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Oxfam International's Perspective on the Draft Guiding Principles for the Implementation of the United Nations "Protect, Respect and Remedy" Framework

Oxfam International welcomes the Draft Guiding Principles as a significant step towards strengthening corporate accountability for human rights abuses. We recognize and congratulate the wide-ranging consultations and studies undertaken by the UN Special Representative John Ruggie that has contributed to this work.

Oxfam agrees that corporations can infringe upon the full range of human rights and that many States are failing to fulfill their primary role to protect communities and individuals from corporate human rights abuses. Oxfam expects that the United Nations "Protect, Respect and Remedy" Framework and the Principles can play an important role in closing the governance gap that too often allows corporations to operate with impunity and to exploit the powerlessness of poor communities.

However, Oxfam believes that the Principles can be further strengthened and in particular would recommend that they provide a more forceful and clear articulation the duties of States and corporations, and offer more concrete support for affected communities and individuals to vindicate their human rights. States face a variety of political and practical challenges in protecting the rights of communities from the impacts of businesses. It is therefore critical that the Principles re-affirm the mandatory nature of the duties of States to respect and protect human rights. Likewise, the corporate responsibility to avoid infringing on human rights and to redress any human rights violations must be stated in unequivocal terms. The current wording of the Principles is ambiguous in parts and tends to obscure the mandatory nature of State and business obligations.

In addition, Oxfam is concerned that the Principles are almost exclusively focused on the obligations of States and corporations, while neglecting to reaffirm the rights of affected individuals and communities that undergird these obligations and that provide the means for these critical stakeholders to take part in the defense of their own rights. With few exceptions, the Principles fail to reference the procedural rights -- the rights to information, participation, consent and remedy -- that go to the core of human rights protections. State and company obligations should be more explicitly premised on the fulfillment of these rights.

We provide more specific comments on the Principles below.

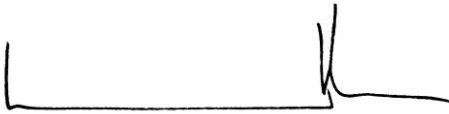
Looking ahead, Oxfam recommends that the Human Rights Council put in place a high level and authoritative process, backed by a representative body of independent experts and sufficient resources to follow up on the Framework and Principles, in particular by:

- 1) Developing concrete and authoritative guidance to implement the Framework and Principles, including by receiving and responding to concrete cases of violations of the State duty to protect and the corporate responsibility to respect;

- 2) Drawing attention to particularly serious human rights violations, including those relating to large scale land acquisitions by corporations and private investors in developing countries, and other deprivations of access to natural resources of rural communities, farmers, landless workers, women and indigenous peoples;
- 3) Promoting legislative, administrative and adjudicative measures to increase the agency of vulnerable groups to prevent and address human rights abuses;
- 4) Integrating the Framework and Principles into relevant multilateral institutions, instruments and processes;
- 5) Facilitating the development of a binding international treaty based on the Framework and Principles.

Oxfam appreciates the efforts of the Special Representative to forge a consensus among communities, civil society, States and businesses through the Framework and Principles. We look forward to the evolution and implementation of this work in partnership and dialogue with others.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Jeremy Hobbs
Executive Director
Oxfam International

