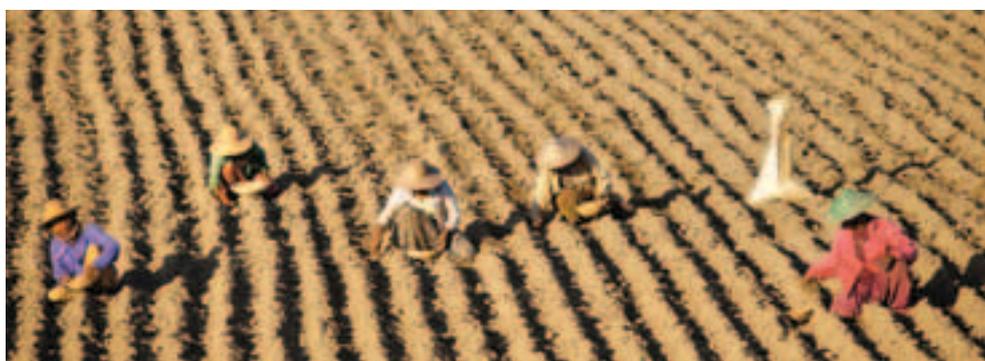

BUSINESS AND HUMAN RIGHTS

A GUIDEBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS



INTERNATIONAL COORDINATING COMMITTEE
OF NATIONAL INSTITUTIONS FOR THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS

BUSINESS AND HUMAN RIGHTS
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ICC: <http://nhri.ohchr.org/EN/Pages/default.aspx>

ICC Working Group on Business and Human Rights: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

DIHR: <http://www.humanrights.dk/>

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1. INTRODUCTION

1.1 PURPOSE OF THIS GUIDEBOOK

This Guidebook is a resource for human rights practitioners within national human rights institutions (NHRIs). It has been developed on behalf of the International Coordinating Committee (ICC) of NHRIs by the Danish Institute for Human Rights in consultation with the ICC Working Group on Business and Human Rights. It introduces the subject of business and human rights, including the role of a national human rights institution in identifying and addressing the impacts of business on human rights enjoyment.

Business activities can have a wide range of positive and adverse impacts on human rights. This has been subject to growing attention in the international community, not least through the former mandate of the UN Special Representative on Business and Human Rights and the development of the UN Guiding Principles on Business and Human Rights.

Through their role in promoting and protecting human rights, national human rights institutions can play an important part in engaging with business and human rights issues to ensure that States, businesses and civil society uphold their respective duties and responsibilities with regard to business interaction with human rights.

Each chapter of the Guidebook contains:

- Introductory questions;
- Explanatory text;
- Links to further resources; and
- Examples from NHRI practice in the area of business and human rights.

The Guidebook may be used as a stand-alone reference document. Alternatively, it can be used together with the Business and Human Rights E-learning for National Human Rights Institutions, developed by the Danish Institute for Human Rights. Both the Guidebook and E-learning are available in Arabic, English, French and Spanish.

2. BUSINESS AND HUMAN RIGHTS: INTERNATIONAL FRAMEWORKS

This chapter introduces the international frameworks governing business and human rights, including the United Nations Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights.



AFTER WORKING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- How do businesses impact human rights?
- What are the international human rights standards and frameworks applicable to business and human rights?
- Who is responsible for addressing human rights impacts of business? Who are the rights-holders and duty-bearers?
- What are the UN Guiding Principles on Business and Human Rights?

2.1 BUSINESS IMPACTS ON HUMAN RIGHTS

Business activities can have a wide range of impacts on human rights. Often these impacts are multi-dimensional and context-dependent. In other words, they are influenced by the type of industry in question, country and local context, state of development, and so forth. Positive impacts of business on human rights can include employment, skills development and contributions to economic development at local and national levels. For example, where a company employs women and men, this can contribute to fulfilment of the right to just and favourable conditions of work. Where companies pay taxes, this contributes to state revenues and can therefore support the achievement of national development objectives, including human rights. However, business activities can also have adverse impacts on human rights. For example, interference with the rights to health, property, and an adequate standard of living, such as where workers are exposed to environmental contaminants for which companies are responsible, or where people are resettled without adequate consultation and/or compensation.

Table 1, below, provides a few illustrative examples of how business activities may impact on human rights. Please note that these are examples only and that business activities have the potential to impact on virtually all human rights.

TABLE 1. EXAMPLES OF HOW BUSINESS ACTIVITIES MAY IMPACT ON HUMAN RIGHTS

HUMAN RIGHTS	POTENTIAL POSITIVE IMPACT	POTENTIAL ADVERSE IMPACT OR HUMAN RIGHTS ABUSE
Right to an adequate standard of living	A company creates jobs for local communities contributing to people's ability to afford decent housing and food.	A company resettles local communities without due consultation and /or compensation, to an area with less fertile lands. As a result the resettled communities have insufficient access to housing and food.
Right to just and favourable conditions of work	A company has strong health and safety standards in place reducing the likelihood of injuries.	A company does not allow sufficient breaks during working hours.
Right to water and sanitation	A company works with the State or local government to improve water infrastructure, thereby contributing to creating the conditions needed for the fulfilment of the right to water and sanitation.	In an area of water scarcity a company uses large quantities of water, with the result that local communities do not have access to sufficient water to sustain subsistence agriculture.
Right to education	A company pays taxes to the government contributing to school infrastructure development.	A company employs children as workers whose right to education is not respected as a result.
Right to access to information	A company publishes environmental performance data in languages and formats accessible to rights-holders impacted by the company operations.	The government does not make environmental impact assessments public and the company does not take steps to facilitate access of affected communities to impact assessment information.
Right to non-discrimination	A company treats all employees fairly in relation to hiring, promotion, in-work benefits and pensions without discrimination on unlawful grounds.	A company discriminates against women, e.g., by not allowing them to return to the same job after maternity leave.

2.2 INTERNATIONAL FRAMEWORKS GOVERNING BUSINESS AND HUMAN RIGHTS

2.2.1 HUMAN RIGHTS DUTIES AND RESPONSIBILITIES

When the focus is on business and human rights, respecting, protecting and fulfilling human rights are responsibilities shared amongst a wide range of State and non-State actors. This includes, for example, central and local government, regulatory agencies, large and small businesses, and international organisations and agencies.

It is important to remember the distinction in human rights law between rights-holders and duty-bearers:

- **Rights-holders:** All human beings are human rights-holders. Generally, organisations and entities such as States, companies and religious institutions, are not considered to be human rights-holders. Examples of rights-holders whose human rights can be impacted by business activities include employees, supply chain workers, local communities, customers, and end-users.
- **Duty-bearers:** In principle everyone is a duty-bearer, whether State- or non-State actor, individual or group. The Preamble to the 1948 Universal Declaration of Human Rights states that “every individual and every organ of society has a role to play in upholding human rights”. This includes States as the primary duty-bearers, but may also encompass individuals and non-State actors such as companies. Duty-bearers in a business context can include suppliers, joint-venture or other business partners, government authorities, customers, end-users of a company’s products and recipients of a company’s services.

Although in principle everyone is a duty-bearer, the precise duties and responsibilities of different duty-bearers vary, according to a number of factors and circumstances. In short, States are the primary duty-bearers of human rights and therefore have the duties to ‘protect, respect and fulfil’ human rights. On the other hand, companies do not have direct legal obligations under international human rights law. However, it is now widely accepted that businesses have the ‘responsibility to respect’ human rights, which is to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved (see also Box 1, page 10). This responsibility has been expressed most recently in the UN Human Rights Council’s endorsement of the UN Guiding Principles on Business and Human Rights.¹

BOX 1. DO COMPANIES HAVE HUMAN RIGHTS DUTIES UNDER INTERNATIONAL HUMAN RIGHTS LAW?

Whether companies have human rights duties under international human rights law, akin to those of States, has been subject to debate. For example, the UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights (2003) sought to articulate a definitive list of human rights for which companies are to have direct legal obligations under international human rights law. The initiative did not receive sufficient buy-in from the international community, predominantly for two key reasons: (1) hesitancy to attribute companies with direct human rights duties akin to those of States; and (2) hesitancy to define company responsibility for human rights to a predetermined and definitive list of human rights.

The 2008 UN Protect, Respect and Remedy Framework on Business and Human Rights differentiates the duties and responsibilities of States and companies, reaffirming the State duty to respect, protect and fulfil human rights and stating the corporate responsibility as one to 'respect' human rights, i.e., to do no harm. As such, the Framework does not create new legal obligations for companies under international human rights law (see further, section 2.3).

However, companies do of course have legal duties with regard to human rights where these have been integrated into domestic laws via ratification by State actors of international instruments and the adoption of these into domestic laws. For example, a company will be required to comply with domestic labour laws and relevant environmental regulation.

2.2.2 BUSINESS AND HUMAN RIGHTS STANDARDS

Business activities have the potential to impact on virtually all internationally recognised human rights, including civil and political rights, economic, social and cultural rights, labour rights recognised by the International Labour Organisation, and rights enjoyed by specific categories of rights-holders under specialised human rights instruments, such as the UN Convention on the Rights of the Child.

Businesses are therefore expected to act consistently with the human rights outlined in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work (see Table 2, below). These rights have been elaborated by additional specialised human rights instruments at international and regional levels. Businesses should refer to these wherever relevant, to understand the scope of their responsibility to respect human rights in a given situation and context. For example, wherever Indigenous Peoples' rights are potentially impacted by business activities, the UN Declaration on the Rights of Indigenous Peoples will be relevant.

Table 2, below, gives an overview of international human rights law frameworks relevant to business and human rights.

TABLE 2. INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORKS RELEVANT TO BUSINESS AND HUMAN RIGHTS

The International Bill of Human Rights

The International Bill of Human Rights is comprised of three main documents: (1) the [Universal Declaration of Human Rights](#) (1948) and the associated implementing conventions; (2) the [International Covenant on Civil and Political Rights](#) (1966); and (3) the [International Covenant on Economic, Social and Cultural Rights](#) (1966).

UN Core Human Rights Conventions

In addition to the International Bill of Human Rights, a large number of specialised human rights agreements have been put in place, often responding to the needs of particular rights-holders.

Nine core international human rights treaties have been identified by the UN, they are the:

[International Convention on the Elimination of All Forms of Racial Discrimination](#) (1965);

[International Covenant on Civil and Political Rights](#) (1966);

[International Covenant on Economic, Social and Cultural Rights](#) (1966);

[Convention on the Elimination of All Forms of Discrimination against Women](#) (1979);

[Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1984);

[Convention on the Rights of the Child](#) (1989);

[International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) (1990);

[International Convention for the Protection of All Persons from Enforced Disappearance](#) (2006); and

[Convention on the Rights of Persons with Disabilities](#) (2006).

For an overview of all core international human rights conventions and additional protocols see: <http://www2.ohchr.org/english/law/>

Regional Human Rights Instruments	<p>For example:</p> <p>Council of Europe: the Convention for the Protection of Human Rights and Fundamental Freedoms (1950);</p> <p>Organisation of American States: the American Declaration of the Rights and Duties of Man (1948); the American Convention on Human Rights (1969);</p> <p>African Union: the African Charter on Human and Peoples' Rights (1981); and</p> <p>Association of South East Asian Nations: the ASEAN Human Rights Declaration (2012).</p> <p>Regional systems may have additionally concluded instruments on specific topics. For example, at the Council of Europe 14 protocols exist to amend the Convention on Human Rights and Fundamental Freedoms, which cover issues from the abolition of the death penalty (1983) to the control system of the Convention (2004). Further, the Council has signed a Convention on the Exercise of Children's Rights (1996), as well a Convention on Human Rights and Biomedicine (1997). For the latter, numerous protocols have been elaborated since, ranging from the prohibition of cloning human beings (1998), to transplantations of human organs and tissues (2002), as well as genetic testing (2008).</p>
International Labour Standards	<p>International human rights law also includes international labour standards. These are codified in more than one hundred conventions under the United Nations International Labour Organisation (ILO). ILO conventions cover a wide range of topics, for example, trade union rights, working hours, annual leave provisions, minimum age standards for employment, prohibitions on forced labour, workplace discrimination, and more. Included in the ILO system is also the Indigenous and Tribal Peoples Convention (ILO Convention No.169, 1989), which contains a number of important provisions on the rights of Indigenous Peoples; and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977, revised in 2009).</p>
International Humanitarian Law and International Criminal Law	<p>In contexts of armed conflict international humanitarian law may apply. This body of law includes the Geneva Conventions. International humanitarian law imposes specific obligations on actors operating in situations of armed conflict and some of these obligations may be directly applicable to businesses.²</p>

International criminal law provides for legal accountability for involvement in war crimes, crimes against humanity, and genocide. The International Criminal Court, established in 2002, provides direct international legal liability for persons involved in such international crimes.

Possible scenarios basing allegations of corporate complicity or other forms of involvement in international crimes include, for example, human trafficking, financing of armed conflict, or illegal arms trading.

See also Chapter 7, section 7.4.



2.3 THE UNITED NATIONS PROTECT, RESPECT AND REMEDY FRAMEWORK AND GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

As introduced in the previous section, there has been some debate within the international community about the roles and responsibilities of different duty-bearers in addressing business-related human rights impacts. In particular, the roles and responsibilities of States and businesses have been unclear, resulting in significant governance gaps.

Early attempts at defining the duties and responsibilities of States and business include the ILO Tripartite Declaration of Principles Concerning Multinational

Enterprises and Social Policy (1977, revised in 2009) and the UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights (2003). Whilst gaining some take-up, these initiatives did not receive wide scale buy-in and implementation from States, business, civil society and other key actors, such as NHRIs and financial service providers.

In 2005, the then UN Secretary-General appointed a Special Representative on the issue of human rights and transnational corporations and other business enterprises (Special Representative on Business and Human Rights), Professor John Ruggie, to address the lack of clarity on the roles of States and businesses with regard to human rights. This included identifying and clarifying the expectations and obligations of business. The three-year mandate resulted in the 2008 report of the Special Representative, '[Protect, Respect and Remedy: a Framework for Business and Human Rights](#)' (UN Protect, Respect and Remedy Framework). Unanimously welcomed by the UN Human Rights Council in 2008, the Framework rests on three complementary and interrelated pillars:³

- **Pillar 1: The State duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication;
- **Pillar 2: The corporate responsibility to respect** human rights, which means that companies are expected to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved; and
- **Pillar 3: Access to remedy**, which requires both States and businesses to ensure greater access by victims of business-related human rights abuses to effective remedy, both judicial and non-judicial.

BOX 2. THE UN GUIDING PRINCIPLES AND NATIONAL HUMAN RIGHTS INSTITUTIONS

The UN Guiding Principles recognise the important role of national human rights institutions with regard to business and human rights. For example, the commentary to Guiding Principle 3 notes that:

“National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.”

The role of national human rights institutions is noted under each of the three pillars of the UN Guiding Principles – protect, respect and remedy.

Through this division of duties and responsibilities, the UN Protect, Respect and Remedy Framework clarifies the baseline expectations and obligations of both States and businesses in respect of business-related human rights impacts.

The mandate of the UN Special Representative on Business and Human Rights was subsequently extended by a further three years (2008-2011) to 'operationalise' the UN Protect, Respect and Remedy Framework – that is, to provide practical guidance on steps that can be taken by States, businesses and other actors to implement the Framework. This mandate resulted in the '[Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#)' (UN Guiding Principles).⁴

The UN Guiding Principles were unanimously endorsed by the UN Human Rights Council in June 2011 and have received support from a number of State, business and civil society actors. A large number of international organisations and other bodies that engage with business and human rights issues have also sought to align their standards and activities with the UN Guiding Principles. For example, the 2011 updated version of the [OECD Guidelines for Multinational Enterprises](#) (OECD Guidelines) now include a chapter on human rights, drafted to ensure consistency with the UN Guiding Principles.⁵

The UN Special Representative on Business and Human Rights consulted widely with government, business, civil society and other stakeholders in developing the UN Protect, Respect and Remedy Framework and UN Guiding Principles. He also sought advice from a range of stakeholders, including legal and other experts. The reports and other materials compiled through this work provide useful guidance regarding the application of the UN Protect, Respect and Remedy Framework and the UN Guiding Principles, as well as business and human rights issues more generally.

Following the conclusion of the mandate of the UN Special Representative on Business and Human Rights in 2011, the UN Human Rights Council established the [Working Group on the issue of human rights and transnational corporations and other business enterprises](#) (UN Working Group on Business and Human Rights) to continue the work on business and human rights at the UN-level (see also Chapter 8, section 8.1).

In carrying out its mandate the UN Working Group on Business and Human Rights is tasked to consult widely with a range of stakeholders, including through an annual forum open to the participation of States, UN mechanisms, business enterprises and associations, and civil society. The purpose of this forum is to discuss trends and challenges in the implementation of the UN Guiding Principles and to promote dialogue and cooperation on issues relating to business and human rights.

Each of the three pillars of the UN Framework – protect, respect and remedy – is explained in more detail in the following chapters.



RESOURCES ON THE UN PROTECT, RESPECT AND REMEDY FRAMEWORK AND UN GUIDING PRINCIPLES

Business and Human Rights Resource Centre website on the UN Special Representative on Business and Human Rights: <http://www.business-humanrights.org/SpecialRepPortal/Home>

Business and Human Rights Resource Centre Portal for the UN Working Group on Business and Human Rights: <http://www.business-humanrights.org/UNWorkingGroupPortal/Home>

United Nations, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#), Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (A/HRC/17/31, 2011).

United Nations, [Protect, Respect and Remedy: A Framework for Business and Human Rights](#), Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (A/HRC/8/5, 2008).

OHCHR website on the UN Working Group on Business and Human Rights: <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>



3. NATIONAL HUMAN RIGHTS INSTITUTIONS AND BUSINESS AND HUMAN RIGHTS

This chapter introduces the mandate and role of national human rights institutions (NHRIs) in business and human rights. This includes how the Paris Principles relate to involvement of NHRIs in business and human rights, the Edinburgh Declaration on Business and Human Rights, and the activities of the ICC Working Group on Business and Human Rights.



AFTER WORKING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- What are the standards for NHRI independence and effectiveness outlined in the Paris Principles? How do these standards relate business and human rights?
- What does the Edinburgh Declaration say about the role of NHRIs in business and human rights?
- What is the role and function of the ICC Working Group on Business and Human Rights?

3.1 NATIONAL HUMAN RIGHTS INSTITUTIONS' MANDATE ON BUSINESS AND HUMAN RIGHTS

3.1.1 THE PARIS PRINCIPLES

A national human rights institution (NHRI) is an autonomous body established by the State with a constitutional or legislative mandate to promote and protect human rights.⁶ The [Vienna Declaration and Programme of Action](#) (1993) recommended the establishment of NHRIs on the basis of the [UN Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights](#) (1991) (Paris Principles).

The Paris Principles set out the international minimum standards for the status and functioning of NHRIs.⁷ They outline that NHRIs should have a broad mandate based on universal human rights standards; be autonomous and independent from government; have a pluralistic structure and operate in a pluralistic manner; have adequate resources; and have adequate powers of investigation. They also articulate responsibilities that should be included within the mandate of NHRIs to ensure that their activities are effective (see also Box 3, page 18).

The Paris Principles do not dictate the precise form of NHRIs. Instead, they are formulated to recognise and apply to the broad range of institutional forms adopted by NHRIs. The form of NHRIs varies between States and reflects local contextual factors, including the domestic legal and political frameworks, and

human rights issues and priorities. Institutional forms commonly adopted for NHRIs include commissions, advisory institutes, ombudsman offices and public defenders' offices.

Whilst the mandate of each NHRI is variable, the Paris Principles require NHRIs to have as wide a role as possible, with two main responsibilities: (1) human rights promotion, including creating a national culture of human rights where tolerance, equality and mutual respect thrive; and (2) human rights protection, including helping to identify and investigate human rights abuses, bringing those responsible for human rights violations to justice, and providing a remedy and redress for victims of human rights violations. In this way, NHRIs aim to bridge the 'protection gap' between the rights of individuals and the duties and responsibilities of the State.

It is important to recognise that the mandates of many NHRIs span all internationally recognised human rights. This often includes not only civil and political rights, but also economic, social and cultural rights. The mandate of many NHRIs is broad enough to allow it to address issues related to business and human rights.

BOX 3. MANDATES OF NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE PARIS PRINCIPLES

In addition to the two primary responsibilities of NHRIs – human rights promotion and protection – the [Paris Principles](#) suggest a number of other functions that NHRIs should undertake:⁸

- **Advisory functions:** NHRIs should be tasked with advising government on any matters concerning the promotion and protection of human rights. Advice can take a range of forms, for example, opinions, recommendations, proposals and reports;
- **Promoting legal harmonisation:** The mandate of NHRIs should enable them to promote and ensure the harmonisation of national legislation, regulation and practices with the international human rights instruments to which the State is a party. In addition, NHRIs should be mandated to ensure the effective implementation of these by participating in, or commenting on, review of current and proposed laws; advocating for appropriate amendments to existing laws, regulations and practices; and identifying and communicating any inconsistencies between relevant national and international laws;
- **Encouraging the adoption of international standards:** NHRIs should be mandated to encourage accession to, or ratification of, international human rights instruments and to ensure their implementation;

- **Cooperative functions:** NHRIs should be mandated to cooperate with organisations and institutions competent in the areas of the promotion and protection of human rights. Such bodies should include civil society, other domestic bodies with responsibilities to promote and protect human rights, the UN, organisations within the UN system, regional institutions and national institutions of other countries;
- **Educational functions:** NHRIs should assist in the formulation of programmes for the teaching of, and research into, human rights and can be involved in the execution of such programmes in schools, universities and professional circles; and
- **Raising public awareness:** NHRIs should be mandated to publicise human rights issues generally and to make efforts to combat all forms of discrimination by increasing public awareness. For example, through the provision of information and education, and by making use of the media to influence public opinion.

3.1.2 INTERNATIONAL COORDINATING COMMITTEE ACCREDITATION OF NHRIS

NHRIs are brought together under the UN International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC Sub-Committee on Accreditation reviews and accredits NHRIs according to their compliance with the Paris Principles. NHRIs can receive A, B or C status:⁹

- ‘A’ status denotes full compliance with the Paris Principles. These NHRIs are voting members of the ICC;
- ‘B’ status denotes that an NHRI does not fully comply with the Paris Principles or has not provided sufficient information to make a determination. These NHRIs are granted observer status at the ICC; and
- ‘C’ status denotes non-compliance with the Paris Principles. These NHRIs are non-members of the ICC.

