

# NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

A Toolkit for the Development, Implementation, and Review of  
State Commitments to Business and Human Rights Frameworks



## TOOLKIT COMPONENT 1: THE NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE

**The Danish Institute for Human Rights (DIHR)** is Denmark’s national human rights institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Business Department is a specialized unit within DIHR focusing on the role of the private sector in respecting human rights.

**The International Corporate Accountability Roundtable (ICAR)** is a coalition of human rights, environmental, labor, and development organizations that creates, promotes, and defends legal frameworks to ensure corporations respect human rights in their global operations.

## Report Authors

Claire Methven O’Brien  
Special Advisor, DIHR  
cob@humanrights.dk

Amol Mehra  
Director, ICAR  
amol@accountabilityroundtable.org

Cathrine Bloch Poulsen-Hansen  
Advisor, DIHR  
cph@humanrights.dk

Sara Blackwell  
Legal and Policy Associate, ICAR  
sara@accountabilityroundtable.org

## Research Assistants

Mahmood Bakkash, Legal and Policy Intern, ICAR  
Emily Crawford, Intern, DIHR  
Nicole Santiago, Legal and Policy Intern, ICAR  
Nicole Vander Meulen, Legal and Policy Intern, ICAR

## **CHAPTER 5: THE NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE**

The National Baseline Assessment (NBA) Template is a tool for evaluating a State's current implementation of the UNGPs and relevant business and human rights frameworks. Using the Template to develop a NBA will help a State identify and select measures to be included in a NAP in a coherent and transparent manner. It will also make it easier for States to report on the impact of NAPs over time.

This Chapter first introduces the general idea of baseline assessments. It then explains the approach and structure of the NBA Template and provides guidance on its use.

### **5.1. WHAT IS A BASELINE ASSESSMENT?**

In general, a baseline assessment is a study conducted at the start of an intervention to analyze current conditions. The results of the baseline assessment can then be used to compare future conditions with the initial status after a particular intervention or program has taken place, with the aim to help understand its effects and results; in other words, to assess impact.<sup>1</sup>

Baseline assessments therefore need to be designed so that the assessment can be undertaken in the same or similar manner both before and after the intervention takes place.<sup>2</sup> This entails using a standardized format and a clear methodology.<sup>3</sup> Frequently, baseline assessments are conducted using a combination of quantitative and qualitative methods.<sup>4</sup> Quantitative methods include surveys to generate new data or, where resources are scarce or good data already exists, to extract secondary data, ideally with specialist support from statisticians or assessors.<sup>5</sup> Qualitative methods, such as interviews or focus groups, can be used to gather complementary information about values, opinions, behavior, and context, such as social and cultural factors.<sup>6</sup>

The NBA Template, presented in Annex 4, primarily uses qualitative indicators. However, these could in principle be supplemented by quantitative indicators and benchmarks at the national level and, eventually, at the regional or international levels if resources permit and States and other stakeholders desire.

### **5.2. APPROACH AND STRUCTURE**

As stated above, the aim of the NBA Template is to allow for the evaluation of a State's current implementation of the UNGPs and relevant business and human rights frameworks on a transparent and consistent basis and in line with the general principles of the HRBA and human rights measurement, as set out in Chapter 4 of this report.

Accordingly, the structure of the NBA Template mirrors that of the UNGPs: the Template is made up of a set of tables, one for each UNGP under Pillars I and III.

Because the UNGPs are wide-ranging in nature, each UNGP is broken down further into a number of elements. Indicators are then defined for each element identified.

Many of the indicators in the NBA Template are derived from relevant international law and standards from inter-governmental organizations. However, because they provide increased clarity and can contribute to the State's duty to protect human rights, some of these indicators are based on or refer to other business and human rights frameworks, such as those devised through multi-stakeholder initiatives and those addressing specific thematic concerns or industry sectors.

The indicators in the NBA Template operationalize the UNGPs by earmarking a concrete piece of information that can be examined, at the national level, as a marker of the State's compliance with the UNGP in question. In order to aid someone who is using the Template to assess whether or not a given indicator is met, a short set of scoping questions are included for each indicator.

It should also be noted that, in contrast to human rights indicators in other contexts, a longer list of indicators is included in the NBA Template. This is because, rather than focusing on a single human right (e.g., the right to water), the UNGPs have an open-ended and overarching nature across all human rights. Thus, a wide variety of national measures will usually be relevant to satisfying a given indicator. Consequently, the list of indicators is not meant to be exclusive or exhaustive, and there is less expectation that a given State will be able to answer positively in relation to all of them.

Related to this point, and as mentioned earlier in this report, where specific business and human rights issues are particularly relevant in a given national setting, there is value in giving them additional scrutiny to establish, for example, whether the State has adopted a government-wide strategy to address the issues in question. DIHR and ICAR therefore intend, during the second phase of the Project, to supplement the NBA Template with additional "Thematic Templates." Some Thematic Templates will focus on particular groups of rights-holders, such as children, indigenous peoples, and women. Others will focus on thematic topics, such as those mentioned above. DIHR and ICAR aim to develop the Thematic Templates, in collaboration with partner organizations.

In addition, as mentioned above, most indicators included are qualitative, rather than quantitative. The NBA Template has been designed so that respondents can, if they wish, complete a narrative account based on the elements and their corresponding indicators. Indicators that focus on outcomes, as opposed to structures or process, have not been included at this stage because their identification and selection should proceed from a process of dialogue among States and other stakeholders in order to take into account, for instance, existing available data sources across countries, the collection of which was beyond the scope of this report.

Moreover, whereas it is advised that the NBA should be as comprehensive as possible, users of the Toolkit will note that the NBA Template includes indicators in relation to Pillar I and the State remedy aspects of Pillar III only. The reasons for the NBA Template's exclusion of Pillar II and aspects of Pillar III that are directed at companies are largely practical. For most States, it is unlikely that the data needed to respond to indicators under Pillar II would, at the present time, be available. For example, few countries currently gather data on the number of companies within their territory or jurisdiction that have a human rights policy or that publicly report on human rights, and many lack the resources to do so. Moreover, data on the extent of business-related human rights abuses is not typically gathered en bloc and would usually need to be extracted from a diverse array of existing sources such as court cases and media reports which would also be an exercise beyond the resources likely to be allocated to NAPs processes. Yet, while States cannot directly control the conduct of all companies within their territory or jurisdiction through regulatory action, they can influence businesses' behavior. Therefore, Pillar II will be indirectly addressed in the development and completion of both an NBA and a NAP through data collection and measures included relating to Pillars I and III.

Finally, it should be reiterated that the analysis and approach that have been adopted in developing the NBA Template take inspiration from established approaches to developing human rights monitoring frameworks based on indicators, as well as existing guidance on NAPs.<sup>7</sup>

The following is an excerpt from the NBA Template, found in full in Annex 4.

**FIGURE 8: EXCERPT FROM THE NBA TEMPLATE**

<b>GUIDING PRINCIPLE 5</b>	
<b>States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.</b>	
<b>Commentary to Guiding Principle 5</b>	
States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.	
<b>5.1. Public Service Delivery</b>	
Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Legislative or Contractual Protections</b>	Has the State adopted legislative or contractual protections for human rights in delivery of privatized services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatization of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State's expectation that businesses respect human rights in delivering services and comply with human rights standards?
<b>Awareness-Raising</b>	What measures does the State take to promote awareness of and respect for human rights by businesses that the State commercially contracts with?
<b>Screening</b>	What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?

