

Summary of the UN Working Group on Business and Human Rights' report to the UN Human Rights Council, June 2018

Trade promotion and human rights: How States should use economic diplomacy to incentivize business respect for human rights

In its 2018 report to the Human Rights Council (A/HRC/38/48), the Working Group on Business and Human Rights* examines how States can incentivize business respect for human rights through “economic diplomacy” policies and tools. The UN Guiding Principles on Business and Human Rights (UNGPs)** and emerging practice show States can use their trade promotion and finance services to advance the corporate responsibility to respect human rights. The Working Group report takes stock of the normative framework and the emerging practices, and calls on States to make greater effort to use their leverage and to deploy the powerful tools of export credit, trade promotion and trade advocacy in support of their commitments under the UN Guiding Principles.

State of Play:

Many States have established export and trade promotion services as part of their economic development strategies to promote export-driven growth. Trade, exports, and imports of goods in global supply chains can have significant adverse human rights impacts. Trade in conflict minerals, illegal logging and conflict timber, and endangered species are all areas where States have acted to restrict the flow of goods that are associated with higher risks of human rights abuse. One area where progress is being made is with respect to the training of trade and embassy personnel on the UNGPs. Some States are also providing toolkits and guidance to help businesses address human rights due diligence in their cross-border trade. Despite signs of some progress, however, there is need for a seismic shift in the way States use their influence to protect human rights.

Definition of economic diplomacy:

States provide a wide range of services for businesses engaged in trade and export. Those services include selecting companies for participation in trade missions, export promotion and marketing for companies through trade and commercial officers in embassies overseas, advocacy by senior government officials of companies who are bidding on major overseas projects, political risk insurance, guarantees and support at major trade shows. The types of trade promotion activities by public actors are referred to as “commercial” or “economic” diplomacy.

Why is this important?

States act as gatekeepers when they provide much needed support to businesses by providing trade finance and advisory services aimed at expanding export opportunities. As gatekeepers, States can use their leverage to promote a race to the top by setting out clearly the expectation that businesses respect human rights as a precondition for receiving government support for export activities. States can also promote responsible

imports by restricting the flow of goods in supply chains that involve serious human rights abuses.

Guiding Principle 4 of the [Guiding Principles on Business and Human Rights](#) reminds States that their duty to protect rights holders from corporate human rights abuses includes a responsibility to condition public support for trade and investment promotion, such as export credits, on corporate respect for human rights. In addition to export credits, there are a range of additional services that States provide to export-oriented companies, including participation in trade missions, trade advocacy, general guidance on exporting into foreign markets, embassy services in overseas markets, and training and other resources.

Global supply chains in cross-border trade present significant human rights risks and challenges. In the export context, sellers of products in global markets need to ensure that the products they are selling will not cause, contribute or be directly linked to adverse human rights impacts. In the context of imports, a buyer of goods in the global marketplace also needs to ensure that the goods it is purchasing were not produced or manufactured in a way that caused, contributed to or was directly linked to adverse human rights impacts, such as forced labour or human trafficking.

States provide critical support to companies in the form of export credit financing. Under an export credit regime, States provide loans and other types of risk cover (for example, insurance) for a domestic exporter's international buyers. Providing financing to potential buyers offers an incentive to foreign buyers to choose an exporter. Insurance and guarantees reduce the risk to the domestic exporter of non-payment by the overseas buyer. Export credit agencies provide three main instruments to support domestic exporters; (a) insurance, (b) short- medium- and long-term export credits, and (c) guarantees, often coupled with advisory services (market information). There are various models of export credit agency including: (a) Those which are State agencies or departments, (b) Government-owned State corporations that are operated independently but have government oversight, and (c) Consortiums of public/private companies that may be controlled by a Government through funding or regulation. Because export credit is a significant financial benefit, States should use their leverage to require human rights due diligence as part of an export credit regime.

