Business and Human Rights Initiatives of Governmental and Intergovernmental Bodies

Alan S. Gutterman

Various attempts have been made by governmental and intergovernmental bodies to establish guidelines that could serve as point of reference for the duties and responsibilities of businesses with respect to human rights as they conduct their business activities. Allegations that businesses, particularly large transnational corporations (“TNCs”), were regularly complicit in states’ violations of human rights and engage in corrupt activities in developing countries to gain an economic advantage, led to calls for action by the International Labor Organization, which adopted the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy in 1977; the Organization for Economic Cooperation and Development (“OECD”), which adopted the Guidelines for Multinational Enterprises in 1976 as part of the OECD’s Declaration and Decisions on International Investment and Multinational Enterprises; and the UN, which has engaged in several projects to promote accountability of businesses for human rights including the UN Global Compact (adopted in 1999), the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (introduced by the Human Rights Commission in 2003 and largely praised by NGOs and human rights defenders but ultimately abandoned due to strong opposition within the business community)\(^1\), the Guiding Principles on Business and Human Rights (endorsed by the Human Rights Council in 2011), the UN Sustainable Development Goals and a potential UN treaty on business and human rights presently being drafted under the auspices of the UN Working Group on Business and Human Rights and discussed elsewhere in this publication.

Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy


\(^1\) In stark contrast to the voluntary nature of the UN Global Compact and other approaches to issues relating to the impact of businesses on human rights that had been suggested up to that time, the proposed Norms were not voluntary and included legally binding obligations directly on businesses, rather than states. The fundamental principle of the Norms was that transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights. Not surprisingly, businesses were concerned about the mandatory nature of the Norms and what they perceived as vague standards and a challenging obligation to promote human rights. Ironically, certain of the standards proposed in the Norms, as well as the proposition that businesses need to somehow be held directly accountable for protection of and respect for human rights, are now back under discussion as part of the deliberations on the potential treaty on business and human rights that are described elsewhere in this publication.

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Declaration provides guidance to governments, employers’ and workers’ organizations, multinational enterprises and national enterprises and is not mandatory, nor is it a code of conduct for business. Instead, it can be used as a reference for companies with respect to social policy and inclusive, responsible and sustainable workplace practices. The ILO MNE Declaration sets out principles built on international labor standards in the areas of employment, training, conditions of work and life, and industrial relations as well as general policies. These include the fundamental principles and rights at work but also guidance on many other facets of decent work. The 2017 revisions were intended to respond to new economic realities, including increased international investment and trade, and the growth of global supply chains, and to take into account new labor standards adopted by the ILO and the UN and the 2030 Agenda for Sustainable Development. Specifically, new principles were added in 2017 to address decent work issues related to social security, forced labor, transition from the informal to the formal economy, wages, access to remedy and compensation of victims. Guidance on “due diligence” processes was also added, consistent with the UN Guiding Principles on Business and Human Rights discussed below and elsewhere in this publication.

**OECD Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises (http://mneguidelines.oecd.org/) are the most comprehensive set of government-backed recommendations on responsible business conduct in existence today. The governments adhering to the Guidelines, all 34 OECD countries and 12 non-OECD countries, aim to encourage and maximize the positive impact multinational enterprises (“MNEs”) can make to sustainable development and enduring social progress. The Guidelines were first adopted in 1976 and have been reviewed 5 times since then to ensure that they remain a leading tool to promote responsible business conduct in the changing landscape of the global economy. The most recent update in 2011 took place with the active participation of business, labor, NGOs, non-adhering countries and international organizations.

The Guidelines are part of the OECD Declaration and Decisions on International Investment and Multinational Enterprises, and provide voluntary principles and standards for responsible business conduct by MNEs in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Specifically, among other things, the General Policies in Section II of Part I of the Guidelines call for MNEs to respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments; develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate; and encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the OECD Guidelines. Implementation of the Guidelines is promoted and facilitated by the OECD.

