Nations.

The Guiding Principles are the result of a process that has just begun

- They are a milestone in a multi-stakeholder process that has taken many years and that needs to be shaped and complemented with practical experiences, lessons learned, and successful implementation. They should lead to a tangible and measurable shift in the adverse human rights impacts caused by business activities.
- They are not a tool kit with detailed instructions for use. The implementation of the GP is what will give meaning to what was originally only a valuable set of obligations and responsibilities. They are a common baseline to which each specific stakeholder, be it State or business enterprise, should adequately respond with solutions that address the different specific contexts, needs, and expectations.
- They show, recognise, and describe a problem that exists worldwide, and establish a framework and guidelines for the implementation of different types of mechanisms whose common goal and obligation are achieve a culture and practice of prevention, mitigation, non-repetition, and remedy for the human rights impacts of business activities.



measures should be pre-emptive and reactive measures should only be considered if the preventative measures adopted have been unsuccessful.

- There are several ongoing debates on what actual contributions the Guiding Principles have made to date. Other debates will undoubtedly arise as more progress is made and new developments emerge. However, the Guiding Principles have from the beginning been clear about the obligations and responsibilities of both States and business enterprises to respect internationally recognised human rights. There are no new obligations; only an interpretation to clarify already existing ones.
- The document endorsed by the Human Rights Council instigates a process that should and must be participatory, and that should result in improvements both in terms of results of its implementation and of its own development.

The Guiding Principles as a point of reference for establishing the rules of a complex relationship

- The Guiding Principles set out an approach for both business enterprises and States that is systemic, preventive, proactive, and precautionary and – when this proves ineffective – provides for remedy. Both stakeholders must take measures to mitigate risks and prevent impacts before they occur. The implementation of the suggested

- However, States and business enterprises are not the only stakeholders. The ultimate objective of Guiding Principles is to address the gaps in public policies or in business practices that adversely affect rights-holders. Although the State and business enterprises are obliged to close this gap, those actually or potentially affected, organised or not, should play an active role in these processes to ensure the effectiveness of the measures taken to guarantee the realisation of their rights.
- Far from normalising the adverse human rights impacts of business activities, assuming that they are inevitable and that no options are available, the Guiding Principles take a precautionary approach and seek to prevent business enterprises from taking advantage of situations produced by existing gaps and uncertainty, and operating regardless of the adverse human rights impacts they may cause. Regardless of their stated commitment, the GP establish a framework of obligations and responsibilities for all actors.
- This approach is based on protection and respect for HR. It leaves no room for doubt about conflicting demands resulting from cultural or normative frameworks that contradict international standards or from normative gaps. The responsibility and obligation exist and the point of reference is the international human rights legal framework.

“The obligation to protect, respect, and remedy is explicit in the Guiding Principles and the point of reference is the existing International Human Rights Law”

- The final draft of the GP is sufficiently broad but at the same time sufficiently specific to clarify the obligations and responsibilities of all stakeholders, regardless of the country, the size, the sector, the capacities, the knowledge, the starting point, etc. Those less advanced must catch up to those more advanced, and the latter must improve.
- The measures proposed to meet the State obligations and the business responsibilities are interrelated. The Guiding Principles are a system and as such the actions of one stakeholder support and are necessary for the success of those of the others.
- As the system that it is, the advances made by some offer opportunities and possibilities for others to advance. If the State's implementation of the Guiding Principles is transparent, this allows civil society to oversee, participate, and contribute. If the State develops norms and mechanisms to improve access to justice, those affected can file grievances. If the business enterprise carries out human rights due diligence and provides effective remedy and communicates this to the public, the State can oversee compliance with the norms and civil society and those affected can participate in the preventative process or, where appropriate, gain access to grievance and remedy mechanisms.

The improvements required now and in the future

- The mandate of the Working Group on transnational corporations and HR includes, among others, the duty to “promote the effective and comprehensive dissemination and implementation of the Guiding Principles”^{viii}. However, the dissemination, increased capacities, dialogue, guidance, recommendations, etc. on the Guiding Principles should not be considered an extension of a theoretical or developmental stage, but should always be action and results-oriented. The success of the Guiding Principles should be measurable and reflect a real turn of tide in terms of the reduction, both in number and severity, of the adverse human rights impact of business activities. The legitimacy of this tool will be proportional to the speed with which it demonstrates its ability to protect and prevent human rights impacts and violations, and effective access to fair remedy to those persons.

“Although the Guiding Principles are not an international agreement or treaty, they should not be considered voluntary”





- The current mandate of the Working Group also clearly establishes that the group shall “explore and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas.” This shows that the final wording of the Guiding Principles fell short in relation to grievance mechanisms and access to remedy. Future developments should aim to provide solutions in line with the concept of comprehensive reparations that is being discussed globally, reflected in numerous sentences of the Inter-American Court of Human Rights and in international jurisprudence.
- The Guiding Principles revise the concept of extraterritoriality and expand and adapt it to this domain, taking an approach that suggests that this jurisdiction is not limited to the sovereign geographical territory of a country. The Principles outline that effective access to justice and remedy mechanisms should be established for those affected in countries other than those where the business is domiciled. They also expand the term ‘extraterritoriality’ regarding public policy and bilateral and multilateral agreements, which can affect business behaviour in the countries where the enterprises operate, when this conduct does not take place in the country of origin. Once again the Principles broaden the concept of territoriality and public instruments in order to find ways to improve the protection of human rights and increase access to effective remedy by victims, thus avoiding the unproductive and exhausting debate about national territorial sovereignty.

- After the United Nations published the “Protect, Respect, and Remedy” Framework in 2008, vulnerable groups and conflict-affected regions were designated as areas of special interest. The Guiding Principles refer frequently to conflict areas and the former Special Representative published a specific report on this problem^{ix}.
- This points to the need to work on projects that will allow a better understanding of the specific challenges that may be faced by the vulnerable groups mentioned in the Guiding Principles (indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families). Specific guidance should also be developed for States and business enterprises on respecting and protecting the human rights of these groups, just as was done for conflict zones.
- While prevention of corruption and protection of the environment are not human rights per se, it is possible to identify the rights that are severely and directly affected by both practices. For this reason, under the Guiding Principles States and business enterprises should also take proactive measures to prevent corruption and degradation of the environment, guaranteeing good governance and oversight.
- The Guiding Principles have been accused of lacking the capacity to modify behaviours, because they do not constitute a regulatory framework that is binding on the States, they lack an effective implementation plan, and they lack mechanisms for engaging and committing the stakeholders, monitoring their effectiveness, and punishing non-compliance. For this reason, some people have been demanding the Principles to evolve into a formal mechanism of recognition that entails obligations, punishes non-compliance by States, and sets out mechanisms for periodic monitoring, similar to those set forth in the human rights Conventions. Nevertheless, while they do not constitute an international treaty or convention and do not include this type of instruments, the Guiding Principles cannot be considered voluntary. They clearly set out the obligation of the States, their responsibility to protect human rights, to formulate laws and develop public policies that define the normative framework that rules business activities. This obligation is not merely reactive, but instead requires a preventive, normative, oversight, disciplinary, proactive approach that provides legal certainty.



03

The Guiding Principles in detail: the specific obligations to Protect, Respect, and Remedy.



PROTECT

States have the duty to protect against human rights abuses by third parties, including business enterprises.

The State has the obligation to protect and respect human rights and formulate policies to promote the full realisation of HR. These international human rights obligations are underpinned by international conventions and treaties, as shown by the research conducted by the former Special Representative and his team during his first mandate. The most recent UN conventions also explicitly contain the State's obligation to protect in relation to economic agents^x.

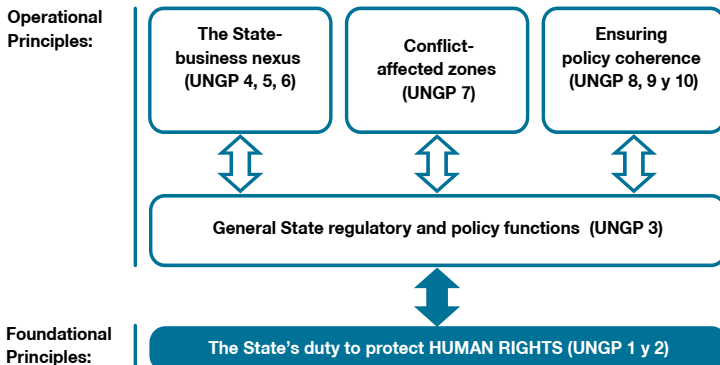
The duty to protect means:

- That States shall create protection frameworks that include distinct instruments (regulatory, political, agreements and guidance, among others), with a territorial and extraterritorial scope;
- That States shall provide business enterprises with tools to meet their responsibility to respect;
- That States shall provide those affected with mechanisms to guarantee access to remedy

“Protect”, the first pillar of the Guiding Principles addresses the following issues:

States must prevent, investigate, punish, and redress abuses through effective policies, legislation, regulation and adjudication.

