

# TIME TO ACT FOR FOSTERING BUSINESS RESPECT FOR HUMAN RIGHTS

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## **Abstract**

*In this article I would like to present the recent aspects and issues relating to the emerging field of Business and Human Rights, beginning with a summarized presentation of the emergence and evolution of this field, its relevant institutions and actors, its concepts and basic regulations, its receptions and currently identified challenges and risks.*

*It will be discussed how an internationally accepted framework for preventing and addressing impacts of the business activity on the human rights of individuals emerged, what its general principles are, what purpose it pursues, what “protect, respect and remedy” means in the context of Business and Human Rights, how the annually held United Nations Forum on Business and Human Rights serves the efforts to move the United Nations Guiding Principles on Business and Human Rights from paper to practice, and what were the most recently discussed issues and challenges to foster business respect for human rights, both for the world governments, and the corporate world.*

**Key Words:** *Business, Human Rights, Guiding Principles, framework.*

**JEL Classification:** [K2, K38]

## **1. Introduction**

On 10 December 1948, the United Nations General Assembly proclaimed the *Universal Declaration of Human Rights* “as a common ideal” to which peoples and nations, all structures of society and all individuals must aspire. Moving towards this ideal implies both the development of respect for the rights and freedoms that the fundamental document enshrines, through education and learning, and progressive measures on national and international level to ensure their universal and effective recognition and application. In other words, a common, lasting, ever-renewing effort of States, of all institutions and individuals (Moroianu Zlătescu, 2007, p. 198).

As the movement for the protection of human rights intensified, it reached the activities of the large corporations which quite often disregard the human rights. In this context, the responsibilities of the states are considered to no longer be limited to positive or negative obligations in their relations with the citizens, but they have to include efforts for protecting human rights in relationships between private individuals (Fodor, 2019, p. 1).

Even while important legal developments are evolving in some jurisdictions, and the number of countries developing national action plans on business and

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human rights continues to grow, governments are currently found to not be doing enough to meet their duty to protect against business-related human rights abuse. Moreover, the effectiveness of current efforts and the lack of wider action are being called into question and the now civil society organizations, affected stakeholders and business alike have called on states to step up their action and leadership, through strengthened regulation, improved policy coherence, and through leading by example in the various roles states have as economic actors, to foster business respect for human rights.

## **2. The emergence of an accepted framework for Business and Human Rights**

The first international standard for preventing and addressing the potentially adverse impacts that the business activity may have on the human rights of individuals was provided by the *United Nations Guiding Principles on Business and Human Rights* (UNGP), developed by John Ruggie, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), after which the Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011<sup>1</sup>.

The responsibilities of business enterprises in relation to human rights began to be prominently debated in the 1990s, as transnational oil, gas and mining companies were expanding into increasingly difficult areas, and as the production of clothing and footwear in poor countries drew attention to the poor working conditions in global supply chains<sup>2</sup>. As the Sub-commission of the UN Commission on Human Rights produced in 2004 a set of “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights”, which essentially sought to impose on companies, as binding obligations under international human rights law, the same range of duties that states have accepted for themselves, with the only distinctions being that states would have “primary” duties and companies would have “secondary” duties, and that the duties of companies would take effect within their “spheres of influence”, Business reacted vehemently by opposing the Draft Norms, while some human rights advocacy groups strongly supported the Draft Norms. The Commission on Human Rights declined to adopt the document, but requested the UN Secretary-General to appoint a Special Representative with the goal of moving beyond the stalemate and clarifying the roles and responsibilities of states, companies and other social actors in the business and human rights sphere. Consequently, UN Secretary-General Kofi Annan appointed, in 2005, Harvard Professor John Ruggie to the post,

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<sup>1</sup> United Nations (2011). *Guiding Principles on Business and Human Rights*. New York and Geneva: HR/PUB/11/04.

<sup>2</sup> United Nations (September 2010). *The UN "Protect, Respect and Remedy" Framework for Business and Human Rights*, p. 1.

while Secretary-General Ban Ki-Moon continued the assignment. The Commission on Human Rights was reorganized in 2006, as the UN Human Rights Council, to which the Special Representative reports annually. He also reports to the UN General Assembly.

