2. Human rights guiding principles: a forward-looking retrospective

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I. INTRODUCTION

On 13 February 2019, a diverse group of human rights experts adopted the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (hereafter: Abidjan Principles) in Côte d'Ivoire. The adoption of these principles was preceded by four years of work that included research, participatory consultation, and a drafting process.

Recent years have witnessed the increasing involvement of private actors in education around the world. However, no clear standards existed to assess this phenomenon. The Abidjan Principles are presented as a document that 'unpacks and compiles' the existing legal obligations of States to guarantee the right to education as prescribed under international human rights law. According to their Preamble, the principles 'seek to promote quality education systems that guarantee equality, human dignity, and social justice, and should not be read in any way as endorsing the involvement of private actors in education or suppressing genuine liberty in education.'¹

After their adoption, the Abidjan Principles gained quick recognition. They were endorsed by resolutions by both the United Nations Human Rights Council² and the African Commission on Human and Peoples' Rights.³ They were also included in reports by human rights monitoring

¹ Abidjan Principles [2019], 9.

² A/HRC/41/L.26, 9 July 2019.

³ *Resolution on States' Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services – ACHPR* / [2019] Res. 420 (LXIV).

bodies.⁴ Moreover, in a critical implementation of the Abidjan Principles, the Global Partnership for Education (GPE), the only global fund solely dedicated to education in developing countries, decided that its funds cannot be used to support for-profit provision of education.⁵

The adoption of so-called ‘principles’ to further clarify the scope and content of human rights obligations is common practice. Since the late 1980s, academics, practitioners and human rights bodies have adopted several principles to further clarify the existing human rights norms and standards. Regardless of the material scope and process of adoption, all human rights principles may be considered ‘soft law’ instruments.⁶ This means that, in principle, they are not legally binding, because States have not formally agreed to be bound by the provisions they contain. Yet, they can carry considerable political and legal weight. They can close protection gaps, reflect key human rights concerns, and establish the foundations for further development of the law by clarifying core issues, legal concepts, and the scope of protection. When supported by public advocacy, human rights principles can promote reforms of domestic law and practices and provide objective benchmarks by which to measure the performance of State institutions. They are critical to improve accountability for human rights violations and to ensure redress for victims.

This chapter seeks to position the Abidjan Principles within this broader process. What do they aim to resolve? How do they embed in the standard-setting process of human rights norms? Why can the Abidjan Principles and their adopters claim legitimacy? Is there any unique characteristic to this process that could explain its quick endorsement?

⁴ For example, the *Report of the Special Rapporteur on the right to education*, A/HRC/41/37, 10 April 2019.

⁵ Global Partnership for Education (GPE), *Private Sector Engagement Strategy Paper (2019–2022) Engaging the private sector to support the delivery of GPE 2020*, June 2019. GPE still accepts some exceptions.

⁶ While traditionally ‘soft law’ refers to those documents created within international organizations or at least promoted by them, the term has increasingly been used to include documents developed by non-governmental organizations (NGOs) and expert groups as well. See e.g. Christine Chinkin: ‘Sources’ in Daniel Moeckli et al. (eds.), *International Human Rights Law* (2nd edn, Oxford University Press 2014) 75–95.

II. WHAT ARE HUMAN RIGHTS GUIDING PRINCIPLES?

Guiding principles are documents that – at the moment of their adoption – do not create legal obligations but instead seek to provide ‘a contemporary interpretation’ of existing legal obligations related to their topic. The Abidjan Principles claim that ‘they are an authoritative statement that consolidates the developing legal framework and reaffirms the existing obligations of States in guaranteeing the right to education as prescribed under human rights law’.⁷ This aligns with most human rights principles. Drafters of guiding principles often claim that their respective principles ‘clarify’ the normative content of treaties and other sources of international law,⁸ reflecting ‘the present state of international law’.⁹

Despite this important standard-setting role, information about the adoption process of various guiding principles remains piecemeal. This section tries to fill that gap by examining the legal weight of these documents, their objectives, and the various ways by which existing documents have been drafted.

Legal Weight

The term ‘soft law’ can be misleading. Though ‘soft law’ texts are not themselves legally binding, most human rights guiding principles draw on principles and norms contained in various sources of international law (such as international treaties and customary law). This means that even when principles are not binding *per se*, they often carry an authority stemming from the international law from which the provisions are drawn.

⁷ *Abidjan Principles* [2019], 9.

⁸ Sources of international human rights law are listed in Article 38(1) *Statute of the International Court of Justice: Treaties, custom, general principles of law and subsidiary means for determining the law, judicial decisions and the writings of jurists*.

⁹ *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*; *Guiding Principles on Extreme Poverty and Human Rights* [2011]; and *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* [2012].

Their influence manifests in various ways. Some guiding principles have become the basis for legally binding treaties. For example, the Kampala Convention, adopted by the African Union, reflects the *Guiding Principles on Internal Displacement* (IDP Principles).¹⁰ The *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (Limburg Principles)¹¹ and *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (Maastricht Guidelines)¹² both highly influenced the drafting of the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (ICESCR).¹³

More often, guiding principles become points of reference in national legislation, national and international jurisprudence, or in other international instruments. Several principles have filled these roles, such as the IDP Principles,¹⁴ the *Basic Principles and Guidelines on Development-Based Evictions and Displacement* (Forced Evictions Principles),¹⁵ the *Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework* (Business Principles),¹⁶ the *Guiding Principles on Extreme Poverty and Human Rights* (Poverty Principles),¹⁷ and the *Maastricht*

¹⁰ These principles were developed in 1998 by the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, upon the request of the former Commission on Human Rights. E/CN.4/1998/53/Add.2, 1 February 1998.

¹¹ The Limburg Principles 1986 were adopted by a group of international experts convened by the International Commission of Jurists (Geneva, Switzerland), the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America). (1987) 9 *Human Rights Quarterly* (HRQ) 2, 122–146.

¹² The Maastricht Guidelines 1997 were adopted on the tenth anniversary of the Limburg Principles by a group of more than 30 experts who met in Maastricht at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). Theo van Boven, Cees Flinterman and Ingrid Westendorp (eds.), 'The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* 3, 691–704.

¹³ Human Rights Council, Resolution 8/2 of 18 June 2008.

¹⁴ See note 10.

¹⁵ A/HRC/4/18, annex 1, 5 February 2007.

