

UN Guiding Principles on Business and Human Rights at 10

Business and human rights: towards a decade of global implementation

ENNHRI's Input

ENNHRI, the [European Network of National Human Rights Institutions](#), brings together [over 40 National Human Rights Institutions \(NHRIs\)](#) across Europe to enhance the promotion and protection of human rights across the region.

[NHRIs](#) are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to promote and protect human rights at the national level. NHRIs address the full range of human rights, including those related to business activities. In line with the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), NHRIs provide guidance on human rights to states but also to business enterprises and other non-state actors. NHRIs can also play the role of non-judicial grievance mechanisms.

Together through [ENNHRI's Working Group on Business and Human Rights](#) (ENNHRI BHR WG), European NHRIs build each other's capacity, exchange and influence European policy.

Individual responses to [this open call](#) have been submitted by [the German Institute for Human Rights](#) and [the Danish Institute for Human Rights](#). Consequently, the ENNHRI BHR WG collectively agreed on the following response to the UN Working Group on Business and Human Rights.

Our recommendations to key guiding questions

We recognise that the following progress has been made:

- There is an increasing amount of NHRIs identifying business and human rights as a priority area of work. More NHRIs are attempting to address business and human rights at the national level, engaging with states, businesses, and civil society actors.
- There is an increasing number of Business and Human Rights National Action Plans (NAPs) being developed at the national level, and sub-national and regional action plans (such as the one at the EU level) are being considered and developed.
- The UNGPs created a virtuous cycle of awareness of the responsibility to respect human rights, which has ramifications at many levels and geographies. In addition, the UNGPs

prompted increased national legislation and has underpinned human rights due diligence developments at the national level (e.g. [French Duty of Vigilance law 2017](#)) and regional level (e.g. [EU Non-Financial Reporting Directive \(Directive 2014/95/EU\)](#) & [Council of Europe Recommendation CM/Rec\(2016\)3](#)).

We recommend to build on the following promising developments and practices:

- Negotiations on a binding treaty on business and human rights have been a positive development. The treaty should be developed to ensure complementarity with the UNGPs.
- The development of mandatory human rights due diligence laws is promising – both at national (for example the German Federal Bill on the Strengthening of Corporate Due Diligence to Avoid Human Rights Impacts in Global Value Chains) and regional levels (EU legislation on mandatory due diligence)
- Legislation such as [France's 'Action Plan for Business Growth and Transformation' \(PACTE Law\)](#) and its inclusion of a wider understanding of the purpose of businesses – including social and environmental elements – is positive. It demonstrates how the UNGPs can shape the role of businesses in society beyond promoting the interests of shareholders.
- There is an increasing awareness of the need to embed human rights within public procurement and state-owned enterprises.

We identified the following gaps to be addressed:

- There is still work to be done to convince government and policy makers of the importance of the business and human rights agenda and the UNGPs. At present, there are still barriers to advance implementation of the UNGPs, including a lack of political will, commitment and actions being taken.
- In some contexts, there is a lack of understanding around what the UNGPs and business and human rights encompass. For example, business and human rights has been confused with the rights of entrepreneurs and business owners.
- Not all states have an NHRI, and not all NHRIs have 'A' status accreditation in line with the UN Paris Principles. NHRIs have a broad mandate which enables them to work on all human rights including human rights and business. NHRIs should be provided adequate resources to work on all aspects of UNGPs, business and human rights, and can in some cases operate as a complaint-handling mechanism. This includes handling human rights violations that have occurred in the private sector - many Ombuds-institutions can only handle public sector cases.

- Lack of capacity, in terms of expertise and resources, is a big factor for actors working with the UNGPs (including NHRIs). Capacity-building is a central element of the UNGPs, but this has not materialised to a large extent. As a result, many actors do not possess sufficient knowledge of the UNGPs, nor how to implement them in practice. NHRIs should receive capacity-building and resources to build knowledge and experience, which in turn allows them to then help build capacity in their national contexts.
- There are many challenges for access to remedies. Potential victims continue to face obstacles in finding a court with jurisdiction (especially with cross-border issues), and accessing information to provide evidence of the link between the harm caused and the business responsible. NHRIs can play a role in ensuring access to justice, particularly those with a mandate to receive individual petitions from victims.
- The UNGPs do not sufficiently address the role of human rights defenders, trade unions, and other groups, including indigenous peoples.
- There is a lack of gender lens and gender intersectionality in the UNGPs.
- There is a lack of focus on small and medium-sized enterprises (SMEs) in the implementation of the UNGPs, and little acknowledgement of the practicalities and potential obstacles to their engagement in the UNGPs.
- There is a lack of alignment between international human rights law and corporate law, which is not addressed in the UNGPs.
- Whilst previously a strength, the non-binding nature of the UNGPs is no longer sufficient, on its own, to fully ensure business respect for human rights. There is an increased need for binding and mandatory measures to ensure implementation.
- More could be delivered by regional actors. For example, there could be further implementation of [Council of Europe Recommendation CM/Rec\(2016\)3](#).

