

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

GICJ's Report on its Participation in the 7th Forum on Business and Human Rights

Geneva, 26 – 28 November 2018

Implementing
the United Nations
'Protect, Respect and
Remedy' Framework



www.gicj.org

Postal address: P.O. Box: GICJ 598 CH-1214 Vernier, Geneva – Switzerland Email: info@gicj.org

Tel: +41 22 788 19 71 Mobile: +41795365866 Office Address: 150 Route de Ferney, CH 1211

Geneva 2 – Switzerland



UNITED NATIONS
HUMAN RIGHTS

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Between 26 and 28 November 2018 the United Nations Office in Geneva hosted the 7th Annual Forum on Business and Human Rights (Forum) with this year's central theme being 'Business respect for human rights – building on what works.' The Forum is the world's largest annual gathering on business and human rights with more than 2,000 participants from government, business, community groups and civil society, law firms, investor organisations, UN bodies, national human rights institutions, trade unions, academia and the media. Over three days, participants take part in 60+ panel discussions on topics that relate to the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), as well as current business-related human rights issues. The Forum is the foremost event to network, share experiences and learn about the latest initiatives to promote corporate respect for human rights.

Implementing
the United Nations
"Protect, Respect and
Remedy" Framework

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Table of Contents

Background	3
What is corporate human rights due diligence?	4
Description of this year's Forum	5
Summaries of the sessions	6
Conversation with the UN Working Group on Business and Human Rights	6
Introduction to the UN Guiding Principles on Business and Human Rights	6
Labour Rights and Human Rights Due Diligence.....	6
Are States making progress on the UN Guiding Principles on Business and Human Rights? Challenges, innovations and lessons learned from implementation.	7
How can Climate Actions respect rights & contribute to peacebuilding in the transition to a green economy?	9
Building coherence on essential elements of human rights due diligence	10
Human Rights Due Diligence Approaches for Safeguarding Migrant Workers.....	10
Crowd-drafting: Designing a Human Rights-compatible International Investment Agreement	11
Safeguarding Human Rights Defenders: New Efforts and Tackling Growing Threats	12
Trends and Challenges in Promoting Business Respect for Human Rights in Africa	13
Due Diligence and Remedy: Is one possible without the other?	13
Trends and Challenges in Promoting Business Respect for Human Rights in 'Western Europe and Others' Region	14
Developing a Gender Lens to Business and Human Rights	14
Elements of effective human rights due diligence regulation: lessons from legal developments.....	15
What Do 'Protect, Respect, Remedy' Mean in Conflict Contexts?	16
Accountability and Remedy: Human Rights Due Diligence and Corporate Legal Liability	16
Leading by Example: Using Government Trade Promotion and Development Finance as Levers for Human Rights Due Diligence	17

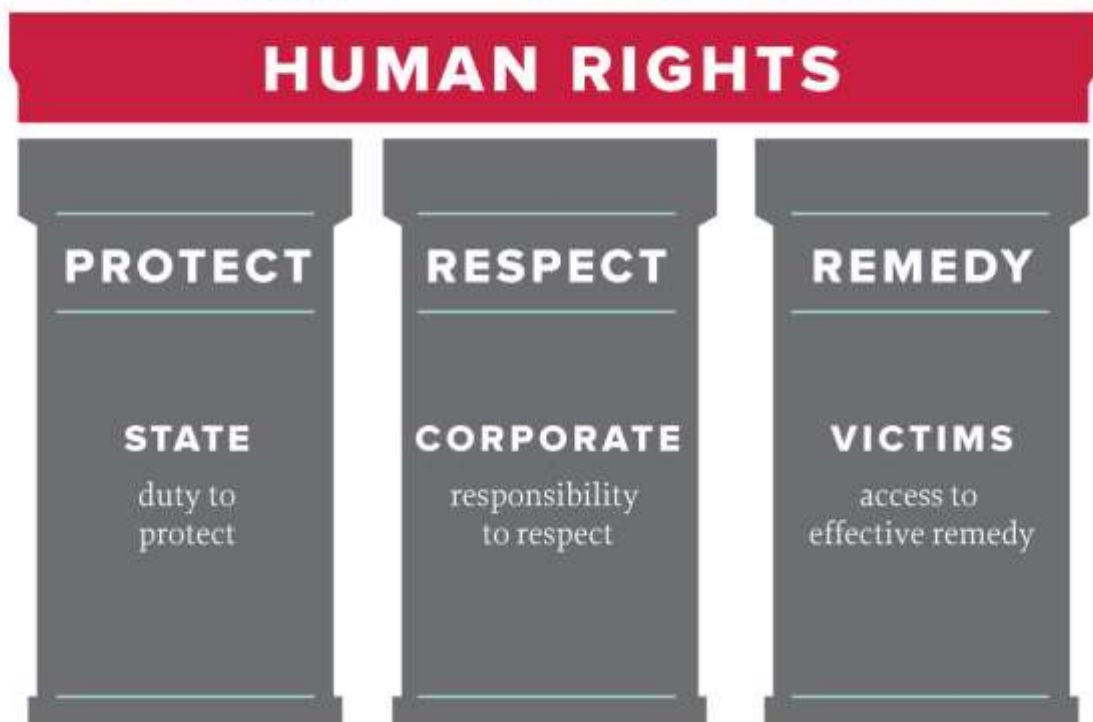
Background

The UN Human Rights Council established the Forum in 2011 to serve as a global platform for stakeholders to 'discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights.' It is guided and chaired by the [Working Group on Business and Human Rights](#) (WG), as per Human Rights Council resolutions 17/4, 26/22 and 35/7. The WG is composed of five independent experts, of balanced geographical representation, and is currently chaired by Mr. Dante Pesce from Chile.