¹⁶ A/HRC/17/31, 21 March 2011.

¹⁷ A/HRC/21/39, 18 July 2012.

Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (ETO Principles).¹⁸

Therefore, while guiding principles do not constitute a formal source of human rights law, they may lead to formal validation of or significantly influence State behaviour, when they are carefully researched and drafted. In so doing, these documents may lay the groundwork for the gradual formation of customary law or treaty provisions.¹⁹

Moreover, as Van Hoof notes, ‘there exists a considerable “grey area” of soft law between the white space of law and the blank territory of non-law.’²⁰ In this sense, some ‘soft law’ instruments may be closer to law than others.

Closing Protection Gaps and Other Objectives

If guiding principles only reflect ‘the present state of international law’, why are they considered necessary or desirable? Human rights guiding principles are usually created to fill gaps in protection. While existing treaties may provide protection in certain respects, guiding principles may be required to frame the rights of an affected group more clearly or in human rights terms.

Sometimes, principles seek to interpret and apply existing norms to a specific vulnerable group. Such is the case, for example, of the Poverty Principles, the IDP Principles, and the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* (Yogyakarta Principles).²¹ Principles might also be necessary to curtail specific practices that violate human rights to which the world community was previously not sensitive (or insufficiently so). For example, the ETO Principles²² were adopted to fill the protection gap created by the States’ tendency to limit their human rights

¹⁸ Adopted on 28 September 2011. Available at: <http://www.etoconsortium.org>.

¹⁹ Antonio Cassese, *International Law* (Oxford University Press, 2001), 160–161.

²⁰ G.J.H. Van Hoof, *Rethinking the Sources of International Law* (Kluwer 1983), 188.

²¹ The Yogyakarta Principles [2006] were adopted by distinguished group of international human rights experts who met in Yogyakarta, Indonesia. Available at <http://yogyakartaprinciples.org>.

²² See note 18.

obligations to their own territory. The Business Principles²³ further seek to protect individuals from business-related human rights harms, a reality rising in severity within the context of globalization.

The Abidjan Principles seek both objectives. They aim to clarify the normative content of the right to education in relation to the private involvement in education. They also provide guidance on how States should regulate the increased involvement of private actors in the provision of education in recent years.

The diagnosis of existent gaps is based on pragmatic analysis (facts on the ground) and international law. Yet, the claim of the existence of a protection gap is often contested. Governments tend to argue that existing standards provide protection for groups particularly exposed to risk, or against a particular behaviour. Conversely, members of such groups and civil society organizations often argue that the clarification of standards is needed.

Beyond clarifying legal grey areas and gaps, those seeking the establishment of new guiding principles might have several additional objectives. They might also seek to raise awareness about violations of rights; address technical issues; identify legal lacunae (loopholes); inform policy development; provide guidelines for States' behaviour; or offer practical guidance for those directly affected to seek redress. In addition, by elaborating on the implications for States of existing standards and integrating them within a single, coherent, and comprehensive document, guiding principles can be essential tools for advocacy and for enhancing accountability. It is often expected that human rights principles will also play a role in the normative and jurisprudential development of States.

III. THE PROCESS OF DEVELOPING AND ADOPTING PRINCIPLES WITHIN AND OUTSIDE AN INTERGOVERNMENTAL PROCESS

In most cases, standard-setting processes are the result of intergovernmental negotiations. Thus, human rights principles are often negotiated within an intergovernmental body, mainly the United Nations (UN) Human Rights Council or the former Commission on Human Rights. These processes often begin with a decision of the intergovernmental

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See note 16.

body that requests a subsidiary body or a special procedure (independent experts, special rapporteurs, or special representatives) to develop the text in consultation with several stakeholders.

When human rights principles are developed through an intergovernmental process, the initiation of the process can impact the level of States' engagement and the resources allocated. If intergovernmental bodies request the drafting of principles, the resolution establishing the process determines who is entitled to participate in negotiations (e.g. UN agencies and NGOs with consultative status), and the resolution might even set a deadline for completing the work. The processes tend to benefit from broad participation from States – whose access is unrestricted – and to receive enough financial support.

In contrast, when the process within an intergovernmental body is not initiated by a formal request (e.g. when it is initiated by a special rapporteur decision), the process is more flexible. In that case, stakeholder participation is not limited to those accredited to work within the body (e.g. NGOs with consultative status at the UN). However, the participation of States and other actors in the drafting process as well as the financial resources is not guaranteed. In addition, factors such as the perceived relevance of the topic or the level of States' support often determine their level of engagement. Moreover, the number of consultations is determined by the mandate holder's capacity to mobilize funds or to work within existing resources.

When principles are drafted within an intergovernmental body, the subsequent resolutions of that body reflect the level of support from States. Both the language used (e.g. 'take note' or 'endorse') and the method for the adoption (i.e. if they have been adopted by consensus or by vote) may indicate States' consent to be bound.

The Abidjan Principles have been adopted outside an intergovernmental body, yet this fact is not exceptional and should not be interpreted as limiting their potential impact. Over the years, several principles have been adopted by groups of academics, practitioners, and NGOs. These include some very influential instruments such as the Limburg Principles (1986); the Maastricht Guidelines (1997); the ETO Principles (2011);²⁴ and the *Additional Principles and State Obligations on the*

²⁴ See note 18. The ETO Principles were adopted in 2011 by a group of experts in international law and human rights at a gathering convened by Maastricht University and the International Commission of Jurists. Available at <http://www.etoconsortium.org/>.

*Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (The Yogyakarta Principles Plus 10).*²⁵

The main advantage of these processes is that they ‘bypass’ the political intricacies of an intergovernmental process. External drafting processes are more flexible and often move faster than those within intergovernmental bodies. In principle, they allow for more active participation by non-State actors (e.g. not being restricted to NGOs with consultative status), a greater ‘control’ over the participants (e.g. avoiding those actors who would only aim to disrupt the process), and facilitate reaching consensus on a coherent text without politically compromising on critical issues. Processes led by non-governmental actors also include a greater opportunity for experts in the subject to influence the process. This contrasts with their limited influence in intergovernmental processes.

