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UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: THEORETICAL AND LEGAL BASIS

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Abstract:

The UN Guiding Principles on Business and Human Rights (UNGPs) have become the field's central lingua franca for allocating responsibilities among states and enterprises to prevent, address, and remedy business-related human rights harms. This article reconstructs the UNGPs' theoretical architecture and traces their evolving legal basis. Part I situates the UNGPs in their genealogy from the "Protect, Respect and Remedy" framework and the Human Rights Council's 2011 endorsement to today's regime complex that blends public and private rulemaking. Part II excavates core ideas polycentric governance, due diligence as a standard of conduct, and the complementarity between state obligations and corporate responsibilities drawing connections to treaty-body doctrine and labor norms. Part III maps pathways of "legalization": integration into the OECD Guidelines (2023 update), the ILO's 2022 recognition of a safe and healthy working environment as fundamental, and the rapid diffusion of hard-law instruments, culminating in the EU Corporate Sustainability Due Diligence Directive (Directive (EU) 2024/1760). Part IV analyzes access to remedy judicial and non-judicial alongside judicial trends on parent-company duties of care. Part V canvasses critiques (voluntarism, extraterritoriality, remedy gaps, and regulatory burden) and assesses future trajectories, including the treaty process under HRC Resolution 26/9 and the UNGPs 10+ Roadmap. The article concludes that the UNGPs now function as a normative "operating system": their risk-based human rights due diligence and remedy logic anchors an expanding transnational administrative space and shapes expectations that, increasingly, carry legal consequence.

Keywords: UNGPs; business and human rights; due diligence; polycentric governance; state duty to protect; corporate responsibility to respect; access to remedy; OECD Guidelines; ILO Declaration; EU CSDDD; parent-company liability; treaty process.

BACKGROUND

Adopted after a multi-year mandate, the UN Guiding Principles on Business and Human Rights (UNGPs) were presented to the Human Rights Council in March 2011 and unanimously endorsed on 16 June 2011 (HRC Resolution 17/4). Their core message is simple yet powerful: states have a duty to protect against business-related human rights abuse; business enterprises have a responsibility to respect human rights through risk-based due diligence; and victims must have access to effective remedy. The UNGPs do not create new international legal obligations for companies; rather, they clarify expectations under existing international law (principally for states) and establish a global standard of conduct for enterprises[1].

The UNGPs are the operationalization of John Ruggie's **"Protect, Respect and Remedy"** framework, proposed to the Council in 2008 after extensive mapping of governance gaps. The 2011 consolidation translated that framework into 31 principles with commentary an actionable, polycentric design meant to travel across regulatory systems, sectors, and organizational functions[2].

J.Ruggie's 2008 report argued that durable progress required clarifying who must do what to reduce corporate-related human rights harms. The 2011 Guiding Principles (A/HRC/17/31) supplied that

[1] UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, 2011) and consolidated OHCHR edition.

[2] John G. Ruggie, "Protect, Respect and Remedy: A Framework for Business and Human Rights," Report to the HRC (A/HRC/8/5, 2008).

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operational detail and were endorsed in HRC Resolution 17/4, which also created the annual UN Forum on Business and Human Rights a focal point for iterative learning and diffusion[3].

Rather than a single binding treaty, the UNGPs were built for a regime complex: public regulators, courts, state-owned enterprises, export credit agencies, investors, industry schemes, certification programs, and civil society. Their "principled pragmatism" pairs clear normative anchors (international human rights standards) with managerial tools (policy commitment, due diligence, remediation) to catalyze uptake across nodes that exert different enforcement logics reputational, market, administrative, and judicial[4].

This article contributes in three ways. First, it reconstructs the theoretical architecture of the UNGPs polycentric governance, the division of labor between public duties and private responsibilities, and due diligence as a risk-to-people standard showing why these choices proved generative rather than merely pragmatic. Second, it maps the legal basis and ongoing legalization, from treaty-body doctrine that grounds the state duty to protect to the transplantation of UNGP due diligence into OECD instruments and domestic/regional statutes. Third, it analyzes access-to-remedy pathways judicial and non-judicial identifying design features that correlate with meaningful outcomes and areas where reform is most urgent.

