



December 2013

The UN Guiding Principles on Business and Human Rights

Context, Content, Implementation and Prioritizing

WWS Series 3



Art 1 All human beings are born free and equal.

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WWS Series 3

**THE UN GUIDING PRINCIPLES ON
BUSINESS AND HUMAN RIGHTS**

Context, Content, Implementation and Prioritizing

Second Edition

December 2013

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INTRODUCTION

In the 90's of the last century, the forefront companies started to focus on environmental issues. Later, rules and regulations followed this lead, and many procedures that were voluntary 30 years ago are now mandatory. Today, some of the innovative businesses are taking on a new challenge: the implementation of human rights into their global operations. Many of them are inspired by the UN Guiding Principles on Business and Human Rights. The following paper outlines the historical context in which the UN Guiding Principles on Business and Human Rights evolved. It summarizes the Guiding Principle's framework: *Protect, Respect, Remedy*, and names the relevant human rights treaties and covenants. It gives an overview on the relevant questions that might arise in the different departments of a company, depending on the activity and the countries of its operations. Further, the paper lists how different governments committed to the Guiding Principles, and which international standards and codes of conduct included them into their codes.



UN Photo by John Isaac

HISTORICAL CONTEXT

Whether the United Nations should create binding regulations for transnational corporations, also in the area of human rights, is a long debate: The UNCTAD III 1972 in Santiago de Chile envisioned a *New International Economic Order* that would also benefit developing countries, as it would be able to regulate the activity of transnational corporations operating within their territory. The newly founded *United Nations Commission on Transnational Corporations* (UNCTC) aimed to develop a binding *Code of Conduct on Transnational Corporations*. The objective of the code was to tackle the negative consequences of the activity of corporations in the newly decolonized countries. The two-decade long discussions addressed many important issues; however, an agreement on a binding code failed, not only because of the resistance of transnational corporations and some of the Western countries, but also due to the refusal of Eastern European countries to include state owned corporations. In the 90's, with the ongoing debt crisis in the developing countries and the end of the cold war, the United Nations started to include businesses as being a part of the solutions to resolve the endemic poverty in the developing world. Later, the newly elected UN Secretary-General Kofi Annan extended the inclusion of businesses further, in order to also achieve the *Millennium Development Goals* that aim at cutting poverty by half in 2015. Several UN initiatives demonstrate this paradigm shift where businesses are perceived as partners.

Partnership initiatives between United Nations and Business

- The United Nations Global Compact
- The Business Call to Action (UNDP)
- The Growing Sustainable Business Initiative (UNDP)
- The Finance Initiative (UNEP)
- Business Linkages Programme (UNCTAD)
- Subcontracting and Partnership Exchange (UNIDO)

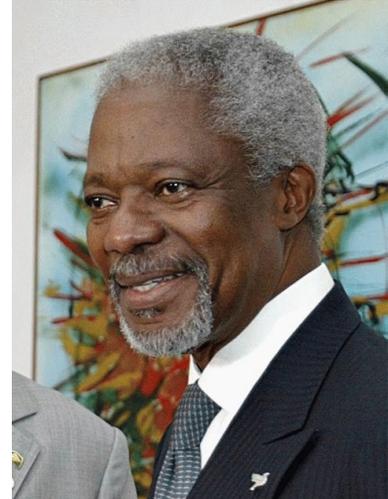
The spirit of this new partnership between UN and business is reflected in the biennial UN resolutions *Toward Global Partnerships*. At the same time, the *Secretary-General's Guidelines on Cooperation Between the United Nations and the Business Community* explicitly excluded companies from working with the United Nations that are involved in human rights abuses, such as forced labor, child labor or the production of landmines. The UN's new approach to businesses had many skeptics including human rights groups, environmental activists, academics, and within the UN that questioned the basic assumption that business can play a role to overcome poverty without fundamental structural reforms of the international economic system.

In 1999, the newly established working group *Business and Human Rights* of the *UN Sub-Commission on Promotion and Protection of Human Rights* developed a draft of binding *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights* (short: the *norms*). These norms were based on 23 international agreements on labor rights, consumer protection and environment. They emphasized the role of the governments, including monitoring by the UN, and compensation for the victims. These norms provoked many critics from the part of the business community that feared more regulations. The *UN Commission of Human Rights* took notes of the norms; however, it did not agree. Some aspects of the norms proved especially controversial, such as the definition of the *Sphere of Influence* of a company and the remedy mechanism.



