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# International Legal Framework on Responsible Business

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Stuart Neely

Norton Rose Fulbright LLP

# UN Guiding Principles on Business and Human Rights

## The UN Guiding Principles on Business and Human Rights

### States

- The **state duty to protect** against human rights abuses by third parties, including businesses.

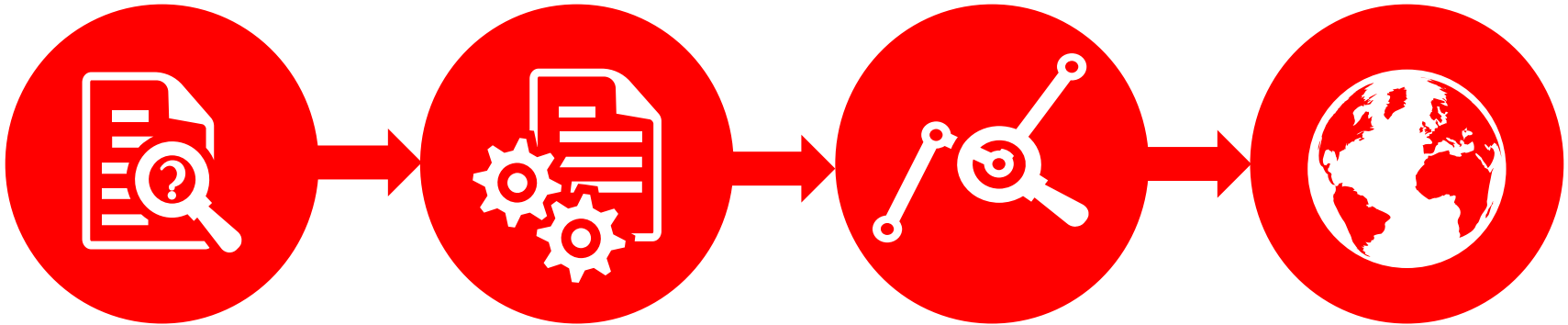
### Business entities

- The corporate **responsibility to respect** human rights:
  - The responsibility is discharged by **due diligence** – i.e. identifying and managing human rights impacts.
  - Businesses can cause, contribute or be linked to impacts through their **commercial relationships** (e.g. suppliers, customers, subsidiaries, JVs etc.)

### Remedy

- **Access by victims** to effective remedy, both judicial and non-judicial.

