



Submission to the Special Representative for Business and Human Rights on the Draft Guiding Principles

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About BSR

A leader in corporate responsibility since 1992, BSR works with its global network of more than 250 member companies to develop sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. With six offices in Asia, Europe, and North America, BSR uses its expertise in the environment, human rights, economic development, and governance and accountability to guide global companies toward creating a just and sustainable world. Visit www.bsr.org for more information.

Overview

On November 22, 2010, Professor John Ruggie, Special Representative to the UN Secretary General for Human Rights and Business (SRSG), proposed draft "Guiding Principles for the Implementation of the United Nations 'Protect, Respect, and Remedy' Framework."

The "Protect, Respect, and Remedy" Framework, proposed by the SRSG and unanimously welcomed by the UN Human Rights Council in 2008, rests on three pillars: the state duty to protect its citizens from human rights abuses, including from businesses; the corporate responsibility to respect human rights through proactive measures; and access to effective remedy—judicial and non-judicial—in cases where human rights have been impacted.

The framework has been met with widespread support from government, business, and civil society organizations. The principles and associated commentary provide valuable guidance on the steps needed for business and government to operationalize the framework.

The views and comments expressed in this submission are BSR's own. While they are based on our experience working with our corporate members and clients around the world, they do not necessarily represent their views.

Overall Comments

BSR would like to congratulate the SRSG and his team on the significant progress made since he began his mandate more than five years ago. Through a diligent, balanced, transparent, and globally inclusive approach, the SRSG and his team have turned what had been an increasingly rigid and unconstructive debate into a focused, civil, and productive discussion resulting in clearly defined duties and responsibilities for states and businesses.

We have seen the framework emerge quickly as the de facto standard for defining corporate responsibility for human rights. In our work with companies, we have used the framework to develop and implement human rights management systems based on the human rights due diligence steps the SRSG has outlined. We are confident that the principles will prove equally valuable and that there will be similar uptake and endorsement.

As a globally applicable standard, the framework can contribute to creating a common understanding and a level playing field for global corporations in the area of human rights.

In our view, the principles strike the right balance between universal applicability and the degree of specificity needed by governments, business, and civil society for successful implementation. Given that the principles are applicable to all business enterprises—from the corner store to the multinational corporation—this is a notable feat.

The principles effectively address the most fundamental questions surrounding business and human rights and provide valuable guidance on many of the challenges and barriers we have encountered in our human rights work with companies around the world. We believe that the principles represent a significant step forward for human rights in both the public and private sectors.

The specific comments below are organized by principle and reflect our intention to provide constructive input to this important process based on our experience working with business to address human rights challenges.

Specific Comments

Principle 5: Fostering Business Respect for Human Rights

We support the notion, included in the commentary to principle 5, that states should not assume that businesses invariably prefer or benefit from state inaction and that states should consider a smart mix of measures both voluntary and mandatory to foster business respect for human rights.

Thus, we support the qualification of “where appropriate” with regard to mandatory measures that require corporate respect for human rights. However, the addition of “where appropriate” in the principle’s main text means that bullet a) on “enforcement,” which is an example of the state “requiring” certain action by the business enterprise, could be construed as being subject to this qualification. We suggest adding the word “always” to bullet a) to clarify that enforcement of existing laws protecting human rights is expected from governments in all circumstances.

We welcome and support the acknowledgement, included in the commentary to principle 5, that human rights impacts can be “material” or “significant” from the investor’s perspective and that states should clarify that this may be the case in the context of their financial reporting requirements.

Principle 12: Responsibility to Respect Human Rights

We support the principle that business respect for human rights refers to all internationally recognized human rights, understood at a minimum to be the principles contained in the International Bill of Rights and the International Labor Organization’s eight core conventions.

As mentioned in commentary to principle 12 and elaborated on in principle 22 for remediation, it is important to note that in practice, some human rights may be at greater risk than others and therefore demand heightened attention, depending on the specific operating context.

In our experience working with businesses on human rights strategies and management systems, identifying the most significant human rights risks and opportunities is necessary to maximize limited resources. As mentioned by the SRSG, this need for prioritization should not stand in the way of periodic assessments of impacts against all human rights.

As mentioned in the commentary to principle 12, additional standards may become relevant for businesses, such as principles of international humanitarian law, when operating in conflict zones or impacting rights specific to vulnerable groups such as indigenous peoples. Given the heightened degree of human rights risk associated with operating in conflict zones and the need for special protection of vulnerable groups, we recommend elevating this notion from commentary to principle.

In our experience, we have found that businesses sometimes operate in context where human rights defenders are vulnerable. Although mentioned in the context of providing effective remedy—in commentary to principle 24—human rights defenders may also merit mention here.

