

Human Rights and Venture Capital

VentureESG White Paper #4

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VentureESG is a community-based non-profit initiative from VCs for VCs aiming to enable the industry to integrate good ESG practices. This project is led by our Human Rights research fellow Joanne Azem and VentureESG Co-Founder and Co-Director, Dr Johannes Lenhard. You can learn more about VentureESG [here](#).

Abstract / Executive Summary

- A. **Goal of the white paper:** Over the course of the 12-month project funded by Luminate, we developed a pragmatic human rights framework for Venture Capital (“VC”). The framework, covered in detail in this white paper, provides VCs with a fundamental understanding and guidance on business and human rights to ensure more responsible tech investing going forward and support VCs in aligning with the UN Guiding Principles on Business and Human Rights (“UNGP”).
- B. **Context:** In recent years, there has been rising awareness of the need for more human rights integration across all areas of business. While tools have been produced for different asset classes, tech and VC investors are still mostly left out from the guidance. Most VCs we have interviewed do not have a human rights policy in place. Some VCs disregard the human rights lens to investments as burdensome, ineffective and irrelevant. Our effort with this white paper and framework is to enable VCs to take pragmatic action to integrate human rights into their (ESG) processes and work with their portfolio companies to do the same.
- C. **Process and methods:** In the first phase of the project, we examined available toolkits on business and human rights to develop implementable guidance. Along this process, we engaged with UN representatives and civil society organisations, including Amnesty International, Investor Alliance for Human Rights and the Business and Human Rights Resource Centre. In the second phase of the process, we systematically collected feedback on the framework we developed from VCs across stages, geographies and sectors. The final iteration of the framework at the end of this document is the product of this two-sided feedback process.
- D. **Framework:** Based on the UNGPs, our framework aims to ensure the protection of human rights, reiterate the role of VCs in respecting human rights and guarantee an effective remedy to human rights violations. The framework includes guidance and questions which VCs may refer to when implementing a human rights framework based on the following fundamental pillars: human rights commitment policy, human rights due diligence and remedy.

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Context

Human rights, VCs and technology

Human rights are universal and cut across civil, political, economic, social, cultural and environmental issues. In the context of early stage and high growth tech companies, human rights cover a wide spectrum of topics: from freedom of expression, employment contracts and labour rights, to data practices and privacy, supply chains, and the diversity of your team.

Although the concept is universal, many technology companies and VC investors we encountered do not see the relevance of human rights in their day-to-day work. While emerging technologies such as social media, (generative) Artificial Intelligence (AI) and facial recognition have enormous potential benefits, they also pose significant risks to human rights. From enabling surveillance, undermining democratic processes and facilitating discrimination, the [UN's B-Tech project](#) lists some of the potential risks that are relevant for tech investors, such as:

- Gathering large volumes of personal data (e.g. Google)
- Selling products to governments which may put vulnerable populations at risk (e.g. Palantir)
- Hyper-personalisation which could lead to discrimination (e.g. targeted advertising)
- Using algorithmic bosses limiting labour protection for workers (e.g. Uber)
- Models that are informed by, or inform, the personal choices and behaviours of populations without their knowledge and consent (e.g. Meta)

Context

Human rights, VCs and technology

Institutions such as Harvard's Carr Center for Human Rights and Human Rights Watch track some examples of the human rights violations in tech companies, including:

- France using (public space) surveillance in the Olympics
- The link between online platforms and mental health
- Brazilian online learning tool harvesting children's data
- Iranian state-backed hacking of journalists
- Digital targeting of LGBT people in the Middle East
- The use of autonomous weapons

These examples emphasise the link between human rights violations and emerging technologies. As the WEF's Group for the Fourth Industrial Revolution already concluded in 2017: businesses, civil society, policy makers and technology companies have a responsibility to create solutions that keep humans at the core of emerging technologies. This responsibility remains much in demand today and this VentureESG White Paper brings VC investors one step closer to meeting it.