ICC accreditation confers international acceptance of an NHRI and promotes compliance with the Paris Principles amongst NHRIs. In practical terms, when an NHRI is accredited A status, it is attributed a participatory role in the work and decision-making of the ICC, as well as in the work of the UN Human Rights Council and other UN bodies. For example, a recent UN Resolution suggested that A-status accredited NHRIs should be enabled to participate in the UN General Assembly in the same way as they currently do in the UN Human Rights Council.

3.2 THE INTERNATIONAL COORDINATING COMMITTEE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

The International Coordinating Committee Working Group on Business and Human Rights (ICC Working Group) was established in 2009 as the first thematic working group of the ICC. The ICC Working Group's purpose is to promote capacity building, strategic collaboration, advocacy and outreach by NHRIs in the area of business and human rights, including by:¹⁰

- Promoting integration of business and human rights issues into NHRI strategies and programmes – nationally, regionally and internationally;
- Building capacity of NHRIs on business and human rights through skills development and sharing of tools and best practices;
- Facilitating NHRI participation in development of relevant legal and policy frameworks; and
- Supporting NHRI outreach to business and human rights stakeholders.

The important role of NHRIs in the protection and promotion of human rights is recognised in a number of UN resolutions.¹¹ As articulated most recently in a 2011 Resolution of the Human Rights Council, this includes business and human rights:

“[The UN Human Rights Council] *Welcomes* the important role of national human rights institutions established in accordance with the Paris Principles in relation to business and human rights, and encourages national human rights institutions to further develop their capacity to fulfil that role effectively, including with the support of the Office of the High Commissioner and in addressing all relevant actors.”¹²

This statement by the UN Human Rights Council followed two years of advocacy by NHRIs, led by the ICC Working Group, to increase understanding and raise awareness of NHRIs' role and mandate in addressing business and human rights issues.

The 10th Biennial ICC Conference in 2010 focused specifically on NHRIs and business and human rights, and resulted in the adoption of the [Edinburgh Declaration](#) (see also Box 4, page 21). Since the Edinburgh Declaration all four regional networks of NHRIs – Africa, Americas, Asia-Pacific and Europe – have held regional workshops and drafted action plans outlining NHRI regional priorities and planned activities in the area of business and human rights.¹³

Since 2009, the ICC Working Group has undertaken a range of activities related to business and human rights. For example, the ICC Working Group has made a number of submissions, such as, on the review of the OECD Guidelines for Multinational Enterprises and the review of the OECD Common Approaches on Environment and Officially Supported Export Credits. In November 2012 the OECD and ICC signed a memorandum of understanding acknowledging the synergies

and complementarities of the two parties in promoting business and human rights related activities.¹⁴

The ICC Working Group has also produced a number of factsheets on business and human rights for NHRIs. For example, on the linkages between NHRIs and UN Global Compact local networks, or on business and human rights in the context of the Universal Periodic Review.

BOX 4. THE EDINBURGH DECLARATION

The [Edinburgh Declaration](#) was adopted by the 10th International Conference of the ICC, held in Scotland in October 2010. The Conference was hosted by the Scottish Human Rights Commission in cooperation with the Office of the High Commissioner for Human Rights and the ICC. The Edinburgh Declaration considers the ways in which NHRIs can engage with business and human rights issues, including by promoting greater protection against business-related human rights abuses, greater business accountability and respect for human rights, access to justice, and the establishment of multi-stakeholder approaches.¹⁵

The Edinburgh Declaration highlights activities that can be taken by NHRIs on business and human rights within their core mandate areas under the Paris Principles, including:

- Monitoring the compliance of State and non-State actors with human rights;
- Advising all relevant actors on how to prevent and remedy human rights abuses;
- Providing and/or facilitating access to judicial and/or non-judicial remedies, for example, by supporting victims, handling complaints and/or undertaking mediation and conciliation;
- Conducting research and undertaking education, promotion and awareness-raising activities; and
- Integrating business and human rights issues when interacting with international human rights bodies, including UN treaty bodies, UN special procedures, the Human Rights Council and the Universal Periodic Review, as well as regional human rights mechanisms.

Further activities identified for NHRIs' consideration include: the establishment of partnerships with a range of organisations (including the UN Global Compact, media and business organisations), the review in each ICC regional network of national action plans on business and human rights, the creation of business and human rights focal points within NHRIs, and reporting to the annual meeting of the ICC on any progress towards the development of national action plans.



RESOURCES ON NATIONAL HUMAN RIGHTS INSTITUTIONS AND BUSINESS AND HUMAN RIGHTS

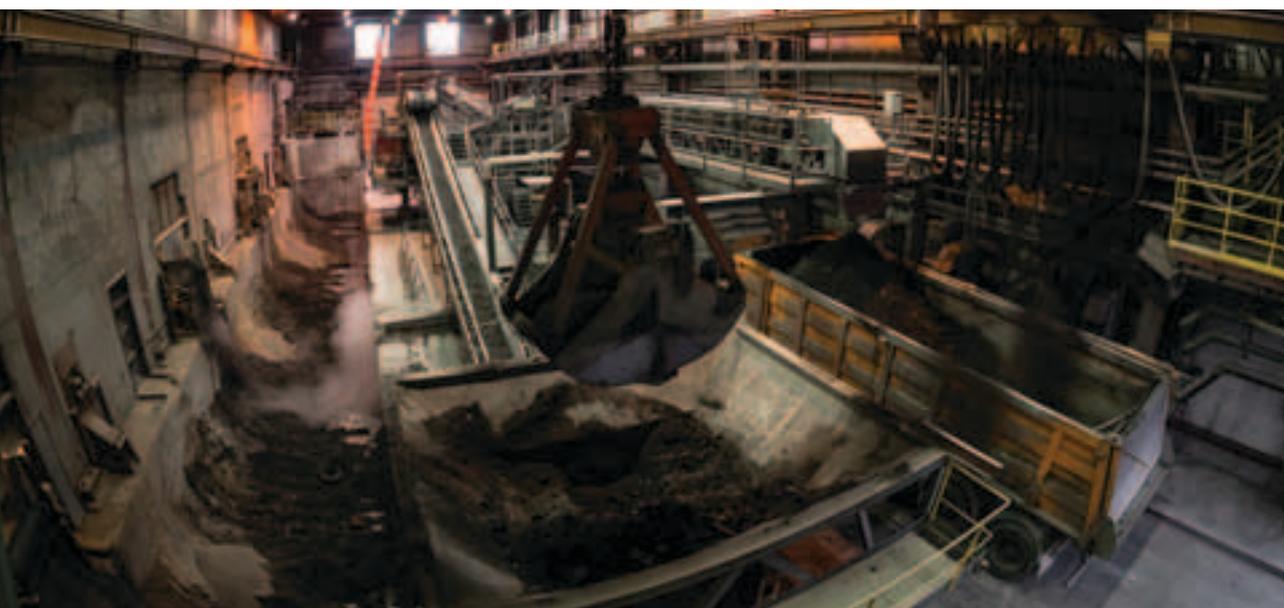
ICC Working Group on Business and Human Rights website: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) website: <http://nhri.ohchr.org/EN/Pages/default.aspx>

Office of the High Commissioner for Human Rights (OHCHR) website on NHRIs: <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), *The Edinburgh Declaration* (2010).

United Nations, *Principles relating to the Status of National Institutions – The Paris Principles*, Adopted by General Assembly resolution A/RES/48/134 (1993).



4. PILLAR ONE: THE STATE DUTY TO PROTECT

This chapter introduces pillar one of the UN Protect, Respect and Remedy Framework. The chapter outlines the foundational and operational principles related to the State duty to protect, and considers opportunities for NHRIs to engage in promoting the State duty to protect.



AFTER WORKING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- How does the State duty to protect apply to business and human rights?
- What are the foundational principles related to the State duty to protect?
- What is expected of States with regard to regulatory and policy functions, the State-business nexus and ensuring policy coherence?
- How is access to remedy related to the State duty to protect?

4.1 FOUNDATIONAL PRINCIPLES

States have an obligation to protect against human rights abuses committed by third parties, including business enterprises, within their territory and/or jurisdiction. This duty is recognised clearly in international human rights law and is reiterated in the first pillar of the UN Protect, Respect and Remedy Framework: the State duty to protect.

The UN Guiding Principles set out the areas where State action is required to ensure compliance with this obligation. The ‘foundational’ principles articulate that States:

- Must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises, by taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Guiding Principle 1); and
- Should set out clearly the expectation that business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations (Guiding Principle 2).

The subsequent ‘operational’ principles of the UN Guiding Principles address:

- General State regulatory and policy functions (Guiding Principle 3);
- The State-business nexus (Guiding Principles 4, 5 and 6);

- Ensuring policy coherence (Guiding Principles 8, 9 and 10); and
- Supporting business respect for human rights in conflict-affected areas (Guiding Principle 7).

The next sections of this chapter address the first three of these areas of the operational principles. For discussion on business and human rights in conflict-affected areas see Chapter 7, section 7.4. For discussion on the State duty to protect in relation to access to remedy see Chapter 6.

The chapter concludes with consideration of how NHRIs might engage with regard to the State duty to protect pillar, and provides some examples from NHRI practice.

4.2 GENERAL STATE REGULATORY AND POLICY FUNCTIONS

The UN Guiding Principles outline that States are required to take appropriate steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulation and adjudication. For example, States need to ensure that relevant laws and regulations (such as environmental laws, corporate laws, anti-bribery and corruption laws, and anti-discrimination laws) appropriately capture business-related human rights impacts. This includes a requirement that such laws and regulations are regularly reviewed, properly enforced, and that individuals and communities have access to remedy whereby they can raise any breaches of such laws and regulations. It is also expected that laws and regulations operate in a way that does not constrain but enables business respect for human rights. For example, corporate laws relating to directors' duties should enable or require company directors to consider the human rights impacts of the business, rather than inhibit or prohibit such consideration.

The UN Guiding Principles also outline that the State duty to protect includes the requirement that the State sets out clearly the expectation that businesses domiciled within the State and/or jurisdiction respect human rights throughout their operations and communicate how they address their human rights impacts. One aspect that has gained attention in this regard is the issue of extraterritoriality. That is, to what extent domestic laws apply to business activities occurring in another jurisdiction and, relatedly, how businesses may be held accountable for human rights abuses that occur outside the home-State (*home-State* refers to the country where the business is incorporated and *host-State* refers to the country where the company is operating).

The following are some example topics and further resources related to the State duty to protect pillar – general State regulatory and policy functions.

EXAMPLES OF TOPICS RELATED TO GENERAL STATE REGULATORY AND POLICY FUNCTIONS

CORPORATE LAW

In the realm of business and human rights, a large range of laws and regulations are relevant, spanning environmental laws, labour laws, taxation and many more. Some bodies of law have been subject to more in-depth analysis.

For example, the Corporate Law Tools Project under the former mandate of the UN Special Representative on Business and Human Rights examined corporate law in 39 jurisdictions to see whether and how national corporate and securities law principles and practices encourage or impede companies' respect for human rights. Issues explored include incorporation and listing, directors' duties, reporting, and stakeholder engagement.

What can NHRIs do? NHRIs can, for example, use their advisory function to review corporate and other laws within their jurisdiction for compatibility with international human rights, and recommend to the government desirable changes to existing corporate laws and policies.

United Nations, [Human Rights and Corporate Law: Trends and Observations from a Cross-National Study conducted by the Special Representative](#), Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (A/HRC/17/31/Add.2, 2011).

UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review (UPR) is a process by which the UN Human Rights Council reviews the overall human rights situation in all UN member States. The purpose is to monitor States' human rights implementation, with a view to improvement.

The review is based on three reports: the States' national report (20 pages); a compilation of UN information on the State (10 pages); and a summary of other relevant stakeholders' information, including information supplied by NGOs and NHRIs, prepared by the Office of the High Commissioner for Human Rights (10 pages).

Through this process, States can receive recommendations from their peers and can subsequently decide whether to accept or reject the recommendations. If the State accepts the recommendations, it is expected to implement them by the time of the next review. Each country is reviewed every 4½ years.

Office of the High Commissioner for Human Rights website on the Universal Periodic Review: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

NATIONAL BASELINE STUDIES ON THE UN GUIDING PRINCIPLES

As a basis for NHRI business and human rights related activities, it is useful to undertake a baseline study against the UN Guiding Principles. That is, a study to examine to what extent national laws, regulations and practices comply with each of the pillars of the UN Protect, Respect and Remedy Framework. Throughout this process, business human rights impacts should be considered, both inside the territory as well as outside the territory of where companies are incorporated.

Development of such baseline studies has been highlighted in the action plans of some of the NHRI regional networks. For example, in the Berlin Action Plan on Business and Human Rights, developed by the European Group of National Human Rights Institutions in 2012. In the European context, a UN Guiding Principles baseline study can also be used to inform the process of European governments in their development of national action plans for implementing the UN Guiding Principles, as requested by the European Commission in its 2011-2014 CSR Strategy.¹⁶

What can NHRIs do? NHRIs can develop national baseline studies on the UN Guiding Principles to identify country specific priorities and inform their business and human rights related activities. Depending on the region, NHRIs may also use the findings from a national baseline study to inform government-led processes, such as the development of national action plans in the European Union.

European Group of National Human Rights Institutions, [Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States](#), Submission to the European Commission (2012).

EXTRATERRITORIAL APPLICATION OF LAWS RELATING TO BUSINESS AND HUMAN RIGHTS

The UN Guiding Principles take the position that States are not generally required to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction under international human rights law, nor are they generally prohibited from doing so, providing that there is a recognised jurisdictional basis. There is also recognition of the strong policy reasons for home-States to be clear about the expectations of business abroad, including ensuring predictability for business enterprises and preserving the State's own reputation. The commentary to Guiding Principle 2 draws a distinction between two types of extraterritoriality:

- Domestic measures with extraterritorial implications: For example, requirements on 'parent' companies to report on operations globally (i.e. including on the activities of their subsidiaries), or the contractual applicability of standards of international finance institutions; and
- Direct extraterritorial legislation: For example, criminal laws that allow for prosecution based on the nationality of the perpetrator regardless of where the offence occurs.

There are several recent examples of States taking measures to regulate with extraterritorial implications.

For instance, in the United States of America, the [Dodd-Frank Act \(2010\)](#) includes several reporting provisions that apply to the global operations of companies.¹⁷ Section 1502 requires the disclosure of sourcing of conflict minerals that originated in the Democratic Republic of the Congo or an adjoining country, as well as an explanation of the measures taken to exercise due diligence on the source and chain of custody of those minerals. There are also reporting requirements regarding certain types of payments made by extractive industries companies to the Federal Government of the United States of America or to foreign governments.

In California, United States of America, there is a Bill pending for a '[Business Transparency on the Trafficking and Slavery Act](#)', which seeks to impose a new reporting requirement for companies to disclose in their annual reports any measure taken during the year to identify and address conditions of forced labour, slavery, human trafficking, and the worst forms of child labour-within the company's supply chains.¹⁸ This reporting requirement would apply to the operations of a company globally.

Another example is from the United Kingdom which has recently adopted a new [Bribery Act \(2010\)](#), that provides for prosecution of an individual or a company involved in bribery where that individual or company has ties with the United Kingdom, regardless of where the crime has occurred.¹⁹

It should also be noted that States have a range of legislative, regulatory and policy tools at their disposal for clearly setting out the expectations that businesses respect human rights throughout their global operations, including multilateral soft law instruments such as the OECD Guidelines for Multinational Enterprises; requiring global human rights due diligence as a condition for receiving state credit and investment guarantees; and establishing and requiring global reporting on human rights risks and measures.

Daniel Augenstein, [Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union](#), University of Edinburgh (2010).

Jennifer Zerk, [Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere from Six Regulatory Areas](#) (2010).

4.3 THE STATE-BUSINESS NEXUS

The UN Guiding Principles expect States to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or receive substantial support from State agencies. The reasoning being that as States are the primary duty-bearers of human rights, an abuse of human rights by a business enterprise acting 'as the State' or in close conjunction with the State, may entail a violation of the State's own international law obligations.

In these domains States are required to take extra care to ensure businesses operate in accordance with the responsibility to respect human rights, including through exercising human rights due diligence and/or requiring clients and projects receiving support from the organisation to implement human rights due diligence (See Chapter 5).

Examples of relevant businesses and organisations include:

- State-owned enterprises and agencies linked to the State, such as export credit agencies, official investment insurance or guarantee agencies, and State-owned investment funds such as sovereign wealth funds and public pension funds;
- Development agencies; and
- Development finance institutions.

Examples of relevant State-business nexus transactions include:

- Contracting for the provision of public services (including privatisation);
- Public procurement; and
- Other commercial transactions.

The following are some example topics and further resources related to the State duty to protect pillar – the State-business nexus.

EXAMPLES OF TOPICS RELATED TO THE STATE-BUSINESS NEXUS

EXPORT CREDIT AGENCIES

Export credit agencies (ECAs) are public entities that provide corporations with government-backed loans, guarantees, credits and insurance to support exports and foreign investments. They may be established as State agencies or take the form of a private corporation, which is subject to government oversight and regulation. ECA activity tends to focus on support for business activities in emerging economies and the global south, and is a significant source of official finance and insurance for the private sector.²⁰

Due to their strong link to the State, ECAs have been called out explicitly by the UN Guiding Principles, which outline that: States have a duty to ensure ECA activities are consistent with human rights; ECAs need to have in place a human rights due diligence process; and that projects that receive ECA support should exercise respect for human rights.

What can NHRIs do? NHRIs can advise their State on ensuring that ECA mandate, policies and regulations integrate human rights considerations; meet with their ECA to discuss implementing human rights due diligence (including consideration

of the division of responsibilities between the ECA and projects receiving ECA support), and advise on performance standards; and assist individuals and communities that experience adverse impacts of ECA-supported projects to raise complaints and grievances. NHRIs can also engage multilaterally to promote adherence of ECAs to human rights, for example, the ICC Working Group made a submission to the review of the OECD Common Approaches on Officially Supported Export Credits and Environmental and Social Due Diligence.

International Coordinating Committee of NHRIs, [ICC Submission to the OECD Council Draft Revised Recommendation on Common Approaches on Officially Supported Export Credits and Environmental and Social Due Diligence](#) (2011).

Karyn Keenan, [Export Credit Agencies and the International Law of Human Rights](#), Halifax Initiative (2008).

PUBLIC-PRIVATE PARTNERSHIPS AND PRIVATISATION

The State retains the duty to protect when it contracts for the provision of services or privatises such services, even if the operational aspects of service delivery are carried out by a private business. For example, water, infrastructure, education or healthcare services.

This means public-private partnerships and privatisation need to be scrutinised to ensure that they reflect the State duty to protect, including that the State sets adequate standards for such services; ensures monitoring and accountability mechanisms; and that the arrangement requires the company carrying out the services to exercise human rights due diligence.

What can NHRIs do? NHRIs can monitor and report on the human rights implications of government outsourcing of services or privatisation of services, and advocate for the carrying out of human rights impact assessments prior to privatisation of services.

10th Biennial ICC Conference, [Working Group Session 1: Privatisation and public procurement outline](#) (2010).

PUBLIC PROCUREMENT

Public procurement, also called public tendering, is the procurement of goods and services on behalf of public authorities. This accounts for a substantial part of national economies. In this process, the State is under a duty to ensure the procurement process and contract comply with human rights standards and contain relevant human rights provisions.

For example, suppliers may be required to meet certain standards concerning workforce diversity before they are qualified to compete for public contracts. The Canadian Federal Government has, for instance, introduced a preferential award of contracts to Aboriginal peoples.²¹ Another example is from the Government of South Africa, which currently uses a system of ‘targeted’ procurement as part of its policy of social integration.²²

What can NHRIs do? NHRIs can examine public procurement trends and advise on best practices, or conduct research on high-risk sectors.

Amnesty International, [Human Rights and Privatisation](#) (2005).

10th Biennial ICC Conference, [Working Group Session 1: Privatisation and public procurement outline](#) (2010).

4.4 ENSURING POLICY COHERENCE

The UN Guiding Principles emphasise that within their national law and policy framework States are also obliged to ensure law and policy coherence. For example, a State's trade and development objectives should be aligned with international human rights commitments as well as aligned internally so that trade objectives are not at odds with, or in contradiction of, State commitments to international human rights and objectives regarding human development.

The following are some example topics and further resources related to the State duty to protect pillar – ensuring policy coherence.

EXAMPLES OF TOPICS RELATED TO ENSURING POLICY COHERENCE

STATE-INVESTOR CONTRACTING

State-investor contracts are those contracts made between a host-State and a foreign business investor for the development of a project, such as, in the extractive industries, power or agricultural sectors.

The content of such contracts can have significant implications in terms of human rights. For instance, the contract can stipulate the operating standards for the project, contain provisions for the State to monitor the project or contain contractual commitments that security arrangements for the project will follow standards that are consistent with international human rights.

The 'Principles for Responsible Contracts' developed as part of the UN Guiding Principles, aim to address some of these challenges. The ten principles seek to help integrate human rights into investment project contract negotiations between host-State entities and foreign business investors. The principles cover a range of subjects, including: operating standards, stabilisation clauses, compliance and monitoring, transparency, and grievance mechanisms for third parties. The Principles address the duties and responsibilities of both the State and the investor.

What can NHRIs do? NHRIs can initiate dialogue with the relevant government department on application of the Principles for Responsible Contracts in contract negotiations; use the Principles as a base for monitoring projects subject to a State-investor contract; or promote the Principles in training for lawyers involved in State-investor negotiations.

United Nations, [Principles for Responsible Contracts: Integrating the management of human rights risks into State-investor contract negotiations – Guidance for negotiators](#), Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (A/HRC/17/31/Add.3, 2011).

TRADE AND DEVELOPMENT

Considerations of how human rights relate to trade and development are not new but have received renewed attention in light of the global financial crisis. At the UN-level, there has been focus on the linkages between sovereign debt and human rights, including consideration of the duty of the State as lender and borrower – noted in the ‘UNCTAD Principles on Promoting Responsible Sovereign lending and borrowing’, and by the UN Independent Expert on the effects of foreign debt.

Another example is that of how development agencies work with the private sector. At the European regional-level, for instance, the European Commission’s Agenda for Change (2011) calls for greater collaboration between public and private sectors with the view of delivering public goods.²³ Where such calls are translated into action, there will be a need to ensure that collaborations between State agencies and businesses are framed and implemented in a manner that reflects the State duty to protect, and the corporate responsibility to respect human rights.

