
TUC position paper
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UN Guiding Principles on Business and Human Rights

The recently adopted [UN Guiding Principles on Business and Human Rights](#) represent a strong international consensus on how to tackle the rise in business-related human rights abuses.¹ This paper outlines TUC policy priorities for the UK government and other actors under each of the 31 Guiding Principles.

Background to the Guiding Principles

In May last year, the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (the “Guiding Principles”).² Developed over a six year period, by John Ruggie, the UN Special Rapporteur on Business and Human Rights, this framework represents a strong international consensus to deal with what he calls the “governance gaps” of globalisation: where the scope and impact of business has vastly outgrown the ability of societies to manage their adverse consequences.

To address this rise in business-related human rights abuses, Ruggie proposes three “pillars” to guide action: firstly, states should fulfil their “duty to protect” people under international human rights law. Secondly, businesses should meet their “responsibility to respect” the human rights of those affected by their activities. And thirdly, those affected by business-related harm should have access to effective remedy.

To meet their “responsibility to respect”, Ruggie proposes that businesses should identify and address any adverse human rights impacts they have on workers and communities through a continual process he calls “human rights due diligence”.

¹ The UN Guiding Principles are at: www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf

² The Guiding Principles are seeking to “operationalise” the earlier “Protect, Respect and Remedy” Framework on Business and Human Rights approved by the UN Human Rights Council in 2008 at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

“Human Rights” includes, at a minimum, the ILO’s Core Labour Standards as well other key rights at work around pay, hours and safety.³

What do the Guiding Principles mean for trade unions?

The Guiding Principles are potentially important for trade unions in a number of respects. Firstly, the Guiding Principles helpfully clarify the different roles and responsibilities of the state and business. It is the duties of states to enact and implement laws and policies to protect against human rights abuse. And businesses should not decide what their responsibilities to society are - as many CSR policies do - but instead should meet their “responsibility to respect” the human rights of all people affected by their operations.

Secondly, the Guiding Principles call on businesses to prevent their negative human rights impacts wherever they occur, even beyond the direct employment relationship. This could include workers in jobs that business outsourcing has made insecure, low paid, and dangerous. For example, if a UK supermarket’s purchasing practices are denying an agricultural worker her legal wage or resulting in unsafe working conditions, then it needs to act to prevent that irrespective of whether or not she is directly employed by them.

Thirdly, the Guiding Principles are not legally binding, but can be a strong advocacy tool to improve existing rules and policies, given the strong backing for them from governments, employers, trade unions and other civil society organisations. For example, the TUC worked with the Trade Union Advisory Committee to the OECD (TUAC) to secure language from the Guiding Principles in the recently update of the OECD Guidelines for Multinational Enterprises. Unions have also begun including the Guiding Principles in collective bargaining and global framework agreement with multinational companies.⁴

UK implementation of Guiding Principles

This paper outlines TUC policy priorities under each of the 31 Guiding Principles which the UK government and other actors are encouraged to adopt. This list is not meant to be exhaustive. The text of the Guiding Principles is contained in Annex 1.

³ This includes the human rights expressed in the International Bill of Human Rights and to the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

⁴ See UNI (19 October 2012) ‘UNI PS, Swedish Transport Workers and Securitas renew Global Agreement’, at <http://tinyurl.com/9xjuazv>

Pillar 1: The state duty to protect

Guiding Principles (“GPs”) 1, 2 & 3 – States should met their “duty to protect”

There are significant gaps in the UK legal and policy framework to ensure that businesses operating in or from the UK are respecting for human rights.

To address such gaps the UK government should:

- Conduct a “root and branch” review to bring the UK into compliance with its international human rights law obligations, as called for by the Parliamentary Joint Committee on Human Rights. This should include a special emphasis on the international treaties, and the jurisprudence of the International Labour Organisation Committee of Experts, the European Social Rights Committee and the European Court of Human Rights, particularly as they relate to freedom of association and the right to collective bargaining and the right to strike.
- Allied to such a review, the UK should ensure that appropriate measures are in place to ensure the effective implementation of these obligations. This would include:
 - Reviewing and amending the Trade Union and Labour Relations (Consolidation) Act 1992
 - Ensuring access to justice for workers:
 - by not introducing fees for Employment Tribunal users, which will price many working people out of access to justice.
 - reversing the two year qualifying period for unfair dismissal claims which will deprive 2.7 million people of protection at work
 - reversing the parts of the recently passed Legal Aid, Sentencing and Punishment of Offenders Bill which will seriously damage access to justice for many working people, especially those injured at work.
 - Ensure measures to reduce the vulnerability of work, by ensuring statutory enforcement agencies, including the Gangmasters Licensing Authority, the Health and Safety Executive and the HMRC National Minimum Wage Team are properly resourced and have effective inspection and enforcement powers.
 - Amend the Companies Act to ensure that the “responsibility to respect human rights” is included as a director’s duty, and where all

such duties contribute towards the primary duty to promote the long-term success of the company.