Today, the *United Nations Guiding Principles on Business and Human Rights* continue to provide the internationally accepted framework for enhancing standards and practice regarding business and human rights. Beyond the Human Rights Council, the Framework has been endorsed or employed by individual Governments, business enterprises and associations, civil society and workers' organizations, national human rights institutions, and investors, and has been drawn upon by such multilateral institutions as the International Organization for Standardization and the Organization for Economic Cooperation and Development in developing their own initiatives in the business and human rights domain. Other United Nations special procedures have invoked it extensively<sup>3</sup>.

### 3. General principles of the UNGP

The *United Nations Guiding Principles on Business and Human Rights* are defined as:

- universal – they apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure;
- indivisible – they should be understood as a coherent whole;
- effort guiding – they should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization;
- not legally binding – “Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights”;
- flexible – they should be implemented with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

These general principles governing the UNGP are reflected in 31 individual principles for implementing the United Nations “Protect, Respect and Remedy” Framework on the issue of human rights and transnational corporations and other business enterprises, grouped together into 3 chapters – The State duty to Protect Human Rights (contains 10 individual principles); The Corporate Responsibility to Respect Human Rights (contains 14 individual principles); Access to Remedy

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<sup>3</sup> United Nations Human Rights Council (21 March 2011). Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie.

(contains 7 individual principles) – with 2 sections each: Foundational Principles, respectively Operational Principles<sup>4</sup>.

#### **4. The three pillars of the United Nations “Protect, Respect and Remedy” Framework**

The Framework provided by the *United Nations Guiding Principles on Business and Human Rights* rests on three pillars.

The first pillar consists of the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication.

The second pillar is the corporate responsibility to respect human rights, which is explained by requesting that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.

The third pillar is represented by the access, provided to victims of human rights infringements, to effective remedy, both judicial and non-judicial.

Furthermore, each pillar is described as an essential component in an inter-related and dynamic system of preventative and remedial measures: while the State has the duty to *protect* because it lies at the very core of the international human rights regime, business has the corporate responsibility to *respect* because it is the basic expectation society has of business in relation to human rights, and access to *remedy* has to be provided because even the most concerted efforts cannot prevent all abuse<sup>5</sup>.

This approach to address the impact of business activity on individuals’ human rights came to be known as the “Protect, Respect and Remedy” Framework.

#### **5. UN annual Forums on Business and Human Rights**

The annually held United Nations Forum on Business and Human Rights is self-defined as a global platform on reviewing and discussing efforts to move the *United Nations Guiding Principles on Business and Human Rights* from paper to practice, by providing a unique space for dialogue between governments, business, civil society, affected groups and international organizations on trends, challenges and good practices in preventing and addressing business-related human rights impacts<sup>6</sup>. The Forum is guided and chaired by the UN Working Group on Business and Human Rights and organized by its Secretariat at the Office of the UN High Commissioner for Human Rights (OHCHR).

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<sup>4</sup> United Nations (2011). *Guiding Principles on Business and Human Rights*. New York and Geneva: HR/PUB/11/04.

<sup>5</sup> United Nations Human Rights Council (21 March 2011). Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie.

<sup>6</sup> United Nations, Office of the High Commissioner on Human Rights (2019). *United Nations Forum on Business and Human Rights*, Geneva, 25-27 November 2019; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx> (accessed: 10 October 2020).

The UN Forum on Business on Human Rights was established by the UN Human Rights Council in 2011, by the same resolution 17/4 which recognized de UNGP. According to the resolution, the Forum on Business and Human Rights was established under the guidance of a Working Group on the issue of human rights and transnational corporations and other business enterprises, also established by the same resolution, with the purpose of the Forum being “to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices”<sup>7</sup>. The Forum was to be open to “the participation of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant bodies, transnational corporations and other business enterprises, business associations, labour unions, academics and experts in the field of business and human rights, representatives of indigenous peoples and non-governmental organizations”<sup>8</sup>, was to meet annually<sup>9</sup>, and had to provide for “the participation of relevant stakeholders from all regions in its meetings, giving particular attention to ensuring participation of affected individuals and communities”<sup>10</sup>.