We recommend to address the following drivers and priorities:

- NHRIs could be supported to help realise the UNGPs. This includes by providing them with necessary resources, and through developing their roles and mandates, where necessary, to allow them to work with the UNGPs, this includes their regional networks such as ENNHRI.
- Capacity building should be a priority for all relevant stakeholders, including NHRIs.
- There is a need to promote the involvement of people with different backgrounds, in addition to lawyers, sustainability/corporate social responsibility actors, and business persons, in order to mainstream the UNGPs in society and drive coherency.
- The 2030 Agenda for Sustainable Development has had a substantial impact on driving businesses forward on the business and human rights agenda. There is a need for

coherency between business and human rights, with the social elements of sustainable development, climate change and the environment.

- Increasingly, city-based and regional approaches have led the way, and in some cases have progressed further than states. These examples and approaches could be key drivers moving forward.
- Human rights actors at both the national and international level can report to human rights bodies on business and human rights and the implementation of the UNGPs.

To ensure sustainable development based on respect for human rights, we recommend to tackle the following obstacles:

- There should be an acknowledgement of the link between climate change and the right to a healthy environment with business and human rights and corporate responsibility to respect human rights standards. Currently this is only implicitly covered by the UNGPs and discussed at the national levels, such as in Germany when developing the new supply chain law.
- The UNGPs do not adequately address corruption and its impact on the realisation of human rights.
- The UNGPs do not address how to finance the implementation of the UNGPs. This gap becomes more apparent when looking at the 2030 Agenda's Means of Implementation.
- The UN Working Group on Business and Human Rights does not receive adequate funding to operate to its full potential.
- There is lack of transparency on corporate structures, which is important when considering structural challenges as this impacts on the realisation of the UNGPs, particularly Pillar III.
- There is a need to address the chilling effect of corporate law, which creates a hierarchy of laws and can result in a lack of consideration for human rights.
- There is a need to address cross-sector perspectives in business and human rights directives. Business and human rights should not be isolated from issues of the climate crisis, and economic and social rights.
- The UN headquarters in New York does not grant NHRIs the same rights they have in Geneva. This prevents NHRIs from engaging at a high level in sustainable development events which occur there.
- There is no explicit mandate or specified role for regional NHRI networks to engage with regional bodies on laws and policies related to business and human rights. If regional NHRI networks engage, it is often on an ad hoc basis. ENNHRI played a key role in supporting the development of Council of Europe Recommendation CM/Rec(2016)3, and this could be adopted as a model for future practice.

We recommend the following actionable and measurable targets to be taken to achieve meaningful progress and meet the UNGPs' expectations over the coming years

- The concept of 'build back better' should be applied in the context of the COVID-19 recovery to ensure that businesses are required to embed human rights due diligence within their operations and activities in order to access state support.
- It is crucial that measures to address the climate crisis take into account human rights.
- Future international treaties and EU regulations, national legislation should be complementary to the UNGPs.
- There should be a role for NHRIs in assisting governments in the development of NAPs, in their implementation, and in monitoring and accountability processes.
- Accountability around NAPs on Business and Human Rights should be strengthened, potentially via a 'peer review' mechanism.
- Proposed government actions on business and human rights should be supported with a financial budget.
- Indicators should be developed to measure the level of UNGPs' implementation, and provide a benchmark to then measure progress.
- There is a need to explore the impacts that the tech sector and Artificial Intelligence can have in the advancement of human rights, but also their potential to cause harm. This should be a focus area for the UN Working Group.
- The extra-territorial aspect of the UNGPs should be addressed. The current status quo means that many victims have problems accessing a remedy when businesses are operating across jurisdictions.
- NHRIs require resources and capacity building to equip them to take a more active role in raising business and human rights issues in treaty body reporting and with special procedures. This would also enable them to facilitate knowledge sharing and participation of business and human rights stakeholders in these processes. This includes support to their regional networks.
- There is a need to bring corporations into the conversation on business and human rights to a greater extent, as there is a shared responsibility to realise the UNGPs.

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