

## The Danish Institute for Human Rights' input to 'UNGPs next 10 years project'

30 November 2020

(1) 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?

One area of clear progress is the broad consensus around the UNGPs as the authoritative framework on business and human rights and broad uptake in commitment to implementation of the UNGPs by a wide range of actors including international governmental organisations, states, national human rights institutions (NHRIs), businesses, financial institutions and civil society organisations.

The UNGPs have been incorporated by a large number of regional and international organisations (e.g. [Council of Europe](#), [EU](#), the [Organization of American States](#)) and the UNGPs form the base for the majority of discussions to advance responsible business conduct.

The UNGPs have also been acknowledged, referenced or mainstreamed into other global instruments and frameworks, such as the OECD Guidelines for MNEs, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the IFC performance standards and Equator Principles, as well as ISO standards. The 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda (AAAA) acknowledge the need for business to respect human rights to achieve the SDGs as articulated by the UN Guiding Principles.

Since 2011 numerous actors including the UN Human Rights Council, the EU, the Council of Europe, the Organization of American States, the G7 & G20, NHRIs and business associations have encouraged states to develop national action plans on business and human rights (NAPs) as a major vehicle for the implementation of the UNGPs at the national level. As of November 2020, 24 states have published NAPs<sup>1</sup>, and at least 17 states are currently developing an inaugural NAP. 5 states have adopted an updated, edited, or second NAP (the UK, Italy, Georgia, Luxembourg, and Switzerland), and 5 further states with a NAP are in the process of drafting a second NAP (Belgium, Chile, Colombia, Lithuania and the Netherlands). An [in-depth case study about the Kenyan NAP](#) (which has not yet been formally adopted) shows that extensive dialogue, capacity-building and stakeholder engagements can play an

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<sup>1</sup> These countries are Belgium, Chile, Colombia, Czechia, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Japan, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovenia, South Korea, Spain, Sweden, Switzerland, Thailand, the United Kingdom, the United States.

important role in making the contents of the NAP relevant and detailed to adequately address national business and human rights challenges.

In addition to NAPs, there has been a range of regulatory and policy progress relevant to business and human rights. These include legislation and guidance on non-financial reporting (e.g. through the [2014 Non-Financial Reporting Directive of the European Union](#) currently being revised), measures focusing specifically on modern slavery, forced labour and human trafficking (like the [2015 UK Modern Slavery Act](#)), alongside a general push towards mandatory human rights due diligence. States have also increasingly become aware of the need to increase efforts in their own relations with the business sector (state-business nexus). It is important to note nascent initiatives to integrate human rights considerations into public procurement measures (see, e.g. the report [Making Socially Responsible Procurement Work](#) by the European Union [and SDG Indicator 12.7.1](#) on the degree of sustainable public procurement policies and action plan implementation). Policies and standards of development finance institutions (see, e.g., FMO's [Position Statement on Human Rights](#), [IFU's Human Rights Policy](#), and Swedfund's [Policy for Sustainable Development](#) ) and export credit agencies are increasingly referencing human rights standards and instruments.

States are also increasingly considering policy coherence [by including human rights clauses in trade and investment agreements](#) and [requirements to address human rights in the impact assessments](#) of such agreements.

Since the 2010 [Edinburgh Declaration](#), NHRIs have embraced work with business and human rights. There are a range of examples [of how NHRIs around the world engage with business and human rights](#) on all three pillars of the UNGPs-

NHRIs are also working collectively on the issue through the [GANHRI BHR working group](#) and the [ENNHRI BHR working group](#). Networks of NHRIs are increasingly engaging in international level policy advocacy, as exemplified by ENNHRI statements to the EU on a [binding treaty on business and human rights](#), and on the [adoption of an EU-level action plan](#) on business and human rights.

NHRIs play a key role in relation to access to remedy through their different mandate area and may also serve as non-judicial grievance mechanisms. This was usefully elaborated in the [OHCHR ARP II project](#). The Danish Institute for Human Rights published a [report](#) on NHRIs and remedy, presenting an analysis of the role and practice of NHRIs regarding access to remedy in business and human rights, including four NHRI case studies from the African region.

An increasing number of businesses have formally committed to human rights and the UNGPs. Although fewer businesses are working with the framework in practice compared to the number who have committed to do so, the last decade has brought about a big shift in acknowledgement by business actors of their human rights responsibilities and awareness of the UNGPs as the 'go-to-standard' on this topic.

