



TERMS OF REFERENCE

FOR INDIVIDUAL CONTRACT

POST TITLE: **Researcher on Business and Human Rights, Sustaining Peace, and International Trade and Investment (International Consultant)**

AGENCY/PROJECT NAME: **Business and Human Rights Unit, UNDP BRH**

COUNTRY OF ASSIGNMENT: **Remote / home-based**

1) PROJECT DESCRIPTION

B+HR Asia

Over several decades in Asia, pro-growth economic policies have encouraged a rapid influx of foreign investment and increased international trade flows. In turn, these forces have driven significant gains in jobs, industrial production, and innovation, as well as achievements in health care provision and education. Yet, fast-paced economic development has also resulted in a wide variety of human rights abuses and devastating levels of environmental degradation. Concern for these adverse impacts seems to be growing among governments, businesses, consumers, and civil society in general.

Almost a decade has passed since the UN Guiding Principles on Business and Human Rights (UNGPs) were endorsed by the UN Human Rights Council. Today, the UNGPs are the main reference framework for the complementary duty of States to protect human rights and responsibility of business enterprises to respect human rights. Although there seems to be increasing global awareness and uptake of the UNGPs, knowledge and implementation gaps remain.

UNDP's regional project on Business and Human Rights, titled "Business and Human Rights in Asia: Promoting Responsible Business Practices through Regional Partnerships", (B+HR Asia) works to ensure the uptake of BHR and the implementation of the UNGPs through technical advisory, awareness-raising, and capacity building support to governments, businesses, civil society organizations (CSOs), and national human rights institutions (NHRIs).

Business and human rights, sustaining peace, and international trade and investment

As expressed by the Special Representative of the Secretary-General on Business and Human Rights

(SRS) in 2011, “[c]onflict situations are one of the most difficult circumstances for human rights. Human rights abuses frequently spark or heighten conflict, and conflict in turn often leads to further human rights abuses. [...] Unsurprisingly, the most egregious business-related human rights abuses also take place in such environments, where the human rights regime cannot be expected to function as intended”. Indeed, in conflict-affected areas, the host State may be unable to protect human rights adequately due to a lack of effective control or even unwilling to protect human rights due to a variety of reasons. Thus, where transnational corporations are involved, home States can play an instrumental role in sustaining peace by guiding or regulating corporations domiciled under their jurisdiction and assisting or enticing conflict-affected host States to ensure business respect for human rights.

The UN Working Group on Business and Human Rights (UNWG) launched a [project](#) in 2018 to clarify the practical steps that States and business enterprises should take to implement the UNGPs in conflict and post-conflict contexts. The UNWG states that it “seeks to develop evidence-based guidance, taking into account both emerging good practices and existing gaps and challenges”. The UNWG has held various consultations to identify gaps relating to business respect for human rights across the full “conflict cycle” (pre-, in- and post-conflict situations) and across the three pillars of the UNGPs (Protect, Respect and Remedy). The UNWG will present its findings and recommendations in a report to the UN General Assembly in October 2020. A key take-away of the various consultations held by the UNWG is that the international trade and investment ecosystem provides a promising avenue to address business-related human rights abuses in conflict contexts. Recent developments in trade policy also suggest that a new generation of trade agreements may include provisions that are more sensitive to the issues that can stoke conflict in its myriad forms. This may include human rights clauses that allow states to withdraw from agreements where one party is responsible for egregious human rights abuses. Though the trade policy is trending strongly in this direction, the long-term viability and impact of these clauses is subject to debate. Asia has in some estimates served as an important testing ground.

The roles of States and business enterprises under the UNGPs

As highlighted by the SRS during his mandate, host States may face challenges in sustaining peace due to a lack of control over their territory. In this context, the question arises how they can ensure that human rights are respected by business enterprises that engage in trade and investment with public or private sector actors within the territory or under the jurisdiction of the host State. The UNGPs stress the importance for host States to ensure that business enterprises are not involved with gross human rights abuses in conflict situations (Guiding Principle 7). According to international human rights law and the UNGPs, host States must protect against human rights abuse within their territory and/or jurisdiction by business enterprises, which requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Guiding Principle 1). This may include enforcing laws to require business enterprises to respect human rights and assess the adequacy of such laws and address any gaps; ensure that other laws and policies do not constrain but enable business respect for human rights; provide effective guidance to business enterprises on how to respect human

rights throughout their operations; and encourage and require business enterprises to communicate how they address their human rights impacts (Guiding Principle 3). Moreover, host States should lead by example where the State is an economic actor in its own right, when it contracts or otherwise engages with companies to provide services that may impact on human rights, or when it conducts commercial transactions with business enterprises (Guiding Principle 4-6). Finally, host States should ensure horizontal and vertical policy coherence to ensure effective protection of human rights within their territory and/or jurisdiction.

At the same time, Guiding Principle 7 explicitly states that “the host-State may be unable to protect human rights adequately due to a lack of effective control” and that, therefore, “where transnational corporations are involved, their home States [...] have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse”. Indeed, home States can shape and leverage the international trade and investment ecosystem through negotiating, concluding and calling for compliance with trade and investment treaties that contain specific provisions on business respect for human rights applicable to conflict situations (Guiding Principles 7 and 9). In these and other contexts, home States can promote business respect for human rights in sustaining peace when acting as members of multilateral financial organizations (Guiding Principles 7 and 10). Further, apart from regulating the international conduct of business enterprises domiciled under their jurisdiction in the context of sustaining peace (Guiding Principles 2-3 and 7), home States can provide guidance to and incentivize or require business enterprises to address human rights abuses through, for example, export credit finance institutions, official investment insurance or guarantee agencies, foreign and trade ministries, and embassies. (Guiding Principles 4 and 7). In this respect, and when providing development assistance to host States in any stage of the conflict cycle, home States should ensure policy coherence across relevant State-based institutions to ensure that (gross) human rights abuses are addressed adequately (Guiding Principle 8).

Moreover, while States shape the rules of the international trade and investment ecosystem, businesses are responsible for large amounts of trade and investment. Under the UNGPs, business enterprises have a complementary and independent responsibility to respect human rights (Guiding Principles 11-15). A core element of this responsibility is that business enterprises should conduct human rights due diligence (Guiding Principles 17-21). The UNGPs acknowledge that business enterprises have a ‘heightened’ responsibility to respect human rights in conflict-affected areas where there is a risk of being complicit in gross human rights abuses or violations, which should be treated as a “legal compliance issue”, and implies that businesses should conduct [‘enhanced’ human rights due diligence \(enhanced HRDD\)](#) (Guiding Principle 23). However, the UNGPs do not further specify what this entails. The UNWG will address this in its forthcoming report to the UN General Assembly. Finally, businesses enterprises have a key role to play in promoting respect for human rights when a conflict-affected area or State moves into a post-conflict and reconstruction phase. A pertinent question is how business enterprises can engage responsibly in such circumstances and thus contribute to sustaining peace.

Finally, both States and business enterprises have a role to play in ensuring that affected rights

holders have access to effective remedy (Guiding Principles 25-31).

2) SCOPE OF WORK

The research project aims at creating a knowledge product with practical examples of how home States and (multinational) business enterprises can promote business respect for human rights and sustain peace in Asia and the Pacific through international trade and investment. Although the UNGPs provide a useful framework to frame these issues, further research is required to identify what practical implementation of the UNGPs entails in such contexts. To understand the scope and structure of the research, prospective applicants should take note of the following.

First, while the UNGPs mention the term 'conflict', there is no uniform definition of what constitutes conflict. Therefore, the research shall be guided by the UN definition of sustaining peace, and Sustainable Development Goal 16.