Specific Comments from Oxfam International on the Draft Guiding Principles

The State Duty to Protect Human Rights

1. Oxfam strongly agrees with Principle 1 which holds that States must protect against business-related human rights abuse within their territory or jurisdiction. However, in the event of corporate abuses, the Principle should be unambiguous that “*States breach their treaty obligations where they fail to take appropriate steps to prevent, investigate, punish and redress such abuse.*” Moreover, this Principle should underscore that in order to “ensure” human rights, States have an obligation to design, implement and enforce appropriate laws and policies.
2. Oxfam is concerned that the Principles only introduce a mandatory (‘must’) duty to protect under the Principle 1, and would recommend that due consideration be given to each of the other remaining principles to see whether “should” could be replaced with “must”. In a similar vein, Oxfam recommends that use of the qualification - ‘where appropriate’ – should be reduced as it further weakens the State duty to protect. Thus, for example the duty to require company disclosure of its human rights performance under Principle 5 should be unqualified.
3. Principle 2 gets to the heart of the “governance gap” – the failure of “home” states to ensure that companies under their jurisdiction do not commit human rights violations abroad. Principle 2 should underscore growing social expectation and emerging legal consensus that home states address these abuses through effective legislative, administrative and judicial measures as part of their duty to protect. Where a State is involved more directly in these companies, the obligation to prevent abuses should be stricter, and tied to the State’s mandatory duty to respect (not infringe upon) human rights.
4. In Principle 6, where a State owns or controls a company, the State duty to comply with its obligations under international human rights law applies. Any limitation of that duty because the State acts through a company has no basis in international law. Accordingly, Oxfam believes that the State duty to ensure respect for human rights by such companies, as described in Principle 6, should be mandatory.
5. Oxfam agrees with Principle 10 that States have heightened obligations to ensure respect for human rights in conflict-affected areas. Principle 10 should clarify that these obligations are additional to the general duty to protect against human rights abuses extraterritorially as elaborated in Principle 2.

The Corporate Responsibility to Respect Human Rights

1. Oxfam welcomes the affirmation in Principle 12 that the company responsibility to respect extends across its activities and through its relationships with third parties, including its supply chain and government actors.
2. Oxfam recommends that Principle 12 clarify that the listing of “core” human rights instruments is not intended to suggest that companies are not bound to respect rights elaborated in other instruments, including those of the United Nations, the ILO and regional bodies.
3. Oxfam also believes that Principle 12’s unequivocal statement that the core human rights instruments do not impose direct legal obligations on business entities be reconsidered. The direct applicability of international instruments to non-state actors is a very open question, and, with the progressive development of human rights law, is trending towards direct application. Moreover, as underscored by the Universal Declaration of Human Rights, the responsibility of “all individuals and organs of society” to promote respect for

human rights does not derive from legal instruments, but from human dignity. Accordingly, the responsibility of companies to respect human rights should not rest on the narrower question of whether a particular treaty or declaration applies directly.

4. Oxfam believes that Principle 12 should also be revised to clarify that while influence or leverage may not be the sole basis, it is certainly one important factor in attributing responsibility for human rights violations.
5. The elaboration in Principles 15-20 of the corporate responsibility to carry out and act upon due diligence is an important step forward. However, inclusion of qualifying words such as “should” and “where appropriate” unnecessarily weaken the principles and should be reconsidered throughout with an eye to making responsibilities less ambiguous.
6. Principles 13-16, 18-21 should make explicit reference to the rights of affected individual and communities to information, participation, consent and remedies as described in relevant instruments.¹
7. Oxfam recommends that Principle 22 be revised to clarify that human rights are indivisible and companies cannot avoid the full gamut of rights responsibilities by focusing on “priority” obligations.

Access to Remedy

1. Oxfam strongly supports the Principles’ elaboration of State and corporate responsibilities to ensure access to effective remedies to those affected by human rights abuses. However, Oxfam is concerned that the Principles only introduce a mandatory (‘must’) duty under Principle 23, and would recommend that due consideration be given to each of the other remaining principles in this section to see whether “should” could be replaced with “must”.
2. Access to remedy is a core principle of human rights law. Principles 23-29 should make explicit reference to the rights of affected individuals and communities to remedies as described in relevant human rights instruments.
3. Denial of remedies for human rights abuses is suffered disproportionately by certain communities; Principles 24 and 25 should elaborate upon those marginalized communities, including women, and the particular obstacles they face.

¹ These rights have a strong foundation under the “core” human rights instruments, and are bolstered by instruments focused on particular groups including indigenous peoples, women, children, refugees, migrant workers, and minorities.