



From  
the People of Japan



KEY FINDINGS  
NATIONAL BASELINE ASSESSMENT  
ON BUSINESS AND HUMAN RIGHTS  
IN KAZAKHSTAN  
2023

Astana  
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This assessment was conducted under the UNDP project “Promoting Responsible Business Conduct in target countries where Japanese companies operate, with a particular focus on promoting human rights due diligence in global supply chains and leveraging the UN Guiding Principles on Business and Human Rights for a just recovery”, supported by the Government of Japan.

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The views expressed in this report are those of the author(s) and do not necessarily reflect the views of the Government of Japan and the Republic of Kazakhstan, the United Nations, including UNDP, or UN Member States.

## INTRODUCTION

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on **Business and Human Rights** (UN Guiding Principles)<sup>1</sup>, which provides guidelines for States and companies to implement the Protect, Respect and Remedy framework to prevent and address adverse human rights impacts in business. The UN Guiding Principles are premised on the recognition of (a) compliance with the obligations undertaken by States to respect, protect and fulfil human rights and fundamental freedoms; (b) the role of business enterprises performing specialized functions as specialized organs of society required to comply with all applicable laws and respect human rights; and (c) the need to enforce rights and responsibilities - when violated - through appropriate and effective remedies.

The UN Human Rights Council has called on all Member States to develop **National Action Plans on Business and Human Rights** (NAPs) as a means of implementing the UN Guiding Principles. In line with the UN Guiding Principles, NAPs should be based on international human rights standards and reflect the complementarity and interconnectedness of the State's obligations and the responsibility of business to prevent, mitigate and address adverse business-related human rights impacts.

**A National Business and Human Rights Baseline Assessment (NBA)** is conducted before any decisions on the scope, content and priorities of the NAP. The NBA aims to assess the current level of implementation of the UN Guiding Principles in a particular State. It combines an analysis of legal and policy gaps in the implementation of the UN Guiding Principles with a review of the negative human rights impacts of business to identify the most salient human rights issues in a given context. The assessment thus informs the formulation and prioritization of actions in the NAP.

This paper summarizes the findings of the NBA in business and human rights in Kazakhstan<sup>2</sup>. The NBA has taken the position that the UN Guiding Principles do not create any new international legal obligations or limitations on human rights. They build on already existing universally recognized human rights standards. The assessment aimed to analyze the legal, political, economic, social and cultural gaps in the implementation of the UN Guiding Principles, reviewing the negative human rights impacts of business to identify the most significant human rights issues in this context. The organizers of the NBA and the researchers who participated in the assessment hope that its results will have an impact on the development of NAPs on business and human rights in Kazakhstan.

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<sup>1</sup> Guiding Principles on Business and Human Rights. URL: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_ru.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_ru.pdf)

<sup>2</sup> This assessment was conducted under the UNDP project "Promoting Responsible Business Conduct with Special Emphasis on Advancing Human Rights Due Diligence in Global Supply Chains and Using the UN Guiding Principles on Business and Human Rights for Just Recovery", supported by the Government of Japan

## ASSESSMENT METHODOLOGY

The purpose of the NBA was to assess the implementation of the UN Guiding Principles in Kazakhstan, based on qualitative baseline data, to identify opportunities and barriers in the implementation of human rights by businesses and formulate recommendations for the development of the NAP in Kazakhstan.

Key Objectives:

- (a) Conduct an assessment of the alignment of national legislation with the UN Guiding Principles, as well as a review of existing national and corporate policies, regulations and mechanisms to protect human rights in the context of business operations to identify barriers and gaps;
- b) identify expectations, opportunities and risks of practical implementation of the UN Guiding Principles by key stakeholders and rights holders;
- c) identify the main directions and priorities for legislative and policy changes concerning the implementation of the UN Guiding Principles;
- d) to develop a set of indicators to measure the effectiveness of interaction between the state and business and civil society in the framework of implementation of the UN Guiding Principles;
- e) Develop a roadmap for state-level support for business and human rights issues.

The international tools and methodology of the National Baseline Assessment were adapted to the local context to conduct the NBA.

The first pillar of the UN Guiding Principles focuses on the State's responsibility to protect human rights and includes two core principles and eight principles of action. This section explores how Kazakhstan has adopted binding and non-binding rules and policy frameworks to implement the first pillar of the UN Guiding Principles. The section considers:

- the general regulatory and policy functions of the state relevant to the implementation of the UN Guiding Principles,
- the link between the state and enterprises,
- ensuring that businesses in conflict-affected areas respect human rights,
- ensuring policy coherence.

The assessment considers Kazakhstan's legal policies, structural reforms and policies in relevant legal areas that are addressed by the UN Guiding Principles. First and foremost, the assessment considers the consistency of state measures with international obligations, particularly under the International Bill of Human Rights.

The researchers have selected key areas relevant to the implementation of the UN Guiding Principles in Kazakhstan. In particular, the study addresses such issues as:

- adopting due diligence processes as part of the regulation of corporate activities;
- corporate responsibility;
- labour, occupational health and safety;
- freedom of assembly and association;
- human trafficking and modern slavery;
- anti-discrimination;
- environmental protection.

In each selected area, the research team focused on the relevance of the issue to Kazakhstan and reported progress and key results or gaps in the implementation of the UN Guiding Principles.