UN General Assembly Resolution [A/Res/70/262](#) and UN Security Council Resolution [S/RES/2282](#) define 'sustaining peace' as follows: "sustaining peace [...] should be broadly understood as a goal and process to build a common vision of a society, ensuring that the needs of all segments of the population are taken into account, which encompasses activities aimed at preventing the outbreak, escalation, continuation and recurrence of conflict, addressing root causes, assisting parties to conflict to end hostilities, ensuring national reconciliation, and moving towards recovery, reconstruction and development", which "is a shared task and responsibility that needs to be fulfilled by the Government and all other national stakeholders, and should flow through all three pillars of the United Nations engagement [read: peace and security, human rights, and development] at all stages of conflict [read: pre-conflict, in-conflict, and post-conflict], and in all its dimensions, and needs sustained international attention and assistance". Note that these resolutions also emphasize "the importance of a comprehensive approach to sustaining peace, particularly through the prevention of conflict and addressing its root causes, strengthening the rule of law at the international and national levels, and promoting sustained and sustainable economic growth, poverty eradication, social development, sustainable development, national reconciliation and unity, including through inclusive dialogue and mediation, access to justice and transitional justice, accountability, good governance, democracy, accountable institutions, gender equality and respect for, and protection of, human rights and fundamental freedoms".

In respect of Sustainable Development Goal (SDG) 16 on Peace, Justice and Strong Institutions, [according to UNDP](#), "without peace, stability, human rights and effective governance, based on the rule of law, sustainable development cannot be achieved. [...] While some regions enjoy peace, security and prosperity, others fall into seemingly endless cycles of conflict and violence. Armed violence and insecurity have a destructive impact on a country's development, affecting economic growth, and often resulting in grievances that last for generations. Sexual violence, crime, exploitation and torture are also prevalent where there is conflict, or no rule of law, and countries

must take measures to protect those who are most at risk. The SDGs aim to significantly reduce all forms of violence, and work with governments and communities to end conflict and insecurity. Promoting the rule of law and human rights are key to this process, as is reducing the flow of illicit arms and strengthening the participation of developing countries in the institutions of global governance.”

Second, the research shall focus on the international trade and investment ecosystem in a broad sense, meaning the research shall not be limited to trade and investment treaties, but shall include other areas of State policy, regulation and adjudication in respect of business-related human rights abuses, as well as the responsibility of business to respect human rights and their role in providing for or cooperating in grievance mechanisms and remedies in the course of their trade and investment activities.

The knowledge product shall be structured as follows:

1. The first section shall set out the linkages between sustaining peace, international trade and investment, and business and human rights considerations. The research essentially needs to combine these three elements and provide analysis on how the UNGPs relate to sustaining peace and international trade and investment. This shall provide the conceptual framework against which subsequent sections are to be understood.
2. The second section shall relate to Pillar I (and where relevant, Pillar III on access to effective remedy) of the UNGPs. The two specific questions to be answered in this section are the following: “how can host States that are in the process of sustaining peace and securing SDG 16 protect human rights in respect of business enterprises that engage in trade and investment within the territory and/or jurisdiction of that host State?” and “how can home States ensure that business enterprises, domiciled in their territory and/or jurisdiction, respect human rights when those business enterprises engage in international trade and investment in host States that are in the process of sustaining peace and securing SDG 16?”. These questions shall be answered by conducting case studies that analyse good practices in South, East and Southeast Asia, and the Pacific. The focus shall be on negotiating, concluding and enforcing trade treaties and trade provisions in investment treaties, and on State policies, regulation and adjudication that address businesses activities and sustaining peace. This latter category may include but not be limited to development assistance and government entities or institutions that facilitate or support businesses in their international trade and investment activities.
3. The third section shall relate to Pillar II (and where relevant, Pillar III on access to effective remedy) of the UNGPs. The specific questions to be answered in this section are the following: “what does practical application of enhanced HRDD look like in conflict situations?” and “when operating in conflict contexts, how can businesses contribute to sustaining peace?” These questions shall be answered by conducting case studies that analyse good practices in South, East and Southeast Asia, and the Pacific. The first question

shall be the main focus of this section. The concept of enhanced HRDD entails a process through which businesses should identify, prevent, mitigate and account for actual and potential impacts on conflict and post-conflict situations. Enhanced HRDD may guide businesses in ensuring that their activities do not cause or contribute to human rights, for example, when they engage in foreign direct investment in conflict-affected States or regions. Further, enhanced HRDD may also guide businesses in how to exercise leverage when human rights abuses are directly linked to their operations, products or services by a business relationship. This relates to situations where businesses engage in trade with States or other businesses, for example, those operating in conflict-affected regions (virtually any industry), or when trading goods or providing services that contribute to conflict (e.g. arms trade or private security services). The second question may include steps to be undertaken by businesses to contribute to sustaining peace in any step of the conflict cycle. For example, a valuable contribution could be to further elaborate on how businesses can contribute to post-conflict reconstruction and transitional justice.

4. The fourth section shall conclude by providing an overview of good practices and existing gaps that should be addressed going forward.

The Research Consultant will work under the guidance and supervision of the Manager of the Business and Human Rights Project and in collaboration with support from project team members. Specific deliverables include the following:

1. Devise a research plan. This result is comprised of the following major tasks:

- Conduct preliminary desk research to identify how home States and business enterprises can promote business respect for human rights and sustain peace through international trade and investment, and collect examples thereof;
- Devise a research methodology (which may include desk research, conducting case studies and in-depth interviews) and research structure, and outline specific activities to be undertaken.

2. Create the knowledge product. This result is comprised of the following major tasks:

- Establish the theoretical framework on business and human rights relevant to home States and business enterprises in sustaining peace through international trade and investment
- Conduct case studies and in-depth interviews, and outline and analyse good practices
- Articulate recommendations on how existing practices can be further developed and strengthened;
- Validate contents through peer-review;
- Incorporate final substantive feedback by UNDP;
- Finalise knowledge product.

3) EXPECTED OUTPUTS AND DELIVERABLES

Deliverables/ Outputs	Estimated Duration to Complete	Target Due Dates	Review and Approvals Required (<i>Indicate designation of person who will review output and confirm acceptance</i>)
1) Devise a research plan	< 1 month	30 June 2020	Business and Human Rights Specialist, Business and Human Rights unit, Governance and Peacebuilding Team, UNDP Bangkok Regional Hub.
2) Create the draft version of the knowledge product	< 5 months	15 Oct 2020	
3) Validate the contents of the knowledge product through peer-review	< 6 months	15 Nov 2020	
4) Launch final knowledge product	< 6 months	30 Nov 2020	

Final report in a layout and format ready to be published (printing costs are not expected to be borne in this consultant contract).

The consultant will use his/her own equipment and software.

Intellectual Property

All information and production of report to the assignments as well as outputs produced under this contract shall remain the property of the UNDP who shall have exclusive rights over their use. The products shall not be disclosed to the public nor used in whatever format without written permission of UNDP in line with the national and International Copyright Laws applicable.

4) INSTITUTIONAL ARRANGEMENTS

The consultant will work under the overall guidance of the Business and Human Rights Specialist,

Business and Human Rights unit, Governance and Peacebuilding Team, UNDP Bangkok Regional Hub.

Fortnightly reporting will be required, and each deliverable shall be presented to the Business and Human Rights Specialist for review and approval.

The project will not be required to provide any facilities or other support, though the Business and Human Rights Specialist or other team members may provide guidance.

5) DURATION OF ASSIGNMENT, DUTY STATION AND EXPECTED PLACES OF TRAVEL

Duration

The assignment is estimated to commence end of May or beginning of June 2020. The assignment will need to be completed 30 November 2020 at the latest. Up to a maximum of 60 working days.

Duty Station

The consultancy will be home-based and shall set-up a schedule to engage with the project team through video conference or other remote communication tools.

6) DEGREE OF EXPERTISE AND QUALIFICATIONS

Required Skills and Experience

The consultant should possess the following expertise and qualifications:

Education and Experience

- University degree (Bachelor's or equivalent) in law, governance, social science, political science, business management, or related discipline(s);
- 7+ years of research experience on human rights, international trade and investment, and/or conflicts;
- 5+ years of work experience related to business and human rights;
- Demonstrated understanding of geo-political situation and experience in Asia-Pacific countries, on a wide range of business and human rights issues, with various types of stakeholders (e.g. government, NHRIs, businesses, civil society);
- Demonstrated capacity to conduct multi-discipline, cross-sector and cross-country research;
- Expertise in writing and documenting research reports.

