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PAMUN XVIII RESEARCH REPORT— CREATING A FRAMEWORK FOR CORPORATE RESPONSIBILITY IN PRESERVATION OF SOCIOECONOMIC RIGHTS

Introduction of Topic

To work towards the future means to work towards sustainability. Some may point to economic figures showing a trend in economic growth to prove the effectiveness of corporate methods; however, we cannot forget to measure whether this economic growth comes at a price of the socioeconomic human rights of people. Sustainable development goal 12 represents the responsible consumption and production, and within this topic a question arises: To what degree are producers responsible.

Due to the nature of international fora, private companies have always been a difficult body to regulate. Consequently, some corporations put price before people and sacrifice some of the world's most basic rights for economic gain. Bodies have debated over years on what should a company be responsible for and what a state should be responsible for in relation to Human rights.

For this problem, international fora can create, refine, and implement frameworks to help clarify the best system that balances economic growth for economic development. In the past, the UN has made some progress. For example, the UN global compact is a list of ten principles that responsible businesses should take up. Corporate social responsibility policies (CSR) are becoming more important in the negotiations of international investment and development. However, various challenges still face the mainstreaming of corporate responsibility.

Definition of Key Terms

Socioeconomic rights

Socioeconomic rights is a term to describe a subset of human rights that relate to the interaction between society and economics. For example, the right to having adequate standards of living, working hours, and social security. Many human rights are socioeconomic rights and the two terms can be used almost interchangeably.

Corporate Responsibility

In the context of the issue, corporate responsibility is the role a corporation plays in preserving socioeconomic right. This means ensuring adequate standards of living for employees, updating sustainable means of production, providing social security and protection, and any other measures

corporations may take to better preserve other socioeconomic rights to employees and business partners.

Human Rights

Human Rights are inherent to all human beings, indiscriminate of national, residential, sexual, ethnic, and any multitude of factors. The exact human rights are, in the international stage, defined by the Universal Declaration of Human Rights (UDHR).

Human Rights due Diligence

Human rights due diligence is a process that assesses risk management of human rights abuses. The primary steps of the process include prioritizing severe human rights risks (salient human rights issues), acting on findings, and recording responses. This process is important for companies to organize the possible human rights abuses of a possible thousands of employees or indirectly related stakeholders.

State-investor contracts

The State-investor contracts are an agreement between a host state and an investor. Their purpose is to lay down the details of investments projects in numerous industries that range from agriculture to infrastructure.

International Investor Agreements (IIAs)

IIAs are treaties agreed amongst states to promote and protect foreign investment. As an example of how they may protect investors and their investments, they often give investors the right to investor-state dispute settlements (ISDS) which allow them to sue states for breaches in IIAs or discriminatory practices

Background Information

Socioeconomic and human rights can be put in danger under unregulated business. The incentive to produce, sell, and profit generates unwanted side effects. In the early years of the industrial revolutions the world witnessed, and eventually eliminated child labor. This first example shows how we have dealt with the problem of corporate responsibility and human rights in the past. In the modern day, corporations are, largely more regulated than during the industrial revolution, however, the problem continues to persist. For example the problem of cheap factory work in China paying laborers less than minimum wages and providing dangerous working conditions. Or maybe, the thousands of factories pumping carbon dioxide into the atmosphere after burning fuel, prolonging and worsening the problems of climate change. To allocate a degree of responsibility to these firms, the UN special representative

and the UN Human Rights Council created the “Protect, respect and Remedy” Framework for Business and Human rights in 2008. The presented conceptual and policy framework is supported with three principles: “the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies”. Although each of these principles are complementary, this research report revolves around the second founding pillar “corporate responsibility to respect human rights, more specifically, the preservation of socioeconomic rights.

Relationship between Socioeconomic Rights and corporate responsibility

Business is strongly related in general to one’s socioeconomic rights. They can be a positive influencer, providing adequate living standards and needed goods and services but they can also negatively destroy people’s livelihoods or exploit workers. Now in the international stage, the world has developed what are known as human rights: rights inherent to all people (that include socioeconomic rights). Treaties like the UN Declaration of Human Rights call upon states to pursue moral standards and protect these rights, like employing minimum wage and minimum working age laws. However, these treaties fall short in that they do not directly concern private parties like individuals and corporations. So seeing as these corporations don’t have the same legal duties under international law, it is up to frameworks to recommend principles that clearly define the responsibilities of businesses to preserve socioeconomic rights. One of such, and most important frameworks is the UN guiding Principles on business and Human Rights.

