

THE FOURTH PILLAR

Centering Communities in Business & Human Rights

Version 2.0

**Fourth Pillar Initiative
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Foundational Principles

Principle 1

- 1. Communities and rightsholders must be central to all existing and future business and human rights frameworks, processes, and practices. This entails states, business enterprises, and other actors recognizing and elevating the agency of communities and rightsholders, addressing power imbalances, and pursuing processes and practices that advance rights protections, all to ensure the full and maximum realization of all human rights.**

Commentary

Centering communities and rightsholders in the business and human rights field includes all actors taking seriously three distinct but interconnected elements: agency, power, and rights realization. “Rightsholders” are individuals who are entitled to enjoy, exercise, and enforce human rights. “Communities” refer to groups of rightsholders that may be either affected or potentially affected – positively or negatively, directly or indirectly – by economic activities. Communities and rightsholders may be distinct from civil society organizations and human rights defenders, and are often shaped and identified by common traits. Community-centric approaches to business and human rights requires careful engagement with the definitions of “rightsholders” and “communities” and consideration of their fluidity, diversity, and dynamism.

Businesses and human rights frameworks, processes, and practices may take place at local, national, regional, and international levels. They may also take place in private governance arenas, including business enterprise operations and community-run processes, or public governance arenas, such as intergovernmental organizations. “Frameworks” include voluntary and mandatory standards and regulatory initiatives of any type. “Processes” and “practices” should be taken to include all formal, informal, ad hoc, and institutionalized measures taken by any actor. These processes and practices may be procedural or substantive (outcome-oriented) in nature. Business and human rights frameworks, processes, and practices should ensure that any actor contribute to the full and maximum realization of human rights.

The term “human rights” should be understood in a broad and holistic sense to cover all human rights, labor rights, environmental rights, and climate rights recognized under national, regional, or international regulatory frameworks. In case of different standards, the higher standard should be adopted or applied in order to achieve maximum realization of human rights. The maximum realization of human rights will require the tripartite duties to respect, protect, and fulfill all human rights to extend to states, business enterprises, and other actors.

Although all principles of the Fourth Pillar are prospective in nature, existing business and human rights frameworks, processes, and practices should be interpreted in the future in light of these principles.

Principle 2

- 2. Understanding fluidity, diversity, and dynamism within communities must be part of engagement frameworks and such diversity should not be exploited by other stakeholders or decision-makers to undermine rights protections.**

The term “community” includes a wide array of rights-affected groups, including workers or identity-based or geographically defined groupings, among others. Community-centric approaches to business and human rights require careful engagement with the definition of “community” and consideration of the diversity and dynamism that exist within given communities.

The definition of “community,” however, is not always straightforward. Communities generally fall into three overlapping categories: ones identified by common traits, ones with shared experiences of business-related human rights impacts, or ones based on self-organization or self-identification. A community is often defined by common traits such as geographical location, history, or social or identity traits, including ethnicity, language, race, gender, social class, socioeconomic status, or religion. A community may also be associated with the harm or impact they experience from business-related activities. Finally, a community may be organized by its own volition through a process of self-identification or self-organization. Importantly, there are communities and rightsholders that have recognized heightened or specialized protections under international law, such as Indigenous communities or vulnerable, marginalized, or under-represented populations.

In addition, communities are fluid and dynamic, not monolithic. Communities may have different levels of formal and informal organization. Some may be quite concentrated while others more diffuse. Communities are diverse and should be treated as such; sub-groups and individuals within communities may have different interests and intersectional identities or belong to multiple communities. Divisions within communities are to be expected, and community-centric approaches will not exploit such differences.

Principle 3

- 3. Communities and rightsholders have the right to exercise their inherent agency with regard to economic activities that affect their rights and lives directly or indirectly.**
 - (a) Communities and rightsholders have a right to engage states and business enterprises, including through meaningful participation and community governance. In doing so, communities and rightsholders have the right to**

advocate for their interests in human rights frameworks, processes, and practices.

