NEXT DECADE | 10+

**BUSINESS AND
HUMAN RIGHTS**
UN GUIDING PRINCIPLES

SUMMARY REPORT
UN Working Group on Business and Human Rights Dialogue
with North American Civil Society Groups

On 29 September 2020, the UN Working Group on Business and Human Rights hosted a virtual dialogue with approximately 40 representatives of civil society organizations based in the North American region, to inform the Working Group's global "UNGPs 10+ / Next Decade BHR" project.

The objectives of the dialogue were as follows:

- Provide a platform for direct dialogue and shared learning between members of the Working Group on Business and Human Rights and North American civil society organizations working in the areas of human rights, responsible business conduct, and corporate accountability;

- Share respective priorities and flag upcoming opportunities for inputs; and

- Map out potential areas of coordination and collaboration.

The two-hour dialogue included:

- An update from the Working Group, outlining the UNGPs 10+ project, the Working Group's other priorities and activities, and opportunities for engagement with civil society.

- An open discussion among all participants, with facilitation by the team at the International Corporate Accountability Roundtable and covering the following 5 questions:

    1. What have been the main challenges in ensuring business respect for human rights in the current context?

    2. What issues, sectors, themes, or key drivers should be prioritized in the next decade in order to better advance business respect for human rights?

    3. In concrete terms, what will be needed in order to achieve meaningful progress with regard to those priority areas?

    4. What are challenges, potential pitfalls, and opportunities around the current drive toward mandatory measures? What will it take to make business and human rights legislation effective in the next ten years, in North America and beyond?

    5. What are ways in which the UN Working Group can be supportive of ongoing civil society activities in the region?

The summary below aims to capture the key themes and civil society perspectives that emerged during the discussion in relation to each of these five questions.

1. *What have been the main challenges in ensuring business respect for human rights in the current context?*

   - **Robust government regulation:** Participants highlighted a lack of targeted regulation in the area of business respect for human rights across the region, particularly in the context of the United States and Canada, as well as weak enforcement where relevant laws such as certain labour and environmental protections may be in place but under threat. Although the number of companies with human rights policies is increasing, the lack of government measures requiring human rights due diligence processes in the region means that these commitments are not being efficiently put into practice, particularly in the current COVID-19 context.

   - **Corporate capture and lobbying:** Participants expressed concern with ties between government and corporate interests, particularly in the United States, and the potential conflicts of interest in policymaking and law enforcement spaces. Participants stated that campaigning laws in the United States, for instance, allow for corporate lobbying efforts and political contributions by companies that consequently influence policymakers and restrict regulatory developments.

   - **Respect for human rights in development finance:** Key development finance institutions that are based in the region, such as those within the World Bank Group, have some integration of the UNGPs and other business and human rights standards, but the participants stressed that there is a long way to go in fully embedding the expectations of the UNGPs into these institutions' processes and practices. Participants stressed the "State-business" nexus in many development finance situations and the need for greater accountability of government support for full integration of human rights due diligence into development projects and investments.

   - **Full value chain coverage:** Participants pointed out that very few US retailers disclose their supply chains and, of those that do, they very rarely go beyond tier 1 despite the fact that severe human rights impacts are often many tiers into these supply chains. Participants also stressed the need for company efforts on human rights to focus on where and how goods and services are distributed and used, by consumers and broader society, such as in the context of digital rights. Several participants also mentioned the need for greater implementation and accountability in the financial sector, including in relation to commercial banks and institutional investors.

   - **Regressions in civil remedy:** Participants noted that, while courts in Canada are in some cases moving in the right direction, there are increased limitations in the United States on the ability of lawyers and civil society groups to hold companies accountable for negative human rights impacts with which they are involved, such as in relation to the use of the Alien Tort Statute. Moreover, the use of SLAPP lawsuits against groups bringing or involved in cases alleging human rights violations by companies has been a significant challenge.

