

The Next Decade of the UNGPs

BSR Response to the UN Working Group's Call for Inputs

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Introduction

BSR has worked with companies for over 25 years to manage human rights risks, including conducting more than 200 human rights assessments and developing implementation plans to prevent, mitigate, and remediate adverse human rights impacts. We are pleased to submit this response to the [UN Working Group on Business and Human Rights](#)' call for inputs to inform the [UNGPs next decade project](#), including the UN Working Group's report taking stock of practice to date under the UN Guiding Principles on Business and Human Rights (UNGPs) and the roadmap for the next decade of implementation. This input is informed by our own experience as well as company consultations conducted during October-December 2020.¹ Following the UN Working Group [guidelines](#), the consultations focused on progress to date in the implementation of the UNGPs, gaps and challenges, and recommendations for how fully realize implementation of the UNGPs in the next decade.

BSR wishes to thank the more than forty companies who participated in these consultations, including members of BSR's [Human Rights Working Group](#) as well as other companies who shared their experience and insight.

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Progress to date

Where has progress taken place in UNGPs implementation over the course of the last decade? What are the promising developments and practices (by governments, businesses, international organizations, civil society organizations, etc.) that can be built on?

- » The UNGPs have become the universal standard guiding business responsibility to respect human rights. This broad consensus around the UNGPs has given companies across sectors – along with their partners in government and civil society – a shared roadmap for respecting human rights and a common language for articulating this goal. Supported by guidance released by the UN Working Group, the UNGPs have both mobilized the private sector and clarified expectations across the UNGPs' three pillars.
- » The shared expectations articulated by the UNGPs have spurred increased public commitments to respect human rights among companies and have enabled corporate actors to mobilize internal change.

¹ Including consultations with BSR's [Human Rights Working Group](#) in Europe, North America, and Japan; bilateral consultations with selected [BSR members](#); and consultation with other companies in our networks.

- » This has in turn driven the development of the internal architecture needed to prevent, mitigate, and remedy human rights harms, including a growing number of human rights policies, due diligence procedures, grievance mechanisms, and dedicated staff.
- » Processes for identifying and prioritizing human rights risks from the perspective of rightsholders have grown stronger, with human rights assessments and prioritization frameworks based on the UNGPs increasingly common across sectors. Company considerations of risk have expanded beyond risks to the business to include a broader set of rights and risks to rightsholders. Risk assessments and frameworks are increasingly tailored to different types of business relationships and different parts of the value chain, including upstream supply chains and, more recently, downstream sale and use of products and services. The UNGPs also provide a useful approach to prioritizing salient human rights risks and guiding appropriate actions to manage these risks.
- » Beyond dedicated human rights due diligence, human rights are increasingly integrated into other existing policies, due diligence processes, and risk frameworks across corporate functions including sustainability strategies, organization, and programs. This is leading to mitigation and remediation action plans embedded in different functions and spanning from the operational level to the group level.
- » The consensus around the UNGPs has driven increased transparency on human rights performance through benchmarking and reporting. In the broader ecosystem, companies recognize that human rights data is of growing commercial importance and is becoming a differentiator in the marketplace. This incentivizes improved transparency. The financial sector is becoming a more powerful force driving corporate efforts, as a growing number of human rights parameters are included in ESG ratings and rankings and as investors increasingly ask about the integration of human rights into broader governance and risk management.

Gaps in implementation of the UNGPs

Where do gaps and challenges remain? What has not worked to date?

- » Despite progress, there is wide recognition that gaps in the implementation of the UNGPs remain. Significant gaps in the achievement of the full promise of the UNGPs include access to remedy; consistent and ongoing conduct of human rights due diligence; inclusion of the full value chain – notably products and services – in due diligence processes; and attention to the cumulative impact of business activity on human rights beyond the impacts of a single company.
- » While the UNGPs have driven a shift in the perception of human rights risks among companies, this perception of risk is not evenly distributed across all corporate functions. More importantly, the behaviors required to prevent and mitigate these risks are not fully in place across the range of functions that should be proactively involved in identifying and managing human rights risks. Despite some progress in coordination across corporate teams and functions (e.g., procurement, legal, compliance), internal knowledge about human rights risks is still limited to a small group of practitioners and few companies have established a vertically integrated approach to the management of human rights risks.
- » Access to remedy remains a neglected pillar of the UNGPs. Effective remedy should be informed by the perspectives of rightsholders who have been harmed, ensuring that the harm and its root causes are appropriately identified and addressed and that adverse impacts are appropriately remediated. However, stakeholder and rightsholder engagement in the development of effective grievance mechanisms and the provision of remedy is a significant gap. Additional guidance is needed to clarify the respective roles of states and companies in the remedy ecosystem.