The fact that some principles are developed outside an intergovernmental law-making body does not mean that UN bodies cannot subsequently endorse them. For example, the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (Johannesburg Principles),²⁶ adopted in 1995 by a group of experts convened by NGOs and academics, were subsequently included as an annex in the report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. The Special Rapporteur subsequently recommended that the former Commission on Human Rights endorse them.²⁷ In its 1996 resolution on the topic, the Commission ‘took note’ of the Johannesburg Principles.²⁸ Since then, the

²⁵ Adopted in 2017 to supplement the Yogyakarta Principles (see note 19) by a group of human rights experts from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others. See <http://yogyakartaprinciples.org>.

²⁶ Adopted in 1995 by a group of experts in international law, national security, and human rights convened by Article 19, the International Centre against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, which met in South Africa.

²⁷ E/CN.4/1996/39, 22 March 1996. See para. 154 and Annex 1.

²⁸ Commission on Human Rights, Resolution 1996/53, 19 April 1996.

Johannesburg Principles have been cited in several annual resolutions on freedom of opinion and expression.²⁹

States can also play an instrumental role in ensuring that guiding principles adopted outside an intergovernmental law-making body by NGOs, practitioners and academics acquire a different legal status and are recognized by an intergovernmental process. For example, after the adoption of the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*³⁰ (Siracusa Principles), the Government of the Netherlands requested through a 'note verbale' that the UN Secretary-General³¹ circulate the principles as an official UN document. The former Commission on Human Rights complied with the request and published the principles.³² The Maastricht Guidelines were also subsequently published as a UN document, through a much simpler process. The Committee on Economic Social and Cultural Rights just published them as one of its documents in its 23rd session in the year 2000.³³

IV. THE LEGITIMACY OF NON-INTERGOVERNMENTAL STANDARD-SETTING PROCESSES

The Abidjan Principles were adopted in a non-intergovernmental process. It is therefore important to examine the factors that will determine their legitimacy. Specifically, why should States and other actors (e.g. UN treaty bodies, specialized agencies) comply with or apply the guiding

²⁹ Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* [November 1996], London.

³⁰ Adopted in a conference held in Siracusa, Italy in 1984, organized by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute of Human Rights, and the International Institute of Higher Studies in Criminal Sciences. Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

³¹ Note verbale dated 24 August 1984 from the Permanent Representative of the Netherlands to the United Nations Office at Geneva addressed to the Secretary-General.

³² E/CN.4/1985/4, 28 September 1984.

³³ E/C.12/2000/13, 2 October 2000. The Limburg Principles were also included in this document.

principles, given that they have been developed outside an intergovernmental process? What determines whether they feel pressure to comply with/apply them?

To answer these questions, I will introduce the concept of legitimacy adapted by Franck to the international system. As he defines it:

Legitimacy is a property of a rule or rulemaking institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believed that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.³⁴

This notion of legitimacy suggests that two factors predispose those addressed by the rule toward voluntary obedience: one related to the process of ‘rule-making’ and the other to the ‘rule’ itself. In this analysis, the ‘rule-making institutions’ are those directly involved in the drafting and adoption of the guiding principles (i.e. drafters and signatories/adopting individuals or institutions), whereas the ‘rules’ are the guiding principles themselves. Finally, those addressed by the rule are primarily the States, but also other actors that are expected to apply the principles in their work.

The extent to which States and other actors perceive human rights principles to be legitimate will determine both how inclined they are to comply with them and the cost of non-compliance (in terms of the ‘mobilization of shame’). Thus, when States do not perceive that human rights principles have a high degree of legitimacy, the degree of compliance will be lower, and it will be less costly to ignore them.³⁵

Without trying to be exhaustive, I propose the following factors as critical determinants of legitimacy for human rights principles adopted outside an intergovernmental process, as the Abidjan Principles were:

1. independence and expertise of the drafters and signatories;
2. diversity of the drafters and signatories;
3. rigour and persuasiveness of the human rights principles;
4. practicality of the human rights principles; and
5. validation of the human rights principles.³⁶

³⁴ T.M. Franck, *The Power of Legitimacy among Nations* (Oxford University Press, 1990), 24.

³⁵ Ibid, p.49.

³⁶ The first two elements refer to those drafting and adopting the guiding principles (i.e. ‘the rule-making institution’) and the last three elements refer to the text of the guiding principles (i.e. ‘the rule’).

It is important to note that legitimacy is a matter of degree and that hence the legitimacy of guiding principles depends on the level of fulfilment of these factors.

Independence and Expertise of Drafters/Signatories

The independence and expertise of those involved in the process as drafters and signatories is without doubt one of the central factors determining the legitimacy of guiding principles. If States have little to no confidence that a body of independent experts developed the principles, they and other actors will not feel bound to comply with or apply the principles.

While the early principles tended to include mainly legal experts (i.e. academics) in drafting processes (e.g. Limburg Principles), those involved in these processes have tended to exhibit greater ‘diversity of knowledge’ over the years. The Abidjan Principles, for example, involved a wide range of expertise among their drafters and through the many consultations.³⁷

The expertise needed is a combination of a high level of knowledge about the topic of the principles, the skills to draft this type of document, plus good political judgement to understand the context in which they will be submitted. Particularly relevant is the level of expertise of the conveners, which refers to a small group of people who take responsibility for moving the process forward and undertake the core of the work (often called ‘steering committee’ or ‘secretariat’). Their knowledge of the particular field, openness to understand and incorporate various perspectives, and capacity to identify gaps and legal analysis are essential for the success of the process. This group is often in charge of making initial proposals, synthesizing the feedback from the consultations, and taking final decisions on the text. In addition to technical and legal expertise, this group should be politically savvy. While they must have a deep understanding of why some principles are needed, they should be willing to accommodate some diplomatic and legal parameters within which drafters must work.

Often, the development of principles is supported by additional research commissioned from experts who are requested to draft specific ‘background’ documents in their field of expertise. The additional

³⁷ Drafting committee and signatories available at: <https://www.abidjanprinciples.org/en/support/drafting-committee>.

research may seek to clarify contested or complex topics, identify existing obligations, provide a comparative analysis, and identify good practices or existing case law. Taken as a whole, the core group, the conveners, supporting experts, and drafters/signatories should have considerable expertise in the diverse areas covered by the principles.

Diversity of Drafters/Signatories

Another important determinate of legitimacy is the diversity of those involved in the process. This refers to diversity in terms of gender, geographical representation (people from different countries/continents), different forms of social and legal systems, and different areas of expertise. Diversity is also a matter of degree. For example, a process developed or led only by white academics from the North would certainly lack legitimacy. The legitimacy of the process increases in line with the diversity of those involved in the process.