The duty of the State runs from preventing the impacts to ensuring that they are redressed if they do occur. Each State must decide what type of policies, laws, regulations and legal measures are the most adequate, taking into account their own specific context (GP 1). The problems related to business and human rights that must be resolved by each State are specific for each case: the risk of violations of different rights, distinct stages of maturity, the legal and normative context, the natural resources available, the predominant economic sectors, the presence of foreign companies, the presence of its companies abroad, the relationship with other States, among others. There is no single silver bullet solution and each State must find its own.



States should set out clearly the expectation that all business enterprises domiciled in their territory, as well as those that operate outside their territory, respect human rights.

The State must set out the expectations that businesses respect human rights (GP 2), in all of their business activities (operations and investments), both in their home country and abroad. The GP do not specifically require the State to regulate extraterritorial activities, but they do specify that the State shall set out the expectation that businesses respect human rights “throughout their operations” and protect its jurisdiction or territory.

The solution to how the State can act outside of its territory is not a binary matter, and there are already several possible types of solutions to the controversy over “recognised jurisdictional basis” or “interference in the internal affairs” of other countries.

SIX WAYS TO APPLY EXTRATERRITORIALITY^{xi}

	Public policies	Regulation	Enforcement actions
Domestic measures with extraterritorial implications	1	2	3
Direct extraterritorial jurisdiction over actors or activities abroad	4	5	6

For example, the signing of international conventions, like the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or the United Nations Convention against Corruption, automatically implies that this type of crimes committed by individuals or companies abroad are under the jurisdiction of the contracting States, regardless of the nationality of the victims or perpetrators, in those cases in which they have not been tried in the country where the crimes occurred.

States shall adopt an adequate combination of measures for the different contexts: national and international, mandatory or optional.

The State must monitor the compliance and application of the established measures (policies, laws, regulations, and judicial measures), whether they are effective and adequate for the context, and whether they are complementary. The State should be alert to the need for possible corrective action and to the development of new measures to resolve emerged problems (GP 3).

“The solution to how States can act outside their borders is not a binary matter, and there are already several possible types of solutions to the controversy over “recognised jurisdictional basis” and “interference in the internal affairs” of other countries

All aspects of rights (non-discrimination, equal pay, health, etc.) should be linked to all the types of measures adopted by the State (laws, policies, conventions, etc.), and in any area in which it acts on and for business enterprises: corporate law, stock market regulation, export and international trade frameworks, specific sectors, among others.

In each case the State should attempt to both enforce and provide adequate incentives to meet the responsibility to respect human rights. It should also provide effective guidance to business enterprises on how to comply and implement mechanisms to ensure compliance^{xii}.

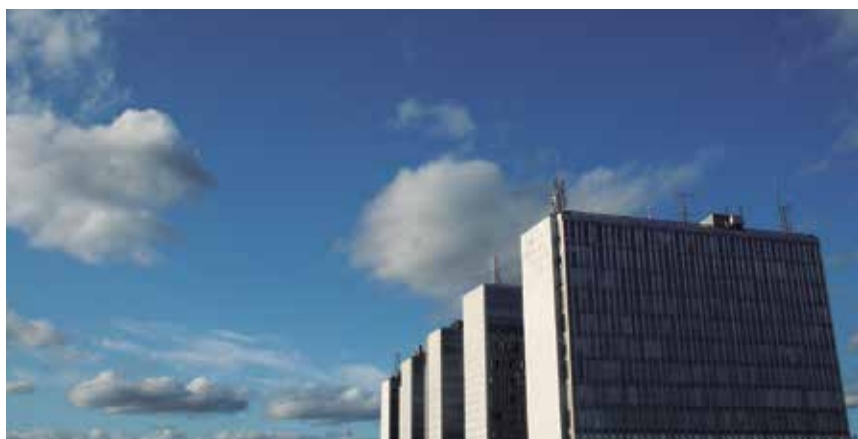
The State should define what it means for companies to respect HR, through norms, laws, recommendations and support. The guidance should be clear for the decision-makers in the business enterprises, as well as explicit, indicating expected outcomes and multiplying effects (e.g., development of standards, methodologies, sharing best practices). It should be particularly effective in relevant technical issues (e.g., human rights due diligence, mechanisms for access to effective remedy) and in how it addresses issues related to gender, vulnerability and/or marginalisation, indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

According to the Guiding Principles, national human rights institutions have an important role to play in helping States, business enterprises, and other non-state agents.

The State can highlight the relevance of communication as a protection instrument for business enterprises, especially in high risk situations. The business culture in relation to respect for HR, the way human rights issues are managed, and the way this is explained may be taken into account by the State when deciding about the criminal responsibility of businesses and monitoring compliance with laws and recommendations. The State is able to adopt different tools to promote this culture^{xiii}.

The State should protect itself from involvement in HR violations, guarantee full access to basic services, and promote behaviours and environments respectful of HR.

There are specific expectations for State-owned businesses or those that receive support and services from State agencies, such as export credit agencies, investment, insurance or guarantee agencies institutions, etc., and they are frequently held to the same standards of compliance as State agencies (GP 4).



The State must avoid any involvement in HR violations because of its relationship with business enterprises. It should take additional steps to prevent and eliminate this risk, which may include norms, rules, and mechanisms for oversight and control of its enterprises, organisations, and institutions. Human rights due diligence, for example, would be a suitable measure for ensuring that the risks and impacts of the decisions related to investments, financing, guarantee, insurance, etc. will be known, monitored, and controlled.

“The State should protect itself from involvement in HR abuses due to its relationship with business enterprises. It should take additional steps to prevent and eliminate this risk

These business enterprises, organisations, and institutions may be incorporated into the State structure, or be independently administered by the State. The level of State ownership and/or participation in the company may also vary. These concepts are useful for defining activities, responsibilities, and the measures to be adopted.

In addition, States should guarantee access to services that may impact the enjoyment of human rights (e.g., right to health, right to education, right to water). However, in the past few decades these services have not always been provided directly by States but are instead increasingly supplied by private sector companies. If a State concession impedes, obstructs or does not guarantee access to these services, this can constitute a human rights violation by the State that grants the concession. When taking this type of decision, States should assess the risks and the necessary conditions, and set out the expectation to respect human rights, establishing adequate mechanisms to guarantee access and oversight (GP 5).

Adequate management and control of public procurement serve for more than savings. Pricing principles and competitive circumstances are not sufficient. Public procurement practices can greatly influence the evolution of the business sector and, as commonly occurs in large companies, State conduct and procurement and investment criteria can serve as a point of reference to be replicated by others. States may establish selection criteria and relationship models for procurement and contracts to promote respect for human rights by business enterprises (GP 6). Public procurement can also support the development of their policies. In any case, the State should take care to ensure that their decisions are consistent with their human rights obligations.

All possible State measures to prevent and protect human rights in conflict-affected zones will be observed and applied.

The worst human rights abuses related to business enterprises most commonly occur in conflict-affected zones. Preventative measures are especially relevant in such cases, with special attention to both gender and sexual-based violence. The enterprise's home State should take particularly proactive and firm action, given the possible weak institutions and even ineffectiveness of the host State. This means taking a combination of all possible preventative measures in the home and host countries, monitoring their effectiveness, cooperation between States, and taking proposals from individuals and groups into account (GP 7).

States should address the gaps in their obligation to protect in conflict zones, by establishing coherent policies that affect business activity.

Other measures, in addition to the preventative measures set out in GP 3, can strengthen the protection measures adopted by States in conflict-affected zones. These include early warning mechanisms, providing information to business enterprises to inform decision-making in these contexts, and guidance and training to government staff that provide some sort of support the enterprises abroad, such as official export credit agencies, official insurance or

guarantee agencies, or financial development institutions. Human rights due diligence is again a necessary point of reference.

In addition to preventative measures, the Guiding Principles contain an annex with several additional specific measures that can be taken by the States and the international community against business enterprises that refuse to cooperate^{xiv} in protecting human rights in conflict-affected zones.

States must ensure domestic policy coherence when incorporating their positions, commitments, and international HUMAN RIGHTS obligations into domestic legislation.

At present there are gaps in coherence in both domestic public policies, such as in the case of States interaction with other States and with business enterprises. This may be to establish trade relations or in the context of business-related multilateral initiatives. There are inevitable tensions in all of these domains between the need to comply and the need to satisfy different types of expectations.

However, States have the duty to find formulas and allocate resources to achieve the necessary coherence to ensure that human rights obligations are known and fully integrated. Domestic policy coherence should be both vertical and horizontal. Vertical policy coherence entails translating international human rights standards into national, regional and local laws. Horizontal policy coherence means that those in charge of shaping business practices should be informed of and take human rights obligations into account.