## GUIDING PRINCIPLE 5

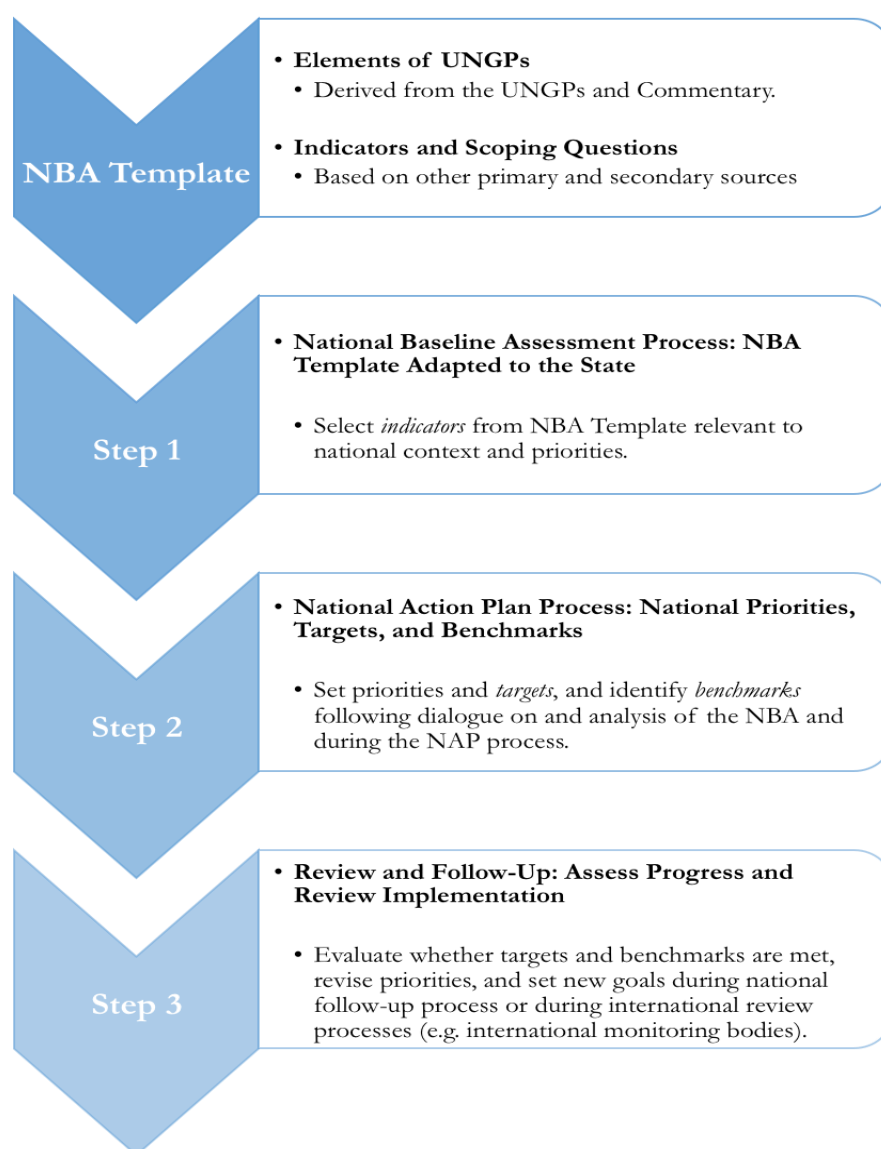
<b>Monitoring and Oversight</b>	Do relevant State agencies effectively oversee the activities of the enterprises that are providing services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?
<b>Other Measures</b>	Is the State a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict? If so, how does it incorporate commitments into national laws? Is the State party to the International Code of Conduct for Private Security Providers, and if so, how does it incorporate commitments into national laws and procurement processes? Is the State party to the Voluntary Principles on Security and Human Rights? If so, how does it incorporate commitments into national laws, including around the provision of public security? Has the State put any other measures in place to ensure that public service delivery by private enterprises does not have any negative human rights impacts?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption and/or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

### 5.3. ADAPTING THE TEMPLATE TO NATIONAL CONTEXTS

The indicators included in the NBA Template have been selected to be generally appropriate and applicable across countries. Where resources allow, the NBA Template can be completed in full to perform a comprehensive NBA. However, it can also be used selectively to support dialogue on or analysis of State alignment with individual UNGPs or on particular issues. Once a selection of indicators has been made, States can set targets for improvement based on the indicators, as well as benchmarks that act as milestones to show whether the State is on track to reach its chosen target within a given time period.

The following figure presents the process of adapting the NBA Template to national contexts.

**FIGURE 9: PROCESS FOR ADAPTING THE NBA TEMPLATE TO NATIONAL CONTEXTS**





## 5.4. RECOMMENDATIONS FOR THE NBA PROCESS

A NBA should be, as far as possible, consistent with the HRBA and accepted approaches to human rights measurement, as described in Chapter 4. With this goal in sight, and drawing on a review of baseline assessments by States to date and stakeholder responses to these, the following recommendations for NBA processes are suggested.<sup>8</sup>

### 1. Undertake the NBA as the first step in the NAP process.

The process of developing a NAP should begin with the development of the NBA. Ideally, the NBA should be completed, or at least its preliminary results made available to stakeholders, before any decision-making concerning the scope, content, and priorities of the NAP takes place.

### 2. Allocate the task of developing the NBA to an appropriate body.

The task of developing a NBA should be clearly allocated to a body with relevant expertise and competence. Ideally, it should be viewed as independent from political affiliation or special interests. Relevant expertise in this context must include, at a minimum, knowledge and experience of national, regional, and international standards and issues in the areas of human rights, business and human rights, and/or CSR.

### 3. Involve stakeholders in the development of the NBA.

Input should be solicited from stakeholders to inform the development of the NBA. A stakeholder analysis, with its point of departure in the categories of rights-holder and duty-bearer, should be undertaken to identify those stakeholders who should be engaged. The following categories of stakeholders should be addressed in this mapping:

- **Government**, including all departments and units relevant to business and human rights;
- **Businesses**, including those representing the largest sectors within the country, small and medium enterprises (SMEs), and business associations;
- **National human rights institutions, ombudsmen, and equality bodies**, if in existence within the country;
- **Civil society**, including groups dealing with specific business and human rights issues of particular concern within the national context; and
- **International and regional actors**, including representatives of UN institutions, OECD, WTO, the World Bank, and others.

Consultation should take place in a manner appropriate to the stakeholder in question, with attention paid to levels of knowledge and expertise and any potential language or social, cultural, financial, or other barriers to participation.

Consultation processes should be transparent at all stages, including publication of summary reports through appropriate media sources, such as local newspapers, the Internet, or the radio.

It may also be beneficial to establish a cross-departmental steering committee to help coordinate inputs to the NBA from government stakeholders.

#### **4. Identify areas of compliance and gaps for all UNGPs addressed under Pillars I and III.**

The NBA should clearly identify, for each UNGP under Pillar I and all UNGPs relating to State remedy under Pillar III, national measures that support compliance with its requirements, as well as any gaps where national measures are lacking or inadequate. Completing the NBA will therefore require research into provisions of the constitution, domestic statutes, administrative regulations, policies, public programs, and other interventions of public bodies, as well as into business conduct.

In relation to gaps, the NBA should gather and reflect information documenting abuses and data on remediation, including court cases, grievance data, reports of relevant enforcement agencies, and reports from NHRIs, trade unions, business associations, NGOs, media, and academic studies. Finally, the NBA should cite and collate relevant recommendations of international human rights bodies, such as the ILO and other UN and regional human rights bodies. Data sources to consider when completing the NBA include official statistics, existing survey results, scholarly journals, and newspaper articles. In some cases, it may be necessary to conduct new baseline research to address specific issues on which there is limited existing data.

#### **5. Address all human rights.**

To align with the HRBA, the NBA should be comprehensive, considering impacts on the full range of rights, economic and social, as well as civil and political, and considering the principles of universality, indivisibility, and the interdependence of human rights.

#### **6. Focus on rights-holders.**

At the same time, the NBA must focus on and facilitate inputs from the most vulnerable and excluded groups by addressing issues such as gender, discrimination, and indigenous peoples. It must also recognize individuals and communities potentially affected by business activities, including those outside the State's territorial jurisdiction, as rights-holders and target their ability to claim rights.

## **7. Ensure the NBA analysis is transparent.**

The NBA should be transparent in terms of the sources of information that have been used to develop it (except where disclosure of sources would present risks of reprisals to rights-holders, human rights defenders, whistle-blowers, media, or others). If a NBA is incomplete, for example omitting analysis in relation to a particular UNGP, the reasons for this should be clearly stated.

## **8. Consult stakeholders on the draft NBA.**

Stakeholders' views should be sought on a draft version of the NBA through an inclusive and timely consultation process. Such a process should take place prior to the NAP's finalization in order to validate provisional findings.

## **9. Disseminate the NBA.**

The finalized NBA should be published and made accessible to all stakeholders, using forms of communication appropriate to relevant stakeholder categories, for example by translating full or summarized findings into relevant languages and posting on government websites.

