THE INSTITUTIONALISATION OF INITIATIVES TO PROMOTE BUSINESS RESPECT FOR HUMAN RIGHTS

ICIP Research
07

ICIP

THE INSTITUTIONALISATION OF INITIATIVES TO PROMOTE BUSINESS RESPECT FOR HUMAN RIGHTS

Daniel IGLESIAS MÁRQUEZ

ICIP Research
07

ICIP

The manuscript for this book was completed in September 2019

C. Tapineria, 10, 3a planta
08002 Barcelona
T. 935 544 270 / icip@gencat.cat
http://icip.gencat.cat/en

Calle 73, 10-10 of. 40300000 Bogotá
T. 571 2104845 / 57 31048386290
juan.cano@semillaconsultores.com

Design and Typeseting
Entitat Autònoma del Diari Oficial i de Publicacions

ISBN: 978-84-393-9993-3

SUMMARY

GLOSSARY[1]

ACCESS TO JUSTICE. Is understood as the people's capacity to look for and obtain individual or collective remedy through formal or informal legal institutions, related to the violation of their rights.

ACTUAL NEGATIVE HUMAN RIGHTS IMPACT. This is a negative consequence that has already occurred or is occurring.

CODE OF CONDUCT. Is a non-binding document establishing detailed minimum standards and expectations related to corporate conduct.

COMPANY. Any entity with for-profit motive which, independently of its legal form, carries out an economic activity on a regular basis. It can be constituted according to some of the following legal forms: private limited company, anonymous society, worker cooperative, cooperative society, among others depending on its location of registration or constitution.

CONFLICT OF JURISDICTION. This is the legal situation that occurs when two or more legal bodies claim to hear, directly or indirectly, a case with of international character. This can also occur between different legal bodies of the same State.

CONFLICT OF LAW. This is the legal situation that occurs when a case of international character is subject to two or more different regulations from different legal systems of sovereign and independent States.

CORPORATE SOCIAL RESPONSIBILITY. This is the company's voluntary integration of social and environmental concerns in its trade operations and relations with its partners.

1 The definitions and descriptions of the concepts in this glossary have been collected from different texts, interpretative guides and guidelines, edited by international organisations, civil society organisations and research centres addressing State and business obligations and responsibilities regarding the prevention and remedy of human rights violations in the framework of corporate activities.

CORPORATE VEIL. Legal doctrine according to which each member of a corporate group is considered a distinct legal entity which separately holds and administers its own liabilities. This means that a member of a corporate group is not automatically accountable for another member's liabilities, even if this entity is a wholly-owned subsidiary.

DUE DILIGENCE. This is a continuous management process a prudent and sensible company needs to carry out, based on its circumstances (such as the sector in which it operates, the context in which it performs its activity, its size and other factors) to fulfil its responsibilities regarding the respect for human rights. The process includes the integration of and the response to the results, achieved in the assessment, as well as the follow-up of these responses and the internal and external communication of how their impact is managed. This process covers the negative impacts the company might cause or to which it might contribute through its own activities, or which can be directly linked to its operations, products or services through business relations.

ENVIRONMENTAL DAMAGES. These are the adverse changes of natural resources, such as water, soil or air, harming the function of this natural resource which is to the benefit of others or of the public, or damaging the biodiversity or ecosystems. These damages can, in turn, affect people or their goods and properties.

EXTRATERRITORIAL JURISDICTION. This refers to the State's capacity, through different legal, regulatory and judiciary institutions, to exert its authority over agents and activities outside its territory. The States exert their extraterritorial jurisdiction, based on international legal regulations establishing a series of circumstances in which the States can exert their jurisdiction in an extraterritorial manner or establish laws that are effective beyond their borders.

EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS. The State's responsibility for its acts and omissions, inside or outside of its territory, which have an effect on the enjoyment of human rights outside its territory, as well as the obligations to participate in international cooperation and assistance for the implementation of human rights.

FORUM NECESSITATIS. The forum of necessity or forum necessitatis allows the courts of a State to hear an international lawsuit, even if there is no specific rule determining it as competent, with the only objective of avoiding a denial of justice.

FORUM NON CONVENIENS. The doctrine of the forum non conveniens is known and applied mainly by common law countries. This doctrine allows the initial judge to decline his jurisdiction because he considers his link with the alleged facts is not strong enough or when he believes that his decision will lack extraterritorial recognition and execution before other national courts of law.

GRIEVANCE MECHANISMS. These are non-judiciary procedures through which the individuals and the communities affected can seek remedy for alleged abuses by companies in matters of labour regulations, general human rights, environmental protection of safety rules. This is generally done before the company itself. These mechanisms can use adjudicative processes, based on dialogue, or other processes which are culturally appropriate and compatible with the concerned rights. In order for a grievance mechanism to be effective, it needs to be legitimate, accessible, predictable, equitable, transparent, compatible with rights and a continuous learning source.

HOST STATE. This is the State where the multinational companies invest and operate through their subsidiaries, a joint venture or another trade agreement. Part of the goods and services, produced by the companies, are obtained by means of activities, carried out in these States.

HUMAN RIGHTS VIOLATION. These are the conducts that obstruct, harm or threaten the rights of the human being, such as genocide, practices of enslavement or similar to enslavement, summary or arbitrary executions, torture, forced disappearance, arbitrary and extended detentions and systematic discrimination. Other types of human rights violations, including economic, social and cultural rights, can also be considered severe violations if they are serious and systematic. These acts of conduct can be performed by State bodies, directly or indirectly (by omission) in the exercise of their authority, or by individuals, companies and other agents.

HUMAN RIGHTS. Human rights are essential inherent guaranties for all human beings, with no distinction whatsoever of nationality, place of residence, gender, national or ethnic origin, colour, religion, language or any other condition. In general, they are provided for in laws, international treaties, customary international law, general principles and other sources of international law.

HUMAN RIGHTS-RELATED RISKS. These are the risks that corporate activities could cause one or more negative human rights impacts.

INTEGRATION OF THE RESPECT FOR HUMAN RIGHTS. This is the process at macro-level that guarantees that the company's responsibility to respect human rights is absorbed by or diffused through the organisation, in its culture and corporate values.

INTERNATIONAL CRIMES. These are the crimes, included in the Rome Statute of the International Criminal Court. They concern genocide ("acts perpetrated with the intention to destroy, in whole or in part, a national, ethnic, racial or religious group as such"), crimes against humanity (systematic and generalised attacks against civilian population, among which murder, enslavement, torture, rape, discriminatory persecution, etc.), war crimes (as defined in international humanitarian law) and crimes of aggression.

INTERNATIONAL HUMAN RIGHTS LAW. This is the set of State obligations, derived from conventional or customary international regulations, to take measures in specific situations, or to refrain from acting in a specific manner in others, in order to promote and protect the human rights and fundamental liberties of individuals or groups.

INTERNATIONAL JURISDICTION. This is a concept, derived from private International law, responsible for defining the jurisdiction of the courts of law of a specific country to hear a case of international character, for instance, when the parties have different nationalities or do not reside in the same country. In this case, the courts of law of several countries could be competent to hear the case; which is called a conflict of jurisdiction. The international jurisdiction rules fix criteria to determine the country whose courts are competent to hear a lawsuit of this type.

JURISDICTION. Jurisdiction is understood as the power of the State's courts of law to sentence and execute what has been sentenced.

LEVERAGE. This is the capacity of a company to have an influence in the modification of harmful practices from another party that cause or contribute to cause negative human rights impacts. A company should use such influence, in case it has it, to prevent or mitigate negative human rights impacts that are directly linked to its operations, products or services through its business relationships.

LIFTING OF THE CORPORATE VEIL. This is an exceptional legal technique, used in specific circumstances and with certain objectives, to correct and sanction actions in which limited corporate liability has been used in a fraudulent manner.

LIMITED LEGAL LIABILITY. The doctrine of limited liability states that the shareholders of a company cannot be considered accountable for the debts and liabilities of the company beyond the value of their investment. This doctrine is applied in the relation between parent companies and their subsidiaries.

MITIGATION. This refers to the measures adopted to prevent or stop illict practices by one of the parties that cause or contribute to a human rights risk or negative impact. The mitigation of the human rights risk refers to the measures adopted to reduce the probability of specific negative impacts occurring. The mitigation of the impacts of the adverse effects on human rights refers to the actions, taken by a third party, to reduce the extension of an impact and any remaining impact that would require remediation.

MULTINATIONAL OR TRANSNATIONAL CORPORATION. These are the companies that are constituted by a parent company, created according to the legislation of the country in which it is based, and operates beyond its national borders by means of direct foreign investment, through subsidiaries which are constituted as local enterprises, according to the legislation of the country of destination of the investment.

NEGATIVE HUMAN RIGHTS IMPACT. This is a negative consequence on human rights, due to an act which eliminates or reduces people's ability to enjoy their human rights.

PARENT COMPANY. The parent company is the one that holds direct or indirect control over one or several companies. A parent company can be the shareholder of other companies under its control, or can have acquired the shares of others. In general, it has its headquarters or domicile in the country of origin, where it takes operational decisions for the entire corporate group. In most cases, although not always, this concerns a country in the global north, from where it directly or indirectly exerts its economic, financial and administrative control over the other subordinate companies.

POLICY COMMITMENT. A document, establishing the corporate responsibility to respect internationally recognised human rights.

OVERRIDING MANDATORY PROVISIONS. This is a provision whose compliance is considered essential in a country in order to safeguard its public interests, such as its political, social or economic organisations, including compulsory implementation in all situations considered in its scope of application, regardless of the law applicable in an international lawsuit.

POTENTIAL NEGATIVE HUMAN RIGHTS IMPACT. This is an adverse effect on human rights that may occur, but has not occurred yet.

PREVENTION. The prevention of a negative human rights consequence refers to the measures adopted to ensure this consequence does not occur.

PRIVATE INTERNATIONAL LAW. Private international law has been defined as the set of rules and principles, established in each national legislation to provide regulation for international private situations.

PUBLIC POLICY DOCTRINE. This is an exception allowing to stop applying foreign law if its content is clearly incompatible with the forum's higher principles and values.

REMEDY/REPARATION. Refers to the processes that provide reparation to the victims of negative human rights impacts and the results that can neutralise, or compensate, this negative consequence. They can include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (either penal or administrative such as fines), as well as preventive measures against new damages as, for example, requirements or guarantees of non-repetition.

SEPARATE LEGAL ENTITY. Through this doctrine, the legal entities are legally separated and different from those of its owners. The separate legal entity is applied to the relation between parent companies and subsidiaries.

STAKEHOLDER ENGAGEMENT / CONSULTATION. This is an ongoing process of interaction and dialogue between a company and potentially affected stakeholders, allowing the company to hear, understand and adress the interests and concerns of the stakeholders, including by means of collaborative approaches.

STAKEHOLDERS. Persons, groups or entities who are or can be affected by corporate activities. For example, workers, shareholders, associations, labour unions, the competition, investors. The stakeholders must be considered as a fundamental element in the strategic planning of corporate activities.

HOME STATE. This is the State where the parent company has its address, has been registered, has its headquarters or performs the biggest part of its economic activity.

SUBSIDIARY COMPANY. Subsidiaries are these companies whose decision power directly depends from the parent company. They count with limited liability and act as separate legal entity from the parent company.

BUSINESS RELATIONSHIPS. These are the relations a company maintains with commercial entities of its value chain and with any other state or non-state entity (governmental or non-governmental), directly linked to its trade operations, products or services. This includes the indirect trade relations within its value chain above the first level and the shares, majority or minority, in joint ventures.

VALUE CHAIN. A company's value chain consists of the activities it performs to convert inputs into products by means of added value. The value chain includes the entities it maintains a direct or indirect business relationship with and which: a) provide products or services that contribute to the company's own products or services, or b) receive products or services from the company.

ABBREVIATIONS

CoP	Communication on Progress
CSR	Corporate social responsibility
DRC	Democratic Republic of the Congo
EMAS	Eco-Management and Audit Scheme
ESMS	Environmental and Social Management System
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FRA	European Union Agency for Fundamental Rights
Guiding Principles	Guiding Principles on business and human rights
IACHR	Inter-American Commission on Human Rights
IFC	International Financial Corporation
ILC	International Labour Conference
ILO	International Labour Organisation
ISO	International Organisation for Standardisation
NAP	National action plans
NCP	National Contact Point
OAS	Organisation of American States
OECD	Organisation for Economic Co-operation and Development
PMSC	Private Military and Security Companies
PSC	Private Security Companies
SEDI	Executive Secretariat for Integral Development
SMES	Small and Medium-sized Enterprises

FOREWORD

Traditionally, peace research always focused on the arms race, arms control and disarmament. Since then, however, the centres of attention have diversified significantly, coming to include the analysis of specific conflicts, post-conflict peace-building, the proliferation of weapons of mass destruction, new threats to security, the relationship between peace and democracy, transitional justice, the problem of organised crime, or the connection between poverty and violence.

On the other hand, over recent years private companies have become increasingly powerful at a worldwide level. Although they benefit society through bringing jobs, goods, services and tax revenues, they can have a negative impact on the societies in which they operate, particularly in contexts of armed and/or social conflict and, at the same time, they can be one of the causes of a conflict.

In this sense, private companies are an important factor in the escalation and the resolution of armed and social conflicts in at least three different ways: they operate in conflict situations, often being involved in the exploitation of natural resources; financial institutions' investments tend to flow towards the arms market, which is driven by intense commercial activity; while security matters, which were previously strictly associated with the state, are increasingly dealt with by private security companies. Therefore, it is essential for private companies and institutions to be recognised as essential key actors in the prevention and resolution of conflicts and in peace-building. An interdisciplinary perspective is needed to fully appreciate the causes, dynamics and consequences of companies' participation in armed conflicts, in abuses of human rights and in environmental damage.

The potential for serious human rights abuses by companies has given rise to a series of new international policy frameworks, codes of conduct and multi-stakeholder initiatives, as well as to national laws. Between 2005 and 2011, the United Nations developed a general framework, the UN Guiding Principles on Business and Human Rights, covering three key elements ("protect, respect and remedy") and describing in detail businesses' responsibilities.

The deployment of the UN Guiding Principles, generally through national plans on business and human rights, has been taken into account in documents of the European Union and the Council of Europe: in the Communication from the European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, in 2011, and in *Recommendation CM/Rec(2016)3 for Member States on human rights and business*, adopted by the Committee of Ministers of the Council of Europe in March 2016.

Other regulatory frameworks deal with specific sectors: the Kimberley Process Certification Scheme for "blood diamonds" (2002); the Extractive Industries Transparency Initiative (EITI), which reinforced the EITI Standard (2003, revised in 2016); the *Voluntary Principles on Security and Human Rights* (VP) (2000); the *Montreux Document* (2008) and the *International Code of Conduct for Private Security Service Providers (ICoC)* or the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (2011), among others.

In addition, the long standing debate on the need to regulate business conduct through international law received new impetus with the adoption in 2014 of *Human Rights Council Resolution 26/9*, which established an intergovernmental working group with the mandate to establish a legally binding mechanism for transnational corporations.

With these premises, and within the framework of the objectives laid down by the Parliament of Catalonia at the time of its creation, the International Catalan Institute for Peace (ICIP), in close alliance with the organisation Business and Human Rights (BHR), has worked to create a space for collaboration between researchers working in universities and other research centres and those who conduct research with NGOs and social movements, in order to continue to examine and comprehend these problems, focusing on the area of the interaction between business and human rights in conflict situations.

With this aim, a first international conference took place in October 2011 in Barcelona, focussing on the role and responsibilities of companies in conflict situations, as an emerging research agenda. The second conference, entitled "Companies in Conflict Situations: Building a Research Network on Business, Conflicts and Human Rights", took place in January 2013, once again in Barcelona. The aim of the conference was twofold: firstly, to present the

agenda of on-going research projects, and secondly, to consider the possibility of establishing an international research network on this subject, with an interdisciplinary perspective. Its main contribution would be to link the knowledge provided fundamentally by the academic world and non governmental organisations. The objective of the network is to reflect on the causes, dynamics and consequences of the participation of companies in armed conflicts, as well as on existing or potential responses from an interdisciplinary perspective. The third conference, on business, conflict and human rights, was held with the support of Amnesty International in London on 6 and 7 November 2014, and here the documents were approved for the constitution of the network. The Network on Business, Conflict and Human Rights (BCHR Network) was formally constituted at the fourth conference, held in Geneva on 19 November 2015, and since then it has continued to hold its annual conferences in that city: so far in 2016, 2017 and 2018.

During this long process the Network has published a monthly bulletin and has come into contact with the most highly regarded academic specialists as well as with the social organisations that carry out the most representative research activities in this field.

This process has also generated other activities organised by the ICIP, such as the international seminar held at the Parliament of Catalonia on 16 and 17 February 2017 entitled "Business and Human Rights: comparing experiences. A look at the extraterritorial perspective".

It has also promoted different ICIP publications, the most recent being that which includes this foreword.

The work published here is entitled *The institutionalisation of initiatives to promote companies' respect for human rights*. As its author, Daniel Iglesias, points out, the analysis has a double objective. On the one hand, to give an account of the initiatives to promote companies' respect for human rights that have been developed at the supra-state, state and sub-state levels, as well as those of a private nature that have been promoted at a sectoral or multisectoral level and, on the other, to facilitate the understanding of the scope and aims of these initiatives. An additional objective is to identify the actors who have the capacity to institutionalise this issue in their respective organisational frameworks and areas of action. It is a very useful tool for all

those people interested in this subject and will doubtless require updating in the future, given that new initiatives appear continuously.

Daniel Iglesias Márquez defended his doctoral thesis at the Rovira i Virgili University in September 2017. The subject of his thesis was the regulation of transnational corporations domiciled in the European Union in relation to their standards of behaviour and their responsibility for environmental damage caused within third party States. Throughout the whole process of preparing the thesis and since defending it Daniel Iglesias has worked on various aspects related to the issue of business and human rights and has published several scientific papers. This has given him the knowledge and rigour required to face up to this ambitious and significant work that I have the satisfaction of presenting with this foreword.

Antoni Pigrau
Member of the Board of Governors
International Catalan Institute for Peace (ICIP)

I. INTRODUCTION

Context

Since the seventies, the negative impact of business on the enjoyment of human rights and on the environment has triggered intense and inconclusive debates on several platforms. These debates have been focussing on how to regulate business activities and their supply chains to protect, respect and implement human rights and guarantee their liability in case of violations. This has resulted in States, international organisations, business and civil society organisations progressively elaborating public and private initiatives whose objective is to promote the respect for human rights in the and the development of the business' economic and commercial activities.

The unanimous adoption of the United Nations Guiding Principles on Business and Human Rights within the Human Rights Council in June 2011, establishing a global action platform for continuous progress in the international agenda in of business and human rights issues, led to a new paradigm in this area. The framework of the Guiding Principles refers to a wide collection of human rights, gathered in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight fundamental conventions of the International Labour Organisation (ILO). Moreover, they point out that companies, depending on circumstances, should respect the human rights of individuals belonging to specific groups or populations, more in particular, the rights of indigenous peoples, women, national, ethnic, religious and linguistic minorities, children, people with disabilities and immigrant workers and their families. On the other hand, in situations of armed conflict, companies should respect the rules of International humanitarian law.

Even though it is true that, since the seventies, initiatives have been registered with rules and standards for companies to respect human rights and protect the environment,[1] the Guiding Principles have been a boost to in-

1 Kirkebø, Tori Loven; Langford, Malcolm (2018). "The Commitment Curve: Global Regulation of Business and Human Rights". Business and Human Rights Journal, 3 (2), pp. 157-185.

crease efforts in the prevention and remediation of negative business-related human rights impacts, and therefore to increment, in turn, the number of initiatives created with this objective. In other cases, the Guiding Principles have been a reference for the revision and updating of existing initiatives to include the developments achieved, at the same time as the study and the understanding of the business and human rights issue at global, regional, national and local level continue to progress.

The initiatives promoting the respect for human rights in the context of business activities range from adopting laws to creating guidelines, standards, strategies, codes of conduct and principles, among others.[2] The universe of this type of initiatives has gradually expanded beyond those that already are globally accepted and recognised, such as the United Nations Global Compact, the OECD Guidelines for multinational enterprises or the ILO Tripartite declaration of principles concerning multinational enterprises and social policy. Therefore, this universe is built up by individual or collaborative initiatives, of political or legislative nature –of soft or hard law– with different objectives, scopes and standards, which have led to a complex regime of heterogeneous institutions and regulations which, sometimes, coexist and interact without any coordination, universal principles or adequate implementation mechanisms.[3]

Objective

The study at hand has been included in *the Business, conflicts and human rights* Programme of the International Catalan Institute for Peace (ICIP) which is responsible, among other issues, for the development of research, either in-house or triggered by this Institute, on proposed indicators and comparative studies of existing and future initiatives on the issue of business and human rights.[4] As such, this study has a double goal: (i) gather a signifi-

2 Kirkebø, Tori Loven; Langford, Malcolm (2018). "The Commitment Curve: Global Regulation of Business and Human Rights". Business and Human Rights Journal, 3 (2), pp. 157-185.

3 Rodríguez Garavito, César (2018). Empresas y derechos humanos en el siglo XXI. La actividad corporativa bajo la lupa, entre las regulaciones internacionales y la acción de la sociedad civil. Buenos Aires: Siglo Veintiuno Editores, p. 15.

4 ICIP (2017). "Program 4: Business, conflicts and human rights". Available at: http://icip.gencat.cat/en/arees-treball/empreses-conflictes-i-drets-humans/.

cant sample of initiatives for the promotion of business respect for human rights which have been elaborated at different levels of governance: supranational, national, and subnational, as well as those of private nature which have been developed at the sector or multi-sector level and (ii) contribute to the understanding of the scope and the purpose of the selected initiatives.

This collection does not only aim at identifying and disseminating the initiatives developed, but also at giving an overarching view of the actors with the capacity to institutionalise this matter from within their respective organisations and fields of action. On the other hand, the analysis also determines the mandatory degree of the proposed measures, thereby showing at what levels of governance some actions are predominant over others, as well as the complementarity between each one of them.

In this regard, the report has been outlined as a diagnostics and consulting tool that can be used in the legal, political, academic, corporate and student field, by civil society and professional organisations, in order to guide and identify standards encouraging the elaboration of initiatives, similar to the ones included in this report, or also to promote and improve the implementation of some of them and avoid the duplication of efforts, made by other actors.

In order to continue generating an approximation of the overarching view of the initiatives in the issue of business and human rights, the report at hand will be submitted to periodic revisions and updates, in order to integrate those initiatives that may have been left out during this first phase of the study, as well as to integrate future developments that arise on the issue and the possible contributions of people in the area of research, academia and civil society, among others, wishing to provide references of initiatives completing the mapping of this type of initiatives.[5]

Methodology and limitations

This descriptive-comparative report is based on a desk research that compiles a significant sample of existing initiatives on the promotion of human

5 References of initiatives or comments to complete and improve the report can be sent to: daniel.iglesias@urv.cat.

rights respect by the companies, launched at different levels of governance. Moreover, it includes observations and recommendations of international and regional organisations, addressed to the States, promoting or including goals for the elaboration of this type of initiatives. This allows examining and identifying customary legal and political techniques, used by States and international organisations to promote human rights in the framework of business activities.

The methodology used for this report is mainly based on collecting and consulting published information and material related to the topic. To a large extent, the report receives its input from research, conducted by different governmental organisations, from the private sector and civil society, analysing the political and legal measures and instruments that have been adopted to promote human rights respect in the development of business activities. As such, existing academic literature on the subject of business and human rights has been consulted, mainly books, monographs, specialised academic journals and other periodicals addressing the thematic axes of this investigation, in order to effectively map the initiatives which are the object of analysis.

The criterion used for the selection of the initiatives was that they contained the development or implementation of national, international, sector-related or universal standards for companies to respect human rights and the environment in their activities and supply chains.

Due to the large number of activities, developed in the field of business and human rights in recent years, the report does not reflect in an exhaustive manner all initiatives existing up to now, for limitations in time and space. In this sense, it is worth pointing out some considerable exclusions and omissions the report presents. In first place, those initiatives that had been individually and unilaterally adopted by companies have been excluded, since their large number makes it impossible to perform a detailed analysis on each of them in the framework of this study. In second place, with respect to the analysis of the national action plans on business and human rights, the plans have been neither addressed nor studied in detail, since other projects have already put particular focus on the detailed study of the content of these political instruments.[6] Finally, the report presents an obvious

6 See: "National Action Plans (NAPs) on Business and Human Rights". Available at: https://globalnaps.org/about/.

void with respect to existing initiatives on the African and Asian continent, which does not imply that they do not exist in these areas. This issue should be corrected during later phases of the investigation.

Structure

The present report describes in "index card format" some of the public and private initiatives that have been developed to protect, respect and implement human rights in the context of business activity. The structure is built up as follows:

- The first block is reserved for the initiatives, adopted at the supranational level, both in the framework of international as regional organisations, such as the United Nations, the Organisation for Economic Co-operation and Development, the International Labour Organisation, the European Union and the Organisation of American States, among others.
- The second block gathers some of the most significant legislative and political initiatives States have developed to prevent and remedy negative business-related human rights impacts, aligning themselves with their international obligations or with developments achieved in the area of business and human rights.
- The third block is composed of the initiatives that were launched in this field at the sub-state level, either regional or local.
- The fourth block refers to some sector-related initiatives. In this chapter, a distinction is made between mixed initiatives (those arising from collaborations between States, companies, business organisations and civil society) and private initiatives (elaborated by private actors for specific industrial sectors).

Index card content

The cards give a summary of the contents of the initiatives selected. Inside, keypoints are highlighted regarding the promotion of respect for human rights in the business context of each of the initiatives. The complete text

of the initiatives has not been reproduced, but rather an approximation of the content, encouraging the reader to deepen his knowledge on the topic.

The general content of each index card is the following:

- **Objective**: describes what the initiative under analysis intends to achieve.
- **Adoption process or background**: provides a short summary of the elaboration process or of the relevant facts, related to the initiative.
- **Scope of application** (material/personal): points out, on one side, the specific subject the initiative addresses and, on the other side, the companies to which the standards, included in the initiative, are addressed.
- **Contents or requirements for companies**: describes which are the main standards for companies to respect human rights or to protect the environment in their operations and supply chains.
- **Additional references**: provides bibliography, related to the initiative or to the main subject, associated with it.

It is useful to point out that, given the diverse nature and contents of each of the initiatives, some index cards have undergone slight modifications in their structure and contents, in order to provide a better understanding of the initiative under analysis.

II.

SUPRANATIONAL LEVEL

a. International organisations

i. United Nations

GLOBAL COMPACT

- Voluntary United Nations initiative on corporate social responsibility
- Adopted on 26 June 2000

Objective

The objective of the **Global Compact**[1] is for companies to voluntarily integrate its ten principles on issues of human rights, labour, environment and fight against corruption in all their operations and strategies. On the other hand, they also aim at facilitating the cooperation between participants in order to guide actions achieving the United Nations' broader objectives, including the Sustainable Development Goals.

Elaboration process

On 31 January 1999, UN Secretary-General Kofi Annan presented the United Nations Global Compact on the matter of corporate social responsibility during the World Economic Forum in Davos.

On 26 July 2000, the operational phase of the Global Compact was launched in the New York United Nations headquarters, with a call from the Secretary-General to business leaders and managers to join the Compact in order to synchronise the companies' activities and needs with the principles and objectives of the political and institutional actions of the United Nations, labour organisations and civil society itself.

1 The Ten Principles of the United Nations Global Compact. Availabe at: www.unglobalcompact.org/what-is-gc/mission/principles.

Scope of application

Material scope

The Compact defines a set of basic values in the area of human rights, working conditions, environment and the fight against corruption, which need to be implemented by companies in their activities and their spheres of influence. These values are derived from the Universal Declaration of Human Rights, ILO's Declaration of Principles regarding fundamental rights at work, the Rio Declaration on Environment and Development and the United Nations Convention against Corruption.

Personal scope

Participation in the Global Compact is open to any company with more than 10 employees, duly constituted in virtue of the national legislation in force, from any sector, committing to implement the principles in all its operations and spheres of influence, and to communicate on its progress regarding implementation.

Remain exempt from participation the companies that:

- Are the object of a United Nations' sanction
- Are included in the UN list of non-eligible providers for ethical reasons.
- Have their revenue coming from weapons, including the production, trade or transfer of antipersonnel landmines or cluster bombs.
- Have their revenue coming from the production or manufacturing of tobacco.

The commitment of a multinational company to join in the Global Compact does not only apply to its headquarters, but also to all its subsidiaries, local branches and offices in all the countries where it operates. It is important that this commitment is spread throughout the company's operations around the world. Nevertheless, if the subsidiaries wish to send a commitment letter to the UN Secretary-General directly to confirm their commitment, either together with the parent company or individually, they will be recognised

as participants and invited to actively join in Global Compact activities at global and local level.[2]

Global Compact Application Process

Step 1:
The companies need to complete the online form that appears on the Global Compact's website, also accepting the conditions of the law on data protection.

Step 2:
The companies need to prepare a commitment letter, signed by the CEO, addressed to the UN Secretary-General, expressing their commitment with:

i) the support and development of the United Nations Global Compact and its ten principles within their sphere of influence;
ii) the adoption of measures to support the broader development goals of the United Nations, particularly the Sustainable Development Goals; and
iii) the yearly submission of a Communication on Progress, describing the company's efforts to implement the principles and to support any specialised platform of the Global Compact.

Step 3:
To finalise the process, the companies need to send the application letter in Word or PDF format through the Global Compact platform.

Non-business organisations, such as academic institutions, corporate associations, cities and municipalities, civil society organisations, labour unions and organisations of the public sector can also participate in the implementation of the Global Compact's principles and in various mechanisms, including social networks, dialogue on policies, learning and association projects.[3]

- **Networks.** Several national and regional networks have been established around the world, aiming to implement the Global Compact principles in a local context through dialogue, learning activities and projects, and to give support to the outlining of quality assurances.

2 Subsidiary Participation and Communication on Progress. Available at: www.unglobalcompact.org/docs/about_the_gc/policy/UNGlobalCompact_SubsidiaryPolicy.pdf.

3 Non-Business Participation. Available at: www.unglobalcompact.org/participation/join/who-should-join/non-business.

- **Dialogue.** The Global Compact organises regional and international meetings, dealing with specific issues related with globalisation and corporate social responsibility.
- **Learning.** The Global Compact participants can carry out local and regional dissemination actions, contributing to the exchange of expertise, corporate practices, experiences acquired and lessons learned.
- **Cooperation projects.** Participants are encouraged to intervene in cooperation projects of the United Nations and civil society organisations, in order to support the development goals.

In 2018, the Global Compact counts with over 12,000 participants from 160 countries. The list of participants can be consulted at the following address: www.unglobalcompact.org/what-is-gc/participants.

Requirements for companies

In order to implement the ten principles, companies participating in the Global Compact are expected to adopt, support and discuss, within their sphere of influence, measures at operational level in issues related to human rights, working conditions, the environment and the fight against corruption.

Human rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights, within their sphere of influence.

This principle implies that the companies carry out due diligence processes to avoid human rights violations and address adverse impacts of their activities on these human rights. Therefore, the companies need to adopt complementary measures to make a positive contribution to the protection of and compliance with the respect for human rights.

Comprehensive human rights management needs to comply at least with the following elements:

- The assessment of human rights impacts caused by the company's activities and business relations.

- The incorporation of human rights in corporate policies, in order to integrate them across the company's relevant internal functions and processes.
- The adoption of measures to prevent or avoid contributing to cause negative human rights impacts.
- Establish monitoring processes to generate the necessary information for continuous improvement.
- The communication on progress through reports available both internally as externally.
- The companies need to compensate or participate in the compensation of negative human rights impacts they caused or to which they contributed.

Principle 2: Business should make sure that they are not complicit in human rights abuses.

The companies need to make sure that other companies that are part of the organisation's supply chain also comply with the principles of the Global Compact, in order to prevent being involved in any case of human rights violation, caused by another company, entity, government, individual or group.

We can distinguish three types of complicity in human rights violations:

- Direct complicity: when a company provides goods or services that it knows will be used to carry out the abuse.
- Beneficial complicity: when a company benefits from human rights abuses, committed by another company.
- Silent complicity: when the company remains inactive in the face of systematic or continuous human rights abuse.

In order to avoid complicity, the companies need to adopt preventive measures, like the following:

- Raise awareness within the company of known human rights issues within the company's sphere of influence

- Establish an effective human rights and due diligence policy to demonstrate all reasonable steps have been taken to avoid involvement in aforementioned violations.
- Identify those functions within the firm that are most at risk of causing human rights abuses.
- Privately and publicly condemn systematic and continuous human rights abuses.
- Continuously consult human rights aspects with stakeholders, both inside as outside the company.
- Assess the human rights impact an investment can cause in a community or region.
- Identify internal functional risks in post-investment situations, including the analysis of specific functions of purchasing, logistics, government relations, human resource management, health, safety and environment, sales or marketing.

Labour standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.

Businesses should not interfere in an employee's decision on his or her right to join associations and labour unions in view of his needs. Therefore, companies need to:

- Respect the right for all workers to create and join a union of their choice, without fear of intimidation or retaliation, in accordance with national law.
- Put in place non-discriminatory policies and procedures with respect to trade union organisation and membership.
- Provide workers' representatives with appropriate facilities to assist in the development of effective collective agreement.
- Recognise representative organisations for the purpose of collective bargaining.

- Use collective bargaining as a constructive for addressing working conditions and terms of employment and relations between employers and workers or their respective organisations.
- Provide information needed for meaningful bargaining.
- Take into account the role and function of representative national employers' organisations.
- Take steps to improve labour-management relations.

Principle 4: Businesses should uphold the elimination of all forms of forced and compulsory labour.

Companies need to evaluate whether forced labour is a risk in their corporate sector and operations. The understanding of the causes of forced labour is the first step towards the adoption of measures to fight it. Once this type of labour has been identified, a comprehensive set of interventions is needed to help ensure the eradication of this type of practices. These actions include:

- Ensure that all company officials have a full understanding of what forced labour is
- Prohibit business partners from charging recruitment fees to workers
- Ensure that large-scale development operations do not rely on forced labour in any phase.
- Carefully monitor supply chains and subcontracting arrangements.
- Support and help design education, vocational training, and counselling programmes for children removed from situations of forced labour.

Principle 5: Businesses should uphold the effective abolition of child labour.

Some examples of how companies can eradicate child labour are:

- Be aware of countries, regions, sectors, economic activities where there is a greater likelihood of child labour and respond accordingly with policies and procedures.
- Use adequate and verifiable mechanisms for age verification in recruitment procedures.

- Develop and implement mechanisms to detect child labour.
- Establish or participate in a task force or committee on child labour in the representative employers' organisation at the local, state or national level.

Principle 6: Businesses should uphold the elimination of discrimination in respect of employment and occupation.

Some examples of how companies can avoid discriminatory practices in the workplace and employment are:

- Institute company policies and procedures which make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of staff at all levels.
- Issue clear company-wide policies and procedures to guide equal employment practices.
- Keep up-to-date records on recruitment, training and promotion that provide a transparent view of opportunities for employees and their progression within the organisation.
- Conduct unconscious bias training.
- Provide staff training on non-discrimination policies and practices.

Principle 7: Businesses should support a precautionary approach to environmental challenges.

Companies can support a precautionary approach by communicating on potential and actual risks for the consumer and the public. The precautionary approach implies that companies need to adopt the following measures:

- Develop a code of conduct or practice for its operations and products that confirms commitment to care for health and the environment.
- Develop a company guideline on the consistent application of the approach throughout the company.
- Create a managerial committee or steering group that oversees the company application of precaution.

- Establish two-way communication with stakeholders, in a pro-active, early stage and transparent manner, to ensure effective communication of information about potential risks.
- Use mechanisms such as multi-stakeholder meetings, workshop discussions, focus groups and public polls.
- Support scientific research and work with national and international research institutions.
- Join industry-wide collaborative efforts to share knowledge with regard to production processes and products around which high level of uncertainty, potential harm and sensitivity exist.

Principle 8: Businesses should undertake initiatives to promote greater environmental responsibility.

Companies need to increase self-regulation by means of codes, regulations and initiatives which are integrated in the planning and decision making processes and, in turn, promote dialogue with employees and the public. With the aim of promoting environmental responsibility, companies can:

- Define company vision, policies and strategies to include sustainable development.
- Develop sustainability targets and indicators.
- Establish a sustainable production and consumption programme.
- Measure, track and communicate progress on incorporating sustainability principles into business practices.
- Ensure transparency and dialogue with stakeholders.

Principle 9: Businesses should encourage the development and diffusion of environmentally friendly technologies.

In order to develop and diffuse environmentally friendly technologies, companies can:

- Change the process or manufacturing technique.
- Change input materials, used in the products.

- Change the product design or components.
- Reuse materials.
- Establish a company policy on the use of environmentally sound technologies.
- Refocus research and development towards 'design for sustainability'.
- Use of life cycle assessment (LCA) in the development of new technologies and products.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

The UN Global Compact suggests that participants consider the following measures when fighting corruption:

- Introduce anti-corruption policies and programmes within their organisations and their business operations.
- Report on the work against corruption in the annual Communication on Progress; and share experiences and best practices.
- Join forces with industry peers and with other stakeholders to scale up anti-corruption efforts.
- Sign the "Anti-corruption Call to Action" [4], which is a call from Business to Governments to address corruption and foster effective governance for a sustainable and inclusive global economy.

Monitoring and supervision of the Global Compact

The United Nations Global Compact is not an assessment or performance initiative. Nevertheless, the companies participating are expected to publish a Communication on Progress (CoP).[5]

4 Anti-Corruption Call to Action. Available at: www.unglobalcompact.org/take-action/action/anti-corruption-call-to-action.

5 Communication on Progress. Available at: www.unglobalcompact.org/participation/report/cop.

Since 2005, the companies participating need to submit a CoP to the Global Compact webpage and share it with all stakeholders. Failing to submit this CoP can lead to a change in the participant's status, receiving the "non-communicating" qualification and, later, after spending a year in this condition, be excluded from the participants' member list. A company, qualified as "non-communicating" or excluded from the list of participants will not be allowed to use the Global Compact name or logo.

The general CoP format is flexible and can be prepared in any language, at the condition of complying with the minimum requirements:

- A statement by the chief executive expressing continued support for the Global Compact and renewing the participant's ongoing commitment with the initiative.
- A description of practical actions that the company has taken or plans to undertake to implement the ten principles.
- A measurement of outcomes.

The CoPs are being made available to the public on the Global Compact webpage in order to provide stakeholders with information on the companies they interact with.

Failure to comply with the Compact

Any person can send a written claim to the Global Compact Office, questioning the existence of an actual commitment on the company's side to learn and improve.

Once the case has been received, the Office will assess whether it concerns an unfounded issue, in which case the accuser will be informed of this, as well as of the fact that the issue will not be pursued any further. In case of the opposite, the Global Compact Office will transfer the issue to the company involved, requesting it to present its observations in writing and to keep the Global Compact Office informed of any measure taken to address the situation.

The Global Compact Office can take, at its own discretion, one or more of the following measures, according to what it considers appropriate:

- Use its good offices to promote the resolution of the issue or request the corresponding regional or national network of the Global Compact, as well as any other organisation participating, to give assistance in the aforementioned resolution.

- Forward the issue to one or more entities of the United Nations system, acting as guardians of the Global Compact principles, to obtain their advice, assistance or action.
- Share information with the parties involved regarding specific procedures of instance, included in the OECD Guidelines for Multinational Enterprises and, in case of issues related with labour rights, the interpretation procedures in accordance with the ILO Tripartite Declaration for Multinational Enterprises and Social Policies.
- Transfer the issue to the Global Compact Board, specifically calling upon the experience and recommendations of its member companies.

Additional references

- Ayuso, Silvia; Mutis, Juliana (2010). "El Pacto Mundial de las Naciones Unidas - ¿una herramienta para asegurar la responsabilidad global de las empresas?" *Revista Globalización, Competitividad y Gobernabilidad*, vol. 4, nr. 2, pp. 28-39.

- De la Mota, Juan (2012). "Sostenibilidad, empresas y competitividad. La experiencia del Pacto Mundial de Naciones Unidas". *Revista del Instituto de Estudios Económicos*, nr. 1, pp. 81-104.

- Deva, Surya (2006). "The UN Global Compact for Responsible Corporate Citizenship: Is It Still Too Compact to Be Global". *Corporate Governance Law Review*, Vol. 2, nr. 2, pp. 145-190.

- Gomes, Eduardo; De Souza, Nadja; Zaitseva, Larisa; Abakumova, Olga (2017). "Corporate Social Responsibility through the Global Compact: Between Business and Society". *BRICS Law Journal*, vol. 4, nr. 4, pp. 93-115.

- Gómez Patiño, Dilia Paola (2011). "El Pacto Global De Las Naciones Unidas: sobre la responsabilidad social, la anticorrupción y la seguridad". *Revista Prolegómenos-Derechos y Valores*, vol. XIV, nr. 28, pp. 217-231.

- KPMG (2005). *Implementing the Global Compact. A booklet for inspiration*. Copenhagen: Royal Danish Ministry of Foreign Affairs.

- Prandi, María (2014). "Del Pacto Mundial al compromiso de la empresa con los derechos humanos". *Mediterráneo económico*, nr. 26, pp. 173-189.

- Ruiz Morales, Carmen Alba; Herrero Pérez, Sara Ana; Platero Jaime, (2017). "Manuel Beneficios de la adhesión al Pacto Mundial de Naciones Unidas en el proceso de internacionalización de las empresas españolas".

Revista de responsabilidad social de la empresa, nr. 26 (Cuatrimestre II), pp. 125-148.

- Wynhoven, Usrula A. (2011). "The Protect-Respect-Remedy Framework and the United Nations Global Compact". *Santa Clara Journal of International Law*, vol. 9, nr. 1, pp. 81-100.

PRINCIPLES FOR RESPONSIBLE INVESTMENT

- Voluntary initiative by the UNEP Financial Initiative and the UN Global Compact.
- Adopted in April 2006
- Investment sector

Objective

The **Principles for Responsible Investment**[1] complement the Global Compact and aim at understanding the impact of investments on environmental, social and corporate governance issues, as well as advising the signatories to integrate these issues in their decisions on investment and properties.

> According to the Principles for Responsible Investment, "responsible investment" is the one that incorporates environmental, social and corporate governance factors into investment decisions, in order to generate long-term sustainable return.[2]

Specific objectives

The implementation of the Principles for Responsible Investment aims at the long-term achievement of a global sustainable financial system which would be of benefit to the environment and society as a whole. Therefore, the Principles promote good corporate governance, integrity and accountability.

1 Principles for Responsible Investment. Available at: www.unpri.org/pri/what-are-the-principles-for-responsible-investment.

2 What is responsible investment? Available at: www.unpri.org/pri/what-is-responsible-investment.

Elaboration process

In 2005, the then United Nations Secretary-General Kofi Annan invited a group of the world's largest institutional investors to join a process to develop the Principles for Responsible Investment, with the support of experts in the investment industry, intergovernmental organisations and civil society.

The Principles were launched in April 2006 at the New York Stock Exchange.

Scope of application

Material scope

The Principles are guiding key actors in the financial system, private and public, to adopt investment policies and practices incorporating the material impact of environmental, social and corporate governance aspects.

Some examples of environmental, social and corporate governance issues the institutional investors need to take into account are:

- Environmental:
  - Climate change
  - Greenhouse gas emissions
  - Natural resource depletion
  - Waste and pollution
  - Deforestation
- Social:
  - working conditions, including slavery and child labour
  - local communities, including indigenous communities
  - health and safety
  - relations with employees and diversity
- Corporate governance:
  - bribery and corruption
  - political lobbying and donations
  - board diversity and structure
  - tax strategy

Personal scope

The Principles are designed for institutional investors from the financial sector. Therefore, they apply to companies, political authorities and other participants in the market. In 2018, the Principles are counting with over 1,800 signatories operating in more than 50 countries.

WHO CAN SIGN THE PRINCIPLES?		
Asset owners	**Investment managers**	**Service providers**
Organisations that represent the holders of long-term retirement savings, insurance and other assets. Examples include pension funds, sovereign wealth funds, foundations, endowments, insurance and reinsurance companies and other financial institutions that manage deposits.	Organisations that manage or control investment funds, either on their own account or on behalf of others, and which does not own more than half of such investment funds.	Organisations that offer products or services to asset owners or investment managers. Although such companies are not stewards or managers of assets in their own right, they do have considerable influence over how their clients address environmental, social and corporate governance issues.

The criteria to become a signatory of the Principles are:

- Abide by the Articles of Association and the Signatory Rules
- Report on yearly progress in implementing the Principles
- Pay annual fees.
- Support the operational costs of the Principles.[3]

The process to become a signatory consists of:

1. Confirm the organisation's approval of the Principles by submitting the relevant declaration, signed by the CEO or equivalent.
2. Provide the company details, contact information and reasons for signing in the application form.
3. Provide an organisation chart, showing the structure of the organisation including all its associated legal entities.

3 The PRI's Signatory Categories Guidelines for Potential Signatories. Available at: https://www.unpri.org/Uploads/l/f/j/Signatory-Categorisation-WEBSITE-UPDATE---MARCH--18.pdf

Contents

In order for investors to incorporate environmental, social and corporate governance issues into their practices, 6 principles have been established, accompanied by 35 possible actions to reach the initiative's goal.

Therefore, the signatories of the Principles voluntarily commit to:

1. **Incorporate environmental, social and corporate governance issues into investment analysis and decision-making processes.**
   - Address environmental, social and corporate governance issues in investment policy statements.
   - Support development of tools, metrics, and analyses, related to environmental, social and corporate governance issues.
   - Assess the capabilities of internal investment managers to incorporate environmental, social and corporate governance issues.
   - Assess the capabilities of external investment managers to incorporate environmental, social and corporate governance issues.
   - Ask investment service providers (such as financial analysts, consultants, brokers, research firms, or rating companies) to integrate environmental, social and corporate governance factors into evolving research and analysis.
   - Encourage academic and other types of research on this issue.
   - Advocate training on environmental, social and corporate governance issues for investment professionals.

2. **Be active owners and incorporate environmental, social and corporate governance issues into ownership policies and practices.**
   - Develop and disclose an active ownership policy consistent with the Principles.
   - Exercise voting rights or monitor compliance with voting policy (if outsourced).
   - Develop an engagement capability (either directly or through outsourcing).
   - Participate in the development of policy, regulation, and standard setting (such as promoting and protecting shareholder rights).
   - File shareholder resolutions consistent with long-term environmental, social and corporate governance considerations.

- Engage with companies on environmental, social and corporate governance issues.
- Participate in collaborative engagement initiatives.
- Ask investment managers to undertake and report on environmental, social and corporate governance-related engagement.

3. **Seek appropriate disclosure on environmental, social and corporate governance issues by the entities in which they invest.**
   - Ask for standardised reporting on environmental, social and corporate governance issues.
   - Ask for environmental, social and corporate governance issues to be integrated within annual financial reports.
   - Ask for information from companies regarding adoption of/adherence to relevant norms, standards, codes of conduct or international initiatives.
   - Support shareholder initiatives and resolutions promoting environmental, social and corporate governance disclosure.

4. **Promote acceptance and implementation of the Principles within the investment industry.**
   - Include Principles-related requirements in Requests for Proposals.
   - Align investment mandates, monitoring procedures, performance indicators and incentive structures accordingly.
   - Communicate environmental, social and corporate governance expectations to investment service providers.
   - Revisit relationships with service providers that fail to meet environmental, social and corporate governance expectations.
   - Support the development of tools for benchmarking environmental, social and corporate governance integration.
   - Support regulatory or policy developments that enable implementation of the Principles.

5. **Work together to enhance effectiveness in implementing the Principles.**
   - Support/participate in networks and information platforms to share tools, pool resources, and make use of investor reporting as a source of learning.
   - Collectively address relevant emerging issues.
   - Develop or support appropriate collaborative initiatives.

6. **Report on activities and progress towards implementing the Principles.**
   - Disclose how environmental, social and corporate governance issues are integrated within investment practices.
   - Disclose active ownership activities.
   - Disclose what is required from service providers in relation to the Principles.
   - Communicate with beneficiaries about environmental, social and corporate governance issues and the Principles.
   - Report on progress or achievements relating to the Principles using a comply-or-explain approach.
   - Seek to determine the impact of the Principles.
   - Make use of reporting to raise awareness among a broader group of stakeholders.

Monitoring mechanism

The signatories need to present annual reports on the implementation of the Principles as tools to strengthen their commitment.

When signatories register for the first time, they are granted a grace period of one year, during which the first reporting cycle is voluntary. Nevertheless, new signatories are encouraged to report during their first year and to use this process as a learning experience.

Signatories failing to report will be delisted as participant in the Principles.

Additional references

- PRI (2018). About the PRI. Available at: www.unpri.org/pri/about-the-pri.
- PRI; OECD (2007). The UN Principles for Responsible Investment and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Contributions. Available at: www.oecd.org/investment/mne/38783873.pdf.

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK

- Non-binding instrument of the Human Rights Council
- Adopted on 16 June 2011

Objective

The **Guiding Principles on business and human rights**[1] are the result of six years of work by the Special Representative of the Secretary-General including an in-depth study and large enquiries on business, governments, civil society, affected individuals and communities, lawyers, investors and other stakeholders.

A total of 31 principles are included, together with a comment clarifying their meaning and implications. Even though they do not possess a proper binding legal nature, the Guiding Principles draft measures for the States to promote business respect for human rights; they contain an outline allowing the companies to manage the risk of causing adverse human rights impacts; and, they offer a set of reference parameters allowing the stakeholders to assess business respect for human rights.

Therefore, they have been constituted via a regulatory platform offering guidance regarding legal and political measures which the States, in accordance with their obligations in human rights issues, can implement to ensure business respect for human rights.

The Guiding Principles have been developed to implement the "Protect, Respect and Remedy" Framework, based on the following three pillars:

- State duty to protect human rights;

1 Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework, UN Doc. A/HRC/17/31, dated 21 March 2011. Available at: www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx.

- Corporate responsibility to respect human rights
- The need to improve access to effective remedy for the victims of business-related abuses.

The three pillars of the "Protect, Respect and Remedy" Framework

State duty to protect
- Policies
- Regulation
- Justice

Corporate responsibility to respect
- Act with due diligence to avoid impacts
- Face adverse impacts when they occur

Access to remedy
- Effective access for victims
- Judicial and non-judicial

Elaboration process

On 20 April 2005, the United Nations Human Rights Council appointed John Ruggie as Special Representative on the issue of human rights and transnational corporations and other business enterprises, with the following mandate:[2]

a) To identify and clarify corporate responsibility and accountability standards for transnational corporations and other business enterprises with regard to human rights.

b) To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, in particular through international cooperation;

c) To investigate and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence".

2 E/CN.4/RES/2005/69. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=11160.

d) To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises.

e) To assemble a compendium of best practices by States and transnational corporations and other business enterprises.

On 7 April 2008, Professor Ruggie presented his final report before the United Nations Human Rights Council which included the "Protect, Respect and Remedy" Framework, completed after three years of study and consultations. The framework rests on three basic principles: the State duty to protect against human right abuses, committed by third parties, more in particular business; corporate obligation to respect human rights; and the need for more effective ways to access resources. The three principles constitute a complementary set in which each principle supports the others in order to achieve sustainable progress.[3]

On 18 June 2008, the Human Rights Council was pleased to welcome the "Protect, Respect and Remedy" Framework and extended the Special Representative's mandate until June 2011, requesting him to implement the Framework and provide concrete and practical recommendations for its implementation.[4]

On 21 March 2011, Professor Ruggie presented before the Human Rights Council the Guiding Principles on business and human rights, which were also based on extensive conversations and consultations with all stakeholder groups, including governments, business and corporate associations, individuals and communities directly affected by corporate activities in different parts of the world, civil society and experts in the extremely diverse legal political fields the Guiding Principles are addressing.[5]

On 16 June 2011, the Human Rights Council adopted Professor Ruggie's Guiding Principles.[6] This action endorsed the Guiding Principles as the global standard of conduct, establishing the expectations for all business

3 A/HRC/8/5. Available at: https://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx.

4 A/HRC/RES/8/7. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=14340.

5 A/HRC/17/31. Available at: https://undocs.org/sp/A/HRC/17/31.

6 A/HRC/RES/17/4. Available at: https://www.ohchr.org/EN/Issues/Business/Pages/ResolutionsDecisions.aspx.

and States in the field of business and human rights. Even though they do not create new obligations with regard to International Law, the Guiding Principles analyse the repercussions that present rules and practices have for States and business, and include some aspects that are considered in national and international legislation in different ways.

Also, the Human Rights Council decided, on one hand, to create a working group on the issue of human rights and transnational and other enterprises and, on the other hand, to create a Forum on Business and Human Rights to examine the trends and problems in the application of the Guiding Principles and to promote dialogue and cooperation with respect to issues related to business and human rights.

Working Group on the issue of human rights and transnational corporations and other business enterprises[7]

The Working Group is composed of five independent experts, of balanced geographical representation, with the following mandate:

- To promote the **effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights**: Implementing the United Nations "Protect, Respect and Remedy" Framework.
- To **identify, exchange and promote good practices and lessons learned** regarding the implementation of the Guiding Principles.
- To assess and make recommendations on the Guiding Principles and, in that context, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders.
- **To conduct country visits** and to respond promptly to invitations from States.
- To continue to explore options 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.
- To integrate a **gender perspective** in the entire foreseen task of the mandate and to pay particular attention to persons living in vulnerable situations, especially children.
- To work in close cooperation and **coordination with other relevant special procedures** of the Human Rights Council, relevant United Nations and other international bodies, treaty bodies and regional human rights organisations.
- To develop a **regular dialogue** and discuss possible areas of cooperation with **Governments**

7 Working Group on the issue of human rights and transnational corporations and other business enterprises. Available at: https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx.

and all relevant actors, including relevant United Nations bodies, specialised agencies, funds and programmes, in particular the Office of the United Nations High Commissioner for Human Rights, the Global Compact, the International Labour Organisation, the World Bank and its International Finance Corporation, the United Nations Development Programme and the International Organisation for Migration, as well as transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organisations and other regional and subregional international organisations.

- **To guide the work of the Forum on Business and Human Rights.**
- **To report annually to the Human Rights Council and the General Assembly**.

The Council renewed the mandate of the Working Group in 2014 (resolution 26/22) and in 2017 (resolution 35/7).

The working group members
Surya Deva - (India), since 2016 (Vice-chair since 1 July 2018)
Dante Pesce - (Chile), since 2015 (Chair since 1 July 2018)
Anita Ramasastry - (USA), since 2016

New members
Elżbieta Karska – (Poland), since 2018 (Chair from 1 July 2019)
Githu Muigai – (Kenya), since 2018 (Vice-chair from 1 July 2019)

Former members
Michael Addo - (Ghana), since 2011
Pavel Sulyandziga - (Russian Federation), since 2011
Margaret Jungk - (USA), 2011-2016
Alexandra Guaqueta - (Colombia), 2011-2015
Puvan Selvanathan - (Malaysia), 2011-2015

United Nations Forum on Business and Human Rights[8]

The Forum is the world's largest gathering on business and human rights. The three-day conference is held annually in Geneva, usually in November and December.

7th Forum on business and human rights, 26-28 November 2018
6th Forum on business and human rights, 27-29 November 2017
5th Forum on business and human rights, 14-16 November 2016

8 About the UN Forum on business and human rights. Available at: https://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx.

4th Forum on business and human rights, 16-18 November 2015
3rd Forum on business and human rights, 1-3 December 2014
2nd Forum on business and human rights, 2-4 December 2013
1st Forum on business and human rights, 3-5 December 2012

The Forum is a global platform for stakeholders to examine trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights. It is open to the participation of States, business and corporate associations, civil society organisations, labour unions, victims, academics, students, media and any other relevant stakeholders.

Since 2017, the Working Group on the issue of human rights and transnational corporations and other business enterprises has the mandate of chairing the Forum and submitting a report on the thematic deliberations and recommendations of the Forum before the Human Rights Council for its review.

Scope of application

Material scope

The Guiding Principles clarify and explain the relevant provisions of the existing international human rights regulations for the States to comply with their obligations to protect against violations of internationally recognised human rights, committed in their territory or jurisdiction by third parties, including business. Therefore, the States need to adopt measures covering a broad spectrum of policies and legislative provisions which are divided into the following general categories:

- General State regulatory and policy functions
- The State-business nexus
- Supporting business respect for human rights in conflict-affected areas
- Ensuring policy coherence

On the other hand, the Guiding Principles address the companies' responsibility to respect human rights through policies and processes to prevent and mitigate any risk of causing or contributing to cause adverse human rights impacts. If, despite this, the companies determine they have caused or contributed to cause adverse impacts, they need to remedy them or con-

tribute in their remedy. Also, companies need to seek to prevent or mitigate any negative consequence, directly linked to their operations, products or services by their business relationships.

The responsibility to respect refers to almost all internationally recognised human rights. At a minimum, to those reflected in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the ILO Declaration on Fundamental Principles and Rights at Work, which covers ILO's eight fundamental conventions.

Personal scope

The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

Requirements for companies

The Guiding Principles establish that business enterprises should respect human rights, regardless of the State duty to protect these same human rights. This means they should avoid infringing the human rights of others and address adverse human rights impacts with which they are involved (Guiding Principle 11).

Also, the responsibility to respect human rights requires that business enterprises:

- Avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
- 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 (Guiding Principle 13).

As such, business enterprises should take the appropriate measure to prevent and mitigate adverse human rights impacts and, if necessary, remediate them. Therefore, they are expected to (Guiding Principle 15):

- Adopt a policy commitment to meet their responsibility to respect human rights.

- Carry out a continuous human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.
- Develop processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Policy commitment

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 is publicly available. This statement needs to comply with the following requirements:

a) Be approved at the most senior level of the business enterprise;

b) Be informed by relevant internal or external expertise;

c) Stipulate the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;

d) Be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;

e) Be reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

The level of detail of the policy statement can vary. It can be simply presented as a general commitment to respect all internationally recognised human rights and the expectation that those who work with the company do the same. It can also include a summary of those human rights the company recognises as the most relevant for its activities, as well as information on the way it will account for the measures it adopts to address its responsibility to respect human rights.

The statement is not necessarily a separate document, but can also be included in the existing corporate statements and its codes of conducts for business partners.

The policy statement can be updated as the company acquires more expertise in the issue (Guiding Principle 16).

Human rights due diligence

Human rights due diligence is a continuous process that varies depending on the size of the business enterprise, the risk of severe adverse human rights impacts, and the nature and context of its operations. Through this process, business enterprises identify, prevent, mitigate and address adverse human rights impacts, caused by their activities (Guiding Principle 17). The main elements of this process are:

a) Assessment: before undertaking a proposed business activity, establishing a new business relationship, adopting important decisions or implementing operational changes, where possible, business enterprises should identify who may be affected, catalogue the relevant human rights standards and issues; and project how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.

   While the assessment and identification processes of actual or potential adverse human right impacts can be included in the framework of other projects, such as risk assessment or environmental or social impact assessment, they should include all internationally recognised human rights as reference point.

   Assessment is the first basic step for business enterprises to prevent or mitigate potential adverse impacts and to remediate any actual adverse impact it may cause or contribute to cause (Guiding Principle 18).

b) Integration and action: business enterprises need to integrate the conclusions of their impact assessments in the framework of the relevant internal functions and processes and implement appropriate measures. This means that, if a business enterprise causes or may cause adverse human rights impacts, it needs to take the necessary measures to put an end to or prevent them, as well as use its influence to mitigate, as far as possible, any remaining impact, caused by others.

   This process is often driven by the department in charge of human rights and needs to be repeated each time a new adverse human rights impact is detected (Guiding Principle 19).

c) Tracking: business enterprises should track the effectiveness of the measures adopted to prevent adverse human rights impacts. The

tracking process needs to be credible and solid to determine whether the implementation of its human rights policies is optimal, it has responded effectively to the adverse human rights impacts, and it has contributed to driving continuous improvement.

This tracking should be based on relevant qualitative and quantitative indicators and draw on feedback from both internal and external sources, including affected stakeholders. The clearer the indicators and the more exhaustive the processes used to collect information on the companies' effectiveness, the better the situation will be for companies to address criticism, in case it needs or decides to do so. The fact that companies would call upon respected and independent external experts or stakeholders, asking for their opinion, will also help to strengthen the credibility of the final report. (Guiding Principle 20).

d) Communication: In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Nevertheless, it needs to reflect an enterprise's human rights impacts; be accessible to its intended audiences; provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; not pose risks to affected stakeholders, personnel; and not violate legitimate requirements of commercial confidentiality.

Communications can focus on the company's general approach to address the human rights-related risks, in particular the possible adverse impacts on the most relevant ones, linked to their activities; as well, they can be specifically treating a particular adverse impact and the way it is addressed or intended to be addressed.

The communication process can demonstrate the company's practical compliance with its responsibility to respect human rights (Guiding Principle 21).

Remediation

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 (Guiding Principle 22). The remediation can take a variety of forms, such as an apology, the adoption of measures to ensure non-repetition, compensation (financial or non-financial) for damages caused, suspension of an activity or a particular business relationship, or some other kind of remedy, agreed by the parties.

The setup of operational-level grievance mechanisms for the parties possibly affected by corporate activities can also constitute an effective remediation method. An operational-level grievance mechanism is an extra-judicial grievance mechanism, organised or facilitated by a business enterprise. Nevertheless, to ensure its effectiveness, it needs to be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning. As such, they need to be based on participation and dialogue (Guiding Principle 31).

Responsibility in cases of business-related human rights violations

In case business enterprises commit human rights abuses, the Guiding Principles state that States need to take the appropriate steps to ensure, through judicial, administrative, legislative and other appropriate means, that those affected have access to effective remedy.

The term grievance mechanism is used to indicate any routinised, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

The duty of providing access to effective remediation does not only imply that States need to strengthen their legal framework and their judicial systems, but also the implementation of provisions to eliminate legal obstacles, practical or others, that can impede the victims to present their case (Guiding Principles 25, 26 and 27).

Additional references

- Carneiro Freire, Mar; Cordero Sanz, Juanjo; Cordero Sanz, Carlos; Martín Hernando, Vidal (2013). *Cuaderno Guía de los Principios Rectores ONU sobre Empresa y Derechos Humanos. Puerta de Entrada*. Madrid: Sustentia.
- Deva, Surya (2012). "Guiding Principles on Business and Human Rights: Implications for Companies". *European Company Law*, vol. 9, nr. 2, pp. 101-109.
- Deva, Surya; Bilchitz, David (2013), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect* (pp. 78-104). Cambridge: CUP.
- Esteve Moltó, José Elías (2011). "Los Principios Rectores Sobre las Empresas Transnacionales y los Derechos Humanos en el marco de las Naciones Unidas para 'Proteger, Respetar y Remediar': ¿Hacia la Responsabilidad de las Corporaciones o la Complacencia Institucional". *Anuario Español de Derecho Internacional*, vol. 27, pp. 317-351.
- Lucena Cid, Isabel Victoria (2017). "La implementación de los Principios Rectores sobre las empresas y los derechos humanos. Implicaciones para los Estados". *Universitas*, nr. 25, pp. 69-89.
- Márquez Carrasco, Carmen (2014). *España y la implementación de los Principios Rectores de las Naciones Unidas sobre empresas y derechos humanos: oportunidades y desafíos*. Barcelona: Huygens.
- Neglia, Maddalena (2016). "The UNGPs - Five Years On: From Consensus to Divergence in Public Regulation on Business and Human Rights". *Netherlands Quarterly of Human Rights*, vol. 34, nr. 34, pp. 289-318.
- United Nations (2012). Corporate responsibility to respect human rights. An interpretive guide. Geneva: United Nations.
- United Nations (2014). *Frequently asked questions about the Guiding Principles on business and human rights*. Geneva: United Nations.
- Van Huijstee, Mariëtte; Ricco, Victor; Ceresna-Chaturvedi, Laura (2012). *How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy. A guide for civil society organisations*. Amsterdam: SOMO.

- Wettstein, Florian (2015). "Normativity, Ethics, and the UN Guiding Principles on Business and Human Rights: A Critical Assessment". *Journal of Human Rights*, vol. 14, nr. 2, pp. 162-182.

STATEMENT ON THE OBLIGATIONS OF STATES PARTIES REGARDING THE CORPORATE SECTOR AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- Statement by the Committee on Economic, Social and Cultural Rights
- Approved on 12 July 2011

Objective

The **Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights**[1] reiterates the obligations of the States parties of the International Covenant on Economic, Social and Cultural Rights to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities.

Through the Statement, the Committee on Economic, Social and Cultural Rights urges the States Parties to include in their initial reports and journals information on the difficulties met and the measures adopted with respect to the role and the effects of the business sector on the effective exercise of economic, social and cultural rights.

Contents

The Statement acknowledges that, in many cases, the business sector participates in the effectiveness of economic, social and cultural rights, established in the Covenant by means of their contribution to the economic development, the creation of jobs and productive investment, among others. In turn, it also states that, frequently, corporate activities can jeopardise the enjoyment of the rights, recognised in the Covenant.

As such, the States Parties have the primary obligation to respect, protect and ensure the exercise of the rights enunciated in the Covenant for all per-

1 E/C.12/2011/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2011%2F1&Lang=en.

sons under their jurisdiction, in the context of corporate activities, undertaken by state-owned or private enterprises.

- **Respecting rights** requires States Parties to guarantee conformity of their laws and policies regarding corporate activities with economic, social and cultural rights set forth in the Covenant. As part of this obligation, States Parties shall ensure that companies demonstrate due diligence to make certain that they do not impede the enjoyment of the Covenant rights by those who depend on or are negatively affected by their activities.

- **Protecting rights** means that States Parties effectively safeguard rights-holders against infringements of their economic, social and cultural rights involving corporate actors, by establishing appropriate laws, regulations, as well as monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations. This implies that States Parties ensure access to effective remedies to victims of corporate abuses of economic, social and cultural rights, through judicial, administrative, legislative or other appropriate means.

  States Parties should also take steps to prevent human rights contraventions abroad by corporations which have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant

- **Fulfilling rights** entails that States Parties undertake to obtain the corporate sector's support to the realisation of economic, social and cultural rights. States Parties home to companies active abroad shall also encourage such companies to assist, as appropriate, including in situations of armed conflict and natural disaster, host States in building capacities needed to address the corporate responsibility for the observance of economic, social and cultural rights.

Additional references

- Cernic, Jernej Letnar (2011). "Corporate Obligations under the Human Right to Water" *Denver Journal of International Law and Policy*, vol. 39, nr. 2, pp. 303-346.
- Coomans, Fons (2011). "The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights". *Human Rights Law Review*, vol. 11, nr. 1, pp. 1-36.
- Vandenbogaerde, Arne (2015). "Jurisdiction Revisited - Attributing Extraterritorial State Obligations under the International Covenant on Economic, Social and Cultural Rights." *Human Rights & International Legal Discourse*, vol. 9, nr. 1, pp. 6-33.

GENERAL COMMENT NO. 16 ON STATE OBLIGATIONS REGARDING THE IMPACT OF BUSINESS ON CHILDREN'S RIGHTS

- General comment by the Committee on the Rights of the Child
- Approved during the 62nd session (14 January 2013)

Objective

The **General Comment No. 16 on State obligations regarding the impact of business on children's rights**[1] is intended to clarify the obligations and determine the steps States need to take regarding the impact of business activities and operations on children's rights, protected by the Committee on the Rights of the Child and in its optional protocols. To do so, it offers guidance on how the States should:

- Ensure that the activities and operations of business enterprises do not adversely impact on children's rights;
- Create an enabling and supportive environment for business enterprises to respect children's rights, including across any business relationships linked to their operations, products or services and across their global operations; and
- Ensure access to effective remedy for children whose rights have been infringed by a business enterprise acting as a private party or as a State agent.

Background

The General Comment No. 16 has been drafted, based on the experience of the Committee on the Rights of the Child in reviewing States' reports and its day of general discussion on the private sector as service provider in 2002. [2]

1 CRC/C/GC/16. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=es.

2 Committee on the Rights of the Child, report on its 31st session period, CRC/C/121, annex II.

It is also informed by regional and international consultations with numerous stakeholders, including children, as well as by public consultations that have taken place since 2011.

Scope of application

General Comment No. 16 mainly refers to the obligations of the States regarding the Convention on the Rights of the Child and its optional protocols to provide the appropriate legal and institutional frameworks that respect, protect and fulfil children's rights, and provide resources in case of violations of these rights in the context of business activities and operations.

Structure and contents

General Comment No. 16 is divided in the following sections:

1. General principles of the Convention on the Rights of the Child as they relate to business activities: in first place, the relation between State obligations with regard to business activities and the general principles of the Convention will be examined.
2. Nature and scope of State obligations: the general nature and scope of the State obligations are defined with regard to the rights of the child and the business sector.
3. State obligations in specific contexts: the scope of the obligations will be examined in contexts where the impact of business activities and operations on the rights of the child is high.
4. Framework for implementation
5. Dissemination

General principles of the Convention as they relate to business activities

The Committee has established four general principles within the Convention as the basis for all State decisions and actions relating to business activities and operations in conformity with a child rights approach.

Right to non-discrimination (article 2)	The best interests of the child (article 3(par. 1))	The right to life, survival and development (article 6)	The right of the child to be heard (article 12)
States are required to prevent discrimination in the private sphere in general and provide remedy if it occurs. States should collect statistical data that is appropriately disaggregated and other information to identify discrimination against children in the context of business activities and operations and mechanisms should be established to monitor and investigate discriminatory practices within the business sector. States should also take steps to create a supportive environ-ment for business to respect the right to protection from discrimination by promoting knowledge and understanding of the right within the business sector	States are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning business activities and operations that directly or indirectly impact on children.	States shall ensure the survival and development of the child through measures, applicable to the business sector, to create an enabling environment for business to respect article 6. These measures must be adapted according to context and include preventive measures such as effective regulation and monitoring of advertising and marketing industries and the environmental impact of business	States should consult with children who face difficulties in making themselves heard, such as children of minority and indigenous groups or children with disabilities. In this sense, States should also hear children when children's rights impact assessments of proposed business-related policy, legislation, regulations, budget or other administrative decisions are under-taken. Also, States should provide businesses with specific guidance emphasising that such processes must be accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times.

Nature and scope of State obligations

1. The obligation to respect

States have the obligation to ensure that all actors respect children's rights, including in the context of business activities and operations. To achieve this, all business-related policy, legislation or administrative acts and decision-making should be transparent, informed and include full and continuous consideration of the impact on the rights of the child.

The obligation to respect also implies that a State should not engage in, support or condone abuses of children's rights when it has a business role itself or conducts business with private enterprises. Furthermore, States should

not invest public finances and other resources in business activities that violate children's rights.

2. The obligation to protect

States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights.

Also, States must investigate, adjudicate and redress violations of children's rights caused by a business enterprise.

3. The obligation to fulfil

States should provide stable and predictable legal and regulatory environments which enable business enterprises to respect children's rights. This includes clear and well-enforced law and standards on labour, employment, health and safety, environment, anti-corruption, land-use and taxation that comply with the Convention and its optional protocols.

On the other hand, States should put in place measures to promote knowledge and understanding of the Convention and protocols within government departments, agencies and other State-based institutions that shape business practices as well as foster a culture amongst business that is respectful of children's rights.

4. Remedies and reparations

States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises. Mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of children´s development and capacities and reparation should be timely to limit on-going and future damage to the child or children affected.

State obligations in specific contexts

The Committee has identified the following non-exhaustive specific contexts where the impact of business enterprises can be significant and where States' legal and institutional frameworks are often insufficient, ineffective or are under pressure.

1. Provision of services for the enjoyment of children's rights

Business enterprises and non-profit organisations can play a role in the provision and management of services such as clean water, sanitation, education, transport, health, alternative care, energy, security and detention facilities that are critical to the enjoyment of children's rights.

To do so, States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised. Also, they must ensure that such provision does not threaten children's access to services on the basis of discriminatory criteria and must also ensure that children have access to an independent monitoring body, grievance mechanisms and, where relevant, to judicial recourse that can provide them with effective remedies in case of violation of their rights.

2. The informal economy

Business activities that take place outside of the legal and institutional frameworks that regulate and protect rights can represent a particular risk for children's rights.

Therefore, States should put in place measures to ensure that business activities take place within appropriate legal and institutional frameworks in all circumstances regardless of size or sector of the economy so that children's rights can be clearly recognised and protected.

On the other hand, they must regulate working conditions and ensure safeguards to protect children from economic exploitation and work that is hazardous or interferes with their education or harms their health or physical, mental, spiritual, moral or social development.

In turn, States should ensure that social and child protection policies reach all, especially families in the informal economy.

3. Children's rights and global operations of business

Business enterprises increasingly operate on a global scale through complex networks of subsidiaries, contractors, suppliers and joint ventures. Their impact on children's rights, whether positive or negative, is rarely the result of the action or omission of a single business unit, whether it is the parent company, subsidiary, contractor, supplier or others. Instead it may involve a link or participation between businesses units located in different jurisdictions.

Within this context, there are particular difficulties for States to discharge their obligations to respect, protect and fulfil the rights of the child in this context due, among other reasons, to the fact that business enterprises are legally separate entities located in different jurisdictions even when they operate as an economic unit which has its centre of activity, registration or domicile in one country (the home State) and are operational in another (the host State).

As a consequence, States have obligations to engage in international co-operation towards the realisation of children's rights beyond their territorial boundaries. To do so, States should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extra-territorially when there is a reasonable link between the State and the conduct concerned. Furthermore, States should provide international assistance and cooperation with investigations and enforcement of proceedings in other States.

To prevent the infringement of children's rights by business enterprises operating abroad, both home and host States should establish institutional and legal frameworks that enable businesses to respect children's rights across their global operations. They should also build capacity so that development assistance agencies and overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including children's rights.

4. International organisations

All States are called upon to cooperate directly in the realisation of the rights in the Convention through international cooperation and through their membership in international organisations. Therefore, States must comply with their obligations under the Convention and its optional protocols when acting as members of international development organisations, such as the World Bank Group, the International Monetary Fund and the World Trade Organisation, and others of a regional scope.

A State engaged with international development, finance and trade organisations must take all reasonable actions and measures to ensure that such organisations act in accordance with the Convention and its optional protocols in their decision-making and operations, as well as when entering into agreements or establishing guidelines relevant to the business sector.

5. Emergencies and conflict situations

There are particular challenges for both host and home States to meet their obligations to respect, protect and fulfil the rights of the child when businesses are operating in situations where protection institutions do not work properly because of conflict, disaster or the breakdown of social or legal order.

In such contexts, there may be a greater risk of using child labour by business enterprises (for example within supply chains and subsidiaries), funding the use of child soldiers or of being involved in corruption and tax evasion. Given the heightened risks, home States should require business enterprises operating in situations of emergency and conflict to undertake stringent children's rights due diligence tailored to their size and activities.

Home States should also develop and implement laws and regulations that address specific foreseeable risks to children's rights from business enterprises that are operating trans-nationally. In this context, they should provide businesses with current, accurate and comprehensive information of the local children's rights context when they are operating or planning to operate in areas affected by conflict or emergency.

On the other hand, both home and host States should introduce and implement national legislation that includes a specific prohibition on such

companies recruiting children or using them in hostilities; requirements for effective measures to protect children from violence and exploitation; and mechanisms for holding personnel accountable for abuses of children's rights.

Framework for implementation

1. Legislative, regulatory and enforcement measures

States should enact legislation that gives effect to the rights of the child on third private parties and provides clear and predictable legal and regulatory environments which enable business enterprises to respect children's rights. To do so, States will need to gather data, evidence and research for identifying specific business sectors of concern.

In this context, States should require all enterprises to undertake child rights due diligence regarding children's rights. In the child rights due diligence framework, large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address children's rights impacts. Such communication should be available, efficient, and comparable across enterprises and address measures taken by business to mitigate potential and actual adverse impacts for children, caused by their activities.

States are also required to implement and enforce internationally agreed standards concerning children's rights, health and business. To do so, there are a number of measures States should employ to ensure effective implementation and enforcement, including:

- Strengthening regulatory agencies responsible for the oversight of standards relevant to children's rights.
- Disseminating laws and regulations regarding children's rights and business to stakeholders, including children and business enterprises.
- Training judges and other administrative officials as well as lawyers and legal aid providers to ensure the correct application of the Convention and its protocols on business and children's rights.
- Providing effective remedy through judicial or non-judicial mechanisms and effective access to justice.

2. Remedial measures

States should focus their attention on removing social, economic and juridical barriers so that children can in practice have access to effective judicial mechanisms without discrimination of any kind. In this context, States that do not already have provision for collective complaints such as class actions and public interest litigation should introduce these as a means of increasing accessibility to courts for large numbers of children similarly affected by business actions.

Also, States may have to provide special assistance to children who face obstacles to accessing justice and implement the Guidelines on justice in matters involving child victims and witnesses of crime.

States should consider the adoption of criminal legal liability –or other form of legal liability of equal deterrent effect- for legal entities, including business enterprises, in cases concerning serious violations of the rights of the child such as forced labour.

Non-judicial mechanisms, such as mediation, conciliation and arbitration can be useful alternatives for resolving disputes concerning children and enterprises. Such mechanisms can play an important role alongside judicial processes provided they are in conformity with the Convention and its optional protocols and with international principles and standards of effectiveness, promptness and due process and fairness.

States should make every effort to facilitate access to international and regional human rights mechanisms including the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, so that an individual child or a group of children, or others acting on his/her/their behalf, are able to obtain remedy for State failure to adequately respect, protect and fulfil children's rights in relation to business activities and operations.

3. Policy measures

States should encourage a business culture that understands and fully respects children's rights. To this end, States should include the issue of children's rights and business in the overall context of the national policy framework for implementation of the Convention through guidance that explicitly

sets out government expectations for business enterprises to respect children's rights in the context of its own business activities as well as within business relationships linked to operations, products or services and activities abroad when they operate trans-nationally.

States should also encourage larger companies to use their influence over small and medium-sized enterprises to strengthen children's rights throughout their value chains.

4. Coordination and monitoring measures

States must ensure that governmental bodies, as well as parliamentarians, that shape business law and practices are aware of the State's obligations with regard to children's rights.

Also, States should develop national strategies and plans of action for implementation of the Convention and its optional protocols, including explicit reference to the measures required to respect, protect and fulfil children's rights in the actions and operations of business enterprises. In this context, States should also ensure that they monitor progress in implementation of the Convention in the activities and operations of business.