Dominating business networks, frameworks and standards are also continuing to align policies and practices with the UNGPs, for example the UN Global Compact. The Global Reporting Initiative, the most used framework for corporate sustainability reporting is currently revising its [universal standards to align with the UNGPs](#). The World Benchmarking Alliance and other initiatives have taken significant steps to closer align with and reinforce the UNGPs through their work.

Human Rights Impact Assessments (HRIAs) in the context of business activities have become a more widely accepted practice with a more streamlined methodology among companies, and [comprehensive guidance](#) available on the contents and process of HRIAs. While more stand-alone HRIAs are being commissioned by companies, there is no exact number of HRIAs done, given that many of them are not made public. To date approximately 20-25 company-led HRIAs are publicly available. In addition, aspects of HRIA methodology are also being integrated into environmental and social impact assessments, methodologies for [community-based, participatory](#) HRIA processes have been developed and numerous HRIAs of large-scale projects have been conducted by civil society organisations. [Sector-wide impact assessment \(SWIA\)](#) is another impact assessment methodology that has been developed to assess and address the negative impacts of business activities, in alignment with the UNGPs. To date five SWIAs have been carried out, of which 4 have been done in [Myanmar](#), and at least three more are currently ongoing.

The responsibility of financial institutions under the UNGPs is increasingly being made clear by authoritative bodies (including the [OHCHR](#), [OECD](#) and [EU](#)) as well as through recognition by the financial sector itself. Notably, the launch and traction of the [Investor Alliance on Human Rights](#) as well as the recent policy development from [PRI](#) on human rights are both examples of the increased focus and awareness in the industry of their role and responsibility in relation to respect for human rights. Development finance institutions (DFIs) are paying increasing attention to human rights in their sustainability policies and safeguards (such as the IFC Performance standards and the World Bank Environmental and Social Safeguards). Most financial actors are embedding human rights responsibilities in existing environmental and social policies and processes which can make it harder to assess the degree to which these actors have aligned with UNGP requirements in practice.

Civil society organisations are using the UNGPs in advocacy and monitoring and it has become a means and language to engage with businesses on human rights. Even in countries with high levels of conflict and a lack of trust between stakeholders, many times the common agreed starting point for dialogue is the applicability of the UNGPs.

## (2) Where do gaps and challenges remain? What has not worked to date?

- Pillar I

Although there is increasing momentum at national and EU level for the implementation of mandatory measures, including requirements that companies undertake HRDD coupled with reporting etc, there have been few concrete steps taken to include hard law obligations to realise the UNGPs as a component of the “smart mix”. While there are existing laws which regulate businesses’ impacts on human rights and the environment in part (such as labour laws, environmental regulation, company law, general tort principles, etc.) they are fragmented and insufficient in addressing existing human rights abuses occurring in global supply chains. From a global perspective, only [France](#) has adopted comprehensive legislation mandating businesses adopt a vigilance plan and share this publicly.

Voluntary measures and national action planning, although much more widespread than obligatory measures, often lack accountability mechanisms and monitoring, both at national and international levels. Most national action plans on business and human rights do not include specific, measurable, achievable, relevant, and time-bound (i.e. SMART) [action points](#). While this is a cross-cutting issue

elaborated further above, adoption of NAPs is still regionally concentrated in Europe, which points to issues of resources and capacity available to conduct such processes in the global south.

In addition, while some states have engaged into peer dialogue around national action plans at the regional level, there is [no streamlined peer review mechanism](#) for national action plans. Overall mechanisms for reviewing progress on the implementation of the UNGPs are lacking both at regional and international level. While an open-ended intergovernmental working group has been established to elaborate an [international legally binding instrument on business and human rights](#), the process currently suffers from a lack of engagement by a critical number of states.

While there has been important efforts on measuring business respect for human rights, little has been made to collect comparable data on the state implementation of the UNGPs. This is thrown into sharp focus by the 2030 Agenda which introduces the systematic measurement of progress through indicators, but where indicators relating to Target 12.6 on sustainable business practices is measured only by the number of companies reporting on sustainability which is clearly inadequate to capture the overall respect of human rights in a business context. There is currently little work on developing business and human rights indicators as a foundation for assessing progress in the uptake and implementation of the UNGPs.

