

# What the UN Guiding Principles on Business and Human Rights mean for investment treaty reform

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INVESTMENT & HUMAN RIGHTS PROJECT

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The Laboratory for  
Advanced Research on  
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**HUMAN  
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# 1. The LSE Investment & Human Rights Project

Raise awareness

Capacity building

Constructive spaces for  
learning & dialogue

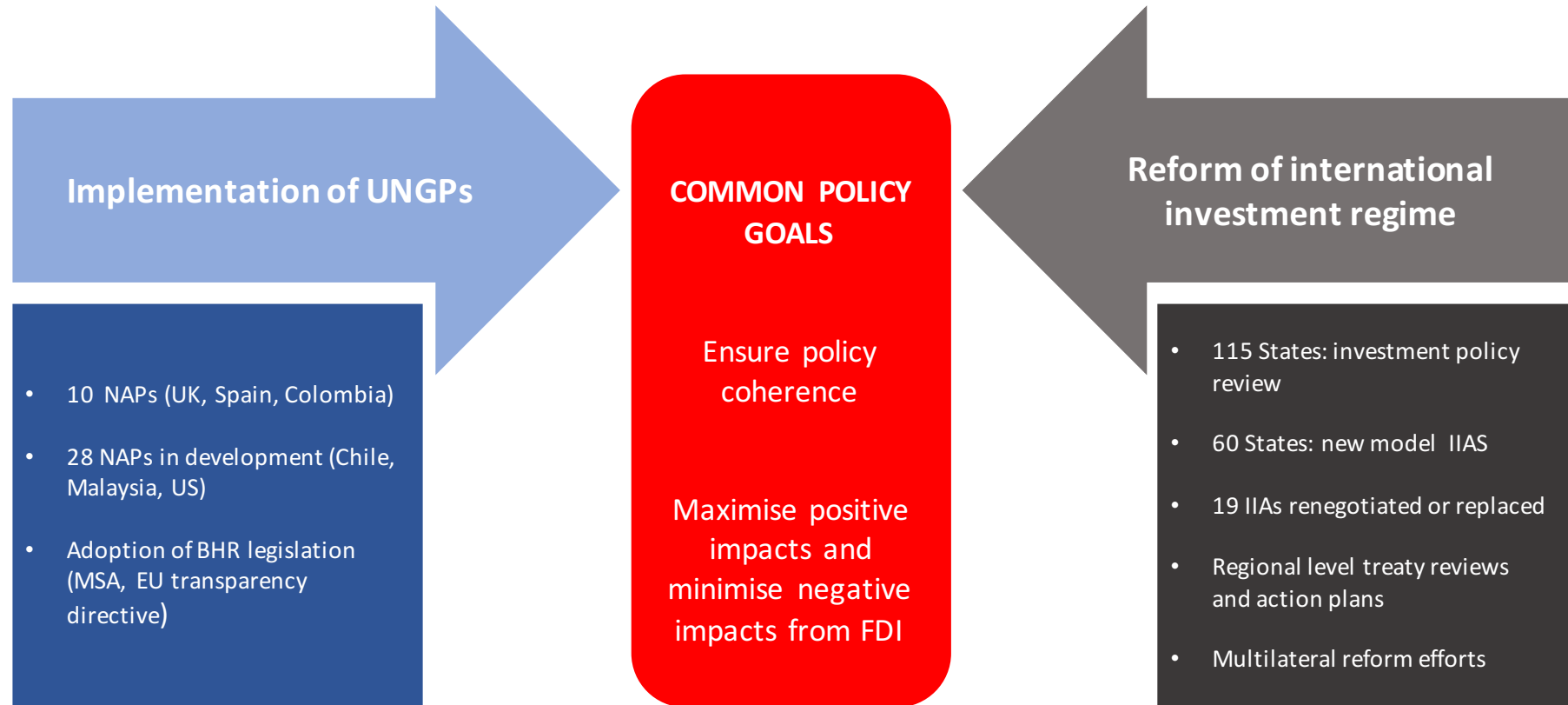
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## 2. The UNGPs and investment policy reform





