



FOCARFE



Philippine Misereor Partnership, Inc. (PMPI)



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Dear Professor Ruggie,

Thank you for the opportunity to comment on the draft text of the Guiding Principles. Along with other members of civil society networks, we have already highlighted a number of outstanding concerns regarding aspects of the current draft. As CIDSE members and partners who have followed the progress of your mandate over the last five and a half years, participating in a number of consultations and making three submissions<sup>1</sup>, we would like to propose some specific changes which we believe will strengthen the principles and make them more effective as a tool for reducing instances of corporate human rights abuses.

We strongly support the analysis in your reports to the Human Rights Council regarding the existence of “governance gaps” and believe that, having identified the extent of the problem, there is more scope to take this analysis to its logical conclusions in the Guiding Principles. In particular, we believe that the impact of the Protect, Respect and Remedy framework will be much greater if the Guiding Principles relating to the three pillars of the framework are mutually re-enforcing.

In this context, we believe that a priority is to strengthen the wording of the second draft Guiding Principle so that it goes beyond simply “encourage” (p. 6). Given the growth of transnational companies and the governance gaps created by globalisation, a stronger approach is justified and, indeed necessary to prevent human rights violations, for example:

<sup>1</sup> 1) *Recommendations to reduce the risk of human rights violations and improve access to justice*, submission to the UN Special Representative on Business and Human Rights, February 2008.

2) *Operationalizing the ‘Protect, Respect, Remedy’ Framework*, CIDSE submission to the UN OHCHR Consultation on Business and Human Rights, October 2009.

3) *Protect, Respect and Remedy - Keys for implementation and follow-up of the mandate*, third submission to the UN Special Representative on Business and Human Rights, October 2010.

Available at: [www.cidse.org/Area\\_of\\_work/BusinessAndHumanRights/?id=52](http://www.cidse.org/Area_of_work/BusinessAndHumanRights/?id=52).

“States should take action to ensure business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their global operations, including those conducted by their subsidiaries and other related legal entities.”

Part of states’ duty to protect human rights against corporate abuse would include introducing a requirement for enterprises to conduct human rights due diligence. This would ensure that laggard companies have to take note of all the relevant ideas on due diligence developed under the pillar of the corporate responsibility to respect, rather than choosing to opt out of or simply ignore these threshold standards.

Given that the framework and the Guiding Principles will be a point of reference for hundreds of different actors with very different agendas in the years ahead, we believe that it is important to make the language of the final text clearer. For instance, the frequent use of undefined terms such as “where appropriate” and “stakeholders” means that there is a risk that the principles in their current form could be used by unscrupulous operators and officials to defend the status quo rather than drive improvements. It is important that the final text eliminates potential loopholes. Likewise, you have recognised that the issue of business and human rights is profoundly different to other aspects of company risk because it concerns rights holders, therefore we recommend removing language referring to companies’ “human rights performance” and replacing this with “impacts on human rights.”

The key challenge for the international debate on business and human rights and for the local organisations with whom we work is how to address situations where businesses harm communities but states are unable or unwilling to take action to protect their citizens from corporate abuses. It is important to emphasise that this situation is by no means limited only to conflict-affected areas. Furthermore human rights violations in the context of business operations often occur in situations of low intensity conflict, hidden from public attention and interest. Our Philippine partners have stressed the importance of also addressing low intensity conflict situations. CIDSE’s submissions to the SRSG have consistently emphasised the complementary roles which home and host states can take to increase oversight, resources and available information. We believe that this is a pragmatic approach which can deliver real changes in a relatively short time-frame. Therefore it is disappointing that the current draft of the Guiding Principles steps back from recommending even home country reporting requirements for enterprises on their human rights impacts, one example of a very practical measure which could be helpful in all kinds of country contexts.

Business arguments about red tape should not be used to water down appropriate mandatory disclosure which would provide much needed information to affected communities, officials and consumers, as well as ensuring that more companies have at least considered their impacts on human rights. We strongly support the statement in the draft commentary that “some small and medium-sized enterprises can have significant impacts, which will require corresponding measures regardless of their size.” Since impact on human rights rather than the size of the business is the central issue, there are clearly ways to design reporting requirements so they are not an unnecessary burden, whilst still providing much needed information on a more comparable, systematic basis.

As part of the corporate responsibility to respect human rights, it is important that guidance to companies on corporate due diligence includes specific reference to vulnerable groups, including women, children, migrant workers, indigenous peoples and human rights defenders. The current draft mentions these groups but would benefit by adding further explicit links to the work and recommendations of other UN Special Procedures, the ILO and the UN Permanent Forum on Indigenous Issues. This is an urgent priority, in light of the high proportion of civil society groups from the South who raised their concerns about the human rights impacts of mining and extractives projects during the course of the mandate.

We would like to see a more explicit and positive recognition of trade unions in the Guiding Principles. We welcome the statement in the commentary that “Operational-level grievance mechanisms should not be used to undermine the role of legitimate trade unions” (p.25) but it is important for the text to go further and explicitly recognise the positive role that independent trade unions can play through mature systems of industrial relations and for example international framework agreements. This includes but certainly goes way beyond mechanisms for dealing with grievances before they escalate. Specific references to this important positive role in the Guiding Principles will help to ensure that more companies respect core rights to freedom of association and collective bargaining and more workers are able to enjoy those rights without reprisal.

The priority for all the local organisations that we have spoken with regarding business impacts on human rights is to stop abuses occurring in the first place. We strongly agree with the intention that the framework supports preventative and remedial measures. By making the changes to the draft Guiding Principles highlighted above, we believe that the preventative aspect would be greatly strengthened in practical ways. We also suggest that it would be helpful to include within the commentary on the third pillar of the framework a reference to the concept of reversing the burden of proof in specific instances, which has been elaborated by our colleagues in the Philippines. Such an approach is entirely feasible, as evidenced by the European Union’s

Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation, which entered into force in June 2007. Also, in April 2010, the Philippines Supreme Court promulgated new Rules of Procedure for all cases of violation of environmental laws. The new court rules include a provision recognizing the precautionary principle and this shifts the burden of evidence of harm away from those likely to suffer harm, i.e. communities in most cases. It places onto companies against which complaints have been made the burden of proving that they did not cause such harm. The Guiding Principles can build on those existing examples and reference the value of using this concept in the human rights context.

As ever we remain very happy to discuss these ideas further with you and your team. Our aim in participating in the consultation is ensuring that the final Guiding Principles prove an effective and relevant tool for change in order to prevent abuses of human rights by businesses and ensure meaningful redress to communities and individuals when instances of corporate abuses do occur.

Yours sincerely



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CIDSE is an international alliance of Catholic development agencies. Its members share a common strategy in their efforts to eradicate poverty and establish global justice. CIDSE's advocacy work covers Global Governance; Resources for Development; Climate Justice; Food, Agriculture and Sustainable Trade; Business and Human Rights.

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