While the level of diversity was low in previous processes,³⁸ it is nowadays unacceptable to have a process without gender and geographical balance. Those involved in the development of guiding principles seem to attach a high degree of importance to this factor, as it is often emphasized that those involved in their respective processes are a diverse group of experts.³⁹ Yet, in several cases, while those involved might be from different nationalities, they are often based in institutions from western Europe and the United States.⁴⁰

The legitimacy of the process can be undermined if beneficiaries, victims, and those who are directly affected by the principles are not represented, particularly when those most affected by violations of the standards at stake have not been adequately consulted or represented in

³⁸ For example, from the 34 participants in the conference that adopted the Maastricht Guidelines, 30 were from Europe and North America and only nine were women. See, *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Annex 2, 'List of Participants'.

³⁹ For example, the 'Introduction' to The Yogyakarta Principles and the ETO Principles.

⁴⁰ For example, from the 40 signatories to the ETO Principles, 15 were women and, as evident from their positions, the great majority of these experts were based in Europe and North America (their nationalities were not registered in the document).

the process. In the case of the Poverty Guidelines,⁴¹ for example, efforts were taken to ensure the direct participation of people living in poverty.⁴²

Rigour and Persuasiveness

The persuasiveness of human rights principles heavily depends on the quality of the research and analysis underpinning their development. Principles should convince readers that they are elucidating existing obligations and that they are based on formal sources of international law.

Thus, their formulation should rely on quality and thorough research, solid legal analysis, careful preparations of the process, and broad consultations. The more progressive the text is or the more it asks in terms of obligations for States and other actors, the more justification is expected, and the higher the threshold for persuasiveness. Hence, more rigorous research is needed when the text expands on the human rights protection currently included in hard law instruments.

To strengthen their persuasiveness after the adoption of some principles, those involved in previous processes have published legal annotations or commentaries expanding on the legal basis of each adopted principle. Such documents seek to provide detailed legal analysis, directly citing specific provisions of binding treaties and domestic and international case law and referencing reports of UN special rapporteurs or treaty bodies as well as academic publications.⁴³

Rigorous research requires, at the very minimum, institutional commitments, time, and resources. For example, the *Global Principles on National Security and the Right to Information* (2013), were drafted by 22 organizations and academic centres in consultation with more than 500 experts from more than 70 countries at 14 meetings held around the world and in consultation with relevant international and regional human

⁴¹ *The Guiding Principles on Extreme Poverty and Human Rights* adopted in 2012. UN Doc. A/HRC/21/39 of 18 July 2012.

⁴² The participation of people living in poverty was mediated by ATD Fourth World, an organization with vast experience working and developing consultations with people in that situation. Thus, the methodology used was specifically adapted to ensure the effective and meaningful participation.

⁴³ See, for example, Olivier De Schutter; Asbjørn Eide; Ashfaq Khalfan; Marcos Orellana; Margot Salomon; and Ian Seiderman, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *Human Rights Quarterly* (HRQ), 1084–1169.

rights special rapporteurs.⁴⁴ The process was facilitated and funded by the Open Society Justice Initiative. Without its support and commitment, the process and resultant principles would have been very difficult to achieve.

Practicality

The legitimacy of the human rights principles also relies on their practicality. The implementation of the required measures should be feasible and should not impose undue burdens on those tasked with implementing them.

Thus, principles should be clearly written with precision and reflecting a good understanding of the particularities and capacities of various States. In this regard, it is crucial for the drafters to be able to differentiate the ‘unwillingness’ from the ‘inability’ of States to comply with the obligations identified in the process.⁴⁵ To be able to respond effectively to the realities of different countries, the principles must be based on solid country or regional case studies and the identification of best practices. To this end, some processes have not only invited experts to undertake research, but also to complete detailed questionnaires on the law and practice of their countries concerning key issues.⁴⁶

Validation Processes

The legitimacy of human rights principles is enhanced when other experts (beyond the drafters) as well as national and international bodies expressly recognize them. The more human rights principles are referred to by other bodies, the higher their legitimacy.

⁴⁴ See <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>.

⁴⁵ As noted in the Maastricht Guidelines No. 13: ‘[i]n determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations.’

⁴⁶ This has been the case, for example, of the process for drafting *Global Principles on National Security and the Right to Information* [2013]. See Sandra Coliver, ‘National Security and the Right to Information’, presentation delivered in Paris on 11 December 2012. Available at: <https://www.opensocietyfoundations.org/sites/default/files/coliver-nsp-pace-20121220.pdf>.

Undoubtedly, the endorsement of the UN political organs, such as the Human Rights Council and the UN General Assembly, is important. When these bodies adopt resolutions reaffirming human rights principles originally authored and adopted outside an intergovernmental body, such resolutions undoubtedly increase the legitimacy of the principles.

The legitimacy of human rights principles is also bolstered when different expert bodies (e.g. UN treaty bodies, special procedures mandate-holders, regional human rights bodies or national human rights institutions) refer to them. Within few months after their adoption the Abidjan Principles have been referred to by the UN Special Rapporteur on the Right to Education,⁴⁷ the Human Rights Council and the African Commission on Human and Peoples' Rights.⁴⁸

Validation also occurs when principles are referenced in resource materials and textbooks relating to human rights that are used across the world or by a variety of stakeholders, in particular those who are addressed by them. For example, not only have civil society and workers' organizations and national human rights institutions endorsed the Business Principles⁴⁹ but governments, business enterprises, business associations and investors have done so as well.⁵⁰ The Forced Evictions Principles⁵¹ have been included in a 'judicial implementation protocol' issued by the Mexican Supreme Court in 2014 intended to serve as a reference for judges.⁵²

Considering that the final objective is their implementation, the use of principles in court proceedings (e.g. in affidavits or *amicus curiae*) and their recognition by judicial bodies is a major validation. Despite their formal non-binding nature, it is not uncommon to find that human rights principles have influenced court judgements. For example, the Forced Evictions Principles have led to either a halt to planned evictions or ensured a resettlement programme was consistent with international human rights law.⁵³ The High Court of India have used them to uphold

⁴⁷ See note 3.

⁴⁸ See notes 1 and 2 respectively.