The above can be achieved both internally through the use of child rights impact assessments and evaluations as well as through collaboration with other bodies such as parliamentary committees, civil society organisations, professional associations, and national human rights institutions.

5. Collaborative and awareness-raising measures

States should adopt and implement a comprehensive strategy to inform and educate all children, parents and caregivers that business has a responsibility to respect children's rights wherever they operate, including through child-friendly and age-appropriate communications.

Education, training and awareness-raising about the Convention should also be targeted at business enterprises to emphasise the status of the child as a holder of human rights, encourage active respect for all of the Convention's provisions and challenge and eradicate discriminatory attitudes

towards all children and especially those in vulnerable and disadvantaged situations.

Dissemination

States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to respect, protect and fulfil children's rights in the context of the activities and operations of business enterprises both domestically and, where appropriate, trans-nationally.

Additional references

- Gerber, Paula; Kyriakakis, Joanna; O'Byrne Katie (2013). "General Comment 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights: What Is Its Standing, Meaning and Effect?" *Melbourne Journal of International Law*, vol. 14, pp. 1-36.
- Unicef; International Commission of Jurists (2015). *Obligations and Actions on Children's Rights and Business. A practical guide for States on how to implement the United Nations Committee on the Rights of the Child's General Comment no. 16*. Geneva: Unicef-ICJ.

RESOLUTION 26/9 ON THE "ELABORATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS"

- Resolution of the United Nations Human Rights Council
- Adopted on 26 June 2014

Objective

Resolution 26/9[1] of the United Nations Human Rights Council establishes an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, the mandate of which shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

Some the goals of the legally binding instrument are to enforce the respect, promotion and protection of, as well as compliance with human rights in the context of business activities of transnational character; to ensure effective access to justice and to remediation mechanisms for victims of human rights violations in the context of business activities of transnational character, and to prevent such violations from occurring; and, to promote international cooperation in view of complying with the State obligations under International human rights law.

1 A/HRC/RES/26/9. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9.

VOTE ON RESOLUTION 26/9		
In favour	**Against**	**Abstentions**
Algeria	Germany	Saudi Arabia
Benin	Austria	Argentina
Burkina Faso	United States of America	Botswana
China	Estonia	Brazil
Congo	Former Yugoslav Republic of Macedonia	Chile
Ivory Coast	France	Costa Rica
Cuba	Ireland	United Arab Emirates
Ethiopia	Italy	Gabon
Russian Federation	Japan	Kuwait
Philippines	Montenegro	Maldives
India	United Kingdom of Great Britain and Northern Ireland	Mexico
Indonesia	Czech Republic	Peru
Kazakhstan	Republic of Korea	Sierra Leone
Kenya	Romania	
Morocco		
Namibia		
Pakistan		
South Africa		
Venezuela		
Vietnam		

Treaty process

On 26 June 2014, based on a proposal by Ecuador and South Africa, the Human Rights Council adopted Resolution 26/9 establishing, among others, that the open-ended intergovernmental working group would hold its first session for five working days in 2015, before the 30th session of the Human Rights Council.

Also, it states that the first two sessions of the open-ended intergovernmental working group should be dedicated to conducting constructive deliberations on the content, scope, nature and shape of the future international instrument.

From 6 to 10 July 2015, the first session of the open-ended intergovernmental working group was held to collect opinions and proposals, both orally as in written, from States and stakeholders on the possible principles, scope and elements of the legally binding international instrument.

During the first session, the following issues were debated:

- Implementation of the Guiding Principles on business and human rights.
- Principles for a legally binding international instrument on transnational corporations and other business enterprises with respect to human rights.
- Coverage of the instrument: transnational corporations and other business enterprises; concepts and legal nature in international law
- Human rights to be covered under the instrument
- Obligations of States to guarantee the respect of human rights by transnational corporations and other business enterprises, including extraterritorial obligation
- Enhancing the responsibility of transnational corporations and other business enterprises to respect human rights, including prevention, mitigation and remediation
- Legal liability of transnational corporations and other business enterprises
- Building national and international mechanisms for access to remedy, including international judicial cooperation, with respect to human rights violations by transnational corporations and other business enterprises.[2]

From 24 to 28 October 2016, the second session of the intergovernmental working group was held with the same objective of collecting opinions and proposals from States and stakeholders on the possible principles, scope and elements of the legally binding international instrument. During this session, the following issues were addressed:

- Overview of the social, economic and environmental impacts related to transnational corporations and other business enterprises and human rights, and their legal challenges.
- Primary obligations of States, including extraterritorial obligations.
- Obligations and responsibilities of transnational corporations and other business enterprises with respect to human rights.

2 A/HRC/31/50. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=26140.

- Open debate on different approaches and criteria for the future definition of the scope of the international legally binding instrument.
- Strengthening cooperation with regard to prevention, remedy and accountability and access to justice at the national and international levels
- Lessons learned and challenges to access to remedy.[3]

From 23 to 27 October 2017, the third session of the intergovernmental working group was held, involving substantive negotiations on the issue based on the elements for a draft legally binding international instrument[4], prepared by the Chair-Rapporteur of the intergovernmental working group for its elaboration.

The elements set out in the document were based on the deliberations, held during the first two sessions and over 200 meetings, organised since 2014 involving multiple stakeholders. As such, they focus on the protection of victims of business-related human rights abuses, the elimination of impunity and access to justice.[5]

During this third session, States and different stakeholders were invited to submit their comments and proposals on the draft elements document no later than the end of February 2018.[6] Some of the States that submitted written comments are Argentina, Azerbaijan, Mexico, Qatar and Singapore.[7]

Also, all States and other relevant stakeholders were convened to participate in a series of open informal consultations on the process to be followed for the drafting of a legally binding legal instrument, in conformance with the

3 A/HRC/34/47.

4 Elements for the draft legally binding instrument on transnational corporations and other business enterprises with respect to human rights. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/LegallyBindingInstrumentTNCs_OBEs.pdf.

5 A/HRC/34/47.

6 Call for comments and proposals on the drafts elements document. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/CallsCommentsDraftElements_EN.pdf .

7 Written submissions received in response to the call for comments and proposals on the draft elements document. Available at: https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session3/Pages/WrittenContributionsDraftElements.aspx .

mandate of Resolution 26/9.[8] These informal consultations were held on 17 and 25 May 2018, 5 June 2018 and 11 July 2018.

On 20 July 2018, the State of Ecuador published the Zero Draft of the legally binding international instrument on transnational corporations and other business enterprises with respect to human rights[9], with the purpose of ensuring effective access to justice and remediation for victims of human rights violations, committed in the context of business activities, as well as to avoid the repetition of such violations. The Zero Draft will be used as a basis for negotiations during the fourth session of the intergovernmental working group (from 15 to 19 October 2018).[10]

Scope of application of the Zero Draft of Ecuador's of the treaty on business and human rights

Material scope

The treaty would apply to the human right violations, committed in the context of any business activity of transnational character (Zero Draft article 3.1). Also, it covers all international human rights, as well as those rights, recognised under domestic law (Zero Draft article 3.2).

Personal scope

All States and regional integration organisations signing the treaty would be subject to its provisions (Zero Draft article 14).

---

8 Invitation to a series of open consultations on the implementation of Resolution 26/9. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/InvitationOpenConsultations_EN.pdf.

9 Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprise. ZERO DRAFT 16/7/018. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf

10 Note Verbale by the Chairmanship of the Working Group regarding the release of the draft legally binding instrument. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/NoteVerbaleLBI.PDF .

Requirements for Companies

The Preamble of the Zero Draft underlines that all business enterprises, regardless of their size, sector, operational context, ownership and structure shall respect all human rights, including by avoiding to cause or contribute to adverse human rights impacts through their own activities and addressing such impacts when they occur.

State Parties shall ensure in their domestic legislation that all persons with business activities of transnational character within such State Parties' territory or otherwise under their jurisdiction or control shall undertake due diligence obligations throughout such business activities, taking into consideration the potential impact on human rights resulting from the size, nature, context of and risk associated with the business activities (Zero Draft article 9.1).

Due diligence shall include, but shall not be necessarily limited to (Zero Draft article 9.2):

- Monitoring the human rights impact of a company's business activities, including the activities of its subsidiaries and those of entities under its direct or indirect control or directly linked to its operations, products or services.
- Identify and assess any actual or potential human rights violations that may arise through its own activities, including that of its subsidiaries and of entities under its direct or indirect control or directly linked to its operations, products or services.
- Prevent human rights violations within the context of its business activities, including the activities of its subsidiaries and that of entities under its direct or indirect control or directly linked to its operations, products or services, including through financial contribution where needed.
- Reporting publicly and periodically on non-financial matters, including environmental and human rights matters at a minimum, including policies, risks, outcomes and indicators. The requirement to disclose this information should be subject to an assessment of the severity of the potential impacts on the individuals and communities concerned, not to a consideration of their materiality to the financial interests of the business or its shareholders.

- Undertaking pre and post environmental and human rights impact assessments covering its activities and that of its subsidiaries and entities under its control, and integrating the findings across relevant internal functions and processes and taking appropriate action.
- Carrying out meaningful consultations with groups whose human rights are potentially affected by the business activities and other relevant stakeholders, through appropriate procedures including through their representative institutions, while giving special attention to those facing heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons.
- Due diligence may require establishing and maintaining financial security, such as insurance bonds or other financial guarantees to cover potential claims of compensation.

Legal liability

Failure to comply with due diligence duties shall result in commensurate liability for business enterprises (Zero Draft article 9.4).

State Parties shall ensure through their domestic law that natural and legal persons may be held criminally, civil or administratively liable for violations of human rights undertaken in the context of business activities of transnational character. Such liability shall be subject to effective, proportionate, and dissuasive criminal and non-criminal sanctions, including monetary sanctions. Liability of legal persons shall be without prejudice to the liability of natural persons. (Zero Draft article 10.1)

Civil liability

State Parties shall provide for a comprehensive regime of civil liability for violations of human rights undertaken in the context of business activities and for fair, adequate and prompt compensation (Zero Draft article 10.5).

As such, all persons with business activities of a transnational character shall be liable for harm caused by violations of human rights arising in the context of their business activities, including throughout their operations; to the extent it exercises control over the operations, or to the extent it ex-

hibits a sufficiently close relation with its subsidiary or entity in its supply chain and where there is strong and direct connection between its conduct and the wrong suffered by the victim, or to the extent risk has been foreseen or should have been foreseen of human rights violations within its chain of economic activity (Zero Draft article 10.6).

Subject to domestic law, courts asserting jurisdiction may require, where needed, reversal of the burden of proof for the purpose of fulfilling the victim's access to justice. (Zero Draft article 10.4).

Civil liability of legal persons shall be independent from any criminal procedure against that entity (Zero Draft article 10.7).

Criminal liability

State Parties shall provide measures under domestic law to establish criminal liability for all persons with business activities of a transnational character that intentionally, whether directly or through intermediaries, commit human rights violations that amount to a criminal offence, including crimes recognised under international law, international human rights instruments, or domestic legislation. Such criminal liability for human rights violations that amount to a criminal offence, shall apply to principals, accomplices and accessories, as may be defined by domestic law (Zero Draft article 10.8).

Criminal liability of legal persons shall be without prejudice to the criminal liability of the natural persons who have committed the offences (Zero Draft article 10.9).

Each State Party shall ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (Zero Draft article 10.10)

In the event that, under the legal system of a State Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions or other administrative sanctions (Zero Draft article 10.12).

Additional references

- Business & Human Rights Resource Centre's Debate the treaty. Available at: https://www.business-humanrights.org/en/about-us/blog/debate-the-treaty.
- Cassel, Doug (2018). "The Third Session of the UN Intergovernmental Working Group on a Business and Human Rights Treaty". Business and Human Rights Journal, vol. 3, nr. 2, pp. 277-283.
- De Schutter, Olivier (2015). "Towards a New Treaty on Business and Human Rights". Business and Human Rights Journal, vol. 1, nr. 1, pp. 41-67.
- Deva, Surya; Bilchitz, David (2017). Building a Treaty on Business and Human Rights. Context and Contours. Cambridge: CUP.
- Lopez, Carlos (2017). "Struggling to Take Off?: The Second Session of Intergovernmental Negotiations on a Treaty on Business and Human Rights". Business and Human Rights Journal, vol. 2, nr. 2, pp. 365-370.
- Lopez, Carlos; Shea, Ben (2015). "Negotiating a Treaty on Business and Human Rights: A Review of the First Intergovernmental Session". Business and Human Rights Journal, vol. 1, nr. 1, pp. 111-116.

IMPROVING ACCOUNTABILITY AND ACCESS TO REMEDY FOR VICTIMS OF BUSINESS-RELATED HUMAN RIGHTS ABUSE

- Report of the United Nations High Commissioner for Human Rights
- Presented on 10 May 2016
- Implementation of the third pillar of the Guiding Principles

Objective

The report on **Improving accountability and access to remedy for victims of business-related human rights abuse**[1] clarifies the criteria and defines domestic law tests for corporate legal liability and sets out guidance and recommendations to improve accountability and access to remedy for victims of business-related abuses in national law, especially in cases of severe abuses.

Background

In 2013, the Office of the United Nations High Commissioner for Human Rights (OHCHR), as part of its mandate to advance the protection and promotion of human rights globally, initiated a process aimed at helping States strengthen their implementation of this third pillar, particularly in cases of severe business-related human rights abuses. To do so, it requested an initial study on the effectiveness of domestic judicial mechanisms in cases of alleged gross human rights abuses.[2]

On 15 July 2014, the Human Rights Council requested the the OHCHR to continue work to facilitate the sharing and exploration of the full range of

1 A/HRC/32/19. Available at: https://undocs.org/es/A/HRC/32/19.

2 Zerk, Jennifer (2014). "Corporate liability for gross human rights abuses: towards a fairer and more effective system of domestic law remedies". Available at: https://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf.

legal options and practical measures to improve access to remedy for victims of business-related human rights abuses.[3]

In November 2014, pursuant to the mandate from the Human Rights Council, OHCHR launched the Accountability and Remedy Project (ARP I) to contribute to making domestic legal responses fairer and more effective for victims of business-related human rights abuses, particularly in cases of severe abuses. The project comprises six components:

a) domestic law tests for corporate accountability;

b) The roles and responsibilities of interested States in cross-border cases;

c) Overcoming financial obstacles to legal claims;

d) Criminal sanctions;

e) Civil law remedies;

f) Domestic prosecution bodies.

On 7 May 2015, the OHCHR presented before the Council a provisional progress report on the work performed.[4]

On 10 May 2016, the OHCHR presented before the Council its final report on the ARP I, along with a guide for States on how to improve accountability and access to remedy mechanisms. The guide was produced through a process which counted with the participation of various stakeholders, based on investigation, consultation and gathering detailed information. The guide takes into consideration the different legal systems, cultures, traditions and economic development levels of each State.

On 30 June 2016, the Council adopted, without voting, a resolution that warmly welcomes the work of the OHCHR, aiming at improving accountability and remedy access for victims of business-related human rights abuse, and notes with appreciation his report on improving accountability and access to judicial remedy for business-related human rights abuse. Also, it

3 A/HRC/RES/26/22. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=23800.

4 A/HRC/29/39. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=24900.

requested the OHCHR to continue its work in this area and to identify and analyse lessons learned, best practices, challenges and possibilities to improve the effectiveness of State-based non-judicial mechanisms that are relevant for the respect for human rights by business enterprises.[5]

Improving accountability and access to remedy for victims of business-related human rights abuse through state-based non-judicial mechanisms (Arp Ii)[6]

In compliance with Human Rights Council Resolution 32/10, OHCHR presented during the 38th session (18 June – 6 July 2018) of the Council the report on **Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms**[7], whose aim is to clarify ways for States to strengthen their implementation of the pillar on access to remedy of the Guiding Principles through State-based non-judicial mechanisms, focusing in particular on:

a) The structure and mandate of different mechanisms;
b) Investigations and information-gathering processes;
c) Aspects of the "effectiveness criteria" for non-judicial mechanisms;
d) Systemic effectiveness and policy coherence; and
e) Cross-border cooperation.

Scope of application

The report's guidance and recommendations are mainly directed to State organisms and legal bodies in charge of development, administration and implementation of domestic legal systems regulating corporate respect for human rights.

They are also useful for the work of professionals and people responsible for drafting policies, among them those participating in drafting bills, prosecutors and officials in charge of law enforcement, as well as national human rights institutions.

5 A/HRC/RES/32/10. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/10.

6 OHCHR Accountability and Remedy Project II: Enhancing effectiveness of State-based non-judicial mechanisms in cases of business-related human rights abuse. Available at: https://www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx.

7 A/HRC/38/20. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/20.

Contents

The report comprises two parts:

1) Introductory part to the guidance, including an explanation of its scope, possible usage and important cross-cutting contextual issues.

2) The annex, containing the guidance itself in the form of "policy objectives" in order to adopt legal measures in domestic law, supported by a series of elements intended to demonstrate the different ways in which States can work towards meeting those objectives in practice.

Guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse

The guidance is designed to be readily adaptable to a range of different legal systems and contexts and, at the same time, practical and forward-looking, and reflective on international standards on access to remedy.

The guidance has been divided in two parts: one relating to the enforcement of public law offences and one relating to private law claims by affected individuals and communities.

1. ***Enforcement of public law offences***

Principles for assessing corporate legal liability

Policy objective 1: Domestic public law regimes that are relevant to the respect by business enterprises of human rights ("domestic public law regimes") are sufficiently detailed and robust to ensure that there is both effective deterrence from and effective remedy in the event of business-related human rights abuses.

Policy objective 2: Domestic public law regimes are sufficiently robust to ensure that there is both effective deterrence from and remedy in the event of corporate contributions to business-related human rights abuses perpetrated by third parties.

Policy objective 3: The principles for assessing corporate liability under domestic public law regimes are properly aligned with the responsibility of companies to exercise human rights due diligence across their operations.

Supporting the work of State agencies responsible for investigation and enforcement.

Policy objective 4: State agencies responsible for investigating allegations of business-related human rights abuses and enforcement of domestic legal regimes ("enforcement agencies") have a clear mandate and political support.

Policy objective 5: There is transparency and accountability with respect to the use of enforcement discretion.

Policy objective 6: Enforcement agencies have access to the necessary resources, training and expertise.

Policy objective 7: Enforcement agencies carry out their work in such a way as to ensure the safety of victims, other affected persons, human rights defenders, witnesses, whistle-blowers and their legal representatives ("relevant individuals and groups") and is sensitive to the particular needs of individuals and groups at heightened risk of vulnerability or marginalisation.

Policy objective 8: Enforcement agencies are able to take decisions independently in accordance with publicly available policies, without the risk of political interference in their operations, and to high ethical standards.

Cooperation in cross-border cases

Policy objective 9: Enforcement agencies and judicial bodies can readily and rapidly seek legal assistance and respond to requests from their counterparts in other States with respect to the detection, investigation, prosecution and enforcement of cross-border cases concerning business involvement in severe human rights abuses.

Policy objective 10: The State works through relevant bilateral and multilateral forums to strengthen methods, systems and legal regimes relevant to cross-border cases concerning business involvement in human rights abuses.

Public law sanctions and other remedies

Policy objective 11: Sanctions and other remedies that may be imposed following a determination of corporate legal liability in cases of business-related human rights abuse offer the prospect of an effective remedy for the relevant loss or harm.

2. *Private law claims by affected individuals and communities*

Principles for assessing corporate legal liability

Policy objective 12: Domestic private law regimes that regulate the respect by business enterprises of human rights ("domestic private law regimes") are sufficiently robust to ensure that there is both proper deterrence from and effective remedy in the event of business-related human rights abuses.

Policy objective 13: Private law regimes are sufficiently robust to ensure that there is both effective deterrence from and effective remedy in the event of corporate contributions to business-related human rights abuses perpetrated by third parties.

Policy objective 14: The principles for assessing corporate liability under domestic private law regimes are properly aligned with the responsibility of companies to exercise human rights due diligence across their operations.

Overcoming financial obstacles to private law claims

Policy objective 15: Claimants in cases arising from business-related human rights abuses have access to diversified sources of litigation funding.

Policy objective 16: Costs associated with bringing private law claims in cases arising from business-related human rights abuses (e.g. lawyer's fees and court fees) are reduced, including through better case management and other efficiency measures.

Cooperation in cross-border cases

Policy objective 17: Claimants in cases arising from business-related human rights abuses are readily and rapidly able to seek legal assistance from relevant State agencies and judicial bodies in other States for the purpose of gathering evidence from foreign individual, corporate and regulatory sources for use in judicial proceedings.

Policy objective 18: The State actively engages in relevant forums and initiatives to seek to improve access to information for claimants and their legal representatives in cross-border cases arising from or connected with business-related human rights abuses.

Private law remedies

Policy objective 19: Private law remedies, consequent upon a determination of corporate legal liability, offer the prospect of an effective remedy for the relevant abuse or harm.

Recommendations

Member States should:

- Develop a comprehensive strategy for implementation of the guidance in a manner that responds appropriately to local legal structures, challenges and needs.
- Take steps, using the guidance, to improve the effectiveness of cross-border cooperation between State agencies and judicial bodies, with respect to both public and private law enforcement of domestic legal regimes.

Additional References

- Oxford Pro Bono Publico (2008). "Obstacles to Justice and Redress for Victims of Corporate Human Rights Abuse". Available at: http://www2.law.ox.ac.uk/opbp/Oxford-Pro-Bono-Publico-submission-to-Ruggie-3-Nov-2008.pdf.
- Zerk, Jennifer (2014). "Corporate liability for gross human rights abuses: towards a fairer and more effective system of domestic law remedies". Available at: https://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf.

GENERAL COMMENT NO. 24 ON STATE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF BUSINESS ACTIVITIES

- General observation by the Committee on Economic, Social and Cultural Rights
- Adopted at the 61st session (29 May-23 June 2017)

Objective

The **General comment no. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities**[1] seeks to clarify the duties of States parties to the International Covenant on Economic, Social and Cultural Rights to prevent and address adverse impacts of business activities on human rights.

Therefore, it also seeks to assist the corporate sector in discharging their human rights obligations and assuming their responsibilities, thus mitigating any reputational risks that may be associated with violations of Covenant rights within their sphere of influence.

Background

Since the nineties, the Committee on Economic, Social and Cultural Rights has considered the growing impact of business activities on the enjoyment of specific Covenant rights relating to health, housing, food, water, social security, the right to work,6 the right to just and favourable conditions of work and the right to form and join trade unions.[2]

1 E/C.12/GC/24. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=es.

2 Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 26 and 35; Committee's general comment No. 4 (1991) on the right to adequate housing, para. 14.; Committee's general comment No. 12 (1999) on the right to adequate food, paras. 19 and 20; Committee's general comment No. 15 (2002) on the right to water, para. 49; Committee's general comment No. 19 (2007) on the right to social security, paras. 45, 46 and 71; Committee's general comment No. 18 (2005) on the right to work, para. 52; Committee's general comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 74 and 75.

On 12 July 2011, the Committee adopted a statement on State obligations related to corporate responsibilities in the context of the Covenant rights.[3]

Scope of application

General Comment no. 24 is directed to States parties of the International Covenant on Economic, Social and Cultural Rights to ensure that business activities, whether they operate transnationally or their activities are purely domestic, whether they are fully privately owned or State-owned, and regardless of their size, sector, location, ownership and structure, respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice.

Contents

General comment no. 24 focuses, on one hand, on the obligations of States parties to identify, prevent and mitigate the risks of violations of Covenant rights, committed in the framework of business activities and, on the other hand, on effective monitoring, investigation and accountability mechanisms to ensure the accountability and access to remedy for victims of Covenant rights violations in the context of business activities.

Obligations of States parties under the Covenant

1. Obligations of non-discrimination

The Committee acknowledges that:

- Discrimination in the exercise of economic, social and cultural rights is frequently found in private spheres, including in workplaces and the labour market and in the housing and lending sectors.
- Among the groups that are often disproportionately affected by the adverse impact of business activities are women, children, indigenous peoples, particularly in relation to the development, utilisation or exploitation of

3 E/C.12/2011/1. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2011%2F1&Lang=en.

lands and natural resources, peasants, fisherfolk and other people working in rural areas, and ethnic or religious minorities where these minorities are politically disempowered.

- Certain segments of the population face a greater risk of suffering intersectoral and multiple discriminations.

The Committee recommends that:

- States parties address the specific impacts of business activities on women and girls, including indigenous women and girls, and incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights, including by consulting the Guidance on National Action Plans on Business and Human Rights.
- States parties should also take appropriate steps, including through temporary special measures, to improve women's representation in the labour market, including at the upper echelons of the corporate hierarchy.

2. Obligations to respect, to protect and to fulfil

The Covenant establishes specific obligations of States parties at three levels — to respect, to protect and to fulfil. Nevertheless, in the context of business activities, the States obligations, focussing on their duties to protect, are the most relevant.

2.1. *Obligation to respect*

The obligation to respect economic, social and cultural rights is violated when States parties prioritise the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. Therefore, the Committee recommends that:

- States parties and businesses respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.
- States parties identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from en-

tering into such treaties where such conflicts are found to exist, as required under the principle of the binding character of treaties.

- States parties insert, in future treaties, a provision explicitly referring to their human rights obligations, and to ensure that mechanisms for the settlement of investor-State disputes take human rights into account in the interpretation of investment treaties or of investment chapters in trade agreements.

2.2. *Obligation to protect*

The obligation to protect means that States parties must prevent effectively infringements of economic, social and cultural rights in the context of business activities. This requires that:

- States parties adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against Covenant rights violations linked to business activities, and that they provide victims of such corporate abuses with access to effective remedies.

- States parties consider imposing criminal or administrative sanctions and penalties, as appropriate, where business activities result in abuses of Covenant rights or where a failure to act with due diligence to mitigate risks allows such infringements to occur.

- States parties adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights.

- States parties ensure that, where appropriate, the impacts of business activities on indigenous peoples are incorporated into human rights impact assessments. In exercising human rights due diligence, businesses should consult and cooperate in good faith with the indigenous peoples concerned through indigenous peoples' own representative institutions in order to obtain their free, prior and informed consent before the commencement of activities.

2.3. *Obligation to fulfil*

The obligation to fulfil requires States parties to take necessary steps to facilitate and promote the enjoyment of Covenant rights, and, in certain

cases, to directly provide goods and services essential to such enjoyment. Discharging such duties may require seeking business cooperation and support to implement the Covenant rights and comply with other human rights standards and principles.

Extraterritorial obligations

The Committee has acknowledged that States parties' obligations under the Covenant do not stop at their territorial borders, but are required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory or jurisdiction, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.

The extraterritorial obligations of States under the Covenant follow from the fact that the obligations of the Covenant are expressed without any restriction linked to territory or jurisdiction. As such, they arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory.

- **Extraterritorial obligation to respect.** The extraterritorial obligation to respect requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements or of financial and tax treaties.
- **Extraterritorial obligation to protect.** The extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective. States parties should also require corporations to deploy their best efforts to ensure that entities whose conduct those corporations may influence, such as subsidiaries or business partners, respect Covenant rights. Corporations domiciled in the territory or jurisdiction of States parties should be required to act with due diligence to identify, prevent and ad-

dress abuses to Covenant rights by such subsidiaries and business partners, wherever they may be located.

- **Extraterritorial obligation to fulfil.** The obligation to fulfil requires States parties to contribute to creating an international environment that enables the fulfilment of the Covenant rights. To that end, States parties should also encourage business actors whose conduct they are in a position to influence to ensure that they do not undermine the efforts of the States in which they operate to fully realise the Covenant rights.

Remedies

In discharging their duty to protect, States parties should put in place effective monitoring, investigation and accountability mechanisms to ensure accountability and access to remedies, preferably judicial remedies, for those whose Covenant rights have been violated in the context of business activities.

In particular, States should: take all measures necessary to prevent rights violations. Where such preventative measures fail, thoroughly investigate violations and take appropriate actions against alleged offenders; provide victims with effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and provide effective remedies to victims, including reparation.

Also, States parties have the duty to take necessary steps to address these challenges in order to prevent a denial of justice and ensure the right to effective remedy and reparation. This requires States parties to remove substantive, procedural and practical barriers to remedies, including by establishing parent company or group liability regimes, providing legal aid and other funding schemes to claimants, enabling human rights-related class actions and public interest litigation, facilitating access to relevant information and the collection of evidence abroad, including witness testimony, and allowing such evidence to be presented in judicial proceedings.

Along the same line, States parties should facilitate access to relevant information through mandatory disclosure laws and by introducing procedural rules allowing victims to obtain the disclosure of evidence held by the defendant. Shifting the burden of proof may be justified where the facts and

events relevant for resolving a claim lie wholly or in part within the exclusive knowledge of the corporate defendant.

Ensuring corporate accountability for violations of Covenant rights requires reliance on various tools:

- **Judicial remedies.** Where the violation is directly attributable to a business entity, victims should be able to sue such an entity either directly on the basis of the Covenant in jurisdictions which consider that the Covenant imposes self-executing obligations on private actors, or on the basis of domestic legislation incorporating the Covenant in the national legal order. In this regard, civil remedies play an important role in ensuring access to justice for victims of violations of Covenant rights.

- **Non-judicial remedies.** Non-judicial remedies may contribute to providing effective remedy to victims whose Covenant rights have been violated by business actors and ensuring accountability for such violations. These alternative mechanisms should be adequately coordinated with available judicial mechanisms, both in relation to the sanction and to the compensation for victims.

  Non-judicial mechanisms should provide effective protection for victims' rights and possess a number of characteristics ensuring that they are credible and can contribute effectively to the prevention of and reparation for violations. Moreover, they should also be available in transnational settings.

Additional references

- Desierto, Diane (2017). "The ICESCR as a Legal Constraint on State Regulation of Business, Trade, and Investment: Notes from CESCR General Comment No. 24 (August 2017)". Available at: https://www.ejiltalk.org/the-icescr-as-a-legal-constraint-on-state-regulation-of-business-trade-and-investment-notes-from-cescr-general-comment-no-24-august-2017/.
- Langford, Malcolm; Vandenhole, Wouter; Scheinin, Martin; Van Genugten, Willem (2014). *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law*. Cambridge: Cambridge University Press.
- The ETO Consortium (2017). "CESCR elaborates on States' ETOs in the context of business activities in new General Comment 24". Available at: https://www.etoconsortium.org/en/news/news/cescr-elaborates-on-states-etos-in-the-context-of-business-activities-in-new-general-comment-24-145/.

ii. UNICEF

CHILDREN'S RIGHTS AND BUSINESS PRINCIPLES

- Non-binding initiative, set out by Unicef, Save the Children and the Global Compact
- Published on 12 March 2012

Objective

The **Children's Rights and Business Principles**[1] are derived from the internationally recognised human rights of children, and do not create new international legal obligations. In particular, they are founded on the rights outlined in the Convention on the Rights of the Child and its optional protocols. They also elaborate on existing standards for business, such as the Global Compact's and the Guiding Principles.

Their objective is to elaborate business' role in respecting and supporting children's rights. To do so, they identify a comprehensive range of actions that all business should take to prevent and address any adverse impact on children's human rights, as well as measures all business is encouraged to take to help advance children's rights.

1 Unicef; Global Compact; Save the Children (2012). "Children's Rights and Business Principles". Available at: https://www.unicef.org/csr/css/PRINCIPLES_23_02_12_FINAL_FOR_PRINTER.pdf .

Scope of application

Material scope

The Children's Rights and Business Principles call on business everywhere to respect and support children's rights throughout their activities and business relationships, including in the workplace, the marketplace, the community and the environment. Therefore, they need to prevent and address any adverse impact on children's human rights, set out in the following international instruments:

- The Convention on the Rights of the Child (1989)
- The Optional protocol on the involvement of children in armed conflict (2000)
- The Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)
- ILO Conventions No. 182 on the worst forms of child labour
- ILO Conventions No. 138 on the minimum age

Personal scope

They are for all business, transnational and other, regardless of their size, sector, location, ownership and structure.

Contents

The Children's Rights and Business Principles are elaborated in ten principles to prevent and address adverse impacts of business activities and business relationships, as well as maximising the positive impacts on children's lives. Each principle lays out actions to respect and promote children's rights. Even if not required, businesses are encouraged to develop initiatives to actively support children's rights.

1. Meet their responsibility to respect children's rights and commit to supporting the human rights of children

Business should:

- Recognise the core Principles underpinning children's rights: the best interests of the child; non-discrimination; child participation; and survival and development.
- Meet the responsibility to respect children's rights. This requires all business, as set out in the Guiding Principles, avoid the infringement of children's rights and address any negative impact on their rights, due to its own activities or those of its business relationships.

  Therefore, all business should:
  - Publicly establish a **policy commitment** setting out the business' responsibility to respect rights, including children's rights, approved at the most senior level of the business and based on relevant expertise in the issue.
  - Establish **human rights due diligence processes**, as described in the Guiding Principles, to identify, mitigate, prevent and account for possible and actual human rights impacts, including children's rights.
  - Establish child-sensitive **processes to enable remediation**. These steps need to meet effectiveness criteria for non-judicial grievance mechanisms, set out in Principle 31 of the Guiding Principles.
- Encourage voluntary actions in support of children's rights, through core business activities, strategic social investments and philanthropy, advocacy and public policy engagement, as well working in partnership and other collective action.
- Promote children's rights, including implementing these Principles and related best business practices, relevant in business operations, including among suppliers, business partners and peers.

2. Contribute towards the elimination of child labour, including in all business activities and business relationships

The corporate responsibility to respect includes respect for the rights in the ILO Declaration on Fundamental Principles and Rights at Work. Therefore, all business should:

- Not employ or use children in any type of child labour. Establish robust age-verification mechanisms as part of recruitment processes and ensure that these mechanisms are also used in the value chain.
- Prevent, identify and mitigate harm to young workers and protect them from work that is prohibited for workers under 18 years old or beyond their physical and psychological capacity.
- Work with governments, social partners and others to promote education and sustainable solutions to the root causes of child labour.

3. Provide decent work for young workers, parents and caregivers

The corporate responsibility to respect includes:

- Providing decent work for young workers and promote social dialogue and rights at work, provision of safe working conditions, protection from abuse and exploitation, and access to gender-appropriate sanitation facilities.
- Being responsive to the vulnerability of young workers above the minimum age for work and address problems that may arise.
- Providing decent working conditions that also support workers, both women and men, in their roles as parents or caregivers, including: the payment of a living wage, length and flexibility of working hours, provisions for pregnant and breastfeeding women, need for parental leave, among others.

4. Ensure the protection and safety of children in all business activities and facilities

Business should:

- Address safety and protection risks to children's rights posed by business facilities and staff in the course of business activities.
- Develop and implement a child protection code of conduct for business operations.

5. Ensure that products and services are safe, and seek to support children's rights through them

The corporate responsibility to respect includes:

- Ensuring that testing and research of products and services likely to be used or consumed by children is conducted in line with relevant national and international standards.
- Ensuring that products and services for children or to which children may be exposed are safe and do not cause mental, moral or physical harm.
- Restricting access to products and services that are not suitable for children or that may cause them harm, while ensuring that all such actions align with international standards, including non-discrimination, freedom of expression and access to information.
- Taking all reasonable steps to eliminate discrimination against any child or group of children in the provision of products and services.
- Seeking to prevent and eliminate the risk that products and services could be used to abuse, exploit or otherwise harm children in any way.
- Taking steps to maximise the accessibility and availability of products and services that are essential to children's survival and development.
- Seeking opportunities to support children's rights through products and services, as well as their distribution.

6. Use marketing and advertising that respect and support children's rights

Business should:

- Ensure that communications and marketing do not have an adverse impact on children's rights. If an adverse impact on children's rights exists or may exist, action needs to be taken to integrate and correct these impacts.
- Comply with the standards of business conduct in World Health Assembly instruments related to marketing and health in all countries.

- Use marketing that promotes children's rights, positive self-esteem, healthy lifestyles and non-violent values.

7. Respect and support children's rights in relation to the environment and to land acquisition and use

Business should:

- Respect children's rights in relationship to the environment, ensuring that business operations do not adversely affect children's rights, including through damage to the environment or reducing access to natural resources.
- Respect children's rights as an integral part of human rights considerations when acquiring or using land for business operations
- Support children's rights in relationship to the environment where future generations will live and grow, taking measures to progressively reduce the emission of greenhouse gases from company operations and promote resource use that is sustainable.

8. Respect and support children's rights in security arrangements

Business should:

- Respect children's rights when making and implementing security arrangements, whether with public or private security service providers.
- Supporting children's rights in security arrangements through the implementation of best practices in the management of security services provided by private contractors or public security forces.

9. Help protect children affected by emergencies

Business should:

- Avoid causing or contributing to the infringement of children's rights in the context of armed conflict and other emergencies, and undertake human rights due diligence accordingly.
- Support the rights of children affected by emergencies by raising awareness among workers and community members of the increased risks of

violence, abuse and exploitation of children in such contexts; as well as support authorities and humanitarian agencies in emergency response, in accordance with best practices.

10. Reinforce community and government efforts to protect and fulfil children's rights

Business should:

- Recognise that respect for the rule of law and the use of responsible business practices, including the payment of taxes to generate revenues, are essential for governments to meet their obligations to protect and fulfil children's rights.
- Support government efforts to protect and fulfil children's rights.
- Undertake strategic social investment programmes for children.

Additional references

- ACCA (2014). *Accounting for Children: Implementing Child Rights for Better Business*. London: ACCA.
- Collins, Tara M. (2014). "The relationship between children's rights and business". *The International Journal of Human Rights,* vol. 18, nr. 6, pp. 582-633.
- ILO; OIE (2016). *ILO-IOE Child labour guidance tool for business: How to do business with respect for children's right to be free from child labour.* Geneva: ILO.
- Martin-Ortega, Olga; Wallace, Rebecca (2013). "Business, Human Rights and Children: The Developing International Agenda" *Denning Law Journal*, vol. 25, pp. 105-128.
- Unicef (2018). "Child Safeguarding Toolkit for Business. A step-by-step guide to identifying and preventing risks to children who interact with your business". Available at: https://www.unicef.org/csr/files/UNICEF_Child-SafeguardingToolkit_FINAL.PDF.

- Unicef; Danish Institute for Human Rights (2013). "Children's Rights in Impact Assessments. A guide for integrating children's rights into impact assessments and taking action for children". Available at: https://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf.
- Unicef; Global Child Forum. "Children's Rights and Business Atlas". Available at: https://www.childrensrightsatlas.org/
- Vandenberg, Paul (2007). *Eliminating Child Labour Guides for Employers: Guide Two – How employers can eliminate child labour.* Geneva: International Labour Organization.
- Williams, Charlotte (2018). "Children's Rights and Business – Stuck in the "Too Difficult" Box?" Available at: https://www.ihrb.org/other/children/commentary-childrens-rights-and-business-stuck-in-too-difficult-box.

iii. Organisation for Economic Coperation and Development

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

- Voluntary initiative by the Organisation for Economic Co-operation and Development (OECD)
- Adopted on 21 June 1976

Objective

The **OECD Guidelines for Multinational Enterprises**[1] constitute the multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. The Guidelines aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.

Specific objectives

The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

Background

On 21 June 1976, the OECD members States adopted the OECD Guidelines for Multinational Enterprises in the framework of the Declaration on International Investment and Multinational Enterprises, with the remaining

1 OECD (2013). *OECD Guidelines for Multinational Enterprises*. París: OECD Publishing.

elements referring to national treatment, conflicting requirements for enterprises and international investment incentives and disincentives.[2]

The Guidelines have been revised in several occasions (1979, 1982, 1984, 1991, 2000 and 2011) in order to adapt to the requirements of the socio-economic context in which they are implemented. The changes agreed aim to ensure the continued role of the Guidelines as a leading international instrument for the promotion of responsible business conduct. In most occasions, the changes were minor. Nevertheless, the changes introduced in 2000 and 2011 should be highlighted.

In 2000, the Guidelines saw at least 80 changes with respect to previous versions, directly impacting on its scope and content. Also, with regard to the implementation mechanisms, the specific instance procedure was introduced.[3]

On 4 May 2010, the governments of the 42 OECD and non-OECD countries, adhering to the OECD Declaration on International Investment and Multinational Enterprises, started work on updating the Guidelines to reflect changes in the landscape for international investment and multinational enterprises.

The updated Guidelines and the related Decision were adopted by the 42 adhering governments on 25 May 2011. Among the most relevant modifications in the Guidelines are the introduction of a new chapter on human rights, consistent with the United Nations Guiding Principles on business and human rights; the adoption of a new and comprehensive approach to due diligence and responsible supply chain management; important changes in many specialised chapters; a pro-active implementation agenda to assist enterprises in meeting their responsibilities as new challenges arise; among others.[4]

2 OECD (1976). "Declaration on International Investment and Multinational Enterprises". Available at: http://www.oecd.org/daf/inv/investment-policy/oecddeclarationanddecisions.htm.

3 Tully, Stephen (2001). "The 2000 review of the OECD Guidelines for Multinationals Enterprises". *International and Comparative Law Quarterly*, vol. 50, nr. 4, pp. 394-404.

4 Černič, Jernej Letnar (2012). "The 2011 Update of the OECD Guidelines for Multinational Enterprises". *American Society of International Law Insights*, vol. 16, nr. 4, pp. 1-5.

Scope of application

The Guidelines apply to the governments adhering to the OECD Declaration on International Investment and Multinational Enterprises. The adhering governments subscribe the binding commitment of implementing them in agreement with the Council's Decision regarding the OECD Guidelines for Multinational Enterprises.

Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country. As well, they accept the commitment of fulfilling their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

Requirements for companies

The Guidelines provide non-binding recommendations, addressed to multinational enterprises by governments adhering to the Guidelines.

> According to the Guidelines, a precise definition of "multinational enterprises" is not required. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed.

The recommendations of the Guidelines are addressed to all the entities within the multinational enterprise (parent companies or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.

The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises, but reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.

The recommendations of the Guidelines provide principles and standards of good practice consistent with applicable laws and internationally recognised standards, in order to encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise difficulties which may arise from their operations.

The 2011 Guidelines exist of eleven chapters on: Concepts and Principles, General Policies, Disclosure, Human Rights, Employment and Industrial Relations, Environment, Combating Bribery, Bribe Solicitation and Extortion, Consumer Interests, Science and Technology, Competition and Taxation.

Concepts and Principles

According to the General Policies of the Guidelines, enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development; respect the internationally recognised human rights of those affected by their activities; carry out risk-based due diligence; avoid causing or contributing to adverse impacts through their own activities; encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines; among others.

Also, enterprises are encouraged to engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

Disclosure

All enterprises should ensure the disclosure, in timely manner, of accurate information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance, in agreement

with the nature, size and location of the enterprise. Disclosure policies of enterprises should include material information on:

a) The financial and operating results of the enterprise;

b) Enterprise objectives;

c) Major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;

d) Remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;

e) Related party transactions;

f) Foreseeable risk factors;

g) Issues regarding workers and other stakeholders; and,

h) Governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.

Also, enterprises are encouraged to communicate additional information on:

a) Value statements or statements of business conduct intended for public disclosure;

b) Policies and other codes of conduct to which the enterprise subscribes;

c) Its performance in relation to these statements and codes;

d) Information on internal audit, risk management and legal compliance systems; and

e) Information on relationships with workers and other stakeholders.

Human rights

States have the duty to protect human rights. Even so, enterprises should:

a) Respect human rights.

b) Avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

c) Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

d) Have a policy commitment to respect human rights.

e) Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

f) Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

c) Contribute to the effective abolition of child labour and the elimination of all forms of forced or compulsory labour.

d) Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

e) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

f) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies.

g) To the greatest extent practicable, employ local workers in their operations.

h) Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations.

Environment

Enterprises should take due account of the need to protect the environment, public health and safety, and generally, conduct their activities in a manner contributing to the wider goal of sustainable development. In this sense, they should:

a) Establish and maintain an appropriate system of environmental management.

b) Provide adequate, measureable and verifiable information on the potential environmental impacts of the activities of the enterprise.

c) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental policies.

d) Assess, and address in decision-making, the foreseeable environment-related impacts.

e) Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

f) Maintain contingency plans for preventing, mitigating, and controlling serious environmental damage.

g) Provide adequate education and training to workers in environmental matters.

Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

a) Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners.

b) Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery.

c) Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments.

d) Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only.

e) Enhance the transparency of their activities in the fight against bribery, bribe solicitation and other forms of extortion.

f) Not make illegal contributions to candidates for public office or to political parties or to other political organisations.

Consumer Interests

Enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. To do so, they have the obligation to:

a) Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety.

b) Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.

c) Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

d) Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.

Science and Technology

Enterprises should:

a) Endeavour to ensure that their activities are compatible with the science and technology policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.

b) Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.

c) When appropriate, perform science and technology development work in host countries to address local market needs.

d) When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term sustainable development prospects of the host country.

e) Develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

Competition

Enterprises should:

a) Carry out their activities in a manner consistent with all applicable competition laws and regulations.

b) Refrain from entering into or carrying out anti-competitive agreements among competitors.

c) Co-operate with investigating competition authorities.

d) Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations.

Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. As such, they should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

Implementation Procedures

The Guidelines are supported by an implementation mechanism: the National Contact Points (NCPs), agencies established by governments of the adhering countries in order to promote and implement the Guidelines.

Adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties. Even so, they need to operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise. In this sense, they will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of these Guidelines.

In providing this specific assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved. Where the issues raised

merit further examination, offer good offices to help the parties involved to resolve the issues.

2. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available by issuing:

   a. a statement when the NCP decides that the issues raised do not merit further consideration.

   b. a report when the parties have reached agreement on the issues raised.

   c. a statement when no agreement is reached or when a party is unwilling to participate in the procedures.

3. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance.

4. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

Additional references

- Černič, Jernej Letnar (2008). "Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational". *Hanse Law Review*, vol. 4, nr. 1, pp. 71-100.

- Evans, John (2003). "OECD Guidelines – one tool for corporate social accountability". *Labour education*, nr. 130, pp. 27-32.

- Huner, Jan (2000). "The Multilateral Agreement on Investment and the Review of the OECD Guidelines for Multinational Enterprises". In: *Liability of Multinational Corporations under International Law*. La Haya-London-Boston: Kluwer Law International.

- Murray, Jill (2001). "A New Phase in the Regulation of Multinational Enterprises: The Role the OECD". *Industrial Law Journal*, vol. 30, nr. 3, pp. 255-270.

- Nieuwenkamp, Roel (2013). "The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct". *Dovenschmidt Quarterly*, vol. 2013, nr. 4, pp. 171-175
- Robinson, Scott (2014). "International Obligations, State Responsibility and Judicial Review under the OECD Guidelines for Multinational Enterprises Regime". *Utrecht Journal of International and European Law*, vol. 30, nr. 78, pp. 68-81.
- Sánchez Felipe, José Manuel (2011). "Líneas directrices de la OECD para empresas multinacionales: (update 25 May 2011)". Revista de derecho de sociedades, nr. 37, pp. 423-425.
- Ricco, Víctor H. (2011). "Las directrices de la OECD para las empresas multinacionales: ¿esperanza en la revisión?" *Aportes DPLF*, nr. 15, 4th year, pp. 31-33.

OECD-FAO GUIDANCE FOR RESPONSIBLE AGRICULTURAL SUPPLY CHAINS

- Sector-related due diligence guidance by the Organisation for Economic Co-operation and Development and (OECD) and the Food and Agriculture Organisation (FAO)
- Published on 31 October 2010
- Agricultural sector

Objective

The **OECD-FAO Guidance for Responsible Agricultural Supply Chains**[1] has been developed to help enterprises observe existing standards for responsible business conduct along agricultural supply chains. These standards include the OECD Guidelines for Multinational Enterprises, the Principles for Responsible Investment in Agriculture and Food Systems, and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

Background

The OECD-FAO Guidance was developed between 2013 and 2015 under the guidance of a multi-stakeholder Advisory Group, including representatives from OECD and non-OECD members, the private sector, and civil society. It held its first meeting on 16 October 2013 and subsequent meetings on 26 June 2014 and 16 March 2015.

It also held a joint meeting with the Advisory Group on Meaningful Stakeholder Engagement in the Extractive Sector on 18 June 2015 to discuss free, prior and informed consent. Conference calls were organised on 10 February 2014, 28 May 2014 and 7 January 2015. An online public consultation was held in January and February 2015 to receive comments on the draft Guidance from a wider range of stakeholders.

1 OECD/FAO (2016). *OECD-FAO Guidance for Responsible Agricultural Supply Chains*. OECD Publishing, Paris.

A Recommendation on the Guidance was adopted by the OECD Council on 13 July 2016, reflecting the common position and political commitment of OECD members and non-member adherents.

Scope of application

Material scope

The Guidance refers to existing standards on human and labour rights, health and safety, food security and nutrition, tenue rights over and access to natural resources, animal welfare, environmental protection and sustainable use of natural resources, governance and technology and innovation, in order to help enterprises in the prevention of risks of adverse environmental, social, labour and human rights impacts.

The Guidance considers existing standards that are relevant for responsible business conduct along agricultural supply chains, including:

- The OECD Guidelines for Multinational Enterprises;
- The Principles for Responsible Investment in Agriculture and Food Systems of the Committee on World Food Security;
- The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security;
- The Principles for Responsible Agricultural Investment that respects rights, livelihoods and resources developed by FAO;
- The Guiding Principles on Business and Human Rights;
- The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;
- The Convention on Biological Diversity, including the Akwé: Kon Voluntary Guidelines;
- The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the UN Economic Commission for Europe.

Personal scope

The Guidance targets all enterprises operating along agricultural supply chains, including domestic and foreign, private and public, small, medium and large-scale enterprises. It covers agricultural upstream and downstream sectors from input supply to production, post-harvest handling, processing, transportation, marketing, distribution and retailing.

> Agricultural supply chains refer to the system encompassing all the activities, organisations, actors, technology, information, resources and services involved in producing agri-food products for consumer markets. They cover agricultural upstream and downstream sectors from the supply of agricultural inputs (such as seeds, fertilisers, feeds, medicines, or equipment) to production, post-harvest handling, processing, transportation, marketing, distribution, and retailing. They also include support services such as extension services, research and development, and market information. As such, they consist of a wide range of enterprises, ranging from smallholders, farmers' organisations, co-operatives and start-up companies to MNEs through parent companies or their local affiliates, state-owned enterprises and funds, private financial actors and private foundations.

It can also be used by governments, particularly NCPs, to better understand and promote existing standards in agricultural supply chains.

Furthermore, it can help affected communities understand what they should expect from the abovementioned actors and thus ensure that their rights are respected.

Structure

The Guidance has been divided into four sections:

1. A model enterprise policy which outlines the content of existing standards that enterprises should observe to build responsible agricultural supply chains (Section 1).
2. A framework for risk-based due diligence along agricultural supply chains, describing the five steps enterprises should take to identify, assess, mitigate, and account for how they address adverse impacts associated with their activities (Section 2).

3. A description of the main risks enterprises are facing, and the measures taken to mitigate these risks (Annex A).
4. Guidance for engaging with indigenous communities and peoples (Annex B).

Requirements for companies

Model enterprise policy for responsible agricultural supply chain

The Guidance contains a model enterprise policy that can be adopted by enterprises as it is, or relevant parts can be incorporated into and tailored to their existing policies on corporate social responsibility, sustainability, risk management, or other equivalent alternatives. Even so, when designing their policy, enterprises should also ensure that they comply with all applicable national laws and consider any other relevant international standards. The standards that need to be considered in the enterprise policy are:

- Cross-cutting responsible business conduct standards (impact assessment, disclosure, benefit sharing, grievance mechanisms, gender).
- Human rights.
- Labour rights.
- Health and safety.
- Food security and nutrition.
- Tenure rights over and access to natural resources.
- Animal welfare.
- Environmental protection and sustainable use of natural resources.
- Governance.
- Technology and innovation.

Five-step framework for risk-based due diligence along agricultural supply chains

Enterprises should implement the following five-step framework to undertake risk-based due diligence along agricultural supply chains:

1. **Establish strong enterprise management systems for responsible agricultural supply chains**
   - Adopt, or integrate into existing processes, an enterprise policy for responsible business conduct (RBC) along the supply chain.
   - The enterprise policy for RBC should be approved at the most senior level of the enterprise; be informed by relevant internal and external expertise; be publicly available and communicated to all employees, business partners and other relevant parties; be reflected in operational policies and procedures throughout the enterprise.
   - Structure internal management to support supply chain due diligence.
   - Establish a system of controls and transparency along the supply chain.
     - Such procedure can consist of a traceability system which implies creating internal documentation of due diligence processes, findings and resulting decisions; maintaining internal inventory and transaction documentation that can be used retrospectively to identify actors in the supply chain; making and receiving payments through official banking and ensuring that all unavoidable cash purchases are supported by verifiable documentation; and maintaining the information collected for a period of several years.
   - Strengthen engagement with business partners.
   - Establish an operational-level grievance mechanism in consultation and collaboration with relevant stakeholders.

2. **Identify, assess and prioritise risks in the supply chain**
   - Map the supply chain
   - Assess the risks of adverse environmental, social and human rights impacts of the operations, processes, goods and services of the enterprise and its business partners over their full life cycle.
     - Such assessments should identify relevant rights-holders and stakeholders; any business partner that risks not undertaking proper due diligence; any reasonable inconsistency between the factual circumstances of the operations and the enterprise policy for RBC.

3. Design and implement a strategy to respond to identified risks

- Report the findings of the risk assessment to the designated senior management.
- Adopt a risk management plan
- Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to the designated senior management.

4. Verify supply chain due diligence

- If the risk has been mitigated or prevented, the enterprise should conduct ongoing due diligence proportionate to the risk.
- If the risk has not been mitigated or prevented, the verification process should identify why this is the case, such as the lack of effective risk mitigation strategy, or inadequate timing, resources or lack of will to mitigate risks. A new risk assessment should be undertaken.

5. Report on supply chain due diligence

- Enterprises should publicly report on their supply chain due diligence policies and practices, with due regard taken of business confidentiality and other competitive concerns, sensitive to the enterprise.

Measures for risk mitigation and prevention along agricultural supply chains

	Risks	Measures for risk mitigation
Disclosure/Transparency (Cross-cutting RBC standards)	• A lack of transparency can create distrust and deprive enterprises of the possibility to resolve minor problems before they escalate into large conflicts. • Unless information is provided in a linguistically and culturally adequate, measurable, verifiable and timely manner, including through regular consultation meetings and the general media, enterprises run the risk of not being fully understood by potentially affected stakeholders or of failing to reach out to all relevant parties.	• Provide timely and accurate information to the public • Diffuse information through all appropriate means of notification. • In the event of imminent threat to human health or the environment, share immediately and without delay all information which could enable authorities and the public to take measures to prevent or mitigate harm arising from the threat. • Tailor disclosure policies to the nature, size and location of the operations.

	Risks	Measures for risk mitigation
Consultations (Cross-cutting RBC tandards)	• A lack of consultations prevents enterprises from realistically assessing the project viability and from identifying effective and context-specific response measures. Inclusive and fully transparent consultations can lower transaction costs, reduce opposition and create trust among stakeholders.	• Develop and implement a stakeholder engagement plan tailored to the risks, impacts and development stage of the operations and to the characteristics and interests of affected communities. • Hold consultations with potentially affected communities. • Organise consultation and decision-making processes without intimidation. • Document and implement agreements resulting from consultations. • Verify that community representatives do in fact represent the views of the majority of the stakeholders they represent.
Impact assessment (Cross-cutting RBC tandards)	• Enterprises can avoid or, when unavoidable, mitigate the actual and potential adverse impacts of their operations, processes, goods and services by assessing the risks of such impacts over their full life-cycle on an ongoing basis. Such assessments can allow them to develop a comprehensive and forward-looking approach to the management of risks, including the risks arising from the operations of their business partners.	• Impact assessments need to include screening, scoping, impact analysis and identification of mitigation measures. • Impact assessments need to cover the following likely impacts: environmental impacts, social impacts, impacts on cultural heritage, impacts on women, impacts on animal welfare, among others. • Invite affected communities to be involved in conducting the impact assessment.
Benefit sharing (Cross-cutting RBC standards)	• To avoid the risk of creating local opposition and to reduce transaction costs, enterprises should explore ways to maximise the positive impacts of their operations on local communities.	• Strive to identify opportunities for development benefits. • Ensure that operations are in line with the development priorities and social objectives of the host government. • Share monetary and non-monetary benefits arising from operations involving indigenous peoples' lands, resources and knowledge.
Grievance mechanisms (Cross-cutting RBC standards)	• Operational-level grievance mechanisms designed as early-warning risk-awareness systems offer a locally based, simplified, and mutually beneficial way to settle issues between enterprises and affected communities by helping resolve minor disputes quickly, inexpensively, and fairly before they are elevated to formal dispute resolution mechanisms, including judicial courts.	• Scale the grievance mechanism according to the risks and adverse impacts of the operations. • Engage with affected stakeholders about the mechanism design and performance to ensure that: it meets their needs. • Avoid using grievance mechanisms established by enterprises to preclude access to judicial or non-judicial grievance mechanisms.

	Risks	Measures for risk mitigation
Human rights	• Enterprises run the risk of not respecting human rights when they cause or contribute to adverse human rights impacts within the context of their own activities and fail to address such impacts when they occur.	• Identify rights-holders potentially affected by the operations of the enterprise and its business partners. • Carry out human rights due diligence by assessing actual and potential human rights impacts. • Ensure that all stakeholders involved are treated fairly. • Recognise the vital role played by women in agriculture and take appropriate measures to eliminate discrimination against women and to help ensure their full professional development and advancement.
Labour rights	• Respecting labour rights in the agricultural sector may be a challenge, as both independent and waged employment often remains informal, and many agricultural workers are excluded from the scope of labour laws. • Marginalised groups, such as women, youth and indigenous and migrant workers, as well as workers employed on a casual, piecework or seasonal basis, and informal workers, often face abusive or insalubrious working conditions. • Violations of core labour rights may encourage disruptive social tensions that may affect the enterprise's performance.	• Workers' protection. • Decent working conditions. • Workers' representation and collective bargaining. • Local employment. • Training.
Health and safety	• Agricultural activities often involve some of the most hazardous activities for workers and many agricultural workers suffer from occupational accidents and illnesses. • Human health can be at risk with unsafe levels of biological, chemical or physical hazards in food.	• Evaluate the risks and impacts to the health and safety of the affected communities throughout the operations. • Avoid or minimise workers, third party and community exposure to hazardous materials and substances. • Avoid or minimise the potential for community exposure to diseases. • Assist and collaborate with affected communities, local government agencies, and other relevant parties, in their preparations to respond effectively to emergency situations. • Consider observing global food safety standards.
Food security and nutrition	• Agricultural investments have increased following food price hikes in 2008. One of the most prominent adverse impacts can result from acquiring large tracts of land and, in the process, displacing communities from it, or hindering their access to it.	• Consider the impacts of operations on the availability and access to food, local employment, dietary preferences and stability of food supply. • Identify food-related concerns of different stake-holders. • Adjust project design to address concerns about negative impacts on food security and nutrition. • Consider contributing to improving access to food and the resilience and nutrition of local populations.

	Risks	Measures for risk mitigation
Tenure rights over and access to natural resources	• Land tenure risk, arising when several land claims overlap, represents a statistically significant risk in concession investments in emerging economies. • The food and beverage industry is second only to the extractive industry in being the recipient of accusations from civil society organisations for failing to give adequate consideration to rights related to access to land and water.	• Identify rights-holders. • Establish a committee representative of the relevant stakeholders to advice on impact assessments. • Consider feasible alternative investments if proposed investments lead to the physical or economic displacement of local communities. • Ensure that tenure rights holders receive a fair, prompt and appropriate compensation for those tenure rights negatively impacted by the operations.
Animal welfare	• Animal welfare risks may arise in agricultural supply chains. They can be associated with limitations on space in individual stalls restricting the movement of animals, high stocking densities in groups increasing the potential for disease transmission and injurious contact with others, barren/unchanging environments leading to behavioural problems, feeding diets that do not satisfy hunger, injurious husbandry procedures that cause pain, and breeding for production traits that heighten anatomical or metabolic disorders.	• Assess actual and potential impacts on animal welfare. • Ensure that the physical environment allows comfortable resting, safe and comfortable movement, including normal postural changes, and the opportunity to perform types of natural behaviour that animals are motivated to perform. • Ensure that animals have access to sufficient feed and water. • When painful procedures cannot be avoided, manage the resulting pain to the extent that available methods allow. • Ensure that the handling of animals fosters a positive relationship between humans and animals and does not cause injury, panic, lasting fear or avoidable stress.
Environmental protection and sustainable use of natural resources	• Agricultural investments intended to increase agricultural production in the short term may also lead to ecosystem degradation in the long term, including land degradation, water resource depletion, and losses of pristine forests and biodiversity.	• Establish and maintain a system of environmental management appropriate to the characteristics of the enterprise. • Establish procedures to monitor and measure the effectiveness of the environmental management system. • Address the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise. • Maintain contingency plans for preventing, mitigating, and controlling serious environ-mental and health damage from the operations. • Support the conservation of biodiversity, genetic resources and ecosystem services. • Enhance resource use efficiency.

	Risks	Measures for risk mitigation
Governance	• If the government does not have clear and well-enforced laws on transparency and anti-corruption, governance-related risks for enterprises are high. • Tax evasion can increase reputational risks for the enterprise. • Dumping by large enterprises selling a product at loss in a competitive market can force competitors, including small and medium enterprises, out of the market.	• Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework. • Avoid directly or indirectly (via a third party) offering, promising, giving, or demanding a bribe or other undue advantage • Abstain from any improper involvement in local political activities. • Provide authorities with timely information that is relevant or required by law for the purposes of the correct determination of taxes to be assessed in connection with operations. • Refrain from entering into or carrying out anti-competitive agreements among competitors.
Technology and innovation	• Promoting and sharing technologies may contribute to create an environment that supports the enjoyment of human rights and enhance environmental protection. However, empirical studies suggest that actual technology transfer in the agricultural sector is reduced.	• Endeavour to ensure that activities are compatible with the science and technology policies and plans of host countries. • Adopt, where practicable in the course of the operations, practices that permit the transfer and rapid diffusion of locally-adapted and innovative technologies, knowhow and practices. • Develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

Engagement with indigenous peoples

Enterprises should undertake good-faith, effective and meaningful consultations with communities before initiating any operations that may affect them as well as during and at the end of operations. Therefore, irrespective of regulatory or operational requirements and throughout their project planning, they should anticipate that indigenous peoples may expect consultation seeking free prior and informed consent and that risks may be generated if such expectations are not met.

In this regard, the following key steps may be useful to engage with indigenous peoples when seeking to implement free prior and informed consent:

- Agree with affected indigenous peoples on a consultation process for working towards seeking free prior and informed consent.

- Consult and agree on what constitutes appropriate consent for affected indigenous peoples in accordance with their governance institutions, customary laws and practices.
- Engage in the process of seeking consent as soon as possible during project planning.
- Recognise the process of seeking free prior and informed consent as iterative rather than a one-off discussion.
- Provide all information relating to the activity to indigenous communities in a manner that is timely, objective, accurate and understandable to them.
- Determine what action(s) will be taken in the event that: a) indigenous peoples refuse to enter into negotiations; and b) indigenous peoples do not give their consent for activities in their territory.

Additional references

- Rosenthal, Paul C.; Hawkins, Anne E. (2015). "Applying the Law of Child Labor in Agricultural Supply Chains: A Realistic Approach". *U.C. Davis Journal of International Law & Policy*, vol. 21, nr. 2, pp. 157-190.

OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS

- Sectoral due diligence guidance by the Organisation for Economic Co-operation and Development (OECD)
- Published on 15 December 2010
- Extractive sector

Objective

The **OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**[1] is the result of a collaborative initiative among governments, international organisations, industry and civil society to promote accountability and transparency in the supply chain of minerals from conflict-affected and high-risk areas.

The purpose of this Guidance is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. It also aims at establishing more transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.

This Guidance is intended to serve as a common reference for all suppliers and other stakeholders in the mineral supply chain, in order to clarify expectations concerning the nature of responsible supply chain management of minerals from conflict-affected and high-risk areas.

Background

Between 2009 and 2010, in view of the preparation of the Guidance, a series of consultations was held in which the OECD, countries of the International

1 OECD (2016). *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. 3rd ed., París: OECD Publishing.

Conference on the Great Lakes Region, mining industry, civil society, as well as the United Nations Group of Experts on the Democratic Republic of the Congo engaged.

The Guidance was amended on 17 July 2012 and 25 September 2015 to include a reference to the Supplement on Gold and to introduce changes to the Introduction of the text.

In 2016, the third edition of the Guidance was published, providing clarification on the scope and the provision of a framework for comprehensive due diligence as a basis for responsible supply chain management of all minerals.

Scope of application

Material scope

This Guidance provides recommendations jointly addressed by governments to companies operating in or sourcing minerals from conflict-affected and high-risk areas, providing guidance on principles and due diligence processes for responsible supply chains of minerals from conflict-affected and high-risk areas, consistent with applicable laws and relevant international standards.

The recommendations build on the principles and standards contained in the OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.[2] Observance of this Guidance is voluntary and not legally enforceable.

Personal scope

This Guidance is applicable to all enterprises of the supply chain of minerals from conflict-affected and high-risk areas.

> The term "supply chain" refers to the system of all the activities, organisations, actors, technology, information, resources and services involved in moving the mineral from the extraction site downstream to its incorporation in the final product for end consumers.

2 OECD (2006). "OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones". Available at: https://www.oecd.org/daf/inv/corporateresponsibility/36885821.pdf.

Structure

The Guidance contains following sections:

1. An overarching due diligence framework for supply chains of minerals from conflict-affected and high-risk areas (Annex I).
2. A model mineral supply chain policy providing a common set of principles (Annex II).
3. Suggested measures for risk mitigation and indicators for measuring improvement which upstream companies may consider with the possible support of downstream companies (Annex III).
4. Two Supplements on tin-tantalum-tungsten and gold tailored to the challenges associated with the structure of the supply chain of these minerals. The Supplements contain specific due diligence recommendations articulated on the basis of companies' different positions and roles in their supply chains. Companies using these minerals, or their refined metal derivates, should first consult the red flags listed in each Supplement to determine if the due diligence processes described therein are applicable to their supply chains.

Requirements for companies

Five-step framework for risk-based due diligence in the mineral supply chain

Companies should review their choice of suppliers and sourcing decisions. They should also integrate into their management systems the following five-step framework for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas:

1. **Establish strong company management systems**
   - Adopt a company policy for the supply chain of minerals originating from conflict-affected and high-risk areas.
   - Structure internal management to support supply chain due diligence.
   - Establish a system of controls and transparency over the mineral supply chain.

- Strengthen company engagement with suppliers.
- Establish a company-level, or industry-wide, grievance mechanism as an early-warning risk-awareness system.

2. Identify and assess risk in the supply chain

- Identify risks in their supply chain.
- Assess risks of adverse impacts in light of the standards of their supply chain policy.

3. Design and implement a strategy to respond to identified risks

- Report findings of the supply chain risk assessment to the designated senior management of the company.
- Devise and adopt a risk management plan.
- Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management.
- Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

4. Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain

- Companies at identified points in the supply chain should have their due diligence practices audited by independent third parties. Such audits may be verified by an independent institutionalised mechanism.

5. Report on supply chain due diligence

- Companies should publicly report on their supply chain due diligence policies and practices. They may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral supply chain due diligence.

Model supply chain policy for a responsible global supply chain of minerals from conflict-affected and high-risk areas

Annex II describes a model supply chain policy, setting forth the standards companies should consider in their supply chains:

- Serious abuses associated with the extraction, transport or trade of minerals.
- Risk management of serious abuses.
- Direct or indirect support to non-state armed groups.

- Risk management of direct or indirect support to non-state armed groups.
- Public or private security forces.
- Risk management of public or private security forces.
- Bribery and fraudulent misrepresentation of the origin of minerals.
- Money laundering.
- Payment of taxes, fees and royalties due to governments.
- Risk management of bribery and fraudulent misrepresentation of the origin of minerals, money-laundering and payment of taxes, fees and royalties to governments.

Suggested measures for risk mitigation and indicators for measuring improvement

	Suggested measures for risk mitigation	Recommended indicators for measuring improvement
Security And related issues	• Alert relevant central government authority of abusive and exploitative practices occurring in the supply chain. • Engage with intermediaries and consolidators to help build their capabilities to document the behaviour of security and payments to security forces. • Support the establishment of community forums to share and communicate information. • Support the establishment of a trust or other similar fund, where appropriate, through which security forces are paid for their services.	Global Reporting Initiative, Indicator Protocols Set: Human Rights, Mining and Metals Sector Supplement (indicator HR8)
Security and exposure of artisanal miners to adverse impacts	• Minimise the risk of exposure of artisanal miners to abusive practices, by supporting host countries governments' efforts for the progressive professionalisation and formalisation of the artisanal sector, through the establishment of cooperatives, associations or other membership structures.	Global Reporting Initiative, Indicator Protocols Set: Society, Mining and Metals Sector Supplement (indicator MM8)
Money laundering	• Develop supplier, customer and transactional red flags to identify suspicious behaviour and activities. • Identify and verify the identity of all suppliers, business partners and customers.	Indicators for improvement should be based on the processes contained in the Guidance.

	Suggested measures for risk mitigation	Recommended indicators for measuring improvement
Transparency on taxes, Fees and royalties paid to governments	• Support the implementation of the Extractive Industry Transparency Initiative. • Support the public disclosure, on a disaggregate basis, of all information on taxes, fees, and royalties that are paid to governments for the purposes of mineral extraction, trade, and export from conflict-affected and high-risk areas. • Inform relevant local and central governmental agencies of potential weaknesses in revenue collection and monitoring. • Support capability training of these agencies to effectively carry out their duties.	Global Reporting Initiative, Indicator Protocols Set: Economic, Mining and Metals Sector Supplement (indicator EC1).

Supplements

1. Tin-Tantalum-Tungsten

This Supplement provides specific guidance on supply chain due diligence of tin, tantalum and tungsten (hereinafter minerals) from conflict-affected or high-risk areas. It provides due diligence recommendations addressed to upstream companies and downstream companies in the supply chain.

With regard to the upstream companies, the Supplement recommends, among others, that these companies establish a system of internal control over the minerals in their possession and establish on-the-ground assessment teams, which may be set up jointly through cooperation among upstream companies while retaining individual responsibility, for generating and sharing verifiable, reliable, up-to-date information on the qualitative circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risk areas.

On the other hand, with regard to the downstream companies, the Supplement recommends, among others, that they identify and review the due diligence process of the smelters/refiners in their supply chain and assess whether they adhere to due diligence measures put forward in this Supplement of the Guidance. Also, downstream companies may participate in schemes that assess smelters/refiners' compliance with this Guidance and may draw on the information these schemes provide to help them fulfil the recommendations in this Guidance.

2. Gold

The Supplement on gold provides specific guidance on supply chain due diligence of gold from conflict-affected and high-risk areas according to the different positions of companies in the gold supply chain. This Supplement focuses on the steps companies should take to avoid contributing to conflict and serious abuses of human rights in the supply chain of gold potentially sourced from conflict-affected and high-risk areas.

Additional references

- Cullen, Holly (2016). "The Irresistible Rise of Human Rights Due Diligence: Conflict Minerals and beyond". *George Washington International Law Review*, vol. 48, nr. 4, pp. 743-780.
- Davis, Rachel (2012). "The UN Guiding Principles on Business and Human Rights and conflict-affected areas: state obligations and business responsibilities". *International Review of the Red Cross*, vol. 94, nr. 887, pp. 961-980.
- Footer, Mary E. (2012). "Shining Brightly: Human Rights and the Responsible Sourcing of Diamond and Gold Jewellery from High Risk and Conflict-Affected Areas". *Human Rights & International Legal Discourse*, vol. 6, nr. 1, pp. 159-191.
- Liberti, Lahra (2012). "OECD 50th Anniversary: The Updated OECD Guidelines for Multinational Enterprises and the New OECD Recommendation on Due Diligence Guidance for Conflict-Free Mineral Supply Chains. *Business Law International*, vol. 13, nr. 1, pp. 35-50.
- Mares, Radu (2014). "Corporate and State Responsibilities in Conflict-Affected Areas". *Nordic Journal of International Law*, vol. 83, nr. 3, pp. 293-346.

OECD DUE DILIGENCE GUIDANCE FOR MEANINGFUL STAKEHOLDER ENGAGEMENT IN THE EXTRACTIVE SECTOR

- Sector-related due diligence guidance by the Organisation for Economic Co-operation and Development (OECD)
- Published on 2 February 2017
- Extractive sector

Objective

The objective of the **OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector**[1] is to provide guidelines to extractive sector enterprises in addressing the challenges related to stakeholder engagement.

Extractive sector enterprises are considered to include enterprises conducting exploration, development, extraction, processing, transport, or storage of oil, gas and minerals.

Stakeholders are persons or groups who are or could be directly or indirectly affected by a project or activity. Priorities for engagement could include but are not limited to:

- Potentially impacted local communities
- Indigenous peoples
- Farmers
- Workers
- Artisanal miners
- Host governments
- Local civil society organisations, community-based organisations and local human rights defenders

1 OECD (2017). *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*. Paris: OECD Publishing.

Stakeholder engagement is an effective activity for identifying and avoiding potential adverse impacts of an extractive operation, appropriately mitigating and remedying impacts when they do occur, and ensuring that potential positive impacts of extractive activities are optimised for all stakeholders.

The modes of engagement for stakeholders can be:
- Informing/reporting
- Consulting
- Negotiating
- Responding

Scope of application

Material scope

This Guidance provides a due diligence framework for enterprises operating in the extractive sector. It focuses on the risk identification and management with regard to stakeholder engagement activities, in order to avoid and address adverse impacts as defined in the OECD Guidelines for Multinational Enterprises.

Personal scope

This Guidance is primarily intended for on-the-ground personnel of extractive sector enterprises that come into contact with communities and stakeholders, or for larger firms, personnel that are responsible for stakeholder engagement activities.

Structure

The Guidance is divided into five sections:

1. A due diligence framework for meaningful stakeholder engagement.
2. Recommendations for corporate planning or to upper management on the strategic positioning of stakeholder engagement.
3. Recommendations to on-the-ground personnel.

4. An annex including a monitoring and evaluation framework for overseeing stakeholder engagement activities.

5. Four thematic annexes including thematic guidance on engaging with indigenous peoples, women, workers and artisanal and small-scale miners.

Requirements for companies

Due diligence framework for meaningful stakeholder engagement in the extractive sector

The Guidance provides a due diligence framework for addressing risks with regard to executing stakeholder engagement activities to ensure they are meaningful and contribute to avoiding adverse impacts and taking adequate steps.

Recommendations for corporate planning or to management

1. **Position stakeholder engagement strategically**
   - The enterprise and its management should ensure a commitment to meaningful stakeholder engagement features in corporate policy, or some other form depending on corporate culture. This commitment shall be endorsed by senior leadership within the enterprise.
   - The enterprises should:
     - Integrate stakeholder engagement into their operations.
     - Consider their commitment to meaningful stakeholder engagement when forming business relationships or making investments that could impact stakeholders.
     - Establish systems which provide for integration of stakeholder views into project decision making at a management level.

Recommendations to on-the-ground personnel

1. **Take adequate steps so that personnel undertaking stakeholder engagement activities have a strong understanding of the local and operating context**
   - Where relevant, personnel leading stakeholder engagement should participate in conducting impact assessments or otherwise consult with technical personnel on anticipated physical impacts of the project.

- If possible, there should be participation in designing and conducting impact assessments by personnel leading stakeholder engagement as well as stakeholders themselves.
- Personnel leading stakeholder engagement should also conduct preliminary field research to understand local context and consult other sources as relevant.
- Collected information should be evaluated for accuracy and credibility.
- Information on the local and operating environment should be updated as relevant.

2. **Ensure that stakeholders and their interlocutors are appropriately identified and prioritised**
   - Enterprises should strive to identify all potentially impacted stakeholders and rights-holders.
   - Also, enterprises should consider how certain impacts may vary amongst different stakeholder groups. Enterprises should prioritise the most vulnerable and severely impacted groups for engagement.
   - Enterprises should verify stakeholder representatives to make sure they are truly communicating the perspectives of their constituents and that the views of vulnerable stakeholders are equally represented.
   - Enterprises should re-evaluate representatives as they change or stakeholder groups evolve.

3. **Establish the necessary support system for meaningful stakeholder engagement**
   - Aims and objectives for meaningful stakeholder engagement should be developed, aligned with corporate policy and endorsed by senior management.
   - All personnel that may come into contact with stakeholders should be trained to understand the importance of cultural appropriateness and respectful behaviour.
   - Enterprises should share material information with the stakeholders in a timely manner and in a format they can understand and access.
   - When sharing information, enterprises should carefully balance a commitment to transparency with privacy concerns when sharing information.
   - Stakeholders themselves should be consulted to help determine what information is most useful to them and in what form.
   - Enterprises should provide the support necessary to ensure stakeholders can adequately assess and represent their own perspectives and interests.

- Resources required for stakeholder engagement activities should be identified and requested in advance.
- On-the ground personnel should advocate for additional resources and streamline resources to the extent possible to support stakeholder engagement activities in the event of resource constraints.

4. **Design appropriate and effective stakeholder engagement activities and processes**
   - Timelines should be planned that allow for engagement to begin as early as practicable, provide stakeholders with sufficient time to engage meaningfully and that allow for flexibility.
   - Enterprises should consider what kind of engagement is needed or required according to their stage of operations and engagement needs.
   - Engagement activities should be designed in a way that is appropriate to the context and audience and reflects best practices.
   - Specific external challenges to stakeholder engagement linked to the local and operating context of an operation and strategies to respond to them should be identified.
   - Clear and functional processes to respond to grievances should be established to enable mitigation and provide early and direct remedy.
   - Enterprises should consult with stakeholders and identify and respond to challenges to providing appropriate remediation.

5. **Ensure follow-through**
   - A commitments register should be maintained to track follow-through on outcomes of stakeholder engagement.
   - Regularly reporting back to stakeholders on follow-through on agreements, commitments and remedies.

6. **Monitor and evaluate stakeholder engagement activities and respond to identified shortcomings**
   - Some measurable indicators to evaluate stakeholder engagement activities should be identified. These indicators need to be consulted on with relevant stakeholders, and monitored over time.
   - Participatory monitoring and evaluation activities should be encouraged and enabled to the extent possible.
   - Enterprises should periodically seek independent external review of their stakeholder engagement.

- When shortcomings are revealed or unforeseen negative impacts occur the reasons behind the shortcomings should be identified and the systems should be adjusted accordingly.