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Due Diligence Guidance for Responsible Business Conduct, which was adopted in May 2018 to provide plain language explanations of due diligence recommendations and associated provisions in the Guidelines to help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships. 3

UN Global Compact

The UN Global Compact (https://www.unglobalcompact.org/), often referred to simply as the “Global Compact”, is a voluntary initiative launched in 1999 under the inspiration of former UN Secretary-General Kofi Annan that is based on CEO commitments to implement universal sustainability principles and to take steps to support United Nations goals. By encouraging companies to operate responsibly and take strategic actions that support society, the Global Compact works to ensure that business activity adds value not only to the bottom-line, but also to people, communities and the planet. At the same time, businesses can help to improve the social and environmental framework that is necessary in order for them to have continued access to the open and free markets needed for their economic success. The Global Compact is based on the proposition that companies should take a comprehensive approach to sustainability and must operate responsibly in alignment with universal principles, take strategic actions that support the society around them, commit to sustainability at the highest level, report annually on their efforts and engage locally where they have a presence.

The Global Compact encompasses ten principles which were derived from standards in four areas: human rights (the Universal Declaration of Human Rights, labor (the ILO’s Declaration on Fundamental Principles and Rights at Work), the environment (the Rio Declaration on Environment and Development) and corruption (the UN Convention Against Corruption). These ten principles are as follows:

**Human Rights**

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.

**Labor**

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

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3 The OECD has also issued several due diligence guidance publications focused on specific sectors including OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector; OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas; OECD-FAO Guidance for Responsible Agricultural Supply Chains; and OECD guidance for institutional investors on implementing human rights due diligence.
Principle 4: the elimination of all forms of forced and compulsory labor;  
Principle 5: the effective abolition of child labor; and  

**Environment**

Principle 7: Businesses should support a precautionary approach to environmental challenges;  
Principle 8: undertake initiatives to promote greater environmental responsibility; and  
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

**Anti-Corruption**

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

A European Union publication has explained that the Global Compact is not a legal instrument; it is aspirational, and that companies who become signatories to the Global Compact do so in order to make a public commitment that they are prepared to work towards the achievement of the Global Compact’s objectives by making the ten principles an integral part of their business strategies and day-to-day operations. Signatories to the Global Compact have opportunities to engage in the exchange of information on initiatives undertaken in the course of the promotion of the principles, thus allowing the Global Compact to serve as a “learning model”. Signatories can also develop networks at regional, national and sectoral levels to engage in dialogue, learning and projects that suit local contexts. However, being a signatory to the Global Compact requires accountability and signatories must commit to issuing an annual Communication on Progress (“COP”), which is a public disclosure to stakeholders (e.g. investors, consumers, civil society, governments, etc.) on progress made in implementing the ten principles, and in supporting broader UN development goals. If a signatory fails to communicate its progress by the deadline, it will be listed as "non-communicating" on the UN Global Compact website. If a further year passes without the submission of a COP, the company will be expelled. The Compact reserves the right to publish the names of companies that have been expelled for failure to comply with this requirement.4

As of the end of 2019, there were over 13,000 signatories to the Global Compact in 170 countries, both developed and developing, representing nearly every sector and size, making it the world’s most popular multi-stakeholder CSR initiative. While businesses were and remain the primary focus of the initiative, the Global Compact, which has its offices in New York, has attracted support and involvement from a variety of non-

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4 Handbook on Corporate Social Responsibility (CSR) for Employers’ Organizations (European Union CSR for All Project, April 2014), 17-18.
business participants including trade unions and a number of human rights and environmental NGOs that are willing and able to bring their expertise and experience to the Global Compact, enhance its learning focus and thereby enhance the development of good practices.\(^5\) However, critics of the Global Compact complain about its voluntary nature and argue that the principles are not specific enough and that the obligations imposed on businesses are minimal. Many have also taken issue with the inadequacy of the Global Compact’s monitoring and enforcement mechanisms and worry that Global Compact membership will be misused as a marketing tool by companies who tout their alleged commitment to human rights and other aspects of responsible business behavior while actually doing nothing to address human rights violations in their operations.