UN Conference on Trade and Development, [UNCTAD Principles on Promoting Responsible Sovereign lending and borrowing](#) (2012).

United Nations, [Guiding principles on foreign debt and human rights](#), Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina (A/HRC/20/23, 2011).

THE STATE ACTING AS A MEMBER OF A MULTILATERAL INSTITUTION THAT DEALS WITH BUSINESS-RELATED ISSUES

The UN Guiding Principles emphasise that States retain their international human rights law obligations when participating in multilateral institutions, such as international trade and financial institutions.

This means two things. Firstly, States need to ensure that such institutions do not restrain the ability of member States to exercise their human rights duties or hinder business from respecting human rights. Secondly, States should encourage such institutions to promote business respect for human rights and help States meet their duty to protect through technical assistance, capacity-building and awareness raising (UN Guiding Principle 10).

The International Finance Corporation (IFC) is one international finance institution that has recently responded to the UN Guiding Principles, in its 2012 review of the IFC Performance Standards. The World Bank is currently undertaking a review of its Safeguard Policies.

What can NHRIs do? NHRIs can, for instance, participate in public reviews of the standards of international financial institutions to ensure human rights are adequately reflected, or assist individuals and communities who are adversely impacted by projects supported by multilateral financial institutions to raise grievances to the appropriate complaints mechanism.

4.5 WHAT CAN NHRIS DO TO PROMOTE THE STATE DUTY TO PROTECT?

The UN Guiding Principles emphasise the important role of NHRIs with regard to the State duty to protect pillar. For instance, Guiding Principle 2 commentary notes:

“National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.”

NHRIs may use various functions of their mandate to engage on the State duty to protect with regard to business and human rights. The following are a few illustrative examples of actions NHRIs can undertake:

- Advising the government on actual and potential business-related human rights impacts within the State’s territory and jurisdiction, e.g., by highlighting to the government the impacts of a particular industry;
- Advising the government on relevant laws and policies, e.g., the effectiveness and/or need for revision of laws and regulation relevant to business and human rights, such as corporate law, environmental regulation, anti-discrimination, land and property laws;
- Ensuring the appropriate regulation of State-owned and State-controlled enterprises;
- Advising the State on the applicability and role of the State duty to protect with regard to financial services, such as those provided by export credit agencies or through the State participation in multilateral financial institutions;
- Participating in developing national baseline studies on business and human rights, and in the drafting and implementation of national action plans on business and human rights;
- Participating in the Universal Periodic Review process and other UN treaty body reporting processes to ensure coverage of business and human rights related matters;

- Advising and monitoring the State’s provision of effective access to remedy, e.g., the effectiveness and/or need for revision of relevant legislative and administrative provisions for judicial remedies to ensure these are accessible to rights-holders and applicable for business-related human rights abuses (see also Chapter 6).

The following are some NHRI practice examples related to the State duty to protect.

THE STATE DUTY TO PROTECT: NHRI PRACTICE EXAMPLES

DANISH INSTITUTE FOR HUMAN RIGHTS: REPORTING ON THE STATE DUTY TO PROTECT

The Danish Institute for Human Rights has taken a convening, coordinating and facilitating role with regard to business and human rights in Denmark. This has included: monitoring and advising the Government of Denmark on policy measures and strategy; engaging with organisations representing Danish businesses, or directly with Danish companies, on tools and methodology development; and engaging with Danish civil society organisations on business and human rights issues.

Each year the Institute produces a report on the status of human rights in Denmark, which includes recommendations on key actions to be taken by the State to improve the national human rights situation. The recommendations are presented during the annual reporting of the Institute to the Danish Parliament. The Institute is currently working on developing a chapter on business and human rights for such annual reports, as well as better streamlining business and human rights considerations throughout the report. The Institute has also developed a national baseline study on the status of implementation of the UN Guiding Principles in Denmark, and this has been used to inform the content of the [‘2012 Report on the status of human rights in Denmark’](#).²⁴

FINNISH HUMAN RIGHTS CENTRE: HUMAN RIGHTS TRAINING FOR THE EXPORT CREDIT AGENCY

In 2013, the Finnish Human Rights Centre was approached by the Finnish export credit agency to conduct a one-day training on human rights. The subsequent training included approximately 50 participants from a range of organisations, including the export credit agency, as well as the Government Ministry for Commerce and the Ministry for Foreign Affairs. The training included an introduction to human rights norms and values, the UN Guiding Principles on Business and Human Rights, as well as a focus on the topic of children’s rights and business. The training was a useful forum for opening a dialogue between the Centre and key financial and business actors in Finland.

FRENCH HUMAN RIGHTS COMMISSION: PROPOSALS FOR THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

The French Human Rights Commission has been asked by the Government to make some proposals regarding the preparation of a national action plan on the implementation of the UN Guiding Principles. Such a national action plan is requested by the European Commission for 2013. The Commission has strong expertise in this area with the adoption of an opinion in 2008 containing 87 recommendations regarding the French strategy on corporate human rights responsibility, as well as domestic and international action by France in this field.

To carry out this new important work, the French Human Rights Commission has constituted a working group and organised hearings of various experts from businesses, trade unions, professors, NGOs, the French OECD national contact point, the French development agency, and others. The proposals - which are currently being finalised - are aimed at the Government and thus mainly focus on strengthening the obligation of the State to protect individuals against human rights violations committed by third parties, including businesses, as well as on ensuring effective access to judicial and non-judicial remedies. The proposals should be adopted in October 2013 and are intended to guide the Government in its preparation of a national action plan on business and human rights.

THE NATIONAL CENTRE FOR HUMAN RIGHTS, JORDAN: HUMAN RIGHTS TRAINING FOR THE MINISTRY OF LABOUR

The Jordanian National Centre for Human Rights has held a number of training sessions for inspectors from the Ministry of Labour to familiarise them with international standards regarding workers' rights. The objective of these training sessions is to enable inspectors to apply these standards during their inspection of factories and other companies which employ local or foreign workers. The sessions also train the inspectors in monitoring violations of workers' rights and in preparing monitoring reports.

NATIONAL HUMAN RIGHTS COMMISSION OF INDIA: WORKING TOWARDS THE ABOLITION OF CHILD AND BONDED LABOUR

The National Human Rights Commission of India had been asked by the Supreme Court to monitor the implementation of the Bonded Labour System (Abolition) Act. In September 2000, the Commission constituted a [Group of experts on the implementation of the elimination of bonded labour](#) to examine the best ways to implement this legislation, and issued a '[Report of bonded labour and child labour situation](#)' (2008) to the Court accordingly.²⁵ Subsequently, the Commission engaged in dialogue with the Government and the Ministry of Labour, and is currently involved in training and awareness raising of various senior government officials. The Commission's work on child labour focused primarily on industries such as the bangle/glass industry, the silk industry, brick kilns, ship-breaking, construction work and carpet-weaving. It monitors the use of child labour through on-site visits, and further seeks to sensitise the business world to this issue, also through coordination with both the Government and civil society. In March 2008, the Special Rapporteur of the Commission called upon the Government to actively involve other actors, such as NGOs and trade unions, in the prevention of

bonded and child labour, and to provide for training and education to those working children.

NATIONAL HUMAN RIGHTS COMMISSION OF THE REPUBLIC OF KOREA: RECOMMENDATION ON STRENGTHENING THE OECD GUIDELINES NATIONAL CONTACT POINT

The National Human Rights Commission of Korea has made a '[Recommendation to the Government on the Role of the National Contact Point to Promote Human Rights in Business](#)'.²⁶ The Recommendation argues that it is necessary to improve the composition and operation of the National Contact Point (NCP), established under the OECD Guidelines for Multinational Enterprises, and to increase access of individuals, employees, business and other parties concerned, to the NCP.

The Commission had reviewed the activities of the NCP in Korea to consider whether the NCP fulfills the core standards of the OECD Guidelines and the role of preventing and redressing business-related human rights abuses. The Commission concluded that the Committee of Foreign Investment, which has the duty of the NCP, was consisted of dominantly senior government officials and lacked a cooperative framework with private sector actors. As a matter of fact, a division in the Ministry of Knowledge Economy performed the role of the NCP instead of the Committee. The Commission also raised the issue that the NCP has only received eight inquiries and made a single recommendation since its establishment in 2001. The Commission concluded that the NCP has not been effective in promoting the OECD Guidelines at the national level and recommended that the Committee of Foreign Investment: cooperate with private sector actors and other stakeholders; make the inquiry handling procedure widely known and available; and ensure better visibility, accessibility, transparency and accountability in its work.

NATIONAL HUMAN RIGHTS COMMISSION OF MEXICO: RECOMMENDATION ON INDIGENOUS PEOPLES' RIGHTS

In September 2012, the National Human Rights Commission of Mexico issued a [Recommendation](#) urging the Government to ensure the protection of the Wixárika peoples' rights, regarding mining activities in Wirikuta, a sacred indigenous site.²⁷ There had been allegations of violations of the rights to participation and consultation, the use of indigenous territories, cultural identity and a healthy environment. The Recommendation is addressed to a number of Government actors, including the Ministry of Economy, the Ministry of Environment and Natural Resources, the General Commission of Development for Indigenous Communities, and to the municipalities of the affected areas. Overall, the Recommendation points to the urgency of reviewing the mining license in Wirikuta, and if necessary the immediate cancelation of the mining activities. It also notes the need for improvement of national law and practice with regard to requirements to consult and negotiate with indigenous communities in relation to any process that can affect their rights and interests. The Recommendation also calls for the creation of conservation and protection programmes incorporating inspection visits and field studies.

NORTHERN IRELAND HUMAN RIGHTS COMMISSION: PROMOTING HUMAN RIGHTS IN PUBLIC PROCUREMENT

In 2013, the Northern Ireland Human Rights Commission produced a study on how to further integrate human rights considerations into public procurement processes. The report (forthcoming in November 2013) examines the extent to which current frameworks and practices for public procurement in Northern Ireland are aligned to applicable legal requirements at national, European and international levels. It also considers relevant best practices, evaluates the extent to which the current legal rules, policies and practices respect the human rights to which people are entitled, and makes recommendations to close any gaps in human rights protection within the jurisdiction. With the ongoing reform of public services in Northern Ireland, and the subsequent impact on arrangements for public procurement, the Commission's report is very timely.

COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES: FACILITATING GOVERNMENT AND CIVIL SOCIETY DIALOGUE ON BUSINESS AND HUMAN RIGHTS

The Commission on Human Rights of the Philippines undertakes a range of work in the area of business and human rights, including: investigating human rights violations committed by business and corporate entities, particularly mining and other extractive industries; engaging with and providing the platform for dialogues between the Government and civil society organisations on issues involving human rights and the extractive industries; conducting human rights impact assessments in affected communities, including Indigenous Peoples communities; and leading an interagency committee to formulate a national monitoring and referral system on the observance of human rights in the mining industry. In 2011, the Commission issued a Recommendation to the Government regarding allegations of human rights violations regarding the Indigenous People of Barangay Dipidio in Kasibu, Nueva Viscaya. The Government had signed a Financial and Technical Assistance Agreement with a foreign company, Oceana Gold Philippines. In light of the alleged human rights allegations the Commission recommended that the Agreement be revoked, and called on concerned agencies to report all actions they had taken to protect the communities.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION: COMMENT TO PARLIAMENT ON CLIMATE CHANGE

In November 2009, the South African Human Rights Commission submitted to Parliament a '[Comment on Climate Change and the right to a healthy environment](#)'.²⁸ This Comment considers, amongst other things, constitutional protection of the environment, promotion of conservation and sustainable development, and natural resources use. It also considers the impacts of climate change on specific groups, including women and children. The Comment identifies current gaps in legislation and advocates a more comprehensive legal framework, including policy evaluation, collaboration between agencies, coordination between civil society and the public sector, public participation in decision-making and the implementation of national strategies. The Commission also made a submission in June 2009 to the Department of Trade and Industry in respect of the draft 'Bilateral Investment Treaty Policy Framework Review: Government Position Paper'. The

Submission considered the human rights context and provisions of bilateral investment treaties, and also the human rights obligations of business.



5. PILLAR TWO: THE CORPORATE RESPONSIBILITY TO RESPECT

This chapter introduces pillar two of the UN Protect, Respect and Remedy Framework, the corporate responsibility to respect human rights. The chapter outlines the concept of human rights due diligence and considers opportunities for NHRIs to engage in promoting business respect for human rights.



AFTER WORKING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- What is the corporate responsibility to respect human rights?
- What is human rights due diligence?
- Which human rights impacts are companies expected to address?
- How can businesses' human rights impacts be assessed?
- What should companies do to provide information on their human rights impacts and due diligence measures?
- What is the difference between the corporate responsibility to respect human rights and corporate social responsibility (CSR)?

5.1 THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS AND DUE DILIGENCE

The **corporate responsibility to respect human rights**, as outlined in pillar two of the UN Protect, Respect and Remedy Framework, requires business enterprises to avoid infringing on human rights and to address any adverse human rights impacts with which they are involved. Businesses are required to identify, prevent, mitigate and remedy any adverse human rights impacts that they are involved with through their business activities or relationships and account for how they meet this responsibility (Guiding Principles 11, 13 and 17).

The corporate responsibility to respect extends to the full range of internationally recognised human rights. This means that at a minimum, companies must respect all human rights enumerated in the International Bill of Human Rights and the labour rights contained in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. According to the specific circumstances and context, businesses are expected to consider additional standards. For example, if the company has activities that affect Indigenous Peoples, rights such as those outlined in ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples should be considered. Likewise, if the company has activities in or relevant to a conflict-affected area, international humanitarian law must be respected (Guiding Principle 12).

The corporate responsibility to respect human rights under pillar two of the UN Protect, Respect and Remedy Framework requires consideration of actual and potential human rights impacts which are **caused** by the business, impacts that the business **contributes to**, and impacts that are **directly linked** to a company's operations, products or services through business relationships (Guiding Principle 13) (see also Box 5, below).

BOX 5. DIFFERENT TYPES OF HUMAN RIGHTS IMPACTS

The UN Guiding Principles on Business and Human Rights state that corporate responsibility for human rights impacts requires both that businesses avoid **causing** or **contributing** to adverse human rights impacts and address any adverse impacts that occur, and that businesses seek to prevent or mitigate impacts that they have not caused or contributed to, but that are **directly linked** to the businesses' operations, products or services through their business relationships (including both contractual and non-contractual relationships). The following are some examples of each type of impact.²⁹

- **Causing** a human rights impact: A company pollutes local waterways affecting the right to water and health of local communities; a business discriminates in hiring practices, such as by not employing persons of a particular ethnic minority.
- **Contributing** to a human rights impact (including unintended consequences and cumulative impacts): Changing product requirements at very short notice without adjusting production deadlines thereby pushing the supplier to breach labour standards to deliver the product on time.
- Impacts **directly linked** to business operations, products or services through business relationships: Public security forces stationed to protect company assets use excessive force against local community protesters; providing financial loans to a project that breaches agreed standards and causes environmental pollution, thereby impacting on the health of local communities.

The corporate responsibility to respect human rights is a baseline standard of expected business conduct (see also Box 6, page 40). This means it applies to all companies, in all situation. This is true even though it is recognised that the scale and complexity of the measures taken by a company to meet its responsibility to respect human rights will vary depending on factors such as the size of the company, its business sector, and the seriousness of human rights impacts to which the company's activities can give rise (Guiding Principle 14). Even small companies can have severe human rights risks, for example, a security company operating in high-risk or conflict-affected areas.

According to Guiding Principle 15, in order to meet the corporate responsibility to respect human rights, businesses are expected to have in place:

- A policy commitment to respect human rights;
- A human rights due diligence process; and
- Processes to enable the remediation of any adverse impacts the company's activities have on human rights.

BOX 6. IS THE CORPORATE RESPONSIBILITY TO RESPECT A LEGAL DUTY?

Under the UN Guiding Principles, the corporate responsibility to respect is a norm of expected conduct, not a legal duty.

However, this does not mean that the corporate responsibility to respect is unrelated to legal duties. For example, companies have a legal duty to respect human rights where these have been integrated into domestic laws, i.e. following ratification of international instruments and adoption of implementing legislation. Companies may also be subject to duties under international humanitarian and international criminal law in certain circumstances (see also Chapter 2, page 12).

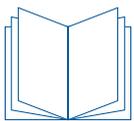
Human rights **due diligence** is a process that a business needs to undertake to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. According to the UN Guiding Principles, a corporate human rights due diligence process should comprise the following elements (Guiding Principle 17):

- Assessing actual and potential impacts of business activities on human rights;
- Acting on the findings of this assessment, including by integrating appropriate measures to address impacts into company policies and practices;
- Tracking how effective the measures taken are in preventing or mitigating adverse human rights impacts; and
- Communicating to the outside world about the due diligence process and results.

Diagram 1, below, gives a visual overview of elements that make up the corporate responsibility to respect and human rights due diligence. The rest of this chapter describes each of these four due diligence elements in turn. It then considers how NHRIs can promote the corporate responsibility to respect human rights and the implementation of effective human rights due diligence by business.

Business responsibility to provide for, or co-operate in, the remediation of adverse impacts that the business causes or contributes to are addressed in Chapter 6.

DIAGRAM 1. HUMAN RIGHTS DUE DILIGENCE



GENERAL RESOURCES ON THE CORPORATE RESPONSIBILITY TO RESPECT AND HUMAN RIGHTS DUE DILIGENCE

Global Compact Network Germany, [Respecting Human Rights - Organisational Capacity Assessment Instrument](#).

Global Compact Network Netherlands, [How to Do Business with Respect for Human Rights: A Guidance Tool for Companies](#) (2010).

Global Compact Office and Office of the High Commissioner for Human Rights, [Human Rights Translated – A business reference guide](#) (2008).

Institute for Human Rights and Business, [State of Play - The Corporate responsibility to Respect Human Rights in Business Relationships](#) (2012).

UN Global Compact and Office of the High Commissioner for Human Rights, [Guide on How to Develop a Human Rights Policy](#) (2011).

Office of the High Commissioner for Human Rights, [The Corporate Responsibility to respect Human Rights: An Interpretative Guide](#) (2012).

5.1.1 DUE DILIGENCE (1): ASSESSING HUMAN RIGHTS IMPACTS

According to the UN Guiding Principles, businesses are expected to identify and assess any actual or potential adverse human rights impacts with which they may be involved. When a company is assessing its human rights impacts it should (Guiding Principle 18):

- Draw on internal and/or independent human rights expertise;
- Undertake meaningful consultation with potentially affected rights-holders and other relevant stakeholders (see also Box 7, below);
- Be gender-sensitive and pay particular attention to any human rights impacts on individuals from groups that may be at heightened risk of vulnerability or marginalisation; and
- Repeat its risk and impact identification and assessment at regular intervals (i.e. before entering into a new activity, prior to significant decisions about changes in activities, and periodically throughout the project lifecycle).

BOX 7. THE INVOLVEMENT OF RIGHTS-HOLDERS IN ASSESSMENT OF HUMAN RIGHTS IMPACTS

A key requirement for any process of human rights impact assessment is the involvement of rights-holders. Guiding Principle 18 commentary states:

“To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives, such as consulting credible, independent expert resources, including human rights defenders and others from civil society.”

The idea and practice of ‘human rights impact assessment’ by businesses have been a relatively recent development. Whilst the UN Guiding Principles require businesses to assess their human rights impacts, they do not specify in detail exactly what type of process or assessment exercise a company must use. So, in line with the specific context, businesses can validly choose a range of methods, such as: integrate consideration of human rights impacts into pre-existing processes of environmental and/or social impact assessment, commission a separate human rights impact assessment, integrate human rights into specialist assessments such as labour rights or security assessments, and more.

Whatever model of impact assessment is used, the established principles regarding a human-rights based approach to development should set the parameters for how such assessment of human rights impacts is conducted – with respect to the process to be followed, the scope of the assessment and its outputs.

Table 3, below, provides a summary of the core process and content criteria that should be applied when assessing human rights impacts.

TABLE 3. SUMMARY OF CRITERIA FOR HUMAN RIGHTS IMPACT ASSESSMENT

PROCESS	Participation	Meaningful participation of affected or potentially affected rights-holders during all stages of the impact assessment process, including scoping, assessment of impacts, design and monitoring of mitigation measures.
	Non-discrimination	Engagement and consultation processes are inclusive, gender-sensitive and take into account the needs of individuals and groups at risk of vulnerability or marginalisation.
	Empowerment	Capacity development of individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.
	Transparency	The impact assessment process should be as transparent as possible to affected or potentially affected rights-holders, without causing any risk to security and wellbeing of rights-holders or other participants, such as NGOs. Impact assessment findings are appropriately publicly communicated.
	Accountability	The impact assessment team is supported by human rights expertise. Roles and responsibilities for impact assessment, mitigation and monitoring are assigned and adequately resourced. The impact assessment identifies the entitlements of rights-holders and the duties and responsibilities of relevant duty-bearers, for example the company, contractors and suppliers, local government authorities and so forth.
CONTENT	Benchmark	Assessment of impacts and severity and mitigation measures are evaluated against relevant international, regional and national human rights standards.
	Scope	The assessment includes actual and potential impacts caused or contributed to by the company.
	Business relationships	The assessment addresses actual and potential impacts directly linked to the project or activity through business relationships of the company, for example with suppliers, contractors, joint-venture partners, customers or government agencies.
	Cumulative impacts	The assessment considers any impacts of the project due to the aggregative or cumulative effect of activities of multiple projects in the same area.
	Legacy issues	The assessment identifies any legacy impacts associated with the project or activity, for example, poorly conducted government resettlement prior to the company acquiring the land.

Access to
remedy

Impacted rights-holders have avenues whereby they can raise concerns or complaints regarding the impact assessment process and outcomes. Impact assessment and management ensures that the project provides for or cooperates in access to remedy for impacted rights-holders.



RESOURCES ON ASSESSING HUMAN RIGHTS IMPACTS

Danish Institute for Human Rights, [Human Rights Compliance Assessment](#).

International Finance Corporation, UN Global Compact and International Business Leaders Forum, [Guide to Human Rights Impact Assessment and Management](#) (2010).

Olga Lenzen and Marina d'Engelbronner, [Aim for Human Rights – Guide to Corporate Human Rights Impact Assessment Tools](#) (2009).

On Common Ground, [Human Rights Assessment of Goldcorp's Marlin Mine](#) (2010).