Monitoring and evaluation framework for meaningful stakeholder engagement

This Guidance provides a monitoring and evaluation framework for stakeholder engagement activities that includes potential indicators and assessment criteria that are meant to provide guidance to enterprises on the elements that should be considered when conducting monitoring and evaluation. Enterprises may reference this framework or adapt it to their own activities.

Engaging with indigenous peoples

The Guidance acknowledges that certain characteristics of indigenous peoples will require special consideration including: their governance institutions, practices and any associated right to self-determination; their relationship with land; their spiritual and cultural heritage; historical discrimination they have suffered; their unique and at times vulnerable position in society; their recognition under international law, as well as at times special legal status under national legislation and policy.

Therefore, enterprises in the extractive sector whose activities affect indigenous peoples should be aware of these unique considerations. In this regard, the Guidance recommends:

- Understanding the context of operations that impact indigenous people.
- Ensuring that indigenous peoples are appropriately identified and prioritised.
- Establishing the necessary support system for meaningful engagement.
- Designing appropriate and effective activities and processes for their engagement.

Engaging with women

This Guidance points out that it is important to apply a gender perspective throughout stakeholder engagement to allow enterprises to account for the

often unequal power relationships between men and women. In this regard, the Guidance recommends:

- Understanding context through gender disaggregated data and identifying gender issues during preliminary research to ensure engagement activities and strategies are designed and implemented to appropriately account for gender dynamics.
- Ensuring that impacted women and their interlocutors are appropriately identified and prioritised.
- Designing appropriate and effective stakeholder engagement activities and processes for engagement with women.
- Monitoring and evaluation of inclusive engagement with men and women.

Engaging with workers and trade unions

Recognised employees will be covered by labour law and social protection as well as the national institutional and legal framework for industrial relations, which generally governs relationships and engagement between workers and employers. In this regard, the Guidance recommends:

- Understanding the context for engagement with workers.
- Ensuring that workers and their interlocutors are appropriately identified and prioritised.
- Designing appropriate and effective stakeholder engagement activities and processes for engagement with workers.

Engaging with artisanal and small-scale miners

There are an estimated 25 million artisanal and small-scale miners operating in over 50 countries, and about 150 million people depend directly or indirectly on this activity for their livelihood. Therefore, the Guidance recommends:

- Understanding the context for the engagement with artisanal and small-scale miners.
- Ensuring that this collective is appropriately identified and prioritised.

- Designing appropriate and effective engagement activities and processes for engagement with artisanal and small-scale miners.

Additional references

- Laplante, Lisa J.; George, Erika R. (2015). "Comments on the OECD's 'Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector'". *New England Law | Boston Research Paper No. 15-08; University of Utah College of Law Research Paper No. 123*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2618188.

OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS IN THE GARMENT AND FOOTWEAR SECTOR

- Sector-related due diligence guidance by the Organisation for Economic Cooperation and Development (OECD)
- Published on 8 February 2017
- Garment and footwear sector

Objective

The objective of the **OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector**[1] is to support a common understanding of due diligence in the garment and footwear sector aligned with the OECD Guidelines for Multinational Enterprises.

Background

The Guidance was developed through a multi-stakeholder process that was overseen by the Working Party on Responsible Business Conduct. It counted with in-depth engagement from OECD and non-OECD countries, representatives from business, trade unions and civil society.

In March 2015, a multi-stakeholder Advisory Group was established to support the development of this Guidance.

This Guidance has benefited from regular input from members of the Advisory Group and other experts, from data from a Roundtable on due diligence in the garment and footwear supply chain, held on 1-2 October2015, as well as that of a public consultation held in February-March 2016.

Also, this Guidance builds on the comprehensive reports of the National Contact Points of France and Italy on the implementation of the OECD Guidelines in the textile and garment sector and the leading initiatives of Belgium, Canada, Denmark, the European Union, Germany, the Netherlands, Sweden, the United Kingdom and the United States. As such, it seeks to respond to

1 OECD (2018). *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. Paris: OECD Publishing.

statements made in June 2013 and 2014 by National Contact Points following the tragic collapse of Rana Plaza.

This Guidance was approved by the OECD Working Party on Responsible Business Conduct on 24 October 2016 and the OECD Investment Committee on 14 January 2017.

Scope of application

Material scope

The Guidance provides recommendations for enterprises in the garment and footwear sector on how to implement due diligence in their own operations and in their supply chains, according to the OECD Guidelines for Multinational Enterprises, the Guiding Principles on business and human rights and other standards for responsible business conduct. The due diligence should be ongoing, proactive and reactive, and applied with flexibility.

Personal scope

The Guidance is relevant for all enterprises operating in the garment and footwear supply chain seeking to implement the OECD Guidelines for Multinational Enterprises. It therefore applies to raw material and fibre producers, material manufacturers and processors, components manufacturers, footwear and garment manufacturers, brands, retailers and their intermediaries.

The Guidance can also be used as a reference for stakeholders to understand the measures enterprises are recommended to take with regard to managing their impacts. It is therefore relevant for sector-wide and multi-stakeholder initiatives promoting the implementation of due diligence.

Structure

The Guidance consists of two sections:

1. Section I addresses the core due diligence process for the garment and footwear sector. As such, this section contains the expectations and fac-

tors that may affect the nature and extent of due diligence. In this regard, it provides a practical due diligence framework that describes how enterprises can identify and prevent adverse impacts on human rights, labour, environment and integrity risks in their own operations in their supply chains. It also includes considerations for stakeholder engagement, collaboration and gender issues.

2. Section II provides information on how enterprises may apply the due diligence recommendations to sector risks in the garment and footwear sector. The modules under Section II are not intended to act as standalone guidance, but rather should supplement Section I and provide enterprises with information on how to tailor their due diligence approach when addressing specific sector risks. Furthermore, modules are not intended to provide technical guidance.

Requirements for companies

Section I. Core due diligence guidance for the garment and footwear sector

1. **Embed responsible business conduct in enterprise policy and management systems**
   - Adopt a policy on responsible business conduct that articulates the enterprise's commitments to responsible business conduct in its own operations and in its supply chain.
   - Strengthen management systems in order to conduct due diligence on risks of adverse impacts in the enterprise's own operations and in its supply chain.

2. **Identify actual and potential impacts in the enterprise's own operations and in its supply chain**
   - Scope the risks of impacts in the enterprise's own operations and in its supply chain.
   - Conduct a self-assessment of the enterprise's own operations.
   - Assess suppliers associated with higher-risk for impacts at the site level.
   - Assess the enterprise's relationship to impacts.

3. **Cease, prevent or mitigate impacts in the enterprise's own operations and in its supply chain**
   - Cease, prevent or mitigate impacts in the enterprise's own operations.

- Seek to prevent or mitigate harm in the enterprise's supply chain.
- Prevent contributing to impacts in the enterprise's supply chain.
- Implement internal measures to mitigate risks in the enterprise's supply chain.
- Use leverage to influence the supplier to prevent or mitigate the impacts.
- Support the supplier in the prevention or mitigation of impacts.

4. Track

- Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations.
- Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain.

5. Communication

- Communicate publicly on the enterprise's due diligence process, including how the enterprise has addressed potential and actual impacts.
- Communicate with affected stakeholders.

6. Provide for or co-operate in remediation when appropriate

- Establish processes to enable remediation in the enterprise's own operations.
- Commit to hearing and addressing complaints raised through legitimate processes.
- Determine the appropriate form of remedy.

Section II. Modules on sector risks

The Modules of Section II contain specific recommendations to supplement Section I and provide the enterprises with information on how to adapt their due diligence process to address the following specific sector risks:

Module 1. Child labour
Module 2. Sexual harassment and sexual and gender-based violence in the workplace
Module 3. Forced labour
Module 4. Working time
Module 5. Occupational health & safety
Module 6. Trade Unions and Collective bargaining
Module 7. Wages

Environmental modules:

Module 8. Hazardous chemicals
Module 9. Water
Module 10. Greenhouse gas emissions
Module 11. Bribery & corruption
Module 12. Responsible sourcing from homeworkers

Additional references

- Jastram, Sarah; Schneider, Anna-Maria (2018). *Sustainable Fashion. Governance and New Management Approaches.* Heidelberg-New York-Dordrecht-London: Springer International Publishing.
- Kuik, Onno (2005). "Fair Trade and Ethical Labeling in the Clothing, Textile, and Footwear Sector: The Case of Blue Jeans". *ILSA Journal of International & Comparative Law*, Vol. 11, nr. 3, pp. 619-636.
- Ruggie, John Gerard; Nelson, Tamaryn (2015). "Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementations Challenges". *Brown Journal of World Affairs*, vol. 22, nr. 1, pp. 99-128.

RESPONSIBLE BUSINESS CONDUCT FOR INSTITUTIONAL INVESTORS: KEY CONSIDERATIONS FOR DUE DILIGENCE UNDER THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

- Due diligence recommendations by the Organisation for Economic Co-operation and Development (OECD)
- Published on 28 March 2017
- Financial sector

Objective

The document **Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises**[1] provides a resource for institutional investors and their stakeholders to implement the due diligence recommendations of the OECD Guidelines in order to prevent or address adverse impacts related to their financial activities with consequences for human and labour rights, the environment, and corruption in their investment portfolios.

Background

This paper has been developed through close consultation with a multi-stakeholder advisory group of over 50 representatives from the financial sector, including leading investment institutions, government, civil society, international organisations and other experts. It has also benefited from input provided by investment practitioners during expert working sessions in London on 23 October 2015 and New York on 23 February 2016. The OECD Working Party on Responsible Business Conduct approved the paper on 23 January 2017, followed by the OECD Investment Committee on 8 February 2017.

1 OECD (2017). "Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises". Available at: https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf.

Scope of application

This paper describes due diligence approaches relevant for institutional investment managers and asset owners. It is not intended to create new standards of conduct but outlines practical considerations for institutional investors seeking to carry out the due diligence recommendations of the OECD Guidelines, taking into account the complexities of various business relationships, as well as the legal, policy and market contexts in which investors operate.

Structure

The Document has been divided in two sections:

1. Section 1 provides a high-level overview of the main recommendations of the OECD Guidelines.
2. Section 2 describes the key components of due diligence and considerations for investors to implement the OECD Guidelines and carry out due diligence. It also provides a list of examples of recommended due diligence actions, adapted specifically to the context of investors.

Requirements for institutional investors

Key recommendations under the OECD Guidelines

This section provides an overview of the principal recommendations under the OECD Guidelines. These recommendations are relevant for all sectors of the economy, including institutional investors. However, their application in practice will vary according to the characteristics of the enterprise implementing them.

1. "Business relationship" under the OECD Guidelines

The OECD Guidelines state that enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities and address those impacts where they do occur.

Also, they should seek to prevent or mitigate adverse impacts when these are directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.[2]

2. Due diligence under the OECD Guidelines

The OECD Guidelines expect enterprises to carry out due diligence processes to avoid and address their involvement with adverse impacts across a range of societal concerns. In this document, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address the actual and potential adverse impacts of their activities.[3]

3. Prioritisation based on risk under the OECD Guidelines

With respect to this issue, the OECD Guidelines also clarify that, where enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence.[4]

4. Engagement with relevant stakeholders under the OECD Guidelines

Stakeholder engagement involves interactive processes of engagement with relevant stakeholders through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.[5]

---

2 OECD (2013). *OECD Guidelines for Multinational Enterprises*. Paris: OECD Publishing, p. 23.

3 Ibid., p. 26.

4 Ibid., p. 27.

5 Ibid., p. 29.

5. Remediation under the OECD Guidelines

Following the Guidelines, when enterprises identify through their due diligence process or other means that they have caused or contributed to an adverse impact, enterprises are recommended to enable remediation mechanisms. Some situations require cooperation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes.[6]

Implementation of the OECD Guidelines in the context of institutional investment

1. **Embedding responsible business conduct in investor policies and management systems**
   - Adopting investor policies which commit the investor to observe international responsible business conduct standards.
   - Establishing a system of internal reporting on responsible business conduct to fund managers.
   - Adopting systems to manage risks for the investment institution.
   - Integrating responsible business conduct matters within investment decision-making.
   - Providing adequate support and resources across all relevant departments and locations for due diligence within the investment institution.

2. **Implementing due diligence: Identifying actual and potential adverse impacts**
   - Integrate risk identification for investments into existing processes.
   - Actively screen investment portfolios to identify potential risk areas based on what is considered high-risk: geography, sectors, products, stages of the supply chain.

3. **Implementing due diligence: Preventing and mitigating adverse impacts**
   - Establish clear responsible business conduct requirements and conditions in investment mandates precedent to investments.
   - Active engagement with investee companies to improve their management of responsible business conduct issues.

6 Ibid., p. 38.

- Reduction of the investment position in the light of responsible business conduct risks identified.
- Temporary divestment while pursuing ongoing responsible business conduct risk mitigation.
- Divestment either after failed attempts at mitigation or where the investor deems mitigation not feasible, or due to the severity of the adverse impact.

4. **Implementing due diligence: Tracking and communicating on results**
   - Tracking the performance against the policy or other commitments on responsible business conduct.
   - Establishing risk identification methodology and general findings of adverse impacts across portfolios.
   - Monitoring investee companies' efforts to prevent and mitigate identified adverse impacts.
   - Communicating publically on responsible business conduct policy.

5. **Processes to support remediation**
   - Co-operation with judicial or state-based non-judicial mechanisms.
   - Establishment of operational-level grievance mechanisms.

Additional references

- Dowell-Jones, Mary (2013). "Financial Institutions and Human Rights". *Human Rights Law Review*, vol. 13, nr. 3, pp. 423-468.

- Dowell-Jones, Mary; Kinley, David (2011). "Minding the Gap: Global Finance and Human Rights". *Ethics & International* Affairs, vol. 25, nr. 2, pp. 183-210.

- Shihata, Ibrahim F.I. (1992). "Human Rights, Development, and International Financial Institutions". *American University International Law Review*, vol. 8, nr. 1, pp. 27-36.

OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT

- Due diligence guidance by the Organisation for Economic Co-operation and Development (OECD)
- Published on 31 May 2018

Objective

The objective of the **OECD Due Diligence Guidance for Responsible Business Conduct**[1] is to provide practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing plain language explanations of its due diligence recommendations and associated provisions. In this regard, the document seeks to promote a common understanding among governments and stakeholders on due diligence for responsible business conduct, in order for the enterprises to implement due diligence recommendations, included in the UN Guiding Principles as well as the ILO Tripartite Declaration.

Background

Between 7 and 8 June 2015, the G7 leaders adopted a declaration recognising the importance of establishing a common understanding on due diligence, in particular for small and medium-sized enterprises, and encouraged enterprises active or headquartered in their countries to implement due diligence in their supply chains.

In May 2016, the OECD Working Party on Responsible Business Conduct and other stakeholders from OECD and non-OECD countries, jointly with representatives from business, trade unions and civil society, submitted a first draft of the OECD Due Diligence Guidance for Responsible Business Conduct.

1 OECD (2018). "OECD Due Diligence Guidance for Responsible Business Conduct". Available at: https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf.

In February 2017, a public consultation was held on a revised draft of this Guidance.

In June of the same year, a multi-stakeholder advisory group was formed to support the OECD Working Party on Responsible Business Conduct in integrating stakeholder comments and completing the Guidance.

On 7 July 2017, the G20 leaders adopted a declaration in which they committed to fostering the implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks in order to achieve sustainable and inclusive supply chains, and underlined the responsibility of businesses to exercise due diligence in this regard.

This Guidance was approved by the OECD Working Party on Responsible Business Conduct on 6 March 2018 and by the OECD Investment Committee on 3 April of the same year.

On 30 May 2018, an OECD Recommendation on the Guidance was adopted by Council at Ministerial level, promoting the implementation of the Guidance and seeking support to generate common and international understanding that provides assurance for the enterprises with regard to their responsibilities in conducting due diligence. Also, the Recommendation provides a way to promote wide dissemination and implementation of the Guidance.

Scope of application

Material scope

The implementation of the Guidance's recommendations helps enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships.

Personal scope

The primary audience of the Guidance is practitioners tasked with implementing due diligence within an enterprise. Given the nature of the imple-

mentation and the wide range of topics covered by due diligence across varied operations and business relationships, the Guidance is helpful for different business units, functional areas and individuals within the enterprise.

Also, it can be useful for other sector-wide and multi-stakeholder initiatives that facilitate collaboration on due diligence activities, and for workers, trade unions and workers' representatives and civil society organisations.

Structure

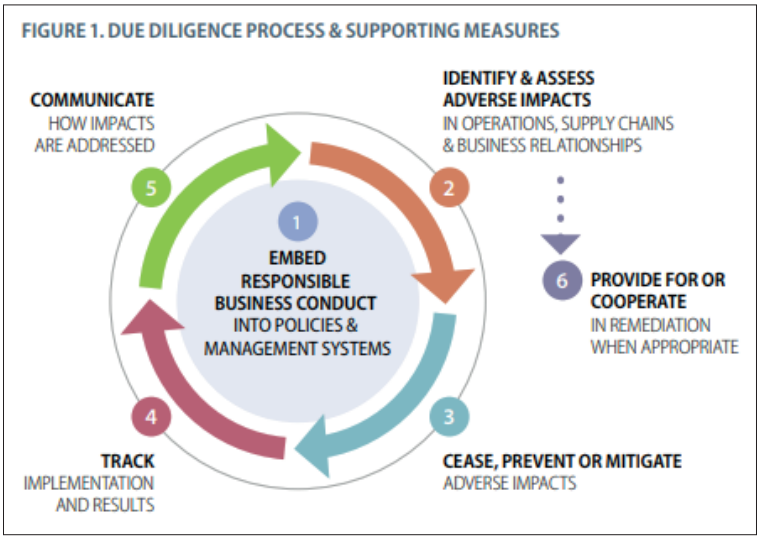
The structure of the guidance is as follows:

1. The Guidance begins with a brief summary of each chapter of the OECD Guidelines, providing an overview of due diligence, including some key concepts and characteristics for the understanding of the due diligence approach recommended in the Guidelines.
2. In second place, it describes the due diligence process and practical actions for its implementation. However, it needs to be emphasised that the Guidance points out that not every practical action will be appropriate for every situation. Enterprises may find additional actions or implementation measures useful in some situations.
3. Finally, this Guidance contains an annex with questions and answers, providing additional explanations, tips and illustrative examples of due diligence.

Requirements for companies

The due diligence process

The second section is the main core of the Guidance, describing a series of practical actions to implement a due diligence process, taking into account that the process should be commensurate with risk and appropriate to a specific enterprise's circumstances and context.



Source: OCDE

1. Embed responsible business conduct into policies and management systems

Practical actions	
Devise, adopt and disseminate a combination of policies on responsible business conduct issues that articulate the enterprise's commitments to the principles and standards contained in the Guidelines and its plans for implementing due diligence, which will be relevant for the enterprise's own operations, its supply chain and other business relationships.	• Review and update existing policies on responsible business conduct issues to align them with the principles and standards of the OECD Guidelines. • Develop specific policies on the enterprise's most significant risks, building on findings from its assessment of risk, in order to provide guidance on the enterprise's specific approach to addressing those risks. • Make the enterprise's policies on responsible business conduct issues publicly available. • Communicate the policies to the enterprise's own workers. • Update the enterprise's policies as risks in the enterprise's operations, supply chain and other business relationships emerge and evolve.

	Practical actions
Embed the enterprise's policies on responsible business conduct issues into management systems so that they are implemented as part of the regular business processes, taking into account the potential independence, autonomy and legal structure of these bodies that may be foreseen in domestic law and regulations.	• Assign oversight and responsibility for due diligence to relevant senior management. • Assign responsibility for implementing aspects of the policies across relevant departments with particular attention to those workers whose actions and decisions are most likely to increase or decrease risks. • Develop or adapt existing information and record-keeping systems to collect information on due diligence processes, related decision-making and responses. • Provide training to workers to help them understand and implement relevant aspects of responsible business conduct policies and provide adequate resources commensurate with the extent of due diligence needed.
Incorporate responsible business conduct expectations and policies into engagement with suppliers and other business relationships.	• Communicate key aspects of the responsible business conduct policies to suppliers and other relevant business relationships. • Develop and implement pre-qualification processes on due diligence for suppliers and other business relationships. • Provide adequate resources and training to suppliers and other business relationships for them to understand and implement due diligence.

2. Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services

	Practical actions
Identify all areas and operations of the business, and relationships in its supply chains, where risks are most likely to be present and most significant. Relevant elements include, among others, information about sectoral, geographic, product and enterprise risk factors, including known risks the enterprise has faced or is likely to face. The scoping of risks should enable the enterprise to carry out an initial prioritisation of the most significant risk areas for further assessment.	• Gather information to understand high-level risks of adverse impacts related to the sector or enterprise-specific risk factors. • Where gaps in information exist, consult with relevant stakeholders and experts. • Consider information raised through early warning systems and grievance mechanisms. • Identify the most significant RBC risk areas and prioritise these as the starting point for a deeper assessment of potential and actual impacts. • Update the information whenever the enterprise makes significant changes.
Carry out assessments of prioritised operations, suppliers and other business relationships in order to identify and assess specific actual and potential adverse impacts.	• Map the enterprise's operations, suppliers and other business relationships, including associated supply chains, relevant to the prioritised risk. • Catalogue the specific responsible business conduct standards and issues applicable to the risk being assessed, including relevant provisions from the OECD Guidelines, as well as domestic laws and relevant international and industry-specific frameworks. • Obtain relevant information about business relationships beyond contractual relationships. • Assess the nature and extent of actual and potential impacts linked to prioritised operations, suppliers or other business relationships. • Identify activities that may not be carried out in an appropriate legal and institutional framework sufficient to protect the rights of all persons and enterprises involved.

	Practical actions
Assess the enterprise's involvement with the actual or potential adverse impacts identified in order to determine the appropriate responses.	• Consult with business relationships, other relevant enterprises and other relevant stakeholders. • Consult with impacted stakeholders and rights-holders or their legitimate representatives. • Seek relevant internal or external expertise as needed.
Drawing from the information obtained on actual and potential adverse impacts, prioritise the most significant risks and impacts for action. Prioritisation will be relevant where it is not possible to address all potential and actual adverse impacts immediately. Once the most significant impacts are identified and dealt with, the enterprise should move on to address less significant impacts.	• Identify which potential or actual impacts may be addressed immediately. • For impacts involving business relationships, assess the extent to which business relationships have appropriate policies and processes in place to identify, prevent and mitigate relevant risks themselves. • Where it is not possible to address all real and potential adverse impacts directly linked to the enterprise's operations, products or services by business relationships, evaluate the likelihood and severity of the identified impacts or risks to understand which issues should be prioritised. • Consult with business relationships, other relevant enterprises and impacted or potentially impacted stakeholders and rights-holders on prioritisation decisions.

3. Cease, prevent and mitigate adverse impacts

	Practical actions
Stop activities that are causing or contributing to adverse impacts, based on the enterprise's assessment of its involvement with adverse impacts. Develop and implement plans that are fit-for-purpose to prevent and mitigate potential adverse impacts.	• In the case of complex actions or actions that may be difficult to stop due to operational, contractual or legal issues, create a roadmap for how to stop the activities causing or contributing to adverse impacts. • Update the enterprise's policies to provide guidance on how to avoid and address the adverse impacts in the future. • Provide training for the enterprise's workers. • Strengthen management systems to flag risks before adverse impacts occur. • Consult and engage with impacted and potentially impacted stakeholders and rights-holders and their representatives to devise appropriate actions to prevent and mitigate adverse impacts. • In the case of collective or cumulative impacts, seek to engage with other involved entities to cease the impacts and prevent them from recurring or to prevent risks from materialising.

	Practical actions
Based on the enterprise's prioritisation, develop and implement plans to seek to prevent or mitigate actual or potential adverse impacts which are directly linked to the enterprise's operations, products or services by business relationships. Appropriate responses to risks associated with business relationships may at times include: continuation of the relationship throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, disengagement with the business relationship either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. A decision to disengage should take into account potential social and economic adverse impacts. These plans should detail the actions the enterprise will take, as well as its expectations of its suppliers, buyers and other business relationships.	• Support or collaborate in developing fit-for-purpose plans to prevent or mitigate adverse impacts identified within reasonable and clearly defined timelines, using qualitative and quantitative indicators for defining and measuring improvement. • Use leverage to prompt the business relationships to prevent or mitigate adverse impacts or risks. • To prevent potential adverse impacts and address actual impacts, seek to build leverage into new and existing business relationships. • For human rights impacts, encourage entities causing or contributing to adverse impacts to consult and engage with impacted or potentially impacted rights-holders or their representatives in developing and implementing corrective action plans. • Support relevant suppliers and other business relationships in the prevention or mitigation of adverse impacts or risks.

4. Track implementation and results

	Practical actions
Track the implementation and effectiveness of the enterprise's due diligence activities. In turn, use the lessons learned from tracking to improve these processes in the future.	• Monitor and track implementation and effectiveness of the enterprise's own internal commitments, activities and goals on due diligence. • Carry out periodic assessments of business relationships, to verify that risk mitigation measures are being pursued or to validate that adverse impacts have actually been prevented or mitigated. • Carry out periodic reviews of relevant multi-stakeholder and industry initiatives of which the enterprise is a member. • Identify adverse impacts or risks that may have been overlooked in past due diligence processes.

5. Communicate how impacts are addressed

	Practical actions
Communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities.	• Publicly report relevant information on due diligence processes, with due regard for commercial confidentiality and other competitive or security concerns. • Publish the above information in a way that is easily accessible and appropriate. • For human rights impacts that the enterprise causes or contributes to, be prepared to communicate with impacted or potentially impacted rights-holders in a timely, culturally sensitive and accessible manner.

6. Provide for or cooperate in remediation when appropriate

	Practical actions
When the enterprise identifies that it has caused or contributed to actual adverse impacts, it should address such impacts by providing for or cooperating in their remediation.	• Seek to restore the affected person or persons to the situation they would be in had the adverse impact not occurred (where possible) and enable remediation that is proportionate to the significance and scale of the impact. • Comply with the law and seek out international guidelines on remediation. Where such standards or guidelines are not available, consider a remedy that would be consistent with that provided in similar cases. • In relation to human rights impacts, consult and engage with impacted rights-holders and their representatives in the determination of the remedy. • Assess the level of satisfaction of those who have raised complaints.
When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rights-holders can raise complaints. Referral of an alleged impact to a legitimate remediation mechanism may be particularly helpful in situations where there are disagreements on whether the enterprise caused or contributed to adverse impacts, or on the nature and extent of remediation to be provided.	• Cooperate in good faith with judicial or non-judicial mechanisms. • Establish operational-level grievance mechanisms. • Engage with workers' representatives and trade unions to establish a process through which they can raise complaints to the enterprise.

Additional References

- Bonnitcha, Jonathan; McCorquodale, Robert (2017). "The Concept of Due Diligence in the UN Guiding Principles on Business and Human Rights". *European Journal of International Law*, vol. 28, nr. 3, pp. 899-920.
- Mares, Radu (2018). "Human Rights Due Diligence and the Root Causes of Harm in Business Operation" *Northeastern University Law Journal*, vol. 10, nr. 1, pp. 1-70-71.
- Ruggie, John Gerard; Sherman III, John F (2017). "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale". *European Journal of International Law*, vol. 28, nr. 3, pp. 921-928.
- Salcito, Kendyl; Wielga, Mark (2018). "What Does Human Rights Due Diligence for Business Relationships Really Look Like on the Ground". *Business and Human Rights Journal*, vol. 3, nr, 1, pp. 113-122.

iv. International Labour Organisation

TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY

- Guidance instrument by the International Labour Organisation (ILO)
- Approved on 16 November 1977

Objective

The aim of the **Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**[1] is to encourage the positive contribution which multinational enterprises can make to economic and social progress and the realisation of decent work for all; and to minimise and resolve the difficulties to which their various operations may give rise.

This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments, including in the fields of labour administration and public labour inspection, and by cooperation among the governments and the employers' and workers' organisations of all countries.

Adoption process

In 1972, the ILO Governing Body approved a resolution on the social and employment impact of multinational enterprises, which resulted in the fact that a tripartite meeting was held in the same year on the "Relationship between multinational enterprises and social policy".

1 ILO (2017). *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. 5th edition, Geneva: ILO.

In 1976, the Governing Board recommended initiating preparatory works for the Tripartite Declaration and a Tripartite World Conference on Employment was organised by the ILO, offering a platform for debate on multinational enterprises.

In 1977, the Governing Board approved the Tripartite Declaration at its 204th session (November 1977) and subsequently amended it at its 279th (November 2000) and 195th (March 2006) session.

In 2017, the Governing Board decided to further amend the Tripartite Declaration, taking account of developments since the previous update in 2006 within the ILO such as the ILO Declaration on Social Justice for a Fair Globalisation, adopted by the International Labour Conference (ILC) in 2008, new international labour standards, the ILC Conclusions concerning the promotion of sustainable enterprises (2007) and the ILC Conclusions concerning decent work in global supply chains (2016); as well as the Guiding Principles (2011) and the goals and targets of the 2030 Agenda for Sustainable Development (2015). On the other hand, it also took note of the Addis Ababa Action Agenda (2015) on financing for development, the Paris Agreement (2015) concerning climate change, and the OECD Guidelines for Multinational Enterprises (as revised in 2011).

Scope of application

Material scope

The principles laid down in the Tripartite Declaration offer guidelines in such areas as employment, training, conditions of work and life, and industrial relations. This guidance is founded substantially on principles contained in international labour Conventions and Recommendations, such as the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which is universally recognised as essential for realising the objective of decent work for all.

Personal scope

The Tripartite Declaration is intended to guide governments, employers' and workers' organisations of home and host countries and multinational enterprises in taking measures and actions and adopting social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, to further social progress and decent work.

> The Tripartite Declaration uses the term "multinational enterprises" to designate the various entities (parent companies or local entities or both or the organisation as a whole) according to the distribution of responsibilities among them, in the expectation that they will cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in this Declaration. In that regard, it also recognises that multinational enterprises often operate through relationships with other enterprises as part of their overall production process and, as such, can contribute to further the aim of this Declaration.

Contents and recommendations for enterprises

The Tripartite Declaration contains principles in such areas as employment, training, conditions of work and life, and industrial relations, whose observance is recommended on a voluntary basis. These principles shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

General policies

All the parties concerned by the MNE Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should also contribute to the realisation of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998.

In this regard, enterprises, including multinational enterprises, should carry out due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts that relate 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 ILO Declaration on Fundamental Principles and Rights at Work.

For the purpose of achieving the aim of the Tripartite Declaration, this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue. Also, multinational enterprises should take fully into account established general policy objectives of the countries in which they operate. Their activities should be consistent with national law and in harmony with the development priorities and social aims and structure of the country in which they operate.

Employment

1. Employment promotion

Multinational enterprises, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.

Before starting operations, they should, wherever appropriate, consult the competent authorities and the national employers' and workers' organisations in order to keep their employment plans, as far as practicable, in harmony with national social development policies.

Furthermore, they should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organisations of these workers and governmental authorities.

On the other hand, they should have regard to the importance of using technologies which generate employment, both directly and indirectly.

To promote employment in developing countries, multinational enterprises should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials.

2. Social security

Multinational and other enterprises could complement public social security systems and help to stimulate further their development.

3. Elimination of forced or compulsory labour

Multinational as well as national enterprises should take immediate and effective measures within their own competence to secure the prohibition and elimination of forced or compulsory labour in their operations.

4. Effective abolition of child labour: minimum age and worst forms

Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour in their operations and should take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

5. Equality of opportunity and treatment

Multinational enterprises should be guided by the principle of non-discrimination throughout their operations and thereby ensure equality of opportunity and treatment in employment. As a consequence, multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.

6. Security of employment

Multinational enterprises as well as national enterprises, through active employment planning, should endeavour to provide stable employment for workers employed by each enterprise and should observe freely negotiated obligations concerning employment stability and social security.

Also, in considering changes in operations which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organisations.

Training

Multinational enterprises should ensure that relevant training is provided for all levels of workers employed by them in the host country. When operating in developing countries, they should participate, along with national enterprises, in programmes, encouraged by host governments and supported by employers' and workers' organisations.

With the cooperation of governments and to the extent consistent with the efficient operation of the enterprise, they should afford opportunities within the enterprise as a whole to broaden the experience of local management in suitable fields such as industrial relations.

Conditions of work and life

1. Safety and health

Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards.

They should also make available the information on safety and health standards, relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and production processes.

On the other hand, multinational enterprises should cooperate in the work of international organisations concerned with the preparation and adoption of international safety and health standards.

Industrial relations

Multinational enterprises should observe standards of industrial relations throughout their operations.

1. Freedom of association and the right to organise

Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and to join organisations of their own choosing without previous authorisation. In this regard, multinational enterprises should support representative employers' organisations.

2. Collective bargaining

Multinational enterprises, as well as national enterprises, should provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements. To do so, they should enable duly authorised representatives of the workers in their employment to conduct negotiations with representatives of management who are authorised to take decisions on the matters under negotiation; as well as provide workers' representatives with information required for meaningful negotiations with the entity involved.

Multinational enterprises, in the context of bona fide negotiations with the workers' representatives on conditions of employment, or while workers are exercising the right to organise, should not threaten to utilise a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organise; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers' representatives or the workers' exercise of their right to organise.

3. Consultation

In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern.

4. Access to remedy and examination of grievances

Multinational enterprises should use their leverage to encourage their business partners to provide effective means of enabling remediation for abuses of internationally recognised human rights.

They should also respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he or she has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.

5. Settlement of industrial disputes

Multinational as well as national enterprises jointly with the representatives and organisations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.

Additional References

- Cernic, Jernej Letnar (2009). "Corporate Responsibility for Human Rights: Analyzing the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy". *Miskolc Journal of International Law*, vol. 6, nr. 1, pp. 24-34.
- Diller, Janelle M. (2002). "ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy". Vol. 41, nr. 1, pp. 184-201.
- Hernández Zubizarreta, Juan (2009). *Las empresas transnacionales frente a los derechos humanos. Historia de una asimetría normativa*. Bilbao: Hegoa-OMAL.
- ILO (2017*). The ILO MNE Declaration: What's in it for Workers?* Geneva: ILO.

- ILO (2011). *The ILO MNEs Declaration: What's in it for Workers?* Geneva: ILO.
- ILO (2002). *A guide to the Tripartite Declaration of Principles concerning multinational enterprises and social policy : knowing and using universal guidelines for social responsibility.* Geneva: Multinational Enterprises Programme.

v. International Organisation for Standardisation

ISO STANDARD 26000:2010. GUIDANCE ON SOCIAL RESPONSIBILITY

- Voluntary international standard by the International Organisation for Standardisation (ISO)
- Published on 1 November 2010

Objective

ISO Standard 26000:2010. Guidance on social responsibility[1] is intended to assist organisations in contributing to sustainable development. It is intended to encourage them to go beyond legal compliance, recognising that compliance with law is a fundamental duty of any organisation and an essential part of their social responsibility.

Also, it is intended to promote common understanding in the field of social responsibility, and to complement other instruments and initiatives for social responsibility, not replace them, and to be used as part of public policy activities.

According to ISO Standard 26000, social responsibility is the responsibility of an organisation for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that:

- takes into account the expectations of stakeholders;
- is in compliance with applicable law and consistent with international norms of behaviour; and
- is integrated throughout the organisation and put into practice in its commercial relationships.

1 ISO (2010). "ISO Standard 26000:2010. Guidance on social responsibility". Available at: https://www.iso.org/obp/ui#iso:std:iso:26000:ed-1:v1:en.

Therefore, the ISO Standard 26000 provides guidance on:

a) concepts, terms and definitions related to social responsibility;

b) the background, trends and characteristics of social responsibility;

c) principles and practices relating to social responsibility;

d) the core subjects and issues of social responsibility;

e) integrating, implementing and promoting socially responsible behaviour throughout the organisation and, through its policies and practices, within its sphere of influence;

f) identifying and engaging with stakeholders; and

g) communicating commitments, performance and other information related to social responsibility.

Background

In June 2000, the ISO Committee on Consumer Policy organised a workshop, hosted by the Trinidad and Tobago Bureau of Standards in Port-of-Spain, on the issue of Corporate Social Responsibility - Concepts and Solutions.

In April 2001, the ISO Committee on Consumer Policy published a report on the value of corporate social responsibility standards, suggesting ISO was qualified to draft an international standard on social responsibility. Also, it proposed to create an advisory group that would involve the main stakeholders in order to carry out a comprehensive study of the issue.

In September 2002, a Strategic Advisory Group was established to assess the ISO Technical Management Board on social responsibility.

In February 2003, the Strategic Advisory Group presented its recommendations to ISO. One of the recommendations, presented by the group, was that any work, performed by ISO, should not only be addressing the social responsibility of enterprises, but that of any type of organisation.

In June 2004, the international ISO conference on social responsibility was held in Stockholm, organised by the Swedish Standards Institute, with 355 participants from 66 countries and several sectors. The objective of the conference was to debate on whether ISO should assume the task on social responsibility of organisations and, if yes, in which way they should develop it.

The ISO Technical Management Board proposed the creation of a new working group to work out a final document, establishing the voluntary guidelines on social responsibility. Therefore, the development of a non-certifiable standard was proposed on the implementation of social responsibility practices and on the organisations' compliance with the guidelines of the document.

In January 2005, the working group started to draft the final document. To do so, a series of international conferences was held: Salvador da Bahia and Bangkok (2005), Lisbon (2006), Sidney and Vienna (2007), Santiago de Chile (2008), Quebec (2009) and Copenhagen (2010).

Scope of application

Material scope

The ISO Standard 26000 contains guidelines on principles, core subjects and associated issues relating to social responsibility, and on how to put them into practice in organisations.

Personal scope

The ISO Standard 26000 provides guidance to all types of organisations, private, public and non-profit, regardless of their size, sector or geographic location, in order to incorporate criteria of social responsibility in their daily activities.

The term organisation refers to any entity or group of people and facilities with an arrangement of responsibilities, authorities and relationships and identifiable objectives.

Structure

Clause number	Clause title	Contents
Clause 1	Scope	Defines the scope of this International Standard and identifies certain limitations and exclusions.
Clause 2	Terms and definitions	Identifies and provides the definition of key terms that are of fundamental importance for understanding social responsibility and for using this International Standard.
Clause 3	Understanding social responsibility	Describes the important factors and conditions that have influenced the development of social responsibility and that continue to affect its nature and practice. It also describes the concept of social responsibility itself – what it means and how it applies to organisations. The clause includes guidance for small and medium-sized organisations on the use of this International Standard.
Clause 4	Principles of social responsibility	Introduces and explains the principles of social responsibility.
Clause 5	Recognising social responsibility and engaging stakeholders	Addresses two practices of social responsibility: an organisation's recognition of its social responsibility, and its identification of and engagement with its stakeholders. It provides guidance on the relationship between an organisation, its stakeholders and society, on recognising the core subjects and issues of social responsibility and on an organisation's sphere of influence.
Clause 6	Guidance on social responsibility core subjects	Explains the core subjects and associated issues relating to social responsibility. For each core subject, information has been provided on its scope, its relationship to social responsibility, related principles and considerations, and related actions and expectations.
Clause 7	Guidance on integrating social responsibility throughout an organisation	Provides guidance on putting social responsibility into practice in an organisation. This includes guidance related to: understanding the social responsibility of an organisation, integrating social responsibility throughout an organisation, communication related to social responsibility, improving the credibility of an organisation regarding social responsibility, reviewing progress and improving performance and evaluating voluntary initiatives for social responsibility.
Annex A	Examples of voluntary initiatives and tools for social responsibility	Presents a non-exhaustive list of voluntary initiatives and tools related to social responsibility addressing aspects of one or more core subjects or the integration of social responsibility throughout an organisation.
Annex B	Abbreviated terms	Contains abbreviated terms used in this International Standard.
	Bibliography	Includes references to authoritative international instruments and ISO Standards that are named in the body of this International Standard as source material.

Principles of social responsibility

The ISO Standard 26000 lays out seven core principles of social responsibility every organisation should take into account in order to maximise its contribution to sustainable development.

Principle	
Accountability	The ISO Standard 26000 calls upon organisations to account for the economic, social and environment impact of their activities, which also implies assuming responsibility for their adverse impacts and the commitment to take relevant measures to remediate them and avoid repetitions.
Transparency	The ISO Standard 26000 guides on how organisations should be transparent in the activities they develop and that impact on society and the environment. In this way, it suggests that the organisation should provide all the information requested by stakeholders, in accessible and comprehensive language.
Ethical behaviour	The ISO Standard 26000 states that organisations should behave based on criteria of honesty, equity and integrity, which means they should not only pursue economic benefit, but also seek to maximise the positive impacts on their social and environmental surroundings, and minimise the adverse ones.
Respect for the stakeholder interests	The ISO Standard 26000 states that an organisation should respect and respond to the stakeholder interests and requirements. To do so, it recommends taking into account these stakeholder groups in their operations and decision making.
Respect for the rule of law	The ISO Standard 26000 recommends respecting the rule or the supremacy of law, which implies recognising that no individual or organisation has the authority to act outside the law.
Respect for international norms of behaviour	The ISO Standard 26000 invites to respect the international norms of behaviour, even if the national legislation, to which it is subject, does not consider social and environmental safeguards.
Respect for human rights	The ISO Standard 26000 states that organisations should respect human rights and recognise both their importance and universality, meaning these rights apply to all individuals of any country or culture.

Cores subjects of social responsibility

The ISO Standard 26000 identifies seven core subjects of social responsibility each organisation should consider in its strategy to integrate social responsibility. These subjects are the fields on which the organisation should focus when seeking to act responsibly.

Core subject	Actions
Organisational governance	• Promote social responsibility strategies and objectives. • Progress in issues of commitment and accountability. • Establish incentives to achieve positive performances in social responsibility. • Make effective use of resources. • Improve opportunities for vulnerable groups (women, ethnic minorities, etc.) to take up management positions. • Address the needs of stakeholders and future generations. • Improve communication with stakeholders. • Promote the engagement of members of the organisation in activities of social responsibility. • Continuously review organisational governance.
Human rights	• Due diligence. • Identify human rights risk situations. • Avoidance of complicity • Grievance resolution. • Discrimination and vulnerable groups. • Identify civil and political rights. • Identify economic, social and cultural rights. • Ensure fundamental principles and rights at work.
Labour practices	• Contribute to employment and work relationships. • Establish conditions of work and social protection. • Social dialogue. • Promote and ensure health and safety at work. • Promote human development and training in the workplace.
Environment	• Prevention of pollution. • Sustainable resource use. • Climate change mitigation. • Protection of the environment, biodiversity and restoration of natural habitats.
Fair operating practices	• Anti–corruption. • Implement fair competition. • Promote social responsibility in the value chain • Respect for property rights.
Consumer issues	• Fair marketing, factual and unbiased information and fair contractual practices • Protect consumers' health and safety. • Promote sustainable consumption patterns. • Offer consumer service, support, and complaint and dispute resolution. • Consumer data protection and privacy. • Access to essential services. • Facilitate education and awareness.
Community involvement and development	• Ensure active community involvement. • Promote education and culture. • Employment creation and skills development. • Facilitate technology development and access. • Wealth and income creation. • Promote health. • Boost social investment projects.

Monitoring tools and continuous improvement of social responsibility actions and practices

The ISO Standard 26000 states that an organisation should constantly monitor its performance in issues of social responsibility. Therefore, it suggests that organisations should be informed of changes occurring in issues of social responsibility, both in regulations and legislations in force as in conditions or expectations of the social context.

In this regard, this opens a broad range of options, among which stand out the revisions at indicated intervals, comparative assessment and stakeholder feedback. These measures can help actual and potential clients, communities, regulators and employees in assessing the social performance of the enterprise.

Additional References

- Argandoña, Antonio; Isea Silva, Ricardo (2011). "ISO 26000, una Guía para la Responsabilidad Social de las Organizaciones". *Cuadernos de la Cátedra "la Caixa" de Responsabilidad Social de la Empresa y Gobierno Corporativo*, nr. 11.
- Chandra, Mahesh (2011). "ISO Standards from Quality to Environment to Corporate Social Responsibility and Their Implications for Global Companies". *Journal of International Business & Law*, vol. 10, nr. 1, pp. 107-114.
- Echaide, Javier (2009). "Responsabilidad Social Empresaria: un sobrevuelo por la norma ISO 26000". *Lan harremanak: Revista de relaciones laborales*, nr. 20-21, pp. 137-162.
- Johnston, Andrew (2012). "ISO 26000: Guiding Companies to Sustainability through Social Responsibility". *European Company Law*, vol. 9, nr. 2, pp. 110-117.
- Martínez Arango, Juan Pablo; Ciro Ríos, León Sigifredo (2015). "Incorporación de la ISO 26000, sobre organizaciones empresariales, en la legislación colombiana". Ánfora: Revista Científica de la Universidad Autónoma de Manizales, vol. 22, nr. 39, pp. 147-168.

- Montero Serrano, Maryelis (2012). "La responsabilidad social y la norma ISO 26000". *Revista de Formación Gerencial*, nr. 1, pp. 102-119.
- Webb, Kernaghan (2015). "ISO 26000 Social Responsibility Standard as Proto Law and a New Form of Global Custom: Positioning ISO 26000 in the Emerging Transnational Regulatory Governance Rule Instrument Architecture". *Transnational Legal Theory*, vol. 6, nr. 2, pp. 466-500.

vi. Food and Agriculture Organisation

PRINCIPLES FOR RESPONSIBLE INVESTMENT IN AGRICULTURE AND FOOD SYSTEMS

- Multilateral voluntary initiative
- Approved on 15 October 2014 by the Committee on World Food Security
- Agriculture and food systems sector

Objective

The objective of the **Principles for responsible investment in agriculture and food systems**[1] is to promote responsible investment in agriculture and food systems that contribute to food security and nutrition and, thus supporting the progressive realisation of the right to adequate food in the context of national food security.

Specific objectives

The Principles seek to:

- Address the core elements of what makes investment in agriculture and food systems responsible;
- Identify who the key stakeholders are, and their respective roles and responsibilities with respect to responsible investment in agriculture and food systems; and,
- Serve as a framework to guide the actions of all stakeholders engaged in agriculture and food systems by defining Principles which can promote

1 "Voluntary Principles on Security and Human Rights". Available at: http://www.voluntaryprinciples.org/.

much needed responsible investment, enhance livelihoods, and guard against and mitigate risks to food security and nutrition.

Adoption process

Between November 2013 and March 2014, an inclusive process of consultations and regional workshops occurred in Africa, Europe and Central Asia, North America, Asia and the Pacific, Latin America and the Caribbean, and the Near East, to develop the Principles for responsible investment in agriculture, respecting rights, livelihoods and resources.[2]

Between October 2012 and October 2014, an open ended working group developed the Principles, based on the opinions of governments, United Nations agencies, civil society and non-governmental organisations, international agricultural research institutions, private sector associations and private philanthropic foundations, international and regional financial institutions.

On 15 October 2014, the Committee on World Food Security endorsed the Principles at its 41st session.

Scope of application

Material scope

The Principles require that investment in agriculture and food systems respects, protects, and promotes human rights, in particular the progressive realisation of the right to adequate food in the context of national food security, in line with the Universal Declaration of Human Rights and other relevant international human rights instruments, such as the ILO Declaration on the fundamental principles and rights at work, the United Nations Declaration on the rights of indigenous peoples, the Guiding Principles on business and human rights, among others.

2 "Background to the RAI Process". Available at: http://www.fao.org/cfs/cfs-home/activities/rai/raibackground/en/.

Personal scope

The Principles are addressed to stakeholders and value chains of investments in agriculture and food systems, including fishery, forestry and livestock. Therefore, the Principles' main users are:

- States;
- inter-governmental and regional organisations;
- financing institutions, donors, foundations and funds;
- research organisations, universities, and extension organisations;
- smallholders and their organisations;
- business enterprises, including farmers;
- civil society organisations;
- workers and their organisations;
- communities; and
- consumer organisations.

Territorial scope

The Principles have a global scope and have been developed to be universally applicable.

Contents

The Principles recognise that Responsible investment makes a significant contribution to enhancing sustainable livelihoods, in particular for smallholders, and members of marginalised and vulnerable groups, creating decent work for all agricultural and food workers, eradicating poverty, fostering social and gender equality, eliminating the worst forms of child labour, promoting social participation and inclusiveness, increasing economic growth, and therefore achieving sustainable development.

As such, the Principles lay out the measures through which responsible investment can be achieved in agriculture and food systems.

Principle 1: Contribute to food security and nutrition

Responsible investment in agriculture and food systems contributes to food security and nutrition, particularly for the most vulnerable, at the household, local, national, regional, or global level, and to eradicating poverty through:

- Increasing sustainable production and productivity of safe, nutritious, diverse, and culturally acceptable food;
- Improving income and reducing poverty;
- Enhancing the fairness, transparency, efficiency, and functioning of markets;
- Enhancing food utilisation through access to clean water, sanitation, energy, technology, childcare, healthcare and education.

According to the Principles, "food security" exists when all people, at all times, have physical, economic and social access to sufficient, safe, and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

The four main dimensions of food security are:
- availability
- access
- utilisation
- stability

Principle 2: Contribute to sustainable and inclusive economic development and the eradication of poverty

Responsible investment in agriculture and food systems contributes to sustainable and inclusive economic development and poverty eradication by:

- Respecting the fundamental principles and rights at work.
- Supporting the effective implementation of other international labour standards.

- Creating new jobs and fostering decent work through improved working conditions, occupational safety and health, adequate living wages, and training for career advancement.
- Contributing to rural development, improving social protection coverage and the provision of public goods and services such as research, health, education, capacity development, finance, infrastructure, market functioning, and fostering rural institutions.
- Supporting the implementation of policies and actions aimed at empowering stakeholders.

Principle 3: Foster gender equality and women's empowerment

Responsible investment in agriculture and food systems fosters gender equality and women's empowerment by:

- Ensuring that all people are treated fairly, recognising their respective situations, needs, constraints;
- Eliminating all measures and practices that discriminate or violate rights on the basis of gender;
- Advancing women's equal tenure rights, and their equal access to and control over productive land, natural resources, inputs, productive tools; and promoting access to extension, advisory, and financial services, education, training, markets, and information;
- Adopting innovative or proactive approaches, measures, and processes to enhance women's meaningful participation in partnerships.

Principle 4: Engage and empower youth

Responsible investment in agriculture and food systems engages and empowers youth by:

- Advancing their access to productive land, natural resources, inputs, productive tools, extension, advisory, and financial services, education, training, markets, information, and inclusion in decision-making;
- Providing appropriate training, education, and mentorship programmes for youth;

- Promoting development and access to innovation and new technologies, combined with traditional knowledge, to attract and enable youth to be drivers of improvement in agriculture and food systems.

Principle 5: Respect tenure of land, fisheries, and forests and access to water

Responsible investment in agriculture and food systems respects legitimate tenure rights to land, fisheries, and forests, as well as existing and potential water uses, in line with the following documents:

- The voluntary Guidelines on the responsible governance of tenure of land, fisheries, and forests in the context of national food security.
- The voluntary Guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication.

Principle 6: Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks

Responsible investment in agriculture and food systems conserves, and sustainably manages natural resources, increases resilience, and reduces disaster risks by:

- Preventing, minimising, and remedying negative impacts on air, land, soil, water, forests, and biodiversity.
- Supporting and conserving biodiversity and genetic resources.
- Reducing waste and losses in production and post-harvest operations.
- Increasing resilience of agriculture and food systems, the supporting habitats, and related livelihoods, particularly of smallholders, to the effects of climate change through adaptation measures.
- Taking measures to reduce or remove greenhouse gas emissions.
- Integrating traditional and scientific knowledge with best practices and technologies through different approaches, including agro-ecological approaches and sustainable intensification.

Principle 7: Respect cultural heritage and traditional knowledge, and support diversity and innovation

Responsible investment in agriculture and food systems respects cultural heritage and traditional knowledge, and supports diversity, including genetic diversity, and innovation by:

- Respecting cultural heritage sites and systems.
- Recognising the contributions of farmers in conserving, improving, and making available genetic resources.
- Respecting the rights of these farmers to save, use, exchange, and sell these resources, subject to national law and in accordance with applicable international treaties.
- Promoting fair and equitable sharing of benefits arising from the utilisation of genetic resources for food and agriculture, on mutually agreed terms, in accordance with international treaties, where applicable for parties to such treaties.
- Promoting the application and use of locally adapted and innovative technologies and practices.

Principle 8: Promote safe and healthy agriculture and food systems

Responsible investment in agriculture and food systems promotes safety and health through:

- Promoting the safety, quality, and nutritional value of food and agricultural products.
- Supporting animal health and welfare, and plant health, to sustainably increase productivity, product quality, and safety.
- Improving the management of agricultural inputs and outputs.
- Managing and reducing risks to public health across agriculture and food systems, including strengthening science based strategies and programmes for the control of food safety, with supporting infrastructure and resources.
- Enhancing awareness, knowledge, and communication, related to evidence-based information on food quality, safety, nutrition, and public health issues.

- Enabling consumer choice by promoting the availability of and access to food that is safe, nutritious, diverse and culturally acceptable.

Principle 9: Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms

Responsible investment in agriculture and food systems should abide by national legislation and public policies, and incorporate inclusive and transparent governance structures, processes, decision-making, and grievance mechanisms, accessible to all, through:

- Respecting the rule and application of law, free of corruption.
- Sharing of information relevant to the investment, in accordance with applicable law, in an inclusive, equitable, accessible, and transparent manner at all stages of the investment cycle.
- Effective and meaningful consultation with indigenous peoples, through their representative institutions in order to obtain their free, prior and informed consent.
- Promoting access to transparent and effective mediation, grievance, and dispute resolution mechanisms.

Principle 10: Assess and address impacts and promote accountability

Responsible investment in agriculture and food systems includes mechanisms to assess and address economic, social, environmental, and cultural impacts, considering smallholders, gender, and age, among other factors, and respects human rights and promotes accountability of each actor to all relevant stakeholders, especially the most vulnerable, by:

- Applying mechanisms that provide for independent and transparent assessments of potential impacts involving all relevant stakeholder groups, in particular the most vulnerable.
- Defining baseline data and indicators for monitoring and to measure impacts.
- Identifying measures to prevent and address potential negative impacts.
- Regularly assessing changes and communicating results to stakeholders.

- Implementing appropriate and effective remedial or compensatory actions in the case of negative impacts or non-compliance with national law or contractual obligations.

Requirements for companies

The Principles should be promoted, supported and utilised by all stakeholders according to their respective individual or collective needs, mandates, abilities, and relevant national contexts. In this regard, business enterprises involved in agriculture and food systems should apply the Principles with a focus on mitigating and managing risks to maximise positive and avoid negative impacts on food security and nutrition, relevant to their context and circumstances. Therefore, these enterprises should:

- Comply with national laws and regulations and any applicable international law, and act with due diligence to avoid infringing on human rights.
- Conduct equitable and transparent transactions, and support efforts to track the supply chain.
- Respect legitimate tenure rights.
- Use a range of inclusive business models.
- Inform and educate consumers about the sustainability of products and services.
- Respect national safety and consumer protection regulations.
- Promote the consumption of food which is balanced, safe, nutritious, diverse, and culturally acceptable.

Additional References

- Castellanelli, Carlo Alessandro (2017). "A Critique of the Principles for Responsible Agricultural Investment". *Mercator, Fortaleza*, vol. 16, pp. 1-10.
- Cotula, Lorenzo; Blackmore, Emma (2014). *Understanding agricultural investment chains: Lessons to improve governance*. Rome-London: FAO-IIED.
- Cotula, Lorenzo; Vermeulen, Sonja (2010). *Making the most of agricultural investment: a survey of business models that provide opportunities for smallholders*. Rome-London: FAO-IIED.
- FAO (2016). *Promoting responsible investment in agriculture and food systems. Guide to assess national regulatory frameworks affecting larger-scale private investments*. Rome: FAO.
- GESPLAN Research Group of the Technical University of Madrid (2016). "Towards RAI Principles: Four case studies to apply them". Available at: http://oa.upm.es/50897/1/Towards_RAI_principles_2016.pdf.
- Mirza, Hafiz; Speller, William; Dixie, Grahame; Goodman, Zoe (2014). *The practice of responsible investment principles in larger scale agricultural investments: Implications for corporate performance and impact on local communities*. Washington- Geneva: World Bank-UNCTAD.
- TNI (2015). "Political Brief on the Principles on Responsible Investment in Agriculture and Food Systems". Available at: https://www.tni.org/files/download/political_brief_rai_principles_1.pdf.

vii. World Bank

PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY

- Environmental and social standards
- In force since 30 April 2006

IFC International Finance Corporation WORLD BANK GROUP

Objective

The **Performance Standards on Environmental and Social Sustainability**[1] offer guidance for business activities supported and financed by the International Financial Corporation (IFC) of the World Bank Group to identify risks and impact, with the intention of avoiding, mitigating and managing risks and impacts in order to do business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities.

Background

On 21 February 2006, the IFC Board of Directors approved the proposal of the administration to adopt a new framework for risk management regulating the social and environmental aspects of the Corporation's operations.

As such, in 2006, IFC adopted the Sustainability Framework that articulates the Corporation's strategic commitment to sustainable development. Therefore, the Sustainability Framework is applied along with other strategies, policies and initiatives to direct its operations, in order to achieve its objectives of promoting sustainable development in the private sector in developing countries, helping to reduce poverty and improve people's lives.

1 IFC (2012). "Performance Standards on Environmental and Social Sustainability". Available at: https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

The Sustainability Framework comprises the following documents:

- Policy on environmental and social sustainability[2]
- Access to information policy[3]
- Performance Standards on environmental and social sustainability

The IFC Policy on environmental and social sustainability describes the Corporation's commitments, roles, and responsibilities related to environmental and social sustainability.

The IFC access to information Policy reflects its commitment to transparency and good governance on its operations, and outlines its institutional disclosure obligations regarding its investment and advisory services.

In 2012, after a consultation and engagement process with the stakeholders, the IFC Sustainability Framework was updated.

Scope of application

The Performance standards apply to all investment and advisory clients throughout the project's entire lifecycle. They can also be applied by other financial institutions to their clients.

The Performance Standards

The eight Performance standards are the following:

Performance standard 1: Assessment and management of environmental and social risks and impacts

2 IFC (2012). "Policy on Environmental and Social Sustainability". Available at: https://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES.

3 IFC (2012). "Access to Information Policy." Available at: https://www.ifc.org/wps/wcm/connect/98d8ae004997936f9b7bffb2b4b33c15/IFCPolicyDisclosureInformation.pdf?MOD=AJPERES.

Performance standard 2: Labour and working conditions

Performance standard 3: Resource efficiency and pollution prevention

Performance standard 4: Community health, safety, and security

Performance standard 5: Land acquisition and involuntary resettlement

Performance standard 6: Biodiversity conservation and sustainable management of living natural resources

Performance standard 7: Indigenous peoples

Performance standard 8: Cultural heritage

Contents

Performance Standard 1 establishes the importance of: i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects; ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them; and iii) the client's management of environmental and social performance throughout the life of the project.

Performance Standards 2 through 8 establish objectives and requirements to avoid, minimise and, where residual impacts remain, to compensate/offset for risks and impacts to workers, affected communities and the environment.

Each Performance standard comes with a detailed guidance note on the requirements contained in the standard, including reference materials and good sustainability practices to help clients improve project performance.[4]

4 IFC (2012). "International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability". Available at: https://www.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Document.pdf?MOD=AJPERES.

Performance standard 1: social and environmental Assessment and systems		
Objective	**Scope of application**	**Requirements**
• To identify and evaluate environmental and social risks and impacts of the project. • To promote improved environmental and social performance of IFC clients through the effective use of management systems. • To promote and provide means for adequate engagement with Affected Communities throughout the project cycle.	• Applies to business activities with environmental or social risks or impacts.	• Conduct a process of environmental and social assessment. • Establish and maintain an Environmental and Social Management System (ESMS) appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts. The ESMS will incorporate the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programmes; (iv) organisational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; (vii) monitoring and review.

Performance standard 2: Labour and Working Conditions		
Objective	**Scope of application**	**Requirements**
• To promote the fair treatment, non-discrimination, and equal opportunity of workers. • To establish, maintain, and improve the worker-management relationship. • To promote compliance with national employment and labour laws. • To protect workers, including vulnerable categories of workers. • To promote safe and healthy working conditions, and the health of workers. • To avoid the use of forced labour.	• Applies during the environmental and social risks and impacts identification process. • Applies to workers directly engaged by the client, workers engaged through third parties to perform work related to core business processes of the project for a substantial duration, as well as workers engaged by the client's primary suppliers.	• Adopt and implement policies and procedures establishing working conditions and management of worker relationship. • Take measures to prevent and address harassment, intimidation or exploitation, especially in regard to women. • Ensure that all workers receive notice of dismissal and severance payments mandated by law and collective agreements in a timely manner. • Not employ children in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. • Provide the workers with safe and healthy working conditions.

Performance standard 3: Resource Efficiency and Pollution Prevention		
Objective	**Scope of application**	**Requirements**
• To avoid or minimise adverse impacts on human health and the environment by avoiding or minimising pollution from project activities. • To promote more sustainable use of resources, including energy and water. • To reduce project-related Green-House Gas (GHG) emissions.	• Applies during the environmental and social risks and impacts identification process.	• Implement technically and financially feasible and cost effective measures for improving efficiency in the consumption of energy, water, as well as other resources and material inputs. • For projects that are expected to or currently produce more than 25,000 tonnes of CO2-equivalent annually, direct emissions from the facilities owned or controlled within the physical project boundary, as well as indirect emissions associated with the off-site production of energy used by the project, need to be quantified. • Adopt measures that avoid or reduce water usage so that the project's water consumption does not have significant adverse impacts on others. • Avoid the release of pollutants or, when avoidance is not feasible, minimise or control the intensity and mass flow of their release. • Avoid the generation of hazardous and non-hazardous waste materials. • Avoid or, when avoidance is not possible, minimise and control the release of hazardous materials.

Performance standard 4: Community Health, Safety, and Security		
Objective	**Scope of application**	**Requirements**
• To anticipate and avoid adverse impacts on the health and safety of the affected community during the project life from both routine and non-routine circumstances. • To ensure that the safeguarding of personnel and property is carried out in accordance with relevant human rights principles and in a manner that avoids or minimises risks to the affected communities.	• Applies during the environmental and social risks and impacts identification process. • This Performance Standard addresses potential risks and impacts to the affected communities from project activities	• Evaluate the risks and impacts to the health and safety of the affected communities during the project life-cycle and establish preventive and control measures consistent with good international industry practice. • Avoid or minimise the potential for community exposure to hazardous materials and substances that may be released by the project. • Avoid or minimise the potential for community exposure to waterborne, water-based, water-related, and vector-borne diseases, and communicable diseases that could result from project activities, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. • Assist and collaborate with the affected communities, local government agencies, and other relevant parties, in their preparations to respond effectively to emergency situations. • When the client retains direct or contracted workers to provide security to safeguard its personnel and property, it will assess risks posed by its security arrangements to those within and outside the project site.

Performance standard 5: Land Acquisition and Involuntary Resettlement		
Objective	**Scope of application**	**Requirements**
• To avoid displacement. • To avoid forced eviction. • To minimise adverse social and economic impacts from land acquisition or restrictions on land use.	• Applies during the environmental and social risks and impacts identification process. • This Performance Standard applies to physical and/or economic displacement resulting from: expropriation or other compulsory procedures; negotiated settlements with property owners or those with legal rights to the land; project situations where involuntary restrictions on land use and access to natural resources cause a community or groups within a community to lose access to resource usage where they have traditional or recognisable usage rights; certain project situations requiring evictions of people occupying land without formal, traditional, or recognisable usage rights.	• Avoid or minimise physical or economic displacement, while balancing environ-mental, social, and financial costs and benefits, paying particular attention to impacts on the most vulnerable groups. • When displacement cannot be avoided, the displaced communities and persons should be offered compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods. • Establish a grievance mechanism. • Establish procedures to monitor and evaluate the implementation of a resettlement action plan or livelihood restoration plan and take corrective action as necessary.

Performance standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources		
Objective	**Scope of application**	**Requirements**
• To protect and conserve biodiversity. • To maintain the benefits from ecosystem services. • To promote the sustainable management of living natural resources through the adoption of practices that integrate conservation needs and development priorities	• Applies during the environmental and social risks and impacts identification process. • The Performance Standard applies to projects located in modified, natural, and critical habitats; that potentially impact on or are dependent on ecosystem services over which the client has direct management control or significant influence; or that include the production of living natural resources.	• Avoid impacts on biodiversity and ecosystem services. When avoidance of impacts is not possible, measures to minimise impacts and restore biodiversity and ecosystem services should be implemented. • Retain competent experts to assist in conducting the risks and impacts identification process. • Design and implement bio-diversity offsets to achieve measurable conservation out-comes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity. • Minimise impacts on bio-diversity and implement mitigation measures as appropriate. • Not significantly convert or degrade natural habitats. • Not intentionally introduce any new alien species (not currently established in the country or region of the project) unless this is carried out in accordance with the existing regulatory framework for such introduction. • Conduct a systematic review to identify priority ecosystem services.

Performance standard 7: Indigenous Peoples		
Objective	**Scope of application**	**Requirements**
• To ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of indigenous peoples. • To promote sustainable development benefits and opportunities for indigenous peoples in a culturally appropriate manner.	• Applies to communities or groups of indigenous peoples who maintain a collective attachment to distinct habitats or ancestral territories and the natural resources they contain, i.e., whose identity as a group or community is linked to these territories or resources.	• Identify all communities of indigenous peoples within the project area of influence who may be affected by the project, as well as the nature and degree of the expected direct and indirect economic, social, cultural and environmental impacts on them. • Adverse impacts on affected communities of indigenous peoples should be avoided where possible. Where alternatives have been explored and adverse impacts are unavoidable, these impacts should be minimised, restored or compensated for in a culturally appropriate manner commensurate with the nature and scale of such impacts and the vulnerability of the affected communities of indigenous peoples. • Undertake a work process with affected communities of indigenous peoples, promo-ting the engagement of indigenous peoples' representative bodies and organisations. • Obtain the affected communities of indigenous peoples' free, prior, and informed consent. • Identify, together with the affected communities of indigenous peoples, mitigation measures as well as opportunities for culturally appropriate and sustainable development benefits.

Performance standard 8: Cultural Heritage		
Objective	**Scope of application**	**Requirements**
• To protect cultural heritage from the adverse impacts of project activities and support its preservation. • To promote the equitable sharing of benefits from the use of cultural heritage.	• Apply to cultural heritage regardless of whether or not it has been legally protected or previously disturbed. The requirements of this Performance Standard do not apply to cultural heritage of Indigenous Peoples; Performance Standard 7 describes those requirements.	• Identify and protect cultural heritage by ensuring that internationally recognised practices for the protection, field-based study, and documentation of cultural heritage are implemented. • Retain competent professionals to assist in the identification and protection of cultural heritage. • Where a project may affect cultural heritage, the client will consult with affected communities within the host country who use, or have used within living memory, the cultural heritage for long-standing cultural purposes, in order to identify cultural heritage of importance, and to incorporate into the client's decision-making process the views of the affected communities on such cultural heritage. • Not remove any nonreplicable cultural heritage. • Not remove, significantly alter, or damage critical cultural heritage.

Additional references

- De Moerloose, Stéphanie (2014). "Estándares ambientales y sociales en la condicionalidad del Banco Mundial". *Revista de Derecho Ambiental de la Universidad de Palermo*, year III, nr. 2, pp. 45-88.
- Drouin, Renée-Claude (2016). "Compliance within the International Finance Corporation (IFC): A Look at the IFC's Environmental and Social Performance Standards and Its Obligation of Due Diligence". *Revue Juridique Themis*, vol. 50, nr. 3, pp. 863-902.
- Hernández Uriz, Genoveva (2002). "The Application of the World Bank Standards to the Oil Industry: Can the World Bank Group Promote Corporate Responsibility". *Brooklyn Journal of International Law*, vol. 28, nr. 1, pp. 77-122.
- Morgera, Elisa (2007). "Significant Trends in Corporate Environmental Accountability: The New Performance Standards of the International Finance Corporation". *Colorado Journal of International Environmental Law and Policy*, vol. 18, nr. 1, pp. 151-188.
- Office of the Compliance Advisor/Ombudsman (2010). "Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information (IFC)". Available at: http://www.cao-ombudsman.org/documents/CAOAdvisoryNoteforIFCPolicyReview_May2010.pdf.

b. Regional organisations

i. European Union

EUROPEAN PARLIAMENT

REGULATION (EU) NO 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, OF 20 OCTOBER 2010, LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET

- Legislation
- Adopted on 20 October 2010
- In force since 3 March 2013
- Timber sector

Illegal logging creates serious economic, environmental and social impacts. At the economic level, this translates in loss of income and unfair competition for the legitimate agents. At the environmental level, deforestation is linked with climate change and biodiversity loss. Finally, at the social level, illegal logging is usually associated with conflicts over land tenure and natural resources.

In this regard, the European Union (EU) is an important importer of timber and timber products from third States. A big part of the products that reach the EU have been obtained illegally.

Objective

The **Regulation (EU) No 995/2010 of the European Parliament and of the Council, of 20 October 2010, laying down the obligations of operators who place timber and timber products on the market**[1] is an instrument in the fight against illegal logging that seeks to reduce the trade of illegally harvested timber and timber products on the EU internal market. Therefore, it has its place within the international efforts to contain deforestation and protect biodiversity.

1 L 295/23.

As such, Regulation (EU) 995/2010 lays down compulsory measures and procedures for operators, including enterprises, who engage in business in the internal timber market for the first time. The goal of these measures and procedures is to ensure that timber is obtained from legal sources around the world.

Adoption process

In 2003, an Action Plan was adopted on Forest Law Enforcement, Governance and Trade [FLEGT], an initiative outlined by the EU in response to the global concerns on the adverse impacts of illegal logging and trade of timber. In this plan, a series of measures is established to exclude illegal timber from the market, increase the offer of legal timber and the demand for products of responsible origin.

In 2010, as part of the FLEGT Action Plan, the EU regulation regarding timber trade was adopted, with the intention of eradicating illegal logging around the world.

In 2012, two additional legislative measures were adopted, providing a more detailed description for some of the provisions of the Regulation:

1. Commission Delegated Regulation (EU) 363/2012, of 23 February 2012, on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council, laying down the obligations of operators who place timber and timber products on the market. [2]

2. Commission Implementing Regulation (EU) 607/2012, of 6 July 2012, on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.[3]

2 L 115/12.

3 L 177/16.

In 2016, the Commission published a Guidance Document on the EU regulation for timber, offering information on specific aspects of the Regulation and of the two non-legislative Commission acts.[4]

Scope of application

Material scope

Regulation (EU) 995/2010 affects timber and timber products that are placed on the EU market for the first time.

Therefore, it applies to timber and timber products, listed in the Annex of the Regulation, including sawn or chipped wood, plywood, particle boards, logs, briquettes, wooden furniture, pulp and paper.

However, it does not apply to timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste. For example, certain recycled products or those consisting of printed paper such as books, magazines or newspapers.

It applies both to timber and timber products that are imported as to those that are already placed on the internal market.

Personal scope

Subject to the provisions of Regulation (EU) 995/2010 are the operators, defined as natural or legal persons placing timber and timber products on the EU internal market for the first time. Therefore, they apply to traders, understood as any natural or legal person who purchases or sells timber or timber products that have already been traded previously.

The Regulation also affects enterprises in third States whose products can be imported and integrated in the supply chain of enterprises in the EU timber sector.

4 C(2016) 755 final.

Territorial scope

Regulation (EU) 995/2010 is legally binding for EU member States, responsible for establishing effective proportionate and dissuasive penalties, and for the enforcement of the Regulation.

Requirements for companies

Regulation (EU) 995/2010 imposes the following three obligations to enterprises:

1. It prohibits enterprises to place illegally harvested timber or timber products, derived from such timber, on the market.
2. It obliges enterprises to exercise due diligence when placing timber or timber products on the market for the first time (agents).
3. It obliges traders of timber and timber products to keep records of their suppliers and clients after the first transaction.

Due diligence

The Regulation obliges enterprises placing timber or timber products for the first time on the EU market to implement a Due Diligence System.

Enterprises can choose to implement the due diligence system, developed in article 6 of the Regulation, which includes measures and procedures to minimise the risk of placing illegally harvested timber of products derived from such timber on the market; also, they can choose to implement a due diligence system, established by a monitoring organisation, or existing supervision systems under national legislation, or any voluntary chain of custody mechanism which fulfils the requirements, laid down in this Regulation (article 4).

Monitoring organisations

Monitoring organisations are organisations, recognised by the European Commission, that will maintain and regularly evaluate and verify a due diligence system that operators can use to minimise the risk of placing illegally harvest timber products on the market.

The monitoring organisations will be subject to checks at regular intervals by the competent authorities, designated by each member State to ensure compliance with Regulation (EI) no 995/2010.
These checks include:

a) onsite spot checks, including field audits;
b) examination of documentation and records of monitoring organisation;
c) interviews with the management and staff of the monitoring organisation;
d) interviews with operators and traders or any other relevant person;
e) examination of documentation and records of operators;
f) examination of samples of the supply of operators using the due diligence system of the monitoring organisation concerned (article 6 of the Implementing Regulation (EU) No 607/2012).

It is important for operators to have their due diligence systems evaluated regularly by any person in the enterprise (if possible, independent from those setting out the procedures), or by an external organisation, in order to identify weak spots and flaws, and the enterprise's management should set deadlines to resolve them.

The elements the due diligence systems should include to minimise the risk of trading illegally harvested timber products are:

- Information: operators should adopt measures and procedures to collect and register key information on the supply of timber products that will be traded, in order to provide access to information on sources and suppliers of timber and timber products being placed on the internal market for the first time.

  In this regard, operators need to collect specific information on the timber or timber product itself, meaning description, product type and commercial name; country of harvest or licence; quantity (volume, weight or number of units); supplier's name and address; name and address of the trader to whom the products have been supplied; documents indicating compliance with applicable legislation (article 6.1.a).

- Risk assessment: operators should assess, based on the information collected, whether there exists any risk that some components of aforementioned products contain illegally harvested timber.

  In the risk assessment procedures, they need to take into account general information on the prevalence of illegal harvesting of specific tree species,

the prevalence of illegal harvesting practices in the location of harvest and the complexity of the supply chain (article 6.1.b).

- Risk mitigation: When a risk is identified, operators should reduce it with measures, proportionate to the risk identified, in order to avoid placing illegally harvested timber and products derived from such timber on the market. The measures can include requiring additional information or documentation to suppliers or requiring third party certification to verify compliance with the applicable legislation (article 6.1.c).

Information concerning the operator's supply and application of risk mitigation procedures shall be documented through adequate records, which shall be stored for five years and made available for checks by the competent authority (article 5 of Implementing Regulation (EU) 607/2012).

Operators can take into account the voluntary systems of forest certification and timber compliance verification for the evaluation and risk mitigation procedures, at the condition they comply with the criteria established in article 4 of Implementing Regulation (EU) 607/2012:

- having established and made available for third-party use a publicly available system of requirements, which system shall at the least include all relevant requirements of the applicable legislation;
- specifying that appropriate checks, including field-visits, are made by a third party at regular intervals no longer than 12 months to verify that the applicable legislation is complied with;
- including means, verified by a third party, to trace timber harvested in accordance with applicable legislation, and timber products derived from such timber, at any point in the supply chain before such timber or timber products are placed on the market; and
- including controls, verified by a third party, to ensure that timber or timber products of unknown origin, or timber or timber products which have not been harvested in accordance with applicable legislation, do not enter the supply chain.

Traceability

Operators who place timber products on the market shall maintain a register to enable the traceability of the supply chain in order to identify:

- the operators or the traders who have supplied the timber and timber products; and,
- where applicable, the traders to whom the timber and timber products have been supplied.

Traders shall keep this information for at least five years and shall provide that information to competent authorities if they so request.

Compliance with the Regulation

Each member State shall designate one or more competent authorities responsible for the application of this Regulation (article 7). These authorities shall cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation (article 12).

Also, member States shall lay down the rules on effective, proportionate and dissuasive penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. These penalties may include:

a) fines proportionate to the environmental damage, the value of the timber or timber products concerned and the tax losses and economic detriment resulting from the infringement, calculating the level of such fines in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements, without prejudice to the legitimate right to exercise a profession, and gradually increasing the level of such fines for repeated serious infringements;

b) seizure of the timber and timber products concerned;

c) immediate suspension of authorisation to trade (article 19).

Additional References

- Geraets, Dylan; Natens, Bregt (2014). "WTO Consistency of the European Union Timber Regulation". Journal of World Trade, vol. 48, nr. 2, pp. 433-[ii].
- Herbst, Peter (2006). "European Forest Sustainable Development". *Environmental Policy and Law*, vol. 36, nr. 5, pp. 229-231.
- Levashova, Yulia (2011). "How Effective is the New EU Timber Regulation in the Fight against Illegal Logging?" *Review of European Community & International Environmental Law*, vol. 20, nr. 3, pp. 290-299.
- Scott, Joanne (2004). "International Trade and Environmental Governance: Relating Rules (and Standards) in the EU and the WTO". *European Journal of International Law*, vol. 15, nr. 2, pp. 307-354
- Soh Fogno, Denis Roger (2018). "The Impact of the Forest Law Enforcement, Governance and Trade (FLEGT) Standards on Forest Protection in Central Africa: The Case of Cameroon". *Cahiers de Droit*, vol. 59, nr. 1, pp. 285-324

DIRECTIVE 2014/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, OF 22 OCTOBER 2014, AMENDING DIRECTIVE 2013/34/EU AS REGARDS DISCLOSURE OF NON-FINANCIAL AND DIVERSITY INFORMATION BY CERTAIN LARGE UNDERTAKINGS AND GROUPS

- Legislation
- In force since 16 December 2014

Objective

The **Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups**[1] responds to the need to enhance consistency and comparability of the disclosure of social and environmental information provided by undertakings (considering 2).

Its objective is to measure, monitor and manage the undertakings' performance and its impact on society in the framework of managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection (considering 3). This, in turn, allows investors, consumers, legislators and other stakeholders to evaluate the non-financial performance of large undertakings.

Also, Directive 2014/95/EU aims at enhancing the undertakings' diversity policy in their administrative boards to improve oversight of the management and successful governance of the undertaking (considering 18).

1 L 330/1.

Adoption process

The Communication from the European Commission entitled A renewed EU strategy 2011-14 for Corporate Social Responsibility[2], adopted on 25 October 2011, refers to the need to improve the disclosure of social and environmental information provided by undertakings.

