

# The UN guiding principles on business and human rights and their role for non-profit organisations

Julie Wynn and Tomás Navarro Blakemore ([www.froriep.com](http://www.froriep.com))

In June 2011, the United Nations Human Rights Council adopted unanimously the UN Guiding Principles on Business and Human Rights (the ‘UN Guiding Principles’ or ‘UNGPs’).

The UN Guiding Principles follow the endorsement in 2008 of the ‘Protect, Respect and Remedy Framework’ for business and human rights developed by the then-Special Representative of the UN Secretary General, Professor John Ruggie, following three years of research and worldwide consultations with businesses, civil society, governments and victims of corporate human rights abuses.

A range of international frameworks were updated to bring them into alignment with the UNGPs, including the OECD (Organisation for Economic Co-operation and Development) Guidelines on Multinational Enterprises, the Global Reporting Initiative and ISO (International Organization for Standardization) 26000.

The UNGPs – also known as the ‘Ruggie Principles’ – are a set of guidelines for states and corporations



*Julie Wynn*



*Tomás Navarro Blakemore*



to address human rights issues in the field of business operations.

**The UNGPs – also known as the ‘Ruggie Principles’ – are a set of guidelines for states and corporations to address human rights issues in the field of business operations.**

The UNGPs do not constitute an international instrument that can be ratified by states, nor do they create new legal obligations. Instead, they clarify and elaborate on the implications of relevant provisions of existing international human rights standards, some of which are legally binding on states, and provide guidance on how to put them into operation. The UNGPs refer to and derive from states’ existing obligations under international law. Domestic laws often exist or will be established to ensure that these obligations are effectively implemented and enforced.

The three main pillars of the UN Guiding Principles are:

- Protect: the duty of the state to respect, protect and fulfil human rights;
- Respect: the responsibility of businesses to respect human rights; and
- Remedy: the need for rights and obligations to be matched to appropriate and effective remedies when breached.

In addition to being a reminder that corporations are, in any event, bound to comply with all applicable laws and respect internationally recognised human rights, wherever they operate,<sup>1</sup> the UN Guiding Principles embody a set of standards that go above legal compliance. They are meant to set a baseline responsibility for businesses to respect human rights. Beyond that, the UN Guiding Principles do not, however, call on corporations’ responsibility to also promote human rights – a commitment that they can naturally undertake voluntarily.

In that sense, the UN Guiding Principles recognise that states remain, and will remain, the main responsible player with the duty to ensure respect for, and protection of, human rights. Despite that, corporations and other civil society participants today also have a role and a responsibility to play an active part in the respect of human rights. This is even more true considering that transnational corporations and

business enterprises may be financially, geographically and socially more influential than a particular state. These days, the significant impact they can have on employees, consumers and communities across the world is unquestioned.

This article will focus on how the UN Guiding Principles can shape the role of non-profit organisations in ensuring the respect of human rights within their operations.

**The UN Guiding Principles embody a set of standards that go above legal compliance. They are meant to set a baseline responsibility for businesses to respect human rights. Beyond that, the UN Guiding Principles do not, however, call on corporations’ responsibility to also promote human rights – a commitment that they can naturally undertake voluntarily.**

### **Are non-profit organisations subject to the UNGPs?**

The UN Guiding Principles provide that the ‘responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure’.<sup>2</sup> The term ‘business enterprises’ is not clearly defined and does not specify what type of businesses fall within its scope. It should therefore be understood as applying to any private sector legal entity.

Indeed the UNGPs should not be restricted to the corporate world but must be seen more as a ‘global standard for preventing and addressing the risk of adverse human rights impact linked to business activities’<sup>3</sup> in general. In fact, the UNGPs constitute a tool not only for governments and businesses but also for ‘civil society, investors, lawyers and others who engage with business on these [human rights] issues’.<sup>4</sup>

Even when non-profit organisations, such as charitable foundations and non-governmental organisations (NGOs) pursue their non-profit purpose, they still engage in typical business activities, such as having employees, renting offices, purchasing products for internal operations at their headquarters or setting up investment strategies for the grants and donations they receive and distribute. There are therefore compelling reasons why such non-profit organisations should also, alongside business enterprises, adopt the UNGPs.

Moreover, it is emphasised that when corporations decide to engage their responsibility to respect human rights, this then applies throughout the company's own operations and all of its business relationships which include business partners, entities in its value chain and any other non-state or state entity directly linked to its business operations, products or services.<sup>5</sup> This underlines the fact the UNGPs call for a wide-ranged and serious commitment in respecting human rights throughout all aspects of the business' activities. The same should therefore apply to non-profit organisations and all their associated actions.

### **How non-profit organisations can implement the UNGPs within their operations**

In terms of principles, as stated in the UNGPs, corporations are called to respect human rights, as those expressed in the Universal Declaration of Human Rights of 10 December 1948 and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. In particular, this requires business enterprises to:

- Avoid causing or contributing to adverse human rights impacts, and address them when they occur; and
- Prevent or mitigate adverse human rights impacts that are linked to their operations, products or services by their business relationships.

With regard to their policies, the UNGPs call upon businesses to:

- Issue a statement of policy expressing their commitment to meet their responsibility to respect human rights and which should be publicly available;
- Set up a human rights due diligence in order to address their impacts on human rights; and
- Establish remediation processes for any adverse human rights impacts caused or contributed to by them.

