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GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

John Ruggie, Special Representative to the United Nations Secretary General on Human Rights and Transnational Corporations, has over the last six years patiently and thoughtfully addressed the issues of business and its responsibilities for human rights. The author of the “protect, respect, and remedy” framework adopted by the UN, he has now produced his final report “Guiding Principles on Business and Human Rights.”

The Guiding Principles provide a systematic, coherent and detailed explication of the responsibilities of state and corporate actors buttressed by operational principles directed towards establishing clear human rights policies, conducting due diligence, tracking impacts, and taking remedial action. The care and thoroughness of the Principles will undoubtedly make them the starting point for guiding – and judging -- business efforts to identify, manage and remedy human rights. They are the result of an extensive consultation process with governments, businesses, and other actors including lawyer volunteers of ISLP working in the field, and this consultative process has given extra weight and authority to the Principles.

At a practical level the Principles are accompanied with helpful commentary that sets out clearly the problems involved and does so with great sensitivity to the wide range of institutional capacities of governments and businesses and the great variety of contexts in which human rights problems may arise. The Principles pay special attention to the risks of vulnerable groups especially to the effects on women, who often bear quite disproportionately violations of human rights.

The Principles are fundamentally procedural. The actual human rights to be recognized and respected are only identified by reference to long standing UN documents. Successful application of the Principles will require businesses and governments to go from process to addressing the concrete facts of particular cases and political environments. It is this concrete application where businesses and governments must be measured, but the Principles provide an invaluable framework for organizing the analysis, addressing the problems, and providing remedies.

A significant adjunct to the Principles are the “Principles for Responsible State-Investor Contracts: Guidance for Negotiators” which carries the Principles further by providing guidance for state and private negotiators in the area of natural resource projects. Natural resource
investments are often of long duration and frequently a major if not primary source of national wealth. Conflict over natural resources has produced some of the worst human rights violations. Less dramatic than resource conflicts zones but of even more significance in many states is the failure of government in its natural resource contracting or enforcement to protect the economic and social rights of its citizens by failing to address or remedy adverse impacts or not realizing the developmental value of the resource.

Often this is the result of the weaknesses of government negotiators and the imbalance in human negotiating resources. The Guidance for Negotiators provides further detail to help remedy this imbalance and assist both private and public negotiators to better identify and mitigate human rights impacts. Importantly, the Guidance for Negotiators recognizes the need to keep space for the progressive implementation of human rights over the term of investment agreements and to avoid contractual obligations which would inhibit or prevent future government from taking the steps necessary to protect evolving rights or which would excuse investors from respecting those rights.

The Principles and the Guidance for Negotiators should become one of the basic documents in the continuing effort of states and businesses to respect and secure human rights throughout the world.

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