United Nations General Assembly in New York

In 2005, then UN Secretary-General Kofi Annan tasked Harvard Prof. John Ruggie to be the *Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises* (SRSG), and gave the mandate to clarify the standards of corporate social responsibility and terms such as *Sphere of Influence*, as well as develop methodologies for human rights impact assessments.



Former UN Secretary-General
Kofi Annan

During his six-year mandate, John Ruggie conducted 47 formal consultations on every continent with businesses, business associations, labor unions, governments, non-governmental organizations, and academia. On its website, the London-based *Business and Human Rights Resource Centre* published the outcomes of these meetings and comments from numerous others. In June of 2011, the *United Nations Human Right Council* endorsed the *UN Guiding Principles on Business and*



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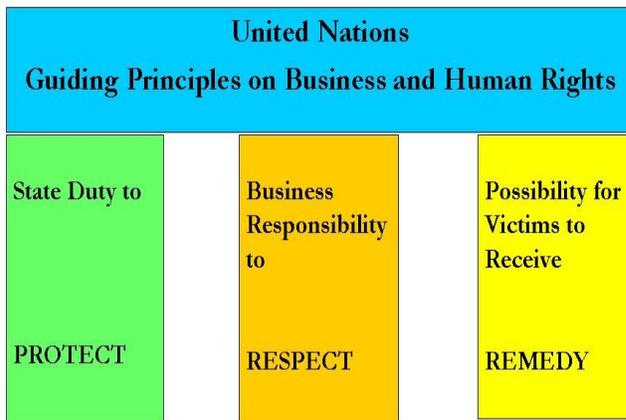
John Ruggie addresses the first annual United Nations Forum on Business and Human Rights in Geneva, Switzerland (2012)

Human Rights, which, therefore, became an authoritative global standard for preventing and addressing negative human rights impacts caused by business activity. Due to Ruggie's *principled pragmatism*, the Guiding Principles were able to escape the decade long stalemate between a mandatory vs. a voluntary approach by including soft law (=non-binding commitments) and hard laws (=binding regulations).

THE *PROTECT, RESPECT, REMEDY* FRAMEWORK OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The Guiding Principles summarize the duties, responsibilities and rights of the involved actors.

Three Pillars



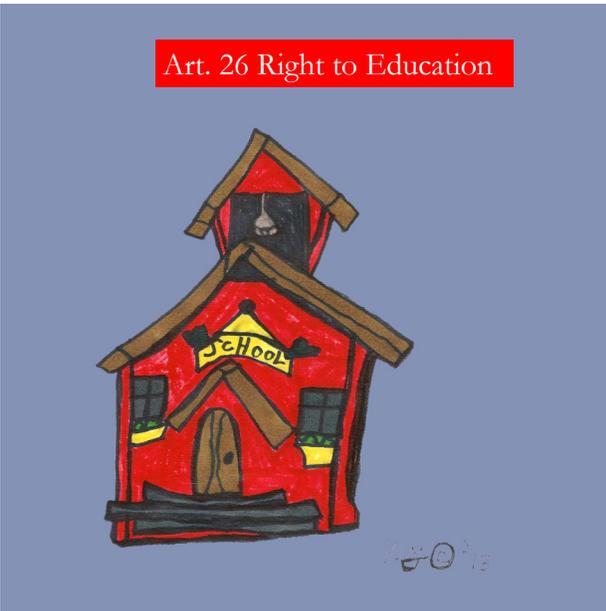
States must protect human rights (Principles 1 – 10): The state is responsible to protect human rights, to take appropriate steps to prevent, investigate, punish and redress abuse. All businesses domiciled in a state have to respect human rights throughout their whole operations, including in foreign countries. The state not only enforces laws, but also provides effective guidance for the implementation of human rights in business operations worldwide.

Businesses must respect human rights (Principles 11 – 24): The respect for human rights is a social norm that exists even in the absence of a law or law enforcement. This respect includes both the direct operation and the indirect impact through business relations, such as business partners, value chain, state and non-state entities. It is relevant for all businesses, from small and medium sized enterprises to large transnational corporations.