**UN Guiding Principles**

One of the most highly publicized initiatives relating to the relationship between international human rights and the operations of business enterprises has been the "Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (“Guiding Principles”), which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises after extensive consultation and were endorsed by the Human Rights Council, the key independent UN intergovernmental body responsible for human rights, in its resolution 17/4 of 16 June 2011.\(^6\) The Guiding Principles were not intended to impose new legal obligations on business, or change the nature of existing human rights instruments, instead their aim is to articulate what these established instruments mean, for both states and companies, and to address the gap between law and practice.\(^7\) Since they were first approved the Guiding Principles have become the global standard for the respective roles and duties of states and businesses relative to human rights and have been integrated as central elements of other well-known international standards such as the OECD Guidelines for Multinational Enterprises, IFC Performance Standards and ISO 26000 Social Responsibility Guidance.\(^8\)

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5 Id. The UN Global Compact has also come to play an important role in the development and promotion of other guidelines and standards that promote business’ accountability for human rights. For example, the Global Compact collaborated with UNICEF and Save the Children in 2010 to develop the Children’s Rights and Business Principles as the first comprehensive guide to businesses on the full range of actions they could take in the workplace, marketplace and community to respect and support children’s rights including, among other things, eliminating child labor, improving health and safety conditions and providing decent work for young workers and their parents.

6 See http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf The Guiding Principles are sometimes referred to as the “Ruggie Principles”, referring to John Ruggie, the Special Representative for Business and Human Rights who first introduced the principles in 2007 and led the efforts that eventually led to the endorsement of the Guiding Principles.

7 Handbook on Corporate Social Responsibility (CSR) for Employers’ Organizations (European Union CSR for All Project, April 2014), 18.

8 ISO 26000 provides that with respect to human rights the responsibility of organizations is to exercise due diligence to identify, prevent and address actual or potential human rights impacts resulting from their activities or the activities of those with which they have relationships (e.g., suppliers and other value chain partners). Section 6.3.3.2 of ISO 26000 requires organizations to design and implement a due diligence process that is appropriate to the organization’s size and circumstances and which includes a human rights policy for the organization that gives meaningful guidance to those within the organization and those...
The Guiding Principles lay out what has become widely known as the “Protect, Respect and Remedy” framework. With regard to protection, it is the states that have the primary duty to protect the human rights of persons within their territories against human rights abuses by third parties, including businesses, through policies, regulation and enforcement. For their part, businesses must respect human rights by taking steps to avoid infringing human rights, such as due diligence, and avoid being complicit in states’ actions that violate human rights. Finally, the Guiding Principles created shared responsibilities for states and businesses to provide victims of human rights violations with greater access to effective remedies, both judicial and non-judicial. While the Guiding Principles do not impose enforcement responsibilities with respect to human rights on businesses, they are expected to engage in ongoing reviews of their activities and relationships to ensure that they are not adversely impacting human rights and consult with all affected groups, disseminate their findings, remedy any direct or indirect violations and monitor the effectiveness of remedial measures to confirm that all issues have been addressed. The Guiding Principles do not require that businesses actively “promote” or advance human rights; however, companies interested in taking on those types of responsibilities may do so by committing to follow the Global Compact and/or conduct their operations in a manner that is consistent with pursuit of the UN’s Sustainable Development Goals discussed below. In fact, businesses often promote human rights through community investment projects, such as building schools and cultural centers, but such actions cannot be used to offset negative human rights impacts from other aspects of the company’s operations.

Responsibility for promotion of the effective and comprehensive dissemination and implementation of the Guiding Principles has been vested in the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (also referred to as the Working Group on Business and Human Rights) established by the Human Rights Council in 2011. The Working Group, which is composed of five independent experts of balanced geographical representation, has a mandate from the Human Rights Council to, among other things:

- Identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations closely linked to the organization; a means of assessing how existing and proposed activities may affect human rights; a means of integrating the human rights policy throughout the organization; a means of tracking performance over time, to be able to make necessary adjustments in priorities and approach; and actions to address the negative impacts of its decisions and activities. ISO 26000 Guidance on Social Responsibility (Geneva: International Organization for Standardization, 2010), 26.

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thereon and, in that context, to seek and receive information from all relevant sources, including governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders.

- Provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights.
- Continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas.
- Work in close cooperation and coordination with other relevant special procedures of the Human Rights Council, relevant UN and other international bodies, the treaty bodies and regional human rights organizations.
- Give due consideration to the implementation of the Guiding Principles in the context of the 2030 Agenda for Sustainable Development, which include various goals closely related to business operations and accountability including affordable and clean energy, decent work and economic growth and responsible production.

