

QUESTIONNAIRE FOR MEMBER STATES: BUSINESS AND HUMAN RIGHTS

Conducted by the Working Group on the issue of human rights and transnational corporations and other business enterprises

Welcome

Thank you for participating in this survey. This questionnaire is intended to invite Governments to provide the Working Group on the issue of human rights and transnational corporations and other business enterprises (“the UN Working Group on Business and Human Rights”) with the background information required to undertake its mandate.

The Working Group was established by the Human Rights Council in its resolution 17/4 in 2011. It consists of five independent experts, of balanced geographical representation, appointed for a period of three years. The Human Rights Council requested the Working Group, among other things, to promote the effective and comprehensive dissemination and implementation of the “Guiding Principles on Business and Human Rights: Implementing the UN ‘Protect, Respect and Remedy’ Framework”; to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles; and to support capacity-building and, upon request, provide advice and recommendations. Your answers and suggestions will be important to guide our work based on evidence and pragmatism.

The Guiding Principles on Business and Human Rights were unanimously endorsed by the Human Rights Council in 2011 ([A/HRC/RES/17/4](#)) and have now become the authoritative global reference point for preventing and addressing adverse impacts on human rights arising from business-related activity. They rest on the UN “Protect, Respect and Remedy” Framework which identifies and clarifies that States and corporations have differentiated but complementary duties and responsibilities for preventing and addressing business-related human rights impact: States have the primary duty to protect against human rights abuses by third parties, including business; business enterprises have the responsibility to respect human rights; and there is a need for greater access to effective remedies, both judicial and non-judicial.

This questionnaire addressed to States complements other surveys and calls for information conducted at the request of the Working Group that seek the views and input from businesses and civil society. This survey is aimed at understanding the early challenges, opportunities and policy innovations by Member States in the implementation of the Guiding Principles. Initial results will be presented already at the UN Forum on Business and Human Rights to be held in Geneva on 4-5 December and will provide a key baseline and evidence-based foundation for informing the discussions among stakeholders at the Forum on trends and challenges in the dissemination and implementation of the Guiding Principles.

Please send replies by November 10, 2012, to wg-business@ohchr.org and/or by fax +4122 – 917 90 08 with the subject heading “State Business and Human Rights Survey”.

1. Contact Information

- a. Country name: _____
- b. Role/function of respondents and their emails and/or contact phones:

2. Issues

- a. Please assess the extent to which the State focuses on the challenges associated with business and human rights.

Please select one number from the scale—from “not a focus”, which is number one (1), to “a strong focus”, which is number seven (7)—that best represents the State’s practice. Please add comments below to qualify or explain your answers.

| | <i>Not a focus</i> | | | | | <i>A strong focus</i> | |
|---|--------------------|---|---|---|---|-----------------------|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| <i>Example Answer</i> | | | X | | | | |
| Migrant workers, wages, health, safety and mobility | | | | | | | |
| Gender, opportunities and discrimination at the work place | | | | | | | |
| Child labor | | | | | | | |
| Freedom of association | | | | | | | |
| Indigenous peoples’ rights | | | | | | | |
| Competition for land use and/or land acquisition, displacement, the resettlement of populations | | | | | | | |
| Environmental pollution or degradation that directly impacts workers and/or communities | | | | | | | |

| | <i>Not a focus</i> | | | | <i>A strong focus</i> | | |
|---|--------------------|---|---|---|-----------------------|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Business activities that reduce access to water or raise food prices | | | | | | | |
| Violation of privacy | | | | | | | |
| Perceived or actual lack of stakeholder engagement, dialogue and/or consultation by civil society | | | | | | | |
| Challenges associated to violence, armed conflict, piracy, or criminal activity | | | | | | | |
| Other, please list: | | | | | | | |

Please include additional comments here:

- b. Please assess the extent to which the State focuses on the prevention or promotion of human rights impacts and violations related to any of the following business activities.

Please select one number from the scale—from “not a focus”, which is number one (1), to “a strong focus”, which is number seven (7)—that best represents the State’s practice. Please add comments below to qualify or explain your answers.

| | Not a focus | | | | A strong focus | | |
|------------------------------|--------------------|---|---|---|-----------------------|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| <i>Example Answer</i> | | | X | | | | |
| Oil and gas | | | | | | | |
| Mining | | | | | | | |
| Consumer products and retail | | | | | | | |
| Manufacturing | | | | | | | |
| Pharmaceutical and chemical | | | | | | | |
| Food and beverage | | | | | | | |
| Financial services | | | | | | | |
| Infrastructure and utility | | | | | | | |
| IT and communications | | | | | | | |
| Transportation | | | | | | | |
| Other, please list: | | | | | | | |

Please include additional comments here:

- c. Please assess the extent to which the State has prioritized the following groups with regards to the issue of business and human rights.