Actions that States should take to implement the UNGPs in economic diplomacy policy and practice:

The Working Groups report calls on States to take concrete steps to implement and facilitate human rights due diligence by integrating the UNGPs and human rights safeguards in economic diplomacy. In particular, the report makes the following key recommendations:

- States should **require businesses to demonstrate an awareness of and commitment to the UNGPs as a prerequisite for receiving State support** and benefits relating to trade and export promotion. States should condition participation in trade missions, eligibility for trade advocacy and generalized export assistance on such commitments. Such forums and tools should be used to raise awareness of business-related human rights risks in the relevant contexts, with a particular emphasis on the risks faced by

vulnerable groups and individuals. The situation for human rights defenders and trade unions should serve as a concrete benchmark.

- States should **expand existing requirements for businesses to make integrity and anti-corruption pledges** in the context of trade promotion and to include a commitment to respect for human rights and an alignment of business activities with the UNGPs.
- States should examine how and when they have withdrawn trade or other government support from companies in the event that they are found to have engaged in foreign bribery or corruption, and determine a similar **withdrawal of support in the event that businesses are found to have caused, contributed or been directly linked to adverse human right impacts**.
- States should also examine how to **use trade support more actively to create incentives for companies to respect human rights** and engage in human rights due diligence and legitimate remediation processes. To the extent that companies know that there is a risk of losing export financing and other benefits, that may promote more effective implementation of the UNGPs.
- In the area of export credit, States and their **export credit agencies should ensure that their practices are aligned with the UNGPs**, not just the IFC Performance Standards. For participants in the OECD Export Credit Group, States are encouraged to look beyond the four corners of the OECD “Common Approaches”, to see how better to align export credit activity with the UNGPs.
- States should **use the multilateral forums that exist for export credit agencies to engage in developing good practices and further commitments relating to the UNGPs**. Such forums include the Berne Union, the International Working Group on Export Credits, the European Union and the BRICS Export Credit Forum.
- **Export credit agencies should focus much more on the issue of enabling access to remedy**. That includes developing better practices for evaluating, supporting and incentivizing the quality of the grievance mechanisms of their clients/applicants at the operational level. At the same time, export credit agencies also need to ensure that they have effective complaints mechanisms and that such mechanisms are readily accessible by affected parties, rights holders and communities.
- **Export credit agencies should review their current transparency and disclosure policies** and consider revising them to make more information public. Export credit agencies can begin from a presumption that material is made public and then carve out narrow exemptions. There may also be a way to present some data in aggregate form or to redact confidential information but still provide civil society with key facts about both successful applications and those turned down by an export credit agency.
- States are encouraged to **develop innovative measures to prevent trade in goods that are connected to serious human rights risk** in global supply chains.

While the present recommendations are focused on States, civil society groups are encouraged to continue their advocacy around issues of human rights, export credits and trade promotion, and to seek greater alignment of State policies and regulations with the UNGPs. Similarly, businesses are encouraged to work in partnership with trade

promotion entities to develop and disseminate effective guidance on how business respect for human rights can be demonstrated in cross-border trade.

See the full report at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/48

Other Working Group publications and statements relating to States activities:

State-owned enterprises (SOEs):

- [Link to report](#) (UN document A/HRC/32/45, available in all UN languages)
- [Executive summary](#)

Best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights:

- [Link to the report](#) (UN document A/HRC/35/33, available in all UN languages)

The Sustainable Development Goals (SDGs) and the UNGPs:

http://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGR_recommendations.pdf

Endnotes:

**) The Working Group on the issue of human rights and transnational corporations and other business enterprises (known as the Working Group on Business and Human Rights) is mandated by the Human Rights Council to promote worldwide dissemination and implementation of the Guiding Principles on Business and Human Rights (resolutions 17/4, 26/22, and 35/7). The Working Group is composed of five independent experts, of balanced geographical representation, and it is part of what is known as the Special Procedures of the Human Rights Council. Special Procedures mandate-holders are independent human rights experts appointed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. The experts are not UN staff and are independent from any government or organization. They serve in their individual capacity and do not receive a salary for their work. For more information see:*

<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

****) The Guiding Principles were unanimously endorsed by the Human Rights Council in 2011 (resolution 17/4) and provide the authoritative global standard for action to safeguard human rights in a business context, clarifying what is expected by governments and companies to prevent and address impacts on human rights arising from business activity. Available at:*

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf