Transcript of Webinar #1

# Introduction to Business and Human Rights

## 01 Welcome

Hi, and welcome to this first of four webinars looking at business and human rights in the digital environment. My name is Richard Wingfield, Legal Officer at Global Partners Digital.

These webinars have been developed by Global Partners Digital, in cooperation with the Global Network Initiative, Internews, New America’s Open Technology Institute, and Ranking Digital Rights in order to introduce some of the key issues related to business and human rights in the digital environment.

## 02 Agenda

This webinar series comprises four webinars on different issues, and an interactive question and answer session.

In the first webinar, we’ll be looking at business and human rights broadly, the major developments in the field, and the key actors. In the second, we’ll look at the relationship between business and human rights and the digital environment specifically. Next, the Open Technology Institute will look at two priority issues in the field: privacy and freedom of expression.

By the end of the series, you should be able to understand the key concepts, terminology and principles in the field of business and human rights as well as its links between human rights and the digital environment.

## 03

Businesses can impact human rights wherever and however they operate. Whether it’s through the products and services they provide or their own policies and processes, companies can impact the entire range of human rights positively or negatively, including the right to non-discrimination, freedom of association freedom of expression, the right to privacy, as well as others.

These days, many companies operate globally — and that means their impact are felt globally too.

In recent years, there have been a number of high-profile instances of businesses impacting human rights in the tech sector. These include data breaches, companies sharing data without users’ consent, censorship by online platforms, and companies assisting governments in online surveillance. All of these instances demonstrate the significant and widespread impact that companies’ actions can have on human rights.

Historically, however, the international human rights system didn’t pay much attention to businesses. This is mainly because businesses don’t have legal obligations under international human rights law. Since the 1970s, however, the UN has been increasingly interested in the impact of businesses on human rights, and it is now widely accepted at the international level that businesses have a responsibility to respect human rights.

A key milestone in this journey occurred in 2011, when the United Nations Human Rights Council endorsed a set of principles that define the responsibilities of governments and businesses when it comes to human rights. These are known as the UN Guiding Principles on Business and Human Rights. They are s set of principles that while not binding, set out duties of states and responsibilities of companies.

## 04 UN Guiding Principles on BHR

Let’s take a look at the UN Guiding Principles. They are divided into three pillars.

The first pillar – Protect – says that governments have to make sure that human rights aren’t abused by businesses. This usually means passing laws that prevent human rights abuses and making sure they are implemented.

The second pillar – Respect – says that businesses have to refrain from causing ‘adverse human rights impacts’ wherever and however they do business. That means that it’s not enough for companies to simply follow the law where they operate. Even in countries where the government don’t fully comply with their own human rights duties, companies have to understand their human rights impacts and take concrete steps to address any adverse ones.

The third pillar is about what happens when something goes wrong. If a company causes an adverse human rights impact, governments have to make sure that the court system or some other legitimate process allows victims to file complaints for these to be investigated and settled. Companies also have an obligation under the third pillar to make sure they have some process in place to address any adverse impacts they have caused.

Each pillar comprises foundational principles that set their scope, and operational ones that set out how they should be put into practice. During the in-person workshop we will go through them in detail, but in this webinar, we just want to highlight the most important ones.

## 05 Pillar 1: State Duty to Protect

Let’s look first at Pillar One – the state duty to respect.

The foundational principles under pillar one say that states must protect against human rights abuses by third parties (including business enterprises) within their jurisdiction by taking appropriate steps to prevent, investigate, punish and redress such abuse through effective legislation, policies, regulation and adjudication. This is Guiding Principle 1.

Guiding Principles 2 says that states should set out clearly the expectation that business enterprises domiciled in their jurisdiction respect human rights across their operations.

We will look at this in further detail during the in-person workshop, but it is important to note that at this stage that the UN Guiding Principles take the position that states are not generally required to regulate the extraterritorial activities of businesses based in their jurisdiction. However, states are not generally prohibited from doing so either.

## 06 Pillar 1: State Duty to Protect

As well as the foundational principles, there are also 'operational' principles under pillar one:

Guiding Principle 3 says that states are required to take appropriate steps to prevent, investigate, punish and redress business-related human rights abuses through effective legislation, policies and guidance.

Guiding Principles 4, 5 and 6 say that states should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the state, or receive substantial support from state agencies. If they do not, this may even amount to a violation of the state’s international human rights obligations. States should also include human rights considerations in their procurement of goods and services.

Guiding Principles 8, 9 and 10 say that within their national legal and policy framework, states should ensure policy coherence. For example, a state should make sure that the trade and investment agreements it negotiates are in line with its human rights obligations.

Finally, Guiding Principle 7 says that because of the heightened risk of gross human rights abuses in conflict-affected areas, states should take extra steps to ensure that businesses operating in these areas are not involved in human rights abuses.

## 07 National Action Plans

Since 2014, the UN Human Rights Council has strongly encouraged all states to develop, enact and update a National Action Plan on Business and Human Rights (or ‘NAP’ for short) as part of the state commitment to disseminate and implement the UN Guiding Principles.