The first annual United Nations Forum on Business and Human Rights was held on 3-5 December 2012 in Geneva, Switzerland, being chaired by John Ruggie, former Special-Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The 1000 registered participants from more than 80 countries focused on discussing trends and challenges in relation to implementation of the *United Nations Guiding Principles for Business and Human Rights*, for implementation of the United Nations "Protect, Respect and Remedy" framework<sup>11</sup>.

The second annual Forum was held in December 2013 in Geneva and it attracted around 1500 people from more than 100 countries. Participants were people who have been adversely affected by business, many of them from indigenous communities, and business representatives from major multinational corporations, as well as representatives of governments, national human rights institutions, international and regional organizations, civil society and other stakeholders<sup>12</sup>.

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<sup>7</sup> United Nations, Human Rights Council (2011). Resolution 17/4 from 16 June 2011, para. 12.

<sup>8</sup> United Nations, Human Rights Council (2011). Resolution 17/4 from 16 June 2011, para. 13.

<sup>9</sup> United Nations, Human Rights Council (2011). Resolution 17/4 from 16 June 2011, para. 14.

<sup>10</sup> United Nations, Human Rights Council (2011). Resolution 17/4 from 16 June 2011, para. 17.

<sup>11</sup> United Nations, Office of the High Commissioner on Human Rights (2012). First annual United Nations Forum on Business and Human Rights, Geneva, 3-5 December 2012; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2012ForumonBusinessandHumanRights.aspx> (accessed: 10 October 2020).

<sup>12</sup> United Nations, Office of the High Commissioner on Human Rights (2013). 2013 United Nations Forum on Business and Human Rights, Geneva, 2-4 December 2013; available at:

The third annual Forum was themed “Advancing business and human rights globally: alignment, adherence and accountability” and was held on 1-3 December 2014, also in Geneva. It was focused on strengthening multi-stakeholder dialogue and engagement, discussing national action plans to implement the Guiding Principles, exploring access to effective remedy, and identifying current and good practice<sup>13</sup>.

The next annual Forum, held 16-18 November 2015 in Geneva, attracted around 2000 persons from over 100 countries and was focused on strengthening multi-stakeholder dialogue and engagement, discussing effective ways to measure and report on progress to implement the Guiding Principles, discussing national action plans to implement the Guiding Principles, exploring access to effective remedy, and examining current practice of States and business enterprises and “unpacking” what implementation of the Guiding Principles means in concrete areas<sup>14</sup>.

The next year, the annual Forum was held 14-16 November 2016 in Geneva, attracting 2300 participants from government, business, community groups and civil society, law firms, investor organizations, UN bodies, NHRIs, trade unions, academia and the media. It was titled “Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy” and it examined 3 main areas: State leadership and leverage (discussions focused on the need for Governments to step up their efforts to protect human rights and lead by example in their own business-related operations), Business leadership and leverage (sessions unpacked the dual concepts of leadership and leverage across the company value chain and in business relationships with various stakeholders), and the role of financial institutions (participants examined how human rights intersect with capital markets and explored the responsibility of financiers to drive respect)<sup>15</sup>.

The 6<sup>th</sup> UN Forum on Business and Human Rights, held in Geneva on 27-29 November 2017, had as its central theme: “Realizing Access to Effective Remedy”. The Forum addressed the critical issue of access to remedy by examining systemic flaws and shortcomings in existing efforts and reviewing emerging good practices and innovations, with a view to achieving greater coherence and committed action in the service of human rights and rights-holders<sup>16</sup>.

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<https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2013ForumonBusinessandHumanRights.aspx> (accessed: 10 October 2020).

<sup>13</sup> United Nations, Office of the High Commissioner on Human Rights (2014). 2014 United Nations Forum on Business and Human Rights, Geneva, 1-3 December; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2014ForumonBusinessandHumanRights.aspx> (accessed: 10 October 2020).

<sup>14</sup> United Nations, Office of the High Commissioner on Human Rights (2015). 2015 United Nations Forum on Business and Human Rights, Geneva, 16-18 November; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2015ForumBHR.aspx> (accessed: 10 October 2020).