⁴⁹ See note 16.

⁵⁰ A/HRC/17/31, 21 March 2011 para. 7.

⁵¹ See note 15.

⁵² See <http://equidad.scjn.gob.mx/wp-content/uploads/2014/06/protocolo-final-proyectos-de-desarrollo-e-infraestructura.pdf>, Suprema Corte de Justicia de la Nación, Mexico, 2014.

⁵³ Housing and Land Rights Network, *Reaffirming Justiciability: Judgements on the Human Right to Adequate Housing from the Delhi High Court* (India, New Delhi, March 2013).

the rights of slum dwellers and eviction victims.⁵⁴ Similarly, the High Court of Kenya have used the Forced Eviction Principles to guide the determination of the resettlement rights of slum residents⁵⁵ and have called for a national law on evictions to be modelled on them.⁵⁶

In some exceptional circumstances, high-level national courts have expressly considered human rights principles binding at the domestic level. This was the case, for example, of the Colombian Constitutional Court regarding the IDP Principles.⁵⁷

A strategy commonly used to achieve faster validation of principles developed outside an intergovernmental process is to engage with various human rights expert bodies and judicial authorities very early in the process. A further one is to invite some authorities to participate in their personal capacities as 'signatories' of the principles (i.e. those who publicly appear adopting the principles).⁵⁸

V. CRITICAL DECISIONS ON THE CONTENT OF THE TEXT: STRIKING A BALANCE

Those leading a process of elaborating guiding principles are often confronted with critical decisions that determine the nature of the document. While these decisions are presented here as dichotomies, the challenge is to strike a balance between the options available.

⁵⁴ For example, the case *Sudama Singh and Others v Government of Delhi and Anr* [2010] (W.P. (C) Nos. 8904/2009, 7735/2007, 7317/2009 and 9246/2009, judgement of 13 February 2010) and the case of *P.K. Koul v Estate Officer and Anr. and Ors* [2010] (W. P. (C) No. 15239/2004 and CM No. 11011/2004, judgement of 30 November 2010).

⁵⁵ Case of *Kepha Omondi Onjuro & others v Attorney General & 5 others* [2014] High Court of Kenya, Petition No. 239 of 2014. Available at <http://kenyalaw.org/caselaw/cases/view/105457/>.

⁵⁶ Case of *Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 others* [2010] High Court of Kenya, Petition No. 65 of 2010. Available at <http://kenyalaw.org/caselaw/cases/view/90359/>.

⁵⁷ Colombian Constitutional Court, Judgment T-025 (2004).

⁵⁸ For example, the Limburg Principles were adopted by 29 experts; the Maastricht Guidelines were by 34 experts; and the ETO Principles by 40 experts.

Restatement or Progressive Development of the Law?

In line with other human rights principles, such as the IDP Principles,⁵⁹ the Yogyakarta Principles,⁶⁰ the Business Principles,⁶¹ the Poverty Principles⁶² and the ETO Principles⁶³, the Abidjan Principles claim that they do not create new legal obligations, but merely reflect or make explicit the existing state of international law.

Such statements reflect difficult dilemmas that drafters must address when drawing up the text. Considering that the whole objective of the process is to clarify emerging international legal obligations, drafters may want to develop a progressive set of standards (i.e. expanding human rights protection especially for the most vulnerable). However, if they go too far, their document might be dismissed by States or by key stakeholders as not being sufficiently grounded in international law. On the contrary, if they fall too short, they risk diluting existing obligations and thus undermining human rights protection.

The quest to be consistent with existing law can result in the deliberate omission of elements from the final text that had been considered during the drafting phase, but which the drafters concluded were not yet binding under international law. For example, the Yogyakarta Principles (2006) did not include the right to marry for same-sex couples, despite the fact that its inclusion was repeatedly raised during the process.⁶⁴ Yet, the principles expressly noted that regular revisions to international human rights law were necessary ‘to take account of developments in that law and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries’.⁶⁵ Thus, ten years after the adoption of the principles, the Yogyakarta Principles Plus 10 were adopted to ‘supplement’

⁵⁹ See ‘Foreword’ to the Guiding Principles by Under Secretary General for Humanitarian Affairs, Mr. Sergio Vieira de Mello, and Principle 3.

⁶⁰ See ‘Introduction to the Yogyakarta Principles’ and ‘Preamble’.

⁶¹ See ‘General Principles’.

⁶² See ‘Objectives’.

⁶³ See ‘Introduction’ and ‘Preamble’.

⁶⁴ Principle 24 on the right to found a family only speaks of a right to non-discriminatory treatment of same-sex marriage in those States which already recognize it. See Michael O’Flaherty and John Fisher, ‘Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles’ (2008) 8 *Human Rights Law Review* 2, 207–248.

⁶⁵ See the ‘Preamble’ to the Yogyakarta Principles.

the original 29 Yogyakarta Principles. The Yogyakarta Principles Plus 10 add additional principles and State obligations, ‘which have arisen over the past decade.’⁶⁶ However, the adoption of subsequent principles is very atypical.

The difficulty of calibrating the text to balance its progressive stance with receiving the support of States and other relevant actors was evident in the ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ (UN Draft Norms), developed by the former UN Sub-Commission on the Promotion and Protection of Human Rights in 2003.⁶⁷ While the Draft Norms were presented as a restatement of the human rights obligations imposed on companies under international law, they were criticized for the ambiguity of their legal foundations and by imposing obligations on business actors that went beyond the existing legal framework.⁶⁸ Many governments and the business community also vehemently opposed them, considering that they went too far.⁶⁹ The former Commission on Human Rights also rejected the UN Draft Norms.

To overcome the impasse, the Commission on Human Rights requested the Secretary-General to appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises (SRSG), John Ruggie,⁷⁰ in 2005. Turning his back to the UN Draft Norms, the SRSG radically changed the approach taken by the Sub-Commission, as he undertook an inclusive consultation process seeking to build consensus among the various stakeholders.⁷¹ As a result,

⁶⁶ Press release: ‘Experts Release Much Anticipated Expansion of the Yogyakarta Principles’ (27 November 2017). Available at: <http://yogyakartaprinciples.org/principles-en/press-release/>.

⁶⁷ Resolution 2003/16, E/CN.4/Sub.2/2003/12/Rev.2 (2003).