Methodologically, the article combines doctrinal analysis (UN instruments, treaty-body general comments, regional and national legislation), institutional design review (OECD National Contact Points, administrative supervisors, company-level mechanisms), and comparative private-law perspectives on emerging duty-of-care jurisprudence. The human rights baseline is understood as the International Bill of Human Rights and the ILO fundamental principles and rights at work, with attention to context-specific standards (e.g., indigenous peoples' rights, conflict-affected settings). Throughout, "due diligence" is treated as a performative discipline: it must be assessed by its capacity to identify salient risks, engage affected stakeholders, change business decisions, and deliver remedy when needed not by the volume of reports it generates.

THEORETICAL FOUNDATIONS

The state duty to protect rests on binding treaty obligations *inter alia*, the ICCPR and ICESCR interpreted to require due diligence to prevent, investigate, punish, and redress harms by private actors. HRC General Comment No. 31[5] and CESCR General Comment No. 24[6] make this explicit, including expectations that states regulate corporate conduct and address extraterritorial dimensions where they can influence business activities. These interpretations supply the hard-law backbone of Pillar I.

In labor, the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, amended in 2022 to recognize a safe and healthy working environment as a fundamental principle, refines the baseline of rights most directly implicated by business operations. This recognition deepens the normative alignment between occupational safety and human rights due diligence[7].

The UNGPs articulate a global standard of expected conduct for enterprises, implemented through human rights due diligence (Principles 17-21): identify and assess actual and potential impacts; integrate and act on findings; track effectiveness; and communicate how impacts are addressed; alongside remediation where the enterprise has caused or contributed to harm. OHCHR's *Interpretive Guide* details these components and clarifies that due diligence is a standard of conduct, not of result reasonable, risk-based, and proportionate to context, severity, and leverage[8].

Because no single sovereign instrument can discipline global value chains, the UNGPs enlist multiple centers of authority. This polycentricity explains rapid norm diffusion into procurement rules, lender covenants, stock-exchange guidance, investor stewardship, and industry standards especially where the OECD Guidelines and OECD Due Diligence Guidance mirror and reinforce the UNGPs' six-step, risk-based approach[9].

[3] UN HRC Resolution 17/4 (16 June 2011), endorsing the UNGPs and establishing the annual Forum on Business and Human Rights.

[4] OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012).

[5] UN Human Rights Committee, General Comment No. 31 (2004) on the nature of States Parties' general legal obligations under the ICCPR (due diligence to prevent, investigate, punish, and redress private-actor harms).

[6] UN Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on state obligations under the ICESCR in the context of business activities (regulation, extraterritorial dimensions, remedy).

[7] ILO, 1998 Declaration on Fundamental Principles and Rights at Work (as amended 2022 to include a safe and healthy working environment as a fundamental principle and right).

[8] Ibid 4.

[9] OECD, Guidelines for Multinational Enterprises on Responsible Business Conduct (2023 update); OECD Due Diligence Guidance for Responsible Business Conduct (2018).

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THE LEGAL BASIS AND ITS "HARDENING"

Legally, the UNGPs are nonbinding. Their authority derives from HRC endorsement, their synthesis of states' pre-existing treaty duties (to protect and ensure rights), and their integration into other authoritative standards (OECD, ILO). In doctrinal terms, they clarify what state due diligence requires across policy domains corporate law, trade, labor inspection, export finance, procurement and what responsible business conduct entails for enterprises[10].

The OECD Guidelines (2023 update) call on companies to undertake risk-based due diligence across operations and value chains, with National Contact Points (NCPs) serving as unique, quasi-public implementation and grievance bodies in 50+ jurisdictions. NCP annual reporting shows both reach and limits of this mechanism. Meanwhile, the ILO's 2022 amendment embeds OSH as a fundamental principle, tightening the human rights-labor interface that UNGP due diligence already assumes.

A growing corpus of legislation transposes UNGP logic into binding duties:

- Transparency in supply chains: the UK Modern Slavery Act 2015 s.54[11] and the Australia Modern Slavery Act 2018[12] require annual statements on steps to address modern slavery risks. Weak enforcement has limited impact but normalized rights-risk reporting.
- Mandatory human rights and environmental due diligence (mHREDD): France's Duty of Vigilance Law (2017)[13] requires large companies to implement and publish vigilance plans covering subsidiaries and business partners; Germany's Supply Chain Due Diligence Act[14] (in force 2023; expanded in 2024) imposes due diligence duties supervised by authorities.
- European Union: The Corporate Sustainability Due Diligence Directive-Directive (EU) 2024/1760 entered into force on 25 July 2024. It requires in-scope EU and non-EU companies to conduct human rights and environmental due diligence aligned with the OECD six-step model and to adopt climate transition plans, backed by administrative supervision and civil-liability provisions to be transposed in Member States. Policy debate about scope and burden continues, but the directive cements UNGP logic in EU law[15].

