

Language to be included in a Template for States' National Action Plans (NAPs) for the Implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs)

Template to be included in States' NAPs:

The UNGPs should guide the approach that [X State's] companies take to respect human rights wherever they operate. The key principles of this approach are to:

- Respect human rights standards and to this end refrain from causing or contributing to violations of human rights that ensue from violations of international conventions; international customary law or general principles of law, including international humanitarian law, wherever the enterprise may operate;
- Respect the general principles of law, including international humanitarian law and human rights law, by ensuring that activities are not conducted on the basis of internationally-unlawful national legislation and institutional practices of another state;
- Recognise and take into account the legal risks of causing, contributing to or benefiting from violations of human rights and international law as well as the legal consequences that they may incur under the national legislation of the State in which the enterprise is domiciled.

1. Reference to international conventions and international customary law or general principles of law, including international humanitarian law, in States' NAPs

While the UNGPs refer mainly to human rights law standards, it is important that this standard is interpreted and applied in line with existing State and international actors' positions – including that of the EU and a number of its Member States – regarding the cause of human rights violations. Violations of international conventions, international customary law or general principles of law, particularly those concerning the legality of inter-state use of force, territorial integrity and sovereignty, and the prohibition of annexation, may cause and result in violations of human rights law. As such, respect for human rights requires a commitment to refrain from causing or contributing to all violations of international law. While the commentary to the UNGPs already requires enterprises to respect standards of IHL, if it is to be effective it is vital that commitments to IHL and other bodies of public international law are explicitly stated in State's NAPs. Violations of IHL may directly lead to breaches of companies' obligation to respect property rights and other civil and political, as well as economic, social and cultural rights.

2. Reference to respect for the general principles of law, including international humanitarian law and human rights law, when faced with contradictory national legislation

While the international duty of non-recognition of internationally wrongful acts is primarily a duty of State actors, it is also applicable in the case of non-state actors that have undertaken commitments to respect human rights and international law in their voluntary codes of conduct or through multi-stakeholder initiatives, such as the United Nations Global Compact and the OECD Guidelines for Multinational Enterprises. It is therefore imperative that in implementing the UNGPs, States' NAPs incorporate the obligation of businesses to respect international law and ensure their non-recognition of any national legislation and institutional practice that contravenes international law; particularly since many businesses undertake to respect 'local law' in the foreign countries where they conduct their activities.

3. Reference to legal consequences within national legislation should enterprises cause or contribute towards violations of international law

By incorporating into national legislation legal consequences arising from the activities of businesses that cause, contribute or benefit from violations of international law, the States in which the corporations are domiciled can provide a form of effective remedy for victims of the activities of such businesses. However, current national practice has not addressed the existing gap in accountability for corporate nationals contributing to violations of international law abroad, effectively allowing them to operate with impunity under national legislation.

At present, while national laws and administrative regulatory frameworks – including public procurement laws, consumer protection laws, stock market listing and investment regulations - could be utilised to hold corporations that cause, contribute to or benefit from violations of international law to account, this is not being realised. Although these instruments are primarily intended to regulate the behaviour of businesses to ensure fair competition and good corporate governance, their application to facts occurring under the jurisdiction of a third country should be vigorously enforced.

By incorporating references to human rights and international law in national legislation, as well as vigorously enforcing legality and lawfulness criteria in the aforementioned existing legislative instruments, the NAPs can ensure that businesses take into account important legal risks when carrying out their due diligence. As such, more than reputational and economic risks will be at stake when corporations become involved in the internationally-unlawful acts of another state or non-state actor.