- Require business to communicate on their human rights impacts and how they address them through strengthening requirements for narrative reporting on social and environmental due diligence and impacts at UK and EU level.
- Strengthen the ability of institutions such as the Equality and Human Rights Commission and the Parliamentary Joint Committee on Human Rights to periodically assess the adequacy of the UK laws and policies to meet its “duty to protect” against business-related human rights harm.

GPs 4, 5 &6 - The State-business nexus

These Guiding Principles call on the state to use its interactions with businesses to promote human rights due diligence. Yet the UK government’s current approach is very fragmented and often contradictory.

To meet these Guiding Principles, the UK government should:

- map out how it supports or interacts with business. This includes businesses that it owns or controls, including contracted-out services. It also includes support or services provided to business such as through UK Export Finance, CDC group plc, or through public-private partnerships, development assistance, finance, insurance or other forms of guarantee. It should especially include commercial transactions that it conducts with business, including its procurement activities.
- develop clear guidance, in consultation with civil society and the UN Working Group on Business and Human Rights, on what it expects of companies when conducting human rights due diligence (see GPs 16 to 24 below).
- introduce a harmonised “human rights due diligence” requirement into all of these interactions with business, such as through contracts, investment policies, procurement processes, legislation, or regulation. This would include advocating for the revision of the EU procurement directive to allow for member states to put in place human rights due diligence requirements in procurement policies. It should also establish appropriate screening or complaints mechanisms or procedures, such as using the UK National Contact Point (NCP) for the OECD Guidelines.⁵

⁵ Each of the 43 signatory countries to the OECD Guidelines for Multinational Enterprises is obliged to set up a National Contact Point to hear complaints against companies operating in or from their territory for alleged breaches of the Guidelines.

GP 7 - Conflict-affected areas

UK business operates in a range of countries where conflict or dictatorship has led to terrible abuses of workers' rights. Such countries include Swaziland, Colombia, Fiji, Zimbabwe, Guatemala, Burma and Iraq, among many others. UK business stands a high risk of being directly associated with such human rights abuses, and in some cases causes or contributes to them.

The UK should:

- Support the establishment, at least in high risk cases such as Burma and Colombia, of a binding mechanism to require businesses sourcing or investing in such countries to conduct human rights due diligence. This would also include publicly reporting on such due diligence and their business relationships, as well as being subject to binding mediation and arbitration processes. The ITUC's "Business and Human Rights in Burma: A trade union proposal" outlines such a mechanism for Burma which the TUC is urging the UK government to support.⁶
- Issue country specific guidance to businesses investing in or sourcing from a high risk country, on steps to take to meet human and trade union rights standards.
- Conduct in-country briefings on human rights risks for UK business and investors that involves local unions and other human rights defenders.

GP 9 – Maintaining domestic policy space under international treaties or contracts

States may enter into international investment agreements or private contracts that constrain their ability to fully implement their international human rights obligations. For examples, such agreements can have so-called "stabilisation clauses" which allow foreign investors to be exempt from any future government regulation, or states may lower human rights standards seeking to attract foreign investment, especially through the Export Processing Zones.

The UK should ensure that any agreement or contract contains:

- a guarantee that the states will not lower or "freeze" human rights standards, especially though "stabilisation clauses"; and
- strong and broad exemptions for states to take action in the public interest, and especially to meet its human rights obligations.

⁶ ITUC, *Business and Human Rights in Burma: A trade union proposal*, at www.ituc-csi.org/IMG/pdf/investment_burma.pdf

GP 10 – States acting as member of multilateral institutions

The UK government can use the multilateral institutions it engages with to promote the implementation of the Guiding Principles in the following ways:

