

Companies' obligations to respect human rights abroad

Joint Statement

Business enterprises carry a legal respect-obligation under international human rights law.

Comment on John Ruggie's „Draft Guiding Principles for the Implementation of the UN protect, respect and remedy framework”

The draft fails to mention that business enterprises carry a legal respect-obligation under international human rights law.¹ The legal quality of this respect-obligation is an immediate consequence of the states' duties to protect which is a legal duty under international human rights law. This duty requires states to protect persons against measures of business enterprises which fail to respect the persons' enjoyment of human rights. If the respect-obligation under international human rights law was not legal, but only moral, the legal duty to protect could not be implemented. Insisting on such legal duties of businesses in international human rights law does not elevate businesses to become subjects of international law, of course. The language for such breaches should therefore be “abuse” rather than violation (as in the case of states breaching their obligations). Ignoring the legal quality of the respect-obligation of business in international human rights law and making it a responsibility in the sense of a mere “expectation of society” (as in para.11)² tends to undermine the states obligation to protect.

The following organizations and individual experts support this statement:

Brot für die Welt (Stuttgart)

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)

FIAN International (Heidelberg)

FIDH – International Federation for Human Rights (Paris)

Friends of the Earth International (Amsterdam)

Green Advocates (Monrovia)

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

¹ Principle 12 formulates “Business enterprises should respect human rights ...” The comment sees this merely as a standard of “expected conduct”. This approach undermines the legal obligation to respect and has absurd consequences: Whereas a person whose human rights are not respected by a state may take legal action in international human rights law, the same person suffering the same abuse would not have such legal remedies, if the abuse was committed by a business enterprise. In the commentary to principle 12 the draft makes the point that human rights instruments “do not impose direct legal obligations on business enterprises” and that “legal liability ... remains defined largely by national law provisions in relevant jurisdictions”. This overlooks that these instruments include the states' legal duty to protect as a duty under international law which presupposes legal obligations of other actors to respect. Persecuting other actors' breaches is not an option for states - but a duty. Therefore the illegality of such breaches is a necessity. This is also obvious from principle 23 which formulates that victims have to find effective remedy through “appropriate means” including judicial means. Judicial means, however, are not available if the legal nature of business enterprises' obligation to respect is not acknowledged.

² In principle 5 business' respect for human rights is a mere „expectation“ of states and becomes a requirement only “where appropriate”. States with such attitudes fail to implement their legal obligation to protect.

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International Peoples Health Council (South Asia)
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