Business and human rights – towards a decade of global implementation

Contributions from the 2020 class of business and human right of Peking University, China

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UNGP 10+ PKU

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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?

UNGP makes more and more countries have formulated national action plans on business and human rights. The amount and quality of the guidance developed by NHRIs, CSOs and other NGOs, including those representing business circles contributed to the states in their NAPs developing efforts. It takes the human rights issue from the moral field to the legal field. Many companies have developed their own human rights policies.

Following the exemplary role of some big companies, for example, Unilever and Coca-Cola, more and more companies are inclined to follow the existing models and give more or less some consideration to the human rights issue. By 2019, more than 200 companies on the Fortune Global 500 list had developed and published a corporate human rights policy.

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

As a soft law, UNGPs execution is still insufficient. They do not create new international legal obligations for companies that can be enforced, and are not accompanied by a grievance or complaints mechanism that victims of business-related human rights abuses can access for remedy.

Furthermore, the Guiding Principles are weak with regards to developing duties for individual states to regulate the human rights impacts of business enterprises beyond national borders (i.e. extra-territorial obligations), even though this principle is internationally recognized in other areas.

I think Pillar 3 is still not work to date. It is true that specific regulations and ordinances are made by the states, and companies are taking actions such as making human
rights policy, but the actual effective grievance mechanisms in practice have still not worked to date.

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

The main contradiction is human rights protection and economic development. At present, the rules of knowledge in various countries are relatively rough. The government needs to play its role, develop more detailed guidelines. States need to transform the model of after-event relief into pre-event prevention. Because the compensation amount is actually not high, this makes the company willing to take risks.

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

While attracting foreign investment, protect human rights in the country to achieve sustainable development. Nowadays, development is still taken as priority even at the expenses of violating fundamental human rights. The reason for this phenomenon is that different regions have different human rights standards. If the national standard is lower than the international standard, companies tend to violate human rights. Different states should strive to adopt international standards, rather than violate human rights to develop the economy. Under the same standard, the company will fulfill its commitment.

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?

NGO need to strengthen supervision of enterprises and the country concerning human rights. They can publish a report about company human rights policy, and make their own assignment. Protect company’s brand and reputation is a big driver for a company’s commitment. It is should be a mandatory requirement for company to make a report on human rights. Government should take consider from 2 report from NGO and company to provide incentives based on human rights performance.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

Although poverty is the biggest obstacle to the realization of human rights in business, I believe the policy will affect the result. By Human rights protection agency and NGOs work, the public is increasingly concerned about human rights in business. Continuously strengthen the education of enterprises, urge governments to implement human rights protection. These paths will continue to work. Finally, the states will meet the requirements of UNGP.
BHR-UNGP next decade-consultation questions- Aruna

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

The UNGPs, which was unanimously endorsed by the Human Rights Council in June 2011 with the careful process of formulation, provided the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and they continue to provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights.

The UNGPs on Business and Human Rights are comprehensive and authoritative guidelines in the field of business and human rights. The UNGPs comprise three pillars: the State duty to protect human rights against infringements of human rights by third parties, including business enterprises; the corporate responsibility to respect human rights; and access to effective remedy for victims of business-related human rights abuses.\(^1\) The UNGPs have identified key issues in business and human rights, including the role of the states, the corporates’ responsibility to respect human rights, responsibilities in the supply chain, access to remedies, human rights due diligence, and environmental issues, etc.

During the development and establishment of the UNGPs, the broad support and full support for them from all stakeholder groups, including States, business enterprises and business organizations, regional and international organizations, and many civil society organizations globally, have established them as a common platform for accountability and progress.

Global convergence of international standards and processes around the Guiding Principles and their core concepts helps to clarify, simplify and reinforce implementation by both States and business enterprises. There has been significant convergence around the Guiding Principles at the international and regional level. Efforts to implement the

\(^1\)HR/PUB/11/4,2011.
Guiding Principles are also being made by international business organizations and individual businesses, national human rights institutions, trade unions, civil society and other actors.

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

After a long-term development, the career of human rights protection has made remarkable achievements. But there are still many gaps and challenges for states, enterprises to face:
- States
  However, as can be seen from the specific measures taken by states to protect human rights in business and industry, the legal provisions concerning the protection of laborers' rights and corporate social responsibility in industry and commerce are mostly synoptically and generally. Victims of business-related human rights abuses continue to struggle to achieve effective remedies for the harm they have suffered. While challenges vary from one context to another, a number of persistent problems common to many jurisdictions may be identified: fragmented, poorly designed or incomplete legal regimes; lack of legal development; lack of awareness of the scope and operation of regimes; structural complexities within business enterprises; problems in gaining access to sufficient funding for private law claims.
  From the perspective of law enforcement and supervision, slacker enforcement and lack of supervision of government are still very serious. In reality, a variety of life production product problems make people shocked, such as emerging food safety problems, a variety of toxic food into the market circulation channels, "dazzling" toxic food, medicine, and so on, make consumers stunned.
- Business Enterprises
  From the perspective of enterprises, with lack of policies and procedures appropriate to the size and environment of the enterprise, this leads to the lack of effective ways for enterprises to identify, prevent, mitigate and eliminate the negative impact of human rights. At present, few non-State-based grievance mechanisms are fulfilling their envisaged role. Even though there have been attempts to design and operate various kinds of mechanisms, and while there have been valuable contributions by such mechanisms to accountability and remedy, rights holders continue to report significant problems with identifying, accessing and using such mechanisms in practice. The remedies that may be obtained from non-State-based grievance mechanisms are usually partial at best. However, the contribution that such mechanisms make to providing remedy is presently undermined by a lack of policy coherence on the part of States in their approaches to non-State-based grievance mechanisms. Furthermore, a lack of sensitivity and responsiveness of many mechanisms to their legal, regulatory, economic, social and cultural contexts, and a lack of cooperation between developers and operators of mechanisms in specific contexts and cases, results in unclear and incoherent processes, inefficiencies and other barriers for rights holders.

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

2 Ibid.
To achieve fuller realization of the UNGPs, the following key obstacles would be involved:

- **Role of the State**
  After the guiding principles are clear, the state considers that corporate social responsibility is not only related to the voluntary of the company, but also how to create legal motivations for regulating corporate behavior through various direct or indirect ways.

- **Corporate Responsibility**
  The guidelines state that companies have a responsibility to respect and protect human rights by not doing anything that causes any related harm. Corporations should not infringe upon the fundamental rights of anyone in their business operations. At the same time, enterprises should stop the ongoing human rights violations and take preventive and remedial measures to deal with the impact of their business activities.

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

To achieve protection of human rights, the Sustainable Development Goals, our shared vision to end poverty, rescue the planet and build a peaceful world, are gaining global momentum. Today, progress is being made in many places, but, overall, action to meet the Goals is not yet advancing at the speed or scale required. So, states need to work towards developing a legal and regulatory environment, to help States to identify the important interlinkages between the different bodies that make up a comprehensive State-based system to remedy business-related human rights abuse, to meeting each of the Guiding Principles’ effectiveness criteria for such mechanisms in practice. And there is a need for greater recognition by States of the legitimacy and utility of non-State-based grievance mechanisms in complementing and supplementing domestic legal and regulatory regimes.

Businesses need to take greater measures to ensure the sustainability of their operations. And, business enterprises’ responsibility to respect human right by not causing or contributing to adverse human rights impacts and preventing such impacts from occurring as a result of their operations.

Rising to these challenges is not an easy thing, only when all issues are properly addressed can sustainable development be truly achieved on the basis of 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?**

States need to:

- Have to re-evaluate policies in order to achieve fuller protection of human rights.
- Have to respect human rights by fully performing the functions of regulation and

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control.
- Supervise reasonably.
- To perfect social safeguards to minimise the impacts of potential future crises.
- Encourage, coordinate and supervise industrial and commercial enterprises through various channels.
- Hold the human rights due diligence through various means.\(^7\)
- Provide effective and appropriate non-judicial grievance mechanisms.
- Leverage the role of national human rights institutions.

Enterprises need to:
- Strive to build corporate culture, improve the human rights respect system.
- A policy commitment to meet their responsibility to respect human rights.\(^8\)
- Integrate business operations with human rights protection, and fully implement human rights due diligence, and make corporate human rights due diligence part of normal business practice.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

Everyone is talking about coronavirus disease 2019 (COVID-19), which has already claimed over one million lives. Because of the COVID-19, unemployment is on the rise. The International Labour Organization, ILO, has estimated that, in the second quarter of 2020 alone, the global loss in working hours was equivalent to 495 million full-time jobs. The International Labour Organisation estimates that 81% of the global workforce, or 2.7 billion workers worldwide, have felt the effects of COVID-19-related measures.\(^9\)

Unfortunately, corruption was a problem before the crisis, but the COVID-19 pandemic has heightened the importance of stronger governance. Corruption is criminal, immoral and the ultimate betrayal of public trust, it is even more damaging in times of crisis.\(^10\)

We must work together to stop such thievery and exploitation by clamping down on illicit financial flows and tax havens. Tackling the vested interests that benefit from secrecy and corruption.\(^11\)

All our efforts are to beat the COVID-19, to respect and protect human rights. Because no one is secure until all of us are secure. To build a better future, we must double-down on respect for human rights, not retreat.

\(^7\)HR/PUB/11/4,2011.
\(^8\)Ibid.
\(^11\)Ibid.
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?

The UN Guiding Principles on Business and Human Rights (UNGPs) adopted in 2011, are the first globally accepted standard articulating the States’ duty to protect human rights from impacts of business activities, while recognizing the companies’ responsibility to respect human rights throughout their operations and their business relationships. There are a lot of subjects who are influenced greatly by UNGPs.

During its implementation over the last decade, many actors in global business have been influenced by UNGPs. In some cases, the actor adopted core elements of the UNGPs outright; others did so in part; still others modified aspects of their mission. Some took the UNGPs into entirely new domains. A few examples follow:

- The European Union not only endorsed the UNGPs. The European Commission also changed its own official definition of CSR in response to the UNGPs and requested that all member states develop National Action Plans for their implementation. In November 2019, the Government of Thailand became the first NAP on Business and Human Rights in Asia. Moreover, the UNGPs due diligence provisions found their way into both U.S. and EU law concerning conflict minerals, U.S. regulations on investment by American firms in Myanmar, the UK’s Modern Slavery Act, and a new French law that imposes a human rights due diligence-like requirement on companies, enforceable by tort liability where injuries result from the failure to have an effective plan.

- Leading companies have been a major source of direct uptake. Indeed, several had
written to the Human Rights Council recommending that it endorse the UNGPs. A
dozen developing countries already have issued or are in the process of developing
National Action Plans.68 And regulatory authorities in China are drawing on
international standards like the UNGPs and OECD GLs to advise their own
companies on appropriate human rights practices in overseas operations—including
the recommendation that Chinese mining companies should “observe the UN
Guiding Principles on Business and Human Rights during the entire life-cycle of the
mining project.

- The new human rights chapter of the GLs is taken virtually verbatim from Pillar II of
the UNGPs (the corporate responsibility to respect human rights). ISO26000, a
guidance on social responsibility developed by the International Organization for
Standardization, was running in parallel with the UNGP mandate;

- Through close collaboration, the International Finance Corporation (IFC)
corporated such key elements of the UNGPs as the requirement for clients to
respect human rights, and that in certain high risk circumstances may need to add
human rights due diligence. Possibly the most unusual development for a UN-
based initiative has been endorsement of the UNGPs by FIFA, the governing body of
international football.12

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

- Supply chain oversight
One topic that highlighted the challenge of implementing the UNGPs in complex
operating environments is the question of supply chain oversight. Questions that are
commonly raised when this topic is discussed include: How far down a supply chain
must due diligence reach? How can a company have leverage over a supplier many
tiers down the supply chain? How can a company possibly assess a supply chain that
in many cases is comprised of tens of thousands of suppliers?

- Regional imbalance
While EU member states and most recently countries in parts of Asia-Pacific and
Latin America have shown increased willingness to embrace the UNGPs, it is time to
leave no region behind in demanding responsible business practices. As the picture
bellow shows, negative human rights impacts are overwhelmingly felt in developing
countries, while those who are ready to adopt UNGPs come from the developed
countries most. A baseline study conducted by UNDP in January 2020 confirmed a
pressing need to engage with African governments and companies. The pandemic
has highlighted more than ever the urgency to focus on the grievances of migrant
workers in the Middle East.

available at https://www.hks.harvard.edu/publications/social-construction-un-guiding-principles-business-
human-rights
Moral standards Vs. business standards
To date, one challenge concerning the placement of human rights in the traditional compliance discourse is that human rights is often viewed, at best, as a moral standard that must not frustrate business standards such as the freedom of the market.

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

- Key obstacles

There is a strong evidence-base that voluntary measures aren’t getting well. There is broad agreement that mandatory measures should be based on the UN Guiding Principles and rights-holders should have seats at the table as measures are developed.

The framework and the Guiding Principles also have a major weakness: they do not create new international legal obligations for companies that can be enforced, and are not accompanied by a grievance or complaints mechanism that victims of business-related human rights abuses can access for remedy. For instance, to date, many EU States have released NAPs. But the plans lack teeth, coming short in terms of both process and content, while failing to effectively address the challenges faced by victims of corporate-related abuses. As a result, a legislative framework to ensure corporate respect for human rights is still lacking.

- Drivers

The leading multinational corporations have been playing a major role in the implementation of UNGPs. They can serve as a model in relevant industry and attract more companies to take part in this project. In the future, the observance and participation could automatically become key criteria for people to evaluate the industries.

• **Priorities**

In respect of the unsatisfactory human rights situations faced by many people, we require businesses to take measures that facilitate access to effective justice and remedy. Also, more importance should be attached to public health emergency, such as COVID-19. Moreover, risks and opportunities of technology are front and center in the development of UNGPs.

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

• **Voluntariness of companies Vs. Effectiveness of principles**

Conversely, the move toward broader mandatory human rights due diligence requirements, such as the EU proposal, are more likely to bring the intended outcomes: a leveled playing field, greater legal certainty and harmonization, increased respect for human rights where companies operate, remedy for the impacted rights holders, and non-negotiable standards to increase leverage with third parties. If such requirements are consolidated at a regional or international scale and hopefully supplant issue-specific disclosure requirements, companies can dedicate more time toward developing a holistic, comprehensive human rights due diligence approach—ultimately leading to improved remedy and outcomes for rights holders.

• **Lack of relevant human rights laws and standards**

The Guiding Principles do not incorporate explicit reference to the full body of human rights laws and standards that is relevant for the assessment of the corporate responsibility to respect human rights. In other words: implementation of the Guiding Principles by a company does not automatically equal respect for all internationally recognized human rights.

In the Guiding Principles “internationally recognized human rights –[are] understood, at the minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work”. While the Guiding Principles do state that business can impact on virtually all human rights, and business may need to consider additional rights depending on the circumstances, these are not explicitly referenced. There are more internationally recognized human rights laws and standards out there that are very relevant for assessing the corporate responsibility to respect, such as the UN Declaration on the Rights of Indigenous Peoples. Some essential human rights treaties and declarations are thus not explicitly referenced in the Guiding Principles, and therefore the Guiding Principles provide loopholes for companies to escape the responsibilities laid down in these documents.

• **The government problem.**

The UNGPs clearly state that governments have the duty to protect human rights; however, in practice governments often fall well short of this duty and make use of technology, data, and regulations to violate rather than protect rights. In many other industry contexts, the laws are often good but are not being enforced, and in the technology industry, the laws are often bad and are being over-enforced. System-wide approaches are impossible when
a key player in the system isn’t willing to cooperate or is a source of the problem—for example, facial recognition solutions need regulating, yet governments are often the customer using face identification in ways that violate 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?

- Mandatory human rights due diligence regimes
  Mandatory human rights due diligence regimes across a growing number of jurisdictions, is welcomed. There is broad agreement that mandatory measures should be based on the UNGPs and rights-holders should have seats at the table as measures are developed. It is encouraging to note that increasingly, businesses and investors, alongside civil society organizations, are calling for effective mandatory HRDD legislation.

- Enhance the role of government
  Apply to the government as an economic actor as part of both vertical and horizontal policy coherence, including procurement and state-owned enterprises. On policy coherence, you have many tools to harmonize first and use it as leverage later, such as in trade and commerce and in development cooperation.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

In my opinion, companies should fulfill a more significant function in BHR. The UNGPs are a floor and not a ceiling, and companies must go beyond "respecting" human rights and move into the "protecting" mode, for example, when dealing with human rights defenders.
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?

1) Policies: More countries are making their country-based guiding principles and relevant policies based on UNGPs and promoting the implementation of UNGPs.

2) Transparency: More international companies had made policies to maintain their obligation on business and human rights, which are often clearly presented on official websites. Many of them also voluntarily submit report on the implementation of UNGPs. They invite experts to have lectures about UNGPs, in order to raise the awareness of the necessity of UNGPs among their staff. Corporation between academic and business circle, between academic and administrative circle are being enhanced.

3) Awareness of workers: In some places, workers of manufacturing are simultaneously creating their own mechanism to promote their living conditions, which poses pressure on the employers to seek effective solutions.

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

1) As mentioned in UNGPs, the corporate and securities law lacks of obligations for companies and their officers to respect and protect human rights. Besides, current laws and regulations considering business and human rights cannot be effectively implemented due to lack of practical guidance.

2) Another challenge is the lack of awareness about the UNGPs themselves together with the broader human rights and business agenda not only among government officials, but also other stakeholder groups. In governments there is no effective coordinating mechanism among different departments to tackle problems of business and human rights.
3) Almost 2000 participants that the UN Forum brings every year to Geneva still represent a relatively small circle of stakeholders, experts and businesses that should be familiar with issues covered by the UNGPs.

4) Another common challenge is the lack of resources, both financial and human, not only to be able to develop necessary policies, including NAPs, and regulations, but also to ensure their effective implementation, enforcement and monitoring.

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:
1) One of the key obstacles that international organizations (both at global level and regional level) are faced with lies in political limitations imposed by foreign governments or multilateral institutions.

2) Many states are still unable to promote the implementation mainly on their own due to lack of relevant knowledge, experience and financial support. Were it not for such support of UN Working Group on Business and Human Rights, particularly in the form of technical assistance and funding being provided to promote specific processes and work, many states would not have the capacity to undertake efforts in areas which they did not initially understand.

3) Another major factor impeding a state’s ability to undertake meaningful action regarding UNGPs’ implementation is the fear of deterring foreign investment, lack of good governance and prevalence of corruption, as well as political limitations imposed by foreign governments or multilateral institutions. Misperceptions of governments could have to do with wrongly perceived protectionism, fear of not being attractive to investment, or unwillingness to undertake additional legislative action that would require establishing a verification mechanism.

Drivers:
1) In terms of states, several states have the willingness to be a leader on business and human rights in a particular region (for instance, Kenya, Colombia, the Netherlands and the UK).

2) It’s important for some essential regional protocols (especially at continental level) to include contents like requirements and encouragements to promote the implementation of UNGPs and corporation among member states.

3) Support from individual states plays an important role in some countries taking the final

4) Make decisions of taking real actions. Individual states can raise the issue of UNGPs’ implementation in the context of bilateral talks, in multilateral fora or in the framework of the Universal Periodic Review (in the form of concrete recommendations), ideally at the same time as offering their support, for instance, sharing their experience.

Priorities:
States and areas in which tragedies happened should take effective measures to prevent such tragedies in the future. Other states as well as international organizations can undertake the role of supervision.
4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

1) The global economy is under great downward pressure and the main supply chains of manufacturing of international companies are switching to places that are even less developed. The poorer the people are, the less they are aware of human rights since they regard work and salary as the priority of living. Thus, they may voluntarily give up many rights and chances to have protection or remedy.

2) The assembly lines in manufactures of capitalism have largely deprived the workers’ ability to learn a new craft or to seek a new job with equal salary after losing their job. To maintain the efficiency of assembly lines, workers should be of high proficiency in repeating single actions. It’s harmful for the sustainable development of human rights in that working on such assembly lines under high pressure; the workers are actually diminishing their potential. As a result, workers are becoming increasingly vulnerable when faced with the risk of losing their job because of economic crisis, the development of artificial intelligence, etc.

3) COVID-19 has revealed that workers sent by foreign companies to the place of investment are vulnerable during global or regional epidemic, especially in less developed countries. The local government cannot tackle with such problems in time effectively and the local and the home governments have no spare attention on Chinese overseas. Without guidance and protection, these workers will fall into a helpless situation. They are under high risk of being infected and cannot return to China. Expensive fly tickets and quarantine costs make them less willing to return, though they will be safer in China.

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?

1) A global fund for raising awareness and enhancing the capacity of stakeholders to implement the UNGPs is also necessary, since the awareness and initiatives are the first step of practice. This fund should contribute to the communication among academic, administrative and business circles. For example, scholars and experts can propose more practical advice on the basis of information, especially data provided by governments and companies, and give seminars and workshops to governmental officials and company staff.

2) A level playing market both at global and regional level, which means states in the region all set up similar regulations, will help promote the implementation of UNGPs in that no state will be less competitive in business due to regulations on business and human rights. It requires high-level conscientious and continued increased coherence between international and regional instruments.

3) Countries that have similar characteristics should participate in experience, knowledge and best practices sharing and collaborative learning.

4) An internal leader who holds a high position in the public administration is necessary for the implementation of UNGPs. The leader should be committed to
advancing the human rights and business agenda internally, is trusted and engaging with all relevant internal and external stakeholders on regular basis. More representatives of shareholders of business and human rights should have the opportunity to participate in the UN Forum and relevant activities.

5) An informal network of government officers in charge or involved in their countries’ NAP development, perhaps somehow administered by the UN WG or at the regional level can be created to facilitate information exchange also beyond the regional or global conferences and workshops.

6) It’s important for governments and international organizations to pay more attention to overseas’ human rights, especially workers, and create a mechanism aimed at the protection and remedies on the basis of coordination between states, to make sure that they are under the protection of at least one side.

7) Governments should try to gain insights into the positions of individual business companies for instance via surveys, as well as investing into raising awareness and understanding not only of the human rights impacts but also the economic cost of not respecting them for the companies.