In designing or assisting in the design of business-related measures and their possible developments, the State – or any of its departments and institutions – should constantly monitor coherence of its decisions and actions with its human rights obligations (PR 8).

The State is responsible for corporate regulation, securities, investment, and trade and export regulation, and should allocate sufficient resources to create a business environment that is compatible with respect for HUMAN RIGHTS.

In their efforts to establish parameters for business activity or guarantee opportunities for growth and development in the country, States sometimes find it difficult to reconcile a human rights agenda with policies to attract foreign investment or promote exports. This is, however, an obligation of the State under international law.

The State must take measures to address the concern of business enterprises and state agencies that the country's competitiveness or capacity to attract investment and business partners could suffer as a result of their HUMAN RIGHTS obligations.

In these cases State should take special care to protect domestic legislation and the regulatory mechanisms for improving the human rights and conflict resolution norms that are applicable to these agreements. States should find methods to protect their sovereignty and capacity to make decisions and take action (GP 9) while protecting and guaranteeing the realisation of human rights. The Guiding Principles include a reference document for negotiating investment agreements by the States^{xv}.

“The worst business-related human rights abuses frequently occur in conflict-affected zones. Preventative measures are especially relevant in these cases”

States should make efficient use of existing forums to share knowledge on the State's obligation to protect against human rights abuses in the business sphere and improve their capacity to comply adequately with its obligations.

In order to enhance the effects of State actions, they should actively seek to extend these actions to the international institutions in which they participate (**GP 10**). States should collaborate in the implementation of joint measures to raise awareness among the population, build capacity, and resolve problems. International institutions, especially those that deal with trade and finance, should prioritise capacity-building and information sharing on best practices in business and human rights.



The ILO is a good example of this, as it has worked consistently on awareness-raising, oversight, guidance, and development of labour rights. Another relevant multilateral initiative is the OECD (Organisation for Economic Cooperation and Development), with its alignment of the Guidelines for Multinational Enterprises to the Guiding Principles, and its support of the National Contact Point concept as a non-state mechanism to ensure access to remedy. The International Financial Corporation has also incorporated important aspects of corporate responsibility to respect human rights into the 2012 updated edition of its Sustainability Framework. The HUMAN RIGHTS Council prepared a report on the way in which the entire United Nations system, including programs, funds and specialised agencies, can contribute to the promotion of the business and human rights program, as well as to the dissemination and implementation of the Guiding Principles.

Prevention turns out to be an essential ally once again. Thus, analysis and consideration of the possible human rights impacts of any agreement at the earliest stages of the negotiation is crucial to ensuring that the State can meet and act in a manner consistent with its human rights obligations. In this way, the actions of a business enterprise may have a positive effect on development and growth in the host country, and contribute to improving realisation and respect for human rights. In this case both negotiating parties should know the activities of the business enterprises and their possible HUMAN RIGHT impacts.

RESPECT

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises and, as such, is enforceable. It is not optional.

While international human rights treaties generally do not impose direct legal obligations on business enterprises, the GP establish the responsibility of businesses to respect human rights as a “global standard of conduct for all business enterprises wherever they operate” **(PR 11)**.

This does not imply a change in the legal framework governing business enterprises, which continues to be international, national and local laws (and the legislation of the home country) applicable in the country where the business enterprise operates. However, national legislations have not always incorporated international human rights obligations, or translated or formulated laws obliging companies to respect HR, or have not fully done so. For this reason, the GP emphasize that corporate responsibility does not end with legal compliance of local laws and therefore cannot avail themselves of the State's failure to meet its obligation to protect human rights. The responsibility to respect human rights established under international law is not optional. It is enforceable regardless of the enterprise's commitment of to respect them or of the genuine gaps in protection in the countries where they operate, whether this is due to ineffective laws or incapacity of the State to guarantee these rights.

Business enterprises must take the necessary measures to ensure that their operations do not generate adverse human rights impacts. This is not simply a passive obligation. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation. The business enterprise that infringes on the human rights of others must remedy the consequences. It cannot compensate for the human rights impact caused by promoting the realisation of human rights or performing charitable acts elsewhere.





Business enterprises must respect all internationally recognised human rights.

According to the Guiding Principles, the International Bill of Human Rights and the Fundamental Principles and Rights at Work of the International Labour Organisation (ILO) contain core internationally recognised human rights. However, depending on their activities and the associated human rights risks and impacts, business enterprises may need to consider additional standards (PR 12).

Business enterprises can have an impact on all recognised human rights, but some human rights may be at greater risk than others in particular industries or contexts and will therefore be the focus of heightened attention. However, since contexts frequently change, business enterprises should periodically review their human rights risks.

The human rights of individuals belonging to certain particularly vulnerable groups or populations require greater protection. Special attention should be paid to international

legislation on the rights of these groups, which include: indigenous peoples, women, national and ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families. Business enterprises should also respect International Humanitarian Law standards in situations of armed conflict.

Corporate responsibility to respect human rights includes not only their own activities but those of the third parties with whom they have business relationships.

Business enterprises may be involved in adverse human rights impacts either through their own activities or as a result of their business relationships with partners, clients, suppliers, sub-contractors, among others. The following scenarios summarise the situations in which a business enterprise may be responsible for adverse human rights impacts:

a) **Causes a direct impact** through its own activities:

- | | |
|----------|---|
| Examples | <ul style="list-style-type: none">• Use of child labour in its own productive process or practices that do not respect labour rights.• Chemical contamination of drinking water sources in a community caused by discharges from its productive process. |
|----------|---|

b) Does not directly cause, **but contributes to the impact**, either through its own activities or as a result of its business relationships with other parties.

- | | |
|----------|---|
| Examples | <ul style="list-style-type: none">• Facilitate information to the government on internet users, which is then used to repress and persecute political dissidents, thus violating their rights.• Maintain a relationship with a business enterprise knowing that they use child labour or do not respect labour laws, taking advantage of lower production costs. |
|----------|---|

c) Does not cause or contribute, **but due to its business relationships** may be involved with human rights impacts caused by an entity with whom they have business relationships.

- | | |
|----------|--|
| Examples | <ul style="list-style-type: none">• Grant loans to a company for business activities that affect human rights, in breach of the loan agreement.• The use of child labour by a sub-contractor for services other than those provided by the business, in breach of the sub-contract terms. |
|----------|--|

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.

Nevertheless, the scale and complexity of the means through which enterprises meet their responsibility to respect human rights will be directly proportional to the real or potential human rights impacts. The size, sector, operational context, ownership and structure may be related to the severity of the adverse impacts. However, none of these factors increases or diminishes the responsibility of the enterprise to respect human rights (**PR 14**).

The severity of the impacts will be judged by the following factors:

- **The scale:** the gravity of the human rights impact and how it affects the dignity of the individual and his/her capacity to exercise other rights.
- **The scope:** number of individuals whose rights are affected.

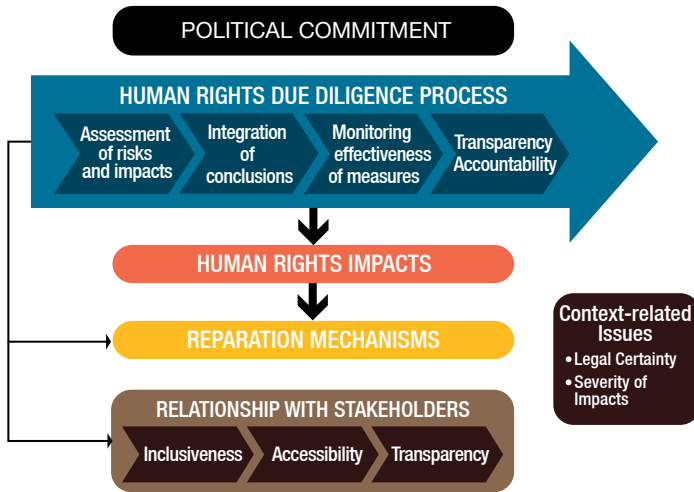
- **Irremediable character:** limits on the ability to restore those affected to the situation prior to the adverse impact.

Corporate respect for HUMAN RIGHTS reflect a management and continuous improvement approach

The responsibility to respect human rights should take a corporate management approach but should also recognise the uniqueness of HR. Businesses need to know and be able to show that they respect human rights, but merely claiming to do so is not sufficient. The decision-making processes of the business enterprise, through its policies and processes must incorporate criteria for respecting human rights. Embedding their responsibility to respect human rights is not something that can be done immediately, but rather is a management process that is continuously being improved (**GP 15**), but with respect for human rights as the minimum threshold and applying the precautionary principle.