Rights and Democracy, [Getting it Right: Human Rights Impact Assessment Guide](#) (2011).

United Nations, [Human rights impact assessment – resolving key methodological questions](#), Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/74, 2007).

5.1.2 DUE DILIGENCE (2): INTEGRATING ASSESSMENT FINDINGS INTO COMPANY POLICIES AND PROCEDURES AND TAKING APPROPRIATE ACTION

Once it has assessed its human rights impacts, a business needs to integrate the responses to the impact assessment findings into its policies and procedures in order to prevent potential adverse human rights impacts, as well as address any actual adverse impacts that have been identified (Guiding Principle 19). Adjustments may be needed in a range of areas of business activity and within a range of its business-unit functional areas, for example, human resources, health and safety, security, legal and compliance, marketing, environmental management, procurement, or any other area (see also Box 8, page 45).

A significant task for businesses is to revise business policies and practices to ensure they comply fully with human rights. This may require, for instance, recruitment or training of staff to ensure the company has the necessary know-how on human rights. Responsibility for human rights should also be clearly

assigned to staff at an appropriate level of seniority within the organisation. Throughout the business, measures will be needed to ensure personnel take their human rights responsibilities seriously and can be held accountable for them. An example of how to promote this may be by including human rights in key performance indicators for staff and providing relevant training. The business will also need to allocate sufficient funding and other resources internally to undertake human rights due diligence activities, and monitoring and management of human rights impacts on a continuous basis.

BOX 8. EXAMPLES OF HOW HUMAN RIGHTS MIGHT BE RELEVANT TO DIFFERENT BUSINESS-UNIT FUNCTIONS WITHIN A COMPANY

Human resources	<ul style="list-style-type: none"> • The company discriminates against local Indigenous Peoples in hiring. • The company does not pay a living wage.
Security	<ul style="list-style-type: none"> • Company security staff are not trained in appropriate use of force. • Public security forces stationed to protect company assets unlawfully detain members of local communities.
Health, safety and environment	<ul style="list-style-type: none"> • The company does not provide sufficient personal protective equipment to workers. • The company pollutes the drinking water of local communities.
Community relations	<ul style="list-style-type: none"> • Only the male heads of local villages are consulted about company impacts, and women’s and children’s rights are missed in the consultation processes. • The company does not have a grievance mechanism in place.
Government relations	<ul style="list-style-type: none"> • The company does not have a protocol or guidance for how staff should engage with government officials, putting it at risk of being involved in bribery and corruption. • The company engages in lobbying in ways that could result in adverse impacts on human rights, for example by opposing labour legislation designed to protect workers’ rights.
Business development	<ul style="list-style-type: none"> • Early country entry procedures and political risk assessments do not consider human rights issues.
Procurement	<ul style="list-style-type: none"> • The company does not include human rights and labour standards in contracts with suppliers and does not monitor the human rights performance of suppliers and contractors.

In determining appropriate action to address impacts, the business is expected to consider (Guiding Principle 19):

- Whether it causes or contributes to the adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; and
- The extent of its **leverage** in addressing the adverse impact (see also Box 9, page 47).

In short:

- For impacts **caused** by the business the company will be expected to cease and prevent the adverse impact, as well as provide for, or collaborate in, remediation for actual adverse impacts caused;
- For impacts to which the business **contributes** the company will be expected to cease and prevent contribution through exercising leverage, taking steps to increase leverage if this is needed, as well as provide for, or cooperate in, the remediation of adverse impacts; and
- For impacts **directly linked to the company's operations, products or services** through its business relationships the company will be expected to use leverage to cease and prevent the impact, taking steps to increase leverage if this is needed. The business is not required to provide for remediation, though it may take a role in doing so.



A company is expected to address all its human rights impacts. However, it is considered acceptable to prioritise actions to address impacts. Where it is necessary to prioritise actions to address adverse human rights impacts, business enterprises should first seek to prevent and mitigate those impacts that are most severe or where a delay in response would make the consequences of the impact irremediable (Guiding Principle 24).

Box 9, below, provides further guidance on determining appropriate actions to address identified impacts linked through business relationships.

BOX 9. LEVERAGE AND DETERMINING APPROPRIATE ACTIONS TO ADDRESS IMPACTS LINKED THROUGH BUSINESS RELATIONSHIPS

The UN Guiding Principles suggest that the following factors should be considered when determining appropriate actions to address identified impacts linked through business relationships:

- What **leverage** the business has over the entity in question;
- How crucial the relationship is to the business;
- The severity of the abuse; and
- Whether terminating the relationship itself would have adverse human rights consequences.

Leverage is considered to exist where a business has the ability to effect change in the wrongful practices of an entity that causes harm. If the business has leverage, it is expected to exercise it; if it lacks leverage, it is expected to seek ways to increase it, for example by offering capacity-building or other incentives to the related entity, or engaging in collaboration with others to influence the behaviour of the party causing the impact (Guiding Principle 19).



RESOURCES ON INTEGRATING ASSESSMENT FINDINGS INTO COMPANY POLICIES AND PROCEDURES AND TAKING APPROPRIATE ACTION

International Business Leaders Forum, International Finance Corporate and the UN Global Compact, [Guide to Human Rights Impact Assessment and Management](#) (2010).

5.1.3 DUE DILIGENCE (3): MONITORING THE EFFECTIVENESS OF COMPANY RESPONSES TO HUMAN RIGHTS IMPACTS

Companies need to monitor the effectiveness of measures taken to address identified human rights impacts. For example, if a company with a poor health and safety record starts to provide training and free personal protection equipment for employees, it needs to monitor whether these measures are having the intended effect of reducing accidents and/or near-miss incidents in the workplace.

According to UN Guiding Principle 20, this monitoring needs to be based on information from appropriate sources – inside and outside the company - and rely on both qualitative and quantitative indicators to measure effectiveness consistently over time (see also Box 10, below).

The Global Reporting Initiative has suggested that to measure the effectiveness of due diligence measures, indicators should include:³⁰

- 1. Internal process indicators:** These measure to what extent the organisation has established processes and procedures for human rights risk management, e.g., has the company established a grievance mechanism?;
- 2. Incident indicators:** These measure how often the activities of a company result in incidents that result or could result in human rights abuses, e.g., what is the rate of fatigue-related accidents?; and
- 3. Outcome indicators:** These measure any changes in human rights related areas that affect the quality of life of rights-holder groups. They can be measured in terms out outputs or outcomes, e.g., what percentage of the local community has access to clean water?

BOX 10. TYPES OF INDICATORS

Quantitative indicators refer to the attributes of a situation, process, or activity to which a number, percentage or ratio can be attached that reflects its status at a given moment of time. Quantitative indicators can be drawn from data and records that have been collected during a study or a planning process.

Qualitative indicators refer to attributes of a situation, process or activity whose status or condition is determined by opinions, perceptions, or judgements, or by quality of an experience – not by numbers.

Indicators can often be developed in consultation with community groups.

A critical component of this third step of the human rights due diligence process is that information from monitoring must be reflected by the company in its internal

policies and processes, for example, in decisions on renewals of contracts with suppliers, in performance contract reviews, surveys and audits. It is also important to involve rights-holders and other stakeholders in the monitoring and evaluation of impact mitigation measures, for example, by developing monitoring indicators in consultation with community groups, or establishing a joint community-company monitoring team. It will also be useful for the company to draw on external human rights expertise as necessary, to inform the monitoring and evaluation of impact mitigation measures.



RESOURCES ON MONITORING THE EFFECTIVENESS OF COMPANY RESPONSES TO HUMAN RIGHTS IMPACTS

Office of the High Commissioner for Human Rights, [Human Rights Indicators – A Guide to Measurement and Implementation](#) (2012).

Erik Andre Andersen and Hans-Otto Sano, [Human Rights Indicators at Programme and Project Level - Guidelines for Defining Indicators Monitoring and Evaluation](#) (2006).

Office of the Compliance Advisor/Ombudsman (CAO), [Participatory Water Monitoring – A Guide for Preventing and Managing Conflict](#) (2008).

5.1.4 DUE DILIGENCE (4): COMMUNICATING AND REPORTING ON HUMAN RIGHTS IMPACTS AND DUE DILIGENCE

As part of human rights due diligence, businesses are expected to give an account of how they address their human rights impacts and the outcomes of such measures. This includes communicating with affected rights-holders as well as public reporting on human rights.

According to Guiding Principle 21, in all cases a company should publish information about due diligence and human rights impacts according to the following criteria:

BOX 11. ACCESS TO INFORMATION, COMMUNICATION AND PARTICIPATION

Access to information is a human right. It is also an important element of the right to participation. This means that rights-holders must have access to information that is timely, adequate, accessible and appropriate before meaningful participation and a right-based dialogue between a company and rights-holders can take place. Accordingly, rights-holders are entitled to more than 'passive' receipt of information. Rather, rights-holders should be able to use relevant information in order to participate in decision-making processes and to influence their outcomes.³¹

- a) Information should be published in a format and with a frequency in line with the scope and severity of the company's human rights impacts, and that are accessible to the intended audiences. For example, company communications about impacts should accommodate the language and any issues of literacy amongst impacted rights-holders. Companies also need to ensure information reaches any remote communities whose human rights are affected by their activities;
- b) Communication and reporting should provide sufficient information to allow the company response to any specific impact on human rights to be evaluated; and
- c) The business should ensure that any information published does not pose risks to rights-holders or others, e.g., human rights defenders, journalists, local public officials or company personnel. The business should also respect any legitimate commercial confidentiality requirements.

According to the UN Guiding Principles, business communication on human rights impacts and due diligence processes can take a variety of forms. This includes in-person meetings, online dialogues, consultation meetings or processes with affected rights-holders, and formal public reports.

The Global Reporting Initiative suggests that company reporting on human rights impacts and due diligence should address:³²

- **Material issues:** Issues relevant to the human rights impacts of the company or operation, considering its sector and location;
- **Human rights due diligence:** Information on the human rights assessment process; human rights policy; allocation of responsibilities for human rights within the organisation; measures to promote awareness of human rights, such as training; monitoring of human rights impacts of company activities; and company measures to follow-up and remediate any human rights impacts detected etc.; and
- **Performance indicators:** Indicators that allow the effectiveness of its human rights due diligence processes and remediation to be measured.

Some businesses may be reluctant to report publicly on human rights impacts and due diligence processes due to commercial sensitivities, potential legal liability, or reputational risks. Whilst such considerations may inform the exact scope and content of public communications around human rights due diligence, there is still a general expectation under the UN Guiding Principles that businesses should communicate and report on human rights as indicated above. For example, Guiding Principle 21 states that: "Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them". The commentary elaborates:

“Formal reporting is itself evolving from traditional annual reports and corporate responsibility/sustainability reports to include on-line updates and integrated financial and non-financial reports. Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.”



RESOURCES ON COMMUNICATING AND REPORTING ON HUMAN RIGHTS IMPACTS AND DUE DILIGENCE

Global Reporting Initiative, Realizing Rights, and the UN Global Compact, [A Resource Guide to Human Rights Reporting](#) (2009).

5.2 HOW DOES THE CORPORATE RESPONSIBILITY TO RESPECT CHANGE WITH CONTEXT?

Conflicts between domestic laws and international human rights are not uncommon. For instance, a State’s domestic law may prevent the establishment or activities of independent trade unions. Inheritance laws may not accord women the same property rights as men. And in many jurisdictions, Indigenous Peoples and their specific human rights under specialised instruments, such as the UN Declaration on the Rights of Indigenous Peoples, are not duly recognised.

Where this is the case, companies may face a choice between complying with domestic laws or upholding international human rights. How should they respond in such situations?

According to the UN Guiding Principles, the responsibility of businesses to respect human rights is the same in all contexts – for all businesses, large or small, across all jurisdictions, and irrespective of the industrial sector or business activities in question. Therefore, all businesses in all contexts are expected to comply with the applicable laws and respect international human rights. This includes seeking ways to honour the principles of internationally recognised human rights even when faced with conflicting requirements (Guiding Principle 23). There are two common scenarios:

- 1. Domestic law is silent on a particular international human rights standard or principle:** Here a company is not strictly prevented from upholding the international human rights standard, and should endeavour to do so. In practice, this implies analysis of the extent to which domestic laws and practice are consistent with international human rights, identification of any gaps and inconsistencies, and taking steps to follow the higher human rights standard (i.e. domestic or international law); or

2. **Domestic law is in contradiction of international human rights:** Here companies are expected to uphold the spirit and intent of international human rights principles without violating local laws. For example, if independent trade unions are not permitted, it may be possible to find other means to enable meaningful and constructive worker-management dialogue.

5.3 COMMUNITY DEVELOPMENT PROJECTS AND CORPORATE SOCIAL RESPONSIBILITY (CSR)

Pillar two of the UN Protect, Respect and Remedy Framework, the corporate responsibility to respect human rights, addresses the adverse impacts of business on human rights. Of course, it is true that businesses can and do impact on human rights positively in a range of ways. Most importantly, businesses can do this by providing essential goods and services and employment. In addition, businesses may contribute positively towards human rights through community development projects and corporate social responsibility measures. Job creation, building infrastructure, providing public utilities such as power and water, stimulating positive changes in the labour market conditions, and contributing to small business development can all help to create conditions in which human rights can be fulfilled.

However, the UN Guiding Principles state clearly that positive contributions by business towards the realisation of human rights may not be off-set against any adverse human rights impacts, or substitute for robust and ongoing human rights due diligence. For example, if a company supports community development projects, such as building or funding a health clinic or school, this does not relieve or reduce the company's responsibility for any negative impacts on human rights. Likewise, positive contributions to the local economy through job creation does not mitigate a company's responsibility for human rights abuses resulting from discriminatory hiring processes or failing to provide workers with a living wage.

A further important point is that community development projects and other CSR activities undertaken by companies should themselves be human rights-based in their planning and implementation to avoid any adverse impacts on human rights (see also Box 12, below). Companies should ensure that any contribution they make to local development in conflict-affected, remote or weak governance regions is stable and reinforces the capacities of local actors, including government agencies, rather than replacing or undermining them.

BOX 12. A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT

A **human rights-based approach** (HRBA) to development includes the principles of participation, non-discrimination, transparency, accountability and empowerment. The Office of the High Commissioner for Human Rights defines the human rights-based approach as: "A conceptual framework for the process

of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”.³³

The human rights-based approach originates from international development practice but it can also usefully inform the company due diligence process and company community development projects. For example, when assessing human rights impacts, the company should apply the principles of the human rights-based approach. The approach can also inform how a company designs and implements a community development project, for example by ensuring that impacted individuals and communities participate in the design of the project, that the governance structure is transparent, and that vulnerable individuals have access to participate in, and benefit from, the project.

In short, a human rights-based approach to development rests on the following principles:³⁴

- **Explicit link to human rights:** A human rights-based approach implies that practices are guided by human rights standards and principles. For example, whereas ordinary approaches to land acquisition might only involve compensation to legal title holders, a human rights-based approach would consider impacts on the rights and livelihoods of all affected individuals, including legal and informal title holders and the usage and passage rights of non-owners;
- **Non-discrimination and equality:** This includes paying particular attention to vulnerable and marginalised individuals and groups, as well as gender. It also involves taking steps to ensure that all affected and impacted women and men, girls and boys, are empowered to understand and participate in decisions that affect them.
- **Participation and empowerment:** In a human rights-based approach, participation is both an objective as well as a means of development. Participation should aim to create genuine ownership by people over the development processes with which they are involved and that impact on them. For this, participation should be ‘active, free and meaningful’. From a rights-based perspective, participation is more than consultation or a technical add-on to development activities; instead it is an integral part of shaping these; and
- **Accountability, transparency and the rule of law:** In a human rights-based approach to development, development is seen as an *entitlement* rather than an act of *charity*. This has important implications for how the company would relate to its community stakeholders. For example, in a rights-based approach the individuals affected by the project would be seen as *rights-holders* rather than as *stakeholders* – that is, as people who have entitlements for which they can hold a relevant duty-bearer accountable. A rights-based approach delineates between rights-holders and duty-bearers, and seeks to ensure that rights-holders have the capacity to claim their rights, and that duty-bearers correspondingly uphold these rights.

5.4 WHAT CAN NHRIS DO TO PROMOTE THE CORPORATE RESPONSIBILITY TO RESPECT?

NHRIs can use their mandate to promote the corporate responsibility to respect in a range of ways, for example:

- Engaging in dialogue directly with business to inform businesses about the UN Guiding Principles, and to build the capacity of businesses to address human rights impacts, e.g., through providing training on human rights to business, or developing or disseminating human rights tools;
- Convening and facilitating multi-stakeholder dialogue on the UN Guiding Principles and specific business and human rights issues;
- Participating and promoting organisations that work with business and human rights issues, such as UN Global Compact Local Networks;
- Monitoring business activities for human rights impacts or undertaking investigations into situations of business-related human rights abuses;
- Undertaking a national mapping of business and human rights issues and developing an action plan to address key risks; and
- Undertaking human rights education with rights-holders to promote knowledge and understanding of relevant frameworks and participation in due diligence processes and related activities, e.g., impact assessment, monitoring, reporting.

The following are some NHRI practice examples related to the corporate responsibility to respect.

THE CORPORATE RESPONSIBILITY TO RESPECT: NHRI PRACTICE EXAMPLES

AUSTRALIAN HUMAN RIGHTS COMMISSION: PROMOTING NON-DISCRIMINATION AND DIVERSITY IN THE WORKFORCE

The Australian Human Rights Commission has undertaken a number of initiatives on business and human rights. For example, the Commission launched a [partnership project with the Australian Stock Exchange \(ASX\)](#), following the results of a 2008 census of Australian Women's Leadership, which found that women only chair boards of directors, or half CEO positions, in 2% of the top 200 companies on the ASX. As a result of the partnership, from 2011 ASX200 companies report publicly on meeting voluntary targets for gender diversity. The objective of these targets is to create greater transparency and accountability in the role that women are given in the Australian corporate sector. Between January and June 2010, 24% of all ASX200 board appointees were female, compared with just 5% in 2009.

The Commission has also developed human rights materials and resources for employers called ‘[Good Practice, Good Business](#)’, which includes guidance on anti-discrimination and harassment in the workplace, and accessibility for persons with a disability.³⁵ In the area of gender equality, the Sex Discrimination Commissioner has worked with big business to create a group entitled [Male Champions of Change](#). This group is committed to working with CEO’s and directors of major Australian companies to ensure gender equality remains on the agenda.

The Commission has also worked with business to address the lower workforce participation of people with a disability. As part of this, it has published a best practice guide, ‘[Workers with mental illness: A practical guide for managers](#)’ (2010), to dealing with mental health in the workplace.³⁶ It has also worked with business and other bodies to demonstrate that the cost of making workplace adjustments for people with a disability is outweighed by the benefits, and to address misconceptions about people with a disability in the workplace.

CANADIAN HUMAN RIGHTS COMMISSION: DEVELOPING HUMAN RIGHTS DUE DILIGENCE TOOLS

The Canadian Human Rights Commission has developed several due diligence tools to raise awareness and advise federally regulated organisations on human rights issues. For example, the [Human Rights Maturity Model](#) (HRMM), which focuses on eliminating discrimination in organisations.³⁷ The HRMM is a business-management framework designed to support organisational change. It outlines a collaborative, proactive, step-by-step approach to increasing awareness of, and respect for, human rights inside and outside the workplace. The focus is to provide assistance to employers to go beyond meeting their basic statutory requirements through leadership. Once an organisation commits to using the HRMM, they self-assess their current status using an online system. So far, 54 organisations from both the public and private sectors have registered to use the online system since the release of the HRMM in February 2012. This represents a potential impact on more than 500,000 employees across Canada. The Commission also provides training to managers and employees on the prevention of human rights violations, alternate redress mechanisms, and any other training the organisation believes would be of benefit.

DANISH INSTITUTE FOR HUMAN RIGHTS: DEVELOPING TOOLS FOR BUSINESS

The Danish Institute for Human Rights works with companies and industry associations on how to embed human rights in company policies and practices. For example, through policy reviews, impact assessments, training and tools development. One of these tools is the [Human Rights Compliance Assessment Tool](#), which includes questions and indicators for companies to evaluate their compliance with international human rights standards and principles.³⁸ These questions and indicators cover a range of business functions, including human resources, environment and communities, security management, procurement and legal and government affairs.

Another example is the [UN Global Compact Self-Assessment Tool](#), which the Institute launched in 2010, together with Danish Industries, The Danish

Industrialisation Fund for Developing Countries (IFU) and the Danish Business Authority.³⁹ In 2013 the Tool was updated to ensure further alignment with recent developments, including the UN Guiding Principles. The Institute played a key role in updating the content on human rights and labour rights, as well as the new management section of the Tool which is designed to enable companies to measure their due diligence performance.

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS: CONVENING MULTI-STAKEHOLDER SEMINARS ON HUMAN RIGHTS DUE DILIGENCE

The Kenyan National Commission on Human Rights has established a [Human Rights and Business Programme within its Economic, Social and Cultural Rights Department](#), as well as establishing a focal point on business and human rights.⁴⁰ As part of this Programme the Commission convenes roundtables and seminars on business and human rights in which public authorities, the private sector and civil society take part. For example, in 2012, the Commission held a consultation forum for stakeholders with the purpose to discuss human rights due diligence for the extractive industries in Kenya. This consultation was held with the view to building capacity amongst civil society organisations and streamlining their participation in extractive industries due diligence. From time to time the Commission also conducts business and human rights training for businesses.

NATIONAL HUMAN RIGHTS COMMISSION OF THE REPUBLIC OF KOREA: COLLABORATING WITH THE UN GLOBAL COMPACT NETWORK

In December 2008, the National Human Rights Commission of Korea and the Global Compact Network Korea co-hosted an international conference on human rights and socially responsible investment. In 2009, the Commission collaborated with the Global Compact Korea Network and the Korea Human Rights Foundation to co-host a [business roundtable](#), focusing on the implementation of the UN Global Compact Principles in the context of business management issues. The roundtable included 15 business participants.

