

## Human Rights Defenders' Fact Sheet

### United Nations Guiding Principles on Business and Human Rights

#### "Appropriate Action" and the use of Leverage

##### **Disclaimer**

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#### 1. **Corporate responsibility to respect human rights**

- 1.1 The United Nations Guideline Principles on Business and Human Rights ("**UNGPs**") are a global, non-legally binding standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.<sup>1</sup>
- 1.2 The corporate responsibility to respect human rights, as set out in the second pillar of the UNGPs, is a standard of conduct for business enterprises. The UNGPs state that businesses should have in place:
  - (A) a Human Rights Policy Statement demonstrating commitment to respect human rights;
  - (B) a human rights due diligence procedure ("**HRDD**"); and
  - (C) processes to enable the remediation of any adverse human rights impacts that the business enterprise causes or to which it contributes.
- 1.3 This Fact Sheet focuses on leverage under the UNGPs. Please refer to separate Fact Sheets for information on human rights policy statements, human rights due diligence, grievance mechanisms and remediation.

#### 2. **Leverage and the UNGPs**

- 2.1 Under the UNGPs, the influence or leverage of a business becomes relevant in identifying what it can reasonably do to address an adverse human rights impact. Specifically, Guiding Principle 19 (and commentary) provides that, when integrating findings from HRDD (often in the form of an impact assessment), a business is required to look for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated, and actual impacts should be a subject for remediation<sup>2</sup>. Where a business has not contributed to an adverse human rights impact, it should take "appropriate action" to mitigate any adverse impacts of its business activities on human rights.
- 2.2 "Appropriate action" will vary according to:

<sup>1</sup> See: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

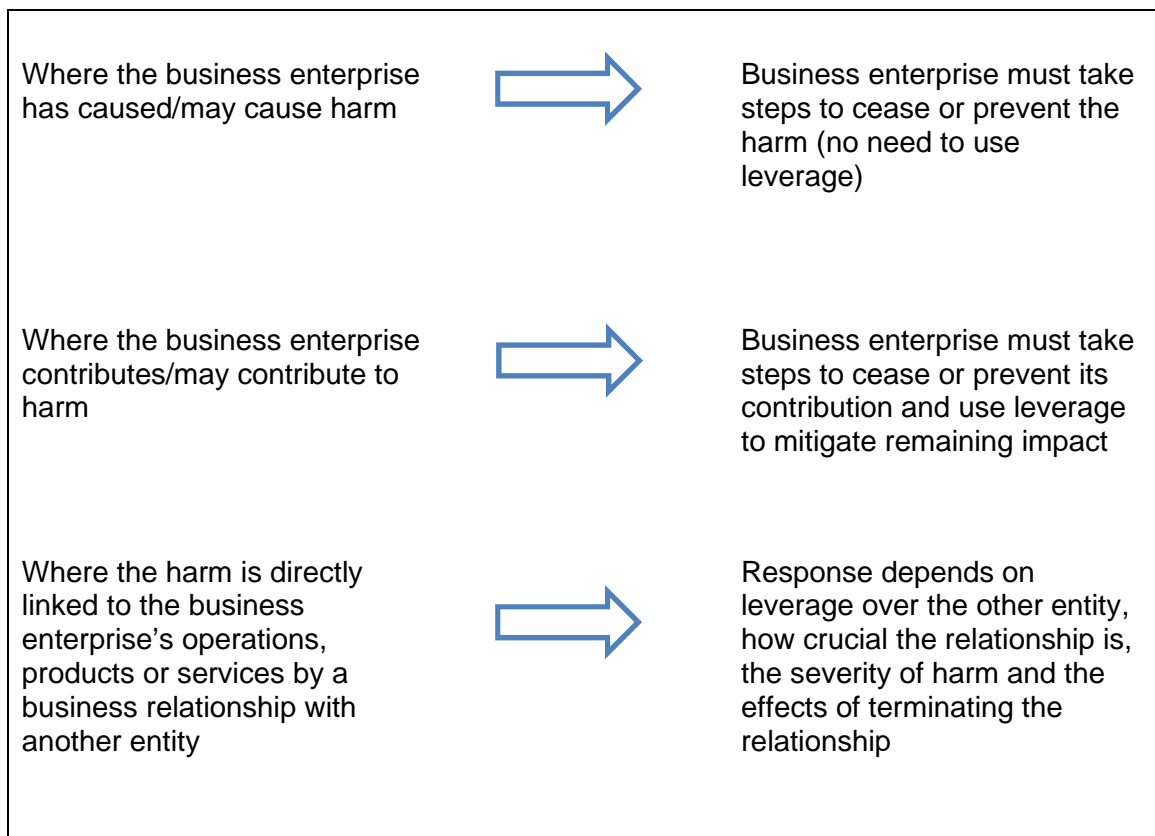
<sup>2</sup> See GP 22 of [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

- (i) whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; and
- (ii) the extent of its leverage in addressing the adverse impact.