<sup>15</sup> United Nations, Office of the High Commissioner on Human Rights (2016). 2016 United Nations Forum on Business and Human Rights, Geneva, 14-16 November; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2016ForumBHR.aspx> (accessed: 10 October 2020).

<sup>16</sup> United Nations, Office of the High Commissioner on Human Rights (2017). 2017 United Nations Forum on Business and Human Rights, Geneva, 27-29 November; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2017ForumBHR.aspx> (accessed: 10 October 2020)

In 2018, the UN Forum was held on 26-28 November 2018, also in Geneva, registering over 2500 participants from more than 130 countries, and having as its focus the theme: “Business respect for human rights – building on what works”, concentrating on the second pillar of the Guiding Principles: the corporate responsibility to respect human rights, and in particular the requirement that companies exercise human rights due diligence to prevent adverse impacts on people<sup>17</sup>.

The last held UN Forum from last year, which took place on 25-27 November 2019, in Geneva, was themed "Time to act: Governments as catalysts for business respect for human rights" and focused on the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthening accountability; as the Guiding Principles clarify, ensuring access to effective remedy is also a part of the State duty to protect against business-related human rights abuse, and discussions on government action need to address the full spectrum of measures from prevention to remediation<sup>18</sup>.

This year’s annual Forum was scheduled to take place on 16-18 November 2020 in Geneva, but currently the organizer, the UN Working Group on Business and Human Rights, is in the process of exploring and assessing the different options for the 2020 edition of the Forum, because of the ongoing COVID-19 pandemic<sup>19</sup>.

## **6. Actual status of the efforts to move the UNGP from paper to practice**

To fulfil its purpose to encourage business respect for human rights, the *United Nations Guiding Principles on Business and Human Rights* propose that States consider a “smart mix of measures – national and international, mandatory and voluntary”<sup>20</sup>. Numerous countries are discussing, creating or have already adopted action plans, policies or laws to incentivize, pressure or mandate business respect for human rights. However, discussions throughout the 2019 annual Forum on Business and Human Rights highlighted unsatisfactory levels of business performance and disclosure and called into question the effectiveness of efforts and measures taken to date (Fiedler, 2019).

### *6.1 Human Rights Due Diligence*

The *United Nations Guiding Principles on Business and Human Rights* clarify that all business enterprises have an independent responsibility to respect

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<sup>17</sup> United Nations, Office of the High Commissioner on Human Rights (2018). United Nations Forum on Business and Human Rights, Geneva, 26-27 November 2018; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2018ForumBHR.aspx> (accessed: 10 October 2020)

<sup>18</sup> United Nations, Office of the High Commissioner on Human Rights (2019). United Nations Forum on Business and Human Rights, Geneva, 25-27 November 2019; available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx> (accessed: 10 October 2020)

<sup>19</sup> United Nations, Office of the High Commissioner on Human Rights (2020). 9<sup>th</sup> Annual Forum on Business and Human Rights, available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2020ForumBHR.aspx>

<sup>20</sup> United Nations (2011). *Guiding Principles on Business and Human Rights*. New York and Geneva: HR/PUB/11/04, Commentary on Guiding Principle 3.

human rights, and that in order to do so they are required to exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights<sup>21</sup>. According to the UNGP, “In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed”<sup>22</sup>.

Enterprises are expected by the UNGP to identify and assess risks by geographic context, sector and business relationships throughout own activities (both HQ and subsidiaries) and the value chain, considers the UN Working Group on Human Rights. The prevention of adverse impacts on people is considered to be the main purpose of human rights due diligence. It concerns risks to people, not risks to business. It is expected to be ongoing, as the risks to human rights may change over time; and to be informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations. Risks to human rights defenders and other critical voices are required to be considered<sup>23</sup>.

In its 2018 report, the UN Working Group on Business and Human Rights shows that since 2011, corporate human rights due diligence has become a norm of expected conduct, being integrated in other policy frameworks for responsible business, such as the recent OECD Due Diligence Guidance for Responsible Business Conduct that provides concrete guidance for due diligence in practice, that a growing number of investors are starting to ask enterprises how they manage their risks to human rights, and that among business enterprises, a small but growing number of large corporations in different sectors have issued policy statements expressing their commitment to respect human rights in line with the Guiding Principles, several such enterprises having developed practices that involve ongoing learning and innovation around the various components of human rights due diligence to prevent and address impacts across operations and relationships, including in supply chains<sup>24</sup>.