- » While the conduct of human rights due diligence is growing (including both customer-facing sectors and, to a lesser degree, B2B companies), the number of companies conducting human rights due diligence remains limited, even among large corporations. Small and medium enterprises (SMEs) are often left out of the equation entirely, lacking adequate support, incentives (whether from regulation or business relationships), and resources to guide implementation of the UNGPs.
- » Even where human rights due diligence is conducted, there are still significant gaps in scope and methodology. Human rights assessments are often conducted as one-off events rather than as part of an ongoing process of discovery and response built into cross-functional risk management processes. A diversity of assessment approaches risks undermining credibility and the certainty required to shift the way in which business is done. There are persistent gaps in human rights due diligence across the value chain, upstream beyond Tier 1 suppliers as well as downstream, where only a few companies assess the impacts of their products and services. Some human rights risks and impacts remain hidden, are not yet fully understood and evaluated (e.g., living wage vs minimum wage), or are difficult to anticipate. Finally, there is still limited attention to the cumulative impact of business activity on human rights beyond the impacts of a single company.

Obstacles to the realization of the UNGPs

What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?

- » Within companies, full realization of the UNGPs is hindered by insufficient support from company leadership; unclear accountability for the management of human rights risks and the achievement of positive human rights outcomes; inadequate resourcing of human rights due diligence processes, mechanisms, and staff; corporate concerns about liability, leading to hesitancy in pursuing remedy; and focus on the degree of connection to risk as a driver for action, leading to a diffusion of responsibility for addressing harms.
- » Challenges related to defining relevant metrics and collecting data about human rights outcomes (particularly data related to prevention of adverse impacts) has undermined the field's ability to evaluate and compare the effectiveness of specific approaches.
- » In the value chain, companies still lack visibility of their human rights impacts, particularly beyond the point of sale and beyond the first tier of the supply chain. This is especially the case in highly commoditized sectors where traceability and transparency of human rights performance remain a challenge. The lack of clarity about how to most effectively apply the UNGPs among SMEs across the value chain is a persistent barrier to assessment and implementation in partnership with these actors.
- » A number of obstacles undermine access to remedy. There are few good examples of effective remedy, and the provision of remedy remains hypothetical for many companies beyond grievance and whistleblowing mechanisms or on-site consultation mechanisms. These tools are often not built with the UNGPs in mind and thus are not necessarily fit for purpose. The UNGPs effectiveness criteria are challenging to implement and additional guidance is needed on how to apply them. Finally, remedy and responsibility for harm remains a challenge in long value chains, where the connection to the risk and responsibility for addressing harms is unclear amongst the different actors across the supply chain.
- » While legislative initiatives are an important component of the smart mix of measures needed to support corporate respect for human rights, regulation will also shift the incentives and focus of companies in ways that may hinder the realization of rights. Such obstacles include a focus on compliance with regulatory requirements at the expense of systemic and collaborative approaches to identifying and

managing risk; a rebalancing of incentives toward mitigation of liability and litigation risks, leading to reluctance to provide remedy for fear of it being seen as an admission of responsibility; and increasingly complex transnational governance due to lack of harmonization between the burgeoning number of regulations and due diligence requirements. There is an opportunity to learn from the experience of implementing anti-corruption compliance to ensure that regulation complements and enhances human rights due diligence rather than restricting its purview to a narrow scope of issues.

Systemic and structural challenges

What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

- » Despite the trend toward increased legislation related to business and human rights, the absence of state action to protect human rights in many countries around the world is perhaps the most prominent structural challenge to the implementation of the UNGPs. This issue both limits the realization and enjoyment of human rights and creates legal uncertainty and operating risks to companies, heightening the risk of involvement in human rights harms. Specific challenges related to the implementation of Pillar 1 include the slow pace of adoption of National Action Plans as well as shortcomings and unclarity in their content; incomplete and poorly enforced legislation; and lack of clarity about the remedy regime, notably about where the responsibility to provide remedy lies. These challenges are most evident in geographical contexts afflicted by corruption, conflict, and weak, predatory, or authoritarian states.
- » Effective prevention, mitigation, and remedy of adverse human rights impacts requires an understanding of the diverse dynamics underlying human rights impacts as well as collaboration and co-creation of solutions to address systemic challenges among the private sector, government, and civil society. Companies can effect change and increase their leverage, impact, and legitimacy by collaborating with other actors. Collective action to assess and address underlying drivers of human rights abuses is still limited, however, undermined by confrontational communications and limited trust between companies and civil society. Companies often view human rights defenders and other civil society actors as adversaries rather than allies in identifying human rights risks and appropriate actions to address them, while civil society actors often fail to recognize challenges companies face in aligning competing internal incentives, influencing the behavior of business partners, and integrating human rights considerations across an array of complex and transnational procedures and practices. Collaboration between companies to address both root causes and cumulative impacts is also hindered by concerns about competitiveness as well as the general diffusion of responsibility for preventing, mitigating, and remedying risks deep in the supply chain.
- » Contextual challenges related to state fragility, poverty, underdevelopment, political instability, corruption, and conflict heighten the risk that business activity will cause or contribute to adverse human rights impacts or facilitate harm through business relationships. The role of the private sector is necessary if not sufficient to solve these persistent development challenges: business plays a critical role in fostering the enabling environment for peace, stability, development, and the realization of human rights through inclusive economic growth, responsible stewardship of natural resources, and respect for the rights of all people, with attention to the most vulnerable. Insufficient action by states to address these development challenges is a core obstacle to overcoming them, as is the reluctance by business to take proactive action in the absence of the state.

