OHCHR Submission on the Open Public Consultation on the Corporate Sustainability Due Diligence Directive Guidelines

August 2026

UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER
Representation Office to the European Union

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

OHCHR Submission on the Open Public Consultation on the Corporate Sustainability Due Diligence Directive Guidelines

August 2026

Contents

1. Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is the United Nations (UN) agency responsible for leading the business and human rights agenda within the UN system and is the institutional focal point for providing uniform guidance and clarification on issues relating to the interpretation of the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs are the global standard for preventing and addressing the risk of adverse impacts on human rights involving business activity, and they provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights.

Since the unanimous endorsement of the UNGPs by the UN Human Rights Council in 2011, OHCHR has contributed to the dissemination and implementation of the UNGPs in many different ways. This includes providing practical and interpretative advice, tools and other resources, supporting capacity building, and carrying out detailed comparative and empirical research, notably in relation to accountability and remedy and human rights due diligence.

OHCHR has long supported the process to develop the European Union Corporate Sustainability Due Diligence Directive (CS3D) and has made substantial contributions in line with its belief that mandatory human rights due diligence regimes have a vital role to play as part of a “smart mix” of measures to effectively foster business respect for human rights, as called for in the UNGPs. In doing so, OHCHR has joined the many voices, including from the business community, who have expressed support for such laws. When aligned with international standards on responsible business conduct (in particular the UNGPs, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and ILO Tripartite

Declaration of Principles concerning Multinational Enterprises and Social Policy), such laws help to ensure businesses are resilient, are competitive, and avoid the reputational, financial, and legal risks that often come with involvement in adverse impacts on human rights and the environment.

The submission below contains a number of recommendations to ensure that CS3D guidelines strengthen the alignment between the CS3D and the UNGPs. It elaborates on crucial aspects that we consider to be highly relevant to the ultimate guidelines but which could not fit within the confines of the survey questionnaire.

The submission below also refers to the Joint United Nations Brussels Team (UNBT) submission which compiled a set of UN tools, databases, and digital resources from ten United Nations entities to facilitate and support companies' compliance with corporate sustainability due diligence obligations.

OHCHR would welcome continued engagement with the Commission as the guidelines are developed and remains available to provide further expertise on the issues raised below, as well as on other aspects of the CS3D.

2. Human rights (including labour rights) and environmental impacts

The UNGPs are clear that "[b]ecause business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights."[1] OHCHR has since elaborated upon the ways in which companies can impact all internationally recognized human rights in practice. For instance, in Human Rights Translated 2.0 - A Business Reference Guide, we illustrate, through the use of real-life case studies how the human rights in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are relevant in a corporate context and how such human rights issues can be managed. To ensure that the guidelines build upon existing work in this area and align closely with international standards, the following points should be considered:

- **Encourage companies to consider the full spectrum of internationally recognized human rights and avoid an unduly narrow or overly technical interpretation of the CS3D's material scope.** Companies should not prejudge which human rights are likely to be most relevant to their business activities. While, in practice, some rights will be more relevant or "salient" than others in particular industries and circumstances, companies are unlikely to predict all of the human rights that may be impacted in advance, and will inevitably require specialist human rights expertise and stakeholder engagement to do so thoroughly and accurately. In formulating their approach to human rights due diligence, companies need to be mindful that business activities can have an impact on virtually the entire spectrum of internationally recognized human rights and that their corporate responsibility to respect, under the UNGPs, applies to all such rights.
- **Recognize the need to consider additional standards in appropriate circumstances**. While the rights and instruments referenced in the current CS3D annex cover a wide range of internationally recognized human rights, some rights are missing, and there are instances in which rights covered by Part 1 of the annex are articulated in a more robust, targeted way in human rights instruments that elaborate on the rights of individuals belonging to specific groups or populations, for instance those concerning women, persons with disabilities, migrant workers and Indigenous Peoples. In this regard, it would be helpful to incorporate language from Recital 33, as well as the commentary

[1] Internationally recognised human rights are defined in the UNGPs as encompassing, at a minimum, those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's declaration on Fundamental Principles and Rights at Work. The UNGPs also note that, depending on the circumstances, business enterprises may need to consider additional international standards in their due diligence processes.

to UNGP 12, in the guidelines. In addition, the guidelines should avoid a static understanding of rights and should encourage companies and Member States to take account of developments in internationally recognized human rights.

