

## Summary of the UN Working Group on Business and Human Rights' report to the UN Human Rights Council, June 2016

### Leading by example: The State, State-owned enterprises, and Human Rights

In its June 2016 report, the UN Working Group on Business and Human Rights examines the duty of States to protect against human rights abuses involving those business enterprises that they own or control, generally referred to as State-owned enterprises (SOEs). It calls attention to and clarifies how a State should behave **in its role as a company owner** and the ways in which its ownership model aligns with its international human rights obligations. The report assists States in implementing their duty to protect against human rights abuses by SOEs by suggesting a range of action-oriented measures that States can take.

#### State of play

Many States manage large SOE portfolios, and SOEs have risen as significant actors in the global economy. The proportion of SOEs among Fortune Global 500 companies has grown from 9.8% in 2005 to 22.8% in 2014, with US\$389.3 billion of profit and US\$28.4 trillion in assets. SOEs also increasingly operate transnationally, and they are active in a wide range of sectors such as energy, infrastructure, utilities, but also banking and telecommunications.

#### Definition of State-owned enterprises

SOEs are any corporate entity recognized by national law as an enterprise, and in which the State exercises ownership or which is under the control of the State. The State could exercise control either by being the ultimate beneficiary owner of the majority of voting shares or through other means. Examples of an equivalent degree of control include cases where legal stipulations or corporate articles of association ensure continued State control over an enterprise or its board of directors in which it holds a minority stake.

*OECD Guidelines on Corporate Governance of State-owned Enterprises, 2015*

#### Why is this issue important?

There is a lack of attention to the human rights impacts and responsibilities of SOEs, and of the duty of States to protect against abuses by these enterprises. Documented harms include labour rights abuses and adverse impacts on communities. At the same time, SOEs in many countries have been marred by corporate governance issues – from preferential regulatory treatment, direct subsidies and inefficiencies; to lack of transparency and accountability; and operating with impunity.

The Working Group's report sheds light on these normative, governance and protection gaps. It also calls attention to **the duties of the State as an economic actor**, a key element of the Guiding Principles on Business and Human Rights (4, 5 & 6).

## Call for “additional steps” to protect against abuses by SOEs

The starting point for action is Guiding Principle 4: “**States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, ... including, where appropriate, by requiring human rights due diligence.**”

Guiding Principle 4 raises important questions: Why are States explicitly expected to take *additional* steps to protect against human rights abuses by SOEs? Is it not sufficient that States be required to take *appropriate* steps to ensure that all companies, irrespective of structure and ownership, respect human rights?

## Compelling reasons for taking “additional steps”

All business enterprises, including SOEs, have a responsibility to respect human rights. At the same time, there are compelling reasons for States to lead by example and do their utmost to ensure SOEs fully respect human rights and are role models in this regard. The reasons include:

- **Policy coherence:**
  - Governmental departments and entities tasked with exercising State ownership - often Ministries of Finance or Economy - need to be able to act in a manner that is compatible with the overall human rights obligations of the State.
  - States should implement international standards and guidelines in a coherent manner. International guidelines on SOEs, notably the OECD Guidelines on Corporate Governance of SOEs, have been developed to help foster the efficient, transparent and accountable performance of SOEs. Central to this is the concept of “active ownership” - how governments should exercise the State ownership function to avoid the pitfalls of both passive ownership and excessive State intervention. This framework offers a useful anchor for implementing human rights requirements and the Guiding Principles.
- **A legal obligation:** The State has a legal obligation to protect against human rights abuses. A human rights abuse by an SOE may also constitute a violation of the State’s own international law obligations when the acts of the enterprise can be attributed to the State.
- **Legitimacy and credibility:** The State should not ask less of companies that are closely associated with it than it asks of private businesses.

## Suggested measures for additional State action

The Guiding Principles do not specify what types of “additional steps” States should take to ensure the enterprises they own or control fully respect human rights. The Working Group’s report thus suggests a range of measures that States can take to operationalize the Guiding Principles, based on selected good national practices and

relevant international guidelines on corporate governance, responsible business conduct and human rights.

The measures include:

- **Setting clear expectations** in law and/or policy that SOEs not only respect human rights throughout their operations, but that they should be role models in this regard;
- Requiring that SOEs conduct **human rights due diligence** (in their operations at home and abroad);
- Requiring systematic and meaningful **reporting on environment, social, and governance factors that includes human rights**;
- Ensuring victims' **access to remedy**: requirements that SOEs cooperate fully with judicial and non-judicial grievance mechanisms, and that they provide remediation for abuses;
- **Using ownership models** to set human rights expectations and oversee their implementation;
- **Engaging with boards**, which are a key vehicle for States to manage their relationship with SOEs and the human rights requirements they set. Boards should have explicit mandates to ensure and monitor the implementation by SOEs of human rights standards, and account for it.

The Working Group's report elaborates on all these measures, and offers additional suggestions related to ownership arrangements.

### What now?

In working to ensure that all business enterprises respect human rights, there are compelling reasons for States to lead by example and to do their utmost to ensure that the enterprises under their ownership or control fully respect human rights. The Working Group calls on States to demonstrate that leadership, and for SOEs and other stakeholders to focus on this area:

- As a first step, **States** should review their policies and practices with respect to SOEs, and identify and implement measures for action based on the Working Group's recommendations;
- **State-owned enterprises** themselves, irrespective of State action or inaction, should strive to be role models on human rights;
- **Other stakeholders (international organizations, UN bodies, national human rights institutions, civil society organizations, and business associations)** are encouraged to prioritize advocacy, research and action on the human rights responsibilities of SOEs and the duties of States in this regard.

*The Working Group's report (A/HRC/32/45) is available in all UN languages at: <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>*