

Human Rights Defenders Toolbox Training

UN Guiding Principles on Business and Human Rights

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15 September 2020

What are we covering today?

- What are the UN Guiding Principles on Business and Human Rights?
- Treaty on Business and Human Rights: worth waiting for?
- UNGPs: Key requirements for businesses
- Strategic use of the UNGPs
- Case study / discussion

What are the UN Guiding Principles on Business and Human Rights?

Key content

- 31 principles
- Non-binding
- Three pillars:
 - Protect
 - Respect
 - Remedy
- Apply to the State and corporates – focus today is on corporates

Key timeline

- 2011: UNGPs adopted by the UN
- 2014: Inter-governmental working group (IGWG) established to draft treaty
- 2018: First draft produced
- 2019: Revised draft produced
- 2020: Next round of negotiations this October

Treaty on Business and Human Rights

Worth waiting for?

Yes?

- Need concrete rules rather than vague principles to hold businesses to account
- Need clarity on relationship with other human rights instruments

No?

- Drafting a treaty is a long process – a final version is years away
- Treaty unlikely to solve issue - difficulty of enforcing business compliance

Conclusion? *Don't rely on the promise of a treaty.*

Instead:

- Increase your understanding of the non-binding UNGPs and how to use them
- Lobby companies so that they understand their obligations under the UNGPs

Key requirements for businesses

Enterprises should:

1. Avoid causing/contributing to adverse impacts on human rights and address impacts
2. Prevent or mitigate adverse impacts on human rights directly linked to operations, products or services by their business relationships even if they have not contributed to them



(Guiding Principle 15)

Human Rights Policy Statements

Basic requirements (GP16)

Businesses should adopt a Statement that sets out their human rights responsibilities

FORMAT	CONTENT	PROCESS	COMMUNICATION
<p>Stand alone</p> <p>Multiple documents</p> <p>Statement on website</p> <p>Part of code of ethics</p>	<p>Which human rights are covered?</p> <p>Whose human rights are covered?</p> <p>What activities does the policy relate to?</p>	<p>Use appropriate expertise</p> <p>Consultation or relevant groups/buy-in</p> <p>Approval at senior level</p> <p>Implementation and amendment</p>	<p>Communicate internally and externally</p> <p>Identify relevant people/entities</p> <p>How is communication to be effected?</p> <p>Training and reporting lines</p>

Human Rights Policy Statements

Practical tips

- Ask for a copy!
- Determine who is responsible for the Statement
- Is the Statement referred to in contracts / other policies issued by the business?
- Does it refer to other (binding) human rights standards?
- Consider whether national law requires a Statement to be produced
- Contact third parties (e.g. UN, embassy) regarding deficiencies in the Statement – ask them to contact the business directly