The management focus must be an inclusive, accessible, and transparent system for all stakeholders, especially for those potentially affected. It consists of the following components:

- A **policy commitment** to respect human rights.
- A **due diligence process** on human rights.
- **Processes to enable the remediation** of any adverse human rights impacts



Respect for human rights requires a statement including a policy commitment approved at the most senior level of the business enterprise and communicated internally and externally.

This means a policy commitment to respect internationally recognised human rights in all contexts and throughout their operations. It is a strategic decision when planning and assigning responsibilities and resources that will build stakeholder trust (**PR 16**).

This policy commitment should embed human rights values into the management system that should permeate all policies and operational processes, i.e., it should inform all decision-making and ensure that all decisions are respectful of human rights. The policy commitment should also send a clear message within the enterprise, its business partners and other collaborators, such as suppliers or sub-contractors: managers understand respect for human rights as a corporate responsibility.

The policy commitment should also explicitly mention those human rights considered most salient for its operation (with specialised technical assistance from external and internal experts) and provide guidance on the functional areas that are considered most sensitive in terms of human rights. It should also contain an explanation of how the enterprise is implementing the UN Framework and the GP, mentioning the documents that describe the policy's human rights principles and the process of embedding and monitoring said policy.

“The political commitment to respect human rights is a strategic decision that conveys trust to the business stakeholders”

Every business enterprise should design its own human rights due diligence process in terms of its specific human rights risks and impacts.

Due diligence is an ongoing management processes consisting of a series of measures that should be undertaken by a reasonable and prudent enterprise in order to meet its responsibilities to respect human rights^{xvi}. These measures will depend on its particular situation: industry, operational context, size and other similar factors.

The purpose of human rights due diligence is to identify, prevent, mitigate, and address the adverse human rights impacts of business activities. It is not measurable in absolute terms, because it is not a single prescriptive formula. Each business enterprise should design specific measures for its own human rights due diligence process, in terms of its specific human rights risks and impacts (GP 17). The human rights impacts include those that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services rendered as a result of its business relationships.

This is an ongoing process that helps an enterprise know and address the changes in context that can vary its human rights risks and, therefore, should not be understood as a one-off undertaking. The difference from other business management processes is that it focuses on people and reflects the entitlement of every human being to be treated with dignity. Hence, the key to human rights due diligence is the need to understand the perspective of those potentially affected individuals and groups, through processes of direct consultation.

Human rights due diligence is intended to reduce the risk of conflicts and, therefore, of social media campaigns, administrative sanctions or judicial action against business enterprises involved in human rights abuses. It does this by allowing enterprises to show how were taken reasonable measures to avoid adverse human rights impacts, although this will not necessarily exempt them from their inherent responsibilities

Business enterprises should conduct regular assessments in order to gauge actual human rights risks and impacts.

Business enterprises should know their actual and potential human rights impacts they may be involved either through their own activities or as a result of their business relationships, in order to put its commitment to respect human rights into practice. The final objective is to understand the specific impacts on specific people in a particular operational context. Since human rights risks and impacts can change over time, the business enterprise should conduct regular assessments to gauge these impacts and risks **(PR 18)**.

This process should include substantive consultations with potentially affected groups or their representatives, designed to allow them to express themselves freely, without fear of reprisals, and taking into account their linguistic and cultural particularities and different forms of social organisation. These assessments should be carried out by human rights experts, comparing the information from distinct sources to ensure that their conclusions are reliable. The assessments should include:

- Identifying who may be affected
- Cataloguing the relevant human rights standards and issues, and
- Projecting the adverse human rights impacts that the proposed activity and associated business relationships could have on those identified.

“Human rights risks cannot simply be subjected to a cost-benefit analysis”

The main criterion for classifying risks is the severity of the potential human rights impacts, even those with low probability. Human rights risks cannot simply be subjected to a cost-benefit analysis, whereby the costs to the enterprise of preventing or mitigating an adverse impact on human rights are weighed against the costs to the enterprise of being held to account for that harm. It requires an in-depth analysis that applies the preventive and precautionary principle to the decision-making process.



The business enterprise should establish specific measures to integrate the findings from their impact assessments across internal processes and prioritise them appropriately.

Strategically, this implies including respect for human rights as a criterion in the enterprise's decision-making process and establishing adequate oversight and control processes. From a management perspective, this translates into using the findings of the human rights risk and impact assessment to analyse each process, designing actions to prevent and mitigate these risks, and establishing who is responsible for carrying out the mitigation or prevention actions. Ensuring that responsibilities and resources to address human rights impacts are assigned at the appropriate level and function within the business enterprise (**PR 19**) is essential to ensure the effectiveness of these measures.

Defining the specific measures to be taken by the enterprise, as well as of the urgency and importance of such measures, should take the following into account:

- **The severity** of the human rights impacts (according to their scale, scope and irremediable character) is a crucial variable for prioritising actions by level of urgency as well as by allocation of resources or assuming the costs deriving from such decisions.
- **Direct** (causes or contributes to) or **indirect** (by business relationship) involvement. In the former case, there is greater responsibility but it is also easier to take corrective measures. The context is more complex in the case of indirect involvement, because it is ultimately the third party who can take action to prevent the human rights impacts. The business enterprise can also take actions, but this depends on:
 - **Leverage**, which means the ability to provoke changes on wrongful practices of the party that is causing the impact
 - If it has the leverage, the business enterprise should exercise it. If it does not exercise it, it could be charged with complicity, given that it has greater responsibility for the impacts caused.
 - If it does not the leverage, it should seek to increase it. If this is not possible, it should assess the severity of the human rights impact and the importance of the business relationship and take this into account when deciding whether or not to end the relationship.
- **The importance of the business relationship**. A product or service that is crucial for the business activity could depend on this relationship. Even when there are no reasonable alternatives, the severity of the human rights impacts could inform the decision and its urgency, regardless of the importance of the relationship.

If the business enterprise decides to end the business relationship because of involvement in adverse human rights impacts, it should assess whether the decision to end the relationship has potential adverse human rights impacts and seek to prevent them.

The system for tracking measures to prevent human rights impacts is essential to the preventive and risk mitigation approach of human rights due diligence.

Following the logic of the human rights due diligence process, once a business enterprise takes action to prevent adverse impacts, it should set up a system to establish:

- The degree to which its human rights policy commitment is embedded.
- The degree of effectiveness of the actions taken to avoid adverse impacts.
- Stakeholder perception, especially of those whose rights have been affected, of the due diligence process.

The tracking system could be integrated into the existing management system of the business enterprise (grievance mechanisms, audits, employee surveys, indicators, among others). It should take into account the specificity of human rights management, given the importance of qualitative information to human rights risk and impact assessment, in particular the perception of rights-holders and affected groups (**GP 20**). In addition, the business enterprise should formulate specific quantitative human rights indicators to complement the information. Different types of indicators should be considered: process indicators (assessing the capacity of the organisation to manage human rights issues); incident indicators (recording non-compliance or evidence of non-compliance with specific human rights commitments); and human rights impact indicators (measuring the level of realisation of rights).

“Respect for human rights requires political commitment at the highest level and the corresponding internal and external communication.

The follow-up systems should receive information from internal and external sources. All sources should be compared to reduce bias and ensure credible findings.

The business enterprise should be transparent in its communication and accountability to enable stakeholders to evaluate its HUMAN RIGHTS performance.

The responsibility to respect human rights requires that business enterprises have policies and processes in place to know and report that they respect human rights in practice (**GP 21**). Reporting implies communicating, offering transparency and being accountable to potentially affected individuals or groups, in particular rights-holders and other stakeholders (NGOs, citizens, State entities, among others). This implies that they should:

- Communicate the measures taken to address adverse human rights risks and impacts.
- Be transparent about the impacts caused and the response to these impacts.
- Accountability exercises, comparing the results obtained to the human rights objectives and commitments.