The Working Group is also charged with guiding and overseeing the work of the UN Forum on Business and Human Rights, which was established by the Human Rights Council in 2011 and has become the world's largest global gathering on business and human rights (a three-day conference held annually in Geneva, normally in November). As the Human Rights Council specified in its resolution 17/4, the Forum serves as a key global platform for stakeholders to “discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights.” It is open to States, business enterprises and associations, civil society organizations, trade unions, victims, academics, students, the media and any other relevant stakeholder. The Working Group chairs the Forum and submits reports on the proceedings and thematic recommendations of the Forum for consideration by the Human Rights Council.

The Guiding Principles begin by focusing on the duties of states to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises, through appropriate steps to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication. 12 With regard to business enterprises, states are expected to clearly set out expectations that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations and take additional steps in situations where activities of the state intersect with business (e.g., guarding against human rights abuses by business enterprises that are owned or controlled by the state, or that receive substantial support and services from state; and promoting respect for human rights by business enterprises.

with which they conduct commercial transactions). States are also expected to provide governmental departments, agencies and other state-based institutions that shape business practices with relevant information, training and support to ensure they are aware of and observe the state’s human rights obligations when fulfilling their respective mandates. The Guiding Principles also include specific duties and obligations on states with respect to ensuring, through judicial, administrative, legislative or other appropriate means, that when human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedies including effective domestic judicial and non-judicial grievance mechanisms.\(^{13}\)

The part of the Guiding Principles relative to corporate responsibilities to respect human rights begins with the following foundational ideas in Guiding Principles 11-15:

“11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.\(^{14}\)

13. The responsibility to respect human rights requires that business enterprises avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including a policy commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and...
processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”

Guiding Principles 16, 17 and 22-24 lay out various operational principles to guide business enterprises on how they can effectively discharge their human rights responsibilities including:

“16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that: (a) is approved at the most senior level of the business enterprise; (b) is informed by relevant internal and/or external expertise; (c) stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (e) is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; and should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.15

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.  
23. In all contexts, business enterprises should comply with all applicable laws and respect internationally recognized human rights, wherever they operate; seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements; and treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate. 
24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent

15 Guiding Principle 17 defines the parameters for human rights due diligence, while Guiding Principles 18 through 21, which have been omitted for the sake of brevity, elaborate its essential components (i.e., identification and assessment, integration of findings, tracking and communications).
and mitigate those that are most severe or where delayed response would make them irremediable.”

As mentioned above, states have obligations under the Guiding Principles to adopt and enforce domestic laws that fulfill their duty to protect people within their borders from human rights abuses by businesses and other non-state actors. These laws, when implemented, often cover a wide ranges of subjects including labor practices and working conditions, health and safety, environmental matters, consumer protection and non-discrimination, and are sometimes embedded in the states’ constitutions. However, there is no global standard that effectively harmonizes the content and interpretation of domestic human rights laws (e.g., language may be weak, interpretive guidance may be poor and unclear and application may be limited so as to ignore certain groups), nor is there any guarantee that the laws will be consistently enforced by government officials and courts due to lack of resources and/or propensities to bribery. In those cases where businesses are operating in countries where the human rights law framework does not meet recognized international standards, the Guiding Principles requires that companies continue to respect the higher standards as a legal compliance issue even in the face of conflicting local requirements and practices.

Guiding Principles 18-21 elaborate the essential components of the human rights due diligence obligation stated in Guiding Principle 17:

“18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should draw on internal and/or independent external human rights expertise; and involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.  
19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. Effective integration requires that responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise; and internal decision-making, budget allocations and oversight processes enable effective responses to such impacts. Appropriate action will vary according to whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; and the extent of its leverage in addressing the adverse impact.  
20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should be based on appropriate qualitative and quantitative indicators; and draw on feedback from both internal and external sources, including affected stakeholders.
21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences; provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved; and in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality."