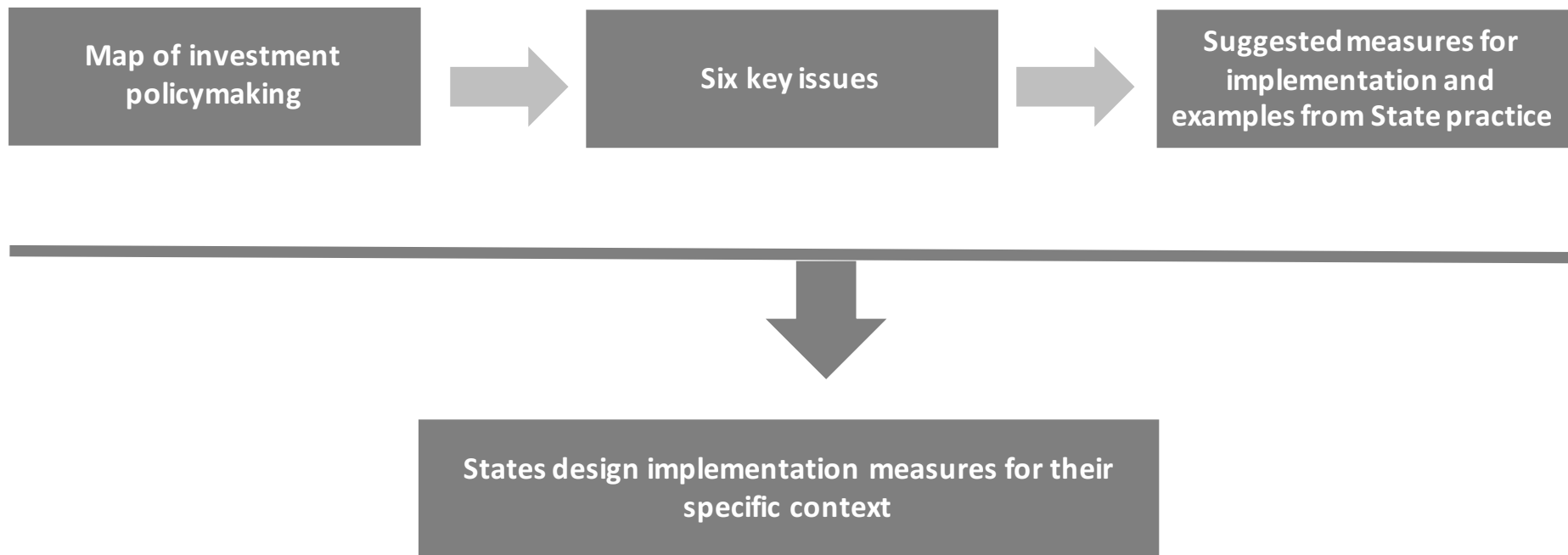
The Government will do the following to reinforce its implementation of its commitments under Pillar 1 of the UNGPs ...

[e]nsure that agreements facilitating investment overseas by UK or EU companies incorporate the business responsibility to respect human rights, and do not undermine the host country's ability to either meet its international human rights obligations or to impose the same environmental and social regulation on foreign investors as it does on domestic firms.



