



**Comments to**

**The Report of the  
Special Representative of the Secretary General  
on the issue of human rights and transnational corporations  
and other business enterprises, John Ruggie**

**Guiding Principles for the Implementation of the United Nations  
“Protect, Respect, and Remedy” Framework**

**January 31, 2011**

**Presented by:**

**The Center for Human Rights and Environment (CEDHA)\*  
Córdoba Argentina**

**Questions, Clarifications or Comments to: [jdtailant@gmail.com](mailto:jdtailant@gmail.com)**

*\*The Center for Human Rights and Environment (CEDHA) is a non-profit organization based in Argentina working locally and globally to defend the human rights of individuals and communities affected by environmental degradation. CEDHA has worked on the issue of Human Rights and Business since 1999, originally engaged with the Working Group led by David Weissbrodt which engendered the UN Norms on Human Rights and Transnational Corporations. Over the last decade, we have participated in numerous consultations in the region and elsewhere of during the UN Norms process as well as during the UN Special Representative’s Mandate on Human Rights and Business and have contributed extensively to the process since its’ beginning with various commentaries throughout the evolution of the Protect, Respect, Remedy Framework.*

## I. General Comments

1. We'd like to bring to the attention of the Human Rights Council, the fundamental contribution made by the UN Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, Professor John Ruggie, and the extremely effective work he has been able to accomplish on his mandate assigned in 2005 and renewed in 2008 to explore the issue of human rights and business.
2. We recall the very unfortunate experience the Human Rights Commission went through with the laborious and highly controversial production of the UN Norms on Human Rights and Transnational Corporations (the UN Norms), which while approved by the UN Sub Commission on Human Rights in 2003, never had widespread approval from key stakeholder communities, including States, business and civil society. In fact, the UN Norms served to create conflict and tension between stakeholders practically making any further discussion on the issue of human rights and business impossible. We were one of the several Non Governmental Organizations which worked on the evolution of the UN Norms, and were sorry to see their substantive failure to harness global consensus and very much less, approval. *But fortunately, times have changed, and we wish especially to recognize the effort and success of the UN Special Representative to have achieved opening a new and constructive chapter in this evolving and very critical policy discussion*
3. Development debate, including discussions around the relevance of realizing human rights has evolved considerably since our days of stalemate with the UN Norms. Today most actors, be they States, business or civil society, understand that attaining universal human rights, that is, *realizing* rights, implies social and economic development. Hindering (or violating) human rights, often implies the reverse. This idea is already enshrined in many recent international agreements, resolutions, etc.
4. We are also witnessing, as societies develop, and as communication and technology evolve, that communities around the world are seeking more engagement in the determination of their own future and development. In this regard, any *positive or negative* impact on the environment, on social conditions and on local economies becomes instantly part of the local development agenda. The role of business to this equation is of course not foreign, and more and more, companies (particularly large international companies) find that local communities have something to say about how they do business in their community, and particularly to any impacts that business may have on local livelihoods and quality of life. Human Rights have become an integral part of this discussion. Companies around the world are coming to understand that talking about and addressing human rights concerns, is now part of *business as usual*.
5. Companies, and especially large transnational corporations, are being told that they must understand what their impacts are on the human rights of people in the communities where they do business, particularly as regards impacts to vulnerable groups, indigenous communities, etc.. *This is not a mere requisite coming from human rights organizations*. In fact, many of the world's most prominent human

rights organizations work very little on business issues. This pressure is coming genuinely from local communities with little or no experience working on human rights.