On 6 February 2013, European Parliament adopted the Resolution on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth[3] and the Resolution of 6 February 2013 on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery.[4] These resolutions recognise the importance of business transparency in environmental and social matters.

On 16 April 2013, the Commission proposed an amendment to accounting legislation in order to improve the transparency of certain large companies on social and environmental matters.[5]

On 26 February 2014, European Parliament and the Council reached an agreement on amending accounting legislation to improve the transparency of certain large companies on social, environmental and diversity matters.[6]

The European Parliament adopted Directive 2014/95/EU on 15 April 2014.

---

2 A renewed EU strategy 2011-14 for Corporate Social Responsibility, adopted on 25 October 2011. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF

3 "European Parliament resolution of 6 February 2013 on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth (2012/2098(INI))". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013IP0049.

4 "European Parliament resolution of 6 February 2013 on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery (2012/2097(INI))". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1543743579556&uri=CELEX:52013IP0050.

5 "Commission moves to enhance business transparency on social and environmental matters". Available at: http://europa.eu/rapid/press-release_IP-13-330_en.htm.

6 "Disclosure of non-financial information by certain large companies: European Parliament and Council reach agreement on Commission proposal to improve transparency". Available at: http://europa.eu/rapid/press-release_STATEMENT-14-29_en.htm?locale=en.

Scope of application

Material scope

For the financial year starting on 1 January 2017 or during the calendar year 2017, all undertakings included in the scope of Directive 2014/95/EU shall publish a non-financial statement with information regarding at least the following matters:

- *Environmental*

Detailed information on current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, on health and safety, the use of renewable or non-renewable energy, greenhouse gas emissions, water use and air pollution.

- *Social and employee-related*

Information on actions taken to ensure gender equality, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities.

- *Respect for human rights, anti-corruption and bribery*

Information on the prevention and measure to mitigate and remediate possible human rights abuses, and on instruments in place to fight corruption.

Where the undertaking does not pursue policies in relation to the aforementioned matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.

In exceptional cases, the possibility exists to omit information relating to impending developments or matters in the course of negotiation when its disclosure would be seriously prejudicial to the commercial position of the undertaking (*safe harbour clause*).

The non-financial statement shall also include information on the due diligence processes implemented by the undertaking, also regarding its supply

and subcontracting chains, where relevant and proportionate, in order to identify, prevent and mitigate existing and potential adverse impacts.

Also, in accordance with Comment 8 of the Preamble, the undertakings which are subject to Directive 2014/95/EU should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised.

Personal scope

Directive 2015/95/EU applies to public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year (article 19 bis).

Also, it applies to public-interest entities which are parent undertakings of a large group exceeding on its balance sheet dates the criterion of the average number of 500 employees during the financial year (article 29 bis on consolidated non-financial statement).

The personal scope of application covers approximately 6,000 large undertakings and groups within the EU, including public companies, banks, insurance companies and other undertakings, designated by national authorities as public-interest entities.

The Small and Medium-sized Enterprises will be exempted from the obligations under Directive 2014/95/EU.

Territorial scope

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2014/95/EU by 6 December 2016.

Member State Implementation of Directive 2014/95/EU

The 28 member States have implemented the provisions, laid down in Directive 2014/95/EU through amendments in their national laws like Belgium, Bulgaria, Croatia, Cyprus, Denmark, Slovakia, Slovenia, Estonia, Finland, France, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Romania; or also, through the adoption of laws that transpose the Directive like in the case of Germany, Austria, Spain, Greece, Italy, Ireland, Luxembourg, The Netherlands, Portugal, United Kingdom and Sweden.

For more information on the member State implementation of the Directive 2014/95/EU: CSR Europe and GRI (2017). "Member State Implementation of Directive 2014/95/EU A comprehensive overview of how Member States are implementing the EU Directive on Non-financial and Diversity Information". Available at: https://www.globalreporting.org/resourcelibrary/NFRpublication%20online_version.pdf.

Requirements for companies

Undertakings shall present the non-financial statement:

- in their management report, or
- in a separate report, published within a reasonable period of time, not exceeding six months after the balance sheet date, on the undertaking's website.

Directive 2014/95/EU offers high flexibility in order for the undertakings to use international, European or national directives to produce their non-financial statement:

- Eco-Management and Audit Scheme(EMAS);
- United National Global Compact;
- Guiding Principles on business and human rights;
- OECD Guidelines for Multinational Enterprises;
- ISO Standard 26000:2010 – Guidance on social responsibility;
- ILO Tripartite declaration of principles concerning multinational enterprises and social policy.

However, the non-financial statement shall include:

a) a brief description of the undertaking's business model;

b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;

c) the outcome of those policies;

d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;

e) non-financial key performance indicators relevant to the particular business.

The members of the administrative, management and supervisory bodies of an undertaking have collective responsibility for ensuring that the contents and methodology of non-financial information disclosure comply with the requirements of Directive 2014/95/EU.

With regard to the form in which the non-financial statement is drafted, in its article 2, the Directive states that the Commission should prepare non-binding methodology guidelines that apply to non-financial information, including general and sectoral non-financial key performance indicators, in order to facilitate relevant, useful and comparable disclosure of non-financial information by undertakings.

The guidelines of the Commission on non-financial reports were published on 26 June 2017, with the intention of improving corporate transparency in social and environmental matters. The guidelines contribute to the undertakings' compliance with the requirements, established in Directive 2014/95/EU and promote the disclosure of high quality, relevant, useful, consistent information that ensures transparency to stakeholders.[7]

7 "Communication from the Commission. Guidelines on non-financial reporting (methodology for reporting non-financial information) (2017/C 215/01). Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_on_non-financial_reporting.pdf.

Additional references

- Buhmann, Karin (2018). "Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU's Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action". *Business and Human Rights Journal*, vol. 3, nr. 1, pp. 23-45.
- Chambers, Rachel; Yilmaz-Vastardis, Anil (2016) "The New EU Rules on Non-Financial Reporting: Potential Impacts on Access to Remedy". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 18-[ii].
- European Commission. Non-financial reporting. EU rules require large companies to publish regular reports on the social and environmental impacts of their activities. Available at: https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_es.
- de Roo, Koen H. M. (2015). "The Role of the EU Directive on Non-Financial Disclosure in Human Rights Reporting", *European Company Law*, vol. 12, nr. 6, pp. 278-285.
- Quinn, John; Connolly, Barry (2017). "The Non-Financial Information Directive: An Assessment of Its Impact on Corporate Social Responsibility". *European Company Law*, vol. 14, nr. 1, pp. 15-2.
- Szabó, Dániel Gergely; Sørensen, Karsten Engsig (2015). "New EU Directive on the Disclosure of Non-Financial Information (CSR)". *Nordic & European Company Law Working Paper No. 15-01*.

EUROPEAN PARLIAMENT RESOLUTION OF 8 SEPTEMBER 2015 ON 'HUMAN RIGHTS AND TECHNOLOGY: THE IMPACT OF INTRUSION AND SURVEILLANCE SYSTEMS ON HUMAN RIGHTS IN THIRD COUNTRIES' (2014/2232(INI))

- Political declaration
- Approved on 8 September 2015

Objective

The **European Parliament resolution on Human rights and technology: the impact of intrusion and surveillance systems on human rights in third countries**[1] calls for coherence between the EU's external actions and its internal policies related to Information and Communication Technologies (ICT), in order to ensure fulfilment and full respect for human rights and fundamental freedoms.

Background

In June 2013, the European Commission published the ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights.[2]

On 12 February 2014, the Communication entitled "Internet Policy and Governance: Europe's role in shaping the future of Internet Governance" from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions was published.[3]

1 P8_TA(2015)0288. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0288+0+DOC+PDF+V0//EN.

2 European Commission (2013). "ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights". Available at: https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/information_and_communication_technology_0.pdf.

3 COM(2014)0072. Available at: https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex:52014DC0072.

Proposals

The Resolution recognises that technological developments and access to the open internet are playing an increasingly important role in enabling and ensuring the fulfilment and full respect for human rights and fundamental freedoms.

However, technological systems, as well as Internet surveillance, can be misused by public and private actors as tools for human rights violations through censorship, unauthorised access to devices, jamming, interception, and the tracing and tracking of information and individuals. In turn, they undermine the ability of human rights defenders to take advantage of the internet and to communicate sensitive information, which is in breach of several articles in the Universal Declaration of Human Rights guaranteeing each person's right to privacy and to freedom of expression

Some EU-made information and communication technologies and services are sold, and can be used, in third countries by private individuals, businesses and authorities with the specific intent of violating human rights.

In this regard, it is highlighted that, in the digital domain, private actors play an increasingly significant role in all spheres of social activities, but safeguards are still not in place to prevent them from imposing excessive restrictions on fundamental rights and freedoms. As a result, private actors play a more active role in assessing the legality of content and in developing cyber-security systems and surveillance systems, which can have a detrimental impact on human rights all over the world

EU-based companies have an important share of the global market in ICTs, in particular when it comes to exporting surveillance, tracking, intrusion and monitoring technology. Therefore, the European Parliament expresses its concern about the fact that some EU-based companies may provide technologies and services that can enable such human rights violations.

As such, the European Parliament underlines that corporate social responsibility principles and human rights by design criteria, which are technological solutions and innovations protecting human rights, should be adopted in EU law to ensure that internet service providers, software developers, hardware

producers, social networking services and media, mobile phone carriers and others consider the human rights of end users globally.

Also, it reminds corporate actors of their responsibility to respect human rights throughout their global operations, regardless of where their users are located and independently of whether the host state meets its own human rights obligations; calls on ICT companies, notably those based in the EU, to implement the UN Guiding Principles on Business and Human Rights, including through the establishment of due diligence policies and risk management safeguards, and the provision of effective remedies when their activities have caused or contributed to an adverse human rights impact.

In this regard, the European Parliament points out that a voluntary approach is not enough, and that binding measures are required to encourage companies to take into account a country's human rights record before selling their products there, and to carry out an assessment of the effect their technologies will have on human rights defenders and Government critics.

Therefore, it stresses that the Commission should swiftly be able to provide companies that are in doubt as to whether to apply for an export licence with accurate and up-to-date information on the legality or potentially harmful effects of potential transactions. Also, it urges the Commission publicly to exclude companies trading in dual-use technologies with potential detrimental effects on human rights while operating in the EU, with regimes whose actions violate human rights.

On the other hand, it warns against the privatisation of law enforcement through internet companies and Internet Service Providers, and calls for a clarification of the norms and standards used by private actors to develop their systems.

Additional references

- Allison-Hope, Dunstan; Hodge, Mark (2018) *Artificial Intelligence: A Rights-Based Blueprint for Business. Paper 3: Implementing Human Rights Due Diligence*. San Francisco: BSR.
- Bilchitz, David (2016). "Privacy, Surveillance and the Duties of Corporations". *Journal of South African Law*, vol. 2016, nr. 1, pp. 45-67.
- Ebert, Isabel Laura (2018). "The corporations' dilemma: navigating government access to information". Available at: https://www.openglobalrights.org/the-corporations-dilemma-navigating-government-access-to-information/?lang=English.
- FIDH (2014). *Surveillance technologies "Made in Europe": Regulation Needed to Prevent Human Rights Abuses*. Paris: FIDH.
- Sullivan, David (2016). "Business and digital rights: Taking stock of the UN Guiding Principles for Business and Human Rights in the ICT sector". Available at: https://www.apc.org/sites/default/files/APC_Business_and_digital_rights.pdf.

EUROPEAN PARLIAMENT RESOLUTION OF 25 OCTOBER 2016 ON CORPORATE LIABILITY FOR SERIOUS HUMAN RIGHTS ABUSES IN THIRD COUNTRIES (2015/2315(INI))

- Political Declaration
- Approved on 25 October 2016

Objective

The **European Parliament resolution on corporate liability for serious human rights abuses in third countries**[1] calls on the EU, the member States, third countries and all national and international authorities to adopt, as a matter of urgency and as widely as possible, binding instruments devoted to companies' respect for human rights and implementation of due diligence processes throughout their operations and supply chains.

The call of the Resolution is based on the fact that the EU has played a leading role in negotiating and implementing a number of initiatives for global responsibility which go hand in hand with the promotion and respect of international standards; on the lack of a global holistic approach to corporate liability for human rights abuses; and, on the multiple obstacles victims of human rights abuses involving international companies face to accessing judicial remedies.

Proposals

The Resolution recognises that, in the context of globalisation, business enterprises operating at international level can at times cause or contribute to human rights violations, and affect the rights of vulnerable groups such as minorities, indigenous peoples, women and children, or contribute to causing environmental problems. In this regard, it points out that these enterprises can be European or from third countries operating in Europe.

1 P8_TA(2016)0405. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0405+0+DOC+PDF+V0//EN.

Therefore, it considers that the protection of human rights must be a priority for the member States and the EU itself and, as such, a proper, effective and coherent legal framework needs to be developed to deal with human rights violations, committed by business enterprises.

To do so, the Resolution calls on companies, member States and the EU, proposing the following measures and actions:

To the corporations

The European Parliament recognises the major importance of corporate social responsibility and welcomes the growing use of instruments based on this responsibility and the self-commitment by corporations. Also, it emphasises the practice of incorporating responsibility for respecting human rights into binding contractual requirements between companies and their corporate and private clients and suppliers.

However, it calls on companies, whether European or not, to carry out human rights due diligence. To do so, it recommends sufficient resources to be allocated to ensure transparency and communication regarding measures taken to avoid human rights abuses in third countries, since they are crucial to allow for proper oversight and to allow consumers to make fact-based choices.

Also, it emphasises that respecting human rights is a moral duty and a legal obligation on corporations and their management and should be integrated into a long-term economic perspective, wherever they may act and whatever their size or industrial sector. Nevertheless, it recognises that specific legal duties for corporations should be concretely tailored according to their sizes and capabilities, taking into account the specific needs of SMEs to avoid additional administrative or financial constraints.

If companies are found to have caused or contributed to harm, Parliament determines whether they should take not only moral but also legal responsibility and provide for effective remedy process for the individuals and communities affected, including restitution, compensation, rehabilitation and guarantees of non-repetition.

To the member States

The Resolution recalls that member States have the obligation to protect, avoid and remediate human rights violations committed by companies, including in third States. Therefore, in compliance with their international obligations, the Parliament calls on the member States to guarantee policy coherence on business and human rights at all levels.

The Parliament suggests, as such, that member States, on one hand, lay down clear rules setting out that companies established in their territory or under their jurisdiction must respect human rights throughout their operations, in every country and context in which they operate; and, on the other hand, comply with their duty to prevent, investigate and punish human rights violations by corporations acting under their jurisdiction, including those perpetrated in third countries.

Besides, it calls on member States to use legislative processes to introduce mandatory human rights due diligence, specifically in case for business enterprises which are owned or controlled by the state, and receive substantial support and services from state agencies or European institutions as well as for businesses that provide goods or services through public procurement contracts. The legislative progress that can be achieved must follow the steps required in the Guiding Principles and be guided by certain overarching principles related to the proactive identification of risks to human rights.

In this regard, it calls on member States to consider supply chain due diligence for companies that use raw materials or commodities that might originate from conflict-affected areas to disclose their sourcing.

Also, it calls on the member States to implement the Guiding Principles swiftly and robustly by developing national actions plans, or if these are lacking, to revise or update these plans based on the guidelines provided by the United Nations Working Group on the issue of human rights and business.

Finally, it is worth noting that the Parliament urges the member States to constructively engage in the negotiations on the binding UN treaty on business and human rights.

To the European Commission

The Resolution calls for urgent binding and enforceable rules and related sanctions and independent monitoring mechanisms for responsible supply chain management introduced by the Commission's services. Along these lines, it strongly calls for the systematic inclusion in trade and investment agreements of rules on corporate liability for violations of human rights.

In issues of access to justice, the Parliament urges the building of a consistent body of law that allows extending the rules on legal jurisdiction so that third-country defendants have a clear link with one member State; to improve access to evidence through enhanced procedures regarding the disclosure of evidence; and, in accordance with Article 83 of the Treaty on the Functioning of the European Union, to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crimes with a cross-border dimension pertaining to serious human right violations in third countries committed by corporations.

On the other hand, in order to promote increased awareness among producers and consumers, recommends the creation of a certified 'abuse-free' product label at EU level, participation in which would be on a voluntary basis, monitored by an independent body governed by strict rules and endowed with powers of inspection, devoted to verifying and certifying that no abuse has been committed at any stage in the chain of production of the relevant good.

Additional references

- Bijlmakers, Stephanie; Footer, Mary; Hachez, Nicolas (2015). "The EU's engagement with the main Business and Human Rights instruments". Available at: http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-7.4.pdf.

- Cernic, Jernej Letnar (2016). "Towards a Holistic Approach to Business and Human Rights in the European Union". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 160-[ii].

- European Parliament (2017). "Implementation of the UN Guiding Principles on Business and Human Rights". Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf.

- Fasciglione, Marco (2016). "The Enforcement of Corporate Human Rights Due Diligence: From the UN Guiding Principles on Business and Human Rights to the Legal Systems of EU Countries". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 94-[ii].

- Grimheden, Jonas (2018). "Civil Litigation in Response to Corporate Human Rights Abuse: The European Union and Its Member States". Case *Western Reserve Journal of International Law*, vol. 50, pp. 235-248.

- Márquez Carrasco, Carmen; Vivas Tesón, Inmaculada (coords.) (2017). *La implementación de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos por la Unión Europea y sus Estados Miembros*. Navarra: Editorial Aranzadi.

EUROPEAN PARLIAMENT RESOLUTION OF 27 APRIL 2017 ON THE EU FLAGSHIP INITIATIVE ON THE GARMENT SECTOR (2016/2140(INI))

- Political Declaration
- Approved on 27 April 2017
- Textile and garment sector

The EU is one of the largest importers of textile and clothing products, often manufactured in third State *maquiladoras* where workers are exposed to bad working conditions, including cuts in minimum wages, forced overtime, child labour, sexual harassment, exposure to toxic substances, arbitrary dismissals, unsafe workplaces, unhealthy working conditions and other extreme labour risks, as well as retaliations against workers trying to form trade unions.

It is worth noting that the personnel of these maquilas, which are part of the supply chain for large business enterprises in the textile sector, is mainly constituted by women who, besides the aforementioned abuses, also suffer from the wage gap, sexual work distribution and the invisibilisation of the caring and reproduction tasks.

The high rate of human and labour rights violations in the textile and garment sector has triggered multiple initiatives to improve the infrahuman situation endured by millions of workers in this sector and create a level playing field for all those involved.

Objective

The **European Parliament resolution on the EU flagship initiative on the garment sector**[1] urges the European Commission to present a legislative proposal on binding due diligence obligations regarding supply chains in the garment sector, in harmony with the principle of coherence in

1 P8_TA(2017)0196. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0196+0+DOC+PDF+V0//EN.

the development policies, reflected in article 208 of the Treaty on the Functioning of the EU.

The legislative proposal must be developed in line with the new OECD due diligence guideline for the garment and footwear sector, the OECD Guidelines for Multinational Enterprises which are importing into the EU, the ILO resolution on decent work in supply chains and internationally agreed human rights, social and environmental standards.

This legislative proposal intends, as such, to improve transparency in the supply chains of the textile and garment sector; to modify product labelling to inform the consumer of who manufactures the clothing; and, to avoid human rights to be violated, with special emphasis on the case of women.

Background

On 24 April 2013, the Rana Plaza factory building, in the outskirts of Dhaka (Bangladesh), hosting several garment companies, collapsed, causing the deaths of over 1,000 people and leaving some 2,500 people injured.[2]

Following the attention generated by the tragedy in Bangladesh, in 2015, the European Commission announced the development of a legislative sustainability initiative for the textile and garment sector worldwide.[3]

On 29 April 2015, European Parliament adopted the Resolution on the second anniversary of the Rana Plaza building collapse and the state of play of the Sustainability Compact with Bangladesh[4] which called on the European Commission, the EU governments and other stakeholders to consider the

2 Aizawa, Motoko; Tripathi, Salil (2016). "Beyond Rana Plaza: Next Steps for the Global Garment Industry and Bangladeshi Manufacturers". *Business and Human Rights Journal*, vol. 1, nr. 1, pp. 145-151.

3 "Communiaction of the Commission, of 14 October 2015, entitled "Trade for all. Towards a more responsible trade and investment policy» (COM(2015)0497)". Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

4 "Resolution of the European Parliament on the second anniversary of the Rana Plaza building collapse and the state of play of the Sustainability Compact (2015/2589(RSP))". Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2015-0376+0+DOC+XML+V0//EN.

possibility to propose regulatory frameworks that will ensure that access to remedy and compensation is based on the needs of the people affected.

In turn, it welcomes the Commission's flagship initiative on responsible management of the supply chain in the garment sector, taking into account existing national initiatives, like those in Germany, the Netherlands, Denmark and France, and considers that the EU has the ability and duty to be a global champion of supply chain responsibility.

On 27April 2017, European Parliament approved, with 83% of the votes in favour, the report on the "Union's Flagship Initiative in the Garment Sector", establishing a strong mandate for the European Commission to propose binding legislation.

Proposals

The Resolution recognises the adverse impacts throughout the supply chain of the European textile industry which, according to the Resolution, are the result of lacking traceability and transparency.

It also recognises that public as well as private initiatives for the reinforcement of human rights and the sustainability of the textile and garment sector are insufficient, due to the complexity of the sector's supply chain; to the partial approach of most initiatives (not covering the entire supply chain); to the partial approach regarding geographic environment; and, to the duplicity and overlapping of initiatives.

Therefore, European Parliament calls on the European Commission to establish binding regulations regarding the respect for human rights in the supply chain of the textile and garment sector.

To do so, it proposes the following measures and actions:

- *Signing agreements and treaties with third States*

Parliament values the legally binding Bangladesh Accord on Fire and Building Safety, as well as the Bangladesh Sustainability Compact, launched by the Commission together with Bangladesh and the ILO following the Rana Plaza disaster in 2013.

Given the potential of these instruments to improve labour rights and factory safety in the sector of garment and textile industry, it urges the Commission to implement similar programmes and measures with other States where the supply chains of European garment companies are present, such as Sri Lanka, India or Pakistan.

- *Mandatory due diligence*

The European Parliament calls on the Commission to present a legislative initiative, similar to Regulation (EU) 2017/821 on minerals from conflict areas with regard to binding and mandatory due diligence, but applicable to the supply chains of garment companies, following the new OECD guidelines on this matter as guiding principle.

The due diligence obligations must be applicable to all companies wanting to develop their activity on the European market, both in the initial as in the final segments of the supply chain.

In this regard, the European Parliament recognises the specific needs of European SMEs, as well as the fact that the nature and extent of due diligence, such as specific steps to be taken by a company, are affected by its size, the context of its operations and the severity of its potentially adverse impact. Therefore, it calls for appropriate consideration of the SMEs which dominate the European manufacturing garment sector.

- *Cross-cutting approach in gender and child labour matters*

An estimated 70-80% of employees in the ready-made garment sector in production countries are low-skilled female workers and frequently minors; low wages, coupled with low or non-existent social protection, make these women and children particularly vulnerable to exploitation; a gender perspective and specific measures on women's empowerment are largely missing in the ongoing sustainability initiatives.

Regarding this issue, the European Parliament urges to include a solid gender and child approach in the legislative proposal. Therefore, gender equality, women's empowerment and children's rights should be a central focus of its legislative proposal, in order to promote non-discrimination and address the issue of harassment in the workplace, as already envisaged by European and international commitments.

In this regard, it promotes women's access to leadership positions and the training of male managers on gender equality and discrimination.

- *Transparency and traceability*

The geographic dispersion of the different stages of the production process, the different types of workers in this sector, the purchasing policy, low prices, high volumes, short lead times, subcontracting and short-term buyer-supplier relationships, are conducive to reducing the visibility, traceability and transparency of an enterprise's supply chain and to increasing the risks of human rights and labour abuses, as well as environmental damage.

Therefore, European Parliament considers that the new proposal should promote sustainability, transparency and traceability throughout the entire supply chain, including mandatory disclosure of production locations.

To do so, it proposes to develop a wide variety of monitoring systems in the EU garment sector using key performance indicators – encompassing data collection using surveys, audits and data analysis techniques that can effectively measure performance and address the impact of the garment sector on development, labour rights and human rights in the entire garment supply chain.

- *Environment*

Global supply chains in the textile and garment sector expose their workers and local residents to environmental damages that affect the fulfilment of their human rights. For example, untreated residual water containing chrome, sulphur, ammonia and other chemicals that can cause serious problems for people's health.

Therefore, the legislative proposal must guarantee compliance with the strictest environmental standards.

Also, it proposes to use ecological and sustainably managed raw materials such as cotton and to promote the re-use and recycling of garments and textiles within the European Union through the specific provisions in the legislative proposal on the garment sector.

On the other hand, it calls on the Commission to ensure sustainable, alternative sourcing of raw materials for the EU garment sector and to implement the highest and strictest animal welfare standards available.

- *ILO labour and social standards*

Given the high number of labour rights violations committed in the textile and garment sector, the legislative proposal must promote effective implementation of the ILO standards on wages and working hours. Also, it must provide guidance and support on how to enhance respect for these standards.

In this regard, through policy dialogue and capacity-building, the take-up and effective enforcement of international labour standards and human rights by partner countries based on ILO Conventions, including child labour rights and standards such as Conventions 138 and 182, and recommendations, should be promoted.

In turn, it needs to guarantee the right to join and form a union and engage in collective bargaining, which is a key criterion for business accountability. Therefore, the legislative proposal should encourage governments of developing countries to strengthen the role of labour unions and to actively promote social dialogue and fundamental principles and rights at work, including freedom of association and the right to collective bargaining for all workers, regardless of their employment status.

- *Raising consumer awareness*

One of the goals of the legislative proposal is to raise awareness among consumers by providing better consumer information. Informing consumers plays a key role in assuring decent working conditions.

To do so, the European Commission and member States are asked to consider the possibility of setting up a public online database of all relevant information regarding all actors along the supply chain.

- *Quality labels and stamps*

Closely linked to consumer awareness, a proposal is made to develop EU-wide labelling standards for 'fair clothing', accessible to both multinational compa-

nies and SMEs, to indicate that fair working conditions have been respected and to assist customers in their purchasing decisions with better information.

- *EU external action*

To ensure sustainability and the promotion of human rights in the textile and garment sector worldwide, the legislative proposal must promote:

1. Development cooperation policies which, through technical assistance and incentives, strengthen the rule of law and social standards in third States.
2. Fair trade policy as safeguard for the respect for human rights through binding clauses in the chapters on sustainable development of every trade agreement, signed between the European Union and third States.
3. An ILO decent work agenda in the agreements on tariff preferences such as the GSP or GSP+.
4. Fair and transparent tax policy at international level as relevant instrument for the promotion of decent work.

Additional References

- Guamán, Adoración (2018). "Duty of surveillance, Human Rights and Transnational Corporations: a review of the different models of fight against impunity". *Homa Publica – International Journal on Human Rights and Business*, vol. 2, nr. 1, pp. 138 -184.
- Human Rights Watch (2017). "Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry". Available at: https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry.
- Jastram, Sarah; Schneider, Anna-Maria (2018). *Sustainable Fashion. Governance and New Management Approaches*. Heidelberg-Nueva York-Dordrecht-London: Springer International Publishing.

REGULATION (EU) 2017/821 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 MAY 2017 LAYING DOWN SUPPLY CHAIN DUE DILIGENCE OBLIGATIONS FOR UNION IMPORTERS OF TIN, TANTALUM AND TUNGSTEN, THEIR ORES, AND GOLD ORIGINATING FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS

- Legislation
- Applicable from 1 January 2021
- Mining sector

Objective

The overall objective of **Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas**[1] is to contribute to the reduction of the trade in of tin, tantalum, tungsten and gold, extracted using forced labour or used to fund armed conflicts. The Regulation is designed to provide transparency and legal certainty as regards the supply practices of Union importers, and of smelters and refiners sourcing from conflict-affected and high-risk areas.

Meanwhile, their specific objectives focus on:

- Stopping the export of minerals and metals from conflict areas to the EU;
- Avoiding the use of minerals from conflict areas by EU smelters and refiners;
- Stopping abuses against mine workers.

1 L 130/1.

Adoption process

On 7 October 2010, the European Parliament adopted the Resolution on failures in protection of human rights and justice in the Democratic Republic of Congo[2] in which it calls on the European Commission to legislate on the trade of minerals from conflict areas.

In 2013, civil society organisations called on the European Commission to adopt legislation requiring European companies to carry out a supply chain due diligence process to ensure that their activities do not contribute to the financing of armed conflicts or to the perpetration of human rights abuses.

On 5 March 2014, the European Commission presented before the Council and the European Parliament the proposal for a Regulation on supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.[3] This proposal had a voluntary character for companies, meaning it did not impose due diligence obligations.

On 20 May 2015, the European Parliament approved amendments[4] to the European Commission's legislative proposal to establish a mandatory certification system for EU business importing tin, tantalum, tungsten and gold for manufacturing consumer goods.[5]

---

2 "European Parliament resolution of 7 October 2010 on failures in protection of human rights and justice in the Democratic Republic of Congo". Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0350+0+DOC+XML+V0//EN.

3 "Proposal for a Regulation on supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflictaffected and high-risk areas". Available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0111_/com_com(2014)0111_en.pdf .

4 "Amendments adopted by the European Parliament on 20 May 2015 on the proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas (COM(2014)0111 – C7-0092/2014 – 2014/0059(COD))". Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0204+0+DOC+XML+V0//EN.

5 "Conflict minerals: MEPs ask for mandatory certification of EU importers." Available at: http://www.europarl.europa.eu/news/en/press-room/20150513IPR55318/conflict-minerals-meps-ask-for-mandatory-certification-of-eu-importers.

After months of tripartite negotiations, in June 2016, the EU institutions reached a political understanding on legislation aligned with other initiatives aiming at ensuring that minerals are obtained responsibly and do not finance conflicts or human rights abuses.[6]

Regulation (EU) 2017/821 on minerals from conflicts areas was approved on 17 May 2017.

Scope of application

Material scope

The minerals subject to control are tin, tantalum or tungsten and gold, as well as metals containing or composed by these minerals.

Personal scope

The scope of the Regulation includes the EU companies importing these minerals and metals. It directly applies to an estimated number of 600 to 1,000 EU importers. Indirectly, it affects around 500 smelters and refiners of tin, tantalum, tungsten and gold, regardless of whether they are located in the EU or not.

Those companies whose annual import of each of the minerals or metals is below the volume threshold, specified in article 1 section 3 and annex I, fall outside the Regulation's scope of application.

Territorial scope

The Regulation covers imports of minerals and metals from conflict-affected or high-risk areas, defined as areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.

6 "Political Uniderstanding". Available at: http://mediacentrum.groenlinks.nl/sites/default/files/political%20understanding%20conflict%20minerals%2015-06-2016_0.pdf.

In this regard, it is foreseen for the Commission to call upon external expertise to obtain an indicative, non-exhaustive and regularly updated list of conflict-affected or high-risk areas.

Requirements for companies

The Regulation requires importing companies to carry out supply chain due diligence practices to identify and address risks regarding the supply of tin, tantalum or tungsten and gold from areas affected by conflict and instability. To do so, they need to follow five steps of the framework, established by the OECD in its due diligence Guidance for responsible mineral supply chains in conflict-affected or high-risk areas:

- establish solid business management systems
- identify and assess risks in the supply chain
- design and implement a strategy to respond to the identified risks
- carry out an independent third-party audit on supply chain due diligence
- annually report on supply chain due diligence.

Management system obligations

Companies must adopt a supply chain policy for the minerals and metals potentially originating from conflict-affected and high-risk areas, in accordance with the OECD due diligence Guidance (article 4.a). This supply chain policy must be incorporated in contracts and agreements with providers to strengthen their engagement (article 4.d).

The company policy must come with a grievance mechanism as an early-warning risk-awareness system (article 4.e).

Also, they need to apply a chain of custody or supply chain traceability system that provides specific information on the minerals and metals: description of the mineral, name and address of the supplier, country of origin of the minerals, quantities, expressed in volume or weight, and dates of extraction.

Where minerals or metals originate from conflict-affected and high-risk areas, it is foreseen to provide additional information, such as the mine of

mineral origin, locations where minerals are consolidated, traded and processed, and taxes, fees and royalties paid (article 4.f and g).

Risk management obligations

In agreement with the information collected through the management systems, companies have the obligation to identify and assess the risks of adverse impacts in their mineral supply chains. Therefore, they should implement a strategy to respond to the identified risks so as to prevent or mitigate adverse impacts (article 5).

Third-party audit obligations

Companies shall carry out external audits via independent third parties to determine conformity of the due diligence practices in the mineral or metal supply chain (article 6.1).

Shall be exempted from this obligation those companies making available substantive evidence, including third-party audit reports, demonstrating that all smelters and refiners in their supply chain comply with this Regulation (article 6.2).

Disclosure obligations

Companies shall make available to member State competent authorities the reports of any third-party audit. Also, they make available to their immediate downstream purchasers all information gained and maintained pursuant to their supply chain due diligence with due regard for business confidentiality and other competitive concerns (article 7.1 and 2).

On the other hand, importers are required, on an annual basis, to publicly report as widely as possible, including on the internet, on their supply chain due diligence policies and practices. (article 7.3).

Compliance

Each EU member State shall verify whether the EU importers implement the Regulation (article 10). The competent authorities shall be responsible for carrying out appropriate ex-post checks in order to ensure that Union

importers of minerals or metals comply with the obligations set out in the Regulation. Therefore, they can carry out on-the-spot inspections at the premises of the importer.

In case of non-compliance, member States shall adopt a penalty system, applicable to any infringement of the Regulation (article 16).

Additional references

- Iglesias Márquez, Daniel (2017). "The EU Conflict Minerals Regulation: Challenges for Achieving Mineral Supply Chain Due Diligence". Available at: http://www.asser.nl/DoingBusinessRight/Blog/post/the-eu-conflict-minerals-regulation-challenges-for-achieving-mineral-supply-chain-due-diligence-by-daniel-iglesias-marquez#_edn10.
- Partiti, Enrico; Van der Velde, Steffen (2017). "Curbing Supply-Chain Human Rights Violations through Trade and Due Diligence. Possible WTO Concerns Raised by the EU Conflict Minerals Regulation". *Journal of World Trade*, vol. 51, nr. 6, pp. 1043-1068.
- Van der Meulen, Mureille (2017). "The EU Responsible Trading Strategy For Minerals From Conflict Zones: - A path towards peace, stability and development? –". Available at: http://renforce.rebo.uu.nl/wp-content/uploads/2014/12/CS-EU-Paper-Final-MureillevdMeulen-69219-1.pdf
- Van der Velde, Steffen (2017). "The End of Conflict Minerals on the EU Market?" *Asser Institute Policy Brief 2017*, pp. 1-11.

EUROPEAN PARLIAMENT RESOLUTION OF 12 SEPTEMBER 2017 ON THE IMPACT OF INTERNATIONAL TRADE AND THE EU'S TRADE POLICIES ON GLOBAL VALUE CHAINS (2016/2301(INI))

- Political Declaration
- Approved on 2 September 2017

Objective

The **European Parliament resolution of 12 September 2017 on the impact of international trade and the EU's trade policies on global value chains**[1] calls on the European Commission to step up initiatives relating to corporate social responsibility and due diligence across the whole supply chain, through EU trade and investment policies. This with the aim to respond even more effectively to social and environmental dumping and unfair competition and trade practices, and ensure a level playing field.

Proposals

The Resolution points out that global supply chains are a key feature of today's global economy, offering new prospects for economic growth, sustainable development, the involvement of civil society, workers and business associations, and for job creation for companies within the production chain, by enabling them to focus on specific tasks while increasing their interdependence.

However, in turn, it highlights that its extremely complex nature, lack of transparency and dilution of liabilities may lead to a higher risk of human and labour rights violations, factual impunity for environmental crimes and large-scale tax avoidance and tax fraud.

1 P8_TA(2017)0330. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0330+0+DOC+PDF+V0//EN.

In this regard, it emphasises that the EU trade and investment policy should aim to provide tools to establish clear rules and responsibilities for governments and companies in order to ensure compliance with international commitments such as the UN Sustainable Development Goals; that sustainability and transparency are not only a matter of values but should also be seen as real drivers of increased added value in global trade and investment in the context of global value chains.

In order to adopt a multilateral, global and holistic approach to corporate liability for human rights abuses and environmental sustainability in global value chains, Parliament proposes the following measures and actions:

Regarding global value chains

Parliament starts by emphasising that trade and investment policy should aim to provide leverage, to create a level playing field for European businesses and promote European competitiveness. Therefore, it calls on the Commission and the member States to adopt reinforced trade defence instruments to combat unfair commercial practices, taking into account social and environmental dumping.

Also, it calls on the Commission to actively work within the World Trade Organisation in order to increase transparency, and to define and promote multilateral rules for trade, including the sustainable management of global value chains, which should, in particular, include the following:

- mandatory supply chain due diligence and transparency requirements, building on the United Nations Guiding Principles on Business and Human Rights;
- minimum health and safety standards, recognising in particular workers' right to establish safety committees;
- a social protection floor and respect for ILO labour standards; and
- the right to collective bargaining.

On the other hand, it calls on the EU and the member States to engage constructively in the ongoing negotiations on a binding United Nations Treaty for transnational corporations and human rights and play an active role by

contributing to the development of concrete proposals, including access to remedies, investing all their efforts in achieving a positive outcome and encouraging trade partners to equally engage.

In this regard, it recommends the possibility of introducing extensive mandatory due diligence, including at global level, and asks the member States to expedite the application and increase the effectiveness of the national action plans implementing the UN Guiding Principles.

Regarding corporate responsibility

On this matter, Parliament considers that the EU should swiftly seek ways to develop global values chain transparency strategies and rules, including the possible consideration of immediate action towards developing binding and enforceable rules. These initiatives should follow the required steps outlined in the Guiding Principles and the OECD Guidelines relating to the proactive identification of risks to human rights, the drawing up of rigorous and demonstrable action plans to prevent or mitigate these risks, adequate response to known abuses, and transparency.

On the other hand, it invites the Commission to ensure compliance by European and international companies with the OECD Guidelines for Multinational Enterprises and the sector-specific OECD guidelines, as well as to update its strategy in the matter of corporate social responsibility, with the objective of strengthening social and environmental standards. In this regard, it recommends considering proposals relative to mandatory due diligence for EU companies operating inside as well as in third States.

Regarding reinforcing private-sector initiatives

Parliament stresses that private-sector companies need to pursue sustainability strategies, not only so as to prevent damage to their reputation. Therefore, it calls on the Commission to find new ways to support private-sector efforts to make global value chains more sustainable and to develop inclusive business models and related private-sector multi-stakeholder partnerships. Meanwhile, calls on companies to apply human rights due diligence and to integrate their findings into internal policies and procedures.

Regarding free trade agreements

On this matter, Parliament asks the Commission to address, in its trade and investment policy and free trade agreements, the challenges associated with the rise of global value chains by taking into consideration the ex-ante and ex-post trade sustainability impact assessments, adding assessment requirements on human rights and on gender; including enforceable anti-corruption and whistle-blower protection provisions; including standstill clauses setting a minimum level for social, environmental and safety standards in all EU free trade agreements. Therefore, it recommends the Commission to ensure that social and environmental standards subscribed to in free trade agreements apply throughout the territory of trade partners, including in industrial export processing zones.

Regarding labelling, traceability and customs data

The possibility is considered to introduce legislation relative to the labelling rules regarding the origin of products entering the EU market or to the rules that guarantee social and environmental traceability along the entire production chain.

Regarding jurisdiction and access to remedies

In principle, the urgent need to effectively address human rights abuses by transnational corporations when they appear is reaffirmed. Therefore, Parliament calls on Member States to take appropriate steps to tackle the financial and procedural hurdles faced in civil litigation by victims. In this regard, it recommends the extension of jurisdictional rules under the Brussels I Regulation to third-country defendants in cases brought against companies with a clear link with one Member State or companies for which the EU is an essential outlet.

Also, it recalls that business enterprises should establish operational-level grievance mechanisms for workers affected by their operations, including in industrial export processing zones.

Regarding gender equality and children's rights

Gender equality is firmly established in all EU policies. Therefore, Parliament proposes that, at the level of international trade and EU trade policies on global value chains, a specific strategy should be developed to formally protect individuals who denounce practices such as femicide, labour trafficking of persons and sexual trafficking, and to defend the victims.

Along the same line, it launches a call for the harmonisation and strengthening of import and supply chain controls so as to ensure that only forced labour-free, child labour-free and modern slavery-free products enter the EU market.

Regarding developing countries

Parliament underlines that global value chains constitute an important opportunity for firms in developing countries to develop a link with the global economy. Therefore, it suggests adopting policies to support the effective participation of these companies in global value chains, while ensuring a high level of social, environmental and human rights protection.

Regarding rules of origin

Parliament notes that simplified, effective and preferential rules of origin are key in the context of global value chains. Therefore, it calls on the Commission, to the extent possible, to use multilateral rules of origin as preferential rules of origin in free trade agreements.

Regarding intellectual property rights and data flows

With regard to this matter, Parliament recognises that digital innovation and data flows are crucial drivers of the services economy and are an essential element of the global value chains of traditional manufacturing companies, and that, therefore, forced localisation requirements should be curbed to the extent possible both within and outside Europe, allowing for the accommodation of necessary exemptions based on legitimate public purposes such as consumer protection and the protection of fundamental rights.

Additional references

- Bijlmakers, Stephanie; Footer, Mary; Hachez, Nicolas (2015). "The EU's engagement with the main Business and Human Rights instruments". Available at: http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-7.4.pdf.
- Cernic, Jernej Letnar (2016). "Towards a Holistic Approach to Business and Human Rights in the European Union". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 160-[ii].
- European Parliament (2017). "Implementation of the UN Guiding Principles on Business and Human Rights". Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf.
- Fasciglione, Marco (2016). "The Enforcement of Corporate Human Rights Due Diligence: From the UN Guiding Principles on Business and Human Rights to the Legal Systems of EU Countries". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 94-[ii].
- Grimheden, Jonas (2018). "Civil Litigation in Response to Corporate Human Rights Abuse: The European Union and Its Member States". Case *Western Reserve Journal of International Law*, vol. 50, pp. 235-248.
- Márquez Carrasco, Carmen; Vivas Tesón, Inmaculada (coords.) (2017). *La implementación de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos por la Unión Europea y sus Estados Miembros*. Navarra: Editorial Aranzadi.

EUROPEAN PARLIAMENT RESOLUTION OF 3 JULY 2018 ON VIOLATION OF THE RIGHTS OF INDIGENOUS PEOPLES IN THE WORLD, INCLUDING LAND GRABBING (2017/2206(INI))

- Political Declaration
- Approved on 3 June 2018

Objective

The **European Parliament resolution on violation of the rights of indigenous peoples in the world, including land grabbing**[1] calls for the EU, the member States and their partners in the international community to adopt all necessary measures for the full recognition, protection and promotion of the rights of indigenous peoples, including to their lands, territories and resources.

Proposals

The Resolution recognises that a number of EU-based investors and companies, among many others, are involved in hundreds of land acquisition operations in Africa, Asia and Latin America, which in some cases has led to violations of the rights of indigenous and local communities. As such, EU-based actors may be implicated in human rights violations related to land grabbing in different ways, such as through EU-based private and finance companies.

In this regard, the Resolution emphasises that forcible land grabbing by private companies is usually accompanied by the presence of private security or military forces, leading inter alia to an increase in direct and indirect violence on indigenous peoples' territories.

1 P8_TA-PROV(2018)0279. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0279+0+DOC+PDF+V0//EN.

Also, it highlights that the implementation of non-binding corporate social responsibility and voluntary regulation schemes needs to be improved to protect indigenous and local communities from the violation of their human rights; to prevent land grabbing; and to ensure effective corporate accountability. Also, it points out that the lack of control and accountability mechanisms constitutes a major impediment to effective and adequate remedy. Regarding this matter, it notes that multinational corporations carry the responsibility of ensuring that their operations and supply chains are not implicated in human and environmental rights violations, specifically the rights of indigenous peoples.

Regarding the aforementioned, the European Parliament proposes that:

Human rights of indigenous peoples

States should ensure that indigenous peoples, in particular women, have access to judicial mechanisms in cases of corporate violations of their rights, and that private forms of remedy that do not ensure effective access to justice are not legitimised.

The Commission should launch the EU Action Plan on responsible business conduct to address the implementation of the Guiding Principles, including with regard to due diligence and access to remedy.

EU partners in the private and public sector should provide complete and accessible information on their compliance with the free, prior and informed consent of indigenous people.

Land grabbing

The EU and all its Member States should request disclosure of land acquisitions involving EU-based corporations and actors or EU-funded development projects in order to increase the transparency and accountability of those acquisitions.

Business and human rights

The UN Guiding Principles for Business and Human Rights are fully integrated into the national programmes of Member States and incorporated

into the practices and operations of transnational corporations and business enterprises with European ties.

The EU should engage in constructive negotiations on a UN treaty on transnational corporations that guarantees respect for the human rights of indigenous peoples, and of women and girls in particular.

The EU and its Member States must work to hold multinational corporations and international financial institutions to account for their impact on indigenous communities' human and environmental rights.

The EU should ensure that all violations of the rights of indigenous peoples by European companies are duly investigated and sanctioned through appropriate mechanisms, and to withdraw any form of institutional or financial support in the case of human rights violations.

The EU should set up a grievance mechanism, in accordance with Commission Recommendation 2013/396/EU of 11 June 2013, whereby indigenous and local communities can lodge complaints regarding violations and abuses of their rights resulting from EU-based business activities, regardless of the country where the violations and abuses occurred, in order to ensure that the victims have effective access to justice as well as to technical and legal assistance.

The EU and its Member States guarantee access to remedy for victims of human rights abuses and violations arising from the activities of Union-based companies by removing all barriers, both practical and legal.

The EU should fulfil its extraterritorial duties related to human rights and devise clear rules of conduct and regulatory frameworks for extraterritorial action by companies and investors that fall within its jurisdiction, in order to ensure that they respect the rights of indigenous peoples and local communities and that they can be properly held accountable and sanctioned when their activities result in the violation of those rights.

The European Commission should consider effective mechanisms on due diligence obligations for companies to make sure that imported goods are not linked to land grabbing and serious violations of the rights of indigenous people.

Additional references

- Borras Jr., Saturnino M.; Backes, Stephan; Fyfe, Daniel; Herre, Roman; Michele; Laura; Mills, Elyse (2016). *Land Grabbing and Human Rights: The Involvement of European Corporate and Financial Entities in Land Grabbing outside the European Union*. Brussels: European Parliament.
- Cotula, Lorenzo (2014). *Addressing the Human Rights Impacts of 'Land Grabbing'*. Brussels: European Parliament.
- Hands on the Land for Food Sovereignty Alliance; FIAN International (2017). *Land Grabbing and Human Rights: The Role of EU Actors Abroad*. Heidelberg: FIAN International.
- White, Ben; Franco, Jennifer C.; Sánchez, Javier (2012). *Acaparamiento de tierras, el nuevo expolio*. Madrid: Centro de Investigación para la Paz.
- Zamora Cabot, Francisco Javier (2013). "Acaparamiento de tierras (*land grabbing*) y empresas multinacionales: el caso Mubende-Neumann". *Working Papers "El Tiempo de los Derechos"*, nr. 5, pp. 1-25.

EUROPEAN COMMISSION

ACTION PLAN: FINANCING SUSTAINABLE GROWTH

- Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions
- Adopted on 8 March 2018
- Banking and finance sector

Objective

The **Action Plan: financing sustainable growth**[1] falls under the framework of the Capital Markets Union[2] initiative, which seeks to connect financing with the specific needs of the European and global economy for the benefit of the planet and society. Also, the Action Plan is a fundamental step towards the implementation of the Paris Agreement on climate and of the Sustainable Development Goals, laid down in the Communication from the Commission entitled "Next steps for a sustainable European future: European action for sustainability."[3]

The Action Plan aims to:

- reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth;
- manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues; and
- foster transparency and long-termism in financial and economic activity.

1 COM(2018) 97 final. Available at: https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-97-F1-EN-MAIN-PART-1.PDF.

2 "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Action Plan on Building a Capital Markets Union". Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0468&from=EN.

3 COM/2016/0739 final.

Proposals

The Commission recognises that finance supports the economy by providing funding for economic activities. In this regards, it emphasises that the financial sector has a key role to play in reaching fundamental environmental and social goals, such as the fight against climate change and resource depletion.

However, it recognises in turn that environmental and social considerations are often not sufficiently taken into account by the financial sector. Therefore, the Action Plan sets out a strategy to reorient private capital towards more sustainable investments that allow transforming Europe's economy into a greener, more resilient and circular system; as well as to boost competitiveness by improving the efficiency of production processes and reducing the costs of accessing and managing resources.

Sustainable finance

The term 'Sustainable finance' generally refers to the process of taking due account of environmental and social considerations in investment decision-making, leading to increased investments in longer-term and sustainable activities.

Some of the actions under consideration seek to regulate the behaviour of companies in the financial sector:

1. The Commission will explore the feasibility of the inclusion of risks associated with climate and other environmental factors in institutions' risk management policies and the potential calibration of capital requirements of banks as part of the Capital Requirement Regulation and Directive. The aim would be to take into account such factors to safeguard the coherence and effectiveness of the prudential framework and financial stability (Action 8).

2. In terms of disclosure by the financial sector, the Commission considers there is merit in enhancing transparency of asset managers and institutional investors, including the way in which they consider sustainability risks and their exposures to climate-related risks. Therefore, it proposes to strengthen sustainability disclosure to enable investors and stakeholders to assess companies' long-term value creation and their sustainability risk exposure (Action 9).

The Commission proposes a fitness check of EU legislation on public corporate reporting, including the Directive on non-financial information, to assess whether public reporting requirements for listed and non-listed companies are fit for purpose to achieve the social and environmental goals pursued.

Also, it suggests revising the guidelines on non-financial information. In this regards, it recognises that the EU Directive on the disclosure of non-financial information allows companies to report sustainability information in a flexible manner. Going forward, an appropriate balance needs to be struck between flexibility and the standardisation of disclosure necessary to generate the data needed for investment decisions. In terms of disclosure by the financial sector, there is merit in enhancing transparency of asset managers and institutional investors, including the way in which they consider sustainability risks and their exposures to climate-related risks.

3. The Commission recognises that corporate governance can significantly contribute to a more sustainable economy, allowing companies to take the strategic steps necessary to develop new technologies, to strengthen business models and to improve performance. This would in turn improve their risk management practices and competitiveness, thus creating jobs and spurring innovation.

   Nevertheless, it emphasises that companies' guidelines can become overly focused on short-term financial performance and disregard opportunities and risks stemming from environmental and social sustainability considerations.

   Regarding the aforementioned, it fosters sustainable corporate governance and attenuating short-termism in capital markets, through the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets; as well as through rules according to which directors are expected to act in the company's long-term interest.

The implementation strategy of the Action Plan combines non-legislative and legislative actions with new measures and carefully targeted amendments to existing rules. Alongside legislative measures, non-legislative measures would ensure adaptability and minimise administrative burdens.

Also, its smooth implementation, as well as monitoring the achievement of its three main objectives, will need appropriate technical support and a solid governance structure, given the expertise needed around all fields of sustainable development.

Additional references

- Dowell-Jones, Mary (2013). "Financial Institutions and Human Rights". *Human Rights Law Review*, vol. 13, nr. 3, pp. 423-468.
- Dowell-Jones, Mary; Kinley, David (2011). "Minding the Gap: Global Finance and Human Rights". *Ethics & International* Affairs, vol. 25, nr. 2, pp. 183-210.
- Shihata, Ibrahim F.I. (1992). "Human Rights, Development, and International Financial Institutions". *American University International Law Review*, vol. 8, nr. 1, pp. 27-36.

EUROPEAN COMMISSION SECTOR GUIDES ON IMPLEMENTING THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

- Sector guides
- Published in June 2013
- Employment and recruitment, oil and gas, and information and communication technology sector

Objective

The **European Commission Sector Guides on Implementing the United Nations Guiding Principles on Business and Human Rights**[1] offer practical advice on how to implement the corporate responsibility to respect human rights in day-to-day business operations through step-by-step guidance. At each step, they summarise what the Guiding Principles expect; offer a range of approaches and examples for how to put them into practice; and provide companies with additional resources for consultation.

Background

In October 2011, the European Commission published the revised EU strategy for 2011-2014 on corporate social responsibility proposing to work with business and other stakeholders to develop guidelines on human rights for a limited number of relevant industrial sectors, as well as guidelines for Small and Medium-sized Enterprises, based on the Guiding Principles.

After public debate, and based on objective criteria, the European Commission decided to develop guides for the employment and recruitment, information and communication technology, and oil and gas agencies.

1 European Commission Sector Guides on Implementing the UN Guiding Principles on Business and Human Rights. Available at: https://ec.europa.eu/anti-trafficking/publications/european-commission-sector-guides-implementing-un-guiding-principles-business-and-hum-0_en.

In December 2011, the Institute for Human Rights and Business[2] and Shift[3] were selected by the Commission to develop the Guides.

The Guides were developed over a period of 18 months through extensive research and multi-stakeholder consultation with representatives from the three industries as well as governments, trade unions, civil society, academia and other experts.

Sector Guides

Source: European Commission

2 Institute for Human Rights and Business. Available at: https://www.ihrb.org/.

3 Shift. Available at: https://www.shiftproject.org/.

Employment & Recruitment Agencies Sector Guide[4]		
Objective	**material scope**	**personal scope**
This Guide applies the Guiding Principles to the specific context of employment and recruitment agencies. As such, it is intended to help employment and recruitment agencies integrate respect for human rights into their own systems and company cultures. The Guide is not legally binding, nor does it propose a set management system, but rather leaves companies the flexibility they need to implement the Guiding Principles in their own particular circumstances.	This Guide covers the operations of companies involved in the recruitment of "direct hire employees" for client companies or the supply of "agency workers" to user enterprises, whether private or public sector employers. The Guide covers respect for all internationally recognised human rights, including the human rights of workers – direct hire employees, agency workers and the internal staff of employment and recruitment agencies – and the rights of individuals or groups in a position of heightened vulnerability or marginalisation. The Guide applies to employment and recruitment agencies' own activities and to their business relationships with third parties. The Guide should be useful to all sizes of employment and recruitment agencies, with varying types of ownership and structure. The Guide takes particular account of the experience of EU companies, but aims to be as globally applicable as possible.	This Guide is for those practitioners in employment and recruitment agencies who have the lead responsibility for human rights issues, whatever function or department they sit in. The Guide should also be of use to those who are interested in promoting respect for human rights in the employment and recruitment agencies sector, including trade unions, NGOs, representatives of affected workers and communities, industry associations, multi-stakeholder initiatives, governments, and consumer organisations. Also, it should be of use to companies that rely on employment and recruitment agencies' services for the recruitment of direct hire employees or the supply of agency workers, whatever sector they are in.

4 European Commission (2013). "Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights". Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/employment_and_recruitment_agencies.pdf.

Oil and Gas Sector Guide[5]		
Objective	**material scope**	**personal scope**
This Guide applies the Guiding Principles to the specific context of the oil and gas sector. As such, it is intended to help companies in this sector integrate respect for human rights into their own systems and company cultures. The Guide is not legally binding, nor does it propose a set management system, but rather leaves companies the flexibility they need to implement the Guiding Principles in their own particular circumstances.	The Guide concentrates on upstream activities of O&G companies throughout the project lifecycle from pre-feasibility, through feasibility, development (including construction), implementation (including production), to decommissioning and post-closure. The Guide covers respect for all internationally recognised human rights, including human rights of workers and the rights of individuals or groups in a position of heightened vulnerability or marginalisation. The Guide applies to oil and gas companies' own activities and to their business relationships with third parties. The Guide should be useful to all sizes of oil and gas companies engaged in upstream activities, with varying types of ownership and structure. The Guide takes particular account of the experience of EU companies, but aims to be as globally applicable as possible.	This Guide is for those practitioners in oil and gas companies who have the lead responsibility for human rights issues, whatever function or department they sit in. The Guide should also be of use to those who are interested in promoting respect for human rights in the oil and gas sector, including trade unions, NGOs, representatives of affected communities, investors, industry associations, multi-stakeholder initiatives, governments, and consumer organisations.

5 European Commission (2013). "Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights". Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/oil_and_gas.pdf.

Information and Communication Technology Sector Guide[6]		
Objective	**material scope**	**personal scope**
This Guide applies the Guiding Principles to the specific context of the information and communication technology sector. As such, it is intended to help companies in this sector integrate respect for human rights into their own systems and company cultures. The Guide is not legally binding, nor does it propose a set management system, but rather leaves companies the flexibility they need to implement the Guiding Principles in their own particular circumstances.	The Guide covers activities ranging from telecommunications and Web-based services through software, and electronic device and component manufacturing. The Guide covers respect for all internationally recognised human rights, including human rights of workers and the rights of individuals or groups in a position of heightened vulnerability or marginalisation. The Guide applies to information and communication technology companies' own activities and to their business relationships with third parties. The Guide should be useful to all sizes of information and communication technology companies, with varying types of ownership and structure. The Guide takes particular account of the experience of EU companies, but aims to be as globally applicable as possible.	This Guide is for those practitioners in information and communication technology companies who have the lead responsibility for human rights issues, whatever function or department they sit in. The Guide should also be of use to those who are interested in promoting respect for human rights in the information and communication technology sector, including trade unions, NGOs, representatives of affected communities, investors, industry associations, multi-stakeholder initiatives, governments, and consumer organisations.

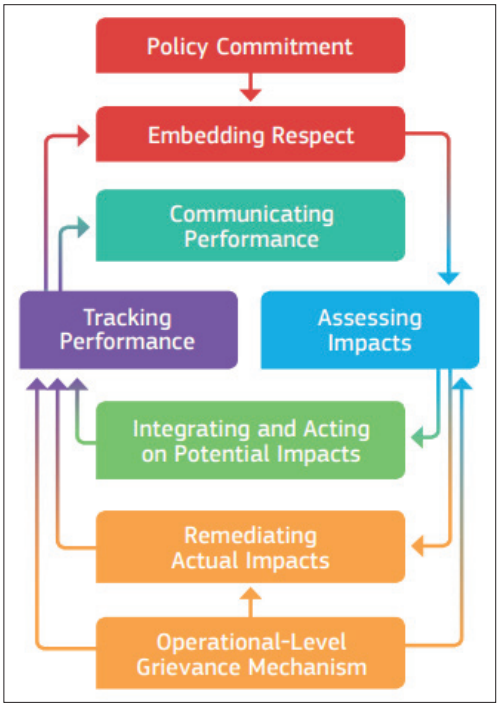
Requirements for companies

The Guides explain the six core elements of corporate responsibility to respect human rights and apply them to activities and business relationships of companies in the selected sectors.

1. Adopt a **human rights policy** that establishes the company's overarching, public commitment to respect human rights and the processes for embedding that commitment into the company's culture.
2. **Assess actual and potential impacts** on human rights.

6 European Commission (2013). "ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights". Available at: https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/information_and_communication_technology_0.pdf.

3. **Integrate the findings** of the impact assessments and **act to prevent or mitigate** these impacts.
4. **Tracking** of the measures to prevent and mitigate the human rights impacts.
5. **Communicate** the measures to prevent and mitigate the human rights impacts to the public.
6. **Remediate or contribute to remediate** through legitimate means when adverse human rights impacts were caused or contributed to.



Source: Comision Europea

Additional References

- Shift (2012). "European Commission Human Rights Sector Guides". Available at: https://www.shiftproject.org/resources/collaborations/european-commission-human-rights-sector-guides/.

COUNCIL OF THE EUROPEAN UNION

COUNCIL CONCLUSIONS ON THE EU AND RESPONSIBLE GLOBAL VALUE CHAINS

- Political Declaration
- Adopted on 12 May 2016

Objective

The **Council Conclusions on the EU and Responsible Global Value Chains**[1] call on the European Commission and the Member States to enhance the implementation of global value chain due diligence to ensure adequate management for inclusive and sustainable growth, in line with the EU objectives on economic growth going hand in hand with social justice, human rights, including core labour standards, sustainable environmental practices and policy frameworks.

Proposals

The Council Conclusions recognise the importance and complexity of global value chains of global production patterns. They also highlight the position of the EU and its member States to make global value chains more sustainable and inclusive, in particular in those markets in which the poorest make their living.

Therefore, the Council Conclusions propose some actions the EU and its member States can launch to meet the objective of achieving more sustainable and inclusive global value chains.

Stepping up joint efforts

In order to guarantee sustainability in the global value chains, the Council encourages the Commission to enhance the implementation of due diligence

1 Council conclusions on the EU and Responsible Global Value Chains (12 May 2016). 8833/16. Available at: http://data.consilium.europa.eu/doc/document/ST-8833-2016-INIT/es/pdf.

and to foster dialogue and cooperation amongst all relevant public and private stakeholders, in order to achieve a global level playing field and to implement policy measures aimed at promoting e.g. human rights due diligence at company-level.

Also, it promotes the systematic inclusion in all EU trade agreements of trade and sustainable development provisions, which promote relevant internationally agreed guidelines and principles on corporate social responsibility.

On the other hand, the Council encourages the Commission and member States to share best practices promoting responsible supply chains, including the promotion of new and innovative approaches. In this regards, it points out that it would be useful to develop a public-private partnership on responsible mineral sourcing and other initiatives concerning the responsible sourcing of minerals in conflict-affected and high-risk areas.

The Council underlines the need for continued advocacy for the uptake of internationally agreed principles, guidelines and initiatives on corporate social responsibility or responsible business conduct. Therefore, it suggests the Commission, the European External Action Service and member States to intensify their work on responsible business conduct. This implies the adoption by member States of national action plans on corporate social responsibility and on business and human rights, and the introduction by the Commission of a new EU action plan on responsible business conduct.

Additional references

- Bijlmakers, Stephanie; Footer, Mary; Hachez, Nicolas (2015). "The EU's engagement with the main Business and Human Rights instruments". Available at: http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-7.4.pdf.
- Cernic, Jernej Letnar (2016). "Towards a Holistic Approach to Business and Human Rights in the European Union". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 160-[ii].
- European Parliament (2017). "Implementation of the UN Guiding Principles on Business and Human Rights". Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf.
- Fasciglione, Marco (2016). "The Enforcement of Corporate Human Rights Due Diligence: From the UN Guiding Principles on Business and Human Rights to the Legal Systems of EU Countries". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 94-[ii].
- Grimheden, Jonas (2018). "Civil Litigation in Response to Corporate Human Rights Abuse: The European Union and Its Member States". Case *Western Reserve Journal of International Law*, vol. 50, pp. 235-248.
- Márquez Carrasco, Carmen; Vivas Tesón, Inmaculada (coords.) (2017). *La implementación de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos por la Unión Europea y sus Estados Miembros*. Navarra: Editorial Aranzadi.

FOREIGN AFFAIRS COUNCIL CONCLUSIONS ON BUSINESS AND HUMAN RIGHTS

- Political Declaration
- Adopted on 20 June 2016

Objective

The EU Foreign Affairs Council adopted the **Conclusions on Business and Human Rights**[1] in order to reaffirm the need for the EU and its member States to undertake actions for business to respect human rights, as set out in the Guiding Principles, and to tackle the obstacles victims are facing to access grievance mechanisms.

Corporate respect for human rights in their operations and value and supply chains boosts sustainable development and allows achieving the Sustainable Development Goals, as well as the implementation of the 2030 Agenda for Sustainable Development.

Proposals

The Council Conclusions recognise the support of the EU and its member States to the different international initiatives that have been launched in order for business to respect and integrate human rights in their operations and value and supply chains. Also, they express the support of the EU to the United Nations Working Group on Business and Human Rights in their task of building awareness on the importance of the Guiding Principles and advocating for their implementation.

The Council Conclusions, therefore, promote a series of measures for the EU and its members States to boost the issue of business and human rights.

1 Council Conclusions on Business and Human Rights – Council conclusions (20 June 2016). 10254/16. Available at: http://data.consilium.europa.eu/doc/document/ST-10254-2016-INIT/es/pdf.

Implementation of the Guiding Principles

Taking into account that the EU member States have taken the lead internationally on developing and adopting National Action Plans on business and human rights, the Council encourages the Commission and the European External Affairs Service to promote peer learning on business and human rights, including cross regional peer learning.

On the other hand, the Council welcomes the Commission's intention to launch an EU Action Plan on Responsible Business Conduct in 2016 and encourages the Commission to enhance the implementation of due diligence and to foster dialogue and cooperation amongst all relevant public and private stakeholders.

Finally, it recalls that any possible further steps regarding the international legal framework for business and human rights at UN level must be firmly rooted in the UN Guiding Principles and address all types of companies.

Corporate responsibility to respect human rights

The Council calls on all business enterprises to integrate human rights due diligence into their operations to better identify, prevent and mitigate human rights risks, in compliance with international initiatives. In this regard, it highlights the importance of corporate transparency in enabling markets to recognise, incentivise and reward respect for human rights by companies.

In the same way, the Council calls on the international financial institutions to ensure human rights compliance in their programme support and that their grievance mechanisms operate in line with the UN Guiding Principles.

In turn, the Council requests the Commission to study what tools and guidance can be provided to support public authorities, covered by the revised EU procurement Directives, to implement the UN Guiding Principles, the OECD Guidelines and the ILO Tripartite Declaration.

Access to grievance mechanisms

Regarding access to grievance mechanisms, the Council acknowledges that further progress on the implementation of the third pillar of the Guiding Principles is necessary and, therefore, this should be addressed in national actions plans as well as in the future EU Action Plan on Responsible Business Conduct.

In this regard, the Council calls on member States to consider international initiatives encompassing concrete measures aimed at improving redress mechanisms, for example, by adopting or updating their national actions plans. Also, it calls on the Commission and member States to actively participate in the OECD's efforts to strengthen the capacity of NCPs within the EU and in the EU's partner countries.

EU companies are encouraged to establish operational-level grievance mechanisms, or create joint grievance initiatives between companies.

External policy

In order to promote the Guiding Principles in third countries, the Council recommends the EU and it member States to give support to third countries and regions for the development and publication of national action plans.

On the other hand, it encourages capacity building both within EU delegations and member States' embassies to work effectively on business and human rights issues. In this regard, it invites the High Representative and the Commission to develop the necessary tools for EU Delegations to help meet these needs.

Additional references

- Bijlmakers, Stephanie; Footer, Mary; Hachez, Nicolas (2015). "The EU's engagement with the main Business and Human Rights instruments". Available at: http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-7.4.pdf.
- Cernic, Jernej Letnar (2016). "Towards a Holistic Approach to Business and Human Rights in the European Union". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 160-[ii].
- European Parliament (2017). "Implementation of the UN Guiding Principles on Business and Human Rights". Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf.
- Fasciglione, Marco (2016). "The Enforcement of Corporate Human Rights Due Diligence: From the UN Guiding Principles on Business and Human Rights to the Legal Systems of EU Countries". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 94-[ii].
- Grimheden, Jonas (2018). "Civil Litigation in Response to Corporate Human Rights Abuse: The European Union and Its Member States". Case *Western Reserve Journal of International Law*, vol. 50, pp. 235-248.
- Márquez Carrasco, Carmen; Vivas Tesón, Inmaculada (coords.) (2017). *La implementación de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos por la Unión Europea y sus Estados Miembros*. Navarra: Editorial Aranzadi.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA)

OPINION OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA) ON IMPROVING ACCESS TO EFFECTIVE REMEDY IN THE AREA OF BUSINESS AND HUMAN RIGHTS

- Political declaration
- Published on 10 April 2017

In 2017, the EU Council created the European Union Agency for Fundamental Rights through Council Regulation (EC) 168/2007 of 15 February 2007[1], with the aim to provide the relevant institutions, bodies, offices and agencies of the Community and its member States, when implementing Community law, with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights (article 2).

Among the competences of the EU Agency for Fundamental Rights is the one to formulate and publish conclusions and opinions on specific thematic topics, for the EU institutions and member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission.

Objective

The **Opinion of the European Union Agency for Fundamental Rights (FRA) on Improving access to effective remedy in the area of business and human rights**[2] provides assistance and expertise to ensure access to remedy for victims of human rights violations, committed

1 L 53/1. Available at: https://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A32007R0168.

2 FRA (2017). "Improving access to remedy in the area of business and human rights at the EU level". Available at: http://fra.europa.eu/en/opinion/2017/business-human-rights.

by enterprises, in accordance with the Charter of Fundamental Rights of the European Union.[3]

Therefore, the FRA Opinion aims at implementing the third pillar of the Guiding Principles through possible avenues to lower barriers for access to remedy at the EU level, taking into account existing legal instruments and competences in the EU and its member States.

Also, it provides inputs for the work of the European Commission in the development of the EU Action Plan on Responsible Corporate Conduct. In this regard, the FRA Opinion also contributes to the implementation of the Guiding Principles in the member States through the development and publication of national action plans.

Adoption process

On 20 June 2016, the EU Council adopted the Conclusions on business and human rights,[4] in which it called on the EU Agency for Fundamental Rights to publish a statement on the possible avenues to lower barriers for access to remedy at the EU level.

On 10 April 2017, the EU Agency for Fundamental Rights published the Opinion on Improving Access to Effective Remedy in the Area of Business and Human Rights.

Structure

The FRA Opinion focusses on the third pillar of the Guiding Principles, which is why it addresses three main areas in a general way: judicial remedies, non-judicial remedies and issues related to their effective implementation.

3 C 364/1. Available at: http://www.europarl.europa.eu/charter/pdf/text_es.pdf.

4 Council Conclusions on Business and Human Rights – Council conclusions (20 June 2016). Available at: http://data.consilium.europa.eu/doc/document/ST-10254-2016-INIT/en/pdf.

Each of the main areas identifies the fundamental rules relative to the area of business and human rights, the political and legislative actions that have been adopted at EU level and, finally, presents an analysis of the barriers and the possible measures and actions to be developed.

The Agency formulates 21 specific opinions containing actions and measures the EU and its member States should adopt to guarantee access to grievance mechanisms. The opinions are clustered under the following 6 headings:

1. Lowering barriers to make judicial remedies more accessible
2. Enhancing the effectiveness of judicial remedies in extraterritorial situations
3. Ensuring effective remedies through criminal justice
4. Ensuring effective non-judicial remedies – state based and non-state based
5. Implementing access to remedy – transparency and data collection
6. Implementing access to remedy – action plans, coordination and due diligence

The specific opinions are formulated based on the Guiding Principles, the Recommendation Cm/Rec (2016)3 of the Council of Europe on business and human rights and the Report of the UN High Commissioner for Human Rights on Improving accountability and access to remedy for victims of business-related human rights abuse.

Also, other additional standards have been taken into account, such as those of the OECD and International human rights law.

Contents

1. *Lowering barriers to make judicial remedies more accessible*

The Agency acknowledges that victims of business-related human rights abuse have in theory a range of options as to where to turn for remedy. However, in turn, it emphasises that they can face more than a few barriers, ranging

from determining which court is competent to the costs that come with court proceeding or fear of possible reprisals they might face for filing a complaint against the companies. These barriers affect the right to effective remedy before the competent national court, as it is recognised in international instruments and in the interpretations of the UN monitoring mechanisms.

The EU Charter of Fundamental Rights enshrines in its article 47 the right to effective judicial remedy and to an impartial judge, including legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. Therefore, this legal aid requires set criteria to ensure that any supported litigation is reasonable and does not encourage malicious or unreasonable litigation.

In this regard, FRA Opinion 1 recommends member States to raise minimum standards for plaintiffs' access, residing in the EU or not, to legal aid when filing complaints against companies before courts in the EU. Furthermore, they propose the EU to create mechanisms for public and private litigation funds to ensure effective access to remedy for potential claimants within and outside of the EU.

FRA Opinion 2 calls on the member States to establish uniform criteria in civil procedural rules for collective redress mechanisms in case of business-related human rights violations. Regarding this issue, the Agency recognises that victims can join forces to overcome some of the obstacles they meet, or organisations may act on behalf of victims. As such, in turn it recommends legitimising non-profit organisations, both national as international, to allow them to bring claims on behalf of alleged victims.

On the other hand, the Agency notes that the burden of proof and access to evidence are important aspects influencing access to appropriate remedy. Therefore, FRA Opinion 3 suggests developing minimum standards on how, what and when business should share information with plaintiffs. Furthermore, it recommends rebuttable presumption in cases requiring a certain level of evidence. As such, the burden of proof would be shifted from a victim to a company to prove that a company did not have control over a business entity involved in the human rights abuse.

FRA Opinion 4 starts by acknowledging that the obstacles victims are facing in cases relating to business and human rights may lead to situations where

no effective access is possible within a given jurisdiction. In such cases, some member States foresee in their legal systems the *forum necessitates* doctrine. Therefore, it recommends the EU to clarify how and when this doctrine applies or equivalent systems are in place in the EU to avoid denial of justice. The EU should also incentivise Member States to ensure a more harmonised application of these rules across the EU.

Finally, regarding the reduction of obstacles to make judicial resources more accessible, FRA Opinion 5 puts particular focus on individuals and groups with heightened vulnerability risk, and points out that member States, in line with their international and EU obligations on non-discrimination, need to make particular efforts to assess and ensure effective access to remedy resources for these persons.

2. *Enhancing the effectiveness of judicial remedies in extraterritorial situations*

Access to grievance mechanisms in cases of business-related human rights abuses brings particular challenges in cross-border contexts, and even more so when the abuse takes place outside the EU member States' territory. In this context, member States should consider strengthening the remedies provided to protect people who have been victims of activities of business enterprises operating in third States.

At EU level, Regulation (EU) 1215/2012 (Brussels I bis) offers the possibility of litigation before the general competent forum corresponding to the member State in which the defendant is domiciled. This standard applies to cases of human rights abuses inside or outside of the EU. Therefore, victims of business-related human rights violations can bring claims before an EU court when the company has its statutory seat, or its central administration or principle place of business in any of the member States.

However, the Brussels I bis Regulation does not provide for jurisdiction in the EU for companies or subsidiaries domiciled outside the EU. The assignment of jurisdiction to national courts in this type of allegations must be pronounced in compliance with the autonomous rules of residual jurisdiction of each member State. In this regard, FRA Opinion 6 proposes to mandate a platform for EU member States to have a dedicated exchange of experiences on how best to address extra-territoriality in legislation and through other

measures, to improve access to remedy for victims of business-related human rights abuse across the EU.

Closely linked to the former, FRA Opinion 7 calls on the EU and its member States to lead on multilateral developments in the framework of the Hague Conference on Private International Law to ensure a global and equitable solution facilitating access to grievance mechanisms for victims of business-related human rights abuse.

On the other hand, at EU level, Regulation (EC) 864/2007 (Rome II) sets out as general rule that, in cross-border allegations, the applicable law is that of the country where the damage occurs, unless the damage produced has a much closer link to another state. Furthermore, the Rome II Regulation includes exceptions to the general rule, based on police law, security and conduct rules or for matters of public order. In this regard, FRA Opinion 8 calls on the EU to provide guidance on when and how to make full use of the *ordre public*-clause of the Rome II Regulation, in order to ensure that, when damage levels in host countries are too low, an EU-wide level, high enough to deter business from further abuse, can be applied.

Furthermore, FRA Opinion 9 suggests revising the Rome II Regulation determining exceptions to the general rule, applicable to business-related human rights abuse. In this regard, it suggests taking into account the standard for environmental damages, allowing the person who is claiming damage compensation to choose between the law of the country where the damage occurred and that of the country where the cause of the damage originated.

3. *Ensuring effective remedies through criminal justice*

Access to remedy can also be achieved through criminal justice. In such a process, possible compensation to victims may be determined in the same criminal process or in a separate civil procedure. This saves time and costs, and makes it easier for the victim by easing the burden proof.

FRA Opinion 10 acknowledges that the EU should make greater efforts to ensure proper implementation in the Member States of the existing EU criminal law instruments that are relevant to business and human rights. For example, Directive 2011/36/EU on human trafficking or Directive 2009/52/

EC establishing minimum standard for sanctions and measures applicable to employers of third-country nationals in irregular situation contribute to ensuring that severe crimes with cross-border elements are criminally sanctioned across the EU.

In turn, FRA Opinion 11 suggests the EU to encourage its member States to improve investigation of corporate crimes affecting the full respect of human rights by providing specialised training and resources to relevant authorities for the investigation of cross-border cases.

Finally, in criminal matters, FRA Opinion 12 calls on the EU to provide guidance for member States to facilitate victims' claims for damages in the related criminal process, rather than being forced to launch a separate suit.

4. *Ensuring effective non-judicial remedies – state based and non-state based*

The Agency points out that non-judicial mechanisms are complementary to judicial remedy and may offer benefits such as lower cost and less lengthy. Regarding this matter, FRA Opinion 13 calls on the EU to strengthen the non-judicial grievance mechanisms through minimum standards to improve its efficiency. Therefore, besides complying with the criteria set out in Principle 31 of the Guiding Principles, collective grievance mechanisms and representative action must be taken into consideration. Also, the role of national human rights institutions must be considered as a non-judicial grievance mechanism.

In this line of thought, FRA Opinion 14 incentivises member States to adhere to the OECD Guidelines and establish NCPs as non-judicial grievance mechanisms for business and human rights-related cases. In this regard, the EU should encourage the development of minimum standards for the effectiveness of the NCPs, including provide them with resources and funding to fulfil their functions.

On the other hand, the Agency refers to non-State based grievance mechanisms, managed by the companies, and in FRA Opinion 15, it launches a call to the EU to incentivise business to establish remedy, including the so-called multi-stakeholder initiatives.

5. *Implementing access to remedy – transparency and data collection*

Access to judicial and non-judicial remedy requires additional measures to render these instruments more operational. FRA Opinion 16 suggests the EU to make available information on existing judicial and non-judicial mechanisms for the benefit of the general public, legal practitioners and victims. Therefore, it needs to collect operation-related data and information on the existing mechanisms, such as the number of cases brought and their outcome in a comparative format and disaggregated by factors such as business sector and type of complaint.

In the same line, FRA Opinion 17 proposes to publish a list of companies which, in compliance with EU instruments, are obliged to provide data and information on the impact of their activities on human rights. This list should also indicate which of these companies comply with these obligations, what information they are disclosing and, also, information on whether they have developed grievance mechanisms and their actual functioning.