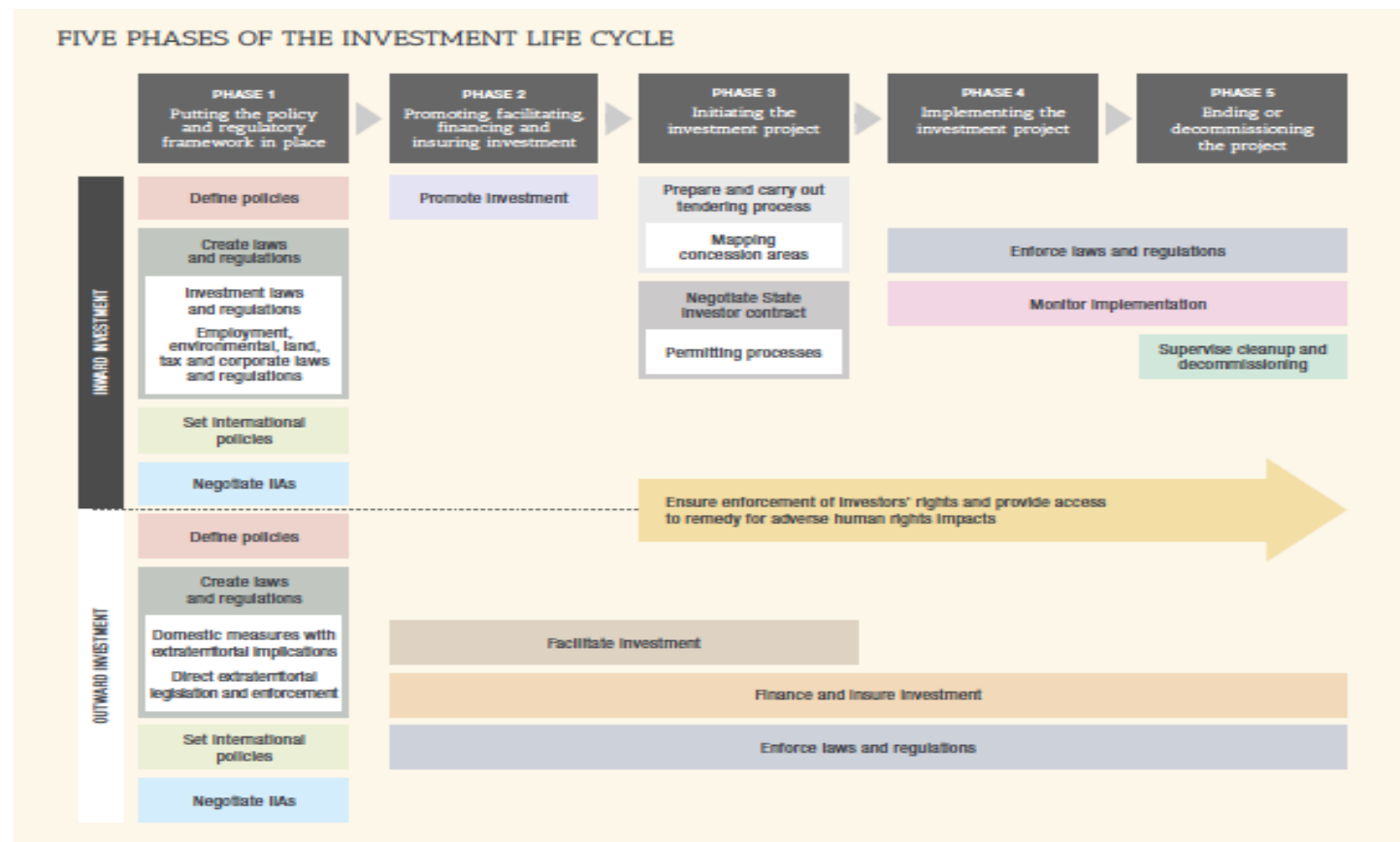
The Working Group will engage in a multi-stakeholder dialogue to address the investment - human rights relation so as to guide the generation of an investment strategy at the national, sectorial and regional levels.