In order to enable the stakeholders, especially the affected rights-holders, to evaluate the human rights performance of the business enterprise, the information should:

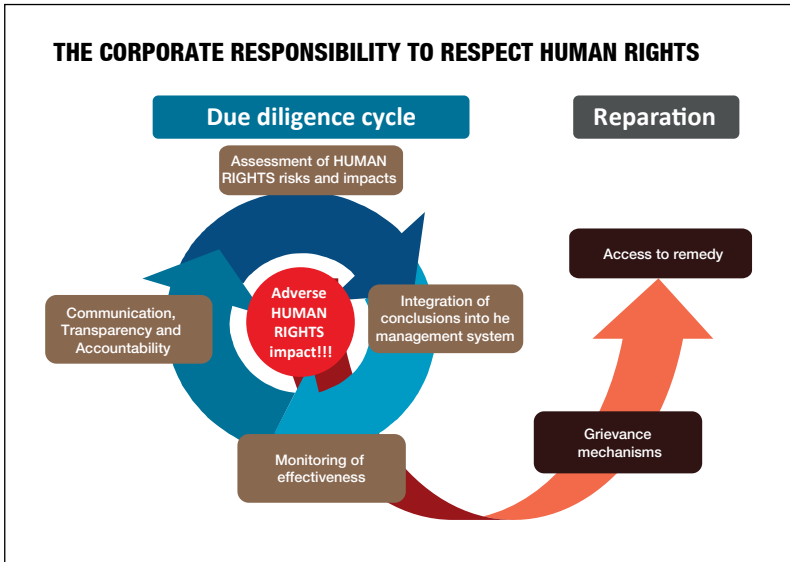
- Be tailored to the specific interests of each stakeholder, in terms of content, frequency, channels, format, language, and use of plain words
- Be sufficient, especially with regard to the entire human rights due diligence process: risk identification and assessment, measures taken, results of indicators, etc.
- Not violate other rights, such as personal safety, privacy, or legitimate business confidentially requirements.
- Provide an accurate picture of the real situation: material (from the perspective of the human rights impact), reliable, inclusive, comparable, neutral and balanced. Otherwise, it may be counterproductive to the purpose of building stakeholder trust.

When business enterprises have caused or contributed to adverse impacts, they should provide for remediation through legitimate processes.

Once human rights impacts have been identified, the business enterprise should provide effective remedy and mitigate associated future risks by establishing its own operational-level grievance mechanisms (**GP 29**) for affected individuals that meet the criteria for extrajudicial effectiveness (set out in **GP 31**).



If the business enterprise neither causes nor contributes to causing adverse impacts, but is involved as a result of its business relationships, the Guiding Principles do not require that the enterprise itself provide for remediation. It may, however, take a role in the reparation process (**GP 22**). If these impacts constitute alleged crimes, the business enterprise must cooperate with judicial mechanisms.



A difficult context does not exonerate a business enterprise from complying with international human rights law or from considering themselves liable for the risk of possible abuses.

Even though there are local legislations that do not require enterprises to act according internationally recognised human rights, they must seek formulas that will allow them to respect international HR standards, to the extent possible (**GP 23**). Businesses must also treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue. If they do not do so, they may at some point face criminal liability as a result of extraterritorial civil liability suits, extraterritorial legal proceedings or before the International Criminal Court. These abuses frequently occur in certain contexts of conflict (see **GP 7**), where there is greater risk of corporate complicity.

Business enterprises should prioritise actions to address the most severe human rights risks and impacts over those that are less serious.

In those cases in which the business enterprise has identified the actual and potential adverse human rights impacts or abuses caused by its activity and it is not able to address them all simultaneously, the enterprise must prioritize those whose impact is most severe. This prioritisation is based on an assessment of the scale, the scope and the irremediable character of the human rights impacts (**GP 24**). Severity is not an absolute concept, but is relative to the other human rights impacts the business enterprise has identified.

In view of the irremediable character of human rights, the speed with which an enterprise designs and implements preventive and remediation measures is key to ensuring their effectiveness.

REMEDY

“Remedy refers to both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact^{xvii}.”

After a long process of discussion and debate, the international community understood the need to take action with respect to the human rights risks and impacts caused by business enterprises. The Guiding Principles, and in particular the section on Remediation, provide an adequate instrument to facilitate access to effective remedy.

However, with the GP document the United Nations attempted to go one step further. They not only improve the effectiveness of the grievance mechanisms for impacted or violated rights, but they also highlight the need to prevent these impacts from occurring. In other words, they underscore the need for preventative mechanisms and adequate identification – and subsequent management – of risks, when they arise.

The group of processes referred to in the definition proposed by the UN in 2012 imply the existence of two obligations: the duty to protect citizens from human rights violations and, consequently, the duty to redress these abuses.

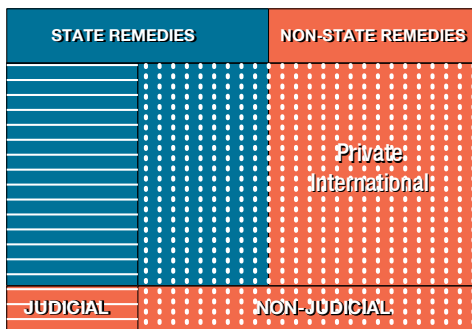
In both cases, the primary responsibility falls on the State, as guarantor of those individuals rights or groups whose rights have been violated as a result of business activities. As rights-holders they are entitled to remedy or reparation. States must take appropriate steps, through judicial, administrative, legislative or other appropriate means, to ensure that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy **(PR 25)**.

Notwithstanding the State's primary duty to protect, the GP further develop the responsibility of business enterprises to respect human rights throughout their activities as well as their responsibility to provide for mechanisms to prevent and remedy the human rights risks and impacts caused by their business activity.

It is important to recall that GP15 provides more information on how business enterprises should provide effective remedy. For example, it underlines that “a company cannot compensate for human rights harm by performing good deeds elsewhere.”

The objective of the GP is to focus on providing practical tools to provide effective remedy. In this way, they seek to remove the barriers commonly faced by those affected to gain access to remedy and to provide them with effective grievance mechanisms in cases of human rights abuses.

In order to address the above-mentioned problems, the Guiding Principles categorize grievance mechanisms according to their nature, differentiating between State-based and non-State-based -which can be simultaneous and non-exclusive- and between judicial and non-judicial, which can be public or private sector initiatives. They also include arbitration and other dialogue-based mechanisms.



Existing judicial mechanisms are insufficient to guarantee the protection of human rights.

For this reason the GP diagnose and identify specific aspects where States can improve, both during access to remedy and when investigating and sanctioning of business activities (GP 26), and those related to legal barriers, existence of corruption and obstruction and persecution of the activities of human rights defenders. These legal and practical barriers include:

- Lack of economic and technical resources (public and private)
- Financial, social and political disincentives to offer legal representation to victims (and other types of legal assistance)
- Different levels of protection for especially vulnerable groups
- State prosecutors lack adequate resources, expertise and support to investigate large-scale businesses
- Lack of adequate tools to file class actions and other collective action procedures
- Migrants face particular difficulties to accessing remedy (cases of denial of justice in both host and home States)
- Direct or indirect business conduct that limits access to remedy
- The way in which responsibility is attributed among members of a corporate group
- Problems related to the criminal liability of transnational corporations:
 - Reasons related to eligibility for extraterritorial jurisdiction
 - The need for national and regional responses
 - The possibility of creating a global criminal authority for Business and Human Rights

The controversy over the criminal liability of transnational corporations

(Related to **PR 2**)

The International Federation for Human Rights (FIDH) states that “multinational corporations do not benefit from legal personhood under international law. They enjoy a de facto immunity that protects them against all challenges. Invoking the civil liability of a multinational corporation can therefore be done only at the national level, either in the corporation’s country of origin or in its host country.”

Given the difficulties faced by individuals that seek access to remedy for human rights violations in the country where the abuse was committed by a transnational corporation, it is necessary to rethink both the possible enforcement of national legal frameworks in countries where the transnational mother companies are based and the international legal system.

While there are international courts that can receive cases of business-related conflicts, there is extensive debate regarding their jurisdiction terms and where this type of conflicts should be tried. Both extraterritorial jurisdiction and the need to strengthen national jurisdictions are key factors in the prosecution of human rights violations committed by transnational corporations and the need to allow for criminal liability of enterprises. This approach should not come as a surprise as it was developed in international anti-corruption conventions, which recognize corporate liability, and relates to incidents that occur in third countries, reinterpreting extraterritorial liability.

The United Nations calls on States to create a comprehensive system for remedy of business-related human rights abuse.

Taking into account the existing barriers to the implementation of judicial mechanisms, it is necessary to use non-judicial conflict resolution and grievance mechanisms. These alternative mechanisms should be adequately coordinated with judicial mechanisms (both in forms of sanction and compensation). They should function as a whole and meet the same criteria.

Thus, the State should provide non-judicial grievance mechanisms as a complement and supplement to judicial mechanisms, both State and non-State-based, in order to avoid the mentioned legal barriers. Harvard Kennedy School established a classification of six different types of process that may be used to address a grievance^{xviii}:

Information

Arbitration

Negotiation

Investigation

Mediation/
Conciliation

Adjudication

Recognizing the importance of court judgments, the GP provide for and systematise other existing mechanisms to increase access to effective remedy. Non-judicial mechanisms can be national or international, State-based or non-State-based (**PR 27**).

According to this Principle and in line with other UN areas, the State has the obligation to create and implement a comprehensive reparations system. To this end it should provide non-judicial State-based mechanisms and facilitate non-State grievance mechanisms. The main State-based non-judicial mechanisms are National Human Rights Institutions, the OCDE National Contact Points (both created to meet the country's international obligations), offices of the National Ombudsman, and Public Complaints offices.