Corporate responsibilities with respect to “due diligence”, as laid out in Guiding Principle 17 and elaborated upon in the other Guiding Principles referred to above, have been described as the process that businesses can use to “know and show” that they respect human rights and a guide for businesses to operationalize respect for human rights into their practices and activities; however, there has been no shortage of controversy with respect to determining the appropriate scope of a company’s duties and obligations. A European Union publication has explained that companies are expected to use due diligence as a "tool" to help them identify, prevent, mitigate and account for any adverse human rights impacts. As noted above, due diligence should include assessing actual or potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating any actions. Certainly these activities should be manageable with respect to a company’s own operations and, in fact, there are legitimate business reasons apart from the Guiding Principles that should be driving companies to carefully monitor its own human rights impacts; however, difficulties will no doubt occur when and if companies take on their responsibilities to look into the actual or potential human rights impacts that are created by any business relationships including dealings with supply chain partners.16

It is reasonable to use experience gained from due diligence in other contexts, such as mergers and acquisitions, as a starting point for human rights due diligence; however, there is a key difference: when the subject is human rights due diligence, it is the risks to people that need to be examined, not the risks to the business itself, although human rights risks can easily become business risks if they are not identified, corrected or remediated. Human rights due diligence is intended to be a purposeful effort by companies to analyze the actual or potential human rights impacts of its own activities and those of its business partners. Without such an initiative it is impossible for a company to truly know whether it is actually conducting its business in a manner that is doing no harm. Human rights due diligence requires meaningful consultation with potentially affected groups to be sure that they are appropriately included and needs to be regularly repeated, used when new initiatives, products or services are in development, or when entering a new market or business relationship (i.e., supply contract, joint venture

16 Handbook on Corporate Social Responsibility (CSR) for Employers’ Organizations (European Union CSR for All Project, April 2014), 21.
etc.) or be part of other assessments (e.g., environmental). While guidelines and best practices for human rights due diligence are evolving, there will never be “one-size-fits-all” for the process and companies will need to continuously assess allocation of responsibilities and resources, both human and financial, to their efforts, particularly as their business footprint expands. Human rights due diligence needs to be effectively overseen, the results of the due diligence need to be captured and reported, effective remedial steps need to be taken promptly and measures need to be implemented to protect against a recurrence of negative impacts uncovered during the process.  

Tools and Resources for Implementing the Guiding Principles

This publication attempts to provide readers with references to a wide range of tools and resources that are available to assist policymakers, businesses, civil society and other stakeholders in understanding how to effectively implement the Guiding Principles. Some of the most widely used resources include:

- “Doing business with respect for human rights” (Global Compact Network Netherlands, Oxfam and Shift) (https://www.businessrespechumanrights.org/)
- UN Guiding Principles Reporting Framework, (Shift, Mazars) (https://www.ungpreporting.org/)
- Human Rights Due Diligence Framework (Ethical Trading Initiative)

Recognizing that due diligence activities will vary depending on the underlying business activities, resources have been developed for sector-specific application of the Guiding Principles. Examples include the European Commission Sector Guides on Implementing the UN Guiding Principles on Business and Human Rights (for employment and recruitment agencies, ICT companies, and oil and gas companies), OHCHR advice to the OECD on the application of the Guiding Principles to the financial sector and OHCHR guidance on the application of the Guiding Principles in the context of the banking sector.

Readers should also consult the tools relating to the corporate responsibility to respect under the Guiding Principles that are available through the Business and Human Rights Resource Centre’s portal at https://business-humanrights.org/en/business-action. The portal includes an extensive library of links to materials published by various organizations to assist companies in operationalizing human rights and also includes examples of actions taken by companies to implement human rights policies and practices.

In addition, the UN Working Group on Business and Human Rights has compiled a list of tools and resources to support corporate human rights due diligence in the Annex to Companion Note II to the Working Group’s 2018 Report to the General Assembly: “Corporate human rights due diligence—Getting started, emerging practices, tools and resources” (UN Working Group on Business and Human Rights, October 2018) including “getting started” tools with practical examples and lessons, tools focused on specific aspects of human rights due diligence (e.g., assessing impacts, stakeholder engagement, communications and supply chain management and business relationships), context-specific human rights

17 Id. at 21-22.
due diligence tools, issue- and sector-specific human rights due diligence tools and publicly available human rights impact assessments.