The three elements a business needs to implement in its operation:

- A policy commitment that outlines the expectation, is approved by senior management, informed and communicated by internal and external expertise, communicated internally and externally, and reflected in operational policies.
- An on-going human rights due-diligence process to address and track the impact on human rights, that includes all relevant stakeholders, draws on internal as well as external expertise, has clear defined indicators, integrates its findings into the operational policies, and communicates them to all parties.
- A legitimate remediation process in case of adverse human rights impact through impartial, clear and known procedures.

Art. 26 Right to Education



Access to remedy (Principles 25 – 31):

States have the duty to provide access to a judicial or non-judicial remedy for corporate related human rights violations, but also business and business initiatives for human rights-related standards should guarantee that effective grievance mechanisms are in place. Effectiveness criteria includes that the non-judicial grievance mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and are a source of continuous learning, based on engagement and dialogue.

WHICH HUMAN RIGHTS SHOULD BE OBSERVED?

The Guiding Principles refer to the main international conventions and declarations:

- the International Bill of Human Rights;
- the Declaration on Fundamental Principles and Rights at Work (1998) of the International Labor Organization (ILO).

The International Bill of Rights

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)

Additionally, businesses might need to consider other standards:

- UN Convention on the Rights of the Child (1989)
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- UN Declaration on the Elimination of Violence Against Women (1993)
- UN Declaration on the Rights of Indigenous Peoples (2007)
- UN Conventions on the Rights of Persons with Disabilities (2008)
- UN Conventions on the Protection of the Rights of Migrant Workers and Their Families (2008)
- ILO Convention Concerning Decent Work for Domestic Workers (2013)

Moreover, in situations of armed conflict, enterprises should respect the standards of international humanitarian law. Human rights do not have offsets. If a company's activity violates the rights of one group, it is unacceptable to point out that the rights of another group are respected.

HOW TO MEET INTERNATIONAL STANDARDS?

Since 1990, companies have implemented risk management systems to monitor the companies' conduct in the areas of the environment and anti-discrimination or to prevent criminal misconduct by employees. The same could be applied for the concept of human rights, which implies that a company has to start a human rights due diligence process that involves a human rights impact assessment within all departments (Ruggie 2013: 44).

DIRECT OR INDIRECT IMPACT ON HUMAN RIGHTS WITHIN A BUSINESS

A business' activity might have a direct or an indirect impact on human rights. Although it might be easier for a company to mitigate its direct impact, it is also responsible for its indirect impact: if a company engages business partners that provide services for this company by



committing human rights abuses, the company is responsible. Complicity is defined as the act of helping to commit a crime. However, even if no law is broken (as in the case of Apple pushing Foxconn to fulfill more orders in a shorter time) it is a social benchmark, and can cost the company its reputation (Ruggie 2013: 100). Within a company, the different departments might deal with different human right issues and have to ask different questions to address these issues.

Table 1: Human rights impact and questions according to company function or department

Impact on Employees and Agency Workers

Human Resources Department

Abolition of slavery and forced labor (4)	Are the employees promoted with regard to their competences or are there hidden criteria? Are the salaries, benefits, and working hours suitable for favorable living conditions? Do the employees receive the training they need? Do the employees receive the adequate papers when they want to leave? Are all workers over the required minimum age? Are the employees allowed to organize and participate in unions or other forms of collective bargaining?
Right to nondiscrimination (7)	
Right to marry and form a family (16)	
Right to hold opinions, freedom of information and expression (19)	
Freedom of thought, conscience and religion (18)	
Right to political life (21)	
Right to social security (22)	
Right to work, right to join a trade union (23.4)	
Right to leisure, including reasonable limitation of working hours and periodic holidays with pay (24)	
Right to an adequate standard of living (including food, clothing, housing, medical care, and special care during motherhood) (25)	
Right to education (26)	
Right to participate in cultural life, the benefits of scientific progress, and protection of authorial interest (27).	
Freedom of association (ILO)	
Right to organize and participate in collective bargaining (ILO)	
Abolition of child labor (ILO)	
Right to physical and mental health (ESC)	

Accounting Department

Right to equal pay for work, and right to just and favorable remuneration (23)	Are the employees being paid according to their performance and position?
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Department of Health, Safety and Environment

Right to a safe and healthy work conditions (ESC)	Do the different workplaces offer a healthy environment?
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Employee Benefits

All human rights	Does the pension fund have criteria that exclude unsustainable companies?
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(In the blue boxes, the number in brackets refers to the article of the Universal Declaration of Human Rights; ESC refers to the International Covenant on Economic, Social and Cultural Rights; ILO refers to the Declaration on Fundamental Principles and Rights at Work.)