The comprehensive nature of the system requires the full restoration of the obligations to respect and guarantee human rights, through remedies that aim to remove the consequences of adverse human rights impact as well as to guarantee non-repetition of human rights abuses, especially in cases of flagrant abuse. This will entail both monetary and non-monetary measures.

The Draft of the Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of human rights by Special Rapporteur, Theo van Boven, developed a classification of the different forms of reparation, applying the integrated approach. This classification includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

Subsequently, numerous Inter-American Court of Human Rights (IACHR) sentences have assumed the concept of comprehensive reparations. In these judgments the Court has ordered institutions to take measures to restore the victim to the original situation before the violation occurred. According to international jurisprudence, when this is not possible, the victim should be granted a fair monetary compensation (of a non-punitive nature, that repairs moral damages,

consequential damages, and lost profits), together with other reparation measures, such as measures of satisfaction and guarantees of non-repetition. The IACHR has noted its enormous reparative capacity, for example, through "(...) recognition of the dignity of the victims, relief of the human rights affected, and preventing repetition of the human rights violations"^{xix}.

"In its 2004 judgment in the case of *Molina Theissen v. Guatemala*, the IACHR began to group these measures together under the category "measures of satisfaction and non-repetition". In 2008, the Court extended the concept and consolidated them under "measures of rehabilitation, satisfaction, and non-repetition". There are two measures of this type, now grouped together as measures of satisfaction, that are almost obligatory under the concept of comprehensive reparations. These are the publication of the relevant parts of the judgment and a public act to acknowledge international responsibility".

Mediation and arbitration help to overcome existing judicial barriers.

In addition to implementing non-judicial mechanisms, the State should promote effective non-State-based grievance mechanisms (**GP 28**). A study by the team led by J. Ruggie identified several obstacles to this type of mechanism that the State could help to overcome, and proposed four framing prepositions:

- 1) The key role of mediation in addressing business/rights-holder disputes.
- 2) A preference for processes at the local level aimed at local solutions.
- 3) The need for rights-holders/stakeholders engagement in any process of designing a new "facility" in this field.

4) The particular interest in focusing new capacity on “business-community” disputes.

Specific measures were proposed within these framing propositions:

First Priority	Second Priority
Helping parties to assess their options for accessing remedy.	Promoting awareness of the nature and benefits of mediation.
Strengthening professional resources.	Strengthening the incentives for parties to use mediation.
Enhancing effective participation of parties.	Developing process standards and principles for mediation in this field.
Acting as a clearinghouse for case stories, experiences, and analysis.	Building the capacities of mediators in this field.

In those cases in which the parties opt for international mediation, it is recommended that this means of recourse have multi-stakeholder supervision, take a network-based approach -with central and assigned functions- and facilitate different options for institutional affiliation.

Effective remedy is not possible if business enterprises do not create their own operational-level grievance mechanisms (in connection with GP 22)

These mechanisms aim to prevent future conflicts by creating a specific channel for individuals (within or outside the business enterprise) to raise concerns when they are being adversely impacted, whether or not they constitute a violation of the company code (GP 29). The effectiveness of these mechanisms lies in that they meet the requirements of “integrated conflict management”: a commitment to oversight by senior staff, a systemic design, adequate alignment and organizational integration, availability of incentives, and the creation of adequate communications, training, and tracking and monitoring policies.

Business enterprises should participate in these mechanisms, in accordance with its human rights Due Diligence (as mentioned in GP 13), to detect and redress potential

“The corporate human rights policy should be fully embedded in the corporate culture, (...) enhancing Alternative Dispute Resolution (ADR) tools”

human rights risks in a timely and direct manner. For this reason, the corporate human rights policy should be fully embedded in the corporate culture, seeking to facilitate the relationships between stakeholders, especially rights-holders, and enhancing the Alternative Dispute Resolution (ADR) tools. These mechanisms transcend “internal complaint policies”, which enable employees to raise concerns about violations to company ethics and codes of conduct whether or not they adversely impact individuals.

These mechanisms may be created by the business enterprise or by a third party, thus constituting a shared mechanism. This is in line with multi-stakeholder initiatives (GP 30),

which require all business collaboration initiatives to create and implement effective grievance mechanisms. The following are some examples of this:

- a) **Initiatives that include corporate members:** Fair Labour Association (FLA), Ethical Trading Initiative (ETI), Voluntary Principles on Security and Human Rights

b) **Initiatives that exclude corporations:** Workers Rights Consortium (WRC)

c) **Initiatives that combine certification and membership:** International Council of Toy Industries (ICTI), Social Accountability International (SAI)

All non-judicial grievance mechanisms, both State-based and non-State-based, should meet certain criteria for effectiveness, especially if they are created in collaboration with or for corporate stakeholders (**GP 31**).

It is particularly important to include all stakeholders in the process of creating, management, evaluating, and improving the grievance mechanisms. The criteria for developing grievance mechanisms are the following:

Legitimate	Accessible	Predictable	Equitable
Transparent	Rights-compatible	Source of continuous learning	Participation and dialogue (operational-level mechanisms)

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes
- b) Accessible: being know to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a

grievance process on fair, informed and respectful terms;

- e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

04

Every actor before the Guiding Principles.
Responses to business-related human
rights risks and impacts.



Estate

From the perspective of principles, when preparing a response to its obligations under the Guiding Principles the State should:

- Guarantee the coherence of its policies and decisions, both internally and externally.
- Ensure that its Business and Human Rights “Action Plan” is the result of a participatory and inclusive process.
- Ensure that the processes used and the individuals involved in developing the Business and Human Rights Action Plan have the legitimacy required to ensure their effectiveness.
- Work with management transparency, making relevant and timely information available to all stakeholders and ensuring informed participation.
- Ensure that its Business and Human Rights Action Plan is understandable and accessible to all stakeholders, in particular rights-holders and those affected.

From the perspective of Content and Outcomes, the State should ensure that its response to the Guiding Principles (“Action Plan”):

- Explicitly promotes the implementation of the Guiding Principles, regardless of the format and assignment to a specific point within the State’s organizational structure.

- Based on established materiality and priorities (from the perspective of actual or potential human rights impacts), contains concrete and relevant instruments: laws, regulations, policies, mechanisms for investigation and oversight, punitive mechanisms and judicial recourses.
- Provides evidence of the identification and knowledge of the problems and the management gaps, their causes and measures adopted to address them. It should include measures to incentivise, sanction and establish penalties. This combination of incentives, punitive sanctions and penalties must effectively prevent human rights abuses.
- Contain measures to modify conduct and promote concrete changes. The measures adopted should run from prevention to access to justice and effective remedy, and have a territorial and extraterritorial scope.
- Set out the expectation that national and foreign companies operating within the jurisdiction of the State, as well as enterprises domiciled in the State that have transnational operations, respect human rights throughout their operations and in their decision-making, and in particular the State’s expectation that they implement effective human rights due diligence in the different contexts.
- These clear expectations of the State should cover the entire scope of business activity, referring to what it expects from mother companies and subsidiaries, suppliers and sub-contractors.
- Include measures that directly impact human rights (e.g., equality, non-discrimination, fair salaries, forced labour, freedom of association, health,

etc.) and economic activities (e.g., stock market regulation, export incentives, commercial registration, incorporation of companies, sector oversight, etc.), and establish a crosscutting relationship between both spheres in order to create a culture of respect for human rights.

- Provide capacities and resources to oversee the effective enforcement of laws and regulations, so as not to produce ineffective and unproductive accumulation.
- Provide capacities and resources to the judicial system and promote effective, judicial and non-judicial, State-based grievance mechanisms.
- Ensure that adequate legislation is in place to enable the judicial system to take action against business enterprises involved in human rights abuses and against those business enterprises and/or employees that have not implemented human rights Due Diligence, and ensure that others (State, those affected, civil society, etc.) have access to a complaint and grievance mechanism to raise concerns and seek remedy.
- Promote transparency in business enterprises, giving it the importance and value it deserves in overseeing compliance and implementation of human rights Due Diligence.
- Also, promote human rights Due Diligence by business enterprises, as a management tool with a preventative approach, ensuring that the human rights Due Diligence framework is established and operating effectively.
- The sanctions against corporations included in the Action Plan should be proportional to the degree in which the rights were affected, in addition to guaranteeing effective remedy for the victims.



From the perspective of Processes, the State should ensure that in preparing its response to the Guiding Principles (“Action Plan”):

- An analysis is made of the material aspects in relation to the at-risk or affected rights and groups, and establishes priorities related to the State’s duty to protect. The work and results should aim to address these aspects and ensure coherence with established priorities.

