

Protect, Respect and Remedy Framework

- I. **Protect:** Governments have the inherent duty to take measures that prevent human rights violations by itself or non-state actors. This is in line with its core obligations of Protect, Respect and fulfil human rights.
- II. **Respect:** Businesses must comply with the national and international law so as keep off any activities that may lead to human rights violations; including avoiding being complicit in human rights violations. Businesses need a human rights due diligence process, whereby they become aware of, prevent, and address their adverse human rights impacts
- III. **Access to remedy:** where human rights violations have occurred. Both the state and businesses should offer remedy where either has violated human rights.

Do the UNGPs create any new international law?



No. They must not be construed to, but instead should be read together as whole with international instruments/laws. The state still retains its obligations under international law.

UNGPs apply to all businesses irrespective of size; all businesses have human rights impacts however small or big.

The UNGPs have 31 Principles targeted at the State, Businesses and Remediation when violations have occurred:

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Kenya National Commission on Human Rights

Summarised Version of the United Nations Guiding Principles on Business and Human Rights

‘PROTECT’
‘RESPECT’
‘REMEDY’

The United Nations Guiding Principles On Business and Human Rights (UNGPS)



What are UNGPs?

Background

The UN Secretary General Kofi Anan appointed a special representative (John Ruggie) in 2005 to advice and clarify the roles and responsibilities of states, companies and other social actors in the business and human rights sector. Having the experience of failure of the “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” Ruggie engaged in an extensive consultation process in which all actors were consulted. These included states, businesses, NGOs with the aim of establishing a consensus between the actors.

In 2008 after three years of these consultations, the Special Representative of the Secretary General (SRSG) presented a framework that incorporated three pillars, popularly known as Protect, Respect and Remedy Framework. The framework outlined the responsibilities of the states and businesses: The State Duty to Protect against human rights violations, the businesses responsibility to respect human rights and the access to remedy where human rights have been violated.

The mandate of the SRSG was extended by another three years in order to operationalize and promote the framework. In June 2011, the Human Rights Council unanimously adopted the United Nations Guiding Principles on Business and Human Rights giving effect to the Protect, Respect and Remedy Framework. The quote below from Professor John Ruggie gives a summarise vision of the UNGPS:

“The Guiding Principles are a transformational roadmap to a future where the billions of people whose lives are impacted by corporate activities are treated with respect for their dignity and fundamental welfare – a world where human beings and corporations alike can thrive and prosper.” **Prof John Ruggie**

PILLAR I: THE STATE DUTY TO PROTECT HUMAN RIGHTS
PRINCIPLE 1 Protect against human rights violations by third parties including businesses <ul style="list-style-type: none">The state should proactively take steps to prevent occurrence of human rights violations, investigate and provide redress where human rights violations have occurred.This will achieved by promoting the rule of law, formulation of appropriate policies and enacting legislation that would offer the full package of prevention and remedial measures.
PRINCIPLE 2 Clear government expectation that that businesses respect human right within and outside jurisdiction. This applies to those business which have operations outside the country of origin, in other words Multinational Companies/Enterprises. It can be done through various approaches such as: <ul style="list-style-type: none">Reporting on compliance by businessesLegislation and enforcement- including prosecutions
PRINCIPLE 3 The state should not ignore or take no action when human rights are violated by businesses. Therefore it should take the following steps <ol style="list-style-type: none">Enforce Laws that require businesses to respect human rightsEnsure that laws are encourage businesses to respect human rightsProvision of guidance to businesses on expected outcomes of respecting human rightsEncourage and require that businesses communicate how they address their human rights impacts National Human Rights Institutions should take lead in advising the state on whether the laws enacted by the state are aligned to international human rights obligations
PRINCIPLE 4 As the primary duty bearer, the state should take additional steps to protect against human rights violations by those businesses which it owns, controls or gives substantial support in their operations. This is because the state has full or substantive control in terms of reporting and operations hence the ease of control.
PRINCIPLE 5 The state should have sufficient oversight on businesses that it contracts or legislates to provide services which may have impacts on enjoyment of human rights. Absence of this oversight could lead to human rights violations and making the state liable to failure to meet international obligations on human rights
PRINCIPLE 6 The state should promote respect for human rights by those businesses with which it does business with. Since the state is one of the biggest consumers of goods and services, it should ensure that its supply chain respects human rights.

