

# Introduction to the Guiding Principles on Business and Human Rights

*OHCHR*

*African Regional Forum*

*Addis Ababa, 16 September 2014*



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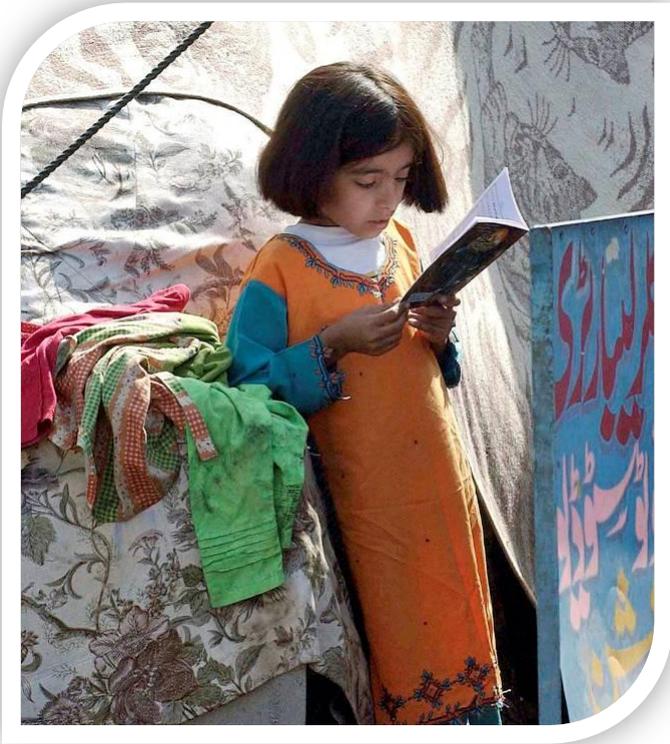
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# BACKGROUND



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# What are human rights?



- The simple idea behind human rights is that **everyone should be treated with dignity**
- Human rights are rights that are inherent to all people, without discrimination
- Human rights are all **interrelated, interdependent** and **indivisible**
- Human rights are enshrined in international treaties and customary law
- **Business can impact all human rights – positively and negatively**
- **Focus on the UN Guiding Principles is on avoiding and addressing negative impacts**

## Human rights – some frequently invoked rights in the context of business (non-exhaustive list , often depends on sectoral and operational context):

- Right not to be subjected to slavery, servitude or forced labour (ICCPR, Art. 8):
  - **Example:** A food processing company contracts with a recruitment agency that uses trafficked workers and requires workers to give over their passports until they have worked off their debt to the agency
- Rights to freedom of expression (ICCPR, Art. 19):
  - **Example:** An extractives company pressures the government to initiate criminal proceedings against peaceful protesters

# Human rights – some frequently invoked rights in the context of business...

- Right to form and join trade unions and the right to strike (ICESCR Art. 8):
  - **Example:** A manufacturing company discriminates against unionized employees in hiring decisions, promotions or other treatment, and when workers go on strike, dismisses the workers
- Right to health (ICESCR, Art. 12):
  - **Example:** A chemicals company dumps toxic waste without precautions, so the toxins get into water suppliers and soil and causes diseases in the community

# Human rights – some frequently invoked rights in the context of business...

- Right to an adequate standard of living (ICESCR, Art. 11)
  - **Example:** An agribusiness company engages in forced evictions, resulting in displacement and loss of housing and income-generating activities.
- Right to just and favourable conditions of work (ICESCR Art. 7):
  - **Example:** A clothing retailer contracts with a supplier that pays workers less than the minimum wage and requires them to work up to 80 hours per week in cramped, noisy factories.



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# THE GUIDING PRINCIPLES



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# The early business and human rights agenda

- With globalization, increased stakeholder attention – particularly on corporate supply chains
  - Fueled in part by high-profile scandals – e.g. Nike child labour scandal, hanging of Ogoni leaders in Nigeria, 1984 Bhopal
- In response, emergence of initiatives on broader, industry-wide standard-setting
  - **Short-comings: purely voluntary, limited in scope, and lacking effective oversight**
  - **No broad agreement on what standards apply to business**