6. *Implementing access to remedy – action plans, coordination and due diligence*

The Agency acknowledges the potential of national action plans on business and human rights and, therefore, FRA Opinion 18 recommends the EU to incentivise member States to adopt, implement and review national action plans which implement specific measures to strengthen and facilitate access to remedy. The plans should include indicators to measure achievement and be developed in a process involving civil society, the private sector and other stakeholders. From its side, the EU should ensure a regular review of the plans and the progress made as to actions, taking each of them in consideration.

In the same line, the Agency considers that the EU should adopt an action plan, based on the same criteria as the national ones, including indicators to measure its implementation and participatory dialogue with stakeholders for the development of the plan.

On the other hand, FRA Opinion 19 suggests launching and open method of coordination in the area of business and human rights to develop among EU Member States a common understanding of the problems and challenges in implementing the Guiding Principles, as well as to build consensus on

their practical implementation. This, in turn, will allow clarifying in detail the shared and separate competence between the EU and its member States concerning business and human rights.

Another additional measure to improve access to remedy is setting up networks of business and human rights experts in each member State. According to FRA Opinion 20, this network should provide advice on available resources for victims of business-related human rights abuse: exchange practices and experiences; provide guidance and training to professional groups regarding this matter.

Finally, FRA Opinion 21 incentivises imposing due diligence obligations to parent companies. Regarding this matter, the Agency acknowledges that some of the legislative developments achieved in some member States strengthen access to remedy.

Additional references

- Álvarez Rubio, Juan José; Yiannibas, Katerina (2017). *Human Rights in Business: Removal of Barriers to Access to Justice in the European Union*. Abingdon: Routledge.
- Augenstein, Daniel; Dawson, Mark; Thielbörger, Pierre (2018). "The UN-GPs in the European Union: The Open Coordination of Business and Human Rights?" *Business and Human Rights Journal*, vol. 3, nr. 1, pp. 1-22.
- De Tomasso, Alessandra (2017). EU Fundamental Rights Agency Calls for Better Access to Remedies through Criminal Justice. Available at: http://rightsasusual.com/?p=1152.
- Grimheden, Jonas (2018). "Civil Litigation in Response to Corporate Human Rights Abuse: The European Union and Its Member States". Case *Western Reserve Journal of International Law*, vol. 50, pp. 235-248.
- Márquez Carrasco, Carmen; Vivas Tesón, Inmaculada (2017). *La implementación de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos por la Unión Europea y sus Estados Miembros*. Navarra: Editorial Aranzadi.

ii. Council of Europe

RECOMMENDATION CM/REC(2016)3 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON HUMAN RIGHTS AND BUSINESS

- Political Declaration
- Adopted on 2 March 2016
- Implementation of the third pillar of the Guiding Principles

Objective

The **Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on Human Rights and Business**[1] provides the member States of the Council of Europe with a range of measures and actions for the prevention and remediation of business-related human rights violations.

In particular, Recommendation CM/Rec(2016)3 focuses on legal standards for civil and criminal liability for the reduction of judicial barriers, legal aid and collective actions, and on the implementation of the third pillar of the Guiding Principles through the knowledge and experience of the Council of Europe in this matter.

Adoption Process

On 6 October 2010, the Parliamentary Assembly of the Council of Europe adopted Resolution 1757(2010)[2] which, on one hand, recognises the

1 "Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business. (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies)". Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1ad4.

2 "Resolution 1757 (2010) of the Parliamentary Assembly on human rights and business, of 6 October 2010". Available at: http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0xNzkw

environmental and human rights impact of transnational corporations, especially outside Europe and, on the other hand, based on the fact that the corporations assume certain classic State functions, it recognises that they also carry the responsibility of respecting and protecting human rights. Therefore, it recommended exploring new instruments and mechanisms to improve the role of business in respecting and promoting human rights.

On the other hand, it also adopted Recommendation 1936(2010)[3] in which it requested to prepare a study on corporate responsibilities in the area of human rights, in order to examine the feasibility of elaborating a complementary legal instrument in the shape of a convention or an additional protocol to the European Convention on Human Rights, and to prepare a recommendation on corporate responsibility in the area of human rights, supplemented by flexible guidelines for national authorities, businesses and other actors.

In 2012, following requests by the Parliamentary Assembly, the Steering Committee for Human Rights of the Council of Europe prepared two studies:

- The "Preliminary Study on corporate social responsibility in the field of human rights: existing standards and outstanding issues" identified priority issues for a possible new instrument, as well as the scope and the target groups (States or business), access to remedy and the subject areas it would address.[4]
- The "Feasibility Study on Corporate Social Responsibility in the Field Of Human Rights" was responsible for exploring several subjects and issues in order to determine the possible added value the Council of Europe could provide to corporate social responsibility in the area of human rights, in

MyZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE3OTAz.

3 "Recommendation 1936 (2010) of the Parliamentary Assembly on human rights and business, de 6 October 2010". Available at: http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0xNzkwNCZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE3OTA0.

4 Draft Preliminary Study on Corporate Social Responsibility in the Field of Human Rights: Existing Standards and Outstanding Issues, CDDH(2012)012.

order not to duplicate or repeat efforts made by the Guiding Principles. Therefore, the Study determined subject areas in which the Council of Europe could contribute with its experience and knowledge.[5]

On 11 July 2013, the Drafting Group on human rights and business was created, formed by national experts, together with observers from the private sector and civil society. This Group was in charge of preparing Recommendation CM/Rec(2016)3.[6]

Structure

The Recommendation is divided in eight sections, addressing the following issues:

- The first deals with the implementation of the Guiding Principles by means of general measures and the adoption of national action plans.
- The second and third focus on the States' obligations, mainly on their duty to protect human rights and the actions taken to enable business to respect them.
- The fourth examines access to judicial (civil, criminal and administrative liability) and non-judicial resources, aiming at effective remedy for those affected.
- The final four sections refer to groups which are particularly affected by business and require additional protection (workers, minors, indigenous peoples and human rights defenders).

5 Draft Feasibility Study on Corporate Social Responsibility in the Field Of Human Rights, 16 November 2012, CDDH(2012) 017.

6 Report of the Steering Committee for Human Rights (CDDH), 11 July 2013, CDDH(2013)R78.

Contents

1. *Implementation of the Guiding Principles*

Recommendation CM/Rec(2016)3 advises the Council member States to effectively implement the UN Guiding Principles, in agreement with international human rights standards.

In this regard, if this has not been done so far, the member States should develop and publish national actions plans for the implementation of the Guiding Principles' three pillars. The implementation, evaluation and updating of the plans needs to be done with the participation of different stakeholders.

Also, third States should be encouraged to implement the Guiding Principles through assessment and support to strengthen them and reduce barriers to judicial and non-judicial remedies against business-related human rights abuses.

2. *The State duty to protect human rights against corporate activities*

Recommendation CM/Rec(2016)3 notes that States should adopt the measures necessary to require business enterprises domiciled in their territory or under their jurisdiction to respect human rights. In turn, they must protect human rights against corporate activities.

In order to do so, member States should ensure that their legislation creates conditions that are conducive to the respect for human rights by business enterprises and do not create barriers to effective accountability and remedy for business-related human rights abuses. Therefore, they should evaluate new relevant legislation with regard to any impact on human rights. In this regard, member States should pay particular attention to the rights and needs of individuals, groups or populations that may be at heightened risk of becoming vulnerable or marginalised.

In line with their international obligations, member States should ensure that their laws relating to employment are effectively implemented and require business enterprises not to discriminate against workers on any grounds.

As such, member States should ensure that business enterprises domiciled or conducting substantial activities within their jurisdiction apply human

rights due diligence. Also, they should apply additional measures to require business enterprises to respect human rights when member States:

- own or control business enterprises;
- grant substantial support and deliver services through agencies, such as export credit agencies and official investment insurance or guarantee agencies, to business enterprises;
- grant export licenses to business enterprises;
- conduct commercial transactions with business enterprises;
- privatise the delivery of services.

On the other hand, when concluding and during the term of trade and investment agreements or other relevant conventions, member States should consider possible human rights impacts of such agreements and take appropriate steps, including through the incorporation of human rights clauses, to mitigate and address identified risks of adverse human rights impacts.

Through their competent ministries or diplomatic or consular missions, member States should advise business enterprises which intend to operate or are operating in a third country on human rights issues, including challenges faced by individuals from groups or populations that may be at a heightened risk of becoming vulnerable or marginalised, and with due regard to gender-related risks.

In case business enterprises carry out operations in conflict-affected areas or in areas that involve a high risk of a negative impact on human rights, member States should be in a position to provide assistance to these business enterprises to prevent human rights violations, in line with relevant international instruments such as the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas.

3. *Access to remedy*

Member States should comply with their obligations under articles 6 and 13 of the European Convention on Human Rights, as well as obligations included in other international and European human rights instruments, to grant to everyone effective remedy before a national authority when their rights and freedoms have been violated.

3.1. *Civil procedure*

Member States should ensure that human rights abuses, caused by business enterprises within their jurisdiction give rise to civil liability.

In this regard, Recommendation CM/Rec (2016)3 lists a series of legislative and other measures to ensure that domestic civil courts have jurisdiction over this type of claims:

- Limit the application of the *forum non conveniens* doctrine to cases of business and human rights.
- Consider allowing domestic courts to exercise jurisdiction over civil claims subsidiaries of business enterprises domiciled within their jurisdiction if such claims are closely connected with civil claims against the parent enterprises.
- In cases where business enterprises are not domiciled within their jurisdiction, member States should consider applying the *forum necessitates* doctrine if no other effective forum guaranteeing a fair trial is available and there is a sufficiently close connection to the forum addressed due to necessity.
- Consider adopting measures that allow entities such as foundations, associations, trade unions and other organisations to bring civil claims on behalf of the victims.
- Ensure that their domestic courts refrain from applying a law that is incompatible with their international obligations, in particular those stemming from the applicable international human rights standards.
- Guarantee an equality of arms for victims of business-related human rights abuses through legal aid in accordance with article 6 of the European Convention on Human Rights.
- Revise procedural rules to facilitate access for victims of corporate abuse to information in the possession of the defendant or a third party, with due regard for confidentiality considerations.

3.2. *Criminal procedure*

Member States should consider applying such legislative and other measures as may be necessary to ensure that business enterprises or their representa-

tives can be held liable under their criminal law or other equivalent law for the commission of crimes under International law, offences established in accordance with international treaties or other offences constituting serious human rights abuses.

To do so, member States must ensure that:

- Criminal investigations must satisfy the effectiveness criteria under the European Convention on Human Rights, namely that they must be thorough, impartial and independent, prompt, and contain an element of public scrutiny, including the effective participation of victims in the investigation.
- Prosecute where warranted by the outcome of an investigation.
- Guarantee that victims are entitled to request an effective official investigation.

3.3. *Administrative procedure*

Member States should apply such legislative and other measures as may be necessary to ensure that decisions of competent authorities such as those granting support, delivering services or granting export licenses to business enterprises take into account human rights impacts, are disclosed as appropriate and are subject to administrative or judicial review.

3.4. *Non-judicial mechanisms*

Member States should raise awareness of and facilitate access to State and non-State non-judicial grievance mechanisms that meet the criteria listed in Principle 31 of the Guiding Principles.

Those member States adhered to the OECD Guidelines should ensure the effectiveness of their NCPs by making available human and financial resources so that they can carry out their review tasks.

Also, business enterprises must be encouraged to establish their own grievance mechanisms in line with Principle 31 of the Guiding Principles. Where such mechanisms are put in place, it should be ensured that they are not used to impede the victim's access to the other judicial and non-judicial mechanisms.

4. *Additional measures for groups in situation of vulnerability*

Recommendation CM/Rec (2016)3 urges member States to require business enterprises, when operating within their jurisdiction, to respect the rights of workers, children and indigenous peoples, in accordance with international standards.

Also, they must ensure that the activities of human rights defenders who focus on the adverse effects of business-related activities on human rights are not obstructed through political pressure, harassment or politically motivated or economic compulsion. In turn, they should protect and support the work of human rights defenders in third States through their diplomatic and consular missions.

Additional references

- Augenstein, Daniel; Van Genugten, Willem; Jagers, Nicola (2014). Business and Human Rights Law in the Council of Europe: Noblesse Oblige. Available at: https://ssrn.com/abstract=2501310.

iii. Organisation of American States

GUIDING PRINCIPLES ON CORPORATE SOCIAL RESPONSIBILITY IN THE AREA OF HUMAN RIGHTS AND THE ENVIRONMENT IN THE AMERICAS

- Report by the Inter-American Juridical Committee on corporate social responsibility in the field of human rights and the environment in the Americas
- Unanimously approved during the session held on 13 March 2014

Objective

The **Guiding principles on corporate social responsibility in the area of human rights and the environment in the Americas**[1] is an advisory and guidance document, aiming at strengthening the progress made by countries which have integrated the region in the field of corporate social responsibility and overcome existing obstacles and weaknesses in the matter.

Adoption process

On 15 May 2012, the Inter-American Council for Integral Development of the Organisation of American States (OAS) adopted Resolution AG/RES. 276 (XVII-O/12) which acknowledges enterprises' responsibility to promote and respect the observance of human rights in the course of their business, adding that enterprises should honour the principles of respect for labour and environmental regulations.

On 4 June 2012, the OAS General Assembly adopted Resolution 2753 (XLII-O/12) which encourages dialogue on social responsibility between the private sector and national congresses, as well as the member States to train and

1 CJI/doc.436/13. Available at: http://www.oas.org/es/sla/cji/docs/CJI-doc_436-13.pdf.

advise their small and medium enterprises so they get involved in corporate social responsibility initiatives.

In March 2013, during the 82nd ordinary period of sessions of the OAS Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, the members of this main body of the Organisation unanimously decided, upon the vice-chairman's request, to include the topic of "Corporate social responsibility in the field of human rights and environment in the Americas" in their agenda, based on the competence granted to the Committee under article 100 of the Charter, 12(c) of the Statute and under article 6(a) of the Regulation thereto, to initiate, under its own initiative, the studies and works it deems convenient for the region.

To that end, the Juridical Committee Secretariat was requested to support the Rapporteur on the topic, Dr. Fabián Novak, in asking member States to provide the existing domestic legislation on the matter and any other documentation that might be relevant to this end.

Between 5 and 9 August 2013, the Rapporteur submitted an initial report at the 83rd regular session of the Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, in order for the other members of the referred body to present their observations and recommendations.

In March 2014, the Rapporteur concluded a second report incorporating new information provided by the countries, and other information garnered by the Rapporteur himself and, in turn, proposes a set of Guiding Principles on corporate social responsibility in the area of human rights and the environment in the Americas in a view to their review.[2]

The OAS General Assembly, during its 44th session, held from 3 to 5 June 2014 in Asunción, Paraguay, decided to approve the referred Guiding Principles.

2 CJI/RES. 205 (LXXXIV-O/14). Available at: http://www.oas.org/es/sla/cji/docs/CJI-RES_205_LXXXIV-O-14.pdf.

Contents

The Guiding Principles are based on the characteristics of corporate social responsibility in the American region, in the absence of (binding or voluntary) regulation at the hemispheric level, as well as on the different initiatives developed in the field by universal and regional international organisations.

The document considers preventive measures to be adopted by business enterprises in order to avoid violations of human rights, workers' labour rights and against the environment where they operate, as well as to develop emergency plans and remediation measures before possible damages caused.

The Guide stresses the measures which, in some way, intend to overcome the main deficiencies observed in the region in the field of corporate social responsibility, in order to be a useful and practical reference for OAS member states when building a corporate responsibility culture. These measures are:

a. Enterprises, in the course of their activities, should adopt internal preventive measures and measures to protect human rights, environmental law, and the labour rights of their workers and the populations where they operate. To that end, they should implement policies, for example, to eliminate all forms of discrimination, child labour, and forced labour; respect the right of workers to unionisation, collective bargaining, and workplace health and safety; the use of clean technologies and ecologically efficient extraction procedures; among other measures, according to international law.

b. Enterprises should respect the environment, property, customs and ways of life of the communities where they operate, seeking to cooperate and contribute to their economic, social, and environmental development.

c. Enterprises should encourage their providers and contractors to respect the rights mentioned in the first item of these Guidelines, so as not to become complicit in illegal or unethical practices.

d. Enterprises should conduct training activities for their officers and employees, so that they will internalise the commitment to corporate social responsibility.

e. Enterprises should conduct studies of the impact their activities will have, which should be presented both to the authorities and to the population in whose environment they will operate.

f. Enterprises should have emergency plans for controlling or mitigating potential serious harm to the environment stemming from accidents in the course of their operations, as well as systems for alerting authorities and the population, so that swift and effective action may be taken.

g. Enterprises should redress and deal with damage brought about by their operations.

h. Corporate social responsibility pertains to all enterprises, regardless of size, structure, economic sector, or characteristics; however, policies and procedures established by them may vary according to these circumstances.

i. Enterprises should take the necessary measures to ensure that consumers receive the goods or services they produce with the appropriate levels of quality in terms of health and safety. To that effect, it is essential that the good or service carry sufficient information on its content and composition, eliminating deceptive trade practices.

j. Enterprises and the States where they operate should strengthen, respectively, their internal and external systems for the follow-up, monitoring, and control of compliance with labour rights, human rights, and environmental protection laws. This necessarily involves State implementation of efficient policies for the inspection and supervision of enterprises in the course of their activities as well as the enterprises' establishment of policies to ensure respect for human rights and environmental laws in their operations. Both monitoring mechanisms should consult outside sources, including the parties affected.

k. Internal and external monitoring and control mechanisms should be transparent and independent of the businesses' control structures and of any sort of political influence.

l. The former should be complemented with the establishment of incentives or means of recognition, both governmental and private, to benefit or distinguish enterprises that are actively committed to corporate social responsibility.

m. States should require enterprises with which they conduct commercial transactions or which present competitive bids to comply fully with the obligations noted in item (a) of these Guidelines.

n. Enterprises should also guarantee that parties potentially affected by their activities have recourse to internal claim mechanisms that are swift, direct, and effective.

o. Parties potentially affected by an enterprise's activities have the right of recourse to administrative, judicial, and even extrajudicial claim mechanisms that are effective, transparent, and expeditious.

p. The principles of corporate social responsibility should be publicised, as should good business practices that have benefited both the local communities where enterprises operate and the enterprises themselves. Corporate social responsibility should be part of a culture, shared and embraced by all, to which end it is essential to train and sensitise entrepreneurs, authorities, and public opinion in general.

q. Other actors should participate in this effort, from universities and research centres, providing skills and ideas to improve business behaviour, through NGOs, unions, social organisations, communications media, and churches, who can serve as instruments of pressure or condemnation but also as organs of support and cooperation.

r. Business guilds or associations can be key actors in the conscious, voluntary strengthening of corporate social responsibility, providing technical advice and training, establishing networks for the exchange of information and discussion of experiences among enterprises, and creating incentives and prizes, among other measures.

Additional references

- Anicama, Cecilia (2008). "State Responsibilities to Regulate and Adjudicate Corporate Activities under the Inter-American Human Rights System: Report on the American Convention on Human Rights". Available at: https://www.business-humanrights.org/sites/default/files/reports-and-materials/State-Responsibilities-under-Inter-American-System-Apr-2008.pdf.
- Novak Talavera, Fabián (2014). "La «Guía de Principios sobre Responsabilidad Social de las Empresas» elaborada por el Comité Jurídico Interamericano de la OAS". Derecho PUCP-Revista de la Facultad de Derecho, nr. 73, pp. 359-394.
- Salmón, Elizabeth (2012). "Mecanismos de reparación en el ámbito del sistema interamericano por violaciones de derechos humanos cometidos por empresas multinacionales: la responsabilidad estatal y la construcción de medidas reparatorias". *Revista de Estudios Jurídicos*, nr. 12, pp. 1-11.

RESOLUTION AG/RES. 2840 (XLIV-O/14) ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN BUSINESS

- Resolution of the OAS General Assembly
- Approved on 4 June 2014

Objective

Resolution AG/RES. 2840 (XLIV-O/14) on the promotion and protection of human rights in business[1] acknowledges the value of the Guiding Principles and the need of promoting the issue of business and human rights in the region.

Contents

Through Resolution AG/RES. 2840 (XLIV-O/14) the OAS General Assembly recognises that businesses, regardless of their size, sector of activity, operational context, or structure, perform an important role in political, economic, and social life, and have a responsibility to respect human rights wherever they carry out their activities, irrespective of the capacity of States to meet their obligations in that regard.

Also, it underlines the importance of building the capacities of all players so they are able to deal with challenges in the area of business and human rights. In this regard, it recognises the significant support expressed in the United Nations Human Rights Council for the Guiding Principles.

On the other hand, it takes note of the report adopted by the Inter-American Juridical Committee which contains Guidelines concerning corporate social responsibility in the area of human rights and the environment in the Americas.

1 "Resolution AG/RES. 2840 (XLIV-O/14) on the promotion and protection of human rights in business". Available at: http://www.oas.org/en/sla/dil/docs/AG-RES_2840_XLIV-O-14_eng.pdf.

In this regard, the OAS General Assembly resolves:

1. To continue promoting the application of the United Nations guiding principles on business and human rights, and to urge member states to disseminate these principles as broadly as possible, facilitating the exchange of information and sharing of best practices on promotion and protection of human rights in business in order to create greater awareness of the benefits of their enforcement.

2. To underscore the importance of continuing to make progress with the topic of businesses and human rights and, accordingly, to invite the member states to consider the matter in the appropriate bodies.

3. To encourage member states and their respective national human rights institutes or competent institutions to foster constructive dialogue among business, government, and civil society and other social stakeholders, for application of the Guiding Principles.

4. To request the Inter-American Commission on Human Rights (IACHR) and the Executive Secretariat for Integral Development (SEDI), in a coordinated fashion and within the sphere of their responsibilities, to continue supporting states in the promotion and application of State and business commitments in the area of human rights and business.

5. To request the Permanent Council to hold a special meeting of the Committee on Juridical and Political Affairs in first quarter 2015 to foster the exchange of best practices and experiences with respect to the promotion and protection of human rights in business. That special meeting shall be attended by the member States; government, academic and civil society experts; and other social stakeholders, as well as representatives of international organisations, and through the Secretariat for Legal Affairs shall prepare a report of that meeting's findings prior to the forty-fifth regular session of the General Assembly.

Special meeting on promotion and protection of human rights in business[2]

The special meeting was held on 29 January 2015, with the president of the Inter-American Juridical Committee presenting the report on Corporate social responsibility in the area of human rights and the environment in the Americas,[3] addressing the present situation of the issue in the region, based on information sent by Argentina, Colombia, El Salvador, Jamaica, Dominican Republic and the United States regarding the situation of existing domestic legislation, including decisions of jurisprudence, and presents a list of corporate practices in the lights of decisions of the IACHR and the Inter-American Court for Human Rights.

Also, it establishes a series of principles on corporate social responsibility in the area of human rights and the environment in the Americas, addressed at States and business.

Participants of the special meeting included actors from States, civil society and the business area.

6. To request the Permanent Council to report to the General Assembly at its forty-fifth regular session on the implementation of this resolution, which will be subject to the availability of financial resources in the program-budget of the Organisation and other resources.

2 "Special meeting on promotion and protection of human rights in business". Available at: http://www.oas.org/en/sla/dil/docs/human_rights_in_business_sessions_2014_agenda.pdf.

3 "Second reporto n Corporate social responsibility in the area of human rights and the environment in the Americas. OEA/Ser. CJI/doc.449/14 rev.1 Q, 24 february 2014". Available at: http://www.oas.org/en/sla/iajc/docs/CJI-doc_449-14_rev1_en.pdf .

Additional references

- Muñoz Quick, Paloma (2015). "El Estado de Empresas y Derechos Humanos en la Organisación de Estados Americanos". Available at: https://bhramericasblog.wordpress.com/2015/07/31/situacion-de-empresas-y-derechos-humanos-en-la-organizacion-de-estados-americanos/.
- Salazar, Katya (2015). "Empresas y Derechos Humanos: ¿un nuevo desafío para la OAS?" *Aportes DPLF*, nr. 20, pp. 8-11.
- Slack, Keith (2011). "Derechos humanos e industrias extractivas en América Latina". *Aportes DPLF*, nr. 15, 4th year, pp. 4-6.

RESOLUTION AG/RES. 2887 (XLVI-O/16) ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

- Resolution of the OAS General Assembly
- Approved on 14 June 2016

Objective

Regarding the matter of the promotion and protection of human rights in the business area, **Resolution AG/RES. 2887 (XLVI-O/16) on the promotion and protection of human rights** [1] is intended to continue promoting the implementation and dissemination of the Guiding Principles by the OAS Member States, in order for them to adopt initiatives for corporate respect for human rights.

Background

On 31 December 2015, the IACHR approved a report on the States' obligations in the framework of extraction, exploitation and development activities with respect to the rights of indigenous peoples and Afro-descendent communities.[2]

Contents

In Resolution AG/RES. 2887 (XLVI-O/16), the OAS General Assembly points out that sustainable development, promoted by the 2030 Agenda, is based on responsible corporate behaviour. In this regard, it emphasises that business, including microenterprises and cooperatives, have contributed to sustainable development based on dynamic, efficient, responsible corporate behaviour that protects labour rights and health and environmental requirements, in

1 Resolution AG/RES. 2887 (XLVI-O/16) on the promotion and protection of human rights. Available at: http://www.oas.org/en/sla/dil/docs/AG-RES_2887_XLVI-O-16.pdf.

2 IACHR (2015). *Indigenous peoples, Afro-descendent communities, and natural resources: human rights protection in the context of extraction, exploitation, and development activities*. Washington D.C.: IACHR.

keeping with relevant international norms and agreements as well as other initiatives being carried out in this area.

Therefore, the Assembly resolves:

1. To continue promoting the implementation of the United Nations Guiding Principles on business and human rights and to urge member States and their respective national human rights institutes or competent agencies to disseminate these principles as widely as possible and facilitate exchange of information, constructive dialogue and sharing of best practices on promotion and protection of human rights in business, in order to raise awareness about the benefits of applying them; and to invite all member states to participate constructively in initiatives related to effective observance of human rights by businesses.

2. To encourage regional financing and development mechanisms, especially the Inter- American Development Bank, as requested by member states, companies, and other public or private entities, to support efforts to implement the United Nations Guiding Principles on Business and Human Rights, among other such initiatives in the Hemisphere, and to consider, within management, evaluating the standards for respecting human rights in their project funding mechanisms.

3. To request the General Secretariat, the IACHR, and the SEDI, within the sphere of their responsibilities and in a coordinated manner, to continue supporting member States that so request in the promotion and application of state and business commitments in the area of human rights and business, including, inter alia, support in developing national action plans on human rights and business as one way of applying the Guiding Principles.

4. To request the IACHR to conduct, by the second half of 2016, a study on inter- American standards on business and human rights based on an analysis of conventions, case law, and reports put forth by the inter-American system, which could be an input for the efforts of member states in the context of different national and international initiatives in the area of business and human rights. This mandate shall be contingent on the necessary financial resources being identified. As follow-up to the foregoing, to request the IACHR to report to the Permanent Council on the findings of that study in the first quarter of 2017.

Thematic report on "business and human rights: inter-American standards"

The IACHR Strategic Plan 2017/2021 decided to launch the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights in 2017,[3] assigning the position to Soledad García Muñoz for a period of three years, renewable once.[4]

Within her mandate, a series of persistent regional challenges can be found to which she will give priority. Among them, we find violations in the context of business activities, particularly in relationship with extraction, development and investment projects.

In this regard, the Special Rapporteurship has taken expanding actions, collecting preliminary information on the subject. During the 1st Forum on the Inter-American Human Rights System, it carried out an open consultation on the subject. In a similar manner, it participated and carried out consultations with key actors during the 3rd Regional Consultation for Latin America and the Caribbean on business and human rights, organised by the Regional Officer of the United Nations High Commissioner for Human Rights in Santiago de Chile.

In the framework of the 167th period of sessions of the Commission in Bogota (Colombia), a workshop was organised on experiences, challenges and good practices on national action plans on this issue, as well as a public regional hearing on business and human rights. During this hearing, organisations underlined the importance of the decision of the IACHR to address the subject of business and human rights. Also, they emphasised the need to strengthen regional standards to have a binding guarantee that regulatory frameworks and local mechanisms are aiming at preventing business-related human rights violations, ensure effective accountability from States and enterprises, and adequately remediate victims. They also highlighted the State's obligation of respect and due diligence, the urgency to address the extraterritorial implementation of these obligations, as well as the particular situation of risk and vulnerability of specific groups due to business activities. Finally, they underlined their concern for the so-called

3 "Strategic Plan 2017/2021 OEA/Ser.L/V/II.161 Doc. 27/17". Available at: http://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf, p. 36.

4 "IACHR Chooses Soledad García Muñoz as Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (ESCER)". Available at: http://www.oas.org/en/iachr/media_center/PReleases/2017/090.asp .

corporate capture of the State, the inadequacy of voluntary responsibility schemes and the asymmetry of power against these economic agents.[5]
In April 2018, the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights launched a consultation process, inviting States, civil society and other stakeholders to answer a questionnaire and contribute with all additional information for its analysis as part of the elaboration of the thematic report on "Business and Human Rights: Inter-American standards."

The questionnaire was composed of 4 blocks, intending to collect relevant information to draft the thematic report:
Block 1 – context information
Block 2 – regulatory framework and public policies
Block 3 – prevention and supervision mechanisms and standards
Block 4 - investigation, accountability and remedies mechanisms and standards.[6]

Additional references

- Bravo Figueroa, Roberto Luis (2017). "La Responsabilidad Internacional de los Estados de Origen de las Industrias Extractivas: Aproximación a las Obligaciones Extraterritoriales del Derecho a la Consulta en el Marco del SIDH". *American University International Law Review*, vol. 32, nr. 4, pp. 789-817.
- Gos, Tatiana (2017). "La "Responsabilidad de Respetar" los Derechos Humanos y el Establecimiento del Deber de Debida Diligencia como una Obligación Legal para las Industrias Extractivas: Desafíos y Oportunidades en Las Américas". *American University International Law Review*, vol. 32, nr. 4, pp. 859-983.
- Inter-American Institute of Human rights (2017). *Derechos Humanos y Empresas: Reflexiones desde América Latina*. San José: IIDH.

5 "Public Hearings, Working Meetings, Promotional Activities and Bilateral Meetings of the 167th period of sessions of the IACHR". Available at: http://www.oas.org/en/iachr/media_center/PReleases/2018/041A.asp .

6 "Questionnair – Thematic report on business and human rights, inter-American standards". Available at: http://www.oas.org/en/iachr/docs/pdf/2018/CuestionarioEmpresasDDHH-EN.pdf.

III.

STATE LEVEL

a. National action plans on business and human rights

NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

- Political instruments for the implementation of the Guiding Principles at national level

Objective

A national action plan is a political document in which a State outlines the priorities and actions it will adopt to support the implementation of international, regional or national obligations and commitments with respect to specific political area or issue.

The **National Action Plans on business and human rights** (NAPs) are policy strategies, drafted by a State to protect against adverse human rights impacts by business enterprises in conformity with the Guiding Principles on business and human rights. These NAPs contribute to:[1]

- Greater coordination and coherence within government on the range of public policy areas that relate to business and human rights.
- An inclusive process to identify national priorities and concrete policy measures and action.
- Transparency and predictability for interested domestic and international stakeholders.
- A process of continuous monitoring, measuring and evaluation of implementation.
- A platform for ongoing multi-stakeholder dialogue.
- A flexible yet common format that facilitates international cooperation, coordination, and exchanges of good practices and lessons learned.

1 United Nations Working Group on human rights and transnational and other enterprises (2016). *Guidance on National Action Plans on Business and Human Rights*. Geneva: WG-business, p. 2.

Process towards the development of National Action Plans

On 25 October 2011, the European Commission invited the EU member States to draft national plans for the implementation of the Guiding Principles.[2]

On 14 March 2013, the United Nations Working Group on human rights and transnational and other enterprises (Working Group), in its report presented during the 23rd session of the Human Rights Council, urged the States to consider drafting a national action plan, in order to define the responsibilities at national level, identify the resources needed and mobilise the relevant actors, based on lessons learned from similar experiences in other countries.[3]

In this regard, the Working Group created a database on NAPs and other relevant information, related to globally achieved progress in the implementation of the Guiding Principles.[4]

On 15 July 2014, the Human Rights Council encouraged the States to adopt NAPs as a measure to implement the Guiding Principles within their respective territories and jurisdictions.[5]

In November 2016, the Working Group published guidance that provided recommendations on the development, implementation and revision of the NAPs.[6] Besides the guidance, published by the Working Group, another complementary tool for the development of NAPs is the "National action plans on business and human rights toolkit"[7] drafted by the International Corpo-

2 European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM (2011) 681 final (25 October 2011), p. 17.

3 A/HRC/23/32. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21620.

4 "Repository on National Action Plans". Available at: https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

5 A/HRC/RES/26/22. Available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=23800.

6 United Nations Working Group on human rights and transnational and other enterprises (2016). *op. cit.*

7 ICAR; DIHR (2017). "National action plans on business and human rights toolkit". Available at: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2017/dihr_icar_nap_toolkit_2017_edition.pdf.

rate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR).

Since 2011, several States have launched processes to draft NAPs. There are twenty-three countries to date that have adopted a NAP, and many more countries are in the middle of a drafting process or have committed to drafting a NAP.

National action plans on business and human rights	
Approved	**Under development**
United Kingdom (2013)	Argentina
The Netherlands(2013)	Australia
Denmark (2014)	Azerbaijan
Finland (2014)	Guatemala
Lithuania (2015)	Greece
Sweden (2015)	Japan
Norway (2015)	Jordan
Colombia (2015)	Kenya
Switzerland (2016)	Latvia
Italy (2016)	Malaysia
United States of America (2016)	Mauritius
Germany (2016)	Mexico
France (2017)	Morocco
Poland (2017)	Mongolia
Spain (2017)	Mozambique
Belgium (2017)	Myanmar
Chile (2017)	Nicaragua
Czech Republic (2017)	Peru
Ireland (2017)	Portugal
Luxembourg (2018)	Thailand
Slovenia (2018)	Uganda
South Korea (2018)	Zambia
Georgia (2018)	

Essential criteria of National Action Plans

A one-size-fits-all model for drafting a NAP does not exist. However, in order to make them efficient, some essential criteria have been defined to be taken into account by the States:[8]

1. **The UNGPs as the foundation for NAPs**: NAPs must be based on and aligned with the Guiding Principles and international human rights instruments, in order to adequately reflect a State's duties to protect against adverse business-related human rights impacts and provide effective access to remedy.

   Furthermore, they need to promote business respect for human rights through due diligence processes and corporate measures to allow access to remedy.

2. **Responding to specific challenges faced in the national context**: NAPs need to be context-specific and address the country's actual and potential business-related human rights abuse. Therefore, each State should define focused and realistic measures which deliver the most impact possible on preventing and remedying these human rights harms.

3. **Inclusiveness and transparency**: NAPs must be drafted within inclusive and transparent processes so that relevant stakeholders can participate in their development and update. The participation must be guaranteed when the process is launched, during the period of consultations, during drafting and implementation.

4. **A continuous process of regular review and update**: NAPs need to be regularly reviewed and updated to respond to changing contexts and to aspire growing progress.

Furthermore, States are recommended to establish a firm long-term commitment so that the NAP drafting process is adequately prioritised within the government; set up a coordination mechanism, such as a cross-departmental advisory group or steering committee to meet periodically throughout a NAP process to ensure coherence between government agents; allocate appropriate financial resources for the NAP process; identify stakeholder groups; and,

8 United Nations Working Group on human rights and transnational and other enterprises (2016). *op. cit.*, pp. 3-5.

provide capacity-building for state actors and relevant external stakeholders so they can share a common understanding of the Guiding Principles.[9]

Developing process

For the drafting and implementation process of a National Action Plan, States are recommended to consider five phases, composed of 15 steps:[10]

Phase 1: Initiation

1. Seek and publish a formal government commitment.
2. Create a format for cross-departmental collaboration and designate leadership.
3. Create a format for engagement with non-governmental stakeholders.
4. Develop and publish a work plan and allocate adequate resources.

National Baseline Assessment

The Working Group recommends carrying out national baseline assessments at the start of a NAP process to identify legal and policy gaps in the government's implementation of the Guiding Principles. The analysis of these assessments identifies the most significant problems regarding business and human rights in a specific context and is useful when prioritising future actions to address gaps in the implementation of the Guiding principles.

https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrb_2018/dihr_icar_nap_toolkit_may_15_2018_spanish.pdf

Phase 2: Assessment and consultation

5. Get an understanding of adverse business-related human rights impacts.

9 ICAR; DIHR (2017). *op. cit.,* pp. 19-25.

10 United Nations Working Group on human rights and transnational and other enterprises (2016). *op. cit.*, pp. 5-11.

6. Identify gaps in State and business implementation of the Guiding Principles.

7. Consult stakeholders and identify priority areas.

Phase 3: Drafting of initial NAP

8. Draft the initial NAP

9. Consult on the draft with interested stakeholders.

10. Finalise and launch the initial NAP.

Phase 4: Implementation

11. Implement actions and continue cross-departmental collaboration.

12. Ensure multi-stakeholder monitoring.

Phase 5: Update

13. Evaluate impacts of the previous NAP and identify gaps.

14. Consult stakeholders and identify priority areas.

15. Draft updated NAP, consult on, finalise, and launch it.

Overall structure and contents

States are recommended to consider structuring their NAPs along four sections:[11]

1. An introductory section where the State commits to protect against adverse business-related human rights impacts; corporate responsibility in the respect for human rights in line with the Guiding Principles; and the significance of the policies and activities outlined in the NAP.

2. The second section should provide some context to introduce the Guiding Principles, clarifying the relation of the NAP to other related government

11 Ibid., pp. 12-13.

policy strategies, and outline the key national business and human rights challenges.

3. The third section should highlight the governments' priorities in addressing adverse business-related human rights impacts and discuss current and planned activities on the Guiding Principles directed at States. For every planned activity, governments should clarify the modalities of implementation including clear responsibilities of relevant entities, a timeframe, and indicators to evaluate success.

   In this section, it is recommended to include in the content priority actions to address the main gaps and challenges, based on national baseline assessments and stakeholder consultation; a specific approach for marginalised or vulnerable groups (children; women; racial, ethnic, religious or other minorities; LGBTQI people; persons living with disabilities; indigenous peoples; elderly persons; migrant workers and their families, among others); actions points that are specific, measurable, achievable, relevant and time-specific; and, action points that are coherent with other relevant frameworks.[12]

4. The final section should specify the modalities of monitoring and update, possibly by creating a multi-stakeholder monitoring group. Moreover, a date should be defined for the next NAP update and identify mechanisms for measuring progress.

Requirements for companies

A significant number of National Action Plans recommend companies to implement human rights due diligence processes to identify, prevent, mitigate and account for their impacts on human rights. Therefore, they encourage companies to design appropriate policies and processes to respect human rights[13] and to assess actual and potential risks and impacts, related to their activities, on the population and the environment.[14]

12 ICAR; DIHR (2017). *op. cit.*, pp. 33-36.

13 "Danish National Action Plan". Available at: https://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf.

14 "Plan de Acción de Nacional de Colombia". Available at: https://www.ohchr.org/Documents/Issues/Business/NationalPlans/PNA_Colombia_9dic.pdf; "Italian National Action Plan". Avail-

Some NAPs highlight specific criteria companies should consider in their due diligence processes in order for them to be effective:[15]

- Consider the internal risks (stemming from the business's own operations) and external risks (particularly in relation to business partners and other entities with which the business works).
- Identify existing risks (with a view to eliminating them) and potential risks (with a view to preventing any loss or damage).
- Adapt the due diligence process to the size of the business, the nature of its operations and specific local factors.
- Implement the due diligence process in the internal management system.
- Regularly update the due diligence process to reflect evolving conditions.
- Leverage the experience and knowledge of independent experts who operate externally or maintain a high degree of personal independence.
- Engage employees, as they should have the opportunity to draw attention to risks and provide assistance in the removal thereof.
- Engage the public directly concerned, stakeholders in the community and vulnerable groups in the formation of the due diligence process.

Other NAPs describe key elements of due diligence processes. These are: a human rights policy statement; procedures for the identification of actual or potential adverse impacts on human rights; measures ward off potentially adverse impacts and the review of the effectiveness of these measures; reporting; and, a grievance mechanism.[16]

able at: http://cidu.esteri.it/resource/2016/12/49117_f_NAPBHRENGFINALEDEC152017.pdf; "Norwegian National Action Plan". Available at: https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business_hr_b.pdf; "Swedish National Action Plan". Available at: https://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf.

15 "Czech Republic National Action Plan". Available at: https://www.ohchr.org/Documents/Issues/Business/NationalPlans/NationalActionPlanCzechRepublic.pdf.

16 "German National Action Plan". Available at: https://www.ohchr.org/Documents/Issues/Business/NationalPlans/NAP_Germany.pdf.

Furthermore, the NAPs encourage the companies to disclose non-financial information in the framework of due diligence processes[17] and promote the responsible supply chain management with a sector-related approach through human rights due diligence. Therefore, they propose companies to implement sectoral due diligence guidance, like the one of the OECD.[18]

Additional references

- Business & Human Rights Resource Centre. "National Action Plans". Available at: https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans.
- Cantú Rivera, Humberto (2017). "Planes de acción nacional sobre empresas y human rights: sobre la instrumentalización del derecho internacional en el ámbito interno". *Anuario Mexicano de Derecho Internacional*, vol. XVII, January-December, pp. 113-144.
- Danish Institute for Human Rights. "National Action Plans on Business and Human Rights". Available at: https://globalnaps.org/.
- De Felice, Damiano; Graf, Andreas. (2015). "The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights". *Journal of Human Rights Practice*, vol. 7, nr. 1, pp. 40-71.
- Esteve Moltó, José Elías (2018). "Planes de Acción Nacional sobre empresas y human rights: la imperiosa complementariedad con normas vinculantes. Referencia al plan español". *Anuario Español de Derecho Internacional*, vol. 34, pp. 729-751.

17 "Plan de Acción de Nacional de España". Available at: http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/DerechosHumanos/Documents/170714%20PAN%20Empresas%20y%20Derechos%20Humanos.pdf; "French National Action Plan". Available at: https://www.ohchr.org/Documents/Issues/Business/NationalPlans/NAP_France_EN.pdf; "Finnish National Action Plan". Available at: https://tem.fi/documents/1410877/3084000/National%20action%20plan%20for%20the%20implementation%20of%20the%20UN%20guiding%20pronciples%20on%20business%20and%20human%20rights/1bc35feb-d35a-438f-af56-aec16adfcbae.

18 "Belgian National Action Plan". Available at: https://www.sdgs.be/sites/default/files/publication/attachments/20170720_plan_bs_hr_fr.pdf.

- United Nations Working Group on human rights and transnational corporations and other business enterprises (2016). *Guidance on National Action Plans on Business and Human Rights*. Geneva: WG-business.
- Márquez Carrasco, Carmen; Vivas Tesón, Inmaculada (coords.) (2017). *La implementación de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos por la Unión Europea y sus Estados Miembros*. Navarra: Editorial Aranzadi.
- Methven O'Brien, Claire; Mehra, Amol; Blackwell; Sara; Poulsen-Hansen, Cathrine Bloch (2016) "National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool". *Business and Human Rights Journal*, vol. 1, nr. 1, pp. 117-126.
- Rojas Buendía, María del Mar (2016). "El desarrollo de los Planes de Acción Nacional sobre empresa y human rights y el estado actual de los Planes de Acción sobre RSC: España y los países nórdicos". *Universitas. Revista de Filosofía, Derecho y Política Pública*, nr. 23, pp. 35-91.

b. America

i. Canada

CANADIAN OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE AND ADVISORY BODY ON RESPONSIBLE BUSINESS CONDUCT

- Initiatives under the framework of responsible business conduct abroad
- Announced on 17 January 2018

Objective

The Canadian Ombudsperson for Responsible Enterprise and the Advisory Body on Responsible Business Conduct is a series of initiatives that strengthen the Canadian commitment to comply with its international human rights obligations. Therefore, its goal is to help Canadian companies to operate responsibly and improve access to remedy for alleged human rights abuses, caused by Canadian companies operating abroad.

Background

Since 2013, over 100,000 Canadians and more than 50 civil society organisations have joined the Open for justice campaign of the Canadian Network on Corporate Accountability. This campaign aims at improving access to Canadian courts and the creation of a human rights ombudsperson for the extractive sector in Canada.[1]

In 2015, the Liberal Party of Canada, New Democratic Party of Canada, Green Party of Canada and *Bloc Québécois* took an important step forward – each committing to implement concrete measures to enhance corporate accountability for Canadian extractive companies operating abroad.

1 Canadian Network on Corporate Accountability (2016). "Executive Summary: Draft model legislation to create a human rights ombudsperson for the international extractive-sector in Canada". Available at: http://cnca-rcrce.ca/wp-content/uploads/2016/03/Executive-Summary-Global-Leadership-in-Business-and-Human-Rights-Draft-Extractive-Sector-Ombudsperson-Model-Legislation-11022016.pdf.

Ombudsperson mandate

The Ombudsperson's mandate consists in addressing grievances, related to allegations of human rights violations, caused by the activities of Canadian companies abroad. As such, it is in charge of promoting human rights respect and responsible business conduct, as well as the adoption and implementation of best practices by Canadian companies.

On the other hand, the Ombudsperson can make recommendations to the Government on Canada's compliance with human rights obligations and the implementation and effective development of its laws, policies and practices relative to responsible business conduct of Canadian companies operating abroad in all sectors. The mandate of the Ombudsperson is based on international initiatives such as the Guiding Principles or the OECD Guidelines.

The scope of the Ombudsperson mandate is multi-sectoral, initially focussing on the mining, oil and gas, as well as the garment sector, with the expectation of expanding to other business sectors over a period of one year after the Ombudsperson has taken office.

In case of allegations of human rights violations, caused by activities of Canadian companies abroad, the Ombudsperson will carry out a collaborative and independent investigation. In this regard, the Ombudsperson will always seek a collaborative solution in disputes or conflicts between the impacted communities and Canadian companies.

In those cases, the Ombudsperson will make public recommendations to the companies that are monitored. The recommendations can refer to compensation, apologies, suspension of specific activities, mitigation actions or corporate policy changes. Furthermore, it can carry over any type of evidence identifying a possible crime to the relevant authorities.

When companies fail to cooperate in the investigation process, the Ombudsperson has the authority to recommend the denial or withdrawal of financial support from the Export Development Canada, either as a temporary measure or as final recommendation. This sanction gives leverage to encourage companies to participate in the process in a consistent manner.

Presentation of grievances

Grievances are foreseen to be sent to the Ombudsperson electronically through the future webpage of the Ombudsperson Office. As well, grievances can be presented via ordinary mail for those persons who do not have access to electronic equipment or to the Internet.

Mandate of the Advisory Body

The Advisory Body is a multi-stakeholder entity advising the Canadian government on the effective implementation and further development of its laws, policies and practices addressing business and human rights and responsible business conduct for Canadian companies operating abroad in all sectors. Furthermore, this body can provide advice related to the operational procedures of the Ombudsperson.

Members of the Advisory Body[2]

The voluntary members of the Advisory Body represent various stakeholders, including civil society, business, academia, among others, with practical experience in issues of responsible business conduct. The members of the Advisory Body work together to identify areas in which Canada could still make progress in its approach of responsible business conduct abroad.

In 2018, the 16 Advisory Body members are:
James Gordon Carr - Minister of International Trade Diversification
John Ruggie - Harvard Kennedy School
Jackie King - Canadian Chamber of Commerce
Alex Neve - Amnesty International (Canada)
Phillip "Jerry" Asp - Gray Wolf Solutions Ltd./ Global Indigenous Development Trust
Michèle Asselin - Association Québécoise des Organismes de Coopération Internationale
Ben Chalmers - Mining Association of Canada
Emily Dwyer - Canadian Network on Corporate Accountability

2 "Members of the multi-stakeholder Advisory Body on Responsible Business Conduct". Available at: http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/bios.aspx?lang=eng.

Bob Kirke - Canadian Apparel Federation
Harry Kits - World Vision Canada
Tim McMillan - Canadian Association of Petroleum Producers
Chris Moran - Global Affairs Canada
Emily Norgang - Canadian Labour Congress
Doug Olthuis - United Steelworkers
Lesley Williams - Prospectors & Developers Association of Canada
Elana Wright - Development and Peace

The Advisory Body will meet a minimum of four times a year in person and virtually to further and promote the mandate of the Advisory Body and its subcommittees. The first meeting of the Advisory Body took place on 23 April 2018.[3]

This advisory body reports annually to the Minister of International Trade Diversification on matters related to the responsible business conduct and human rights with respect to Canadian companies operating abroad. As such, it specifically informs on potential regulatory, legislative, policy and guidance changes and implementation.

3 "First meeting of multi-stakeholder Advisory Body on Responsible Business Conduct abroad". Available at: https://www.canada.ca/en/global-affairs/news/2018/04/first-meeting-of-multi-stakeholder-advisory-body-on-responsible-business-conduct-abroad.html.

Additional references

- Above Ground (2018). "Transnational Lawsuits in Canada against Extractive Companies. Developments in Civil Litigation". Available at: http://aboveground.ngo/wp-content/uploads/2018/05/Cases_31May2018.pdf.
- Goverment of Canada (2018). "Advancing Canada's Approach on Responsible Business Conduct Abroad". Available at: https://www.canada.ca/en/global-affairs/news/2018/01/advancing_canadasapproachonresponsiblebusinessconductabroad.html.
- Goverment of Canada (2018). "Multi-stakeholder Advisory Body on Responsible Business Conduct abroad". Available at: http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/advisory_body-groupe_consultatif.aspx?lang=eng.
- Goverment of Canada (2018). "Responsible business conduct abroad – Questions and answers". Available at: http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/faq.aspx?lang=eng.
- Johnson, Mora (2018). "The Promise and Limitations of the New Canadian Business and Human Rights Ombudsperson". Available at: https://www.morajohnsonlaw.ca/blog/2018/1/26/the-promise-and-limitations-of-the-new-canadian-business-and-human-rights-ombudsperson.
- Seck, Sara L. (2011). "Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights". *Canadian Yearbook of International Law*, vol. 49, pp. 51-116.
- Seck, Sara L. (2015). "Business, Human Rights, and Canadian Mining Lawyers". *Canadian Business Law Journal*, vol. 56, nr. 2, pp. 208-237.
- Seck, Sara L. (2017). "The Canadian Country Visit of the UN Working Group on Business and Human Rights. CIGI Papers No. 129". Available at: https://www.cigionline.org/sites/default/files/documents/Paper%20no.129.pdf.

ii. Colombia

GUÍAS COLOMBIA EN DERECHOS HUMANOS Y DERECHO INTERNACIONAL HUMANITARIO

- Multilateral voluntary initiative
- Created in 2006 and publicly announced in 2010

Objective

The multilateral initiative Guías Colombia en derechos humanos y Derecho internacional humanitario[1] (Guidelines Colombia in human rights and International humanitarian law) gathers business operating in the country, civil society organisations and government, with the aim of contributing to improve the human rights and International humanitarian law situation in Colombia. This based on the outline of practical due diligence guidelines for companies wanting to promote operations, respectful with human rights.

The guidelines to develop in the *Guías Colombia* framework cover the following issues:[2]

- **Security:**
  - Relations between business and private security
  - Relations between business and private security, and other State agencies
  - Business and International humanitarian law
- **Labour issues:**
  - Freedom of association for unionised workers or other ways of association
  - Occupational health and safety
  - Child labour

1 "Guías Colombia en Empresas, Human rights y DIH". Available at: http://www.ideaspaz.org/tools/guias-colombia.

2 "Guías Colombia. Documento Base". Available at: http://cdn.ideaspaz.org/media/website/document/59dce6613fcd7.pdf.

- **Communities:**
  - Displacement
  - Right to participation or prior consultation
  - Land
  - Local procurement of goods and services / local recruitment
- **Transparency:**
  - Extortion
  - Corruption
- **Institutional strengthening:**
  - Appropriate use of public resources
  - Strengthening of State institutions
- **Environmental issues**
- **Grievances and claims**

Specific objectives

The organisations that are part of the *Guías Colombia* commit to developing and implementing guidelines to promote the respect for human rights and International humanitarian law, reflecting a joint task and the achievement of consensus on criteria for transparent management by the companies; the State responsibilities regarding human rights and International humanitarian law; and, the opportunities for civil society to contribute to the promotion of these rights.

The initiative has been led by the Fundación Ideas para la Paz (Foundation Ideas For Peace, FIP), acting as Technical Secretariat. FIP is an independent research centre, created in 1999 by a group of Colombian entrepreneurs. Its mission is to generate expertise, propose initiatives, develop practices and support processes contributing to the construction of stable and durable peace in Colombia.

Participants in the Guías Colombia

Companies, Government agencies and civil society organisations can participate as member or observer.[3] To do so, they need to express their interest to the Technical Secretariat of *Guías Colombia*, which falls under the *Fundación Ideas para la Paz*.

Members:

- All members engage constructively in the joint creation of elements that are part of the initiative.
- No member will carry out monitoring functions or be authorised to carry out audits on other members or pronounce judgement on their behaviour, regardless of its nature.
- All members must implement the recommendations and guidelines, developed within the initiative.
- All members are entitled to speak and vote within the initiative.
- Companies, civil society organisations and government can engage as members.

Observers:

- Observers constructively engage through proposals regarding issues that are being developed in the framework of the initiative.
- No observer will carry out monitoring functions or be authorised to carry out audits on other members or pronounce judgement on their behaviour, regardless of its nature.
- Observers contribute with their proposals and observations, always aware of the fact that these proposals are not binding.
- Observers are entitled to speak, but do not have the right to vote.
- Corporate associations, government, civil society organisations and international bodies can act as observers.
- Companies can be observers for a maximum period of 1 year.

3 Guías Colombia. "Reglamento de Gobierno Interno de Guías Colombia". Available at: http://cdn.ideaspaz.org/media/website/document/59dce5e9e175a.pdf, p. 6-7.

Guías Colombia has 20 members			
Companies and trade unions	**State**	**civil society organisations**	**international organisations**
ABB, ANDI, AngloGold Ashanti Colombia, EPM, Equion, Indupalma, ISAGEN, Telefónica and Tipiel	Reincorporation and Normalisation Agency (ARN), *Consejería Presidencial para los Derechos Humanos y Defensoría del Pueblo* (Presidential Adviser on Human Rights and Ombudsperson)	*Centro Regional de Empresas y Emprendimientos Responsables* (Regional Centre of Responsible Companies and Enterprises, CREER), International Alert, Redprodepaz, *Sisma Mujer* and *Fundación Renacer*	Office of the United Nations High Commissioner for Human Rights, International Organisation for Migration and Global Compact Local Network

Requirements for companies

The main responsibilities of the companies, participating in *Guías Colombia* as members or observes are the following:[4]

- Implement the guidelines developed within the framework of the initiative, relative to their area, and comply with the rules on progress reporting.
- Socialise internally the agreements reached within the initiative in order to establish a general knowledge of the commitments, made by the company.
- Maintain and promote constructive dialogue and trust building.
- Promote the organisation of work sessions and events within the framework of the initiative.
- Diffuse and promote the adoption of the guidelines in other companies that have not joined the initiative.
- Participate in the drafting of guidelines and work methodologies, contributing from own experience and knowledge to identify key points in corporate activities, as well as to improve ways of addressing these aspects to make progress in the respect for human rights and to improve relations with stakeholder groups.

4 Ibid., p. 6.

Thematic guidelines

In the framework of *Guías Colombia*, six thematic guidelines have been published, recognising the different areas of human rights and their integral character, while focussing on the part relative to corporate activity in vulnerable areas, marked by social conflict and fragile governance.

The thematic guidelines have been organised in two parts:

- General Principles, which are sufficiently comprehensive commitments applying to all types of companies and sectors.
- Action Principles, which are more specific regarding the actions companies should take.

Drafting the guidelines is the responsibility of working groups, composed by members and observers expressing their intention to do so. Third parties, not linked to the initiative, can participate in the draft stage of the guidelines as "invited experts", if considered relevant by the working group. Meanwhile, the thematic guidelines are drafted under the responsibility of the Technical Secretariat.[5]

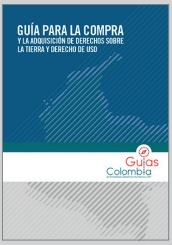
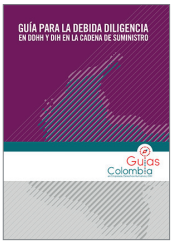
5 Ibid., p. 10.

THEMATIC GUIDELINES	
Guideline	**Objectives**
Security guidelines[6] 	This document seeks to give clear guidelines on what companies, operating in Colombia, must do in human rights and International humanitarian law matters when they develop security activities. As for corporate due diligence related to their security strategy, the Guidelines include a series of reasonable steps for companies to become aware of how to prevent and address adverse impacts, linked to their business activities and relationships.
Guidelines on grievance and claim mechanisms respecting human rights and international humanitarian law[7] 	This document seeks to give clear guidelines on the actions of companies, operating in Colombia, establishing mechanisms that allow them to address grievances and claims by part of their stakeholders in a way that respects human rights and International humanitarian law. Companies are expected to launch grievance and claims mechanisms, using this Guideline, to address abuses linked to security, environment, labour issues, communities, transparency and institutional strengthening. The Guideline recognises that grievance and claim mechanisms are particularly relevant for companies operating in conflict-affected or high-risk areas. In this regard, grievance and claim mechanisms are a useful tool, since they can be used as early-warning alert and offer the company information on its impact. Also, it can give clues on the best way to adapt its practices, how to avoid non-conformities to escalate and to contribute to their resolve.
Guidelines on decent work[8] 	These Guidelines intend to orient corporate operation in a way that is respectful and responsible with human rights and International humanitarian law in Colombia and focuses on labour issues, occasionally on the following: freedom of union, work opportunities, working conditions, prevention of forced labour, child labour exploitation and sexual exploitation, prevention of sexual exploitation of children and adolescents, industrial safety and social protection, equal opportunities and respect for diversity.

6 Guías Colombia (2014). "Guía de seguridad". Disponible en: http://cdn.ideaspaz.org/media/website/document/5a1ed7724745c.pdf.

7 Guías Colombia (2014). "Guía de Mecanismos de Quejas y reclamos atentos a los human rights y el Derecho internacional humanitario". Available at: http://cdn.ideaspaz.org/media/website/document/5a1ed7376bad2.pdf.

8 Guías Colombia (2014). "Guía de Trabajo Decente". Availabla at: http://cdn.ideaspaz.org/media/website/document/5a1ed81d548ce.pdf.

THEMATIC GUIDELINES	
Guideline	**Objectives**
Guidelines for the purchase and acquisition of land rights and rights of use[9]  	These Guidelines are based on the acknowledgement of the fact that human rights are indivisible and interdependent, and land is a cross-cutting matter for the enjoyment of rights, particularly in rural contexts. Therefore, the Guidelines propose a series of action principles at the time of planning and acquiring land property rights or land-use rights, to avoid negative impacts on the enjoyment of these rights. The Guidelines put an emphasis on corporate due diligence with respect to the purchase and acquisition of land-use rights, in order to ensure corporate operations respecting human rights and International humanitarian law in Colombia.
Guidelines on human rights and international humanitarian law due diligence in supply chains[10]  	This document is intended to offer guidelines to companies when implementing human rights due diligence in their supply chains, through responsible and transparent management in their relationships with suppliers and contractors. It also seeks to provide companies with sufficient elements to to address risks and impacts in their relationship with suppliers and contractors through a preventive approach, acknowledging the companies' authority to take corrective measures in case the behaviour of a supplier or contractor goes against the respect of human rights. Finally, it intends to establish development programmes for suppliers and the implementation of monitoring actions to integrate the supply chain-linked risks and impacts in the company's human rights management.

9 Guías Colombia (2014). "Guía para la Compra y la Adquisición de Derechos sobre la Tierra y Derecho de Uso". Available at: http://cdn.ideaspaz.org/media/website/document/5a1ed7c35b96c.pdf.

10 Guías Colombia (2014). "Guía para la Diligencia Debida en Human rights y Derecho Internacional Humanitario en la Cadena de Suministro". Available at: http://cdn.ideaspaz.org/media/website/document/5a1ed6b8ba4a3.pdf.

THEMATIC GUIDELINES	
Guideline	**Objectives**
guidelines on human rights and international humanitarian law due diligence in institutional strengthening actions11 	This document aims at providing guidelines to orient companies in their responsibility to respect human rights in the implementation of institutional strengthening actions. The scope of this Guideline is directed, on one hand, at strengthening the capacities and tools of organisations, particularly State agencies, to effectively comply with their task as guarantors of rights; and, on the other hand, to formally constituted civil society organisations, in order for them to participate in an informed and enabled manner in decisions on territory. It also defines the scope of strengthening the rules of the game, focussing on the role of companies in the respect for and promotion of both national rules and laws as social customs and rules which are established within the legal and ethical framework.

Monitoring of compliance

The companies participating must comply with submitting a report on progress made in the implementation of the guidelines. In cases where the reports do not give evidence of improvement or progress with respect to the implementation of the guidelines, or non-compliance of a mandatory requirement is identified, the Governing Board will call for a meeting with the company for a review of commitments and results.

Two types of decisions can be taken:[12]

- Coaching: Companies will be offered the possibility to call on assessment of the Technical Secretariat to identify the causes of their low performance and design a plan for improvement.
- Delisting: companies will be removed from the initiative and cannot sign up again for a period of 2 years in the following cases:
  - Coaching has been done without showing any progress.
  - The company or its decision-makers have been sentenced by a competent national or international authority for human rights violations and

11 Guías Colombia (2014). "Guía para la Diligencia Debida en Human rights y Derecho Internacional Humanitario en las Acciones de Fortalecimiento Institucional". Available at: http://cdn.ideaspaz.org/media/website/document/5a1ed6f46e693.pdf.

12 Guías Colombia. "Reglamento de Gobierno Interno de Guías Colombia". Available at: http://cdn.ideaspaz.org/media/website/document/59dce5e9e175a.pdf, p. 13.

infringements of International humanitarian law, after the moment of joining the initiative. However, the company can join again before the two years have expired if it is acquitted after appealing its sentence before a different instance.

Additional references

- Alfonso Monroy, Maria Paula (2013). "Empresas y Derechos Humanos: una responsabilidad en construcción". *Revista Facultad de Derecho y Ciencias Políticas*, vol. 43, nr. 118, pp. 349-385.
- Fundación Ideas para la paz (2014). *Identificación de casos de empresas y human rights: un obstáculo a superar desde el Estado*. Bogotá: Fundación Ideas para la paz.
- *Guías Colombia*. *"Guías Colombia e Empresas, Derechos Humano y DIH. Desde 2006"*. Available at: http://cdn.ideaspaz.org/media/website/document/59f256da802e1.pdf.

iii. United States

SECTION 1502 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

- Legislation
- Approved on 21 July 2010
- Mining sector

Objective

The aim of **Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act**[1] is to prevent, through supply chain transparency, that the use of conflict minerals benefits to or directly finances armed groups in the Democratic Republic of the Congo (DRC) or adjoining countries. Therefore, it intends to deter companies from further participation in the trade of minerals that support regional conflicts.

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act includes the definition of key terms for its implementation.

The term "conflict minerals" refers to tin, tantalum, tungsten and gold, including their derivatives; as well as any other mineral or its derivatives, defined by the Secretary of State, that are used to finance conflicts in the DRC or an adjoining country.

In this regard, "adjoining countries" are countries that share an internationally recognised border with the DRC. These countries are Angola, Burundi, Central African Republic, Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia.

The term "armed group" is used for those groups that are identified as perpetrators of severe human rights abuses.

1 "Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act". Available at: https://legcounsel.house.gov/Comps/Dodd-Frank%20Wall%20Street%20Reform%20and%20Consumer%20Protection%20Act.pdf.

Background

On 21 July 2010, the United States Congress passed the Dodd-Frank Act promoting the financial stability of the United States by improving accountability and transparency in the financial system, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services, among other purposes.

Section 1502 of the Dodd-Frank Act establishes, among other matters, that the Securities and Exchange Commission must pass regulation for the implementation of Section 1502.

On 22 August 2012, the Securities and Exchange Commission sent out the final rule to implement the new disclosure requirements imposed by the Dodd-Frank Act.[2]

The first drafting period for reports started in January 2013.

In October 2012, a group of businesspeople challenged the final rule of the Securities and Exchange Commission which implements Section 1502 of the Dodd-Frank Act. The plaintiffs stated that the legal obligations of the Securities Exchange Act had not been fulfilled, that the regulatory procedure had been arbitrary in many more aspects and that the obligation of providing public information, imposed by the rule and Section 1502 of the Dodd-Frank Act constituted a mandatory statement and therefore violated the First Amendment of the United States Constitution. The Columbia District Appeal Court ruled that part of the final rule was unconstitutional.

In February 2017, a Memorandum by President Donald Trump revealed his intention to repeal Section 1502 of the Dodd-Frank Act, pointing out the high administrative costs and adverse impacts for communities in the Democratic Republic of the Congo.[3]

2 "Final Rule of the Section 1502 of the Dodd-Frank Act". Available at: https://www.sec.gov/rules/final/2012/34-67716.pdf.

3 Otano, Guillermo (2017). "Trump y los minerales en conflicto". Available at: https://elpais.com/elpais/2017/03/10/planeta_futuro/1489161724_873110.html.

In March 2018, the United States Senate approved a bill, modifying a series of rules, designed to avoid a financial crisis, similar to the one of 2008.

Scope of application

Material scope

Section 1502 of the Dodd-Frank Act establishes requirements for companies to disclose information to determine whether their products contain conflict minerals and on the due diligence measures adopted in the supply chain.

Personal scope

The provisions of Section 1502 of the Dodd-Frank Act are applicable to US or foreign public companies that are listed on the United States Stock Exchange, using conflict minerals necessary to the functionality or manufacturing of a product. The main sectors affected are electronics and communications, aerospace, automobile, jewellery and industrial products. As such, approximately 6,000 companies are estimated to fall under the scope of application of Section 1502.

To determine whether a conflict mineral is necessary to the functionality of a product, we need to consider:

- Whether the conflict mineral is intentionally added to the product or any of its components, and is not a natural sub-product.
- Whether the conflict mineral is necessary to the function, use and purpose of the product.
- Whether the conflict mineral is incorporated for ornamental or decorative purposes, and the main purpose of the product is ornamental or decorative.

To determine whether a conflict mineral is necessary for manufacturing a product, we need to consider:

- Whether the conflict mineral is intentionally included in the manufacturing process of the product, except if it is included in a tool, machine or equipment, used to manufacture the product (such as computers or powerlines).
- Whether the conflict mineral is included in the product.
- Whether the conflict mineral is necessary to manufacture the product.

Requirements for companies

Section 1502 of the Dodd-Frank Act amends Section 13 of the 1934 Securities Exchange Act to have companies reporting annually before the Securities and Exchange Commission regarding the presence of any conflict mineral in their products.

The report, presented before the Commission, shall include the following information:

1. A description of the measures, adopted by the company to implement due diligence in establishing the source and chain of custody of conflict minerals, including an independent private sector audit for the report presented before the Commission.

2. A description of the products manufactured or contracted to be manufactured that are not "DRC conflict free", the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin.

> "DRC conflict free" is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country.

The information published by companies must be accessible on their websites.

The Commission's implementation regulations provide a disclosure process that consists of three steps the companies need to take into consideration:

Step 1: determine whether their products contain conflict minerals that submit them to the requirements of Section 1502 of the Dodd-Frank Act.

Companies must determine whether one of their products contains conflict minerals and whether such minerals are necessary to:

1. The functionality of the product manufactured.

2. The manufacturing process of the product.

Step 2: determine whether the conflict minerals, necessary for the functionality or manufacturing of their products, originate from one of the countries, covered by Section 1502 of Dodd-Frank.

The companies must carry out a "Reasonable Country of Origin Inquiry" for the conflict minerals used, in order to determine whether these come from the DRC or adjoining countries, or whether they are derived from recycled elements or waste.

The reasonable country of origin inquiry standard is considered to be fulfilled when the company seeks and finds reliable information identifying the facilities where the conflict minerals were processed and demonstrating these do not originate from countries covered by Section 1502 or come from recycled material or waste.

Step 3: carry out a supply chain due diligence process and draft a report on conflict minerals.

The companies must carry out a due diligence process in accordance with national and international standards when using conflict minerals originating from countries covered by Section 1502 of Dodd-Frank. The goal of the due diligence process is to determine whether the conflict minerals used by the company directly or indirectly benefit to or finance armed groups in the DRC or in adjoining countries.

Also, they must present a report on the measures the company adopted to implement due diligence on the source and chain of custody of its conflict minerals. The report must include the following information:

- the country of origin of the conflict minerals.
- the efforts to determine the mine or location of origin with the greatest possible specificity.
- the facilities used to process the conflict minerals, such as foundries or refineries.
- a description of the products that are not conflict free.

If, in the course of the due diligence process, it is determined that the minerals do not originate from countries covered or from recycled material or waste, the company is released from its obligation to present a report.

On the other hand, companies presenting their report must perform an independent private audit, in order to express an opinion or conclusion on whether the design of the due diligence measures, described by the companies in their reports, comply with national and international standards and whether the description of the due diligence measures developed are consistent with the companies' actions.

Additional references

- Factor, Amy (2014). "Dodd-Frank's Specialized Disclosure Provisions 1502 and 1504: Small Business, Big Impact". *Ohio State Entrepreneurial Business Law Journal*, vol. 9, nr. 1, pp. 89-118.
- Lynn, David M. (2011). "The Dodd-Frank Act's Specialized Corporate Disclosure: Using the Securities Laws to Address Public Policy Issues". *Journal of Business & Technology Law*, vol. 6, nr. 2, pp. 327-356.
- Mirindi, Patient Lwango. (2014). "Article 1502 du Dodd-Frank Act: Une Menace pour la Souveraineté de la République Démocratique du Congo sur ses Ressources Naturelles". *Revue Québécoise de Droit International*, vol. 27, nr. 2, pp. 27-58.
- Sells, Rebecca N. (2013). "Towards Stability in the Democratic Republic of the Congo - The Dodd-Frank Act's Strengths and Weaknesses". Seattle Journal for Social Justice, vol. 12, nr. 2, pp. 603-650.
- Silverman, Bryan Stuart (2014). "One Mineral at a Time: Shaping Transnational Corporate Social Responsibility through Dodd-Frank Section 1502". *Oregon Review of International Law*, vol. 16, nr. 1 (2014), pp. 127-152.
- Stork, Victoria (2017). "Conflict Minerals, Ineffective Regulations: Comparing International Guidelines to Remedy Dodd-Frank's Inefficiencies". *New York Law School Law Review*, vol. 61, nr. 3-4, pp. 429-448.
- Taylor, Celia R. (2012). "New Disclosure Requirements under the Dodd-Frank Financial Reform Act: A Move towards Greater Transparency". European Company Law, vol. 9, nr. 2, pp. 64-69.

c. Europe

i. Europe

"GREEN CARD" INITIATIVE ON CORPORATE ACCOUNTABILITY FOR HUMAN RIGHTS ABUSES

- Political Declaration
- Launched on 18 May 2016

The "Green Card" initiatives represent an informal mechanism for parliaments of member States to launch a constructive proposal for the European Commission to adopt legislative or other measures or actions on a specific matter.

The European Union Committee of the House of Lords of the Parliament of the United Kingdom took care of promoting this new mechanism to fulfil and strengthen the active role of the member States' parliaments in the legislative process of the EU.

Therefore, it seeks to open a political dialogue to allow national parliaments, jointly, to engage in the legislative process of the EU.

Objective

The **"Green Card" initiative on corporate accountability for human rights abuses**[1] calls on the European Commission to start a legislative procedure to ensure corporate accountability for human rights abuses. Therefore, due diligence legislation is requested to protect people and communities whose rights and local environment have been affected by activities of business enterprises with headquarters in the EU.

1 "Green card" initiative at European Union (EU) level to ensure corporate accountability for human rights abuses. Available at: http://oide.sejm.gov.pl/oide/en/images/files/pigulki/green%20card%20csr.pdf.

"Green card" proposals

The "Green card" initiative was prompted by Danielle Auroi, member of French Parliament, and supported by France, the United Kingdom, Italy, Estonia, Lithuania, Slovakia, Portugal and the Netherlands.

The initiative acknowledges the challenge that represents the responsibility of multinational enterprises over their suppliers, subsidiaries and subcontractors located in States where compliance with social and environmental standards is not met.

On the other hand, it observes that corporate social responsibility is a matter which is addressed by the EU institutions and European law. However, they have a limited scope as regards the prevention of human rights violations in third States.

Also, it points out that several EU member States have adopted NAPs on business and human rights. However, the measures contained in each of them differ from one State to another and are insufficient to face the social and environmental challenges resulting from the enterprises' supply chains.

Therefore, the initiative calls on the European Commission to strengthen corporate social responsibility and table an ambitious legislative proposal implementing the corporate social responsibility principles at European level.

The legislative proposal shall meet the following characteristics:

1. It shall apply to all enterprises having their headquarters in a European Union member State, whatever their business sector. In this regard, criteria shall be set to exempt the smallest enterprises, without excluding parent companies and holdings.

2. It shall include precise obligations regarding due diligence that apply to the operations of business enterprises and their subsidiaries, suppliers and other business relations to prevent social and environmental risks.

3. It shall impose effective, proportionate and dissuasive sanctions in case of environmental and social damages, caused by the non-compliance of due diligence obligations.

Additional references

- Bordignon, Marta (2016). "State Commitment in Implementing the UN-GPs and the Emerging Regime of National Action Plans: A Comparative Analysis". *Human Rights & International Legal Discourse*, vol. 10, nr. 1, pp. 117-[ii].
- ECCJ (2016). "Members of 8 European Parliaments support duty of care legislation for EU corporations". Available at: http://corporatejustice.org/news/132-members-of-8-european-parliaments-support-duty-of-care-legislation-for-eu-corporations.
- Serowaniec, Maciej (2015). "Towards the "green card" - strengthening the role of national parliaments in EU affairs?" *Studi Polacco-Italiani di Toruń*, nr. 11, pp. 29-44.

ii. Germany

GERMAN PARTNERSHIP FOR SUSTAINABLE TEXTILES

- Multilateral initiative
- Launched on 16 October 2014
- Textile and garment sector

Objective

The **German partnership for sustainable textiles**[1] is a voluntary multilateral initiative, prompted by the German government, unions, business and civil society organisations. The objective of the Partnership is to constantly improve the social, economic and environmental conditions along the textile sector supply chain.

To meet this objective, the Partnership has established four strategic elements:

- Joint definition of standards and implementation requirements with deadlines.
- Jointly improve framework conditions in producer countries and make recommendations to Germany and the EU regarding the adoption of political measures.
- Transparent communication, allowing consumers to identify sustainable textile and informing on progress made by the Partnership.
- Set up a platform to review the Partnership's progress and implementation, and share lessons learned among members.

1 "Partnership for Sustainable Textiles". Available at: https://www.textilbuendnis.com/en/.

Background

In April 2014, following several tragic accidents in textile factories in Bangladesh and Pakistan, the German Federal Minister for Development, Gerd Müller, invited several stakeholders to set up a roundtable on the textile industry to discuss options to improve environmental and social standards in the sector. Over 70 representatives from the textile industry, unions and civil society participated in the roundtable and drafted an Action Plan defining the social, environmental and economic standards that should be progressively implemented along the textile sector's supply chain.

On 16 October 2014, the Action Plan was made public, thereby officially launching the German Partnership for sustainable textiles.[2]

Scope of application

Material scope

The Partnership addresses the social, economic and environmental challenges for the supply chain of the textile sector. The Partnership members implement the standards established to constantly improve the following conditions in the supply chains of the textile sector:

- Social dimension:
  - Freedom of association and collective bargaining
  - Decent wages, paid overtime, paid holidays, social security benefits
  - Prohibition of child labour, forced labour and contract slavery
- Economic dimension:
  - Ethic trade practices
  - Prevent corruption
  - Purchasing practices implementing the Partnership standards

2 Federal Ministry for Economic Cooperation and Development (2014). "The Partnership for Sustainable Textiles". Available at: https://www.bmz.de/en/publications/topics/health/booklet_textiles.pdf, p. 6.

- Environmental dimension:
  - Environmental risk management
  - Protection of the land and biodiversity

Personal scope

The standards established are applicable to business enterprises in the textile and garment sector that comply with the eligibility requirements for becoming a Partnership member and voluntarily commit to meeting their objectives and standards. The companies interested in becoming a Partnership member must inform the Partnership Secretariat in writing.

Besides business enterprises from the textile and garment sector, associations and initiatives, active in the field of sustainable textiles, civil society organisations, sector unions, German government bodies and other stakeholders such as research institutions can become a Partnership member.[3]

The Partnership counts over 150 members, representing roughly half of the German textile market.[4]

Requirements for companies

Individual responsibility of the members

Partnership member companies are submitted to the Review Process, designed to measure progress regarding common[5] and individual targets.

3 "Plan of Action for the Partnership for Sustainable Textiles". Available at: http://www.bmz.de/de/zentrales_downloadarchiv/Presse/Textilbuendnis/Action_Plan_Partnership_for_Sustainable_Textiles.pdf, pp. 9-10.

4 "Members of the Partnership for Sustainable Textiles". Available at: https://www.textilbuendnis.com/en/who-we-are/members/.

5 "Overview of targets". Available at: https://www.textilbuendnis.com/wp-content/uploads/2018/02/targets-overview-2017.pdf.

- Reference data collection

In first place, companies must collect and identify information describing the present situation relative to the common goals of the Partnership, to define the starting point for improving social, economic and environmental conditions of their supply chain. To do so, they must answer a series of questions, selected by groups of experts of the Partnership[6], regarding their commercial practices and supply chain management. Each company must be able to describe its actions that contribute to reducing the use of hazardous chemicals, to ensuring that the workers in their factories receive decent wages or to supporting farmers to use sustainable cultivation methods.

Reference information is confidential and no other member will have access without prior consent.

- Roadmap

After a baseline assessment, companies must draft an individual roadmap, setting out the goals to reach within one year as Partnership member. Besides the mandatory targets, companies can set individual targets, as long as they are measurable, achievable, realistic and defined in time relative to the indicators, established by the Partnership expert groups.

The companies must submit their individual roadmap to the Partnership. An external service provider will examine the credibility of all roadmaps received. This will be done initially, comparing the baseline and the targets set in the roadmap in a logical way.

- Progress report

Once they start working on the goals, companies must draft an annual report addressing the progress of the targets established in the individual roadmap. In case the companies fail to present any progress, they must explain this in their report which will be evaluated by the Working Group in charge of the Review Process.