Please select one number from the scale—from “not a focus”, which is number one (1,) to “a strong focus”, which is number seven (7)—that best represents the State’s practice. Please add comments below to qualify or explain your answers.

| | Not a focus | | | A strong focus | | | |
|--------------------------------------|--------------------|---|---|-----------------------|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| <i>Example Answer</i> | | | X | | | | |
| Children | | | | | | | |
| Displaced communities or refugees | | | | | | | |
| Elderly people | | | | | | | |
| Women | | | | | | | |
| Indigenous or aboriginal communities | | | | | | | |
| Sexual minorities | | | | | | | |
| Religious minorities | | | | | | | |
| Migrant workers | | | | | | | |
| Impoverished communities | | | | | | | |
| Disabled people | | | | | | | |
| Other, please list: | | | | | | | |

Please include additional comments here:

3. Implementation

3.1. General Guidance and Reporting

- a. Does the State have in place Corporate Social Responsibility (CSR) programs, policies or regulation?

YES NO

If “YES,” do they explicitly encourage the implementation of the UN Guiding Principles on Business and Human Rights?

Please explain:

If “NO,” do they refer to other global CSR guides, like the OECD Guidelines for Multinational Enterprises, the UN Global Compact’s Principles or the Voluntary Principles on Security and Human Rights or others?

Please explain:

- b. Has the State collaborated with particular industry groups to promote the respect for human rights?

YES NO

If “YES,” please briefly describe those groups and the initiatives adopted:

c. Do policies (and/or laws) give guidance or offer best practices for the following businesses to respect human rights:

i. Domestic businesses operating in the State's jurisdiction?

YES NO

If "YES," please briefly explain which policies do so and how:

ii. Foreign businesses operating in State's jurisdiction?

YES NO

If "YES," please briefly explain which policies do so and how:

iii. Companies domiciled in the State's territory that are operating transnationally?

YES NO

If "YES," briefly explain which policies do so and how:

d. Do existing policies (and/or laws) mandate high-level corporate oversight or participation in human rights due diligence?

YES NO

Does the state require or encourage corporate governance structures, such as corporate boards, to be involved in monitoring the human rights performance of the corporation?

YES NO

Briefly explain which laws require high-level corporate oversight and how:

e. Does the State encourage business to report their respect for human rights?

YES NO

If "YES," is the reporting voluntary or mandatory?

VOLUNTARY MANDATORY

If this practice varies by sector, please explain:

f. Once reports have been submitted, does the State have a follow-up protocol?

YES NO

If "YES," please briefly explain this process:

g. Which challenges has the State faced, or anticipates facing, when promoting business and human rights policies?

Please check all that apply, and explain how the state has tried to resolve them, if at all:

Public dissemination of laws among citizenry in general and among target actors in particular.

Please explain briefly, including any resolution strategies:

Lack of effective sanctions included in the policy.

Please explain briefly, including any resolution strategies:

Lack of the state capacity to implement the policy.

Please explain briefly, including any resolution strategies:

Lack of judicial system capacity.

Please explain briefly, including any resolution strategies:

Lack of resources to effectively promote the policies.

Please explain briefly, including any resolution strategies:

Lack of willingness to comply by certain actors.

Please explain briefly, including any resolution strategies:

Other, please explain:

3.2. Legislation and Regulation

- a. In which issue areas does your state explicitly regulate business respect for human rights through domestic law?

Please check all that apply, and list the year in which each law was adopted:

- Non-discrimination laws. Year adopted:
- Labor laws. Year adopted:
- Environmental law. Year adopted:
- Law on criminal and civil liability (corporate liability, attribution of liability, etc.). Year adopted:
- Property/access to land. Year adopted:
- Privacy law. Year adopted:
- Consumer law. Year adopted:
- Anti-bribery laws. Year adopted:
- Due diligence requirement in the law (general or specific to some high-risk business activities). Year adopted:
- Other? Please explain:

- b. Does State law require companies to respect human rights at incorporation or when companies are listed in the stock exchange?

YES NO

c. What challenges have you faced or do you anticipate facing when enforcing laws that directly address the issue of business and human rights?

Please check all that apply, and explain how your State has tried to resolve them, if at all:

Public dissemination of laws among citizenry in general and among target actors in particular.

Please explain briefly, including any resolution strategies:

Lack of effective sanctions in the law.

Please explain briefly, including any resolution strategies:

Challenges with regards to state capacity to implement the law.

Please explain briefly, including any resolution strategies:

Lack of judicial system capacity.

Please explain briefly, including any resolution strategies:

Lack of resources to effectively enforce laws.

Please explain briefly, including any resolution strategies:

Lack of willingness to comply by business actors.

Please explain briefly, including any resolution strategies:

Other? Please explain:

3.3. Policy coherence

- a. Has the State performed dissemination and training activities among its departments on the UN Guiding Principles on Business and Human Rights?

YES NO

If “YES,” please describe briefly:

- b. Has the State adopted policies that specifically seek to foster business respect for human rights?