8) To raise the awareness of business and human rights in the whole society, governments and companies are recommended to have business and human rights events, such as important anniversaries of certain events which represent a significant step of the development of UNGPs, and platform for shareholders to communicate on a regular basis. The number and influence of such events can be one of the actionable and measurable targets.

9) Experience, knowledge and best practices sharing and collaborative learning should also be encouraged within the business circle. Companies can organize study visits to better carry out this measure.

10) A useful tool for experience, knowledge and best practices sharing and collaborative learning is a database of best practices and case studies of what has worked from governments and businesses particularly on access to remedy.

11) Actionable and measurable targets can be certain steps of the creation of mechanisms mentioned above.

References:
BHR-UNGP next decade-consultation questions- Maoze CHEN

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

The 2011 resolution and accompanying state and civil society consensus constituted a watershed event in BHR. For example, the official French position now is that the GPs were ‘groundbreaking’ so that ‘all existing fundamental international standards have been integrated into a single model with global scope’. The GPs both manifest and help to solidify a much wider trend towards socially responsible business and investment conduct, and its regulation.

The GPs, or elements of them, have since 2011 begun to be integrated into intergovernmental, governmental and business policy and management systems, and into the agenda of organizations that lobby and monitor these constituencies. At the multilateral and regional level, for example, the GPs-related framework has been incorporated by reference into the EU policy framework and the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.

In big business and finance circles one can discern GPs-related activity, with some promising potential. For instance, the International Organization for Standardization (ISO) has incorporated GP elements into its influential ISO 26000 social responsibility standard, and also privately owned stock exchanges are examining their listing and reporting requirements. Along with specialist BHR organizations, the global legal profession and bar associations are becoming more fluent in the GPs, while BHR increasingly features on the curriculum of business and law schools.

At the national governmental level, some influential states have either developed or are developing general National Action Plans (NAPs) on the GPs. Other governments are
producing more targeted policy guidelines referencing the GPs, such as China’s 2014 guidelines for mining and minerals-trading firms operating abroad.

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

Even if the international human rights and treaty systems were in good shape, the BHR field is beset with legacies of division, uncertainty and apathy.

Only a small proportion of businesses and funds globally are fully incorporating these issues into business strategy and risk management systems. Most will lack the awareness, capacity or incentives to respond. Some of this divergence results from differing capacities, but at issue are also structural and specific business incentives for reform.

These are enduring features that will also affect how states pursue their long-standing human rights commitments and duties in all areas, not just BHR. These patterns seem unlikely to shift notably over the medium term.

The emerging human rights responsibilities of business enterprises, and calls for greater accountability, flow in particular from the perceived greater influence and impact of transnational business, especially in countries with weak institutions.

One cannot assume that business will be passive or resistant to GPs-related regulatory activity. A tipping point may come (nationally or even globally) where influential business constituencies push for action simply to resolve the current uncertain and unpredictable regulatory and litigation landscape.

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

The BHR field is so broad that it seems unsuited to attempted governance through one overarching treaty framework. The many obstacles to agreeing a treaty of any workable scope make resurrection of the ‘treaty path’ a potential distraction from pursuing national-level measures envisaged in the GPs.

The main question is whether states will be able to rebuild consensus and repair current distrust and polarization around international regulation efforts, and avoid unproductive and (in today’s corporate world) artificial north–south division.

Excessive faith in law’s transformative and emancipatory role should be avoided. The focus should be on the ends and not the means, the broader, engaging process of seeking continuous improvement in business practices, not simply narrow approaches framed around achieving or ensuring procedural ‘compliance’.

Some roundtable proponents of broader framings accepted that tax justice is a ‘secondary’ BHR issue; one participant conceded that including issues such as tax justice within the BHR agenda did not amount to saying that these are human rights issues ‘in themselves’. Instead, the use of rights terms was an attempt to promote thinking about systems and
interrelationship of conduct in society.

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

Trade and investment regimes and instruments have an inherently limited potential to advance BHR issues, given their core trade-promotion and investor-protection functions. Their regulatory promise is no substitute for strengthening conventional human rights capacities. BHR concepts are not necessarily the most promising narrative for addressing structural issues about the role for international investment in promoting sustainable development.

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?

To be frank about the limits of legal development in this area is not to act as an apologist for business or to deny shifts in modern international law and the global society it serves. Instead, it is to accept limits while seeking to understand where viable scope exists to expand preventive, protective and remedial opportunities. This tweaking exercise building on existing regulatory approaches is not unambitious ‘pragmatism without principles.’ It reflects recognition that along with a broad normative vision and alignment of incentives, transformation is often comprised of the net effect of myriad relatively small interventions. It follows that the BHR agenda will require from experts more consistent accuracy and credibility in addressing particular conceptual and practical problems across diverse legal systems and business sectors, and a greater understanding of this by stakeholders such as governments, business and civil society.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

Nope.
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?

1(1) Mainly on providing business enterprises appropriate and effective remedy when breached.

1(2) A. To governments, alongside independent regulatory bodies, in defining principles and rules of corporate governance that duly reflect the importance of respect for human rights for society and its most vulnerable communities, as well as for the ability of companies to create long-term value.

To be more specific, government should be a good policy maker and guarantee the policy coherence. Policy coherence, leading to clear and established policy and operational practice, serves to strengthen knowledge and accountability across government actors that shape business practice or interact with business, and significantly enhances both prevention and access to remedy for victims of human rights abuses. The call for policy coherence has been made by numerous actors and is increasingly recognized by governments. Many business enterprises, as well as business associations and organizations, also recognize that the private sector benefits from and expects policy clarity, consistency and predictability in places where it conducts business, as well as an overall enabling environment for economic activity.

1(2)B. Corporates need to have the right processes in place in order to try to prevent these impacts and to respond appropriately should they occur. Taking the UN’s Guiding Principles as an example, this provides a blueprint for them to do so. I suppose these principles can be used for reference in governments’ policy making.

That blueprint describes a three-part approach that can be summarized as:

A public commitment to respect human rights that is embedded into a business’s culture; An ongoing process of human rights due diligence through which the corporate assesses risks to human rights, integrates the findings into its decision making and actions in order
to mitigate the risks, tracks the effectiveness of these measures, and communicates its efforts internally and externally;
Processes for providing remedy to anyone who is harmed where the business caused or contributed to that harm.
1(2)C. To international or civil society organizations, building on industry-focused partnerships which can bring international organizations together with global brands, local business and trade unions, such as the “Better Work” initiative with ILO and the International Finance Corporation is the promising practice that can be done.

Also, developing tailored trainings to support efforts to foster a culture of human rights at the grass-roots level is needed to organizations mentioned. Improving cooperation and develop a true partnership between global buyers and small and medium-sized enterprise suppliers instead of command and comply-type models

2. Where do gaps and challenges remain? What has not worked to date?
2(1) Protectionism has now shown a rising trend, from a policy point of view, there is a general willingness among countries to adopt interregional or point-to-point convention mechanisms, such as FTA, CPTPP, etc. are the main current trends. If you compare the provisions of CPTPP and RECP, it can be found that developing countries are currently more resistant to the combination of business and human rights, to China has been or is negotiating the 27-nation FTA as an example, human rights provisions are only an example, such as China-France, China-Australia, and the length is mainly limited to personal privacy, environmental rights and so on. But among developed countries, such as the CPTPP, human rights are seen as the primary threshold. In general, gaps are currently the different positions and attitudes of developing and developed countries towards the integration of human rights and business, and challenges are protectionism that has risen and become mainstreamed.
2(2) UNGPs are only declarative proposal text, which has no actual binding force.

3. What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?
3(1) The rise of protectionism has made the introduction of global mechanisms face greater difficulties.
3(2) Corresponding to protectionism, the removal of protectionism is also the main driver of UNCPs realization, and there is a general desire among developing country entities to engage in commercial activities in a more open and equitable mechanism.
3(3) At present, global business conventions or mechanisms, such as WTO and CISG, generally lack human rights-related standards, and the integration of human rights and business is currently a gap. Moreover, with the development of the third generation of human rights, it is urgent and necessary to fill the blanks.

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

Achieving respect for human rights is challenging. It is not just about companies’ own operations and employees and the activities they directly control. Nor is it just about first tier or strategic suppliers. It includes impacts that may be much more remote in their value chain and caused by third parties over which they have limited influence. But the expectation on businesses today is clear: if their products or services are linked to human
rights abuses, they have a responsibility to take reasonable steps to try to change that situation. To be more specific, this kind of expectation should include two aspects: Corporates should have a clear recognition of what the risks to people are. When conducting stand-alone human rights impact assessments for particular projects or operations or in high-risk contexts, making them publicly available is a good practice; Also, corporates should have accurate descriptions of the due diligence processes that the business enterprise has in place to address specific risks. Indicators of good practice may be the number of affiliates that conduct regular human rights impact assessments, like the monitoring of identified risks to human rights, which may include auditing, especially when identifying the risks of severe impacts; clear statements on how business enterprises understand their responsibility, as opposed to trying to shift responsibilities; and evidence that resources are being spent on identifying and fixing problems.

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?
5(1) To absorb the participation of a broader body, especially the government subject, and at the same time, to demand the participation of large countries, and play its leading role.
5(2) To key actors, go beyond the first tier, and managing the risks to and impacts on human rights in supply chains can be actionable and measurable targets. Supply chains can involve hundreds or thousands of suppliers and several tiers, with suppliers typically providing services to more than one sector. Each key actor should ensure that its own practices, for example, selling defective parts or unhealthy ingredients, irresponsible purchasing practices, or low-cost, fast-delivery business models, do not contribute to adverse human rights impacts caused by entities in the value chain.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?
Business and human rights – towards a decade of global implementation

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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?

The UNGPs has increased attention on the impact of corporate social responsibility (CSR) in the private sector arose. Under the UNGPs are the three fundamental pillars of Protect, Respect and Remedy. According to Natascha Weisert’s article, namely, *The UN Guiding Principles for Business and Human Rights as a Framework for Action in Global Textile Supply Chains*, Over the past years, the UNGP have stimulated a significant amount of corporate action. Based on the human rights due diligence elements outlined above, businesses have, often in cooperation with other actors, such as specialized consulting firms and expert advisers, established internal processes to help them analyze and monitor their human rights risks and engage in preventive and/or remedial action. For instance, discussions at the annual UN Forum on Business and Human Rights are a clear testimony to these efforts (OHCHR 2017; O’Brien and Dhanarajan 2015; Shift 2012).

Regarding to the purpose of UNGPs, the States’ legislative regimes that address CSR are the most promising developments that can be built on. As noted, the UNGPs are aspirational, and often considered “soft law”. The international institutions might require turning soft law into hard law. For instance, Bar associations have been active in promoting the aspirational aspect of the UNGP. For example, in 2016 the International Bar Association (IBA) issued the IBA Practical Guide on Business and Human Rights for Business Lawyers. Similarly, at domestic level, companies might require compliance as a condition in supply chain contracting, meaning that the otherwise aspirational ideas are embodied into enforceable provisions. Although certain national legislations now impose hard law obligations regarding certain elements of the UNGPs, particularly those requiring businesses to self-evaluate and report, like China, have been the focus of attention, particularly in terms of sustainability and corporate social responsibility aspects of its Belt and Road project, a 21st century attempt to restore the trade and investment, literally and by analogy, to the ancient Silk Road. The UNGPs may be non-binding, but State still can
take legislative measures to make them become hard law at domestic level.

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

In Natascha Weisert’s view, whether recourse to the UNGPs has indeed translated into positive human rights-related impact along global supply chains has repeatedly been called into question (Lukas 2011: 7–8; Ruggie 2010). This is because, the UNGPs as high-level principles, deliberately leave many critical questions unanswered, such as what the scope of adequate human rights due diligence and risk assessments should be, how the concept of “leverage” should be applied and what exactly constitutes “significant” human rights risks or “serious” human rights abuse. They should be clarified through relevant implementation mechanisms or processes: to overcome conceptual difficulties, practical testing is required; to deal with implementation-related problems, relevant capacities need to be built.

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

In terms of modern slavery, according to the International Labour Organization’s (ILO) global data on modern slavery, a staggering 25 million people are estimated to be trapped in conditions of forced labour. Human rights abuses, from child labour to hazardous conditions of work to debt bondage, are often hidden and unintentional aspects of the global supply chains behind our everyday products. In Diane Bulan Hampton’s article, which he pointed out that, over the past few decades, the globalization of economic forces, actors and markets has had both positive and negative effects: contributing to economic prosperity on the one hand, and leading to business-related human rights violations on the other. Many policymakers have observed that over this period, the scale and power of transnational companies have increased, while the capabilities and capacities of governments have declined. This has created a “fundamental institutional misalignment”, or a governance gap, in accountability for such human rights violations. As a result, with the global interdependence and integration of corporate supply chains, business activity generated in one country can cause abuses to occur in other countries.

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

Challenges facing states in granting access to remedy as proposed by principles 26, 27 and 31 of the UNGPs. The state has to implement and, in principle, guarantee “effective” access to an “effective” remedy as a component of its duty to protect human rights in its territory and/or jurisdiction (UNGPs 2011, principle 25). Non-judicial remedy mechanisms provided by businesses are not part of this analysis because, as mentioned, the research project has focused on the state-based mechanisms. The legal and conceptual framework to which the UNGP refers is complex, as many topics are involved. The methodology and methods to evaluate how states fulfil their duty to grant ‘effective’ access to an ‘effective’ remedy are also diverse and depend on the issue, on the geographical and economic context, and on the availability of data. That is to say, methodological challenges for legal analysis when dealing with the third pillar of the UNGPs, particularly principles 26, 27 and 31, regarding the state-based non-judicial and judicial mechanisms that provide “effective” access to an “effective” remedy.

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?

Accordingly, considering modern slavery, National Action Plans (NAPs) provide a means for governments to reinforce existing commitments focused on business and human rights and raise awareness about priority human rights issues. But states should optimize the polycentric governance to improve the relevance and effectiveness of NAPs as drivers of change. For example, the U.S. and UK National Action Plans both underscore the commitment of these two key states to eradicate modern slavery and highlight forced labour in supply chains as a significant impact area. Yet rather than merely summarizing actions already taken, NAPs should establish forward-looking action plans with specific improvement targets, time frames and mechanisms to track progress. Where states have parallel human rights initiatives (e.g., specific to modern slavery or human trafficking), the NAP can reference, or be developed in alignment with, existing initiatives. Moreover, considering the centrality of polycentric governance to the UNGPs, NAPs should be designed to enhance and maximize the benefits of a polycentric system of human rights protection. To be specific, these actions included: adopting new disclosure requirements for companies; enhancing existing laws and enforcement; strengthening norms, such as ‘employer-paid’ recruitment fees; and funding new measures for non-state actors to benchmark company performance and foster innovation. Considering the influence of polycentric governance theory on the development of the UNGPs, the ways in which the NAP measures contributed towards a polycentric system of governance that is: (1) multistakeholder, (2) multilevel, (3) interdependent, (4) adaptive and (5) innovative.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

The “preliminary outline of the report on new and emerging digital technologies and human rights” has be proposed by the EU to Advisory Committee of the Human Rights Council. And the Human Rights Council resolution 41/11 “New and emerging digital technologies and human rights” at its forty-first session has been adopted at the early of this year. When the right to privacy is not upheld, digital technologies can be used to infringe on a number of other rights: Freedom of Expression, Association and Assembly, but also social and economic rights. I suppose the UNGPs 10+ will emphasize this issue, especially with regard to the business’s responsibilities.
BHR-UNGP next decade-consultation questions- Yueping GUO

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?

Since the endorsement by the Human Rights Council in 2011, UNGPs and the “Protect, Respect and Remedy” pillars have become a common reference point for all stakeholders and have seen relatively wide uptake by public and private sector actors. UNGPs have provided a tool for governments, businesses, international organizations and civil society organizations etc. to identify the harms, take steps to prevent, and then mitigate or remedy those harms. UNGPs are also critical for the prevention of crisis and the emergence of sustainable and resilient business models.

In terms of governments, national action plans (NAPs) on business and human rights have been promoted as key policy tools for advancing implementation of UNGPs. The UN Working Group on Business and Human Rights has developed guidance for NAP processes, and the International Corporate Accountability Roundtable and the Danish Institute for Human Rights have developed a useful and comprehensive toolkit. As of 13 November 2020, 25 states have published NAPs, at least 17 states are currently developing an inaugural NAP, 5 states have adopted an updated, edited or a second NAP, and at least 5 states that have a NAP are in the process of drafting a second NAP. The principle of human rights due diligence is also reflected in policy frameworks. In the 20 national action plans on business and human rights that have been issued to date, Governments have reaffirmed the expectation that business enterprises in their territories or jurisdictions exercise human rights due diligence.

In terms of private sectors, a small but growing number of large corporations in different sectors have issued policy statements expressing their commitment to respect human rights in line with the UNGPs. Several such enterprises are developing practices that involve ongoing learning and innovation around the various components of human rights due diligence to prevent and address impacts across operations and relationships, including in supply chains. Among companies whose reporting is reviewed in the UNGPs Reporting Database, 43% have a stand-alone human rights policy. This number goes up to about 75% when also counting commitments included in a Code of Conduct. Meanwhile, a growing number of investors are asking business enterprises how they manage their risks to human rights. Also, among business lawyers there is a growing recognition that they should advise corporate clients to exercise human rights due diligence.

In terms of international organizations, organizations including but not limited to OECD, ILO and FIFA are integrating UNGPs into their working frame. The OECD

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Due Diligence Guidance for Responsible Business Conduct has been endorsed by all 48 adhering Governments. Due diligence was also incorporated into the revised Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, of the ILO, and has been reiterated by leaders at the G7 and G20 summits. In the world of sports, human rights due diligence processes have become an integral part of the selection process for future world cups of the FIFA and for host-city contract operational requirements of the Olympic Games.

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

Firstly, the number of countries developed NAPs are limited, while most of them are developed countries in Europe. There are also too few companies committed to respect human rights and most of them are huge companies in Western markets. It shows the uneven development in business and human rights greatly influenced by economic/commercial logic.

Secondly, there is a huge gap between theoretical principles and practices in reality as UNGPs are soft law. Take due diligence as an example, according to human rights benchmarking and rating assessments, the majority of companies covered by the assessments do not demonstrate practices that meet the requirements set by the UNGPs. Furthermore, connections between human rights due diligence and the remediation of actual impacts are not being made in practice. Overall, there are gaps on the implementation of UNGPs between large corporations in Western markets and smaller companies, holding company and subsidiary, as well as different tiers in the supply chain.18

Thirdly, the permissive environment enables business-related human rights abuse to take place without adequate corporate accountability and effective remedy for victims. Due to the lack of hard legislation and incentive structure to regulate the impact of businesses on human rights, most companies are under “first-mover challenge” and under-supported on due diligence.18 And the lack of access to remedy through either judicial or non-judicial measures leaves rights-holders affected by, or vulnerable to, business-related human rights abuse around the world remain at risk.14

The remarks made by Anita Ramasastry, Chairperson of UN Working Group on Business and Human Rights, pointed out the weakness of issued NAPs in terms of both process and content. I would like put it here for your reference.

In terms of process, (1) Lack of robust evidence based gathered via national baseline assessments; (2) Not accounting for existing power imbalances and mistrust, which leads to lack of meaningful participation; (3) Lack of transparency and clear timeline for publication in the drafting processes. Once in place, there is weak governance of NAPs, including lack of adequate frameworks for progressing and monitoring implementation; (4) Weak in terms of actionable steps that State should take; (5) Inside government, ministries in charge do not have sufficient political power to convene key ministries and lack a strong mandate from the highest political level to implement NAP actions internally; (6) Lack of resources and capacity; (7) Lack of continuity when governments transition.

In terms of content, (1) NAPs lack provisions for legal developments and mandatory options to close protection gaps; (2) Overemphasis on voluntary measures such as
awareness-raising, training, research, and promotion of good practice; (3) Insufficient attention to the State as an economic actor, missing the duty and opportunity to embed the Guiding Principles in SOEs, public procurement and export credit, among others; (4) Access to remedy (judicial and non-judicial grievance mechanisms) has been neglected.16

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

It is undeniable that the priority of business enterprises is profits. The protection of human rights might sometimes, if not frequently, in contrast with the interest of companies. The inadequate communication also lead to the insufficient understanding of the risks to human rights, which will lead to the lack of attention to business and human rights issues for both states and companies. Even for states and companies who notice the significance of human rights protection, human rights protection might not be the priority/principle of their agendas, which mean it will easily be neglected once in emergencies, such as economic crisis. Meanwhile, the authorities in charge of human rights in states and companies have limited capacity and effectiveness.

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

- Reverse globalization/closed borders/nationalism
- Unevenness at home and across global value chain
- Rising inequalities
- Continued discrimination towards vulnerable population
- Shrinking civic space and weak rule of law
- Rapid development of new technologies without clear management of the risk to human rights
- Poverty
- Corruption
- Violence and armed conflicts
- Pandemic
- Climate change and ecological emergencies

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?**

- Build the incentive system to connect human rights protection and business profits.
- Promote human rights communication and education to raise the governments’, businesses’ and the public’s awareness.
• Provide capacity building, toolkits and technical supports for both governments and companies on the identification and management of human rights abuses.
• Scale up good business and investor practice to make corporate human rights due diligence part of normal business practice in both domestic and international trades through more comprehensive regulations.
• Promote coordination within the government to enhance the effectiveness of adopting and implementing UNGPs.
• Advocate for more states and companies to commit to human rights protection and effective practice in reality.
• Work more on remedy through judicial and non-judicial measures by developing tools, summarizing and communicating best practices.
• Pay attention to the potential vulnerable population suffering from human rights abuse due to new types of business practices.

The CHRB Core UNGP Indicators can still be a great tool to evaluate the future achievements. Thus, I would like to put it here for reference.