Recommendations

In concrete terms, what will be needed in order to achieve meaningful progress with regard to those obstacles and priority areas? What are actionable and measurable targets for key actors in terms of meeting the UNGPs' expectations over the coming years?

- » As we look ahead to the next decade of the UNGPs, our focus should be on those areas that will enable us to achieve the most meaningful progress toward the realization of human rights: strengthening access to remedy; more collaboration with rightsholders, particularly vulnerable groups, in identifying, preventing, and mitigating human rights impacts; greater consideration of systemic and contextual risk factors; increased attention to due diligence of products and services; and increased focus on addressing upstream human rights impacts in corporate supply chains, including through increased collaboration across the value chain, more effective use of leverage, and increased application of the UNGPs among SMEs.
- » To achieve the desired outcomes of reduced human rights abuses and increased realization of human rights, companies must look beyond process to real-world outcomes and ensure that their teams have the knowledge, the skills, and the relationships to shape these outcomes for the better. Human rights due diligence can be strengthened in the following ways:
 - » Companies should take a forward-looking approach to identifying human rights impacts, so that they can proactively prevent and mitigate harm. Futures and strategic foresight methods, such as trend analysis and scenario planning, can enable companies to increase the range of potential adverse human rights impacts identified and surface new strategies to address them.
 - » Ongoing due diligence enables companies to track shifts in the operating environment that may change their human rights risk profile. The ability of a company to nimbly respond to such change depends not only on formal processes for updating risk assessments, but also on regular stakeholder engagement (including dialogue with human rights defenders) as well as a culture of sharing and escalating internal concerns to appropriate internal decision-makers.
 - » Effective human rights due diligence recognizes the company as part of a system. No matter where they are present or what industry they are in, companies operate in geographical contexts and product value chains that are shaped by pre-existing dynamics. While companies may cause or contribute to specific human rights impacts, these harms occur in the context of the wider system. Companies should understand their role in shaping these systems and the ways in which their actions combined with those of other companies cumulatively impact people. Companies can effect change in these systems and increase their leverage, impact, and legitimacy by collaborating with other actors, particularly in fragile and conflict-affected contexts, where companies and other actors can work together to address the multiple causes of conflict and human rights violations. Companies should also understand how their internal ecosystem (e.g., commercial targets, political advocacy) affects the achievement of human rights outcomes.
 - » Effective human rights due diligence is grounded in stakeholder engagement. Rightsholders provide information that enables companies to understand their human rights risks by raising concerns about actual and potential impacts and by providing input about how best to address and remediate these impacts. Companies should make extra effort to engage with vulnerable groups to avoid aggravating structural oppression and disproportionately negative impacting people who are at heightened risk. Proactive consultation, formal grievance mechanisms, and ongoing dialogue with people who are impacted in different ways by the company's business

- activity positions the company to design, implement, and track the effectiveness of their human rights due diligence programs.
- » Shifts in the human rights ecosystem are also needed to enable the full realization of the UNGPs, including in engagement of states in protecting human rights; establishment of meaningful process and outcome indicators to measure performance; harmonization of legal requirements with the UNGPs; a stronger role for the financial sector in incentivizing human rights performance; guidance for SMEs; and guidance on access to remedy.
 - » Taking inspiration from the climate movement, actors should establish a common vision for outcomes and impacts and a set of clear goals and targets that can help mobilize all actors as was done in the Paris agreement. Clear goals will be needed to create accountability indicators to measure progress. A clear set of process indicators to track implementation of the UNGPs should also be considered as a way to ensure companies continue their journey to integrate the UNGPs.
 - » Many companies view the move toward more legal requirements for human rights due diligence favorably, so long as the requirements are standardized and aligned with the UNGPs. This is important to prevent the emergence of multiple, competing soft law and hard law regimes. The UN Working Group could play an important role in this clarification effort. Related to this and driven by the increased regulations pertaining to climate, harmonization of both reporting and due diligence requirements applicable to both human rights and environment is important.
 - » Robust engagement with the financial sector is needed to strengthen the ability of investors to incentivize good human rights management, particularly to support the development of meaningful performance measurement criteria to better integrate human rights performance into investment decision making.
 - » To make the UNGPs applicable to all companies regardless of their size, more guidance is needed on how to most effectively apply the UNGPs in SMEs across the value chain.
 - » To improve access to remedy, more guidance is needed on the effectiveness criteria, alongside clarification of the remedy ecosystem and the respective roles and responsibilities that the different actors play, how to engage and address, including creating practical guidance that would make it easier for practitioner to implement. Existing company instruments such as whistleblower and speak up channels and operational level grievance mechanisms have shown to be effective in providing earlier warnings. However, they have fallen short in many other aspects, such as identifying some of the bigger issues including in supply chains and impacts that are happening in remote and challenging geographical contexts. More institutionalized systems could be promoted as a way to address this challenge (e.g., through trade / industry associations or professional parties).

ABOUT BSR

BSR is a global nonprofit organization that works with its network of more than 250 member companies and other partners to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Visit www.bsr.org for more information about BSR's 25 years of leadership in sustainability.