Despite some positive developments on that front outlined above, there is a gap in policy coherence. Although other international frameworks acknowledge the UNGPs, there is still a lack of clarity on what this means in practice – for example the degree to which [states' efforts to realise the SDGs can be aligned with the UNGPs](#). Implementation of the UNGPs, when it occurs in a country, is often confined to central government level and does not percolate down to the regional, city, or local level. Consistent application of the state duty to protect from human rights abuses still needs to be applied consistently throughout development cooperation, public procurement, and actors in the state-business nexus, such as development finance institutions, pension funds, sovereign wealth funds, and export credit agencies. Lack of policy coherence is illustrated by the occurrence of forced labour in government procurements of [health equipment](#).

- Pillar II

Despite significant progress in the uptake and commitments by business to human rights as highlighted above, too few are seemingly implementing the UNGPs in practice. In addition, we have limited insight into implementation by business, aside from self-reporting, and a corresponding data and measurement gap. [Analysis of company reporting](#) to assess how human rights is reported on is also limited by the lack of common standards, use of different reporting format and absence of common repository.

Implementation efforts are furthest advanced in big MNEs, but there is little sign of a trickle-down effect of UNGP implementation by these entities through their supply or distribution chains. This is despite the central role of leverage in the UNGPs. Many times, responsible supply chain management programmes and third-party contract clauses do not serve as a lever for uptake of UNGPs by these entities. The [2020 progress report on the UN Global Compact](#), ten social responsibility principles adopted by more than 10,000 companies, shows that while nine in ten have adopted human rights policies, less than a third monitor their human rights performance. Similarly, in the 2019 Corporate Human Rights Benchmark, assessing 200 of the world's largest listed companies in four high-risk sectors, [two thirds failed to show any evidence of human rights due diligence](#).

In the Danish context, a [Snapshot](#) of large Danish companies conducted by the Danish Institute for Human Rights in 2020 showed that while all companies assessed had a publicly available statement committing the company to respect human rights, none of them demonstrated full alignment with the responsibility to respect human rights, as defined by the UNGPs, with the weakest performance being across the indicators measuring the implementation of human rights due diligence, as well as mechanisms to remedy adverse impacts.

Whereas certain business actors have been making some progress in embedding a human rights lens in parts of their business operations, like the supply chain, other parts continue to be overlooked (e.g. consumer impacts or abuses in the distribution chain). Similarly, many companies continue to be more attentive to some risks, e.g. those pertaining to labour rights, whereas others are less frequently identified and tackled, e.g. privacy rights associated with digitalisation. In addition, implementation of the UNGPs in some companies has become mainly an operational compliance exercise, which has not led to fundamental and strategic questions about business models, or the purpose of the corporation, at the top of the hierarchy in the company in question. In addition, many business initiatives to support the SDGs often fall short of recognising the necessity of [human rights due diligence to achieve the SDGs](#), although a [database](#) shows that companies who work efficiently with human rights due diligence can contribute to the realisation of the SDGs.

SMEs are consistently side-lined in implementation of the UNGPs. Most actors recognise this as a gap and a challenge, but very little has been done to remedy this or to provide practical guidance to SMEs. Furthermore, uptake of the UNGPs outside of the global north remains very low (illustrated by recent assessments of Pillar 2 implementation in [Ukraine](#) and [Zambia](#)).

While the financial sector has started to engage with human rights issues through social risk management and reporting measures (the 'S' in ESG reporting), more needs to be done by the industry to align their due diligence practices with the UNGPs and ensure the leverage of investors is used to underpin uptake of the UNGPs by investee companies.

- Pillar III

Access to effective remedy in all of its forms is both a gap and a challenge. The gaps include lack of access to effective remedy at the domestic and international level, and the paucity of business efforts to develop their own grievance mechanisms. The few viable avenues to remedy which do currently exist have their own challenges. Litigation is costly and inaccessible to most affected parties. International and regional mechanisms lack teeth. Regulators often lack the resources to investigate, monitor and enforce laws. The global nature of multinational enterprises presents further challenges to achieving justice across borders. Jointly, these challenges underlie a continued accountability gap for both states and businesses as well as a failure to facilitate access to effective remedy for victims of corporate human rights abuses.