3. **When should leverage be used?**

3.1 It is important to note that if a business enterprise has not caused the impact itself, the leverage it has over the perpetrator will shape its range of options to prevent or mitigate the impact. However, it does not affect the scope of the responsibility itself. Leverage is considered to exist where the enterprise is able to effect change in the wrongful practices of an entity that causes harm.<sup>3</sup>

3.2 The commentary to Guiding Principle 19 gives further details on what is considered “appropriate action” and when leverage should be used. This is summarised below.



3.3 If it is necessary to prioritise actions to address human rights risks, business enterprises should be guided by the severity of the potential or actual impact identified, including whether a delayed response may make the impact irremediable.<sup>45</sup> The more complex the situation and its implications for human rights, the stronger the case is for the enterprise to draw on independent expert advice in deciding how to respond.

<sup>3</sup> See commentary to GP19. Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>4</sup> See: [http://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf)

<sup>5</sup> See: [https://www.ohchr.org/Documents/publications/hr.puB.12.2\\_en.pdf](https://www.ohchr.org/Documents/publications/hr.puB.12.2_en.pdf).

#### 4. **How can leverage be increased?**

- 4.1 If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. However, if a business lacks leverage, it should seek to increase it.
- 4.2 There are several steps that the business can take to try to increase its leverage. For example:
- (A) terminate orders/contracts with substandard suppliers to encourage better practices;
  - (B) liaise or collaborate with other actors and/or competitors to agree joint actions or standards;
  - (C) engage with industry or sector groups and/or non-governmental organisations to encourage the development of best practices;
  - (D) ensure that contracts adequately reflect and incorporate the cost of labour, health, and safety compliance;
  - (E) carry out regular (impromptu) on-site audits; and/or
  - (F) offer capacity-building or other incentives.
- 4.3 Many of these steps overlap with standard HRDD and may need to be tailored to the specific situation to ensure that harm is prevented/mitigated.
- 4.4 Collective action is generally considered the most powerful way of increasing leverage. For example, Action Collaboration Transformation is an initiative in which fashion brands, manufacturers and trade unions work together to address the issue of living wages in garment supply chains.<sup>6</sup> This leverage is important as even big brands, such as H&M and Primark, may only represent 5% of a factory's production.

#### 5. **What are the consequences when a business enterprise fails to use leverage?**

- 5.1 If the business enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage, the business should consider ending the relationship. Before doing this, it should consider whether ending the relationship might result in further adverse human rights impacts.
- 5.2 As long as the abuse continues, and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences of the continuing connection. These consequences could be reputational, financial or legal.<sup>7</sup>

#### 6. **Practical steps for Human Rights Defenders ("HRDs")**

- 6.1 HRDs can take the following steps:
- (A) Review the businesses impact assessment.
    - (1) If this is publicly available, check whether the concerns of potentially impacted rights holders are included and addressed.

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<sup>6</sup> The Action Collaboration Transformation website is available at: <https://www.ethicaltrade.org/act-initiative-living-wages>

<sup>7</sup> See commentary to GP19. Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

- (2) If this is not publicly available, request this directly from the business enterprise or contact the relevant regulatory agencies or inspectorates.
- (B) Engage in a consultation between the affected rights holders and the business to develop actions to address the impact.
- (C) Consider whether the business has any subsidiaries, contractors or suppliers over which it could exercise leverage.
- (D) Contact the business and make enquiries regarding its approach to the human rights impact and any action plan developed to address the impact effectively.
- (E) Direct the business to publicly available resources or examples that indicate how leverage can be used effectively.<sup>8</sup>
- (F) Request information from the business enterprise regarding tracking the effectiveness of its responses to the human rights impacts through qualitative and quantitative indicators.
- (G) Engage the relevant government or embassy to contact the business on the HRDs' behalf if necessary.
- (H) When taking these practical steps, HRDs may also decide to copy in, as appropriate, UN Special Procedures,<sup>9</sup> Inter-American Commission on Human Rights Thematic Rapporteurships and Units,<sup>10</sup> African Commission on Human and Peoples' Rights Special Mechanisms,<sup>11</sup> or the Business and Human Rights Resource Centre,<sup>12</sup> to help raise awareness of any concerns raised or request ongoing monitoring and support.

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<sup>8</sup> The Global Business Initiative on Human Rights is one such useful resource: <https://gbhr.org/business-practice-portal/using-leverage>

<sup>9</sup> [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM)

<sup>10</sup> <http://www.oas.org/en/iachr/mandate/rapporteurships.asp>

<sup>11</sup> <https://www.achpr.org/specialmechanisms>

<sup>12</sup> <https://www.business-humanrights.org/>