Part I: Business and human rights: from the UNGPs to their application to VC

The UNGPs - Aspirations and challenges

The UNGPs on the issue of human rights and transnational corporations and other business enterprises are the global standard when examining human rights harms in the business sector. The UNGPs operationalise the United Nations' Framework on business and human rights from 2008 ("the UN Framework") which had set the following foundations:

1. State duty to **protect** human rights
2. Corporate responsibility to **respect** human rights
3. **Remedy** for survivors of human rights violations

After being unanimously ratified by the Human Rights Council in 2011, there were high expectations of the UNGPs to deliver sustainable and impactful guidance on business and human rights. The UNGP's language is simple, pragmatic, and considerate of the corporate world and despite not imposing legal obligations on companies, they are increasingly being reflected and referred to in law, regulation and bilateral contracts. However, the UNGPs have been extensively criticised for not being binding, lacking penalization and compliance mechanisms, lacking clear guidance and having weak follow-ups or implementation measurements from the UN. A major barrier lies in the language of the UNGPs of "*corporate responsibility*" thereby giving leeway to companies to dismiss them as a mere social expectation rather than a legal obligation.

The corporate responsibility to respect human rights

The UN Framework and the UNGPs emphasised that corporate responsibility to respect human rights exists independently of the general state duty to protect (UNGP 11). This responsibility includes taking adequate measures to the prevention, mitigation, and where appropriate, the effective remediation of adverse human rights (UNGP 11, 13). The corporate responsibility to respect human rights applies equally and fully to all enterprises, including VCs and perspective portfolio companies, regardless of their size, sector, operational context ownership or structure. However, the complexity and scale may vary based on these factors and the severity of the adverse human rights impact of the company (UNGP 14, 15). The corporate responsibility calls business enterprises to have (UNGP 15):

1. A **human rights policy commitment** to meet the responsibility to respect human rights;
2. A **human rights due diligence** process to identify, prevent, mitigate and account for how human rights impact are addressed;
3. A process to enable the **remediation** of any adverse human rights impact caused, linked or contributed to.



What are Human rights?

Generally speaking, Human rights are rights inherent to all human beings without discrimination, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. The corporate responsibility to respect human rights refers at a minimum to the rights expressed in the International Bill of Rights (which is consisted of the Universal Declaration of Human Rights (“UDHR”), the International Covenant of Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural rights (“ICESCR”)) along with the International Labour Organisation (“ILO”) Core Conventions. These rights *inter alia* include: the right to life, liberty and security, freedom from slavery and torture, freedom of association, the right to work, and many more.

Human Rights and VCs

Several Reports of the United Nations High Commissioner for Human Rights from recent years demonstrate how emerging technologies have significant risks for human rights, dignity, autonomy and privacy. For example, the usage of information and communications technology to surveill protesters and impact assemblies or the continued explosion of data by artificial intelligence, including profiling, automated decision-making and machine-learning and their effect on the enjoyment of the right to privacy.

VCs shape the future of technology, economies, politics and societies and hold a massive impact on human rights in the name of corporate profitability. While reputational and ethical arguments, lip service, legal obligations in more advanced jurisdictions or bottom-line considerations may motivate companies to respect human rights, there is still a gap in adherence to the UNGPs. Indeed, the 2021 report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises indicates that despite progress, there is a human rights gap in ESG and that basic knowledge of human rights remains limited. Our framework calls on VCs to ensure that they themselves and the companies they are investing in respect human rights, adhere to the UNGPs and do not wait for a company disaster to develop their human rights framework.

¹UDHR, Article 3; ICCPR, Article 9.

²UDHR, Article 4; ICCPR, Article 8; ILO Convention No. 87.

³UDHR, Article 17; ICCPR, Article 22; ILO Convention No. 98.

⁴UDHR, Article 23; ICESCR, Article 6.

⁵For example, the French Duty of Vigilance law from 2017.