The UN Guiding Principles on Business and Human Rights (UNGPR)

The UNGPR on Business and Human Rights (appendix I) implements the previously mentioned “Protect, respect and Remedy” Framework and its 31 principles currently serves as the world’s premier framework for corporate responsibility in preservation of socioeconomic rights. Starting from 2005 by Special representative of the Secretary General, the frameworks development included 47 consultations with multi-stakeholders as well as thousands of online consultations from stakeholders around the world. By 2011, the Human Rights Council unanimously endorsed the fully refined framework. In summation, the second pillar discussed in this research report is summarized with this principle: “Companies have a responsibility to respect human rights-i.e., avoid infringing on the rights of others wherever they operate and whatever their size or industry, and address any impact that does occur. This responsibility exists independently of whether States fulfill their obligations. In short, companies are responsible for all human rights and take concrete steps to preserve them.

Foundational Principles

The foundational principles are the “ideological” statements that corporations must respect. The five principles, in summary state that:

1. Business enterprises should respect and recognize human rights independently of their State's ability or willingness to fulfill their obligations.
2. Business enterprises must place all rights defined in the international bill of human rights at equal and high importance.
3. Business enterprises hold the responsibility to avoid the infringement of such rights in their activities and address infringements appropriately should they occur as well as the responsibility to avoid or address infringements of human rights in their operations, business relationships, even if they do not directly contribute to the impacts.
4. The responsibilities business enterprises hold in relation to human rights are indiscriminate of size, context, sector, ownership, and structure. They may only vary in how a business enterprise must correct their adverse human rights impacts.
5. In order to meet their responsibilities, business enterprises should include policies that include a commitment, a human rights due diligence process, and a process to enable the remediation of adverse human rights impacts.

Operational Principles

The operational principles are more direct measures involving corporate responsibility, as opposed to the “ideological” measures the foundational principles proposed. The following are concrete strategies that can be applied to a corporations policies. They include:

1. Business enterprises must express their commitment by completing a statement of policy.
2. Business enterprise's human rights due diligence process should be able to adequately assess actual and potential human rights impacts and decide on how to best act upon the findings.
3. Business enterprises should actively seek actual or potential human rights risks they directly or indirectly (through business relationships) cause.
4. Business enterprises should integrate findings from human rights impact assessments into all their internal functions.
5. Business enterprises should track the effectiveness of their responses to human rights impacts.
6. Business enterprises should be able to communicate their human rights impacts to stakeholders.
7. Business enterprises should provide or cooperate in their remediation through legitimate processes.

8. Business enterprises should abide state laws, internationally recognized human rights in all contexts.

9. Business enterprises should target human rights impacts that are most severe (salient human rights issues) first. The specific definition for most severe would be: “how grave and how widespread the impact would be and how hard it would be to put right the resulting harm.” For example, in a 2015 report, Unilever identified forced labor as a salient issue, where the issue can take migrants worker on a large scale and essentially sell them in to slavery.

The Guiding Principles Legality

As a framework, the principles cannot be ratified by States, as they don’t create legal obligations. What it does do is provide direction into how national legislation can best preserve socioeconomic rights according to international recommendations. This means that the most crucial aspect of the guiding principles is how they’re being implemented in national legislation, if at all. It is important to note that the Guiding Principles are still an expectation of standards that corporations must meet. This clarifies a distinction between the Guiding Principles and conventional corporate social responsibility (CSR) whereas the latter is rather a voluntary contribution to community, social, and environmental development. However, it is true that the guiding principles are expected, yet there are no defined repercussions for not meeting expectations.

Investment Policymaking

The OHCHR recommends that the UNGPs are best implemented through investment policymaking. The strategy encompasses all state functions and instruments that allow for foreign direct investment (FDI) to happen. The reasoning of why investment policymaking is important for the UNGP is that FDI can have its benefits, however when left unregulated, it can pose unique governance challenges that allow socioeconomic rights violations to take place without punishment. Without the refinement of investment policies, then corporations will further disregard socioeconomic rights through FDI. There is another incentive to pursue investment policymaking in that the world is already making trends to investment policy reform. The momentum of this trend is an opportunity to ensure the UNGPs are incorporated in the reform.

In order to well implement investment policymaking, the full range of state functions should be employed – national and international, mandatory and voluntary. Presented in figure 1 is the OHCHR’s general framework for an investment life cycle that can be applied to any industry.