- **Address international humanitarian law in situations of armed conflict.** The UNGPs recognize that "in situations of armed conflict enterprises should respect the standards of international humanitarian law." The guidelines should draw upon this language, as well as that from Recital 42, to help companies better understand the relevant frameworks to respect when in situations of armed conflict.
- **Recognize how different rights and impacts are interconnected.** All human rights are indivisible and interdependent. This means that one set of rights cannot be enjoyed fully without the other. An impact on one right can be the root cause of another impact; for instance, the failure to pay living wages can be a root cause of child labour. Additionally, many environmental impacts (e.g., due to pollution, biodiversity loss, land degradation, or climate change) directly affect a range of people's human rights, as OHCHR has well documented. The guidelines should encourage companies to avoid siloed approaches and assess rights and impacts holistically.
- **Ensure a gender responsive approach.** Women and girls often experience business-related human rights impacts differently and disproportionately due to structural inequalities and discriminatory social norms. A gender-responsive approach helps companies identify and address risks that may otherwise remain overlooked, including gender-based violence and harassment, pay discrimination, occupational segregation, barriers to remedy, and the concentration of women in precarious, informal, and low-paid work. The Guidelines should provide practical guidance on integrating gender considerations into impact assessments, stakeholder engagement, indicators, remediation, and effectiveness assessments, while promoting meaningful consultation with women and women's rights organisations. Aligning the Guidelines with international standards, including CEDAW and ILO Convention No. 190, would strengthen human rights due diligence and better equip companies to prevent, mitigate, and remedy adverse impacts on gender equality and women's rights.
- **Provide examples of sector- and context-specific impacts.** Guidelines should illustrate how the same right may be affected differently across sectors and contexts, and how companies should use sectoral, geographic, product and service risk factors to identify impacts. This would help avoid a formalistic annex-by-annex approach and support more practical, risk-based due diligence.
- **Clarify how indicators should be used to assess impacts and effectiveness.** Guidelines should distinguish between indicators that track activities, such as policies adopted or audits conducted, and indicators that assess changes in behaviour and outcomes for affected people. The latter are more important for determining whether due diligence measures are effective in practice. The same indicators can often support both internal management and external reporting, provided they are designed to measure whether risks are actually being prevented, mitigated or remedied.

3. Prioritisation

The revised CS3D appropriately maintains prioritization based on the severity and likelihood of adverse impacts. This reflects the risk-based approach that lies at the heart of the UNGPs and related international frameworks, notably the OECD Guidelines and ILO Tripartite Declaration, and should remain the foundation of the CS3D guidelines in this area. At the same time, the guidelines should make clear that, **for human rights impacts, severity is the predominant consideration**. As reflected in UNGP 24, where it is necessary to prioritize actions on human rights impacts, companies should first seek to prevent and mitigate those impacts that are most severe or where delayed action would make them irremediable. Severity must be understood through its constituent elements of scale, scope and irremediability, and an impact can be severe based on any one of those dimensions (see The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Questions 13 & 88). This is particularly important to ensure that certain categories of harm are not inadvertently deprioritized, including irreversible harms and low probability but potentially catastrophic human rights impacts. It would be helpful to incorporate elements from Recital 44 into the guidelines, including the list of factors that should not be considered in prioritization decisions. Prioritization should remain focused on risks to people and the environment, rather than the financial, legal or reputational risks that an impact may present to the company.

Prioritization must also be understood as a **tool for sequencing action, not for excluding impacts from action altogether**. The Directive recognizes that companies may not always be able to address all identified impacts simultaneously. However, Article 9 is premised on continuous progress: once the most severe and likely impacts have been addressed, companies should move systematically to address the remaining impacts. Guidelines should therefore emphasize that prioritization cannot be used to justify indefinite inaction, permanent exclusion of certain impacts from due diligence, or the creation of classes of impacts that never receive attention. Rather, prioritization should facilitate an orderly and effective allocation of effort and resources while preserving the expectation that all identified adverse impacts will ultimately be addressed. Companies should also ensure that the sequencing of responses does not aggravate impacts that are scheduled for later action, including by allowing harms to become more severe, more widespread or less remediable while efforts and resources are focused elsewhere.