Part II: Human rights and VCs- Challenges and gaps

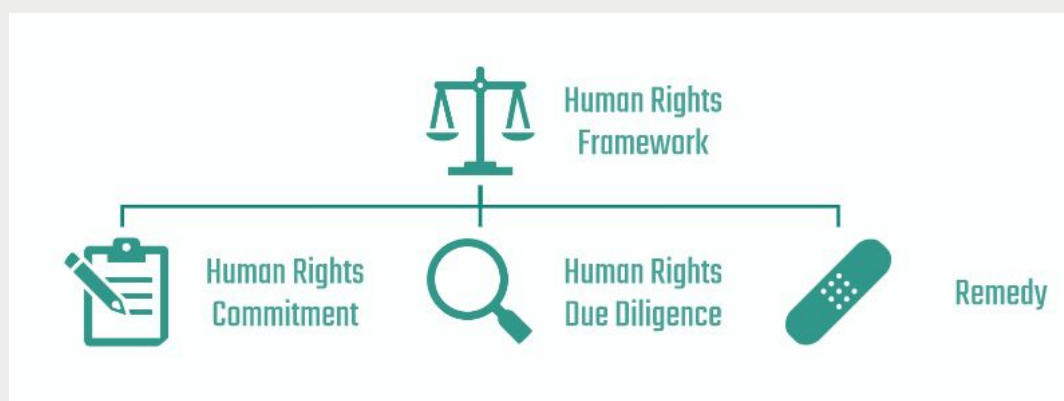
Throughout the past year we have engaged in ongoing conversations with UN representatives VCs, civil society organisations and experts on business and human rights. The purpose of these conversations was to better understand the continuing challenges in implementing the UNGPs and the corporate responsibility to respect human rights and ways to bridge this gap. Our key-findings are:

- **Lack of a clear human rights definition:** most of the VCs we have spoken with expressed a keen interest in learning more about the UNGPs and human rights and business; they were, however, unsure about the definition of Human rights. VCs viewed human rights as a broad term and believed that a clear definition and specific examples of human rights are in order to ensure the implementation of the UNGPs in their processes and the development of human rights lens investments. Furthermore, we have noticed that the lack of a unified human rights definition, leads to gaps in understanding the UNGPs. Some of the VCs we interviewed, assumed that the UNGPs and human rights are irrelevant to them due to the nature of their operations and supply chain, for example SAAS focused companies. Others had an advanced human right thinking and even suggested adding the existing legislation and regulatory requirements (For example SFDR) as an additional layer to the framework. Some even considered adding a whistle-blower protection policy in the remedy pillar and ensuring an appropriate way to raise a complaint and participate in grievance mechanisms.
- **Lack of fit-for-purpose human rights frameworks:** the vast majority of VCs we have interviewed do not have a human rights framework in place, including a human rights commitment policy, a human rights due diligence process or remedies for human rights violations. Some are now developing a human rights framework and most were open to learning more about the suggested human rights framework and implementing it in their operations; a minority of interviewees considered the human rights framework as overburdening and ineffective and admitted that they lacked the desire, expertise or resources to answer even basic human rights related questions.
- **Lack of a specialised tool:** VCs critiqued the UNGPs for being too wide and general and called for a specific tool for their own practice and their portfolio companies. Particularly, VCs required a specialised set of due diligence questions based on the company's stage, sector, size and areas of operation.

- **Disconnect between civil society guidance and investors' practice:** Civil society organisations and Human Rights experts have opened our eyes to several toolkits on the implementation of the UNGPs (e.g. the [OHCHR B-Tech Project](#), the Investor Alliance Investor toolkit on Human Rights [toolkit](#), Navigating the surveillance technology ecosystem: A human rights due diligence guide for [investors](#), Stakeholder Impact [Canvas](#)). VCs we interviewed were unfamiliar with these resources. As a matter of a fact, VCs that had shown and expressed openness and sincere desire to implement the UNGPs and develop human rights lens investments, often did not know where to turn to get proper guidance.
- **Fear of human rights washing:** Despite the general positive feedback we received by both Civil Society Organisations and VC firms, both sides were sceptical of the actual implementation of UNGPs and the development of a human rights framework. Civil society organisations were wary of the motive of investors and companies to implement the UNGPs or develop a human rights framework. In particular, they feared that VCs were paying lip-service and doubted they would engage in human rights protection without a business-case. VCs on the other hand considered UNGPs difficult to implement, especially in challenging markets where governments refuse to cooperate. VCs were also concerned of the effective methods to measure the successful implementation of the UNGPs or a human rights framework and called for examples of good practice and refraining from tick the box strategy.