6 "Annual Report 2016/2017". Available at: https://www.textilbuendnis.com/wp-content/uploads/2018/02/2018-01-10_NHTW-Jahresbericht-2017_EN_v02.pdf, pp. 10-13.

Collective engagements

As Partnership members, companies can participate in Partnership Initiatives, which are measures in which different members can join to address the challenges identified in producer countries. These measures contribute in a practical manner to the improvement of the general conditions in the field and involve local suppliers and stakeholders. Therefore, they allow the companies to take measures at the local level and work on the targets they have defined in their individual roadmap.

Some of the Partnership Initiatives that have been carried out are:[7]

- The Partnership Initiative on chemical products and environmental management (May 2017 – December 2018) aims at raising awareness and improving access to training in sustainable chemical products and environmental management in the suppliers' factories, and promoting the replacement of harmful chemical substances and of technological innovation. China and Bangladesh have been identified as first priority countries for the implementation of the Initiative.
- The Partnership Initiative for improvement of labour standards in Tamil Nadu (June 2017 – September 2019) seeks to raise awareness on matters of sustainability, implement practices of fair recruitment, improve labour standards and transparency in the textile and garment industry in Tamil Nadu, India.
- The Partnership Initiative to improve water management in Pakistan (May 2017 – December 2018) aims at improving water security along the cotton production value chain, in order to promote inclusive economic growth in specific regions in Pakistan.

7 Ibid., pp. 17-19.

Additional references

- Gardetti, Miguel Ángel (2017). *Textiles y moda ¿Qué es ser sustentable?* Buenos Aires: Editorial LID.
- Gardetti, Miguel Ángel; Torres Ana Laura (2013). *Sustainability in Fashion and Textiles: Values, Design, Production and Consumption*. New York: Routledge.
- Jastram, Sarah; Schneider, Anna-Maria (2018). *Sustainable Fashion. Governance and New Management Approaches*. Heidelberg-New York-Dordrecht-London: Springer International Publishing.
- Kaway, Mina (2009). *Corporate social responsibility through codes of conduct in the textile and clothing sector*. Geneva: Graduate Institute of International and Development Studies.
- Subramanian Senthilkannan, Muthu (2017). *Textiles and Clothing Sustainability Implications in Textiles and Fashion*. Heidelberg-New York-Dordrecht-London: Springer.

LEGISLATIVE PROPOSALS BY CIVIL SOCIETY ORGANISATIONS ON HUMAN RIGHTS DUE DILIGENCE

- Legislative proposals
- Launched in December 2016

Objective

In Germany, the government and civil society has considered the possibility to impose due diligence obligations on business enterprises. In this regard, a coalition of civil society organisations presented a **legislative proposal**[1] for business enterprises to implement due diligence processes in their activities.

The objective of this Law is to ensure that companies respect internationally recognised human rights in their activities and supply chains. The protection of human rights is useful both for the public interest as for the interests of people participating in the supply chains or directly affected otherwise by the impacts of these supply chains.

Drafting process

In 2016, Amnesty International, *Brot für die Welt* (Bread for the World), Germanwatch and Oxfam Germany entrusted Prof. Dr. Remo Klinger, Prof. Dr. Markus Krajewski, David Krebs and Constantin Hartmann with drafting a legislative proposal to introduce mandatory due diligence in the German legal order.

In parallel, in November of the same year, the German Green Party presented a motion, requesting Parliament to establish legal obligations in business-related human rights due diligence.[2]

1 Klinger, Remo; Krajewski, Markus; Krebs, David; Hartmann, Constantin (2016). "Verankerung menschenrechtlicher Sorgfaltspflichten von Unternehmen im deutschen Recht". Available at: https://germanwatch.org/sites/germanwatch.org/files/publication/14745.pdf.

2 "Zukunftsfähige Unternehmensverantwortung – Menschenrechtliche Sorgfaltspflichten im deutschen Recht verankern". Available at: http://dipbt.bundestag.de/doc/btd/18/102/1810255.pdf.

The motion of the German Green Party on mandatory human rights due diligence

The motion of the Green Party proposes the adoption of a Human rights due diligence law, imposing the following obligations on business enterprises:

- Carry out a human rights risk analysis.
- Adopt preventive measures against human rights violations.
- Adopt remedial measures in cases where human rights violations are committed.
- Determine responsibilities within the organisation, for example, whistle-blower protection or establishing compliance units.
- Document and disclose actions adopted to prevent and remediate human rights violations.

The motion also proposes to facilitate civil litigation for victims of human rights violations, committed by business enterprises, and to establish mechanisms of collective remedy. As such, it also suggests establishing effective sanctions for companies in case of non-compliance with their human rights due diligence obligations.

In December 2016, the German Council of Ministers approved the national action plan on business and human rights, establishing goals and measures for companies to implement due diligence processes in their activities.[3]

German National action plan on business and human rights

The NAP expresses the expectation for companies to carry out human rights due diligence processes in accordance with their size, the sector in which they operate and their position in the supply and value chains, particularly when operating in countries where the rule of law does not apply or only applies in part.

The goal is that at least 50% of all business, domiciled in Germany with more than 500 employees, have incorporated some of the elements of the due diligence process in their operations by 2020. If the companies fail to do so, they need to explain the reasons.

In case business enterprises fail to comply with this expectation, the Federal Government will consider additional measures, implying legislative measures to implement human rights due diligence.

3 "National Action Plan. Implementation of the UN Guiding Principles on Business and Human Rights 2016- 2020". Available at: https://www.auswaertiges-amt.de/blob/610714/fb740510e8c-2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf.

Scope of application

Material scope

The proposal considers that business enterprises must implement due diligence processes to ensure respect for human rights recognised in international treaties, especially those included in the International Covenant on Civil and Political Rights of 16 December 1966, in the Second Optional Protocol of the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty of 15 December 1989, in the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, among others.

They also need to respect the labour rights, recognised in the ILO conventions, like those in Convention nr. 87 on the freedom of association and protection of the right to organise convention of 9 July 1948, Convention nr. 98 on the right to organise and collective bargaining of 1 July 1949, in Convention nr. 29 on forced labour of 28 June 1939, in Convention nr. 105 on the abolition of forced labour of 25 June 1957, among others (§1, § 3.1 and Annex).

Personal scope

The law is foreseen to apply for large enterprises, regardless of the legal structure of its registered office, central administration or main centre of activities in Germany (§2.1.1). A business enterprise is deemed large when, alone or jointly with the enterprises under its control or with those that control it, it exceeds one of the criteria established in the law at the balance sheet date (total balance, invoicing or number of employees) (§3.2).

It would also apply for SMEs that perform activities on their own or by means of an enterprise under their control in a high-risk sector, or in a conflict or high-risk area (§2.1.2). The proposal defines conflict or high-risk area as areas in state of armed conflict or in a fragile post-conflict situation, as well as areas with weak or non-existing governance or security in which widespread and systematic violations of International law can be seen, including human rights abuses (§3.5).

The obligations, imposed by the law, would also apply to any trade activity, performed abroad (§2.2).

Territorial scope

The law would regulate all activities of business enterprises managed or controlled from German territory.

Requirements for companies

The bill imposes mandatory due diligence on the companies, based on the following elements: risk analysis, risk prevention, remedy and documentation measures and disclosure of the due diligence implementation process.

Furthermore, the legislator could impose obligations relative to corporate governance on the companies. For example, he could require the appointment of a person in charge of supervising and managing all matters related to regulation compliance (compliance officer) or the setup of a protection system for whistle-blowers of illicit corporate activities (§9).

Risk analysis

Companies shall analyse whether their activities generate risks of contributing to committing human rights violations (§6.1). Risk analysis extends to activities of subsidiaries and the supply chain (§6.4). Furthermore, a risk analysis, linked with the strategic decisions of the companies, will be performed as well (§6.5).

In order for an analysis to be adequate, the following criteria must be taken into account (§6.2):

- The size of the company.
- Country- or sector-specific risks.
- The expected severity and likelihood of possible violations.
- The degree of contribution to such violations by the company.

If the company identifies indications of risks of contributing to human rights violations being committed, it shall perform an exhaustive and comprehensive analysis of the specifically identified risks, including the people affected (§6.3).

The risks analysis shall be constantly updated whenever there are motives to do so (§6.5).

Risk prevention

When companies detect a risk of contributing to commit human rights violations, they shall incorporate adequate preventive measures in their policies and monitor their effectiveness (§7). For example, if a company determines that there is an existing risk of violations of workers' rights in its subsidiaries abroad or in their global supply chains, it can perform audits or organise training to prevent labour rights abuses.

Measures for remedy

If human rights violations have already occurred or are imminent, companies shall immediately adopt the appropriate measures to prevent or mitigate them (§8). The measures for remedy are determined in accordance with the human rights violations committed. These can include the setup of accessible mechanisms to present grievances or the termination of commercial relations with other companies if that is the only way of ensuring it does not contribute to human rights violations being committed.

Documentation and disclosure of the due diligence implementation process

The measures adopted for the implementation of the due diligence process need to be documented by the companies. This information will be disclosed conforming §289.3 of the German Commercial Code on the non-financial performance of the companies. Furthermore, it shall be kept in the company archives, since it can be requested by the relevant authorities for compliance monitoring (§11).

The documentation of the implementation of the due diligence process not only constitutes evidence in the interest of the people affected by the human

rights abuses, but also demonstrates that the company complied with its due diligence obligations.

Compliance with the law

Compliance with the provisions of the law is foreseen to be monitored by the authorities of the federated states (*Bundesland*), for example, the business register offices. Furthermore, some federal authorities could also carry out monitoring tasks, such as the Customs Office of the Federal Office of Economic Affairs and Export Control.

These authorities are in charge of determining whether companies performed a due diligence procedure through the analysis of documents in the companies' possession. Furthermore, they can issue *ad hoc* administrative orders requiring, for example, a company to consult with the parties affected, or to design a grievance mechanism.

It the case where it is determined that companies fail to comply with their due diligence obligations, they can be fined or excluded from requesting assistance for external trade or from the awarding of public contracts.

Civil liability

In case the non-compliance with due diligence obligations causes harm to third parties, the Proposal points out that the aggrieved parties can file a damage claim, conforming to the Civil law provisions. The Proposal establishes a duty of care standard for companies and, therefore, holds them responsible for the damages that can be identified and avoided by adopting the required measures.

The duty of care standard, considered in the Law, has the character of peremptory norm (mandatory provisions), so that in international private situations it is applied independently of the applicable law that is a result of the rules of Private international law (§15).

Additional references

- Daamen, Nicolas; Gaul, Michael (2017). "Compliance due diligence in Germany". *Business Ethics and Anti-Corruption World*, nr. 5, pp. 32-34.
- Grabosch, Robert; Scheper, Christian (2016). *Corporate Obligations with Regard to Human Rights Due Diligence Policy and Legal Approaches*. Berlin: Friedrich-Ebert-Stiftung.
- Klinger, Remo; Krajewski, Markus; Krebs, David; Hartmann, Constantin (2017). "Legislative Proposal: Corporate Responsibility and Human Rights. Legal Text and Questions and Answers on the Human Rights Due Diligence Act proposed by German NGOs". Available at: https://germanwatch.org/de/download/18575.pdf.

iii. Spain

NON-LEGISLATIVE PROPOSALS ON BUSINESS AND HUMAN RIGHTS

- Non-legislative proposal
- Presented on 22 March 2013 and 7 March 2018

Objective

Non-Legislative Proposals (*Proposiciones no de Ley*) are non-binding proposals on a variety of subjects, presented by parliamentary groups. In April 2013, the Congress of Deputies approved the **Non-legislative Proposal on Corporate Social Responsibility and Human Rights (162/000591)**[1] calling on the Government to make progress in matters of business and human rights through various actions. Furthermore, in July 2018, the **Non-Legislative Proposal on the liability of Spanish trans-national enterprises relative to the respect for human and environmental rights (161/003056)**[2] was approved, proposing to establish a binding roadmap to implement the Guiding Principles and, in turn, supporting the drafting process of an internationally binding treaty on transnational and other businesses and human rights

Contents

Non-legislative Proposals 162/000591 and 161/003056 were presented by the Socialist Parliamentary Group to prompt progress in the national agenda on business and human rights, by means of tools and measures that address

1 "La Proposición no de Ley sobre Responsabilidad Social Corporativa y Derechos Humanos (162/000591)". Available at: http://www.congreso.es/docu/tramit/LegX/162.591.pdf.

2 "La Proposición no de Ley sobre la responsabilidad de las empresas españolas transnacionales en relación con el respeto a los human rights y medioambientales (161/003056)". Available at: http://www.congreso.es/public_oficiales/L12/CONG/BOCG/D/BOCG-12-D-387.PDF.

the effects of globalisation and regulate corporate due diligence obligations in human rights matters.

Therefore, the Government is urged to:

1. Carry out the appropriate actions in order to encourage and incentivise the implementation of the Guiding Principles for large Spanish business enterprises operating worldwide, within the Spain Brand Foster Plan (*Planes de Fomento de la Marca España*) (162/000591).

2. Draft a legal report on the possibility of developing judicial or non-judicial mechanisms in compliance with the Guiding Principles, ensuring remedy of human rights violations, committed by business enterprises (162/000591).

3. Raise awareness among and provide training to Spanish enterprises, operating in Ibero-America, relative to the Guiding Principles (161/003056).

4. Review the support policy of business internationalisation and the public procurement policy in order to explicitly include incentives and requirements for Spanish companies, regardless of whether they are investors, contractors or subcontractors, to comply with the obligation to respect human rights and the rights of indigenous peoples in their international investments and operations (161/003056).

5. Adopt a relationship protocol for Spanish diplomatic authorities with human and environmental rights defenders in those States where Spanish enterprises are operating which, in the course of their activities, are likely to see themselves involved in conflicts of this nature (161/003056).

6. Launch a programme for the protection of human rights defenders and increase the budget lines for this protection through the Spanish Agency for International Development Cooperation (161/003056).

7. Draft a legal report on the possibilities of having Spanish courts applying the Guiding Principles when ruling cases related to Spanish enterprises. This application would include business activities outside national territory, assessing the relevant reforms to be adopted in order to comply with the obligation, in this case, of State remedy; also the elimination of barriers for access to justice for people affected by these business operations, acting against human rights (161/003056).

8. Call on the Government to promote a legislative proposal on the matter of business and human rights, aligned with recent legislation approved on the matter in other EU member States (161/003056).

Additional references

- Márquez Carrasco, Carmen (2014). *España y la implementación de los Principios Rectores de las Naciones Unidas sobre empresas y derechos humanos: oportunidades y desafíos*. Barcelona: Huygens.

iv. France

DUTY OF VIGILANCE LAW

- Legislation
- Adopted on 21 February 2017
- Implementation of the first, second and third pillar of the Guiding Principles

Objective

The **Duty of vigilance law**[1] introduces mandatory due diligence in the French legal system, in order for parent companies, as well as their subsidiaries, subcontractors and suppliers, to identify, prevent, mitigate and account for human rights violations and environmental impacts, caused by their activities.

Adoption process

On 6 November 2013, the Bill on duty of vigilance[2] was presented, before finally arriving to the National Assembly in January 2015. The National Assembly decided to send the text to one of the commissions in order to be debated and subsequently modified. The result of the work of the Commission were substantial modifications to the Bill, leading to a new version.[3]

1 LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. Available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id.

2 "Assemblee Nationale. Enregistré à la Présidence de l'Assemblée nationale le 6 novembre 2013. Proposition de Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre". Available at: www.assemblee-nationale.fr/14/propositions/pion1519.asp.

3 "Assemblee Nationale. Session Ordinaire de 2014-2015, 30 mars 2015. Proposition de Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre". Available at: www.assemblee-nationale.fr/14/ta/ta0501.asp.

In February 2015, the second version of the Bill was presented and approved, including the substantial modifications, at the first reading before the Lower House of the National Assembly. However, it was rejected by the Senate, which is why it was sent back to the National Assembly, in accordance with the domestic legislative process.

In March 2016, the National Assembly sent the Bill back to the Senate which, in turn, adopted the third version in October that same year, which was then turned into a transposition of the 2014/95/EU Directive on non-financial disclosure.[4]

In November 2016, the National Assembly adopted a fourth version of the Bill.[5]

The Law was adopted in March 2017 and came into effect in the first financial year starting after its publication in the official bulletin. In 2018, the business enterprises presented their first vigilance plan.

Scope of application

Material scope

Companies shall adopt reasonable vigilance measures vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms; and, environmental damage resulting directly or indirectly from the operations of the company and of the companies it controls, as well as from the operations of the subcontractors or suppliers with whom it maintains an established commercial relationship (article L. 225-102-4 of the Commercial Code).

4 Senat. Session Ordinaire de 2016-2017 13 octobre 2016. Proposition de Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. Available at: www.senat.fr/leg/tas16-001.html.

5 "Assemblee Nationale. Session Ordinaire de 2016-2017 29 novembre 2016 Proposition de Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre". Available at: www.assemblee-nationale.fr/14/pdf/ta/ta0843.pdf.

Established commercial relationship means that it exists with or without contract, and includes a certain business volume with the reasonable expectation for the relationship to last (article L. 442-6-I-5 a of the Commercial Code).

Personal scope

The Law applies to companies registered or constituted in France which, at the end of two consecutive financial years, employ at least five thousand workers, within the company or in its direct or indirect subsidiaries whose head office is located on French territory, or at least ten thousand workers between the parent company and its direct or indirect subsidiaries, whose head office is located on French territory or abroad (article L. 225-102-4 of the Commercial Code). The Law is estimated to cover some 120 companies.

Requirements for companies

The Law imposes on business enterprises the obligation to draft, disclose and implement a vigilance plan (*plan de vigilance*). This plan needs to be drafted in collaboration with the company's stakeholders.

On the other hand, five measures the vigilance plan must contain are given (article L. 225-102-4 of the Commercial Code):

1. A mapping that identifies, analyses and ranks risks.
2. Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship.
3. Appropriate action to mitigate risks or prevent serious violations.
4. An alert mechanism that collects reporting of existing or actual risks, developed in working partnership with the trade union organisations representatives of the company concerned.
5. A monitoring scheme to follow up on the measures implemented and assess their efficiency.

The plan and the results of its effective implementation must be publicly disclosed and included in the annual report.

When a company, required to draft, disclose and implement a vigilance plan, does not meet its obligations in a three months period after receiving formal notice to comply, the relevant jurisdiction can, following the request of any person with legitimate interest in this regard, urge said company, under financial compulsion if appropriate, to comply with its duties.

The original text of the Law considered a civil fine that could not exceed 10 million Euros for companies failing to comply with their obligations of drafting, disclosing and implementing a vigilance plan.

Furthermore, it also included the provision where, in case of failure to meet the obligations set out, the company should compensate the damage that compliance with these obligations could have avoided.

However, these provisions were declared unconstitutional by decision n° 2017-750 DC of the *Conseil Constitutionnel* (Constitutional Council) of 23 March 2017.[6]

Civil liability

The Law considers a regime of civil liability in cases where damages are produced that could have been avoided by compliance with the obligation of drafting, disclosing and implementing a vigilance plan.

Consequently, companies can incur civil liability under articles 1240 and 1241 of the French Civil Code, at the condition the failure to comply with their obligations under the law can be linked with the damage suffered by the aggrieved party. In this regard, the burden of proof falls on the aggrieved party, having to demonstrate that the non-compliance led to the damages suffered (article L. 225-102-5 of the Commercial Code).

6 "Décision no. 2017-750 DC du 23 Mars 2017 du Conseil Constitutionnel". Available at: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/decision-n-2017-750-dc-du-23-mars-2017.148843.html.

Additional references

- Cossart, Sandra; Chaplier, Jerome; Beau De Lomenie, Tiphanie (2017), "The French Law on Duty of Care: a Historic Step towards Making Globalization Work for All". *Business and Human Rights Journal*, vol. 2, nr. 2, pp. 317-323.
- *French Law on the Corporate Duty of Vigilance. A Practical and Multidimensional Perspective* (Thematic dossier on the Law on Duty of Vigilance). *Revue Internationale de la Compliance et de l'Éthique des Affaires. Supplément à la Semaine Juridique Enterprise et Affaires*, nr. 50 (14 December 2017). Available at: http://www.bhrinlaw.org/frenchcorporatedutylaw_articles.pdf.
- Guamán, Adoración (2018). "Duty of surveillance, Human Rights and Transnational Corporations: a review of the different models of fight against impunity". *Homa Publica – International Journal on Human Rights and Business*, vol. 2, nr. 1, pp. 138 -184.

v. Luxembourg

INITIATIVE ON DUE DILIGENCE FOR TRANSNATIONAL ENTERPRISES IN LUXEMBOURG

- Civil society initiative
- Launched in 2018

Objective

The **initiative, proposed by civil society organisations on due diligence for transnational enterprises in Luxembourg**[1] aims at regulating mandatory due diligence conforming the Guiding Principles and other regulatory developments that have taken place in Europe. The initiative invites political parties to incorporate this proposal in their election programmes.

Scope of application

Material scope

The bill would require business enterprises to respect, in the course of their activities, the human rights, internationally recognised in the International Bill of Human Rights, in the International Covenant on Civil and Political Rights, in the International Covenant on Economic, Social and Cultural Rights, as well as the rights, recognised in the ILO conventions, ratified by Luxembourg, and the international environmental standards.

1 The initiative is supported by STM, Caritas, Cercle de Coopération, CPJPO, Justice et Pax Luxembourg, etika, Fairtrade Lëtzebuerg, Frères des homme, Greenpeace Luxembourg, OGBL, OGBL solidarité Syndicale, Partage.lu and SOS Faim. "Initiative pour un devoir de vigilance au Luxembourg". Available at: http://astm.lu/wp-content/uploads/2018/03/Proposition-devoir-de-vigilance_partis.pdf.

Personal scope

The initiative proposes for due diligence to be mandatory for transnational enterprises with headquarters in Luxembourg.

Proposals

The initiative recognises the existence of a growing trend towards binding standards in matters of business and human rights. This is reflected in the due diligence regulation that has been implemented in several countries, including at EU level. In this regard, it stresses that binding rules do not affect the competitiveness of these countries.

On the other hand, it points out an increase in the consumption of fair trade products in Luxembourg, which demonstrates a growing awareness in a country that depends on foreign products.

Therefore, the initiative proposes:

1. The adoption of a due diligence law to prevent human rights violations and environmental damages, caused by global activities of transnational enterprises with headquarters in Luxembourg. Furthermore, this law would allow enterprises to better manage the risks their activities involve.
2. The creation of an independent supervision and monitoring body, responsible for ensuring the implementation of due diligence by the companies.
3. The definition of sanctions in case of non-compliance with the due diligence obligations.
4. The creation of an effective mechanism to guarantee access to justice and remedy to victims of corporate abuses.
5. The previous measures must be reflected in the national action plan on business and human rights.

Additional references

- ASTM (2018). “Lancement de l’Initiative pour un devoir de vigilance des entreprises transnationales au Luxembourg”. Available at: http://astm.lu/lancement-de-linitiative-pour-un-devoir-de-vigilance-des-entreprises-transnationales-au-luxembourg.
- DELANO (2018). “Due Diligence Law for Lux Multinationals”. Available at: http://delano.lu/d/detail/news/due-diligence-law-lux-multinationals/173231.

vi. The Netherlands

SECTOR AGREEMENTS FOR RESPONSIBLE BUSINESS CONDUCT

- Multilateral initiative
- Since July 2016
- Textile and garment, banking, gold, sustainable forestry, vegetable proteins, food products and insurance sector

Objective

The **Sector agreements on responsible business conduct**[1] are multilateral voluntary initiatives, signed between the Dutch government, civil society organisations, trade unions and industrial organisations. The goals of the Sector agreements are:

- To improve circumstances for groups exposed to specific risks, caused by the activities of business enterprises and their supply chains, within a period of three to five years after an agreement has been signed.
- To offer a collective solution to problems that businesses are unable to solve entirely or on their own.

Specific objectives

The objective of the **Textile and garment sector agreement**[2] is to improve working conditions, prevent pollution, and promote animal welfare in production countries.

1 "Dutch Agreements on International Responsible Business Conduct". Available at: https://www.imvoconvenanten.nl/agreements?sc_lang=en.

2 "Agreement on Sustainable Garment and Textile". Available at: https://www.imvoconvenanten.nl/garments-textile/~/media/files/internet/talen/engels/2016/agreement-sustainable-garment-textile.ashx.

The aim of the **Banking sector agreement**[3] is to work towards a situation in which human rights are respected by the banks in their financial and lending activities.

The **Gold mining sector agreement**[4] aims at improving supply chain transparency.

In turn, the **Sustainable forestry sector agreement**[5] contributes to the sustainable management of forests and is meant to improve business conduct throughout the entire wood value chain.

The **Vegetable protein sector agreement**[6] promotes a more sustainable production and a higher international availability of vegetable proteins as an alternative for animal protein.

The **Food products sector agreement**[7] aims at minimising the risks of negative impacts, including human rights violations and environmental damage, and at promoting a more sustainable production chain.

Finally, the **Insurance sector agreement**[8] promotes traceability in the international chain of the sector to prevent and tackle human rights violations, environmental damages and animal suffering.

3 "Dutch Banking Sector Agreement". Available at: https://www.imvoconvenanten.nl/banking?sc_lang=en.

4 "Dutch Gold Sector IRBC Agreement". Available at: https://www.imvoconvenanten.nl/gold?sc_lang=en.

5 "Agreement to Promote Sustainable Forestry". https://www.imvoconvenanten.nl/agreements/forestry?sc_lang=en.

6 "Voluntary agreement on international corporate social responsibility (ICSR) in the area of plant proteins". Available at: https://mvonederland.nl/sites/default/files/media/ICSR%20voluntary%20agreement%20on%20plant%20proteins.pdf.

7 "Agreement for the Food Products Sector". Available at: https://www.imvoconvenanten.nl/~/media/files/imvo/voedingsmiddelen/convenant-voedingsmiddelen.ashx.

8 "Agreement for international socially responsible investment in the insurance sector. Available at: https://www.imvoconvenanten.nl/insurance?sc_lang=en.

Background

In December 2013, the Netherlands published their NAP on business and human rights that considers the development of agreements to promote due diligence in those sectors that present a heightened risk of generating adverse impacts and where priority should be given to strengthening due diligence processes.[9]

In April 2014, at the request of the Dutch government, the Social and Economic Council of the Netherlands presented a recommendation regarding sector agreements on responsible business conduct, calling on various sectors and enterprises to take initiative in signing agreements with the government, unions and civil society organisations to address the risks of human rights violations and environmental damages in their supply chain.[10]

In September 2014, the Dutch government published a sector-related risk analysis identifying 13 priority sectors where risks are higher and that require corporate policies to address the adverse impact, generated by their activities and supply chains, among which we find the textile and garment, construction, metallurgy and electronics, oil and gas, agriculture and the food sector, among others.[11]

Since 2016, dialogue was started in several sectors and with different actors in the Netherlands, and the following sector agreements were signed:

- Textile and garment (9 March 2016)
- Banking (28 October 2017)
- Gold mining (9 June 2017)
- Sustainable forestry (22 March 2017)

9 Ministry of Foreign Affairs of the Netherlands (2013). "National Action Plan on Business and Human Rights". Available at: https://www.business-humanrights.org/sites/default/files/documents/netherlands-national-action-plan.pdf.

10 SER (2014). "Agreements on International Responsible Business Conduct. Advisory Report 14/04". Available at: https://www.ser.nl/~/media/files/internet/talen/engels/2014/international-responsible-business-conduct.ashx.

11 KPMG (2014). "MVO Sector Risico Analyse". Available at: https://www.rijksoverheid.nl/documenten/rapporten/2014/09/01/mvo-sector-risico-analyse.

- Vegetable protein (July 2018)
- Food products (29 June 2018)
- Insurance (5 July 2018)

Other agreements in other sectors are currently under development.

Scope of application

Material scope

The Sector agreements focus on the prevention and mitigation of adverse impacts of corporate activities and supply chains in several sectors, in particular related to the following impacts:

- Environmental:
  - Greenhouse gas emissions and air pollution
  - Water and soil pollution
  - Water scarcity
- Labour:
  - Unhealthy and unsafe working conditions
  - Child labour
  - Women's rights
- Human rights:
  - Dispossession of land
  - Deprivation of a clean, safe, healthy living environment
  - Depletion of natural resources

Personal scope

The Agreements apply to sector organisations and companies that voluntarily commit to complying with their provisions.

Requirements for companies

The companies that have signed the Sector agreements commit to implementing due diligence processes in conformance with the Guiding Principles and the OECD sector guidance on due diligence, to prevent and mitigate adverse impacts of their activities and supply chains.

As such, they must adopt the appropriate measures, according to their size and the sector in which they operate, to identify, prevent, mitigate and account on their actual and potential adverse impacts on human and labour rights and the environment.

Risk identification

The companies that have signed the Sector agreements must identify and analyse the adverse impacts, generated by their activities and supply chains. In the case of companies in the textile and garment sector, they shall prepare an action plan, identifying the possible risks their activities can generate.[12] In turn, banks shall request information to their clients to identify adverse impacts their loans or funding can generate.[13] Companies in the mining sector identify negative supply chain impacts by means of a risk management system.[14]

Measures to address identified risks

A second step in the due diligence process consists in preventing or mitigating the risks and impacts identified by means of adopting and implementing appropriate measures. When it is not possible to address all impacts at the same time, priorities must be established to prevent and mitigate irreversible impacts. In this regard, companies in the textile and garment sector include prevention and mitigation measures in an action plan they develop as part of the due diligence implementation process.[15] Banks shall adopt corrective measures, and as final resource at their discretion, they can terminate the

12 Agreement on Sustainable Garment and Textile, *op. cit.*, p. 8.

13 Dutch Banking Sector Agreement, *op. cit.*, pp. 14-15.

14 Dutch Gold Sector IRBC Agreement, *op. cit.*, p. 20.

15 Agreement on Sustainable Garment and Textile, *op. cit.*, p. 8.

relationship with the client to prevent adverse impacts.[16] Companies in the mining sector can design and implement a risk management plan to address the impacts identified.[17]

Assessment of the measures adopted

The Sector agreements require companies to assess the actions following the impacts identified. This assessment can sometimes be done by third parties. For example, in the case of the textile and garment sector, the Sector agreement Secretariat is responsible for assessing the quality and progress of the action plans.[18] In turn, companies in the gold mining sector can carry out or request an audit by independent third parties to verify due diligence practices along the supply chain.[19]

Transparency and monitoring

Companies participating in the Sector agreement shall draft annual reports on the progress made in the implementation of the provisions established in the Agreements. In case the companies fail to report on progress, they shall elaborate the reasons for not complying. The information provided by the companies will be evaluated by the Agreements Steering Group in order to monitor the implementation.

Resolution of conflicts

The Sector agreements include mechanisms for conflict resolution between parties in case of controversies related with the dispositions established in the Agreements. The disputes between the parties will first be tentatively resolved in a bilateral manner. In case an agreement is not reached, the Steering Groups of each Agreement will address the controversy through dialogue between the parties and take a unanimous decision with binding recommendations for the parties involved.

16 Dutch Banking Sector Agreement, *op. cit.*, p. 17.

17 Dutch Gold Sector IRBC Agreement, *op. cit.*, p. 22.

18 Agreement on Sustainable Garment and Textile, *op. cit.*, p. 10.

19 Dutch Gold Sector IRBC Agreement, *op. cit.*, p. 22.

Additional references

- Business & Human Rights Resource Centre. "Dutch Agreements on International Business Responsibility". Available at: https://www.business-human-rights.org/en/dutch-agreements-on-international-business-responsibility.
- CNV International (2017). "Acuerdos sectoriales conjuntos para una conducta empresarial responsable". Available at: http://cgthonduras.org/wp-content/uploads/2017/03/Acuerdos-Sectoriales-conjunto-para-una-conducta-empresarial.pdf.
- Doing Business Right (2017). "The Dutch Agreement on Sustainable Garment and Textile. Taming transnational supply chains via corporate due diligence". Available at: http://www.asser.nl/DoingBusinessRight/Blog/post/the-dutch-agreement-on-sustainable-garment-and-textile-taming-transnational-supply-chains-via-corporate-due-diligence.
- Duval, Antoine; Partiti, Enrico (2018). "The UN Guiding Principles on Business and Human Rights in (National) Action: The Dutch Agreement on Sustainable Garment and Textile". In: *Netherlands Yearbook of International Law 2017*, The Hague: Asser Institute, pp. 381-409.
- Thompson, Benjamin (2018). "The Dutch Banking Sector Agreement on Human Rights: An Exercise in Regulation, Experimentation or Advocacy?" *Utrecht Law Review,* vol. 14, nr. 2, pp. 84-107.

LAW ON CHILD LABOUR DUE DILIGENCE

- Legislation
- Approved by Parliament on 21 February 2017
- Waiting for Senate approval

Objective

The **Law on child labour due diligence**[1] has the fight against child labour as its main target. Therefore, the Law imposes due diligence obligations on companies to avoid that consumers would purchase goods and services produced by means of child labour. Therefore, companies shall adopt reasonable measures to avoid child labour.

As such, companies are expected to avoid the supply of products and services from countries with heightened risk of turning to child labour.

Adoption process

In June 2016, the Labour Party member of Parliament Roelof van Laar presented before the Dutch Parliament a Bill on due diligence to prevent consumers to purchase goods and services produced by means of child labour.

In February 2017, after several amendments to the Child labour due diligence bill, the Lower Chamber of the Dutch Parliament adopted the law with 82 votes in favour out of a possible 150.

On May 14, 2019, the Dutch Senate voted in favor of the adoption of the Law. Its entry into force was scheduled for January 1, 2020. However, due to the delay in the adoption process, the date has not yet been determined. Companies will have six months to fulfill their obligations once it enters into force.

1 "Voorstel van wet van het lid Van Laar houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen (Wet zorgplicht kinderarbeid): 34 506". Available at: https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vk57gun38ytv.

Scope of application

Material scope

Companies need to carry out due diligence processes to identify and prevent child labour in the supply chains. The term child labour, used in the law, is based on the ILO conventions regarding minimum age (nr. 138)[2] and on the worst forms of child labour (nr. 182)[3] referring to child workers as those younger than 12 years old carrying out paid activities, those between the ages of 12 and 14 carrying out other than light work, and as all children submitted to the worst forms of child labour, by means of which they are enslaved, recruited by force, offered for prostitution or trafficking, forced to commit illegal activities or put in danger.

Personal scope

The Law applies to companies registered in the Netherlands, as well as companies from third States selling their products or services on the Dutch market at two or more occasions yearly. The government can exempt from these obligations companies from sectors where the risk of using child labour is minimal. The administrative tool complementing the Law is expected to establish criteria to determine the companies, subject to these provisions, to avoid disproportionate loads for SMEs.

Requirements for companies

Some of the aspects related to the interpretation and implementation of the Law still need to be determined by means of an administrative tool (*Algemene Maatregel van Bestuur*) that will be adopted after Senate approval.

Declaration on due diligence process to prevent child labour in the supply chain

2 "C138 - Minimum Age Convention, 1973 (nr. 138)". Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138.

3 "C182 - Worst Forms of Child Labour Convention, 1999 (nr. 182)". Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312327,en:NO.

The Law determines that companies under the scope of application are required to present a statement before the regulating authority, which is still to be appointed, declaring a due diligence process has been carried out to prevent child labour in the supply chain.

The shape and contents of the statement will be determined by the administrative tool, established by the Law.

The statements of the companies will be published on the website of the regulating authority.

Due diligence

Under the term due diligence, the Law understands the assessment and investigation process of any reasonable suspicion that supplied goods and services along the supply chain could have been produced using child labour. The assessment and investigation shall comply with the standards of the "ILO-IOE Child labour guidance tool for business"[4], jointly created by ILO and the International Organisation of Employers.

If the assessment and investigation indicate that reasonable suspicion exists regarding the use of child labour for the production of a good or service, the company is expected to draft an action plan, in conformance with international standards to prevent this from occurring. The requirements for the action plan still need to be developed and defined by the administrative tool.

Non-compliance with the Law

Companies failing to present their statement will receive a fine of up to 4,100 Euros. The fine can be increased if new complaints are presented, linked with the non-compliance with company obligations or if the company fails to comply with the instructions or mandatory terms of execution, imposed by the regulating authority.

Any person (natural or legal) can file a complaint before the regulating authority on the base of concrete evidence, supporting that the goods or ser-

4 ILO; IOE (2016). ILO-IOE Child labour guidance tool for business: How to do business with respect for children's right to be free from child labour. Geneva: ILO.

vices of a company were produced by means of child labour. Therefore, in first place, a complaint must be presented before the company to be resolved before its complaint or grievance mechanism. If the company fails to resolve the case within six months or this does not lead to a solution, the complaint can be presented before the regulating authority.

If the regulating authority determines the company has failed to carry out a due diligence process in conformance with what is established in the Law, the authority can determine instructions of mandatory compliance for the company and a deadline for their execution. The criteria to assess whether the company's due diligence to prevent child labour was sufficient or not still need to be determined.

On the other hand, if a company is fined twice in a 5-year period, it is foreseen to determine a prison sentence for the manager in charge of the following non-compliance with the provisions of the Law. In this regard, the non-compliance with the Law can involve prison sentences and fines from 750,000 Euros up to 10% of the company's annual turnover.

Additional references

- MVO Platform (2017). "Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law". Available at: https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/.
- van Dam Cees. "Statutory human rights due diligence duties in the Netherlands". Available at: https://www.rsm.nl/fileadmin/Images_NEW/Sites/Chair_IBHR/Publications/Van_Dam_-_Statutory_HRDD_duties_in_NL.pdf.

vii. United Kingdom

SECTION 54 OF THE MODERN SLAVERY ACT ON TRANSPARENCY IN SUPPLY CHAINS

- Legislation
- Approved on 26 March 2015
- In force since 29 October 2015
- Implementation of the second and third pillar of the Guiding Principles

Objective

The goal of the **Modern slavery act**[1] is the fight against slavery and human trafficking in the United Kingdom, through the implementation of issue-related international and European tools. The Law includes **Section 54 on transparency in supply chains**[2] which makes it compulsory for commercial organisations operating in the United Kingdom to inform on the measures adopted to prevent slavery and human trafficking in their global activities and supply chains.

Adoption process

In December 2013, the government of the United Kingdom presented a draft Bill on modern slavery for pre-legislative scrutiny.[3]

In April 2014, a joint Committee of the House of Commons and the House of Lords analysed the Bill and published a report. The Committee took evi-

1 "Modern Slavery Act 2015 (c. 30)". Available at: http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf.

2 "Section 54. Transparency in supply chains etc". Available at: http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted.

3 Home Office (2013). "Draft Modern Slavery Bill". Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266165/Draft_Modern_Slavery_Bill.pdf.

dence from a wide cross-section of interested parties, holding 13 days of oral evidence hearings.[4]

In June 2014, the government responded to the report of the joint Committee.[5]

The Modern slavery act was approved by the United Kingdom Parliament and received royal assent on 26 March 2015.[6]

In October 2015, the Regulations of the 2015 Modern Slavery Act were adopted (Transparency in the supply chain) (SI 2015/1833).

Scope of application

Material scope

Section 54 of the United Kingdom's Modern slavery act requires enterprises to prepare a statement, describing and assessing the steps taken to prevent modern slavery in their operations and supply chains. The term modern slavery includes, on one hand, slavery, servitude and forced or compulsory labour and, on the other hand, human trafficking.

Slavery, servitude and forced or compulsory labour are committed when a person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or when a person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour (Section 1).

4 The Joint Committee on the Draft Modern Slavery Bill (2014). "Report Draft Modern Slavery Bill". Available at: https://publications.parliament.uk/pa/jt201314/jtselect/jtslavery/166/16602.htm.

5 "The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 Hl Paper 166 / HC 1019: Draft Modern Slavery Bill". Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/318771/CM8889DraftModernSlaveryBill.pdf.

6 "Royal Assent". Available at: https://publications.parliament.uk/pa/ld201415/ldhansrd/text/150326-0002.htm#15032625000607.

Meanwhile, human trafficking is committed when a person arranges or facilitates the travel of another person with a view to that person being exploited, regardless of whether the victim consents to the travel. The exploitation linked with human trafficking includes sexual exploitation, forced labour, domestic servitude, removal of organs, offences linked with children, forced marriage and illegal adoption (Section 2).

Personal scope

Section 54 applies to all commercial organisations performing activities or part of its activities supplying goods and services in the United Kingdom with an annual turnover of £36 million (Section 54 (2) and (3)). The term commercial organisations includes body corporates or partnerships which carry on a business, or part of a business, regardless of where they have been registered or formed (Section 54 (12)).

The Government of the United Kingdom estimates that 12,000 companies are required to comply with Section 54 of the Modern slavery act.

Furthermore, it also applies to business registered abroad if they perform part of their activities in the United Kingdom and have an annual turnover of £36 million.

When a parent company and one or more subsidiaries of the same corporate group are required to produce a statement, the parent may produce one statement that subsidiaries can use to meet the requirements of Section 54, provided that the statement fully covers the steps each of the subsidiaries have taken to prevent modern slavery in the relevant financial year.[7]

Territorial scope

Most of the provisions of the Act only apply to England and Wales. However, some provisions also apply to Scotland and Northern Ireland (Section 60).

7 Home Office (2015). "Transparency in the Supply Chain: a Practical Guide". Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf, p. 8.

Requirements for companies

The companies, subject to Section 54 of the Modern slavery act must prepare a slavery and human trafficking statement for each financial year (Section 54 (1)).

Slavery and human trafficking statement

A slavery and human trafficking statement consists in an analysis of the steps taken by the companies during the financial year to ensure that their activities or supply chains are free from modern slavery (Section 54 (4)(a)).

In case a company has not taken any steps to prevent slavery and human trafficking in its activities and supply chains, it must prepare a statement, explaining the lack of measures (Section 54 (4)(b)).

Contents

Section 54 does not contain any indication on how the statement must be drafted or structured nor does it define the level of detail of the information it holds. Companies can prepare them in different ways, depending on their size, type of organisation and activities. Nevertheless, they must contain information relative to the following points (Section 54 (5)):

- The structure of the organisation and its supply chains.
- The organisation's internal policies in relation to slavery and human trafficking.
- The due diligence processes used to identify and prevent slavery and human trafficking in its business and supply chains.
- The identification of its activities or some parts of its supply chain where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk.
- The effectiveness of its policies and measures to ensure that slavery and human trafficking is not taking place in its business or supply chains.
- The training about slavery and human trafficking available to its staff.

In this regard, the statements of the companies could include more detailed information on:

- The sectors in which they operate.
- The countries they source their goods and services from, including high risk countries where modern forms of slavery are prevalent.
- The complexity of the supply chains.
- The businesses operating model.
- The relationships with suppliers and others, including trade unions and other bodies representing workers.
- The recruitment policy.
- Codes of conduct.
- Details of risk management processes, including monitoring and evaluation measures.
- Impact assessments undertaken.
- Business-level grievance mechanisms in place to address modern slavery.[8]

It is recommended to write the statements in simple language that is easily understood and provide appropriate links to relevant publications, documents or policies for the organisation. In this regard, any relevant material, used in reports relative to slavery and human trafficking can be used in the statement.[9]

Approval of the statement

The statements shall be approved and signed by the commercial organisations' senior management. In this regard, when a company is other than a limited liability partnership, the statement must be approved by the board of directors and signed by a director. In the case of limited liability partnerships, it must be approved by the members and signed by a designated member (Section 54 (6)).

8 Ibid., pp. 27-37.

9 Ibid., p. 10.

Publication of the statement

In order to increase transparency, the statements must be made public at the end of the financial year, or within six months after the end of the financial year, on the company's website. The statements must be easily accessible and visible for the general public, including consumers, civil society organisations, investors, among others (Section 54 (7)). If the company has several websites, it is recommended to upload a copy of the declaration or provide a link to the declaration on each website.[10]

Furthermore, it is recommended that organisations keep historic statements available online, allowing the public to compare statements between years and monitor the progress of the organisation in the prevention of modern slavery.[11]

In case the organisation does not have a website, it must provide a copy of the statement to anyone who makes a written request for one. The copy must be provided before the end of the period of 30 days beginning with the day on which the request is received (Section 54 (8)).

Failure to comply with Section 54

If a business fails to comply with the provisions of Section 54, the Secretary of State may seek an injunction through the High Court, requiring the organisation to comply with its obligation (Section 54 (11)). If it fails to fails to comply with the injunction, the company is punishable by a fine. In practice, failure to comply will mean the organisation has not produced a statement, published it on their website or has not set out the steps taken by the organisation in the relevant financial year to prevent modern slavery.[12]

10 Ibid., p. 14.

11 Idem.

12 Ibid., p. 6.

Monitoring and evaluation of the statements

One of the shortcomings of the implementation of the Modern slavery act is that there is no list of companies that are required to comply with the provisions of Section 54. Furthermore, there is no central database where companies can upload their statements.13

However, civil society organisations have undertaken the monitoring and assessment of the statements.14 In this regard, the Business and Human Rights Resource Centre and tiscreport.org have created a register to identify and collect the companies' statements in accordance with Section 54 of the modern slavery act. These registers allow investors, consumers, etc. to assess the companies' progress in the prevention of slavery.

Source: Modern Slavery Registy

Source:TISCREPORT

13 Joint Committee on Human Rights (2017). "Human Rights and Business 2017: Promoting responsibility and ensuring accountability". Available at: https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44308.htm#_idTextAnchor046.

14 Committee of Public Accounts of the House of Commons (2018). "Reducing modern slavery Thirty-Sixth. Report of Session 2017-19". Available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/886/886.pdf.

Additional references

- Craig, Gary (2017). "The UK's Modern Slavery Legislation: An Early Assessment of Progress". *Social Inclusion*, vol. 5, nr. 2, pp. 16-27.
- Haynes, Jason (2016). "The Modern Slavery Act (2015): A Legislative Commentary". *Statute Law Review*, vol. 37, nr. 1, pp. 33-56.
- Lindsay, Rae; Kirkpatrick, Anna; Low, Jo In (2017). "Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights". *Business Law International*, vol. 18, nr. 1, pp. 29-50.
- Martinetto, Sara (2017). "The UK Modern Slavery Act Two Years After: Where do we stand?" Available at: http://www.asser.nl/DoingBusinessRight/Blog/post/the-uk-modern-slavery-act-two-years-after-where-do-we-stand-by-sara-martinetto#_ftnref15.
- Nolan, Justine; Bott, Gregory (2018). "Global supply chains and human rights: spotlight on forced labour and modern slavery practices". *Australian Journal of Human Rights*, vol. 24, nr. 1, pp. 44-69.
- Wen, Shuangge (2016). "The Cogs and Wheels of Reflexive Law - Business Disclosure under the Modern Slavery Act". *Journal of Law and Society*, vol. 43, nr. 3, pp. 327-359.

viii. Switzerland

FEDERAL ACT ON PRIVATE SECURITY SERVICES PROVIDED ABROAD

- Legislation
- Adopted on 27 September 2013
- In force since 1 September 2015
- Surveillance and private security sector

Objective

The **Federal act on private security services provided abroad**[1] aims at safeguarding the internal and external security of Switzerland, realising Switzerland's foreign policy objectives, preserving Swiss neutrality and guaranteeing compliance with International Law, in particular related to human rights and International humanitarian law (article 1).

In order to meet this objective, the Federal act imposes a series of legal obligations and prohibitions on companies providing private security services or services in connection with private security abroad.

Adoption process

In 2005, the Report by the Swiss Federal Council on Private Security and Military Companies concluded it was necessary to adopt legislative measures regarding the contracting of private military and security companies.[2]

1 "Federal Act on Private Security Services provided Abroad (PSSA) of 27 September 2013 (Status as of 1 September 2015)". Available at: https://www.admin.ch/opc/en/classified-compilation/20122320/index.html.

2 Swiss Federal Council (2005). "Report on Private Security and Military Companies". Available at: http://psm.du.edu/media/documents/national_regulations/countries/europe/switzerland/report_swiss_2005_private-security-and-military.pdf.

In 2013, the Federal act on private security services provided abroad and the Ordinance on private security services provided abroad[3] were adopted by the Federal Assembly of the Swiss Confederation.

Scope of application

Material scope

The Federal act covers the provision of private security services or services in connection with private security abroad, to ensure that these are performed in accordance with the rules of the International human rights law and the International humanitarian law. As such, it provides regulations to ensure private security services do not contribute to committing International law violations in third States.

> "Private security services" are understood as those activities, carried out by private companies, related with the protection of persons in complex environments, the surveillance of goods and properties in complex environments, the security at events, the custody and transport of prisoners, operating and maintaining weapon systems, advising members of armed or security forces, among others (article 4.a).
>
> Meanwhile, "services in connection with private security" are understood as those activities related with recruitment or training of personnel for private security services abroad, or providing personnel for a company that offers private security services abroad (article 4.b).

Personal scope

The application of the Federal act covers legal entities and business associations that, from Switzerland, provide private security services abroad; that provide services in Switzerland in connection with private security services; that establish, operate or manage a company in Switzerland that provides private security services abroad or provides services in connection with private security services abroad; and, that exercise control from Switzerland

3 "Ordinance on Private Security Services provided Abroad (OPSA) of 24 June 2015 (Status as of 1 September 2015)". Available at: https://www.admin.ch/opc/en/classified-compilation/20143157/index.html.

over a company that provides private security services abroad or provides services in connection herewith in Switzerland or abroad (article 2.1).

Furthermore, it also applies to natural persons in the service of companies subject to the obligations of the act (article 2.2) and to natural persons who provide private security services abroad or services in connection with private security abroad from Switzerland (article 2.3).

Finally, it applies to federal authorities that contract with companies for the performance of protection tasks abroad (article 2.4).

Requirements for companies

The companies subject to the scope of application of the Federal act are deemed to have acceded to the International code of conduct for private security providers, to declare the provision of private security services or services in connection herewith abroad, to cooperate with the relevant authorities and to preserve documentation, and to comply with specific obligations in connection with subcontracting private security services.

On the other hand, the Federal act explicitly prohibits that the private security services, provided by the companies, are used for direct participation in hostilities in the context of an armed conflict or for committing serious human rights violations.

Accession to the International code of conduct for private security providers

Companies subject to the Act are deemed to have acceded to the International Code of Conduct of Private Security Providers (article 7). This implies compliance with the requirements to request membership of the International Code of Conduct for Private Security Service Providers Association, in charge of the promotion and supervision the implementation of the Code. If a company withdraws its Association membership or the Association decides to exclude it, the competent authority must be informed immediately.[4]

4 Article 2 of the Ordinance on private security services provided abroad; Federal Department of Foreign Affairs (2016). "Guidelines to the Federal Act on Private Security Services provided

Declaration of its activities

Companies intending to provide private security services abroad or services in connection with private security abroad are deemed to inform the Directorate of Political Affairs of the Federal Department of Foreign Affairs (FDFA)[5] of their intention in advance.

The declarations of the companies must be submitted together with documents containing information regarding the following points (article 10):

- The nature, provider and place of performance of the intended activity.
- Details on the principal and on the recipient of the service for an evaluation of the situation.
- The personnel to be deployed for the intended activities and the training they have received.
- An overview of the business sectors in which the company is active.
- Proof of accession to the Code of conduct of private security providers.
- The identity of all persons bearing responsibility for the company.
- Furthermore, the declarations shall contain detailed information on the activity:
- The nature of the Service.
- The weapons and other means used to provide the private security service.
- The extent and duration of the operation.
- The place where the activity is carried out.
- The risks that the activity entails.[6]
- With regard to the company:

Abroad (PSSA)". Available at: https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/wegleitung-BPS-ausland_EN.pdf, p. 27.

5 Article 3 of the Ordinance on private security services provided abroad; ibid., p. 22.

6 Article 4 of the Ordinance on private security services provided abroad.

- The company name, registered office and legal form, as well as an extract from the commercial register, the objectives, areas of operation abroad and main categories of clients.
- The name, date of birth, nationality and certificate of residence of the members of the management and supervisory bodies.
- The measures taken for the basic and advanced training of personnel.
- The internal control system for personnel.[7]
- With regard to the persons who carry out management duties within the company or who are authorised to carry a weapon in the course of the activities for the company:
- The name, date of birth, nationality and certificate of residence.
- The required authorisation under the relevant law for exporting, carrying and using a weapon, weapons accessories and ammunition.
- The basic and advanced training in the fields of fundamental rights and international humanitarian law.
- The basic and advanced training in the use of weapons and aids as well as the use of force and other police measures.[8]

The documents must be presented in orderly fashion to ensure a swift and efficient evaluation of the declaration.[9]

If any significant change in circumstances occurs, subsequent to the declaration, the company shall notify the competent authority without delay (article 10.3).

The companies shall refrain from carrying out the declared activities until they have received notification from the competent authority, stating no grounds were found to start a review process or, if there is one, that the review process has not led to any restriction of the declared activity (article 11).

7 Idem.

8 Idem.

9 Federal Department of Foreign Affairs (2016). *op. cit.*, pp. 19-20.

Review procedure

The competent authority will start a review procedure when (article 13):

- There are indications that suggest that the declared activity could be in conflict with the general aims of the Federal act.
- A significant change in the circumstances relating to a declared activity has occurred.
- An activity has not been declared.
- The possibility exists to incur in a violation of Swiss law or International law.

If the competent authority deems necessary to initiate a thorough review, it shall notify the company within 14 days after the start of the review procedure. During this process, the competent authority can request more information from the company on the private security service it intends to provide.

The company shall refrain from carrying out the declared activity until the review procedure has been concluded, except if there is overriding public or private interest in doing so, according to the discretionary power of the competent authority (article 11.2). The Federal act establishes that the duration of the procedure is 30 days, which may be extended according to the complexity of the circumstances (article 13.4).

Once the review procedure has been concluded, the competent authority will notify the company on whether or not there is a prohibition to carry out the declared activity. The full or partial prohibition of a private security service that is contrary to the aims of the Federal act can be declared (article 14). For example, when a private security service is constituted in support of one of the parties of an armed conflict that affects the neutrality of Switzerland, or when Swiss efforts to comply with its international human rights and Humanitarian law obligations are put at risk.

The prohibition is published in the form of a substantiated decree which can be contested at the Federal Administrative Court, pursuant to article 50 of the Federal act on administrative procedure, within a period of 30 days.[10]

10 Ibid., p. 26.

Requirement to cooperate and keep records

Companies shall provide the competent authority with all the information required, and shall submit to it all the necessary documents for the review of their declarations (article 18). When a company fails to satisfy its requirement to cooperate, the competent authority may take several oversight measures, including on-site inspections of company premises, examination of relevant documents and the seizure of material (article 19).

On the other hand, companies are obliged to keep records of their activities, allowing them to provide the following information and documents at any time:

- The identity and address of the principal, the provider and the recipient of the service.
- A copy of the contract concluded for providing services.
- The identity of the persons implementing the contract.
- Details of the equipment used, in particular weapons.
- Documentary evidence of performance of the contract, such as contractual documents and relevant authorisations.

The members of the management board shall retain the information for ten years, even after the company has ceased its business activities.[11]

Obligations in connection with the subcontracting of private security services

When a company subcontracts the provision of a private security service or of a service connected with private security, it shall ensure that the subcontracted company complies with the obligations set out in the Federal act (article 6). As such, the subcontracted company is obliged to declare its activities and accede to the International Code of Conduct for Private Security Service Providers.

11 Article 11 of the Ordinance on private security services provided abroad; ibid., p. 28.

Legal prohibitions

1. Direct participation in hostilities

In first place, the Federal act prohibits private security services or services connected with private security, provided by companies, to constitute individual or collective actions causing civilian or military damage in support of one of the parties in an armed conflict (article 8). For example, the performance of a combat function for a conflict party or the identification of targets in a conflict zone for aerial attacks constitutes direct participation in hostilities.[12]

2. Serious violations of human rights

In second place, the Federal act prohibits private security services or services connected with private security, provided by companies, to be used by the recipients of the services for the commission of serious human rights violations (article 9), such as torture and other cruel, inhumane or degrading treatment or punishment, deprivation of liberty or systematic suppression of the freedom of expression.

Noncompliance with the Federal act

The competent authority is obliged to report to the Office of the Attorney General of Switzerland for the investigation and prosecution of actions in contravention of the provisions of the Federal act.[13]

In case of non-compliance, the Federal act includes criminal sanctions, ranging from monetary penalties to custodial sentences for company directors or employees who, intentionally or due to negligence, fail to comply with one of the obligations or perform one of the legally prohibited actions, stipulated in the Federal act.

On their side, companies can be sanctioned with fines or even receive an order of dissolution or liquidation of the company if their activity contravenes

12 Ibid., p. 32.

13 Ibid., pp. 36-38.

a legal prohibition or fails to comply with a requirement of the competent authority (articles 21-27).

Additional references

- Information Platform (2015). "Law on the control of the activities of Swiss security service providers abroad". Available at: https://www.humanrights.ch/en/switzerland/foreign-affairs/foreign-trade/transnational/law-control-activities-swiss-security-service-providers-abroad.

RESPONSIBLE BUSINESS INITIATIVE

- Popular initiative
- Launched on 21 April 2015

Objective

Popular initiatives in Switzerland intend to amend the Federal Constitution. To do so, they require 100,000 signatures within a period of 18 months in order to be presented before the Federal Council and the Parliament (article 139 of the Federal Constitution of Switzerland).

The **Responsible business initiative**[1] intends to reform the Swiss Federal Constitution in order to incorporate Article 101a on "responsibility of business". Following this constitutional provision, a legal framework needs to be developed, legally requiring companies in Switzerland to carry out due diligence, in order to improve the protection of the environment and the respect for human rights in their business activities, both at the national level as abroad.

Background

On 2 May 2014, the Swiss government published a report on the legal obligations of company directors to carry out due diligence processes with respect to activities abroad.[2] This report identified possible measures that could be adopted in Corporate law to promote business responsibility in the respect for human rights.

1 "Swiss Coaliton for Corporate Justice". Available at: http://corporatejustice.ch/initiativtext/.

2 "Rapport de droit comparé. Mécanismes de diligence en matière de droits de l'homme et d'environnement en rapport avec les activités d'entreprises suisses à l'étranger". Available at: https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2014/2014-05-28/ber-apk-nr-f.pdf.

On 1 April 2015, the Swiss government published a Position paper on corporate social responsibility, presenting four strategies for the period 2015-2019 regarding this matter: 1) develop the definition of corporate social responsibility within international fora, such as the United Nations and the OECD; 2) support companies implementing their corporate social responsibility; 3) promote corporate social responsibility in developing countries; and 4) work for the improvement of corporate transparency.[3]

In March 2015, the National Council (Lower chamber of the Parliament) rejected a motion requesting to draft a bill imposing the obligation of due diligence on companies.[4]

On 21 April 2015, a coalition of Swiss civil society organisations working in human rights, development and environmental protection launched the Responsible Business Initiative.[5]

On 10 October 2016, 120,000 signatures were officially presented, supporting the Popular initiative, which was then submitted to the Federal Council and, subsequently, to the Parliament, for a discussion on the proposal and the drafting of a possible counter-proposal, before it is submitted to the popular vote, requiring a double majority (majority of the electorate and of the cantons) to be adopted.

On 15 September 2017, the Federal Council of the Government of Switzerland recommended Parliament to reject the initiative, without presenting a counter-project.[6]

3 "Position et plan d'action du Conseil fédéral concernant la responsabilité des entreprises à l'égard de la société et de l'environnement". Available at: http://www.news.admin.ch/NSBSubscriber/message/attachments/38882.pdf.

4 "Motion 14.3671: Mise en œuvre du rapport de droit comparé du Conseil fédéral sur la responsabilité des entreprises en matière de droits humains et d'environnement". Available at: https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20143671.

5 "The initiative text with explanations". Available at: http://corporatejustice.ch/wp-content/uploads/2017/11/The-initiative-text-with-explanations.pdf.

6 "Initiative populaire «Entreprises responsables»: le Conseil fédéral reconnaît le bien-fondé de l'objectif mais choisit une autre voie". Available at: https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-68134.html.

On 13 November 2017, the Commission on Judicial Affairs of the National Council (Upper chamber of the Parliament) decided to present a counter-proposal.[7]

On 11 December 2017, the Commission on Legal Affairs of the National Council decided not to support the counter-proposal of its fellow commission.

On 2 May 2018, the Commission on Judicial Affairs reviewed its position and presented a legislative proposal before the National Council.

On 14 June 2018, the plenary session of the National Council adopted the legislative proposal, which needs to be voted by the Council of States.

Scope of application

Material scope

Companies must respect in the course of their activities, both at national level as abroad, the human rights that are internationally recognised in the International Bill of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as the eight fundamental ILO conventions.

Furthermore, they shall respect the international environmental rules, derived from legislative processes at international level, as well as the environmental standards that are generated in the framework of international organisations, such as the ISO standards or the IFC environmental and social performance standards (article 101a(2)).

Personal scope

The regulatory framework, proposed by the Popular initiative, must encompass the companies, domiciled in Switzerland. The concept of domicile is based on the 2007 Lugano Convention regarding jurisdiction and the ex-

7 "La Commission Décide d'Opposer un Contre-Projet Indirect à L'initiative Pour des Multinationales Responsables". Available at: https://www.parlament.ch/press-releases/Pages/mm-rk-s-2017-11-14.aspx?lang=1036.

ecution of judicial resolutions in civil and trade matters, therefore, all companies that have their registered office, central administration or principal place of business in Switzerland are subject to this regulatory framework (article 101a(2)).

These companies shall ensure that human rights and international environmental standards are respected by the companies under their control. Controlled companies are generally subsidiaries of parent companies. However, in certain cases, a parent company could also *de facto* control another company through the exercise of economic control (article 101a(2)(a)).

Requirements for companies

The Popular initiative includes three key elements that need to be developed within the regulatory framework to meet the overall goal of strengthening the respect for human rights and the protection of the environment in business activities.

Mandatory due diligence

The first element, included in the Popular Initiative, is mandatory due diligence, article (101a(2)(b)). The companies domiciled in Switzerland are deemed to identify, prevent, mitigate and account on the actual and potential impacts of their activities on internationally recognised human rights and the environment. This obligation extends to the activities of subsidiaries and *de facto* controlled companies.

Mandatory due diligence, to be drafted by the Swiss legislator, must be based on the Guiding Principles and the OECD Guidelines.

Furthermore, it includes that companies shall perform environmental sustainability assessments, according to what is established in the OECD Guidelines to comply with the requirements of a due diligence process.

Small and Medium-sized Enterprises are generally exempted from the legislative obligations, proposed by the Initiative, unless they operate in high-risk

sectors such as the mining sector, or the companies trading raw materials such as gold, diamonds or tropical wood.

Civil liability

The Popular Initiative includes civil liability of parent companies for harm in case of violations of human rights or environmental standards, committed by companies under their control. This civil liability regime is based on article 55 of the Swiss Code of Obligations.

The preceding implies that, in cases where Swiss companies did not adopt the necessary measures to prevent human rights violations or environmental impacts, they can be held responsible for the damage, caused by companies under their control in third States.

Therefore, the victims abroad can turn to Swiss courts of justice to seek compensation for damages suffered, at the condition the damage is demonstrated, as well as the relationship of control and the causality between the damage and the company's action or inaction.

However, the Popular initiative also proposes a defence mechanism for companies, meaning they will not be held responsible if they can demonstrate they adopted all the necessary due diligence measures to prevent the damage, or that the damage would have occurred even if all due care had been taken.

Imperative rule

The Popular Initiative includes an imperative character in the legal framework it adopts for the implementation of the constitutional provision (police laws). Taking into account that Swiss courts generally apply Foreign law in cases of international private situations, more in particular the law of the location where the damage occurred, the legislator is proposed to determine the imperative character of the legal framework which is created, based on the constitutional provision, meaning that in cases of international private situations, the substantial Swiss rules will be applied, regardless of the applicable law under Private international law ensuring the application of the basic dispositions with fundamental significance for the State and the in-

ternational community, such as the protection of the environment and the respect for human rights.

As such, the imperative character of the rule guarantees that the legal framework, implemented by the constitutional provision on the obligation of corporate due diligence, is effectively applied.

The Counter-Proposal to the Popular initiative

The **Counter-Proposal**[8] of the Commission on Legal Affairs of the National Council is set in the framework of the Corporate law review. This review considers legal measures to tackle human rights violations and the non-compliance of international environmental standards by companies, registered in Switzerland.

Mandatory due diligence

The Counter-Proposal takes over mandatory due diligence in the same line as the Guiding Principles and the OECD Guidelines. Therefore, companies shall adopt the necessary measures to guarantee compliance with their sector-relevant provisions regarding respect for human rights and protection of the environment in their activities, including those abroad.

To do so, companies need to identify and assess actual and potential impacts of their activities on human rights and the environment. Once the risks are identified, companies need to adopt the appropriate measures to prevent, mitigate and, if necessary, remediate them. Furthermore, they need to monitor the effectiveness of the measures adopted.

These due diligence obligations extend to impacts of activities by controlled companies or by business relationships with third parties (article 716a of the Code of Obligations).

8 "Counter-proposal by the Swiss Parliament to the citizen initiative Responsible Business Initiative". Available at: http://www.bhrinlaw.org/180508-swiss-parliament-counter-proposal_unofficial_en-translation_updated.pdf.

The companies, subject to these obligations, shall draft a report on the compliance with the respect for human rights and the protection of the environment in their global activities. This report will be made available to the public (article 961e of the Code of Obligations).

Personal scope

The Counter-Proposal includes that due diligence is mandatory for companies which, alone or together with one or more domestic or foreign companies, exceed two of the following values in two consecutive financial years (Art. 716a bis (3) of the Code of Obligations):

- Balance sheet total of 40 million Swiss francs
- Sales of 80 million Swiss francs
- 500 fulltime positions on annual average

Due diligence will also be mandatory for companies whose activities, including abroad, entail a particularly high risk of violating human rights or damage the environment. However, it is not applicable to companies whose activities generate a minor risk (Art. 716a bis (4) of the Code of Obligations).

Civil liability

The Counter-Proposal establishes civil liability for parent companies in case their subsidiaries commit human rights violations or cause environmental damages, affecting the right to health, personal integrity or property (article 55.1bis of the Code of Obligations).

However, they will not be held responsible if the damages are caused by companies which are simply economically dependent on the parent company (article 55.1ter of the Code of Obligations).

Furthermore, they will not be held responsible either if they can demonstrate they have adopted all the appropriated measures to prevent damages or they have not been able to influence the conduct of the subsidiary (article 55.1bis of the Code of Obligations).

Additional references

- Bueno, Nicolas (2018). "The Swiss Popular Initiative on Responsible Business from Responsibility to Liability". Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3125672.
- George, Anya; Burckhardt, Peter (2017). "Business and Human Rights - What Swiss companies need to know". Available at: https://www.lexology.com/library/detail.aspx?g=483d670c-93cb-4480-b518-a604b7aa9489.
- Miserez, Marc-André (2017). "Paradise Papers fuel Swiss better business initiative - for now". Available at: https://www.swissinfo.ch/eng/corporate-responsibility_can-the-paradise-papers-fuel-switzerland-s-better-business-initiative-/43678910.
- Tognina; Andrea (2018). "Vía parlamentaria a empresas responsables". Available at: https://www.swissinfo.ch/spa/iniciativa-y-contraproyecto_v%C3%ADa-parlamentaria-a-empresas-responsables-/44190184.

d. Asia

i. China

GUIDELINES FOR SOCIAL RESPONSIBILITY IN CHINESE OUTBOUND MINING INVESTMENTS

- Voluntary initiative
- Published on 24 October 2014
- Mining investment sector

Objective

The objective of the **Guidelines for Social Responsibility in Chinese Outbound Mining Investments**[1] is to regulate investments and operations of the Chinese mining sector abroad and orient Chinese companies to improve corporate social responsibility and their sustainability strategies, as well to establish risk management systems.

Scope of application

Material scope

The Guidelines provide orientation for Chinese mining investors to identify priority issues regarding social responsibility, disclosure of information on social responsibility and continuous improvement of performance with respect to the principles and requirements established in the Guidelines, which are essentially structured along the principles and core subjects of ISO Standard 26000:2010 on social responsibility, with some exceptions to better reflect the specifics of the mining industry. To do so, the Guidelines take into account the ten principles of the United Nations Global Compact and other international standards and initiatives.

1 CCCMC (2014). *Guidelines for social responsibility in Chinese outbound mining investments*. Beijing: CCCMC.

Personal scope

These Guidelines apply to Chinese companies dedicated to the exploration, extraction, processing and cooperation for project investments, including other related activities such as the building of infrastructure related to mining development abroad, in which Chinese companies have invested.

Structure

The Guidelines are divided into three chapters:

1. Chapter 1 summarises the scope of the Guidelines and defines the Guiding Principles for social responsibility. The seven Guiding Principles represent the global commitment towards social responsibility for mining investments abroad.
2. Chapter 2 specifically summarises the requirements of social responsibility for mining investments abroad.
3. Chapter 3 includes an explanation on how these Guidelines should be implemented and how the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters will support and monitor their implementation.

Guiding Principles

Companies within the scope of application of the Guidelines commit to:

1. Ensure compliance with all applicable laws and regulations.
2. Adopt ethical trade practices.
3. Respect human rights and protect the rights and interests of the workers.
4. Respect nature and protect the environment.
5. Respect stakeholders.
6. Strengthen the responsibility throughout the mining industries value chain.
7. Increase transparency.

Requirements for companies

- **Organisational governance**
  - Outline social responsibility goals, policies and plans for economically, socially and environmentally affected areas, and diffuse them within as well as outside the companies, in order to establish a common understanding.
  - Incorporate the principles and requirements of the Guidelines, as well as the corresponding goals, policies and plans in the decision-making system at the highest levels, and in the company's organisational structure.
  - Develop indicators of economic, social and environmental impact, implement a comprehensive control and assessment system, and set objectives for continuous improvement.
  - Establish a plan to strengthen the capacity to increase knowledge regarding responsibility and disclose the company's goals, policies and plans.
  - Map all stakeholders and parties affected.
  - Strengthen transparency and report regularly and appropriately to the stakeholders on decisions involving social and environmental impacts.

- **Fair operating practices**
  - Draft and implement a declaration or policy on ethical business conduct.
  - Develop a compliance and integrity system and ensure its implementation, including an independent system for audits, effective internal control, due diligence, risk assessment, training for personnel in situations of risk and grievance and sanctioning mechanisms.
  - Prevent and control bribery and other forms of corruption in the supply chain.
  - Respect intellectual property rights

- **Value chain management**
  - Require providers to adopt the principles and requirements, established in the Guidelines.
  - Establish goals to ensure responsible procurement and develop the pertinent policies in the company.
  - Set a clear goal regarding local procurement, indicating what and how will be purchased as supplies for the project in progress in a specific country.
  - Companies dedicated to advanced mining development activities shall adopt a due diligence process and an internal control system to evaluate risks in their supply chain.

- **Human rights**
  - Comply with the Guiding Principles on business and human rights throughout the entire duration of the mining Project.
  - Ensure they are not accomplices in human rights violations.
  - Reduce as much as possible involuntary resettlement of persons residing in mining areas and fairly compensate them when it is inevitable.
  - Respect the culture and protect the heritage of local communities and indigenous peoples, minimise cultural impact and not damage the cultural traditions of the local population by the mining operation.
  - Guarantee the right to free, prior and informed consent of local communities, including indigenous peoples.
  - Study the supply chain due diligence process in order to prevent engagement with materials that may have funded conflicts.

- **Labour practices**
  - Not turn to child labour, not impose forced or compulsory labour and protect the rights of young workers.
  - Ensure impartial and fair employment, based on work contracts and legal requirements.
  - Not discriminate workers for reasons of race, skin colour, gender, religion, political ideology, opinions, nationality or social status, or any other type of conditions in the process of access to employment.
  - Comply with the laws and industry standards regarding minimum wages and pay social security fees.
  - Comply with international regulations regarding working hours, overtime and yearly vacations.
  - Establish a collective bargaining system between employees and employers, in accordance with the laws and local customs.
  - Establish a communication channel and grievance mechanism between company and employees.

- **Occupational health and safety**
  - Implement an occupational health and safety management system that includes a routine system for the detection of health and safety risk, as well as an emergency response plan.
  - Take all the practical steps to avoid work accidents, injuries and occupational illnesses.
  - Provide employees with regular training on health and safety.

- **Environment**
  - Draft an environmental management system and adapt it to the laws and regulations of the hosting countries.
  - Perform environmental impact evaluations before carrying out any mining activity, and periodically monitor environmental impacts.
  - Develop mine rehabilitation and closure plans before the start of the operation.
  - Regularly assess and mitigate adverse impacts on soil, air and water, caused by mining operations.
  - Develop and implement a system to reduce waste and emissions.
  - Ensure safe storage and elimination of waste.
  - Develop and implement plans to reduce greenhouse gas emissions.
  - Promote conservation and protection of biodiversity and the environment throughout the entire development cycle and value chain of the mining operation.

- **Community engagement**
  - Carry out social impact assessments and inform potentially affected parties as soon as possible through regular communications mechanisms.
  - Ensure culturally appropriate communication with parties affected, including indigenous peoples and vulnerable groups.
  - Establish a formal grievance mechanism for community issues.
  - Respect cultural traditions and religious beliefs, and protect the community heritage.
  - Contribute to the community development through the outline and implementation of community development plans with local stakeholders.

Additional references

- Chow, Daniel (2012). "China and Human Rights in International Trade". South *Carolina Journal of International Law and Business*, vol. 9, nr. 1, pp. 13-38.
- Dorn, James A. (1996). "Trade and Human Rights: The Case of China". *Cato Journal*, vol. 16, nr. 1, pp. 77-98.
- Subedi, Surya P (2015). "China's Approach to Human Rights and the UN Human Rights Agenda". *Chinese Journal of International Law*, vol. 14, nr. 3, pp. 437-464.
- Tay, Alice E. S.; Redd, Hamish (2002). "China: Trade, Law and Human Rights". *International Trade and Business Law Annual*, vol. 7, pp. 301-324.
- Zhao, Jingchen (2014). *Corporate Social Responsibility in Contemporary China*. Cheltenham-Northampton, MA: Edward Elgar.

CHINESE DUE DILIGENCE GUIDELINES FOR RESPONSIBLE MINERAL SUPPLY CHAINS

- Voluntary due diligence initiative
- Published on 2 December 2018
- Mining sector

Objective

The objective of the **Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains**[1] is to provide guidance to all Chinese companies which are extracting or using mineral resources and their related products, and are engaged at any point in the supply chain of minerals to identify, prevent and mitigate their risks of directly or indirectly contributing to conflict, serious human rights abuses and risks of serious business misconduct, as well as for compliance with the Guiding Principles on business and human rights throughout the entire lifecycle of the mining project.

Specific objectives

Companies incorporating the Guidelines are expected to obtain the following benefits:

1. Increased ability to meet expectations of customers and markets on responsible mineral resources.
2. Enhanced understanding, data collection and management on a company's mineral resource supply chains and sourcing strategies, to enable more informed and strategic decision-making.
3. Improve the reputation of participating companies and of the Chinese industry.
4. Decreased disruptions in supply caused by conflict and weak governance.

1 CCCMC (2018). *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*. Beijing: CCCMC.

5. Provide guidance for companies wanting to undertake supply chain due diligence in natural resources other than minerals.

Background

On 24 October 2014, the Guidelines for Social Responsibility in Chinese Outbound Mining Investments were launched by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters[2], which establish in their Clause 2.4.6 that Chinese mining companies, undertaking outbound mining investment, cooperation and trade, are required to strictly observe the Guiding Principles throughout the entire life-cycle of the mining project and to strengthen the responsibility throughout the extractive industries value chain. Furthermore, they contain requirements to carry out risk-based supply chain due diligence to prevent engagement with materials that may have funded or fuelled conflicts.

Scope of application

Material scope

These Guidelines provide a basic 5-step model for carrying out risk-based supply chain diligence, in accordance with the Guiding Principles and the OECD due diligence guidance for responsible supply chain of minerals in conflict-affected or high-risk areas.

Personal scope

The Guidelines apply to all Chinese companies which are extracting, trading, processing, transporting, or otherwise using mineral resources and their related products and are engaged at any point in the supply chain of mineral resources and their related products.

2 CCCMC (2014). *Guidelines for Social Responsibility in Chinese Outbound Mining Investments*. Beijing: CCCMC.

Therefore, they target all Chinese companies which are engaged in both the upstream, i.e. resource exploration, extraction, trading, transporting and storing up to processing, including refining, or smelting; and the downstream parts that are engaged in using mineral resources and their related products of the supply chain (for example, electronics, electrical appliances, instruments, jewellery, communications equipment, etc.).

"Chinese company" means legal (for-profit) entities which are registered in China or overseas companies (including subsidiaries) which are wholly- or majority- owned or controlled by a Chinese entity or individual.

Requirements for companies

All companies within the scope of application of the Guidelines shall carry out the 5-step risk-based supply chain due diligence framework.

Step 1. Establish strong company risk management systems

- Adopt, and clearly communicate to suppliers and stakeholders, a company policy for the mineral supply chain originating from conflict-affected and high-risk areas.
- Structure internal management to support supply chain due diligence
- Establish a system of controls and transparency over the mineral supply chain.
- Strengthen company engagement with suppliers.
- Establish a company-level, or industry-wide, grievance mechanism as part of an early-warning risk-awareness system.

All companies which are extracting, trading, processing, transporting, or otherwise using mineral resources and their related products and are engaged at any point in the supply chain of mineral resources shall make good faith efforts to identify the presence of any of the "warning signs" in their supply chains.	
Warning Sign locations of resource origin and transit	1. The mineral resources originate from or have been transported through a conflict-affected or high-risk area. 2. The resources are claimed to originate from a country that has limited known reserves. 3. The mineral resources are claimed to originate from a country through which resources from conflict-affected and high-risk areas are known or reasonably suspected to transit. 4. The resources are claimed to originate from recyclable/scrap or mixed sources and have been processed in a country where these resources from conflict-affected and high-risk areas are known or reasonably suspected to transit. 5. The mineral resources originate from a conflict-affected or high-risk area that is known to suffer from large scale environmental degradation, to be in the vicinity of world heritage sites, to endure land infringements, or where the worst forms of child labour are prevalent.
Supplier Warning Signs	1. Suppliers or other known upstream companies operate in locations that exhibit the warning signs above, or have shareholder or other interests in suppliers from one of the abovementioned warning sign locations. 2. Suppliers or other known upstream companies used to purchase resources from one of the above-mentioned warning sign locations.
Circumstantial Warning Signs	Anomalies or unusual circumstances are identified through the information collected in Step 1 which give rise to a reasonable suspicion that the mineral resources may contribute to conflict or serious abuses associated with the extraction, transport or trade of said resource.