The Commission's guidelines should further emphasize that prioritization is **tier-agnostic**. Resources should be directed to the most severe and likely impacts wherever they occur within a company's operations or chain of activities, as human rights harms frequently arise beyond direct business relationships. While Article 8 permits companies, in limited circumstances, to sequence certain in-depth assessments involving direct business partners, this **narrow flexibility** should not become a default focus on tier-one suppliers. Companies should be expected to allocate resources, expertise and attention wherever the most salient risks are located, rather than where oversight is easiest or business relationships are closest. Guidelines should therefore clarify that Article 8 does not establish any presumption in favour of prioritizing impacts of direct business partners.

Given the central role that prioritization plays in the due diligence process, determining prevention, mitigation and remediation measures, its quality and integrity is of critical importance, and **robust documentation is therefore essential**. This is particularly important in light of the connections between prioritization decisions and possible penalties and liability. Companies should therefore document the methodology used to assess severity and likelihood, the evidence relied upon, any uncertainties or data limitations encountered, the reasons for sequencing decisions, and a clear plan for addressing impacts that are not tackled immediately. Transparent documentation not only facilitates supervision and accountability, but also helps ensure that prioritization remains principled, consistent and focused on risks to people rather than risks to the business.

Finally, **meaningful stakeholder engagement is indispensable to effective prioritization**. In many contexts, severity and likelihood are difficult to assess through desk-based research or quantitative indicators alone. This is particularly true where restrictions on civic space, weak governance, discrimination, conflict, or informality obscure the true nature and extent of harms. Over-reliance on available data may systematically understate severe impacts that are difficult to measure, document or quantify. In contexts where reliable information is scarce, companies should rely on credible indicators, qualitative evidence, stakeholder testimony and other credible sources of information. Similarly, companies should consider the interrelationship between adverse impacts when assessing severity. Certain impacts, such as restrictions on freedom of association, barriers to stakeholder participation, or interference with Indigenous Peoples' rights, may be root causes of other harms and should not be assessed in isolation. Engagement with potentially affected groups and other relevant stakeholders (such as credible proxies where direct access is limited) is often the most reliable means of understanding how severe an impact is in practice, whether harms are interconnected, and whether delayed action could render them irremediable. The assessment of severity should therefore be informed by the perspectives of those who are, or may be, affected, and the Commission's guidelines should underscore stakeholder consultation as a core element of any credible prioritization exercise.

4. Responsible disengagement

In Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting, OHCHR elaborates upon the considerations under the UNGPs as regards when and how to responsibly disengage. As flagged in that note, the UNGPs identify a number of factors that are relevant when deciding whether to end a business relationship in a linkage scenario: "the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences." Suspending or exiting a relationship should be subject to human rights due diligence processes, involving stakeholder consultation, to identify and address any adverse impacts resulting from those decisions. In order to minimize the adverse impacts resulting from such decisions, it is often useful (i) to treat exit as a process rather than an event, and (ii) to manage post-exit consequences.

The guidelines should draw on several aspects from OHCHR's note to ensure that any disengagement is done responsibly and in line with international standards. Some points to consider include:

- **Recognize that suspension is a leverage-enhancing measure, not an end point**. Its purpose is not to distance a company from risk, but to create incentives for business partners and others to address adverse impacts.
- **Suspension does not end a company's responsibility to work towards a solution**. Where a company is involved in an adverse impact through a problematic relationship, it has the responsibility to address the impact. Suspension should be viewed as part of an ongoing due diligence process rather than a mechanism for transferring responsibility or disengaging from difficult situations.
- **Recognize that in some circumstances, withdrawal may worsen outcomes for workers, communities or other affected stakeholders; reduce access to remedy; or remove leverage that could otherwise be used to improve conditions**. The analysis will often be quite dependent on the circumstances – the impacts of withdrawing from a small factory in areas where there are plenty of other employment opportunities would be different from those resulting from a withdrawal from a large agricultural enterprise on which hundreds of smallholder farmers rely for their livelihoods. A key consideration should be the extent to which the livelihoods of workers or communities depend on the business relationship remaining operational.
- **Expect companies to act more quickly where harm is more severe**.
- **Meaningful engagement with affected stakeholders is often critical** in assessing which course of action is most likely to reduce harm in practice.
- **Maintain robust documented assessments, informed by stakeholder input, for supporting decisions to disengage or continue to engage**. Further, as noted in the UNGPs, where a company decides to continue engagement, it should (i) be able to demonstrate its ongoing efforts to avoid infringing on the human rights of others and address any impacts with which it is involved, and (ii) be prepared to accept any consequences of remaining in relationships that pose ongoing risks of involvement in human rights abuse.