For corporations, a core focus of the UNGPs is the human rights due diligence process. This is reflected in the fact that Principles 18 through 21 elaborate on the components of this process, which is portrayed as a risk-management tool. This serves to demonstrate that the business took every measure possible to avoid involvement with an alleged human rights abuse<sup>6</sup> and in the event it had such involvement, how it has set up an effective tracking

of its responses and a communication strategy of how it was addressed.

Foundations and other non-profit organisations should especially pay close attention to human rights due diligence when collaborating with various stakeholders and working with local service providers on the ground. The implementation of broad enterprise risk-management systems is recommended with specific guidelines for activities held in risk-sensitive regions.

**Foundations and other non-profit organisations should especially pay close attention to human rights due diligence when collaborating with various stakeholders and working with local service providers on the ground.**

Non-profit organisations should also not neglect their impact related to their investment strategies. Indeed every investment decision has both social and environmental impact that can further the non-profit organisation's mission, or detract from it. Investing without regard to social or environmental impact can contribute to the very issues on the investment side that the grant side is working to resolve. Therefore non-profit organisations should focus on socially responsible investments (SRIs) or – even better – on mission-related investments (MRIs), through which there are both a financial return and a social impact return (more specifically, one that advances the particular mission of the non-profit organisation). The UNGPs stress in this respect the need for drawing on human rights expertise, engaging in consultations with stakeholders and integrating impact assessment findings.<sup>7</sup>

Such mission-related investments, which involve environmental, social and corporate governance (ESG) or impact assessment considerations, and are currently increasingly pursued by non-profit organisations, can certainly set the stage for the human rights due diligence process proposed by the UNGPs. Further, non-profit organisations would additionally be called to establish effective tracking of their responses to adverse human rights impacts that had been caused as well as to communicate how such impacts are addressed by the organisation.

Communication about the management of human rights risks is another tool that the non-profit organisations might consider implementing within

their standard annual reports and in line with the trend towards increased transparency. The UNGPs provide an accepted framework for organisations to report on their approach to human rights.<sup>8</sup>

Finally, considering that non-profit organisations have a responsibility to respect human rights not only in their own activities, but also in their business relationships with others, taking into account the human rights perspective in the drafting and signature of contracts and agreements is key. The right contractual terms can create strong incentives for other parties to respect human rights, where the other party has the capacity to do so. Introducing a human rights lens can play such a crucial role, especially with regard to joint venture, mergers and acquisitions or supply chain agreements in which non-profit organisations may be directly or indirectly involved.

Here are some examples of contractual terms which are useful to address potential human rights issues:

- The requirement for the other party to adhere to human rights standards, often by reference to the non-profit organisation's code of conduct;
- The right to audit compliance by the supplier using the non-profit organisation's standards; *or*
- The right to terminate a contract in case of human rights violation by the other party.

## Conclusion

The charitable purposes of a non-profit organisation are to promote a social and/or environmental impact but let us not forget that the impact of an organisation should also be viewed through a holistic approach including all aspects of the operations.

The UNGPs are in this respect an excellent tool for non-profit organisations to reflect upon their approach to human rights issues and how they are tackled across the whole organisation by their internal processes, governance and agreements.

<sup>1</sup> See UN Guiding Principles, Principle 23(a).

<sup>2</sup> UN Guiding Principles, Principle 14.

<sup>3</sup> Statement by Ms. Navi Pillay, the UN High Commissioner for Human Rights, to the Employers' Group at the International Labour Conference, 7 June 2011, p. 5.

<sup>4</sup> OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012, p. 3.

<sup>5</sup> UN Guiding Principles, Principle 13 Commentary.

<sup>6</sup> UN Guiding Principles, Principle 17 Commentary.

<sup>7</sup> See UN Guiding Principles, Principles 18 and 19.

<sup>8</sup> See the research and consultation reports from the Reporting and Assurance Frameworks Initiative, <http://www.shiftproject.org/resources/collaborations/human-rights-reporting-assurance-frameworks-initiative/>.

**Julie Wynne** is a partner of the Swiss law firm Froriep Legal SA. She is a highly regarded charity and social enterprise lawyer.

Julie advises non-profit organisations, B Corps and social enterprises for their set-up and tax issues and assists them with mergers, reorganisations, joint ventures and other forms of collaborative working, as well as constitutional reviews. In addition, she regularly provides advices on grant-making, fundraising, intellectual property, corporate philanthropy and governance.

Julie is a Board member of the European Social Enterprise Law Association, the Swiss Impact Enterprise Association and the STEP Philanthropy Advisors SIG Steering Committee. She is also a member of the Legal Committee of Sustainable Finance Geneva.

**Tomás Navarro Blakemore** is an associate at Swiss law firm FRORIEP in Geneva, where he advises non-profit organisations and social enterprises on structuring, tax advice and governance. He has previously worked for nearly two years in the NGO sector for a non-profit law organisation in Phnom Penh, Cambodia thus knowing the practical issues behind cross-border giving and fundraising for international donors and charities. Tomás' legal practice also focuses on international arbitration and his working languages are French, English and Spanish.