In its 2018 report to the UN General Assembly, the Working Group focused on emerging practice and innovations of corporate human rights due diligence across sectors, noting that guidance and practical experience on how to implement human rights due diligence in practice now existed and that a lack of understanding could no longer be used as an excuse for inaction by businesses. In the Background Note for the report, the Working Group referred to three assessments completed in 2017 on various aspects of how human rights due diligence was being implemented among the largest corporations across several industries and highlighted several key observations including the following:

- Most companies that were surveyed were at an early stage of implementing the Guiding Principles; however, there appeared to be a growing willingness to commit to respect human rights and explore how to embed the commitment in company systems.
- The majority of surveyed companies did not demonstrate “best practice”, which may indicate that risks to workers and communities were currently not being managed adequately in spite of growing awareness and commitments.
- There was a lack of focus in most current reporting on human rights risks, which at best was a result of inadequate communication, or at worst a reflection of insufficient understanding and management of human rights risks.
- The strongest performance tended to be in relation to policy commitments and high-level governance arrangements and the early stages of human rights due diligence.
- Performance was particularly weak on the “taking action” and “tracking of responses” components of human rights due diligence set out in the Guiding Principles, and meaningful engagement with potentially affected stakeholders was lagging.
- Businesses generally performed poorly with respect to transparency on the concrete details of risk assessments and human rights due diligence processes, thus making assessment of the effectiveness of current practices most difficult.

The Working Group argued that while the results of the assessments indicated the progress was slow overall, there was nonetheless good news in the evidence that good

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18 Background Note: “Corporate human rights due diligence—Identifying and leveraging emerging practice” (UN Working Group on Business and Human Rights, April 2018), 4-5. The referenced assessments included the 2017 Corporate Human Rights Benchmark (https://www.corporatebenchmark.org/) (focusing on companies involved in the agricultural products, apparel and extractives sectors); “Human rights reporting: are companies telling investors what they need to know?”, available at https://www.shiftproject.org/resources/publications/corporate-human-rights-reporting-maturity/ and a study by Vigeo Eiris (http://www.vigeo-eiris.com/the-human-rights-responsibilities-of-business-in-a-changing-world/) (an assessment of more than 3,000 companies headquartered in 35 countries on “the degree to which listed companies around the globe commit and act to respect and promote, and prevent violations of, fundamental human rights, employees’ labor rights and non-discrimination at work in both their operations and their supply chain”).
practices were beginning to emerge and that a small group of leaders seemed to be developing practices that could provide a foundation for learning and improvement by a wider range of companies. The Working Group urged companies to adhere to principles of internationally recognized human rights, which means that businesses should honor and follow international human rights standards when national legal requirements fall below such standards; conduct due diligence in a manner that is proportionate to the size of the enterprise, the risk of the severe impacts and the nature and context of the business operations; tailor due diligence to specific risks and how they affect different groups (such as applying a gender lens or taking into account how actual or potential adverse impacts may differ for or may be specific to women) and ensure that due diligence is informed by meaningful stakeholder engagement throughout the process, in particular with affected stakeholders.\textsuperscript{19}

UN Sustainable Development Goals

The 17 Sustainable Development Goals ("SDGs") of the 2030 Agenda for Sustainable Development were adopted by world leaders in September 2015 and went into effect on January 1, 2016. It was intended that over the fifteen year period running through 2030 the SDGs, and their accompanying 169 targets, would be universally applied to all and that countries would mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind. While the SDGs are not legally binding, it is intended that national governments will be expected to take ownership and establish national frameworks for the achievement of the 17 SDGs and that countries will have the primary responsibility for follow-up and review of the progress made in implementing the SDGs. Provisions have also been made for monitoring and review of the SDGs using a set of global indicators developed by the UN Statistical Commission and adopted by the Economic and Social Council and the UN General Assembly will then adopt these indicators. Briefly, the SDGs are as follows\textsuperscript{20}:

- **Goal 1—No Poverty**: End poverty in all its forms, everywhere.
- **Goal 2—Zero Hunger**: End hunger, achieve food security and improved nutrition and promote sustainable agriculture.
- **Goal 3—Good Health and Wellbeing**: Ensuring healthy lives and promoting wellbeing for all at all ages.
- **Goal 4—Quality Education**: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
- **Goal 5—Gender Equality**: Achieve gender equality and empower all women and girls.
- **Goal 6—Clean Water and Sanitation**: Ensure availability and sustainable management of water and sanitation for all.