5. Remediation

Ensuring that there is access to remedy for human rights harms is of critical importance to the realization of the vision laid down in the UNGPs. The OHCHR's Accountability and Remedy Project (ARP) was established in 2013 as a platform for

(a) further research and stakeholder engagement on the diverse ways the different remediation mechanisms mentioned in the UNGPs can contribute to the delivery of effective remedies in cases of business-related human rights abuses, and
(b) identifying ways that these mechanisms could be improved.

The Accountability and Remedy Project developed practical guides for how to improve the effectiveness of the three categories of mechanisms referred to in the UNGPs – judicial mechanisms, State-based non-judicial mechanisms and non-State-based grievance mechanisms (see Part 8 below on notification mechanisms and complaints procedures). In addition, OHCHR has published *Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide*. This publication sets out, in a systematic and accessible way, learnings from the many years of research (including extensive empirical research) carried out under the auspices of ARP. The comments below highlight key insights set out in this OHCHR work that will be important to integrate into the CS3D guidelines in order to promote and encourage practices that are well aligned with international standards and expectations regarding remediation in human rights-related cases.

Remediation practices generally

The overarching expectation under international human rights law and influential international statements on remedy is that remediation should be "adequate," "effective" and "prompt" (see Remedy Interpretive Guide, Box 1). This standard sets out the benchmark against which all remediation in human rights cases should be judged. The key components of this standard are explained further in the Remedy Interpretive Guide as follows:

- **Adequate**: proportionate and appropriate in light of the degree of illegality or blameworthiness of the behavior in question and the nature and gravity of the harm suffered;
- **Effective**: bringing an end to actions and other factors giving rise to the abuse, and putting the affected stakeholder(s) back in the position that they would have been in had the abuse not occurred, or as close to this as is possible in the circumstances;
- **Prompt**: provided in a timely manner.

Beyond this, the context dependency of remediation (and specifically whether it is effective or not given all the factors in play) makes it difficult to generalize about what would be the most effective (including cost-effective) practices related to remediation. However, the Remedy Interpretive Guide contains a number of additional observations that are highly relevant to fostering rights-respecting approaches to remedy, which could readily and usefully be integrated into CS3D guidelines. For instance:

- **Substantive remedies can take many forms**. While financial compensation will be an important component of remediation in many cases, other measures may be required to meet the international standards of effectiveness outlined above. The guidelines should be influential in encouraging more flexible, victim-centered, approaches to remediation for business-related human rights harms, drawing from the full range of recognized categories of remedy; namely restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
- **The perspectives of affected individuals and communities are of fundamental importance in any assessment of whether the substantive outcomes of a remedial process meet international standards in fact**. Affected people are best placed to assess what form of remedy is appropriate

and how it should be delivered. The guidelines should therefore highlight the importance of meaningful stakeholder engagement in both the design and delivery of remediation.

- **Individuals and groups within affected communities may have different interests and needs**. These will have a bearing on the effectiveness of different remediation options. The guidelines should therefore stress the importance of understanding differing needs of different individuals and groups within affected communities, including those of people at heightened risk of vulnerability, marginalization, or exclusion. Where compromises are needed, in order to reconcile competing interests and perspectives, the guidelines should usefully stress the value of mediation or adjudication by an independent third party, using rights respecting processes.
- **Whatever form the remediation eventually takes, its implementation should be carefully monitored and evaluated to make sure it meets agreed objectives, in the short, medium and longer term**. For instance, the effectiveness of a remediation package could be monitored against a set of performance targets agreed between the entity responsible for implementation and affected stakeholders, with built-in moments for progress reviews with stakeholders and consultation on any corrective measures that might be needed. Ongoing monitoring is also important for ensuring that remediation is not having adverse unintended effects, such as exacerbating community tensions or entrenching existing inequalities.
- **Effective remediation is forward-looking as well as backward-looking.** In many cases there will be more to remediation than addressing past harms and abuses. Therefore, the guidelines should not neglect the importance of understanding the underlying causes of business-related human rights abuses and taking steps to address them. The UNGPs emphasize the importance of continuous improvement in the way that companies assess and address the risks of adverse human rights impacts, such that lessons learned in the course of remediation processes are fed back into, and used to strengthen, their human rights due diligence.

Remediation in cases involving multiple responsible actors

OHCHR examined State and corporate practices in cases of joint causation and contribution by multiple actors (e.g., State actors, companies and others) as part of empirical research and stakeholder consultations carried out during its Accountability and Remedy Project.