Step 2. Identify and assess risk in the supply chain

- Upstream companies should gather, examine and verify chain of custody or traceability information as appropriate and engage with suppliers to identify risks and confirm basic source information of materials and any potential warning signs in the supply chain.
- Downstream companies should identify products containing relevant minerals and use best faith efforts to identify the key upstream actors in the supply chain.

The Guidelines define two different kinds of risk: Type 1 and Type 2.

Type 1 Risks are risks of contributing to conflict and serious human rights abuses associated with extracting, trading, processing, and exporting of resources from conflict-affected and high-risk areas.

- Risks of committing, profiting from, assisting to, facilitating, sourcing from or being linked to any party committing, profiting from, assisting to, or facilitating any form of torture, cruel, inhuman and degrading treatment; any form of forced labour; war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide; among others.
- Risks of providing, sourcing from or being linked to any party providing direct or indirect support to non-state armed groups.
- Risks relating to public or private security forces.
- Risks of contributing to, sourcing from or being linked to any party contributing to serious business misconduct.

Type 2 includes risks associated with serious business misconduct in environmental, social and ethical issues.

- Breaking Chinese or host country laws and regulations or industry minimum standards.
- Employing children under the minimum working age as legally prescribed by the host country regulations.
- Disrespecting the rights and interests of young workers.
- Extracting or sourcing resources from land where the free, prior and informed consent of local communities and indigenous peoples has not been obtained.
- Failing to take proactive steps to respect all other principles set forth in the Chinese Responsible Mining Guidelines.

Step 3. Design and implement a strategy to respond to identified risks

- Report findings of the supply chain risk assessment to the designated senior management of the company.
- Devise and implement a risk management plan.
- Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management.
- Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

Step 4. Carry out independent third-party audit and identify bottlenecks in the supply chain

- The primary objective of third-party audit and certification is the expression of confidence to external stakeholders that a company has appropriate and effective policies in place to prevent, identify, and mitigate risks in their mineral supply chains and source conflict-sensitively and responsibly.

Step 5. Report on progress and results of supply chain risk management

- Companies should publicly report on their supply chain due diligence policies and practices, including on identified risks and steps taken to mitigate these risks, and may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral resource supply chain due diligence.

Additional references

- Chow, Daniel (2012). "China and Human Rights in International Trade". South *Carolina Journal of International Law and Business*, vol. 9, nr. 1, pp. 13-38.
- Dorn, James A. (1996). "Trade and Human Rights: The Case of China". *Cato Journal*, vol. 16, nr. 1, pp. 77-98.
- Subedi, Surya P (2015). "China's Approach to Human Rights and the UN Human Rights Agenda". *Chinese Journal of International Law*, vol. 14, nr. 3, pp. 437-464.
- Tay, Alice E. S.; Redd, Hamish (2002). "China: Trade, Law and Human Rights". *International Trade and Business Law Annual*, vol. 7, pp. 301-324.
- Zhao, Jingchen (2014). *Corporate Social Responsibility in Contemporary China*. Cheltenham-Northampton, MA: Edward Elgar.

e. Oceania

i. Australia

MODERN SLAVERY BILL

- Bill
- Presented on 28 June 2018[1]

Objective

The **Modern slavery bill**[2] sets requirements for specific companies and other entities to report annually on the risks of turning to practices of modern slavery in their operations and supply chains, as well as on the actions and measures adopted to address these risks.

Adoption process

On 15 February 2017, the Parliament of Australia started an inquiry on the adoption of domestic legislation to fight modern slavery in the same way as the 2015 United Kingdom's Modern slavery act.[3]

1 The preparation of the presentation culminated before the adoption and actual sanction of the Modern Slavery Law at the end of 2018. Therefore, the content is based on the Bill despite the fact that this regulation has entered into force on January 1, 2019.

2 Parliament of Australia (2018). "A Bill for an Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes". Available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbills%2Fr6148_first-reps%2F0000%22;rec=0.

3 Parliament of Australia (2017). "Inquiry into establishing a Modern Slavery Act in Australia". Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Terms_of_Reference.

In August 2017, the Parliament of Australia presented an interim report on supply chain transparency. This interim report points out the strong support of companies, trade unions and NGOs for supply chain reporting requirements for companies and entities operating in Australia. The report recommends the Australian government to consider the possibility of adopting a modern slavery act in Australia, including supply chain transparency requirements.[4]

On 16 August 2017, the Australian Government announced its intention of introducing legislation requiring large companies operating in Australia to report on the measures adopted to tackle modern slavery, including in their supply chains, by means of annual statements. The then Minister for Justice published a consultation document on the model, proposed by the Australian Government.

Between August and December 2017, several roundtable consultations were held in Canberra, Melbourne, Sidney and Perth, to allow stakeholders to engage in the design of the Modern slavery act. Furthermore, written contributions were requested for submission by 20 October 2017.

On 7 December 2017, the Parliament of Australia presented its final report, in which the final recommendations for the Government of Australia had been drafted. Among them, the proposal to create a central repository of statements from entities, funded by the Government and administered by civil society; sanctions for entities failing to comply with the legislative provisions; a public list of entities with reporting requirement; among others.[5]

On 15 February 2018, Alex Hawke, Assistant Minister for Home Affairs, reaffirmed the commitment of the Australian Government to introduce a

4 Parliament of Australia (2017). "Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia". Available at: http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024092/toc_pdf/Modernslaveryandglobalsupplychains.pdf;fileType=application%2Fpdf.

5 Parliament of Australia (2017). "Hidden in Plain Sight. An inquiry into establishing a Modern Slavery Act in Australia". Available at: http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf.

modern slavery act to the Parliament during the first half of 2018, to be enacted by the end of 2018.[6]

In May 2018, the Government of Australia announced the key features of the modern slavery act.[7]

On 28 June 2018, the Government of Australia presented the Modern slavery bill before the Parliament.[8]

On 28 June 2018, the Senate referred the provisions of the Modern slavery bill to the Legal and Constitutional Affairs Legislation Committee for inquiry and report.[9]

Scope of application

Material scope

The Bill imposes requirements regarding annual reporting on the risk of committing modern slavery practices in the commercial operations and supply chains of specific entities, as well as the measures and actions taken to address these risks.

6 Business & Human Rights Resource Centre (2018). "Establishing a Modern Slavery Act in Australia". Available at: https://www.business-humanrights.org/en/inquiry-into-establishment-of-a-modern-slavery-act-in-australia.

7 Business & Human Rights Resource Centre (2018). "Australian Government announces details of modern slavery reporting requirement". Available at: https://www.business-humanrights.org/en/australian-govt-announces-key-features-of-company-reporting-requirement-to-be-included-in-upcoming-commonwealth-modern-slavery-act#c172577.

8 Parliament of Australia (2018). "Modern Slavery Bill 2018. Explanatory Memorandum". Available at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6148_ems_9cbeaef3-b581-47cd-a162-2a8441547a3d/upload_pdf/676657.pdf;fileType=application%2Fpdf.

9 Parliament of Australia (2018). "Modern Slavery Bill 2018 [Provisions]". Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery.

Definition of modern slavery (section 4)

Concerning the proposed Act, the definition of "modern slavery" refers to the offence, reflected in Divisions 270 and 271 of Australia's Criminal code.

Furthermore, it also includes, on one hand, trafficking in persons, as defined in article 3 of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, as reflected in the United Nations Convention against Transnational Organised Crime of 15 November 2000; and, on the other hand, the worst forms of child labour, as defined in article 3 of ILO Convention nr. 182 on the prohibition and immediate action for the elimination of the worst forms of child labour, of 17 June 1999.

Personal scope

The entities, subject to the reporting requirements will be those with headquarters or performing trade activities in Australia, with a consolidated turnover of at least $100 million.

Furthermore, the Government of Australia would be subject to the same reporting requirements on behalf of the corporate State entities, included in Section 15 of the Public Governance, Performance and Accountability Act 2013, with a consolidated turnover of at least $100 million.

Other entities, based or operating in Australia could also report on a voluntary basis, regarding the risks and measures adopted to address modern slavery in their operations and supply chains (section 5), informing the Minister in writing of their intention to do so (section 6).

Territorial scope

An enterprise is understood to perform trade activities in Australia when it operates in Australian territory or in an Australian state, in accordance with section 21 of the Corporations Act 2001.

Furthermore, the Act is considered to extend to all external territories of Australia. As such, it will apply to acts and omissions outside Australian territory (section 10).

Requirements for companies

The enterprises subject to the Act's reporting requirements shall present modern slavery statements each financial year or another annual accounting period that applies to the enterprise (section 4).

The modern slavery statements of the entities shall contain:

1. A description of the risks of committing modern slavery practices in their operations and supply chains.
2. A description of the actions adopted to address the risks of committing modern slavery.

The Bill includes the following types of statements the enterprises can present:

- Modern slavery statements for single reporting entities.

The entities shall draft a statement which is approved by the principal governing body of the entity and signed by any of the members of this body. The statement shall be sent to the Minister within 6 months after the end of each financial year (section 13).

- Joint modern slavery statements

An entity can present before the Minister a modern slavery statement covering one or more entities, as long as it is approved by the principal governing body of each entity or by an entity in a position, direct or indirect, to influence or control each entity covered by the statement. The statement shall be sent to the Minister within 6 months after the end of each financial year (section 14).

- Commonwealth modern slavery statements

The Minister must prepare a modern slavery statement covering all non-corporative entities of the Government, within the meaning of the Public Governance, Performance and Accountability Act 2013. The statement will be prepared within 6 months after the end of each financial year (section 15).

The mandatory criteria for the modern slavery statements need to comply with (section 16):

a) Identification of the reporting entity.

b) Description of the structure, operations and supply chains of the entity.

c) Description of the risks to commit modern slavery practices in the operations and supply chains of the reporting entity, and the risks of other entities covered by the statement.

d) Description of the actions taken by the reporting entity and by any other enterprise covered by the statement to assess and address the risks identified, including due diligence and remediation processes.

e) Description of how the entities assess the effectiveness of the actions adopted.

f) Any other information considered relevant.

Access to the modern slavery statements

According to the Bill, the Minister shall be in charge of registering the statements, drafted by the entities (section 19). In this regard, it is foreseen to create a central register for the statements made by the entities: Modern Slavery Statements Register. The register shall be available to the public via Internet, without charge for individuals (section 18).

Additional references

- Business & Human Rights Resource Centre (2018). "Australia: Open letter in support of Modern Slavery Bill 2018". Available at: https://www.business-humanrights.org/en/australia-civil-society-and-business-leaders-express-strong-support-for-modern-slavery-bill-2018-in-open-letter-to-prime-minister.
- Hocking, Barbara Ann; Muthu, Yega (2012). "Australasian Reflections on Modern Slavery". *Journal of Politics and Law*, vol. 5, nr. 4, pp. 69-85.

- Landau, Ingrid; Marshall, Shelley (2018). "Should Australia be Embracing the Modern Slavery Model of Regulation". *Federal Law Review*, vol. 46, nr. 2, pp. 313-339.
- Leishman, Marianna (2007). "Human Trafficking and Sexual Slavery: Australia's Response". *Australian Feminist Law Journal*, vol. 27, pp. 193-218.
- Nolan, Justine; Bott, Gregory (2018). "Global supply chains and human rights: spotlight on forced labour and modern slavery practices". *Australian Journal of Human Rights*, vol. 24, nr. 1, pp. 44-69.

IV.

SUB-STATE LEVEL

a. California

CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT

- Legislation
- Adopted on 30 September 2010
- In force since 1 January 2012

Objective

The objective of the **California Transparency in Supply Chains Act**[1] is to provide consumers with information on efforts companies make to eradicate human trafficking and slavery from their supply chains. Therefore, it empowers and educates consumers to combat human trafficking and slavery, not only within the territory of California, but also outside its borders.

Background

In the year 2000, the United States adopted the Federal Act for victims of trafficking and violence as starting point for the domestic policies to combat trafficking in persons, especially the sex trade, slavery, and involuntary servitude.[2]

In October 2007, the California Justice Department published the final report of the CA ACTS Task Force, containing a list of findings and recommendations to combat the trafficking in persons. The report refers to the moral responsibility California bears to exert leadership, through its administration and business, in the promotion of fair and humane labour practices throughout their supply chains.[3]

1 "California Transparency in Supply Chains Act of 2010 (SB 657)". Available at: https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf.

2 "Victims of Trafficking and Violence Protection Act of 2000". Available at: https://www.state.gov/j/tip/laws/61124.htm.

3 Final Report of the California Alliance to Combat Trafficking and Slavery Task Force. October 2007, Administered by the California Attorney General's Office. Crime and Violence Prevention Center.

On 27 February 2009, Senator Darrell Steinberg introduced a Bill on supply chain transparency before the Senate.

In September 2009, the United States Department of Labour published a report, required by the 2005 and 2008 Trafficking victims protection reauthorisation acts, identifying 122 products from 58 countries that were believed to be products using forced labour or child labour, in violation of international regulations.

On 30 September 2010, after overcoming the different phases in the Chambers, the text was approved by the Governor of California and presented before the Secretary of State that same day, who assigned it with Chapter number 556.

Scope of application

Material scope

The California Act incorporates Section 1714.43 to the California Civil code and section 19547,5 to the California Revenue and taxation code to require companies to disclose information on their activities regarding monitoring and supervision within the company itself and in its supply chains to prevent human trafficking and slavery, in order to allow consumers to take well informed purchasing decisions.

Personal scope

Section 1714.43 to the California Civil code establishes the requirements for companies subject to the Act. Therefore, the provisions of the California Act apply to companies which are manufacturers and retail sellers doing business in the state of California and obtaining more than $100,000,000 in annual worldwide gross receipts.

According to Section 23101 to the California Revenue and taxation code, doing business in the state of California means companies actively engage in any transaction for the purpose of financial or pecuniary gain.[4] And according to the same provision, for taxable years beginning on or after 1 January

4 "California Revenue and Taxation Code Section 23101". Available at: https://law.onecle.com/california/taxation/23101.html.

2011, any company satisfying any of the following conditions is doing business in California:

1. Be commercially domiciled in the state.
2. Sales exceeding $500,000 in the state or 25% of the company's sales in the state.
3. The real property and tangible personal property in the state exceed $50,000 or 25% of the total property.
4. The compensations paid to its employees exceed $50,000 or 25% of the total worldwide.

Requirements for companies

The companies covered by the scope of application of the California Act must create a conspicuous and easily understood link on their Internet website to access the information regarding their efforts to eradicate slavery and trafficking in persons in their product supply chains. In order for the link to be more effective and avoid confusion, it needs to point directly to the page with the information, required by the California Act, without the need for the consumer to click on multiple links to access said information. For companies that do not have an Internet website, consumers shall be provided the written disclosure within 30 days of receiving a written request for the disclosure from a consumer.

In practice, information needs to be disclosed on the way the company:

1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery.
2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains.
3. Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards.

5. Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The Act applies including to companies which do not take measures related to the five preceding points: certification, auditing, certification, accountability and training. In these cases, the company can disclose it did not adopt any measure relative to slavery and trafficking in persons in its supply chains.

Modern Slavery Registry

Several companies are complying with the mandate, imposed by the Act, and have disclosed information on the efforts made to eradicate human trafficking and slavery in their supply chains. According to the Modern Slavery Register database of the Business and Human Rights Resource Centre, at least 1140 companies have published information, required by the California Act.

Source: Modern Slavery Registry

Monitoring and implementation mechanism

The California Act establishes that the Franchise Tax Board, agency in charge of administering the corporate tax, shall provide the California Attorney General with the list of companies required to comply with the provisions of the Act. The list will be presented annually before 30 November and contain the name of retail sellers and manufactures required and their California identification number.

On his side, the Attorney General has exclusive authority to enforce compliance with the California Act, verifying that required companies disclose the information, required by the Act. In this regard, it can start a civil action to

obtain injunctive relief for non-compliance with its provisions. To do so, an online form has been created to collect consultations and reports, relative to the California Act: https://oag.ca.gov/sb657/contact-us.

Additional references

- Fischer, Matthew A. (2012). "Complying with the California Transparency Supply Chains Act". *Mass Torts Litigation*, vol. 10, nr. 4, pp. 15-18.
- Frequently Asked Questions (FAQs) - SB 657. Available at: https://oag.ca.gov/SB657/faqs.
- Greer, Benjamin Thomas (2018). "Opaque Transparency: Why California's Supply Chain Transparency Act is Unenforceable". Oñati socio-legal series, vol. 8, nr. 1, 2018, pp. 32-49.
- Harris, Kamala D. (2015). "The California Transparency in Supply Chains Act. A Resource Guide". Available at: https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf.
- Muñoz Fernández, Alberto (2012). "Nuevas iniciativas contra la trata de personas: la implicación de todos los actores (el papel de los particulares)". *Cuadernos de derecho transnacional*, vol. 4, nr. 2, pp. 342-355.
- Nolan, Justine; Bott, Gregory (2018). "Global supply chains and human rights: spotlight on forced labour and modern slavery practices". *Australian Journal of Human Rights*, vol. 24, nr. 1, pp. 44-69.

b. Catalonia

LAW 16/2014 ON EXTERNAL ACTION AND RELATIONS WITH THE EUROPEAN UNION

- Legislation
- Approved on 4 November 2014

Objective

Law 16/2014 on external action and relations with the European Union[1] aims at regulating Catalonia's external action and the relations between the *Generalitat* and the European Union.

Background

On 19 December 2013, the Parliament of Catalonia approved a motion in which it urged the Government to create a working group within the framework of the Council for Development Cooperation, in order to design an awareness plan, aimed at Catalan companies headquartered abroad and operating where Catalan external cooperation projects exist, in order for them to know these projects, the existing human rights situation in the country of destination and the compliance with international law.

Contents

Law 16/2014 promotes the defence of peace, human rights and sustainable human development (Article 4, f). In this regard, the Law points out that the government, in the area of the economy, needs to ensure that actions aimed at promoting the economic internationalisation of Catalonia are consistent

1 Law 16/2014, of 4 December, on external action and relations with the European Union. Available at: http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=fitxa&versionId=1625558&versionState=02&language=ca_ES&documentId=676911&mode=single.

with the United Nations Guiding Principles on Business and Human Rights, ensuring respect for human rights in any action that is taken (Article 12.2.e).

Furthermore, it promotes policies for the promotion and recognition of social organisations performing tasks in areas such as sustainable development, cooperation and development aid, the promotion of peace, the defence of human rights and social cohesion in the countries where the operations take place (articles 13, 26 c, 27, 34 y 36).

Additional references

- Lafede.cat (2016). El Parlament aprova per unanimitat una proposta pionera de control de les empreses catalanes a l'exterior. Available at: http://www.lafede.cat/el-parlament-aprova-per-unanimitat-una-proposta-pionera-de-control-de-les-empreses-catalanes-a-lexterior/.

RESOLUTION 359/XI ON THE RESPECT FOR HUMAN RIGHTS BY CATALAN COMPANIES OPERATING ABROAD

- Resolution by the Parliament of Catalonia
- Adopted on 3 November 2016

Objective

Resolution 359/XI on the respect for human rights by Catalan companies operating abroad[1] proposes the creation of a Centre for the assessment of impacts of Catalan companies abroad.

Adoption process

On 26 May 2015, the Executive Council of the Parliament of Catalonia approved the Strategic plan for external action and relations with the European Union 2015-2018. This Strategic plan considers the creation of a coherent and cohesive public policy, supervising the integration of the approach of promoting the culture of peace and the defence of human rights in all policies and actions in the area of Catalan external action.

On 22 April 2015, the Parliament of Catalonia approved the Guiding Plan for Development Cooperation 2015-2018 which considers the defence, protection and guarantees of individual and collective human rights as main axis of its actions in the matter of development cooperation.

On 3 June 2016, a workshop on transnational enterprises and human rights was organised in the Parliament of Catalonia. During the event, on one hand, the second report on the reality in Buenaventura (Colombia) was presented,

1 *Resolució 359/XI del Parlament de Catalunya, sobre el respecte dels drets humans per les empreses catalanes que operen a l'exterior.* (Resolution 359/XI of the Parliament of Catalonia on the respect for human rights by Catalan companies operating abroad) 250-00554/11. Published: BOPC 255.

as a symbolic case of a Catalan company accused of violating the population's human rights abroad and, on the other hand, a proposal by the Centre for the assessment of impacts of Catalan companies abroad to avoid cases like the one of Buenaventura repeating itself.

On 3 November 2016, the Commission for External Action and Cooperation, Institutional Relations and Transparency debated and approved the Resolution proposal on the respect for human rights by Catalan companies operating abroad (section 250-00554/11), presented by the *Junts pel Si* Parliamentary Group, the *Ciudadanos* Parliamentary Group, the Socialist Parliamentary Group, the *Cataluña Sí que se Puede* Parliamentary Group, the *Partido Popular* Parliamentary Group and the *Candidatura de Unidad Popular - Llamamiento Constituyente* Parliamentary Group.

Contents

Through Resolution 359/XI, the Parliament of Catalonia:

- Strengthens its commitment with International human rights law, International labour law and the international regulations on the environment and the promotion of peace and the right to sustainable development. Furthermore, it commits to continue working in a transversal way within its legislative framework to progress in these areas.
- Calls on the Government of Catalonia to start within a period of 8 months the task of creating and unfolding a Centre for the study and assessment of impacts of Catalan companies abroad, which has tools available to monitor corporate compliance with the human rights legislation in force, and in which Catalan civil society, the Government of Catalonia and Parliament engage.
- Declares itself in favour of the creation of a legally binding international instrument ensuring compliance with human rights obligations by transnational and other enterprises, and supports the United Nations Human Rights Council working group which has the mandate of developing this instrument.

Centre for the study and assessment of impacts of Catalan companies abroad

Catalan civil society organisations have taken the task upon them to propose and justify the creation and implementation of the Centre for the assessment of impacts of Catalan companies abroad as an independent, fully autonomous public body, provided with separate legal personality and accountable to civil society, the Parliament and the Government of Catalonia.

The main objective of the Centre will be to ensure, through research, assessment and its capacity to activate the corresponding sanctioning mechanisms, Catalan public and private external actions, coherent with the respect for the International human rights law, international labour law and international regulation on the environment, promotion of peace and sustainable human development.

Among the main functions of the Centre, we find:

1. External action of Catalan companies
   - Investigation of cases of alleged human rights violation, caused by Catalan investments abroad.
   - Collection and follow-up of grievances presented by populations affected by operations of Catalan companies abroad.
   - Support to communities affected in their claim for access to justice for cases of human rights violations committed by Catalan companies.

2. Internationalisation of Catalan companies
   - Coordination with the relevant bodies of the Government of Catalonia to ensure the public funding of the internationalisation of Catalan companies includes strict observance of human rights.

3. Innovation, coherence and international projection
   - Coordination between public sectors of different territorial areas.
   - Incorporation of criteria for the respect for human rights in public procurement processes at different levels of the Catalan Administration.
   - Establish dialogue with initiatives, networks and entities at international level.

4. Boost regulatory frameworks
   - Creation of an investigation platform to realise concrete proposals of the Parliament of Catalonia on binding regulation in terms of observance of International human rights law for the external action of Catalan companies.
   - Work out meaningful contributions, such as regulatory proposals, reports and opinions.

5. Activation of relevant sanctioning mechanisms for Catalan companies failing to observe human rights
   - In case of human rights violations, the Centre relies on an assessment mechanism, aimed at substantiating the suspension of any type of public aid to companies involved, until they provide evidence of effective changes in their operations.

6. Communication and transparency
   - Implement communication mechanisms ensuring transparency and continuous information on the activities of the Centre towards the Catalan society, as well as accountability mechanisms and reports.

Centre for the assessment of impacts of Catalan companies abroad. Available at: http://www.lafede.cat/wp-content/uploads/2016/06/InformeAvEmpCAST.pdf.

Motion presented by the Socialist party municipal group in support of the creation of a legislative framework for the observance of human rights by Catalan companies operating abroad[2]

On 31 May 2017, the Catalan socialist party group of the municipality of Santa Coloma de Gramenet in the province of Barcelona approved a motion in which it proposed the municipal plenary session to adhere Resolution 359/XI on a legislative framework for the observance of human rights by Catalan companies operating abroad and to study the possible measures to adopt within the municipality to ensure that companies operating abroad observe human rights. Furthermore, to study measures that can be adopted in the area of responsible public procurement and the introduction of clauses guaranteeing compliance with basic human rights in the specification of public procurement, among others.

2 "Moció presentada pel grup municipal del partit socialista de catalunya en suport a la creació d'un marc legislatiu pel respecte dels drets humans de les empreses catalanes que operen a l'exterior". Available at: https://www.gramenet.cat/fileadmin/Files/Ajuntament/mocions/2017/2017Maig/23_-_Mocio_GM_PSC_marc_legislatiu_empreses_catalanes.pdf.

Additional references

- Lafede.cat (2016). "Acord polític per a la creació d'un Centre públic d'avaluació dels impactes de les empreses catalanes a l'exterior". Available at: http://www.lafede.cat/es/acord-politic-per-a-la-creacio-dun-centre-public-davaluacio-dels-impactes-de-les-empreses-catalanes-a-lexterior/.
- Lafede.cat (2016). "El Parlament aprova per unanimitat una proposta pionera de control de les empreses catalanes a l'exterior". Available at: http://www.lafede.cat/el-parlament-aprova-per-unanimitat-una-proposta-pionera-de-control-de-les-empreses-catalanes-a-lexterior/.
- Lafede.cat (2016). "El Centre d'avaluació dels impactes de les empreses catalanes a l'exterior es presenta a l'ONU". Available at: http://www.lafede.cat/el-centre-davaluacio-dels-impactes-de-les-empreses-catalanes-a-lexterior-es-presenta-a-lonu/.

PROPOSAL FOR A CODE OF ETHICS ON RESPECT FOR HUMAN RIGHTS AND GENDER EQUALITY FOR THE RESPONSIBLE INTERNATIONALISATION OF CATALAN COMPANIES

- Code of ethics proposal, drafted by the Territory, Citizenship and Sustainability Research Group of the University Rovira i Virgili
- Presented on 7 February 2017

Objective

The **Proposal for a code of ethics on respect for human rights and gender equality for the responsible internationalisation of Catalan companies**[1] is a document, drafted from an academic perspective, but with a practical orientation for implementation by the competent authorities in accordance with the context in Catalonia. The aim of the code of ethics is to contribute to the responsible internationalisation of Catalan companies regarding the respect for human rights and gender equality.

"Responsible internationalisation" means a corporate strategy for growth through international geographic diversification, by means of an evolving and dynamic process, which gradually affects the different activities in the value chain and takes into account the social and environmental impact and, in particular, the respect for human rights and gender equality, in the field in which the company operates, in a way that demonstrates ethical and transparent behaviour, contributing to sustainable development.

Background

On 5 February 2016, the Catalan Agency for Development Cooperation entrusted the Territory, Citizenship and Sustainability Research Group of the

1 "Proposta d'un codi ètic de respecte dels drets humans i de la igualtat de gènere per a la internacionalització responsable de les empreses catalanes" (Proposal for a code of ethics on respect for human rights and gender equality for the responsible internationalisation of Catalan companies). Available at: http://cooperaciocatalana.gencat.cat/web/.content/Documents/20161121_Proposta-de-Codi-etic.pdf.

Public Law Department of the University Rovira i Virgili with the design of a "code of ethics on respect for human rights and gender equality for the responsible internationalisation of Catalan companies and their implementation mechanisms".

On 4 December 2014, Law 16/2014 on External Action and Relations with the European Union was adopted, establishing the coherence of promotion actions for the economic internationalisation of Catalonia with the United Nations Guiding Principles on business and human rights.

Scope of application

Material scope

The Proposal for a code of ethics pronounces a series of measures and tools for companies to identify, prevent, mitigate and account on their negative impacts on internationally recognised human rights; as well as to integrate the gender perspective in all their activities, policies, methods and instruments affecting their activity.

The measures and tools included in the Proposal are based on the Guiding Principles, the OECD Guidelines and other international instruments in human rights and environmental matters.

Personal scope

The Proposal for a code of ethics applies to all Catalan companies, both public and private, regardless of their size, sector, operational context or structure, performing economic activities abroad in any of the different stages of the internationalisation process. Therefore, it is not only addressed to companies operating abroad through subsidiaries, but also to importing or exporting companies.

The Proposal is estimated to apply to 3,000 Catalan companies operating abroad through around 7,000 subsidiaries, to almost 15,000 that export but do not have offices abroad and to 15,000 more that only import.

Requirements for companies

The Proposal for a code of ethics is set up as a soft law instrument that does not create new legal obligations for companies, but rather includes the set of international regulation in force, good corporate practices and the contents of internationally recognised codes of ethics the economic operators shall observe.

General principles

In first place, the Proposal for a code of ethics sets out 10 general principles Catalan companies performing economic activities abroad must take into account. These principles consist in companies:

1. Maintaining a responsible and ethical behaviour, contributing to economic, social and environmental progress in the countries where they operate.
2. Acting in an honest, upright and loyal way in all their activities and in all the countries worldwide where they are present.
3. Strictly respecting and complying with the legality in force of the place where they develop their activities, as well as the values, customs and good practices of those countries.
4. Respecting internationally recognised human rights, as well as civil liberties of the people affected by their activities and the ethical values and principles of each culture.
5. Promoting decent work.
6. Integrating the gender perspective in all their activities.
7. Adopting an approach based on sustainability and responsibility in all the aspects of their activity with potential environmental impacts.
8. Promoting sincerity, truthfulness, compliance with commitments and transparent action in all the areas of intervention.
9. Take additional responsibility when operating in specific risk contexts.
10. Promoting the ethical code in all their stakeholder groups, linked to the company, through appropriate dissemination and ensuring compliance.

Behavioural guidelines

Catalan companies performing economic activities abroad shall comply with the following behavioural guidelines:

- Human rights

  Companies shall prevent, avoid and mitigate negative human right impacts, due to action or inaction in their activities or the activities of natural or legal persons they maintain a commercial link with. In case these impacts occur, directly or indirectly, they shall remediate them.

- Fair labour relations

  Companies shall effectively and completely eliminate child labour, forced labour and any type of discrimination and violence in the work environment, both in their activities as in the companies they maintain a commercial relation with.

  Furthermore, they shall ensure and respect the freedom of association, the right to freely join unions and fair wages; as well as adopt appropriate measures to guarantee health and safety in the work place.

- Environment

  Companies shall prevent damages to the environment in accordance with the highest protection standards, comparable to those required in Catalonia. Therefore, they shall carry out periodical environmental impact assessments and apply the best technologies available.

  On the other hand, they shall ensure an efficient consumption and management of energy, water and other natural resources. In this regard, they shall reduce the production of waste and implement recycling policies. In turn, they need to provide stakeholders with comprehensive information on the measured adopted regarding the environment.

- Supplier and retailer commitment

  Companies shall promote the respect for this ethical Code throughout the entire value chain, and encourage the implementation of responsible management.

- Consumer and client protection

  Companies shall offer quality products and services respecting consumer and user health and environment. Therefore, they shall promote consumer

education in their activities regarding the gender, environmental and social impacts of their decisions. Furthermore, they shall avoid misleading and sexist advertising.

- Community engagement

  Companies shall actively contribute to the general and balanced development of the social environment where they develop their activities. In this regard, they shall employ local personnel, encourage the empowerment of women, maintain communication and dialogue with the communities affected, involve the communities in their corporate activities and compensate the damages caused by their activities.

- Information and corporate transparency

  Companies shall respect the right to personal intimacy in the management of data they have access to and publish precise information on significant aspects of their activities.

- Tax liability

  Companies shall comply with the tax regulation in force in each country where they are represented, avoid concealing relevant information and comply with the highest transparency standards.

- Respect for the competition rules

  Companies shall perform their activities in a way that is compatible with the laws and regulations in the matter of fair competition and avoid anti-competitive practices.

- Relationship with authorities

  Companies shall avoid any type of bribery of form of extortion, capital laundering for the funding of terrorism or activities of organised crime. Therefore, they shall cooperate with the authorities.

Compliance with the code

Compliance with the ethical code is based on the second pillar of the Guiding Principles for which companies need to rely on human rights respect policies and due diligence procedures designed according to the size of the company, the risk of severe negative human rights impacts and the nature and context of its operations.

As such, companies shall:

- In first place, formalise their adhesion to the ethical code by means of a political commitment to assume their responsibility in the observance of human rights.
- In second place, maintain or develop a human rights due diligence process to identify, prevent, mitigate and account on human rights impacts. This implies identifying and assessing actual and potential human rights impacts in which companies can see themselves involved through their activities or commercial relations. In order to prevent and mitigate these impacts, companies shall integrate the conclusions of their impact assessment in the framework of the company's internal functions and processes and take the appropriate measures. In this regard, companies shall monitor the effectiveness of actions adopted to prevent actual or potential impacts, as well as communicate in a regular and accessible way on these measures with parties affected and public authorities.
- In third place, when companies identify they have caused or contributed to cause negative human rights impacts, they shall have grievance and complaint mechanisms and procedures allowing to remediate them or contribute to their remedy by means of legitimate means.

Monitoring systems

To monitor the promotion of and compliance with the code of ethics, a double mechanism of periodic performance reports of the code by the companies is proposed, along with a grievance system.

Companies can submit the first report one year after their adhesion to the code, including an analysis reflecting an assessment of the actual or potential impact of the activities of the company with respect to the aspects included in the code.

In case the evaluation of the reports confirms the satisfactory compliance with the code of ethics by the companies, this can result in measures of acknowledgement such as a distinctive company seal with an established period of validity. In case of the opposite, non-compliance can lead to recommendations for improvement or negative compliance reports.

Additional references

- Xarxanet (2017). “Presentada una proposta de codi ètic per a la internacionalització de les empreses catalanes”. Available at: http://xarxanet.org/economic/noticies/un-codi-etic-les-empreses-catalanes-internacionals.

CATALAN STRATEGY FOR BUSINESS AND HUMAN RIGHTS OF THE GENERALITAT OF CATALONIA

- Political document
- Work in progress

Objective

The **Catalan strategy for business and human rights of the Generalitat of Catalonia** is a document which is created, based on the United Nations Guiding Principles on business and human rights. Also, it describes a series of measures for the Generalitat of Catalonia, as well as Catalan business enterprises and organisations, to assume their respective obligations to protect and respect human rights.

The goal of the Strategy is to put Catalonia and its business network in a leading position regarding the development of business activities respecting human rights, provide clarifications to and supporting Catalan enterprises and organisations on this issue as well as on how to reduce the risks linked with their activities.

On the other hand, the Strategy establishes the basis for drafting a future action plan on business and human rights in Catalonia.

For the purpose of this Strategy, "Catalan business enterprise" means any business with a permanent seat and tax ID number in Catalonia or operating in Catalonia, regardless of the origin of its capital.

"Catalan organisation" means any organisation, for-profit or non-profit, performing an economic activity in Catalonia.

Background

In October 2015, the Generalitat of Catalonia published its Master Plan for Development Cooperation 2015-2018, promoting a responsible international policy for Catalan business enterprises, in accordance with recognised in-

ternational frameworks, such as the United Nations Guiding Principles on business and human rights.[1]

In February 2017, in the framework of the conclusions of the workshop "Business and Human Rights: comparing experiences. A glance, focused on the extraterritorial perspective" ("*Empresas y Human rights: comparando experiencias. Una mirada centrada en la perspectiva extraterritorial*"),[2] organised by the International Catalan Institute for Peace and the Directorate General for Development Cooperation, Raül Romeva, former *conseller* (counsellor) for External Affairs, Institutional Relations and Transparency of the Generalitat of Catalonia, the creation of a strategy on corporate responsibility and human rights was announced.

In this regard, the Annual development cooperation plan for 2018 by the Directorate of external affairs, institutional relations and transparency highlights that, in 2018, the technical document with the proposed Strategy for business and human rights of the Generalitat will be completed. Furthermore, it points out that the incorporation of business and human rights matters will be boosted within the human rights protection system in Catalonia.[3]

In May 2019, the 2019-2022 Development Cooperation Master Plan was approved. This Plan reaffirms the commitment of the Generalitat de Catalunya to promote a policy of internationalization of Catalan companies that is respectful of human rights, gender equity and environmental sustainability. Likewise, it promotes the creation of a Catalan Center for Business and Human Rights, as recommended by the Parliament of Catalonia in its Resolution 359 / XI, of November 3, 2016. The Center must be established as a new mechanism for public supervision, which ensures for the obliga-

1 Generalitat de Catalunya (2015). "Plan director de cooperación al desarrollo 2015-2018". Available at: http://cooperaciocatalana.gencat.cat/web/.content/continguts/02dgcd/PlaDirector/20151014_Pla-director_ES_v2.pdf.

2 "Seminario internacional Empresas y Human rights: comparando experiencias. Una mirada centrada en la perspectiva extraterritorial". Available at: http://icip.gencat.cat/web/.content/continguts/agenda/imatges_i_documents/2017/Gen_Juny/Programa_Empreses_DretsHumans.pdf.

3 Generalitat de Catalunya (2018). "Pla anual de cooperació al desenvolupament per a 2018". Available at: https://www.acm.cat/sites/default/files/manual_uploads/comissions/4.plaaanualcooperacio_2018.pdf.

tory fulfillment and respect of human rights by the companies established in Catalonia, which operate both in Catalonia and abroad.

Reference

Generalitat de Catalunya (2019). "Pla director de cooperació al desenvolupament 2019-2022". Available at: http://presidencia.gencat.cat/web/.content/departament/transparencia/acords_govern/2019/2019_05_19/SIG19EXI0448.pdf.

Structure

The Strategy has a similar structure to that of the Guiding Principles and includes four parts.

1. The first part introduces the context, main themes, time frame and objectives of the Strategy.
2. The second part presents additional measures, joining the principles relative to the States' obligation to protect human rights.
3. The third part explains in detail the expectations of the Generalitat of Catalonia on the responsibility of business enterprises and organisations to respect human rights.
4. Finally, the fourth part describes the additional measures the Generalitat of Catalonia adopts to facilitate access to judicial and extrajudicial remedy mechanisms for persons potentially affected by negative business impacts, as set out in the third pillar of the Guiding Principles on access to remedy mechanisms.

Contents

The Strategy contains a series of measures, in line with the Guiding Principles, to prevent, investigate, sanction and remediate negative human rights impacts, caused by Catalan business and organisations, both within Catalan territory as outside.

1. *The State's duty to protect human rights*

Some of the measures proposed for the Generalitat of Catalonia to protect human rights against business activities are:

- Perform an analysis of the activities of Catalan business enterprises and organisations and their relation with possible human rights impacts, both within Catalonia as outside, in order to establish priority criteria in the actions of the Generalitat.
- Approve a code of conduct, clearly establishing the responsible behaviour Catalan companies and organisations are expected to demonstrate, putting particular emphasis on their operations in countries with weak or insufficient institutional or legislative frameworks.
- Carry out a study on the applicable legislation in force in Catalonia, linked with business activity, allowing to identify its limitations, as well as to assess its suitability to ensure the respect for human rights by Catalan business enterprises and organisations, both within as outside Catalan territory.
- Create a public study and evaluation centre on business and human rights that, among other matters, does the follow-up of the Strategy.
- Establish human rights due diligence mechanisms for certain companies and organisations with a specific number of employees or according to the volume of their activities.
- Establish criteria and procedures for Catalonia's public administrations to deny access to or withdraw financial support from companies and organisations that cause negative human rights impacts and refuse to cooperate with Catalan administration or the competent authorities to mitigate and remediate the impacts caused.
- Help companies and organisations in the very initial phase of their internationalisation to identify, prevent and mitigate the risks linked to business activities and relations taking place in conflict-affected areas.
- Promote further implementation of the Guiding Principles on international fora.

2. *The responsibility of business enterprises to respect human rights*

The Generalitat of Catalonia establishes that all enterprises and organisations, regardless of their size, sector, operational context and structure, must be aware of the responsibilities, reflected in the second pillar of the Guiding Principles. To do so, it proposes the following:

- Promote and encourage Catalan business enterprises and organisations to adhere to the code of conduct, given its provisions represent the will to respect internationally recognised human rights in their operational contexts.

3. *Access to remedy mechanisms*

Regarding the Access to remedy mechanisms, the following is proposed:

- Draft a report on the limitations of the present judicial and extrajudicial mechanisms and the modifications required to guarantee access to remedy in cases of negative impacts, produced by the companies and organisations, both within as outside Catalan territory.
- Call on the Spanish Government to review the legal framework of the responsibility of companies and organisations, as well as the jurisdiction of Spanish courts to hear cases of possible adverse human rights impacts, in accordance with the Guiding Principles.
- Develop instruments for citizens and stakeholders to know and understand the available judicial grievance mechanisms in cases of negative human rights impacts.
- Award specific subsidies to non-governmental organisations to design programmes of protection and legal advice to human rights defenders and victims of possible negative impacts by Catalan companies and organisations, operating abroad.

Implementation

For the implementation of the Strategy, the Generalitat of Catalonia foresees to establish an inter-departmental Commission in charge of implementing the Strategy and of guaranteeing the coherence of business and human rights policies within the Generalitat. Furthermore, it will be in charge of defining

monitoring mechanisms for each of the measures proposed in the Strategy through specific compliance indicators.

The inter-departmental Commission will meet twice per year to analyse the fulfilment of objectives and initiatives included in the Strategy and to elaborate recommendations to improve their implementation.

Additional references

- Carrillo, Miquel (2017). "Empreses, drets humans i coherència". Available at: http://blogspersonals.ara.cat/nolidiguiscooperacio/2017/07/11/empreses-drets-humans-i-coherencia/.
- Generalitat de Catalunya (2017). "El conseller Romeva anuncia la creació d'una estratègia sobre responsabilitat empresarial i drets humans". Available at: http://premsa.gencat.cat/pres_fsvp/AppJava/notapremsavw/298896/ca/conseller-romeva-anuncia-creacio-duna-estrategia-responsabilitat-empresarial-drets-humans.do.

c. Scotland

DEVELOPMENT OF AN ACTION PLAN ON BUSINESS AND HUMAN RIGHTS FOR SCOTLAND

- Political instrument
- Under development

Objective

The objective of the elaboration of an **Action Plan on Business and Human Rights for Scotland**[1] is to implement the United Nations Guiding Principles on business and human rights in Scotland and to raise awareness among Scottish companies regarding their responsibilities in human rights matters.

Background

On 10 December 2013, Scotland's action plan for human rights was launched, establishing a roadmap towards a Scotland where everyone is able to live with human dignity. This Plan includes a commitment to develop a coordinated action plan for the implementation of the Guiding Principles in Scotland, based on the United Kingdom Action Plan on this matter.[2]

In order to establish a robust evidence base to underpin an action plan on business and human rights for Scotland, a Baseline assessment on business and human rights was commissioned, using the tool designed by the Danish Institute for Human Rights and the International Corporate Accountability Roundtable. This Assessment was published in October 2016.[3]

1 "Action Plan on Business and Human Rights for Scotland". Available at: http://www.snaprights.info/action-areas/better-world/business-and-human-rights.

2 "Scotland's National Action Plan for Human Rights 2013–2017". Available at: http://www.snaprights.info/wp-content/uploads/2016/01/SNAPpdfWeb.pdf.

3 "National Baseline Assessment on Business and Human Rights". Available at: http://www.snaprights.info/action-areas/better-world/business-and-human-rights.

After the Baseline Assessment was published, a series of stakeholder consultations were held throughout 2017, mainly intended for civil society, unions, business sector and public officers.

Based on the outcome of the consultations, a Drafting group was appointed with the task of drafting the action plan on business and human rights in 2018.

Recommendations of the Baseline assessment

The Baseline assessment is the first stage of a wider consultation process and will be used as basis to start the dialogue with stakeholder groups on Scottish priorities in business and human rights matters.

Some of the recommendations in the Baseline assessment for the implementation of the Guiding Principles are:

1. *Pillar I: State duty to protect*

- Improve human rights education in the business activity.
- Take measures to reduce corporate tax evasion by including tax practice in public procurement which includes the setting of requirements for companies seeking to sign public contracts.
- Develop a specific guide for public companies to address human rights in the corporate context and the implementation of the Guiding Principles.

2. *Pillar II: Business responsibility to respect*

- Intensify the awareness efforts highlighting the relevance of human rights for specific enterprises and industries.
- Promote and support existing initiatives developing more consistent and rigorous methodologies to measure and report on business-related human rights impacts.

3. *Pilar III: Access to remedy*

- Widen the scope of the United Kingdom NCP to allow the implementation of sanctions and assess fulfilment of the recommendations.
- For the United Kingdom NCP to share the results of any investigation regarding entities with responsibilities in public procurement.
- Eliminate labour court fees in Scotland.

4. *General recommendations*

- Design a website on business and human rights for Scottish companies, including personalised guidance for Small and Medium-sized Enterprises.
- Encourage business associations to develop a guide, in line with the Guiding Principles, describing the risks of human rights impacts linked with their specific industry and providing good practice examples.
- For the Scottish government to encourage companies to design soft law codes.
- Monitor jointly the activities and progress in business and human rights matters in an annual or biennial forum, allowing the dissemination of the progress and stakeholder engagement, including that of the government, the business community and civil society.

Additional references

- "National Action Plan on Business and Human Rights in Scotland". Available at: https://globalnaps.org/country/scotland/.

d. Hong Kong

MODERN SLAVERY BILL

- Bill
- Presented on 1 November 2017

Objective

The **Modern Slavery Bill**[1] aims to:

- Amend the Crimes Ordinance [Cap. 200] to establish penal provisions on slavery, servitude and forced labour, forced marriage and human trafficking;
- Combat slavery, servitude and forced labour, forced marriage and human trafficking;
- Implement article 4 of the Hong Kong Bill of Rights;
- Implement article 1 of the 1957 Supplementary Convention on the Abolition of Slavery.

Adoption process

The Bill was first presented in November 2017, together with the Hong Kong Against Human Trafficking Petition, signed by civil society and legislators, in order to make all forms of human trafficking a criminal offence.[2]

1 "Draft Modern Slavery Bill 2017. A Bill to Amend the Crimes Ordinance to make provision about slavery, servitude and forced or compulsory labour, forced marriage and about human trafficking, including provision for the protection of victims; to combat slavery, servitude and forced or compulsory labour, forced marriage and human trafficking; to give effect to and implement Article 4 of the Hong Kong Bill of Rights; to give effect to and implement Article 1 of the Supplementary Convention on the Abolition of Slavery of 1957; and to provide for related matters." Available at: https://www.legco.gov.hk/yr17-18/chinese/panels/se/papers/secb2-765-1-ec.pdf.

2 Hui, Dominic; Wijekoon, Lavanga V.; Congiu, Michael G.; Marculewic, Stefan (2018). "Hong Kong Considers Draft Law Requiring Companies to Report on Modern Slavery". Available at: https://www.littler.com/publication-press/publication/hong-kong-considers-draft-law-requiring-companies-report-modern.

In January 2018, two members of the Legislative Council presented the Bill, by means of a letter, before the Legislative Council Panel on Security.

In June of 2018, the Bill was debated during a meeting of the Legislative Council Panel on Security, but consensus was not reached on the Bill. The Legislative Council did not confirm the date when the debate on the Bill will be continued.[3]

Scope of application

Material scope

The Bill sets out requirements for specific commercial entities to present annual reports on modern slavery and human trafficking. Furthermore, it proposes new offences, including slavery, human trafficking, forced marriage and sexual tourism, as well as a civil action against individuals or entities committing or benefitting from such offences.

Personal scope

The Bill includes the requirements of information disclosure to apply to Corporate entities and enterprises performing commercial activities in Hong Kong, whose business volume exceeds a minimum amount that will be established by the rule of the law.

Requirements for companies

Commercial organisations shall prepare a slavery and human trafficking statement, describing the actions adopted throughout the financial year to prevent slavery and human trafficking in their operations and supply chains. In case measures have not been adopted, this shall also be reported in the statement.

3 Steinhardt, Julia; Edmonds-Camara, Hannah (2018). "Developments in modern slavery regulation: U.K., Hong Kong and Australia". Available at: https://www.globalpolicywatch.com/2018/07/developments-in-modern-slavery-regulation-u-k-hong-kong-and-australia/.

The declaration shall be approved by the board of directors or an equivalent management body and signed by a director or his equivalent. If the organisation is a limited liability partnership, registered under the Limited Partnerships Ordinance, it must be signed by a general partner.

The slavery and human trafficking statements shall contain the following information:

a) The commercial organisation's structure, its business and its supply chains.

b) The policies in relation to slavery and human trafficking.

c) The due diligence processes in relation to slavery and human trafficking in its business and supply chains.

d) The parts of the business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps taken to assess and manage that risk.

e) The assessment of the actions adopted to prevent practices of slavery and human trafficking in the operations and supply chains.

f) The training to the staff of the commercial organisation on slavery and human trafficking.

The Bill foresees the drafting of guidance regarding the duties imposed on commercial organisations, in particular on the type of information that can be included in a slavery and human trafficking statement.

The commercial organisations must publish their slavery and human trafficking statement on their website and include a link to the statement in a prominent place on that website's homepage.

If the organisation does not have a website, it must provide a copy of the slavery and human trafficking statement to anyone who makes a written request for one, and must do so before the end of the period of 30 days beginning with the day on which the request is received.

Civil liability

The victims of slavery or human trafficking can file a civil claim against any person having committed an illegal act under the Bill or against any person who knowingly benefits from another person and knew or should have known he was engaged in illegal acts under the provisions of the Bill.

Additional references

- Carvalho, Raquel (2018). "Legislator and lawyers push for bill against human trafficking in Hong Kong". Available at: https://www.scmp.com/news/hong-kong/law-crime/article/2140749/long-awaited-law-against-human-trafficking-be-discussed.
- Crockett, Antony (2018). "Modern Slavery Law Proposed For Hong Kong". Available at: https://www.herbertsmithfreehills.com/latest-thinking/modern-slavery-law-proposed-for-hong-kong.
- Jenkins, Helen; Bigby, Nicole (2018). "The Ripple Effect: New Draft Modern Slavery Bill under discussion for Hong Kong". Available at: https://www.blplaw.com/media/expert-insights/Asia/Final_New_Draft_Modern_Slavery_Bill_under_discussion_for_Hong_Kong_-_option_2.pdf.
- Nolan, Justine; Bott, Gregory (2018). "Global supply chains and human rights: spotlight on forced labour and modern slavery practices". *Australian Journal of Human Rights*, vol. 24, nr. 1, pp. 44-69.
- Woods, Samantha (2018). "Human Trafficking and Slavery: Updates from Hong Kong". Available at: http://www.csr-asia.com/44-csr/newsletter/895-human-trafficking-and-slavery-updates-from-hong-kong.

e. New South Wales

MODERN SLAVERY BILL

- Legislation
- Adopted on 21 June 2018
- Date of entry in force still to be defined

Objective

The objects of the New South Wales **Modern Slavery Bill**[1] are (section 3):

- To combat modern slavery.
- To provide assistance and support for victims of modern slavery.
- To provide for an Anti-slavery Commissioner.
- To provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur.
- To raise community awareness of, and provide for education and training about, modern slavery,
- To encourage collaborative action to combat modern slavery.
- To provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws.
- To make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales.
- To further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material in New South Wales.

1 Parliament of New South Wales (2018). "Modern Slavery Bill 2018". Available at: https://www.parliament.nsw.gov.au/bill/files/3488/Passed%20by%20both%20Houses.pdf.

Adoption process

In 2017, Paul Green, Chair of the Legislative Council Select Committee on Human Trafficking in New South Wales, held an inquiry on modern slavery in New South Wales.[2]

In October 2017, the Legislative Council Select Committee on Human Trafficking in New South Wales presented its final report on modern slavery in New South Wales.[3]

In March 2018, Paul Green presented the Modern slavery bill before the New South Wales Parliament.[4]

On 21 June 2018, the Upper Chamber of the New South Wales Parliament approved the Modern slavery bill for New South Wales.[5]

Scope of application

Material scope

The Bill makes provision with respect to slavery, slavery-like practices and human trafficking. Furthermore, it makes provision regarding the appointment and functions of an Anti-slavery Commissioner (Part 2). In matters of supply chain transparency, it sets requirements for specific commercial organisations to present annual reports on modern slavery (Part 3).

2 IJM (2018). "Modern Slavery Bill 2018 (NSW): Fact Sheet". Available at: https://ijm.org.au/modern-slavery-bill-2018-nsw-fact-sheet/.

3 Select Committee on Human Trafficking in New South Wales (2017). Human trafficking in New South Wales. Available at: https://www.parliament.nsw.gov.au/lcdocs/inquiries/2421/Final%20report.pdf.

4 Parliament of New South Wales (2017). "Modern Slavery Bill 2018. First Reading". Available at: https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-75577'.

5 Parliament of New South Wales (2018). "Modern Slavery Bill 2018". Available at: https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3488.

Personal scope

The provisions regarding supply chain transparency apply to commercial organisations with employees in New South Wales that supply goods and services for profit or gain and have a total turnover in a financial year of not less than A$50 million or such other amount as may be prescribed by the regulations (section 24.1).

Territorial scope

The intention of Parliament is for the Bill to apply within and outside New South Wales. Therefore, it would apply to acts, transactions and matters done, entered into or occurring in or outside the territorial limits of New South Wales (section 4).

Requirements for companies

Commercial organisations shall prepare a modern slavery statement after the end of each financial year as provided for by the future regulation of the Bill (section 24.2 and 24.3).

The information the modern slavery statements shall contain will be required by or under the regulations regarding the Bill (section 24.4). However, they shall contain at least the following information (section 24.5):

a) The organisation's structure, its business and its supply chains.

b) Its due diligence processes in relation to modern slavery in its business and supply chains.

c) The parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk.

d) The training about modern slavery available to its employees.

Penalties

The Bill contains a variety of penalties up to penalty units or the equivalent of A$1.1 million for commercial organisations: failing to present their mod-

ern slavery statement, failing to publish the statement in accordance with the regulations and providing false or misleading information in a modern slavery statement (Part 4).

The Anti-slavery Commissioner and the Modern Slavery Committee

The Bill establishes the appointment of an independent Anti-slavery Commissioner and the appointment of a Modern Slavery Committee.

Among the functions of the Commissioner, we find the following ones (section 9):

- To promote action to combat modern slavery.
- To identify and provide assistance and support for victims of modern slavery,
- To make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery.
- To cooperate with or work jointly with government and non-government agencies and other bodies and persons to combat modern slavery and provide assistance and support to victims of modern slavery.
- To monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies and commercial organisations.
- To monitor the effectiveness of legislation and governmental policies and action in combating modern slavery.
- To raise community awareness of modern slavery.
- To exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

Regarding the matter of supply chain transparency, the Commissioner has the following specific functions:

- Regularly consult with the Auditor-General and the New South Wales Procurement Board to monitor the effectiveness of due diligence procedures in

place to ensure that the procurement of goods and services by government agencies are not the product of modern slavery (section 25).

- Keep a register in electronic form of the modern slavery statements issued by the commercial organisations (section 26).
- Develop codes of practice for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of government and non-government agencies and steps that can be taken by government and non-government agencies to remediate or monitor identified risks (section 27).
- Promote public awareness of and provide advice on steps that can be taken by government and non-government agencies to remediate or monitor risks of modern slavery taking place in their supply chains (section 28).

The Commissioner is required to prepare, within the period of 4 months after 30 June in each year, a report of the Commissioner's operations during the year ended on that 30 June and furnish the report to the Minister. The report is to be furnished to the Presiding Officer of each House of Parliament within 14 sitting days after it is given to the Minister (section 19).

Meanwhile, the Modern slavery Committee is constituted by four members, appointed by the Legislative Council and four members appointed by the Legislative Assembly (section 23). The Committee's functions are:

- To inquire into and report on matters relating to modern slavery.
- To report to both Houses of Parliament on matters relating to modern slavery.

Additional references

- Business & Human Rights Resource Centre (2018). "Australia: Modern Slavery bill passed by New South Wales state Parliament". Available at: https://www.business-humanrights.org/en/australia-modern-slavery-bill-passed-by-new-south-wales-state-parliament.
- Covington, Christine; do Rozario, Michael; Forsyth, Anthony (2018). "NSW Modern Slavery Act and Commonwealth Slavery Bill: How Will Organisations Be Affected by the Reporting Requirements?" Available at: http://www.corrs.com.au/publications/corrs-in-brief/nsw-modern-slavery-act-and-commonwealth-slavery-bill-how-will-organisations-be-affected-by-the-reporting-requirements/.
- Wootton, Jacqueline; Brooke, Penny; Swain-Tonkin, Melissa; Gooding, Travis (2018). "Modern Slavery Reporting is coming – You Won't Escape the Net". Available at: https://www.herbertsmithfreehills.com/latest-thinking/modern-slavery-reporting-is-coming-you-wont-escape-the-net.
- Wootton, Jacqueline; Crockett, Antony; Kelly, Olivia; Barnes, Ashleigh (2018). "Modern Slavery Update: First Australian Modern Slavery Legislation Passes in NSW". Available at: https://www.herbertsmithfreehills.com/latest-thinking/modern-slavery-update-first-australian-modern-slavery-legislation-passes-in-nsw.

V.

BUSINESS LEVEL

(sector-related initiatives)

a. Mixed sector-related initiatives

i. Extractive sector

VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

- Multilateral voluntary initiative
- Approved on 19 December 2000
- Extractive and energy resources sector

Objective

The objective of the **Voluntary principles on security and human rights**[1] is to help extractive sector companies to maintain the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms under International humanitarian law.

Background

In 2000, a small group of States (United States, United Kingdom, the Netherlands and Norway), business enterprises and non-governmental organisations cooperated in the development and launch of the Voluntary principles on security and human rights on 19 December of that same year.

Scope of application

Material scope

The Voluntary principles guide companies in order for their operations to be secure and to guarantee the respect for human rights and international humanitarian law.

1 "Voluntary principles on security and human rights". Available at: http://www.voluntaryprinciples.org/.

Personal scope

Participation in the Voluntary principles is open to all States, companies and non-governmental organisations proactively contributing to their implementation.

In 2007, the Voluntary principles formally adopted the Participation Criteria to strengthen the Principles. All States, companies and non-governmental organisations shall comply with the following criteria:[2]

- Publicly promote the Voluntary Principles.
- Proactively implement or assist in the implementation of the Voluntary Principles.
- Attend plenary meetings and, as appropriate and commensurate with resource constraints, other sanctioned extraordinary and in-country meetings.
- Communicate publicly on efforts to implement or assist in the implementation of the Voluntary Principles at least annually.
- Prepare and submit to the Steering Committee, one month prior to the Annual Plenary Meeting, a report on efforts to implement or assist in the implementation of the Voluntary Principles according to criteria agreed upon by the participants.
- Participate in dialogue with other Voluntary principles participants.
- Subject to legal, confidentiality, safety, and operational concerns, provide timely responses to reasonable requests for information from other participants with the aim of facilitating comprehensive understanding of the issues related to implementation or assistance in implementation of the Voluntary principles.

Contents

The Voluntary principles include three key elements:

1. Risk assessment: companies are required to assess security risks and the possibility of human rights violations occurring. For effective risks assessment, the following factors should be considered:
   - **Identification of security risks.** Security risks can result from political, economic, civil or social factors. Identification of security risks allows a company to take measures to minimise risk and to assess whether company actions may heighten risk.

2 FIDH (2016). *Corporate Accountability for Human Rights Abuses A Guide for Victims and NGOs on Recourse Mechanisms*. 3rd ed., Paris: FIDH, p. 555-556.

- **Potential for violence.** Risk assessments should examine patterns of violence in areas of company operations for educational, predictive, and preventative purposes.
- **Human rights records.** Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security.
- **Rule of law.** Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.
- **Conflict analysis.** Risk assessment should also consider the potential for future conflicts.
- **Equipment transfers.** Where companies provide equipment to public or private security, they should consider the risk of such transfers. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

2. Public security: companies are required to interact with public security (military, police and other special forces) to promote the protection of human rights. therefore, companies need to consider the following principles:
   - **Security Arrangements.** companies should plan their strategy to collaborate with public security providers, consulting regularly with host governments and local communities about the impact of their security arrangements on those communities. Furthermore, they should communicate their policies regarding ethical conduct and human rights to public security providers.
   - **Deployment and conduct.** Companies providing equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences.
     On the other hand, they should use their influence to promote the different principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of company employees as recognised

by the Universal Declaration of Human Rights and the International Labour Organisation Declaration on fundamental principles and rights at work.

- **Consultation and advice.** Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. They should also consult regularly with other companies, host and home governments and civil society to discuss security and human rights.
  On the other hand, they should support efforts by governments, civil society and multilateral institutions to provide training for public security forces.
- **Responses to human rights abuses.** Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. In this regard, they should actively monitor the status of investigations and press for their proper resolution. To the extent reasonable, companies should monitor the use of equipment provided by them and investigate properly situations in which such equipment is used in an inappropriate manner.

3. Private security services: companies need to interact with private security services in a way that promotes the respect for human rights. Given the risks associated with the use of private security companies as a complement to public security, companies should recognise the following voluntary principles to guide private security conduct:
   - Private security should observe the policies of the contracting company regarding ethical conduct and human rights.
   - Private security should maintain high levels of technical and professional proficiency.
   - Private security should act in a lawful manner.
   - Private security should have policies regarding appropriate conduct and the local use of force.
   - Private security should provide only preventative and defensive services.
   - Private security companies should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights.

- In cases where physical force is used, private security companies should properly investigate and report the incident.

What does it take to implement the Voluntary principles?

The effective implementation of the Voluntary principles is facilitated by several key factors:

- Political commitment at the highest management level of the company: explicit corporate-level commitment to respecting human rights is a key enabling factor.
- Internal cooperation across departments and functions: Successful implementation of the Voluntary principles requires collaboration and cooperation between different corporate departments or, for smaller companies, alignment between individuals involved in those functions.
- Local community supports as key security measure: often, one of the most important layers of security protection a company can possess is the support of the local community. Similarly, alignment between community engagement activities and the security function is a critical component of the Voluntary Principles' implementation.
- Cooperation with external stakeholders: it is very difficult, if not impossible, for one company to successfully implement the Voluntary principles on its own without working with other social actors. Governments, non-governmental organisations, local communities and other actors all have a role to play in making the Voluntary Principles' implementation work.

Additional references

- Freeman, Bennett; Pica, Maria B.; Camponovo, Christopher N. (2001). "A New Approach to Corporate Responsibility: The Voluntary Principles on Security and Human Rights". *Hastings International and Comparative Law Review*, vol. 24, nr. 3, pp. 423-450.
- ICMM; CICR; IFC; IPIECA (2012). "Voluntary principles on security and human rights. Implementation Guidance Tools". Available at: http://www.ipieca.org/resources/good-practice/voluntary-principles-on-security-and-human-rights-implementation-guidance-tools/.

KIMBERLEY PROCESS CERTIFICATION SCHEME FOR THE INTERNATIONAL ROUGH DIAMOND TRADE

- International system for voluntary certification
- Adopted in November 2002

Objective

The **Kimberley process international certification scheme**[1] is an initiative by several diamond importing and exporting States, aiming at excluding the flow of conflict diamonds into the legal market, through a series of measures each participating country needs to adopt, in accordance with its own internal regulations and within its jurisdiction.

> According to the Certification scheme, "conflict diamonds" are rough diamonds, used by rebel movements or their allies to fund conflicts seeking to destabilise legitimate governments, as described in the relevant United Nations Security Council resolutions in force and in other similar Council resolutions that may be adopted in the future, and as is understood and recognised in United Nations General Assembly Resolution 55/56, or other similar Assembly resolutions that may be adopted in the future.

Background

On 1 December 2000, the United Nations General Assembly adopted Resolution 55/56 in which it called on the international community to create a certification scheme to control the international trade of rough diamonds from so-called "conflict zones", controlled by rebel groups, thereby ensuring that resources coming from importing or exporting rough diamonds would not be used to fund guerrillas, armed movements and subversive groups.

1 "What is the Kimberley Process?" Available at: https://www.kimberleyprocess.com/en/what-kp.

On 6 May 2002, the United Nations Security Council adopted Resolution 1408, supporting the proposal of an international certification scheme for rough diamonds, presented in the Kimberley Process context, the name given to the round of negotiations in which several countries participated in view of developing an international mechanism to ensure the international trade in rough diamonds does not contribute to the funding of illegitimate and violent movements that could affect international peace and security.

On 5 November 2002, as the result of the Kimberley Process negotiations, the Interlaken Declaration was adopted, establishing the rules of the Kimberley Process Certification Scheme for the international trade in rough diamonds. The Certification scheme was launched with the participation of 37 countries.

On 28 January 2003, the United Nations Security Council adopted Resolution 1459, expressing its support to the Kimberley Process international certification scheme, looking forward to its implementation and stressing that the widest possible participation in the Certification scheme is essential, which is why it urges all United Nations member States to actively participate in the implementation of the requirements established.

Scope of application

Participation in the Certification Scheme is open on a global, non-discriminatory basis to all countries willing and able to fulfil the requirements of the Scheme. In 2018, the system gathered 54 participants, representing 81 countries (the EU and its 27 member States are considered one single participant) and, approximately, 99.8% of the global production of rough diamonds.[2]

Countries wishing to participate in the Certification scheme should signify their interest by notifying the chair through diplomatic channels. This notification should include the information identifying their designated authorities or bodies responsible for implementing the provisions of the Certification scheme. Furthermore, they should facilitate information regarding their laws, regulations, rules, procedures and practices, and update that information as required.

2 Participants. Available at: https://www.kimberleyprocess.com/en/participants.

Participating as observer refers to industry and civil society groups that play an active role in monitoring the effectiveness of the Certification scheme and who provide technical and administrative expertise to the secretariat, working groups, applicants and participants.[3]

Requirements

Countries participating, importing as well as exporting countries, commit to implementing the Certification scheme in order to ensure that:

a) A Kimberley Process Certificate accompanies each shipment of rough diamonds on export.

b) Their processes for issuing certificates meet the minimum standards of the Kimberley Process.

c) Certificates meet the minimum requirements.

d) They notify all other participants, through the chair, of the features of its certificate for purposes of validation.

Minimum requirements for Certificates

- Each Certificate should bear the title "Kimberley Process Certificate" and the following statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds".
- Mention the country of origin for shipment of parcels of unmixed origin.
- Certificates may be issued in any language, provided that an English translation is incorporated.
- Unique numbering with the Alpha 2 country code, according to ISO 3166-1.
- Tamper and forgery resistant.
- Date of certificate issuance.
- Date of expiry.
- Issuing authority.
- Identification of exporter and importer.
- Carat weight/mass.
- Value in US$.
- Number of parcels in shipment.
- Relevant harmonised commodity description and coding system.
- Validation of certificate by the exporting authority.

3 Observers. Available at: https://www.kimberleyprocess.com/en/observers.

Regarding the international trade in rough diamonds, each participating country shall (does not apply, in principle, to diamonds in transit):

- Require that each shipment of rough diamonds exported to a participant is accompanied by a due validated certificate, in accordance with the rules and the requirements established.
- Require, regarding shipments imported from another participant, the corresponding certificate and ensure that confirmation of receipts is sent expeditiously to the relevant exporting authority.
- Ensure that no shipment of rough diamonds is imported from or exported to a non- participant.

Following the aforementioned, the participating countries shall:

a) Establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory.

b) Designate an importing and an exporting authority(ies).

c) Ensure that rough diamonds are imported and exported in tamper resistant containers.

d) As required, amend or enact appropriate laws or regulations to implement and enforce the certification scheme and to maintain dissuasive and proportional penalties for transgressions.

e) Collect and maintain relevant official production, import and export data.

f) When establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls.

Compliance monitoring mechanism

The Certification scheme includes a monitoring mechanism through annual reports issued by the participating countries, presented in the plenary sessions of the Kimberley Process where the effectiveness of the Certification scheme is discussed. The annual reports describe how the participants meet the requirements of the Certification scheme.

In case the reports of the participants need clarifications, the following measures may be applied:

a) Requesting additional information and clarification from Participants;

b) Review missions by other participants or their representatives where there are credible indications of significant non-compliance with the certification scheme.

Review missions are to be conducted in an analytical, expert and impartial manner with the consent of the participant concerned. The size, composition, terms of reference and time-frame of these missions should be based on the circumstances and be established by the chair with the consent of the participant concerned and in consultation with all participants.

Certification scheme review mechanism

Participants submit the Certification scheme to periodic review, to allow themselves to conduct a thorough analysis of all elements contained in the scheme. The review should also include consideration of the continuing requirement for such a scheme, in view of the perception of the participants, and of international organisations, in particular the United Nations, of the continued threat posed at that time by conflict diamonds.

Additional references

- Bieri, Franziska (2009). "The Quest for Regulating the Global Diamond Trade". ICIP *Working Papers: 2009/5*. Barcelona: ICIP.
- Cullen, Holly (2013). "Is There a Future for the Kimberley Process Certification Scheme for Conflict Diamonds". *Macquarie Law Journal*, vol. 12, pp. 61-80.
- Diago Diago, María del Pilar (2009). "El Comercio Internacional de Diamantes: Sistema de Certificación del Proceso Kimberley". *Cuadernos de Derecho Transnacional*, vol. 1, nr. 1, pp. 72-91.
- Ezeudu, Martin-Joe (2014). "From a Soft Law Process to Hard Law Obligations: The Kimberley Process and Contemporary International Legislative Process". *European Journal of Law Reform*, vol. 16, nr. 1, pp. 104-132.
- Gooch, Tina Muscarella (2088). "Conflict Diamonds or Illicit Diamonds: Should the Difference Matter to the Kimberley Process Certification Scheme". *Natural Resources Journal*, vol. 48, nr. 1, pp. 189-214.
- Nichols, Julie Elizabeth (2012). "A Conflict of Diamonds: The Kimberley Process and Zimbabwe's Marange Diamond Fields". *Denver Journal of International Law and Policy*, vol. 40, nr. 4, pp. 648-685.
- Pigrau Solé, Antoni (2012). "Conflict diamonds and the Kimberley Process". ICIP Digital magazine, nr. 14. Available at: http://www.icip-perlapau.cat/e-review/issue-14-september-2012/conflict-diamonds-and-kimberley-process.htm.
- Price, Tracey Michelle (2003). "The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate". *Minnesota Journal of Global Trade*, vol. 12, nr. 1, pp. 1-70.

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

- Multilateral voluntary initiative
- Launched in 2002
- Extractive sector

Objective

The **Extractive industries transparency initiative**[1] is an international standard aiming at promoting open and accountable management of oil, gas and mineral resources, through the disclosure of information along the extractive industry value chain from the point of extraction to how revenues make their way through the government, and how they benefit the general public.

The information published under the Initiative is used by the people in charge of applying reforms, political authorities, investors, governments, civil society actors, academics and journalists, among others, in order to better understand the sector. As such, the stakeholders can propose reforms to strengthen transparency and accountability in the sector.

Background

In 2002, Tony Blair announces the launch of the Initiative and sets it in motion during the World Summit on Sustainable Development.

In 2003, during the Lancaster House Conference, organised by the Government of the United Kingdom, a diverse group of countries, companies and civil society organisations agreed on a declaration of principles to increase transparency in payments and revenues of companies in the extractive sector. These principles became known as the Extractive Industries Transparency Initiative Principles and constitute the cornerstone of the initiative.

1 "Extractive Industries Transparency Initiative". Available at: https://eiti.org.

In 2013, some adjustments were made to the Initiative, modifying the requirements so they would cover aspects beyond the transparency of revenues.

In 2016, the Council of the Initiative agrees on new disclosure requirements regarding actual beneficiaries of the extractive sector.

Scope of application

Material scope

The Initiative standard requires countries and countries to disclose comprehensive and precise information on key aspects in the management of natural resources in the oil, gas and extractive industry:

- Natural resources
- Contracts and licenses
- Production
- Revenue collection
- Revenue allocation
- Social and economic spending
- Public benefit

Source: EITI

Personal scope

The Initiative is open to countries wanting to improve the way they manage their natural resources. At the start, they would be candidate and later compliant countries, once the transparency and accountability requirements are met.

Signing up for the initiative: steps from becoming a candidate country to implementing the initiative standard

A country intending to implement the Initiative is required to undertake a number of steps before applying to become a candidate:

- The government is required to issue an unequivocal public statement of its intention to implement the Initiative. The statement must be made by the head of state or government, or an appropriately delegated government representative.
- The government is required to appoint a senior individual to lead the implementation of the Initiative.
- The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the Initiative.
- The multi-stakeholder group shall draft an updated and fully costed work plan, aligned with the reporting and validation deadlines established by the Initiative Board.

At a later stage, government, with the support of the multi-stakeholder group, should submit a candidature application before the Initiative Board, using the prescribed application form. The application should describe the activities undertaken to date and provide evidence demonstrating that each of the sign-up steps have been completed. The application should include contact details for government, civil society and private sector stakeholders involved in the preparatory steps for implementation of the Initiative.

Contents

The Initiative Principles

The Initiative Principles lay out the general aims and commitments by all stakeholders.

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental organisations.

Requirements for Initiative implementing countries

The Initiative requirements are the basis of the standard to which the Initiative implementing countries must adhere.

Requirement 1. Oversight by the multi-stakeholder group

The Initiative requires effective multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society. The key requirements related to multi-stakeholder oversight include government engagement; industry engagement; civil society engagement; and an agreed work plan with clear objectives for Initiative implementation, and a timetable that is aligned with the deadlines established by the Initiative Board.

Requirement 2. Legal and institutional framework, including allocation of contracts and licenses

The Initiative requires disclosures of information related to the rules for how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual framework that apply to the extractive sector, and the institutional responsibilities of the State in managing the sector. The Initiative Requirements related to a transparent legal framework and award of extractive industry rights include: legal framework and fiscal regime; license allocations; register of licenses; contracts; beneficial ownership; and state-participation in the extractive sector.

Requirement 3. Exploration and production

The Initiative requires disclosures of information related to exploration and production, enabling stakeholders to understand the potential of the sector. The Initiative requirements related to a transparency in exploration and production activities include: information about exploration activities; production data; and export data.

Requirement 4. Revenue collection

The Initiative requires a comprehensive reconciliation of company payments and government revenues from the extractive industries. The Initiative requirements related to revenue collection include: comprehensive disclosure of taxes and revenues; sale of the state's share of production or other revenues collected in kind; infrastructure provisions and barter arrangements; transportation revenues; transactions related to state-owned enterprises; subnational payments; level of disaggregation; data timeliness; and data quality.

Requirement 5. Revenue allocations

The Initiative requires disclosures of information related to revenue allocations, enabling stakeholders to understand how revenues are recorded in the national and where applicable, subnational budgets, as well as where the companies' social expenditure ends up. The Initiative requirements related to revenue allocations include: distribution of revenues; subnational transfers; and revenue management and expenditures.

Requirement 6. Social and economic spending

The Initiative requires disclosures of information related to social expenditures and the impact of the extractive sector on the economy, helping stakeholders to assess whether the extractive sector is leading to the desirable social and economic impacts and outcomes. The Initiative requirements related to social and economic spending include: social expenditures by companies; state-owned enterprises quasi-fiscal expenditures; and an overview of the contribution of the extractive sector to the economy.

Requirement 7. Outcomes and impact

The Initiative requirements related to outcomes and impact seek to ensure that stakeholders are engaged in dialogue about natural resource revenue management. Initiative reports lead to the fulfilment of the Initiative principles by contributing to wider public debate. It is also vital that lessons learned during implementation are acted upon, that discrepancies identified in Initiative reports are explained and, if necessary, addressed, and that Initiative implementation is on a stable, sustainable footing.

Requirement 8. Compliance and deadlines for implementing countries

This requirement consists in the presentation of annual progress reports and the Validation process.

- Annual progress reports

The Initiative requires the publication of progress reports for the assessment of impacts and outcomes of the Initiative implementation. The annual reports shall include:

1. A summary of Initiative activities undertaken in the previous year.
2. An assessment of progress with meeting and maintaining compliance with each Initiative requirement, and any steps taken to exceed the requirements. This should include any actions undertaken to address issues such as revenue management and expenditure, transportation payments, discretionary social expenditures, ad hoc subnational transfers, beneficial ownership and contracts.
3. An overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation. The multi-stakeholder group is required to list each recommendation and the corresponding activities that have been undertaken to address the recommendations and the level of progress in implementing each recommendation. Where the government or the multi-stakeholder group has decided not to implement a recommendation, it is required that the multi-stakeholder group documents the rationale in the annual progress report.
4. An assessment of progress with achieving the objectives set out in its work plan, including the impact and outcomes of the stated objectives.
5. A narrative account of efforts to strengthen the impact of Initiative implementation on natural resource governance, including any actions to extend the detail and scope of Initiative reporting or to increase engagement with stakeholders.

The report of the previous year's activities must be published by 1 July of the following year. If the annual progress report is not published within six months of this deadline, i.e. by 31 December of the following year, the country will be suspended until the outstanding progress report has been published.

- Validation process

All countries becoming Initiative member are assessed according to the so-called Validation process. It is intended to offer all stakeholders an independent assessment on whether the implementation of the Initiative in a country is done in accordance to what is laid out in the Initiative standard. The Validation therefore studies the country's progress in complying with the Initiative requirements, the lessons learned in the implementation, the concerns stakeholders may have expressed and recommendations for strengthening the process and improving sector governance.

Validation is carried out in three stages:

1. Preparation for Validation. Prior to the commencement of Validation, the multi-stakeholder group is encouraged to undertake a self-assessment of observance of the Initiative.

2. Initial data collection and stakeholder consultation undertaken by the Initiative International Secretariat. The International Secretariat reviews the relevant documentation, visits the country and consults stakeholders.

3. Independent Validation. The Board will appoint an Independent Validator through an open, competitive tendering process. The Validator will report to the Board via the Validation Committee.

4. Board Review. The Validation Committee will review the Final Validation Report and the supporting documentation. The Validation Committee will then make a recommendation to the Initiative Board on the country's compliance with the Initiative requirements and, where applicable, any corrective actions required.

Outcomes and consequences of the Validation.

The Validation of a country according to the Initiative standard can result in the following outcomes:

- Satisfactory progress. This status indicates all requirements have been implemented and the broader objective of the Initiative has been fulfilled.
- Meaningful progress. This means significant aspects of each of the requirements have been implemented and that the broader objective of the Initiative is being fulfilled.
- Inadequate progress. A country is considered to have achieved inadequate progress when significant aspects of each of the requirements have not been implemented and the broader objective of the Initiative is far from being fulfilled.
- No progress. When the requirements remain pending compliance and the broader objective of the Initiative is not fulfilled.
- Pending assessment. Many countries have not been assessed so far.