HUMAN RIGHTS COMMISSION OF MALAYSIA: NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES

From December 2010 to June 2012, the Human Rights Commission of Malaysia conducted a '[National Inquiry into the Land Rights of Indigenous Peoples](#)', in response to numerous and persistent complaints received by the Commission over many years from the Orang Asli of Peninsular Malaysia and the natives of the States of Sabah and Sarawak, or collectively called Indigenous Peoples or Orang Asal of Malaysia.⁴¹ In deciding to conduct this Inquiry, the first ever undertaken by the Commission, the members of the Commission were of the view that the long-standing and systemic issues affecting the Indigenous Peoples of the country could best be dealt with in a comprehensive and in-depth fashion with a view to having a better understanding of the issues, their underlying causes, effects on the indigenous communities, and how best to resolve the issues in the interest of promoting and protecting their human rights. The Inquiry found that the violations of the land rights of the Indigenous Peoples take many forms and

are perpetrated by a number of actors who mostly knowingly, carry out economic activities in the pursuit of development, that involve encroachments on the traditional land of the community resulting in their eviction or transfer to other less suitable areas, thus disrupting and affecting adversely their traditional way of life as a community. For the most part, these disruptive activities relate to business activities such as plantation and logging activities, quarrying, mining, housing and other infrastructure projects, such as highways, gazetting of land into national or state forest reserves and/or parks, catchment areas, etc., which are carried out in areas where the community has lived on for generations, or in adjoining tracts of land which they regard as part of their traditional foraging area. The report from the Inquiry contains a number of recommendations for the consideration and follow-up actions of the Government.

NATIONAL HUMAN RIGHTS COMMISSION OF MONGOLIA: MONITORING THE HUMAN RIGHTS IMPACTS OF MINING IN AFFECTED COMMUNITIES

The National Human Rights Commission of Mongolia regularly monitors the human rights impacts of the extractive industries by visiting affected communities and individuals, and reporting publicly on the findings of these monitoring visits. The Commission has also participated in evidence-based research on the environmental impacts of mining activities in rural areas. In October 2012, the Commission convened an ‘International Conference on Mining and Human Rights in Mongolia’, which was attended by participants from the Government, mining companies, international and national civil society organisations from the human rights and environment field, NHRIs from the Asia Pacific Forum, herders who are being affected by mining, and members of the UN Working Group on Business and Human Rights. The Conference resulted in a set of ‘[Recommendations from the International Conference “Mining and Human Rights in Mongolia”](#)’ to Government, companies and civil society on the improvement of the mining sector with regard to the protection of, and respect for, human rights.⁴²

NEW ZEALAND HUMAN RIGHTS COMMISSION: MONITORING WOMEN’S PARTICIPATION IN GOVERNANCE, PROFESSIONAL AND PUBLIC LIFE

In its two-yearly ‘[Census of Women’s Participation](#)’ (2012), the New Zealand Human Rights Commission reported a slight increase in women’s participation of two or three percentage points across many areas of professional and public life.⁴³ In spite of this, women’s representation remained low at the top, on boards and in senior leadership positions. The Commission’s report criticised unambitious targets and ongoing systemic barriers as contributing to the lack in women’s progress. The United Nations Committee on the Elimination of Discrimination Against Women told New Zealand in 2012 that “...targets, goals and time frames...are not sufficient and may be a symptom of regression rather than progress in women’s representation.”

OMBUDSMAN AT DEFENSORÍA DEL PUEBLO DE PERÚ: RECOMMENDATIONS ON MANAGEMENT OF SOCIO-ECONOMIC CONFLICTS RELATED TO EXTRACTIVE INDUSTRIES

In 2007, the Ombudsman at Defensoría del Pueblo de Perú presented an extraordinary report to Congress, '[Socio-environmental conflicts due to extractive activities in Peru](#)'.⁴⁴ This Report included recommendations to extractive industries companies and to civil society on the improvement of relations and avoidance of escalating violence around conflicts. The recommendations to extractive industries companies were focused on compliance with the social and environmental obligations derived from National law and company environmental policies. Recommendations to Government focused on reform and strengthening of environmental governance institutionally, through the creation of an environmental authority independent from other state agencies, as well as the establishment of a formal complaints mechanism that is easily accessible to civil society. For civil society the Ombudsman's office strongly recommended the promotion of dialogue and responsible participation in the avoidance and management of environmental and social conflicts.

HUMAN RIGHTS COMMITTEE OF QATAR: DEVELOPMENT OF A WORKERS RIGHTS HANDBOOK

The Human Rights Committee of Qatar has produced a '[Workers Rights Book](#)' (2009), based on the Qatari Labour Law and other relevant legislation.⁴⁵ This booklet was written in Arabic and has been translated into English, Farsi, Hindi, Indonesian, Tagalog and Nepalese. Together with partners from the American Centre for International Labour Solidarity the Committee has conducted train-the-trainers seminars on labor rights and obligations in Qatar, reaching over 2000 people. Due to increased concerns around the rights of migrant workers working in Qatar, the Committee has been actively engaged in awareness raising activities with human rights and trade union organisations in the countries of origin of the migrant workers. This awareness raising work has included visits to India, Sri Lanka, the Philippines and Nepal to distribute the Workers Rights Book, as well as meetings with government representatives from Nepal, Sri Lanka and Philippines in Qatar.

6. PILLAR THREE: ACCESS TO REMEDY

This chapter introduces the access to remedy pillar of the UN Protect Respect and Remedy Framework on Business and Human Rights. It outlines the role of judicial and non-judicial mechanisms, and considers opportunities for NHRIs to engage in ensuring victims of business-related human rights abuses have access to effective remedy.



AFTER WORKING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- What is the role of the State and judicial mechanisms in remedy for business-related human rights abuses?
- What types of non-judicial mechanisms exist for remedy of business-related human rights abuses?
- What are the UN Guiding Principles effectiveness criteria for non-judicial grievance mechanisms?
- How can NHRIs utilise their Paris Principles mandate, including monitoring and complaints handling functions, to ensure access to effective remedy?

6.1 BUSINESS HUMAN RIGHTS ABUSES AND ACCESS TO REMEDY

The right to access to effective remedy for breaches of human rights is articulated in a number of international human rights instruments.⁴⁶ Under pillar three of the UN Protect, Respect and Remedy Framework, both States and businesses are obliged to ensure access for victims of business-related human rights abuses to effective remedy.

The UN Guiding Principles indicate that access to effective remedy can be provided through:

- State-based judicial mechanisms;
- State-based non-judicial mechanisms; and
- Non-State-based grievance mechanisms, including mechanisms provided by business, industry associations, multi-stakeholder groups and international bodies.

Whilst each category mentioned above has a role to play in securing access to remedy, it is stated clearly in the UN Guiding Principles that effective judicial mechanisms must sit at the core of ensuring access to effective remedy for

business-related human rights abuses, with non-judicial mechanisms playing a complementary and supporting role (Guiding Principle 26).

6.2 JUDICIAL REMEDY

Pillar three of the UN Protect, Respect and Remedy Framework outlines that States are required to ensure the effectiveness of domestic judicial mechanisms in addressing business-related human rights abuses (Guiding Principle 26). This includes considering ways by which to reduce legal, practical and other relevant barriers that victims may face when securing a remedy. Although national contexts are different, research has indicated a number of recurring obstacles facing victims that prevent them from using national courts to access a remedy for business-related human rights abuses. Some common barriers to judicial remedy that have been identified include:⁴⁷

- **Attribution of responsibility amongst members of a corporate group:** As parent and subsidiary companies are separate legal entities, it can be difficult to attribute responsibility to a parent company for human rights abuses associated with a subsidiary. At the same time, it may be difficult to hold the subsidiary to account when it is located in a host-State jurisdiction where the judicial system is under-resourced or affected by bribery and corruption;
- **Delays and length of proceedings:** If a court system is under-resourced, then delays in proceedings can pose a significant barrier to justice. Furthermore, proceedings involving business-related human rights abuses may take years, causing significant delay in victims' access to remedy;
- **Limited enforcement of judgments:** Many business and human rights related cases settle out of court rather than proceeding to judgment, thereby limiting the development of judicial precedents for future cases;
- **Home- and host-State dynamics:** Within the host-State, access to judicial remedy may be limited when there are not sufficient suitable courses of action in law to bring a claim. In home-States, bringing a claim can be complicated by arguments such as 'forum non-conveniens' (the argument that the claim should be heard in a more suitable forum, usually the host-State);
- **Corruption and economic or political pressures:** Both State and business actors may be implicated in corruption or exercise political pressure towards claimants or the lawyers, prosecutors and judges involved in hearing business and human rights related cases. This may result in fear of reprisal against victims of business-related human rights abuses, or their representatives; and
- **Costs:** Judicial proceedings can be expensive, which acts as a disincentive for victims of business-related human rights abuses. Furthermore, options for bringing aggregate claims or enabling representative proceedings (e.g., class actions or other collective proceedings) may be limited, thereby further increasing potential or actual costs for individuals wanting to bring a claim.

The following are some illustrative examples of avenues for judicial remedy for business-related human rights abuses.

EXAMPLES OF AVENUES FOR JUDICIAL ACCESS TO REMEDY

NATIONAL COURTS

Within a national jurisdiction, business-related human rights abuses may fall under a range of applicable legislation, such as environment, labour, anti-bribery and corruption, or anti-discrimination. Both criminal and civil law provisions may be relevant. National courts provide an obvious point of access to remedy for victims of corporate human rights abuses and are increasingly being used for this purpose.

For example, a USA federal grand jury recently indicted four employees of Global Horizons, a USA-based labour recruiting company, on charges of forced labour. Hundreds of Thai workers were brought to the USA and made to believe that if they did not work for the defendants, they could be arrested and deported.⁴⁸ Another example concerns an Argentinian prosecutor who filed a complaint against executives of Ford Motor Argentina on grounds that they had collaborated with the 1976-83 military regime and were accomplices to the detention, torture and disappearance of Ford workers.⁴⁹

NATIONAL COURTS FOR EXTRATERRITORIAL CLAIMS

In some countries, it may be possible to bring a claim for specific business-related human rights abuses that have occurred in a different jurisdiction. For example, provisions in criminal laws and anti-bribery and corruption laws frequently apply to the actions of national citizens even if these actions occur overseas. However, in many instances it is difficult to hold businesses accountable for human rights abuses occurring overseas (see also Chapter 4).

One avenue that has received considerable attention is the United States of America's [Alien Tort Claims Act](#) (ATCA). This statute allows plaintiffs to sue companies registered in the United States of America for alleged violations of international law regardless of where the alleged violations have occurred. During the past decade a number of cases have been brought by human rights groups against multinational companies. The majority of ATCA cases involve companies in the natural resources industries, and a small number of cases have resulted in settlement payments. The ongoing applicability of ATCA to company involvement in human rights abuses overseas is currently being considered by the US Supreme Court.⁵⁰

REGIONAL HUMAN RIGHTS COURTS

The courts associated with regional human rights instruments may provide an avenue for remedy for business-related human rights abuses. For example, in the case of *Fadeyeva v Russia* the European Court of Human Rights found that the Russian Government was in violation of Article 8 of the European Convention on Human Rights by failing to regulate environmental pollution from an iron-smelter.⁵¹

6.2.1 CORPORATE COMPLICITY IN HUMAN RIGHTS ABUSES

The term ‘complicity’ in the context of business and human rights can have both legal and non-legal meanings. In a non-legal context, human rights organisations and activists, international policy makers, government experts and businesses frequently use the term ‘business complicity in human rights abuses’ to describe what they view as undesirable business involvement in human rights abuses.⁵² Examples of company acts or omissions that may give rise to allegations of complicity include: if a company takes over land where the people have been forcefully displaced by the government; any insufficient supply chain management, such as where children are employed in the supply chain; and may also extend to situations where company revenues are paid to an oppressive State.

Although significant consequences may flow from allegations of complicity, civil or criminal legal sanction will generally only result where it can be established that the company:⁵³

- *Caused or contributed to* the human rights abuse(s) by enabling, exacerbating or facilitating the abuse;
- *Knew* or should have *foreseen* that human rights abuse(s) would be likely to result from its conduct; and
- Was *proximate* to the human rights abuse(s) either geographically or through the strength, duration or tone of its relationships.

A company entity and/or an individual company official may attract legal liability depending on the jurisdiction and the particular law that is used to bring the claim (e.g., environmental, corporate, anti-bribery and corruption etc.).

The UN Guiding Principles call for consideration of legal and non-legal, and actual or potential instances of complicity, recognising that legally, contribution to harm is relevant in both criminal and civil law. Guiding Principle 23 commentary also notes:

“Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.”

6.3 NON-JUDICIAL REMEDIES

Under the UN Guiding Principles, non-judicial remedy for business-related human rights abuses can include:

- State-based mechanisms, such as labour tribunals, NHRIs, National Contact Points under the OECD Guidelines, or State-run Ombudsman offices (Guiding Principle 27); and
- Non State-based mechanisms, such as mechanisms provided by industry associations or project-level company grievance mechanisms (Guiding Principles 28, 29 and 30).

The UN Guiding Principles state clearly that non-judicial mechanisms should complement, rather than replace or undermine, judicial mechanisms. They also articulate eight effectiveness criteria for State-based and non State-based non-judicial mechanisms (Guiding Principle 31). The effectiveness criteria focus on ensuring fair and transparent due process and outcomes, including an emphasis on engagement and dialogue where necessary, with capacity building of participating parties in order that they are able to participate meaningfully in the grievance resolution process (see also Box 13, page 64).



BOX 13. UN GUIDING PRINCIPLES EFFECTIVENESS CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS (GUIDING PRINCIPLE 31)

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, and advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping the parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognised human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational-level mechanisms should also be:

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

The following are some illustrative examples of non-judicial avenues for access to remedy for business-related human rights abuses. Some further resources are also noted.

EXAMPLES OF AVENUES FOR NON-JUDICIAL GRIEVANCE MECHANISMS FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES

NATIONAL CONTACT POINTS FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The [OECD Guidelines for Multinational Enterprises](#) are supported by [National Contact Points \(NCPs\)](#), which provide mediation and conciliation platforms for resolving practical issues arising with the implementation of the OECD Guidelines. All OECD Guideline countries are required to have in place an NCP, although the form and governance of NCPs varies depending on the country.

NCPs are tasked with the dual function of promoting the OECD Guidelines and dealing with complaints, which are called 'specific instances' of alleged non-compliance of a business with the OECD Guidelines. Various actors called for the strengthening of the role and capacity of NCPs in the 2011 revision of the OECD Guidelines. This is reflected in the revised OECD Guidelines in the form of strengthened provisions regarding the role of NCPs.

OECD National Contact Points website: <http://www.oecd.org/corporate/mne/ncps.htm>

INDUSTRY-ASSOCIATED

A number of industry-level initiatives or organisations have associated complaints-handling mechanisms. Applicability of such a mechanism is usually based on voluntary company participation in the initiative (e.g., company commitment to participating in the industry initiative), or through a contractual requirement to implement certain standards (e.g., a company is required to implement a certain standard in return for provision of finance).

For example, in the finance sector the [Compliance Advisor/Ombudsman](#) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) is responsible for handling complaints from individuals and communities that are adversely impacted by a project that has received financing from IFC or MIGA.⁵⁴

In the apparel sector, the [Fair Labour Association](#) has a complaints resolution and investigation function where allegations can be brought against a company that has committed to the Fair Labour Association's Labour Standards.⁵⁵

In the Canadian Foreign Affairs and International Trade department, the [Corporate Social Responsibility Counsellor](#) has a role to act as an impartial advisor and facilitator to address problems and disputes relating to any Canadian mining, oil or gas company in any operations outside Canada, through a review process.⁵⁶

OPERATIONAL-LEVEL GRIEVANCE MECHANISMS

Participation in an operational-level grievance mechanism is considered under the UN Guiding Principles to be an integral part of a company's human rights due diligence process. Businesses are expected to provide for, or cooperate in, the remediation of any adverse impacts that they have caused or contributed to (Guiding Principle 22). In response, numerous companies are developing and improving their own operational-level grievance mechanisms whereby affected communities can raise concerns and complaints relating to company operations and activities.

These mechanisms can have a dual role in providing access to remedy, as well as enhancing community-company dialogue with the view of identifying and addressing points of conflict before they escalate. Operational-level mechanisms may also link to other remedy mechanisms. The operational-level grievance mechanism of the Newmont Ahafo mine in Ghana, for example, has an escalation procedure that links first to the Human Rights Commission, and then to the judicial system.⁵⁷

Usually, it is considered appropriate to provide separate channels for remedy for employees and impacted communities, although some companies may choose to combine these in the one mechanism. It is also worth noting that an operational-level grievance mechanism in accordance with the UN Guiding Principles is more than a 'complaints hotline', but requires an approach where the parties can be engaged in dialogue in order to resolve disputes and grievances. Operational-level grievance mechanisms can provide a complement to stakeholder engagement processes, collective bargaining processes and other judicial and non-judicial mechanisms, but must not undermine or preclude access to these (Guiding Principles 29).

Caroline Rees and David Vermijs, [Mapping Grievance Mechanisms in the Business and Human Rights Arena](#) (2008).

International Federation for Human Rights, [Corporate Accountability for Human Rights Abuses – A Guide for Victims and NGOs on Recourse Mechanisms](#) (2010).

Office of the Compliance Advisor/Ombudsman (CAO), [A Guide to Designing and Implementing Grievance Mechanisms for Developments Projects](#) (2008).

6.4 WHAT CAN NHRIS DO TO PROMOTE ACCESS TO REMEDY?

The mandate and role of NHRIs in relation to non-judicial remedy is identified explicitly in the UN Guiding Principles and the Edinburgh Declaration. This may be in the form of the NHRIs' own complaints handling, investigative and mediation functions.

More broadly, Paris-Principles-compliant NHRIs should have the mandate and opportunity to take a variety of steps to promote the effectiveness of both judicial and non-judicial remedies for business-related human rights abuses. For example, NHRIs can:

- Identify and advise the State on addressing barriers to access to judicial remedy;
- Provide outreach and advice to victims of corporate human rights abuse on how to access judicial remedies in home and host countries;
- Encourage or provide education and training for legal professionals on access to judicial remedy for business-related human rights abuses;
- Dialogue with the State, judiciary and legal profession on particular topics related to judicial remedies, such as complicity and extraterritorial application of laws relating to business-related human rights abuses;
- Support the complaints handling function of the local National Contact Point through sharing of information on cases and dispute resolution methodologies;
- Develop guidance material for business on the development and implementation of project-level grievance mechanisms;
- Apply the NHRI complaints handling, investigative and mediation function to business and human rights related cases; and
- Facilitate access of victims of business-related human rights abuses to available non-judicial mechanisms through outreach, education and referral.

The following are some NHRI practice examples related to access to remedy.

ACCESS TO REMEDY: NHRI PRACTICE EXAMPLES

GERMAN INSTITUTE FOR HUMAN RIGHTS: MODEL NATIONAL BASELINE STUDIES

The German Institute for Human Rights is producing two studies capturing the current state of German implementation of Pillars I and III of the UN Guiding Principles. In each study, a comprehensive analysis of the areas of law affected by the UN Guiding Principles is undertaken, together with concrete reform proposals where gaps are identified between the current state of national law and the standards called for by the UN Guiding Principles. In each case, transnational NHRI cooperation is a focus of the proposals. The studies focus on Germany, but their primary purpose is to develop a structure for national baseline studies that can then be adopted by other NHRIs for use in their own countries. Both studies should be published in early 2014.

INDONESIAN HUMAN RIGHTS COMMISSION: INVESTIGATION OF HUMAN RIGHTS IMPACTS OF OIL AND GAS EXPLORATION ACTIVITIES

The Indonesian Human Rights Commission investigated the gas exploration activities of PT Lapindo Brantas Inc in Porong, Sidoarjo, East Java, which caused thousands of families to be displaced. The Commission concluded that human rights violations had been committed by the State as well as the corporation. The Commission asked the State to provide remedies to the victims.

GHANA COMMISSION FOR HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE: INVESTIGATING THE HUMAN RIGHTS IMPACTS OF MINING

In 2008, the Commission for Human Rights and Administrative Justice issued a report on 'The State of Human Rights in Mining Communities in Ghana'.⁵⁸ The Commission found mining companies operating in Ghana responsible for human rights abuses in host-communities. In the Report, the Commission notes that it has investigated human rights violations in mining areas since 2001. A key emerging issue concerned the lack of mutual understanding between the mining companies and communities. A verification mission undertaken by a team of investigators from the Commission to the mining communities in 2006 confirmed some of the reports of widespread violent abuses of human rights by mining company officials and their security contractors. The Report called on the Government to contribute to addressing these violations, and made specific recommendations to government bodies and agencies.

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS: PUBLIC INQUIRY INTO THE HUMAN RIGHTS IMPACTS OF SALT MINING COMPANIES

The Kenyan National Commission on Human Rights has used its formal powers of investigation to address alleged human rights abuses relating to a range of business sectors. For example, in 2005, the Commission undertook a public inquiry into alleged human rights abuses by salt mining companies in collusion with public authorities, in the Magarini, Malindi district. The Inquiry resulted in the publication of a special report, '[Economic interests versus social justice: Public inquiry into salt manufacturing in Magarini, Malindi District](#)' (2006), presented to the President and National Assembly.⁵⁹ In 2012 the Commission held follow-up meetings with local communities to identify whether the recommendations made in the Report had been implemented. Subsequently, in 2013 the Commission exercised its powers to litigate in the public interest, and filed a case against the companies in question in relation to violations of land rights and the right to a clean environment.

HUMAN RIGHTS COMMISSION OF SIERRA LEONE: DEVELOPING A HUMAN RIGHTS MONITORING TOOL FOR COMPANY ACTIVITIES

The Human Rights Commission of Sierra Leone has undertaken a number of initiatives on business and human rights, including a formal investigation into mining-related human rights abuses in the Bumbuna, Tonkolili District in 2012. The investigation by the Commission consisted of a document review, oral and written statements from affected individuals and expert opinions, as well as focus group meetings and a public hearing. Citing the UN Guiding Principles, the Inquiry found

that the company had left worker concerns unaddressed for far too long. The final 'HRCSL Bumbuna Public Inquiry Report' (2012), issued by the Commission, also concludes that the Government and all other State bodies should improve systematic issues leading to situations such as this, which will go a long way in combating violence and impunity, and safeguarding human rights in the mining communities going forward.⁶⁰

Prompted by the incidents leading to this investigation, as well as other reports to the Commission of business-related human rights abuses, the Commission decided to develop a Monitoring Tool, that can be used in future investigations and dialogues with companies, as well as other actors, to assess company conduct against human rights standards. Development of the Monitoring Tool has involved dialogue with government, business and civil society representatives. The finalised Monitoring Tool will include specific questions and indicators outlining the human rights laws and standards relevant to a number of business-unit functions, including human resources, environment and communities, security, government relations and procurement.