“The sanctions against corporations included in the Action Plan should be proportional to the degree in which the rights were affected, in addition to guarantee effective remedy for the victims”

- The “Action Plan” should be constantly improved on, but on the basis of precautionary and prevention principles and with respect for human rights as the minimum threshold for enforceable and expected conducts. The preliminary draft and future revisions should include sufficient and adequate measures to reduce human rights impacts until they are eradicated. This is a management approach, although the logic will always be prevention. When speaking of human rights there are no intermediate solutions.
- A baseline of the initial situation and the management gaps has to be established, and contains a system of indicators to measure progress and compliance.

- Leadership is invested in the appropriate agency and individual, with capacity, expertise, legitimacy and resources, and similarly for the team.
- All ministries, agencies, institutions or any other State actor are involved: National Ombudsman, credit agency, export agency, sovereign wealth funds, banking authority, office of the President and Vice President, etc.
- There is adequate representation and participation of stakeholder groups: business enterprises, civil society, academia and experts, rights-holders, those affected and victims, etc. They all have clear idea of the work team, the processes, and what is expected of their participation.
- All those involved have the knowledge and information necessary to understand the problem and engage in the grievance process on informed terms.
- A work plan and clear and transparent coordination mechanism exist, with clear milestones and intermediate outcomes to generate trust in the process.
- Although it is a national measure, bilateral and multilateral initiatives to promote the implementation of the Guiding Principles are also involved.
- The duration of the resulting “Action Plan” is established, as well as a procedure for review and evaluation.

Business Enterprise

The Guiding Principles urge all business enterprises to meet their responsibility to respect human rights, taking action to avoid infringing on the human rights of others and addressing the adverse human rights impacts with which they are involved. The business enterprise must take measures, overtaking legal compliance or the voluntary nature of this responsibility as an excuse to not take action. Taking adequate measures to comply with this responsibility raises many challenges for business enterprises.

- A policy commitment to respect human rights carries implications for the entire business model and, therefore, requires leadership by management to ensure effective implementation. Changing behaviours requires immediate action but with a strategic long-term perspective.
- The policy commitment is a decision which should not be conditioned on future economic returns. Human rights Due

Diligence contributes to the sustainability of business endeavours, but should be understood as an obligation. It should not be used merely as a business tool that is guided by objectives of a different nature. Viewing respect for human rights as a competitive market strategy, and expecting to obtain financial profits from it, is a serious legal and management error.

- The business enterprise should define a management system for human rights Due Diligence and access to remedy that is tailored to its own operational context. This will require a crosscutting approach that will affect all departments, services and geographic areas. The tasks of directing, ensuring coherence, coordinating and providing guidance to the process should be assigned to an individual or work team that will assume this responsibility.
- Achieving relatively effective human rights Due Diligence requires more than formal changes in policies, processes, and indicators or even the implementation mechanisms for consultation, grievance or risk assessment.



- Evidence of the effectiveness of this process should be based on results, the absence of human rights impacts, the identification and timely management of risks, the functioning of grievance and consultation mechanisms, and effective remedy for those affected. Special emphasis should be placed on the perception of the stakeholders of the process in which they participate, in particular the perception of those affected by human rights impacts.
- Incorporating respect for human rights into all corporate processes requires the allocation of resources to ensure that those engaged in the processes adopted the technical capacities and human rights expertise necessary to make the proper decisions.
- Business management tools (indicators, processes, complaint channels, risk assessments, etc.) are not directly transferrable to human rights Due Diligence. They must be tailored to respond to the singular purpose of preserving human dignity.
- When gross human rights abuses are identified, the business enterprises must apply the precautionary principle, seeking options to prevent and eliminate the risk. A prevention and mitigation approach is not sufficient to reduce serious and irremediable risks.
- The business enterprise should develop processes to relate to its stakeholders, especially affected stakeholders and rights-holders, that are based on recognition of their legitimacy and will allow them to speak freely. The results of these processes should serve as input for carrying out human rights Due Diligence.
- The business enterprise should guarantee the inclusive, legitimate, balanced and informed representation

of stakeholders, both those directly affected, organised or non-organised, and others, in the processes in which they participate (assessments, consultations, accountability exercises, etc.).

- Communications by business enterprises on the measures taken to address their human rights impacts should contain information that will serve to evaluate the response of the business enterprise: the results of indicators, the perception of affected communities, the objectives achieved, analysis of the effectiveness of the measures, etc. This type of information should not be subject to corporate considerations but should present a realistic picture of the performance of the business enterprise.
- Communicating about the human rights performance of the enterprise and including information on adverse impacts, results not achieved, and management errors will contribute to generating greater stakeholder trust, as long as this information is accompanied by the corresponding explanations and analysis of the causes and measures taken. This is more effective than presenting a perfect picture where there are barely any problems and all measures taken have been successful.

“Business management tools are not directly transferrable to human rights Due Diligence. They must be tailored to respond to the singular purpose of preserving human dignity”



- Operational-level grievance mechanisms are crucial for implementing human rights Due Diligence as well as for providing access to effective remedy. The business enterprise should employ the resources necessary to ensure that the grievances received are analysed with sufficient rigor to enable the identification of risks and impacts at an early stage.
- All cost-related criteria should be excluded when a business enterprise is establishing its responsibility after being involved in a human rights impact and the severity of the abuse.
- The process of providing reparations to those affected cannot be viewed as a negotiation to establish the amount of monetary compensation, but instead as a broader process that seeks to restore the dignity and rights of these individuals and compensate for the damages caused. The dialogue process enables the construction of trust-based relationships, which provides for greater certainty among the stakeholders.
- Business enterprises that operate in conflict-affected areas where the State is unable to protect adequate human rights protection need to collaborate with

the State - in both the home and host countries -, with civil society organizations and human rights defenders, and receive expert advice on the context.

Civil Society And Affected Stakeholders

- The Guiding Principles offer a window of opportunity for the global society. They are an innovative instrument for guaranteeing respect for human rights affected by business activities.
- This instrument gives civil society an important role in protecting human rights, together with business enterprises and the State. Rights-holders are given a leading role, but are not required to assume duties.
- However, this instrument must be considered a first step in the effective management, protection, and enjoyment of human rights. It is a useful and necessary step that can underpin future developments.

- Civil society plays a crucial role in demanding comprehensive reparations from the State, who in turn will require business enterprises to provide reparations and will monitor both compliance and coherence between all the different measures, both State-based and non-State-based.

Civil Society

- It is important to keep in mind that the measures provided under the Guiding Principles must be effectively implemented. The success of the measures in the medium to long term will depend on the speed and effectiveness of their implementation. Civil society plays a key role between the two stakeholders with legally binding obligations: the State and the business enterprise.
- The Guiding Principles include new instruments and guidance that support the work of civil society in defending the realisation of human rights, by providing international recognition of the importance and suitability of its role.
- Since this is a global instrument, civil society can enhance its efforts through international and regional networks^{xxi} in order to have a greater impact on the improvement and implementation of the measures proposed in the Guiding Principles.
- Each civil society organization should design an adequate strategy for action and impact, according to its priorities, interests, and capacities, within its own specific role in society. This strategy should be in line with those entitled to the rights that have been prioritised.
- Civil society can advocate for the protection of human rights in business activities in two spheres:
 - In the public sphere (Protect and Remedy):
 - The Guiding Principles constitute a bridge between the State and civil society, in order to harmonise the different roles of these two stakeholders in guaranteeing and protecting human rights in the business domain.
 - Influence the public policies related to business and human rights.
 - Demand effective monitoring of the performance of corporate human rights Due Diligence.



- Oversight and alerting authorities to cases of in compliance of corporate human rights commitments and responsibilities.
 - Apoyo técnico y económico a Technical and financial support to individuals whose rights have been affected by business activities and are filing legal claims.
 - Promotion and participation of State-based non-judicial mechanisms: National Human Rights Institutions, OECD National Contact Point, and intermediation before Public Complaints Offices.
 - Civil society plays a fundamental role in relation to the UN Working Group on Business and Human Rights, as it has valuable firsthand information that should be taken into account by the agency in charge of implementing the Guiding Principles around the world.
- o In the private sphere (Respect and Remedy):
- The Guiding Principles are designed to create bonds of trust between civil society and business enterprises, by working together to prevent and mitigate human rights risks, and providing redress for adverse human rights impacts.
 - Defending interests of corporate stakeholders.
 - Participating in the creation and implementation of specific human rights Due Diligence processes in each business enterprise.
 - Special protection of rights and representation of those individuals whose rights have been affected by business activities.