A country may be suspended if it fails to carry out significant progress or cannot continue with the implementation of the Initiative within its borders for social or political reasons, or, may be delisted when it has not achieved sufficient progress in the implementation of the standard within the deadline specified or when it does not comply with significant aspects of the principles and requirements. A delisted country can reapply for admission at any time.

Requirements for companies

The Initiative recognises that international, national, public or private companies play a key role to ensure the Initiative objectives are met. As such, some of the measures companies can adopt for the implementation of the Initiative are:

- Participate in conferences on the matter of revenue transparency and management.
- Comment on the revisions of basic documents used as guidance for the Initiative.

- Help collecting examples of best practices regarding the Initiative and disseminate them at a global level.
- Include the Initiative in conversations held with their own government (or any other government) as part of their strategic interaction.
- Actively engage with stakeholders to promote revenue transparency.
- Support the methods of the Initiative in best practices and guidelines with respect to the industry, and contribute to these efforts during implementation.

Additional references

- Caspary, Georg (2012). "Practical Steps to Help Countries Overcome the Resource Curse: The Extractive Industries Transparency Initiative", *Global Governance*, vol. 18, nr. 2, pp. 171-184.
- EITI (2005). "Extractive Industries Transparency Initiative Source book". Available at: https://eiti.org/sites/default/files/documents/sourcebook-march05_0.pdf.
- EITI (2016). "EITI Standard". Available at: https://eiti.org/document/standard#download.
- EITI (2018). "Factsheet". Available at: https://eiti.org/sites/default/files/documents/eiti_factsheet_en_feb2018.pdf.
- Ekhator, Eghosa Osa (2014). "The Roles of Civil Society Organizations in the Extractive Industries Transparency Initiative in Nigeria". *International Journal of Not-for-Profit Law*, vol. 16, nr. 2, pp. 47-52.
- Fortineaux, Eric (2013). "The Fight against the Extractive Industries Transparency Initiative". *Loyola University Chicago International Law Review*, vol. 11, nr. 1, pp. 65-77.
- Milin, Zorka (2016). "Mapping Recent Developments in Transparency of Extractive Industries". *Business and Human Rights Journal*, vol. 1, nr. 2, pp. 321-326.

ii. Private military and security sector

MONTREUX DOCUMENT ON PERTINENT INTERNATIONAL LEGAL OBLIGATIONS AND GOOD PRACTICES FOR STATES RELATED TO OPERATIONS OF PRIVATE MILITARY AND SECURITY COMPANIES DURING ARMED CONFLICT

- Intergovernmental document
- Approved on 17 September 2008
- Surveillance and private security sector

Objective

The **Montreux Document**[1] is intended to promote respect for International humanitarian law and human rights law by private military and security companies (PMSCs) whenever they are present in armed conflicts. This initiative is not legally binding, but rather constitutes a summary of pertinent international obligations and good practices for States regarding the operations of PMSCs in armed conflicts.

Adoption process

On 2 December 2005, the Swiss Federal Council adopted a report on private military and security companies,[2] instructing the Federal Department of Foreign Affairs to launch an international initiative for the promotion of compliance with International humanitarian law and human rights by PMSCs operating in conflict areas.

1 A/63/467–S/2008/636.

2 Swiss Federal Council (2005). "Report by the Swiss Federal Council on Private Security and Military Companies". Available at: https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/PMSCs%20Bericht%20Bundesrat%20en.pdf.

In 2006, an international process was launched, triggered by the Swiss Government and the International Committee of the Red Cross, aiming at promoting respect for International humanitarian law and human rights in all armed conflicts where PMSCs operate. In this process, meetings were organised in January and November 2006, November 2007 and April and September 2008, as well as consultations with PMSCs and other civil society actors.[3]

On 17 September 2008, the Montreux Document was approved by consensus by 17 States: Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Ukraine and the United States of America. In 2018, the Document is supported by more than 50 countries and some international organisations, such as the European Union.

In December 2014, following the request of the Montreux Document participants, the "Montreux Document Forum" was launched as a platform to share good practices and analyse the challenges regarding PMSC regulation. This forum gathers all the Montreux Document participants.[4]

Scope of application

Material scope

The Montreux Document collects the well-established rules of International law, in particular those of International humanitarian law and human rights rules that apply to States in their relations with PMSCs and their operations during armed conflicts.

3 Federal Department of Foreign Affairs (2017). "The Montreux Document". Available at: https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html.

4 "Montreux Document Forum". Available at: http://www.mdforum.ch/.

Personal scope

The Montreux Document is mainly intended for States and international organisations showing their interest in participating through an official letter or diplomatic note to the Swiss Federal Department of Foreign Affairs. Neither civil society organisations nor business enterprises can officially join the Montreux Document.

Contents

The Montreux Document is divided in two main parts:

1. Part One identifies the pertinent obligations under international human rights and humanitarian law, applicable to States, in particular to Contracting, Territorial and Home States. It also addresses the responsibilities of the PMSC and their personnel, as well as superior responsibility;

> "Contracting States" are States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC.
>
> "Territorial States" are States on whose territory PMSCs operate.
>
> "Home States" are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the "Home State".

2. Part Two describes good practices for state regulation of PMSCs. This includes establishing transparent regulatory regimes, terms for granting licenses and measures to improve supervision and accountability at national level. To ensure the PMSCs' capacity to comply with international regulations regarding human rights and humanitarian law, good practices are proposed in the areas of training, adequate internal policies, and supervision.

	Pertinent international legal obligations relating to private military and security companies	Good practices relating to private military and security companies
Contracting States	• Not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority. • To ensure respect for International humanitarian law by PMSCs they contract. • To adopt legislative and other measures to comply with their obligations under International humanitarian law. • To enact legislative tools necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions. • To investigate, prosecute, extradite or surrender persons suspected of having committed other crimes under International law. • To provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs.	• To establish a procedure for the selection and contracting of PMSCs, ensuring transparency and supervision. • To adopt suitable quality criteria for the selection of PMSCs, in order to ensure they respect pertinent International humanitarian law and human rights rules. • To select PMSCs, taking into account: past conduct, whether they possess the required authorisations; whether they maintain personnel and property records; whether they are sufficiently trained; whether they have adequate internal policies; among others. • To include contractual clauses, requiring compliance with selection criteria and, more in particular, respect for International humanitarian law, also by subcontractors. • To monitor and supervise contract compliance and provide for accountability mechanisms for PMSCs.
Territorial States	• To ensure respect for International humanitarian law by PMSCs operating on their territory. • To adopt legislative and other measures to comply with their obligations under International humanitarian law. • To enact legislative tools necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions. • To investigate, prosecute, extradite or surrender persons suspected of having committed other crimes under International law. • •	• To establish an authorisation system, requiring companies to obtain an operating license or to request a license to carry out specific services. Territorial States can also grant licenses to or register individuals. • To establish a PMSC selection procedure, based on selection criteria, similar to those of Contracting States. • To link granting of authorisations or licenses with compliance with selection criteria and require respect for International humanitarian law, also by subcontractors. • To establish specific rules to regulate the provision of services by PMSCs and their personnel. • To monitor and supervise compliance with authorisation or license criteria and provide for accountability mechanisms for PMSCs.
Home States	• ·To ensure respect for International humanitarian law by PMSCs of their nationality. • To adopt legislative and other measures to comply with their obligations under International humanitarian law. • To enact legislative tools necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions. • To investigate, prosecute, extradite or surrender persons suspected of having committed other crimes under International law.	• To establish an authorisation system, in particular for exporting PMSC services abroad. • To establish procedures, selection criteria, and authorisation conditions, similar to those of Contracting and Territorial States, monitor compliance with authorisation or license conditions and establish mechanisms for PMSCs to account for their actions.

	Pertinent international legal obligations relating to private military and security companies	Good practices relating to private military and security companies
PMSCs and their personnel	• To comply with international humanitarian law or human rights law imposed upon them by applicable national law, as well as other applicable national law such as Criminal law, Tax law, Immigration law, Labour law, and specific regulations on private military or security services. • The personnel of PMSCs are obliged to respect the relevant National law, in particular the National criminal law, of the State in which they operate, and, as far as applicable, the law of the States of their nationality.	

Additional references

- Balmond, Louis (2009). "Observations sur le document de Montreux **r**élatif aux obligations juridiques internationales pertinentes et aux bonnes pratiques pour les Etats concernant les activités des sociétés militaires privées". *Revue Generale de Droit International Public*, vol. 113, nr. 1, pp. 113-124.

- Cockayne, James (2008) "Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreux Document". *Journal of Conflict & Security Law*, vol. 13, nr. 3, pp. 401-428.

- Federal Department for Foreign Affairs (2017). "Regulating private military and security companies ". Available at: https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/20150506-regulating-private-military-security-companies_EN.pdf.

- Pozo Serrano, María del Pilar (2010). "El Derecho Internacional Humanitario ante las empresas militares y de seguridad privadas: aportaciones y límites del Documento de Montreux". In: Ramón Chornet, Consuelo (coord.). *Estabilidad internacional, conflictos armados y protección de los derechos humanos*. Valencia: Tirant lo Blanch.

- Saura Estapà, Jaume; Bitorsoli Cirocco, Marta (2013). *Private military and security companies and international humanitarian law. Report 10/2013*. Barcelona: International Catalan Institute for Peace.

- Seiberth, Corinna (2014). *Private Military and Security Companies in International Law: A Challenge for Non-Binding Norms: The Montreux Document and the International Code of Conduct for Privacy Security Providers*. Cambridge: Intersentia.
- Villamizar Lamus, Feranando (2014). "El Documento de Montreux: Derechos Humanos y Derecho Internacional Humanitario en las Operaciones de Empresas Militares y de Seguridad Privadas". *Revista Jurídica do Cesuca*, vol. 2, nr. 4, pp. 30-48.

INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY COMPANIES

- Multilateral initiative
- Published on 9 November 2010
- Private security sector

Objective

The purpose of the **International code of conduct for private security companies**[1] is to set forth a commonly-agreed set of principles for private security companies (PSCs) and to establish a foundation to translate those principles into related standards as well as governance and oversight mechanisms.

The International code of conduct acts as a founding instrument for a broader initiative to create better governance, compliance and accountability for PSCs. However, it does not replace the control exercised by competent authorities, and does not limit or alter applicable international law or relevant national law. As such, it creates no legal obligations and no legal liabilities on the signatory companies.

Adoption process

On 17 September 2008, the Montreux Document was approved by consensus of 17 States.

In January 2009, the Swiss Government launched a complementary effort to improve the private security sector's accountability. By means of a consultation process that lasted almost 18 months, Switzerland brought together private security companies, States (including Australia, the United Kingdom and the United States of America), civil society organisations and academ-

1 "International code of conduct for private security companies". Available at: https://www.icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf.

ics to draft a code of conduct for the private security industry, based on the International human rights and humanitarian law standards.

On 9 November 2010, the Code was completed, and signed and supported by 58 companies formally committing to its implementation.

In September 2013, the International Code of Conduct Association for private security service providers was established, through the Articles of Association, as a Swiss non-profit organisation with seat in Geneva.[2]

International Code of Conduct Association

The International code of conduct sets out that one of the additional steps that need to be adopted to support its implementation is to create a governance and supervision mechanism that will be responsible for the maintenance and administration of the Code.

Therefore, the Association is constituted as the governance and supervision mechanism, aiming at promoting, regulating and supervision the execution of the International code.

The core functions of the Association are:

1. Certification of member companies, which includes assessing whether a company's systems and policies are designed to meet the Code's principles (article 11 of the Articles of Association);
2. Monitoring and assessing (through the use of established human rights methodologies) of member companies' efforts to comply with the Code (article 12 of the Articles of Association);
3. Complaints process for alleged violations of the Code (article 13 of the Articles of Association).

Association membership is open to private security companies, civil society organisations and all Montreux Document States and intergovernmental organisations. Other stakeholders, such as PSC clients or academics, can obtain the condition of "observer" in the Association and contribute in this way to the development of the functions of governance and supervision (article 3 of the Articles of Association).[3]

2 "The Articles of Association". Available at: https://www.icoca.ch/en/articles_of_association#article-3-membership.

3 "Become a Member or Observer". Available at: https://www.icoca.ch/en/become-member-or-observer.

Scope of application

Material scope

The signatory companies of the International code of conduct affirm that they have a responsibility to respect the human rights of, and fulfil humanitarian responsibilities towards, all those affected by their business activities, including personnel, clients, suppliers, shareholders, and the population of the area in which services are provided. This as to promote the rule of law, respect the human rights of all persons and protect the interests of their clients.

Personal scope

The International code of conduct is mainly aiming at the private security industry, operating in complex environments. However, it can also be used by PSC clients (states, humanitarian organisations, extractive industries and other commercial actors) to contribute to the definition of performance targets and rules, linked with their contracting practices and policies. Company membership of the Code is voluntary.

Contents

The International code of conduct recognises in first place that the activities of PSCs and other private security service providers can bring along potentially positive or negative consequences, not just for their clients, but also for the local population of the area of operation, the general security environment, the enjoyment of human rights and the rule of law.

The International code of conduct gathers 70 articles and is divided into two main parts:

The first part establishes the principles regarding the conduct of PSC personnel, based on international human rights and humanitarian law regulations, addressing the following subjects:

- Rules for the use of force.
- The use of force.

- Detention.
- Apprehending persons.
- Prohibition of torture.
- Sexual exploitation and abuse or gender-based violence.
- Human trafficking.
- Prohibition of slavery and forced labour.
- Prohibition of the worst forms of child labour.
- Discrimination.
- Identification and registering.

The second part provides specific commitments on management and governance consisting of:

- Incorporation of the Code into company policies.
- Selection and vetting of personnel.
- Selection and vetting of subcontractors.
- Training of personnel.
- Management of weapons.
- Weapons training.
- Management of material of war.
- Incident reporting.
- Safe and healthy working environment.

As such, the signatory companies of the International code of conduct commit to:

a) operate in accordance with the principles contained in this Code, requiring that their personnel, and all subcontractors or other parties carrying out security services under signatory company contracts, operate in accordance with the principles of the Code;

b) implement appropriate policies to ensure that the actions of their personnel comply at all times with the principles of the Code;

c) act in compliance with applicable rules and regulations in force, including International humanitarian law and human rights law as imposed upon them by applicable national law;

d) exercise due diligence to ensure compliance with the law and with the principles contained in the Code;

e) not contract with, support or service any government, person, or entity in a manner that would be contrary to United Nations Security Council sanctions;

f) take reasonable steps to ensure that the goods and services they provide are not used to violate human rights law or international humanitarian law, and such goods and services are not derived from such violations;

g) provide a means for responding to and resolving allegations of activity that violates any applicable national or international law or the Code;

h) cooperate in good faith with national and international authorities exercising proper jurisdiction;

i) establish a corporate culture that promotes awareness of and adherence by all personnel to the principles of the Code.

Additional references

- Buzatu, Anne-Marie (2015). *Towards an International Code of Conduct for Private Security Providers: A View from Inside a Multi-stakeholder Process*. Geneva: Geneva Centre for the Democratic Control of Armed Forces.
- Federal Department for Foreign Affairs (2017). "Regulating private military and security companies. " Available at: https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/20150506-regulating-private-military-security-companies_EN.pdf.
- Saura Estapà, Jaume; Bitorsoli Cirocco, Marta (2013). *Private military and security companies and international humanitarian law. Report 10/2013*. Barcelona: International Catalan Institute for Peace.
- Seiberth, Corinna (2014). *Private Military and Security Companies in International Law: A Challenge for Non-Binding Norms: The Montreux Document and the International Code of Conduct for Privacy Security Providers*. Cambridge: Intersentia.
- Wallace, David A. (2011). International Code of Conduct for Private Security Service Providers". *International Legal Materials*, vol. 50, nr. 1, pp. 89-104.

b. Private sector-related initiatives

i. Textile and garment sector

NICE CODE OF CONDUCT AND MANUAL FOR THE FASHION AND TEXTILE INDUSTRY

- Code of conduct, jointly drafted by the Nordic Fashion Association and the Nordic Initiative Clean and Ethical
- Published in 2012
- Textile and garment sector

Objective

The **NICE Code of conduct and Manual for the Fashion and Textile industry**[1] is the first sectoral Global Compact initiative with the purpose of ensuring ethical and fair trade for all parties involved in the textile and fashion industry. Therefore, it promotes high levels of sustainability performance on a wide range of topics relevant for the fashion and textile industry, through ethical, responsible and sustainable baselines to tackle challenges specific to the industry.

Background

In 2008, the Nordic Fashion Association was founded by Helsinki Design Week, Icelandic Fashion Council, Oslo Fashion Week, Swedish Fashion Council and Danish Fashion Institute.

In 2009, the Nordic Fashion Association launched the NICE Project (Nordic Initiative Clean and Ethical) as a joint commitment from the Nordic fashion industry to take a lead on social and environmental issues. In that same year, the NICE Code and Manual was developed through consultation with industry representatives and other relevant stakeholders. The NICE Code

1 "NICE Manual and Code of conduct for the Fashion and Textile industry". Available at: http://ethics.iit.edu/codes/NICE2012.pdf.

of conduct and Manual was released as a consultation draft with a view to obtaining further input and finalising the documents by the end of 2012.

On 3 May 2012, the NICE Code of conduct and Manual were presented in the framework of the Copenhagen Fashion Summit.

Contents

The NICE Code of conduct and Manual strive for alignment with international standards and universal principles. The Code of conduct contains a total of 16 principles, categorised into seven chapters inspired in the ten principles of the United Nations Global Compact, but providing additional specificity from a sectoral perspective.

Meanwhile, the NICE Manual includes guidance that gives a detailed view of the principles of the Code of conduct, including guidelines for continuous improvement toward ethical, responsible and sustainable textiles and fashion, in relation to the challenges and dilemmas specific to the industry. The NICE Manual explains in detail what it means to act in accordance with the NICE Code of conduct, why it is important and how to do it.

Principles of the NICE Code of conduct		
1. Support and respect the protection of internationally proclaimed human rights.	Human rights	Global compact
2. Make sure that they are not complicit in human rights abuses.		
3. Uphold the freedom of association and the effective recognition of the right to collective bargaining.	Labour rights	
4. Eliminate all forms of forced and compulsory labour.		
5. Abolition of child labour.		
6. Eliminate discrimination in respect of employment and occupation.		
7. Support a precautionary approach to environmental challenges.	Environment	
8. Undertake initiatives to promote greater environmental responsibility.		
9. Encourage the development and diffusion of environmentally friendly technologies.		
10. Work against corruption in all its forms, including extortion and bribery.	Anti-corruption	

Principles of the NICE Code of conduct		
11. We recognise the conscious ethical decision not to use real animal fur. In business where animals are used for materials in production or labour, such animals must be treated with dignity and respect.	Animals	Sectoral specificity
12. Businesses and their designers must work actively to encourage sustainable design and design processes.	Designers	
13. Businesses must, through their choice and treatment of models, promote a healthy life style and healthy body ideals, and the models' minimum age must be 16 during fashion weeks and other occasions where the workload is excessive.	Models	
14. Work towards transparency in their supply chain.	Transparency	
15. Work towards a stronger commitment between retailers, suppliers and sub-contractors to reinforce the development of a secure mining industry.	Jewellery	
16. Be open and accessible at all times for announced, semi-announced and unannounced audits for monitoring and evaluation of compliance with the NICE Code of conduct.	Monitoring and evaluation	

Human rights (Principle 1 and 2)

The textile and fashion industry must respect and support, and not violate, 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 ILO Declaration on fundamental principles and rights at work.

Respecting human rights implies avoiding complicity in human rights abuse. This basically means that businesses should avoid being implicated in human rights abuse beyond their own direct business activities, or, in other words, in human rights abuse caused by another company, government, individual, group etc.

How

- Publish a written procedure defining the step-by-step process involved in hiring and firing workers.
- Raise awareness about the importance of human rights issues among your workers.
- Ensure that every worker in your supply chain knows what it means to respect human rights.
- Ensure that every worker knows who is responsible for safeguarding the protection of human rights at all staff levels.
- In the case of violation of human rights, be sure that workers and managers know who to contact and what actions to take.

Labour rights (Principles 3, 4 and 5)

1. Freedom of association and right to collective bargaining

Textile and fashion industry is encouraged to respect the workers' right to freedom of association and collective bargaining, ensuring that workers participating in unions are not subject to discrimination or punitive disciplinary actions.

How

- Protect the right of workers to meet in the factory during breaks, after or before work to discuss working conditions and concerns.
- Be informed about local laws in regard to collective bargaining and free association, in your own and your subcontractors' countries. Communicate the policy about the right to collective bargaining and freedom of association to the workers.
- Train managers and supervisors in freedom of association compliance and give workers instructions on their rights under national law and company standards.
- Facilitate the formation of parallel means to independent and free association for all workers, such as working groups or committees, in the factory.

2. Forced labour

Textile and fashion industry must ensure that no part of the labour force or people involved at the premises of the supplier and subcontractors or in other parts of the production line are imposed forced or compulsory labour. No fining or severe reductions in any wages are permitted due to mistakes made by the labour force. Workers must be able to terminate their employment provided that they give a reasonable notice; no personal salary, documents or the like required for leaving, living or working must be withheld on any such occasions; overtime has to be performed voluntarily; workers have permission to leave the factory under reasonable circumstances, such as personal or family emergencies.

How

- Comunicate to all workers that the factory does not tolerate any kind of forced labour.
- Ensure that all overtime is voluntary, through audits or regular assessments.
- Do not keep workers' ID documents, passports or tickets.
- Pay wages directly to the worker.
- Ensure that workers who have to leave the factory do not suffer any penalties as a result.
- Do not restrict or limit workers in any way when they need access to religious facilities, toilets or drinking water.
- Train supervisors and workers on your policies.
- In cases where contractors or agents are used for labour recruitment, ensure that the terms of employment for those workers do not include conditions violating the ILO Forced Labour Convention.
- Not withhold any part of worker wages in an effort to prevent them from resigning.

3. Child labour

The ILO conventions' recommendations regarding the minimum age for workers, which is generally the maximum age for compulsory schooling and child labour, must be complied with.

It is stressed that work performed by a child (under the age of 18) may not in any way be mentally, physically, socially or morally dangerous or harmful to children; shall not interfere with the schooling of children; shall not deprive the children of the opportunity to attend school; shall not oblige the children to leave school prematurely; and shall not require the children to attempt to combine school attendance with excessively long and strenuous work.

How

- Establish an age verification procedure when hiring workers.
- Ensure that all labour contracts include an identity card with date of birth and photo.
- If a child is discovered in the workforce, have an action plan that points out the role of the company, suppliers and family and takes measures to ensure that the child's situation is improved.
- Be familiar with the NGOs that work for children's rights and who to contact in case you have questions and need help.
- Have responsible managers to ensure that no youths are exposed to night work or hazardous work as defined by the ILO.
- Collaborate with relevant parties, i.e. trade unions, subcontractors, NGOs, or other companies, to improve the systems and processes that prevent children from working in the manufacturing industry and setting clear minimum age requirements in accordance with international standards.

4. Discrimination in respect of employment and occupation

Textile and fashion industry shall not accept discrimination in regard to race, skin colour, religion, political or sexual orientation, gender, national origin, or social rank or status. Workers should be hired because of their ability to do the job and not because of their individual characteristics.

How

- Have an employment policy that prohibits discrimination.
- Communicate this policy to subcontractors and to relevant HR and management staff.
- Train staff on non-discrimination policies and practices.
- If the policy is violated, have an action plan for how to remove the discriminatory elements.
- Have a policy that prohibits discrimination against pregnant women.
- Encourage flexible work options to support women that have multiple roles such as being the primary caregiver for young and elderly.
- Pay equal remuneration, including benefits, for work of equal value and strive to pay a living wage to all women and men.
- Provide a favourable environment for all pregnant workers in accordance with ILO No. 183, such as granting six weeks leave before and after the presumed date of confinement and a job that is compatible with the worker's physical condition from the moment she is informed about the pregnancy until 120 days after childbirth.

5. Working hours

Hours of work shall comply with applicable national laws and business standards. In any event, in regular conditions, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven-day period. Overtime shall be voluntary and shall—unless national laws allow otherwise—not exceed 12 hours per week, shall not be demanded on a regular basis, and shall always be compensated at a premium rate of wages.

How

- Have a work schedule that limits overtime and encourages workers not to work on their days off.
- Keep work hour records containing overtime and lunch breaks or other statutory breaks during the day for at least two years.
- Keep work hour records for temporary and subcontracted workers.
- Make work hour records that are accessible to workers and comparable with payroll records.
- Have a system for assessing the skills of new workers and provide the necessary introduction or training soon after their employment.
- Have a well-developed production plan that includes information about critical paths and standard production times.
- Continuously work to improve communication between merchandisers, factory management and production to minimise problems of e.g. late delivery and tight deadlines.

6. Wages, payroll records and deductions

Wages must at least be the minimum as required by national law and business standards, whichever is higher, in order to meet the basic needs of workers and their families.

Wages must be paid regularly, on time and in a way that is convenient to workers. In this regard, understandable payroll records must be kept for at least two years.

On the other hand, wage deductions are not permitted as disciplinary measure, unless this is provided for by national law and only in severe and exceptional cases.

How

- Prior to employment, provide all workers with written and easily understood information about wage conditions.
- Pay wages that are sufficient to meet the basic needs of workers and their families.
- Pay all wages regularly, on time and in a way convenient for the workers.
- Only deduct wages according to national laws.
- Deductions must never constitute an amount that will result in the worker receiving less than minimum wage.
- Provide workers with a pay slip when they receive their salary showing regular and overtime hours as well as regular and overtime rates.
- Inform workers how calculations are made if a piece-rate system is used. If the piece-rate wage does not meet legal minimum wage, then the difference must be paid so it does.

7. Labour contracts

All workers should have a written employment contract that contains an accurate and complete summary of the terms of employment, including wages, benefits and working conditions.

How

- Employment contracts state the responsibilities of both parties and contain work assignments, salary agreements (both regular and overtime allowances), special benefits, and include a copy of the worker's identity card (photo and age).
- The employment contract is signed by both employer and worker–often required by national law.
- The worker has a copy of the contract in a language that he or she understands.
- The employment contracts of migrant, temporary or home workers are equivalent to the standard of the contracts of permanent workers.
- Keep all paperwork for dismissed workers for at least two years (contracts, any disciplinary action taken etc.).
- Work proactively to outline, define and work collaboratively on addressing the important and growing issue of contract/sub-contracted labour within key sourcing markets.
- Apprentices are subject to the same statutes and enjoy the same protection and benefits as normal workers e.g. the time period is reasonable and offers opportunities for advancement, increased payment and more permanent employment.

8. Sick leave and annual leave

All workers should be able to leave without any negative repercussions if they are sick or have stipulated annual leave. If a worker is injured during work, the factory should pay any costs not covered by the national social security.

How

- Have a health and sickness policy that states clearly what happens if a worker gets sick or injured.
- Clearly inform workers about the health and sickness policy when they are hired.
- Provide workers with a copy of the health and sickness policy in easily understandable language.
- Keep records of social security transactions, industrial injury insurances and the paid sick leave accorded, for at least two years.

9. Grievance system

A grievance system must be available to ensure that workers have the opportunity to anonymously present matters of concern related to their employment and workplace.

How

- Have a grievance system in place that allows workers to report anonymously.
- If you have a suggestion box, place it where workers can make a contribution unnoticed in an out-of-the-way place, e.g. in a bathroom or a stairwell.
- Encourage workers to express their opinions.
- Provide opportunities for workers to talk with someone other than their supervisor.
- Assign a committee to be responsible for guaranteeing improvements in the working area.
- Have a system that documents your efforts.

10. Occupational health and safety

Worker safety must be a priority at all times. Therefore, workers shall be protected from hazardous equipment, insufferable surroundings or unsafe premises. Also, the workplace should be safe and hygienic, and effective steps taken to prevent potential accidents and to minimise health risks as much as possible.

How

- Document the status of health and safety issues and plans for improvements in an annual written report.
- Train the workforce on a regular basis to raise awareness of health and security issues.
- Provide all workers with information in their local language about the health and safety standards relevant to their activities that includes the effects of chemicals and substances used in manufacturing processes.
- Provide the information orally and in writing.
- Provide all workers with regular and recorded health and safety training.
- Ensure that all work stations have adequate body positioning, lighting, air, ventilation and temperatures at all times.
- Provide fans or heaters where required.
- Set up a routine for regular cleaning of the heating, ventilation, or air conditioning system.
- Provide all workers with access to water at all times.

Environment (Principle 7, 8 and 9)

In order to lower the environmental impact (water pollution by toxic waste and carbon dioxide emissions) and be more efficient in production, compliance with national environmental laws and regulations must be warranted at all times, clean technologies implemented, environmentally friendly auxiliaries used, as well as environmentally friendly energy sources.

How

- Work with integration, engagement and action when it comes to environmental management in general.
- Integrate environmental issues in your business plan by e.g. setting goals to minimise the amount of wastewater produced and recycle as much as possible.
- Engage people–the workforce, locals, NGOs and other stakeholders–by sharing the concern for the environment with them.
- Take collective action, collaborate and share knowledge about best practices and methods with business partners and colleagues.
- Develop a better mutual understanding of sustainable business practices by engaging in partnerships with suppliers. Partnerships can also create a societal and environmental impact that goes beyond the business scope.

Anti-corruption (Principle 10)

All forms of corruption, facilitation payments, extortion and embezzlement are strictly prohibited. Such activities may result in immediate termination of the business relationship, in communication with relevant authorities and organisations, as well as in legal actions.

How

- Have policies, procedures and management systems in the organisation ensuring that employees know how to deal with bribery and corruption.
- Define the vulnerabilities in the organisation and describe the preventive measures that are intended to be implemented to eliminate corruption.
- Introduce anti-corruption policies and programmes within the organisation and business operations.
- Communicate the policy to all relevant persons.
- Report on the work carried out against corruption annually.
- Join forces and cooperate within the industry and with other stakeholders to eliminate all forms of corruption.
- Have established procedures on how to handle corruption if discovered inside your organisation.

Animals (Principle 11)

In the textile and fashion industry, maltreatment of animals must not be tolerated and animals must be cared for and protected from harm, recognising and respecting that animals have a mind and body, which can be harmed due to wrong, ignorant and brutal treatment. Therefore, using animal products in fashion is a legitimate practice as long as it is recognised that animals are sentient beings.

How

- Have an animal treatment policy that clearly states that garments containing animal-derived products are produced using abundant species that have been treated in accordance with international animal welfare standards, as well as animal welfare standards laid down by European law.
- Clearly label garments containing parts of animal origin as such, including the name of the part used (such as leather or natural fur) to ensure that consumers are not deliberately or unintentionally mis-sold goods they do not wish to purchase.
- Species farmed for any consumer goods must be produced to standards found on highly regulated European farms. This includes Directive 98/58 on the protection of animals kept for framing, and the 1999 Council of Europe Recommendations on the keeping of animals for fur. Animals taken from the wild must have been afforded the protection of the International Agreement on Humane Trapping Standards, and hunted in accordance with the International Union for the Conservation of Nature's 'sustainable use' policy.
- Where possible, reputable voluntary schemes should be used to ensure that the highest possible standard of care is given to all animals used for the purposes of fashion.

Designers (Principle 12)

Sustainability considerations should be mandatory for all lifecycle stages when designing a new product, in order to reduce negative environmental and social impacts. Therefore, designers must rethink every stage of the design process, including concept, material and production choices and sampling and development, as well as consider creative concepts for sale, use and end-of-life of a product, from a sustainable and responsible perspective.

How

- Encourage designers to be curious about where materials come from and the environmental impact a product creates during its entire lifecycle to ensure responsibility in making design and production choices.
- Ensure that the design process, in all its stages follows or exceeds international working and environmental standards.
- Consider consumer involvement and culture–ensuring products are created and marketed in a way that reflects diverse, multicultural societies and depict and engage with men, women and children in a positive and healthy way.
- Help designers to connect ideas both internally and externally–encouraging the use of open innovation methods–to enable and promote systemic change.

Models (Principle 13)

The fashion industry has an important impact on body image and beauty ideals, especially among young people. As such, it needs to work towards promoting a healthy life style in relation to food, body and exercise.

How

- Support a healthy way of living for models, whose livelihood depends on their bodies and looks. Help them to live healthily, sleep regularly, eat right and exercise.
- Be attentive to the influence of the fashion industry on body image ideals, especially with younger people.
- Provide wholesome and nourishing food at photo shoots and shows.
- Ensure close contact with the family as well as written consent prior to shows if a model is under the age of 16.
- Ensure access to information on eating disorders and risk behaviour as well as advice on how to spot symptoms in someone suspected of having an eating disorder.
- Work together with partners who offer anonymous, prompt and professional assistance for anyone suffering from an eating disorder of any kind.

Transparency (Principle 14)

The textile industry supply chain has multiple stakeholder impacts and the end product affects both nature and society. Therefore, it is important to be able to track and measure all parts of the process of a product, from sourcing to the consumer.

How

- Engage in verification of product supply chains to identify and address the risks of environmental and societal impact.
- Conduct audits of suppliers to evaluate their compliance with company standards.
- Require direct suppliers to certify that the materials incorporated into the product comply with the laws and international labour and environmental standards.
- Maintain internal accountability standards and procedures for employees or contractors or suppliers that fail to meet company standards with international environmental and labour standards.
- Provide training for employees and management who have direct responsibility for supply chain management, and training on mitigating risks within the supply chain.
- Supply chain transparency is created through a disclosure of suppliers and subcontractors. By creating a visible and traceable public list of suppliers and subcontractors, it is possible to track maleficence or breach of any international standards. The disclosure of subcontractors and suppliers will furthermore create a closer relationship with stakeholders and also ensure a higher level of trust from business partners and other suppliers.
- The disclosure of subcontractors and suppliers, furthermore, creates a better overview of the business process and stages that the product goes through and will ease reporting and coherence to international standards and codes of conduct.
- Issue an annual Communication on Progress, a public disclosure to stakeholders on progress made in implementing transparency goals.

Jewellery (Principle 15)

Precious metals and gemstones are an important part of the fashion industry. Therefore, any way of mining and extracting precious metals and gemstones that is potentially harmful for people and the environment must be rejected, and the respect for international standards of the field upheld.

How

- Work with suppliers who adhere to the Kimberley Process Certification System and the World Diamond Council voluntary system of warranties.
- Benchmark your performance with the highest industry standards available through collaborative efforts such as the Responsible Jewellery Council.
- Work actively to support the identification of responsibly-sourced jewellery materials produced, processed and traded through the jewellery supply chain through Chain-of-Custody standards.
- Conduct due diligence to support conflict-sensitive and responsible sourcing practices.

Monitoring and evaluation (Principle 16)

The monitoring and evaluation process sets out and describes the appropriate tools and the knowledge and the qualifications necessary to conduct audits and to make suitable action plans in case a supplier does not meet the requirements of a responsible supply chain.

How

- Clearly define internal roles and responsibilities.
- Integrate responsible supply chain management in the daily work.
- Define the appropriate level for monitoring and evaluation.
  - Basic level: code of conduct, corporate social responsibility clause in supplier contracts and informal audits.
  - High level: risk mapping and assessment, self-assessment, formal audits and action plans.
  - Advanced level: partnerships and third party audits.

Additional references

- Gardetti, Miguel Ángel (2017). *Textiles y moda ¿Qué es ser sustentable?* Buenos Aires: Editorial LID.
- Gardetti, Miguel Ángel; Torres Ana Laura (2013). *Sustainability in Fashion and Textiles: Values, Design, Production and Consumption*. New York: Routledge.
- Jastram, Sarah; Schneider, Anna-Maria (2018). *Sustainable Fashion. Governance and New Management Approaches*. Heidelberg-New York-Dordrecht-London: Springer International Publishing.
- Kaway, Mina (2009). *Corporate social responsibility through codes of conduct in the textile and clothing sector*. Geneva: Graduate Institute of International and Development Studies.
- Subramanian Senthilkannan, Muthu (2017). *Textiles and Clothing Sustainability Implications in Textiles and Fashion*. Heidelberg-New York-Dordrecht-London: Springer.

ii. Financial sector

EQUATOR PRINCIPLES

- Voluntary initiative
- Launched on 4 June 2003
- Financial sector

Objective

The **Equator Principles**[1] are intended to serve as common baseline and framework in the international financial sector to identify, assess and manage environmental and social risks of their investments in a structured way, in order to ensure the projects they finance and advise on are developed in a manner that is socially responsible and reflects sound environmental management practices.

The equator principles association[2]

The purpose of the Equator Principles Association is the management, administration and development of the Equator Principles. The Association was founded on 1 July 2010 and instituted to ensure long-term viability and facilitate the management of financial institutions adhering the Principles.

Background

The Equator Principles were developed in 2003 by ten Banks (ABN AMRO, Barclays, Citigroup, WestLB, Crédit Lyonnais, Credit Suisse First Boston, Hypo Vereinsbank, Rabobank, The Royal Bank of Scotland and Westpac) from seven countries, jointly with the International Financial Corporation

1 "The Equator Principles". Available at: http://equator-principles.com/about/.

2 "Governance & Management". Available at: http://equator-principles.com./governance-management/.

in order to implement a framework to manage social and environmental risks, linked with financing projects in developing countries. The adhering financial institutions have reviewed the Equator Principles twice (2006 and 2013), based on implementation experience, in order to reflect ongoing learning and emerging good practice.

Scope of application

The Equator Principles constitute a baseline and framework for the development of individual and internal policies, procedures and practices in environmental and social issues. These are applicable to the entire financial sector in all countries for the following four financial products:

1. Project financial advisory services.
2. Project finance.
3. Project-related corporate loans.
4. Bridge loans.

Therefore, the adoption of and adhesion to the Equator Principles is open to any financial institution voluntarily meeting the adoption requirements, periodically reporting and paying the annual fee. More than 90 financial institutions in 37 countries have adhered to and adopted the Equator Principles.[3]

The Equator principles adoption process[4]

1. The financial institution signs the adoption agreement and completes the contact form.
2. The agreement and contact form should be emailed or faxed to the Equator Principles Association Secretariat.
3. An adoption date of the Principles is agreed between the Association and the financial institution.
4. The financial institution prepares a press release and sends it to the Association Secretariat for review before it is made public.
5. On the agreed adoption date, the financial institution should announce their adoption on its website and this is reciprocated on the Equator Principles website.

3 "EP Association Members & Reporting". Available at: http://equator-principles.com/members-reporting/.

4 "The Adoption Process". Available at: http://equator-principles.com./the-adoption-process/.

6. The financial institution will receive a welcome email from the Association Steering Committee Chair and the Association Secretariat will announce the adoption to the Association membership.

Requirements for the Financial institutions

The financial institutions adhering to the Equator Principles will only provide Financing Projects and Project-Related Corporate Loans meeting the requirements of the 10 principles.

In case the financial institutions provide Project Finance Advisory Services and Bridge Loans, they shall inform the client of the contents, the implementation and the benefits of complying with the Equator Principles in the related Project. Furthermore, they will request that the client communicates his intention to adhere to the requirements of the Equator Principles when subsequently seeking long-term financing.

Equator Principles

Principle 1: review and categorisation

The financial institutions shall categorise financing project proposals, based on the magnitude of their potential environmental and social risks and impacts.

The categories are the following:

- Category A: projects with potential significant adverse environmental and social risks or impacts that are diverse, irreversible or unprecedented
- Category B: projects with potential limited adverse environmental and social risks or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures.
- Category C: Projects with minimal or no adverse environmental and social risks or impacts.

Principle 2: environmental and social assessment

For all Category A and Category B Projects, the financial institution will require the client to conduct an assessment process to address the relevant environmental and social risks and impacts of the proposed project. In some cases, it may be necessary to undertake one or more specialised studies.

The assessment documentation will be an adequate, accurate and objective evaluation and presentation of the environmental and social risks and impacts, as well as measures to minimise, mitigate and offset adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed project.

For all projects, when combined scope 1 and scope 2 emissions are expected to be more than 100,000 tonnes of CO2 equivalent annually, an alternatives analysis will be conducted to evaluate less greenhouse gas intensive alternatives.

Principle 3: applicable environmental and social standards

The Assessment process should address compliance with or, if lacking, any justified deviation from, relevant host country laws, regulations and permits that pertain to environmental and social issues.

Principle 4: Environmental and Social Management System and Equator Principles action plan

For all Category A and Category B Projects, the financial institution will require the client to develop or maintain an Environmental and Social Management System, addressing issues raised in the assessment process and incorporate actions required to comply with the applicable standards.

Principle 5: stakeholder engagement

For all Category A and Category B Projects, the financial institutions will require the client to demonstrate effective stakeholder engagement as an ongoing process in a structured and culturally appropriate manner with affected communities and, where relevant, other stakeholders. Therefore, they will make available the appropriate assessment documentation in the local language and in a culturally appropriate manner. Furthermore, the client will

take account of, and document, the results of the stakeholder engagement process, including any actions agreed resulting from such process.

Projects affecting indigenous peoples will be subject to a process of informed consultation and participation, and will need to comply with the rights and protections for indigenous peoples contained in relevant national law, including those laws implementing host country obligations under international law.

Principle 6: grievance mechanism

For all category A and, as appropriate, category B projects, the financial institution will require the client, as part of the Environmental and Social Management System, to establish a grievance mechanism designed to receive and facilitate resolution of concerns and grievances about the project's environmental and social performance.

The mechanism should not impede access to judicial or administrative remedies. Furthermore, the client will inform the affected communities about the mechanism in the course of the stakeholder engagement process.

Principio 7: independent review

Project Finance

For all category A and, as appropriate, category B projects, an independent environmental and social consultant, not directly associated with the client, will carry out an independent review of the assessment documentation and the stakeholder engagement process documentation in order to assist the financial institution's due diligence tasks, and assess Equator Principles compliance.

Project-Related Corporate Loans

An independent review by an independent environmental and social consultant is required for projects with potential high risk impacts including, but not limited to, any of the following: adverse impacts on indigenous peoples, critical habitat impacts, significant cultural heritage impacts and large-scale resettlement.

Principle 8: covenants

For all projects, the client will covenant in the financing documentation, by means of clauses included in the financial documentation, to comply with all relevant host country environmental and social laws, regulations and permits in all material respects.

Where a client is not in compliance with its environmental and social covenants, the financial institutions will work with the client on remedial actions to bring the project back into compliance to the extent feasible. If the client fails to re-establish compliance within an agreed grace period, the financial institution reserves the right to exercise remedies, as considered appropriate.

Principle 9: independent monitoring and reporting

Project Finance

To assess project compliance with the Equator Principles and ensure ongoing monitoring and reporting after financial close and over the life of the loan, the financial institutions will, for all Category A and, as appropriate, Category B projects, require the appointment of an independent environmental and social consultant, or require that the client retain qualified and experienced external experts to verify its monitoring information which would be shared with the financial institutions.

Project-Related Corporate Loans

For projects where an independent review is required under Principle 7, the financial institutions will require the appointment of an independent environmental and social consultant after financial close, or require that the client retain qualified and experienced external experts to verify its monitoring information which would be shared with the financial institutions.

Principle 10: reporting and transparency

Client reporting requirements

For all category A and, as appropriate, category B projects, financial institutions will require that:

- The client ensures that, at a minimum, a summary of the environmental and social impact assessment is accessible and available online.
- The client publicly reports greenhouse gas emission levels (combined Scope 1 and Scope 2 Emissions) during the operational phase for projects emitting over 100,000 tonnes of CO2 equivalent annually.

Financial institutions reporting requirement

The financial institutions will report publicly, at least annually, on transactions that have reached financial close and on its Equator Principles implementation processes and experience, taking into account appropriate confidentiality considerations.

Monitoring mechanism

Financial institutions, adhering to the Equator Principles, shall publish annually on their website reports containing the following information:

- project finance advisory services data
- project finance and project-related corporate loans data
- bridge loans data
- implementation reporting
- project name reporting for project finance

Additional references

- Conley, John M.; Williams, Cynthia A. (2011). "Global Banks as Global Sustainability Regulators: The Equator Principles". *New Governance and the Business Organization Law & Policy*, vol. 33, nr. 4, pp. 542-575.
- Lance, Joshua A. (2013). "Equator Principles III: A Hard Look at Soft Law". *North Carolina Banking Institute*, vol. 17, pp. 175-200.
- Lawrence, Robert F.; Thomas, William L. (2004). "The Equator Principles and Project Finance: Sustainability in Practice". *Natural Resources & Environment*, vol. 19, nr. 2, pp. 20-26.
- Nwete, Bede O. N. (2005). "The Equator Principles - How Far Will It Affect Project Financing". *International Business Law Journal*, vol. 2005, nr. 2, pp. 173-188.
- Principios de Ecuador. Available at: http://www.codigor.com.ar/principiosecuador.htm.
- Richardson, Benjamin J. (2005). "Equator Principles: The Voluntary Approach to Environmentally Sustainable Finance". The European Environmental Law Review, vol. 14, nr. 11, pp. 280-290.
- Williams, Cynthia A. (2013). "Regulating the Impacts of International Project Financing: The Equator Principles". *American Society of International Law Proceedings*, vol. 107, pp. 303-308.

THUN GROUP OF BANKS

- Consortium of bank entities
- Created in 2011

Objective

The **Thun Group of Banks**[1] is an informal initiative by a group of banks, consisting of Barclays, Credit Suisse, UBS, UniCredit, BBVA, ING Bank N.V. and RBS Group, among others, aiming at gaining a better understanding of the United Nations Guiding Principles on business and human rights in the context of bank services and in their implementation in the policies or practices of banking institutions.[2] The Thun Group is advised by the University of Zurich Competence Centre for Human Rights and members of the Swiss Centre of Expertise in Human Rights.

The work of the Thun Group is motivated by the following drivers:

Acting responsibly. All of the participating banks are committed to respect human rights in their business activities. The motivation for this commitment is twofold: it reflects responsible business practice by minimising related risks and underlines the banks' desire to manage their impacts on society responsibly.

Acting instead of waiting for legal requirements. While the Guiding Principles are non-binding, they have nevertheless prompted legal developments which are relevant for banks. The European Union, the United States and other countries have introduced binding rules impacting on business responsibility for human rights. It is therefore advisable for banks to proac-

1 The name of the group is derived from the Swiss town where it gathered for the first two workshops in May 2011 and March 2012.

2 Thun Group (2011). "Statement by the Thun Group of banks* on the "Guiding principles for the implementation of the United Nations 'protect, respect and remedy' framework" on human rights". Available at: https://www.business-humanrights.org/sites/default/files/media/documents/thun-group-of-banks-statement-guiding-principles-19-oct-2011.pdf.

tively engage in the ongoing debate around the Guiding Principles and their implementation.

Acting jointly. The participating banks agree that the Guiding Principles need to be implemented in a manner appropriate for each institution if they are to become operationally effective. At the same time the banks see an opportunity on how to tackle this implementation process in the policies and practices of banking institutions based on shared expertise and experience.

Background

In June 2011, the United Nations Human Rights Council adopted the United Nations Guiding Principles on Business and Human Rights. However, the Guiding Principles do not provide specific guidance for the sector. This has motivated the need for banks to interpret the implementation of the Guiding Principles in the banking sector.

Discussion papers on the Guiding Principles

The Thun Group has published two discussion papers on the implications of the Guiding Principles on the banking sector.

First Discussion paper on the implications of principles 16-21 of the Guiding Principles for banks[3]

In October 2013, the Thun Group published its first Discussion paper on corporate responsibility to respect human rights from the perspective of the banks, included in Guiding Principles 16 to 21. According to the discussion paper, these principles are considered to be the most relevant to tackle possible adverse impacts of banks on human rights and usually the most difficult to implement. These principles address the policy commitment, due diligence, assessment of actual and potential impacts, adoption of measures and accountability.

3 Thun Group (2013). "Discussion Paper for Banks on Implications of Principles 16–21". Available at: https://www.ubs.com/global/en/about_ubs/ubs-and-society/how-we-do-business/sustainability/thun-group.html.

The Discussion paper recognises that banks may find themselves linked to human rights violations committed by their clients, and therefore have an interest and a responsibility to proactively ensure, so far as practically possible, that their actions and decisions do not affect the enjoyment of human rights.

Therefore, it proposes the development of a risk management model that goes beyond traditional parameters, to address adverse human rights impacts risks to external stakeholders as well as risks to the bank itself. Furthermore, awareness of human rights issues and responsibilities shall be ensured within the bank at all levels and across all disciplines.

- Policy commitment (Principle 16)

The Discussion paper points out that banks need to develop a policy statement and a governance framework that are approved at the most senior level of the business enterprise, aiming to:

- Express the bank's public commitment to respect human rights.
- Generate awareness and understanding throughout the organisation of the importance and relevance of human rights issues to business decisions.
- Apply the policy commitment to all parts of the business, including client and other business relationships, transactions, projects, products, operational decisions, strategy and planning.
- Identify human rights impacts.
- Signpost tools and guidance to assist personnel in identifying and assessing human rights-relevant aspects.
- Establish requirements for disclosure of information and risk monitoring.
- Carry out regular reviews, audits and external consultation.

- Due diligence (Principles 17-21)

The Discussion paper recognises that all Banks carry out due diligence processes. However, they need to undertake a review to determine to which degree their processes are adapted to the parameters established in the Guiding Principles.

The due diligence, outlined by the Guiding Principles, requires that businesses, including banks, take a broader view of their potential impacts rather than focussing solely on their own commercial or reputational risks. This means assessing adverse human rights impacts in different bank operations, among them, those related to retail and private banks, corporate and investment banks and asset management.

The due diligence processes in banking operations must be carried out, taking into account the different risks each operation produces. In this regard, banks can prioritise the assessment of their potential adverse impacts on human rights and related risks, using two criteria: the type of impact on the rights holders (severity and number of affected people) and the bank's connection to these adverse impacts.

Operation	Definition	Risks	Due diligence
Retail and private banks	Retail banking encompasses consumer credit, leasing and mortgage products for individuals and cash management and commercial banking services for small businesses. Private banking offers a range of advisory and investment products and services.	• Providing financial products or services to individuals who may be involved in human rights controversy. • Providing financial products or services to owners of companies involved in human rights controversy.	Human rights due diligence in these operations should be based on existing policies and practices covering human rights risks.
Corporate and investment banks	Corporate and investment banking offers a wide range of products and services, such as corporate loans, merger or acquisition advice, among others.	• Providing financial products and services to companies with a challenging human rights track record or involved in countries with a conflict situation. • Providing financial products and services to governments or State-owned enterprises with a challenging human rights track record. • Providing financial products and services to projects in sensitive industries or in sensitive locations.	When financing or advising corporate clients, it is important to determine whether the product or service is intended for general corporate purposes or whether it will be used for a specific investment or project. The scope of the due diligence may further depend on the type of countries where the client operations are situated.
Asset management	Asset management includes all business activities related to the creation and management of investment funds, property or credit portfolios, investments managed on behalf of clients as well as other assets held on a financial institution's own account.	• Investing in companies with a challenging human rights track record or investing in countries with a challenging human rights situation. • Establishing and managing funds of companies or countries with a challenging human rights track record. • Establishing and managing funds around a topic that could be viewed critically from a human rights perspective.	Due diligence in asset management processes should include "know your customer", country, industry. The level of due diligence depends on the applicable circumstances. In some business settings a bank may consider it appropriate to include the client characteristics, such as controversial government/authority, in the due diligence process.

There are a number of additional challenges banks should take into account when implementing due diligence:

- Unfamiliarity with human rights issues may result in some risks or impacts being overlooked.
- Time constraints.
- Difficulty in achieving a consistent approach across an international organisation spanning many different cultures and jurisdictions and including many different businesses and subsidiaries.
- Ongoing due diligence is often challenging as the leverage and access to documentation can be limited.
- Managing external expectations around transparency where the data and information concerned belongs to the client and cannot be disclosed by the bank.
- Managing situations where national law conflicts with internationally accepted standards, with bank policy, or where national laws of different countries conflict with each other.

- Accountability (Principle 21)

The First Discussion paper recognises banks shall aim to institute a sensible level of transparency regarding the human rights policies, processes and procedures it has implemented. The formal and regular option of reporting on these matters is through annual reports, sustainability reports or their webpages. These media ensure wide dissemination among the bank's stakeholders of its key human rights commitments and activities.

Second Discussion paper on the implications of Guiding Principles 13b and 17 for banks[4]

In January 2017, the second Discussion paper was published, exploring the meaning and reach of principle 13b in a corporate and investment banking context and provides additional guidance around principle 17.

4 Thun Group (2017). "Paper on the Implications of UN Guiding Principles 13b & 17 in a Corporate and Investment Banking Context". Available at: https://www.ubs.com/global/en/about_ubs/ubs-and-society/how-we-do-business/sustainability/thun-group.html.

Principle 13b

In accordance with principle 13b, banks should seek to prevent or mitigate 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. The Second Discussion paper proceeds on the basis that this is the appropriate focus for banks if their clients cause or contribute to adverse human rights impacts.

Principle 17

The Second Discussion paper supports the position that, even if banks have not caused or contributed to adverse human rights impacts, where "directly linked", banks should still seek to prevent and mitigate such impacts. Banks typically do this via development and adoption of corporate policies and robust management systems to identify risks, perform due diligence and consider mitigation measures that influence the actions of the client causing, or contributing to, the identified impacts. The proximity of the bank to the human rights impact, and the definition of the appropriate unit of analysis for the specific transaction, may assist the bank in defining the scope of due diligence.

The second Discussion paper concludes that:

1. Under the Guiding Principles, banks should develop environmental and social risk management policies and procedures to support identification, prevention and mitigation of impacts caused or contributed to by clients to whom the bank provides financial products and services.

2. When describing the business relationship between a bank and a client for the purposes of principles 13b and 17, there are two important concepts to consider:
   - Proximity to an impact, which may indicate the degree of causality between the impact and the product offered by the bank. Proximity is determined by the financial product offered and can range from a high level of proximity to a low level of proximity.
   - Unit of analysis, as a means to inform the focus of a bank's due diligence (for example, by reference to the client (company or subsidiary) to which the financial product and service is offered, or asset in the case of specific asset finance).

3. When directly linked to adverse impacts, banks are expected to seek to identify, prevent and mitigate such impacts. This entails conducting a due diligence procedure and, potentially, the use of leverage to try and influence the behaviour and actions of the client causing or contributing to the impacts.

4. When conducting due diligence, a number of factors need to be considered:
   - The requirement and scope of due diligence are determined by a combination of the financial product or service offered by the bank and the inherent human rights risk associated with the sector and operating context of the client / transaction (sector, geography, client's track record etc.).
   - The duration of the business relationship or the duration of the provision of the financial service impacts the capacity of the bank to monitor the due diligence and mitigation measures over time.
   - In many cases, banks' financial products or services will not be linked to human rights impacts caused or contributed to by clients. However, depending on the nature of the bank's relationship with the client, the bank may nonetheless seek to improve the situation through active client engagement.

5. Regarding the outcome of a bank's due diligence:
   - The outcome may influence the action of the client (who is causing or contributing to a human rights impact) to prevent or mitigate those impacts, but may not necessarily influence the outcome for rights holders directly.
   - Insufficiency of due diligence may result in a bank reaching an ill-informed decision but does not generally change the proximity of the bank to an impact caused or contributed to by a client. In some cases, insufficient due diligence may result in the bank's failure to respect human rights. The consequence of this for the bank may be reputational damage or potential financial impacts. The primary concern for the bank remains, however, the avoidance or mitigation of the human rights impact.

Additional references

- BankTrack (2013). "The Thun Group Paper on Banks and Human Rights". Available at: https://www.ohchr.org/Documents/Issues/Business/Forum-Session2/Contributions/BankTrack.pdf
- De Felice, Damiano (2015). "Banks and human rights due diligence: a critical analysis of the Thun Group's discussion paper on the UN Guiding Principles on Business and Human Rights". *International Journal of Human Rights*, vol. 19, nr. 3, pp. 19-340.
- Dowell-Jones, Mary (2013). "Financial Institutions and Human Rights". *Human Rights Law Review*, vol. 13, nr. 3, pp. 423-468.
- Dowell-Jones, Mary; Kinley, David (2011). "Minding the Gap: Global Finance and Human Rights". *Ethics & International* Affairs, vol. 25, nr. 2, pp. 183-210.
- UNEP FI; Foley Hoag LLP (2015). *Banks and Human Rights: A Legal Analysis*. Ginebra-Washington D.C.: UNEP FI-Foley Hoag LLP.
- Van Dijk, Maria Anne; De Haas, Marijn; Zandvliet, Ruben (2018). Banks and Human Trafficking: Rethinking Human Rights Due Diligence". *Business and Human Rights Journal*, vol. 3, nr. 1, pp. 105-112.

iii. Legal sector

PRACTICAL GUIDE ON BUSINESS AND HUMAN RIGHTS FOR BUSINESS LAWYERS

- Sectoral guide
- Adopted on 28 May 2016
- Legal sector

Objective

The **Practical Guide on business and human rights for business lawyers**[1] is intended to provide an accessible summary of a complex and nuanced subject as the one of business and human rights by assisting lawyers who are involved in advising businesses to improve their understanding of this issue through comprehensive explanation of the Guiding Principles on business and human rights.

Background

On 8 October 2015, at the annual International Bar Association conference held in Vienna, the Association Council adopted the Business and Human Rights Guidance for Bar Associations,[2] which is intended to inform bar associations on how they can promote, launch and develop relevant initiatives on the matter of business and human rights for lawyers practicing in this jurisdiction.

During the annual conference in Vienna, the Association Council agreed to continue working on a practical guide that would set out in detail the core content of the Guiding Principles, how they can be relevant to the advice

1 IBA (2016). *Practical Guide on business and human rights for business lawyers*. London: International Bar Association.

2 IBA (2015). *IBA Business and Human Rights Guidance for Bar Associations*. London: International Bar Association.

provided to clients by individual lawyers subject to their unique professional standards and rules and their potential implications for law firms as business enterprises with a responsibility to respect human rights themselves.

On 28 May 2016, at the annual conference of the Association in Barcelona, the International Bar Association Council approved the Practical Guide for Business Lawyers.

Structure

The Practical Guide has been divided into the following sections:

- Section 1 describes the purpose of the Practical Guide.
- Section 2 explains the background and key concepts of the Guiding Principles, which are also incorporated in other standards and initiatives on human rights and corporate responsibility, such as the OECD Guidelines for Multinational Enterprises, the IFC Performance Standards, international standard ISO 26000.
- Section 3 explores the form in which the Guiding Principles can be relevant for legal advice and other services lawyers provide to their business clients.
- Section 4 explains the implications of the Guiding Principles for the clients' right to access and their representation by an independent lawyer.
- Section 5 and 6 explore the opportunities and challenges offered by the Guiding Principles for lawyers advising businesses.

Contents

The Practical Guide recognises the relevant role of lawyers in matters of business and human rights, since numerous legal practice areas have been identified where legal advice and services can improve a business client's capacity to respect human rights:

1. **Corporate governance and enterprise risk management.** Lawyers are typically asked to advise companies on proper corporate governance and risk management, which increasingly includes human rights

issues, such as the design and implementation of internal compliance related controls and compliance and risk management systems allowing them to manage their activity-related human rights risks.

2. **Reporting and disclosure.** Public disclosure laws and regulations are increasingly and specifically requiring disclosure of a company's human rights policies. Therefore, lawyers who advice companies on reporting and disclosure should be aware of and understand the evolving law requiring greater transparency on human rights performance, and the trends on human rights reporting that are developing worldwide.
3. **Disputes.** Lawyers who advise and represent companies in the management and resolution of disputes should be aware of the likelihood of increased litigation worldwide arising from business involvement in human rights issues, and the availability of non-judicial grievance mechanisms to assist with remedying them.
4. **Contracts and agreements.** Lawyers who advise companies on a wide variety of corporate and commercial contracts should be aware of and understand how those contracts can be structured to help prevent and mitigate human rights harm. The right contractual terms can create strong incentives for other parties to respect human rights, where the other party has the capacity to do so.
5. **Development of and participation in human rights standards.** Lawyers who advise companies on the development, participation, and implementation of global, industry and issue-specific standards should be aware of how such standards may be relevant to and can enhance a company's human rights due diligence and should encourage clients to participate in their development.

Therefore, familiarity with the Guiding Principles presents significant opportunities for all lawyers who advise business, both for internal and external counsel.

"Internal general counsels" are the legal counsellors for the CEO and the board on responsible business practices and principles, including global soft law standards such as the Guiding Principles.

"External counsels" are those belonging to law firms businesses call upon for advice on the identification or management of human rights risks and broader reputation-based risks.

The Guide lists some key point lawyers should consider when implementing or advising on the Guiding Principles:

1. **Human rights policy commitment.** Consider explaining how this commitment aligns with the responsibility of the lawyer to act as wise professional counsellor, and advice on the bigger picture.

2. **Assessing negative human rights impacts.** Consider the potential negative human rights impacts, including the firm's employment practices, supply chain, and the legal advice and services it renders. Furthermore, also the risks that the subject of specific legal advice or service poses to human rights can be considered.

3. **Integrating and acting upon involvement in actual and potential human rights impacts.** The Guiding Principles themselves impose no legal liability on business enterprises for their involvement in human rights impacts. Whether a law firm has legal or professional liability for any of its activities is a matter for the courts, legislatures and bar regulatory agencies to decide.

4. **Increasing a firm's ability to influence the client to avoid or mitigate human rights impacts.** Some of the measures that can be considered to increase a lawyer's capacity to be seen as a wise professional counsellor in business and human rights issues are: develop internal capacity on business and human rights, identify problems that other companies have faced when they ignored human rights issues in similar situations, offer client briefings and alerts, among others.

5. **Withdrawing from the client relationship if the client persists in infringing upon human rights.** Withdrawal is a last resort, and may not be legally permitted in any event.

6. **Tracking.** Review how the lawyer has identified and responded to human rights issues related to its core business, as part of a broader review process.

7. **Communication.** The lawyer should be able to provide anonymised and aggregated information in order to explain generally how it is implementing its commitment to respect human rights.

8. **Remediation.** Other than in cases of illegal or unprofessional conduct by the lawyer, resulting in a human rights violation arising from these le-

gal services and advice, the purposes of the Guiding Principles are better served by making the business case to the client to provide or cooperate in legitimate processes to remedy human rights impacts that the client caused or contributed to.

Additional references

- Casajuana Artacho, Estela (2015). "Abogados, empresas y human rights: liderazgo en juego". Available at: http://www.corresponsables.com/actualidad/abogados-empresas-y-derechos-humanos-liderazgo-en-juego.
- Ovejero Puente, Ana María (2016). *El papel del abogado en la implantación de los principios Ruggie: 8 buenas prácticas para abogados de negocio*. Valencia: Tirant lo Blanch.
- Pombo Morales, Carmen (2017). Publicación por la Asociación Internacional de la Abogacía (IBA) de la guía sobre human rights y empresas para abogados de negocios. *Revista de Derecho de Sociedades*, nr. 49, pp. 349-353.
- Pombo Morales, Carmen; Ovejero Puente, Ana María (2014). "The role of business lawyers in human rights compliance". Available at: http://www.fundacionpombo.org/wp-content/uploads/2013/10/Human-Rights-Law-working-group-Sept-2014-Part-11.pdf.

iv. Multi-sector

UNITED NATIONS GUIDING PRINCIPLES REPORTING FRAMEWORK

- Sectoral guide to report on human rights issues
- Published in 2015

Shift

Objective

The **United Nations Guiding Principles Reporting Framework**[1] provides clarity on how companies can report in a meaningful and coherent way on their progress in implementing their responsibility to respect human rights. The objectives of the Reporting Framework are threefold:

- Provide guidance to companies about how best to disclose information about their human rights policies, processes and performance.
- Ensure the Framework is feasible for companies to apply.
- Help companies to improve management systems.

Background

The Reporting Framework has been developed through the Human Rights Reporting and Assurance Frameworks Initiative (RAFI), co-facilitated by Shift[2] and Mazars[3] through an open, global, consultative process involving representatives from over 200 companies, investor groups, civil society organisations, governments, assurance providers, lawyers and other expert organisations from all regions of the world. Consultations took place

1 Shift; Mazars (2015). "United Nations Guiding Principles Reporting Framework". Available at: https://www.ungpreporting.org/wp-content/uploads/UNGPReportingFramework_withguidance2017.pdf.

2 Shift Project. Available at: http://www.shiftproject.org/.

3 Mazars. Available at: http://www.mazars.co.uk/.

in Addis Ababa, Bangkok, Jakarta, London, Manila, Medellin, New York and Yangon.

Scope of application

The Reporting Framework provides a concise set of questions to which any company should strive to have answers in order to know and show that it is meeting its responsibility to respect human rights in practice. Therefore, the Reporting Framework is set up as a valuable tool, applicable for companies' internal auditors, investors, civil society groups and consumers. It can also be important and useful for people who may be affected by companies' activities and business relationships.

Reporting Framework Principles

A number of cross-cutting principles should guide the use of the Reporting Framework. These principles are the following:

a. Setting human rights reporting in the business context.

b. Meeting a minimum threshold of information.

c. Demonstrating ongoing improvement.

d. Focusing on respect for human rights.

e. Addressing the most severe impacts on human rights.

f. Providing balanced examples from relevant geographies.

g. Explaining any omission of important information.

Structure

The Reporting Framework is divided in three parts:

1. Part A contains two overarching questions, each with one or more supporting questions, focusing on the company's commitment to and governance of human rights risk management.
2. Part B provides a filter point for the reporting company to narrow the range of human rights issues on which it will focus the remainder of its reporting under Part C. The focus is on those human rights issues that are salient within its activities and business relationships.
3. Part C has six overarching questions, each with one or more supporting questions, which focus on the effective management of each of the salient human rights issues on which the company is reporting.

The overarching questions focus on general, relevant information about the company's efforts to meet its responsibility to respect human rights. They are designed to enable responses from any company, including small companies and those at a relatively early stage in the process.

The supporting questions highlight more substantial and detailed information that would improve the quality of the reporting company's response to the overarching question. Each company can assess how many of these supporting questions it can answer, and to what extent. Companies should be able, over time, to address these questions more fully and deeply, thereby providing more robust reporting overall.

Contents

PART A: GOVERNANCE OF RESPECT FOR HUMAN RIGHTS

Policy commitment

Overarching question	Objective	Supporting questions
What does the company say publicly about its commitment to respect human rights?	To explain how the reporting company understands its responsibility to respect human rights, and how it articulates its resulting expectations of its workforce, business partners and businesses or other entities directly linked to its operations, products or services.	• How has the public commitment been developed? • Which stakeholders and their human rights does the public commitment address? • How is the public commitment disseminated?

EMBEDDING RESPECT FOR HUMAN RIGHTS

Overarching question	Objective	Supporting questions
How does the company demonstrate the importance it attaches to the implementation of its human rights commitment?	To describe the ways in which the reporting company sees respect for human rights as relevant to its core business and how it is reflected in the ways the company thinks about and carries out its activities and business relationships.	• How is day-to-day responsibility for human rights performance organised within the company, and why? • What kinds of human rights issues are discussed by senior management and by the Board and why? • How are employees and contract workers made aware of the ways in which respect for human rights should inform their decisions and actions? • How does the company make clear in its business relationships the importance it places on respect for human rights? • What lessons has the company learned during the reporting period about achieving respect for human rights, and what has changed as a result?

Part B: DEFINING THE FOCUS OF REPORTING		
Statement of salient issues	State the salient human rights issues associated with the company's activities and business relationships during the reporting period.	Objective: To set out clearly those human rights issues on which the remainder of the company's reporting under Section C of this Framework will focus. These issues should reflect the human rights at risk of the most severe negative impact through the company's activities or business relationships.
Determination of salient issues	Describe how the salient human rights issues were determined, including any input from stakeholders.	Objective: To enable the reader of the company's reporting to understand the basic processes through which the company identified the salient human rights issues on which it is reporting, and the key factors that informed that process.
Choice of focal geographies	If reporting on the salient human rights issues focuses on particular geographies, explain how that choice was made.	Objective: For those reporting companies that adopt a geographical focus in their reporting, to explain the basis for that decision and the principles underlying the selection of the specific chosen geographies.
Additional severe impacts	Identify any severe impacts on human rights that occurred or were still being addressed during the reporting period, but which fall outside of the salient human rights issues, and explain how they have been addressed.	Objective: To enable companies to report on how they have addressed any severe impacts that are unrelated to their salient human rights issues.

Part C: MANAGEMENT OF SALIENT HUMAN RIGHTS ISSUES

Specific policies

Overarching question	Objective	Supporting questions
Does the company have any specific policies that address its salient human rights issues and, if so, what are they?	To inform the reader of any specific policies the reporting company has in place – in addition to its overarching public human rights commitment – that are particularly relevant to the salient issues identified. By outlining, or referring the reader to, key elements of the policy, the reporting company can help the reader understand the foundation for how the company approaches the management of each salient issue.	• How does the company make clear the relevance and significance of such policies to those who need to implement them?

Stakeholder engagement

Overarching question	Objective	Supporting questions
What is the company's approach to engagement with stakeholders in relation to each salient human rights issue?	To explain to the reader how the reporting company learns about the views of stakeholders who have insight into the salient issues on which it is reporting, and how it takes these perspectives into account in its decisions and actions.	• How does the company identify which stakeholders to engage with in relation to each salient issue, and when and how to do so? • During the reporting period, which stakeholders has the company engaged with regarding each salient issue, and why? • During the reporting period, how have the views of stakeholders influenced the company's understanding of each salient issue or its approach to addressing it?

Assessing impacts

Overarching question	Objective	Supporting questions
How does the company identify any changes in the nature of each salient human rights issue over time?	To provide additional information about how the reporting company keeps each salient issue under review and identifies any changes in the potential severity or likelihood of impacts over time and across its activities and business relationships.	• During the reporting period, were there any notable trends or patterns in impacts related to a salient issue and, if so, what were they? • During the reporting period, did any severe impacts occur that were related to a salient issue and, if so, what were they?

Integrating findings and taking action		
Overarching question	**Objective**	**Supporting questions**
How does the company integrate its findings about each salient human rights issue into its decision-making processes and actions?	To explain if and how the reporting company's understanding of its salient human rights issues makes a difference to how it conducts business.	• How are those parts of the company whose decisions and actions can affect the management of salient issues, involved in finding and implementing solutions? • When tensions arise between the prevention or mitigation of impacts related to a salient issue and other business objectives, how are these tensions addressed? • During the reporting period, what action has the company taken to prevent or mitigate potential impacts related to each salient issue?
Tracking performance		
Overarching question	**Objective**	**Supporting questions**
How does the company know if its efforts to address each salient human rights issue are effective in practice?	To explain how the reporting company understands if it is successful in reducing risks to human rights in relation to each salient issue, such that it can continuously improve in its efforts to meet its responsibility to respect human rights.	• What specific examples from the reporting period illustrate if each salient issue is being managed effectively?
Remediation		
Overarching question	Objective	Supporting questions
How does the company enable effective remedy if people are harmed by its actions or decisions in relation to the salient human rights issues?	To explain the processes that apply when the reporting company has caused or contributed to a negative impact and through which it is able to help ensure that the people who were impacted receive an effective remedy.	• Through what means can the company receive complaints or concerns related to each salient issue? • How does the company know if people feel able and empowered to raise complaints or concerns? • How does the company process complaints and assess the effectiveness of outcomes? • During the reporting period, what were the trends and patterns in complaints or concerns and their outcomes regarding each salient issue, and what lessons has the company learned? • During the reporting period, did the company provide or enable remedy for any actual impacts related to a salient issue and, if so, what are typical or significant examples?

Additional references

- Eccles, Robert G.; Serafeim, George (2017). Corporate and Integrated Reporting: A Functional Perspective". En: Mohrman, Susan; O'Toole, James; Lawler, Edward (eds.). *Corporate Stewardship: Achieving Sustainable Effectiveness*. 2nd. ed. New York: Routledge.
- Laine, Anniki L. (2015). "Integrated Reporting: Fostering Human Rights Accountability for Multinational Corporations". *George Washington International Law Review*, vol. 47, nr. 3, pp. 639-668.
- Shift; Mazars (2018). "UN Guiding Principles Reporting Framework". Available at: https://www.ungpreporting.org/about-us/.

VI.

CONCLUSIONS

FINAL REFLECTIONS

The report at hand shows that, increasingly more, the individual or joint agenda of States, international organisations, civil society and even businesses, include initiatives for the promotion of business respect for human rights. The number of initiatives is an indicator for the efforts that are being made to mitigate the negative externalities of business activities and supply chains in the area of human rights.

Regarding the initiatives, presented in the report at hand, the following aspects stand out:

- The number of initiatives analysed indicates the existence of a complex regime of institutions and regulations with different objectives, scopes and standards.
- As well as developing initiatives, applicable to all business enterprises, both transnational as others, regardless of their size, sector, location, owner and structure, also specific initiatives were established for particular business sectors in which patterns of human rights violations and environmental damages have been identified, such as the textile, mining, and even the banking and financial sector.
- The scope of the human rights protection of the initiatives varies according to the sector in which they are implemented or the goal they aim to reach. Some cover all internationally recognised human and labour rights, while others include a list of specific rights, covered by the initiative, such as workers' rights, children's rights, or the rights of indigenous peoples.
- The requirements, foreseen by the initiatives to prevent or avoid companies to contribute to causing negative human rights impacts vary from certification to disclosure or to the implementation of comprehensive due diligence processes in accordance with the Guiding Principles.
- The mandatory degree of the initiatives' requirements varies, since some are voluntary and others compulsory. As a result, the degree of commitment of the companies in implementing the initiatives is, in practice, also a variable factor. In this regard, it is worth noting that not all initiatives establish monitoring or liability mechanisms ensuring effective compliance with the provisions, set out in the initiatives.

Finally, the report at hand shows that there are existing standards, allowing the mitigation of adverse effects of business on the enjoyment of human rights and the environment, however, the basis on which the present economic model all companies operate in is built, puts economic before social and environmental interests, thereby conditioning the effectiveness of any initiative aiming at promoting human rights respect in the business context.

About the author

Daniel Iglesias Márquez is "Juan de la Cierva" Postdoctoral Researcher at the University of Seville; PhD in Law (*cum laude*) from Rovira i Virgili University (2017); LL.M. in Global Governance and Human Rights from University of Castilla-La Mancha; LL.M. in Environmental Law from Rovira i Virgili University (2012); Specialist in Governance, Human Rights and Culture of Peace from University of Castilla-La Mancha (2015). He is an independent expert in business and human rights. He is an Associate Researcher at Tarragona Centre for Environmental Law Studies (CEDAT). He collaborates with the Catalan Environmental Law Review. He is also member of the Editorial Council of the Homa Publica - Revista Internacional de Direitos Humanos e Empresas; member of the Network on Business, Conflict and Human Rights (BCHR Network); member of the Global Business and Human Rights Scholars Association; member of the Council of the Latin American branch of the Global Business and Human Rights Scholars Association. Daniel has work experience in international organizations and civil society organizations. He has published and participated in a variety of research works on topics related to environmental law, human rights, business, international criminal law, among others.

El Instituto Catalán Internacional para la Paz –ICIP , creado por el Parlament de Catalunya para fomentar la investigación, la formación, la transferencia de conocimientos y la actuación de prevención de la violencia y promoción de la paz fomenta, a través de actuaciones diversas (convocatoria de proyectos, becas, seminarios...) la investigación de base y aplicada en los estudios de y sobre la paz. La actividad del ICIP se articula alrededor de cuatro programas de actuación transversales y de cada uno de estos programas se deriva la organización de seminarios y jornadas, publicaciones, la creación de exposiciones y materiales audiovisuales, y diferentes iniciativas de sensibilización y fomento de la cultura de paz. Los programas son: (i) Construcción de paz y articulación de la convivencia después de la violencia; (ii) Violencias fuera de los contextos bélicos; (iii) Paz y seguridad en las políticas públicas; (iv) Empresas, conflictos y derechos humanos.

La colección *ICIP Research* recoge algunos resultados de estas actividades, todos ellos mantienen un evidente eje vertebrador: la investigación por la paz y la noviolencia.
Los objetivos de la colección son difundir y ofrecer textos que puedan ayudar a la reflexión y la formación. Especialmente dirigida tanto al ámbito académico como a las personas trabajadoras de paz, los textos se publican en cualquiera de las cuatro lenguas de la colección: castellano, inglés, catalán o francés.

L'Institut Català Internacional per la Pau - ICIP, creat pel Parlament de Catalunya per a fomentar la recerca, la formació, la transferència de coneixements i l'actuació de prevenció de la violència i promoció de la pau, fomenta, a través d'actuacions diverses (convocatòria de projectes, beques, seminaris...) la recerca de base i aplicada en els estudis de i sobre la pau.
L'activitat de l'ICIP s'articula al voltant de quatre programes d'actuació transversals i de cadascun d'aquests programes se'n deriva l'organització de seminaris i jornades, publicacions, la creació d'exposicions i materials audiovisuals, i diferents iniciatives de sensibilització i foment de la cultura de pau. Els programes son: (i) Construcció de pau i articulació de la convivència després de la violència; (ii) Violències fora dels contextos bèl·lics; (iii) Pau i seguretat en les polítiques públiques; (iv) Empreses, conflictes i drets humans.

La col·lecció *ICIP Research* recull resultats d'aquestes activitats, tots ells però amb un evident eix vertebrador: la recerca per la pau i la noviolència. Els objectius de la col·lecció són difondre i oferir textos que poden ajudar a la reflexió i formació. Especialment adreçada tant a l'àmbit acadèmic, com a les persones treballadores de pau, els textos es publiquen en qualsevol de les quatre llengües de la col·lecció: català, anglès, castellà o francès. publiquen en qualsevol de les quatre llengües de la col·lecció: català, anglès, castellà o francès.

The International Catalan Institute for Peace - ICIP, created by the Catalan Parliament to foster research, training, the transfer of knowledge and the prevention of violence and the promotion of peace, fosters applied research of peace studies through diverse actions (calls for projects, scholarships, seminars...). ICIP activities are structured around four cross-cutting action programs which include research, knowledge transfer, training and dissemination, opinion formation and support for peace actions. These four programs are: (i) Peacebuilding and development of coexistence after periods of violence; (ii) Violences outside armed conflicts; (iii) Peace and security in public policies; (iv) Business, conflicts and human rights.

The *ICIP Research* collection gathers the results of these activities, all maintain a clear leitmotif: the research for peace and nonviolence. The aims of the collection are to present and publicise texts that may help to stimulate reflection and training. Addressed specifically to academia and to peace workers, the texts are published in any of the four languages of the collection: English, Catalan, Spanish or French.

ICIP