

States' obligations to respect and protect human rights abroad Joint Statement on John Ruggie's Draft Guiding Principles

The „Draft Guiding Principles for the Implementation of the UN `protect, respect and remedy framework`” developed by the UN Special Representative of the Secretary-General on business and human rights (henceforth: the draft) in their introductory part emphasise: “Nothing in these Guiding Principles limits or undermines any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.”

The following observations show, on the contrary, that the draft understates the obligations of states under international human rights law. The observations refer to two Principles of human rights law which are affected by the deliberations of the draft:

1. States carry a legal duty under international human rights law to respect human rights abroad.

The draft is silent on existing legal obligations to human rights when a state is operating outside its borders. With regard to state-owned companies, all that is mentioned¹ is that there are “sound policy rationales” for the state to ensure that this company respects the enjoyment of human rights abroad. A legal duty is not mentioned. Acts of such a company, however, are attributable to the state, which in turn is under a legal obligation to respect human rights abroad.²

The position taken in the draft also contradicts the clear and consistent view of the UN Committee on Economic, Social and Cultural Rights (CESCR) that states must respect human rights abroad.³

2. States are required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. The only constraint on such regulation is that it may not infringe on the rights of other states to protect and fulfil human rights in their territories.

The draft claims⁴: “At present, States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction.”⁵ This is not correct in the current context: The realisation of human rights (as the *raison d'être* of all human rights law) requires that states take preventative, protective and punitive measures against corporate abuses whenever they have the legal or political means to do so in accordance with the Charter of the United Nations and applicable international law. Moreover such a duty to protect requires States to take steps individually and also through international cooperation and assistance⁶. The regulation of domiciled

¹ Para 8, similarly in the commentary to principle 2,

² cf. ILC Article 8 on State Responsibility; Any alternative view would give rise to absurd consequences. If a government wants to violate human rights abroad, it could just form its own corporation to do it with impunity.

³ GC 12,para.36; GC 14,para.39; GC 15,para.31; GC 19,para.53. Principle 6 of the draft formulates only that states “should” take steps to require human rights compliance by state-owned companies, whereas the CESCR formulates a clear requirement for states to respect. Similarly in principle 8.

⁴ Para. 7, similarly in the commentary to principle 2.

⁵ Para. 7, similarly in the commentary to principle 2.

⁶ UN Charter arts 1.3, 56

businesses is a minimum requirement of international cooperation for addressing abuses by such businesses.

Under human rights law states have the obligation to protect individuals from human rights abuses. The Committee on Economic, Social and Cultural Rights has emphasised that this duty does not carry a restriction on territory or jurisdiction. If jurisdictional aspects are to be considered this has to be done with a view to the object and purpose of human rights treaties – the protection and promotion of human rights. This means that extraterritorial human rights jurisdiction is only limited by the rights of other states under the purpose of the Covenant – i.e.: States acting extraterritorially to protect human rights must not interfere with the implementation of human rights obligations of the victims’ state. This, however, is well-understood and does not merit the sweeping statements of the draft.

In its General Comment (GC) 14, the Committee on Economic, Social and Cultural Rights (CESCR) stresses such an obligation: “States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.”⁷ The CESCR in GC 15 (and similarly in GC12 and GC19) says that states should “take steps to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries.”⁸

The draft however, in principle 2, says that states should “encourage domiciled business” to respect human rights abroad. According to the draft the step to be taken is to encourage business to respect – rather than to prevent business from abusing. This would significantly undermine the standards already set out by the CESCR.

Conclusion:

The draft claims that there is a “global movement of sorts in support of a successful mandate”.⁹ The mandate's success will be measured by how effectively it can contribute to the protection of human rights and it cannot be effective if it undermines basic legal features of international human rights law, and the authoritative interpretations of treaty bodies.

The following organisations and individual experts support this statement:

Amnesty International (International Secretariat, London)
Brot für die Welt (Stuttgart)
Center for Economic and Social Rights (Madrid)
Centre on Housing Rights & Evictions (Geneva),
CELS - Centro de Estudios Legales y Sociales (Buenos Aires),
Community Law Centre (University of the Western Cape)
ECCHR - European Center for Constitutional and Human Rights (Berlin),
ESCR-net (New York City),
FIAN International (Heidelberg),
FIDH – International Federation for Human Rights (Paris)
Friends of the Earth International (Amsterdam)
Green Advocates (Monrovia)
Greenpeace International (Amsterdam)

⁷ Para.34

⁸ GC 15, para. 33. See also GC 12, para. 36 and GC 19, para. 54.

⁹ Para.15

HIC-HLRN - Habitat International Coalition – Housing and Land Rights Network
(Cairo/New Delhi)

IHES - Initiative for Health & Equity in Society (New Delhi)

International Peoples Health Council (South Asia)

People's Health Movement (Cape Town, Cairo, Delhi)

SALIGAN – Alternative Legal Assistance Centre (The Philippines)

SERAC - Social and Economic Rights Action Center (Lagos)

Transnational Institute (Amsterdam)

Wenche Barth Eide (Associate Professor, Department of Nutrition, University of Oslo),
Professor Dr. Anne C. Bellows (Universität Hohenheim, Institute for Social Sciences in
Agriculture, Stuttgart)

Koldo Casla Salazar (Rights in Context, Denver)

Siri Damman (Rain Forest Foundation, Oslo)

Asbjørn Eide (Professor Emeritus, Norwegian Centre for Human Rights, University of Oslo)

Professor Koen de Feyter (University of Antwerp)

Professor Mark Gibney (University of North Carolina, Asheville)

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Social and Cultural Rights, Geneva Academy of International Humanitarian Law and Human
Rights)

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Professor Harriet Kuhnlein (McGill University, Montreal)

Clement Mavungu (University of Johannesburg)

Khulekani Moyo (University of Stellenbosch)

Claudio Schuftan (Peoples Health Movement Vietnam, Hanoi)

Dr. Mira Shiva (Diverse Women for Diversity - Foundation for Research in Science
Technology & Ecology, New Delhi)

Professor Sigrun Skogly (Lancaster University)

Satya Utama (French Red Cross, Program Manager Indonesia, Jakarta)

Professor Wouter Vandenhole (University of Antwerp)

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