In assessing this component of the UN Guiding Principles, the research team was guided by Principles 1-10 of the document. An international tool such as the National Baseline Tool on Business and Human Rights<sup>3</sup> was also used and adapted to the local context for the assessment. This tool helps organizations working on business and human rights issues at the national level to conduct a baseline assessment of the state's implementation of the UN Guiding Principles.

The assessment of this component is based on a combination of the following tools:

Legal, comparative, and conceptual analysis (desk review). This method was based on the analysis of current legislation, state legal statistics and thematic public reports, and publications.

Consultations with key stakeholders on business and human rights issues in Kazakhstan (field research). The results of the field stage were based on 7 focus groups and 6 individual interviews with representatives of government agencies, businesses, civil society organizations, trade unions, the Bar, and the National Human Rights Institute.

It should be noted that the study had its limitations, as the research team did not systematically empirically evaluate the effectiveness of specific interventions and outcomes that were captured and related to practical effectiveness.

The UN Guiding Principles also recognize the role of business enterprises as specialized organs of society, performing specialized functions that are required to comply with all applicable laws and respect human rights.<sup>4</sup> This component comprises five core principles and nine operational principles that aim to ensure that companies apply human rights due diligence to both their operations and their supply chain.

The assessment of the level of compliance of Kazakhstani companies with the UN Guiding Principles was based on a combination of the following tools:

- Screening of 60 websites of companies operating in Kazakhstan to assess the inclusion of the UN Guiding Principles in policies, procedures and business practices based on the Corporate Human Rights Benchmarking methodology. Corporate Human Rights Benchmark - Core UNGP Indicators (CHRB-Core).<sup>5</sup>
- Online survey of 278 businesses, which aimed to determine the level of business awareness of the UN Guiding Principles, the existence of human rights policies and due diligence procedures.
- Consultations with key stakeholders on business and human rights issues in Kazakhstan in the format of focus groups and individual interviews.

The third pillar of the UN Guiding Principles focuses on access to remedy and includes one core principle and six operating principles. The Core Principle indicates that, as part of their duty to protect against business-related human rights abuses, States, through judicial, administrative, legislative or

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<sup>3</sup> For a description of the tool (available in English), see. URL: <https://bhrbaseline.humanrights.dk/node/247> Questionnaire (available in English) see URL: <https://bhrbaseline.humanrights.dk/node/247>. URL: [https://bhrbaseline.humanrights.dk/files/media/document/example\\_questionnaire.pdf](https://bhrbaseline.humanrights.dk/files/media/document/example_questionnaire.pdf)

<sup>4</sup> General Principle (b). of the UN Guiding Principles.

<sup>5</sup> Assessment (benchmarking) of corporate responsibility in the field of human rights. Key Indicators for Assessment under the UN Guiding Principles (available in English). URL: <https://www.worldbenchmarkingalliance.org/research/corporate-human-rights-benchmark-core-ungp-indicators/>

other appropriate means, should take appropriate measures to ensure that, where such abuses occur within their territory and/or jurisdiction, affected parties have access to effective remedy.

The key international instruments under which Kazakhstan has obligations to provide access to remedies recognize the human right of access to justice and effective remedies.<sup>6</sup>

In assessing this component of the UN Guiding Principles, the research team was guided by Principles 25 to 31. An international tool such as the National Baseline Tool on Business and Human Rights (National Baseline Tool on Business and Human Rights)<sup>7</sup> was also used and adapted to the local context for the assessment. This tool helps organizations working on business and human rights issues at the national level to conduct a baseline assessment of the state's implementation of the UN Guiding Principles.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>8</sup> have also been used in assessing the effectiveness of access to remedies.

Through the pre-assessment, the research team focused on the following aspects of the assessment:

- Guarantees and conditions for access to effective remedies in Kazakhstan (based on UN Guiding Principles 26-31).
- Opportunities for victims of human rights violations to initiate complaints and obtain effective remedies.
- Additional mechanisms on business and human rights, namely transnational proceedings and inter-State cooperation.

The assessment of the third component is based on a combination of the following instruments:

- Legal, comparative and conceptual analysis (desk review). This method was based on the analysis of current legislation, state legal statistics and thematic public reports, and publications.
- Consultations with key stakeholders on business and human rights issues in Kazakhstan (field research). The results of the field stage were based on 7 focus groups and 6 individual interviews with representatives of government agencies, business, civil society organizations, trade unions, the Bar and the National Human Rights Institute.

It should be noted that the study had its limitations, as the research team did not conduct a systematic empirical assessment of the results of the procedures and was not able to assess the

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<sup>6</sup> See for example: Universal Declaration of Human Rights (Articles 7 and 8), International Covenant on Civil and Political Rights (Articles 2, 14), UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). UN Committee on Civil and Political Rights General Comment No. 32.