PRINCIPLE 7 The state should help businesses ensure that they are not involved in human rights abuses during situations of conflict. This means that even in situations where multinationals are present in zones of conflict and the host country is unable to offer sufficient interventions, the mother state of that business should step in and ensure that these businesses are not involved in the human rights violations.
PRINCIPLE 8 The state must ensure that there is policy coherence in all its agencies and that they are well alive to the human rights obligations while dispensing of their mandates. This should be done through dissemination of information, training and other relevant support to these agencies.
PRINCIPLE 9 States must ensure that while getting into any business related policies with foreign states or businesses, due consideration is given to domestic policies. This is to ensure that such engagements do not constrict the state's ability to protect human rights while executing the said agreements
PRINCIPLE 10 States should also ensure that there is policy coherence at the international level such that multilateral institutions (in relation to businesses) it deals with do not constrain it against the duty to protect human rights. The state should go further and ensure that there is shared understanding of human rights obligations through international cooperation.
PILLAR II: THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS
PRINCIPLE 11 Businesses should respect human rights and where they are involved in adverse human rights impacts, they should offer redress through among others taking adequate measures to prevent, mitigate and remediate those impacts.
PRINCIPLE 12 Businesses should in the minimum observe human rights in line with the international bill of human rights (UDHR, ICESCR, and ICCPR) and the ILO core conventions as set out in the Declaration of Fundamental Principles and Rights at Work. They should go a step ahead where necessary to take into consideration the concerns of special interest groups such as people with disabilities, indigenous and marginalized groups, migrants etc. and in situations of conflict, businesses should respect the standards of international humanitarian law.
PRINCIPLE 13 Businesses should avoid adverse human rights impacts either through their operations/activities or through operations of those in their supply chains or those they have business relations with.
Principle 14 Irrespective of size, all businesses should respect human rights. Even though big businesses have a larger scope of human rights impacts, small and medium businesses could have immense negative impacts on human rights.

PRINCIPLE 15 Businesses should demonstrate their respect for human rights by having the right policies and processes in place such as policy commitments, human rights due diligence and remediation processes.
PRINCIPLE 16 The policy statement to respect human rights should: <ul style="list-style-type: none">Be approved at the highest level of the business hierarchyShould be drawn from internal and external expertiseClearly stipulates human rights expectations by its personnel and business partnersBe available both internally and externally to its personnel and partnersBe embedded in all aspects/functions of the business entity.
PRINCIPLE 17 In order to fully respect human rights, businesses should carry out human rights due diligence. This process should cover the human rights impacts resulting from the entity's activities and those of its businesses relationships. It should also recognize that complexity of impacts is determined by the size of the businesses enterprise and that human rights impacts are evolutionary.
PRINCIPLE 18 Due diligence process should draw on internal and external human rights expertise and should be as consultative as possible taking into consideration the size, nature and context of operations of the business enterprise. The wide stakeholder consultations and regular review of the impacts informs subsequent steps in the due diligence process
PRINCIPLE 19 The business enterprises should integrate the findings of their impact assessments across its internal functions and processes and take appropriate action. The appropriate actions include assigning responsibility to the appropriate level and function within the organization and having effective internal decision making, budget allocations and oversight processes.
PRINCIPLE 20 Businesses should verify if the adverse human rights impacts are being addressed by tracking the effectiveness of their response. Tracking should be based on qualitative and quantitative indicators and should draw back from internal and external sources such as affected stakeholders.
PRINCIPLE 21 For accountability purposes, businesses should communicate how they have addressed human rights impacts to those affected stakeholders and be prepared to do this frequently, with sufficient information and should not present any risks the affected stakeholders and personnel.
REMEDIATION
PRINCIPLE 22 Where businesses have contributed to or caused adverse human rights impacts, they should provide or cooperate in remediation through legitimate processes.

PRINCIPLE 23 All businesses have the responsibility to respect human rights in their areas of operation. They should comply with internationally recognized human rights even when faced with conflicting requirements- that international human rights principles take priority.
PRINCIPLE 24 Where businesses have to prioritize addressing adverse human rights impacts, priority should be given to the ones that are most severe or which if not addressed immediately will make remediation difficult or impossible.
ACCESS TO REMEDY
PRINCIPLE 25 States must take appropriate steps to ensure that those affected by the adverse human rights impacts access effective remedy. This should be done through judicial, administrative, legislative and other appropriate means.
PRINCIPLE 26 States must ensure that domestic judicial mechanisms are effective and should reduce legal, practical and other barriers that could lead to denial of access to remedy.
PRINCIPLE 27 Alongside judicial mechanisms, states should provide appropriate non-judicial grievance mechanisms so that there is a comprehensive state based system for remedy.
PRINCIPLE 28 States should consider facilitative roles in accessing non state based remedy systems such as those administered by businesses, industry associations or stakeholders. These mechanisms could be of benefit such as speed of access to remedy, reduced costs of access and may have transnational reach.
PRINCIPLE 29 Grievance mechanisms should be directly accessible to individuals and communities who are adversely impacted by a business enterprise and they should be administered by the businesses either alone or in collaboration with relevant stakeholders.
PRINCIPLE 30 Through collaborative initiatives with industry and other stakeholders, there should be available effective mechanisms through which those affected by adverse human rights impacts can raise their concerns.
PRINCIPLE 31 To have effectiveness, non-judicial mechanisms by state and not state actors should have the following characteristics: <ol style="list-style-type: none">LegitimateAccessiblePredictableEquitableTransparentRights CompatibleSource of continuous learningBased on engagement and dialogue (operational- level mechanism) A grievance mechanism will serve its purpose if the people for whom it is intended to serve know about it, trust it and are able to use it.