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**Theme B. Embedding respect and Human Rights Due Diligence**

| B.2.1 | HRDD – Identifying: Processes and triggers for identifying human rights risks and impacts |
| B.2.2 | HRDD – Assessing: Assessment of risks and impacts identified (salient risks and key industry risks) |
| B.2.3 | HRDD – Integrating and Acting: Integrating assessment findings internally and taking appropriate action |
| B.2.4 | HRDD – Tracking: Monitoring and evaluating the effectiveness of actions to respond to human rights risks and impacts |
| B.2.5 | HRDD – Reporting: Accounting for how human rights impacts are addressed |

**Theme C. Remedies and Grievance Mechanism**

| C.1 | Grievance channels/mechanisms to receive complaints or concerns from workers |
| C.2 | Grievance channels/mechanism to receive complaints or concerns from external individuals and communities |
| C.7 | Remediating adverse impacts and incorporating lessons learned |

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

No, thank you.
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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?

Progress: since 2011, the UNGPs and the "Protection, Respect and Remedy" pillar have become a common reference for all stakeholders, and its use in public and private sectors is relatively widespread. UNGP provided governments, businesses, international organizations and civil society organizations with a tool to identify hazards, take measures to prevent them, and solutions to mitigate or remedy them. Many countries have adopted a series of political measures on the basis of UNGP to promote respect for human right. In 2012, China pointed out that it is necessary to promote the popularization of corporate human rights knowledge and form a corporate culture that respects and protects corporate human rights. Moreover, in May 2020, BP updated its Human Rights Policy to clarify its human rights commitments and to address emerging human rights issues related to the oil and energy industries.

Promising developments and practices: the state legislative system on corporates’ social responsibility may be the most promising development. UNGP is often regarded as a "soft law." International institutions may need to transform it into “hard law”. For example, BP has been actively promoting the idealization of the Magna Carta of the UN. The company's internal and external counsel would play an active role in implementing UNGP. When the companies face business judgments, lawyers may advise them to respect human rights.

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

There is still a long way to go from making promises to taking measures. Fewer institutions are taking effective steps to put the UNGP into practice. There seems to be a lack of
mechanisms to monitor the implementation of national plans.

Moreover, few Chinese companies have formulated human rights plans. The general ignorance and indifference of Chinese companies to the rule is actually turning into operational risk. The 3rd national human rights action plan also failed to design a systematic and comprehensive plan in the fields of industry, commerce and human rights.

Meanwhile, there is still a permissible environment that allows business-related human rights violations to occur without holding commercial institutions accountable and giving victims effective remedies. The level of public awareness of the impact of business on human rights is still low. In some countries, few people know when their basic rights were violated, let alone taking actions to protect themselves. As a result, the economic and social cost of infringing on consumer rights may be too low for them to understand its nature and reasons and take measures to prevent it from happening.

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

Companies are often profit-driven and human rights issues will not be their top concern. Once a company faces difficulties and must make a difficult choice between profit and ethical obligations, without an effective judicial mechanism, the company may betray its human rights obligations.

Moreover, from the perspective of the government, the relationship between the government, the company and the country's social system may affect the country's support for UNGP within the country. The connection between the government and some Internet companies is always invisible to the public. It is difficult to find evidence that infringement does exist. If the government violates the privacy of phone users and supervise citizens with the help of technology companies, people will have no idea of how to protect them human rights.

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

Nowadays, progress is being made in many places. But in general, actions to achieve the goals have not yet advanced at the required speed or scale. Systemic or structural challenges may still be inseparable from the lack of strong punishment mechanisms for UN Member States. UNGP is responsible for monitoring and implementing the mechanism of UNGP. Countries need to work hard to develop a legal and regulatory environment to help institutions establish an important link between different agencies that compose a comprehensive state-based system to remedy business-related human rights violations. The standard of effectiveness of this mechanism is inadequate. Moreover, countries need to be more aware of the legality and practicality of non-state complaint mechanisms in supplementing domestic laws and regulatory systems.

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?

Whether it is the responsibilities of the government or the enterprises, the economic analysis of corporate human rights protection requires efforts and cooperation of scholars and practitioners. As for academic research, it requires the joint efforts of multiple disciplines, as well as maintaining contact and interaction with the practical world. In addition, we must pay attention to the role of education. The emphasis on human rights protection is a change in people's perceptions, which is a long-term task. Education should be promoted to form a general consensus and promote the international community’s respect for corporate protection of human rights. Moreover, a plan should be formulated and negotiated among countries, in which a mandatory human rights due diligence system with clear standards and requirements should be developed and some basic and common standards may be designed and incorporated.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

No, thank you!

(Xiao Han)
BHR-UNGP next decade-consultation questions- Weikang JIA

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?

During the past 10 years, The UK became the first country to issue the relevant National Action Plan in September 2013, and more than a dozen countries, including the United States, also announced the plan. The United States issued the National Action Plan on Responsible Business Conduct in December 2016.

Relevant departments of the Chinese government and industry associations actively promote overseas investment enterprises to fulfill their social responsibility, and the issuance of corporate social responsibility reports has become standard for many enterprises, especially state-owned enterprises. It is also common for overseas investment enterprises to issue corporate social responsibility reports.

Besides, China began to stipulate trade and labor and environmental provisions in free trade agreements.

In 2016, China issued the National Human Rights Action Plan (2016-2020).

Although there are no special chapters or sections on the industry commerce in this action plan, it puts forward requirements for respect for human rights for China's industrial and commercial enterprises, indicating the expectation of enterprises to fulfill their social responsibilities.

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

Compared with the great influence of Chinese enterprises, their cognitive level and management ability of human rights need to be improved. In comparison to the overall level of global enterprises, Chinese companies are more likely to focus on economic and social power.

From a worldwide point of view, the activity of domestic law enforcement agencies is obviously too low and is limited to a small number of countries, indicating the urgent need to pay attention to law enforcement.

As a result, there is much remaining to be done, particularly concerning domestic law enforcement and prosecution agencies, better interpreting the legal, political and practical challenges, and helping build local law enforcement expertise and capacity.

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

The study found that current programs to prevent, detect and remedy cases of business involving serious human rights violations did not work well: in many cases, victims did not receive effective compensation. The use of remedial mechanisms showed an unequal pattern in countries, and enterprises must operate in an environment with great legal uncertainty and lack of fair competition.

The definition of "scope of application" is different. However, it is the basis and necessary element of normative legal documents, and the prerequisite for the effectiveness of the legal binding force. At the same time, it is also the primary issue that needs to be addressed in the process of industrial and commercial human rights treaties.
Stakeholders cannot declare their positions based on vague treaties, and companies may refuse to accept treaties for fear that vague boundaries of responsibility may lead to "private enforcement of human rights law".

4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?
On August 2, 2015, representatives of the 193 member states of the United Nations agreed on the post-2015 development agenda and issued a document entitled "Transforming our World: The 2030 Agenda for Sustainable Development ". It marks the first time that human society has reached a consensus on the concept of development, which is of great significance.
Sustainable development covers a wide range of issues, which makes enterprises can use this concept to selectively carry out some activities to whitewash their performance in social responsibility, but essentially evade some important responsibilities.
For example, on the one hand, some enterprises infringe upon labor rights and destroy the natural environment; on the other hand, they establish a public image of fulfilling their social responsibilities through charitable donations and community development.
Some standards of sustainable development have neither legal coercive force nor substantial violation consequences.

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?
Under the international institutional framework composed of sovereign states, how enterprises fulfill their responsibility to respect human rights depends to a large extent on the policy orientation of individual countries, especially the host country.
The most important policy orientation is the recognition and promotion of "corporate responsibility to respect human rights" within the policy and legal framework.
Whether countries develop policies or action plans to implement the guiding principles can be taken as an actionable and measurable target.
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?

The most appreciating progress in the UNGP implementation in last decade, is the broader awareness of corporate’s social responsibility, which is not only recognized by the private entities themselves, but also other stakeholders like governors, customers, media, etc. Human right due diligence (HRDD) is the most useful tool that developed in this period, as it provides practical guidelines for those private entities, which’re willing to respect human right and offer concrete efforts. This is the most promising development that can be built on, for it needs improving for a broader application, with more consensus/less critics.

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

Gaps:
1) The number of the entities applying HRDD is still too low.
2) It’s been generally adopted by many leading companies of respective industries, while has been given cold shoulder by other entities with smaller scale.
3) Especially, few participations by Chinese entities render the good mechanism far less than an internationally-practiced mode.

Not work yet:
The goal to protect stakeholders’ right through HRDD instead of a whitewash approach is still hard to achieve. This is mainly because, on the one hand, reputation gains are the most common and original incentive for a company to conduct HRDD, and CSR reports indeed provide a platform for them to display accomplishments; on the other hand, given the limited strength/motivation of a private entity, protecting stakeholders’ rights by HRDD cannot be fulfilled without other coordinating...
measures, such as,
- full access to comprehensive remedies not only complaint/investigating resource provided by the company, which promotes better awareness of the corporates on their negative human rights impacts;
- balance of bargaining power between victims and “abusers”, which helps the victims to obtain concrete indemnifications.

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

Low adoption of HRDD can be affected and resulted by:
- State’s lack of positive engagement, which should be dealt with in priority;
- Corporate’s fewer motivation thus low willingness to conduct HRDD;
- Consumers give more weights to the product/service than the reputation of the corporate.
- Weak power and voice of civil societies, indicating weak supervisor on corporates for their business performance, and less bargain power for victims;
- Insufficient access to remedy for business human right abuse,

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

The government’s engagement needs improving. Though the rules in BHR are mainly soft laws, states still play an import role in, including
- developing rules, policies, standards and guidelines for human right compliance;
- rising out for providing remedy;
- optimizing company’s HRDD practice
- promoting public awareness and concerns to business human right practice, etc.

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? Positive engagements of states are most needed! States can contribute more to accomplish the expectation of UNGPs, in addition to developing enforceable laws and regulations, they still have a lot to do by, for example,
- inserting HRDD into government procurement system, as this system covers much amount of transactions; giving more credits to compliant corporates when considering government procurement contractor list;
- integrating HRDD result/report with social credit system, giving credit/punishment for company’s human right compliance/non-compliance (btw, China is in the way building a nationwide credit-based administration mechanism, which is correlated with the ancient Chinese philology governing by virtue);
- encouraging human right compliance certificate, providing guiding principles and recommended industry standards

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

If we look into top 20 of Chinese companies of fortune China 500,\(^\text{20}\) we will find that

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\(^{20}\) See list of 2020 Fortune 500 China, Fortune Chinese Website: fortunechina.com.
those leading companies are conscious about their social responsibility, and demonstrate their relevant commitments, while little conducted HRDD. Those state-owned companies are much appealing the call for social responsibility, and demonstrate their commitments derived from their business. Their demonstrations or relevant report are quite accessible in their website. When looking into Code of Conducts of, like Pingan, JD, Alibaba, and other private-owned heads in top 20, it’s noteworthy that, though not referring to the term “human right”, they are caring about business ethics like fair trade, anti-commercial bribery, employee welfare, trying to act of reliable appearance. Their reports, no matter the stated-owned or private owned entities, are more about positive impacts/contribution to the society than disclosure their previous, existed or potential negative impacts they assessed.

\[21\] For example, see Sinopec demonstration at 可持续发展治理架构尊重人权(sinopec.com); see Petrochina reports at 可持续发展报告(petrochina.com.cn); see CCB report at 企业社会责任报告_今日建行_建设银行(cbb.com).
BHR-UNGP next decade-consultation questions- Chunsu LIANG

Next Decade 10+

Business and human rights - towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

- The UNGPs creates the first universally accepted global framework on business and human rights and “Protect, Respect and Remedy” Framework.[1]
- Following the Commission’s initiative, a number of member states developed National Action Plans prior to the UN Working Group publishing its official NAP guidance. The majority of member states have furthermore published NAPs on CSR that also refer to human rights.
- UNGP has promoted BHR to transcend the field of the relationship between the state and individuals and the normative norms of positive law in policy definition and practical application, and has developed into a value principle that governs and judges social actors including enterprises and other private law subjects.

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

- The rights of women workers still need to be promoted.
  Women occupy a large proportion of these jobs and constitute the majority of workers in some industries, such as the garment and food processing industries. But in global value chains, gender discrimination is still endemic in GVCs. And women are always low-cost labour in the more insecure and less protected jobs with low pay and poor conditions. [2]
- The rights of people lack of physical ability still needs to be promoted
  For a variety of reasons, the disabled are still the most unfairly-treated group in the employment field. Even the disabled with high educational background usually encounter the difficult employment situation. At present, employment has not been taken as a matter of course to protect the people's livelihood and social rights of the disabled. Most people
still treat the employment of the disabled with charity and special treatment. Under the guidance of this habitual thinking, the employment of the disabled is more regarded as a welfare issue for the disabled. In practice, it is rarely considered as a specific social group to consider the disabled as a whole, and the employers' enthusiasm to employ the disabled is also insufficient.

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

- Reasonable mechanisms are needed to urge countries to perfect the legislative protection. It is necessary to monitor that each country needs to clearly stipulate the standards of infringement of human rights by industry and Commerce in the law, so as to make clear the distinction between legitimate and unjustifiable discrimination, protect the legitimate rights and interests of victims, and clarify legal responsibilities.
- Reasonable mechanisms are needed to urge countries to propose litigation mechanism of public welfare. It is necessary to monitor that each country establish the relief mechanism of constitutional litigation and propose litigation mechanism of public welfare, so that victims can protect their rights and interests through litigation.
- Reasonable mechanisms are needed to urge countries to strengthen judicial protection. It is necessary to monitor that each country has set up supervision organization and supervision department, to ensure the employment rights and interests of workers. Not just through labor unions, because in socialist countries, trade unions are basically useless.

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

- The management of multinational enterprises needs to be improved. The impact of transnational enterprises on business and industrial human rights is no longer limited to a country. Enterprises all over the world have brought local economic growth, employment opportunities and technology transfer. At the same time, due to the improper business behaviors and business relations of some enterprises, the rights of local employees and community residents may be negatively affected.
- The cognitive level and management ability of enterprises on human rights need to be improved. In addition to the right to development, compared with the overall level of transnational enterprises, some domestic enterprises tend to know less about human rights, and generally have a lower level of understanding. In addition, among non labor rights, developing countries, such as Chinese enterprises, tend to recognize economic and social 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?

NGOs should strengthen supervision through the following three ways:
- First, submit proposals for supervision. That is to say, non-governmental organizations
report the situation to the representatives or members of the state authority, and submit motions through the representatives and members to supervise the government's actions.

- Second, legal supervision. That is, to supervise the illegal actions of the government through litigation.

- Third, to guide public opinion to supervise. That is, through newspapers, radio, television, network and other media to reflect the situation and carry out supervision. The fourth is to directly put forward administrative reconsideration to the government, asking the government to re-examine its own behavior, and correct it if it is wrong, so as to supervise.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

Many enterprises have some limitations in their understanding of corporate social responsibility. In Chinese government documents, corporate social responsibility is also defined as operating in accordance with the law, improving sustainable profitability, improving the quality of products and services, saving resources and protecting the environment, independent innovation and technological progress, strict protection of production safety, safeguarding the legitimate rights and interests of employees, and participating in social public welfare undertakings. However, the international understanding of corporate social responsibility is different from these contents. It is urgent to strengthen the education of enterprises and unify the standards of enterprises in different countries and regions.

Reference:
BHR-UNGP next decade-consultation questions- Jiamu LIN

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

UNGP}s provide us with a set of comprehensive guidelines in the field of business and human rights, and have made clear explanations on many major issues. What are our expectations of the country? What are our expectations of enterprises? When human rights are affected by industry and commerce, how can victims protect their own interests? In response to these important issues, UNGPs put forward three core principles: First, the country’s existing obligation is to respect and protect the basic human rights and freedoms enjoyed by citizens; second, companies as an organization that performs professional functions in the division of labor in society, it must abide by all laws to protect human rights. Third, there is an urgent need to formulate effective remedies that are compatible with the law and can be applied when human rights are violated.

Promising developments and practices may be accomplished in this way. First, the enterprise. Companies should not infringe on anyone’s basic rights in their business operations, they should stop the ongoing human rights violations, and take preventive and remedial measures to deal with the impacts that have been caused in their business activities; Second, supply chain. A large number of industries outsource production to developing countries where labor costs are low. Today's multinational companies have very long supply chains, and their contractors are all over the world. In the guiding principles, multinational companies provide for their supply. If the buyer’s company is alleged to be “directly” deeply related to a human rights violation in the supply chain, then the buyer is obliged to take relevant measures. This means that the buyer’s company should follow the principle of due diligence to prevent the harm from occurring, and require secondary contractor correct the current behavior, not that the buyer is obliged to compensate the victim. Third, the country. This includes both the state's obligations as a company owner (for state-owned enterprises) and the state's obligations as members of intergovernmental organizations. For example, when they
establish intergovernmental agreements on trade, investment, and development, human rights should be taken into consideration.

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

The gaps and challenges are mainly reflected in the following aspects, which have not worked to date either.

First, the lack of remedies. Because cross-over companies often develop their business activities in multiple countries, the establishment of foreign subsidiaries or branches is very extensive. However, because the investee country is often a developing country and the rule of law system is not sound, the extraterritorial obligations of multinational companies have not been established in the investee country. UNGPs did not make recommendations on how to control and remedy transnational business activities that cause or contribute to human rights violations in other countries to ensure that companies under their jurisdiction do not contribute to domestic or foreign human rights violations.

Second, the efficiency of international law enforcement is low. UNGPs lack a strong and effective judicial mechanism or fail to provide companies to ensure that stakeholders obtain proper relief, which is essentially due to UNGPs’ lack of mandatory binding effect in international law. Therefore, even if the country has formulated the "Human Rights Action Plan", it is difficult to implement this advocacy policy in the country through law enforcement and justice, and the company's punishment mechanism has not been established. This makes the implementation effectiveness of the Guiding Principles difficult to achieve expectations.

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

Key obstacles may be that the expressions of human rights protection are scattered in international law and are not taken seriously, and their coercive and enforcement power is limited. The drivers and priorities are to further emphasize and promote the relevant parts of business and human rights in international law. On the basis of the Universal Declaration of Human Rights, the international human rights conventions stipulate that human rights are not violated by any party, including company protection. The states’ obligation to protect human rights from violations is clear. For example, the substantive provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights all provide for specific rights. For example, the right to work stipulated in the International Covenant on Economic, Social and Cultural Rights (Article 6) Article), the right to enjoy social security (Article 9); freedom of marriage, family rights, and women’s and children’s rights (Article 10), and the right to life (Article 6) and opposition to coercion in the International Covenant on Civil and Political Rights Labor (Article 8) and other regulations, etc.
4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

The systemic or structural challenge may still be inseparable from the lack of a powerful punishment mechanism for member states of the United Nations. Since UNGPs are responsible for the monitoring and implementation mechanism of UNGPs, even if the UN regional working group recognizes the huge impact of multinational corporations and other enterprises on human rights, when solving these problems, the UN calls on them to be human rights in a way that is independent of the state. The work of the UN Working Group is an advocacy based on a voluntary basis and lacks a more effective implementation mechanism to help it promote the implementation of UNGPs. A common example is that in less developed countries, due to weak legal frameworks, weak law enforcement, low transparency, and poor accountability, voluntary commitments to human rights protection, including countries and enterprises, hardly exist.

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?

On the one hand, human rights due diligence is regarded as a regulatory compliance requirement, and direct legal obligations are formed by formulating rules, or indirect obligations are formed by giving human rights conscientious companies the opportunity to avoid criminal, civil or administrative charges. For example, courts use human rights due diligence as the standard to assess whether corporate actions comply with relevant environmental, labor, consumer protection, and anti-corruption laws. First, the state may impose criminal responsibility for companies' failure to fulfill their human rights responsibilities to prevent certain crimes. This includes areas of criminal law directly related to human rights protection, such as violent crimes and environmental crimes that may threaten the right to life and health. In a legal system that recognizes the criminal liability of legal persons, companies should be responsible for the actions of their employees and agents and accept prosecution, conviction, or other sanctions, unless the company can prove that it has implemented effective human rights due diligence measures to prevent the above behaviors. Secondly, the legal systems of most countries provide for actions that cause personal injury or damage to enterprises, including civil liability for actions that fail to perform human rights due diligence for these damages to the organization. This requires responsible enterprises to establish relevant procedures for all violations of human rights. Actively defend against the behaviors to ensure effective prevention of these hazards.

On the other hand, it encourages and rewards corporate human rights due diligence practices. All countries supervise the licensing of commercial activities or other forms of government approval processes. These processes often require or encourage companies to implement human rights due diligence and use this as the basis for government licensing of certain designated activities. In order to make enterprises eligible to obtain export credits, labeling schemes or other forms of government support, the government often
requires enterprises to fulfill their human rights due diligence in terms of environmental and social risks. For example, in the process of granting licenses or conducting project approvals, the government may require companies to carry out a series of human rights due diligence activities, and submitting these human rights due diligence certificates may be one of the conditions for obtaining relevant government approval.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

More cultural differences should be included in the consideration of human rights protection. For a company that wants to implement a unified value of respect for human rights in its global operations, local cultural variation is one of the most difficult problems it faces. Values vary greatly between departments within an enterprise, and between enterprises within a region. At the same time, there are also differences between regions and countries. The driving factors for this variability include tradition, Markets, regions and corporate culture, etc. The debate about cultural relativism and the universality of human rights is not new. This issue was discussed a lot at the time of the Universal Declaration of Human Rights, and it aroused heated discussion again at the United Nations World Conference on Human Rights in Vienna in 1998. In this history, like Saudi Arabia and some Asian countries, they believe that the definition of human rights should be changed according to the region where they are applied, while most other countries believe that cultural relativism is contrary to the universality of human rights. The "Vienna Declaration" at the end of the conference stated: "The country has the responsibility to promote and protect all human rights and fundamental freedoms, regardless of its political, economic and cultural systems." This means that companies should be under the condition that human rights and fundamental freedoms are not really affected. Reasonable changes are allowed, but when it comes to these rights and freedoms, every effort should be made to maintain a consistent global high standard. This requires companies to exceed the requirements of local laws when local laws require them to be lower than international human rights standards. In fact, in order to overcome this attitude of "us to them", the challenge of cultural diversity poses a challenge for companies to actively understand and appreciate local values in a wide range.