Part III: Human right framework for VCs

In line with the UNGPs, we believe that investors must recognise their potential to impact human rights and ensure that prospective companies integrate human rights into their missions. VCs have a corporate responsibility to respect human rights which comes in three forms: human rights commitment, human Rights due diligence and human rights remediation.



To put it simply, there are three initial questions VCs are ought to ask, themselves and prospective portfolio companies, as a first step to developing human rights lens and ensuring responsible investments:

- Is there a human rights commitment policy?
- Is there a human rights due diligence process?
- Is remedy provided for human rights violations?

It is important to remember that similar to the relationship of the UNGPs pillars, these categories are interlinked but also inter-dependent: there is no hierarchy between them and they should be equally addressed.

The goal of the below three pillared framework is importantly not to judge or rate the performance of potential investee companies, but rather to open their eyes to ways in which they can improve their performance and ensure human rights respect. This framework in no way aspires to create new legal obligations or overburden VCs and prospective portfolio companies. It merely aims to allow them to implement the UNGP more pragmatically and advance more responsible human rights oriented investments. We hope to guide VCs to identify human rights risks, push them to manage these risks and encourage them to find ways to improve their performance.

Pillar I: Is there a human rights commitment policy?

The human rights policy is a statement which expresses the commitment to corporate responsibility publicly (UNGP 16).

Suggested Questions for VCs to themselves and prospective portfolio companies:

- Is there a human rights commitment policy in place?
- What human rights does the commitment policy refer to?
- Whose human rights does the commitment policy address? Does it exclude any potentially affected group?
- Does the commitment policy specify the human rights expectations of all business relationships? What are they?
- How often is the commitment policy updated?
- Which expert informed the commitment policy? What is their expertise?
- Is the commitment policy public, available and communicated internally and externally?
- How does the commitment policy align with other policies, commitments, and procedures?
- Who is internally responsible for the policy commitment?
- Are training on human rights provided? If so, who runs them?

Things to keep in mind:

1. According to [OHCHR](#), there is not a single and definitive template for the human rights policy commitment.
2. By definition, the commitment policy would be dynamic and subject to regular revisions.
3. The commitment policy may be a stand-alone statement or expressed within company statements of business principles, codes of conduct or other values-related statements and documentation.
4. The requirement for expert input varies and may include credible independent expert resources, including human rights defenders and others from civil society.

Below are some examples of human rights policy commitments for different corporation:⁶

Nike

At Nike, we strongly believe and are committed to respecting human rights... We look to the human rights defined in the Universal Declaration of Human Rights and the International Labour Organization's Declaration on Fundamental Rights at Work. We also consider the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises as best practice for understanding and managing human rights risks and impacts. Our commitment to respecting human rights is more specifically described in our many policies, standards and strategies, including our Code of Business Conduct... These commitments apply to our employees, communities, consumers, sponsored athletes, and includes our own operations as well as the partners and suppliers we work with in our manufacturing and logistics supply chains...

⁶ These references are aimed only to present VCs and prospective portfolio companies with concrete examples of human rights commitment policies. It does not express endorsement, rejection or evaluation of these companies and their human rights frameworks or practices.

Meta:

We are committed to respecting human rights as set out in the United Nations Guiding Principles on Business and Human Rights (UNGPs). This commitment encompasses internationally recognized human rights as defined by the International Bill of Human Rights — which consists of the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights — as well as the International Labour Organization Declaration on Fundamental Principles and Rights at Work... we implement our commitment to human rights using approaches set out in the United Nations Guiding Principles on Business and Human Rights (UNGPs)... For this reason, we identify and prioritize the most salient human rights issues in each context using the UNGP's framework of severity (scope, scale, remediability) and likelihood...

Stripe:

Stripe is committed to keeping current on global legal developments relating to human rights and modern slavery to continue operating responsibly and in compliance with the law. We will continue to monitor how we receive and provide services to ensure that we are effectively combatting the risk of modern slavery in our business.

Pillar II: Is there a human rights due diligence process?

In line with the UNGP 17, there should also be a human rights due diligence process to identify, prevent, mitigate and account for how adverse human rights impacts are addressed.

