

# DUE DILIGENCE RESPONSIBILITIES OF BUSINESSES INVOLVED IN SMALL ARMS AND LIGHT WEAPONS

For more than a decade, the international community has been developing guidelines for responsible business conduct for States and companies to prevent, address and remedy human rights abuses committed in business operations. These include: the **UN Global Compact**, the **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct** and the **UN Guiding Principles on Business and Human Rights** (UNGPs). This Fact Sheet focuses on how these guidelines apply to businesses that manufacture and trade small arms and light weapons (SALW). It also looks at existing legal obligations that apply to such businesses.

## Existing legal obligations

The manufacture and trade of SALW can have a negative impact on human rights. SALW and ammunition might be directly transferred to end users that use them in the commission of human rights violations or abuses. But SALW and ammunition can also end up in the hands of those committing such violations or abuses by way of diversion to unauthorised end users and to the illicit market.[1]

International instruments (such as the Arms Trade Treaty) aimed at ensuring responsible SALW and ammunition transfers and preventing their diversion set out states' obligations to take steps which regulate businesses. National transfer control systems include corresponding obligations for businesses, notably within the framework of the export licencing process. SALW businesses have legal obligations at various stages in the export licencing process to gather and provide information to the state authorities, such as required end-use/r documentation. The businesses' role in providing information is understood as part of a process of exchange and coordination with the state authorities to assist them in implementing their export control systems. In the manufacturing stage, states should require SALW manufacturers to mark firearms and their main components to facilitate their traceability.[2]

## Corporate responsibility and human rights due diligence

It is generally understood that businesses do not have direct international human rights legal obligations. However, over the past several decades, work has been done to create global human rights standards for businesses. The frameworks that have developed distinguish between the State **duty** to protect against business related human rights abuse, and the **responsibility** of companies to respect human rights. The corporate responsibility to respect human rights, as conceived in the UNGPs has evolved to "a global standard of expected conduct."[3]

Concretising the corporate responsibility to respect human rights, the UNGPs propose **human rights due diligence** as a risk management tool for businesses to identify, prevent, mitigate and account for actual and potential adverse human rights impacts that they cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.[4]

Broadly speaking, the concept of "**due diligence**" is a mechanism for businesses to assess various risks connected with their activities. On the one hand, this includes risks for the companies themselves, such as financial, legal or reputational risks.[5] On the other hand, the concept of "human rights due diligence" is used in relation to the analysis of adverse human rights impacts of businesses.

The corporate responsibility to conduct human rights due diligence also applies to businesses active in the manufacture and trade of SALW and ammunition. This would include implementing effective due diligence procedures throughout all stages of the value chain (including manufacture, marketing, export, distribution, transport, transit, import, post-delivery/use, repair, disposal). The concrete measures to be taken need to be tailored to the specific business and the specific risks at hand. Therefore, companies need to consider not only the specificities of their business activity but also the national legal arms control framework from which effective human rights due diligence measures should be built.

To support businesses in setting up the appropriate due diligence processes some guidance on what is expected has been published. For instance, the **UN Working Group on the issue of human rights and transnational corporations and other business enterprises** issued recommendations for states and businesses on how to ensure responsible business conduct in the arms sector in line with the UNGPs.[6] More detailed sector-specific due diligence guidance for defence exporters was published by the **American Bar Association Center for Human Rights**.[7] Based on the international standards such as the UNGPs, this guidance sets out concrete elements that should be included in the human rights due diligence process: human rights risk assessment, prevention and mitigation measures, end-use monitoring, as well as investigation of misuse and remediation.

SALW businesses should also assess the potential use of their products in conflict settings, where a higher standard of due diligence is expected. **The United Nations Development Programme** (UNDP) with the **UN Working Group on the issue of human rights and transnational corporations and other business enterprises** has developed guidance on how to conduct "Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts".[8] This includes a strengthened understanding of the context of the conflict where the business operates and of the interaction between the business activities and that conflict. Heightened human rights due diligence means that businesses do not only need to assess their actual or potential adverse impacts on human rights but also the impacts on a specific armed conflict.

Some states include explicit human rights due diligence obligations in their arms export control framework. For example, in the Belgian region of Flanders, human rights due diligence obligations are anchored in the legal requirement for exporters of defence-related products to an Internal Compliance Programme (ICP). Accordingly, beyond ensuring compliance with relevant regulations and providing the licencing authority with information about end-use and end-users, businesses are expected to carry out their own risk assessment regarding possible diversion and misuse of their products and implement their own processes to address such risks.[9]

The challenge for states and businesses is in applying both their existing legal obligations and meeting their responsibilities to create effective due diligence procedures. States could consider introducing mandatory due diligence obligations for the arms trade sector. However, even in the absence of such state regulation, SALW businesses should act in accordance with international corporate responsibilities frameworks and implement comprehensive human rights due diligence processes.

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## RESOURCES

- [1] Human Rights Council (2020), [Impact of arms transfers on human rights, Report of the United Nations High Commissioner for Human Rights](#), United Nations General Assembly, A/HRC/44/29, p. 2.
- [2] See e.g.: [UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects](#) (UN Programme of Action), II. 7.
- [3] Commentary to [Principle 11 of the UNGPs](#).
- [4] See [Principles 17 to 21 of the UNGPs](#).
- [5] Kanetake, & Ryngaert, C. (2023), [Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility](#), Report by the Flemish Peace Institute, p. 9.
- [6] [Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights](#), Information Note by the UN Working Group on Business and Human Rights (2022).
- [7] American Bar Association Center for Human Rights (2022), [Defense Industry Human Rights Due Diligence Guidance](#).
- [8] [Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide](#) (2022).
- [9] Dienst Controle Strategische Goederen, [Due diligence inzake mensenrechten](#), Vlaamse overheid, Departement Kanselarij & Buitenlandse Zaken.