DUE DILIGENCE AS A LEGAL AND MANAGERIAL STANDARD

Human rights due diligence is ongoing and risk-based, focusing on risks to people (not merely risks to the enterprise). Core elements include:

1. assessing actual and potential impacts (salience/severity first);
2. integrating findings and acting (using leverage up and down value chains);
3. tracking effectiveness (KPIs, audits that test outcomes, not just inputs); and
4. communicating (public reporting tailored to affected stakeholders). Enterprises should enable or cooperate in remediation where they cause or contribute to harm[16].

The OECD Due Diligence Guidance (2018) codifies a six-step cycle echoing the UNGPs and offers sectoral guides (minerals, agriculture, garments, finance). Legislatures and regulators have embraced this convergence: the EU CSDDD expressly references the OECD cycle, helping supervisors and courts evaluate whether company processes are adequate for the risks at stake[17].

Although the UNGPs do not themselves create corporate obligations under international law, how a company conducts due diligence increasingly affects domestic liability as evidence of reasonable care (or its absence) in negligence and consumer-protection claims, and as a basis for administrative penalties under mHREDD statutes. Courts are also refining parent-company duties of care, recognizing circumstances where a parent's policies, supervision, or assumption of responsibility ground a duty toward those harmed by subsidiaries (e.g., Vedanta v. Lungowe; Okpabi v. Royal Dutch Shell)[18].

The UNGPs urge states to lower practical barriers to transnational claims (jurisdiction, forum non conveniens, evidence, collective redress, funding). The UK Supreme Court's decisions in Vedanta (2019) and Okpabi (2021) clarified routes for claimants to pursue

[10] A/HRC/RES/17/4. Human rights and transnational corporations and other business enterprises.
[11] United Kingdom: Modern Slavery Act 2015, Section 54 (Transparency in supply chains) and UK Government guidance.
[12] Australia: Modern Slavery Act 2018 (Cth) and official guidance for reporting entities.
[13] France's Corporate Duty of Vigilance law (Loi de Vigilance) requires large companies in France to effectively manage their human rights and environmental risks.
[14] Germany: Supply Chain Due Diligence Act (Lieferkettengesetz).
[15] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.
[16] Knox, John H., "The Human Rights Council Endorses 'Guiding Principles' for Corporations," ASIL Insights (2011).
[17] OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct.
[18] Parent-company duty of care. Vedanta Resources plc v. Lungowe (UKSC 2019) and Okpabi v. Royal Dutch Shell (UKSC 2021) (case materials).

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parent-company negligence, aligning private-law doctrines with governance realities of multinational groups[19].

Export-credit agencies, public procurement, securities regulators, and labor inspectorates can embed UNGP-style due diligence and enforce it administratively. In Europe, the CSDDD's supervisory architecture will accelerate this trend as Member States designate authorities to monitor compliance and impose penalties[20].

OECD NCPs function as quasi-public NJGMs, facilitating mediation and issuing recommendations. Outcome data show both successful agreements and frequent stalemates; peer review and procedural upgrades aim to improve performance. UN OHCHR's Accountability and Remedy Project (ARP)[21] distills lessons on strengthening all three categories of mechanisms (judicial, state-based non-judicial, and non-state-based)[22].

NATIONAL ACTION PLANS AND POLICY COHERENCE

The UN Working Group promotes **National Action Plans (NAPs)** to integrate UNGPs across government levers investment promotion, export finance, procurement, corporate governance, labor inspection, and environmental enforcement. The UNGPs 10+ Roadmap (2021) calls for raising ambition, accelerating pace, and improving coherence across these levers, with special emphasis on remedy, human rights defenders, just transition, and high-risk contexts[23].