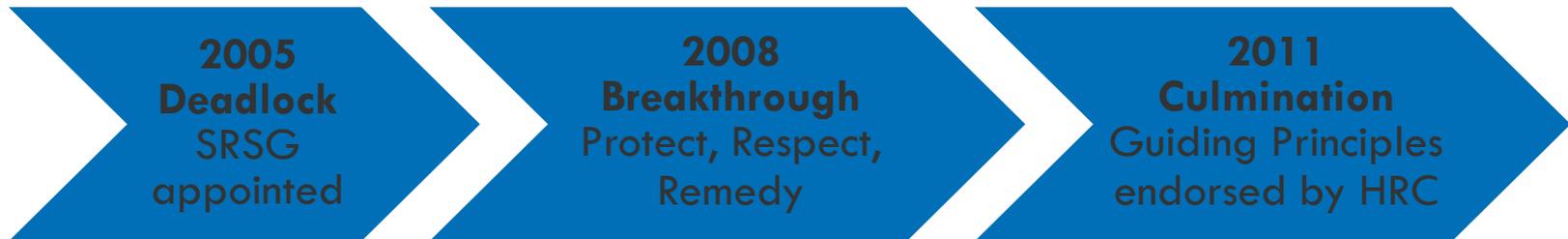


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# UN process 2005-2011



*John Ruggie  
Special Representative of the UN  
Sec-Gen (SRSG)*



- Human Rights Council mandate
  - *Identify and clarify standards of Corporate Responsibility*
  - *Clarify role of States*
- Principled pragmatism: “to reduce corporate-related human rights harm to the maximum extent possible in the shortest possible period of time”
- Evidence-based: voluminous research, 47 multi-stakeholder consultations

# The “End of the Beginning”

- A global normative framework with a strong political foundation
- 2011: The Council unanimously endorses the Guiding Principles for operationalizing the Protect, Respect and Remedy framework in Resolution 17/4.
- Structured on the three pillars – Protect, Respect and Remedy

# WHAT to Do – 3 Pillar Framework

## State Duty to Protect

- Policies
- Regulation
- Adjudication

## Corporate Responsibility to Respect

- Act with due diligence to avoid infringement
- Address adverse impacts on human rights

## Access to Remedy

- Effective access for victims
- Judicial and non-judicial

# Features of the GPs

- **All States.**
- **All companies**, of all sizes, in every sector, in any country.
- **Distinct, but complementary** responsibility between States and companies
- **No new legal obligations** – but elaborate on **implications of existing obligations** and practices for States and business.
- Human rights **cannot be offset**: doing good in one aspect cannot compensate human rights harms elsewhere.
- Contains **“smart mix”** of regulatory and voluntary approaches

# STATE DUTY TO PROTECT



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# State Duty to Protect – where does it come from?

- The Guiding Principles clarify that the State has the duty to to protect individuals within its territory or jurisdiction or against human rights abuses committed by non-state actors, including business.
  - This duty is **derived from international law** and is well established in the international human rights framework
  - It is elaborated upon by international human rights bodies - e.g. UN treaty bodies.

→ **The Guiding Principles affirm this duty, but do not create new legal obligations – the obligation already exists.**



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## State Duty to Protect

Must protect against business-related abuse within territory/jurisdiction

*Prevent, mitigate and address through policies, legislation, regulation and adjudication*

Set out expectation that business domiciled in territory/jurisdiction respect human rights

*Extraterritorial jurisdiction over companies not a general requirement in IHRL, but reference is made to developments in international and national practice on ETJ*

# The State duty to protect

- ✓ A **standard of conduct** – States are not responsible for human rights abuses by private actors, but must take the necessary steps to prevent, punish and redress.
- ✓ States have the duty to **protect and promote the rule of law**.
- ✓ Concept of **policy coherence**:
  - ✓ States should ensure that all governmental departments, agencies and institutions that shape business practices observe human rights obligation, including through relevant information, training and support.

# CORPORATE RESPONSIBILITY TO RESPECT



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# Where does this responsibility to respect rights come from?

- International human rights law generally limited to State actors – references for individuals and institutions to respect and promote human rights generally do not create direct legal obligations under international law.
- The State enacts and enforces legislation and regulation that protect the human rights of people in its jurisdiction – in most cases, respecting human rights follows from complying with national law.
- **With the Guiding Principles, United Nations member states have affirmed that business enterprises have an independent responsibility to respect human rights, distinct from obligations of states!**



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# Corporate Responsibility to Respect

Respect: Do no harm and address impacts

Scope: all rights

Avoid causing/contributing + prevent/mitigate negative impacts by business relationships

Apply to all companies

Implications: Policies and processes



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# Policies and processes – ‘Know & Show’

## Starting Point: Policy Commitment

## Identify and address impacts: Due Diligence

Due diligence to identify, prevent, mitigate and account for how impacts are addressed. 4 elements:

1. Assessing impacts
2. Integrating and acting on findings
3. Tracking responses
4. Communicating on impacts

- Taking all necessary and reasonable precautions to prevent harm
- Should cover impacts caused or contributed to through activities or relationships
- Varies according to size, risks, and context
- On-going

# ACCESS TO REMEDY



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# Access to Remedy in the international human rights system

- Effective remedies for victims of human rights abuse are a critical component of any legal system and are contemplated by all major human rights treaties
- Strongly affirmed by human rights bodies and expert recommendations

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

– UDHR, Article 8



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# Access to Remedy in the Guiding Principles

Even where institutions operate optimally, disputes over adverse human rights impacts of company activities are likely to occur. If so, victims must be able to seek redress.