- (b) States, business enterprises, and other actors must create and facilitate conditions for communities and rightsholders to exercise their agency and should recognize their knowledge and contributions. This includes providing sufficient resources, eliminating barriers and obstacles that commonly inhibit the exercise of agency, and refraining from discriminatory practices and retaliation against communities and rightsholders.**

Commentary

Communities and rightsholders have inherent agency. They can exercise their agency through meaningful participation and community governance, both of which include having a seat at the table and affecting rights-based outcomes. Meaningful participation requires procedural safeguards for community and rightsholder engagement along with the ability to influence decisions and substantive outcomes. Community governance means that communities and rightsholders are treated as additional governance actors with the ability and authority to shape the design and management of business and human rights frameworks, processes, and practices. All actors must also ensure that communities and rightsholders are able to freely and securely exercise their agency without intimidation and retaliation.

Communities and rightsholders possess perspectives and knowledge that can inform how to effectively address business-related human rights concerns. They have firsthand experience with the practical outcomes and impacts of corporate decision-making and activities. They are uniquely equipped to articulate their specific needs and to prioritize the rights concerns that they most want addressed. They also have the capacity to contribute to solutions that ensure the full realization of their rights.

Exercising agency is closely linked to the principle of non-discrimination, which undergirds the full realization of all human rights. All actors must not discriminate against communities and rightsholders based on their race, class, gender, sexuality, national origin, ethnicity, caste, Indigeneity, migrant status, religion, disability, or other identities. Special attention should be paid to vulnerable or marginalized communities and rightsholders, including those experiencing intersectional discrimination or those with heightened protection under international law, such as Indigenous communities.

All actors, including states, businesses, civil society, and communities, should proactively create and facilitate conditions for communities and rightsholders to exercise their agency. Facilitating conditions for the exercise of agency implicates an array of rights, including the rights to participation, association, access to information, transparency, and freedom from retaliation. All

actors should both address existing barriers and obstacles that prevent the realization of these rights, as well as affirmatively develop conditions that facilitate community and rightsholder agency, such as advising, technical training, cross-cultural awareness, legislative and regulatory reform, non-discrimination, and sufficient resourcing.

Efforts to create and facilitate conditions for communities and rightsholders to exercise agency should be well-resourced and sustained to allow them to meaningfully participate and, if they so choose, be an active part of governance. Oversight of resourcing should be independent from business control so as to avoid conflicts of interest. Resourcing should also avoid creating dependency or co-opting communities into engagement.

Principle 4

- 4. Power imbalances that advantage states or business enterprises over communities or rightsholders undermine the promotion and protection of human rights. Meaningfully centering communities and rightsholders requires combatting power imbalances, including those that emanate from systemic or structural inequities and barriers. All actors, but particularly states and businesses as the primary beneficiaries of existing power imbalances, must work to create conditions to promote a more equitable and level playing field.**

Commentary

Existing power structures and decision-making processes often reflect an inequitable distribution of power across communities and rightsholders, businesses, and states. These power imbalances frequently devalue community expertise and input, negatively affect community and rightsholder agency and engagement with businesses and states, and can inhibit the protection and promotion of the rights of communities and rightsholders. All too often, inequitable power structures and power imbalances advantage states or businesses over communities or rightsholders and can further exacerbate harms, undermine due diligence and preventative efforts, subvert remedial processes, and impede the maximum realization of rights.

All actors, and especially states and business enterprises, must proactively mitigate and deconstruct power imbalances that inhibit the full realization of the rights of communities and rightsholders. Actors should take concrete and active steps to invite communities and rightsholder to the table, ensure the rules of engagement at the table are fair and equitable, and make substantial, ongoing efforts to identify, analyze, and remediate imbalances throughout the given ecosystem.

Principle 5

5. **Economic activities should advance and maximize the realization of the rights of communities and rightsholders. Economic activities should do no harm. Economic activities should lead to meaningful rights-based outcomes for communities and rightsholders.**

Commentary

Economic activity that centers communities and rightsholders should advance and maximize their human rights. All actors, including states, business enterprises, civil society, and communities, should approach economic activity with this objective in mind. States and businesses need to do more than focus on the harms and negative impacts of business activities that implicate responsibilities and obligations to respect. States and businesses should also leverage their significant power over economic activities to advance human rights, which includes taking proactive steps to protect and fulfill rights to meet positive responsibilities and obligations.