6. The pressure for business to address human rights also comes from market actors which want to ensure that their commercial relationships in the international business community are sound and sustainable and which definitely do not want to be associated with human rights violations. .
7. States are also calling on businesses to comply with international norms on sustainability, and this more and more includes human rights considerations.
8. Multilateral institutions are also beginning to develop tools for their partners and clients to consider human rights risks and impacts.
9. Business is effectively being swarmed by human rights issues, with pressure to conduct what are coming to be known as *human rights impact assessments*, which are essentially a management tool to map out the relevance of human rights to a particular business.
10. Communities are claiming a wide variety of rights when faced by negative impacts, sometimes legitimately because they are indeed human rights violations, but sometimes claims are simply based on *the perceived sense of rights* entitlements but may have little or nothing to do with human rights *per se*. Nonetheless, businesses are faced with a need, and sometimes an obligation, to respond to these inquiries in order to achieve their social license to operate.
11. We have all agreed that business needs to respect human rights as is clearly stipulated in the Universal Declaration on Human Rights. What we are less clear about, however, is *what precisely this means for corporations* doing business around the world, *what it means for States* that host foreign investments, or that generally must regulate national and international business activity both in their territory and sometimes abroad, *and what it means for stakeholder communities* that live with small, medium and large corporate activity in their neighborhoods, with both positive and negative externalities occurring every day.
12. For this reason, we recognize the most important work of the UN Special Representative to date, which in the beginning was simply to make a very first but firm step to bring all of the frustrated actors that worked for many years under the UN Norms process back to the discussion table. Through trust-building, frank discussion, and the incorporation of all views in the process (in which we have participated in many consultations), the arduous task of consensus building on human rights and business began and in this task, Professor Ruggie has greatly succeeded.
13. The Protect, Respect, and Remedy Framework, presented in 2008 made a second fundamental step and contribution to the discussion and has been *extremely successful* in engendering support from a multi-sector and multi-actor base, in which States, corporations and non-governmental organizations on the whole, have unequivocally agreed on this common framework for discussion. In fact, developing nations, industrialized countries and emerging economies, many

industrial sectors as well as NGOs from many focus areas are mostly in agreement with the conclusions and recommendations of the mandate, which is why the Protect, Respect, Remedy framework is rapidly becoming the *state of the art* on the human rights and business issue. Even the business sector, which was so adamantly opposed to the UN Norms back in 2003 has expressed fairly universal acceptance of the framework. A recent article in the Financial Times sends precisely this message, “Mr. Ruggie’s framework has been broadly welcomed by business. ... there has been an outburst of activity among leading companies to determine if their policies are “Ruggie-proof”.<sup>1</sup>

14. In this regard, the publication in 2008 of the Protect, Respect and Remedy Framework has made a critical and fundamental contribution to the evolution of our global understanding on the issue of human rights and business. This distinction of clear pillars or dimensions of the discussion into *obligations* of the State (the Duty to Protect), the *due diligence* necessary from Business (the Responsibility to respect), and the need for *access to justice* for victims (Remedies), provides an extremely well grounded basis upon which to build and evolve a technical discussion on the issue of human rights and business. Perhaps this contribution, *the Protect, Respect, and Remedy Framework* has been the most fundamental step and the cornerstone of everything else that is to come on this debate and deepening of the human rights and business linkage. We must commend Professor John Ruggie on this effort and success and be sure to build on this effort into the future.
15. So we now turn to what we see as the next step of the debate, which is adding the technical substance to the principles that are outlined in the framework. The more recent publication of the UN Special Representative, the Guiding Principles for the Implementation of the United Nations “Protect, Respect, and Remedy Framework”, makes an initial and important further step in this direction.
16. It is important to stress that our principles discussion has taken nearly 8 years to mature, but we have firmly arrived at a broad consensus. This new technical debate which the Guiding Principles successfully launch, will necessarily draw further discussion from the various actors that are very much engaged in this evolution, namely, States, Business and Civil Society. We each come to the table with different viewpoints, with different agendas, and with different priorities, but all of us today can agree that we are all discussing the same issue and that we depart from the same premise and framework, published by the Mandate in 2008.
17. This debate that is now taking, that is, the new debate is no longer about principle, but rather it focuses on defining the technical characteristics and boundaries or territory in which the principles operate. To this end, the Guiding Principles provide key initial input to begin the technical discussion. We say key, because the Guiding Principles for the Implementation of the Framework lay out *the most prominent substantive and technical issues companies are facing in practice, not in theory*. We can think of the Guiding Principles as a terms of reference for business, and for States regulating business, to move their internal and external processes on the issue of human rights and business forward.