NHRIs can play an important role [in supporting access to remedy](#), including through but not restricted to, their own complaints-handling mechanism when they have one. While many NHRIs have handled complaints related to business related human rights abuses and conducted investigations and national inquiries, there remain challenges in the implementation of their decisions or recommendations, especially in the case of cross-border cases. Some NHRIs remain without a mandate to address such grievances, and many NHRIs lack resources and capacity to fully engage with that role.

- Cross-cutting issues

There is a geographical imbalance of uptake of UNGPs. Two clear examples of this are national action plans on business and human rights and mandatory human rights due diligence, with Europe heavily skewing the numbers; 19 of the 24 countries that have adopted NAPs to date are part of the Council of Europe. While this is important considering the high number of businesses headquartered in Europe and the impact that policies and legislations in Europe may have through global supplies chain, and although there is progress in other continents, there is no balanced progress across all continents and regions. Some of the same concern exists on the side of uptake of the UNGPs by business entities.

There is a pattern of sustainable and violent attacks on human rights and environmental rights defenders in particular in connection to business activities. The human rights defenders who are targeted are often women or indigenous peoples. (see, for example, the [human rights defenders database on the business and human rights resource centre](#)).

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

- Obstacles

The UNGPs are still seen by some as a minimum safeguards compliance regime, which businesses should use to avoid human rights abuses, rather than as a mechanism to ensure the contribution by business to sustainable development. This among other things means that the value and importance of the UNGPs to 'do good' and activities to realise the SDGs are underestimated (see the [paper](#) on an integrated approach to the SDGs and Business and Human Rights by the Danish Institute for Human Rights).

There continues to be a lack of transparency of business activities, complex value chains and business relationships. Complex corporate structures, existence of shell companies and registrations of business entities in jurisdictions favouring secrecy continue to impede accountability.

Some developments in the law have had a chilling effect on companies' willingness to know and show progress on the realisation of the UNGPs. Some businesses see risks in being transparent on human rights abuses they are connected to and their efforts to address them for fear that they may expose themselves to litigation risk. In the context of public procurement, public procurement officials often [do not want to step beyond](#) what they are required to do under public procurement law (even if they can take other considerations, like human rights, into account) as they fear this will leave them open to costly challenges.

As highlighted by many human rights actors (including UN Special Procedures, [FRA](#) and the [COE](#)), there is an increasing shrinking of civic space and the decline of human rights in many states which is having a significant impact on the possibility of a meaningful dialogue on business and human rights challenges. Spread of misinformation and increased polarisation often exacerbated by the use of technology, further threatens dialogue across stakeholder groups.

The pace of the digital transition and the associated need for regulation and oversight to ensure the absence of human rights abuses in that realm a continuous challenge. This is also an area where the lack of transparency is significant to the point that even the most well-informed experts can only make qualified guesses as to what impacts companies are really having or what it is in different kinds of digital

products and services that are causing these impacts. Some positive developments have occurred, such as an increased number of companies that produce transparency reports, but the phenomenon of ‘black boxes’ surrounding AI models means that while we can see that impacts occur it remains difficult to understand exactly why. A further obstacle is that of a general lack of knowledge about the issues. As all companies are increasingly digital, there is a need to understand the potential impacts that relate to that so that they can be addressed.

The Covid-19 crisis has underlined many of the structural problems that existed prior to the crisis, including problematic public procurement practices (notably [in the context of PPE equipment](#)), workers' rights (and especially the [vulnerability of workers in global supply chains](#)), and [inequality](#). The sense of urgency which many governments have reacted to the pandemic indicates the possibility to move with similar dedication on issues of climate change and many of the systemic issues leading to business abuses of human rights. The willingness to “[build back better](#)” – i.e. to use the crisis in a transition to a greener and more just world needs to be leveraged. References to the UNGPs in recovery plans is an important signal that needs to be accompanied by specific requirements and monitoring. However, states' struggle to recover economically from an unprecedented global crisis, focus on economic growth and attracting FDI may favour unsustainable business practices and facilitate further shrinking civic space.

- Drivers

[Recent research](#) into the existence of a business case for human rights indicate that firms can indeed be “doing well by doing right”, but that there are also grounds for caution. Empirical evidence seems to suggest that a business case for human rights is most likely to exist for highly visible firms in consumer-facing sectors, where public scrutiny is more intense and the costs of failing high stakeholder expectations are heavier.