Finally, we support the notion that the responsibility to respect human rights does not preclude business enterprises from undertaking additional commitments or activities to support or promote human rights. We believe the private sector can and should play a crucial role in this regard. We agree with the SRSG that such activities complement, but do not replace, the measures necessary to ensure respect for human rights, in itself a significant responsibility requiring proactive measures.

Principle 15: Human Rights Due Diligence

Since its founding in 1992, BSR has worked with businesses to address human rights impacts in global supply chains. Based on this experience, we support the notion, contained in principle 15, bullet c), that a company's human rights due diligence should extend to its suppliers. It is our experience that for many companies, the supply chain harbors the most severe human rights risks.

We welcome the acknowledgement contained in the commentary to principle 15 that it may be impossible to include all suppliers in a due diligence effort. In our work helping companies assess human rights risk in the supply chain, we found that a rigid approach to prioritizing suppliers for assessment—for example, by tier—is not always effective. In this context, we would welcome if the SRSG would reiterate the statement made in his 2009 report that suppliers themselves have a responsibility to respect human rights. More discussion will be needed on when including or excluding suppliers in human rights due diligence is appropriate, although we understand that the SRSG's mandate may not be the right forum for this debate.

In addition, we would welcome clarification on whether the term “business partners” is meant to include the customers of the business enterprise, as the reference to the “value chain” in the commentary to principle 12 suggests. In our experience, the question of whether there are circumstances when the responsibility to respect may extend to a company's customers touches on one of the most difficult human rights dilemmas for business: the question of what actions a company should take when a potentially beneficial product is used by a customer to inflict harm. While the SRSG's thoughtful discussion of complicity is relevant in this context, further clarification on this particular dilemma—and the potential for companies to undertake greater due diligence of their customers and the product use phase—would be welcome.

Principle 19: Communication

This principle and related commentary, which clearly outline the expectation of businesses with significant human rights risks to report regularly on their

responses, represents a big step forward given the still limited number of companies who report on their human rights impacts and performance. In our work with companies, we have found that open communication with stakeholders, far from creating an undue burden, creates value for both the company and society.

The principle as written seems to suggest that companies without “significant” human rights risks should be prepared to report only when faced with stakeholder concerns. This may be interpreted as placing the burden to identify adverse human rights impacts on stakeholders rather than businesses themselves.

In our work, we often find that it is important for companies to understand and acknowledge the limits of what stakeholders may know about their business. Consequently, companies should take responsibility to identify, address, and report on significant human rights risks, regardless of whether stakeholders happen to be raising concerns at that moment.

We suggest further clarification on this point as well as on the question of when human rights risks become “significant.”

Principle 21: Conflict Between Local Law and International Human Rights

In bullet b) of principle 21, the SRSG clarifies that businesses should seek ways to honor the principles of internationally recognized human rights where domestic legal compliance may undermine their responsibility to respect. This touches on one of the most challenging dilemmas in the business and human rights context: What is a company’s responsibility where national law conflicts with international human rights protections? We have seen instances where a company’s decision to continue rather than cease operation in the country can have significant positive impacts for human rights.

In the commentary to principle 21, the SRSG suggests that where legal compliance may mean possible involvement in gross abuses of human rights the company should consider whether and how it can continue to operate with integrity in such circumstances.

We would welcome more guidance on the issues and challenges associated with this dilemma, including on instances where human rights impacts do not amount to gross abuses and where a decision by the company to cease operations may itself negatively impact human rights. We would also welcome additional clarity on the conditions under which continued operation with integrity is deemed possible even in cases where gross human rights abuses may occur.

In our experience working with companies around the world, one of the most difficult situations we have encountered is when local law and international human rights standards are in significant conflict. While we recognize the challenges to the SRSG in developing more specific guidance on this issue, we believe a strong case could be made that it is the responsibility of the company in this situation to take an approach of constructive engagement by challenging the government and seeking improved human rights standards. We recognize that it is not practical or desirable for business to challenge governments in all cases, and we point to the [Implementation Guidelines](#) of the Global Network Initiative as well thought-out guidance on the types of criteria companies can use in deciding whether or not to challenge.

Conclusion

We again commend the SRSG and his team on the substantial progress they have achieved in creating a clear focal point for the business and human rights debate and in proposing a conceptual framework and operational guidance for human rights and business. As we continue working with business to develop strategies and management systems that ensure respect for human rights, we will continue to apply the “Protect, Respect, and Remedy” Framework and the Guiding Principles to our work.

As the SRSG’s mandate concludes, we would welcome and support the creation of an ongoing forum for discussion, collaboration, and implementation as the business and human rights community works to address the remaining open questions, challenges, and dilemmas. Such a forum would allow businesses, government, and civil society groups to share lessons and best practices and enable all of us to maintain the momentum that the SRSG’s hard work and leadership has generated.

For questions or comments, please contact Faris Natour, Director, Human Rights at fnatour@bsr.org.