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<sup>1</sup> <http://www.ft.com/cms/s/0/d4530e7a-1e45-11e0-bab6-00144feab49a.html#axzz1Apvkgs00>

18. In this regard, the work of the Special Representative has clearly been informed by the many dozens of consultations he's had around the world. What are the questions that States and companies need answers to that are still unclear?

Some of these are:

- a. States need to identify the areas where human rights are relevant to corporations in their territory and abroad;
  - b. How to develop Corporate Human Rights Policy;
  - c. How to design technical tools such as Human rights impact assessments;
  - d. How to measure and report impacts;
  - e. How does one shape contracting between States and Business accordingly;
  - f. How should businesses engage with communities on human rights;
  - g. What should grievance mechanisms and remedy look like?
19. None of these issues, as needs of the State and Business sector, are controversial to anyone, since they are at the crux of the challenges that companies and States are facing today to answer questions about human rights impacts of corporate behavior.
20. There may be debate around the descriptive content of any one of these items, but clearly no one will claim that these issues are not top priority for businesses around the world grappling with what they should do about their human rights impacts.
21. States, Business and Civil Society organizations will agree that a company needs a human rights policy, but disagree on what one will look like; we will all agree that business must engage, consider and inform stakeholders about their human rights impacts, but disagree on what indicators to choose or what and how to inform; we may agree on incorporating human rights clauses in contracts between States and corporations, but disagree about disclosing them to the public;
22. We should not confuse these differences of views on *how the substance should look, with what the issues are all talking about really are*. The substantive "gap" to which some critics have referred are none other than the natural debate that arises when we attempt to introduce the technical underpinnings of a principles discussion, a task which as a global society we are still engaged on defining.
23. In the end, the Guiding Principles have provided a route map on most of these issues, in order to further our technical debate.
24. We should not be asking ourselves what elements of these principles fail to provide a specific technical recommendation, but rather, if the principles as they are enumerated in the Guiding Principles will provide the appropriate guidance so that that definition can subsequently be achieved by those actors that will be implementing human rights policies, management systems and control mechanisms as relate to business activity.
25. This is our challenge. The draft version of the Guiding Principles as presented by the UN Special Representative meet this task. As is always the case with such

consensus documents, we can wordsmith the content to improve it, or change it according to our collective priorities and agreements, but we should not confuse this need to strengthen or edit as appropriate, with the fundamental importance of agreement on the essence of the exercise and the broad general conclusions that have been reached as a global informal network of actors through dozens of consultations across the world.

26. We offer here some general comments and then specific comments to the actual text of the draft Guiding Principles, with the spirit of contributing to a final text which is robust and appropriate to move our debate forwards.
27. Most importantly we should stress the critical need that the global community, States, business and society generally to deepen our technical grasp and establish clear policy and management systems to address the impacts of business on human rights.

The time has never been better to initiate this discussion.

#### *General Comments*

28. Our overall comments to the Guiding Principles (GPs) are:
  - a. The need to further emphasize, in the text of the GPs the importance of attention and special consideration to vulnerable communities and stakeholders, both in the State Duty and the Corporate Responsibility Sections;
  - b. That while conflict zones are indeed places where many human rights can and do take place, many human rights violations perpetrated by corporations happen in not so conflictive countries, and to overemphasize conflict zone as the place of the “worst” business related human rights abuses may not be warranted;
  - c. That States that do nothing to regulate companies or that support investments, are not merely “associated” to human rights violations, but in fact are “complicit” in such violations, and as such indeed are “per se responsible for human rights abuses by private actors” either through complicity or through the failure to protect, which is their duty.
  - d. “Grievance mechanisms” should be included in the remedies foundational principle alongside remedies.
  - e. The Mandate of the UNSG included “to integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children”; we mentioned in point “a” above the lack of reference in the main text of the GPs to vulnerable groups, which could be repeated in this case for gender and children, neither of which are referenced in the 29 Principles.
29. Life after Ruggie. There is indeed life after the UN Special Representative mandate. Fortunately, and very much in contrast to the stillborn arrival of the UN Norms, the work of the UN Special Representative leaves us with a very much