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<sup>21</sup> United Nations, Office of the High Commissioner on Human Rights (2018). Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163), available at: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx> (accessed: 10 October 2020).

<sup>22</sup> United Nations (2011). Guiding Principles on Business and Human Rights. New York and Geneva: HR/PUB/11/04, Guiding Principle 17.

<sup>23</sup> United Nations, Office of the High Commissioner on Human Rights (2018). Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163).

<sup>24</sup> United Nations, Office of the High Commissioner on Human Rights (2018). Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163).

The tone of the debate at the 2019 annual Forum was reported to be shifting towards mandatory human rights disclosure and due diligence by business and this is expected to be reflected in new or renewed discussions on binding legislation at national and international levels. Furthermore, companies were highlighted at the Forum that implement the UNGP effectively by:

- (1) committing to respect human rights,
- (2) carrying out human rights due diligence for their operations and supply chain, and
- (3) ensuring effective access to remedy for affected individuals and communities (Fiedler, 2019).

The most common arguments for businesses advocating for regulation include:

- Ensuring expectations for business conduct are clear and policy measures incentivizing and requiring the required conduct are coherent;
- Creating a more level playing field, disincentivizing laggards from freeriding on leading companies' efforts to respect human rights; and
- Calling for support to businesses willing to meet growing stakeholder expectations on business respect for human rights (Fiedler, 2019).

Regarding currently identified challenges, the Working Group notes gaps in the current practice in corporate disclosure of risk assessments and human rights due diligence processes, as well as the "taking action" and "tracking of responses" components of human rights due diligence. Beyond a small group of "early adopters" – mostly large corporations based mainly, but not exclusively, in some Western markets – the Working Group reports that there is a general lack of knowledge and understanding of the corporate responsibility to respect human rights.

Besides these challenges and gaps in business practice, the Working Group reports that a lack of government leadership in addressing governance gaps remains the biggest challenge. A fundamental issue is considered to be that host Governments are not fulfilling their duty to protect human rights, either failing to pass legislation that meets international human rights and labour standards, passing legislation that is inconsistent, or failing to enforce legislation that would protect workers and affected communities. While some home Governments have introduced due diligence or disclosure legislation, such efforts are observed to also remain patchy or uncoordinated. Governments are considered to have not been providing enough guidance on human rights due diligence and support tailored to national business audiences, including small and medium-sized enterprises. A lack of policy coherence in government practice is determined to be part of the overall picture, and Governments are found not to be leading by example in their own roles as economic actors.

Consequently, as the majority of enterprises around the world remain either unaware of their responsibility, or unable or unwilling to implement human rights due diligence as required of them in order to meet their responsibility to respect human rights, the fundamental challenge going forward is to scale up the good

practices that are emerging and address remaining gaps and challenges. That will require concerted efforts by all actors. Evidence of what constitute some of the strongest drivers for changing business practice suggests that governments and investors have a key role to play. For Governments in particular, addressing and closing market and governance failures is an inherent part of their duties<sup>25</sup>.

### *6.2. Impact of Technology on Human Rights*

Concerns are reported to be growing over the risks of human rights violations that arise from the use of technology, as well as over the realization that we are only beginning to understand the negative impacts of technology.

Beyond well-known examples of fake news, harassment and hate speech spreading through social media, an investigation found that apps are being used to trade and traffic human beings. Biased data has been called out as posing real threats to the rights and freedoms of people and exacerbate discrimination, even more so when used by artificial intelligence (AI) to predict human behavior or replace human decision-making.

Several sessions at the 2019 UN Forum addressed the questions begged by these examples:

- Who is responsible for preventing and mitigating these risks of human rights abuses?
- Does technology need stronger regulation from the international community and governments?
- How can the fundamental rights and freedoms of people be protected from tech-driven human rights violations? (Fiedler, 2019).

As the implications of technology on human rights has, as yet, not been fully understood and clarified, it is to be expected that there will be an intensified debate on this topic in the following years.