FIVE PHASES OF THE INVESTMENT LIFE CYCLE

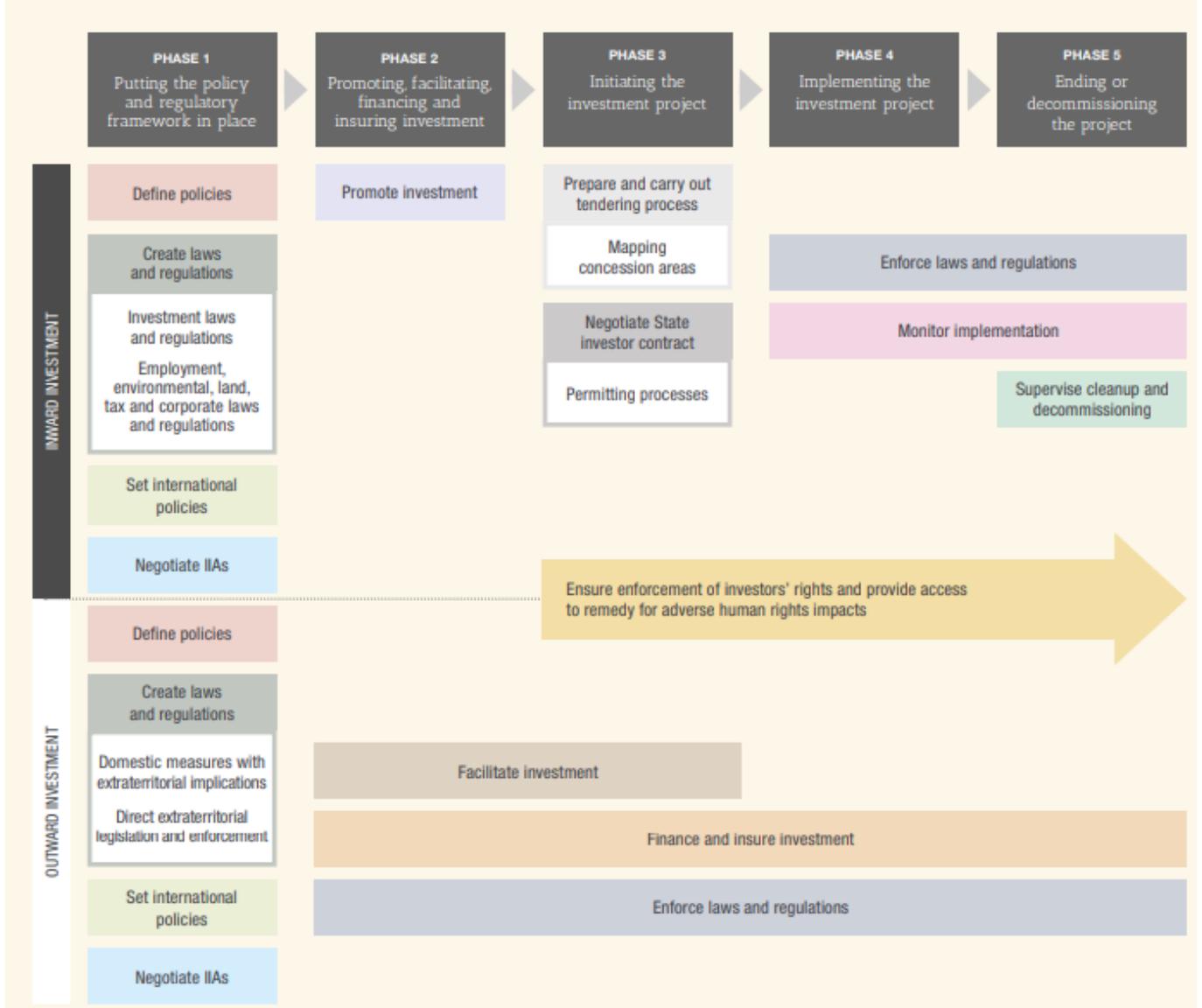


Figure 1. Five phases of the investment life cycle, *Guide to Implementing the UNGPs on Business and Human Rights in Investment Policy Making*

The diagram helps identify the 5 stages of the investment life cycle. Underneath each phase includes the most important state functions for investment policy making. For example, the state functions for phase 1 include the inward investment (foreign economies investing in domestic economies) and outward investment (domestic economy investing in foreign economies), creating national policies, laws and regulations, international policies, and International investment agreements (IIAs).