Impact on supply chain

Procurement

All human rights

Do the suppliers respect the international human rights and labor rights? Are the expectations towards the suppliers realistic or do they lead to overtime and low wages? Are safety measures implemented? Are there sudden changes in buying decisions?

Accounting

Right to just and favorable remuneration 23.3

Are the suppliers paid on-time, securing that they can fulfill their financial obligations (e.g. toward the workers and banks)?

Impact on local communities and the general public

Business development

Right of peaceful assembly (20)
Right to self-determination (ESC)
Right to own property and protection against arbitrarily deprivation (17)

Are the people allowed to meet and discuss openly their concerns about the new factory? How are these concerns handled? What are the alternatives that consider these concerns? How is the relocation handled ?

Health, Safety and Environment

Right to health (ESC)

Are the operations safe, and do they use the appropriate technologies regarding the reduction of air pollution, waste and water treatment?

Security Department

Right to life, liberty, security of the person (3)
Freedom from torture or cruel, inhuman, or degrading treatment (5)
Equal recognition and protection under the law (6, 12)
Right to a fair trial (8, 9, 10,11)
Freedom of movement (13)

Are the security guards trained according to international human rights standards? How is the cooperation with law enforcement officials in countries with low degree of rule of law?

Impact on product and services

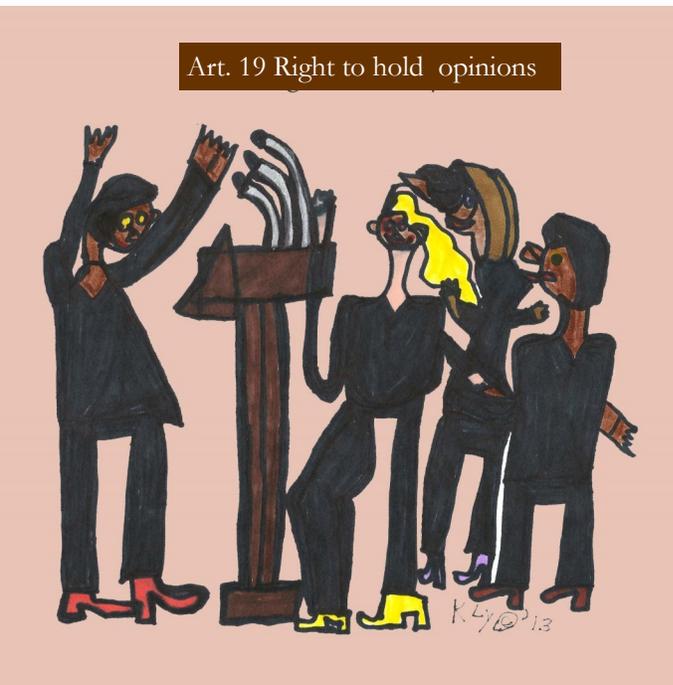
Sale Departments

Right to health (ESC)

Are the products beneficial for the health of customers? Are the products always safe?

MOST SALIENT HUMAN RIGHTS ISSUES IN SPECIFIC SECTORS

A company is exposed to multiple human rights challenges depending on its sector and on the countries in which it operates. The Guiding Principle Nr. 24 states that it might be necessary to prioritize the most severe human rights abuses or those in which a late response would make the adverse impact irremediable. Any company operating in countries with weak human rights enforcement has to make sure that its suppliers and other business partners are not using these loopholes to get an advantage over their competitors. In some situations, the host country might have laws that contradict international laws, such as the lack of freedom of association, excessive working hours, maternity protection, the right to collective bargaining,



gender or ethnic equality, treatment of migrant workers, and privacy or *habeas corpus* rights. In such cases, Ruggie (2013) recommends to respect the international laws to the greatest extent possible. If a company risks being complicit in egregious human right abuses, it should handle this as a legal compliance issue and dissolve the business relation.