Suggested Questions for VCs for themselves and prospective portfolio companies:

- Which human rights impacts are assessed in business decisions? Are actual and potential impacts included, in addition to direct impacts and impacts linked to operations or business relationships?
- What are the areas of operations? What controls are in place and what is the level of adherence to these controls in that area of operation?
- What are the general human rights trends and patterns in the area of operation? Is there a particular human rights issue or affected group to focus on?
- What is the level of severity of these human rights violations? What is their scope of injured people and the seriousness of these violations?
- What tools or methods are used to assess potential human rights impacts and identify relevant stakeholders?
- Is there engagement with human rights experts and stakeholders? Which ones? How?
- How is the human rights understanding influenced by the input received from human rights experts and stakeholders?
- How regularly is the human rights assessment conducted?
- How are tensions between the prevention or mitigation of human rights impacts and other business objectives addressed?
- How are findings of the human rights impact assessments adequately integrated and acted upon?
- Who is responsible for addressing such impacts to the appropriate level and function to ensure effective responses to such impacts?

- How is the effectiveness of the response to human rights impacts tracked?
- Does the tracking include internal and external sources?
- Is there internal and external communication on how human rights impacts are addressed? Where and how?
- If there is a severe human rights impact, is there a formal reporting on how it was addressed?
- What does this communication reflect? Is it accessible and does it provide sufficient information?

Things to keep in mind:

1. Due Diligence should be genuine and not be a lip service to remove responsibility from VCs and/or prospective portfolio companies.
2. Based on the industry, sector or even country of operation, some human rights may be at greater risk than others and would require heightened attention. Depending on the circumstances, VCs and portfolio companies may need to consider additional standards in their due diligence.⁷

Pillar III: Is remedy provided for human rights violations?

In line with UNGP 22, where VCs and/or companies identify that they have caused or contributed to adverse human rights impacts, they should provide for, or cooperate in the remediation through legitimate processes.

Suggested Questions from VCs to themselves and prospective portfolio companies:

- How is an effective remedy to adverse human rights impacts enabled?
- How is the severity or urgency of the adverse human rights impacts prioritised?
- Are there effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted?
- How are complaints processed and findings integrated into the broader human rights due diligence process?
- How is the alignment with the UNGPs effectiveness criteria ensured? Are the remedies legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue?
- How are capacity building and stakeholder engagement practices strengthened to identify human rights issues, prevent, mitigate and address them?
- Are vulnerable people lens applied in implementing decisions around remedy to ensure lack of perpetuation or discrimination against vulnerable groups?
- Are human rights lawyers integrated into human rights teams to facilitate relationships with the legal department and build awareness of the costs of unaddressed human rights risks and potential violations, changing stakeholder expectations, and consequences for inaction?

⁷ For example, impacts on the rights of indigenous people, women, national or ethnic religious and linguistic minorities, children, persons with disabilities or refugees.

Things to keep in mind:

1. Remedy is often referred to as the weakest pillar of the UNGPs and when it comes to operational-level grievance mechanisms of companies, progress has been slow.
2. It is worth noting that remedy can take multiple forms:
 - Restitution: restoring and returning to the state prior to the human rights abuse
 - Compensation: money or other exchange for the cost of the harm
 - Rehabilitation: medical, psychological, legal, and social services to restore the survivors
 - Satisfaction: cease the violation, acknowledge the harm, disclose the truth, provide an apology, and sanction those responsible
 - Guarantee of non-repetition: change policies and procedures to prevent future harms and/or take disciplinary action

Part IV:

Recommendations

In this paper we analysed the implementation of human rights lens investments. We examined the normative source for business and human rights, the UNGP, their aspirations and their challenges. We received feedback from VCs, UN representatives and civil society organisations based on which we developed our human rights framework. We presented it to VCs and civil society organisations for their review, most of which found it structurally useful, relevant and comprehensive. Below are our key recommendations:

No size-fits all: although we aimed to provide specific guidance and clear question sets for VCs, it is important to remember that there is not a one size fits all human rights framework. The pillars of the human rights framework including the policy commitment, due diligence and remedy will vary for each investor based on the complexity of the prospective company: its size, sector, country of operations, regulations and more. We call VCs and portfolio companies to be open to learn, be creative and embark on their human rights journey today. Once they develop a framework in place, we encourage them to routinely and regularly revise, update and improve it based on their specific conditions and circumstances.

