

CONNECTING BUSINESS AND HUMAN RIGHTS WITH ANTI-CORRUPTION

Preliminary concept note by the UN Working Group on Business and Human Rights

Background

The need to safeguard human rights in connection with economic activities is a critical component of sustainable development and socially sustainable globalization. In order to address the governance gaps that continue to create the kind of conditions where business activities have adverse impacts on human rights, the UN Human Rights Council in 2011 unanimously endorsed the Guiding Principles on Business and Human Rights for implementing the UN “Protect, Respect and Remedy” Framework. The Guiding Principles were the first UN-endorsed framework to define the respective duties and responsibilities of governments and businesses to prevent and address human rights impacts arising from business activities. They provide the leading international framework for managing business-related human rights impacts. The Guiding Principles are also critical to the 2030 Agenda for Sustainable Development, given the emphasis on private sector engagement and collaboration to achieve the goals, which needs to be based on corporate respect for human rights.

The UN Working Group on Business and Human Rights¹ is mandated to disseminate the Guiding Principles, promote their comprehensive implementation world-wide and embed them in other global governance frameworks.² This includes giving due consideration to the implementation of the Guiding Principles in the context of the 2030 Agenda for Sustainable Development.

Working Group objective: Unpacking the links between business and human rights and corruption

The Working Group is now seeking to clarify how the Guiding Principles and anti-corruption efforts relate to each other, to demonstrate how measures to drive responsible business practice along these two dimensions can reinforce each other, and what it would imply in practical terms for government and business action.

International human rights mechanisms, including the Human Rights Council, have paid increasing attention to the negative impact of corruption on the enjoyment of human rights and made numerous recommendations to Member States with the aim to prevent and suppress corruption. Depending on the level, pervasiveness and form of corruption, corruption can have devastating impacts on human rights, as it may undermine the availability, quality and accessibility – on the basis of equality – of goods and services States are required to provide to meet international human rights obligations. Moreover, it undermines the functioning and legitimacy of State institutions and processes, it weakens

¹ Formally the Working Group on the issue of human rights and transnational corporations and other business enterprises, <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.

² UN Human Rights Council as per resolutions 17/4, 26/22 and 35/7.

the rule of law and ultimately the State itself. Marginalized and discriminated groups and individuals suffer disproportionately from corruption.

It is also well-established that corruption involving business actors harms the human rights of workers and communities affected by it. For example, work by the International Corporate Accountability Roundtable and Global Witness focusing on large-scale land deals, corruption, and the combined effects of these two issue areas on human rights around the world, demonstrated that many serious human rights abuses involving business often have corruption as an underlying factor.³ Other areas where the connection has been demonstrated include large-scale infrastructure projects and the extractive sector, as well as in relation to the issue of forced labour and trafficking

The importance of strong rights-based approaches to tackling corruption is also a central element for the realization of the Sustainable Development Goals (SDGs). In particular, SDG 16 aims to substantially reduce corruption and bribery in all their forms (16.5), reduce illicit financial flows (16.4), promote effective, accountable and transparent institutions (16.6), and promote inclusive, participatory and representative decision-making (16.7). Building on its previous work and findings on how States address corruption in law enforcement practices in the context of cross-border crimes,⁴ the Working Group is now undertaking work to explore how implementation of the “Protect, Respect and Remedy” pillars of the Guiding Principles and the anti-corruption agendas intersect, and how efforts in both areas can be mutually reinforcing. That is the starting point for this thematic work by the Working Group. Based on initial scoping in consultations with experts working across both fields, it has identified several broad areas in need of examination. These include:

- how the business and human rights and the anti-corruption agendas intersect and how synergies between them might be enhanced
- how understanding corruption risks enhances understanding of and helps addressing salient business-related human rights risks
- how to integrate human rights due diligence in anti-corruption and anti-bribery measures (changing the lens from risk to business to risk to people)
- how lessons from the anti-corruption field (both in the public policy sphere and in corporate governance, as well as from existing monitoring systems and efforts to enhance accountability) can help inform efforts to implement the “Protect, Respect and Remedy” pillars of the Guiding Principles, and what models can be replicated or adapted to the area of business and human rights
- what mutually beneficial policy options for States and business should be pursued

³ <https://www.icar.ngo/publications/2017/5/9/tainted-lands-corruption-in-large-scale-land-deals>

⁴ 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: Study of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/35/33. The report contained an examination of law enforcement practices in the context of other cross-border crimes, such as trafficking in persons, environmental crimes, transnational bribery and corruption, with a view to highlight what types of tools could be used in business and human rights cases.