Companies have different issues they might look into more thoroughly. The challenges for an agribusiness that plants cotton with a high input of pesticides and herbicides

as well as a high water use has a different impact on workers and communities, as a bank that might be more challenged to offer equal access to credit for men and women or for different ethnic groups.

Table 2: Most salient questions in different sectors

Type of company	Salient issues	Salient questions (selection)
Retail (garment, footwear, electronics, home ware, toys)	Labor rights, environment	Do the factory workers receive a living wage with appropriate leisure and work under safe conditions? Is the factory implementing appropriate waste treatment and pollution reduction measures? Under which conditions are the raw materials extracted or produced (see agribusiness, logging and mining companies)? How are the recycling procedures (e.g. e-waste)?
Agribusiness	Labor rights, land issues, environment	How are the communities and the environment affected by the land expansion, and land and water use? To what extent are herbicides or pesticides used and how are the workers and the communities protected against these effects? What is the company's policy regarding GMOs? Do the farm workers receive a living wage?
Food & beverage company	Labor rights, land issues, impact on water, environment	Is the product beneficial to the health of the consumer? How are the recycling procedures? What are the working conditions of the workers? How is the community next to the factories affected (water use, land use) See also the questions for agribusiness.
Logistics company	Environment, human trafficking, labor laws, security	Is the company using the newest technology to save on fuel, noise reduction, waste (water) treatment ? Are there measures to avoid introducing invasive species? Are the security guards trained according to international human rights standards? Is the ship line under a foreign flag to avoid stricter labor and environmental laws? Are there measures in place to avoid being complicit in human trafficking?
Chemical company	Health and safety, environment, security related risks	How are the workers and the surrounding communities protected from a worst case scenario accident? How is the waste management organized to prevent damage to the surrounding environment? Are the products safe and healthy for the customer?
Pharmaceutical company	Health issues, consumer protection, environment	Do people have access to the medications they need? Are people who are participating in the tests well informed about the consequences? How does the production affect the community and the workers? Is the company getting patents for natural medicines that had been used for centuries by indigenous communities?

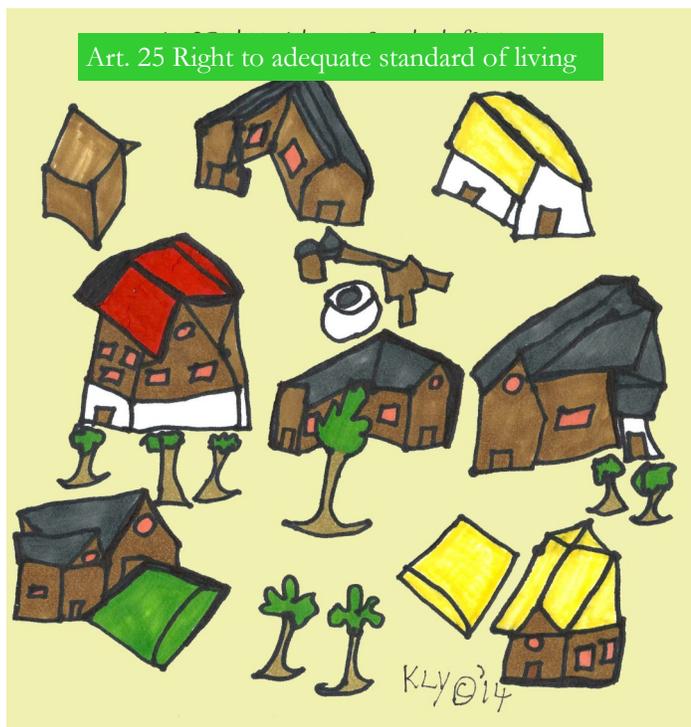
Type of company	Salient issues	Salient questions (selection)
Tourism industry	Labor laws, human trafficking, environment	Are living wages with enough leisure time paid? Has the hotel strict guidelines in order to avoid (child) prostitution and /or human trafficking? Is the cruise ship line under a foreign flag to avoid stricter labor and environmental laws? What is the impact of the excessive water use of hotels and cruise ship on the local communities? Are the light-skinned employees offered waiter positions while the dark-skinned do not have positions with direct customer contact? Do locals still have access to the beaches?
Information/communication company	Freedom of expression and the right to privacy	Is the company selling its technology in countries where it is used for surveillance, censorship?
Construction, infrastructure, energy company, extractive company (mining, oil and gas), logging company	Environment, land issues, security related issues, health and safety	How do the environmental changes affect the community? How have the relocated people been compensated? Do the relocated people have special heritage sites on the land, which could lead to an ethnocide if these links are cut? Can the relocated people still live their traditional way of life? What type of protective gear is used by the workers in order to maximize safety? How is the training of security guards organized according to human rights standards? What are the procedures regarding waste, wastewater, and contamination? Are the gains of the raw materials used to finance conflicts (e.g. <i>blood diamonds</i>).
Employment & recruitment company	Labor laws human trafficking, bonded labor	Are the workers based in countries with low law enforcement standards, which can lead to various human rights violations, such as discrimination, unsafe work conditions, and excessive work hours? Are workers charged with fees that can lead to debt bondage and, consequentially, to forced labor? Is there domestic work involved, which is highly unregulated in most countries and can therefore involve all types of labor rights abuses? Is the immigration status of migrant workers linked to their employer, which can lead to forced labor and other human rights abuses?
Banking and business services sector	Nondiscrimination, any issues mentioned above	Do all the people have equal access to the services, regardless their gender, ethnic origin etc? What are the most salient issues in which the client is involved?

