工商企业与人权专题下部分术语译法建议

1．abuses 侵害，损害

《工商企业与人权指导原则》英文本在提到与工商企业有关的损害人权行为时，通篇使用human rights abuses，只有一处提及国家违反人权时使用了violations一词，因为abuses有聚焦事实的意味，与violation或infringement有区别。从指导原则英文本的这一精神出发，中文本将“abuses”译为“侵犯”不太妥当，因“侵犯”隐含着对法律义务的违反，此处的“abuses”宜译为“侵害”或“损害”。这一点希望大家特别留意。

例句1

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.

国家必须保护在其领土和/或管辖范围内人权不受第三方，包括工商企业侵害。

例句2

Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

在此情况下，一些人权条约机构建议，母国应采取步骤，防止在其管辖范围内的工商企业在境外侵害人权。

例句3

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

除非国家采取了适当步骤，调查、惩治和纠正已经发生的与企业相关的侵害人权行为，否则，国家的保护义务即失之薄弱或流于无形。

2．human rights due diligence 人权尽责（管理）

due diligence 尽责（管理）

在人权语境下，“due diligence”强调的是“尽责”和“尽职”，本身不包含“调查”的意思，应注意避免使用“尽职调查”，用“尽责”（工商业与人权语境下）和“尽职”（其他人权语境下）即可，行文中确有需要时，可酌情在尽职或尽责之后加上“管理“一词。

例句1

Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented.

高层管理部门一般向国家机构负责，有关政府部门有较大的审查和监督权限，包括确保有效的人权尽责。

例句2

A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.

如果企业的业务性质或经营背景造成了巨大的人权风险，很可能有必要提出人权尽责的要求。

例句3

They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business.

它们应当审查其政策、法律、条例和执行措施能否有效应对这类高度风险，包括作出企业人权尽责规定。

3．Sanctions在很多语境下指的是 “惩罚”或“处罚”，如一律译为“制裁”，有时可能产生歧义，需谨慎。

例句

Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

补救可能包括道歉、恢复原状、康复、财政或非财政赔偿和惩罚性处分(刑事或行政的，例如罚金)以及通过例如禁令或不再重犯的保证防止伤害。

（注：指导原则中原译“惩罚性制裁”，不准确，建议今后文件中译为“惩罚”或“惩罚性处分”等，避用“制裁”。）

4. business 很多时候指的是企业，可直接译为“企业”。 “responsible business practices”这个术语建议译为“负责任的企业行为”，不译“负责任的商业行为”。

例句

Supporting business respect for human rights in conflict-affected areas

在受冲突影响地区支持企业尊重人权

5. Practices 建议适用时尽量译为“实践”。

例句1

These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization

.这些指导原则应看作是一个统一的整体，并应单独或共同地根据下列目标加以解读，即加强在工商企业与人权方面的标准和实践，以针对受影响个人和社群实现具体成果，从而推进社会意义上可持续的全球化。

例句2

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice.

疏于执行直接或间接制约工商企业尊重人权问题的现行法律，往往是国家实践中的一个重大法律缺失。

（注：指导原则中两处均译“做法“，今后宜改译为“实践”。）

6． “remedy”译“补救”即可，不需加上“办法”，加上办法反而可能表述不准确。

例句

Effective judicial mechanisms are at the core of ensuring access to remedy.

有效的司法机制是确保获得补救的关键。