The UN Working Group on Business and Human Rights, the Danish Institute for Human Rights and the International Corporate Accountability Roundtable (ICAR), highlight 6 criteria for the development and implementation of NAPs:

* The process should be embedded in the government and be adequately resourced;
* The process should involve all relevant stakeholders;
* One of the first steps should be to create a National Baseline Assessment to understand existing gaps;
* The NAP itself should address all the three pillars of the UNGPs;
* The process should be transparent; and
* The finalisation of the NAP should be followed up by a monitoring and review process involving all relevant stakeholders.

## 08 National Action Plans

Since 2011, 21 governments have developed a NAP. While there are a range of different ways that they have been developed, there are some good and poor practices that can be considered.

First, the good practices. Most NAPs have been developed through the involvement of a range of relevant government entities during the drafting process, including the creation of inter-ministerial working groups.

Secondly, they have generally involved consultation with stakeholders.

Third, many NAPs include information in relation to follow-up and implementation of the planned future actions included.

In terms of some of the weaknesses, the development of NAPs usually fails to include processes to allow participation by disempowered or at-risk stakeholders.

NAPs also tend to lack transparency regarding the drafting process. Timeframes and terms of reference are often not published.

There is also a general failure to conduct national baseline assessments to inform the content of the NAP.

NAPS are, ultimately, important because they can provide an opportunity for the constructive collaboration and dialogue between stakeholders that is needed for the effective implementation of the UN Guiding Principles.

## 09 Pillar 2: The Corporate Responsibility to Respect

Let’s turn to Pillar Two – the corporate responsibility to respect human rights.

The foundational principles make clear that the responsibility to respect human rights requires business enterprises to avoid infringing on human rights and to address any adverse human rights impacts with which they are involved. This principle applies to all businesses of all sizes in all situations and includes all internationally recognized human rights. These are Guiding Principles 11 to 14.

## 10 Pillar 2: The Corporate Responsibility to Respect

In terms of operational principles, Guiding Principle 15 says that businesses should have in place:

* A policy commitment to respect human rights;
* An ongoing process of human rights due diligence; and
* Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

## 11 Due Diligence

Human rights due diligence – which is set out in Guiding Principles 7 to 21 – needs to cover different types of adverse impacts on all internationally recognised human rights. This includes impacts that the business causes; impacts to which the business contributes; and impacts that are directly linked to business operations, products or services.

Actual and potential adverse human rights impacts should be avoided and addressed through human rights due diligence which includes four key steps:

* Assessing adverse human rights impacts;
* Integrating and acting upon findings in human rights impact assessments;
* Tracking and monitoring responses: this should be an ongoing process, involving affected right-holders and other stakeholders; and
* Communicating and reporting: information about due diligence and impact assessments should be publicly communicated. They should be accessible, provide sufficient and relevant information, and not pose risks to rights holders or others.

## 12 Pillar 3: Remedies

Finally, let’s look at Pillar Three – remedies. Under this pillar, states and businesses are obliged to ensure access to an effective remedy for victims of business-related human rights abuses. This includes access to both judicial and non-judicial remedies.

On judicial remedies, Guiding Principle 25 says that the state needs to take appropriate steps to ensure that its legal system, including its national courts, is effective in addressing business-related human right abuses.

This also means that governments need to consider how to reduce legal and practical barriers that could prevent victims from accessing and effective remedy. Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in relation to their financial resources, access to information and expertise. This is Guiding Principle 26.

## 13 Non-Judicial Mechanisms

Non-judicial remedies for business-related human rights abuses can be divided into state-based mechanisms and non-state-based mechanisms. They should complement rather than replace or undermine judicial mechanisms.

State-based non-judicial mechanisms include, for example, National Contact Points under the OECD guidelines for multinational enterprises, state-run Ombudsman offices, and National Human Rights Institutions.

In addition to state-based non-judicial mechanisms, the Guiding Principles emphasise the importance of non-state-based grievance mechanisms. These could be, for example mechanisms provided by an industry association, a multi-stakeholder group, or a company, such as a company ombudsman. They could also be regional and international human rights bodies.

Finally, Guiding Principle 31 outlines eight effectiveness criteria for non-judicial grievance mechanisms. They should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and engagement- and dialogue-based.

## 14 Other International Standards and Mechanisms

Apart from the UN Guiding Principles, there are a number of other principles that set standards to address the adverse impact of companies.

There are several voluntary initiatives addressing business and human rights-related issues in different sectors and regions. Some examples include:

First, The UN Global Compact: Before the adoption of the UN Guiding Principles, the UN embarked on an effort to address the adverse impacts of the corporate sector, leading to the eventual development of the UN Global Compact in 2000. The Global Compact established ten non-binding principles to guide businesses in the development of socially and environmentally sustainable practices.

Second, the Voluntary Principles on Security and Human Rights: Building from the UN Guiding Principles and as a collaborative effort by governments, major multinational extractive companies, and NGOs, the Voluntary Principles on Security and Human Rights provide guidance to companies on steps that they can take to minimise the risk of human rights abuses in communities located near extraction sites.

And third, the Global Network Initiative is a multi-stakeholder initiative which aim is to protect and advance freedom of expression and privacy in the ICT industry by setting a global standard for responsible company decision-making and by being a leading voice for freedom of expression and privacy rights.

## 15 Up Next

Thank you for joining us during this first webinar. In the next one, we will be looking at the links between business and human rights and the digital environment. Finally, in the third and fourth, OTI will look at the key issues of privacy and freedom of expression.