\textsuperscript{19} The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group on Business and Human Rights, July 16, 2018), 5-6.

\textsuperscript{20} For detailed discussion of each of the SDGs, see A. Gutterman, Sustainability Standards and Instruments (Oakland CA: Sustainable Entrepreneurship Project, 2019), available at www.seproject.org.
• **Goal 7—Affordable and Clean Energy:** Ensure access to affordable, reliable, sustainable and modern energy for all.

• **Goal 8—Decent Work and Economic Growth:** Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

• **Goal 9—Industry, Innovation and Infrastructure:** Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.

• **Goal 10—Reduced Inequalities:** Reduce income inequality within and among countries.

• **Goal 11—Sustainable Cities and Communities:** Make cities and human settlements inclusive, safe, resilient and sustainable.

• **Goal 12—Responsible Consumption and Production:** Ensure sustainable consumption and production patterns.

• **Goal 13—Climate Action:** Take urgent action to combat climate change and its impacts by regulating emissions and promoting developments in renewable energy.

• **Goal 14—Life below Water:** Conserve and sustainably use the oceans, seas and marine resources for sustainable development.

• **Goal 15—Life on Land:** Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

• **Goal 16—Peace, Justice and Strong Institutions:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

• **Goal 17—Partnerships for the Goals:** Strengthen the means of implementation and revitalise the global partnership for sustainable development.

While the primary responsibility for the delivery of SDGs lies with the states, success should be important to businesses that realize that they will not be able to achieve sustainable success in a world of poverty, inequality, unrest and environmental stress. As such, it has been argued that companies should contribute to the SDGs not just by “doing good”, but also by upholding recognized standards and principles on human rights, labor, the environment and anti-corruption and transparently reporting on their SDG-related priorities and efforts to investors and other stakeholders. The Business and Sustainable Development Commission has suggested that business leaders should proactively embrace the SDGs as an opportunity for them to rebuild the social contract between business and society by working with governments, consumers, workers and civil society to achieve the whole range of SDGs, adopting responsible and open policy advocacy and adopting and implementing sustainable business practices for their own activities and those of their supply chain partners (e.g., contributing positively to the communities in

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21 Integrating the SDGs into Corporate Reporting: A Practical Guide (Global Reporting Initiative, Principles for Responsible Investment and United Nations Global Compact, 2018), 4. Ideas regarding opportunities that can simultaneously boost the financial performance of companies while supporting the universal drive toward achievement of the SDGs can be gathered from various resources such as the “Better Business Better World” report available through the Business & Sustainable Development Commission. http://report.businesscommission.org/
which they operate, fair wages and working conditions, training and education and abolition of slave and child labor).  

**Domestic Legislation**

As the activities of the Working Group continue to move forward, a growing number of countries and states are taking steps to impose human rights due diligence and reporting requirements on large companies operating with significant operations in their borders.  

For example, the Transparency in Supply Chain Clause of the United Kingdom’s Modern Slavery Act, which was adopted in 2016, requires companies that are domiciled or conducting business in the UK to report on the measures they are taking to prevent slavery or human rights trafficking in their supply chains. In February 2017 lawmakers in the Netherlands adopted a bill that would require covered companies to investigate the existence of child labor within their operations or supply chains. In addition, if a company’s investigation revealed that child labor may have contributed to its products or services, the company must develop an action plan to address and remedy these labor violations that is consistent with the Guiding Principles and the OECD Guidelines.

Also in February 2017, the French Parliament adopted into law a new due diligence measure requiring large French companies to create and implement a “vigilance plan” aimed at identifying and preventing potential human rights violations—including those associated with subsidiaries and supply chain members. Each vigilance plan, which must be publically available, must include a method for identifying, analyzing, and prioritizing the different risk areas; procedures for regularly evaluating subsidiaries, subcontractors, and suppliers; actions to mitigate identified risks; mechanisms for reporting and receiving alerts about violations; and methods for tracking the plan’s efficacy.  