- Support the introduction of human rights due diligence requirements in the World Bank Groups' safeguards procedures, as well as those of the regional development banks and the commercial banks' Equator Principles.
- Provide funding and support for the ILO to assist governments, especially in the developing world, to improve their "duty to protect", with a particular focus on businesses operating in their territory.
- Support and fund an ILO action plan on implementing the ILO Declaration on Multinational Enterprises, including a new survey to monitor its implementation.
- Seek to include in EU trade agreements, commitments for the parties to require businesses operating in or from their territory to conduct human rights due diligence; and adhere to and implement the OECD Guidelines for Multinational Enterprises.
- Ensure that the IMF, World Bank, WTO and other multilateral institutions do not act in ways that erode respect for international labour standards and other human rights, or restrict states in meeting their "duty to protect".
- Support the establishment of a WTO working group on business and human rights to explore how trade and trade agreements can support and not undermine the promotion of human rights.
- Support the inclusion of the implementation of the Guiding Principles as part of the UN Human Rights' Council's Universal Periodic Review
- Support the OECD to put in place a strong peer review mechanisms to improve the effectiveness of National Contact Points in implementing the OECD Guidelines for Multinational Enterprises.

Pillar 2: The business responsibility to respect

GPs 11 to 24 - the steps for businesses to conduct human rights due diligence

To increase the number of UK-based businesses that are conducting human rights due diligence and to accordingly reduce business-related human rights abuses the UK government should:

- Develop definitive guidance, in consultation with civil society and the UN Working Group on Business and Human Rights, for companies on how to carry out "human rights due diligence" as described in the Guiding Principles under this pillar.

- Require companies to implement such guidance in exchange for state support (see GPs 4-6) and through non-financial reporting requirements (see recommendations for GPs 1-3 above).
- Establish a funding pool to support organisations with a credible track record, to work with businesses to improve their respect for human rights.
- Development specific guidance on what business should be doing to addresses difficult governance gaps such as the denial of freedom of association in supply chains.

Pillar 3: Access to remedy

GP 25 and 26 - Judicial mechanisms

As stated in GPs 1-3 above, the UK government should ensure access to justice for workers by:

- not introducing fees for Employment Tribunal users, which will price many working people out of access to justice.
- reversing the two year qualifying period for unfair dismissal claims which will deprive 2.7 million people of protection at work.
- reversing the parts of the recently passed Legal Aid, Sentencing and Punishment of Offenders Bill which will seriously damage access to justice for many working people, especially those injured at work.

GP 27 – Non-judicial mechanisms

The OECD Guidelines for Multinational Enterprises which provides a set of recommendations to companies on human rights and other key topics has recently been updated to be brought into line with the Guiding Principles. The UK National Contact Point (NCP), set up to hear complaints under the Guidelines is one of the better performing NCPs because of its professional procedures, oversight body, and encouraging track record in resolving disputes, particularly in trade union cases. Yet there is significant room for improvement. The UK government should:

- Increase the resources of the UK NCP especially to enable it to conduct in-country investigations and mediations; and
- Use the UK NCP in carrying out any assessments of business adherence to the Guiding Principles, particularly in determining state support or whether or not to establish a business relationship as per the recommendations in GPs 4, 5 & 6 above.

GP 28 -31 – Non-state-based mechanisms

Operational-level or enterprise based grievance mechanisms can have a role to play as part of a mature system of industrial relations that has collective bargaining at its

heart. However such mechanisms should not be used as a substitute for trade unions or genuine collective bargaining, which should be recognised as playing a vital role in providing routes for redress and vigilance against human rights abuses.

The UK should encourage any multi-stakeholder initiative that it supports which has the aim of improving business respect for human rights to have effective grievance mechanism in line with Guiding Principles 30 and 31.

Oversight of the strategy

The Guiding Principles will not be achieved overnight. They are ambitious, and will present both technical and political barriers to their effective implementation. Accordingly, any government strategy should have the following components to track, review and improve implementation over time:

- An independent oversight body with representation from social partners and civil society to monitor, evaluate and provide recommendations for improving implementation
- A cross-White Hall implementation group with Ministerial-level participation.
- An assessment framework that has measurable milestones and outcomes seeking to reduce business-related human rights abuses.

Annex 1: The UN Guiding Principles on Business and Human Rights

Pillar 1: The state duty to protect

Foundational principles

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Operational principles

3. In meeting their duty to protect, States should:
 - (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
 - (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
 - (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
 - (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.
4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.
5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.
7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
 - (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
 - (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
 - (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.
8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.
9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.
10. States, when acting as members of multilateral institutions that deal with business-related issues, should:
- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
 - (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
 - (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

Pillar 2: The business responsibility to respect

Foundational principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Operational principles

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

17. 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. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

- (a) Effective integration requires that:
 - (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
 - (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.
- (b) Appropriate action will vary according to:
 - (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;
 - (ii) The extent of its leverage in addressing the adverse impact.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Pillar 3: Access to remedy.

Foundational principle

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Operational principles

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

(c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;

(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.