SOUTH AFRICAN HUMAN RIGHTS COMMISSION: INQUIRY INTO THE HUMAN RIGHTS IMPACTS OF MINING OPERATIONS

The South African Human Rights Commission has undertaken a number of investigations and inquiries into complaints regarding mining operations. One of these has been the inquiry into the impacts on local communities caused by the Potgietersrus platinum mine in Limpopo, Mokopane. Prompted by a report by the NGO Action Aid, in 2008 the Commission decided to conduct its own full investigation into the matters concerned. The investigation of the Commission focused on both specific human rights abuses alleged, as well as systemic underlying issues. The [Report of the SAHRC on the Potgietersrus platinum mine in Mokopane \(2009\)](#) found that relocation was adversely affecting the concerned communities.⁶¹ The Report was intended to be proactive and constructive, raising awareness of international best practice and avoiding exacerbating existing vulnerability. It made a number of recommendations, including to the Government and the company, on how to assist rights-holders in building their capacity to claim their rights, and improve company approaches to resettlement and due diligence. The results of the investigation were communicated to affected communities, public authorities and the company. The Commission continued to monitor the implementation of its recommendations for two years, which revealed that some of the recommendations that had been made to the Government and company were implemented.

7. BUSINESS AND HUMAN RIGHTS ISSUES

This chapter explores in more detail some of the business and human rights issues that have been flagged in the previous chapters. The issues addressed are not intended to provide an exhaustive account of the business and human rights field, but serve as introductions from which NHRIs can further build their own knowledge of those issues that are particularly relevant in their jurisdiction.

The business and human rights issues covered are (in alphabetical order):

1. Children's rights;
2. Environment and water;
3. Gender;
4. High-risk and conflict-affected areas;
5. Indigenous Peoples;
6. Land and food;
7. Supply chains; and
8. Working conditions.

For each issue the chapter provides:

- a) A brief introduction;
- b) Identification of relevant human rights;
- c) Standards and guidance relating to the issue; and
- d) Opportunities for NHRI engagement.

7.1 CHILDREN'S RIGHTS AND BUSINESS

Children are defined by the UN Convention on the Rights of the Child as those up to 18 years of age. Businesses may come into contact with children as consumers, workers, family members of employees and community members. Children are amongst the most powerless stakeholders in terms of exercising and enjoying their rights, and there is a rapidly growing attention on children's rights within business and human rights. This includes a focus on the full range of children's rights and potential adverse business impacts on children. Whilst issues such as child labour and trafficking have received attention within the business world for some time and remain critical issues, attention now extends to also consider wider business impacts on children.

EXAMPLES OF HOW BUSINESS ACTIVITIES MAY IMPACT ON THE HUMAN RIGHTS OF CHILDREN

- **The right to health.** Product development and testing may have particular impacts on children's health in the phase of physical and psychological development. Marketing and products used by children can also have adverse impacts where these are not suitably designed for children's particular needs and safety.
- **Environment-related human rights.** Children are more susceptible to environmental hazards and exposure to pollutants at early life stages may cause irreversible damage to children that would not be caused in adults.
- **Labour rights.** Young workers are entitled to particular standards, e.g., regarding number of working hours and night work, and where these are not upheld young workers' rights will be adversely impacted.
- **Rights to education, play and family life.** Where children are engaged in child labour this will adversely impact a range of human rights, including their rights to education, play and family life. These rights may also be adversely impacted when parents are required to work excessive hours with the result that children's access to education, recreation and family time are unduly restricted.
- **The right to non-discrimination.** Different children will face different issues. For example, child-headed households, girls, children of ethnic minorities and indigenous children may be at particular risk of being vulnerable or marginalised.

KEY HUMAN RIGHTS LAWS RELEVANT TO CHILDREN, BUSINESS AND HUMAN RIGHTS

The Convention on the Rights of the Child (CRC) articulates a number of rights that specifically apply to children. The CRC is also based on four key principles that should be taken into account in any action affecting children:

- Non-discrimination – the rights apply to all children;
- Best interests of the child – decisions should be made in the child's best interests, rather than the convenience or best interests of adults or other actors, including businesses;
- Respect for the right to life, survival and development – every child has the right to survive and thrive in a safe protective environment; and
- Respect for the views of the child – children should be seen and heard.

BOX 14. THE COMMITTEE ON THE RIGHTS OF THE CHILD ON NHRIS AND ON BUSINESS AND HUMAN RIGHTS

In 2002 the Committee on the Rights of the Child, responsible for overseeing the implementation of the Convention on the Rights of the Child (CRC) and Optional Protocols, issued a General Comment (No.2) on the role of NHRIs in relation to the promotion and protection of the rights of the child, highlighting the particular role that NHRIs can play in relation to children's rights, including child labour.

The Committee has had a long-standing interest in how the activities and operations of business enterprises affect different aspects of children's lives and provided a General Comment (No.17) specifically on Child Rights and Business in 2013. The General Comment provides State parties with a framework for implementation of the CRC as a whole with regard to the business sector.

The Convention on the Rights of the Child also has two optional protocols of potential relevance to business:

- The Optional Protocol on the sale of children, child prostitution and child pornography, specifically addresses businesses by requiring States to adopt laws making legal persons liable for acts involving the sale of child prostitution or involvement in child pornography: and
- The Optional Protocol on the Involvement of Children in Armed Conflict, requires States to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities.

CHILD LABOUR AND YOUNG WORKERS

It is estimated that 168 million children worldwide are engaged in child labour and that of these, around half are engaged in the worst forms of child labour, including sexual exploitation, slavery, bonded labour and hazardous work.⁶² In many ways, patterns of child labour reflect the human rights enjoyment of communities and families. For example, poverty, HIV&AIDS, conflict, limited government capacity and discrimination may be factors that correlate to a higher prevalence of child labour. Children who work are usually more vulnerable than adult counterparts to exploitation and violence, including sexual exploitation and abuse in the workplace. As child labour often occurs in informal and under-regulated sectors, such factors are exacerbated. Child labour can have permanent negative impacts on children's physical and cognitive development with permanent consequences on their health, development and well-being. Child labour also interferes with the right to education or can result from the lack of access to this human right. Where this is the case, valuable opportunities for breaking the cycle of poverty in communities can be lost.⁶³

Child labour and the rights of young workers are addressed by the human rights conventions noted above, as well as the following core ILO Labour Conventions:

- ILO Convention No.182 on the Worst Forms of Child Labour; and
- ILO Convention No.138 on the Minimum Age for Admission to Employment.

Child labour can be defined as including work that:

- Is mentally, physically, socially or morally dangerous and harmful to children; and
- Interferes with the child's schooling by depriving her of the opportunity to attend school; obliging her to leave school prematurely; or requiring her to attempt to combine school attendance with excessively long and heavy work.

More detailed provisions are included in ILO Convention No.138 on the Minimum Age for Admission to Employment and Work. ILO Convention No.138 applies to all children under 18 and provides strict guidelines on the age and type of work that children are allowed to undertake. The key principles are:

- Children under 12 are not allowed to work;
- Minimum age for work should be 15 (possible exception of 14 for developing countries). This is the age at which compulsory schooling ends;
- Minimum age for hazardous work should be 18; and
- Light work (i.e. work not affecting the child's health, education or development) can be undertaken between the ages of 13 and 15 (possibly between the ages of 12 and 14 in developing countries).

ILO Convention No.182 on the Worst Forms of Child Labour defines the worst forms of child labour (article 3) to include:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom; and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- The use, procuring or offering of a child for prostitution, for production of pornography or pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children ('hazardous work').

Governments set the legal age of employment and school leaving, as well as the definition of hazardous work. The ILO Recommendation 190 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour provides some guidance to governments on what types of factors they should consider in identifying hazardous work (paragraph 3):

- Work which exposes children to physical, psychological and sexual abuse;
- Work underground, under water, at dangerous heights or in confined spaces;
- Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- Work under particularly difficult conditions, such as work for long hours or during the night, or work where the child is unreasonably confined to the premises of the employer.



EXAMPLE STANDARDS AND GUIDANCE RELATING TO CHILDREN'S RIGHTS AND BUSINESS

STANDARDS AND GUIDANCE	DESCRIPTION
Business and Human Rights Resource Centre, Business & Children Portal	The Portal is an information hub developed to give practical assistance to people from all business sectors in their work and decision-making, leading to better protection of the rights and welfare of children. The Portal has sections on: issues, positive initiatives, alleged abuses, lawsuits and guidance.
Children's Rights and Business Principles (2012)	Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children's rights.
ILO Programme on the Elimination of Child Labour (est. 1992)	The Programme has the overall goal of the progressive elimination of child labour, to be achieved through strengthening the capacity of countries to address it and promoting a worldwide movement to combat child labour.
UN Committee on the Rights of the Child General Comment No.16 on State obligations regarding the impact of the business sector on children's rights (2013)	The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children's rights. The objective of General Comment No.16 is to provide States parties with a framework for implementing the CRC, particularly with regard to the business sector.
Children's Rights in Impact Assessment – a tool for companies (2013)	Developed by UNICEF and the Danish Institute for Human Rights, this checklist is a practical tool intended to help companies to identify and manage their impact on children's rights. The checklist contains a set of questions and indicators covering the 10 Children's Rights and Business Principles, addressing different aspects of company policies and operations and the impact on children's rights.

EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON CHILDREN’S RIGHTS AND BUSINESS

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
<p>The minimum wage established by law is so low that in many families children have to contribute substantively to income and livelihood earning activities, often at the expense of regular school attendance.</p>	<p>Work with local communities to raise awareness in the business community about the inadequacy of the minimum wage and to promote awareness of the need for payment of a living wage.</p> <p>Systematically monitor the impacts of the low minimum wage on the rights of children and their families and report findings and recommendations to government.</p>
<p>A company sources product components from a supplier who has been found to use child labour. The company is incorporated in an OECD country.</p>	<p>Work with the company and supplier to find ways to transition child labourers into the education system without causing unintended consequences such as loss of resources to sustain livelihoods.</p> <p>Use the provisions on supply chain due diligence in the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises to advise the company on how to enhance specific attention to child labour in conducting its supply chain due diligence.</p>
<p>The State has not ratified the Optional Protocols to the CRC.</p>	<p>Lobby the government to ratify the Optional Protocols and effectively implement them into domestic laws.</p>
<p>A company uses chemicals and fertilising agents that cause harm to children’s health.</p> <p>The company receives funding from the International Finance Corporation.</p>	<p>Assist local communities in reporting these incidents to the IFC complaints mechanism, the Compliance Advisor/Ombudsman.</p> <p>Request the government ministry responsible for agriculture to immediately investigate the company’s use of chemicals and fertilisers, and to require the company to use alternative chemicals and fertilising agents that have been established as safe for children.</p>

7.2 ENVIRONMENT AND WATER RELATED BUSINESS AND HUMAN RIGHTS ISSUES

The condition and protection of the world's environment and its natural resources, including water, are inextricably linked to the enjoyment of human rights. This relationship was first addressed by the international community at the United Nations Conference on the Human Environment, held in Stockholm in 1972. The conference's main point of focus was to discuss how the increasing impairment of the world's environment was impacting on "the condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries."⁶⁴

Business and industry in general has been identified as being a major contributor to environmental degradation and human rights violations due to the reoccurring adverse impacts that business activities have had upon the environment and sustainable ecosystem.

EXAMPLES OF HOW BUSINESS ACTIVITIES MAY IMPACT ADVERSELY ON HUMAN RIGHTS RELATING TO THE ENVIRONMENT AND WATER

- **The right to health.** Business operations can cause harmful environmental pathogens to be introduced into the natural environment thereby causing illness and disease. This can occur through carriers such as water, soil, air, food sources and other parts of the environment.
- **The right to access to information.** A mining company does not provide adequate information and consultation during the environmental and social impact assessment process and as a consequence local communities lack information about significant health risks associated with exposure to waste from the mining operations.

BOX 15. A HUMAN RIGHT TO A CLEAN ENVIRONMENT

The right to environment has itself emerged as a widely recognised human right. Principle 1 of the Stockholm Declaration recognises a fundamental right to:

"...freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and [man] bears a solemn responsibility to protect and improve the environment for present and future generations".

This right was affirmed in the Rio Declaration, which further recognised the need for environmental impact assessments and rights to information, participation and access to remedy.⁶⁵

- **The right to water.** A textiles factory disposes of wastewater that contains harmful chemicals into nearby water systems, thus contaminating communities' drinking and residential water supply.
- **Children's rights.** Children are particularly vulnerable to the toxic effects of pesticides used in a commercial agricultural development.

KEY HUMAN RIGHTS LAWS RELEVANT TO ENVIRONMENT, WATER AND BUSINESS AND HUMAN RIGHTS

There are several international law protocols and principles that specifically address the topic of environment and human rights, for example:

- The Stockholm Declaration on the Human Environment (1972);
- The Declaration on Environment and Development ('Rio Declaration') (1992);
- The Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (1998); and
- The United Nations Framework Convention on Climate Change (1992) and the Kyoto Protocol (1997).

These laws are relevant in the area of business and human rights as many of the provisions have implications for business activities when implemented into domestic law. For example, the provisions in the Aarhus Convention relate directly to consultation carried out by the government or companies regarding environmental impacts of projects, including environmental and social impact assessment processes.

The *precautionary principle* and the *polluter pays principle* are also relevant in relation to human rights impacts which result from environmental harm caused by business-related activities. The precautionary principle seeks to ensure that where it is suspected but cannot be scientifically proven that an action may create a risk of harm to the environment or the public, the party taking the action has the burden of proving that the action is not harmful. The polluter pays principle seeks to ensure that the costs of pollution prevention, control and reduction are borne by the generator of the pollution, rather than society at large. Both of these principles have been implemented into a number of international agreements, including the Rio Declaration, as well as national legislation and regulation.⁶⁶

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT

During the design phase of a business project, an environmental and social impact assessment (ESIA) should be conducted to predict, identify, assess

and mitigate the possible adverse impacts that a project might have upon the surrounding environment and human population. The key objective of the impact assessment is to inform a company's decision-making processes and assist in the implementation of environmental, social and health considerations, such as the placement of infrastructure and the use of certain technology and materials to avoid, minimise or mitigate potential impacts. The scope of the assessment should include consultation and engagement between the company, its workers, its suppliers and contractors, potentially impacted rights-holders affected by the business activities, and other interested parties.

Environmental and social impacts, including human rights impacts, need to be managed and monitored throughout the lifecycle of the project. An effective ESIA is therefore expected to:⁶⁷

- Reflect the nature and the scale of the project;
- Be fully supported by management and informed by relevant stakeholders;
- Adopt a methodological approach to managing environmental and social risks and impacts; and
- Aim to further the progress of sound and sustainable environmental and social performance.

It is worth noting that ESIA requirements vary greatly across national contexts. Internationally, the Convention on EIA in a Transboundary Context (1991) is pertinent. While it applies to transboundary impacts in the European context, the Convention provides example provisions that could also be included in other national environmental assessment legislation. The Convention gives substance to Article 17 of the Rio Declaration, which calls for EIAs as a national instrument to assess and manage environmental impacts, including business activities.

BUSINESS ACTIVITIES AND THE RIGHT TO WATER AND SANITATION

The right to water and sanitation includes the right of all persons to have access to safe water for personal use, including for drinking, cooking and sanitation. This right was recognised by the UN General Assembly as a fundamental right in 2010.⁶⁸ Specific criteria further define the meaning, scope and content of the right:⁶⁹

- Quality - Water must be safe to drink;
- Availability - Water must be available in adequate quantities;
- Accessibility - Water must be physically accessible and equally accessible for women, children, men and people of different social backgrounds; and
- Affordability - Water does not necessarily have to be free, but must be affordable for people of all incomes.

“ States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.”

CESCR, General Comment No. 15, on the right to water, para 49.

The role of business in water and sanitation service provision has been subject to the attention of the United Nations Special Rapporteur on the issue of human rights obligations related to access to safe drinking water and sanitation. For example, the Special Rapporteur has recommended that non-State service providers exercise due diligence to ensure human rights compliance, and that States have in place strong regulatory frameworks to govern water service providers in line with human rights standards.⁷⁰

EXAMPLE STANDARDS AND GUIDANCE ON ENVIRONMENT, WATER AND BUSINESS AND HUMAN RIGHTS

STANDARDS AND GUIDANCE	DESCRIPTION
CEO Water Mandate (2011)	Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
IFC Performance Standards on Environmental and Social Sustainability (2012)	The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
Institute for Human Rights and Business, Draft-Business, Human Rights &	This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company’s responsibility to respect the human right

<p>the right to water- Challenges, dilemmas and Opportunities, Roundtable Consultative Report (2009)</p>	<p>to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.</p>
<p>ISO 14000 Standards on Environmental Management Systems</p>	<p>Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.</p>
<p>United Nations Special Rapporteur on the human right to safe drinking water and sanitation (est. 2008)</p>	<p>Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.</p>
<p>Global Water Tool (2007)</p>	<p>Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.</p>



EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON ENVIRONMENT, WATER, BUSINESS AND HUMAN RIGHTS

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
Communities' access to water is adversely impacted by a number of companies operating in the area.	Facilitate a multi-stakeholder dialogue involving the communities, companies and government to hear and address the communities' concerns.
Project approval and licensing decisions made by government bodies are not subject to challenge by affected communities.	Based on the provisions of the Aarhus Convention, NHRIs can request the government to make provisions in relevant legislation and regulation that ensure stakeholders are able to participate meaningfully in decision-making processes. Where necessary, work with local communities to challenge or seek review of particular licensing decisions through appropriate courts or tribunals.
Environmental damage caused by a hydropower project necessitates the relocation of a local community.	Engage with both government and business to ensure a timely and adequate environmental and social impact assessment has been undertaken, and that community consultations are conducted prior to any community relocation.
Pesticides used in an agricultural project contaminate local irrigation sources and destroy food crops relied upon by local communities.	Advise the government on how to ensure that hazardous substance regulations are adequately enforced. Assist local NGOs to raise this issue in a shadow report to the country Universal Periodic Review process.

7.3 GENDER, BUSINESS AND HUMAN RIGHTS

Women and men often experience business-related human rights impacts in different ways. Frequently, women bear a disproportionate burden of negative impacts while having less access to the benefits that may be generated by private sector development. For example, women's property rights may be inadequately recognised meaning they are less likely to have a say in business-related transfer of property or compensation for loss of property. Women may also experience human rights impacts particular to their sex or gender, for example health impacts associated with women's reproductive rights. In some situations women's and girls' position may mean that they are vulnerable to certain impacts

or marginalised, for example women may not be included in consultation and engagement processes of business to the same extent as men, with the result that their needs and experience of human rights impacts are not recognised and addressed.

The UN Guiding Principles call for explicit attention to gender, for instance:

- **State duty to protect:** In exercising the duty to protect, States are called on to pay attention to gender in guidance to business, as well as paying special attention to gender-based and sexual violence when supporting business respect for human rights in conflict-affected areas (Guiding Principles 3 and 7); and
- **Corporate responsibility to respect:** In exercising human rights due diligence and showing respect for human rights, businesses are expected to bear in mind the different risks that may be faced by women and men, including through collection and use of sex-disaggregated data (Guiding Principles 18 and 20).

EXAMPLES OF HOW THE HUMAN RIGHTS OF WOMEN AND GIRLS MAY BE IMPACTED BY BUSINESS ACTIVITIES

- **Labour rights and the right to non-discrimination.** Women may face discrimination in pay, benefits, hiring and promotions. Women and girls also tend to be over-represented in the informal and casual labour markets, thereby increasing exposure to inadequate wages and working conditions.
- **Rights to property and an adequate standard of living.** Where women have primary agricultural responsibilities, they are likely to bear a disproportionate burden of negative impacts associated with company land acquisition or use or environmental impacts, such as where company use of land restricts subsistence agriculture.
- **Right to health and reproductive rights.** Exposure to pollutants and chemicals can have particular impacts on women's right to health, including reproductive health.
- **Right to life, liberty and security of person.** Women and girls are likely to face disproportionate risk of experiencing gender-based violence and sexual violence, e.g. perpetrated by private or public security forces protecting company assets.

KEY HUMAN RIGHTS LAWS RELEVANT TO GENDER, BUSINESS AND HUMAN RIGHTS

As well as all generally applicable human rights, women's human rights are recognised in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). CEDAW calls on States parties to incorporate the principle of equality of men and women into the legal system and ensure

elimination of all acts of discrimination against women by persons, organisations or enterprises, including through legislation and temporary special measures. CEDAW affirms the reproductive rights of women, and targets culture and tradition as influential forces shaping gender roles and family relations. States that have ratified CEDAW are obliged to implement its provisions in national laws and regulations. In national laws, non-discrimination provisions may be found in constitutions, labour laws, anti-discrimination and equal treatment laws, and more. Companies will be obliged to conduct their business activities in accordance with these provisions.

EXAMPLE STANDARDS AND GUIDANCE RELEVANT TO GENDER, BUSINESS AND HUMAN RIGHTS

STANDARDS AND GUIDANCE	DESCRIPTION
International Labour Organisation (ILO) Core Labour Standards on Non-discrimination and the ILO Bureau for Gender Equality	Non-discrimination comprises one of the four core areas of the ILO Declaration on Fundamental Principles and Rights at Work , which comprises the ILO core labour standards. The ILO integrates gender throughout its work, with the objective of achieving gender equality as an essential feature of decent work. This can include advisory services, research and information dissemination, training and capacity building.
Oxfam Australia, Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009)	This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.
Women’s Empowerment Principles (2010)	Developed in a collaboration between UN Women and the UN Global Compact, the Women’s Empowerment Principles are a set of principles for businesses offering guidance on how to empower women in the workplace, marketplace and community.

EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON GENDER, BUSINESS AND HUMAN RIGHTS

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
<p>You have received a complaint about a company practice that women who have children receive less opportunities for professional development, including promotions, than those employees who do not have children.</p>	<p>Use the NHRI complaints hearing function and mandate to work on non-discrimination to hear and address the complaint and/or refer the female employees to the relevant labour tribunal.</p> <p>Work with the company and trade union representatives to deliver a training on non-discrimination and equal opportunities to company personnel working in human resources, paying particular attention to the rights of women.</p>
<p>Domestic property and inheritance laws are discriminatory towards women.</p>	<p>Work with the law reform commission to advocate for changes to the laws to bring them into compliance with international human rights standards on non-discrimination.</p> <p>Provide practical guidance to companies on how they can recognise and support women's inheritance and property laws without violating national law.</p>
<p>Company consultation processes occur with community leaders and property owners who are all men.</p>	<p>Work with local women and women's representative organisations to ensure the views of women are heard in the consultation processes.</p> <p>Advise the company on appropriate ways to engage with women and girls in the local cultural context.</p>
<p>Public security forces protecting company assets have been found to harass women in local communities, including sexual harassment and violence.</p>	<p>Support the impacted women and girls in reporting these instances to the relevant authorities, as well as to the company, and monitor the cases.</p> <p>Use the Voluntary Principles on Security and Human Rights as a basis for a dialogue with the company on its responsibility to influence the conduct of the public security forces, for example, through a memorandum of understanding and incident reporting measures that capture sexual harassment and gender-based violence.</p> <p>Work with public law enforcement authorities on implementing or reforming sexual and gender-based violence programmes, including training of public security personnel on sexual harassment and gender-based violence.</p>

7.4 BUSINESS AND HUMAN RIGHTS IN HIGH-RISK AND CONFLICT-AFFECTED AREAS

Business activities and accountability in high-risk and conflict-affected areas has received significant attention, in recognition that such circumstances can increase the likelihood of business operations causing or contributing to human rights abuses and violations.

/// Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended.”

UN Guiding Principle 7 commentary.

While there is no single definition of what constitutes a ‘high-risk’ area, indicators may include the following:⁷¹

- War and other armed conflicts;
- Transition from conflicts to peace;
- Presence of illegitimate or unrepresentative government;
- Limited popular sovereignty and avenues for political participation;
- Limited government capacity and/or political will to uphold the rule of law and provide citizens with basic services and infrastructure; and/or
- Systemic corruption, including poor management of revenues.

Attention to high-risk areas is noted explicitly in the UN Guiding Principles, for example:

- State duty to protect: States are expected to engage with business enterprises to help them to identify and address human rights-related risks; deny access to public support and services to those businesses involved with gross human rights abuses; and ensure that policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses (Guiding Principle 7); and
- Corporate responsibility to respect: It is recognised that some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Given the expanding web of potential

corporate legal liability, businesses are expected to treat such risk as a legal compliance issue (Guiding Principle 23).

EXAMPLES OF HOW BUSINESS ACTIVITIES CAN IMPACT ADVERSELY UPON HUMAN RIGHTS IN HIGH-RISK AND CONFLICTED-AFFECTED AREAS

- **The rights to property, an adequate standard of living, food, water and housing.** Where a company purchases land at below the market rate from which people have been displaced due to conflict, or where people are displaced from their arable lands and as a result no longer able to sustain their livelihoods.
- **The right to life, liberty and security; and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment.** Where private or public security forces protecting company assets and personnel use excessive force or perpetrate sexual violence.
- **Human rights and the supply chain.** Business supply chain activities may be associated with supporting armed factions, such as where rare earth minerals are sourced from areas experiencing violent conflict. This may give rise to allegations of complicity in gross human rights violations.
- **Human rights impacts associated with corruption and revenue management.** Company interaction with governments (e.g., payment of taxes, permitting requirements, contractual arrangements) where there are high-levels of corruption and poor revenue management may be associated with adverse impacts on the right to participate in government, and rights associated with public services, such as health, education, fair trial and remedy.

KEY HUMAN RIGHTS LAWS RELEVANT TO BUSINESS IN HIGH-RISK AND CONFLICT-AFFECTED AREAS

In situations of armed conflict, human rights law is complemented by international humanitarian law commonly known as ‘the law of war’. These are rules established by treaties or customs that regulate the means and methods of warfare to protect civilians, including war crimes, crimes against humanity and genocide. While human rights law binds States, humanitarian law applies to both State and non-State actors, including businesses where business activities are closely linked to an armed conflict.⁷² Activities in which businesses can be complicit include, for example, human trafficking, financing of armed conflict, or illegal arms trading.

International Criminal Law provides for legal accountability for involvement in war crimes, crimes against humanity, and genocide. The International Criminal Court, established in 2002, provides direct international legal liability for natural persons involved in such international crimes, which may also include business personnel (see also Chapter 2, page 12).

EXAMPLE STANDARDS AND GUIDANCE RELATING TO BUSINESS OPERATIONS IN HIGH-RISK AND CONFLICT-AFFECTED AREAS

STANDARDS AND GUIDANCE	DESCRIPTION
International Alert, Conflict Sensitive Business Practices: Guidance for Extractive Industries (2005)	International Alert is a peace-building NGO working with civilians and other affected stakeholders in conflict areas. This Guidance is intended for companies in the extractive industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.
International Alert and Fafo, Red Flags: Liability Risks for Companies Operating in High-Risk Zones (2008)	The Red Flags address illicit business activities under international and national law. The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.
International Commission of Jurists, Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008)	This three volume report outlines the ICJ Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.
The Dodd-Frank Wall Street Reform and Consumer Protection Act, (Pub.L 111-203), 2010 (USA)	Section 1502 of the Act requires public and private companies to disclose the use of any conflict minerals in their products. This promotes greater transparency and dissuades companies from engaging in trade that may support regional conflicts.
International Committee of the Red Cross, Business and International Humanitarian Law (2006)	The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2013)	Guidance for companies in the mining sector on how businesses can respect human rights, enable transparent mineral supply chains, and avoid contributing to context-related conflict through their operations.

UN Global Compact, Doing Business While Advancing Peace and Development (2010)

This publication presents a number of case studies that illustrate how companies from different sectors are approaching challenges and contributing to development in conflict-prone or post-conflict environments.

UN Global Compact and Principles for Responsible Investment, Guidance on Responsible Business in Conflict-Affected and High-Risk Areas (2010)

This Guidance provides good practice examples for businesses operating in conflict-affected and high-risk areas. The Guidance is designed to assist companies in their implementation of the Global Compact Ten Principles in a variety of contexts, including countries, areas or regions.

The Voluntary Principles on Security and Human Rights and the Voluntary Principles on Security and Human Rights Implementation Guidance Tools (2012)

The Voluntary Principles on Security and Human Rights were established through a multi-stakeholder dialogue. The Principles both direct and serve as a reference guide for the extractive industries sector on the governance of security risk assessment and management, and private and public security arrangements. The Implementation Guidance Tools provide practical guidance on the implementation of the Voluntary Principles in operational contexts.



**EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI
ENGAGEMENT ON BUSINESS AND HUMAN RIGHTS IN HIGH-RISK
AND CONFLICT-AFFECTED AREAS**

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
The State uses revenues generated by business activities to fund armed conflict.	<p>Lobby the government to become a member of the Extractive Industries Transparency Initiative.</p> <p>Work with the companies to implement responsible supply chain management practices.</p>
A company acquires large tracts of land for development during a civil conflict in which many people have been displaced.	<p>Use the Food and Agriculture Organisation (FAO) Guidelines on Responsible Governance of Tenure (2012) to engage government and business actors on their duties and responsibilities regarding land management.</p> <p>Undertake an independent review of land title, use and compensation in the affected area, and communicate findings to the government, business and civil society.</p> <p>If needed, work with affected individuals and communities to challenge the land acquisition process in court.</p>
A company uses rare earth minerals sourced from conflict-affected areas in its products.	Use the OECD Due Diligence Guidance for Responsible Supply Chains to request the company to uphold the relevant due diligence standards relating to sourcing and supply chain management of rare earth minerals potentially coming from conflict-affected areas.
Private security guards employed by the company use excessive force to break-up community protests.	<p>Work with the company to ensure that relevant security standards are integrated in the company's procurement process, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Providers.</p> <p>Including ensuring that all hired private security personnel undergo background checks and training on appropriate use of force, and that the company has in place a monitoring system to review the conduct of private security guards.</p>

7.5 INDIGENOUS PEOPLES, BUSINESS AND HUMAN RIGHTS

In some countries, Indigenous Peoples are recognised formally under national law. In such cases, these groups may enjoy special protections and entitlements under national law, for example a claim to particular land areas. These provisions may translate into legal obligations for companies engaging with Indigenous Peoples. Alternatively, some countries have failed to implement or recognise Indigenous Peoples' rights under national law and consequently offer little protection to Indigenous Peoples' rights from the adverse impacts of business operations.

While Indigenous Peoples' rights can be impacted by any business activities, some industry sectors have been noted as being particularly likely to impact adversely on the rights of Indigenous Peoples, for example large footprint industries such as mining, oil & gas, dams, forestry, fisheries, agriculture and other large scale infrastructure projects.⁷³

EXAMPLES OF HOW BUSINESS ACTIVITIES CAN IMPACT ON THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

- **Rights to lands, territories and waters traditionally owned or used by Indigenous Peoples.** Where a mining project impacts on traditional lands, or restricts access to, or destroys sites of cultural heritage.

BOX 16. WHO ARE INDIGENOUS PEOPLES?

An estimated 300-400 million Indigenous Peoples live in all regions of the world. There is no set definition of what constitutes Indigenous Peoples but a range of characteristics have been outlined:⁷⁴

- Self-identification by a group as indigenous;
- A shared experience of oppression or colonisation;
- Historical continuity with a given region prior to colonisation or annexation;
- Attachment to particular lands, territories and natural resources;
- Distinct social, economic, and political systems;
- Distinct languages, spiritual traditions, culture, beliefs and knowledge;
- Non-dominant sectors of society; and
- A shared wish to maintain a distinctive shared identity.

- **Rights to an adequate standard of living, food, water and housing.** Where business activities require the resettlement of indigenous communities, impacting on livelihoods and income generation, or where business activities cause pollution and damage to the environment and water resources used to sustain livelihoods.
- **Labour rights.** Discriminatory employment practices, or where businesses do not support employment and skills development of local indigenous communities.
- **Consultation and free, prior and informed consent.** Where the consultation processes carried out by the State or companies regarding natural resources development do not meet the required standards as outlined by international human rights law.

KEY HUMAN RIGHTS LAWS RELEVANT TO BUSINESS INTERACTION WITH INDIGENOUS PEOPLES

Indigenous Peoples are entitled to all universal human rights, as well as additional human rights under international law, intended to preserve the distinctiveness of Indigenous Peoples as a group. These are recognised in a number of international legal instruments.⁷⁵ Two instruments in particular are of note are:

- The ILO Convention No.169 – Indigenous and Tribal Peoples Convention (1989); and
- The UN Declaration on the Rights of Indigenous Peoples (2007).

Notably, these two instruments recognise the inextricable linkages between Indigenous Peoples’ relationships to lands and territories, and their enjoyment of a wide range of human rights. The instruments also highlight the importance of consultation with Indigenous Peoples regarding decisions that affect them, including the requirement for free prior informed consent in some instances (see also Box 17, below).

BOX 17. FREE, PRIOR AND INFORMED CONSENT

The principle of free, prior and informed consent (FPIC) derives from the right to self-determination. FPIC is recognised under the UN Declaration on the Rights of Indigenous Peoples, which dictates that FPIC should apply to decisions regarding:

- Relocation from lands and territories (Article 10);
- Taking of cultural, intellectual, religious and spiritual property (Article 11);

- State adopting and implementing legislative or administrative measures that may affect Indigenous Peoples (Article 19);
- Development or damage of lands, territories and resources which Indigenous Peoples have traditionally owned or otherwise occupied and used (Article 28);
- Storage of toxic waste on Indigenous Peoples' lands (Article 29); and
- Approval of projects affecting lands or territories and other resources, particularly in connection with development, utilisation or exploitation of mineral, water or other resources (Article 32).

FPIC is also reflected in some national laws. It is recognised in the 2012 version of the IFC Performance Standards as applicable to certain circumstances (impacts on lands and natural resources subject to traditional ownership or under customary use; relocation from traditional lands; and critical cultural heritage).⁷⁶

There is no universally accepted definition of FPIC but the following elements have been noted:⁷⁷

- Free - without coercion, intimidation or manipulation;
- Prior - ensuring that consultation occurs well before project decisions are made and impacts occur; and allowing sufficient time for people to be involved in decision-making;
- Informed - based on timely, relevant and adequate information presented in an understandable, accessible and culturally-appropriate form; and
- Consent - there are effective decision-making processes in place to allow Indigenous Peoples to give or withhold their consent. Decision-making processes account for community preferences and decisions made are upheld.

According to the current United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, FPIC should be seen as a *process* to ensure mutual agreement in a dialogue where neither party imposes its will on the other. This includes ensuring the consultation process is mutually agreed upon and addresses imbalances of power between parties, including ensuring that Indigenous Peoples have timely, full and objective information about all aspects of the project; and the financial, technical and other assistance they need to participate in consultation.⁷⁸ The duty to consult rests with the State, which must either undertake or carefully monitor and oversee the consultation process.

INDIGENOUS PEOPLES' RIGHTS AND COMPANY DUE DILIGENCE

The United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples has identified five aspects of Indigenous Peoples' rights that are of particular relevance to company due diligence:⁷⁹

- 1. Recognition of Indigenous Peoples:** Companies should take steps to determine whether indigenous groups are present, and to recognise them as such even when the host-State has not;
- 2. Rights to lands, territories and natural resources:** Where Indigenous Peoples are present, the company should identify their claims to lands, territories and natural resources and respect them;
- 3. The State's duty to consult, and related corporate responsibilities:** States have the duty to consult with Indigenous Peoples concerning any activity that may impact on their rights. Companies should ensure that the State has duly consulted with Indigenous Peoples, as well as undertaking complementary ongoing consultations and engagement with Indigenous Peoples;
- 4. Impact studies and compensation measures:** Company impact studies, including environmental and/or social impact assessments, should include assessment and remediation of potential human rights impacts, including impacts on the rights of Indigenous Peoples; and

BOX 18. INDIGENOUS PEOPLES, NATURAL RESOURCES AND IMPACT BENEFIT AGREEMENTS

The specific attachment Indigenous Peoples have to their lands and resources is often viewed as a rich and diverse relationship, founded upon a deep spiritual connection to the environment, and frequently the dependence on the natural environment and its resources to sustain livelihoods. Companies are increasingly expected or required to ensure the early and on going engagement with Indigenous Peoples, as well as their participation in decision-making relating to natural resources development.

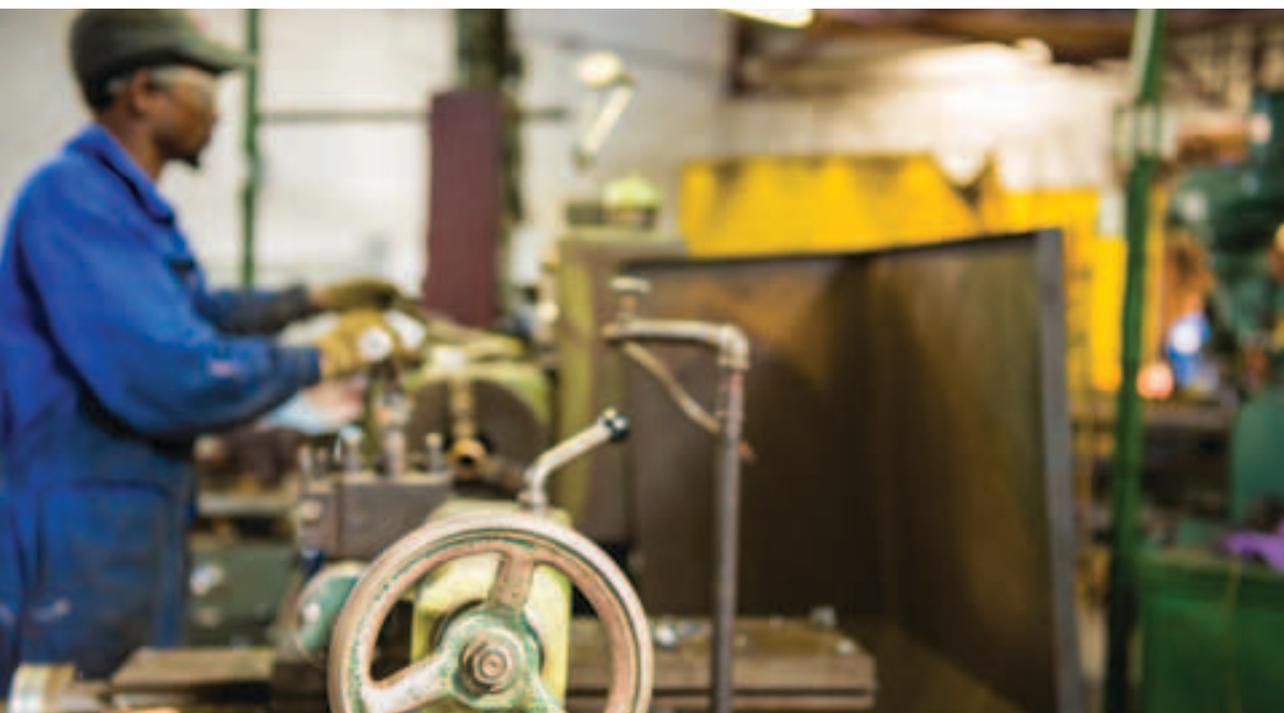
In some jurisdictions, formal land use agreements, such as impact and benefit agreements or indigenous land use agreements, can form an integral part of how companies and Indigenous Peoples interact. Such agreements can govern a variety of aspects, including land access and use, preservation of local cultural sites and traditions, benefit sharing, training and employment, and opportunities for economic development of local communities.

5. Benefit sharing: Indigenous Peoples are entitled to share in the benefits arising from activities on their traditional lands, including natural resource extraction. However, where States fail to provide such benefit sharing, companies should take steps to ensure this, for example through community development projects or job creation.

EXAMPLE STANDARDS AND GUIDANCE RELEVANT TO BUSINESS INTERACTION WITH INDIGENOUS PEOPLES' RIGHTS

STANDARDS AND GUIDANCE	DESCRIPTION
The Forest Peoples Programme (est. 1990)	Established in 1990, the Programme is dedicated to supporting Indigenous Forest Peoples protect their land rights and human rights. The Programme works directly with indigenous communities, assisting them in building their own capacities and exercising their human rights.
IFC Performance Standard 7: Indigenous Peoples (2012)	The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
International Council on Mining and Metals Good Practice Guide: Indigenous Peoples and Mining (2010)	The ICMM is the industry organisation for the mining and metals sector. The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
International Work Group for Indigenous Affairs (est. 1968)	IWGIA is an international human rights organisation specialising in Indigenous Peoples' rights. IWGIA works to further the understanding, knowledge, and engagement with the rights of of Indigenous Peoples through publications, advocacy programmes and support of local projects.
The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009)	The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.

<p>Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education)</p>	<p>The Foundation's main purpose is to work for the respect, protection and fulfilment of Indigenous Peoples' rights and the operationalisation of Indigenous Peoples' self-determined sustainable development. The Foundation offers a number of relevant resources on issues such as traditional knowledge and traditional livelihoods, biodiversity and climate change.</p>
<p>UN Permanent Forum on Indigenous Issues (UNPFII) (est. 2000)</p>	<p>The Forum was formed to advise the United Nations Economic and Social Council on a number of Indigenous Peoples' rights issues, such as economic and social development, culture, education, environment, health and human rights.</p>
<p>UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (est. 2001)</p>	<p>The Special Rapporteur mandate is to advise on and monitor the human rights situation of Indigenous Peoples. This includes country reports, promoting good practice, addressing relevant human rights violations and contributing to thematic study on topics related to Indigenous Peoples.</p>



EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON INDIGENOUS PEOPLES, BUSINESS AND HUMAN RIGHTS

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
The State delegates consultation processes with Indigenous Peoples to the private sector without monitoring or overseeing these processes.	Work with indigenous communities and their representative organisations to report any inadequacies in consultations and monitoring of consultations to the national government as well as internationally, for example through the Universal Periodic Review process.
Indigenous Peoples are not recognised under national law.	Lobby the government to formally recognise Indigenous Peoples and their rights in relevant laws and regulations.
A company does not employ local indigenous workers as many do not have the training required to take a job with the company.	Educate the company on the challenges faced by indigenous individuals in gaining skills for employment and the role of special measures to ensure non-discrimination. Support the company to consider ways of capacity and skills development of local indigenous workers to enable them to apply for positions at the company.
Company operations restrict local indigenous communities' access to cultural heritage sites situated on the land leased by the company.	Report the company practices to the relevant government body, for example, the ministry of lands or the government agency for non-discrimination. Engage the company to prompt it to review its impact assessments and land management policy to integrate cultural heritage considerations.

7.6 LAND AND FOOD RELATED BUSINESS AND HUMAN RIGHTS ISSUES

Where companies interfere with land ownership, access and usage, such activities often have impacts on the human rights of individuals and communities. For example, when a company leases land for agricultural development, this may have adverse impacts on the local community's subsistence farming practices, which in turn impacts upon peoples rights to an adequate standard of living and other inter-related human rights (education, health etc.). This illustrates the importance of recognising the inter-relatedness of human rights. As pointed out by the UN Committee on Economic, Social and Cultural Rights, for instance: "Accessibility to food means that vulnerable groups such as landless and impoverished may need

special attention ... A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.”⁸⁰

“ ... all members of society – ... as well as the private business sector – have responsibilities in the realisation of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities. The private business sector – national and transnational – should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the government and civil society.”

CESCR, General Comment No. 12, on the right to adequate food, para 20.

EXAMPLES OF HOW BUSINESS ACTIVITIES CAN IMPACT ADVERSELY ON HUMAN RIGHTS RELATING TO LAND AND FOOD

- **The right to property.** Where a company buys or leases land without undertaking adequate consultation with the formal and informal owners and users, and/or without paying adequate compensation.
- **The right to an adequate standard of living.** Where communities are resettled for a business development and the resettlement sites are on less arable lands, thereby impacting on communities’ ability to grow food and sustain their livelihoods.
- **The right to participate in cultural life.** Where a company interferes with or destroys sites that have cultural and spiritual significance.
- **The right to water and sanitation.** Where a company uses water, thereby depleting local water sources used by communities, or causes pollution to drinking water supplies.

“ The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions”. This includes the State’s duty to ensure that “legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies.”

CESCR, General Comment No. 7, on the right to adequate housing and forced evictions, para 8.

RESETTLEMENT AND HUMAN RIGHTS

Based on the right to property, people are not allowed to be arbitrarily deprived of their property, or moved by the State or other third parties from their property and lands without due process. Where individuals and communities are resettled by governments or companies for private sector development projects, a number of rights may be adversely impacted. Resettlement losses can occur through land acquisition, expropriation or other regulatory measures to obtain land.