consolidated principles framework to continue our debate and evolution. The work to be done into the future should involve:

- a. Reaffirming and ensuring the broad and universal adoption of the Protect, Respect, Remedy Framework in all UN agencies, intergovernmental organizations, and promoting the framework in other sectors, including private and public business, etc.
- b. Continuing our debate to underpin the theory with the substantive and technical details, and as such, helping defining the technical aspects of global public policy on human rights and business but also providing the private sector with much needed technical specificity, such as what should be the content of human rights impact assessments, among others; if the GPs are approved, this point has to do with furthering the technical underpinnings of the GPs, perhaps in more elaborate Guidance Notes related to the GPs
- c. Further engage business on both “a” and “b”
- d. Further develop grievance mechanisms;

## II. Specific Paragraph by Paragraph Commentary

**NC = No Comment**

### **Introductory Report Section**

#### *Paragraph 2*

The importance of attending to human rights violations in areas affected by conflict should not be understated, however, extremely serious human rights violations perpetrated by corporations, and oftentimes with the complicity of public finance, can and do frequently occur in countries that are democratically stable and even developed. As such, *conflict areas* are not a *sine e qua none* for “the worst human rights abuses” committed by corporations. For this reason, we encourage to change the reference of “the worst corporate-related human rights abuses, ... take place in areas affected by conflict” to wording that would suggest the importance to attend to such areas, but not categorizing them as “the worst” which might lead to undervaluing or underemphasizing serious abuses elsewhere.

#### *Paragraph 5*

In paragraph 5, the report refers to the absence of “any internationally-recognized hierarchy of treaty obligations” and that the State are “unlikely place every single human right they have ever recognized above their legal obligations” We should note that the supremacy of International Human Rights Law above other obligations often derives by commitments made by States in treaties they have signed, often elevating international treaties (or certain rights therein contained) to “*ius cogens*”, thus placing them above national constitutional obligations. Several references in the UN Charter support this hierarchical relationship:

#### The UN Charter

*“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”<sup>2</sup>*

#### Preamble Art. 1.:

*“We the people of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”*

#### Article 1.3 Purposes and Principles as follows:

*“Art. 1. The Purpose of the United Nations are: 3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging*

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<sup>2</sup> Art. 103 of the Charter of the United Nations.

*respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and..."*

As such, the primacy of international human rights obligations can be easily justified and certainly not overlooked. It would be helpful to mention that some states follow this tendency and incorporate certain international treaties obligations of certain commitments to certain rights in such hierarchical relationship in their constitutions.

*Paragraph 6*

We strongly welcome this paragraph, particularly the distinction between a States promotional activities and its' parallel obligations.

*Paragraph 7*

The report should mention here that the OECD Guidelines for Multinational Enterprise to a certain extent, are a step towards developing extraterritorial accountability, or at the very least that this mechanisms, which States today want to improve and strengthen, serves as a critical step to engage with business operating globally.

*Paragraph 8*

The reference to a State's "involvement" in an investment, should explicitly state for example, "as co-investor" or "as guarantee" reflecting typical existing cases of such involvement.

Further, the nature of such relationship is such that there could be issues of "complicity" involved in human rights violations perpetrated by business that if financed by the state. This merits mention in this paragraph.