YES NO

If “YES,” please identify whether the policies refer to any of the following (check all that apply):

Public procurement standards

Specific industry guidelines

National action plans

Independent monitoring for state contracts

Other? Please explain:

c. What challenges has the State faced or anticipates facing when promoting these policies? Please check all that apply, and explain how the state has tried to resolve them, if at all:

Dissemination to business actors.
Please explain briefly, including any resolution strategies:

Dissemination to civil society.
Please explain briefly, including any resolution strategies:

Lack (actual or perceived) of effective sanctions included in the policy.
Please explain briefly, including any resolution strategies:

Lack of the state capacity to implement the policy.
Please explain briefly, including any resolution strategies:

Lack of resources to effectively promote the policies.
Please explain briefly, including any resolution strategies:

Lack of willingness by businesses to comply.
Please explain briefly, including any resolution strategies:

Other? Please explain:

- d. Which governmental departments, agencies and other State-based institutions carry out activities or are mandated to work on issues relating to business and human rights?

Please check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> Vice Presidencies | <input type="checkbox"/> Foreign Ministry |
| <input type="checkbox"/> Attorney General's Office | <input type="checkbox"/> Ministry for Industry |
| <input type="checkbox"/> Ministry of Commerce/Trade | <input type="checkbox"/> Ministry of Defense |
| <input type="checkbox"/> Comptroller General's Office | <input type="checkbox"/> Ombudsman's Office |
| <input type="checkbox"/> National Human Rights Institution | <input type="checkbox"/> Export Credit Agency |
| <input type="checkbox"/> Sovereign Wealth Fund | <input type="checkbox"/> Stock Exchange Authority |
| <input type="checkbox"/> Ministry of Mining/Forest/Natural resources | |
| <input type="checkbox"/> State-owned Enterprises Governing Body | |
| <input type="checkbox"/> Other? Explain: | |

- e. Do these agencies coordinate with one another on their work in business and human rights?

- YES NO

If "YES," please explain how they coordinate:

- f. What are the main challenges that have state authorities have faced thus far?
Please explain your answer:

3.4. International Trade and Investment Agreements

- a. Is there coordination between the agency directly responsible for human rights and those responsible for investment and trade?

YES NO

If “YES,” please explain briefly:

- b. Does the State include explicit business and human rights provisions (including environmental and labor issues) in the international investment and trade agreements signed by the State?

YES NO

If “YES,” please explain which provisions:

Do these provisions constrain in any way the possibility of the State to protect and realize the rights of its citizens?

YES NO

- c. Does the State’s export and foreign investment promotion policies include specific human rights provisions?

YES NO

- d. In the case of incoming investments, do State policies (as a receiving country) require the undertaking of human rights impact assessments?

YES NO

e. Does the State otherwise engage/participate in national or international initiatives on the issue of human rights and transnational corporations and other business enterprises?

YES NO

If “YES,” please describe the State’s engagement/participation and any relevant lessons learned (positive or negative):

f. Does the State otherwise engage with local or international NGOs on the issue of business and human rights issues domestically?

YES NO

If “YES,” please describe and if possible, list them here:

Does the State engage with local or international NGOs on foreign business and human rights issues?

YES NO

If “YES,” please describe and if possible, list them here:

3.5. Access to Remedies

- a. Does the State's legal system allow for the prosecution of legal persons accused of committing or participating in human rights violations related to the conduct of business activities ***within*** the State's borders?

YES NO

If "YES," please explain briefly:

- b. Does the State's legal system allow for the prosecution of legal persons accused of committing or participating in human rights violations related to the conduct of business activities ***beyond*** the State's borders?

YES NO

If "YES," please explain briefly:

- c. Does the State utilize non-judicial grievance mechanisms (including OECD National Contact Points if applicable) that provide access to remedy to victims of corporate human rights?

YES NO

If "YES," please explain briefly:

- d. Have International Public Financial Institutions or Multilateral and Bilateral Development Banks mediated or provided for remedy to people residing in your country who might have been impacted by projects financed by their organizations?

YES NO

e. Does the State follow other legal approaches or administrative procedures to remedy human rights violations committed by businesses?

YES NO

If “YES,” please explain briefly:

f. Please indicate which types of judicial and non-judicial tools exist to redress business-related human rights impacts and abuses in the country. Please check all that apply, and describe briefly how they work:

Sanctions (whether criminal or administrative).
Describe briefly:

Financial or non-financial compensation.
Describe briefly:

Prevention of harm through, for example, injunctions or guarantees of non-repetition.
Describe briefly:

Public or private apologies.
Describe briefly:

Land restitution.
Describe briefly:

Environmental rehabilitation.
Describe briefly:

Other? Please explain:

4. Suggestions for the UN Working Group

Do you have any other suggestions for the UN Working Group with regards to the implementation of its mandate?