Actively resolve human rights issues at the junction of the external world and the local area, especially through dialogue and creative solutions while respecting and protecting fundamental rights; understanding and attaching equal importance to human rights achievements and challenges; emphasizing that all regions may have human rights issues; Through clear explanations of specific benefits, human rights exchanges can be made practical; local cultural knowledge can be displayed and cultivated. Meeting these challenges is not easy. For example, Shell’s experience gained from the implementation of the Danish human rights compliance assessment tool found that sometimes due to the politicized nature of human rights, talking to employees about “human rights” may have negative consequences for them. Some suggestions may not be suitable for local reality, or the residents of the country do not like to be told that they lack human rights.

Reference
1. U.N. Sub-Commission on the Promotion and Protection of Human Rights, "Norms on
Business and human rights – towards a decade of global implementation

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?

i. Coverage Expansion

Through the last decade’s effort by civil society organizations, companies and governments, the conversation and debate over business and human rights have reached beyond a limited group of western business. Geographically, the relationship between business and human rights is an emerging issue in developing countries where both the government and civil society have taken the issue more seriously. At the meantime, the Guiding Principles has drawn attention from a variety of enterprises. This not only includes companies, but also includes institutional investors such as some government procurement offices and international institutions like FIFA (Fédération Internationale de Football Association). A growing number of stakeholders are coming to realize that their investment and activities could have a profound human right implication and are recognizing their responsibilities.

ii. Increased Level of Transparency

Corporates’ impact on human rights can no longer be covered up since nowadays new communication technologies allow information to travel fast across boarder. This pushes corporates, especially those with large scope international business, to make real endeavors on meaningful communication and transparency instead of merely utilizing public relation tactics. Leading companies, such as Microsoft, Unilever, Nestlé, and H&M, are now actively producing insightful reports and communications on their own human rights challenges and their progress on solving the issues. This progress is extremely meaningful as corporate engagement is at the core of promoting rightsensitive business.

iii. Emerging Public Financing Tools

Business activities and corporate decisions are largely driven by investment. Thus, public finance institutions (“public investors”) can play a vital role in promoting human rights concerns into companies’ own agenda. In fact, over the past decade, public financing tools have been increasingly
leverage business and human rights. National finance development institutions, export credit agencies, and multilateral development banks have been applying risk management tools to address environmental and social issues related to their investment and now, they are seeking to expand and further refine their standards and guidelines to meet the evolving expectations of human rights due diligence.

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

i. **Government Commitments**
   
   The implementation of the UNGPs requires that each country develop their own National Action Plans (NAPs) on business and human rights as a roadmap to achieve the goals and standards set up in the UNGP. However, the progress so far is not very optimistic. There are 24 states, disproportionately concentrated in Europe, that have already produced a NAP and 23 more that are in the process. Despite the limited number and coverage of NAPs, their level of ambition is also relatively conservative. There is a lack of awareness that the NAPs should serve as a roadmap towards the future consisting of meaningful government commitments, rather than descriptive summaries of existing policies and legal provisions. Instead of a burden, governments should view the implementation of the UNGP as an opportunity to build cooperation with both its private sector and the civil society and form joint efforts to overcome social challenges, such as poverty, discrimination, sustainable development, etc.

ii. **Grievance Mechanism and Remediation**
   
   The access to effective remedy is an essential pillar of the UNGPs. However, nowadays remediation lacks the necessary level of attention and ambition. As an aspect of business and human rights that relies solely on the government for its implementation, legal remediation are rarely defined in the current NAPs. Gaps exist in adopting existing grievance mechanism to the need of human rights protections.

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

i. **Data Collection and Disaggregated Data**
   
   While promoting higher level of transparency in corporate reporting and disclosure, it is also important to recognize the necessity of multi-sourced evidence. This requires quality data collection by the authority as well as third party organization. Currently, it remains a challenge to use quantitative evidence as the base for assessment and evaluation of the human rights protection progress and for determining underestimated risks. Meanwhile, for the purpose of “no one left behind”, it is essential to collect and use disaggregated data that reveals the gaps among different groups and communities.

ii. **Translating UNGPs into Detailed Tools**
   
   One of the priorities for implementation is to translate the UNGPs into detailed actions, tools, platforms, and guidance for business in specific
iii. Rise Human Rights on the Strategical Level for Business

For large international corporates, human rights concerns have long been on their risk management and compliance checklist. However, for the purpose of implementing the UNGPs, this is far from enough. Expectation is that corporate awareness and action on human rights be pushed on the level of corporate strategy, purposes, and goals. For corporates, this means involving more resources and taking more proactive approaches to recognize and tackle human rights challenges.

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

Human rights are largely driven by the public sector, especially international organizations and non-governmental organizations. The challenge for now is to shift this dynamic and have business themselves become the number one promoter of business responsibilities and human rights due diligence. Leading companies are just realizing that human rights are the foundation of a healthy society and sustainable business, while most other smaller companies are still struggling with short term profit loss from taking on more responsibility. To realize sustainable development based on respect for human rights, corporates needs not only to be pushed by third party organizations or the authority, but also to be mobilized by incentives that relates to business success, for instance, healthier corporate-community relationship, improved consumer/customer relation, better access to local resources and labor, etc.

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?

What will be needed:

In order to achieve meaningful progress with regard to the obstacles and priorities above, the followings will be needed:

i. Sector and Context Specific Guidelines and Principles;

While all businesses have the responsibility to respect internationally recognized human rights, it is the industry/sector and operation context of a corporate that determines its specific challenges and responsibilities. Thus, instead of promoting general guidelines, sector and context specific principles are also of vital importance in supporting business to properly and efficiently respond to the real-world demand.

ii. Knowledge on the Implications of Corporate Ownership and Structure;

It is now widely accepted that corporates are an essential type of stakeholder in international human rights protection. However, there lacks a deeper dive in terms of how different forms of corporate ownership and organizational structure influence corporates’ human rights risks and responds. The attribution of responsibility can vary significantly among businesses that are publicly listed, privately owned, State-owned, joint ventures or hybrid form of ownership. Current management system for human rights due diligence needs to be better informed by projects’ specific geographical and sectoral
context. Meanwhile, the structure of an enterprise affects how it responds to human rights challenges, for example, through their contractual arrangements, internal management systems, governance or accountability structures. These differences need to be better recognized and understood for the purpose of more efficient corporate engagement.

**Actionable and measurable targets for:**

- **Governments:**
  - Thorough, consultative and efficient national baseline assessment;
  - NAP on business and human rights that contains specific, future-oriented commitments, timelines and allocated responsibilities and resources;
  - Clear guidance for business on human rights due diligence and progress reporting in accordance with the UNGPs;
  - Operational guidelines on safeguarding and developing institutional mechanisms that provide access to remedy for the business-related human rights abuses victims;

- **Business:**
  - Transparent publication of corporate human right influence, challenges, and the action plan and progress on solving the issues;
  - Corporate guidelines that regulates business activities and employee behaviors in accordance with the principles and provisions of the UNGPs;
  - Internal trainings on human rights issues under the sectoral and geographical context of a corporate;
  - Independent monitoring: third party assessment on corporate performance regarding due diligence in accordance with the UNGPs.

6. **Is there other information relevant to the UNGPs 10+ project that you’d like to share?**

While technology is a double-edged sword for human rights protection, it is large corporate that determines how it is transferred into mass market and how it is used to make profit as well as to change people’s lives. Without doubt, companies would need guidelines on how to align their technology roadmaps with their responsibility over human rights. I think this could be an interesting angle for future research and conversation on the UNGPs.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

(1) UNGPs have become the core of the rule system for solving the issues of business social responsibility in the form of soft law. In 2015, the United Nations Sustainable Development Goals (UNSDGs) referred to the guiding principles; the 2015 FIFA (FIFA) requirements for major events such as the World Cup also involved the guiding principles; in 2015, the EU trade policy also referred to the guiding principles to make.

(2) The UNGPs are referenced or adopted by many intergovernmental organizations (including OECD, European Union, World Bank, International Organization for Standardization).

(3) The UNGPs encouraged states to adopt complex regulations to encourage companies to respect human rights. For example, prior to 2011, the regulations on business social responsibility were based on a voluntary basis. The EU evaded related matters in its legislation, and also gave up passing new regulations to make European multinational companies responsible for their actions in developing countries. After 2011, the situation has changed. EU began to pay more attention to specific issues of industry, commerce and human rights in its legislation. In 2014, the new regulation is that the reports of business social responsibility of European multinational companies have become a mandatory requirement. In 2014, the new European Government Procurement Act required governments to take human rights into consideration when ordered.

(4) The UNGPs solved the issue of whether multinational companies should be responsible to their suppliers. The responsibility of the multinational company for the supply chain is to prevent the harm from happening based on the principle of due diligence,
and to require the subcontractor to correct its misconduct rather than compensate the victims. That is, multinational companies need to make efforts, rather than have to have substantial results.

(5) The UNGPs promoted the formation of a treaty in the field of business and human rights: a convention on business and human rights is being negotiated.

2. Where do gaps and challenges remain? What has not worked to date?
(1) There are too many responsible subjects (including home countries, intergovernmental organizations, international non-governmental organizations, multinational companies, host countries, etc.), and what responsibilities they should assume in the stages of prevention, implementation, supervision, and relief still need to be further clarified.

(2) The newly emerging multinational companies have not yet strengthened their understanding of business and human rights, which is reflected in lack of awareness of human rights protection, and lack of understanding of international human rights protection norms and standards and norms and standards of host countries.

(3) Insufficient public awareness of the guiding principles, which means insufficient social supervision.


3. What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?
(1) Pluralistic subject should learn more about these aspects:
   A: Insufficient public awareness of the guiding principles means insufficient social supervision.
   B: Multinational companies pay insufficient attention to and study the laws of the host country.
   C: Multinational companies have insufficient understanding of the importance of NGO cooperation.

(2) Cooperation:
   Diverse subjects should cooperate to solve problems, with special emphasis on cooperation between non-governmental organizations and multinational companies.

(3) The problem of linking the guiding principles with the norms of specific countries (including home country and host country) is actually the process by which the UNWG understand national norms and the countries understand the guiding principles.
4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

(1) Diversed methods to solve this issue:
A: Domestic laws and industry strength in the home country.
B: The power of the host country and the host country should be supported.
C: Constraints of international law—the formation of uniform rules, such as a treaty. Social restraint mechanism.

(2) Cooperation between NGOs and multinational companies:
A: The formulation and supervision of external standards. Non-governmental organizations participate in the formulation of external supervision guidelines. Multinational companies accept external supervision and accountability of non-governmental organizations, providing effective feedback.
B: Establishing cooperative projects. Multinational companies and NGOs cooperate to establish projects related to human rights protection within the company or in the community. The multinational companies provide material information and the NGOs are responsible for the preparation. NGOs help multinational companies understand the needs of stakeholders in the host country.
C: Writing research and reports. When a multinational company promotes overseas business or writes a human rights report, a government organization can act as a third party to conduct research on stakeholders to obtain data and information, or when the multinational company violates human rights, the NGO accepts the commission of the multinational company to investigate.

(3) Remedies for corporate human rights violations: international, domestic, judicial, public opinion, remedy/compensation, etc.

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?

(1) A bottom line:
The status of human rights protection in different countries is different, and the requirements for human rights protection of multinational companies entering the country are also different. The bottom line of human rights protection for a multinational company should be required.

(2) For different subjects:
Home country:
Relying on the domestic laws and industry strength of the home country. The role of the law in prevention, investigation, relief, etc.; the home country's industry has reached consensus and rules on corporate social responsibility (of course, including the field of human rights); the home country has helped multinational companies understand and put into practice by formulating and implementing industry guidelines and standards, etc.; The home country government attaches great importance to promoting their multinational companies to pay attention to their impact on human rights.
Host country:
Relying on the regulations of the host country to solve relevant issues, especially the lack of strength of host countries, different host countries have different standards for judging the violation of human rights, the host country dare not set too high human rights standards due to the need for foreign investment.

International Law:
Relying on international law to directly regulate, or indirectly restricting multinational companies by restricting their home countries.

Social restraint mechanisms:
Rely on social restraint mechanisms to regulate the conduct of multinational companies. For example: the formation of enterprise industry codes of production (a written self-restraint norm for the production and operation process); strengthening the supervision of international non-governmental organizations and forming a social restraint mechanism.

(4) Business reports, industry reports, and NGO reports. (The detailed content and specific standards of the report are still under consideration)

6.Is there other information relevant to the UNGPs 10+ project that you'd like to share? No, thanks.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
*Please include links to relevant publications and materials, wherever relevant*

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?

When UNGP was implemented, the three basic pillars defined the scope of responsibility of the state and company, basic principles, and the responsibility of the state and company to protect human rights. Correspondingly, UNGP also stipulates that the breach of the above obligations will bear corresponding responsibilities. In my opinion, the most important contribution of UNGP is the establishment of a unified judgment system for the protection of global industry and commerce and human rights. This way of judging will subtly draw companies from various countries into the competition for the level of human rights protection, and invisibly encourage various subjects to accelerate the reform of protecting human rights.

It can be seen that many leading international brand companies have begun to establish basic standards for companies (including their overseas branches) to protect human rights that producers must comply with. Regardless of whether it is a developing or developed country, an emerging industrial and commercial entity tends to ignore the care of human rights in the early stage. This is often something that the country and the international community cannot solve. However, since the UNGP's action plan, many companies have established the protection of human rights as an indicator of their company's performance. Even in many business schools, the protection of human rights has become an important issue of "business ethics". It can be seen that in the future, a wider range of industries and countries will join the ranks of automatic producers to protect human rights.

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

The three pillars set by UNGP are an expectation of conscientious industrial and
commercial production. There will be unavoidable loopholes and defects in anticipation. Among the three pillars, the company and the country are included in the main body of responsibility to protect human rights. This is a static protection. I think UNGP can do more, provided that it is a different way of thinking. Specifically, American economists have already put forward a theory in this area-Coase Theorem. Under the three pillars set by UNGP, every producer has to fulfill a certain responsibility to protect human rights, but this ignores that producers always tend to cooperate and even merge. Enterprises may be able to strictly adhere to these three principles, but they may not cooperate appropriately to protect human rights. UNGP needs to conduct research with more economists in an attempt to discover how the externalities of protecting human rights in production as a cost affect the goal of corporate profitability. If the level of human rights protection can be improved through cooperation and mergers, this will realize the goals set by UNGP from a whole new dimension. This is a dynamic protection, not a static one.

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

The three principles established by UNGP are targeted at countries and companies. Of course, if some of UNGP's expectations are not fulfilled, the above subjects are of course the obstacles of UNGP. However, before we can figure out what UNGP will do next, we must see why they are obstacles to our goals.

Take a company as an example. Perhaps business decision-makers (such as the board of directors, managers) will require a good working environment to protect the basic human rights of workers. However, if there is a trend of "sacrifice oneself in exchange for success in business" among enterprises, workers themselves will also give up their healthy lives. Take investment banks as an example. Many workers regard promotion and salary increases as their "life ideals". They are willing to accept huge workloads and their living standards are even lower than other labor production industries (for example: miners). On this basis, even if the company has established strict human rights protection standards, the workers are willing to sacrifice.

I think that in this context, this kind of "sacrifice yourself" is the biggest obstacle to UNGP.

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

We must admit that in many developed countries, they will transfer their domestic enterprises to foreign countries for production because of the consideration of reducing costs. Take China in the 1970s as an example. Many Japanese and American companies have indeed reduced their labor costs significantly. As China has increased its protection of industrial and commercial human rights, these companies have targeted other countries with lower labor costs, and the industrial chain has shifted again. We will find that low-cost manpower is the driving force for industrial transfer. At the same time, UNGP's goal is also difficult to achieve in countries with lower manpower costs. Therefore, we must think about how to protect human rights from the perspective of industrial transfer.
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?

I believe that companies should be required to strengthen the protection of human rights by upstream companies in the production process. Of course, this is more like a problem that the WTO should deal with. For example, a Taiwanese printer shop has every right to ask a manufacturer from Vietnam to increase the average hourly wage of workers when producing parts. Otherwise, this Taiwanese downstream company will have the right to fine it, thereby forcing those who accept the industry. The transferred regions will improve the standard of protection of human rights. For manufactures, cost and price is the only key to solve those obstacles.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

I believe that the emphasis on the protection of human rights does not only appear when a country's economy is developing rapidly (usually in peacetime), but human rights protection should be emphasized during wars, epidemics, and coups (because human rights are often the most vulnerable to violations).

Workers’ living areas include factories, families, medical treatment, and transportation. In times of insecurity, even if the factory does not stop work, the human rights of workers are often violated when commuting, seeking medical treatment, or even living at home. Taking this year’s global epidemic as an example, many workers have to go to work when they cannot buy enough virus protection equipment (they know that the consequences of not going to work will be worse). For example, at the beginning of the epidemic, many houses in Beijing prohibited workers from outside the country from entering indoors because they were worried that they would spread the disease, but their company still required them to continue working.

UNGP is not only a basis for international standards, but also strict protection of workers' human rights. The standards can be formulated to be very complete, so that more countries can carry out comprehensive human rights protection.
BHR-UNGP next decade-consultation questions- Wenjing MENG

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

   The UNGP has progressed significantly in the last decade in many ways, for example it launched "Protect, Respect and Remedy" framework on human rights which is the first set of global standards for preventing and addressing the risk of adverse impacts on human rights associated with business activities. It proposed a collaborative governance comprising three core principles: the state duty to protect against human rights abuses by third parties, including business activities; the corporate responsibility to respect human rights; and the need for effective access to remedies for human rights abuses. In terms of the promising developments taken by the government, in many countries, the human rights issues have been recognized by the local government in the business context such as the launch of National Action Plan on Corporate Social Responsibility (CSR) that has been prevalently adopted by businesses as a self-regulatory management tool in response to people’s growing awareness and attention about human rights issues in the context of business.

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

   Although we can see a significant progress, the gaps and challenges remain in different Perspectives as followings:

   From the government perspective, there is lack of monitor and evaluation mechanism for the implementation and the results of conducting such actions in many countries especially in some developing countries.

   From the corporate perspective, CSR is playing a role of marketing for the company to build its reputation on the market rather than protecting human rights or environment seriously.
From the social development perspective, people are not fully aware of such actions and the human rights should be considered and protected in business activities in society. With such low awareness in society, it will take a very long journey to develop the UNGPs in different countries.

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

The key visible obstacle to achieve fuller realization of the UNGPs is the lack of monitor and evaluation mechanism for it and the means to link the consequences to the business outcomes and the hidden obstacle is the nature of profit driven for all types of businesses. We shall try to drive the balance between the business benefits and human rights and measure how the human rights protection will be able to benefit the business development so that UNGPs can be widely accepted and implemented. The priority is to raise the awareness in the society and make people understand it.

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

From the government perspective, there is lack of monitor and evaluation mechanism for the implementation and the results of conducting such actions in many countries especially in some developing countries.

From the corporate perspective, CSR is playing a role of marketing for the company to build its reputation on the market rather than protecting human rights or environment seriously.

From the social development perspective, people are not fully aware of such actions and the human rights should be considered and protected in business activities in society. With such low awareness in society, it will take a very long journey to develop the UNGPs in different countries.

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?

From country level, the government should encourage the research and study on measurement and links between the benefits of human protection and business activities and launch more clear rules and regulations for implementation.

From society level, we should better promote the UNGPs and make more people aware of it and understand how the UNGPs can benefit and protect their rights.

The corporates and business owners will follow and respond to the UNGPs actively once they can see it brings benefits and saving costs for their business so it is again very important to prioritize the measurement how we can link up both business benefits and human rights.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

None.
BHR-UNGP next decade-consultation questions- Shuaishuai NIU

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

a. The development of National Action Plan on Business and Human Rights
Many states have developed its own National Action Plan on Business and Human Rights. By 2020, 24 countries, including UK, Sweden, Norway, Colombia, Poland, Kenya, Thailand, Japan, etc. have produced a national action plan. Two countries, Georgia and South Korea have included a Business and Human Rights chapter in their Human Rights national action plan; 23 countries, including, Argentina, Australia, Azerbaijan, Greece, India, Jordan, Latvia, Mauritius, Mozambique, Peru, Ukraine, Zambia are in the process of developing a national action plan or have committed to developing one. And in Ghana, Kazakhstan, Nigeria, South Africa, Tanzania, and the Philippines either the NHRI or civil society have begun steps in the development of a national action plan.

b. Legislation on Business and Human Rights Due Diligence
On April 29, 2020, the European Commissioner for Justice, Didier Reynders, announced that the European Union plans to develop a legislative proposal by 2021 requiring businesses to carry out due diligence in relation to the potential human rights and environmental impacts of their operations and supply chains. He indicated that the proposal would be ‘cross-sectoral’ and considered that a "possible combination of state supervision and civil liability in case of breaches” could be incorporated. Draft legislation is expected to be tabled by the Commission in early 2021.

The German Federal Minister for Labour and Social Affairs, Hubertus Heil, endorsed the Commission's commitment indicating that Germany would push for commitments from the Council of the EU Ministers in support of the initiative before the end of the six-month German Presidency in 2021.
France enacted the Duty of Vigilance Law in 2017 that mandates large French companies to publish and implement a vigilance plan in order to identify and prevent human rights risks linked to their activities. Finland incorporates HRDD in their official program. Similar national HRDD laws or EU laws are welcomed among Belgium, UK, Switzerland, Sweden, Italy and may others.

c. Business and Human Rights Convention (Zero Draft Treaty)
In July 2018, Eudora's Ambassador released the ‘Zero Draft’, paved a path towards an international treaty on business and human rights. Its key focus includes the issue of access to justice and remedy for those who allege harm by a business enterprise. This draft addresses conduct of transnational corporations and business enterprises that have "transnational activities."
In 2019 the Revised Draft is published and in August 2020, the Second Revised Draft is published and was discussed during the sixth session of the IGWG held in October 2020.

d. Corporate Policy on Human Rights

According to the result of the 2020 Corporate Human Rights Benchmark, a number of companies are meeting the fundamental expectations of the United Nations Guiding Principles on Business and Human Rights (UNGPs), with strong commitments and rigorous procedures in place. Companies with good human rights policy ranked by Business and Human Rights Center include BHP Billiton, Marks & Spencer Group, Rio Tinto, Nestle, Adidas, Unilever, Total, Hennes & Mauritz, Kellogg, and Anglo American. For instance, Adidas took an active approach to eliminate forced labour from its supply chain. It installed stricter recruitment requirements. It has launched campaign against modern day slavery, assessing potential abuses from where materials such as rubber, cotton and leather are sourced. Unilever was one of a handful of companies cited for aggressive tracking of human rights risks; Nestlé stood out for monitoring and tracking such abuses. Mars & Spender was praised for implementing explicit policies that prohibit retaliation against anyone who files a human rights-related complaint against the company or one of its suppliers.