In 2011 the UNGPs provided the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and currently they continue to provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights. They comprise three pillars by recognising

- the States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms (thus both negative and positive obligations);
- the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- the need for rights and obligations to be matched to appropriate and effective remedies when breached (procedural limb).

THREE PILLARS of the UN GUIDING PRINCIPLES



The UNGPs clarify that all business enterprises have an independent responsibility to respect human rights, and that in order to do so they are required to exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights.

Apart from the WG which guides the work of the annual Forum on Business and Human Rights, other bodies are tasked with the agenda of business and human rights, for example the Office of the UN High Commissioner for Human Rights (OHCHR). Since 2014, the OHCHR has been conducting a major project, entitled the *Accountability and Remedy Project*, aimed at enhancing accountability and access to remedy in cases of business involvement in serious human rights abuse. The Project, which has received multiple mandates from the Human Rights Council (Resolutions 26/22, 32/10 and 38/13), aims to deliver credible, workable guidance to States to enable more consistent implementation of the UN Guiding Principles on Business and Human Rights in the area of access to remedy. There are currently three phases of the Project, two of which have been completed:

- **ARP I:** Enhancing effectiveness of judicial mechanisms in cases of business-related human rights abuse
- **ARP II:** Enhancing effectiveness of State-based non-judicial mechanisms in cases of business-related human rights abuse
- **ARP III:** Enhancing effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse.

Besides OHCHR, other organisations have adopted instruments related to business and human rights, such as the Organisation for Economic Cooperation and Development (OECD) and its 2011 *Guidelines for Multinational Enterprises* (OECD MNE Guidelines) and more recently its 2018 *Due Diligence Guidance for Responsible Business Conduct* (OECD DD Guidance), the International Labour Organisation and its revised 2017 *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (ILO MNE Declaration), and others; all with the aim of developing tools and guidelines for companies and other relevant stakeholders to integrate human rights into the world of business.

This year's Forum on Business and Human Rights took place in the aftermath of the submission of a report by the WG to the UN General Assembly. In its report, the WG highlighted key features of human rights due diligence and why it matters; gaps and challenges in current business and Government practice; emerging good practices; and how key stakeholders — States and the investment community, in particular — can contribute to the scaling-up of effective human rights due diligence.

What is corporate human rights due diligence?

Human rights due diligence (HRDD) is a way for enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved. It involves four core components:

- Identifying and assessing actual or potential adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact;
- Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working;
- Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

Enterprises should identify and assess risks by geographic context, sector and business relationships throughout own activities (both HQ and subsidiaries) and the value chain.

The prevention of adverse impacts on people is the main purpose of human rights due diligence. It concerns risks to people, not risks to business. It should be ongoing, as the risks to human rights may change over time; and be informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations. Risks to human rights defenders and other critical voices need to be considered.

Description of this year's Forum



Under the theme *'Business respect for human rights – building on what works'*, this year's Forum focused on the second pillar of the Guiding Principles: the corporate responsibility to respect human rights, and in particular the requirement that companies exercise human rights due diligence to prevent adverse impacts on people.

The Forum programme looked at emerging practices in different sectors and across value chains, and what human rights due diligence implies in relation to specific human rights risks and impacts. This included sessions focused on groups at particular risk, 'hot' topics such as the connection between human rights due diligence and artificial intelligence, automation, block chain technology, the role of tech companies in society, civic freedoms and human rights defenders, climate justice and transition to a green economy, responsible tax conduct, corporate engagement on the SDGs, and business in conflict areas. Sessions explored good practice elements of stakeholder engagement, meaningful disclosure on human rights risks and evaluation of corporate respect for human rights in practice.

The programme also included discussions on how actors such as investors and others in the investment community (benchmarks, ranking initiatives and ESG analysts) as well as business lawyers can be levers for greater progress in making human rights due diligence part of standard business practice.

The Forum not only addressed corporate responsibility to respect human rights, but also 'government action' and how governments are performing in implementing the Guiding Principles. Forum sessions looked at how States can incentivize corporate human rights due diligence, through law and policy, and through leading by example in their own roles as economic actors.

As in all Forums, all three pillars of the Guiding Principles were covered (State duty to protect, corporate responsibility to respect and access to remedy), and the programme included sessions that explored ways to overcome gaps in realizing access to remedy for victims of business-related human rights impacts.

Opening remarks were given by the [UN High Commissioner for Human Rights Michelle Bachelet](#) and the [Chairperson of the Working Group on Business and Human Rights Dante Pesce](#). The Forum hosted 200+ speakers.

Summaries of the sessions

Conversation with the UN Working Group on Business and Human Rights

Monday, 26 Nov 2018, 08:00, Room XXI

This session was conducted by the chair and members of the WG to provide an overview of this year's forum and address overarching questions about the WG's activities. A key issue was its position on development of a binding instrument on business and human rights.