In cases decided by the courts (e.g., either private law disputes or criminal matters), questions of (a) which actors should be held liable (and on what basis), (b) the appropriate quantum of damages (or fines), (c) allocation of damages (or fines) between multiple entities, and (d) how judicial orders for reparations are to be discharged, are governed by national law and procedural rules.

In some cases and legal systems, the involvement of a third party may be held to have broken the chain of causation sufficiently to exonerate a defendant entirely. In other cases, and depending on the applicable law, a single defendant may be held liable for the entirety of a damages award, but may retain the right to sue other entities (e.g., business partners or other companies) for a contribution based on their own involvement. Alternatively, the law may permit judges to apportion liability for damages between different co-defendants on the basis of their relative contributions to the harm caused by their collective actions, making each of them directly responsible for remediation. In cross-border cases, involving actors from multiple jurisdictions and parallel proceedings, it has sometimes been possible to apportion responsibilities for remediation by agreement between the various domestic enforcement authorities.

The diversity of domestic law approaches to the apportionment of liability and damages between multiple actors poses challenges for the development of guidelines of general application.

However, the CS3D guidelines could usefully support regulators, companies and other relevant actors (e.g., ombuds, mediators, and operators of other kinds of grievance mechanisms) in resolving cases in other contexts and settings (i.e., not involving recourse to judicial mechanisms), drawing from the principles relating to remediation in the UNGPs.

The starting point for any such discussions should be the guidance set out in Guiding Principle 22 and its commentary, which reflects the expectation that: "Where a business enterprise identifies [that it has caused or contributed to adverse impacts], whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors."[2]

In any given case, the correct allocation of "a company's proportionate involvement in an adverse impact for the purpose of remediation" will be highly fact dependent. Therefore, there will be a limit to how prescriptive the CS3D guidelines can be, in the abstract, on questions of allocations of responsibility for remediation.[3] However, the guidelines could usefully set out a step-by-step process and the factors to consider for resolving these often very complex issues. We would propose, based on the UNGPs and work undertaken in the course of ARP:

- **Companies should first determine, based on the UNGPs, the nature of their own involvement in the relevant harm.** For instance, whether it is a case of causation, contribution, or direct linkage to the company's operations, products or services by its business relationships. In this regard, it would be useful for the guidelines to incorporate language from Recitals 45 and 53 regarding the types of involvement under international frameworks.
- **Companies should then consider the extent to which other companies may be (or have been) involved in the same (or similar) business-related human rights harms.**
- **These companies should proactively seek to develop and agree on a joint package of remediation, reflective of each of their types and degrees of involvement, in consultation with affected stakeholders** (see Remedy Interpretive Guide, Box 15).
- **In the event that the companies cannot reach agreement, involve a neutral third party as a mediator or turn to adjudication.**

Common obstacles to determining and delivering appropriate remediation in cases where multiple actors may be involved in business-related human rights harms include the following:

- Commercial confidentiality: companies hesitant to cooperate where they may be asked to share commercial information;
- Competition law: where this could restrict the ability of companies to enter into agreements that may have impacts on prices of goods;
- Different legal standards: leading to inconsistent analyses as to who is responsible for harms, and why (see discussion above);
- Different legal traditions: potentially leading to guarded approaches in jurisdictions where the litigation risk is very high;

[2] In contrast, "Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so." UNGP 22 commentary.

[3] See OHCHR, Application of the UNGPs in the context of the banking sector, p. 12 ("It is not… possible to stipulate in general terms *pro rata* responsibilities of involved companies in different scenarios. The exact allocation of different companies' 'share' of the harm will depend entirely on the specific situation and should be determined in each instance through the remediation process, which should involve a legitimate grievance mechanism. If the implicated companies cannot reach agreement on their respective share of responsibility for the harm, it may prove necessary either to involve a neutral third party as a mediator or to turn to adjudication.")

- Access to information: to properly analyze the substance of the relationships between the relevant parties (i.e., at a practical, day-to-day level), including the extent to which there might be (or have been) opportunities in fact to exercise control or leverage.