Human Rights Due Diligence

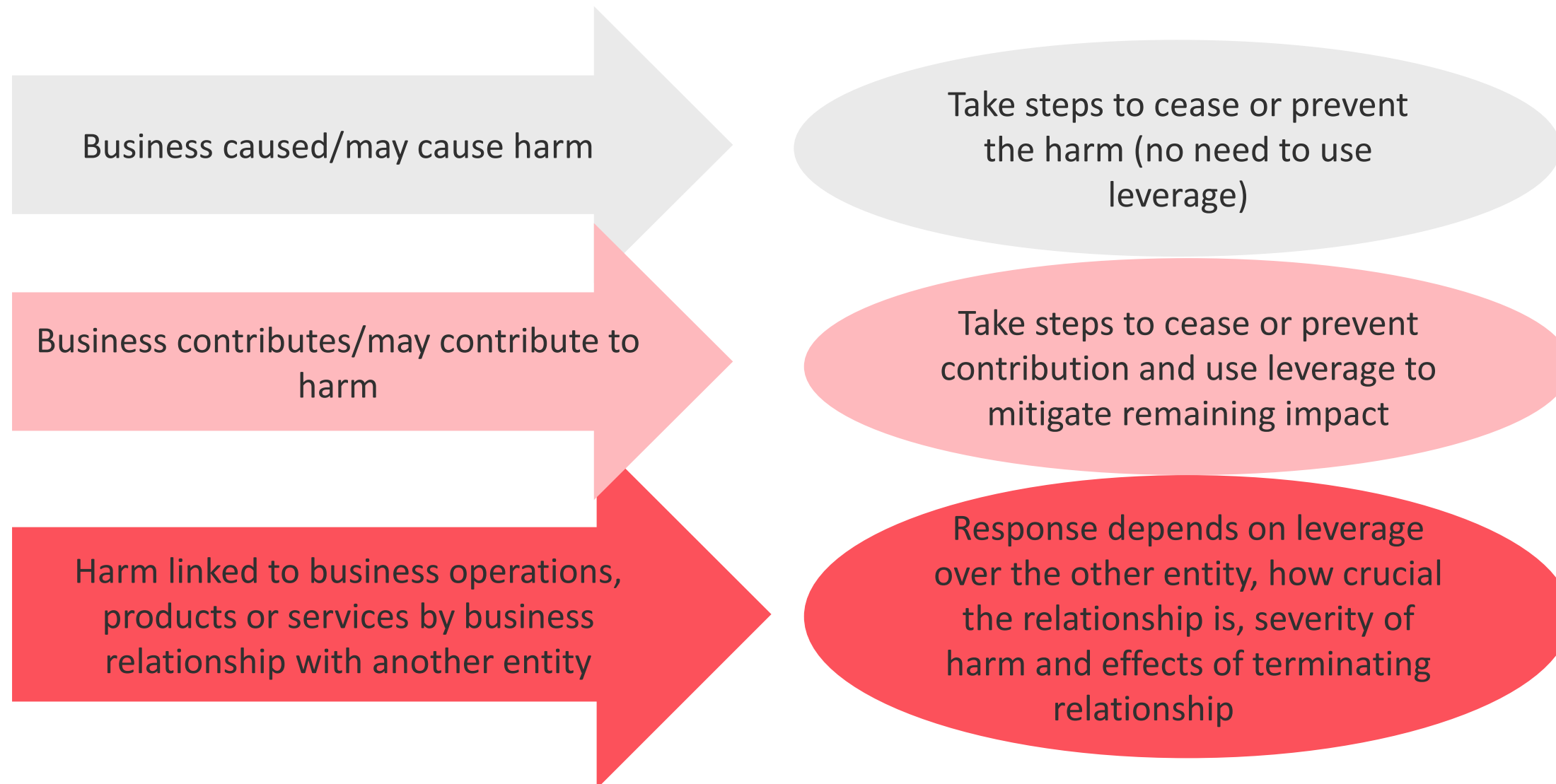
Basic requirements

“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence” (GP17)

GP18	GP20	GP19	GP21
<p>Identify and assess any actual/potential adverse impacts</p> <p>Use appropriate expertise</p> <p>Meaningfully consult with potentially affected groups and stakeholders</p>	<p>Track effectiveness of response</p> <p>Use qualitative and quantitative indicators</p> <p>Obtain feedback from stakeholders</p>	<p>Integrate findings from impact assessments across functions and processes</p> <p><u>Take appropriate action</u></p>	<p>Externally communicate</p> <p>Formally report where operations pose risks of severe adverse impacts</p>

Appropriate Action (and Leverage)

Basic requirements GP19



HRDD, Appropriate Action and Leverage

Practical tips

- Request the impact assessment from business / regulator
- Assess whether concerns of impacted rights holders are addressed / what indicators are used to assess compliance
- Ask business for action plan to address impact
- Consult affected rights holders and business to develop actions to address impact
- Consider if business has subsidiaries/contractors/suppliers over which it could exercise leverage
- Use collective action to put pressure on business
- Ask government/embassy to provide safe forum for discussions

Examples of exercise of leverage

1. Terminating orders/contracts with substandard suppliers
2. Liaising with competitors to agree joint actions/standards
3. Engaging with industry/sector groups/NGOs to encourage best practices
4. Ensuring contracts adequately reflect and incorporate the cost of labour, health, and safety compliance
5. Carrying out regular (impromptu) on-site audits

Grievance mechanism and remediation

Basic requirements

- Businesses need to ensure that effective remedies are available (GP22)
- Should establish or participate in effective operational-level grievance mechanisms (GP29)

Best-practice grievance mechanisms (GP31)

Equitable

Predictable

Accessible

Legitimate

Engagement and
dialogue

Source of continuous
learning

Transparent

Rights compatible

Grievance mechanism and remediation

Practical tips

- Ask for copy of grievance mechanism – does it meet GP31 criteria?
- Consult affected rights holders to ask whether grievance mechanism has been used / is effective
- Consult with affected rights holders and business to develop appropriate grievance mechanism
- ask government/embassy to put pressure on business / provide safe forum for discussions

Strategic use of the UNGPs

How to get results when rights are violated

- UNGPs as basis for legal action for non-compliance?
- Promote the use of leverage: assist those businesses who are more engaged to put pressure on peers
- Interplay with recent parent company liability cases: Vedanta, Shell, Unilever
- HRDs may also lodge complaints with other entities (as appropriate), particularly where internationally recognised human rights have been breached e.g. National contact point for OECD

Case study

- A copper mine has contaminated land occupied by the San Fernando farming community and the Nahuatl indigenous tribe. The contamination has caused serious health issues. These communities have formed the Tierra y Paz Coalition to voice their concerns.
- Cobre Mex (“**CM**”) owns the mine. It is a subsidiary of UK Copper. Global Bank provided finance to UK Copper for the project.

Key concerns:

1. An environmental impact assessment has recently been found (dated prior to the commencement of operations). It states that contamination of local water tables might occur but provides no suggestions to prevent harm or any remediation process should harm occur.
2. CM and UK Copper have not published human rights policy statements. However, UK Copper’s website states that *“Corporate social responsibility is an utmost priority for UK Copper PLC. The welfare of local communities is a cornerstone of our operating policies.”*

Discussion

What are the obligations of the businesses? What practical steps could Tierra y Paz take?

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