<sup>7</sup> For a description of the tool (available in English), see. URL: <https://bhrbaseline.humanrights.dk/node/247> Questionnaire (available in English) see URL: <https://bhrbaseline.humanrights.dk/node/247>. URL: [https://bhrbaseline.humanrights.dk/files/media/document/example\\_questionnaire.pdf](https://bhrbaseline.humanrights.dk/files/media/document/example_questionnaire.pdf)

<sup>8</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. URL: [https://www.un.org/ru/documents/decl\\_conv/conventions/principles\\_right\\_to\\_remedy.shtml](https://www.un.org/ru/documents/decl_conv/conventions/principles_right_to_remedy.shtml)

effectiveness of the specific measures provided as reparation/compensation, as this requires a case-by-case analysis. The team also did not contact specific victims or their associations/unions.

## I. THE STATE'S DUTY TO PROTECT HUMAN RIGHTS. KEY FINDINGS AND RECOMMENDATIONS

Overall results
<ul style="list-style-type: none"><li>• Kazakhstan's legislation is based on universally recognized human rights, and the country itself is a signatory to key international human rights covenants and conventions. However, the concept of human rights is wide-ranging, and the development of more stringent regulations relating to non-state actors (e.g. companies) requires detailing their roles and responsibilities compared to the obligations imposed on states. This requires ratification of a number of international labour Conventions.</li><li>• Despite the extensive regulatory framework, there are still legislative gaps and practical problems in the areas of labour rights, child labour, non-discrimination in the workplace, the role of trade unions, migrant rights, forced labour, harassment, and environmental rights. This requires the Government of Kazakhstan to take additional legislative measures and efforts to change enforcement practices on the part of companies.</li><li>• National companies and the quasi-state sector play a significant role in Kazakhstan's economy, contributing to its development and diversification. The contribution of these sectors to the country's economy is multidimensional and covers various areas. Large national companies and quasi-state enterprises are among the largest employers in Kazakhstan, providing thousands of jobs. Some national companies, particularly in the natural resources sector, play a key role in the country's export activities, generating significant revenues from the sale of goods abroad. This also helps to strengthen international ties and attract foreign investment. In this regard, the Government needs to take additional steps to protect against human rights abuses by businesses that are owned or controlled by the state or that benefit from substantial support and services from state agencies, such as export credit and state insurance or investment guarantees.</li><li>• Kazakhstani companies operate in conflict-affected countries and areas. It is therefore essential that the State help to ensure that businesses operating in such areas do not engage in gross human rights abuses in conflict-affected areas.</li><li>• Kazakhstan, while attracting significant foreign investment and participating in a multitude of investment contracts and agreements, is also committed to responsible business conduct and respect for human rights. This implies the creation of a transparent and fair business environment where the interests of all parties, including employees, communities, and the environment, are taken into account. Important measures in this context include strengthening corporate social responsibility, ensuring jobs with decent working conditions, protecting workers' rights, and preventing exploitation and discrimination. Kazakhstan is also obliged to ensure that investment activities do not harm the environment by promoting sustainable development and environmental safety. All of this requires special attention to these issues in the country's investment agreements and contracts.</li><li>• Kazakhstan is a member of key international organizations and initiatives. This makes the country a driver and supporter of international cooperation and the exchange of best practices in promoting responsible business standards.</li></ul>
<b>General regulatory and policy functions of the State relevant to the implementation of the UN Guiding Principles (UN Guiding Principles 1-3)</b>



States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.

States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

In meeting their duty to protect, States should:

(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps;

(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

**Status and gaps**

- Kazakhstan has a number of recommendations from UN treaty bodies on the need to bring the national legal framework into line with international human rights obligations.
  
- Despite current progress, Kazakhstan has yet to accede to a number of key international treaties that are also important for the promotion and protection of human rights.
  
- Despite the existence of detailed codified acts based on international labour obligations and constitutional guarantees in the field of labour, law enforcement practice demonstrates the existence of problems in the field of labour rights: the need to create conditions conducive to the unimpeded

**Recommendations**

- It is recommended to establish a working group consisting of representatives of the Government, business and civil society to prepare an analysis of the applicability of national legislation to international business activities, to regulate and guide international business activities, especially to prevent and address serious human rights violations and to develop recommendations to further align national legislation with international human rights obligations for the least developed countries.
  
- It is recommended that the Government initiate the process of acceding to the Convention on the Protection of the Rights of All Migrants, Workers and Members of Their Families and the ILO Convention No. 190 on the Elimination of Violence and Harassment at Work.
  
- It is recommended that the Government harmonize the Law on Trade Unions in line with ILO standards.
- It is recommended that the Government conduct an analysis of workplace strikes, followed by recommendations on workplace communications for companies and public