Those affected by business activities

- The Guiding Principles mean bringing decision-makers in the framework of Business and Human Rights closer to understanding the actual needs of rights-holders affected by business activities.
- The UN Resolution recognizes that those affected by business activities face barriers when bringing business-related human rights claims and offers some solutions, while it also urges the State and the business enterprise to find specific solutions to specific cases.
- Points directly at the lack of information of those affected and to the need for preventive action to support them in accessing both technical (legal information, legal representation, third-party arbitration) and financial resources.
- Adequate communication and corporate accountability regarding the measures taken by the business enterprise to guarantee specific rights could constitute a valid and innovative way to further protect the right to know of those affected.



| 05 |

Reflections on the implementation of
the Guiding Principles. From today
onward



The approval of the Guiding Principles on Business and Human Rights and the ensuing process should be understood as an opportunity, a favourable environment for continuing to seek a solution for a problem that has continued to grow over the past decades. We cannot say that they have been successful, however, until there is evidence that the GP have served to prevent and remedy the human rights impacts of business activities. This is an opportunity because the Guiding Principles have been accepted as a framework on which to work and gathers obligations and responsibilities agreed by many States and business enterprises, and a significant segment of civil society.

“States and business enterprises should prioritise those measures that aim to facilitate access of those affected to reparation mechanisms, in particular access to justice”

It is necessary to take advantage of this opportunity. If we do not do so, if time goes by without evidence of effective results, the Guiding Principles and the ensuing process will lose credibility, especially with civil society, together with its much of its legitimacy. This risk should be mitigated with bold determination by the different stakeholders, particularly State and business enterprises, taking a broader approach to achieve development and business models that promote economic activities that “do no harm.”

This process requires that State, business enterprises, and civil society agree to create relationships of trust, of recognition of the other, and put those affected and the realisation of their rights at the centre of the process. If does not, the process itself will lack any meaning. This is why it is imperative that those affected and their representatives play a key role in this initial phase of dissemination, exchange of ideas, and development of norms and management tools.

This Notebook-Guide has identified several aspects of the Guiding Principles that need to be further developed. Most important and urgent of all is the responsibility to provide effective remedy. States and business enterprises should prioritise those measures that aim to facilitate access of those affected to reparation mechanisms, in particular access to justice. If progress is made in this area, it would send a clear message about the level of commitment to the implementation of the Guiding Principles and thus build trust in the process among the other stakeholders, especially civil society.

Furthermore, international and regional institutions should take decisive steps to promote the process, to the extent that they commit to obligate their members States to advance in the Principles implementation, including creating mechanisms to monitor compliance and punish non-compliance.

There are high expectations about the possible outcomes of the Guiding Principles. Perhaps the importance of the Principles is less about what they say and more about the fact that they have placed the issue at the heart of the international debate. It is time to move forward, to respond with action, to avoid taking positions that are calculated to make changes that do not allow anything to truly transform.

This is an enormous challenge but today there are more open doors and more people who are willing to cross them. It is not easy, but it is possible.

Other documents

on the **Guiding Principles**

Basic documents:

Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations
A/HRC/17/31, March 2011

Protect, Respect and Remedy: a Framework for Business and Human Rights, United Nations
A/HRC/8/5, April 2008

Understanding the process that led up to the Guiding Principles:

United Nations. Office of the High Commissioner for Human Rights. Businesses Reports and other documents.

Reports by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises between 2008 and 2011, and subsequently by the Working Group on business and human rights
<http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>

Follow the process in the UN:

Working Group on human rights and transnational corporations

Website of the Working Group, consisting of five international experts, established by the Human Rights Council for a period of three years, with information on activities, reports, and works carried out in compliance with its mandate.

<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

Annual Forum on Business and Human Rights

Website of the Annual Forum in Geneva. Contains webcasts and official documents. Includes information on the Regional Forum on Business and Human Rights for Latin America and the Caribbean.

<http://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>

Learn about human rights and international treaties:

UN –International Human Rights Law

<http://www.ohchr.org/SP/ProfessionalInterest/Pages/InternationalLaw.aspx>

ILO – Labour standards

<http://www.ilo.org/dyn/normlex/es/?p=NORMLEXPUB:12000:0:NO::>

**Learn more
and update:**

The UN Human Rights Office provides updated documents and tools on its website on Business and Human Rights, including the Guiding Principles and the document “The Corporate Responsibility to Respect Human Rights. An Interpretive Guide.”

<http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>

The Business and Human Rights organization runs a Business and Human Rights Resource Centre, including three separate portals on the Guiding Principles, the Working Group, and on Tools and Guidance on Business and Human Rights.

<http://www.business-humanrights.org>

- <http://www.business-humanrights.org/UNGuidingPrinciplesPortal/Home>
- <http://www.business-humanrights.org/UNWorkingGroupPortal/Home>
- <http://www.business-humanrights.org/ToolsGuidancePortal/Home>



Notes

- ⁱ Human Rights Commission, E/CN.4/Sub.2/2003/12/Rev.2, August 2003.
- ⁱⁱ UN Human Rights Council, Protect, respect, and remedy: a Framework for Business and Human, A/HRC/8/5, April 2008.
- ⁱⁱⁱ UN Human Rights Council, Guiding Principles on Business and Human rights: Implementing the United Nation's "Protect, Respect and Remedy", A/HRC/17/31, March 2011.
- ^{iv} UN Human Rights Council, A/HRC/17/31, p. 4, par. 8. Notes that "by January 2011 the mandate had held 47 international consultations on the Framework, on all continents, and that the Special Representative and his team had made site visits to business operations and their local stakeholders in more than 20 countries."
- ^v UN Human Rights Council, A/HRC/17/31, p. 5, par. 12. Notes that "online consultations attracted 3,576 visitors from 120 countries and territories. Some 100 written submissions were sent directly to the Special Representative, including by Governments."
- ^{vi} Other international institutions, such as the European Union (EU) and the Organization for Economic Cooperation and Development (OECD), the Inter-American Development Bank (IDB), the Organization of American States (OAS) or the Association of Southeast Asian Nations (ASEAN) have dedicated their efforts to the issue of Business and Human Rights and use the Guiding Principles as a point of reference, albeit in different levels of interest. In 2011 the EU published its Corporate Social Responsibility (CSR) strategy, and the OECD published an updated version of its Guidelines for Multinational Enterprises. The IDB allocates funds through the Multilateral Investment Fund (FOMIN). The OAS developed a program on Corporate Social Responsibility (CSR) and the ASEAN announced an intergovernmental thematic study on adapting the UN guidelines. At the State level, the government of the Netherlands, United Kingdom and Colombia, among others, have informed about measures to implement the Framework and the Guiding Principles.
- ^{vii} UN Human Rights Council, A/HRC/8/5/Add.2, May 2008
- ^{viii} UN Human Rights Council, A/HRC/RES/17/4, July 2011
- ^{ix} Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises - Business and human rights in conflict-affected regions: challenges and options towards state responses, A/HRC/17/32, May 2011
- ^x See, as reference, Human Rights Council, A/HRC/4/35, February 2007 and A/HRC/4/35/ Add.1 April 2008
- ^{xi} See Human Rights Council, A/HRC/14/27, April 2010
- ^{xii} See for examples of these efforts by Denmark or Spain: Denmark to develop code of conduct for arms transporters, available at <http://humanrights.dk/news/news?doc=22236>; Inspecciones de trabajo sobre igualdad de género en la empresa (Spain), available at <http://www.europapress.es/nacional/noticia-rsc-inspecciones-trabajo-igualdad-genero-empresa-tendran-caracter-permanente-20130909103854.html>
- ^{xiii} Dodd-Frank Wall Street Reform and Consumer Protection Act 1504. Includes mandatory transparency requirements for mining companies listed in the United States, July 2010.
- ^{xiv} Business and human rights in conflict-affected regions: challenges and options towards state responses, A/HRC/17/32, mayo 2011
- ^{xv} Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators A/HRC/17/31/Add.3, mayo 2011
- ^{xvi} UA detailed guide on how to implement adequate corporate human rights due diligence processes can be found in Human Rights Translated: A Business Reference Guide, Office of the High Commissioner for Human Rights and others, Geneva, 2008.
- ^{xvii} Office of the High Commissioner for Human Rights (OHCHR), The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, New York and Geneva, 2012, p. 6
- ^{xviii} Rees, C and Vermijs, D, Mapping Grievance Mechanisms in the Business and Human Rights Arena. Corporate Social Responsibility Initiative Report No. 28, Harvard Kennedy School, 2008.
- ^{xx} See Rousset Siri, Andrés J. El concepto de reparación integral en la jurisprudencia de la Corte Interamericana de Derechos Humanos, Revista IDH, N° 1, 2011.
- ^{xx} Kovick, D. y Rees, C. International Support for Effective Dispute Resolution Between Companies and Their Stakeholders: Assessing Needs, Interests, and Models. Corporate Social Responsibility Initiative Working Paper No. 63. Cambridge, MA: John F Kennedy School of Government, Harvard University, 2011
- ^{xxi} An interesting document on this topic is How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy. A guide for civil society organisations, SOMO – CEDHA – CIVIDEP, 2012