Critics long argued that the UNGPs over-rely on voluntary corporate responsibility and under-deliver on binding duties. The recent hard-law turn (France, Germany, EU) addresses part of this critique, but questions remain about enforcement capacity, civil liability design, and access to remedy especially outside Europe[24].

How far home states must regulate extraterritorial harms remains contested. CESCR General Comment 24 leans toward robust home-state regulation of corporate groups and global value chains where leverage exists, whereas state practice varies. The treaty process (below) is one arena where these issues are being negotiated[25].

Evidence from NCPs and other NJGMs shows uneven remedial outcomes—useful for process improvements and forward-looking commitments, but often insufficient for full reparations in severe cases. OHCHR's ARP recommends concrete institutional reforms to close this gap[26].

Policy debates around CSDDD and national due diligence laws highlight compliance costs and potential impacts on SMEs and suppliers, even as proponents argue benefits for risk management and rights protection. These debates will shape transposition choices and supervisory practice[27].

In 2014, HRC Resolution 26/9 established an open-ended intergovernmental working group (OEIGWG) to elaborate a legally binding instrument on business and human rights. Negotiations have produced multiple drafts and textual proposals; the process is positioned as complementary to the UNGPs, potentially addressing jurisdiction, cooperation, and civil liability gaps. Whatever the treaty's fate, its existence further juridifies expectations around business and human rights and keeps pressure on states to align domestic regimes[28].

CONCLUSION

[19] Okpabi v Shell and Lungowe v Vedanta Dispel Three Myths available at: < https://www.business-humanrights.org/en/latest-news/okpabi-v-shell-and-lungowe-v-vedanta-dispel-three-myths/>.

[20] EC, Corporate sustainability due diligence. Available at: < https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en>.

[21] OHCHR, Accountability and Remedy Project. Available at: < https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project>.

[22] OECD, National Contact Points for Responsible Business Conduct. Available at: <https://www.oecd.org/en/networks/national-contact-points-for-responsible-business-conduct.html>.

[23] UN Working Group on Business and Human Rights, UNGPs 10+: A Roadmap for the Next Decade (2021).

[24] Business and Human Rights. Supply Chain Act Act on Corporate Due Diligence Obligations in Supply Chains. Available at: <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html>.

[25] General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

[26] 2023 Annual Report on NCP Activity. Increasing impact, addressing challenges: A year in review of National Contact Points for Responsible Business Conduct.

[27] Mike Scott (2024), ESG Watch: New European human rights rules leave companies with 'big gap to close'. Available at: < https://www.reuters.com/sustainability/society-equity/esg-watch-new-european-human-rights-rules-leave-companies-with-big-gap-close-2024-07-11/>.

[28] UN HRC Resolution 26/9 (2014) establishing an OEIGWG to elaborate a legally binding instrument.

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The UN Guiding Principles on Business and Human Rights crystallize a pragmatic settlement for governing markets' impacts on people. Their theoretical core polycentric governance anchored in a division of labor between public duties and private responsibilities has proven unusually generative. Their legal core state *due diligence* duties to protect and corporate *responsibility to respect* has supplied a common grammar for legislators, regulators, courts, investors, and firms. Together, these cores have transformed the UNGPs from a soft-law framework into a normative operating system that increasingly shapes *hard* outcomes: statutes that mandate human rights and environmental due diligence; supervisory architectures that test adequacy; and judicial doctrines that recognize parent-company duties of care. The challenge is no longer whether the UNGPs matter, but whether implementation reliably delivers rights-compatible outcomes for those most at risk.

Three implications follow.

First, legalization must not become proceduralism. The migration from guidance to law has been swift, but the risk is a compliance culture focused on paperwork rather than prevention and remedy. The UNGPs were explicit that due diligence is a *standard of conduct* oriented to risks to people, not merely enterprise risk. Regulators and courts should therefore evaluate *effectiveness*, not just the existence of policies: Did a company identify its salient risks? Engage affected stakeholders credibly? Use and escalate leverage in high-risk relationships? Track outcomes with indicators that reflect lived experience, not just audit counts? Where harm occurs, are remedy pathways accessible, predictable, and equitable? Implementation that privileges checklists over consequences will miss the point and the people.