Respecting the rights of communities and rightsholders requires that economic activity seeks to do no harm in the first place. Doing no harm requires anticipating and avoiding harms that may violate or undermine the procedural and substantive rights of communities and rightsholders. From the perspective of communities and rightsholders, it is insufficient for states and businesses to solely mitigate harms or provide remedies after the fact. Due diligence that applies a “do no harm” principle should include more than mitigation and remedial measures. Harm from economic activities should not be inevitable, and in certain circumstances where particularly severe rights violations have been identified, certain economic activities should not move forward.

Economic activity can implicate a range of substantive and procedural human rights. A primarily process-oriented approach to rights protection is insufficient. The maximum realization of the rights of communities and rightsholders requires looking beyond the *means* of the procedure employed for rights protection. All actors should also work towards meaningful *ends* that guarantee rights-based outcomes for communities and rightsholders. Rights-based outcomes discernably protect or promote one or more human rights. States and businesses can advance rights-based outcomes by actively sharing benefits of economic activities with communities and rightsholders.

Operational Principles

Principle 6

6. **In order to promote agency, combat power imbalances, and fully realize rights, all actors, but especially states and businesses, must incorporate the following processes and practices in assessing and carrying out their role in a given ecosystem.**

- (a) **Communities and rightsholders must have a seat at the table during critical decision-making moments.**
- (b) **All at the table must be engaged on a level playing field with equitable rules of engagement.**
- (c) **Power imbalance impact assessments must be completed to identify, evaluate, and remediate power imbalances.**

Commentary

In order to fully realize rights, communities and rightsholders must have a seat at the table during critical decision-making moments. Being at that table in and of itself will not address power imbalances if communities and rightsholders have less power relative to other actors. Addressing relative positions of power to create a more level playing field is thus critical to ensuring communities and rightsholders can participate more fully and from a more equitable position, increasing the likelihood of achieving rights-based outcomes.

Depending on the context, the seat at the table may take a variety of forms, including at times communities negotiating directly with businesses and states. The proverbial table may also include referenda and other forums or decision-making mechanisms. Whatever form the table takes, the process must ensure inclusive practices and diverse representation directly reflecting the stakeholders in the ecosystem.

Home states, host states, businesses, and other actors, including civil society and the international community, have common but differentiated responsibilities that overlap and should reinforce one another to promote and protect the rights of communities. The mandate and ability to undertake these responsibilities is often dependent on the *de jure* and *de facto* power each actor holds in a given system. Different ecosystems may shift power distributions across state, business, and community actors, necessitating a corresponding shift in roles and responsibilities. In a community-centric framework, actors cannot rely on non-compliance by another actor to justify inaction or avoidance of rights-based responsibilities. The relative power of the state to a business may vary substantially or be inverted in certain situations. Indeed, in weak governance zones, businesses and communities may have more *de facto* effective control and power relative to the absent state; such a situation should shift responsibilities for rights protection to the present actors with *de facto* power and control. In short, with *de facto* power should come corresponding responsibilities.

Power imbalance impact assessments will clarify the state of power distribution in an ecosystem and advance a more equitable design to maximize rights for communities and rightsholders. Assessments should consider the relative power of different actors and their *de jure* and *de facto* effective control

within a given ecosystem. Disparities in resources, information, availability of specialized expertise, and financial and political benefits all contribute to power imbalances. Each type of power disparity should be thoroughly evaluated through a power imbalance impact assessment; the assessment, which could be incorporated into a human rights impact assessment, should include policies and recommendations to address the disparities, especially the most severe ones.

Principle 7

- 7. Communities and rightsholders have the right to meaningfully participate in decisions and activities associated with business and human rights frameworks, processes, and practices that affect their lives, whether directly or indirectly. Meaningful participation requires robust procedural rights and safeguards as well as the ability to affect or influence decisions, practices, and substantive outcomes.**
 - (a) States and businesses must ensure meaningful participation through an array of rights, including the rights to information, assembly, and association, among others.**
 - (b) Meaningful participation also requires that communities and rightsholders, including human rights defenders, are able to exercise their rights without intimidation or retaliation.**

Commentary

The right to participation is well-established and is closely linked to the social contract and social license to operate. Meaningful participation implicates an array of further rights, including access to information, transparency, and freedom from retaliation. Community and rightsholder participation helps inform all actors of potential impacts and is critical to the full realization of human rights. If done well, participation amplifies the role of communities and rightsholders and improves rights outcomes.