Resettlement often brings particular human rights implications for those who are not legal land title holders, for example squatters or artisanal miners, as their land use and occupation may not be adequately recognised. Frequently, resettlement also has different impacts on women and men. Indigenous Peoples have distinct rights regarding resettlement in recognition of their unique relationships to lands and territories, which includes the requirement for the free prior and informed consent of Indigenous Peoples in any resettlement process (see also section 7.5, page 91).

The IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and the accompanying Guidance Note and Resettlement Handbook, are one source of guidance on land acquisition and involuntary resettlement. Resettlement is defined as including both physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood). Resettlement is defined as being involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement.⁸¹

The objectives of IFC Performance Standard 5 highlight the importance of:

- Avoiding and minimising adverse social and economic impacts from land acquisition or restrictions on land use, including through altering project plans and providing compensation;
- Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected; and
- The need to improve or restore the livelihoods and standards of living of displaced persons, including through the provision of adequate housing with security of tenure at resettlement sites.

Displaced persons include those who have no recognisable legal right or claim to the land or assets that they occupy or use. For displaced persons with land-based livelihoods, replacement land of equal value in terms of productive potential and locational advantages must be a priority in resettlement. Recognising that the government often plays a central role in land acquisition and resettlement processes, IFC Performance Standard 5 also notes private sector responsibilities under government-managed resettlement.

LAND-RELATED HUMAN RIGHTS IMPACTS AND GENDER

Land-related human rights issues frequently involve the right to non-discrimination. For example, where women and men have different formal and informal ownership and usage rights to land, they are likely to experience impacts differently. Often women do not hold land-title. This can have a range of implications where land is appropriated by the State or by companies. For instance, women may not be adequately consulted or may have unequal access to compensation payments. Where women have the main agricultural responsibilities, they may also bear a disproportionate share of the negative impacts associated with land appropriation and resettlement.

Women also tend to be overrepresented in groups that may have distinct vulnerabilities to adverse land related impacts, such as the landless, single-headed households or the very poor. Therefore, it is important to ensure equal rights for women and men regarding land related matters, including inheritance and ownership of land.

/// The Committee on Economic, Social and Cultural Rights notes that to ensure an adequate standard of living for women “requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.”

CESCR, General Comment No. 16, on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para 28.

EXAMPLE STANDARDS AND GUIDANCE RELEVANT TO LAND AND FOOD RELATED BUSINESS AND HUMAN RIGHTS ISSUES

STANDARDS AND GUIDANCE	DESCRIPTION
FAO Voluntary Guidelines on the Responsible Governance of Tenure (2012)	Developed by the Food and Agriculture Organisation of the UN (FAO), the Guidelines promote responsible governance of tenure of land, fisheries and forests by outlining the principles and internationally accepted standards for the responsible governance of tenure. The Guidelines inform States and non-government actors on relevant policies, strategies and activities.
IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and IFC Handbook for Preparing a Resettlement Action Plan (2002)	The IFC Performance Standards are contractually binding on certain projects receiving IFC finance. PS5 is accompanied by a Guidance Note and a Resettlement Handbook that gives detailed guidance on managing resettlement and associated impacts.

Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2010)

A joint initiative of UNCTAD, FAO, IFAD and the World Bank, these seven principles cover all types of investment in agriculture, including between principal investors and contract farmers. The Principles provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives, and individual investor contracts.

EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON LAND AND FOOD RELATED BUSINESS AND HUMAN RIGHTS ISSUES

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
Businesses buy land in an area where the land title registration system is unclear and many 'owners' of property do not hold title deeds.	<p>Work with local NGOs to support community capacity development initiatives on raising awareness of land rights and entitlements.</p> <p>Lobby government to update and maintain the land registration system.</p> <p>Look for best practice on addressing this issue in other jurisdictions and communicate any transferable findings to the government, businesses and local communities.</p>
To promote economic development, the government has recently leased large tracts of land to a company that was previously used by communities for subsistence living. These communities now have no means to sustain their livelihoods.	<p>Use the UN Guiding Principles and the FAO Voluntary Guidelines on the Responsible Governance of Tenure to engage government and business on their responsibilities to protect and respect the rights of local individuals and communities.</p> <p>Conduct a human rights-based policy review of the government's development plans and strategies and use findings to challenge the government's land leasing practices.</p>
A company resettles people without adequate compensation to lands less arable than their previous lands.	<p>Raise the issue with the government to ensure it duly monitors the company's resettlement process.</p> <p>Request the company to review the compensation scheme and align its resettlement standard and practice with international human rights norms and the IFC Performance Standard on Involuntary Resettlement.</p>

Company operations restrict local communities' access to cultural heritage sites.	<p>Conduct an investigation to establish whether the company is in compliance with cultural heritage legislation.</p> <p>Request the company to review its impact assessments and land management policy to integrate cultural heritage considerations.</p>
A company bound by the OECD Guidelines resettles communities without due consultation or due diligence.	<p>Assist communities to raise their concerns regarding the resettlement with the OECD National Contact Point in the home- or host-State.</p> <p>Raise the issue with the local embassy of the company's home-State.</p> <p>Lobby the government to convene a multi-stakeholder strategic-level impact assessment of human rights impacts of economic development laws, programmes and policies.</p>

7.7 BUSINESS AND HUMAN RIGHTS AND SUPPLY CHAINS

Globalisation has significantly changed the way business is conducted in the 21st century and is responsible for the dramatic rise in diverse business relationships operating across many different territories. Although these new and diverse relationships have provided exciting opportunities for companies and their stakeholders, they have equally created a wide range of related human rights impacts. For example, the dramatic increase in companies outsourcing certain operations to suppliers to countries in the global south has increased the risk of human rights abuses occurring within cross-border supply chains as some countries within the supply chain may have weak human rights governance or adherence to international labour standards.⁸²

The UN Guiding Principles note that companies can be involved with adverse human rights impacts either through their own activities or as a result of their business relationships. The UN Guiding Principles expect companies to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, including those that are directly linked to business operations, products or services, even if they have not contributed to those impacts (see also Chapter 5).

/// The term 'business relationship' includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services."

OECD Guidelines for Multinational Enterprises (2011).

EXAMPLES OF HUMAN RIGHTS IMPACTS ASSOCIATED WITH SUPPLY CHAINS

- **Labour rights.** Where suppliers or contractors have poor health and safety standards or conditions of work employ children in the production of their goods, or benefit from forced labour.
- **The right to health and environment-related rights.** Where suppliers or contractors cause pollution or environmental damage, adversely impacting on the right to food and potable water, the right to an adequate standard of living or the right to health of workers and/or communities.
- **Human rights impacts associated with bribery and corruption.** Where suppliers engage in activities that constitute bribery and corruption. This may give rise to complicity risks for a business, as well as contributing to adverse human rights related impacts where revenues or other benefits do not reach intended beneficiaries (e.g., taxes, tariffs and other sources of government revenues that would otherwise be used for healthcare programmes, housing, water or sanitation).

KEY HUMAN RIGHTS LAWS RELEVANT TO SUPPLY CHAINS, BUSINESS AND HUMAN RIGHTS

Supply chain activities have the potential to impact on virtually all human rights, with specific risks depending on factors such as the industry, location and the nature of the supply chain. Traditionally, supply chain due diligence has tended to focus on labour rights, but this is increasingly expanding into other areas in recognition that a range of human rights impacts may be found in the supply chain. It is therefore important that as part of their due diligence, businesses undertake a careful mapping of the supply chain to establish where the main human rights risks may be found and then implement systems and activities to prevent, monitor and remediate any identified human rights risks and impacts.

EXAMPLE STANDARDS AND GUIDANCE RELEVANT TO SUPPLY CHAINS, BUSINESS AND HUMAN RIGHTS

STANDARDS AND GUIDANCE	DESCRIPTION
<p>Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009)</p>	<p>The Ethical Trading Initiative is an alliance of different business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.</p>
<p>Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012)</p>	<p>The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships.</p>
<p>Portal for Responsible Supply Chain Management (est. 2008)</p>	<p>The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.</p>

EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON BUSINESS AND HUMAN RIGHTS AND SUPPLY CHAINS

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
A company supplier fails to provide a safe and healthy working environment for employees, which results in a number of work-related injuries.	<p>Establish a multi-stakeholder forum involving the company, industry bodies and suppliers to address health and safety.</p> <p>Educate the company on improving supply chain management in the area of health and safety, for example through including key suppliers in company health and safety training and forums.</p> <p>Engage with the government on improving government regulation and labour inspection procedures to ensure company compliance.</p>
Issues of discrimination against a particular ethnic minority have been found in a company's supply chain.	<p>Convene a training with the ILO country office on non-discrimination and core labour standards, targeting the suppliers in the company's supply chain.</p> <p>Use the UN Global Compact Guidance on Supply Chains to work with the company on addressing and improving non-discrimination provisions and practices in the supply chain through contractual clauses and monitoring.</p>
The State's immigration policies facilitate the employment of migrant workers in circumstances where their working conditions will be of a lower standard than that permitted for local workers.	Work with civil society organisations to raise concerns with government regarding the impacts of the immigration policy on migrant workers; and with multilateral institutions to consider relevant political issues at the international/regional level.

7.8 WORKING CONDITIONS AND HUMAN RIGHTS

Individuals have a human right to just and favourable conditions of work. This includes aspects such as: working hours, terms of employment, rest periods and leave, wages, freedom of association and collective bargaining, non-discrimination and equality in the workplace, and health and safety. Working conditions also contribute, both positively and negatively, to the realisation of development goals within countries.

In addition to direct company employees, contracted workers and other workers, human rights impacts associated with inappropriate working conditions may affect other groups, including children and dependents of workers. In relation to discrimination, inappropriate working conditions may affect vulnerable individuals and groups, for example, ethnic or religious minorities, persons with disabilities, gender minorities and sexual minorities.

EXAMPLES OF HOW BUSINESS ACTIVITIES CAN IMPACT ON LABOUR-RELATED HUMAN RIGHTS

- **Right to just and favourable conditions of work.** Where a company pays a minimum wage that does not equate to a living wage; imposes excessive working hours; or does not allow workers sufficient breaks during their shift, rest during the week or holiday periods.
- **Right to freedom of association and right to collective bargaining.** Where a company prevents workers from joining a trade union of their choice, does not recognise the rights of union representatives to participate in collective bargaining processes, or discriminates against workers who are unionised.
- **Right to freedom from slavery.** Where workers' identity documents are retained, or where workers are physically restricted from leaving work premises during working hours.

BOX 19. THE INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation (ILO) is the global standard-setting body in the field of labour rights, which concern the human rights of workers. ILO conventions are international treaties, which when ratified at the national level become binding on governments, which must then adopt legislation to implement them. The ILO plays a role by helping to promote dialogue between governments, workers' and employers' organisations by providing assistance and tools to better understand the labour dimension of business respect for human rights.

The ILO field programmes are one of the main means of action to support constituents locally in promoting decent conditions of work for all. The ILO has offices in countries in: Africa, the Americas, Arab States, Asia and the Pacific and in Europe and Central Asia.

The ILO also has a Helpdesk for Business on International Labor Standards, which is a unit within the ILO system specifically charged with supporting businesses in their efforts to meet international labor standards.

- **Right to non-discrimination.** Where a company does not hire workers from a particular tribe or of a particular ethnic origin, or where company facilities do not accommodate persons with physical disabilities.
- **Rights to health and life, liberty and security of person.** Where a company does not uphold adequate health and safety standards, exposing workers to hazardous and dangerous conditions, causing harm to health, injury or death.

KEY HUMAN RIGHTS LAWS ON LABOUR RIGHTS

Rights relating to work and working conditions are covered in the Universal Declaration of Human Rights (UDHR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, labour rights are comprehensively outlined in the conventions, recommendations, standards and principles of the International Labour Organisation (ILO) (see also Box 19, page 106).

The ILO's Governing Body has identified eight conventions as covering subjects that are considered as fundamental principles and rights at work:

- Freedom of Association and Protection of the Right to Organise, ILO Convention No.87 (1948);
- Right to Organise and Collective Bargaining, ILO Convention No.98 (1949);
- Forced Labour, ILO Convention No.29 (1930);
- Abolition of Forced Labour, ILO Convention No.105 (1957);
- Minimum Age, ILO Convention No.138 (1973);
- Worst Forms of Child Labour, ILO Convention No.182 (1999);
- Equal Remuneration, ILO Convention No.100 (1951); and
- Discrimination (Employment and Occupation), ILO Convention No.111 (1958).

The rights outlined in these eight Conventions comprise the [ILO's Declaration on Fundamental Principles and Rights at Work \(1998\)](#), which is explicitly noted in the UN Guiding Principles as forming part of the baseline of human rights that businesses are expected to respect.

Also relevant is the [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#), which contains recommendations for both governments and companies to maximise the positive contribution companies can make to socio-economic development.

Aspects covered by other ILO conventions include: protection of wages, health and safety provisions, working hours and night work, among others. Rights relating to work and working conditions are also reflected in a number of regional conventions, for example, the European Convention on the Legal Status of Migrant Workers, the African Charter on Human and Peoples’ Rights, and the American Convention on Human Rights.

EXAMPLE STANDARDS AND GUIDANCE RELATING TO LABOUR RIGHTS, BUSINESS AND HUMAN RIGHTS

STANDARDS AND GUIDANCE	DESCRIPTION
IFC Performance Standard 2: Labour and Working Conditions (2012)	IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers.
International Labour Organisation	The International Labour Organisation (ILO) is the UN agency responsible for preparing and overseeing international labour standards. The mission and objectives of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
OECD Guidelines for Multinational Enterprises (2011)	The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO.

EXAMPLE SCENARIOS AND OPPORTUNITIES FOR NHRI ENGAGEMENT ON LABOUR RIGHTS, BUSINESS AND HUMAN RIGHTS

SCENARIO	OPPORTUNITIES FOR NHRI ACTIONS
Public sector employment policies fail to provide equal advancement opportunities to employees with disabilities.	<p>Make concrete recommendations to government on changes to the policy to ensure non-discrimination and equal opportunities are reflected.</p> <p>Undertake public awareness raising and education initiatives to ensure widespread understanding of equality in the workplace and the challenges faced by employees with physical and/or mental disabilities.</p>
When considering employee progression to the most senior levels, it is assumed that indigenous workers will be unwilling to work beyond normal business hours due to cultural commitments.	Work with trade unions and the indigenous workers affected to raise this issue with the company as a matter of discrimination.
A garment company contracts seamstresses on a very low price-per-piece basis with the effect that they must work unreasonably long hours to make a living wage.	Convene a multi-stakeholder forum with business, relevant business associations and government on the importance of both a living wage and adequate rest periods and leave, with a view to establishing appropriate standards to guide payment of piece workers.
A temporary or contracted worker has made a complaint regarding working conditions. This is taken into account when the company, which is headquartered in an OECD country, considers extending or renewing the worker's contract.	<p>Assist the worker to raise a complaint regarding this practice with the local National Contact Point for the OECD Guidelines.</p> <p>Advise the company to revise its human resources practices so that consideration of contract extensions/renewals do not factor in whether a worker has complained about, or been critical of, working conditions.</p>

8. INTERNATIONAL ACTORS AND INITIATIVES ON BUSINESS AND HUMAN RIGHTS

This chapter introduces some of the key international actors and initiatives on business and human rights.



AFTER READING THROUGH THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THE FOLLOWING KEY QUESTIONS:

- What is the mandate and role of the UN Working Group on Business and Human Rights?
- How does the Office of the High Commissioner for Human Rights engage on business and human rights?
- What is the UN Global Compact?
- What is the role of the International Finance Corporation in business and human rights?
- How does the International Labour Organisation engage on business and human rights?

8.1 UNITED NATIONS WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

The UN Working Group on Business and Human Rights is requested to undertake a range of activities under its mandate:⁸³

- Promote the effective and comprehensive dissemination and implementation of the UN Guiding Principles on Business and Human Rights;
- Identify, exchange and promote good practices and lessons learned on the implementation of the UN Guiding Principles;
- Provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as advice for the development of domestic legislation;
- Conduct country visits;
- Explore options for enhancing access to effective remedies;
- Integrate a gender perspective and give special attention to persons living in vulnerable situations;
- Work in close cooperation with other relevant international bodies and regional human rights organisations;

- Develop a regular dialogue with governments, as well as transnational corporations and other business enterprises, national human rights institutions, representatives of Indigenous Peoples, civil society organisations and other regional and sub-regional international organisations;
- Guide the work of the Forum on Business and Human Rights; and
- Report annually to the Human Rights Council and the General Assembly.

In carrying out this mandate, the UN Working Group is tasked to consult widely with a range of stakeholders, including through an annual Forum open to the participation of States, UN mechanisms, business enterprises and associations, and civil society, to discuss trends and challenges in the implementation of the UN Guiding Principles and promote dialogue and cooperation on issues relating to business and human rights.

UN Working Group on Business and Human Rights website: <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

8.2 UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

OHCHR's work on the issue of business and human rights focuses on the following key areas:

- Advocacy by the High Commissioner for both the development of human rights standards applicable to the business sector as well as the implementation of voluntary initiatives towards corporate social responsibility (CSR);
- Leading the business and human rights agenda within the United Nations system, and, in collaboration with the UN Working Group, providing guidance on interpretation of the UN Guiding Principles;
- Support to the Working Group on the issue of business and human rights; and
- Active involvement in the UN Global Compact, including through contributing to developing and publishing tools for companies on how to understand and implement the human rights principles of the UN Global Compact.

Support and outreach to NHRIs is also an integral component of the role of OHCHR, which creates a valuable link between the UN and NHRIs in the business and human rights space.

OHCHR website on Business and Human Rights: <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

8.3 THE UNITED NATIONS GLOBAL COMPACT

The UN Global Compact (UNGC) is the UN's corporate responsibility initiative. It was launched by the UN Secretary-General in 2000 and is aimed at getting business leaders to voluntarily promote and apply within their business activities 10 principles relating to human rights, labour, environment and anti-corruption.

The two UNGC UN principles on human rights are:

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. Businesses should make sure that they are not complicit in human rights abuses.

Businesses joining the UNGC are expected to integrate the 10 principles in governance and decision-making, as well as publicly communicating on progress of this implementation. Non-business entities, such as civil society organisations, can also participate actively in the Global Compact through: UNGC Local Networks, joining a particular UNGC workstream or activity, or providing commentary to companies on Communications on Progress.

Implementation and promotion of the UNGC occurs through a range of activities, including: guidance material for business actors; online and face-to-face sharing of best practice and dilemmas around human business and business; contribution to thematic initiatives such as the Women's Empowerment Principles or the Children's Rights and Business Principles; and The Global Business Initiative on Human Rights.

The UNGC is in part brought into practice through Local Networks: clusters of participants who come together to advance the UNGC within a particular geographic context. Local Networks can facilitate the progress of companies in implementing the principles as well as creating opportunities for multi-stakeholder engagement and collective action around the UNGC.

NHRIs and UNGC Local Networks share the common aim of helping businesses to understand and give effect to their human rights responsibilities. The ICC Working Group has recognised this shared goal as a strategic starting point for dialogue and collaboration between NHRIs and UNGCs, in particular through sharing best practice and information with the view of enhanced strategic alignment.

UN Global Compact website: <http://www.unglobalcompact.org/>

8.4 INTERNATIONAL FINANCE CORPORATION

The International Finance Corporation (IFC) is a member of the World Bank Group and provides a range of financial services including investment, advisory and asset management. The IFC has a Sustainability Framework that applies to all investment and advisory clients.

The Performance Standards of the Sustainability Framework define clients' roles and responsibilities for managing their projects and the requirements for receiving and retaining IFC support. These standards include requirements to disclose information and relate to a number of human rights aspects, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Labor and Working Conditions (PS2), and Indigenous Peoples (PS7). The standards were revised in 2011 to respond to changes and developments and now include enhanced coverage of climate change and human rights. The revised standards show alignment with the UN Guiding Principles referencing the corporate responsibility to respect human rights and due diligence. The standards are accompanied by Guidance Notes and Handbooks that elaborate the content of the standards. Regional development banks have similar frameworks.

The IFC and Multilateral Investment Guarantee Agency (MIGA) also have an associated accountability mechanism, the Compliance Advisor/Ombudsman (CAO), who is responsible for handling complaints from project-affected communities. The CAO's work encompasses conflict assessment and dispute resolution, compliance auditing, and advice to the IFC and MIGA on systemic social and environmental issues.

IFC Performance Standards website: http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/IFC+Sustainability/Sustainability+Framework

Compliance Advisor/Ombudsman website: <http://www.cao-ombudsman.org/>

8.5 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The Organisation for Economic Co-operation and Development (OECD) was established for governments to work together to promote policies that will improve economic and social wellbeing.

The OECD Guidelines for Multinational Enterprises, applicable to enterprises in OECD Member States (and some others), require companies to respect human rights, including through due diligence. The OECD Guidelines constitute recommendations addressed by OECD Member States to multinational enterprises operating in or from adhering countries. The OECD Guidelines cover: human rights, publication of information, employment and professional relations, environment, science and technology, competition, fiscal systems, anti-corruption, and consumer protection.

The Guidelines are supported by National Contact Points (NCPs), which are mandated to consider 'specific instances', for example, questions and allegations from organisations and private citizens regarding violations of the OECD Guidelines by a businesses. All OECD Guidelines adhering countries are required to have in place a NCP, although the form and governance of NCPs varies depending on the country.

The OECD Guidelines were updated in 2011 and include increased coverage of human rights and alignment with the UN Guiding Principles requiring companies to show respect for human rights and exercise human rights due diligence.

The OECD also has guidance and initiatives on specific human rights-related topics. For example, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas provides management recommendations for responsible supply chain management of companies potentially sourcing minerals or metals from conflict-affected and high-risk areas.

OECD Guidelines for Multinational Enterprises website: <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/>

OECD National Contact Points website: <http://www.oecd.org/corporate/mne/ncps.htm>

8.6 INTERNATIONAL LABOUR ORGANISATION

The International Labour Organisation (ILO) is the international organisation responsible for drawing up and overseeing international labour standards. It is a tripartite United Nations agency that includes representatives of governments, employers and workers to jointly shape policies and programmes promoting decent work for all (see also Box 19, page 106).

ILO programmes and projects encompass the full range of employment related rights.

ILO website: <http://www.ilo.org/global/lang-en/index.htm>

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