Second, coherence across the regime complex is now decisive. The "polycentric" design works only if the nodes speak the same language. Legislatures are transposing due diligence duties; supervisors are writing guidance and imposing penalties; procurement authorities, export-credit agencies, and lenders are embedding expectations in their decisions; stock exchanges and investors are aligning stewardship; and courts are clarifying private-law duties. These pieces can reinforce or undermine each other. Coherence means (i) harmonizing definitions and scoping so firms face consistent expectations across jurisdictions; (ii) adopting the OECD/UNGP risk-based method as the benchmark for *adequacy*; (iii) building interoperability between grievance mechanisms (company-level, NCPs, administrative bodies) and courts; and (iv) ensuring that disclosure regimes support, rather than substitute for, substantive due diligence. Policy design should privilege feedback loops: information from complaints, inspections, and cases must cycle back into risk assessment and supervision.

Third, remedy must move from aspiration to architecture. The persistent gap in access to remedy the hardest test of the UNGPs demands structural answers. States should strengthen jurisdictional gateways, disclosure and discovery, collective redress, and funding for complex transnational cases. Non-judicial mechanisms need clearer mandates, performance standards, and outcome transparency; company-level mechanisms should be co-designed with workers and communities, with protections for human rights defenders and whistleblowers. Administrative regimes should link supervisory findings to concrete remedial orders and follow-up. And across all fora, remedy should reflect the full spectrum recognized in international law restitution where possible; compensation, rehabilitation, satisfaction, and guarantees of non-repetition where needed rather than narrow settlement terms that externalize costs to victims.

Looking ahead, several frontiers will determine whether the UNGPs continue to deliver real-world improvements:

- Extraterritorial leverage with legitimacy. Home-state regulation of group-wide conduct and value chains is expanding. The test is whether it produces *shared* enforcement capacity cooperation with host-state authorities, mutual legal assistance, and support for national human rights institutions without crowding out local institutions or imposing unworkable burdens on SMEs and suppliers. Calibrated, context-sensitive supervision and phased expectations can preserve incentives to trade up rather than cut and run.
- High-risk contexts and conflict-affected areas. Where governance is weakest, the UNGPs demand heightened due diligence, meaningful stakeholder engagement, and careful use of leverage including suspension or disengagement where harms cannot be mitigated. Guidance must evolve to address sanctions, humanitarian carve-outs, and the role of finance, logistics, and digital infrastructure in such settings.
- Climate, just transition, and the human rights lens. As climate obligations enter corporate and financial regulation, the UNGPs' people-centered due diligence can keep mitigation and adaptation aligned with labor rights, indigenous peoples' rights, and intergenerational equity. Climate transition plans should therefore be integrated with human rights due diligence, not run-on separate tracks.
- Technology and data-intensive business models. Platform work, algorithmic management, surveillance, and generative AI present diffuse, rapidly scaling risks. The UNGPs' method map impacts, engage those affected, test effectiveness, and remediate offers a governance script for AI safety and digital rights that complements sectoral laws.

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• Measurement and assurance. What counts as "effective" due diligence cannot be left to glossy reporting or third-party audits of inputs. Indicators should privilege *outcomes for rights-holders* (e.g., wage recovery, injury reduction, freedom of association realized in practice) and be triangulated through workers, communities, unions, and civil society those with epistemic proximity to harm. Assurance should evolve accordingly, moving beyond document review to field-level verification.

Finally, the much-debated treaty process should be read as a complement, not a competitor, to the UNGPs. A well-crafted instrument could codify cooperation duties, clarify jurisdictional rules, and consolidate civil-liability baselines, thereby strengthening the remedial spine of the existing ecosystem. But treaty law will achieve little without the institutional muscle the UNGPs have already cultivated: regulators capable of supervising, courts willing to hear complex cases, NCPs and administrative bodies that can broker solutions and escalate where necessary, and companies that embed due diligence into governance, incentives, and strategy.

In sum, the UNGPs have shifted the center of gravity from debating whether companies have human rights responsibilities to determining how well those responsibilities are exercised and what happens when they are not. Their distinctive value lies in aligning public and private authority around a risk-based, stakeholder-engaged, remedy-oriented discipline. If the next phase focuses relentlessly on outcomes, coherence, and remedy, the UNGPs will continue to function as the operating system through which law, markets, and institutions converge on the same simple proposition: commerce must be organized so that people's rights are respected, and when they are not, remedy is real.