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22 Executive Summary: Better Business Better World (Business & Sustainable Development Commission, January 2017), 8-10. In a later part of the same report, the Commission stated that: “Treating workers with respect and paying them a decent wage would go a long way to building a more inclusive society and expanding consumer markets. Investing in their training, enabling men and women to fulfill their potential, would deliver further returns through higher labor productivity. And ensuring that the social contract extends from the formal to the informal sector, through full implementation of the UN Guiding Principles on Business and Human Rights, should be non-negotiable.” Id. at 17. See also the 10 key recommendations of the Work Group on the connection between the Guiding Principles and the Goals, https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf; Shift’s framework for how business enterprises contribute to the SDGs by respecting human rights; and the work being done by the Danish Institute for Human Rights (https://www.humanrights.dk/business-human-rights)) to provide guidance for businesses on how to use the UN Guiding Principles on Business and Human rights to engage with the SDGs.

23 For further discussion of legislation to create incentives for exercising human rights due diligence, see The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group on Business and Human Rights, July 16, 2018), 16-22 and 24-25.

also been seriously considering adopting new regulations, which would have to be approved by the legislature and a public vote, pertaining to human rights diligence that would be similar to those adopted in France.

The European Union has adopted a number of requirements relating to reporting and the conduct of due diligence with respect to human right matters. For example, the reporting obligations imposed on large companies under the EU Non-Financial Reporting Directive include reporting on their principal impacts and risks regarding human rights and the due diligence processes implemented to address human rights issues related to their operations. The EU Timber Regulation, which was adopted in 2013, required EU traders to exercise due diligence in order to prevent the placement of illegally harvested timber into the EU market. In 2016 eight European national parliaments petitioned the European Commission to adopt legislation affirming and establishing a due diligence duty of care with respect to human rights for EU companies. In the US, the California Transparency in Supply Chains Act requires large retailers and manufacturers doing business in California to disclose on their websites their efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale; however, the Act does not mandate that businesses implement new measures to ensure that their product supply chains are free from human trafficking and slavery.
About the Author

This chapter was written by Alan S. Gutterman, whose prolific output of practical guidance and tools for legal and financial professionals, managers, entrepreneurs and investors has made him one of the best-selling individual authors in the global legal publishing marketplace. His cornerstone work, Business Transactions Solution, is an online-only product available and featured on Thomson Reuters’ Westlaw, the world’s largest legal content platform, which includes almost 200 book-length modules covering the entire lifecycle of a business. Alan has also authored or edited over 80 books on sustainable entrepreneurship, leadership and management, business law and transactions, international law and business and technology management for a number of publishers including Thomson Reuters, Practical Law, Kluwer, Aspatore, Oxford, Quorum, ABA Press, Aspen, Sweet & Maxwell, Euromoney, Business Expert Press, Harvard Business Publishing, CCH and BNA. Alan has extensive experience as a partner and senior counsel with internationally recognized law firms counseling small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property, and has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. He has been an adjunct faculty member at several colleges and universities, including Berkeley Law, Golden Gate University, Hastings College of Law, Santa Clara University and the University of San Francisco, teaching classes on corporate finance, venture capital, corporate governance, Japanese business law and law and economic development. He has also launched and oversees projects relating to sustainable entrepreneurship and ageism. He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge. For more information about Alan and his activities, please contact him directly at alangutterman@gmail.com, follow him on LinkedIn (https://www.linkedin.com/in/alangutterman/) and visit his website at alangutterman.com.

About the Project

The Sustainable Entrepreneurship Project (www.seproject.org) was launched by Alan Gutterman to teach and support individuals and companies, both startups and mature firms, seeking to create and build sustainable businesses based on purpose, innovation, shared value and respect for people and planet. The Project is a California nonprofit public benefit corporation with tax exempt status under section 501(c)(3) of the Internal Revenue Code dedicated to furthering and promoting sustainable entrepreneurship through education and awareness and supporting entrepreneurs in their efforts to launch and scale innovative sustainable enterprises that will have a material positive environmental or social impact on society as a whole.

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