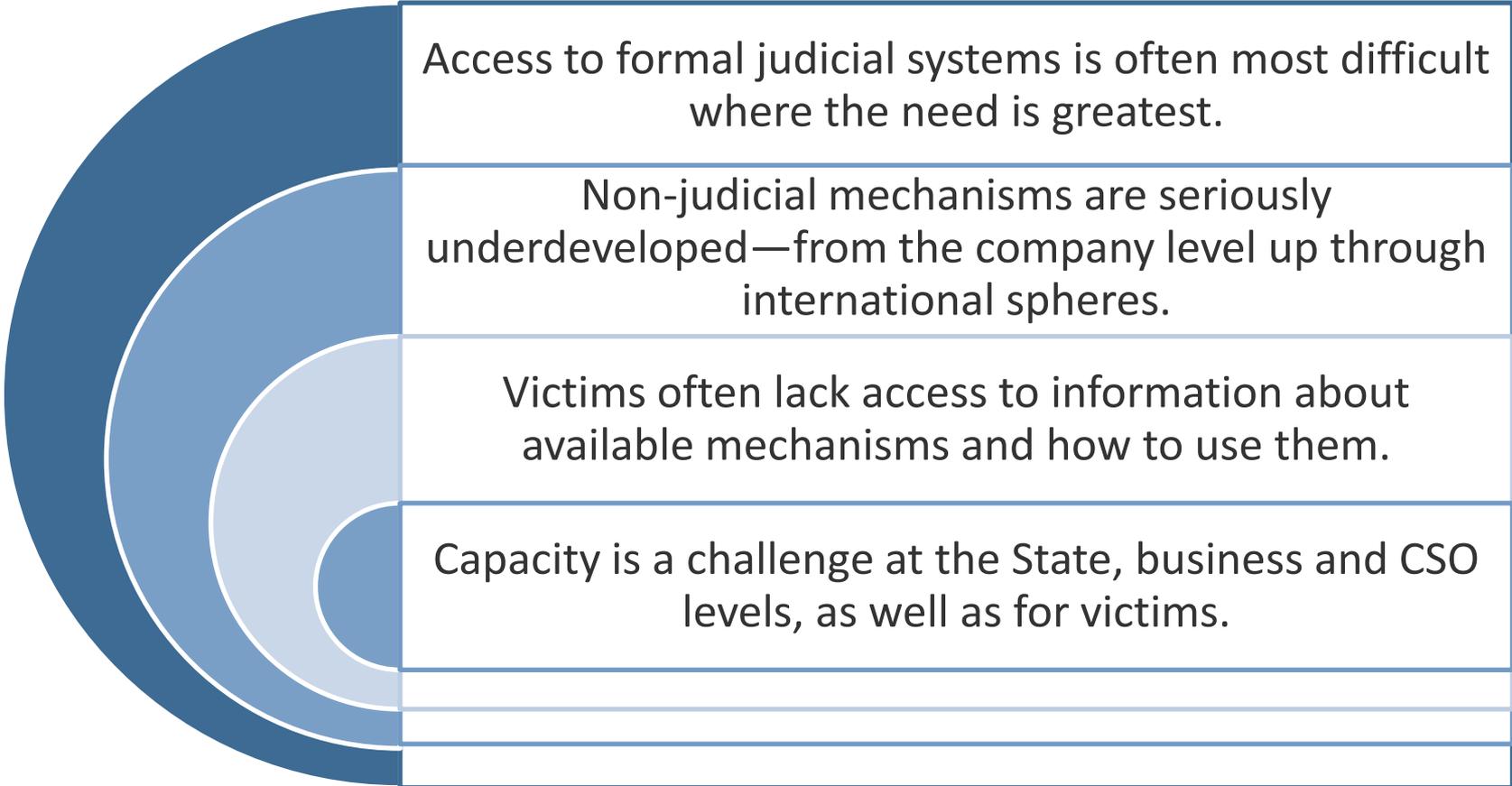
## State Duty to Protect

States are required to take appropriate steps to investigate, punish and redress.