# Human rights due diligence: UN Guiding Principles 17 - 21



## Assess

Assess actual /  
potential human  
rights risks

## Integrate

Take action to  
operationalise  
findings

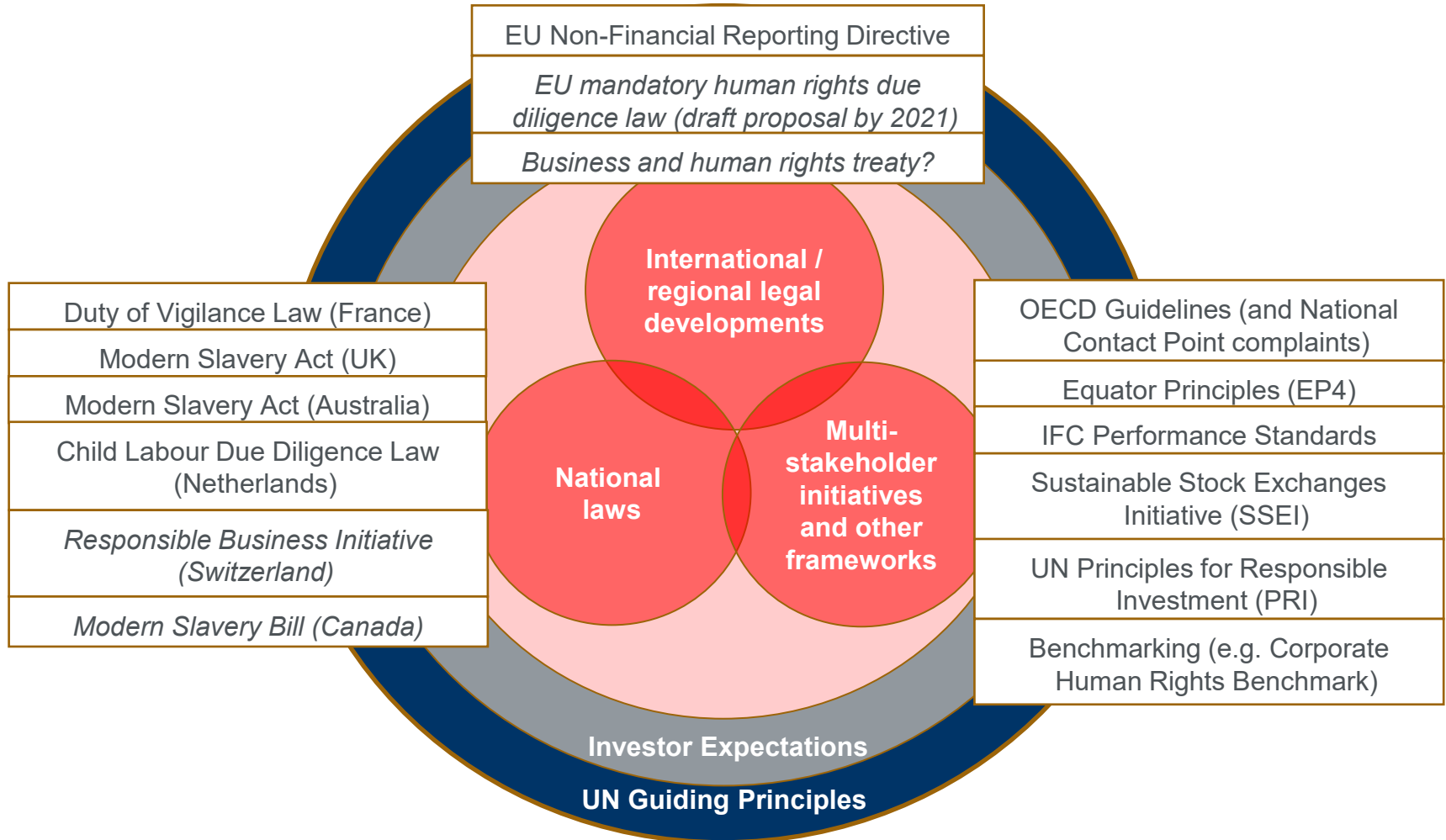
## Track

Track effectiveness  
of response to  
impacts

## Communicate

Communicate  
externally how  
human rights risks  
addressed

# Legal developments and international initiatives drawing from the UNGPs





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# Thank you

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## Corporate Responsibility to Respect: Role of lawyers in ensuring responsible business practices – mitigation of legal and reputational risks

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Flaviana Charles(Adv)

ED-Business and Human Rights (BHRT)

Email: [flaviacharlz@gmail.com](mailto:flaviacharlz@gmail.com)

# Introduction: Corporate Responsibility to Respect

- Means that Business enterprises should ***avoid infringing on the human rights of others & should address adverse human rights impacts*** with which they are involved.'
- Companies must ***'know and show'*** respect for human rights through exercising **human rights due diligence.**

# Mitigation of Legal & Reputational Risks

## ● Legal Risks

- Ensure that the non judicial & judicial mechanisms is available & accessible to all
- Ensure that Businesses adopt policies & HR strategies to avoid the impact of non-compliance/HR abuse

## ● Legal Risks

- Represent clients on remedial redress
- Land: full, fair & prompt compensation
- Environment: Air, water & water pollution, EISA/
- HR-abuses: discrimination, Security guards/militarization, Contract disclosures etc



# Mitigation of Legal & Reputational Risks

## ● Legal Risks

- Facilitate the alignment of policies, legislation & gvt programmes with international stds
- Ensure that, Contracts are made open for review/scrutiny & provide redress
- Avoid human rights abuses

## ● Legal Risks

- Provide legal address for victims of HR abuse
- Ensure meaningful consultation (FPIC)
- Endure that-Business are corruption free zone
- Take part in assessing & improving the law enforcement capabilities, Review existing law,
- Provide consultation/guidance for co's on how to respect HRs

# Mitigation of Legal & Reputational Risks

## ● Legal Risks

- Undertake thoroughly process of due diligence when investigating supply chains/entering into any relationship/contracts with other party
- A *'know and show'* policy should be auctioned timely

## ● Legal Risks

- Undertake an active dichotomy of mitigation & leverage, a *'know & show'* approach
- Ensure ethical transparency
- Provide an opportunity for access to remedy to be enforced during contract negotiations.