Years ago, companies active in the business and human rights debate were mostly large Western extractives, brands and retailers. Today, the conversation has moved far beyond those groups and into business to business relationships. Moreover, different kinds of “enterprises” understand that the Guiding Principles speak to them as well. Institutional investors are recognizing that they themselves are exposed where they invest in companies that have severe human rights impacts.

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

a. States’ Lack of Political Will to Enforce

The Guiding Principles call for the development of public and private grievance mechanisms for victims of human rights harms, but this is an area that has not yet been sufficiently addressed. Five years after the UNGPs’ global endorsement, the EU and its Member States are far from complying with their obligation to guarantee victims judicial remedies. Individuals and communities face numerous legal and practical obstacles, including limitations on admissibility, restrictive rules on the disclosure of evidence, standards of burden of proof, lack of corporate liability standards, costs of litigation, etc. This situation leads to a practical denial of the victims’ right to access to justice and to the impunity of human rights abuses and crimes committed by European companies worldwide.

Finally, translating a concept like “respect for human rights” into effective and credible management plans is a difficult challenge even for those companies that are deeply committed to the exercise. There is no one-size-fits-all approach and the nature and complexity of a company’s human rights impacts may vary widely depending on the company’s size and sector, as well as the locations of its business operations.

b. Companies’ lack of will to comply

2020 corporate human rights benchmark showed that there is a lack of will and commitment among companies to treat human rights issues seriously. For instance, out of 60 companies assessed on setting targets for paying the living wage, 59 companies scored a zero. Out of 11 clothing companies assessed on working hours, all 11 failed to demonstrate good practices in their own operations.

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

key obstacles:

a. Rise of protectionism and anti-globalism

First and foremost, over the past years we have witnessed a rise of right-wing political parties among Western states. Within the context of Europe, we have seen a crisis of democracy with right wing challengers
gaining popularity in Italy, Hungary, France, Germany and the UK. The EU has been under attack by domestic politicians and there has been a growing disenchantment with the EU. These have given rise to an increasing anti-globalism, anti-European Union sentiment, resulted in the UK’s referendum to exit the European Union. Outside of Europe, President Donald Trump, by setting his ‘America First’ policy and anti-globalization protectionism, other global leaders have been following his lead into a protectionist policy. This led to the rise of nationalism globally, most prominently in India and Brazil with their leaders prompting nationalism. Typically, right-wing leaders are less interested in human rights issues such as climate change, modern slavery and human rights abuse. Also, human rights violation conducted by transnational companies mainly located outside their home countries. Hence, global leaders are less likely to place their radar on violations happening overseas.

b. Corporate Lobby

Another contributing factor is corporate lobbying power of transnational corporations. As mentioned above, a significant number of wrongful conducts are undertaken by transnational corporations headquartered in the West but with multiple manufacturing factories in poorer global south. For instance, it was reported that oil and gas companies Chevron, BP and ExxonMobil spend nearly 200 million dollars lobbying to delay tackling climate change.

c. Power Imbalance Between States

Apart from lobbying, another issue worth consider is the power imbalance between states. Human rights issues in business are often raised by developing countries, particularly by Latin America countries. This is because these countries are the transporter of raw materials and natural resources and they have suffered from the devastation of human rights violation. The Texaco-Chevron case in Ecuador is a classic example. The misconduct of the company caused massive water contamination and pollution. However, it is relatively difficult for developing countries to call out the action of huge corporations and gain support of western countries the company belongs to. The power imbalance between developing countries and global superpower such as the US has made it difficult to push for the implementation of the initiative. Moreover, these countries typically struggle with economic well-being and heavily reply on the export of raw materials as major sources of income. Domestic government might be unwilling to upset giant corporations at the expense of civilian sufferings.

d. Pandemic and Global Divisiveness

The COVID-19 crisis has exposed and exacerbated systemic weaknesses, inequalities and unacceptable practices throughout global value chains. It has shown state’s lack of interest in cooperating and returned to the classic blame shifting and name calling. The pandemic has further dimmed globalisation and global cooperation. With only ten years to go to achieve the Sustainable Development Goals (SDGs), it is clear, more than ever, that urgent change is needed if we are to realise the ambitions of the 2030 agenda.

e. Lack of Punishment

Another question needs to be asked is what happens when states choose not to follow UNGP. Or, what happens when companies refuse to comply. What is the punishment to deter non-compliance and how effective is it? Despite being set out by the UN, the guiding principles are not binding international laws. There is little that can be done when states do not adhere to the principles, except for the potential pressure from the international community. Also, because these are not binding laws, companies, to a large extent, are not obligated to follow in accordance. To make states and corporations take human rights in business seriously, these questions must be effectively addressed.

Drivers:

What drives the UN Guiding Principles implementation by states is, in some cases, the (positive) willingness to be a leader on this issue(s) in a particular region (for instance, Kenya, Colombia, the Netherlands and the UK). The emergence of a regional leader, and proof that ‘it can be done’, can in turn initiate (a positive) competition in the region as to which country will be next or which NAP will be better.
At regional level, the EU leadership, regulations and encouragement addressed directly to its member states was instrumental in the countries from this region being the first to develop NAPs. Several of the interviewees working on human rights and business in Latin America also highlighted the instrumental role of the OAS resolutions in securing some of the states’ interest in the region to look closer at the UNGPs’ implementation.

It is just as important to have an internal leader within the public administration who is committed to advancing the human rights and business agenda internally, is trusted and engaging with all relevant internal and external stakeholders on regular basis, as for example in Kenya, or as was the case in the EU at the time of the 2011 EC Communication on CSR adoption and implementation. The higher the position such a leader holds in the public administration hierarchy, the greater are the chances of implementation succeeding.

Setting clear expectations vis-à-vis member states of a regional international organisation (as is the case with the Council of Europe Recommendations on business and human rights adopted in 2016), together with the adoption of relevant regulations at regional level (as was the case with the EU Non-Financial Reporting Directive [Directive 2014/95/EU] or 2014 Public Procurement Directives – even if they are not as strong as civil society would wish them to be) can also have a positive impact on decisions and the uptake of UNGPs or, more broadly, the human rights and business agenda.

Support from individual states plays an important role in some countries taking the final decision of moving from talking about the need for implementation to actual implementation.

Tragedies initiated by human failure such as Rana Plaza, Deepwater Horizon (Pallardy, 2010), and the Maricana massacre (Smith & Macalister, 2012), also drive at least some states to put in place measures for preventing such tragedies in the future, including those presented through the UNGPs’ implementation.

Priorities that need to be addressed

1. Putting actions into National Action Plans

Government commitments to develop National Action Plans on business and human rights (NAPs) to implement the Guiding Principles have been far too slow to materialize. But inevitably each state that develops a NAP will look to those that went before. And of those already on the table, there are few that live up to the billing of their own titles. A National Action Plan must first and foremost be about future plans for action, not descriptions of legislation or recaps of past action. Governments that see this process as a tiresome necessity will entirely miss the opportunity that the Guiding Principles provide them with to engage with both business and with civil society on initiatives that can address not just business and human rights but also poverty, income inequality, social justice and sustainable development.

2. Moving remedy beyond the rhetoric

The third pillar of the Guiding Principles, access to effective remedy, is sometimes described as the “forgotten pillar.”

That’s in part why we haven’t yet seen many National Action Plans on business and human rights meaningfully address judicial remedy, despite this being one aspect of the Guiding Principles that depends entirely on states for its effective implementation. It’s also why discussions among companies often get bogged down in concerns about exposure to liability rather than realizing the critical early warning role that effective grievance mechanisms can play.

3. Changing the discourse on human rights and development

Advancing human rights is critical to achieving most of the SDG goals. Yet, there is a risk that companies see the Guiding Principles as just a “do no harm” standard, a matter of compliance, or “the starting point” en route to more exciting and innovative ideas for how they can support the SDGs.
**Challenges:**

Lack of awareness about the UNGPs themselves together with the broader human rights and business agenda not only among government officials, but also other stakeholder groups.

Difficulty coordinating across government departments to implement the initiatives.

Lack of resources, both financial and human, not only to be able to develop necessary policies, including NAPs, and regulations, but also to ensure their effective implementation, enforcement and monitoring.

Fear of deterring foreign investment, lack of good governance and prevalence of corruption, as well as political limitations imposed by foreign governments or multilateral institutions.

Lack of political will for states to implement policies and for companies to comply.

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

First, only a minority of companies demonstrate the willingness and commitment to take human rights seriously. To tackle this, less declaration and more real political will is needed on the side of governments.

The second challenge is arguably more pernicious and relates to the disconnection between commitments and processes on the one hand and actual performance and results on the other. If we are to achieve the SDGs by 2030, we need to ensure that strong commitments and management systems deliver their intended effects. Additionally, we need all companies to participate in this effort.

Other barriers need to tackled:

- Cost of bringing a claim. Costly in terms of financial and time consumption. Lawsuits can go on for years while the victims are in need of immediately support.
- Difficulty in securing legal representation
- Inadequate options for aggregating claims, such as class actions and group claims (see commentary by Martyn Day, of Leigh Day law firm [UK])
- Lack of resources and expertise among government prosecutors

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?**

- Awareness-raising;
- Capacity building activities (including those amongst states and other key stakeholders on how to reach out to and motivate business enterprises still not familiar with the Principles, through NAPs or other policy measures);
- Business and Human Rights events;
- Technical assistance and training;
- Study visits;
- Experience, knowledge and best practices sharing and collaborative learning with countries that have similar characteristics although some cross-regional learning was also of interest (e.g. during the UN Forum or during AU-EU meetings).

It might be useful to create an informal network of government officers in charge or involved in their countries’ NAP development, perhaps somehow administered by the UN WG or at the regional level (e.g. in Europe with support of the Council of Europe information sharing platform – when it is created), to facilitate
information exchange also beyond the regional or global conferences and workshops.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

Increasing awareness of business and human rights issues

Ten years ago, before the implementation of UNGPs, the conversation on business and human rights only spoke to a limited range of participants—namely those large Western extractives, brands and retailers. To date, the debate has moved far beyond those groups and is written on the agenda of governments, NGOs and trade unions, multinational corporations and other stakeholders.

Alignment of key international standards

Relevant key international standards such as OECD Guidelines for Multinational Enterprises and ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy are made aligned with the UNGPs. All of the aforementioned documents contain due diligence recommendations, guiding enterprises to conduct due diligence in order to identify, prevent or mitigate and account for their potential adverse impacts on human rights.

Domestic legislation and regulations

At domestic level, legislations and regulations have come into force aimed at preventing human rights abuses in human rights. For instance, the UK’s Modern Slavery Act of 2015 requires businesses to report publicly on measures to reduce human trafficking or forced labour in their supply chains. The change of Brazilian Constitution of May 2012 states that the government can take over the property of people and companies that profit from slave or compulsory labour. In the Fundamental Principles for the Sustainable Sourcing Code, Japan addresses the issue of human rights abuses in the public procurement.
2. Where do gaps and challenges remain? What has not worked to date?

**Putting the action into National Action Plans**

Government commitments to develop National Action Plans on business and human rights (NAPs) to implement the Guiding Principles have been far too slow to materialize. Only 24 countries have launched a national action plan to date. The distribution of those 24 countries shows a noteworthy geographical imbalance (only 6 out of 24 are countries out of Europe). Moreover, many of the NAPs launched are declaratory and stock-taking in nature, rather than focusing on future-oriented actions.

**The “forgotten pillar”**

The UNGPs “respect, protect and remedy” pillars are treated as a complementary whole, with each pillar supporting the others in achieving sustainable progress. During the implementation process, however, the three pillars are covered unevenly with little attention given to remediation. While relying heavily on corporate self-regulation and access to non-judicial remedies, states have left the legal protection gaps. No National Action Plan on business and human rights has meaningfully addressed judicial remedy.

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**

One of the key obstacles is that some companies see UNGPs as a “do not harm” standard or a matter of compliance. Some states also consider UNGPs as unnecessary steps and are fearful of putting domestic businesses at a competitive disadvantage by imposing burdens on them.

Another obstacle is that states may have more urgent needs to achieve other goals such as to fight the pandemic, to end poverty and tackle domestic inequality and injustice. Business and human rights issues may not be their primary consideration on the agenda.

**Drivers**

One of the key drivers that need to be addressed is the states’ willingness to be a leader and rule maker on business and human rights issues in a particular region.

Important contributions can also be made by the international organizations. At regional level, it is the European Commission who called on the EU member states to develop the National Actions Plans on business and human rights in order to create a platform with greater coordination and coherence. At global level, the UN human rights treaty bodies can provide concrete instructions and technical supports since special attention should be paid to vulnerable groups such as women, children and indigenous people.

**Priorities**

- States should ensure that human rights standards and principles are explicitly incorporated in their future documents.
- Businesses should raise their awareness of the business and human rights issues and keep in mind that compliance of UNGPs is the hallmark of a lasting and competitive
• Cooperation should be enhanced among government departments, multinational corporations, NGOs and trade unions.

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

The systemic or structural challenge is that states, as the key actors in the sustainable development based on respect for human rights, are sometimes lack of a strong political will to implement the UNGPs.

UNGPs require states to prevent, investigate, redress and punish human rights abuses by private actors [the first pillar]; to provide the appropriate policy and regulatory environment to foster corporate respect for human rights [the second pillar]; and to ensure that effective remedies are available in cases of the violation of human rights [the third pillar].

The implementation of UNGPs at domestic level requires legal and policy reform. States might be reluctant to make political commitment to carry out such reform because firstly, it requires a high degree of consensus among the leadership [1]; secondly, it is a big investment of time and money since the concept of sustainable development is a continuous process demanding constant monitoring, follow-up and improvement [2]; and thirdly, requiring domestic companies to undertake new human rights responsibilities might have a negative impact on their investment attractiveness [3].

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?

Here are some concrete recommendations for the further progress:
• A legally binding instrument on business and human rights bases on the UNGPs could be very helpful for the effective implementation on the general principles.
• A reporting mechanism and common timetable could be established for countries to report on their implementation of UNGPs and to produce and revise their NAPs.
• Qualitative and quantitative indicators could be built up to evaluate states’ national performance on business and human rights.
• Mechanisms could be established to connect the implementation of UNGPs with the Sustainable Development Goals (SDGs) adopted by the UN.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

Less declaration and more concrete measure is needed.
Less criticism and more cooperation is needed.
Less hypocrisy and more strong will is needed.
BHR-UNGP next decade-consultation questions- Juan REN

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
*Please include links to relevant publications and materials, wherever relevant*

All my input will focus on women and children’s/girls’ development and protection in China.

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?

During the past decade, progressively improvement on protection of women and girls had been recorded by the actions taken by the government, business, NGOs and individuals in China.

- The Law of Anti-domestic Violence has been passed and implemented in China since 2016.\(^{22}\) The government has taken its responsibility on protecting women and girls, including men and boys who are experiencing violence; and promote knowledge and skills on anti-violence through the whole country. Also, The Law of Child Protection has been revised in 2020, which added new items, such as sexuality education, prevention of campus violence in it.\(^{23}\)

- The sensitiveness and awareness of human rights have been improved during the past decade. For example, Byte Dance has launched the *Sunflower Project* to protect child and the youth when they are using short-video app Tik tok.\(^ {24}\)

- International and domestic NGOs have launched research and campaigns on anti-gender-based violence at workplace, promoted the protection for women to build a safe environment for everyone. All-China Federation of Trade Unions has published


\(^{24}\) [https://www.bytedance.com/zh/corporate](https://www.bytedance.com/zh/corporate)

- The supervision from the netizen has become one of the rising public power on promoting human rights protection. For example, Didi has recognized the fault of excluding women from using online car-hailing service after 8 pm, when it became a hot topic and was fully discussed on the internet.

It’s great to see that more and more grass-roots organizations in China have devoted themselves in public education and public service through various campaign, both on the internet and in community service, then the disadvantage groups become visible and have been empowered to protect themselves. Such as Shenzhen Green Rose Social Service Center, which provides various programs, including seminars on Labor Law, Law of Anti-domestic Violence, Women Health; after-school tutoring, community library to support migrant women workers and migrant children live in the industrial areas.

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

Even through progress on gender equality has been made during the past years, when evaluate women’s development by Beijing Declaration (1995), and Beijing Platform for Action (1995), results showed that most countries fell and left behind the targets. There are at least three gaps or challenges:

- The gender sensitiveness of public servants, professionals in China, such as Police person, journalists, should be improved. One of the challenges on implementing Anti-domestic Law in China, is the lack of gender awareness by the public servants, who might have the myth of “parents’ ownership of children/girls, grant them the rights to beat the kids when they did not behave themselves”. Lack of gender awareness would cause and lead to secondary damage to the women/girls’ survivors in various cases in news.

- Son-preference still exist in China, girls cannot get equal opportunities on education, relax or exercise after school (doing house work) as boys, such as children in Sichuan Da Liangshan.

- With the influence of Feudal ideas, and lack of gender and child rights awareness, some people prefer obedient or attribute to bad luck, or even criticize themselves instead of speaking up and fight for their rights when they were treated poorly or inequality.

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

Protecting women and girls’ rights are mainly hindered by culture barrier and stereotype which are disguised as “tradition” “traditional culture”, such as “Traditional Women Workshop”, which encourages women and girls focusing on body shape, obey to the
husbands/parents with no challenge at all. These ideas and thoughts even prevent the audience from learning the understanding the notion of “women and children’s rights are human rights”.

With the notion of “Leave on one behind”, the most disadvantaged groups should be included in development programs, such as the large number of low-paid informal migrant elder women workers.

The rapid development of new technology should also be considered, in detailed, the gender-bias/age-bias/(dis)abilities status-bias of technology itself should be paid more attention. “Users experience” should be expanded to all the potential ones with those who might not be able to get access to.

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

For women and girl’s development, we need to keep challenging and end patriarchy culture, promoting feminist culture- which cares and respect everyone’s well-being and development regardless of gender, race, (dis)ability, sexuality orientation, education background, economic status, marital status, migrant status and so forth. All the women and girls, men and boys, LGBTQ are protected from discrimination and violence.

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?

Just as the main stakeholders listed in UNGP, actions and efforts are needed from state government and business.

◦ More detailed or operational law or regulations should be launched to protect women and children. Set Anti-domestic Violence Law as an example, this law is more like a national guidance that short of related further explanation on operation process.

◦ Gender Equality Budget is important for the actions. State government could consider tax reduction, grant programs, or punishment for the business to encourage them taking their responsibility on supporting women workers, or stop discriminating women employees.

◦ Business should follow the international and national laws or regulations, take human rights into consideration during the development, including partnership regulation, in the workplace, and in its commercial films and other copy writes of the advertisements.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

No.
BHR-UNGP next decade-consultation questions- Yunchao SHANG

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

As we can see the UNGP implementations have achieved a lot over the last decade. As far as I know that more and more companies began to aware of the social responsibilities they should take. And some companies want give the customers good impression by doing good things to the stakeholders. But the gaps and challenges still exits and may become wider cause everything moves so fast nowadays. We still have a long way to go to tackle the new challenges which come into our sight day by day. The specific field that I am interested in mostly is the relationship between technology companies and human rights. And I think we should pay more attention to the technology companies to make sure that the development of the technology meets with the human rights protection requirement.

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

As we all know the technology plays an important role in peoples’ daily life and we can’t deny that many renowned technology companies have made a lot of contributions to the development for the whole world. But at the same time, we can see it also bring a lot of new social issues on global governance. For example, some new technical breakthrough may be utilized by local government to invade the basic rights of their citizens, some internet companies with special background may also become the accomplice of the local government on human rights infringement by using the big date, artificial intelligence technology.

I think there are two possible situations for technology companies to shoulder the human rights protection responsibility.

First, the technology company may take part in the human rights infringement directly by joint with the local government, like helping the government to gather the private information, locating and capturing the person for political reasons but not the public interests, control the messages the computer can be received, etc. The company chooses to cooperate with government for gaining the advantage over others in competition because the government will support the company partially in return. Under this circumstance, the company should take the responsibility.

Second, the patented technology of the company may be used by the government to infringe the human rights, thus the company may take part in the infringement indirectly. Patented technology is seen as the invisible property and can be authorized to use. But some patented technology may seems
unlawful for the commercial market. But the technology which is not welcomed by the market may be a very powerful tool for military use or political purpose.

How to deal with those situations? We don’t have any effective solutions yet.

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

   The connection between the government and some internet companies are always invisible to the public. So it’s very hard to find any clue to certify the infringements do exit. For example, as far as I know some civil servant are not allowed to use the import brand phones because their official are afraid of the foreign government may put some secret devices or install software into the phone in order to keep track of the activities of the phone owners. (Since the phone owners are civil servants and working for the government and their phone calls or short messages may contain confidential information.) And we can put it further, the right to privacy of the phone users may be invaded if the government supervises their citizens with the help of technology companies.

   The obstacles needed to be address is technical problems - You can never aware of the infringement easily because it always happen in the dark place, hard to be found for civilians and other organizations. The remedies won’t work because the victims have no idea that their rights are infringed by public power. Take CIA employee Snowden as an example, he made the prism program public. But before that, no one aware of that they were under the supervision of the US government through their internet connection. Some experienced and professional trained internet users can take some counter measures on their PC or phone to avoid the infringement. But for the common people, it’s a huge obstacle to protect themselves free from the infringement of privacy or even aware of the infringement’s existing without the technolog support.

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

   There is no universal standard for the fair-use of technology. The structural challenges are what disaster it may cause is unknown to everyone. Like AI technology, big date, block-chain. All these sort of things are unfamiliar to us. So the solutions are always fall behind with the issues.