<p>functioning of trade unions, forced labour, the use of child labour, discrimination in employment and labour activity.</p> <ul style="list-style-type: none"> <li>• Kazakhstan is a party to more than 29 international environmental agreements and has an extensive legal framework of</li> </ul>	<p>authorities to ensure effective communication and respect for freedom of assembly within the labour relations.</p> <ul style="list-style-type: none"> <li>• To effectively combat forced labour, it is recommended that the Government of Kazakhstan focus its efforts on (1) developing mechanisms to identify and protect victims, especially among foreign workers and in remote areas, (2) improving the training of the Labour Inspectorate to recognize signs of forced labour and empowering it to conduct unannounced workplace inspections, (3) and intensifying the prosecution and punishment of forced labour offences.</li> <li>• With regard to ensuring non-discrimination and equal opportunities in the workplace, it is recommended that the Government focus its efforts on developing and adopting a framework law on equality in the Republic of Kazakhstan, consistent with the provisions of international treaties ratified by the Republic of Kazakhstan.</li> <li>• To strengthen legal protection for workers against harassment and sexualized harassment, it is recommended that the Government ensure that legislative and advisory measures are developed for employers to prevent and address gender-based violence and sexual harassment in the workplace.</li> <li>• It is recommended that the Government consider increasing the number of state labour inspectors, expanding their powers and training.</li> <li>• The Government is encouraged to ensure a range of legislative and practical measures to prevent illegal child labour in the agriculture and services sectors. Detection of child labour should be strengthened by ensuring targeted enforcement activities, such as raids and unannounced labour inspections, throughout the year and in all sectors in which children are vulnerable to child labour, including agriculture.</li> <li>• The government needs to audit the regulatory measures on environmental protection within the enterprises' operations</li> </ul>
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<p>environmental legislation. At the same time, companies continue to commit environmental violations.</p> <ul style="list-style-type: none"> <li>• Kazakhstan has not currently made a public statement on the expectation of human rights compliance on the part of business.</li> </ul>	<p>and formulate a new package of measures aimed at strengthening the responsibility of the private sector for environmental violations.</p> <ul style="list-style-type: none"> <li>• The government is encouraged to actively promote the dissemination of sustainability and ESG standards into the practices of national and quasi-public companies, as well as private sector companies, through information campaigns and the development of recommendations and related guidelines.</li> <li>• It is recommended that Kazakhstan make a public State statement on the expectation of human rights compliance by business through the development and adoption of relevant strategic documents, such as the National Action Plan on Business and Human Rights.</li> <li>• It is advisable to include in the legislation of Kazakhstan regulating the activities of business entities the principle of corporate respect for human rights as a general principle of business activities.</li> <li>• A regulatory model for the human rights due diligence requirement for the approval of large-scale projects whose business activities pose a significant risk to the rights of local communities should be developed and incorporated into relevant existing legislation.</li> <li>• Examine the possible future enactment of legislation on mandatory human rights due diligence by examining the legislative and economic framework in this regard.</li> <li>• It is recommended that the Government compile and publish information on best practices in implementing corporate responsibility in the field of human rights.</li> <li>• It is recommended to publish and disseminate the UN Guiding Principles on Business and Human Rights in the Kazakh language.</li> </ul>
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**State-Enterprise Linkages (UN Guiding Principles 4-6)**

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from

State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

States should exercise adequate oversight to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

**Status and gaps**

- In Kazakhstan, there are both national companies and quasi-state companies that have a significant market share in areas related to the extractive, energy, infrastructure, services, financial, technology, and health sectors. The companies do not have human rights due diligence procedures. Also, not all companies have human rights policies.

- The Unified Accumulative Pension Fund of Kazakhstan (ENPF) operates in the country, whose founder and shareholder is the

**Recommendations**

- It is recommended that a model code of conduct clearly defining the relationship between business and human rights be developed for businesses owned, controlled or working with the State.
- There should be mandatory human rights policies in national and quasi-national companies.
- Human rights due diligence should be promoted in the corporate practices of national and quasi-national companies.
- It is important to extend the practice of filing non-financial reports according to GRI standards to all companies with state participation. This will allow for the application of the principle of materiality, where companies work and report on factors that are central to how their activities impact people, societies, climate and the environment.
- It is recommended that the government publicly note that there is a need to focus more strongly on the responsibility of boards of directors also of enterprises in which the state has an equity interest and their approach to human rights. To this end, tracking of CSR and human rights performance through dialogue with owners in quarterly and/or annual meetings is initiated. In special cases, a more thorough tracking of company performance may be required. The work of companies and boards of directors on human rights should be taken into account when selecting board members.
- Guidelines should be developed to monitor and exclude from ENPF's portfolio companies that contribute to or are responsible for

<p>Government, and pension assets are managed by the National Bank of Kazakhstan. The portfolio structure of pension assets by country in November 2023 includes investments in 24 countries.</p> <ul style="list-style-type: none"> <li>• Kazakhstan currently has two laws regulating public procurement. However, the restrictions on participation in public procurement are not directly related to the identification of human rights violations. The existing register of unscrupulous procurement participants, and/or the list of unreliable potential suppliers are also not based on categories directly related to the identification of individual human rights violations.</li> </ul>	<p>certain gross misconduct, including human rights abuses. Responsible investment management should be based on international principles and standards, such as those established by the UN in the UNDAF and the OECD in the Guidelines for Multinational Enterprises. These Guidelines for Surveillance and Exclusion should apply not only to ENPF itself but also to management companies.</p> <ul style="list-style-type: none"> <li>• ENPF JSC's risk assessment should include analyses on violent conflict, human rights violations, and political terror. Human rights can also be part of risk monitoring at the sector and company level.</li> <li>• Based on the Guiding Principles on Surveillance and Exclusion, a system of company surveillance and exclusion should be developed. Such a system would safeguard against investment in companies that produce certain products or contribute to, or are responsible for, grossly unethical behavior and human rights abuses.</li> <li>• It is recommended that public procurement rules be reviewed and updated to include human rights due diligence as a key criterion in the bidding and assessment process and to give preference to businesses that demonstrate actions taken to fulfill their human rights obligations.</li> <li>• It is important to ensure project cooperation with the business sector in the areas of ethics, security, and corruption.</li> </ul>
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**Ensuring respect for human rights by business enterprises in conflict-affected areas (UN Guiding Principle 7)**

Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent, and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;

(d) Ensuring that their current policies, legislation, regulations, and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Status and gaps	Recommendations
<ul style="list-style-type: none"> <li>• Kazakhstan has close partnership and trade ties with countries in conflict-affected areas. Therefore, the country needs to have a clear behavioral strategy towards Kazakhstani companies located in such areas. Both the company itself and local personnel (e.g. security services) in conflict-affected areas can potentially be human rights violators.</li> </ul>	<ul style="list-style-type: none"> <li>• The dissemination of the UNDP Guidance for Business on Enhanced Human Rights Due Diligence in Conflict-Related Conflict to Kazakhstani companies should be promoted.<sup>9</sup></li> <li>• It is important to develop a package of national recommendations for Kazakhstani businesses in conflict-affected areas, taking into account all aspects of UNDAF Principle 7, including dialogue and cooperation with government authorities on security, risk assessment and corruption in conflict zones and in complex markets in these regions. Particular attention will be paid to the risk of gender-based and sexual violence.</li> <li>• It is advisable to promote the dissemination of the Voluntary Principles on Security and Human Rights<sup>10</sup> and the International Code of Conduct for Private Security Services, among Kazakhstani businesses operating abroad.</li> <li>• It is recommended that the Ministry of Foreign Affairs make a public statement that assistance will not be provided to companies involved in gross human rights abuses unless they show a willingness to cooperate in addressing the situation. To this end, it is recommended that the Ministry of Foreign Affairs strengthen dialogue with the business sector through missions abroad on risks related to human rights violations, security issues, and corruption in conflict zones.</li> </ul>
<p><b>Ensuring policy coherence (UN Guidelines 9-10)</b></p> <p>States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.</p>	

<sup>9</sup> United Nations Development Programme (2022). Enhanced human rights due diligence for business in conflict: a guide. New York, United States of America. URL: [https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP\\_Heightened\\_Human\\_Rights\\_Due\\_Diligence\\_for\\_Business\\_in\\_Conflict-Affected\\_Contexts\\_RU.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Contexts_RU.pdf)

<sup>10</sup> See at: <https://www.voluntaryprinciples.org/>

States, when acting as members of multilateral institutions that deal with business-related issues, should:

(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;

(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

<b>Status and gaps</b>	<b>Recommendations</b>
<ul style="list-style-type: none"> <li>• Kazakhstan is bound by mutual obligations through its membership in international trade organizations such as the World Trade Organization (WTO), the Eurasian Economic Community (EurAsEC), and the Customs Union. It is therefore recommended that the Government outlines its position on multilateral trade and investment contracts.</li> <li>• Kazakhstan is an active member of many international organizations. Among them: UN, OSCE, SCO, OIC, CSTO, CIS and others. By participating in the work of international organizations, Kazakhstan can encourage organizations to promote respect for human rights in corporations within their respective mandates.</li> </ul>	<ul style="list-style-type: none"> <li>• The Government of Kazakhstan is encouraged to endeavor to ensure that provisions on respect for human rights, including fundamental workers' rights, and environmental protection are included in bilateral free trade and investment agreements.</li> <li>• The Government is also encouraged to promote international cooperation in addressing business and human rights challenges.</li> </ul>

## II. CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS. KEY FINDINGS AND RECOMMENDATIONS

<b>Overall results</b>	
<ul style="list-style-type: none"> <li>• The study found that companies operating in Kazakhstan have a low level of compliance with the goals and principles of the UN Guiding Principles. A very limited number of companies follow a systematic approach based on the implementation of human rights policies, human rights due diligence procedures, and appropriate stakeholder engagement and communication. The analysis clearly shows a divide between different companies and their attitudes towards human rights obligations. Companies with state participation, companies with foreign participation, wholly foreign companies, as well as companies listed on global stock exchanges, and partly KASE member companies demonstrate a better commitment to respecting and protecting human rights than other Kazakhstani companies. As a rule, the first group has appropriate policies, procedures, and channels for reporting human rights violations. Such companies provide mechanisms for the remediation of violated rights, as well as procedures for monitoring and assessing human rights impacts. However, even these efforts are incomplete in terms of the UN Guiding Principles standards, as responsible business practices are embedded in the overall risk assessment system.</li> <li>• Human rights violations are largely defined by companies as a risk with a medium or low degree of harm and likelihood of occurrence, as evidenced by risk management reports and analyses. Companies also fail to assess the level of impact and change in the human rights situation, which reduces the effectiveness of practices and actions in the context of human rights.</li> <li>• Only select companies require suppliers and business partners to comply with human rights obligations.</li> <li>• Most companies have mechanisms for receiving and addressing grievances and channels for reporting violations and declare guarantees of access to legal remedies, both judicial and non-judicial. However, only a few publish reports on the activities of such mechanisms, and not all companies monitor their effectiveness in protecting and redressing violations.</li> <li>• Business associations do not promote the human rights agenda within business activities and do not popularize standards of responsible business conduct in Kazakhstan.</li> </ul>	
<b>Corporate Responsibility to Respect Human Rights (UN Guiding Principles 11-16)</b>	
<ol style="list-style-type: none"> <li>1. Human rights policy commitments</li> <li>2. Management commitment and embedding human rights in the company's operations</li> </ol>	
<b>Status and gaps</b>	<b>Recommendations</b>
<ul style="list-style-type: none"> <li>• Few companies explicitly state their human rights commitments through public statements and a separate human rights policy. The human rights theme is embedded in other policies in a segmented manner. For the most part, such statements are declarative and do not refer to adherence to the International Bill of Human Rights, ILO</li> </ul>	<ul style="list-style-type: none"> <li>• The Government of Kazakhstan should make additional efforts to raise awareness among companies of the need to make public commitments to respect human rights, engage with stakeholders, and provide access to information in line with the UN Guiding Principles.</li> <li>• Business associations need to focus on developing useful tools and initiatives to</li> </ul>