REFERENCE TO AND ADAPTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

After the approval of the Human Rights Council, governments, business associations, labor unions, started to put the *Protect, Respect, and Remedy* framework into action, as the following examples demonstrate:

Governments

- The U.S. Government published its approach to the Guiding Principles by providing laws, policies, and regulations that U.S. companies should know in the area of human rights (See also Dodd-Frank Wall Street Reform Act and its due diligence requirements for U.S. listed companies regarding conflict affected areas in Congo and health and safety provisions in mines).
- The EU and its members committed to the Guiding Principles by developing national action plans (see also EU: Renewed EU Strategy 2011-2014 for Corporate Social Responsibility that includes human rights).
- The United Kingdom was the first EU member state to present an action plan: *Good Business - Implementing the UN Guiding Principles on Business and Human Rights*.
- The *California Transparency in Supply Chains Act of 2010* that requires companies to report on their efforts to eliminate slavery and human trafficking from their supply chain.



Business Association

- The International Organization of Employers published the *Guiding Principles on Business and Human Rights: Employers Guide*.

Labor Union

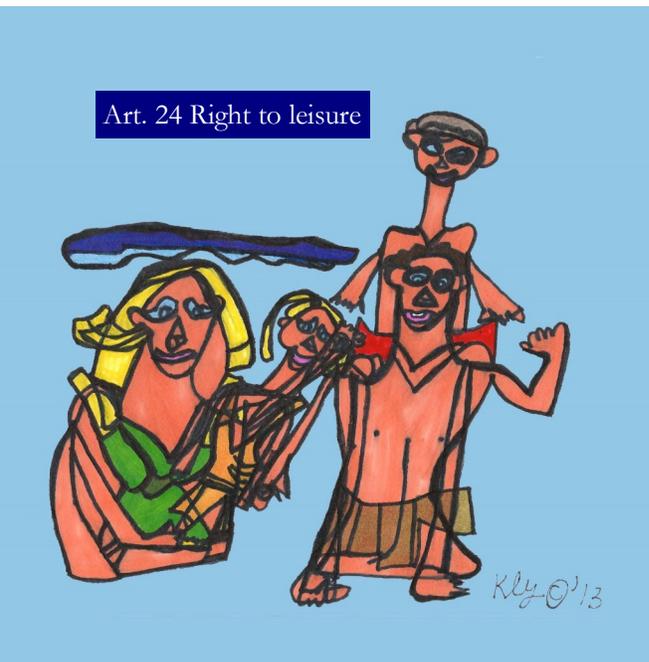
- The International Trade Union Confederation developed briefing notes for trade unionists regarding the *Protect Respect Remedy* Framework and the Guiding Principles on Business and Human Rights.

At the same time several voluntary codes of conduct and other guidelines integrated the UN Guiding Principles on Business and Human Rights into their standards.