Community and rightsholder participation involves several possible levels of engagement. The appropriate level of participation is context- and community-dependent, but at a minimum, must involve meaningful consultation. In many contexts, the term “consultation” is associated with box-ticking processes and fails to adequately center communities and rightsholders. “Meaningful engagement” or “meaningful participation” have emerged to represent more rigorous approaches, and “community governance” represents an even deeper level of community and rightsholder participation. Relatedly, there is a range of options related to participation in decision-making, from consultation to full consent.

Meaningful participation has procedural, substantive, and political dimensions. Participation that is solely process-oriented and leads to no rights-based substantive outcomes should be viewed with skepticism as it raises the specter of being a box ticking exercise. Ultimately, communities and rightsholders must have the power to practically affect decisions, activities, processes, and practices of businesses and states related to their rights. To realize this power, the process of meaningful participation must be rigorous and deep. Certain circumstances may require that communities and rightsholders are represented in decision-making processes, while other circumstances may require that their full consent is obtained before moving ahead with economic activity. Meaningful participation also requires that communities and rightsholders are able to self-organize. Communities and rightsholders must also have the ability to propose alternative business activities that do not adversely affect their rights. Community-based participatory research or action methodologies that bring communities and rightsholders into engagement processes offer one pathway to meaningful participation.

Any participatory framework should also carefully consider representation, factoring in the reality that communities are diverse, dynamic, and non-homogenous. Participatory frameworks should avoid recreating or exacerbating existing power inequities within or between communities, instead utilizing inclusive, intersectional approaches that incorporate and value diverse perspectives, focus on marginalized groups within communities, and include a variety of mechanisms to gather both individual and collective input. Exploiting divisions within or between communities by intentionally selecting representation of a particular kind undermines participatory processes. When representation is inclusive and participation is robust, there is increased political and social legitimacy for the business activity in question.

Meaningful participation is often elusive and requires dedicated and sustained resourcing to ensure that communities and rightsholders are sufficiently informed and supported so that they can rigorously engage to shape processes and outcomes. As a starting point, any participatory process should be understandable and accessible. This accessibility will often entail advising support (including linguistic, scientific, technical, business, financial, legal, negotiation, and cross-cultural advisors) as well as financial support. Accessible participatory systems also accommodate scheduling and time burden considerations of communities and rightsholders. In all cases, transparency and clarity are necessary so that communities and rightsholders are informed as to what type of participation—for example, consultation, representation, or consent—is taking place. All stakeholders should also have clarity about who has decision-making power and over what decisions, precisely, they have that power. States and businesses should provide communities and rightsholders with digestible information on proposed and alternative business activities in their own languages, including, for example, the identity of companies in supply chains which affect them or in which they work, and relevant policies, studies, and impact assessments. Discrimination analysis, including intersectional impacts, should also be routinely part of participation considerations. States and businesses should prioritize engagement with communities and rightsholders with more severe actual or potential harms or impacts as well as those with a more direct relationship or proximity to

the economic activity. Some groups, including Indigenous or historically or currently vulnerable or marginalized groups, should receive heightened attention and dedicated efforts to include them in participatory processes. The Free Prior and Informed Consent process offers an operational model for the protection of Indigenous interests and may also be relevant for non-Indigenous communities.

Communities' and rightsholders' right to participation includes the right to be free from intimidation and retaliation, including when opposing business-related activities that they view as harmful. Particular protections and care should be extended to survivors, witnesses, whistleblowers, advocates, and other human rights defenders. Communities and rightsholders may feel particularly unsafe as a result of their limited power relative to businesses, states, and other actors involved in business activities. To address these concerns, a power imbalance impact assessment may inform the appropriate participation process and possible risks to communities and rightsholders. States and businesses have responsibilities to protect human rights defenders and prevent attacks on communities and rightsholders, including through their due diligence efforts and other policies and practices. States have existing duties to protect the same actors, including their rights to life and to humane treatment; such duties are particularly important when there are specific threats or pre-existing patterns of intimidation or violence.

Principle 8

- 8. Community governance is a critical element in the ecosystem of advancing and ensuring the full and maximum realization of human rights. Such governance may entail communities and rightsholders possessing decision-making authority or co-authority, the power to design or co-design, or the responsibility to manage or co-manage business and human rights frameworks, processes, and practices.**

Commentary

At times, communities and rightsholders can be integral contributors to the governance of the business and human rights landscape. Communities and rightsholders can and should be viewed in certain circumstances as more than mere beneficiaries of rights protections. Involving communities and rightsholders in designing governance solutions helps capture their knowledge and insights, incorporates their interests and perspectives, and in creating or reshaping policies and laws, bolsters the legitimacy of the governance regime as a whole.