Overall, the forum is focused on Pillar 2 (business responsibilities) of the UNGPs. Regarding the work of an Inter-Governmental Working Group (IGWG) to develop a binding instrument on transnational corporations and human rights, the main concern of the WG was to ensure consistency with the UNGPs and participate constructively with the IGWG. The WG also works with the various treaty bodies to promote consistency with the UNGPs. Importantly, the WG has three feedback sessions per year to help identify major issues and prioritize work that will help elaborate and clarify the General Principles. Businesses, NGOs and governments are encouraged to participate and identify gaps the practice of businesses regarding human rights where the WG can make a difference.

Introduction to the UN Guiding Principles on Business and Human Rights

Monday, 26 Nov 2018, 09:30, Room XXI

This session reviewed the history and basic content of the UNGPs. It was conducted by Ms. Lene Wendland who has led the issue of business and human rights in the OHCHR for the past 15 years.

The session was primarily aimed at first-time attendees to the forum or those who were not familiar with the UNGPs. The main objective was to provide an overview of the origin and substance of the UNGPs to allow the attendees to better understand the background and foundation of the discussions that will take place during the forum.

The UNGPs are organized into three main pillars that reflect a *'protect, respect, and remedy'* framework: 1. State duty to protect human rights, 2. Corporate responsibility to respect human rights, and 3. Access to remedy for violations of human rights. A key message was that the UNGPs are meant to apply to all actors, both state and business. The principles were constructed in such a way that they do not contain any new legal obligations for states, but rather they elaborate on existing obligations and allow for new legal developments (e.g. new or stronger obligations adopted through other mechanisms).

Labour Rights and Human Rights Due Diligence

Monday, 26 Nov 2018, 13:30, Room XXI

The objectives set for this session included facilitating exchange of experiences on how corporate human rights due diligence processes can help enterprises to identify, prevent, mitigate and account for adverse labour rights impacts, including the fundamental principles and rights at work, working

conditions, OSH, hours of work, wages, etc. Furthermore, it aimed at providing examples of meaningful consultation with potentially affected groups and other relevant stakeholders, and the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue in this process.

In her presentation *Dr. Stefanie Freyberg*, German Federal Ministry of Labour and Social Affairs, first made general initial remarks about the 2017 revised text of the ILO MNE Declaration. She highlighted the tripartite character of the declaration and recognised that the revision had been necessary to achieve consistency with other international frameworks, to lay out international labour standards in detail, to provide clear orientation for enterprises on how to work with risk management and to clearly describe duties of governments, states and enterprises. She continued with domestic experience with the NAP in Germany which serves to implement the UNGPs. Its goal is to achieve a status quo in which at least 50 % of all enterprises in Germany with more than 500 employees incorporate human rights and due diligence into their conduct by 2020. In this connection, the German Government has been developing supporting measures for companies that include the launching of sector dialogues, focusing on specific sectors with human rights challenges; the creation of a help desk - National Agency for Business and Economic Development - which serves as a contact point for companies and provides initial guidance regarding the requirements under the NAP; and the functioning of the ILO Help Desk supported by the German Government. *Mr. Roberto Suarez Santos*, SG of the International Organisation of Employers (IOE), considers the delivering on the practical level to be of utmost importance. The essential idea is to protect not only labour rights but also employer rights and thus find a right balance. He mentioned that freedom of association is not respected in some countries, such as Algeria, Venezuela and Togo.

Mr. Rob Johnston, ASG of the International Transport Workers' Federation (ITF), pointed out that the same effort must be put into implementation of minimum standards as had been put into negotiation of the text. In that respect the ITF has deployed 150 inspectors worldwide who enforce the agreed rules and who have so far conducted more than 850 examinations across the world. The ITF has also been working with unions in Thailand on the improvement of labour standards in the fisheries sector. *Ms. Elaine McKay*, Director of Social Programs at Japan Tobacco International (JTI), talked about child labour. To fight it, the JTI introduced a programme which aims to bring children back into the education system where they belong and to make a clear distinction between 'child labour' and 'child work'. In this regard, it has been of utmost importance to work with trade unions, international organisations and ILO, with a crucial focus on the community level, especially parents themselves.

Are States Making Progress on the UN Guiding Principles on Business and Human Rights? Challenges, Innovations and Lessons Learned from Implementation.

Monday, 26 Nov 2018, 15:00, Room XX

This double session provided an opportunity for States to share updates on progress in implementing the UNGPs and for all relevant stakeholders to engage in open dialogue on ways forward. States were invited to share information about regulatory and policy developments to provide guidance, incentives and/or requirements for business enterprises to carry out HRDD in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts across operations and value chains. Furthermore, they were invited to provide updates on national action plans (NAPs) on business and human rights (in line with HRC res. 26/22, paragraph 4), including assessments of impact of the implementation of existing plans.

Danish Institute for Human Rights conducted an analysis on NAPs, according to which 21 states have developed NAPs, now also including Slovenia, which brings the number to 22. 11 more are in the process, and non-state initiatives are led in at least 15 states. In terms of process of development of NAPs, all states had held events, involved business and civil society actors (8 states had taken specific measures to involve persons with disabilities and indigenous people). In terms of the content of NAPs, the majority of them follow the UNGPs. Migrant workers, women, persons with disabilities and the indigenous people received less attention. Full analysis available at www.globalnaps.org.