⁶⁸ See Office of the High Commissioner for Human Rights, *Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights* (2005) (E/CN.4/2005/91).

⁶⁹ Remarks by the Special Representative of the Secretary-General, John Ruggie on 28 January 2014. Available at: <https://sites.hks.harvard.edu/m-rcbg/CSRI/UNBusinessandHumanRightsTreaty.pdf>.

⁷⁰ E/CN.4/RES/2005/69, 20 April 2005.

⁷¹ Karin Buhmann: ‘Navigating from a “train wreck” to being “welcomed”: negotiation strategies and argumentative patterns in the development of the UN framework’ in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013), 29–57.

he submitted a completely new set of principles to the Human Rights Council in 2011: *The Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework* (Business Principles)⁷² which were strongly supported and endorsed by the Human Rights Council.⁷³

However, the Business Principles have not been exempted from criticism either. For some States (particularly those from the Global South), academics, and NGOs, the Business Principles contain watered-down obligations cast only in terms of a *responsibility* (rather than an *obligation*) to respect human rights.⁷⁴ They also do not include the extraterritorial dimension of the duty to protect human rights in relation to business entities.⁷⁵ Some authors have argued that the attempt to take into account and reconcile the views of all parties concerned led to a lack of coherent conceptual foundation.⁷⁶

Thus, drafters should strive to identify the most protective interpretations of international human rights law as well as best practices. They should ensure that the text of the principles is based on existing international law, but at the same time provides wider protection against abuses by applying the general standards to a specific context.

The drafters should be particularly careful in ensuring that the principles do not take a more regressive approach towards the human rights

⁷² A/HRC/17/31, 21 March 2011.

⁷³ Human Rights Council Resolution 17/4 of 16 June 2011.

⁷⁴ See, e.g., Carlos López: 'The "Ruggie Process": From Legal Obligations to Corporate Social Responsibility?' and Surya Deva: 'Treating Human Rights Lightly: A Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles' in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013), 58–77 and 79–104 respectively.

⁷⁵ Daniel Augenstein and David Kinley, 'When Human Rights "Responsibilities" become "Duties": The Extra-Territorial Obligations of States that Bind Corporations' (September 2012) Sydney Law School Legal Studies Research Paper No. 12/71.

⁷⁶ See, e.g., López op. cit., note 74, and Tara Melish, 'Putting "Human Rights" Back into the UN Guiding Principles on Business and Human Rights: Shifting Frames and Embedding Participation Rights' in C. Rodriguez-Garavito (ed.), *Business and Human Rights: Beyond the End of the Beginning. Globalization and Human Rights* (Cambridge University Press, 2017), 62–75. See also 'Joint Civil Society Statement on the draft Guiding Principles on Business and Human Rights' of January 2011. Available at: https://www.fidh.org/IMG/pdf/Joint_CS_O_Summary_on_GPs.pdf.

obligations of States and the responsibilities of non-State actors than authoritative interpretations of international human rights law and current practices.

Legal or Non-legal Language?

The language, format and length of these documents vary enormously. Some documents are written in non-legal language (e.g. the Forced Eviction Principles), some in a more normative language (e.g. the Limburg Principles, the Johannesburg Principles and the ETO Principles) and yet others in a mix of both normative and non-legal language (e.g. the Abidjan Principles).

The language used seems to be largely determined by the process undertaken, the topic under discussion and the aim of the document. When the process is mainly led by legal experts, human rights principles generally use legal terminology that reflects formulations found in international human rights treaties. This is the case, for example, in the ETO Principles adopted by 40 international law experts. The more a process draws on the advice of non-legal practitioners and experts, the less legal the language. Moreover, when the human rights principles are designed to be operationalized, in other words, to be a tool for policymakers and practitioners (e.g. the Forced Eviction Principles and the Poverty Principles), less legal and more technical language is used.

While drafters should avoid legally dry documents and should make guiding principles more accessible to non-legal experts, sometimes relying on well-established legal language has advantages. Using legal terms may assist in restating the authority and status of the principles. Moreover, it could help to avoid definitions or clarifications. For example, various human rights principles, including the Abidjan Principles, use the well-established tripartite typology of respect, protect, and fulfil. This widely accepted typology reflects, in a concise manner, the various levels of obligations, which would otherwise require lengthy explanations.⁷⁷

⁷⁷ For further information about this typology, see Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003).

Detailed or Broad Formulations?

Vagueness can lead States and other actors to dismiss a set of principles. However, broad formulations are sometimes needed to avoid the risk of the principles quickly becoming outdated. Drafters must therefore strike a balance between specific normative guidance and general formulations and leave room for normative improvement or further development of additional standards and norms. They need to identify issues that are likely to evolve in the future and draft the relating principles with this in mind. This does not mean that all the principles should be broad and non-prescriptive but, rather, that broad language should be considered where substantive legal uncertainties remain after the background research and consultations have been done.

While human rights principles need to be mandatory to guide States' behaviours, their support and compliance could be undermined by ignoring the diversity among States or interfering with the legitimate discretion of States to determine the policy measures best suited to their needs. Sometimes, it might be appropriate to draft a principle in a manner that allows States to make choices on implementation within carefully defined limits. The challenge here is to identify the situations in which States should enjoy such discretion. Drafters might question, for example, if specific approaches are appropriate in most, but not all, States due to their specific contexts. Is there any cultural limitation for the implementation of some principles in some countries/regions? These questions should be carefully addressed by the drafters and subject to the widest consultation possible.

To strike a balance, human rights principles should be drafted with a clear sense of the controversies and difficulties surrounding the topic. When it is possible to infer clear obligations without stretching beyond the current stage of international law, the text should attempt to provide detailed guidance in a mandatory manner (e.g. 'States must'). When international law and standards are emerging, not clear, or even contradictory, the drafters should use less mandatory language (e.g. 'States should') or formulations allowing interpretation to evolve over the years providing broader protection for the individuals involved. Decisions about how generally or specifically to articulate a controverted principle should be subject to broad consultation and, when necessary, to additional research.

Targeting only States or also Non-State Actors?

Considering that States are the primary duty bearers in international law, human rights principles are mainly addressed to them. Nonetheless, under international law, States have a duty to protect against non-State abuses. Therefore, even when focusing on States, third parties, including corporations, are indirectly liable for infringements.