Realizing agency involves the opportunity for communities and rightsholders to engage in governance of business and human rights frameworks, processes, and practices. Community and rightsholder inclusion in governance may involve the design or co-design of systems, which can include setting the rules, parameters, and policies that oversee and manage a particular context, including mechanisms and processes that ensure accountability, transparency, participation, and

inclusivity. Community governance may also entail management or co-management, implementation, and enforcement of the governance mechanisms and regimes. Additionally, community governance may involve communities and rightsholders holding decision-making authority or co-authority over the adoption or administration of a given system.

Governance regimes may be state-led, private in nature, or a hybrid of the two. At times, it may be appropriate for a governance regime to be co-created or collaboratively created among communities and rightsholders with other stakeholders, including civil society, business, and states. At other times, the governance regime may be community-created or community-led, which may be appropriate in a variety of contexts. These may include community-led impact assessments, community-created grievance mechanisms, or worker-led and owned cooperatives where the rightsholder is simultaneously the central governance actor. Additionally, in some situations, community governance is closely tied to customary or Indigenous legal traditions or political systems that are operating alongside business or state governance systems, which may lead to the need to reconcile or create hybrid solutions for the given context.

Governance roles for communities and rightsholders may be particularly relevant where the state is absent, and businesses and communities are left to self-regulate and manage the situation independently. In situations where the state is unwilling or unable to create or enforce a robust governance regime to protect the rights of communities and rightsholders, the need for communities and rightsholders to be governance actors is elevated. Sole reliance on self-regulation by business is insufficient and business should not be the exclusive governance actor in these private governance arenas.

Community governance must not over-burden communities or be extractive and should always be tied to communities' and rightsholders' willingness to exercise their agency. Communities and rightsholders should have access to necessary information so that they can make informed decisions about becoming governance actors, given that governance includes taking on additional responsibilities. While communities and rightsholders have a role to play as governance actors in certain circumstances, states and businesses should not abdicate their human rights obligations. Importantly, community governance does not mean that states and businesses can shift their responsibilities to protect and promote human rights onto communities and rightsholders, especially marginalized groups that have faced disproportionate impacts and harms. Rather, states and businesses must continue to meet their obligations with regards to human rights, including through preventative due diligence and providing remedies for harms.

Principle 9

- 9. Business enterprises should share benefits from economic activities with communities and rightsholders whose resources (human, natural, or otherwise) are utilized in these economic activities.**

- (a) Benefit sharing should advance and ensure rights-based outcomes for affected communities and rightsholders and address inequities and inequalities, especially in its most severe forms.**
- (b) Communities and rightsholders involved in economic activities are also entitled to be free from exploitative economic models and activities that regress rights protections, including those that exacerbate the most severe inequalities.**

Commentary

Economic models should include benefit sharing arrangements in order to ensure the maximum realization of human rights. Without such arrangements, business activities can too often cause or increase economic inequality and inequity. Serious and persistent economic inequalities and inequities implicate a host of human rights, including the right to be free from extreme poverty. Severe economic inequality and inequity can also greatly limit, regress, or undermine altogether the enjoyment of human rights, including economic, social, and cultural rights.

Benefit sharing helps promote economic justice and remedy past or ongoing economic injustice, including the wealth and income inequalities and inequities systemically experienced by many communities and rightsholders. Regardless of inequality and inequity considerations, resources provided by communities and rightsholders are in many circumstances essential for the success of business activities in generating economic benefits. As economic activities should advance and maximize the realization of the rights of communities and rightsholders, benefit sharing arrangements represent a return on the resources that communities and rightsholders have put into economic activities and any resulting economic benefits. Such community resources can include labor, land and other natural resources, or knowledge and intellectual property.

Benefit sharing models also stem from an idea that economic activities should do no harm and not regress rights of communities and rightsholders, especially those most directly affected by the activities. Accordingly, communities and rightsholders should be able to enjoy benefit sharing arrangements that mitigate harms and promote rights. In no circumstances can business enterprises and states utilize benefit sharing arrangements to justify business practices that result in the most severe forms of rights violations or regressive impacts, such as modern forms of slavery or contributing to extreme poverty.