4. **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?**

   I think UN should take some new measures when facing with the new form of human rights infringement in the next decade. First, making the rules to the technology companies like how the personal date can be collected and used. Second, commitment should be made by the government and companies to obey the rules. Third, maybe UN should set up an apartment which is qualified in charge of the global internet governance with technical support to detect the human rights infringement.

6. **Is there other information relevant to the UNGPs 10+ project that you'd like to share?**

   Since the concept of ‘human rights’ is only about the public power and individuals, so we don’t talk about how the internet company can misbehave on their users for their own interests. We only focus on how the internet companies can do on behalf of the local government and how it will make the company bear the responsibility to protect the human rights free from the public power’s infringement.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

In the last decade, the value of the UNGPs lies in their providing practical guidance not only on ‘who’ and ‘what’, but also on ‘how’ states can provide the appropriate policy and regulatory environment to foster corporate respect for human rights. They also identify specific areas where states interact with businesses and articulate how these areas can be used as avenues to ensure corporate respect for human rights.

In September 2013, the British government issued a special policy document entitled Good business: Implementing the UN Guiding Principles on Business and Human Rights, which is generally considered to be the first national action plan in the field of industry, commerce and human rights in the world. To date, at least 29 countries in the world have developed or are in the process of formulating their national action plans for industry, commerce and human rights.

As China has gradually become one of the largest economies in the world, Chinese enterprises also have a growing impact on human rights at home and abroad. In this context, China's human rights policy has changed to "Pillar 2", that is, "enterprises have the responsibility to respect human rights", thus transforming human rights from the norms of public law to the value principles of the private sector including enterprises. In 2016, China released the national human rights action plan (2016-2020). This is the third national human rights action plan formulated and published by the Chinese government, which lists the human rights goals that the country has committed to achieve in the next five years. The new national human rights action plan has made important breakthroughs in the fields of industry, commerce and human rights, including practical human rights awareness cultivation planning and the guidance of human rights responsibility in investment and foreign aid.

The amount and quality of the guidance developed by NHRI, CSOs and other NGOs, including those representing business circles contributed to the states in their NAPs developing efforts. The first comprehensive ‘NAPs toolkit’, the result of a collaboration between the Danish Institute for Human Rights and the International Corporate Accountability Roundtable, was the key resource to develop National Baseline Assessments and recommendations for the NAP process in their countries, regardless
of whether those were developed or developing economies. It was also cited by the UN WG HRB and the Council of Europe as recommended guidance in the development of NAPs. Several governments have referenced it also in designing their NAPs processes, while the NHRIs and some CSOs have used the Toolkit as a framework for the development of NBAs, as have CSOs or universities.

Academics played more integral roles in the UNGPs’ implementation processes, including drafting national baseline studies on human rights and business. Guidance on gaps in legislation aimed at securing UNGPs and advice on implementation issues sought from academia, both by examining already existing publications and by commissioning relevant research into specific areas.

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

**Unbalanced Regional Development** - Comparatively speaking, EU countries have a better balance between business and human rights, while Asia is not. Asia is the continent with the largest total economy and the largest population in the world. The development of industrial and commercial enterprises is closely related to the promotion and Realization of human rights. In Asia, the positive impact of business on human rights (such as poverty alleviation and job creation) and the negative impact (such as child labor and sweatshops) are equally significant. However, Asia has a vast territory, with different historical and cultural backgrounds and economic development. Therefore, the current situation and development path of human rights in Asian countries are different.

**Inaction by Key Countries in the region** - None of the Chinese enterprises that have entered the world's top 50 enterprises have formulated human rights policies. With the SOFTENING of expressions of the guiding principles becoming more and more strong, the general ignorance and indifference of the rule system in Chinese enterprises is actually turning into operational risk. The third national human rights action plan also fails to design a systematic and comprehensive plan in the field of industry, commerce and human rights, especially in the aspects of the impact of the relationship between the state and enterprises on human rights, the policy consistency in the two fields of industry, commerce and human rights, and the overall corporate human rights due diligence requirements.

**Lack of Strength and Execution**: Some countries have issued their national action plans. However, these plans are not strong enough in terms of process and content, failing to effectively respond to the challenges faced by the victims of corporate related torts. There is much room for improvement regarding transparency on the concrete details of risk assessments and human rights due diligence processes. An apparent gap in current supply chain management is that human rights due diligence tends to be limited to tier-one companies. As a result, there is still a lack of an effective framework to ensure that companies respect human rights.

**The Gravity of the Existing Human Rights Problems** - When enterprises engage in business activities, there are many practical human rights problems, including child labor, forced labor, discrimination against women, minorities, immigrants, inadequate living wages of workers, insufficient participation of community members and indigenous people, and forced resettlement or inability to obtain subsidies. These violations of human rights involve systemic issues, in many cases related to root causes or fundamental development problems, such as poverty, corruption and weak rule of law.

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**
- There is a lack of understanding of UNGPs itself and the broader business and human rights agenda.
- Lack of financial and human resources - not only is it impossible to develop the necessary policies,
including NAPs and regulations, but also to ensure their effective implementation, implementation and monitoring.

- Lack of good governance and prevalence of corruption.
- Political restrictions imposed by foreign governments or multilateral institutions.

**Drivers**

Special opinion leaders (countries / leaders) - in some cases, the driving force behind national implementation of the United Nations guiding principles is the willingness of some important countries in a particular region to play a leading role on this issue. The emergence of a regional leader, and the evidence that it can be done, in turn, can trigger (a positive) competition in the region as to which country will be the next and which will have a better national action plan.

Equally important is an internal leader within the public administration who is committed to promoting the human rights and business agenda internally, gaining trust and engaging regularly with all relevant internal and external stakeholders. The higher the position of such a leader in the public administration hierarchy, the greater the chance of successful implementation is.

**Priorities**

- Promoting the global enforceability of human rights issues;
- NAPs for effective implementation;
- Mandatory Human Rights Due Diligence;
- Non-Financial Reporting & Corporate Transparency;
- Access to Justice for victims of corporate abuse;
- A UN Treaty on business and human rights;

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

- **Global health crisis**
  With the worldwide spread of Covid-19, many explicit and implicit human rights issues have emerged. Human health is damaged or even lost. Affected by the epidemic, the national economy has suffered serious setbacks, and a large number of workers have been laid off. In addition, the quarantine caused by the epidemic has led to more violence (such as domestic violence, street protests).

- **Poverty and shortage of basic food supply**
  Regional poverty and even the shortage of basic food supply are very serious. Many enterprises ignore the existence of these groups in their self-development, and even sacrifice them for development, which this is a typical non sustainable development.

- **Discrimination**
  “People who are vulnerable must be empowered”, and includes LGBTQIA+, explicitly children, youth, persons with disabilities, people living with HIV, older persons, indigenous peoples, refugees, internally displaced persons, migrants, people living in areas affected by complex humanitarian emergencies and in areas affected by terrorism, and people living under colonial and foreign occupation.

- **Demographic changes**
  According to Department of Economic and Social Affairs, Population Division of United Nations, the global population will reach a projected 9 billion in 2050. The contradiction between the continuous growth of population and the limitation of resources will inevitably have a profound impact on the balance between respecting human rights and achieving sustainable development.
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?

The things be needed:

- Awareness-raising;
- Capacity building activities (including how to contact and motivate enterprises not familiar with UNGPs through NAPs or other policy measures between the state and other major stakeholders);
- Business and Human Rights events (e.g. role of the UN Forum on BHR);
- Technical assistance and training: sharing experiences, knowledge and best practices with countries with similar characteristics and collaborative learning;
- Study visits;
- Improved co-ordination within governments as well as across governments;
- The promising non-NAP related non-regulatory and regulatory developments particularly in the area of public procurement, non-financial reporting, supply chain monitoring or limiting demand for human trafficking should be widely disseminated as possibly inspiring examples for other states to follow;

Actionable and Measurable Targets of Key Actors:

- Governments should develop and implement National Action Plans on Business and Human Rights;
- Strengthen access to justice and access to adequate remedies for victims of business-related human rights abuses;
- Companies should obey the advice provided by UNGP on how to assess and address human rights risks in their supply chains;
- Companies should strive to eliminate discrimination against SOGIE (sexual orientation, gender identity and gender expression), race, nationality and religion, and protect the legitimate rights and interests of employees;

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

In my opinion, UNGPs' global action has not really solved the core issue of "why should enterprises pay attention to human rights". Interests?-Many enterprises that do not implement human rights protection well are still developing well. NAPs?- In essence, this is a measure or a path. It should never be the internal cause of the interaction between business and human rights. Because the key driving force has not been found, the implementation of UNGPs is still relatively weak.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

   a. In-house counsel of the corporation or external legal advisor plays an active role in implementing the UNGPs in the practice. Lawyers have the potential to suggest the company to respect human rights when the company decides business judgement\(^28\).

   b. With the implementation of the UNGPs, human rights due diligence is driving through the global supply chain. Companies begin to take active measures to prevent human rights violations. They don’t just passively wait for the violations to occur and then wait for the prosecution. More and more business association in the world will comply with respecting human rights\(^29\).

   c. Many countries, based on UNGPs, have launched a series of political measures to promote respect for human rights in business industry. In 2012, in the National Human Rights Action Plan, China first point out that promoting the popularization of human rights knowledge in enterprises and forming a corporate culture that respects and protects human rights in enterprises\(^30\).

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

   a. On the one hand, government takes slowly steps to develop National Action Plans on Business and Human Rights to implement the UNGPs. On the other hand, National Action

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\(^{28}\) [Where We're At: Taking Stock of Progress on Business and Human Rights](https://shiftproject.org/where-were-at-taking-stock-of-progress-on-business-and-human-rights/).

\(^{29}\) Id.

Plans should first focus on future plans for action, rather than the description of past action.\(^{31}\)

b. With regard to the effective remedy, many Nation Action Plans adopted by the national government do not effectively address the judicial remedy. The Enterprises rarely becomes the subject of litigation for human rights abuses. Even if they become the subject of the litigation, few workers’ claims against the enterprises can go to the final judgement, where the legal remedy can be obtained. Therefore, persons seeking judicial remedy will face many challenges. The article, titled “Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse” describes the problems related to the human rights jurisdictions. They include fragmented, poorly designed or incomplete legal regimes; lack of legal development; lack of awareness of the scope and operation of regimes; structural complexities within business enterprises; problems in gaining access to sufficient funding for private law claims; and a lack of enforcement. Those problems have all contributed to a system of domestic law remedies that is “patchy, unpredictable, often ineffective and fragile”\(^{32}\).

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

Lack of clarity of cross-border jurisdictions about the roles and responsibilities of different interested State may cause victims not to obtain proper remedy. Besides, States may not clearly understand how to make a request to agencies in other States. There is also lack of cross-border consultation and coordination mechanisms. Therefore, States may enter into bilateral and multilateral arrangements to facilitate international cooperation regarding legal assistance and enforcement of judgements in cross-border cases.\(^{33}\)

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

a. The cooperation between State regarding legal assistance and enforcement of judgement is needed. Besides, States may enter into bilateral and multilateral arrangements to facilitate international cooperation regarding legal assistance and enforcement of judgements in cross-border cases. Such agreements should enable enforcement agencies and judicial bodies to request mutual legal assistance from relevant counterparts in other States.

b. Policy Coherence is also needed. “State should build both vertical and horizontal policy coherence in the development of laws and policies that have implications for business and human rights.”\(^{34}\)

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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?

a. Business relationship is a drive for promoting UNGPs. Companies can build and promote their human rights awareness within bilateral dialogues, communicating policies and standards to business partners. Business communication on how they address their human rights is needed.

b. Legal accountability of business enterprises should be established and the State also have to ensure that personals can obtain the effective remedy when suffering the human rights abuse. In addition to the state-based judicial mechanisms, non-judicial mechanisms are also needed.

c. Human rights due diligence plays an important role in protecting human rights, so human rights due diligence mechanisms should be enhanced.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

Due to the covid-19, many people have to stay at home, and online shopping is more popular these days. The online retail sales in UK has rose from £1.45billion in 2019 to £2.2billion in May 2020\(^{35}\). With the online shopping booming, logistics companies play an important role in the online shopping value chain. However, the human rights of couriers cannot be properly protected because they are the self-employed not the employee of the logistics companies. These couriers who risk their lives to deliver the items, cannot get fair salary. Sometimes when the item is not delivered or with low comments by customers, they cannot get paid at all. Besides, they also cannot get the holiday or sick pay.

During the covid-19 pandemic period, many workers are affected by different degrees, such as being laid off, cannot receiving salary. Companies, at the same time, also face existential threats, and many businesses have to adapt to the unprecedented reality. When they make some decisions, they have to precisely evaluate the effect of their choice on the lives of labors. Maybe we also should focus on the human rights in the extraordinary circumstances such as covid-19 pandemic.

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

With the development of social material civilization and economic growth, the business activities of industry and commerce are more and more closely related to the well-being of human beings. Faced with the large companies, people always expect their business activities to respect the basic rights of people. However, for a long time, from the ‘legal prospective, the responsibilities assumed by industrial and commercial enterprises have often only satisfy national regulations in the fields of civil law, criminal law, labor law, land and administrative licensing. In recent years, the law has begun to restrict some business activities and set corporate social responsibility (CSR) as a legal obligation. However, limited by the special nature of the law, it has inherent flaws and limitations in regulating enterprises to respect human rights. Till now, more and more industry pioneers are influencing the entire industry by actively accepting and assuming social responsibility. However, the concept of corporate social responsibility is becoming more and more stretched and unable to meet the needs of practice. Then a new concept, namely, Business and Human Rights, came into being.

UNCPs provide us with a comprehensive guideline in the field of industry, commerce and human rights, and provide clear explanation on many major issues. The question that the document intends to answer is: What do we expect from the country in terms of the relationship between industry and commerce and human rights? What do we expect from the enterprises? When human rights are violated by industrial and commercial enterprises, how do victims defend their own interests?

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37 See Davis, K. Can business afford to ignore social responsibilities? [J], California Management Review, 1960
In response to these important issues, UNCPs put forward three core principles: Firstly, the state’s existing obligation is to respect and protect the basic human rights and freedoms enjoyed by citizens; Secondly, the enterprises are institutions that perform professional functions in the division of labor in society, which should abide by all laws to protect human rights. Thirdly, there is an urgent need to formulate effective remedies that are compatible with the law and can be applied when human rights are violated.  

The following features give the guiding principle a high degree of authority:

a. Legality. It was unanimously approved by the United Nations Human Rights Council. At the same time, its formulation process is also very important. Professor John Ruggie fully considers the close connection between business and law and conducts extensive research on human rights issues. During the formulation process, the drafters conducted in-depth consultations with stakeholders, which gives the guiding principles significant credibility. Therefore, the proposal of the guiding principles has not encountered too many objections: the government and enterprises are very willing to accept the guiding principles, when social groups are also glad to see the birth of a binding guiding principle that they have always expected.

b. Critical Nature. After the UNGPs were adopted, numerous intergovernmental organizations (IGOs) have referred to or adopted them to regulate the human rights responsibilities of enterprises in the form of soft law. These intergovernmental organizations include the OECD, the European Union, the World Bank, and International Organization for Standardization (ISO), etc.

c. Creation. Even if it is not binding, it is the first time that the United Nations has reached a consensus in the field of business and human rights.

d. Comprehensiveness. UNGPs are a very comprehensive index covering all human rights fields, all types of enterprises, all types of industries, including the responsibilities and obligations of both the home country and the host country, and all relevant legal categories (from International Human Rights Law to Investment Law, Company law, Criminal Law and International Organization Standards), all legal and commercial motives that affect company behavior, and all types of remedies.  

Because of the comprehensiveness, UNGPs try to find and mobilize all social resources that can promote the development of human rights, including various mechanisms inside and outside the judicial system and integrating them to drive the changes in people's thinking and practice.

It clarifies the responsibilities and obligations of the country and enterprises, and also emphasizes the channels of current relief. Because there is no grievance mechanism, stakeholder cannot be treated fairly, and companies and governments that violate their rights cannot be held accountable. UNGPs involve the following key issues, which are also the promising developments and practices that could be built on.

38 See Mantilla, G, Emerging international human rights norms for transnational corporations [J], Global Governance, 2009
a. Corporate responsibility. UNGPs state that companies have the responsibility to respect and protect human rights, that is, not to act that causes any related harm. Companies should not infringe upon anyone's basic rights in their business operations. At the same time, enterprises should stop ongoing violations of human rights, and take preventive and remedial measures to deal with the impacts already caused by business activities. In the report, Professor Ruggie said that the promotion of the development of human rights by multinational companies is commendable, and that under certain extreme conditions, such as natural disasters, such an attempt may seem precious. It seems that this has exceeded the corporate responsibility. The country, not the company, should be responsible for advancing and realizing human rights.

b. Responsibilities of the supply chain. Numerous industries outsource production to low labor cost developing countries. Today’s multinational companies have a long supply chain with their contractors are all over the world. UNGPs introduced a novel approach to put forward broader requirements for responsibilities of the company. Before the UNGPs appeared, multinational companies believe that they can only influence their direct contracting, or the first level of the supply chain. Multinational companies claim that they are the contractors which will encounter little or no influence, because of the non-direct contractual relationship and the big amount of the subcontractors. 41 UNGPs believe that this view is wrong. It’s worth noting that UNGPs believe that the responsibility of the chain is limited in many ways. This kind of responsibility is to work hard, not necessarily to have substantial results; which only applies to direct relationship with goods, services, and operations, however, the buyer's company is not necessary to compensate the victims of subcontractors. In short, if the buyer’s company is accused of supply chain (above the level of subcontractors) A human rights violation that occurred in China is “directly” deeply related, then the buyer is obliged to take relevant measures, which means that the buyer’s company should be based on the principle of due diligence to prevent harm from occurring, and require secondary contractors to correct the current behavior instead of saying that the buyer is obliged to compensate the harm. UNGPs put forward a broader liability for the buyer’s company’s supply chain, and, out of pragmatic and feasibility considerations, limit this liability in a very detailed manner.

c. Ways to obtain relief. Therefore, UNGPs are practical and encourage everyone to pay attention and establish any mechanism that can provide relief to victims. Although it is important to realize the usefulness of non-judicial relief channels, it is also important to ensure that victims are not prevented from obtaining relief through the courts. UNGPs clearly point out that the national human rights institution is an important country-based and independent non-judicial relief channel. UNGPs encourage national human rights institutions to negotiate with companies and governments to resolve issues related to industry, commerce and human rights, and determine the importance of national human rights institutions in the field of industry, commerce and human rights.

d. The role of country. Going back to UNGPs, the core principles include various types of measures that countries can and should take, both within the judicial

system and outside the judicial system; under international human rights law, as well as corporate law, investment law, and government information disclosure law; existing countries which have obligations as company owners (for country-owned enterprises), also those which has the obligation of the country as a member of intergovernmental organizations (For example, when they establish intergovernmental agreements on trade, investment, and development, human rights should be taken into consideration). Therefore, UNGPs regard the country as a regulator, economic participant, member of an international organization, and it can and should do its best to promote the respect and protection of human rights in the industry.

e. Human rights due diligence. UNGPs state that the key to human rights due diligence is that the company must do something before and after the human rights violation; in other words, the company must take preventive and corrective measures in the human rights violation, not just passively wait for the violation to occur, and then prosecution. According to UNGPs, companies can take the following human rights due diligence measures: Firstly, confirm the company’s impact on human rights incidents, and understand the risks that the company’s operations which bring to human rights; secondly, take corrective measures to address the risks and impacts on human rights; thirdly, ensure whether the company’s policies and corrective measures effectively deal with the company’s impact on human rights based on follow-up investigation; fourthly, publicize the company’s measures.

f. Environment. The content of UNGPs is related to the corporate responsibility, so the guiding principles also deal with environmental issues, such as pollution, climate change, and waste of resources. But UNGPs are not directly related to these areas. Generally speaking, although the three cores of obligation, responsibility, and relief can be applied to all fields, UNGPs only involve the issue of the acceptable degree of pollution. It has no substantive assistance to the effective implementation of the current environmental protection management system, and it can hardly solve the related technical issues and professional jurisdiction issues that have gradually emerged in environmental management and laws; in addition, UNGPs do not involve how to deal with climate change, depletion of natural resources such as fisheries and forests.

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

The gaps and challenges remain in the following aspects:

a. Emerging human rights. Emerging human rights are an expression of human rights that gradually expands in response to social development and academics have mixed review. It not only expresses the actual interest demands of each country, but also bears the risks of “narrowing the concept of human rights”, “separating desirability and feasibility” and “derogating the value of human rights”. From an open perspective, emerging human rights as a “local knowledge” reflects a diverse philosophy of human rights. Meanwhile, their desirability and feasibility are not necessarily related, and they show abandonment of traditional moral principles. It

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42 See Johnston, B, Human rights and the environment [J], Human Ecology, 1995
is precisely this kind of emerging human rights with very local characteristics that derives the moral imagination and factual experience of human rights. This actually represents the contribution of different cultures to the concept of human rights, which not only does not reduce the value of human rights, but enriches the intension and extension of human rights, and shapes an open comprehensive, shared concept of human rights.44

b. The cost dilemma. Holmes and Sunstein believe that rights have budgetary costs and social costs. “The cost of rights means that the government departments that extract and redistribute public resources substantially affect the value, scope, and feasibility of rights.” Whether it is a positive social right to promote equality or a negative right to freedom from being violated, both involve implicit claims about the government’s actions and the allocation of public resources. In this sense, all rights are positive rights, which are the essential reliance on government actions and social cooperation to guarantee collective and individual welfare. However, due to the limitation and scarcity of resources in various countries, it is difficult for any country to satisfy all the demands of rights at the same time. The expansion of emerging human rights means further requirements and allocation of national resources or costs, which not only empowers the country with greater powers. Mandatory intervention in social life will also hinder the realization of personal and public interests. The strength of the relationship between rights changes with the quality of enforcement. Rights with lower enforcement quality cannot provide support for other rights, and guaranteeing high-quality rights is not a realistic possibility in developing countries. At the same time, more and more rights needs are included in the category of human rights. Human rights have become a weapon for humans to transform their desire needs into rights discourse. The diversification of interest subjects will trigger competition and conflicts between human rights demands, and then fall into Society and Morality, and the contradiction between the goals set by rights and the realization of rights.

c. Localization. Clifford Geertz emphasized that local knowledge is not only related to time, space, and class, but is also a local feature that connects local knowledge and local imagination. Emerging human rights is an expression of the concept of human rights with regional cultural characteristics. It is culture that shapes the emergence of emerging human rights.45 In other words, when mankind needs to solve the various problems it faces, all previous practical experience is invaluable. Due to the limitation of cultural perspective, a certain right may not be a human right in the context and reality at the time, or it may not be recognized and supported by other countries, but it is undeniable that this right may be a reasonable one in the future. The human rights claims can be applied to the specific local environment and solve specific problems.