It thereby becomes clear that a key driver to realising responsible business conduct is the development of a regulatory and policy environment that encourages business to respect for human rights and sanctions human rights abuses. This applies at the national and sub-national levels, as well as through international frameworks and agreements, including widespread political support for a well-crafted legally binding instrument on business and human rights.

Moreover, the financial sector has a key role to play acknowledging its own responsibility under the UNGPs and making clear their expectations to incentive businesses to respect human rights by undertaking human rights due diligence. There needs to be clear tools for investors to assess human rights in their portfolio companies.

#### [\(4\) What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?](#)

Non-discrimination on a series of ground, including gender, is a key human rights principle, embedded in international human rights instruments. Non-discrimination and equality are at the core of the 2030 Agenda's call of “leaving no one behind”. In the context of business and human rights, adverse impacts on human rights are disproportionately affecting certain groups. Frequently, women and girls bear a disproportionate burden of negative social, economic, and environmental impacts, however, the business and human rights field has paid too little attention to gendered impacts.

Inequalities and poverty remain a structural issue and are tied to a variety of human rights abuses, including involving businesses. Informal employment is often characterized by low pay, poor working conditions, and a lack of social security and disproportionately affects women. While the UNGPs address all enterprises, the high degree of informality of economic activities in certain context require additional efforts.

There is a lack of accountability for human rights abuses that needs to be addressed at many levels to ensure that rightsholders get access to an effective remedy and that businesses are strongly incentivised to prevent adverse human rights impacts through the conduct of human rights due diligence.

The role of business in society continues to be understood in many places as restrained to the obligation of businesses to generate profit for their shareholders. While the UNGPs have proposed a pathway to understanding businesses as actors with human rights responsibility, this understanding has yet to permeate fully through all layers of society, including corporations themselves.

There remains a divide between human rights and the environment and climate crisis. There has been some positive progress in recognising the human rights impacts of the climate crisis, and some recognition that work to protect the environment should integrate human rights, but there remain many shortcomings which need to be addressed to allow for a sustainable development based on respect for human rights.

(5) 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?

Cross-cutting:

- States need to step up on efforts to implement the UNGPs through a smart mix of measures at domestic level and engage in further normative development at regional and international level. What is required is:
  - The development of national action plans, based on an analysis of gaps through a national baseline assessment, provides the ability to identify systemic issues in a particular context and engage into a dialogue at a national level on specific measures that are needed to address these. These NAPs should be both specific, measurable, achievable, relevant, and time-bound (i.e. SMART). However, to ensure the quality of NAPs, states need to be held to account at the regional or international level. A peer review mechanism could be a first step towards a monitoring mechanism. We have outlined relevant examples for such peer review in a [briefing](#).
  - The development of mandatory measures, including mandatory human rights due diligence, disclosure requirements and other areas of law such as those governing corporate governance, public procurement, investment and trade to create a coherent regulatory environment conducive to the realisation of the UNGPs.
  - The development of avenues to remedy for corporate human rights abuses which are accessible, expeditious and effective.
  - The empowerment of NHRIs and other actors to guarantee a non-retrogression in civic space.



- Overcoming deadlock on the binding treaty through good faith engagement of states and the consideration of a variety of models.
- The link between the SDGs and human rights should be strengthened. Business and human rights need to be mainstreamed into the 2030 Agenda including in relation to climate change and environment to ensure that policies and measures to preserve the climate and the environment fully integrate human rights. The data gathered through the implementation of the SDGs should be informing the implementation of the UNGPs and vice-versa.
- There is an urgent need to develop methodologies to better measure the implementation of UNGPs by states. National baseline assessments can be an important tool for generating national data on gaps in laws and policies and patterns of business and human rights abuses. Building on that tool but also other relevant methodologies used by organisations such as ILO in the labour domain, new partnerships should be pursued to elaborate core business and human rights indicators as a condition for systematic, consistent and comparable data generation at the national level.
- Digitalisation and technology will grow exponentially in the coming years. We need to define a policy framework addressing specificities of this sector and its human rights impacts. While the focus has in the past primarily been on the freedom of expression and right to privacy, there is a need to significantly widen that scope and understand the vast range of impacts that digital technologies have on individuals as well as on society. Some large 'big tech' companies have primarily been scrutinised, but in a society where most companies are more or less digital, there is a need for frameworks to recognise that aspect in order to be able to address all kinds of impacts.