# Mitigation of Legal & Reputational Risks

## ● Reputation Risks

- Loss of reputation due to failure to act responsibly may impact profitability of business to a great extent
- Businesses should also support and respect the protection of internationally proclaimed HRs'

## ● Reputational Risks

- Businesses should ensure they are not complicit in HRs abuses.
- **CSR**-be meaningful
- Businesses should guarantee the environmental & social stds
- Meaningful consultation

## ● Reputational Risks

- Demystifying the impacts of human rights' abuses on the long-term performance of a company,
- Educating the Board on best practices to avoid reputational damages
- Create awareness on how Co's operate

## ● Reputational Risks

- By creating sense of ownership of the company through community engagements on various issues
- Avoid bad publicity that can pose serious threat to the long-term plan of the Businesses; So businesses should act Responsibly.



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## Legal and Corporate Governance Perspective on Responsible Business in Tanzania: The role of lawyers in navigating legal challenges

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Masoud Salim Mohamed

Advocate of the High Court of Zanzibar, and  
Partner at Said Attorney & Associates

Email: [masoud@saidattorneys.com](mailto:masoud@saidattorneys.com)

# OUTLINE

- Rationale for responsible business in Tanzania
- Whose duty is it to uphold responsible business standards?
- The legal perspective
- The corporate perspective
- Key challenges
- The role of lawyers

# Why responsible business practice in Tanzania?

- It will precipitate a more inclusive and sustainable growth
- Foster economic growth by creating more decent work in line with SDGs, the National (mainland's) Five-Year Development Plan 2016/17-2020/21 and the Zanzibar Strategy for Growth and Reduction of Poverty 2016-2020
- Increased responsible business practice will spur compliance and confidence in the country
- The country will become more attractive to serious investors and see increased FDI
- Ultimately, revenue collection will improve and so will social services



# Whose responsibility is it to uphold best practices in business?

It's our collective...

...responsibility



# Legal perspective

- Many legislations have good provisions that promote responsible business practice
- Companies Act, 2002, as amended in 2019, lays a good foundation on matters of disclosure and duty of directors to act in good faith
- Zanzibar Companies Act (of 2013) adopts the same principles
- The Petroleum (Corporate Integrity Pledge) Regulations, 2019 key objectives, inter alia, are;
- Reg. 4(a) to develop a nation of high integrity, that is resilient and embraces universal good values; (c) to reinforce corporate governance, integrity, and transparency...
- Tanzania Extractive Industries Transparency Act, 2015, Sec. 16(1) disclosure of agreements

# Corporate perspective

*“It can be said, without too much oversimplification, that there are no “underdeveloped countries.” There are only “undermanaged ones.” – Peter F. Drucker*

# Corporate perspective

- Most countries' corporate governance approach is informed by events such as financial and economic collapse
- In Tanzania, the corporate governance drive was not precipitated by any serious collapse
- There is a vast amount of interest in the governance parastatals, listed companies as well as private companies
- To date there is no integrated national code of corporate governance
- Company law provides key principles
- The Capital Markets & Securities Authority's guidelines apply to banks and listed companies
- BoT guidelines for Boards of Directors of Banks and Financial Institutions, 2008 apply for Boards as well as individual directors
- A voluntary code of corporate governance is highly desirable

# Some key challenges

- Many companies remain attached to family ownership with often the shareholders doubling as managers
- There is very little disclosure and so much suspicion towards it
- Serious potential conflict of interest
- Inadequate competences in the boards
- Little or no commitment from directors
- Very few independent directors
- Agency problems
- Lack capacity and in some cases, commercial awareness by some board members
- Shortsighted on profit maximization

# The role of lawyers

- The role of lawyers in navigating legal and procedural challenges is critical
- Lawyers need to invest in themselves in order to be well versed with their particular areas of practice
- Company secretaries, in-house Counsel need to ensure there is clarity of procedures and guide clients towards compliance from day go
- Lawyers need to conduct themselves ethically and to a high standard of values
- Serve as gatekeepers and arbitor for the company, to steer it clear from wrongdoing and malpractice
- A good lawyer should also be a good “professional and public citizen”, -concerned not just with the best interest of his/her client- but the **“greatest good for the greatest number”**



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