*Paragraph 9*

In addition to mentioning " Business consultancies and corporate law firms", this paragraph could also mention Multilateral agencies, (such as IFC) which are also actively developing tools "to advise clients on the requirements"

We are not so sure that "these developments have not acquired sufficient scale to reach a tipping point of truly shifting markets"; this is a value statement that could be deleted for the benefit of the doubt.

*Paragraph 12*

"The Guiding Principles that follow constitute the next step, providing the 'concrete and practical recommendations' for the Framework's implementation requested by the Council." We understand that the GPs are in fact a sort of terms of reference for the next step, which we see as providing technical specificity. We are pleased with the GPs in this context. Perhaps this is a semantic difference in viewpoint, but it seems that since much further work and time will be needed to underpin the principles with technical specificity, the GPs should forecast this longer stage of evolution needed. If approved, the GPs will become the template, or terms of reference upon which corporations and states, as well as other stakeholders will be able to build the technical depth ("the "toolkits" mentioned in

paragraph 14, which the GPs are not) as is needed to carry implement them fully in practice.

## **I. Annex: INTRODUCTION**

In the first section of the introduction, point (b) reads:

[These GPs are grounded in recognition of: (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and meet the societal expectation to not infringe on the human rights of others”;

We are concerned that the “corporate responsibility to respect human rights” (from paragraph 9 of the Framework, in the wording above, has been loosely translated and effectively demoted in the above GP paragraph to “[the role of business enterprises to] ... meet the societal expectation to not infringe on the human rights of others”. We are specifically concerned with the words “to meet the societal expectation to not infringe” which is quite different from emphasizing the “corporate responsibility to respect”. We strongly urge that this particular paragraph be framed with the previous language from the Framework.

In the last paragraph, the reference to “vulnerable and marginalized groups, and with due regard to gender considerations” should be expanded to include “children”, as in the mandate text.

## **II. THE STATE DUTY TO PROTECT HUMAN RIGHTS**

### **Principle 1. NC**

#### **Principle 1. Commentary**

Line 14: We do not agree with the sentence: “The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. On the one hand, States can be complicit and jointly responsible for human rights violations committed by a private company, but they can be directly responsible for human rights violations if they own or partially own the company committing the abuse, in which case there is a “duty” or direct “obligation” involved. We suggest to eliminate this sentence from the commentary or further explain the complexity.

**Principle 2.** We suggest stronger wording than “States should encourage”, such as “should ensure” or “have the duty to protect against”

### **Principle 2. Commentary**

In the first paragraph, the commentary might make reference to the commitments made by States as stipulated by the OECD Guidelines for Multinational Enterprise and the recent effort and will of states to modify/expand/revise/improve the OECD Guidelines.

### **Principle 3. NC**

#### **Principle 3. Commentary.**

There could be reference in this section of the need for States to commit to incorporating policy and implementation actions across departments/ministries, particularly relative to those promoting corporate investments, technology, industry standards, etc.

### **Principle 4.**

Principle 4 could introduce the principle of hierarchy of human rights obligations relative to other issues (investment, etc.)

#### **Principle 4. Commentary.**

This explanatory section should introduce “human rights clauses” as advisable in investment agreements, for example, suggesting that agreements include a human rights clause stipulating hierarchy of compliance with human rights above contractual obligations.

### **Principle 5.**

- Concerned with the word “expectation for all business ... to respect” instead of emphasizing already established principle of the “corporate responsibility to respect”.
- The lists of points in this principle, misses a key element, which should be added as a new point (e) regarding State’s guidance/encouragement/influence for companies to measure **impacts**;
- Further to the last point, this new point should also mention and encouragement by the state to companies to develop and/or use “human rights impact assessments”
- May want to consider reordering points in a logical sequence of State activity: Policy/Advisory Assistance/Measure/Enforce;

#### **Principle 5. Commentary.**

- 8<sup>th</sup> Paragraph: in regards to financial reporting, this mention might be expanded to “sustainability reporting”, particularly as the field is already there on human rights issues (GRI has a section on HRs and is already the standard for sustainability reporting for most companies) and is now moving to integrated reporting in which HRs will also be a key part.