Many requirements for enterprises need to be realized which haven’t worked to date:

a. Corporate responsibilities, including improving wages and benefits, handling labor and personnel disputes, safety production prevention and control, and occupational

disease prevention.
b. Towards environmental rights, it is needed to form an environmental governance system governed by the government, enterprises and the public.
c. In terms of the rights of persons with disabilities, it is more urgently required to promote telecommunications business operators and e-commerce companies to provide information barrier-free services for persons with disabilities.

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

Key Obstacles:

a. Environment and human rights. This concept is a pair of important challenges facing developing countries. Environment and human rights share a common value foundation. Analyzing environmental issues from the perspective of human rights provides new ideas for environmental governance. The company’s impact on the environment is increasing day by day, and the legality of the company's environmental responsibility can be justified from the externality theory, power responsibility theory, long-term interest theory or corporate citizenship theory. From the perspective of human rights, corporate environmental responsibility as a human rights responsibility can be divided into four levels: legal responsibility, social responsibility, moral responsibility, and charitable responsibility. From the implementation mechanism, it includes four levels: government, society, market, and company.

b. The clarification of the human rights due diligence standards. Taking into account the broad nature of international human rights treaties, there is still a lot of room for interpretation of these treaties, which may cause a lot of confusion among States parties. A study of 853 corporate executives around the world also found that people are increasingly aware that companies play an important role in respecting human rights, but companies are “still seriously considering what their responsibilities mean in practice”, and they are often uncertain where to start. The complexity of the company's structure, operating through various subsidiaries, contractors, recruiters, and suppliers, makes it more difficult for the company to monitor its global operations.

c. Jurisdiction issues. Extraterritorial obligations may be one of the most challenging aspects of the UNGPs and the OECD Code of Conduct, because neither of these two instruments is very clear about jurisdiction issues. Article 1 of the UNGPs stipulates that “States must protect their own territories and/or human rights within the jurisdiction of third parties from infringements”, which means that the country’s protection obligations are not limited to acts that occur within its own territory. Further, governments should put forward specific expectations for companies to “respect human rights in all their businesses”. All these principles should conform to the OECD Code of Conduct.

d. Supply Chain Management. Multinational companies often cooperate with subcontractors and other local supply chains through overseas operations, but the extent to which a company is responsible for human rights violations in the supply chain may be unclear. According to the UNGPs, companies must not bring adverse human rights impacts through their own activities or due to their “business...
relationships” (including entities in the “value chain”). As part of the corporate responsibility to respect human rights under the UNGPs, companies should also deal with “related human rights impacts caused by their business partners’ business, products, or services, even if it is not involved in it.” However, the reality is that due to the complexity and geographic diversity of the supply chain, companies still face difficulties in identifying risks and tracking the supply chain. Suppliers themselves also need to cooperate, but various business motives and inhibitors will cause them It is difficult to cooperate with each other.

Drivers:
For developing countries, they face many internal and external challenges in the process of economic and social development, which not only constitute propositions that need to be solved urgently within the country, but are also important themes in international legal and political dialogues and games. For example, in the process of environmental protection, the closure of polluting companies and the restrictions on pollution behavior often involve property rights and freedom. But sometimes they are mutually unified and complementary: Citizens' political rights constitute the democratic basis for the formulation of environmental protection policies, and the improvement of the environment also provides conditions for the improvement of human rights such as the right to health and the right to food to a certain extent. Besides, the demand for a good environment and human rights is based on human dignity, and both are expressions of human dignity.

Priorities:
   a. Formulate human rights policies. The UNGPs put forward requirements for the company to make policy commitments/declarations. The premise of making this policy commitment is that the company must first formulate this policy.
   b. Assess human rights risks. The UNGPs require companies to measure human rights risks. This impact includes both the human rights impact of the company’s own activities and the possible impact of its business relationship; it includes both its direct impact and the impact caused by its participation; it includes both actual impacts and potential impacts.
   c. Conduct due diligence on the human rights. The UNGPs require companies to conduct human rights due diligence. The scope of due diligence should include negative human rights impacts that may be caused by the company's own activities, negative human rights impacts that may be exacerbated by the company's own activities, and negative human rights impacts directly related to the company's business relationship or its business, products or services.
   d. Establish a complaint and notification mechanism. The UNGPs require companies to track the effectiveness of human rights countermeasures, accept internal and external feedback, and report corresponding information externally.

4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?
The systemic or structural challenges need to be tackled are as follows:
   a. The subject identity problem faced when accepting the jurisdiction of international law. In order to adapt to the process of globalization, most multinational companies choose to integrate the networked operation model of multiple corporate entities, which means that multinational companies have to abandon direct control of some
important operating links and replace hierarchical structures with negotiation mechanisms. This improves the economic efficiency of company operations, but it also leads to the subject identity issues faced by multinational companies when they accept the international law. There are three basic requirements to be qualified as a subject of international law, namely, the ability to directly participate in international relations, the ability to directly enjoy rights in international law, and the ability to directly assume obligations in international law. For multinational companies, with their increasing participation in global affairs, the influence of multinational companies on international relations continues to increase. Some multinational companies with stronger financial resources even play a greater role in international affairs than sovereign countries.

In terms of rights and obligations, some regional treaties (such as the North American Free Trade Agreement, European Union law) also give multinational companies the right to directly engage in dispute litigation. All this means that multinational companies have already enjoyed the status of subject of international law to some extent, and have participated in practice with this status in certain fields. However, in the field of human rights, the problem with multinational companies is that the parent company and subsidiary of a multinational company are separate legal entities, and the parent company is not liable for the illegal activities of the subsidiary unless the subsidiary is the pure agent of the parent company. This means that when a subsidiary company violates human rights, the parent company does not need to take responsibility for it. At the same time, subject to differences in domestic laws, the subsidiary company’s human rights violations may not be subject to corresponding sanctions. The company's application of international law has been readjusted.

b. The doubts towards the corporate autonomy and independence. It is questioned that if multinational corporations are given the same qualifications as the government in international law, and the functions that the government need to perform are imposed on the multinational corporations, it is likely to undermine the spirit of corporate autonomy and independence, and even bring about government. The company's game not only detracts from efficiency, but also causes the public to suffer from both sides' prevarication.

c. Not legally binding. Multinational companies need to bear different responsibilities from the government when dealing with human rights issues. This is also the reason why the human rights guidelines for multinational companies formulated at this stage are not legally binding.

d. The problems existing in the cooperation between multinational companies and NGOs. First of all, the current cooperation mechanism greatly increases the cost of their competition with multinational companies in developed countries; in the absence of supervision mechanisms, there are rights and obligations between multinational companies, suppliers, foundries and workers. In the uncertainty zone, the crusade by non-governmental organizations on a certain part of the supply chain will often cause multinational companies to abandon other small enterprises.

in the supply chain, which will cause more serious consequences.

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?

To achieve meaningful progress with regard to those obstacles and priority areas, the following aspects need to be taken into consideration:

(1) National actions
Except for special circumstances, the violation of human rights by private actors cannot be attributed to the country, but it is based on that the country has a comprehensive human rights obligation, that is, the obligation on the three levels of respect, protection, and realization stated in the UNGPs. The country should take appropriate measures to protect human rights from violations by enterprises. This includes giving companies adequate guidance and supervision, as well as punishing and remediating human rights violations after they occur, mainly including the following national actions:

a. Actively cultivate a corporate culture that respects human rights. The first is to clarify the expectation that companies respect human rights in laws and policies. The second is to strengthen market pressure for companies to respect human rights. The third is to give play to the exemplary role of the government and state-owned enterprises.

b. Ensure policy consistency in both vertical and horizontal directions. The country must maintain a consistent basic policy of dealing with the corporate and human rights agenda, reduce the horizontal inconsistency of laws and policies, and avoid the resulting weakening of corporate human rights obligations. In order to reduce vertical disunity, the country not only needs to formulate laws, policies and necessary work guidelines, but also needs to establish a monitoring system for corporate human rights performance to grasp the implementation of regulations and the actual human rights impact of corporate activities. The supervision system can include active observation by government departments, human rights performance reports issued by companies, and suggestions and feedback from stakeholders to achieve the integration of internal management and external supervision.

c. Provide country-based relief. Judicial relief is the most typical and traditional way of rights relief. Besides, non-judicial mechanisms also have advantages such as efficiency, convenience, economy and flexibility.

(2) Corporate Action
The minimum form for enterprises to fulfill their human rights obligations is “respect”. When they perform certain public duties or voluntarily make additional commitments, the form and extent of their human rights obligations should be strengthened accordingly. “Respect” means that the company must first not damage or avoid infringing on the human

rights of others, and in addition, when involved in human rights violations, it must eliminate the negative impact on human rights that it causes or aggravates. Generally speaking, in order to fulfill its human rights obligations, in addition to supplementary measures taken as appropriate, companies must implement at least the following three aspects:

a. Policy Commitment.

(a) Making public commitments to respect human rights can constitute a source of corporate human rights obligations from within the company. In addition to all internationally recognized human rights that should be the objects that companies promise to respect, companies should also make some supplementary commitments based on their business scope and geographic conditions, and make special considerations for those human rights that are easily affected by their activities. Enterprises whose activities are located in ecologically fragile areas must be extremely careful about environmental protection, and labor-intensive enterprises must pay full attention to protecting the rights of workers to health, rest, and remuneration for labor. UNGPs also put forward requirements on the ways the company’s policy commitments should be made. For example, the commitment should be made with full knowledge of various expertise and approved by the top management to be able to serve as the entire enterprise. In the collective statement, companies should also disclose their policy commitments to respect human rights, and actively introduce to the stakeholders.

(b) An enterprise's human rights commitments should not only be an intermittent declaration and statement, but should maintain the consistency of the commitments and actions, that is, taking supporting actions to incorporate these commitments into the corporate governance and operation to make them meaningful. Otherwise, these commitments will become castles in the air due to the lack of systematic human rights considerations in corporate internal actions. In order to fulfill their commitments, companies can set up special leadership and decision-making bodies for fulfilling their human rights obligations, build and implement human rights work systems within the company; special training can be held to raise awareness of human rights for management and employees, and to respect human rights in their business activities. It can also proactively publish reports on the fulfillment of human rights obligations by enterprises, and accept supervision by stakeholders and the public on the fulfillment of their human rights commitments.

b. Human rights due diligence.

(a) Any actual and potential negative human rights impacts that their activities may cause, including evaluating the human rights background, identifying the individuals or groups affected, which human rights will be involved, and the selection of measures to eliminate and mitigate the negative human rights impacts, and many more. Evaluation includes pre-evaluation, post-evaluation and in-process evaluation. Given the dynamic nature of the human rights situation, assessments can be made on a regular or irregular basis.

(b) Embedding human rights policy commitments in all relevant corporate functions. Only in this way can the specific results of corporate human rights impact assessment be effective. To test whether the negative impact of human
rights has been eliminated, companies should track the effectiveness of countermeasures. If employees of a company are responsible for respecting human rights, both internal management and external stakeholders must track the company's response to potential and actual negative human rights impacts.

(c) Subject to stakeholder supervision. Under the condition of not violating trade secrets, relevant information should be immediately available. If it involves interested parties, it needs to be announced to the stakeholders; if it involves the public interest, it should be announced to the whole society.

(d) Remedy. If business enterprises have brought negative human rights impacts, they should remedy them through legal procedures or cooperate on remedies. Companies should establish or participate in an effective business-level appeal mechanism.

To meet the UNGPs’ expectations over the coming years, the following actionable and measurable targets for key actors need to take into practice:

a. Promote and guarantee the success of overseas investment and reduce possible economic losses. Respect for human rights and then establish a good corporate image for companies, thereby creating a good public opinion environment for companies’ overseas investments, and reducing the misunderstanding or resistance of local people. Respecting the requirements of the country’s human rights legislation and international human rights standards is a manifestation of a company’s compliance with laws and regulations.

b. Reduce legal risks. When international human rights standards are becoming more operable and actionable, violating human rights standards is likely to cause companies to fall into legal disputes and face legal sanctions. Australia's Rio Tinto was sued in the United States Federal Court by citing the Alien Tort Law for allegedly infringing on islanders’ environmental rights and racial discrimination on the island of Gambier, Papua New Guinea. Well-known multinational companies such as Coca-Cola and Yahoo have also been prosecuted and suffered losses for suspected violations of human rights. We can't help but take a warning.

c. Establish the image and increase the country's right to claim. Good performance in respect of human rights is also conducive to the right to speak for the companies and government departments to participate in international human rights dialogues, and the formulation and revision of international human rights standards.

d. Improve the local community environment to ensure the safety of employees and property. Overseas companies are rooted in their home countries. Today, when Chinese overseas companies are increasingly emphasizing localization, they must handle the relationship with the local community and achieve a balanced development of economic and social benefits. Respect for human rights standards, protect local human rights conditions, or at least not infringe on the human rights of local residents, help reduce misunderstandings and disputes between local people and companies, create a friendly community environment for companies, and protect the employees and property of companies offshore safety.
BHR-UNGP next decade-consultation questions- Jingxiao WANG

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

Over the past decade, UNGPs have become an authoritative point of reference for all stakeholders to ensure business respect for human rights, with relevant international standards aligned with the UNGPs, new operational tools developed to provide guidance for governmental and/or non-governmental actors, as well as a basis established for constructive discussion among all stakeholders.

At the International level, the UNGP and its ‘Protect, Respect and Remedy’ Framework level of alignment with other relevant key international standards is extremely impressive. Just to name a few: the OECD Guidelines for Multinational Enterprises (2011), OECD Due Diligence Guidance for Responsible Business Conduct (2018), the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

At the national level, as of the time of reporting, there are 25 states have produced a national action plan on business and human rights as part of the State responsibility to disseminate and implement the UNGP. Two states have included a Business and Human Rights chapter in their Human Rights national action plan, and 23 states are currently in the process of developing a national action plan or have committed to developing one. There are six states where their National Human Rights Institutions and/or civil society have begun steps in the development of a national action plan.

Among business enterprises, according to the Business and Human Rights Website\(^2\), as of the time of reporting, globally a total of 28 companies have human rights policy statements that explicitly refer to the Universal Declaration of Human Rights, whereas 11 other companies have policy statements that refer to the concept of human rights. Despite the very limited number and the fact that this mainly – if not always – happen among multinational enterprises, this does prove a gradually increased awareness among corporations across different sectors.

Governmental and non-governmental institutions, as well as civil society organizations also play an active role in pushing forward the business and human rights agenda by developing many tools and guidance that help translate the principles into actions and provide operational strategies specifically designed to address the status quo. For instance, in 2020, in response to the COVID-19 pandemic, the Danish Family Planning Association published the Gender Equality and the Right to Health: A Guideline for Businesses\(^3\).

Apart from the aforementioned, the recent years has also seen an increased awareness among investors and financial institutions. A growing number of mainstream investors are integrating environmental, social and governance (ESG) criteria into their investment activities. In 2020, the Investor Alliance for Human Rights published an Investor Toolkit on Human Rights\(^4\) for assets owners and managers to address risks to people posed by their investments.

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

Firstly, the limited numbers listed above shows that there are only a very limited number of governments and companies all around that have made their commitment. The majority of them have not yet started to take this matter seriously enough in order to really engage themselves in making concrete plans to curb the human rights violations in the business world. Development is still used by many countries as a go-to excuse for their neglecting the human rights aspects in business conduct.

Secondly, there are even fewer actors that have taken meaningful steps to effectively translate the UNGP into practice. From making a commitment to actually taking measures, there is still a long way to go. As many of the national plan were just produced, there seems to be a lack of monitoring mechanism for the implementation of the national plans, for example in the form of the universal periodic review of the human rights records of UN Member States, in order to encourage to walk the walk instead of merely talking the talk.

Last but not the least, a permissive environment still exists that allows business-related human rights abuse to take place without holding the business actor accountable and

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\(^3\) [https://www.sexogsamfund.dk/sites/default/files/ssf_gender_equality_and_the_right_to_health_enkel.pdf](https://www.sexogsamfund.dk/sites/default/files/ssf_gender_equality_and_the_right_to_health_enkel.pdf)  
\(^4\) [https://investorsforhumanrights.org/investor-toolkit-human-rights](https://investorsforhumanrights.org/investor-toolkit-human-rights)
giving the victims effective remedy. Such an environment seems to be root cause of the two points mentioned above. The level of awareness among the general public on business implications on the human rights remains low. In some countries, people sometimes are not aware when their fundamental rights are being violated, let alone reporting or even protesting against the violation, for instance. As a result, the cost for violating consumers’ rights (for example the right to privacy) economically and socially imposed on the company could be so low that they don’t bother to understand what and why it is and take actions to prevent it from happening again.

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

According to the survey report\(^5\) published by the Economist Intelligence Unit, the 5 biggest barriers the company faces in address human rights are:
- Lack of understanding of the company’s responsibilities in this area
- Lack of available company resources (money and staff)
- Lack of relevant training and education for the employees
- Inconsistency between national law and international standards
- Poor enforcement of local laws

The 5 biggest drivers for a company’s commitment include:
- Building sustainable relationships with local communities.
- Protect company’s brand and reputation.
- Employees’ expectations about company values and actions.
- Moral-ethical considerations.
- CEO has taken lead on the issue and prompt employees to take actions.

For the company to better fulfil the corporate responsibility to respect human rights, the top enablers/priorities to be addressed include:
- Public benchmarking on human rights performance (e.g. an index of companies)
- Availability of reliable and independent country-level information on human rights
- Make human rights due diligence a legal requirement for business
- Make reporting on human rights a mandatory requirement for companies
- Provide incentives based on human rights performance (e.g. preferential treatment in procurement process, access to capital, etc.)
- Stronger legislative framework to ensure level market playing field at the national level (e.g. ensure fair competition in awarding contracts)

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

One of the biggest challenges that need to be tackle is to ensure policy coherence by

addressing the current contradictions between economic, trade and investment policies with the 2030 Agenda and human rights policies. In recent years, especially this year, in the face of the COVID-19 pandemic, many countries around the world have demonstrated a lack of political will in achieving sustainable development. Development are still taken as priority even at the expenses of violating fundamental human rights. Setting up a clear target for policy coherence could help foster synergies across economic, social and environmental policy areas, identify trade-offs and reconcile domestic policy objectives with international agreed objectives, as well as address the spillovers of domestic policies. As the Economist survey report indicated (see answer to question no. 3), the inconsistency between national laws and international standards is the fourth biggest barrier for the companies to address human rights. We cannot wish all the business actors to be always willing to abide by the higher standards- that is unrealistic and unsustainable. The fundamental solution is to make efforts to erase the inconsistency in policy.

Another challenge I can think of that need to address is to increase the awareness and technical know-how among all stakeholders. As evidenced by the Economist survey report, there is a serious lack of awareness among many people, including in the business world. This results in a permissive environment that allows impunity for human rights abuse in many spheres of people’s daily life, leading to a vicious circle of unmotivated implementation. Therefore, it is of great significance to create better understanding of sustainable development and human rights among all stakeholders, including national and local governments, private sectors, as well as civil society organizations, for them to take actions respectively in an ethical and sensitized manner.

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?

To achieve meaning progress with regard to the obstacles and priority areas mentioned above, awareness must be raised among the duty bearers, including the national and local government and business enterprises, as well as the general public about human rights and the implication of business on them. Apart from that, a well-developed monitoring mechanism needs to be established in order to ensure that the commitment is in the process of being put into practice and human rights are promoted as an end for the public interest instead of mere means to promote the state or company’s reputation.

In this regard, some actionable and measurable targets may include: For government:
- Ensure availability of information and disaggregated data on the human rights situation for the information of all people.
- Ensure availability of tools and guidance for on business and human rights in their native language for use of all companies.
- Ensure monitoring and reporting on the business-related human rights issues on a
regular basis and make the report document available to the general public.

For businesses:
- Ensure that respecting human rights are explicitly mentioned in the Code of Conduct and other documents related to professional ethics.
- Ensure that human rights are specifically included in the staff orientation training.
- Ensure that a third-party monitoring mechanism is established to make sure the planning, development, implementation of all CSRs projects are human-centered, society-oriented and conducted from a human rights-based perspective and are carefully followed through.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

No.
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?

It’s gratifying to see that progress has taken place in UNGPs’ implementation in almost all scopes. For example, in terms of governments, many countries have recognized the value and significance of human rights issues in the context of business conduct and have established their own National Action Plans and many more are on the way of producing their own National Action Plan; in terms of businesses, Corporate Social Responsibility (CSR) has been prevalently adopted by businesses as a self-regulatory management tool in response to people’s growing awareness and attention about human rights issues in the context of business.

Among these developments, the most promising development that has the real potential to bring about actual progress is legislation on mandatory human rights due diligence by the European Union. Introducing the requirement that businesses should carry out due diligence about human rights impacts into law can greatly enhance companies’ awareness and focus on their business conduct and thus enhance the implementation of UNGPs’ values in actual business practices.

2. Where do gaps and challenges remain? What has not worked
Despite the progresses as stated above, the gaps and challenges faced by UNGPs still remain, somewhat unchanged, in terms of motivation.

On the governmental level, countries lack the commitment to effectively oversee the conduct of businesses to make sure they are in line with the values of UNGPs - the goal of economic development often outweighs other goals such as better human rights condition in business. The rationale is simple yet powerful: survival comes before better living. That is why it is often observed that the countries who seem to be doing a better job at human rights protection are more likely to be developed countries. Moreover, the victims of human rights abuses have to fight hard to get remedies and even if they do get remedies of some kind in the end, those remedies are often insufficient.