6. Conflict-Affected and High-Risk Areas (CAHRAs)

As recognized in the UNGPs, "the scale and complexity of the means through which enterprises meet" their responsibility to respect human rights will vary according to a number of factors, such as "operational context" and "the severity of the enterprise's adverse human rights impacts." Further, UNGP 17(b) is clear that human rights due diligence will "vary in complexity with … the risk of severe human rights impacts[] and the nature and context of a company's operations." As such, human rights due diligence is inherently context specific, and, all else equal, more will be expected of a company operating in CAHRAs than otherwise. Such contexts raising red flags should "trigger human rights due diligence processes that are finely tuned and sensitive to this higher level of risk."[4] The Working Group on Business and Human Rights has developed guidance on what companies should do to respect human rights in conflict and post-conflict contexts.[5]

In Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting and other resources, OHCHR has elaborated upon what makes an operating context challenging or high risk. There are many features of operating contexts that can make them especially challenging in human rights terms, including situations where:

- **The human rights situation is particularly grave, for instance due to conflict, political turmoil and/or systematic violations of rights**: This includes situations of armed conflict, authoritarian regimes (e.g., involving civil society suppression or severe restrictions on independent media), and coups d'état. States subject to sanctions by the United Nations or regional intergovernmental organizations sometimes fall under this category.
- **National laws or regulations require actions that would be inconsistent with internationally recognized human rights standards**: This may happen, for instance, where a company is subject to employment laws that mandate discrimination on the basis of sex, gender, sexual orientation, or gender identity, or where it is obliged to comply with regulatory directions that would interfere with specific rights such as those protecting privacy, freedom of expression or freedom of assembly.
- **National laws or regulations offer a level of human rights protection that falls short of internationally recognized human rights standards**: This could be due to deficiencies in legal regimes, lack of clarity in legal standards or poor enforcement of laws, which may be compounded by problems relating to corruption, poverty, entrenched patterns of discrimination, a lack of government resources or institutions, or a lack of respect for the rule of law (for instance, by criminal groups).

Many companies will find it difficult to assess the risks adequately in such contexts. If that is the case, they should seek advice from credible external sources, including civil society organizations working in or reporting from the area. Where appropriate, they can also seek advice from Governments, including that of their home State. National human rights institutions can be another valuable source of advice. Working with business partners, industry bodies or multistakeholder initiatives can also help companies in devising approaches that are more finely tuned to the human rights risks posed by complex circumstances.

[4] OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Question 85.
[5] *See also* UNDP & Working Group on Business and Human Rights, Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide.

As flagged in the Joint United Nations Brussels Team submission to the CS3D guidelines process, the United Nations system contains many relevant tools, databases, and digital resources that can facilitate and support due diligence efforts by companies in CAHRAs. In addition to OHCHR webpages on different countries and issues, OHCHR's Knowledge Gateway offers a series of helpful databases and resources for companies to understand the human rights situation around the world, including the Universal Human Rights Index, Human Rights Indicator Dashboard, Universal Periodic Review resources, Special Procedures Communication Database, and UN Treaty Bodies Database, among others. In addition, OHCHR's Helpdesk of Business and Human Rights serves as a one-stop shop for States, businesses, civil society, and others seeking authoritative advice on the meaning and application of the UNGPs.

7. Meaningful stakeholder engagement

Meaningful stakeholder engagement is fundamental to meeting the corporate responsibility to respect human rights, particularly through the exercise of human rights due diligence and remediation of human rights harms. Its significance derives from recognition that the people directly affected by business activities, such as workers or community members, are best placed to identify and assess actual or potential impacts and what is needed to address them.

Given the centrality of stakeholder engagement in ensuring human rights due diligence and remediation are effective, it will be particularly important for the guidelines to reference and build upon relevant international standards, OHCHR guidance and existing practice in this field. Some key points to consider include:

- **Be clear that Article 13 should not be read as an exhaustive checklist**, but as a minimum set of legally required moments within a broader expectation of meaningful, ongoing and fit-for-purpose engagement. The UNGPs recognize the importance of stakeholder engagement with respect to other stages in human rights due diligence (explicitly and implicitly). For instance, UNGP 20 calls for companies to "draw on feedback from … affected stakeholders" when tracking the effectiveness of their responses to identified human rights impacts. The guidelines should therefore encourage companies to engage affected stakeholders in assessing whether corrective measures are working in practice.
- **Highlight the importance of stakeholder engagement as a tool for effective due diligence**. Among other roles, engagement enables a company to identify whether stakeholders have the same or different perspectives on what constitutes an impact on their human rights and on how significant an impact may be. For instance, damage to land that belongs to an Indigenous community but is not farmed or otherwise used for economic purposes might seem to the company to represent a low-level impact on the right to property that can easily be addressed through financial compensation or the provision of alternative land; whereas an Indigenous community may consider that there is a far greater impact related to the role of that land in its culture, traditions and beliefs. It is often only through talking to those who may be affected that these issues come to light and can be addressed. In this sense, stakeholder engagement should be framed as a means of improving the quality, targeting and effectiveness of due diligence, which is also highly beneficial to a company's better understanding of the situation on the ground, rather than as a procedural requirement to be satisfied at discrete moments.
- **Recognize the different groups to consider in stakeholder engagement efforts.** As covered in OHCHR's e-learning course on Business and Human Rights: How companies can operationalize the UN Guiding Principles (developed together with the UN Global Compact and Shift), there are generally three key groups to consider:
    - **Directly affected stakeholders and their legitimate representatives**: those whose human rights may be negatively impacted by a company across its value chain;