<p>standards, and other international instruments.</p> <ul style="list-style-type: none"> <li>● The rights of workers in companies are better protected than other human rights. Although the enshrinement of workers' rights may also meet only minimum requirements. Based on International Labour Organization (ILO) principles and standards, strategies to protect workers' rights focus mainly on workplace rights, including those related to safety, health and safety at work, decent wages, protection of workers' health, and redress for violations. However, rights such as the right to association, the effective demand for the right to collective bargaining, and the right to better working conditions are much less protected.</li> <li>● Most companies do not have a publicly available statement of their commitment to remediate adverse impacts on individuals, workers, and communities caused or contributed to by their operations. Only half of companies have publicly available information on the remedies and mechanisms available to the company.</li> </ul>	<p>promote the UN Guiding Principles standards in Kazakhstan's corporate practices.</p> <ul style="list-style-type: none"> <li>● Companies need to develop human rights policies that (1) are approved at the highest level; (2) are based on relevant expertise; (3) set clear expectations for staff, all business partners, and other parties related to the company's operations throughout the supply chain; (4) are publicly available and communicated; and (5) are embedded in operational policies and procedures. This commitment should be linked to a broader set of human rights due diligence procedures.</li> </ul>
<p><b>Human rights due diligence (UN Guiding Principles 17-24)</b></p> <ol style="list-style-type: none"> <li>1. Assessment of adverse human rights impacts</li> <li>2. Integrate and act on results and prioritize responses</li> <li>3 Tracking the response and reporting on actions taken</li> <li>4. Communicating adverse human rights impacts</li> </ol>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>● Companies do not communicate responsibilities and resources for day-to-day human rights activities. The study showed that in fact, companies lack employees with an independent function in the field of human rights.</li> <li>● Partly, companies do identify risks but do not rank them or have clear plans to prioritize and reduce them.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>● As large companies operating in Kazakhstan, irrespective of their form of ownership and sphere of activity, have the necessary resources, they should implement human rights due diligence practices, integrating into this system already existing approaches in the field of sustainable development, social auditing, and integrity development. To this end, companies should identify responsible employees and assign them the</li> </ul>

<ul style="list-style-type: none"> <li>● The study found that none of the companies analyzed had system-level procedures in place to ensure human rights due diligence. Although companies address human rights in the company's overall risk assessment framework, this cannot be a meaningful analog to a true human rights due diligence system.</li> <li>● In very rare cases, companies integrate the results of their human rights risk and impact assessments into relevant internal functions and processes and engage with stakeholders to take appropriate action to prevent, mitigate, or address significant human rights risks and impacts. Few companies track the effectiveness of actions to respond to human rights risks and impacts.</li> <li>● Only select companies communicate how they address their human rights impacts in a format that is accessible to the target audience and provides sufficient information to assess the adequacy of the response.</li> </ul>	<p>necessary human rights functions. This approach will ensure that responsible business practices are promoted in the supply chain of large companies and will affect medium and small businesses.</p> <ul style="list-style-type: none"> <li>● It is important for the Government of Kazakhstan and business associations to make efforts to (1) develop and disseminate tools to promote human rights due diligence in Kazakhstan's corporate practices, adapted to the capabilities of companies and (2) raise awareness of the due diligence process among companies operating in Kazakhstan.</li> </ul>
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**Access to Remedies (UN Guidelines 22, 29-31)**  
Mechanisms for effective remediation of adverse human rights impacts

<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>● Many companies operating in Kazakhstan have grievance mechanisms to address violations, but not all of them relate to human rights. Many procedures concern company employees, but are also available to third parties (partners, suppliers, consumers, local communities). However, few companies complement these grievance procedures with transparent remedial action procedures. Companies do not openly communicate the approaches they take to provide or enable timely redress for victims.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>● Companies should develop transparent grievance mechanisms that are independently managed and allow all stakeholders to raise grievances about human rights violations.</li> <li>● Companies should (1) have a transparent approach to taking remedial action in response to (alleged) adverse human rights impacts, and (2) disclose the operation of the grievance mechanism and approaches to remedial action.</li> <li>● The Government of Kazakhstan and business associations should consider establishing grievance mechanisms or supporting/developing existing mechanisms at enterprises of all forms of ownership, size and scope of activity.</li> </ul>
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### III. ACCESS TO REMEDY. KEY FINDINGS AND RECOMMENDATIONS