Thailand welcomed the WG's recent visit and underlined the importance of multi-stakeholder approach, capacity building, training, monitoring and international cooperation. Its NAP comprises four priority areas (labour, natural resources, human rights defenders, cross border investment) and will soon come into effect (aspiration for 2019) which may make Thailand the first Asian country to have a national action plan. **Chile** already published its NAP in August 2018, making a roadmap for the implementation of the UNGPs and comprising 158 commitments in respect of 17 institutions and businesses with the State being the main guarantor of human rights. **France** had made the obligation of HRDD mandatory in its NAP. New laws that are fully aligned with the UNGPs and OECD guidelines were adopted (for example, the French Law on 'vigilance') aiming at effective implementation of HRDD; it is innovative and includes environmental issues. There are also national contact points which help to explain the standards, provide a platform for dialogue and serve as a tool for alternative dispute settlement. Complementarity between hard law and soft law was highlighted. **Liberia** struggles with major legislative gaps in protection of workers, policy coherence to promote HRDD and good governance. In 2013 the Government committed itself to a five-year long NAP that supports initiatives and policies for incorporation of business and human rights standards, and responsibility for enterprises through management and operation system of business.

Netherlands was one of the first countries to adopt a NAP in 2013. There is a policy of responsible business conduct in place which has started with due diligence in the sectors of high risks. Netherlands has so far seven agreements with businesses and they aim to have four more ready by the beginning of 2019. A complaints mechanism is also in place. Other policies include child labour and a living wage programme with the ILO, where the aim is to produce a definition of what living wage entails. **United Kingdom** adopted the *Modern Slavery Act* in 2015. Companies are obliged to publish policies on DD. At the UN General Assembly's session, the UK together with Australia, Canada, United States and New Zealand adopted a set of principles to tackle exploitation in public and private supply chains. The Group will meet annually and invites other states to join. In terms of harmonisation it is necessary to align existing laws and policies to combat human trafficking and modern slavery. **Greece** is in the process of consulting a NAP on corporate social responsibility which comprises four areas (company, environment, society, market), focuses on employees' quality of life and improves the dialogue with employees, unions, extra-judicial dispute resolution and a swifter access to remedy. **European Union** has also carried out policy developments, for instance on [disclosure of non-financial activities](#), on [illegal timber](#), on [combatting the trade in conflict minerals](#). On the level of the EU, 15 Member States have adopted their own NAPs. **Slovenia** adopted its NAP on 8 November 2018 – review will be carried out biannually.

Italy adopted its NAP in 2016, this year its mid-term review is being carried out. A new revised NAP is available from 27 November 2018 online (in Italian and in English). The text was updated in accordance with recent legislative and administrative developments. The process included nine months of work – institutional work, multi-sectoral dialogue (3 meetings, 80 different entities), online

consultations. The revised plan extends education and training to journalists. Italy has also asked the WG to start a platform on peer review of NAPs. **Sweden** adopted its NAP in 2015 and highlighted gender, ethics, diversity, sustainable taxation. Reporting was made mandatory for companies employing more than 250 employees, and whistleblowing legislation was put in place. Challenges that Sweden experiences include having dialogues with companies in the field (outside Sweden) and lack of competence. **Germany** emphasised four points: firstly, *stakeholder involvement*: from 2014 to 2016 a steering committee had conducted 12 expert hearings and 3 plenary conferences, the outcome of which had been a draft NAP, adopted in the end of 2016. The Steering Group works on the implementation by the Permanent Inter-Ministerial Committee who reports every two months on NAP implementation, also to the Steering Group. Germany tries to be as transparent as possible. A monitoring process started in October 2018. Secondly, the question of *voluntary vs. compulsory* due diligence. Thirdly, *CSR consensus*: since June 2018 partners have come together and agreed on and described requirements of responsible supply value chains. Lastly, Germany also launched a *pilot project* under which they want to support businesses to implement the project when they are not in Germany. **Kenya** appreciated the WG's visit in July 2018. It informed that a steering committee had been created after the UPR in January 2015, and after several rounds of consultations the draft NAP is in its final stage now (covers all three pillars). They also took a thematic approach – land, labour, environment, revenue management, access to remedy. Measures and actions in their NAP are modest but correspond to the reality. Next country visit scheduled by the Working Group is to **Georgia**, in the context of the development of their own NAP (April 2019).

How Can Climate Actions Respect Rights and Contribute to Peacebuilding in the Transition to a Green Economy?

Monday, 26 Nov 2018, 16:40, Room XXI

This session discussed the shift to renewable energy as a fundamental part of the transition toward a green economy. The aim was to explore the potential of this transition in contributing to peacebuilding and a rights-respecting energy system. It drew on the [2015 Paris Climate Agreement](#) and the SDGs that both underline the necessity of transitioning toward a sustainable, zero-carbon future as an imperative human right. The main focus of the session was to see how companies can ensure that their climate actions respect human rights and at the same time benefit from the transformative potential of the transition to a green economy. In particular, the discussion revolved around the question of what a just transition entails in the context of companies' responsibility to respect human rights; to share ways in which a rights-based climate action can be a positive drive for peacebuilding; and to explore factors that contribute to best practices in the transition from fossil fuels toward renewable energy.

Key messages:

1. *Rights-based approach*

- What is a rights-based approach worth if it does not involve those adversely affected?
- Is climate change a multiplier and not just cause of conflict.
- Duty of vigilance - accountability of company.

2. *Green Economy*

- Definition - what is a green economy? UNEP definition - resource efficient but also inclusive. The issue of economy.

- Roles of different actors - Role of companies, investors and governments, engagement with people and investing in companies.
- Silos, environment, and human rights. The difficulty of measuring human rights. The people most affected are normally least consulted.