1. Phase 1: Putting the policy and regulatory framework in place and preparing for investment
2. Phase 2: Promoting inward investment, and facilitating, financing and insuring outward investment
3. Phase 3: Initiating the investment project
4. Phase 4: Implementing the investment project

5. Phase 5: Ending the investment or decommissioning (where relevant) the project

For a deeper understanding of the investment life cycle, visit pages 9 – 13 in the guide to implementing the UNGPs on Business and Human Rights in Investment Policy Making (Appendix II).

Major Countries and Organizations Involved

The Organization for Economic Co-operation and Development (OECD)

The OECD is an intergovernmental organisation comprised of 36 member states. As a group with many of the world's strongest economic powers, the nature of the organization is naturally involved with many of the world's largest multinational companies and industries. For this reason, they have written the OECD guidelines for Multinational enterprises as an instrument that details the standards and duties MNCs must fulfill. In section IV of their document, the text gives guidelines for dealing with human rights, which reinforces many of the calls that the UNGP does. There are currently 48 states that adhere to their guidelines.

Global Compact Organizations

The global compact, the UN's previous attempt in promoting responsible businesses, brings together roughly 12,000 organizations under their ten principles (about 8,000 businesses and 4,000 other). The involved organizations range greatly but some notable participants include Coca-Cola and Starbucks. The full list can be found on their website. In addition to individual corporations, established local networks allows the Global compact to work on a national level as well. Some notable countries that have seen Global Compact networks reaching to local businesses include Australia, France, India, Syria, Mexico, and Spain. Because of the sheer amount of participants to the Global Compact, it is unrealistic to deem one or two a major country/organization involved therefore, delegates are encouraged to research what Global Compact participants are relevant to themselves.

The Working Group on Business and Human Rights

In 2011, the Working Group on Business and Human Rights was established by the Human Rights Council. The group of five experts was given a mandate to accomplish many tasks involved with the UNGPs. Some examples include developing a dialogue between governments and all other stakeholders as well as promote the effective implementation of the UNGPs on business and human rights. The full specifications of their most recently updated mandate is found in resolution (A/HRC/RES/35/7).

Timeline of Events

Date	Description of event
1979	Original Guidelines for Multinational Enterprises adopted by OECD
2011	Most recent revision for the OECD Guidelines for Multinational Enterprises
June 2011	UNHRC adopts Resolution 17/4 by fully endorses the UNGPs and creating the Working Group on Business and Human Rights.

Relevant UN Treaties and Events

- Human rights and the transnational corporations and other business enterprises, July 6 2011 (A/HRC/RES/17/4)
- UN Guiding Principles on Business and Human Rights (UNGPs), June 2011
- “Protect, Respect and Remedy” Framework, 2008
- Business and human rights: Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises, June 22 2017 (A/HRC/RES/35/7).

Main Issues

The following issues are ones that challenge the implementation of investment policymaking

Managing Human Rights Risks

According to the UNGPs, all businesses must respect the human rights, even when engaging in FDI. It is true that the human rights are inherently for the well-being of people, but adverse human rights can and often impact a business and their investments as well. In 2010, a case study found that one international oil company may have experienced a \$6.5 billion value erosion over the course of two years due to a multitude of reasons, among them stakeholder-related human rights risks like problematic relations with local labor markets. Such situations occur when there is a lack of management of the human rights risks. This means managing in the sense of whether the tools designed for protecting investors like IIAs are efficiently protecting investments. The lack of management also occurs when the human rights due diligence structure of an enterprise is superficial and doesn't go beyond identifying a risk. Avoidable situations like the 2010 oil value erosion are why investment policymaking is threatened by inadequate management of human rights risks by investors and due diligence.

Inadequate Remedy

Investment policymaking needs to ensure that people adversely impacted by business investments projects are given access to effective remedy. This should be assured by the State duty, as defined in the UNGP. However, according to a 2014 study by the OHCHR, the world faces a system of domestic law remedies that are patchy, unpredictable, ineffective, and fragile. They even say that corporations responsible for gross human rights abuses – genocide, slavery, executions, torture, and systematic discrimination are seldom prosecuted in national courts. This lack of access to remedy is extra challenging when the human rights abuse is cross-border, and thus does not allow domestic law the jurisdiction over the issue. Seeing as FDI is, in nature, cross-border, the legal challenges set forth by cross-border human rights abuses are particular and recurrent.