Due to the relevance of other actors in the promotion and protection of human rights, some principles have included ‘recommendations’ directly addressed to non-State actors. This is the case, for example, in the Poverty Principles and the Yogyakarta Principles. While the ETO Principles target States, some may also be applicable to international organizations.⁷⁸ Often, when guiding principles make recommendations to non-State actors, the language changes from ‘shall’ or ‘must’ (which refers to States’ obligations) to a simple ‘should’.

The Abidjan Principles refer mainly to States’ obligations including their obligations to regulate private actors. While most of the principles have been written in a normative manner (‘States must’) some of them refer to what States should do to ensure compliance with their obligations. Exceptionally, the Abidjan Principles refer directly to private actors. For example, principle 49 refers to the responsibility of private actors to respect the right to education and other human rights in education. Similarly, principle 77 refers to the responsibility of private actors to refrain from conduct which nullifies or impairs the enjoyment of the right to education.

VI. CONCLUSION

The Abidjan Principles have been adopted with the specific aim of regulating the increased involvement of private actors in education. In light of rapid growth of private involvement in education over the last 20 years, the Abidjan Principles seek to ensure the legal right of all persons to access public education. The drafting process lasted from 2015 to 2019. The process was grounded in extensive research that sought to clarify the

⁷⁸ For example, while the ETO Principles deal with the obligations of States, some principles may however also be applicable to International Organizations. See Commentary to Principle 16. See O. de Schutter et al., *op. cit.*, note 43.

existing legal obligations regarding the role of private actors in education.⁷⁹ Several consultations with a variety of stakeholders informed the process.⁸⁰ Through this widely consultative process, input and expertise were received from communities, parents, children, academic experts, and States. The Secretariat that facilitated the process also actively engaged with human rights treaty monitoring bodies.⁸¹ Through the work of the Secretariat, the UN Special Rapporteur on the Right to Education, Ms Boly Barry, became a champion for the Abidjan Principles. She elaborated on how they can be leveraged for the implementation of Sustainable Development Goal (SDG) 4 on education in her 2019 report to the UN Human Rights Council.⁸²

This chapter has elaborated on a series of factors that determine the legitimacy of human rights principles in the eyes of States and other actors: (a) independence and expertise of the drafters and signatories; (b) their diversity; (c) rigour and persuasiveness of the principles; (d) their practicality; and (e) their validation.

At this stage, some months after the adoption of the principles, it is possible to say that the Abidjan Principles are better positioned to garner legitimacy than other principles regarding *diversity* and *independence and expertise* of drafters and signatories. The Abidjan Principles' original signatories came from more than 30 different countries. In a striking contrast with previous principles, the original signatories were 60 per cent women and 60 per cent of the signatories came from the Global South.⁸³ Legal as well as non-legal experts were also consulted to ensure that the text responds to the reality on the ground and draws from the knowledge of various disciplines.

The quality of the text, the detailed, careful, and complete analysis of the States' obligations regarding the provision of the right to education, and the regulation of the involvement of private actors suggest legal *rigour*. The fact that the text has been endorsed quickly by States

⁷⁹ See <https://www.abidjanprinciples.org/en/resources/consultation-reports>.

⁸⁰ Ibid.

⁸¹ The secretariat was made up of Amnesty International, the Equal Education Law Centre, the Global Initiative for Economic, Social, and Cultural Rights, the Initiative for Social and Economic Rights and the Right to Education Initiative.

⁸² A/HRC/41/37 of 10 April 2019.

⁸³ See https://static1.squarespace.com/static/5c2d081daf2096648cc801da/t/5d5f200b80e7760001a9143a/1566515220020/Designed_A4_WEB_Abidjan+Principles__august2019.pdf.

members of the Human Rights Council and the African Commission on Human and People's Rights could be considered as an indication of their *persuasiveness*.

The practicability of the principles will need to be demonstrated over time. Still, the fact that they have already influenced the private sector engagement strategy of the GPE seems a step in the right direction.

The development of additional tools to complement the Abidjan Principles, such as a legal commentary and a practitioners' manual, may also help to ensure their implementation. Their validation will also depend on the civil society organizations, which are working collaboratively to put the principles into action, and their capacity to grow the movement of organizations using the Abidjan Principles to advocate for the right to education. These civil organizations should also work to ensure more political partners and allies support the principles, from friendly governments to international organizations.

The coalition of civil society organizations which is leading the implementation of the Abidjan Principles has shown that they are driven by a coherent vision and long-term strategy. The history of guiding principles shows us that, with the right support and a legitimate text, it is possible to find opportunities for their endorsement even in restrictive political contexts.

BIBLIOGRAPHY

- Abiola, Sara: 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant for Civil and Political Rights (ICCPR): History and Interpretation in Public Health Context' Research Memorandum Prepared for the Open Society Institute's Public Health Program Law and Health Initiative (January 2011). Available at: <http://health-rights.org/index.php/cop/item/memo-the-siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-for-civil-and-political-rights-iccpr-history-and-interpretation-in-public-health-context>
- Addo, Michael K.: 'The Reality of the United Nations Guiding Principles on Business and Human Rights' (2014) 14 *Human Rights Law Review*, 133–147
- Alston, Philip: 'Out of the Abyss: The Challenges Confronting the New U. N. Committee on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly*, 332–381
- Amnesty International, Housing and Land Rights Network and Youth for Unity and Voluntary Action: *A Handbook on UN Basic Principles and Guidelines on Developed-Based Evictions and Displacement* (Amnesty International November 2008)
- ATD Fourth World and Franciscans International: *Making Human Rights Work for People Living in Extreme Poverty. A Handbook for Implementing the*