3. *Just Transition*

- Recognising context - very different in developed countries from developing countries; resources and exploitation must be taken into account. Massive mobilisation movement is getting people out of work.
- Challenges and solutions - evolution, how quickly do we make this transition and how does it affect profitability and access? Issue of energy needs. Recognize the need to reduce emissions and address the SDGs. There is a right and wrong way of carrying out this transition. How to include the workers that are left behind? It is critical all parties are included especially the Global South.

4. *Renewable Energy*

- How to ensure human rights are in practice? The role of small and medium enterprises (SMEs) to become more popular especially in developing countries.
- How to ensure same economic development?
- How to ensure green transition? Put more pressure on investors and not so much on governments.
- How far do we expect investors to go?

Building Coherence on Essential Elements of Human Rights Due Diligence

Tuesday, 27 Nov 2018, 8:30, Room XX

This Forum session took place with a view to highlight the essential elements of HRDD set out in the UNGPs and the OECD Due Diligence Guidance, to demonstrate the close alignment between these two frameworks and to engage stakeholders in a discussion on the way forward for achieving wider and more comprehensive uptake of HRDD in standard business practice.

Mr. Tyler Gillard, Head of Sector Projects and Legal Adviser in the Responsible Business Conduct Unit of the OECD's Investment Division, underlined the need to help the governments lead by example, to monitor implementation and to build a framework around that. In order to create the financing space to fund due diligence projects HRDD must value for markets. In India, the actors themselves are calling on the government to act and to implement due diligence standards. According to *Mr. Dante Pesce*, WG's Chairperson, now is the time to push the implementation, there being no excuse to the contrary. Only a few governments have NAPs that are coherent and that offer a mechanism of monitoring as an opportunity to learn and share information. The right to a remedy is considered by some a human right and it is central to the question of due diligence; yet only 40 % of companies have due diligence processes and an even smaller number of them refer to the UNGPs. In that regard, a study was conducted in six different sectors - none of the goal-standards referred to the [ILO Declaration on Fundamental Principles and Rights at Work](#) (FPRW), only one made a reference to the OECD DD Guidance and three of them referred to the UNGPs. This reflects an increasing lack of appropriate engagement in the rule-making process and in prevention mechanisms.

Human Rights Due Diligence Approaches for Safeguarding Migrant Workers

Tuesday, 27 Nov 2018, 8:30, Room XXI

This session discussed safeguarding migrant workers through responsible recruitment practices. According to the ILO there are 150 million migrant workers globally who contribute to the economies

of their host countries and also help the economies of their home countries via remittances. However, human rights abuses against migrant workers persist and continue to be widespread. Panellists from business, civil society, and international organisations made presentations explaining models of good practice, collaboration and lessons learned, which was then followed by an interactive dialogue with the audience that included states and members of civil society. The discussion revolved around these issues: principles to prevent forced labour (US, UK, AUS, NZ), the need to investigate where costs of recruitment are coming from, the need to have understanding of true costs of recruitment and question why some of these costs are so high, why do some government services cost so much, how do we simplify and how to pick up cost of recruitment.

There is a strong need to *assist refugees and migrant workers with suppliers on basic skills* such as making an interview, drafting a cv etc. The biggest challenge, however, is to encourage big companies to hire these people. There is a need to look for better avenues of access to justice. States have a primary role in preventing the scourge of modern slavery and companies must acknowledge and also play their roles in prevention and remedy. Companies need to understand how to achieve leverage of suppliers. We do not have data. Many people in the labour market have gone missing. Furthermore, legal defence is lacking, and several other obstacles remain such as language barriers when in police or detention centres. Businesses have a role to play and governments have a key role as duty-bearers. The principles in the [Global Compact for Safe, Orderly and Regular Migration](#) is key in this aspect. *80% of companies will do the bear minimum in safeguarding human rights of migrant workers.* Until there is very clear guidance on what companies must do many states undercut responsibilities. Thus, there is a need to elevate dialogue and look at which guidelines are most effective. How do we get to a level playing field? Best practices include, the Hong Kong (Act) legislation on forced labour and the California Act on social change within companies. There needs to be a corporate responsibility and human rights bench-mark as well as joint liability for businesses regarding human rights situations in their supply-chain.

It is crucial that companies *implement the “six-step” operational remediation process* for downstream companies when a victim has suffered harm linked to the downstream company’s operations, products or services: *Step 1:* Verify the allegation. *Step 2:* Determine the type and level of response. *Step 3:* Design the remediation action plan. *Step 4:* Implement and monitor the remediation action plan. *Step 5:* Close the incident. *Step 6:* Capture lessons learned. Companies should be encouraged to be transparent on what works and especially what doesn’t work. In light of this, there needs to be stronger coordination between all relevant stakeholders and understand the distinctions between legislation and actions in practice.

Crowd-Drafting: Designing a Human Rights-Compatible International Investment Agreement Tuesday, 27 Nov 2018, 8:30, Room XVII

This session discussed the International investment and trade agreements (IIAs) that can foster economic development. Moreover, it discussed how IIAs could impact adversely the realisation of human rights in diverse ways: e.g. constraining the legal or policy space available to states to regulate the conduct of investors, divorcing rights of investors from their human rights responsibilities, and limiting affected communities’ right to seek effective remedies against investors for project-related human rights abuses. The main objective was to develop concrete proposals to inform the current IIAs regime’s reform and provide a platform to brainstorm collectively and critically the potential as well as limitations of developing human rights-compatible IIAs; also, to inform the WG’s work concerning guidance to states in implementing Principle 9 of the UNGPs.