Preserving Policy Space

This details the problem with investment policymaking getting in the way of a State's ability to implement new policies to meet human rights obligations. While investment policymaking is the key tool for regulating corporate responsibility over socioeconomic rights, it can also get in the way of the State's "policy space", the range of possible policies the state can employ. This occurs when ineffective state-investor contracts are put into place: for example, it is often the case that state-investor contracts offer protections (exemptions) for investors from future law changes. These clauses, dubbed "stabilization clauses" are a "cost of compliance" for the investors. By making such agreements, the range of policies is limited, as the investors are protected from future policies. States need to have a broad range of possible policies to accommodate with contextual and public needs changes over time; limited policy space due to ineffective state-investor contracts make it difficult for States to accommodate to the change in human rights obligations.

Improving Transparency

Transparency, the availability of information and accessible knowledge of decision making processes is a pillar issue of the UNGPs and any issue regarding human rights. Therefore this applies in investment policymaking, meaning states and investors should be open about investments that impact socioeconomic rights. Such steps are necessary for processes like accountability on whether state or investor commitments have been met, promoting certainty in policy reforms, and fostering trust between all parties. Since the onset of the UNGPs states and investors have begun to realize that transparency is preferable, however the practice needs further cultivation to become common place.

Managing Conflict and Post-conflict contexts

The UNGPs need extra support for post conflict or conflict affected areas. This is the case because there's usually gross human rights abuses in conflict-affected areas due to weak institutions and governments too unstable to ensure the protect human rights while simultaneously fostering fair investment. By consequence investors involved are at a higher risk of being involved in human rights abuses and pose a threat to corporate responsibility as defined by the UNGPs. Areas where the problem

is worse like conflict zones require special care and not broadly framed policy, instead special measures tailored to contextual factors. These special measures may need to take large steps in institution reform, regulation, and remediation of past human rights abuses.

Previous Attempts to solve the Issue

Implementation Hub

The implementation hub (appendix III) are a collection of tools, published by the UNGP that provide guidance and examples on how to best implement the UNGPs. The tools include helping companies implement the UNGPs, governments, judicial and non-judicial remedies, and case studies of NGOs, trade unions, intergovernmental organizations, investors and others implementation of the UNGPs. Delegates could choose to focus on a few such tools, to expand and strengthen their impact

UN Forum on Business and Human Rights

The Working Group on Business and human rights established the UN Forum on business and human rights in 2011 as well. The forum is the largest international gathering of governments, corporations, civil society, and all other stakeholders. The purpose of the annual conference is to, as outlined in resolution (A/HRC/RES/17/4) (the working group's original mandate) "to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights".

UN Global Compact

The UN Global Compact, formed on 26 July 2000 is an active and largest CSR initiative with about 13000+ participants spanning 170 countries. Their mandate revolves around the mainstreaming of their ten principles spelled out above... However, some critics have pointed out that the compact lacks effective monitoring tools and enforcement bodies to hold corporations accountable, among some other criticisms. Even if, the UN Global Compact is the largest front the international stage has against human rights, labor, environment, and anti-corruption malpractice.

Possible Solutions

In this year's PAMUN conference, delegates are expected to write specialized clauses, which should later amount to a coherent resolution with each of them addressing a specific aspect of the topic. When writing their clauses, delegates are to focus on a specific aspect or a "specialized topic" of the general issue that are outlined by 'major issues' and 'possible solutions' of this report. During your conference, chairs will deliver their delegates with more specific instructions. However, please keep in

mind that these ideas do not in any way set restrictions for debate. Moreover, each solutions have both its benefits and disadvantages that delegates should thoroughly consider.

Scaling of Human Rights due Diligence on All Investment Policy

No investment policy should be absent of human rights due diligence, as it assures the most severe and important human rights abuses are being tackled first. The first step to this is assuring that existing domestic and international legislation regarding investment (i.e. licensing and permits or IIAs) involve HR due diligence or other management of human rights risks. Other possible measures include building bodies that assure that outward investors carry out management of human rights, finding cooperation among private financial institutions to make human right risks management a requirement for clients, and providing insight to inward investors about specific human rights risks and contextual factors like culture or society in the region they're invested in.

Extending the Global Compact

The Global Compact is a voluntary membership. A corporation would need to purposely commit, by themselves, to the established 10 principles. However, how does it draw the thousands of other corporations that don't care for human rights, labor, environmental issues, and corruption? Some critics call or the extension or revision of the global compact, to better incentivize businesses to take up to compact. Some possibilities people have proposed are providing immediate benefits to member corporations, and providing consultants to help entrepreneurs understand that the preservation of socioeconomic rights is in their best interest. This, among other things, are venues that the Global Compact can extend on to better fully encompass the corporate social responsibility policies.