Benefit sharing touches on the full range of business activities and takes a variety of forms. At a minimum, benefit sharing requires that communities and rightsholders receive some benefit (financial or non-financial) deriving from the relevant economic activities. For example, in extractive industries, wealth from commodities could be shared with communities, including through impact

benefit agreements. Benefit sharing models may also involve how benefits are distributed through supply chains, and in some circumstances, benefit sharing may offset adverse impacts, such as environmental harms. In businesses relying on labor forces, benefit sharing can involve living wages, non-pecuniary benefits, equity stakes, ownership arrangements, or profit sharing with workers, all of which can promote economic security for communities and rightsholders.

Business enterprises and states have a responsibility to account for and address inequalities and inequities to which their business activity contributes. The more severely a company's activity affects communities and rightsholders, the more necessary benefit sharing arrangements become, and the more important it is that agreements distribute benefits directly to the affected community and rightsholders. Given the choices to be made about allocation of resources and benefits, communities and rightsholders should be able to meaningfully participate in the design and implementation of benefit sharing models. Additionally, as benefit sharing models can help ensure the maximum realization of human rights, states should implement policies that incentivize or mandate such arrangements, including through tax codes and other legislation.

Principle 10

- 10. Non-discrimination must be part of all business and human rights frameworks, processes, and practices. To ensure the maximum realization of rights of communities and rightsholders, states, businesses, and other actors should provide heightened protections for vulnerable and marginalized peoples, and particular attention should be paid to the intersectional nature of discrimination and oppression.**

Commentary

Non-discrimination is a foundational principle of human rights, and history and experience demonstrate that particularly vulnerable and marginalized communities and rightsholders require additional rights protections as well as concerted efforts to build and promote their power and agency in the business and human rights arena. Communities and rightsholders should not be discriminated against on the basis of their identity or identities. These identities may include race, class, gender, sexuality, national origin, migrant status, religion, disability, Indigeneity, caste, ethnicity, age, socioeconomic status, or geopolitical position.

An intersectional approach to business and human rights recognizes the interrelated nature of sources of identities and discrimination. Intersecting identities can be sources of pride and power but also bases for exacerbating discrimination of vulnerable or marginalized communities and rightsholders. Intersectional discrimination occurs when a community's or rightsholder's multiple marginalized identities compound to worsen oppression, discrimination, and subordination. Intersectionality is rooted in the understanding that mutually reinforcing frameworks, processes, and

practices must be addressed simultaneously in order to protect and empower marginalized communities and rightsholders. Furthermore, this approach understands that addressing these cumulative oppressions is beneficial both to the specific marginalized communities and rightsholders, and to society as a whole. Combatting intersectional discrimination also creates the opportunity to shift paradigms and address human rights concerns holistically.

Adopting an intersectional approach is necessary to address power imbalances and to ensure the full realization of human rights. States, businesses, and other actors should incorporate inclusive, non-discriminatory, and intersectional practices into all aspects of economic activities. When particularly vulnerable or marginalized communities are involved or intersectional discrimination has been identified, states, businesses, and other actors should undertake heightened due diligence that informs efforts to counteract, shift, and dismantle systemic and intersectional power imbalances. These actors should also develop heightened participatory plans and protections in order to ensure that marginalized communities and rightsholders have opportunities to participate in meaningful ways that take into account their multiple intersecting identities. Similar heightened processes should be implemented in conflict zones, weak governance zones, and other arenas where communities and rightsholders are likely to be most vulnerable and least powerful. Through all frameworks, processes, and practices, states, businesses, and other actors should avoid tokenism that falls short of meaningful inclusion, and that may further alienate vulnerable or marginalized communities or rightsholders. Relatedly, states, businesses, and other actors should encourage and prioritize opportunities for marginalized voices to take on leadership roles and positions.