Key messages while developing reform proposals were to work individually or in a team to develop a reform proposal and focus on any one or more relevant aspects of IIAs (e.g., rights of states, obligations of investors, exceptions to expropriation, impact assessment, dispute settlement). Building on the experience of existing international accountability mechanisms, a new type of accountability mechanism with media on fact-finding and compliance functions could be integrated into investment treaties to ensure responsible business conduct and prevent human rights violations. A provision could set up a roster of professional mediators and panellists to investigate complaints by affected individuals or groups.

Safeguarding Human Rights Defenders: New Efforts and Tackling Growing Threats

Tuesday, 27 Nov 2018, 11:30, Room XX

Threats to human rights defenders and to civic freedoms are increasing concerns globally. A large number of human rights defenders are under threat and attack because they raise concern about adverse human rights impacts of business operations, often in the context of large development projects that affects access to land and livelihoods. At the same time, the space for civil society actors to raise concerns about human rights impacts is shrinking, and human rights defenders face criminalization when engaging in public protest or civil dissent. Concerns are being raised about the role of business in contributing to attacks against human rights defenders or in failing to take action against such attacks. Questions are also being raised about the role of business in helping to protect human rights defenders and civic space. States have the primary obligation to ensure the rights and protection of human rights defenders, as set out in various human rights instruments – in particular the UN Declaration on Human Rights Defenders – and as reaffirmed in many UN Human Rights Council and General Assembly resolutions, including through the March 2016 resolution on the protection of human rights defenders working on economic, social and cultural rights.

This session discussed the need for enhancing protection of human rights defenders who speak up against business-related human rights impacts is a standing item on the Forum's agenda. This session led by the WG in collaboration with NGOs consisted of two parts. The first part of the session was dedicated to showcasing new efforts to strengthen corporate respect and support for human rights defenders. The second part of the session was focused on the growing trend of criminalization and legal harassment of defenders who speak up against business-related impacts and identify concrete action to be taken by governments, business and others to address it.

The aims of this session were to identify what HRDD is needed and what are some of the practical considerations for preventing that companies become involved in criminalization and legal harassment of defenders who engage in legitimate efforts to address potential and actual adverse impacts. This will include identifying steps to be taken by home States, host States, companies that cause negative impacts and who are the main targets of criticism, companies that have business relationships to those causing the abuse (typically transnational corporations and their responsibility to address impacts in their supply chain), investors and companies that invest in contexts where criminalization of human rights defenders is a salient issue. Messages of the session were to highlight the importance of human rights defenders in the context of business-related impacts on human rights as recognized by the UNGPs. They highlighted the key role human rights defenders can have in human rights due diligence and enabling companies to understand concerns of affected stakeholders. In particular, the UNGPs urge businesses to consult human rights defenders as an important expert resource as part of their HRDD, as defenders

have a key role as watchdogs, advocates and voice for affected stakeholders; and urge States to ensure that the legitimate activities of human rights defenders are not obstructed.

Trends and Challenges in Promoting Business Respect for Human Rights in Africa

Tuesday, 27 Nov 2018, 11:30, Room XXIII

The main objective of this session was to facilitate a multi-stakeholder dialogue on lessons learned and the way forward, to identify key challenges towards promoting and, ultimately, implementing human rights with respect to businesses in Africa and to scale up emerging good practices among governments and businesses. *Mr. Dhilwayo*, Director of Zimbabwe Environmental Law Association, spoke on the slow uptake and progress of adopting and implementing the UNGPs in African countries. He noted that this is indicative of definitive challenges. *Mr. Koko*, Project Coordinator at African Coalition for Corporate Accountability, followed by saying that these challenges constitute a huge block in business and human rights. Furthermore, members of civil society are arrested for opposing and protesting against violations, thereby preventing activists from getting involved. To date, there is no law to prevent corporate impunity. Lastly, he said that the commitments made by governments are not respected due to corruption and accentuated that foreign actors must not act without restriction in Africa. *Mr. Mdwaba*, CEO at Tzoro IBC, provided a political perspective saying that *engagement* is crucial toward developing norms and business standards. This can be done via policy coherence on global standards, via mediators of the ‘business and human rights agenda’ interceding with businesses and employers, and via practice to develop policy that helps businesses on the UNGPs. He also brought to attention the many complex challenges such as poverty. In the second round of the interactive dialogue judicial activism and respect to remedy was raised. There was much concern over the vilification of activists who demand rights. To this end, ways of raising such concerns was debated. The conflict of interests between civil society and the government being tied up with company interests who have no interest in human rights was mentioned in the discussion. Political power without economic power was identified as a cause of manipulation by companies.

With regards to the main challenges, the following key messages were given. First, lack of ‘*political will*’ is one of the main key challenges and is very much needed. Second, implementation failure, especially when projects and or legislation that addresses challenges and protects human rights are available. Third, lack of *information and knowledge* has created gaps and made communities unaware of adverse impacts. Fourth, *obstacles and serious crimes and human rights violations with impunity* brought about by companies and authorities who oppose civil society involvement. It was recommended that *engagement, constructive dialogue and collaboration* between civil society and states (such as national parliaments) is one of the most effective ways toward adopting and implementing laws (including NAPs) with HRDD as well as informing governments and other relevant stakeholders and breaking barriers. This can be enhanced by expanding advocacy efforts and increasing and finding creative ways of raising awareness by civil society.