Skills

- Demonstrable research skills;
- Results-driven, initiative-taking, ability to work under pressure and meet tight deadlines;
- Ability to work independently or with very limited guidance.
- Highly motivated with a positive attitude and problem-solving approach;
- Good interpersonal and communication skills.

Language

- Proficiency in English.

7) REQUIRED DOCUMENTS

Required documents

Interested candidates must submit the following documents/information to demonstrate their qualifications.

- a) Duly accomplished Letter of Confirmation of Interest and Availability using the template provided by UNDP;
- b) Curriculum Vitae;
- c) Three examples of previous publications;
- d) Brief description of why the individual considers him/herself as the most suitable for the assignment, and a methodology on how they will approach and complete the assignment.
- e) Financial Proposal that indicates the all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided. If an Offeror is employed by an organization/company/institution, and he/she expects his/her employer to charge a management fee in the process of releasing him/her to UNDP under Reimbursable Loan Agreement (RLA), the Offeror must indicate at this point, and ensure that all such costs are duly incorporated in the financial proposal submitted to UNDP.

Incomplete proposals may not be considered. The short listed candidates may be contacted and the successful candidate will be notified.

8) CRITERIA FOR SELECTION OF THE BEST OFFER

Evaluation Method and Criteria

Only candidates which are responsive and compliant will be evaluated, Individual consultants will be evaluated based on the following methodology;

Combined Scoring method:

The award of the contract shall be made to the candidate whose offer has been evaluated and determined as a) responsive/compliant/acceptable; and b) having received the highest score out of set of weighted **technical criteria (70%) and financial criteria (30%)**.

- The technical criteria consist of qualification review (education, experience, language) [max. 100 points]
- **Financial score** shall be computed as a ratio of the proposal being evaluated as the lowest priced qualified proposal received by UNDP for the assignment will be based on a maximum 30 points.

Technical Criteria for Evaluation (Maximum 100 points)

- Criteria 1: Education – Max 15 points;
- Criteria 2: Working experience – Max 45 points

- Criteria 3: Analytical, research and writing abilities – Max 30 points
- Criteria 4: Excellent command of English writing – Max 10 points

Only candidates obtaining a minimum of 70 points for technical criteria (approx. 70% of the total technical points) would be considered for the Financial Evaluation.

For those passing technical evaluation above, offers will be evaluated per the Combined Scoring method:

- a) Technical evaluation (70%)
- b) Financial evaluation (30%)

The application receiving the Highest Combined Score will be awarded the contract.

9) CONSULTANT PRESENCE REQUIRED ON DUTY STATION/UNDP PREMISES

NONE

PARTIAL

INTERMITTENT

FULL TIME

10) PAYMENT TERMS

Candidates shall quote a **lump sum “all-inclusive” fee** for the completion of each deliverable. The term “all-inclusive” implies that all costs (professional fees, communications, consumables, etc.) that could be incurred by the consultant in completing the assignment are already factored into the lump-sum submitted in the proposal. Payments shall be done upon verification of completion of deliverables and approval by the IC’s supervisor.

The lump-sum price is fixed regardless of changes in the cost components.

- First Tranche – 10% upon submission and approval of Deliverable 1 (“Devise a research plan”)
- Second Tranche – 20% upon submission and approval of Deliverable 2 (“Create the draft version of the knowledge product”)
- Third Tranche – 20% upon submission and approval of Deliverable 3 (“Validate contents of the knowledge product through peer-review”)
- Fourth Tranche - 50% upon submission and approval of Deliverable 4 (“Launch final knowledge product”)
- In the event of unforeseeable travel not anticipated in this TOR, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon between the respective business unit and the Individual Consultant prior to travel and will be reimbursed.

This TOR is approved by:

Signature

A handwritten signature in blue ink, appearing to read 'Livio Sarandrea', is written over a yellow rectangular highlight.

**Mr Livio Sarandrea
Business and Human Rights Advisor**

Date of Signing

8 May 2020