

**A Response to the Guiding Principles for the Implementation of the United Nations
'Protect, Respect and Remedy' Framework**

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Dear Professor Ruggie

The Centre for Human Rights in Practice at the University of Warwick welcomes the Guiding Principles. They provide much needed detail for the Framework in terms of setting out what the State's duty to protect, the corporate duty to respect and the nature of effective remedies entail. We also welcome the rich debate which has ensued around the content of guidelines. We very much hope that consensus can be achieved on key issues raised by all the actors who are engaged in trying to improve the human rights conduct of corporate actors. We are sure that this will enhance and enrich the final draft.

This brief submission attempts to add to the debate by focusing specifically on two issues which relate directly to the work of our Centre over the last few years.

The first issue concerns enhancing understanding of the potential human rights violations that can be caused by corporate actors. The Guiding Principles rightly put a great deal of emphasis on the 'due diligence' measures that corporate actors should undertake (Principles 15-19). Due diligence is necessary in order to identify (potential) human rights violations that might occur and then 'prevent or mitigate any adverse human rights impacts'.

Much recent work in this field has focused on 'human rights impact assessments' (HRIAs) in order to fulfil this obligation. The human rights impacts of a company's policies or practices are complex and multifaceted. Therefore companies must undertake thorough and robust 'research' in order to fully identify the nature and extent of potential impacts and the requisite responses. We agree that a properly constructed HRIA process can have great benefits for the protection and promotion of human rights. Our Centre has worked extensively on methodologies for human rights impact assessments (see <http://www2.warwick.ac.uk/fac/soc/law/chrp/projectss/humanrightsimpactassessments/>)

Our research suggests that current approaches to HRIAs are extremely variable in quality. The Guiding Principles would therefore benefit, at the very least, from referencing a more detailed set of guidance about what constitutes a valid and legitimate HRIA process. There is also a need for mechanisms to differentiate good from bad practice in the conduct of HRIAs by corporate actors (we return to this latter issue below).

We would also argue that the State has a strong role to play when it comes to 'due diligence' and that this does not currently feature in the Guiding Principles. In some areas, it will be clear what the State should be doing to promote human rights (e.g. a new corporate manslaughter law – principle 5). But in other areas, the State will have to

undertake or commission research in order to understand the potential human rights impacts of corporate actions and policies. For instance, when States sign up to international trade law or investment law obligations, there are a variety of potential human rights impacts caused by corporate actors (e.g. agricultural liberalisation on domestic farmers, intellectual property protection on access to medicines). But the precise impact of any actual agreement on any particular State requires detailed analysis. There is increasing activity by UN actors, non-governmental organisations and States themselves to create methodologies for assessing such impacts. This would be reinforced by the Special Representative making recommendations that States should undertake such ‘due diligence’.

The second issue goes to the heart of the purpose of the Framework. Put simply - getting more corporate actors to take their human rights responsibilities more seriously. We would agree with your conclusion that this cannot be done through the creation of a new, single legally enforceable framework. Rather, your Framework can most usefully contribute by working to enhance the existing patchwork of initiatives, standards and practices that already operate in this field globally. In a number of respects, the Principles make important contribution in this respect – e.g. in relation to ‘remedies’, they set out a series of standards to which grievance mechanisms must adhere if they are to be considered legitimate.

But the Principles are currently less helpful when it comes to the soft law initiatives and voluntary mechanisms which litter the landscape of corporate human rights conduct (including the HRIAs discussed above). You have previously identified the problem with many of these initiatives – there is no way of properly differentiating good from bad practice, laggards from leaders. Our own research leads us to the same conclusions. Very rarely does evaluation and differentiation happen effectively – often because those monitoring performance are also attempting to encourage participation in such mechanisms. If ‘soft’ mechanisms are ever to be part of the solution to corporate human rights conduct, then effectively differentiating performance must be tackled.

The Principles themselves cannot be expected to differentiate conduct. This will come from an evaluation of the individual human rights performance of particular companies – but they can lay the ground work. They can address the systemic problem that there is a dearth of actors effectively attempting such a differentiation. For instance the principles could push for the establishment of demonstrably independent and effective bodies to monitor the respective human rights performance of MNCs in respect of soft law mechanisms and to report openly and robustly on performance.

We wish you every success in drafting the final version of the Principles and look forward to seeing the results of your labour.

Yours sincerely

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