  - **Credible proxies**: individuals or entities (such as local civil society organizations) with sufficiently deep experience in engaging with people from a particular region or context, who can help to effectively convey their likely concerns;
  - **Human rights experts**: individuals who can bring particular knowledge or expertise that the company needs to effectively manage human rights, for example, a labour or land rights expert. They can play an important role in supplementing (but not replacing) engagement with affected stakeholders directly.[6]
- **Companies should make best efforts to engage with directly affected stakeholders.** Generally speaking, companies should seek, where possible, to consult affected or potentially affected rightsholders directly, taking account of language, safety and other barriers. Some methods to help identify and engage with hard-to-reach rights holders include:
  - **Seeking help through local civil society organizations, trade unions and other workers' organizations, networks and trusted third parties**: Such groups can help companies identify and connect directly with workers and other (potentially) affected stakeholders throughout value chains. These groups may also constitute credible proxies.
  - **Using digital stakeholder engagement tools**: The use of digital tools to facilitate stakeholder engagement efforts is expanding rapidly. They offer the potential to enhance the scale, inclusivity and responsiveness of stakeholder engagement efforts, but also raising risks and limitations around accessibility, accountability, privacy, and the quality and safety of participation. OHCHR has recently released guidance on assessing the suitability and limitations of such tools which may be a useful resource to consult when developing guidelines concerning the use of digital tools and technologies in this area.
  - **Engagement through grievance mechanisms**: Such mechanisms provide a ready-made platform for dialogue with affected stakeholders about how a company's activities are affecting them.
- **Hidden stakeholders (and those at heightened risk of vulnerability or marginalization) require proactive outreach.** The most severely affected stakeholders are often those who lack status or influence; companies should avoid engaging only with those who are loudest or most visible. Companies should identify and address barriers to their participation by seeking appropriate expertise to understand cultural and other constraints and adapting methods of engagement (e.g., adapted language and literacy approaches, confidential or off-site engagement, safe digital and non-digital channels, and separate engagement with groups facing heightened risks).
- **Recognize the situations in which it would be appropriate to engage with credible proxies.** For instance:
  - where consultation with directly affected people is not possible or feasible (e.g., due to issues of scale, complexity of value chains, or other practical barriers);
  - where consultation with directly affected people may raise security concerns;
  - where the nature of impacts is particularly widespread or collective in nature;
  - directly affected people have requested reliance on credible proxies.
- **Credible proxies require careful selection.** Where proxies are to be used, the following considerations may help with selection:
  - proximity to affected people (with a preference for local actors with direct relationships);
  - sufficiently deep experience in engaging with stakeholders from a particular region or context (e.g., sector-specific initiatives);
  - organizations that have been identified by stakeholders;
  - organizations that are broadly representative and inclusive (as opposed to those that may exclude certain voices or types of stakeholders, such as women, or those at heightened risk of

[6] See also OHCHR, Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide, Box 15.

vulnerability or marginalization, such as children, persons with disabilities or certain minorities);
    - avoidance of conflicts of interest.
- **Safeguards against retaliation must be built in.** Some useful measures include ensuring retaliation risks are assessed and addressed, generally and in specific cases, and providing advice to rights holders about steps that can be taken to enhance safety. This could also involve a range of technical, procedural and institutional measures, including anonymity or pseudonymity, secure storage, data minimization, restricted access, deletion rules, informed consent, independent handling, safe non-digital options and protocols for data breaches or government access requests. It should be recognized that risks are heightened in contexts of repression, conflict, military occupation, surveillance, weak rule of law or anti-union retaliation.