### **Principle 6.**

Would like to see stronger language than “States **should take steps to** ensure that human rights are respected by business enterprises that are owned by the State ... ”. This

is the realm where State has a duty to protect and where stronger and more obligatory language should not be so controversial.

**Principle 6. Commentary.**

The comments above to Principle 6, apply also to the Commentary section in that the duty to protect element should be flushed out in the Commentary as it is the “state owned” aspect of the business in this principles, which warrants such an approach.

**Principle 7.**

We would echo the comments to Principle and suggest stronger duty language for Principle 7.

**Principle 7. Commentary.**

- We echo comments to Principle 6. Commentary.
- The issue of “complicity” could be brought into the Commentary.
- In reference to contracting (Line 4-5), we would like to see a stronger word than “expectation”, something capturing the sense of duty (obligation, requirement, etc.).

**Principle 8.**

-Strongly recommend that this principle state “that companies that receive support and services from the State, ‘be require’ to ensure the respect for human rights.

**Principle 8. Commentary.**

We suggest changing the choice of wording (paragraph 2) from “encouraging and where appropriate” to “require clients to identify human rights relevance (or explain if there are none ... and where appropriate carry out further assessments/due diligence”, etc.)

**Principle 9.**

The State could require at a very basic minimum in this principle that all businesses that provide goods and services have a human rights policy, and where appropriate (based on sector, stakeholders etc.) carry out further due diligence.

**Principle 9. Commentary.**

A more logical sequence of issues as appropriate to the business size/type/location might be flushed out in the Commentary section, such as in Principle 5, policy/systems/measurement/reporting/remedies.

**Principle 10.**

- This Principle could make mention (in bullets) of vulnerable groups;
- The Principle could make reference to no-go zones due to gross human rights violations.

**Principle 10. Commentary.**

We disagree with the sentence “The worst business-related human rights abuses occur amid armed conflict over the control of territory, resources or a government itself ... “

While conflict zones are indeed places where many human rights can and do take place, many human rights violations perpetrated by corporations happen in not so conflictive countries, and to overemphasize conflict zone as the place of the “worst” business related human rights abuses may not be warranted. Limiting the Comment to the idea that conflict zones “heighten” concern, might better serve the intent.

**Principle 11.**

- This principle is key not only to help avoid human rights violations, but to capture the principles that multilateral institutions work towards human development and consequently to promote human rights, and they should explicitly do so relative to corporate practice;
- This principle should also encourage or mention that multilateral institutions should help or guide business in the technical development of the framework;
- This principles is critical to and could mention, key development, financial and/or trade institutions and the importance that they engage or streamline their programs and policies with human rights;

**Principle 11. Commentary.**

- This commentary could flush out this issue more, particularly relative to the role that multilateral agencies play or can play, in promoting corporate due diligence on human rights related matters;

**III. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS.**

**Principle 12.**

- Suggest that language in the GPs reading “Business enterprises should respect” revert to the Framework language regarding “the corporate responsibility to respect”.

**Principle 12. Commentary.**

- Suggest to eliminate Line 18, reading ~~“While these instruments do not impose direct legal obligation on business enterprises, enterprises can infringe on the rights these instruments recognize.”~~ This is a controversial statement which many might agree with, but with which many others disagree. At the heart of the matter resides the debate of whether or not companies are bound by international human rights law or not as derives from the first paragraph of the UDHR. One school says yes, the other says not. We believe they are. So as to avoid this fundamental conflict of view, we can keep the issue moot by simply not saying that the “instruments do not impose direct legal obligation on business enterprise”. Deleting it harms no one, while keeping it generates controversy. If the text is to remain, simply changing “do not impose direct legal obligation on business enterprise” to “are generally thought of as obligations of States”, it would resolve the matter diplomatically

and leave the interpretation to subsequent discussion. We don't think that stating the matter is necessarily important here.