## Corporate Responsibility to Respect

Mechanisms at the company level provide early warning and resolve grievances before they escalate.

# Diagnosis - what is the state of play?



Access to formal judicial systems is often most difficult where the need is greatest.

Non-judicial mechanisms are seriously underdeveloped—from the company level up through international spheres.

Victims often lack access to information about available mechanisms and how to use them.

Capacity is a challenge at the State, business and CSO levels, as well as for victims.

# Access to Remedy – Role of States

- The first and second pillars of the Guiding Principles are only meaningful if there is effective access to remedy
- Essential part of State duty: **ensure access**
  - *Both judicial and non-judicial mechanisms*
  - *Reduce barriers against access to justice*
- **Effective judicial remedies at the core of access to remedy**
- Non-judicial mechanisms play important complementary roles

State based non-judicial mechanisms can include e.g.: labour tribunals, NHRIs, National Contact Points (OECD), ombudsperson and complaints offices

# State-based judicial mechanisms: removing barriers

- States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related abuse, including considering ways to reduce barriers

## Legal barriers

- Piercing the corporate veil: attribution of legal responsibility among members of a corporate group
- Denial of justice in host State and “forum non conveniens” in home state
- Exclusion of some groups from equal legal protection

## Practical and procedural barriers

- Cost of bringing claims and lack of government support
- Lack of legal representation
- Lack of options for aggregating claims
- Prosecutors lack resources, expertise and support

# Access to remedy – role of business

- Remediation is also a critical part of business responsibility: provide for remedy if it has caused/contributed to impacts
- Operational-level (company or site-level) grievance mechanisms can play an important role to enable direct remediation and address impacts before they escalate or worsen
- Businesses should cooperate in good faith with other legitimate mechanisms – e.g. OECD National Contact Points, national human rights institutions

**Example:** A mining company has established a grievance office at the site of one of its open-pit mines. The office has designated a senior official as the focal point, and that person also travels to communities to raise awareness of the mechanism. Communities and individuals can raise any concern with the company, even if it does not amount to a human rights impact. The company tracks use of its mechanism over time to understand whether it is trusted and whether it successfully resolves complaints.



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# Effectiveness criteria for non-judicial grievance mechanisms

- A. **Legitimate** – enabling trust from the stakeholders for whose use they are intended and being accountable for the fair conduct of the process
- B. **Accessible** – being known to all affected stakeholder groups, providing assistance where relevant
- C. **Predictable** – clear and known procedure with an indicative time frame, clarity on types of processes and outcomes they offer
- D. **Equitable** – seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise
- E. **Transparent** – keeping parties informed about progress and providing information on the mechanism’s performance
- F. **Rights-compatible** – outcomes and remedies accord with human rights
- G. **A source of continuous learning** – identifying lessons for improving the mechanism and preventing future harms
- H. **For operational-level mechanisms**: based on engagement and dialogue

# ROLE OF THE UN & MECHANISMS



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# What the UN is doing: Promoting the Guiding Principles



1. Raising awareness - advocacy
2. Supporting human rights mechanisms
3. Supporting capacity building
  1. States and business – implementation
  2. Civil society – monitoring and advocacy
4. Guidance on interpretation of the Guiding Principles
5. Monitoring performance



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# Convergence in global frameworks and standards



# Forum on business and human rights

- Established by the Human Rights Council
- A global platform to discuss trends, challenges and good practices in the implementation of the Guiding Principles
- A venue that brings together all stakeholders
- The 2013 Forum: 1000+ participants from 100+ countries
- Complemented by regional forums organized by the UN Working Group – the first regional forum was held in Medellín, Colombia in August 2013



# Working Group on business and human rights

- **Mandate**
  - Promote dissemination and implementation of the Guiding Principles
  - Promote good practices and lessons learned
  - Seek and receive information from all stakeholders
  - Conduct country visits
  - Explore options for enhancing access to effective remedies
  - Integrate gender perspective & pay special attention to vulnerable persons, including children



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# Latest Developments



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## Recent developments 1.

- Human Rights Council consensus resolution reaffirming endorsement of the Guiding Principles
- Extension of the Working Group mandate for 3 years
- More focus on access to remedy:
  - ✓ Working Group consultations
  - ✓ Annual Forum
  - ✓ OHCHR multi-stakeholder process to improve accountability and access to remedy

## Recent developments 2.

- Human Rights Council resolution to elaborate legally binding instrument to regulate TNCs
- Majority vote
- Focused on TNCs
- Building on the UN Guiding Principles
- Open-ended process (no time limit)
- First session in mid-2015
- One week annual meeting

**Thank you**



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