   - **Responsible termination of contracts:** In the current COVID-19 crisis and its widespread effects across business sectors, there is not clear guidance on and accountability for responsible recovery plans and actions by governments and companies. Buyers are severing ties with business partners without prioritizing respect for the rights of workers and other stakeholders.

2. *What issues, sectors, themes, or key drivers should be prioritized in the next decade in order to better advance business respect for human rights?*

- **Duty-of-care-based legal accountability** for negative human rights impacts in the context of business activities, similar to that established in the French duty of vigilance law.

- **Accountability for coherence across corporate policies**, for example in the context of a strong corporate policy on human rights yet lobbying policies that allow for undermining of Pillar III of the UNGPs in the context of judicial remedy in certain jurisdictions.

- **Shift away from multi-stakeholder initiatives (MSIs) as focal points for implementation and accountability**, based on the recent findings of MSI Integrity report, Not Fit for Purpose, which argues that MSIs are not fit-for-purpose in reliably detecting abuses, holding corporations to account for harm, or providing access to remedy.

- **Business models** as key drivers of positive or negative human rights practice, from the early stages of a company's creation throughout the evolution of its corporate structure and financing.

- **Tech sector** impacts on human rights and broader society, as these increasingly affect all aspects of daily life and are integrated across most if not all other sectors.

- **Risks to human rights defenders**, as one of the most severe areas of real and potential human rights impacts that have a chilling effect across many other areas of business and human rights.

- **Connections between human rights and environmental rights**, including in the context of the renewables sector, land grabs, impacts on Indigenous Peoples, and climate change.

- **Living wages,** as a key enabler for the ability of rights-holders to enjoy a range of fundamental human rights.

3. *In concrete terms, what will be needed in order to achieve meaningful progress with regard to those priority areas?*

- **Coordination between civil society and funders**, to scale up efforts toward systemic change, the building of political will, and robust regulation in the region that goes beyond transparency to require meaningful human rights due diligence processes and outcomes.

- **Use of leverage at the business model stage**, including by governments and financial institutions like investors, since many business structures and practices that are harmful to human rights become embedded into corporate governance and cultures at their early-stage development and since so many major companies in the region, such as tech companies, are still relatively new.

- **Consistency in corporate approaches across regions**, as many European companies treat workers differently in the United States, for example, and vice versa.

4. *What are challenges, potential pitfalls, and opportunities around the current drive toward mandatory measures? What will it take to make business and human rights legislation effective in the next ten years, in North American and beyond?*

    -   **Corporate capture:** Participants pointed out that, in Canada for example, the ombudspersons office is a promising opportunity for government leadership in implementing the UNGPs, but the establishment of a strong structure and mandate has been undermined by corporate lobbying. Similarly, when legislation related to business and human rights is developed, it is significantly watered down based on corporate lobbying. The example of the French duty of vigilance law was highlighted as an example of where more robust regulation did not lead to corporations exiting the market.

    -   **Parent company liability:** Also in the context of Canada, participants pointed to the increasing use of courts to uphold parent company liability for negative human rights impacts of subsidiaries based on customary international law. Participants stressed the need for any mandatory human rights due diligence measures in the region to explicitly clarify the scope of coverage as including subsidiaries, as well as their extraterritorial operations and relationships.

    -   **Involvement from the labour community:** Given the particularly challenging context in the United States in terms of labour relations and the protection of workers' rights, significant coalition building across the human rights and labour rights communities needs to be even further facilitated and built up.

5. *What are ways in which the UN Working Group can be supportive of ongoing civil society activities in the region?*

    -   **Engage local government authorities**, such as in the context of particular states, territories, and cities, especially where federal legislation is slow to develop.

    -   **Publicly communicate with companies** on their human rights practices to facilitate accountability and amplify rights-holder experiences.

    -   **Follow up on communications**, including to governments and companies following Working Group country visits and statements following stakeholder complaints. The Working Group could also weigh in on civil remedy in the region through amicus briefs in particular cases relevant to UNGPs implementation.