The Working Group will explore these issues and seek to unpack practical implications and develop recommendations in relation of all three pillars of the Guiding Principles:

- The State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication;
- The corporate responsibility to respect human rights, which means to avoid infringing on the rights of others and to address adverse impacts with which a business is involved (by adopting appropriate policies, exercising human rights due diligence and enabling remediation of harms that occur); and
- The need for access to effective remedy for rights-holders when abuse has occurred, through both judicial and non-judicial grievance mechanisms.

Topics that the Working Group may examine in relation to the three pillars include:

- How can States address twin duties?
 - Embedding human rights and corruption in key policy strategies
 - Areas where States could extend existing anti-corruption policy and regulations to encompass business and human rights
 - Economic diplomacy, trade and trade promotion
 - Export credit
 - Investment
 - Public procurement
 - White lists/Dirty lists
 - Role of international financial institutions (IFI) and development finance institutions
 - Sanctions and debarment regime
 - Revenue transparency and other transparency initiatives as key to preventing harm (EITI, CoST – construction)
- How can business address respect for human rights alongside legal obligations regarding corruption?
 - How can anti-corruption compliance and human rights due diligence be better coordinated within companies
 - Good practices from anti-corruption compliance that can better inform human rights due diligence processes
 - SMEs and capacity building
- Access to remedy
 - Criminal prosecution of bribery cases – the human rights dimension as a factor
 - Cross-border cooperation – lessons from anti-corruption cross-border initiatives: how investigation and prosecution can be improved for cases involving business-related human rights abuse
 - Victims' right to a remedy – using anti-corruption related mechanisms to seek remedy for human rights abuses
 - Use of IFI and other integrity mechanisms to identify human rights impacts – and how IFIs and other non-judicial mechanisms can address dual issues

The Working Group may also identify ways forward for policy alignment and coordination as well as collective action, by addressing:

- Policy reforms that benefit both agendas
 - Beneficial ownership reform
 - Public procurement transparency
 - Conflict of interest legislation for public officials and legislators
 - Know your customer and banking
- What can we learn about national action plans and potential peer review from UNCAC (and OECD)
- How can states, private sector and civil society work to better coordinate anti-corruption and business and human rights agendas to prevent harms along both dimensions
 - Multi-stakeholder initiatives and collective action – examples of good practice from anti-corruption space
 - Partnerships in the anti-corruption space that led to treaty and policy alignment
- The role of civil society as essential to addressing both challenges
 - UNCAC explicitly has role for civil society, but the UN Guiding Principles do not mention this explicitly. What are the lessons from civil society's engagement on UNCAC
 - Importance of whistleblower protection and other related key policy protection tools
- How can the financial sector become a lever to drive effective holistic due diligence that integrates both human rights and anti-corruption risk management.

Overall objectives of the project

Prevention of adverse business-related impacts on people is the overriding and ultimate aim of the Working Group's mandate and for this project.

The project also aims to contribute advance implementation of goals 5, 8, 10 and 16 of the Sustainable Development Agenda by suggesting measures to strengthening relevant laws, policies and practices on law enforcement and administration of justice, mechanisms for accountability and redress particularly for gender related abuses, to improving transparency of decision making processes and UN engagement on rule of law issues that are firmly grounded in human rights standards.

Output

The Working Group will produce a report containing action-oriented recommendations for States and business enterprises as well as other stakeholders. The report will be presented to the UN Human Rights Council in June 2020.

Methodology

The Working Group seeks to develop evidence-based recommendations, taking into account both emerging good practices and existing gaps and challenges. It seeks to consult as widely

as possible with all relevant stakeholders, including governments, civil society, business, investors, academia, national human rights institutions, trade unions, UN and other international organizations, and affected stakeholders and human rights defenders. The Working Group will consult with experts and stakeholders from both the human rights and anti-corruption fields throughout the process.

In addition to expert and multi-stakeholder consultations, the Working Group recommendations will be informed by:

- Research (desk-based and interviews with practitioners)
- Open calls for inputs to be posted on the project web page and distributed widely through civil society, business and expert networks
- A questionnaire distributed to all Member States
- Engagement with key organizations working in the field of anti-corruption and human rights