A voluntary tool is not enough: while they provide a fundamental understanding of business and human rights, the UNGPs lack compliance, penalization and implementation measurement tools, and are therefore not enough. To ensure their implementation, the UNGPs should be reformed from a voluntary imitative into a binding regulatory mandate. We call on governments worldwide and the UN bodies to regulate human rights abuses in the corporate world and include compliance and implementation mechanisms.

A need for [cooperation](#) between states, civil society organisations, VCs and companies: to ensure that the three pillars of the UNGPs are implemented equally and human rights are respected, we call on states, civil society organisations, VCs and companies to collaborate. VCs should be willing to learn more about human rights and participate in initiatives to implement them in their operations. Governments should ensure that the requirement of companies to respect human rights is mandatory and civil soceity organisations and activists should enhance the understanding of human rights and raise a deeper understanding of the UNGPs , and provide trainings, useful guidance and implementable toolkits to fulfil the UNGPs.

Appendix: Basis in the UNGPs

Pillar I: Is there a human rights commitment policy?

In line with the UNGP 16, the human rights policy commitment should:

1. Be approved by the most senior level of the company.
2. Be informed by a relevant internal or external expert.
3. Specify the human rights expectations of all business relationships including personnel, business partners and other parties directly linked to their operation, products or services.
4. Be publicly available and communicated internally and externally.
5. Be reflected and embedded in other operational policies and procedures.

Pillar II: Is there a human rights due diligence process?

In line with the below UNGPs the human rights due diligence process should include:

1. **Assessing human rights impacts:** The process should assess actual and potential human rights impacts caused or contributed to through activities or directly linked to operations or business relationships. The process should be ongoing and dynamic: prior to a new activity/relationship, prior to major decisions or changes, in response to or anticipation of changes and periodically throughout the life of an activity. In addition, it should draw on human rights expertise and involve meaningful consultation with potentially affected groups and other relevant stakeholders.
2. **Integrating and acting upon the findings of the impact assessment:** the findings from the impact assessments should be integrated across relevant internal functions and processes and be followed by appropriate action. This requires that the responsibility for addressing such impacts is assigned to the appropriate level and function within the VCs and/or portfolio companies and that internal decision-making, budget allocations and oversight processes enable effective responses to such impacts. The appropriate action depends on whether the impact was caused or contributed to or directly linked to operations and the leverage of the VC/company in addressing the adverse impact.
3. **Tracking effectiveness of their responses:** VCs and/or companies should track the effectiveness of their response based on appropriate qualitative and quantitative indicators and draw on feedback from both internal and external sources, including affected stakeholders. This step should be integrated into relevant internal reporting processes.

⁸UNGP 18.

⁹UNGP 19.

¹⁰UNGP 20

¹¹UNGP 21

4. **Communicating how impacts are addressed:** VCs and/or companies should also be prepared to communicate how they address human rights impacts externally. In the case of severe human rights impacts, they should report formally on how they are addressed. The communications should be frequent and accessible and provide sufficient information to evaluate the adequacy of the response and avoid risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality. Communications can take a variety of forms, including in-person meetings, online dialogue, consultation with affected stakeholders and formal public reports. Independent verification of human rights reporting can strengthen its content and credibility and sector specific indicators can provide helpful additional detail.

Pillar III: Is a remedy provided for human rights violations?

In line with the below UNGPs, the remedy process should include:

1. Where it is necessary to prioritise actions to address actual and potential adverse human rights impacts, VCs and portfolio companies should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.
2. VCs and portfolio companies should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.
3. Accordingly, VCs and portfolio companies should ensure their effectiveness in line with the UN Guiding Principles indicators: legitimate, accessible, predictable, equitable, transparent, rights-compatible, source of continuous learning and based on engagement and dialogue.

¹²UNGP 24

¹³UNGP 29

¹⁴UNGP 31