- In paragraph 6, the sentence, "Influence, where defined as leverage, is not a basis for attributing responsibility to business enterprises for adverse human rights impacts" is debatable. This is an unneeded value statement in the GPs. We suggest deleting it for the same reasons as the first observation to this Commentary.

- In paragraph 7, it is not the corporation who determines whether responsibility or liability pertains to itself (a single company) or group of related companies, but rather it is the law that ultimately passes such judgment. As such, this paragraph should be rephrased accordingly.

### **Principle 13.**

Should add reference to "measuring impact", "reporting or communicating impact" and to "grievance mechanisms".

### **Principle 13. Commentary.**

This Commentary should flush out issues more, and/or add other issues as indicated in Principle comments above.

### **Principle 14.**

- Change the word "expertise" in point (b) to "stakeholders".

- Policy should state adherence to the International Bill of Rights; could be a new point

### **Principle 14. Commentary.**

Should mention the importance that Policy is used by, and is coherent with, the businesses management systems.

### **Principle 15.**

- Add verbs "measure" and "address" to the existing "identify, prevent, and mitigate adverse human rights impacts" in order to complete the logical sequence cited above in Principle 4 comment.

- Could add a point (d) referring to "vulnerable groups".

- Degrees of due diligence vary according to many factors, including size, appropriateness, materiality, etc.; perhaps this is a good principle in which to include a principles or element of "incremental" applicability of due diligence, as the human rights relevance increases, so does due diligence in different ways.

### **Principle 15. Commentary.**

- See point in Principle comment regarding due diligence "incremental" nature. This could be explained in the Commentary.

- Disagree with comment in 3<sup>rd</sup> Paragraph, suggesting that "it is impossible to conduct human rights due diligence with regard to them all [suppliers]". Due diligence with many suppliers must necessarily change outreach and engagement scope and mechanisms, but the responsibility with respect to all should not vary.

-In Paragraph 4, the example given regarding attributing criminal responsibility according to intent, or “knowingly providing practical assistance” in the commission of a crime, fails to point to best practice in the field, which is for example Brazil’s Environmental Crimes Law, which stipulates that for persons of upper management, simply knowing of a violation and not informing authorities is itself a crime. The Brazil example, taken here, would offer much more helpful guidance, suggesting that a company’s knowledge of human rights problems, is sufficient to trigger policy and tools reactions to address such potential impacts, as opposed to providing commentary regarding complicity only in terms of displaying intent.

**Principle 16.**

-Suggest change “In order to become aware of human rights risks” to language that raises the bar further. Companies are generally *already* aware that human rights are an issue. Changing this to language suggesting “In order to effectively gauge risks and impacts” would raise the bar more appropriately to where the field has already come.

**Principle 16. Commentary.**

-Lines 3-4 refer to assessing the human rights context prior to the proposed business activity. More clarity is needed here, particularly because the real issue is not whether country A or B is more or less in line with HRs duties, but whether the introduction of a business might place strains on already meagre or sensitive human rights realization (such as access to safe drinking water or sanitation). It should be clear that ex-ante assessment should point to such revelations.

**Principle 17.**

- Suggest including point (c) referring to “introduction of management systems that reflect policy commitments”

**Principle 17. Commentary.**

- We’ve suggested previously (see comments to P5, P15), the need to introduce a logical sequential relationship between policy, impact measurement, systems tools, reporting, grievance mechanisms, and remedies. This issue of impact assessments merits insertion into this logical framework and could be addressed in this Commentary.

- This commentary should suggest ceasing relationships with abusive suppliers over which the company fails to achieve change of practice.

**Principle 18. NC**

**Principle 18. Commentary.**

-This Commentary should give further guidance on existing metric tools or at least mention the growing consensus on standardized sustainability reporting (such as GRI) which includes human rights indicators.

