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Taking business beyond compliance

BUSINESS BRIEFING: UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPs)

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Background

Since June 2011, the United Nations Guiding Principles on Business and Human Rights (UNGPs) have become the global authoritative standard for preventing and addressing the risk of adverse human rights impacts linked to business activity. The UNGPs build on existing legal standards and practices. They apply to all internationally recognised human rights. Although not legally binding, the UNGPs formulate the human rights responsibilities of businesses and governments.

The UNGPs apply to all States and to all business enterprises (covering all sectors), regardless of their size, sector, location, ownership and structure.

The UNGPs are based on the three-pillar "***Protect, Respect and Remedy***" framework, which encompasses:[1]

- The state duty to ***protect*** against human rights abuses by third parties (including businesses), a duty which envisages that governments will develop policies and rules to regulate business conduct in relation to human rights;
- The corporate responsibility to ***respect*** human rights, a responsibility for companies to avoid infringing the rights of others and to address any adverse human rights impacts that occur as a result of their corporate activity;
- The need for greater access by victims to effective ***remedy***, a responsibility of both States and companies to facilitate access to mechanisms (both judicial and non-judicial) to identify and address business-related human rights abuse and provide effective redress for victims of those corporate human rights violations.

This framework was created by Professor John Ruggie, the UN Special Representative on the issues of human rights and transnational corporations and other business enterprises.

Why are the UNGPs important?

Legal reasons: Although the UNGPs are not legally binding, in many cases the responsibility of companies to respect human rights is reflected at least in part in national law or regulations corresponding to international human rights standards.

Reputational reasons: The UNGPs are supported and endorsed by governments, business, civil society organisations and individuals from all across the world. Many of the most important instruments and initiatives concerning the social responsibility of business have been updated in line with the UNGPs. Failing to meet the UNGP standards could result in public campaigns and criticism and business disruptions.

Financial reasons: The UNGPs offer a set of benchmarks for stakeholders to assess business respect for human rights. Stakeholders including consumers, shareholders and investors are more likely to put their trust in companies that show they respect and effectively manage risks to human rights, often leading to more business opportunities and greater profitability.

[1] Guiding Principles on Business and Human Rights, 2011. United Nations. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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Operational reasons: Companies that adopt the UNGPs show proactive commitment to their employees, the communities they work in and other stakeholders, often resulting in a stronger social license to operate. essential to a successful, sustainable business.

As a result, where business poses a risk to human rights, it increasingly also poses a risk to a company's own long-term interests.

What should companies be doing?

The UNGPs make clear that companies should assess and identify the risks of actual or potential human rights violations in their business activities and have in place:

- A statement of their policy commitment to respect human rights
- A human rights due diligence process to:
  - » Assess their actual and potential human rights impacts
  - » Integrate and act upon the findings to prevent or mitigate potential impacts
  - » Track their performance
  - » Communicate their performance
- Processes to provide or enable effective remedy for victims to ensure that they provide adequate redress when mitigation was not sufficient to prevent infringement, caused or contributed to by the company.

As well as a responsibility to prevent, mitigate or remediate human rights violations arising directly from its own business activities, a company is also responsible for third-party violations which they are capable of influencing through their business relations, e.g. with other business partners, such as suppliers, governments and customers.

Tips

- Prioritise the human rights that could be impacted.
- Assign responsibility, allocate financial resources and develop a clear plan, including timelines.
- Ensure that the board of a company is able to fulfil its responsibility to respect human rights. For guidance on the questions board members should ask senior management see: https://www.equalityhumanrights.com/sites/default/files/business_and_human_rights_web.pdf
- Engage with stakeholders regarding the UNGPs and communicate on a regular basis with them regarding performance.
- Consider industry-wide cooperation.
- Stay informed and up-to-date. Since 2011, each year in November or December the Annual Forum on Business and Human Rights takes place, which is open to all relevant stakeholder groups, including representatives of States, businesses and civil society and allows them to discuss trends and challenges in the implementation of the Guiding Principles and to promote dialogue, cooperation and sharing of good practices.
- For more detailed information on the UNGPs read 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' published by the UN Office of the High Commissioner: http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf
- For information on how the UNGPs apply to human trafficking read: http://clt-envirolaw.com/portfolio-items/applying-the-guiding-principles-for-business-and-human-rights-in-the-fight-against-human-trafficking/
- For bespoke guidance on implementing the UNGPs in your company contact info@clt-envirolaw.com

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Guiding Principles for businesses[2]

11.	Business enterprises should respect human rights. This means that they: • Should avoid infringing on the human rights of others and • Should address adverse human rights impacts with which they are involved.
12.	The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.
13.	The responsibility to respect human rights requires that business enterprises: **a** Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; **b** Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
14.	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 that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.
15.	In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: **a** A policy commitment to meet their responsibility to respect human rights; **b** A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; **c** Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.
16.	As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that: **a** Is approved at the most senior level of the business enterprise; **b** Is informed by relevant internal and/or external expertise; **c** Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; **d** Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; **e** Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

[2] Guiding Principles on Business and Human Rights, 2011. United Nations. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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17.	In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: **a** Should cover adverse human rights impacts 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 by its business relationships; **b** Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; **c** Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve.
18.	In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: **a** Draw on internal and/or independent external human rights expertise; **b** Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.
19.	In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. **a** Effective integration requires that: » Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise; » Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts. **b** Appropriate action will vary according to: » Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; » The extent of its leverage in addressing the adverse impact.
20.	In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should: **a** Be based on appropriate qualitative and quantitative indicators; **b** Draw on feedback from both internal and external sources, including affected stakeholders.

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21.	In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: **a** Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; **b** Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; **c** In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.
22.	Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.
23.	In all contexts, business enterprises should: **a** Comply with all applicable laws and respect internationally recognised human rights, wherever they operate; **b** Seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements; **c** Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.
24.	Where it is necessary to prioritise actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.
29.	To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.
30.	Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

Foundational principle

Operational principle: policy commitment

Operational principle: human rights due diligence

Operational principle: remediation

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