### 3. Guide to implementing the UNGPs in investment policymaking





## Mapping investment policymaking



Six key issues

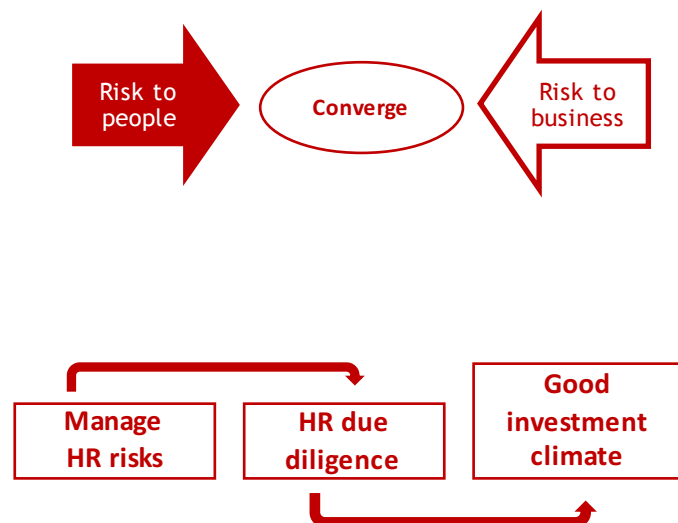


## Examples from State practice

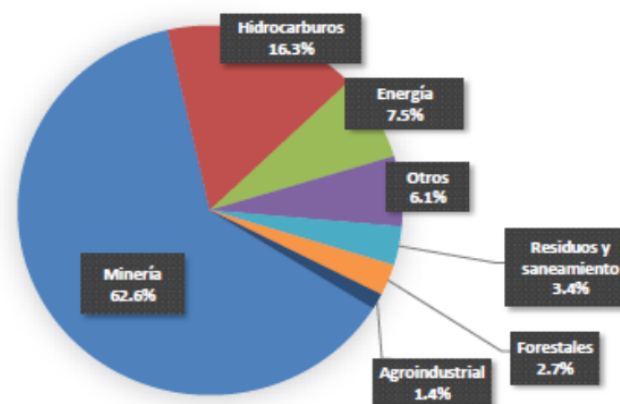
Ejemplo 13	Ejemplo 14
<b>País:</b> Suiza 	<b>País:</b> Mongolia 
<b>Función(es) del Estado:</b> Facilitación de la inversión	<b>Función(es) del Estado:</b> Negociación de contratos entre el Estado y el inversionista
<b>Instrumento(s):</b> Relacionamento con inversionistas a través de las embajadas	<b>Instrumento(s):</b> Contratos entre el Estado y el inversionista
<b>Actores:</b> Ministerio de asuntos exteriores, embajada de Suiza en Colombia	<b>Actores:</b> Ministerio de finanzas, Ministerio de recursos minerales y energía, Ministerio de agricultura, medio ambiente y turismo
<b>Tema(s) clave(s) relevante(s):</b> 1 La gestión de los riesgos relacionales con los derechos humanos 4 El establecimiento y manejo de expectativas 6 El manejo de conflictos de conflicto y post conflicto	<b>Tema(s) clave(s) relevante(s):</b> 1 La gestión de los riesgos relacionales con los derechos humanos 4 El establecimiento y manejo de expectativas 6 El incremento de la transparencia
<b>Contexto:</b> Ética de empresas suizas en Colombia Siguiendo la invitación de la embajada de Suiza en Bogotá, un grupo de empresas suizas que operan en Colombia – incluyendo Nestlé, ABB, UBS, Novartis, Roche y Holcim – oficializaron su compromiso de incorporar los temas de derecho internacional humanitario y derechos humanos en sus operaciones. Durante el 2011 redactaron un documento titulado "Promesa de valor de las empresas suizas en Colombia" según el cual "fundadas en los valores suizos, las empresas suizas en Colombia están comprometidas con la integración de los derechos humanos y el derecho internacional humanitario en su gestión...". Desde entonces, con el apoyo del gobierno suizo, las empresas han reforzado sus esfuerzos en elaborar marcos conceptuales que ayuden a definir la forma de implementar los Principios Rectores en sus operaciones. <sup>46</sup>	<b>Contexto:</b> El contrato entre el Estado y el inversionista para un proyecto de una mina de gran envergadura en Mongolia fue publicado en su totalidad y se encuentra disponible en línea. Más allá de la transparencia del contrato mismo, el contrato establece las expectativas que el Estado tiene con respecto al inversionista en términos de transparencia de información relacionada con el proyecto y participación de la comunidad. Por ejemplo, la sección 4 del contrato que habla sobre desarrollo regional, incluye estas disposiciones:  4.6 El inversionista debe llevar a cabo todos sus programas y actividades de desarrollo socio-económico locales y regionales con base en los principios de transparencia, responsabilidad y participación pública.  4.7 El inversionista debe continuar preparando, actualizando, implementando y actualizando, en forma apropiada y poniendo a disposición del público, los estudios de punto de referencia socio-económico, evaluaciones de impacto socio-económico, análisis de riesgos socio-económicos, así como los planes comunitarios multi anuales, el sistema de manejo de relaciones con la comunidad, políticas, procedimientos y protocolos y los planes de cierre de la mina, todos los cuales deben ser producidos con la participación y el apoyo de la comunidad y ser compatibles con la mejor práctica internacional. <sup>47</sup>