Effective and Accessible Remedy

Seeing as corporations responsible for gross-human rights violations seldom get prosecuted in court, it is an important step to have states, or some panel to review judicial systems on whether they provide remedy to such salient human rights issues. This process would also have to be able to identify specific legal obstacles like cross-border cases to be fully effective. An example solution to cross-border complication is supporting international agreements that allow national courts to hear foreign civilian claims that accuse investors stationed in the state of gross human rights violations. In cross-border issues, there is also a problem of a state's partiality in the matter therefore ensuring an unbiased judicial process through third party involvement is a possible remedy. The process could additionally support more effective Investor-State dispute settlements (ISDS) who face many accusations of holding secret negotiations (lack of transparency) and being generally ineffective.

Implementation of PRC and policy space commitments

The Principles for Responsible Contracts (PRC) (appendix IV) is a guidance tool to help create state-investor contracts that fit well in line with the UNGPs. As outlined in the main issue entitled

“Preserving Policy Space”, stabilization clauses offering exemption from laws to corporations are unfavorable to the UNGPs and corporate responsibility for socioeconomic rights. Tools like the PRC, when well implemented prevent such clauses or any other threat to the UNGPs. As per the previous two solutions, it is important to ensure existing state-investor contracts and IIAs are up to PRC standards, a task that some regulatory body must take. Other steps must be made to preserve a state’s functions like a simple high-level commitment to respecting UNGP friendly state-investor contracts and IIAs.

Transparency across investment Policymaking

This is a simple step towards building the trust and certitude that transparency offers. Corporations and governments should make high-level commitments to transparency. Involved parties must of course act on their commitments by making investment regulatory decisions that impact the public easily available on previous and future investment policies. International investment agreements should follow suit with their negotiations being available to the public. To ensure commitments are reached, international investment agreements should make it common practice of ensuring both parties to have transparent systems to foster trust and certitude among all parties.

Effective Policymaking in Conflict Zones

Investors in conflict zones should be fully aware of the heightened human rights risks in conflict zones and may be required to ensure effective investment due diligence processes and remedy before investing in the zone. Helping these investors will be a continual process to guide steady economic recovery to the region. A long term initiative to provide legitimate and credible recommendations and guidance for a corporation’s duty to respect human rights would help bring sustainability and security to their investment. For example, the Colombian national action plan calls for the “lasting peace in Colombia” and commits to the working with the ministry of post conflict to promote human rights in the private sector.

For further inquiry

“Implementation - Tools & Examples.” *Business & Human Rights Resource Centre*, www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples.

“OHCHR | Overview.” *OHCHR | Convention on the Rights of the Child*, www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx.”

“OHCHR | Working Group on Human Rights and Transnational Corporations and Other Business Enterprises.” *OHCHR | Convention on the Rights of the Child*, www.ohchr.org/en/issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx.

The Ten Principles | UN Global Compact, www.unglobalcompact.org/what-is-gc/mission/principles.

United Nations Human Rights Office of the High Commissioner. *Frequently Asked Questions on the UN Guiding Principles on Business and Human Rights*. www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf.

United Nations Human Rights Office of the High Commissioner. *Guiding Principles on Business and Human Rights*. www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

United Nations Human Rights. *Guide to Implementing the UN Guiding Principles on Business and Human Rights in Investment Policy Making*. blogs.lse.ac.uk/investment-and-human-rights/files/2016/04/LSE_UNGPs_Guide_en.pdf.

“UNCTAD | Corporate Social Responsibility.” *UNCTAD | Press Release*, unctad.org/en/Pages/DIAE/Corporate-Social-Responsibility.aspx.

United Nations Human Rights Office of the High Commissioner. *Principles for Responsible Contracts*. www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf.

Appendix or Appendices

I. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

United Nations Human Rights Office of the High Commissioner. *Guiding Principles on Business and Human Rights*. www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

II. http://blogs.lse.ac.uk/investment-and-human-rights/files/2016/04/LSE_UNGPs_Guide_en.pdf

United Nations Human Rights. *Guide to Implementing the UN Guiding Principles on Business and Human Rights in Investment Policy Making*. blogs.lse.ac.uk/investment-and-human-rights/files/2016/04/LSE_UNGPs_Guide_en.pdf

III. <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples>

“Implementation - Tools & Examples.” *Business & Human Rights Resource Centre*, www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples.

IV. https://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf

United Nations Human Rights Office of the High Commissioner. *Principles for Responsible Contracts*. www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf.