



Mandate of the Working Group on the issue of human rights and  
transnational corporations and other business enterprises

## **Voluntary Principles on Security and Human Rights annual plenary Montreux, Switzerland**

**Keynote remarks  
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**Alexandra Guáqueta  
Chair of the UN Working Group on Business and Human Rights**

*Check against delivery*

Excelencies, Ladies and Gentlemen,

I would like to thank the Government of Switzerland and the organizers of this annual plenary session for their kind invitation. Despite not being able to join you during your panel session on security at the UN annual Forum on Business and Human Rights in December - I need a clone of myself to cover this huge event - I know that it was one of the most useful sessions at the Forum. This is because it identified concrete practices on the ground and the challenges that the multi-stakeholder initiative “the Voluntary Principles on Security and Human Rights” faces.

My very first exposure to business and human rights began with the Voluntary Principles more than a decade ago. At that time, the code had recently been negotiated by bold and innovative representatives of Governments, business and NGOs. My job at an oil company was to take the eight-page text and translate it into action on the ground in one of the most difficult locations of Colombia – a country with an ongoing armed conflict. Back then, the Implementation Guidance Tool did not exist; there was hardly any accumulated and tested knowledge to share among peers; there were no methodologies on key performance indicators; no agreed criteria on how to work out accountability among the three pillars (i.e. Governments, business and civil society); and the topic was still taboo. I had to create the company’s own training modules and risk assessment templates and, very often, lecture local military commanders on our commitment to report human rights incidents to their superiors

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in Bogotá. What I quickly understood was that the company had the ability to exercise leverage and to set the tone on human rights. Sure, it could not control or impart orders to public security agents, but its words, its public narrative and its gestures mattered. This is why I, personally, have always believed in the value of the Voluntary Principles on the ground. The impact on the ground of those companies who have been consistently committed to the Voluntary Principles has been positive – and I would request that we see more concrete information to demonstrate this.

Now, times are changing and the Voluntary Principles, once a pioneering initiative, should continue its journey. As a community of practitioners, you have come a long way by setting up individual company policies and protocols. At the plenary level, the Voluntary Principles have developed some governance rules and structures - such as entry criteria, some general reporting requirements, divisions of labour among working groups etc. - and you have the clear aspiration to expand the membership of the initiative by reaching out to other States, businesses and NGOs.

I also believe that you have a unique opportunity to start documenting good practice on specific issues. For example, regarding the protection of human rights defenders; managing protests so they don't become violent; deciding when the use of force and your security arrangement actually make sense given the risks you face, whether theft or actual attacks against assets or personnel; understanding and managing women's issues in communities with high numbers of male workers and security personnel; making sure neighbouring communities and workers are also protected by public security forces; ensuring the promotion of democratic oversight structures across police and military forces; dealing with community clashes related to illegal mining; respecting privacy during investigations; vetting; screening and others.

It is important to fully align the Voluntary Principles with the UN Guiding Principles on Human Rights, which are the global authoritative reference on how to manage and address

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business-related adverse impacts on human rights. Let me refer to that now as I share with you what I see are the main future trends on business and human rights:

### **On the State Duty to Protect**

Some stakeholders fear that the absence of an explicit chapter on the obligations of States with regards to human rights in the Voluntary Principles is a missed opportunity, and that it might imply that States have no responsibilities with regards to private and public security. Do not fret. States are not off the hook. The Guiding Principles do not create new duties for States. But they do remind States of the ones they already have through their existing international legal human rights obligations. Most States (not all, but most) have signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition, they have signed the ILO's Core Conventions that address fundamental principles and rights at work and other international treaties on the rights of children, indigenous populations, ethnic minorities - to mention a few. Independently on whether the Voluntary Principles say so explicitly, States are already obligated to address the conduct of public and private security. Furthermore, States are obliged, under the Guiding Principles, to close any legal or policy gaps that might lead to human rights violations and/or abuses by security forces protecting economic projects.

Still, the value of the Voluntary Principles is spelling out concrete steps to implement in the context of the security arrangements of extractive operations, and in that vein perhaps the Voluntary Principles could enumerate the actions that both home and host cooperating Governments can take, such as: training that makes soldiers and police aware of their duties to protect communities that live near extractive operations not just the assets and personnel of companies (i.e. reinforcing basic notions of *public* security); measures regarding the report and investigation of incidents by States; setting up of periodic inspection tours to local battalions and units; setting up specific protocols to manage social protest; developing strategies to manage situations where human rights defenders are threatened in the context of extractive operations; criteria to conduct appropriate community engagement in situations of social or violent conflict. These are just a few concrete examples you could look at.

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## **On Leverage**

To me, one of the most powerful parts of the Guiding Principles concerns the expectation that companies must use their leverage when they have caused or contributed to adverse impacts or when their own operations have been linked to human rights abuses. For example, the commentary to Guiding Principle 19 says: “Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.”

The Voluntary Principles also set out this expectation. To some, this is as a “human rights promotion and protection” function. In the Guiding Principles it is a course of action that falls under the “corporate responsibility to respect human rights” pillar. In other words, we don’t need to give companies the role to protect to human rights in order for them to achieve their proactive approach on prevention, remedy and justice when third parties (be it a private security provider or public security forces) have committed an abuse. The Guiding Principles clearly differentiate the roles of States and business for a reason. Calling on business to protect human rights could mean many things we actually do not want, such as allowing extractive firms to create their own armies with a capability to launch military offensives.

## **On Remedy**

Let me now talk about remedy. You all know that the Guiding Principles elaborate on the effectiveness criteria for non-judicial remedy. That is, for the grievance mechanisms that businesses have on the ground in each operation, at the head quarter level, and as part of their membership in industry self-regulation programs or multi-stakeholder initiatives. The Guiding Principles also emphasize that judicial remedy lies at the core of ensuring access to effective remedy, especially when it pertains to acts that are codified as crimes in domestic law and by the obligations derived from international treaty commitments. The Voluntary Principles have a clear opportunity to align with the Guiding Principles in this area, not only

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by publicly acknowledging victims' right to remedy, but by incorporating performance indicators for grievance mechanisms aligned with the Guiding Principles. Performance indicators should also include cooperation with independent judicial systems if it concerns an incident involving criminal behaviour by either private or public security.

The road ahead in the area of access to remedy will see dynamic and lively discussions on what constitutes effective and appropriate remedy. It is important to mention this because the Voluntary Principles do not exist in a vacuum. Whether or not your internal governance structures as a multi-stakeholder initiative are up to speed on current trends and expectations, there is a broader business and human rights agenda and ongoing global policy debate on remedy. Many actors from all stakeholder groups have recognized that important barriers to effective remedy exist. These barriers range from the lack of clear criteria to determine corporate negligence or complicity in human rights violations/abuses, to barriers of access to remedy in home States with victims unable to take cases involving subsidiary firms that are involved in abuses elsewhere. Furthermore, access to effective remedy for victims should go beyond businesses simply paying fines. As the commentary to Guiding Principles 25 states: “remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.”

Many Governments, some of which are members of the Voluntary Principles, have expressed their wish to focus on and address technical aspects of access to remedy in the context of the Guiding Principles. The UN Working Group on Business and Human Rights has received a clear message from Governments and civil society on the need to focus this year's annual Forum on Business and Human Rights – to be held from 1 to 3 December – on both judicial and non-judicial remedy. While the Forum will not look at this issue exclusively, it will certainly take a deep dive on several remedy questions.

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My message here is that the Voluntary Principles should join the conversation. You have accumulated important knowledge and developed good practices that can surely inform the broader global debate on effective remedy.

The Working Group is prioritizing the development of State national action plans in the implementation of the Guiding Principles and these plans must include a concrete focus on strengthening access to effective remedy. Among other things, the Working Group will call on States to improve on how they investigate and punish those involved in serious human rights violations and abuses.

### **On Verification and Reporting**

Finally, I would like to mention “reporting”. I understand that you have been working on various performance and verification systems, either individually or in groups within the Voluntary Principles. This is a correct path to take. The rest of the business and human rights field is certainly moving in that direction. It will be of utmost importance to the Voluntary Principles and to each individual company and State to be able to demonstrate that it has identified potential and actual adverse impacts on human rights and that it has actively participated in effective remedy processes. Businesses must also show that they have exercised as much as leverage as possible to prevent and mitigate adverse human rights impacts. Doing all this in the area of security has obvious challenges, and on certain occasions it will be necessary to keep information confidential in order to protect people. But stakeholders who hold companies accountable for their conduct (such as shareholders, peers, unions, and UN mechanisms including the Universal Periodic Review system and the treaty bodies), will need to be able to ascertain whether companies and States have taken steps to address problems and improve their behaviour. Detailed descriptions of management systems and policies provide some useful information, but very often they leave out meaningful information of the challenges faced and the steps taken to address gaps in human rights protection and remediation for violations and abuses.



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We, in the business and human rights community, still have a lot to learn on reporting. But we are moving in the direction of increased information being made available for victims, communities and the public in general. A number of reporting frameworks are currently being developed outside the Voluntary Principles to promote information sharing in a way that takes into consideration the legal concerns of companies.

To end my remarks, I would like to commend those that have been genuinely committed to implementing the Voluntary Principles on Security and Human Rights on the ground and to strengthening its governance as a multi-stakeholder initiative. You are in a good position to scale up action by inviting in new members. It is the Working Group's hope that membership will be expanded and we will help spread the word. Furthermore, you can count on our support to further to align the Voluntary Principles with the UN Guiding Principles on Business and Human Rights.

Thank you,

Alexandra Guáqueta