## 4. Six questions for investment policy reform

**KEY ISSUE 1: Make the management of human rights risks an integral part of investment policymaking and a key component of investment protection**



**PERÚ: CONFLICTOS SOCIOAMBIENTALES POR ACTIVIDAD, ENERO 2016**  
(Distribución porcentual)



Fuente: Defensoría del Pueblo - SIMCO



If the sustainability and stability of investments can be threatened by the adverse HR impacts they may cause, are IIAs an adequate vehicle to keep investments safe?

Scope?

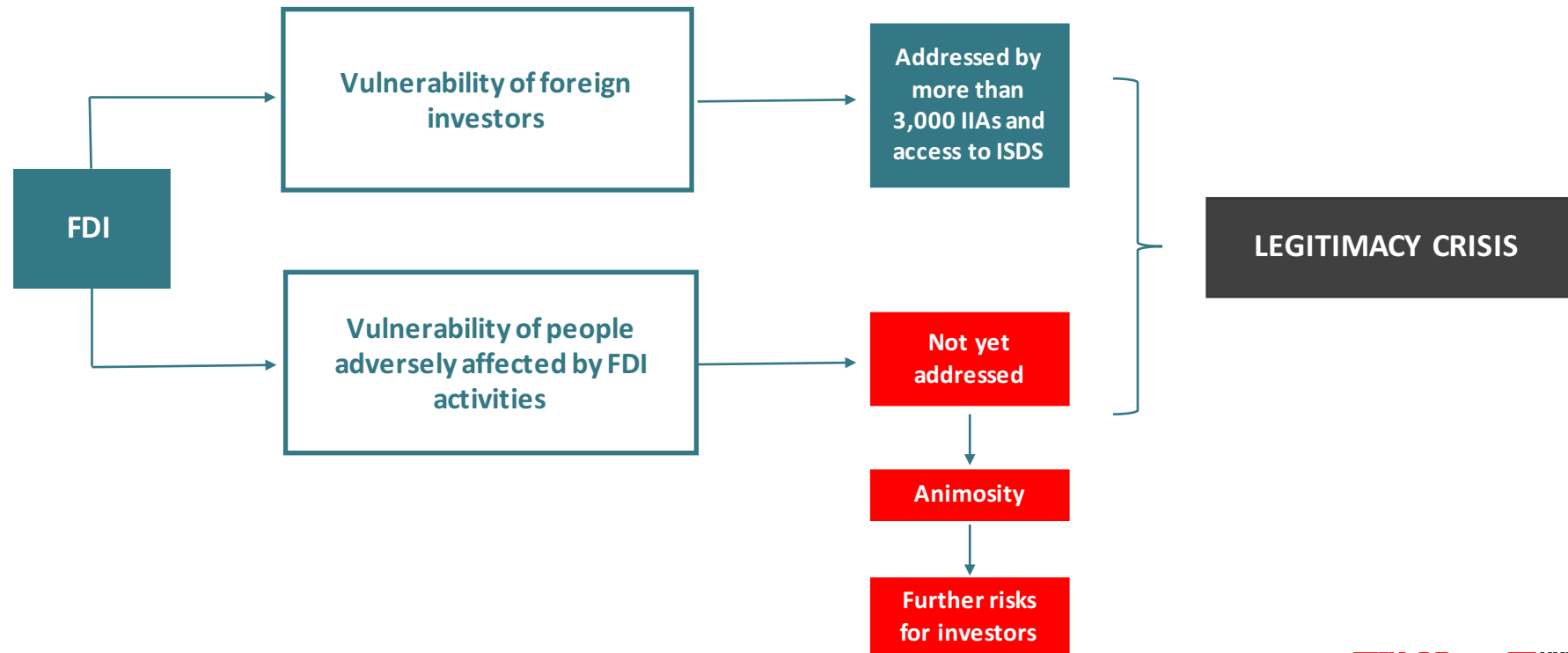
Integration?

