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## Nora Götzmann – Showing respect for human rights in state-investor contracts: Guidance and assessment tool for company negotiators

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Respect for human rights, as envisaged by the [UN Guiding Principles on Business and Human Rights](#), requires companies to exercise human rights due diligence across the project life-cycle. This includes early business development and contracting between a company and a host-state for an investment project (often called 'host-government agreements' or 'state-investor contracts').

Ensuring that human rights are considered at the contracting stage can provide key benefits. For example, it can facilitate the early identification of human rights risks and provide a space for the parties to put in place measures for the future management of human rights due diligence for the project. It can also assist both parties in understanding their respective duties and responsibilities vis-à-vis human rights, and based on this understanding establish the respective role of each party for human rights due diligence activities, and allocation of resources for their implementation.

The importance of integrating human rights considerations in contract negotiations was recognised by the former UN Special Representative on Business and Human Rights, John Ruggie, who as part of his mandate launched the [Principles for Responsible Contracts – integrating the management of human rights risks into State-investor contract negotiations \(2011\)](#).

The Principles for Responsible Contracts consist of ten key principles that seek to help integrate the management of human rights risks into investment project contract negotiations. They cover negotiations planning, operating standards, stabilisation clauses, compliance and monitoring, transparency, security, grievance resolution and community engagement. The Principles focus both on the duties of the state, as well as the responsibilities of the company, to include human rights considerations in state-investor contract negotiations.

Importantly, the Principles focus not only on the actual content of state-investor contracts, but also emphasise the importance of the negotiations process itself. Essentially, the Principles pose that the negotiations process provides a key opportunity for both parties to acknowledge their role towards human rights and make provisions for the future and ongoing management of human rights due diligence.

This can include making provisions in the contract itself where relevant, or articulating clearly that specific human rights due diligence aspects will be addressed through other governance frameworks applicable to the project. For example, the contract might not specify exactly what type of community engagement activities and grievance mechanism will be put in place, however, it can make provision for the development and resourcing of community engagement programmes.

Building on the Principles for Responsible Contracts, in January 2014, the [Danish Institute for Human Rights](#) launched a new human rights due diligence tool on integrating human rights in state-investor contracts and negotiations: [Human Rights and State-investor contracts – Guidance and assessment tool for company negotiators](#).

The Guidance seeks to operationalise what is expected of companies in terms of human rights due diligence during negotiations by (a) pinpointing those aspects which relate specifically to the company responsibility to respect, and (b) articulating what is expected of companies during negotiations in a simplified format that is easily understandably by persons who may not have a background in human rights.

The Danish Institute for Human Rights Guidance consists of:

1. A mini briefing note on human rights and state-investor contracts
2. A short checklist with human rights relevant questions for company negotiating teams
3. The Human Rights Compliance Assessment Module based on the Principles for Responsible Contracts.

These tools are intended for use by company staff in areas such as business development and negotiations, but also for staff groups who may have responsibilities for implementing human rights due diligence, such as legal compliance or sustainability functions.

A key challenge in developing the Guidance (in particular the [Questions for Company Negotiating Teams](#)) was to strike a balance between providing information that is concise, while at the same time ensuring enough detail to make the explanations and questions provided meaningful and understandable to an audience which may not be familiar with human rights. To this end, we opted for a short [Mini Briefing Note](#) as a companion document to the Questions for Company Negotiating Teams.

The Human Rights Compliance Assessment Module is more comprehensive and can be used by a variety of audiences. The questions and indicators can be used as a standard against which to evaluate company negotiations practices and the content of state-investor contracts. Such evaluations might be carried out by staff internal to the company or an external and independent third party. As such, this component of the Guidance is not only targeted at companies, but can also be a practical resource for independent third parties, such as civil society organisations, national human rights institutions or community groups, to challenge and evaluate company practice in the area of state-investor contracts.

The Guidance pinpoints those aspects which relate specifically to company responsibilities in negotiations. However, this is not to diminish the role of the state in the negotiations process nor to detract from the holistic approach that is emphasised in the Principles for Responsible Contracts, but rather, to take a step towards operationalising the content and intent of the Principles for Responsible Contracts.

Looking forward, we suggest that the Guidance can become one tool in the area of human rights and state-investor contracts, which necessarily also needs to include other areas of focus such as working towards contracts transparency; extending technical assistance services for host-states to include a focus on human rights; and capacity building of both company and state negotiating teams on human rights due diligence. It is only through such a holistic and comprehensive set of tools, services and approaches available, that the effective integration of human rights considerations in state-investor contract negotiations can be realised.

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