-Reporting should be explained in this Commentary as both internal (Line 12) as well as external, which is where the field is already on HR reporting.

**Principle 19.**

- Suggest a third bullet (c) relative to the importance of providing/disclosing information to stakeholder requests.

**Principle 19. Commentary.**

- The “know and show” approach to this GP keeps the discussion in the realm of the business, rather than opening the communication issue up to consider the rights of the stakeholder. In this regard, the GP and related Commentary should speak of “disclosure, transparency, access to information, and make reference to the idea that stakeholders will ask for, and should receive, information about human rights impacts.

**Principle 20.**

The wording of this Principle as it stands alone is unclear in terms of exactly what legitimate processes are.

**Principle 20. Commentary.**

Commentary needs to stress that once human rights violations and impacts are identified, the company should work to stop them immediately.

**Principle 21**

- This principle begins with a generic principle about appropriateness, and then through sub point and in the Commentary, diverges to discussing appropriateness as pertains to weak governance zones. The principle, in and of itself is strong and very relevant *to all business practices*, not only to those in weak governance zones, however the intent is not clear from the text. We suggest to use this principle as a generic principle, and balance out or remove the weak governance zone references; if that is not the intent, then the main paragraph may need rewording.

- We suggest eliminating the phrase in point (d) “as though it were a legal compliance issues”

**Principle 21. Commentary.**

Adjust as necessary if heed comments above.

**Principle 22.**

This principle can generate much controversy, particularly as it places the business in the territory of deciding hierarchy of human rights issues. Perhaps more clarity is needed in terms distinguishing between prioritizing responses or resource allocation from prioritizing more generically which issues to address. Companies should not be discretionally choosing to tolerate human rights abuses simply because they consider that others are more urgent. This is a key distinction in the debate and distinctions between human rights and social or sustainability issues more generally.

**Principle 22. Commentary.**

The Commentary will need to be adjusted along the issues raised in the comment above.

**IV. ACCESS TO REMEDY**

**Principle 23.**

As this is a foundational principles for the remedies section, we suggest opening the principle up to the issue of grievance mechanisms. The principle could be divided into issues pertinent to the State (remedies) and to business (grievance mechanisms). Paragraphs 4 and 7 in the Commentary address this partially. It could be explicit in the main text.

**Principle 23. Commentary.**

- Remedies are not a sole response, so “among others should be included” in paragraph 4. When the comment describes what an effective remedy includes, it should be said “among others”;
- The issue of restitution of other elements than property should be mentioned;

**Principle 24.**

NC

**Principle 24. Commentary.**

The issue of conflicts of interest, particularly when State finance or co-own investments, is an effective barrier that should be mentioned.

**Principle 25.**

NC

**Principle 25. Commentary.**

- States should engage business to ensure that they provide such mechanisms;
- States should ensure political mandate and resources to create meaningful state based non judicial mechanisms, such Ombudsman, NHRIs, mediation, etc...

**Principle 26.**

This principle is about Non-State actors, and as such, it should be worded to reflect the responsibility of non-state actors, such as business to provide or participate in effective

grievance mechanisms, presently it is worded as a State duty. Principle 27 is more oriented in this manner. This duality should be considered.

**Principle 26. Commentary.**

The Commentary could focus more on non-state actor led initiatives.

**Principle 27.**

See comments to Principle 26.

**Principle 27. Commentary.**

- Operational level grievance mechanisms should be monitored by governmental human rights authorities to guarantee public interest protection and law compliance.
- Human Rights violations revealed through these processes should be reported to the appropriate governmental authorities.

**Principle 28.**

NC

**Principle 28. Commentary.**

- Collaborative industry or multi-stakeholders initiatives in this domain should formally include internationally recognized human rights standards and also provide for effective grievance mechanisms.

**Principle 29.**

-Should take into consideration dynamics and needs of vulnerable groups.

**Principle 29. Commentary.**

NC