- The OECD Guidelines were updated and include a new chapter on human rights, as well as an enhanced language on due diligence and supply chain management.
- The ISO 26 000 on Corporate Social Responsibility includes human rights.
- The International Finance Corporation (IFC) adopted a new human rights policy in 2011.
- Unicef developed the Children's Rights and Business Principles.
- The Equator Principles are being updated to include reference to human rights and the Guiding Principles.

Conclusion

Today the challenging question for a business is no longer **whether** it should implement human rights into its business operations, but **how** it should implement them. The Guiding Principles on Business and Human Rights provide a framework that shows which human rights are relevant for businesses, what the fundamental steps for implementation are, and how a business should prioritize the handling of adverse impacts of their operations. Within a



single company, and between the different business sectors, depending on the country of operations, different human rights challenges might arise. Therefore, each company needs to address the specific challenges that might arise, utilizing various human rights impact assessments. Governments and business associations, as well as labor unions and nongovernmental organizations started to put into actions the *Protect, Respect, Remedy* framework. As a result the UN

Guiding Principles on Business and Human Rights will become even more relevant as a reference point for good business conduct that guarantees service provided and goods produced in a healthy, safe and fair work environment.

INITIATIVES, RESOURCES, AND ONLINE TOOLS FOR BUSINESS AND HUMAN RIGHTS (SELECTION)

- A Guide for Integrating Human Rights into Business Management, an online tool produced by Business Leaders Initiative on Human Rights (BLIHR), the UN Global Compact and the Office of the UN High Commissioner for Human Rights (OHCHR) (<http://www.integrating-humanrights.org>)
- Business and Human Rights Resource Centre (www.business-humanrights.org)
- Global Business Initiative on Human Rights (www.global-business-initiative.org)
- Human Rights Impact Resource Centre (www.humanrightsimpact.org)
- Institute for Human Rights and Business IHRB (<http://www.ihrb.org>)
- SHIFT – Putting Principles into Practice <http://www.shiftproject.org/>
- The Danish Institute for Human Rights: Business and Human Rights (<https://humanrightsbusiness.org>)
- United Nations Global Compact (<http://www.unglobalcompact.org>)

ABBREVIATIONS

ILO	International Labour Organization
GMO	Genetically Modified Organism
OECD	Organisation for Economic Co-operation and Development
UNDP	United Nations Development Programme
UNEP-FI	United Nations Environment Programme Finance Initiative

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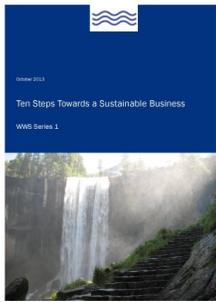
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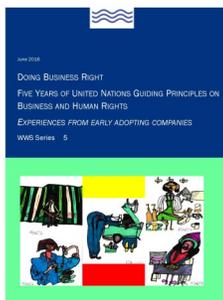
Ten Steps Towards a Sustainable Business

To put sustainability into business practice is a comprehensive, long-term process that involves many stakeholders, measures, and issues and leads to a continuous restructuring of how a business operates. This process is not a simple, linear process, rather, it is a long, continuous journey with detours and obstacles where the final destination lies far ahead. What matters are the steps in the right direction toward a sustainable business.



Participating in the UN Global Compact. Best Practices and Challenges from German Businesses

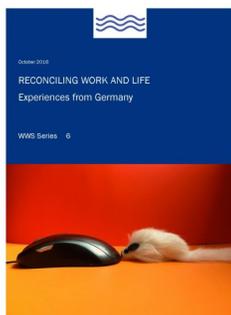
Check out the best practices, challenges, and unresolved issues of German businesses participating in the Global Compact.



DOING BUSINESS RIGHT—

Five Years of United Nations Guiding Principles on Business and Human Rights

Five years ago, the Human Rights Council approved the UN Guiding Principles on Business and Human Rights. This paper shows how governments created and implemented the first action plans and how five companies from five different sectors began to put these principles into action with different initiatives, challenges and lessons learned.



Reconciling Work and Life. Experiences from Germany

Reconciling Work and Life describes the long history of women as food providers, and the very short history of women as housewives and mothers. It discusses the downside of the traditional family model, and the current challenges of “having it all”—and it presents the successes and challenges Germany has experienced in its efforts to reconcile work and family life.