- UN Guiding Principles on Extreme Poverty and Human Rights* (ATD and Franciscan International 2015)
- Aubry, Sylvain and Dorsi, Delphine: 'Towards a human rights framework to advance the debate on the role of private actors in education' (2006) 42 *Oxford Review of Education* 5, 612–628
- Augenstein, Daniel and Kinley, David: 'When Human Rights "Responsibilities" become "Duties": The Extra-Territorial Obligations of States that Bind Corporations' (September 2012) Sydney Law School, Legal Studies Research Paper No. 12/71
- Backer, Larry Catá: 'On the Evolution of the United Nations' "Protect-Respect-Remedy" Project: The State, the Corporation and Human Rights in a Global Governance Context' (June 3, 2010) 9 *Santa Clara Journal of International Law* 1. Available at SSRN: <https://ssrn.com/abstract=1619939>
- Blitt, Robert C.: 'Beyond Ruggie's Guiding Principles on Business and Human Rights: Charting an Embrasive Approach to Corporate Human Rights Compliance' (2012–2013) 33 *Int'l L. J.*
- Buhmann, Karin: 'Navigating from a "train wreck" to being "welcomed": Negotiation strategies and argumentative patterns in the development of the UN framework' in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013), 29–57
- Burgerman, Susan D.: 'Mobilizing Principles: The Role of Transnational Activists in Promoting Human Rights Principles' (1998) 20 *Human Rights Quarterly* 4, 905–923
- Cassese, Antonio: *International Law* (Oxford University Press 2001), 160–161
- Chinkin, Christine: 'Sources' in Moeckli, Daniel et al. (eds.), *International Human Rights Law* (2nd edn, Oxford University Press 2014) 75–95
- Cohen, Roberta: 'The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting' (2004) 10 *Global Governance*, 459–480
- Coliver, Sandra: 'National Security and the Right to Information' presentation (Paris 11 December 2012). Available at: <https://www.opensocietyfoundations.org/sites/default/files/coliver-nsp-pace-20121220.pdf>
- Dankwa, Victor, Flinterman, Cees and Leckie, Scott: 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* 3, 705–730
- De Schutter, Olivier (ed.): *Economic, Social and Cultural Rights as Human Rights*, Edward Elgar Publ., 2013 *ETO Consortium: For Human Rights Beyond Borders: How to Hold States Accountable for Extraterritorial Violations* [Handbook] (ETO Consortium, Germany September 2017). Available at http://www.etoconsortium.org/nc/en/main-navigation/library/documents/detail/?tx_drblob_pi1%5BdownloadUid%5D=204
- De Schutter, Olivier, Eide, Asbjørn, Khalfan, Ashfaq, Orellana, Marcos, Salomon, Margot and Seiderman, Ian: 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *Human Rights Quarterly*, 1084–1169

- Deva, Surya: 'Treating Human Rights Lightly: A Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles' in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013), 79–104
- Deva, Surya and Bilchitz, David (eds.): *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013)
- European Group of National Human Rights Institutions: 'Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States' (June 2012). Available at <https://business-humanrights.org/sites/default/files/media/eu-nhris-paper-on-national-implementation-plans-for-ungps-210612-short.pdf>
- Food and Agriculture Organization: *Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the Pinheiro Principles* (FAO 2007)
- Franck, T.M.: *The Power of Legitimacy among Nations* (Oxford University Press 1990)
- Global Initiative for Economic Social and Cultural Rights: 'Working Paper Human Rights Law Sources: UN Pronouncements on Extra-Territorial Obligations' (November 2015). Available at <http://globalinitiative-eser.org/wp-content/uploads/2015/11/151027-Human-Rights-Law-Sources-ETOs.pdf>
- Guiding Principles on Extreme Poverty and Human Rights* (OHCHR): UN Doc. A/HRC/21/39 (18 July 2012). Available at: http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf
- Housing and Land Rights Network: *Reaffirming Justiciability: Judgements on the Human Right to Adequate Housing from the Delhi High Court* (Housing and Land Rights Network, March 2013)
- Housing and Land Rights Network: *Handbook on the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement* (4th edn, Housing and Land Rights Network 2018)
- International Council on Human Rights Policy: *Human Rights Standards: Learning from Experience* (International Council on Human Rights Policy 2006)
- Kälin, Walter: *The Guiding Principles on Internal Displacement: Annotations* (2nd edn, Brookings 2008). Available at <https://www.brookings.edu/research/the-guiding-principles-on-internal-displacement-annotations-2nd-edition/>
- Kenan Institute for Ethics: *The U.N. Guiding Principles on Business and Human Rights. Analysis and Implementation* (Duke University 2012)
- Kothari, Miloon: 'The Global Crisis of Displacement and Evictions. A Housing and Land Rights Response' (December 2015) *Rosa Luxemburg Stiftung, City Series* No. 2
- Kothari, Miloon and Vasquez, Patricia: 'The UN Guidelines on Forced Evictions: A Useful Soft-Law Instrument?' (2015) 6 *International Development Policy/Revue internationale de politique de développement* 2. Available at <https://poldev.revues.org/2188#tocto1n1>

- López, Carlos: 'The "Ruggie Process": From Legal Obligations to Corporate Social Responsibility?' in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press, 2013), 58–77
- 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' in Scott Leckie and Anne Gallagher (eds.), *Economic, Social, and Cultural Rights: A Legal Resource Guide* (University of Pennsylvania Press 2006), 464–472
- Melish, Tara: 'Putting "Human Rights" Back into the UN Guiding Principles on Business and Human Rights: Shifting Frames and Embedding Participation Rights' in C. Rodriguez-Garavito (ed.), *Business and Human Rights: Beyond the End of the Beginning* Globalization and Human Rights (Cambridge University Press, 2017), 62–75
- O'Flaherty, Michael and Fisher, John: 'Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles' (2008) 8 *Human Rights Law Review* 2, 207–248
- Roth, Kenneth: 'Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization' (February 2004) 26 *Human Rights Quarterly* 1, 63–73
- Ruggie, John G.: 'Business and Human Rights: The Evolving International Agenda' (October 2007) 101 *American Journal of International Law*, 819–840
- Ruggie, John G.: 'A UN Business and Human Rights Treaty?' (28 January 2014). Available at <https://sites.hks.harvard.edu/m-rcbg/CSRI/UNBusinessandHumanRightsTreaty.pdf>
- Ruggie, John G.: 'Life in the Global Public Domain: Response to Commentaries on the UN Guiding Principles and the Proposed Treaty on Business and Human Rights' (23 January 2015). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.2554726>
- Sepúlveda M.: *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003)
- The Global Principles on National Security and the Right to Information (Tshwane Principles)* (Open Society Foundations 2013). Available at: <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>
- United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement* (Housing and Land Rights Network 2019). Available at: http://hlrn.org.in/documents/Handbook_UN_Guidelines.pdf
- Van Boven, Theo, Flinterman, Cees and Westendorp, Ingrid (eds.): 'The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* 3, 691–704
- Van Hoof, G.J.H.: *Rethinking the Sources of International Law* (Kluwer 1983)