8. Notification mechanism and complaints procedure

The notification mechanisms and complaints procedures referred to in Article 14 of the CS3D fall within the category of "non-State-based grievance mechanisms" as defined in the UNGPs (see also Remedy Interpretive Guide, Question 35). During its Accountability and Remedy Project, OHCHR had a dedicated workstream on non-State-based grievance mechanisms, focused on identifying opportunities for improving rights holders' access to remedy through such mechanisms in cases of business-related human rights harms.[7] A list of some key OHCHR resources arising from this work can be found on the ARP III website. The following will be particularly useful for informing CS3D guidelines concerning notification mechanisms and complaints procedures:

- *Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide*: this helps unpack the meaning and intent of the UNGPs' access to remedy pillar, including as regards operational-level grievance mechanisms (Questions 40-50 and Boxes 9-12) and the effectiveness criteria for non-judicial grievance mechanisms (Questions 57-69 and Boxes 13-15).
- *Access to Remedy in Cases of Business-Related Human Rights Abuse: A Practical Guide for Non-State-Based Grievance Mechanisms*: this captures good practice lessons with regard to the design and operation of non-State-based grievance mechanisms, with guidance on how such mechanisms could meet each of the UNGPs' effectiveness criteria (pp. 22-46). A short summary note for companies on how to meet the effectiveness criteria is available here.

To the extent that CS3D guidelines will be developed concerning notification mechanisms and complaints procedures, **OHCHR would strongly recommend that the guidelines incorporate and build upon the "effectiveness criteria" framework and content set out in UNGP 31**. These criteria were developed through a process of extensive research, consultation and testing in the field, and they provide the internationally-accepted basis for holistic assessments of the effectiveness of a wide range of grievance mechanisms and can be applied in any sector or operational context. Companies striving to meet their responsibility to respect human rights, as defined in the UNGPs, are already familiar with this standard. We therefore consider it to be important to build on the provisions on effectiveness in the UNGPs and OHCHR materials highlighted above, rather that pursuing alternative approaches that could potentially complicate corporate compliance efforts, introduce inefficiencies and undermine legal certainty. In this regard, language could be incorporated from Recital 59 that recognizes that certain CS3D terms in Article 14 should be understood in line with UNGP 31. Additionally, we would recommend including an express reference to UNGP 31(h) (based on engagement and dialogue); a clear finding from ARP was that the level of meaningful stakeholder engagement in the design and performance of non-State-based grievance

[7] Through this project, OHCHR has also developed practical guidance for enhancing the effectiveness of judicial mechanisms and State-based non-judicial mechanisms in business and human rights cases. These resources will be helpful for those States interested in addressing the most common barriers to remedy faced by those harmed in the context of business activities.

mechanisms is one of the most important factors in ensuring affected stakeholders trust and use the mechanisms in practice.

Recital 59 contains several further elements that would be important to reflect in any guidelines concerning notification mechanisms and complaints procedures:

- ***Reasonably available measures to prevent any form of retaliation by ensuring confidentiality***. While this is generally very important as a starting point, further (or alternative) steps may be necessary in some contexts. ARP guidance provides additional recommendations on how to protect people from retaliation risks, such as having in place zero-tolerance policies; ensuring retaliation risks are assessed and addressed, generally and in specific cases; and providing advice to rights holders about steps that can be taken to enhance safety. The guidelines provide an opportunity to educate companies about the possible risks to affected people of approaches that rely entirely on confidentiality, and to encourage more proactivity and creativity in addressing risks of retaliation.
- ***Submission of a notification or complaint should not be a prerequisite or preclude the person submitting them from having access to judicial or other non-judicial mechanisms.*** In various publications on access to remedy, OHCHR has drawn attention to serious barriers to remedy that can be created when companies insist on legal waivers as a condition of seeking access to a grievance mechanism (see Remedy Interpretive Guide, Box 12). The guidelines provide an opportunity to reinforce this messaging and to encourage alternate, more flexible approaches.

9. Conclusion

OHCHR reiterates the importance of ensuring that the CS3D guidelines are fully aligned with the UNGPs and other relevant international standards. The recommendations set out in this submission are intended to support the development of practical, coherent and effective guidelines that strengthens risk-based human rights due diligence, enhances legal certainty, and contributes to better outcomes for rights holders while providing clarity for businesses and other stakeholders.

OHCHR would be available to further engage and discuss the issues raised above, as well as other aspects of the CS3D.