Structure?

Are IIAs creating unintended risks for investment?



**KEY ISSUE 2: Ensure access to effective remedy for people adversely impacted in the context of FDI projects as an integral part of investment policymaking protection**





**If we should address access to remedy for adverse human rights impacts in the investment policy reform discussion, what does it mean?**

**What kind of instruments and reforms we need?**



**KEY ISSUE 3: Pursue economic growth and investment goals, while ensuring that the policy and regulatory framework for investment provides the State adequate domestic policy space to meet its human rights obligations**

International law requires States to meet their human rights obligations  
by using their policy space – **"a DUTY to regulate"**

UNGP Principle 8

POLICY COHERENCE

UNGP Principle 9

MAINTAINING ADEQUATE POLICY SPACE



What does the State “**DUTY to regulate**” mean for the discussion on the “right to regulate” within investment policymaking?

**KEY ISSUE 4: Clearly set out the expectation that outward investors respect human rights; and manage the expectations of investors and of the communities and individuals directly impacted by investment activity**

**1**

**Setting out State's expectations  
for outward investors**

**2**

**Managing expectations of  
inward investors**

**3**

**Managing expectations of  
communities and individuals  
potentially impacted by  
investment activity**



How is reform of investment policymaking taking account of these

③

sets of expectations related to investment?

**KEY ISSUE 5: Improve transparency across State functions that relate to investment**

“[w]here human rights and other public interests are concerned, **transparency should be a governing principle**, without prejudice to legitimate commercial confidentiality.” (John Ruggie)

- Disclosure of environmental and social impact assessments, management plans and State-investor contracts



- Investment permitting and tendering processes
  - Adopting policy and regulatory investment reforms
- 
- A 3D rectangular block, possibly a paperweight or a decorative object, is shown. It is white with the word "consultations" printed in black lowercase letters. To the right of the text is a green square icon containing two white stylized human figures. The block is slightly tilted and has a soft shadow beneath it.





**What does this mean for the process of designing and negotiating IIAs?**

**What does this mean for determining the rules under which arbitrations are conducted?**

**What does this mean for the process of creating investment rules and reforming the investment system?**

## KEY ISSUE 6: Institute special measures for investment in conflict-affected and post-conflict areas



### Conflict affected areas

- Context for gross human rights abuses
- Heightened risk for companies to be involved in gross human rights abuses

### Post conflict areas

- Period of rapid transformation where States need the full spectrum of their policy space
- FDI might be a key vehicle to consolidate transition to peace

Particular role of the  
Home State

Support investors to ensure adequate management of human rights risks



**What does this mean for the way we think that IIAs should be equally applied worldwide and at all times?**

- What is the role of FDI in conflict and post conflict scenarios?
- What challenges do conflict and post conflict scenarios present for protecting investors? For protecting people?
- How can investment rules ensure FDI plays a constructive role or at least does not exacerbate conflict?
- How can States ensure that investment rules do not constrain the State's policy space in a time when policy and regulatory changes are most needed?



**THANK YOU**

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