

Andrea Shemberg

***Principles for Responsible Contracts: Integrating the management of human rights risks into State-investor contract negotiations: Guidance for negotiators***

In June 2011, the Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie submitted the Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators to the Human Rights Council along with his final report. This document is a guide meant for use by negotiators of investor-State investment contracts. It identifies 10 Principles to help States and business investors integrate management of human rights risks into investment project contract negotiations. Each principle in the guide is explained in brief, along with their key implications and a recommended checklist for negotiators.

The guide was achieved through four years of empirical research and inclusive, multi-stakeholder dialogue carried out under the Mandate of the Special Representative.

The guidance offered is the fruit of the collective experiences of those involved in major investment projects from government, commercial enterprises, non-governmental organizations, lending institutions and others about how to work towards successful projects that bring benefits to people and appropriately manage any potential adverse impacts on them.

While the guide has been developed specifically for use by State and business negotiators, it should also be of interest to those who are not directly involved in the negotiation, such as oversight bodies, civil society organizations, individuals and communities where investment projects are implemented, institutional and private lenders and insurers.

The 10 principles that can help guide the integration of human rights risk management into contract negotiations are:

1. Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
2. Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.

3. Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
4. Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
5. "Additional goods or service provision": Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
6. Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
7. Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
8. Project monitoring and compliance: The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
9. Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
10. Transparency/Disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

The full guide on Responsible Contracts, is available at: <http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf>.