Due Diligence and Remedy: Is One Possible Without the Other?

Tuesday, 27 Nov 2018, 13:30. Room XXIII

The main objective of this session was to explore the relationship between due diligence and remedy. Some of the pertinent questions were: 1. Is facilitating remedy a part of a company’s due diligence responsibility? 2. Should remedy be left to companies? 3. What is the role of the state? 4. Is a company’s

failure to ensure remedy a failure of due diligence? In this session community members from Mexico and Tanzania, and a worker from Pakistan shared their experiences of being adversely impacted by corporate human rights abuses. They analysed problems stemming from failures of due diligence and remedy through exploring three case studies on corporate impact, i.e. copper mining in Mexico, garment production in Pakistan, and gold mining in Tanzania.

Thelma Irene Moiza (Mexico) shared the difficulties with access to justice concerning the Sonora copper mine spill. *Ben Vanpeperstraete* (Pakistan) discussed the failure to address toxic wastes and child labour to avoid the tragedy of the Ali Enterprises fire incident. *Aneke Van Woudenberg* (Tanzania) discussed the challenges in finding a remedy with regard to the North Mara Gold Mine in Tanzania; she also gave examples of legislation that protects civilians but is not being implemented on the ground. These case studies demonstrated that there is a huge *remedy gap and access to remedy is absent*; legislation to protect exists but is not being implemented on the ground; failure to put in action *prevention measures* and there is a lack of business and government *engagement with affected communities*. To address these challenges, risks need to be mapped and assessed and stakeholders must put in place measures to prevent dangers as well as alert mechanisms. The issue of corruption must be seriously addressed, countries have to prove they have liability, and real change must take place with multinationals.

Trends and Challenges in Promoting Business Respect for Human Rights in ‘Western Europe and Others’ Region

Tuesday, 27 Nov 2018, 15:00, Room XXI

This session reviewed efforts being undertaken in the countries of the global West to promote respect for human rights in the course of business activities. It utilized a large panel of speakers who provided examples of successes and challenges experienced by various governments in their attempt to encourage respect for human rights by businesses. The speakers represented the European Commission, Sweden, Finland, Netherlands, Canada, Germany, France, Norway, and the OECD. The objective of the session was to provide encouragement to governments in promoting respect for human rights within the business community and the potential benefits and drawbacks of different approaches.

Generally, the government efforts presented involved cooperative programs and incentives rather than punitive regulations. Several countries discussed their efforts at improving policy coherence across the government to ensure the consistent application of human rights expectations. Some governments have implemented requirements through their own acquisition and contracting processes, including human rights due diligence systems and reporting on non-financial issues. Some countries have applied such human rights requirements to businesses participating in their trade promotion and foreign investment efforts. In several cases, countries have implemented some type of national ombudsperson or ‘help desk’ for reporting on or assistance with the human rights conduct of businesses. Also, the OECD discussed its key initiative of National Contact Points (NCPs) and the historical under-resourcing that has hindered their effectiveness in the countries that have established them.

Developing a Gender Lens to Business and Human Rights

Tuesday, 27 Nov 2018, 15:00, Room XX

This session discussed major challenges faced by women in business-related contexts and explore potential solutions as well as good practices to address these challenges. Women (including girls)

experience business-related human rights abuses in unique ways and are often affected disproportionately. Women also face multiple forms of discrimination and experience additional barriers in seeking access to effective remedies for business-related human rights abuses. Therefore, in order to effectively meet their respective human rights duties and responsibilities under the UNGPs, States and business enterprises need to give special attention to the unique experiences of women and the structural discrimination or barriers that they face. The roundtable was focused on the following five thematic areas: sexual harassment and sexual violence against women, gender sensitive human rights due diligence, economic inclusion and empowerment of women, impact of trade, investment and tax regimes on women, and women's experiences of accessing effective remedies and defending rights

This session objectives were to raise sensitivity amongst all stakeholders about the key challenges faced by women in business-related contexts, to identify potential solutions as well as best practices concerning these challenges and to inform the WG's proposed gender guidance on how to 'protect, respect and remedy' the rights of women in a business context in line with the UNGPs. Messages of the session were to assist States and business enterprises in achieving this goal, the WG is developing gender guidance to the UNGPs. This guidance will provide practical recommendations for what it means to 'protect, respect and remedy' the rights of women in a business context in line with the UNGPs. The gender guidance to the UNGPs, which will cover all three pillars, will be the theme of report of the WG to be presented to the UN Human Rights Council in June 2019.

Elements of Effective Human Rights Due Diligence Regulation: Lessons from Legal Developments

Wednesday, 28 Nov 2018, 8:30, Room XX

Recently, the EU and a range of countries around the world have adopted or started to consider legislation that requires businesses to either address or communicate how they address human rights impacts. This includes for example the Brazilian 'dirty list' of slave labour, EU Non-financial Reporting Directive, the French Duty of Vigilance law, the UK Modern Slavery Act, and the Responsible Business Conduct bill currently discussed in the Swiss Parliament. These initiatives differ in purpose, human rights risks addressed, and type of legal obligations, but they all utilise the concept of HRDD. This session took stock of the experience with these developments, with a focus on their outcomes, impacts on corporate accountability, and implementation by companies in order to draw lessons for further legislative developments. Its aims had been to summarise lessons from implementation of HRDD requirements by companies, to clarify what are effective means of ensuring HRDD by regulation and necessary elements of such regulation and to identify key information on the conduct of HRDD that should be disclosed.