Principle 11

- 11. Business enterprises have a responsibility to prevent harms from occurring as a result of their business activities. This entails conducting necessary impact assessments and due diligence, taking measures to prevent or mitigate identified risks, and not proceeding with business activities that pose risks that cannot be adequately prevented or mitigated.**

Commentary

Business enterprises have a responsibility to anticipate and prevent harms that infringe on rights and must do more than merely provide remedies after the fact. While a full remedy includes guarantees of non-repetition, avoiding harm in the first place best ensures the full realization of human rights. In taking this preventative approach, business enterprises should conduct due diligence, which includes undertaking necessary impact assessments such as human rights impact assessments, environmental impact assessments, and power imbalance impact assessments. Based on ongoing due diligence, businesses should take appropriate measures to address identified risks prior to starting any new business activity.

When potential human rights risks are identified, the primary response should be prevention; mitigation is appropriate only where prevention is not possible. In some circumstances, the assessed severity of harm may mean certain business activities should not commence or should be halted. In situations where the risk of severe, irreparable, or irreversible harms exists, proceeding with the business activity and relying on providing remedies after the fact is insufficient from a rights-maximizing perspective. In such circumstances, particular care should be taken to ensure heightened community and rightsholder participation in determining whether the business activity should proceed.

In general, states have a duty to set up systems to prevent business-related harms through legislation and regulatory regimes, procurement and other kinds of economic support, as well as through the policies and practices of state-owned business enterprises. Business and human rights frameworks, processes, and practices, whether undertaken by public or private actors, should trigger heightened due diligence and assessments in certain circumstances. These include conflict and weak governance zones, situations where severe risks have been identified, and business activities implicating communities and rightsholders with heightened or specialized protections, such as Indigenous communities or those at risk of experiencing intersectional harms.

Business enterprises are often incentivized to weigh the benefits of engaging in business activities that result in rights violations against the penalties arising out of such violations, which may fail to prevent abuses that are likely to be profitable even after factoring in the costs of remedies. States should ensure that regulatory frameworks and penalties for rights violations are sufficiently robust as to prevent businesses from merely assessing rights violations as internal accounting costs. Rights-maximizing approaches and frameworks would have businesses shift risk assessments and cost-benefit analyses from a purely capital-centered approach to a community-centered approach that emphasizes prevention.

Principle 12

12. Communities and rightsholders have a right to a full and effective remedy for violations and abuses that they have experienced at the hands of businesses.

Commentary

Business enterprises should prioritize prevention of human rights violations, refraining from engaging in activity that is likely to result in harm. However, if harms do occur, businesses must provide adequate remedies through judicial or non-judicial mechanisms. The right to an effective remedy is well-established under international human rights law. Remedy should make communities and rightsholders as whole as possible. Full and effective remedies can contain a variety of financial and non-financial elements including restitution, satisfaction, rehabilitation, compensation, and guarantees of non-repetition.

Remedial frameworks that center communities and rightsholders affected by business-related human rights abuses allow them to make informed choices and pursue a variety of pathways to remedy. In doing so, communities and rightsholders should be able to seek, choose, obtain, and enforce a bouquet of remedies depending upon the specific circumstances and nature of the harms. Communities and rightsholders may emphasize different remedial goals, from accountability to justice to restorative approaches or deterrent effects. Mechanisms and practices should be informed by different sources of intersectional discrimination and designed to be inclusive and sensitive to the needs of vulnerable and marginalized populations. The adequacy of remedies should be judged against both current and long-term needs of the aggrieved, and the design and implementation of remedies should also take into account historical legacy issues and potential effects on future generations. By centering communities and rightsholders in these ways, remedial mechanisms would more directly respond to the varied experiences and expectations of communities and rightsholders, thus enhancing the effectiveness of remedies.

States should ensure judicial and non-judicial mechanisms are available for communities and rightsholders to seek remedies in a timely manner. Participation in remedial frameworks should be empowering rather than burdensome to communities and rightsholders. States and businesses should remove barriers to remedy, including legal, procedural, jurisdictional, and practical hurdles. Such barriers may include reprisals or retaliation against communities and rightsholders, lack of adequate advisory and support services (including legal representation or other key resources), restrictive standing doctrines, or overburdensome costs. In order to address such barriers, states and businesses should create conditions that facilitate remedy, designing mechanisms that are culturally, linguistically, and financially accessible and that protect affected communities and rightsholders from additional retaliatory harms. States and businesses should also ensure that the affected communities and rightsholders are properly informed of the existence, processes, and objectives of remedial mechanisms, including through targeted outreach and user-friendly materials and mediums.