<b>Overall results</b>	
<ul style="list-style-type: none"> <li>• Kazakhstan needs deep reforms to improve the efficiency and quality of its judicial system. The country faces problems of judicial independence, lengthy execution of court judgements, ensuring the basic rights of citizens and corruption. Court funding needs to be increased and procedural legislation needs to be improved in terms of stability and quality. Informatization of the judiciary brings benefits, but faces problems of quality of communication, access to materials and uneven practice in different regions. The efficiency of civil litigation is complicated by a number of legislative and practical obstacles.</li> <li>• With regard to the state's non-judicial grievance mechanisms, several key issues affecting effectiveness are noted. The status of the Ombudsman needs to be upgraded to Category A, to improve the effectiveness of the institution in protecting human rights. Ombudspersons for Children's Rights and Socially Vulnerable Groups suffer from institutionalization problems. The OECD National Contact Centre is limited in its activity. State labour inspectorates are active on labour rights issues, but their numbers are not in line with international recommendations, which limits their ability to monitor. The state legal aid system requires additional funding and streamlining to improve its effectiveness in protecting human rights in the business context.</li> <li>• Non-state mechanisms also need to be strengthened as their effectiveness is difficult to assess due to lack of data. Trade unions are active, but trade union legislation needs to be brought up to ILO standards. The lack of enforcement mechanisms for UN treaty bodies and non-ratification of the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights limits the ability to ensure and protect these rights in Kazakhstan.</li> </ul>	
<b>State judicial mechanisms (UN Guideline 26)</b>	
<p>States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.</p>	
<b>Status and gaps</b> <ul style="list-style-type: none"> <li>• Kazakhstan occupies an average position in global rankings related to the rule of law. According to the ratings, the most vulnerable issues remain, potential problems with the independence of judges and the judiciary from external factors, the duration of execution of court decisions, the issue of ensuring the basic rights of citizens and the high level of corruption. According to national experts, the weaknesses of Kazakhstan's justice system include: independence and accountability of courts and judges, equality between the defense and prosecution during the judicial process, professionalism of judges, quality of legal education and training, workload of courts,</li> </ul>	<b>Recommendations</b> <ul style="list-style-type: none"> <li>• The Government of Kazakhstan needs to focus on quality reforms to ensure the introduction of mechanisms to protect judges from external influence, including additional guarantees of inviolability and stability of their official position.</li> <li>• Particular attention should be focused on reducing corruption risks in the judiciary.</li> </ul>

<p>level of funding and duration of execution of court decisions.</p> <ul style="list-style-type: none"> <li>• Funding for courts in Kazakhstan is significantly less compared to European countries.</li> <li>• The informatization of the judicial system in Kazakhstan brings a number of advantages, but there are disadvantages, especially in online case processing: problems with the quality of communication, access to materials, recording of sessions, compliance with publicity and fair trial standards, and uneven practice in different regions.</li> <li>• The main obstacles affecting the effectiveness of consideration of civil claims are: 1) the necessity established by law in a number of cases to apply for protection in the framework of criminal, administrative or administrative offense proceedings rather than in civil proceedings; 2) the impossibility to refer to the fact of unlawful action or inaction of the inflictor of harm without the presence of a judicial act or an act of an authorized body on bringing him to criminal, administrative or disciplinary responsibility; 3) the absence of the possibility to bring claims in the interests of an unlimited number of persons or in the interests of others</li> </ul>	<ul style="list-style-type: none"> <li>• Reducing the presence of the prosecutor's office in non-criminal proceedings and in supervising court decisions could create a reserve for more reasonable funding of the judiciary and the system of state-guaranteed legal aid.</li> <li>• It is advisable to invest in technological equipment, improving the quality of internet connectivity and creating convenient platforms for online case processing, taking into account the requirements for publicity and fairness.</li> <li>• It is advisable to reform the norms that create obstacles to the effective consideration of civil claims, in particular, to make it possible to invoke wrongful acts without acts of prosecution and to expand the possibility of bringing claims in favor of a wide range of persons.</li> </ul>
<p><b>State-based non-judicial grievance mechanisms (UN Guiding Principle 27)</b></p> <p>States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• The institution of the Ombudsman has been granted "B" status, which indicates the need to bring this mechanism closer to the best possible compliance with the United Nations Paris Principles on National Human Rights Institutions.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• It is recommended to develop and implement an action plan to achieve full compliance of the Ombudsman Institution with the Paris Principles.</li> </ul>

<ul style="list-style-type: none"> <li>• Due to the lack of relevant and detailed statistics and information, it is impossible to assess the effectiveness of human rights protection in business activities through such remedies in Kazakhstan as the Commission on Human Rights under the President of Kazakhstan, the Ombudsman for Children's Rights, the Ombudsman for the Rights of Socially Vulnerable Categories of Population, the National Contact Centre operating within the framework of the OECD Guidelines for Multinational Enterprises, the Prosecutor's Office of Kazakhstan, the Anti-Corruption Agency of Kazakhstan, and the Institute for the Prevention of Corruption.</li> <li>• The activities of the Ombudsman for Children's Rights and the Ombudsman for the Rights of Socially Vulnerable Categories of Population are not supported by any special law. These positions do not have a budget and staff, and their positions are public in nature. The lack of their institutionalization prevents them from effectively carrying out tasks to protect the rights of vulnerable groups potentially affected by business activities.</li> <li>• The National Contact Point, which operates under the OECD Guidelines for Multinational Enterprises on handling grievances, has had limited activity due to the low number of grievances, which is related to low stakeholder awareness of the mechanism and its role in dispute resolution issues related to multinational companies.</li> <li>• Despite the fact that state labour inspectorates are active in protecting labour rights in enterprises and act as a fairly effective extrajudicial mechanism in the country, their number does not meet ILO recommendations, which affects the ability to cover the monitored enterprises.</li> </ul>	<ul style="list-style-type: none"> <li>• It is necessary to develop a system for collecting and analyzing data on the protection of human rights in business activities, including the actions of the Commission on Human Rights under the President of the Republic of Kazakhstan, the Ombudsman for Children's Rights, the Ombudsman for the Rights of Socially Vulnerable Categories of Population, the National Contact Centre operating within the framework of the OECD Guidelines for Multinational Enterprises, the Prosecutor's Office of the Republic of Kazakhstan, the Anti-Corruption Agency of the Republic of Kazakhstan, the Institute of Mediation and Arbitration, the Court and the International Court of Justice.</li> <li>• The Government of Kazakhstan needs to develop specialized laws that formalize the powers, responsibilities and funding of the Ombudsman for Children's Rights and the Ombudsman for the Rights of Socially Vulnerable Categories of Population.</li> <li>• It is recommended that the Ministry of National Economy of the RoK increase its efforts to inform the public and businesses about the role and capabilities of the OECD National Contact Point through awareness and training campaigns.</li> <li>• State labour inspectorates should be scaled up and the number of State labour inspectorates should be increased in line with ILO recommendations and adequately funded and resourced. To this end, it is recommended to develop and implement a strategy to expand and strengthen State labour inspectorates, including the</li> </ul>
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<ul style="list-style-type: none"> <li>• The system of state-guaranteed legal aid, according to researchers, is not yet fully capable of providing adequate support to complainants of human rights abuses in business activities and is characterized by practical and procedural barriers to access to judicial remedies. The majority of the state budget is spent on courts and prosecutors, while minimal funding is allocated to state-guaranteed legal aid.</li> <li>• Arbitration in Kazakhstan cannot consider disputes between individuals and/or legal entities of the Republic of Kazakhstan on the one hand and state bodies, state-owned enterprises, as well as legal entities, 50% or more of the shares in the authorized capital of which are directly or indirectly owned by the state. This provision discriminates against residents who cannot include such a clause in a contract with a company directly or indirectly owned by the state.</li> </ul>	<p>recruitment and training of additional inspectors.</p> <ul style="list-style-type: none"> <li>• It is recommended to reduce procedural and practical barriers by facilitating access to legal aid and judicial remedies. Obstacles that prevent citizens from obtaining state-guaranteed legal aid should be analyzed and removed, taking into account the feedback and experience of applicants.</li> <li>• It is important to review budgetary expenditures with a view to allocating more funding to state-guaranteed legal aid. In doing so, it is recommended to explore the possibility of reallocating funds without compromising other important areas.</li> <li>• It is recommended that Kazakhstan undertake legal reforms to allow arbitration of disputes between individuals and/or legal entities of the Republic of Kazakhstan on the one hand and state bodies, state-owned enterprises, as well as legal entities where fifty percent or more of the voting shares (participatory interests in the charter capital) are directly or indirectly owned by the state.</li> </ul>
<p><b>Non-State grievance mechanisms (UN Guidelines 28-30)</b></p> <p>States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.</p> <p>To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.</p> <p>Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Kazakhstan has introduced an obligation to establish anti-corruption compliance services in the quasi-public sector. At the same time, the work of such services in the private sector is carried out on a voluntary basis. However, it is not possible to assess the effectiveness of these services as a grievance mechanism due to the lack of relevant statistics and information.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• It is necessary to develop and implement a system of collection, aggregation and publication of data on the activities of anti-corruption compliance services and labour dispute resolution tools. This will ensure transparency and the possibility to analyze their effectiveness.</li> </ul>

<ul style="list-style-type: none"> <li>• Data on the work of individual trade union organizations show that they are active in protecting the rights and interests of workers at enterprises. At the same time, the current Law on Trade Unions in Kazakhstan does not fully comply with ILO standards.</li> <li>• The country lacks a mechanism for enforcing the decisions of UN human rights treaty bodies.</li> <li>• Kazakhstan has not ratified the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights, which significantly affects the effectiveness of the protection of individual human rights.</li> </ul>	<ul style="list-style-type: none"> <li>• It is advisable to consider extending the obligation to establish anti-corruption services to large and medium-sized enterprises in the private sector in order to strengthen anti-corruption measures in the country.</li> <li>• It is important to revise the Law on Trade Unions to bring it closer to full compliance with ILO standards.</li> <li>• It is important to develop and adopt a legal act regulating the procedure and mechanism for the implementation of decisions of the UN human rights treaty bodies in Kazakhstan.</li> <li>• The Government of Kazakhstan should initiate the process of ratification of the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights, thus ensuring deeper protection of human rights at the international level.</li> </ul>
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