Voluntary mechanisms of HRDD systems, such as standard setting bodies, business initiatives, responsible recruitment, advocacy around legislation, are good news, but they can only go so far and each of them has their own challenges. Therefore, we must have legislative initiatives that are very inclusive, to ensure harmonisation, the need for alignment and to have the ability to recognise other schemes. Companies should actually have the time to do the work related to HRDD and not to feel judged for not progressing fast enough. They are not expected to solve all their issues in year 1, 2, 3, but it is important to see the progress. As a positive example, OXFAM had laid down in its last report what it had managed to do and what it had not, stating the detailed reasoning.

What Do ‘Protect, Respect, Remedy’ Mean in Conflict Contexts?

Wednesday, 28 Nov 2018, 10:00, Room XXI

This session discussed how respect for human rights by businesses is impacted when a business is operating in a conflict zone. A general theme was the differential impact of a conflict on local versus transnational business entities. One particular aspect of the discussion was how compliance with the General Principles may be hindered due to conflicting human rights obligations.

The main purpose of the session was to explore the reasons behind the lack of action on the issue of human rights and businesses in conflict zones in spite of existing research and policies on this issue. Why are governments and businesses not addressing the issue? What incentives are needed to promote compliance with human rights in conflict zones?

A clear message emerged that larger, transnational companies can make the decision not to operate in a conflict zone, whereas smaller, local businesses often do not have such an option. Small businesses may choose to stay and contribute to what may be a meagre economy in a conflict zone because it is part of the community rather than leave even though doing so risks violating certain UNGPs. Also, local businesses are often critical to the long-term stability of a country post-conflict, so it may be worse for the country if they do leave. The rapidly growing security industry presents particular concerns for human rights compliance, especially as this industry has become dominated by smaller local companies that are more difficult to monitor. The WG plans to focus more on the role of investors in the decisions of businesses regarding human rights and conflict zones.

Accountability and Remedy: Human Rights Due Diligence and Corporate Legal Liability

Wednesday, 28 Nov 2018, 10:00, Room XXIV

This session discussed the relationship between HRDD and determinations of corporate legal liability under national law for business-related human rights abuses with reference to OHCHR’s *Accountability and Remedy Project*. It drew on the WG’s 2018 report to the General Assembly, where it had taken stock of efforts to implement human rights due diligence. Further, the session reviewed recent legislative and policy developments, explored questions that arise when thinking about how HRDD and liability interact, and discussed ways to improve policy coherence between States’ implementation of the third pillar of the UNGPs and their efforts to promote HRDD among business enterprises in accordance with the UNGPs.

The results of the first phase of the OHCHR ‘*Accountability and Remedy Project*’, aiming to deliver credible, workable guidance to States to enable more consistent implementation of the UNGPs in the area of access to remedy, have shown the need for greater clarity and policy coherence. There is an ever-growing necessity to develop hard law instruments that would create an obligation to apply HRDD systems. These may be done by offering companies a more favourable treatment (to encourage) or by different compensatory (to compensate in case of violation) or punitive measures (criminal avenues) and must be done step-by-step while at the same time encouraging compliance with soft law instruments. The concept of HRDD must be referred to in judicial decisions to raise awareness of the issue and must allow for certain degree of flexibility as well as legal certainty. Some States have started putting in place HRDD legislation, for example France, Switzerland, Netherlands and Germany.

Leading by Example: Using Government Trade Promotion and Development Finance as Levers for Human Rights Due Diligence

Wednesday, 28 Nov 2018, 11:40, Room XXI

This session focused on how governments can use their own trade and financing programs to promote human rights due diligence by businesses. The discussion included specific examples of activities by Finland, Norway, and Mongolia, as well as research into responsible investment policies and the unique issues raised by export processing zones (EPZs).

The objective of the session was to answer the question: *What is being done by states, under Pillar 1 (state responsibilities) of the UNGPs, to promote human rights respect by the private sector?*

The government examples showed that government spending and investment can be effectively used as a means of requiring human rights due diligence by business participating in government programs. To be most effective, the government must have good policy coherence across all ministries to ensure a consistent message regarding human rights. Governments can also be effective through the development of international norms and binding instruments, for example the Alliance for Torture-Free Trade promotes prohibition of trade in goods used for capital punishment. It was repeatedly mentioned that governments can lead by example through their own practices and that governments should not rely solely on their private partners to conduct due diligence but should be responsible for due diligence for their own activities, especially where public companies are involved.

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Geneva International Centre *for* Justice

Independent, non-profit, non-governmental organization

GICJ is an independent, non-profit, international non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

Mission

GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

Work

GICJ has been tackling issues of justice and accountability since it was established. GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network around the world. Through these channels, GICJ is able to receive documentation and evidences of human rights violations and abuses as they occur in several countries. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Geneva International Centre for Justice

Independent, non-profit, non-governmental organization



Implementing
the United Nations
"Protect, Respect and
Remedy" Framework



+41 22 788 19 71



+41 79 536 58 66



info@gicj.org



geneva4justice



facebook.com/GIC4J



www.gicj.org



UNITED NATIONS
HUMAN RIGHTS