

The State as an economic actor: Promoting corporate respect for human rights through trade and investment promotion

With a mandate to promote worldwide implementation of the UN Guiding Principles on Business and Human Rights and to identify and scale up good practice, the UN Working Group on Business and Human Rights has decided to give continued attention to issues related to the State's role as an economic actor, and the leverage it can generate to promote corporate respect for human rights, through its trade and investment promotion activities.

During 2015-16 the Working Group undertook the first part of this project, which had an overall aim of encouraging States to "lead by example" in their role as economic actors. The first stage focused on the duty of States to protect against human rights abuses involving those business enterprises that they own or control, generally referred to as State-owned enterprises (SOEs). The Working Group set out recommendations in its 2016 report to the Human Rights Council "Leading by example - the State, State-owned enterprises, and Human Rights" (A/HRC/32/45).

In the second part of this work stream, the Working Group is focusing on the role of States in investment and trade promotion. The Working Group aims to develop practical recommendations for States and international and regional organizations relating to these policy areas and plans to develop concrete recommendations to be presented in its report to the Human Rights Council in June 2018. To gather information about good practice models and inform recommendations, the Working Group seeks input from States.

The UN Guiding Principles clarify that all States are expected to ensure protection of and respect human rights in their role as economic actors (Guiding Principles 4, 5 and 6). This aspect of the State duty to protect human rights covers policy areas such as management of State-owned enterprises, export credit, official investment insurance, and public procurement, and emphasizes that States should both integrate human rights due diligence in the entities in charge of these areas as well as incentivize due diligence by business with which the State conducts commercial transactions. The Guiding Principles also highlight that States should ensure policy coherence between government departments and agencies that "shape business practice" and the States' international human rights obligations.¹

The Working Group kindly requests input for its report, in particular on the following

¹ The commentary to Guiding Principle 4 states:

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, political investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.

questions, which are simply a guide to help structure responses. Please feel free to include other information you consider relevant to the topic. Please email the response to wg-business@ohchr.org by **15 March 2018**. (Please indicate “QUESTIONNAIRE – State as an economic actor – [Country name]” in the subject line.)

Unless indicated otherwise in the response by the Government, the responses received will be posted on the Working Group’s website.

Economic Diplomacy and Trade and Investment Promotion

1. Do the relevant ministries that address cross border trade and investment promotion have any policy commitment to address human rights as part of their activities?

If yes, does such a commitment include any reference of the UN Guiding Principles on Business and Human Rights and other standards for responsible business conduct (e.g. OECD Guidelines; IFC Performance Standards)?

2. Have relevant trade/business oriented ministries and agencies required businesses to demonstrate respect for human rights / alignment with the UN Guiding Principles on Business and Human Rights as a condition of receiving government support through export credit, investment guarantees, and political risk insurance?

If yes, please provide examples of how this requirement has been implemented.

3. Have such ministries or agencies involved with export promotion, required businesses to demonstrate commitments to human rights / alignment with the UN Guiding Principles as a condition of participating in trade missions, receiving export promotion assistance, and being eligible for trade advocacy services?

If yes, please provide examples of how this has been implemented.

4. Do you provide any training or guidance on human rights to your trade officers who assist companies with export promotion and other forms of trade and investment support?

5. If a company/business is the subject of a credible complaint by victims, relating to adverse human rights impacts, will your relevant agencies/ministries take any steps to address such issues with a company that is receiving trade and investment support?

If yes, would such complaints impact any decisions about further support for the company in the future or cause your government to withdraw trade and investment support for that company?

6. In what way does decisions by State-run grievance mechanisms (e.g. national contact points) relating to a business link to whether a business receives trade and investment support?

Export Processing Zones and Investment Promotion

7. Are there any type of special export processing zone or special economic zone in your State?

8. To what extent do your government entities responsible for investment promotion (e.g. for inward investment into the country) also require business to respect human rights as set out in the UN Guiding Principles?