## **10. Review and update the NBA.**

The NBA, along with the NAP itself, should be subject to periodic updating and revision.

## ANNEX 4: THE NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE<sup>9</sup>

### PILLAR I

GUIDING PRINCIPLE 1	
States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.	
Commentary to Guiding Principle 1	
<p>States' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.</p> <p>The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication. States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.</p>	
<p><b>1.1. International and Regional Legal Instruments</b> Has the government signed and ratified relevant international and regional legal instruments?</p>	
Indicators	Scoping Questions
<b>International Human Rights Legal Instruments</b>	Has the government signed and ratified relevant international human rights legal instruments, such as ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, CPED, CRPD, the core ILO conventions, and any corresponding protocols?

<b>GUIDING PRINCIPLE 1</b>	
<b>Regional Human Rights Legal Instruments</b>	Has the government signed and ratified relevant regional human rights legal instruments, such as the African (Banjul) Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and any corresponding protocols?
<b>Other Human Rights Legal Instruments</b>	Are there any other relevant human rights legal instruments that the government has signed and ratified?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant international and regional legal instruments that the government has signed and ratified and list any reservations, understandings, or declarations by the State in relation to such instruments.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>1.2. International and Regional Soft Law Instruments</b> Has the government signed relevant international and regional soft law instruments?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>International Human Soft Law Rights Instruments</b>	Has the government signed relevant international human rights soft law instruments, such as the UDHR, other UN declarations and/or resolutions, and the ILO Tripartite Declaration?
<b>Regional Human Rights Soft Law Instruments</b>	Has the government signed relevant regional human rights soft law instruments, such as the American Declaration of the Rights and Duties of Man and the ASEAN Human Rights Declaration?

<b>GUIDING PRINCIPLE 1</b>	
<b>Other Human Rights Soft Law Instruments</b>	Are there any other relevant human rights soft law instruments that the government has signed?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant international and regional soft law instruments that the government has signed.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>1.3. UN Guiding Principles on Business and Human Rights</b> Is the State actively implementing the UNGPs?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Formal Statement of Support</b>	Has the State given a formal statement of support for the UNGPs?
<b>Implementation Structures</b>	Has the State put in place relevant structures to ensure implementation of the UNGPs, for example, through the establishment or designation of a body tasked with implementation measures or through the allocation of internal resources?
<b>Capacity-Building</b>	Has the State put in place measures to capacitate government actors and local citizens with knowledge and information on the UNGPs, for example, through workshops, conferences, or other events?
<b>Information</b>	Has the State disseminated information about the UNGPs through public media sources, internal guidance documents, or other materials?

<b>GUIDING PRINCIPLE 1</b>	
<b>Other UNGPs Implementation Measures</b>	Has the State taken any other measures to implement the UNGPs within the State?
<b>Implementation Status</b>	<b>Gaps</b>
List all State activities relevant to UNGPs active implementation, as clarified in the indicators above.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>1.4. Other Relevant Standards and Initiatives</b>	
Is the State supporting or participating in other standards and initiatives relevant to business and human rights?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Standards</b>	Has the government supported other standards on business and human rights, such as the IFC Performance Standards, the OECD Guidelines for Multinational Enterprises, and the UN Global Compact?
<b>Initiatives</b>	Has the government participated in initiatives, multi-stakeholder or otherwise, on business and human rights, such as the Global Network Initiative (GNI), the International Code of Conduct for Private Security Service Providers Association (ICoCA), and the Voluntary Principles on Security and Human Rights (VPs)?
<b>Implementation Status</b>	<b>Gaps</b>

## GUIDING PRINCIPLE 1

List all relevant State support and/or participation.

Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

### 1.5. National Laws and Regulations

Does the general law of the State provide protection against business-related human rights abuses?

Indicators	Scoping Questions
<b>Constitution</b>	Does the constitution contain wording aimed at human rights protection?
<b>Labor Law</b>	Has the government put in place labor laws and regulations to ensure the protection and promotion of workers' rights?
<b>Environmental Law</b>	Has the government put in place environmental laws and regulations to ensure the protection and promotion of the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?
<b>Property and Land Management Law</b>	Has the government put in place land management laws and regulations to ensure the protection of the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?
<b>Health and Safety Law</b>	Has the government put in place health and safety laws and regulations to ensure the physical and mental health of workers and communities?



## GUIDING PRINCIPLE 1

<b>Corporate and Securities Law</b>	Has the government put in place corporate and securities laws and regulations to support ethical corporate behavior and business respect for human rights, such as through financial reporting, incorporation/registration, and stock exchange listing requirements?
<b>Tax Law</b>	Has the government put in place tax laws and regulations to support ethical corporate behavior?
<b>Trade Law</b>	Has the government put in place trade laws and regulations to support the protection and promotion of human rights within trade practices?
<b>Disclosure and Reporting</b>	Has the government put in place law to support disclosure and reporting by corporations on human rights, labor rights, environmental impacts, corporate social responsibility, or other ethical issues?
<b>Procurement Law</b>	Has the government put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?
<b>Anti-Bribery and Corruption</b>	Has the government put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?
<b>Human Rights Defender and/or Whistleblower Protection</b>	Has the government put in place laws and regulations aimed at protecting the rights of human rights defenders and/or whistleblowers?
<b>Information and Communications Technologies (ICT) Law</b>	Has the government put in place laws and regulations to ensure the protection of access to information, freedom of expression, privacy, and other information- and communication-based rights, online as well as offline?

<b>GUIDING PRINCIPLE 1</b>	
<b>Other Laws and Regulations</b>	Has the government put in place any other relevant laws and regulations aimed at protecting and promoting human rights from business-related harms, including torture, genocide, and crimes against humanity? Do such laws and regulations extend extraterritorially, as permitted by the UNGPs and international human rights law?
Implementation Status	Gaps
List all relevant national laws and regulations.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>1.6. Investigation, Punishment, and Redress Measures</b>	
Do relevant State agencies responsible for law enforcement address business and human rights?	
Indicators	Scoping Questions
<b>Sector Risk Assessment</b>	Is the State undertaking or supporting any specific activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive, apparel, and other sectors?
<b>Vulnerable Group Assessment</b>	Is the State undertaking or supporting any specific activities to identify specific impacts on particularly vulnerable groups, such as women, children, minorities, and indigenous peoples?
<b>Police</b>	Have police authorities been provided with information and training on issues related to business and human rights? Are the police given statutory authority to address business-related human rights harms?

<b>GUIDING PRINCIPLE 1</b>	
<b>Labor, Health, and Safety</b>	Are relevant labor, health, and safety authorities aware of potential or actual adverse impacts by business on labor, health, and safety? Are such State actors given statutory authority to address business-related human rights harms?
<b>Environment</b>	Have relevant environmental authorities been provided with information and training on issues related to business and human rights? Are such State actors given statutory authority to address business-related human rights harms?
<b>Tax</b>	Have relevant tax authorities been provided with information and training on issues related to business and human rights and connections to local tax laws? Are such State actors given statutory authority to address business-related human rights harms?
<b>Judicial Grievance Mechanisms</b>	Are the judiciary, including civil, criminal, and commercial courts, as well as employment and other administrative tribunals, and those with prosecuting authority informed and trained on issues related to business and human rights? Is the judiciary given statutory authority to address business-related human rights harms, including through civil, criminal, or administrative penalties for business-related human rights harms?
<b>Non-Judicial Grievance Mechanisms</b>	Does the State support and/or participate in non-judicial grievance mechanisms aimed at securing redress for business-related human rights harms, including through entities such as National Human Rights Institutions, OECD National Contact Points, or ombudsmen?
<b>Legal Aid and Assistance</b>	Does the State support legal aid and assistance that aims to address barriers in accessing remedy for business-related human rights harms?

<b>GUIDING PRINCIPLE 1</b>	
<b>Other Measures</b>	Are there any other measures taken by the State to promote the investigation, punishment, and redress of business-related human rights harms?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their corresponding statuses of adoption.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

<b>GUIDING PRINCIPLE 2</b>
States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.
<b>Commentary to Guiding Principle 2</b>

## GUIDING PRINCIPLE 2

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

### 2.1. Home State Measures with Extraterritorial Implications

Has the State adopted domestic measures which set out clearly the expectation that businesses domiciled in their territory and/or jurisdiction respect human rights abroad?

Indicators	Scoping Questions
<b>Expectation setting</b>	Has the State set out and fully disseminated to relevant government agencies (including embassies and consulates) clear policy statements on the expectation that all companies domiciled in its territory and/or jurisdiction respect human rights?
<b>Criminal or civil liability regimes</b>	Has the State introduced criminal or civil liability regimes that allow for prosecutions or civil lawsuits against corporations based on where the corporation is domiciled, regardless of where the offense occurs?

<b>GUIDING PRINCIPLE 2</b>	
<b>“Duty of care” for parent companies</b>	Has the State established a “duty of care” for parent companies in terms of the human rights impacts of their subsidiaries, regardless of where the subsidiaries operate?
<b>Reporting requirements</b>	Has the State introduced requirements on companies to publicly report on their operations abroad, including on human rights and labor issues?
<b>Support for soft law measures</b>	Does the State support and participate in relevant soft-law instruments, such as the OECD Guidelines and the Due Diligence Guidance for Responsible Supply Chains?
<b>Performance standards for over-seas investments</b>	Do State institutions that support overseas investment have and enforce performance standards that support the protection and promotion of human rights?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant statements, plans of action, policies, legislation, and regulations already in place, as well as any in progress and their corresponding statuses of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>2.2. Implementation of Recommendations from International or Regional Bodies</b>	
Has the State received and followed-up on recommendations from international or regional bodies, such as the UN Human Rights Council and UN treaty bodies, regarding steps to prevent abuse abroad by business enterprises domiciled within the State’s territory or jurisdiction?	
<b>Indicators</b>	<b>Scoping Questions</b>

<b>GUIDING PRINCIPLE 2</b>	
<b>Human Rights Council Recommendations</b>	Has the State noted and accepted recommendations from the UN Human Rights Council, such as through the Universal Periodic Review (UPR) process, that are relevant to preventing abuses abroad by companies domiciled within the State's territory or jurisdiction? How has the State followed up on these recommendations and has the State monitored its implementation of the recommendations?
<b>UN Treaty Body Recommendations</b>	Has the State noted and accepted recommendations from UN treaty bodies that are relevant to preventing abuses abroad by companies domiciled within the State's territory or jurisdiction? How has the State followed up on these recommendations? Has the State monitored its implementation of the recommendations?
<b>Other International or Regional Body Recommendations</b>	Has the State noted and accepted recommendations by any other international or regional bodies regarding steps to prevent business-related human rights abuses abroad?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant recommendations and follow-up and monitoring measures taken by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 3

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

### Commentary to Guiding Principle 3

States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures—national and international, mandatory and voluntary—to foster business respect for human rights.

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.

It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

Laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. For example, there is a lack of clarity in corporate and securities law regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.



## GUIDING PRINCIPLE 3

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.

Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures.

Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise.

### 3.1. Development and Enforcement of Relevant Laws and Regulations

What laws and regulations exist that directly or indirectly regulate business respect for human rights?

**Indicators**

**Scoping Questions**

### GUIDING PRINCIPLE 3

<b>Corporate and Securities Law</b>	Has the State put in place corporate and securities laws and regulations to support ethical corporate behavior and business respect for human rights, such as those relating to financial reporting, articles of incorporation, registration, corporate board, director, and stock exchange listing requirements?
<b>Labor Law</b>	Has the State put in place labor laws and regulations to ensure business respect for workers' rights?
<b>Environmental Law</b>	Has the State put in place environmental laws and regulations to ensure business respect for the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?
<b>Property and Land Management Law</b>	Has the State put in place land management laws and regulations to ensure business respect for the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?
<b>Health and Safety Law</b>	Has the State put in place health and safety laws and regulations to ensure business respect for the physical and mental health of workers and communities?
<b>Consumer Law</b>	Has the State put in place consumer laws and regulations to ensure business respect for human rights and to promote consumer interest in the human rights impacts of purchased products and services?
<b>Non-Discrimination Law</b>	Has the State put in place anti-discrimination laws and regulations to support ethical corporate behavior and business respect for human rights?
<b>Tax Law</b>	Has the State put in place tax laws and regulations to support ethical corporate behavior and business respect for human rights?

### **GUIDING PRINCIPLE 3**

<b>Trade Law</b>	Has the State put in place trade laws and regulations to support business respect for human rights within trade practices?
<b>Privacy and Technology Law</b>	Has the State put in place information security and privacy laws and regulations to support ethical corporate behavior and business respect for human rights?
<b>Disclosure and Reporting</b>	Has the State put in place laws and regulations to support disclosure and reporting by corporations on human rights, labor rights, environmental impacts, corporate social responsibility, or other ethical issues?
<b>Procurement Law</b>	Has the State put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?
<b>Anti-Bribery and Corruption</b>	Has the State put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?
<b>Human Rights Defender and/or Whistleblower Protection</b>	Has the State put in place laws and regulations aimed at supporting business respect for the rights of human rights defenders and/or whistleblowers?
<b>Criminal Law</b>	Has the State put in place criminal laws and regulations to ensure that corporate crimes that are related to human rights are investigated, prosecuted, and properly sanctioned?
<b>Civil Law</b>	Has the State put in place civil laws and regulations to ensure investigation, punishment, and redress of business-related human rights harms?
<b>Other Law</b>	Has the State put in place any other laws and regulations to ensure business respect for human rights?

<b>GUIDING PRINCIPLE 3</b>	
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant laws and regulations that are adopted by the State, the status of implementation, how the law or regulation is implemented in practice, factors that constrain effective enforcement of the law or regulation, and any measures in place to improve the efficacy of implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>3.2. Relevant Policies</b> Have policies that seek to foster business respect for human rights been adopted and publicly communicated by the State?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>National Action Plans (NAPs)</b>	Has the State introduced and/or implemented policies to help facilitate business respect for human rights through the adoption of National Action Plans (NAPs) on business and human rights, corporate social responsibility, development, anti-discrimination, government transparency, women’s rights, or human rights in general?
<b>Sector-Specific Policies</b>	Has the State introduced and/or implemented sector-specific policies to help facilitate business respect for human rights within particularly high-risk industries, such as the extractive, apparel, and other sectors?
<b>Other Policies</b>	Have other policies been adopted by the State that aim to foster business respect for human rights?
<b>Implementation Status</b>	<b>Gaps</b>

## GUIDING PRINCIPLE 3

List all relevant policies of the State and measures for public communication and implementation of those policies. List all new legislation resulting from the establishment of those policies, as well as any follow-up or reporting on those policies.

Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

### 3.3. Corporate Reporting and Public Communications

What type of reporting and public communications by business enterprises on how they address their human rights impacts is required by law?

Indicators	Scoping Questions
<b>Financial Reporting</b>	Is corporate financial reporting required the State? Is the law clarifying that, in some cases, human rights impacts are “material” to the economic performance of the reporting company?
<b>Non-Financial Reporting</b>	Is corporate non-financial reporting required and enforced by the State? Is the law clarifying that, in some cases, human rights impacts are “material” to the performance and operations of the reporting company?
<b>Public Consultations</b>	Are there legal requirements for companies to have public consultations before, during, and after the commencement of a major project that may impact local communities? Is there a requirement for the free, prior, and informed consent (FPIC) of impacted communities? Is there a mandatory public release of environmental and social impact assessments by companies?
<b>Other Public Communications</b>	Are there any other legal requirements on companies in terms of public communications?
<b>Implementation Status</b>	<b>Gaps</b>

<b>GUIDING PRINCIPLE 3</b>	
<p>List all relevant reporting requirements, as well as all corresponding enforcement and compliance measures, auditing or verification measures, and measures for public dissemination of corporate reports. List all legal requirements on companies in terms of consultations and other public communications.</p>	<p>Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.</p>
<p><b>3.4. Guidance and Incentives</b> Does the State provide guidance and incentives for companies in terms of business respect for human rights?</p>	
Indicators	Scoping Questions
<p><b>Guidance based on industry sectors, human rights issues and company size</b></p>	<p>Has the State developed guidance for businesses on respecting human rights that is appropriate to different industry sectors (for example, high-risk sectors such as extractives), particular human rights issues (for example, working conditions, discrimination), and different types of corporations (for example, MNEs, SMEs)?</p>
<p><b>Guidance on expected outcomes and best practice</b></p>	<p>Has the State provided indicators of expected human rights outcomes, information regarding relevant national laws and regulations, and examples of best practice and due diligence methods?</p>
<p><b>Incentives</b></p>	<p>Has the State provided incentives for business respect for human rights, such as favorable treatment following non-mandatory self-reporting by companies of human rights policies and practices?</p>
Implementation Status	Gaps
<p>List all guidance and incentive measures taken by the State and any relevant outcomes.</p>	<p>Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.</p>

## GUIDING PRINCIPLE 3

### 3.5. National Human Rights Institutions (NHRIs)

Has the State formally recognized and supported the role of NHRIs in promoting implementation of the UNGPs?

Indicators	Scoping Questions
<b>NHRI Establishment, Recognition, and Support</b>	Has the State established a National Human Rights Institution (NHRI)? If so, how was the NHRI established, and what kind of recognition and support does the State provide for the NHRI?
<b>NHRI Focus on Business and Human Rights</b>	Does the NHRI's mandate include business and human rights? Does the State finance NHRI activities within the field of business and human rights? Does the State support the NHRI in providing guidance on human rights to business enterprises? Does the State support the NHRI in monitoring the national business and human rights situation and to provide access to justice for victims of corporate-related human rights abuses? Has the role of the NHRI in promoting implementation of the UNGPs been formally recognized, and, if so, does the State support the NHRI in that role?
Implementation Status	Gaps
List all measures taken by the State to formally recognize and support the role of NHRIs in relation to business and human rights.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## 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, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

### Commentary to Guiding Principle 4

States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in Chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk—in reputational, financial, political and potentially legal terms—for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

#### 4.1. Businesses Owned or Controlled by the State

Does the State exercise special measures to support the human rights performance of State-owned or -controlled business enterprises?

Indicators

Scoping Questions



<b>GUIDING PRINCIPLE 4</b>	
<b>Human Rights Due Diligence Requirements</b>	What types of human rights due diligence measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of human rights performance information in management reports to relevant State agencies)?
<b>Supply Chain Management Requirements</b>	What types of supply chain management measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective supply chain management is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of supply chain information in management reports to relevant State agencies)?
<b>Other Measures</b>	Has the State set out any other special measures to support the human rights performance of State-owned or -controlled business enterprises?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their corresponding status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<p><b>4.2. Businesses Receiving Substantial Support and Services from State Agencies</b></p> <p>Does the State exercise special measures to support the human rights performance of businesses receiving substantial support and service from State agencies (for example, export credit agencies, public banks, public pension funds, official investment insurance or guarantee agencies, development agencies, or development finance institutions)?</p>	

<b>GUIDING PRINCIPLE 4</b>	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Human Rights Considerations</b>	Has the State required that businesses receiving substantial support and services from State agencies take into account human rights considerations?
<b>Human Rights Due Diligence Requirements</b>	What types of human rights due diligence measures by State-supported businesses are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these businesses?
<b>Other Measures</b>	Has the State set out any other special measures to support the human rights performance of State-owned or -controlled business enterprises?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

<b>GUIDING PRINCIPLE 5</b>
States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
<b>Commentary to Guiding Principle 5</b>

## GUIDING PRINCIPLE 5

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

### 5.1. Public Service Delivery

Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?

Indicators	Scoping Questions
<b>Legislative or Contractual Protections</b>	Has the State adopted legislative or contractual protections for human rights in delivery of privatized services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatization of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State's expectation that businesses respect human rights in delivering services and comply with human rights standards?
<b>Awareness-Raising</b>	What measures does the State take to promote awareness of and respect for human rights by businesses that the State commercially contracts with?
<b>Screening</b>	What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?

<b>GUIDING PRINCIPLE 5</b>	
<b>Monitoring and Oversight</b>	Do relevant State agencies effectively oversee the activities of the enterprises that provide services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?
<b>Other Measures</b>	Is the State a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict? If so, how does it incorporate commitments into national laws? Is the State party to the International Code of Conduct for Private Security Providers, and if so, how does it incorporate commitments into national laws and procurement processes? Is the State party to the Voluntary Principles on Security and Human Rights? If so, how does it incorporate commitments into national laws, including around the provision of public security? Has the State put any other measures in place to ensure that public service delivery by private enterprises does not have any negative human rights impacts?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption and/or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

<b>GUIDING PRINCIPLE 6</b>
<b>States should promote respect for human rights by business enterprises with which they conduct commercial transactions.</b>
<b>Commentary to Guiding Principle 6</b>

## GUIDING PRINCIPLE 6

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States—individually and collectively—with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.

### 6.1. Public Procurement

Which types of requirements or incentives to respect human rights can be found in legislative measures or in terms of public procurement?

Indicators	Scoping Questions
<b>Planning for Procurement Needs and Risks</b>	Have State agencies decided whether their contractors must comply with specific human rights or protect against defined human rights harms as a contract obligation? If so, have State agencies made an effort to expand the scope of protection and clarify specific human rights definitions to resolve vagueness?
<b>Providing Notice During Bid Solicitation</b>	Do State agencies notify potential contractors when there is a significant risk of a human rights violation that undermines fair competition? Does such notice trigger specific disclosure and compliance obligations?
<b>Screening and Selection</b>	In addition to evaluating price and capacity, do State agencies evaluate whether potential contractors are responsible, based on integrity and business ethics and on compliance with domestic law that protects the safety and health of workers and communities? Do State agencies engage in selective or targeted public procurement, such as preferential award to discriminated groups (for example, ethnic minorities) or to companies working to achieve specific human right objectives (for example, gender equality)? Do State agencies require contractors to certify that they know their subcontractors, including specific locations of production or supply, and that they have management systems to ensure compliance? Do State agencies exclude companies with commercial contracts in high-risk countries or a bad human rights record from public procurement?

## GUIDING PRINCIPLE 6

<b>Award Stage</b>	Do State agencies have criteria and sub-criteria for what constitutes the most economically advantageous tender, including human rights criteria? Have State agencies taken steps to clarify how human rights standards and policies might be used to form part of the award criteria for a particular contract? Do State agencies require contactors to disclose information on their supply chain, including specific subcontractors and the addresses of factories or sites of supply? Do State agencies confirm a contractor's assurances and required development of compliance plans during the award stage?
<b>Contract Terms</b>	Is the State taking steps to ensure that human rights requirements, material to the procured good or service, are a part of contractual performance clauses? Have State agencies inserted compliance obligations into contract terms? When a State agency identifies a risk of harm or human rights violations, does it authorize contract officers to insert into the contract an obligation to comply with the domestic law of the country of production or supply?
<b>Auditing and Monitoring</b>	Do State agencies have information systems to audit and monitor contractors to ensure that the contractor meets its performance or compliance obligations and does not adversely impact human rights? Do such systems respond to work complaints? Are such systems independent from, yet accountable to, the State?
<b>Enforcement of Contract Terms and Corrective Action</b>	Do State agencies dedicate staff to enforcement of the contract terms and provide them with detailed policies? Have State agencies put in place procedures to correct adverse human rights impacts identified, such as financial or other remedies if a contractor violates human rights? Do the procedures favor changing the behavior of the contractor to improve their human rights performance rather than simply terminate the relationship? Do State agencies provide for due diligence as both a defense and as a remedy for breach of compliance standards?
<b>Other Measures</b>	Have State agencies put any other measures in place to ensure that public procurement complies with human rights protection?

<b>GUIDING PRINCIPLE 6</b>	
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>6.2. Other Commercial Activities</b> Has the State taken measures to promote awareness of and respect for human rights by other enterprises with which the State conducts commercial activities?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Business Partnerships</b>	Does the State take measures to promote respect for human rights among other businesses with which it engages in commercial relationships, such as through business partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology)?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 7

Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that their current practices, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

### Commentary to Guiding Principle 7

Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself—where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict.

It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert Government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.



## GUIDING PRINCIPLE 7

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives.

All these measures are in addition to States' obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

### 7.1. Guidance

Does the home State play a role in assisting both corporations and host States to ensure that businesses are not involved with human rights abuse in conflict-affected areas?

Indicators	Scoping Questions
<b>Host State relationship</b>	Does the State seek to ensure that it is informed of the role of corporations headquartered within its jurisdiction in conflict-affected areas? Does the home State engage with the host State in ensuring that businesses are respecting human rights?
<b>Business Guidance</b>	Does the State provide guidance for companies operating in conflict-affected areas on what specific human rights issues that the companies should be aware of and pay specific attention to in their due diligence process (such as gender and sexual violence, discrimination, and contributing to conflict through finance)?
<b>Implementation Status</b>	<b>Gaps</b>

<b>GUIDING PRINCIPLE 7</b>	
List all relevant measures already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>7.2. International Frameworks and Initiatives</b> Has the State officially supported or implemented international frameworks and initiatives on the private sector role in conflict-affected areas?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Promotion of Initiatives</b>	Does the State participate in and/or promote relevant initiatives (for example, the Voluntary Principles or the International Code of Conduct for Private Security Service Providers)?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant initiatives and formal support by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>7.3. Supportive Measures</b> Does the State investigate company activities in conflict-affected areas, act upon these investigations, and provide redress?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Investigative Measures</b>	Does the State have a procedure for investigating company activities in conflict-affected areas (for example, through the appointment of a mission that may report to the Parliament or asking the local embassy to investigate in the host State and report to relevant authorities in the home State)?

<b>GUIDING PRINCIPLE 7</b>	
<b>Follow-Up and Remedial Measures</b>	Does the State have a procedure for follow-up on issues identified through the investigative process (for example, through the denial or withdrawal of existing public support or services to business enterprises that are involved in human rights abuse or other crimes)? Has the State developed mechanisms of extraterritorial criminal liability? Is it possible for the State to impose sanctions on persons and entities for example, by seizing equipment or freezing assets?
<b>Implementation Status</b>	<b>Gaps</b>
List regulatory requirements, procedure statements, etc.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>7.4. Gross Human Rights Abuses</b> Has the State put in place measures for addressing the risk of business involvement in gross human rights abuses?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Early-Warning Procedures</b>	Has the State put in place procedures to warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas?
<b>Cross-Unit Cooperation</b>	Has the State put in place efforts with the aim of fostering closer cooperation among its development assistance agencies, foreign and trade ministries, and export finance institutions in its capitals and within its embassies, as well as between these agencies and host State actors?

<b>GUIDING PRINCIPLE 7</b>	
<b>Civil and/or Criminal Liability</b>	Has the State introduced civil or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses, including abuses outside of its territorial jurisdiction, as permitted by the UNGPs and international human rights law?
<b>Multilateral Approach</b>	Has the State engaged in multilateral approaches to prevent and address acts of gross human rights abuses? Does the State accept the jurisdiction of the International Criminal Court (ICC)?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant procedural measures taken by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>7.9. Role of Export Credit Agencies and Insurance Agencies</b>	
Does the State ensure that Export Credit Agencies and Insurance Agencies do not contribute or financially benefit from negative human rights impacts and abuse?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Special Measures</b>	Has the State put in place special measures to ensure that export credit agencies and insurance companies are not contributing to, or financially benefitting from, negative human rights impacts and abuse? Are there rules and incentives for such institutions to take human rights impacts into consideration in their financing and investment procedures?
<b>Implementation Status</b>	<b>Gaps</b>

## GUIDING PRINCIPLE 7

List all relevant State measures.

Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 8

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

Commentary to Guiding Principle 8

## GUIDING PRINCIPLE 8

There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices—including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour—to be informed of and act in a manner compatible with the Governments' human rights obligations.

### 8.1. Policy Coherence

Have efforts been made within the State to support knowledge and understanding for human rights and business and the State duty?

Indicators	Scoping Questions
<b>Clear Commitment</b>	Has the State developed a firm written commitment to business and human rights, and has this commitment been communicated to governmental departments? Further, does this commitment help to clarify the role of different departments (for example, labor, business, development, foreign affairs, finance, or justice)?
<b>Roles and Responsibilities</b>	Has the State developed a clear division of responsibilities to help coordinate human rights and business issues between and across different government agencies and departments?
<b>Resources</b>	Has the State provided the responsible entity or office with adequate resources in terms of economic funding and political backing, in order for it to work actively in contributing to meeting the duty of the State to protect human rights within individual areas of responsibility and expertise?

<b>GUIDING PRINCIPLE 8</b>	
<b>Guidance and Training</b>	<p>Has the State developed guidance material and training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business? Does this guidance include specific information on protection of human rights and how this relates to international and regional obligations and commitments (for example, UN, OECD, and regional obligations and commitments)? Does this guidance include specific information on the protection of human rights in trade, with an emphasis on the role of regional bodies and international organizations (for example, the WTO, IFIs (WB, IFC, etc.), and regional IFIs (EBRD, EIB, etc.))? Further, does the guidance provide information on the roles and responsibilities across ministries or agencies (for example, enterprise, labor, development, foreign affairs, agriculture, environment and climate change, financial sector, health, information society policy, and national financial institutions and funds)?</p>
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

<b>GUIDING PRINCIPLE 9</b>
<p>States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.</p>
<p><b>Commentary to Guiding Principle 9</b></p>

## GUIDING PRINCIPLE 9

Economic agreements concluded by States, either with other States or with business enterprises—such as bilateral investment treaties, free- trade agreements or contracts for investment projects—create economic opportunities for States. But they can also affect the domestic policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

### 9.1. Bilateral and Multilateral Investment Agreements and Arbitration of Disputes

Has the State put in place policies, guidance, monitoring, and reporting for relevant ministries or agencies with regard to the conclusion of bilateral and multilateral investment agreements and with regard to the arbitration of disputes?

Indicators	Scoping Questions
<b>Human Rights Provisions in IIAs and BITs</b>	Has the State worked at promoting the inclusion of specific human rights provisions in International Investment Agreements (IIEs) and Bilateral Investment Treaties (BITs)?
<b>Inclusion of Social Issues in IIAs and BITs</b>	Has the State worked at promoting the inclusion of social issues, such as the environment, labor rights, or social rights, in International Investment Agreements and Bilateral Investment Treaties?
<b>Stabilization Clauses</b>	Has the State put in place measures to ensure that stabilization clauses do not limit the host government's ability to meet its human rights obligations?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.



## GUIDING PRINCIPLE 9

### 9.2. Government Agreements

Has the State put in place policies and guidance for relevant ministries and agencies with regard to the conclusion of government agreements?

Indicators	Scoping Questions
<b>Human Rights in Government Agreements</b>	Does the State take measures to ensure that human rights considerations are made in agreements between the State and corporations? Are such agreements aligned with the UN's principles for responsible contracts? <sup>10</sup>
<b>The Role of the Home State</b>	How does the home State ensure that companies headquartered within its jurisdiction respect the principles of responsible contracting when those companies enter into agreements with host States?
Implementation Status	Gaps
List all relevant efforts for the promotion of business respect for responsible contracting principles.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 10

States, when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

### Commentary to Guiding Principle 10

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions.

Capacity-building and awareness-raising through such institutions can play a vital role in helping all States to fulfil their duty to protect, including by enabling the sharing of information about challenges and best practices, thus promoting more consistent approaches.

Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. Cooperation between States, multilateral institutions and other stakeholders can also play an important role.

These Guiding Principles provide a common reference point in this regard, and could serve as a useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.

#### 10.1. Membership in Multilateral Institutions

How does the State seek to ensure that the institutions it is a member of neither restrain its duty to protect nor hinder the business responsibility to respect?

<b>GUIDING PRINCIPLE 10</b>	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Internal Procedures and Commitment</b>	Has the State established procedures and measures to ensure support for business and human rights frameworks, including the UNGPs, in positions taken internationally and regionally (for example, on human rights screening and documenting of negotiating positions, as well as training of trade and development officials on business and human rights frameworks)?
<b>Promotional Activities</b>	Does the State promote its duty to protect and the corporate responsibility to respect in multilateral institutions, including international trade and financial institutions, the UN system, regional institutions, and with business organization and workers associations? Has the State taken measures to promote awareness of the UNGPs and the broader business and human rights agenda?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant procedures, commitments, and activities already in place, as well as any in progress and their status of implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

### **PILLAR III**

<b>GUIDING PRINCIPLE 25</b>
As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

## GUIDING PRINCIPLE 25

### Commentary to Guiding Principle 25

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

State-based grievance mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis. They may be judicial or non-judicial. In some mechanisms, those affected are directly involved in seeking remedy; in others, an intermediary seeks remedy on their behalf. Examples include the courts (for both criminal and civil actions), labour tribunals, national human rights institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development, many ombudsperson offices, and Government-run complaints offices.

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.

State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-

## GUIDING PRINCIPLE 25

level grievance mechanisms can provide early stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms. Further guidance with regard to these mechanisms is provided in Guiding Principles 26 to 31.

### 25.1. Redress for Business-Related Human Rights Abuses

Has the State put in place measures to ensure redress for business-related human rights abuses?

Indicators	Scoping Questions
<b>Sanctions</b>	Has the State put in place mechanisms that introduce civil liability, criminal sanctions, and administrative sanctions, such as fines or limited access to government funding, for human rights abuses?
<b>Financial or Non-Financial Compensation</b>	Has the State put in place mechanisms that introduce compensation, such as fines or restoration of livelihoods, for human rights abuses?
<b>Prevention of Harm</b>	Has the State put in place mechanisms that introduce processes for the prevention of harm, such as injunctions or guarantees of non-repetition, for human rights abuses?
<b>Apologies</b>	Has the State put in place mechanisms to promote apologies for human rights abuses?

<b>GUIDING PRINCIPLE 25</b>	
<b>State-Based Mechanisms</b>	Has the State put in place judicial and non-judicial, criminal and civil mechanisms where grievances can be raised and addressed? Has the State identified and removed barriers (financial, legal, practical, and evidentiary) to accessing those mechanisms? Are such mechanisms available to address extraterritorial harms, as permitted by the UNGPs and international human rights law?
<b>Non-State-Based Mechanisms</b>	Has the State supported non-State based mechanisms?
<b>Other Measures</b>	Has the State put in place other measures to ensure redress for business related human rights abuses?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their corresponding statuses of adoption.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>25.2. Roles and Responsibility Within States</b>	
Has the State defined clear roles and responsibilities within the State on access to effective remedy?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Competent Authorities</b>	Has the State defined competent authorities to investigate allegations of business-related human rights abuse? If so, are these authorities equipped with the knowledge necessary in order to attribute the abuses to the relevant redress mechanism?
<b>Implementation Status</b>	<b>Gaps</b>

<b>GUIDING PRINCIPLE 25</b>	
<p>List all relevant authorities tasked with this reflecting on the different types of abuses for example, labor rights abuses, and community impacts.</p>	<p>Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.</p>
<p><b>25.3. Public Information-Sharing and Accessibility</b>            Has the State developed measures through which to inform about grievance mechanisms available, grievances received, and relevant processes?</p>	
Indicators	Scoping Questions
<p><b>Public Information on the Mechanism</b></p>	<p>Has the State made efforts to promote public awareness and understanding of remediation mechanisms, including how they can be accessed and their accessibility? Does the State inform about the outcome of grievances and actions for follow-up when systemic issues are identified?</p>
<p><b>Accessibility</b></p>	<p>Does the State ensure that the mechanisms are available to all affected stakeholders (including, for example, women, peoples with disabilities, children, and indigenous peoples)? This includes providing services such as legal aid and legal counseling, as well as support to, for example, the NHRI, CSOs, or trade unions that work to ensure greater accessibility within grievance mechanisms.</p>
Implementation Status	Gaps
<p>List all relevant State policies, regulation, and measures to promote public information and accessibility.</p>	<p>Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.</p>

## GUIDING PRINCIPLE 26

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

### Commentary to Guiding Principle 26

Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

Practical and procedural barriers to accessing judicial remedy can arise where, for example:

- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, “market-based” mechanisms (such as litigation insurance and legal fee structures), or other means;
- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action



## GUIDING PRINCIPLE 26

procedures), and this prevents effective remedy for individual claimants;

- State prosecutors lack adequate resources, expertise and support to meet the State’s own obligations to investigate individual and business involvement in human rights-related crimes.

Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome.

### 26.1. Judicial Mechanisms

Has the State put in place a judicial mechanism with the competency to adjudicate business-related human rights abuses within the national jurisdiction of the State? If so, are these mechanisms in line with the criteria of impartiality, integrity, and ability to accord due process?

Indicators	Scoping Questions
<b>National and Regional Courts</b>	Do the national and regional courts have the competency to adjudicate business and human rights abuses, including for abuses that take place outside of their territorial jurisdiction, as permitted by the UNGPs and international human rights law? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?
<b>Labor Tribunals</b>	Do national labor tribunals have the competency to adjudicate business and human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?

<b>GUIDING PRINCIPLE 26</b>	
<b>Other Mechanisms</b>	Do other judicial mechanisms have the competency to adjudicate on business related human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant judicial mechanisms and how they are able to adjudicate business-related human rights abuses in a way that is impartial and with integrity and ability to accord due process.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>26.2. Barriers for Access to Judicial Remedy</b>	
Has the State taken measures to ensure that there are no barriers to access to judicial remedy for addressing business-related human rights abuses?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Legal Barriers</b>	Has the State taken measures to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring that it is possible to hold corporations accountable under domestic criminal and civil laws, meaning that liability exists under the law; (2) ensuring that all members of society can raise complaints, including indigenous peoples, migrants, women, and children, and are afforded the same legal protection as for the wider population; (3) ensuring that extraterritorial harms can be addressed within the courts, as permitted by the UNGPs and international human rights law; and (4) ensuring that issues such as conflicts of law, statutes of limitations, parent company liability, and standards of liability do not result in barriers to victims of business-related human rights harms in accessing the courts?

<b>GUIDING PRINCIPLE 26</b>	
<b>Practical and Procedural Barriers</b>	Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring financial support, (2) providing legal representation or guidance, (3) providing opportunities for class-actions and multi-party litigation; (4) allowing for recovery of attorneys' fees; (5) preventing retaliatory actions against claimants; (6) reforming access to evidence; and (7) providing training for prosecutors and judges.
<b>Social Barriers</b>	Has the State taken measures to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts? This includes: (1) addressing imbalances between the parties, (2) targeted awareness-raising among vulnerable groups (for example, women, indigenous people, and children), (3) availability of child-sensitive procedures to children and their representatives, (4) legal aid and other type of assistance, (5) efforts to combat corruption, and (6) protection of human rights defenders.
Implementation Status	Gaps
List all measures in place to combat barriers to access to judicial remedy.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>26.3. Remedy for Abuses Taking Place in Host-States</b> Has the State taken measures to address the issue of access of victims to judicial remedy for abuses by domiciliary companies in host States?	
Indicators	Scoping Questions
<b>Remedy of Extraterritorial Effect</b>	Has the State put in place measures to promote access to remedy of claimants (including vulnerable groups such as indigenous peoples, women, and children) that have been denied justice in a host State, enabling them to access home State courts?

## GUIDING PRINCIPLE 26

<b>Forum Non Conveniens</b>	Does the State allow a court considering a forum non conveniens motion to consider factors against dismissal in addition to factors in favor of dismissal?
<b>Implementation Status</b>	<b>Gaps</b>
List information on mechanisms put in place to promote access to remedy for claimants of abuses taking place in host States.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 27

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Commentary to Guiding Principle 27

## GUIDING PRINCIPLE 27

Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favored approach for all claimants.

Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes—or involve some combination of these—depending on the issues concerned, any public interest involved, and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31.

National human rights institutions have a particularly important role to play in this regard.

As with judicial mechanisms, States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.

### 27.1. Types of Non-Judicial Mechanisms

Has the State provided effective and appropriate non-judicial grievance mechanisms?

Indicators	Scoping Questions
<b>Mediation-Based Mechanisms</b>	Does the State provide access of claimants to mediation-based non-judicial mechanisms such as National Contact Points under the OECD Guidelines? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?
<b>Adjudicative Mechanisms</b>	Does the State provide access of the claimant to adjudicative mechanisms such as government-run complaints offices? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?

<b>GUIDING PRINCIPLE 27</b>	
<b>Other Mechanisms</b>	Does the State provide access to other types of non-judicial mechanisms? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?
<b>Implementation Status</b>	<b>Gaps</b>
List the mechanisms in place, each mechanism's mandate on dealing with business-related human rights abuses, and the level of implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>27.2. Role of the NHRI</b>	
Has the State provided specific competency to the national human rights institution (NHRI) to perform the role as a non-judicial mechanism for addressing grievances?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Complaints-Handling Role</b>	Has the State given the NHRI the mandate that allows it to receive and handle complaints relating to corporate human rights abuses?
<b>Supportive Role</b>	Has the State given the NHRI the mandate that allows the NHRI to be in a supportive role to claimants, such as through mediation, conciliation, expert support, or legal aid?
<b>Awareness-Raising</b>	Has the State given the NHRI the mandate to promote awareness on remedy to and redress for corporate human rights abuses?
<b>Training</b>	Has the State given the NHRI the mandate to provide training of relevant stakeholders on their access to remedy for corporate human rights abuses?

<b>GUIDING PRINCIPLE 27</b>	
<b>Counseling</b>	Has the State given the NHRI the mandate to provide counselling on which remedy to access?
<b>Implementation Status</b>	<b>Gaps</b>
List all relevant competencies given to the NHRI by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
<b>27.3. Barriers for Access to Non-Judicial Remedy</b>	
Has the State taken measures to ensure that there are no barriers to access to non- judicial remedy for addressing business-related human rights abuses?	
<b>Indicators</b>	<b>Scoping Questions</b>
<b>Practical and Procedural Barriers</b>	<p>Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent procedural barriers include:</p> <ol style="list-style-type: none"> <li>1. Financial support;</li> <li>2. Providing guidance;</li> <li>3. Ensuring that the information on the mechanism is provided in a language that is understandable to potential claimants;</li> <li>4. Ensuring accessibility despite geographical issues or difficulties (for example, long distances).</li> </ol>

## GUIDING PRINCIPLE 27

<b>Other Barriers</b>	Has the State taken measures to ensure that there are no other barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent other barriers include:  <ol style="list-style-type: none"><li>1. Addressing imbalances between the parties;</li><li>2. Targeted awareness-raising among vulnerable groups (such as women, indigenous peoples, or children);</li><li>3. Expert advice or type of assistance;</li><li>4. Efforts to combat corruption;</li><li>5. Protection of human rights defenders.</li></ol>
Implementation Status	Gaps
List all measures to reduce barriers to access to non-judicial remedy.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 28

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Commentary to Guiding Principle 28



## GUIDING PRINCIPLE 28

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights. However, some have also dealt with the failure of a State to meet its duty to protect against human rights abuse by business enterprises.

States can play a helpful role in raising awareness of, or otherwise facilitating access to, such options, alongside the mechanisms provided by States themselves.

### 28.1. Facilitating Access to Mechanisms

Has the State supported access to effective non-State-based grievance mechanisms dealing with business-related human rights harms?

Indicators	Scoping Questions
<b>Business-Based Grievance Mechanisms</b>	Has the State supported access to business-based grievance mechanisms (such as whistleblower mechanisms or project-level grievance mechanisms) through efforts such as dissemination of information and support for access (for example, through guidance documents and tools)?
<b>Multi-Stakeholder Grievance Mechanism</b>	Has the State supported access to multi-stakeholder grievance mechanisms through efforts such as dissemination of information and support for access?
<b>Organizational-Based Grievance Mechanisms</b>	Has the State supported access to organizational-based grievance mechanisms (including the union systems) through efforts such as dissemination of information and support for access?

## GUIDING PRINCIPLE 28

<b>International Grievance Mechanisms</b>	Has the State supported access to international grievance mechanisms through efforts such as dissemination of information, support for access (for example, through legal aid) as well as support for establishing contact between the claimant in international system?
<b>Regional Grievance Mechanisms</b>	Has the State supported access to regional grievance mechanisms through efforts such as dissemination of information and support for access (for example, through legal aid)?
<b>Other Mechanisms</b>	Has the State supported access to other grievance mechanisms through efforts such as dissemination of information and support for access?
<b>Implementation Status</b>	<b>Gaps</b>
List the mechanisms that the State has supported access to, including how support was given.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

## GUIDING PRINCIPLE 31

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) **legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- (h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

### Commentary to Guiding Principle 31

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance among affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

## GUIDING PRINCIPLE 31

The term “grievance mechanism” is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

- (a) Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;
- (b) Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;
- (c) In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;
- (d) In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
- (e) Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism’s performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals’ identities should be provided where necessary;
- (f) Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;
- (g) Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;
- (h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

### 31.1. Alignment with the Effectiveness Criteria

Does the State ensure that State-based non-judicial grievance mechanisms meet the effectiveness criteria?

Indicators

Scoping Questions

## GUIDING PRINCIPLE 31

<b>1. Legitimate</b>	Has the State taken measures to ensure that the mechanisms enable trust from the stakeholder groups for whose use they are intended (including that it has a firm mandate, is independent and transparent, includes ensuring non-interference with fair conduct, and includes feedback mechanisms for when foul play is detected)?
<b>2. Accessible</b>	Has the State taken measures to ensure that the mechanisms are accessible (including language and literacy issues, cost associated with raising complaints, geographical issues, fear of reprisal, and vulnerability of claimant, for example, due to gender, age, religion, or minority status)?
<b>3. Predictable</b>	Has the State taken measures to ensure that the mechanisms are predictable (including clear and public information about the procedure, timeframes for the procedure, and information on the process and outcome of the mechanism)?
<b>4. Equitable</b>	Has the State taken measures to ensure that the mechanisms are equitable (including access of all parties to information, advice, and expert resources)?
<b>5. Transparent</b>	Has the State taken measures to ensure that the mechanisms are transparent (including regular communication about grievance resolution progress as well as wider public information on cases received and in process in order to identify and address societal trends)?
<b>6. Rights compatible</b>	Has the State taken measures to ensure that the mechanisms are rights-compatible (including that grievances are framed in terms of human rights when they do raise human rights concerns and that the institutions and authorities managing the mechanisms are aware of human rights and how these relate to the cases dealt with)?

## GUIDING PRINCIPLE 31

### 7. A source of continuous learning

Has the State taken measures to ensure that the mechanisms are a source of continuous learning (including State support for regular analysis of the frequency, patterns, and causes of grievances to promote a strengthening of the mechanism)? Has the State incorporated lessons learned through operation of the mechanisms to improve the mechanisms' effectiveness?

#### Implementation Status

For each of the criteria above, provide details as to how the State is working on meeting the criteria.

#### Gaps

Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

---

<sup>1</sup> See, e.g., FAO Integrated Food Security Support Service, M&E Technical Advisory Notes Series: Overview of Methods for Baseline Assessments, [http://www.ideas-int.org/documents/docs/Methods\\_Baseline\\_Assessments.pdf](http://www.ideas-int.org/documents/docs/Methods_Baseline_Assessments.pdf).

<sup>2</sup> See *id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., OHCHR Handbook on Human Rights NAPs, *supra* note 36; European Group of NHRIs Discussion Paper, *supra* note 8; UNWG Draft Country Visit Template, *supra* note 75.

<sup>8</sup> The Recommendations for the NBA Process incorporate the broader principles for NAPs processes, found in Chapter 6 of this report. See also European Group of NHRIs Discussion Paper, *supra* note 8.

<sup>9</sup> The NBA Template draws from and aims to be consistent with existing guidance on assessment of current State implementation of the UNGPs. See, e.g., European Group of NHRIs Discussion Paper, *supra* note 8; UNWG Draft Country Visit Template, *supra* note 75.

<sup>10</sup> Report of the Special Representative of the Secretary-General on the Issue of Human rights and Transnational Corporations and Other Business Enterprises, John Ruggie, United Nations (2011), Principles for Responsible Contracts: Integrating the Management of Human Rights Risks Into State-Investor Contract Negotiations: Guidance for Negotiators, (A/HRC/17/31/Add.3).

The UN's principles for responsible contracts are:

- Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
- Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
- Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
- Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
- "Additional goods or service provision": Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be

---

carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.

- Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
- Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
- Project monitoring and compliance: The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
- Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism
- Transparency/Disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.