### *6.3. Governments must step up their action and leadership to act as catalysts for business respect for human rights*

While the importance of an appropriate domestic legal framework in line with international standards and appropriate procedures and practices is undeniable, it is no less true that when it comes to the judiciary, we are faced with a failure to respect human rights. One area in which the role of the legislature, the executive and the courts is limited, par excellence, or even non-existent in the case of the courts, for example, is the lack of good knowledge and awareness of human rights to public authorities, as well as by the general public, subjects of rights and beneficiaries of their protection (Moroianu Zlătescu, 2007, p. 3).

Even where institutions operate optimally, adverse human rights impacts may still result from a company's activities and victims must be able to seek redress.

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<sup>25</sup> United Nations, Office of the High Commissioner on Human Rights (2018). Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163).

Effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect<sup>26</sup>.

Also, there is need for specific legislative strategies, to be adopted not only by the States parties of the treaties, and for optimization of the control mechanisms and procedures; also, there's need for the support of professionals in the police and the administration of justice in general so that such behaviour codes be promoted that cultivate respect for human dignity, equality, and non-discrimination (Moroianu Zlătescu, 2011, p. 72).

A key message from the 2018 UN Forum on Business and Human Rights was that governments must step up their action and leadership. Currently, they are found to not be doing enough to meet their duty to protect against business-related human rights abuse. While important legal developments are evolving in some jurisdictions, and the number of countries developing national action plans on business and human rights continues to grow, the effectiveness of current efforts and the lack of wider action are being called into question. At the Forum, civil society organizations, affected stakeholders and business alike have called on States to step up action, through strengthened regulation, improved policy coherence, and through leading by example in the various roles States have as economic actors<sup>27</sup>.

Starting from this conclusion of the preceding annual UN Forum on Business and Human Rights, the 2019 Forum had at its focus the need for all governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthening accountability. As the Guiding Principles clarify<sup>28</sup>, ensuring access to effective remedy is also a part of the State duty to protect against business-related human rights abuse, and discussions on government action need to address the full spectrum of measures from prevention to remediation. Consequently, the 2019 Forum tried to look closer at what governments need to do to foster business respect for human rights, including by getting their own house in order and by setting clear expectations and creating incentives for responsible business conduct<sup>29</sup>.

## Conclusions

Since the unanimous agreement on the United Nations “Protect, Respect and Remedy” Framework was reached by the resolution of the Human Rights Council, which endorsed the Guiding Principles on 16 June 2011, the new field of Business

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<sup>26</sup> United Nations (September 2010). The UN "Protect, Respect and Remedy" Framework for Business and Human Rights, p. 3.

<sup>27</sup> United Nations, Office of the High Commissioner on Human Rights (2019). Concept Note for the United Nations Forum on Business and Human Rights, Geneva, 25-27 November 2019, available at: <https://www.business-humanrights.org/en/eighth-annual-forum-on-business-and-human-rights-geneva-25-27-nov-2019> (accessed: 10 October 2020).

<sup>28</sup> United Nations (2011). Guiding Principles on Business and Human Rights. New York and Geneva: HR/PUB/11/04, Guiding Principle 25.

<sup>29</sup> United Nations, Office of the High Commissioner on Human Rights (2019). Concept Note for the United Nations Forum on Business and Human Rights, Geneva, 25-27 November 2019.

and Human Rights developed further and its evolution and impact was reflected by the topics discussed and analyzed at the annual UN Forums on Business and Human Rights, held at Geneva.

As the *United Nations Guiding Principles on Business and Human Rights* have enjoyed widespread uptake and support from both the public and private sectors, its effects are considered to be currently limited to only some of the big actors on the international scene and of the corporate world, and there are still gaps and challenges to be overcome to move the *United Nations Guiding Principles on Business and Human Rights* from paper to practice. Both governments and businesses are requested to step up their efforts to protect human rights from business related adverse impacts.

In the following years, there will be undoubtedly new challenges to overcome and new risks to consider to protect the human rights of individuals from business related impacts, as the evolution of technology raises new questions and fears regarding the abuse of social media, artificial intelligence and generally regarding the need of fundamental rights and freedoms of people to be protected from tech-driven human rights violations.

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