On the corporate level, CSR is usually adopted by companies, not as a real commitment to the protection of human rights in their businesses, but more like a tool for getting a social license to conduct business in a region with the ultimate goal of being recognized and thus being able to make more profits. In other words, it’s more about the “image” than the “substance” of a company that cares about human rights issues.

Therefore, it still remains to be seen how we can incorporate the respect for human rights into the core of business conduct, not just as a tool to placate and get recognition, but as a norm that businesses should operate on.

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 first obstacle that needs to be addressed nowadays, obviously, is the aftermath of the Coronavirus pandemic. During the pandemic, many businesses suffer and are having a hard time just surviving. And that situation is still evolving. In the short-term, more efforts should be made on helping more businesses survive while not harming human rights; in the longterm, this pandemic also shows the importance of providing a healthy working environment for workers and proving them with necessary protective equipment and facilities. The second obstacle is about the trend of growing protectionism in many countries. The tendency to isolate can have a negative impact on the implementation on UNGPs, as international cooperation and facilitation play a vital role in promoting the UNGPs.
Drivers: the willingness of companies and states to act. Admittedly, the willingness sometimes comes from the desire to appear good and responsible. But at the end of the day, this desire brings about good changes, and that’s something that can be further leveraged on. For companies, UNGPs would appear more appealing if their businesses can grow and develop better and more sustainably if they choose to follow the guiding principles.

Priorities: Based on the foregoing analysis, I would suggest to put the priorities on making the UNDPs more “business-friendly”, meaning integrating businesses’ natural mission to make profits into the construction of UNGPs guidelines, acknowledging that drive towards profits and finding ways in which businesses can make profits because they followed the instruction of UNGPs. It’s about making businesses see the values of UNGPs by themselves and therefore realizing these values by taking active actions.

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

Respect for human rights is one of the key components of “sustainable” development, because the reason we pursue development, is for human beings’ welfare, not only for the present generation, but also for the future generations. In other words, development is a way towards a better living for people in general. If in the process of pursuing development, people lose sight of the ultimate goal and can only see what’s immediately ahead of them, the instances of environmental pollution and abuses of human rights begin to rise.

Therefore, the structural challenges that must be tackled is the relationship between economic development and respect for human rights. Within firms, CSR typically was siloed off as a cost center, not integrated into core business functions.49 This phenomenon shows that businesses regard CSR as a burden, not as part of the business itself, and thus comes the conflict between pursuing profits and maintaining a good human rights record, that thinking that the two are mutually exclusive and cannot be realized at the same time. This perception can be restructured by aligning businesses’ drive for interests with respecting human rights, i.e. by showing businesses that by promoting human rights in the conduct of business (production, distribution, selling, etc.), they can actually obtain a higher profit in the short term and in the long run.

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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?

More industry-specific guidelines are needed, which can only be produced by experts who understand the business and know the values of UNGPs. Every industry has its unique features and challenges, therefore guidelines about human rights should be tailored to each industry, to address those industrial concerns separately and effectively, especially about how to bring in more revenues while better respecting human rights.

With regard to targets, in terms of the government, it would be to encourage human rights due diligence into the practice of businesses. Governments should all make their country-specific National Action Plans regarding human rights. More efforts should also be made on preventing human rights abuses and helping victims of human rights abuses getting sufficient remedies.

In terms of businesses, it would be desirable to see that businesses, starting from listed companies, publish their quarterly/annual report on human rights practices, just like the way they are obliged to publish financial statements on a regular basis, so that it becomes more transparent and the public can oversee it and stir public pressure if unsatisfied with the reports. An added perk of this is that it can even create a competitive environment in the market where companies strive to become better companies that respect human rights.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

As human rights risks may change over time as businesses’ operating context evolves, UNGPs should also progress with the time, reflecting the developments in reality and addressing emerging new problems.
With the development of technology, it is becoming an increasingly pressing issue that technologies should be properly regulated in the context of businesses, especially with regard to human rights. The emphasis on using technologies as a means to help people, not to enslave people, can never be too much. For example, some delivery companies use AI technology to reduce deliverymen’s time allowance for delivery to the utmost extent, in total disregard of the deliverymen’s safety. In the view of human rights protection, this should not be allowed and is one of the many areas where the UNGPs is expected to function.

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

According to Doctor Xiaohui Liang, the UNGPs is the symbol of privatization of the international human rights norms. Due to UNGPs, the international human rights norms were changed into the core values and responsibilities for businesses. In this way, the subject responsible for human rights has changed from a single government to a government and enterprises. The cooperation between the government and enterprises has been developed and valued. Through this "privatization", it not only respects the profit demand of enterprises, but also enables the government regulation to play an appropriate role. This kind of privatization could be regarded as the application of PPP trend in the field of international human rights law. The breakthrough of this theory has also been supported by stakeholders, and it is regarded as a practical way of human rights protection in business.

Specifically, many enterprises have put forward their own human rights regulations, taking apple as

51 梁晓晖：《联合国工商业与人权指导原则与国际人权法的私体化》, 载《中国国际法年刊 2013》。
an example. According to the Supplier Responsibility 2020 Progress Report of Apple Co., in 2005, the Apple Supplier Code of Conduct and the Supplier Responsibility Standards (“Code” and “Standards,” respectively) were developed based on their work to safeguard working conditions at their manufacturing suppliers’ facilities and in alignment with international labor and human rights standards, including those from the International Labour Organization (ILO), and industry-leading health and safety standards. 

From this point of view, Apple’s role in the process of protecting human rights is not only a constrained enterprise—it is bound by various international human rights standards such as guiding principles and standards, but also a subject that constrains other enterprises—it uses its own standards to restrain its suppliers and ensure human rights issues in its supply chain.

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

The interaction between enterprises and the government needs to be deepened. The privatization of international human rights norms is only the beginning rather than the end. It is still not clear that the government, enterprises and other subjects have formed a relatively stable order in the human rights protection in business. In the next decade, handling the relationship between enterprises and the government is still an important issue. Especially in the case of different social conditions in different countries, whether the guiding principle can be used to uniformly handle the protection of human rights in business is a matter of serious consideration. For example, should China also promote a protection model similar to Apple, that downstream companies set standards to regulate their upstream companies?

In addition, in the study of international human rights law, the social cost and the wrongness of human rights violations are usually emphasized. However, especially in the fields of human rights protection in business, we should pay more attention to the economic costs of violations of human rights. For example, Dr. Darius Longarino pointed out that the further integration of the LGBTI group will bring improvements in productivity and growth of innovative economy. Professor Haina Lu also pointed out that an social environment that is unfriendly to the LGBTI group will bring intangible economic losses. A diversified and inclusive social environment can increase productivity, increase corporate profits, and make positive contributions to the national economy.

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

54 陆海娜：彩虹经济的“供给侧”改革，http://m.kdnet.net/share-12330585.html.
UNGPs emblematized a change of the relationship between government and enterprises in human rights protection in business, from a "confrontational" protection model that forces enterprises to submit to the human rights norms to a "cooperative" protection model that adequately respects the principal status of enterprises. However, this change will inevitably bring about new problems.

The issue of the allocation of responsibilities between the government and enterprises for human rights protection mentioned above is a problem of this kind, which is an inherently complex one. On the one hand, Dr. Xiaohui Liang pointed out that there are still shortcomings in the participation of Chinese enterprises, especially small and medium-sized private enterprises, which have extensive human rights impacts in the international society. Also, these medium-sized private enterprises are still need to be regulated and guided properly.\(^5\) On the other hand, the phenomenon that multinational corporations such as Apple influence the entire supply chain with their own human rights codes, which brings out concern about the excessive involvement of multinational corporations in human rights issues. Once such involvement is politicized, the impact will be unmeasurable. Facing this incoming “modern and post-modern waves”, a concrete analysis of the actual situation and the formation of a stable and reasonable division of labor between the government and enterprises in human rights protection in business need to be addressed to achieve fuller realization of the UNGPs.

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

UNGPs made it clear that the relationship between government and enterprises is not confrontation but cooperation in the field of protection of human rights in business. Based on this background, as mentioned above, some economic analyses need to be regarded. Doubtfully, some basic human rights such as the right to life are not measurable, but especially in the fields of human rights protection in business, this economic analysis will show its unique significance.

According to UNGPs, enterprises play an important role in human rights protection in business. Realistically, enterprises such as Apple also play a pivotal role in the protection of human rights in business. Facing this situation, starting from the first demand of the enterprise, profit, and proving to the enterprise the profit that the protection of human rights can bring, seems to be a realistic way to promote the protection of human rights in business. The protection of human rights can not only be a corporate responsibility, but also be a practical way to bring corporates profit. Clarify to enterprises that human rights protection may be a new profit-making path, which can promote

\(^5\)梁晓晖：《工商业与人权：中国政策理念的转变与业界实践的互动研究》，载《国际法研究》，2018年第6期。
companies to further their role and promote the protection of human rights in business.

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?

Whether the allocation of responsibilities between the government and enterprises or the economic analysis of human rights protection in business, it requires the efforts and cooperation of academics and practitioners. For academic study, this requires the collaborative efforts of multiple disciplines, as well as maintaining contact and interaction with practical circle. In addition, we must also pay attention to the role of education. The emphasis on human rights protection is, in the final analysis, a change in people’s concepts, which is a long-term task. Education should be promoted to form a universal consensus and promote the international community’s respect for the protection of human rights in business.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

May the project a great success!
Business and human rights – towards a decade of global implementation

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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?

In the past 40 years, the United Nations has made two failed attempts in its attempts to formulate the corporate responsibility system of multinational companies in the 1980s and 2003. It is worth mentioning that in 2000, the United Nations launched a project called the "Global Compact" for companies eager to voluntarily assume social responsibility. These companies can work with the United Nations to explore key principles of social responsibility. The project proposed "The business community should support and respect the internationally recognized human rights: to ensure that they do not go with those who trample on human rights" and put it before the principles of labor, environment, and anti-corruption. Otherwise, there is nothing to tell. After the guidelines were issued, the situation changed.

Generally speaking, companies will "do more" for various reasons. This may be due to the company's moral awareness (the so-called "business ethics"), goodwill, market needs, customers and investment, and the expectations of the people, etc. In addition, there are some purely commercial calculations and considerations, such as maintaining
good relations with local social groups to avoid disputes, because sometimes these disputes can be very serious, and even threaten the company’s property with violence. Reduce this threat and risk. Reduce operating costs; reduce raw material consumption and industrial waste discharge, while reducing costs and protecting the environment. All these reasons are indeed valid. In most cases, the above-mentioned reasons are not enough to enable companies to fulfill their responsibilities for respecting human rights and protecting the environment. However, the government and enterprises will still think that these reasons are the only motivation and "hands" for enterprises to fulfill their social responsibilities, and claim that there is no legal foothold in the territory of corporate social responsibility. The error of this view is obvious. People have now generally accepted such a view and method that corporate social responsibility should be integrated into the legal system. Related laws and regulations have sprung up after a rainy season: the Enterprise Transparency Act, the Human Rights Due Diligence Act, the Government Procurement Act, and so on. In this way, the country can create a variety of legal motives for enterprises to assume social responsibility, not just the aforementioned ethics, goodwill, and purely commercial considerations. Therefore, the current legal system and corporate social responsibility can be compared.

Core Principle 1 of the Guiding Principles includes various types of measures that the state can and should take: both within the judicial system and outside the judicial system; there are obligations under international human rights law, as well as corporate law, investment law, and government Information disclosure law; both the country’s obligation as a company owner (for state-owned enterprises) and the country’s obligation as a member of intergovernmental organizations (for example, when they establish intergovernmental agreements on trade, investment, and development, they should Human rights are taken into consideration). Therefore, the guiding principles regard the state as a regulator, economic participant, and member of an international organization. It can and should do its best to promote the respect and protection of human rights in industry and commerce.

Therefore, after the guiding principles are clear, corporate social responsibility is not only about the company’s voluntariness. The state must consider how to create legal motives for regulating corporate behavior through various direct or indirect methods. By comparing the EU’s regulations on corporate social responsibility before and after 2011, we can see this huge change: Before 2011, the regulations on corporate social responsibility were established on a "voluntary basis." China evaded related matters and gave up on passing new regulations to make European multinational companies responsible for their actions in developing countries. After 2011, the situation has changed, and the EU has begun to pay more attention to specific issues of industry,
commerce and human rights in its legislation. In 2014, a new regulation was introduced, making corporate social responsibility reporting mandatory for European multinational companies. This clearly shows that the country can use complex regulations to promote corporate respect for human rights. In the future, this approach of incorporating corporate social responsibility into mandatory norms through national legislation will still have good results.

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

The content of the guidelines is related to corporate responsibility, so the guidelines also deal with environmental issues, such as pollution, climate change, waste of resources, etc. But the guiding principles are not directly related to these areas. Generally speaking, although the three cores of obligation, responsibility, and relief can be applied to all fields, the guiding principles only involve the issue of the acceptable degree of pollution. It has no substantive assistance to the effective implementation of the current environmental protection management system, and it can hardly solve the related technical problems and professional jurisdiction issues that have gradually emerged in environmental management and laws; in addition, the guiding principles do not involve how to deal with climate changes, depletion of natural resources such as fisheries and forests.

Therefore, the guiding principles are only relevant when the environment deteriorates to the extent that it harms the environment on which humans depend, such as in minerals, petroleum extraction, forestry, and agriculture. These industries neither damage the environment nor compete with other industries for limited natural resources (for example, mining and agriculture compete for water resources). However, in this case, because human rights have been violated, the companies involved should fulfill the relevant provisions of the second core issue explained by human rights due diligence and explain the reasons for the impact on human rights. In this case, in order to protect the environment on which people live, the four principles of human rights due diligence should be applied to environmental issues without exception.

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

The guiding principles clarify the responsibilities and obligations of the state and enterprises, and the guiding principles also place more emphasis on the channels to achieve relief. Because there is no grievance mechanism, rights holders cannot be treated fairly, and companies and governments that violate their rights cannot be held accountable. If when an individual’s rights are violated, whether as an employee, a
consumer or an investor, if the state and the enterprise are on the same side at this time, then the victim’s rights cannot be remedied anyway. Moreover, as the direct infringing party, the behavior of the company is direct and obvious. If the country chooses to abandon the supervision or turn a blind eye to the competition of domestic enterprises in international trade, economy or market, then The behavior of the state is also a tort, and this kind of infringement is concealed and inaction.

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

The "Guiding Principles" will have a profound impact on the development of international human rights law. Prior to this, the company and human rights issues only involved specific areas, such as labor rights issues. In the field of international law, companies and human rights issues are rarely involved. The adoption of the "Guiding Principles" represents the first time that the United Nations has recognized the issue of business and human rights. "Guidelines" is unprecedented in history, and its meaning is a landmark. Affected by this, some important global governance frameworks are being integrated with the Guiding Principles.

In 2012, the Global Pact and UNICEF jointly issued the "Children's Rights and Business Principles", based on the "Guiding Principles" to provide guidance for companies to respect and support children's rights in their operations. The OECD Council passed recommendations requiring export credit agencies to fulfill their due human rights responsibilities and the OECD's plan on how to integrate the Guiding Principles into financial institutions. The compliance consultant/ombudsman of the International Finance Corporation reviewed its operational guidelines and incorporated the Guidelines into the effectiveness standards of its non-judicial grievance mechanism. The United Nations Conference on Trade and Development is committed to working with countries to support and encourage the implementation of a new sustainable development investment policy framework, which uses the Guidelines as an important reference standard. Two thirds of the EU member states have or are formulating national action plans to implement the Guiding Principles. The World Bank is revising its safeguard policy and is considering incorporating the Guiding Principles and due human rights responsibilities into the safeguard policy.

In short, the guiding principles clearly state that in the process of obtaining remedies, it is not only the court that matters: it may take a very long time to obtain remedies, the cost is too high, and at the same time, there may be many obstacles in the process. Therefore, from the perspective of rights holders, it is extremely important to attach importance to all kinds of relief channels, especially non-judicial channels.
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?

Without relief, there is no right. If there is no mechanism for victims to receive relief, all the statements about state responsibilities and corporate obligations (Core Principle 1 and 2) are just a dead letter. They will not have any impact on people's lives. Therefore, combining the above two points, in the future, we will continue to strengthen the relief of victims, strive to broaden different types of relief channels, and try to incorporate more methods that are beneficial to victims into non-judicial relief channels to save victims’ relief cost.

Of course, this is not to say that the state and enterprise's ex-ante safeguards are no longer important. Ex-ante supervision is more efficient than after-event relief, and it can also greatly reduce the severity and scope of possible damage. In this regard, it is still necessary to promote the country’s legislative process in various reasonable restrictions on enterprises, such as anti-monopoly law, anti-unfair competition law, labor contract law, environmental protection law, food and drug management law and many other aspects. Incorporating the protection of human rights has promoted the protection of human rights in business.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share? In view of the fact that the Guiding Principles themselves have many issues that need to be clarified and their non-legally binding nature, the UN's discussion on the issue of business and human rights is still in its infancy. Since the Human Rights Council approved the Guiding Principles, a working group has been established to publicize and promote them, and to find the best ways and methods to implement the Guiding Principles. Through visits to governments, "conduct regular dialogues" , To explore areas of cooperation with the governments of UN member states and other stakeholders". There is reason to believe that the discussion on the issue of industry and commerce and human rights based on the Guiding Principles will continue and be developed. Similarly, the “Guiding Principles” have far-reaching impact on business enterprises. This is the first time that the United Nations has stipulated the company's responsibility to respect human rights through legal documents. The company’s status in international law and its failure to fulfill the responsibility for respect A relatively complete legal framework. In the process of globalization, non-state actors such as multinational corporations and other industrial and commercial enterprises are playing an increasingly important role no matter at the international level or the domestic and local levels. With the spread of the "Guiding Principles" and its research In-depth, the
topic of industry and commerce and human rights will further arouse the attention of the
world, thereby fundamentally promoting the protection and respect of human rights.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
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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?

Many businesses in China are already addressing human rights and action is often spread across diverse business functions. Within large corporations, there are often policies, processes and systems in place to address some of a company’s human rights impacts. For example, Health and Safety teams deal with the right to health, and right to just and favorable conditions of work (Articles 7 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESR)); Company security personnel often deal with the right to peaceful assembly, and the right to liberty and security of person (Articles 21 and 9 of the International Covenant on Civil and Political Rights (ICCPR)); and Human Resources and Procurement teams need to be concerned with, among other things, ILO standards for employees and for workers in the supply chain. In recent years, many businesses in China have begun integration of respect for human rights across these and other business functions (including for example, Sales and Marketing; Product Development; Enterprise Risk; Strategy; and Mergers and Acquisitions).56

56 Wang, Xiaoguang & Oud, Malin, *the Corporate Responsibility to Respect Human Rights in China and Globally: A Case-Based Learning Project Involving Business Leaders from Chinese state-owned enterprises and multinational corporations from diverse geographies*, Peking University International Law Institute & Global
In addition, there have been many developments in the wider Corporate Social Responsibility (CSR) sphere in China, encompassing issues related to the environment, corruption, labor rights, philanthropy and aspects of human rights. This is most apparent in the sharp increase in CSR and sustainability reporting. In 2006 only 19 such reports were published, but by 2013, over 2,000 Chinese companies were publishing CSR or sustainability reports. State-owned enterprises are also not immune from pressures to take a more responsible approach to business. The 18th National Congress of the Communist Party of China mandated that state-owned enterprises must fulfill social responsibility.

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

Despite all the effort, however, the challenges are massive and pressing. The gaps and challenges remain in the following aspects:

- The awareness of human rights responsibility and the visibility of the UNGPs in Chinese business community is extremely low;
- The uptake of the UNGPs by the Chinese government is even lower; the good practices in human rights of some Chinese companies outside China have given rise to the issue of “double standards” against their practices in China;
- China’s support on a binding treaty in business and human rights at the UN may dilute its political will in promoting the UNGPs and cause hesitation among its businesses to embrace them.

On the level of individual companies, businesses also face the following challenges:

- Companies are finding it difficult to understand what human rights means to them;
- Companies face lack of access to appropriate resource to address these issues;
- Education for leaders in companies is insufficient.

Respect for human rights can look very different for companies in different industries. Hence, it’s important for a company to understand what it means to them and for their

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58 Wang, Xiaoguang & Oud, Malin, the Corporate Responsibility to Respect Human Rights in China and Globally: A Case-Based Learning Project Involving Business Leaders from Chinese state-owned enterprises and multinational corporations from diverse geographies, Peking University International Law Institute & Global Business Initiative on Human Rights, 2014
60 Richard Karmel, the challenges companies face in addressing human rights, Partner, Mazars UK
corporate activities. For example, the salient human rights related issues in the garment industry will often be based around workers’ rights in the supply chain, health and safety, minimum wage and potentially child labor. Whereas in the extractive industry, the salient human rights issues are likely to be about security, community engagement, working with indigenous people and land acquisition. Once human rights are translated in these ways, companies will be able to begin to embed them within the wider business strategy. For example, it may be easier for a company to react quickly if an issue is phrased as a land acquisition problem more than if it is raised as a human rights issue without further explanation.\(^61\)

Even once a company understands its salient human rights issues, most still struggle to implement change they don’t have the sufficient resource with appropriate skills. The reality is that most companies will not have this in place because there aren’t yet appropriate and widespread education and training modules to address companies’ needs in this area.\(^62\)

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

Though companies in China spend most effort in improving the economic aspects of CSR, such as competitiveness, product innovation and process innovation, only a small minority of the companies set concrete targets and report the realization of these targets for social and environmental goals. This indicates that the attention to social and environmental aspects of CSR is still rather loose. The most important obstacles for improving CSR are strong competitive pressure, insufficient support from the government and/or nongovernmental organizations and high costs of CSR implementation.\(^63\)

Currently, the ESG record of Chinese business remains mixed, at best. For example, the quality of CSR reports varies widely, as do their rates of publication. And, in fact, as the number of CSR reports has risen, the share that can be considered good has declined. Local governments further undermine China’s ESG record. Despite Chinese President Xi Jinping’s 2012 declaration that economic growth should no longer be pursued without regard for its social and environmental consequences, local governments have remained focused on GDP.\(^64\) In addition, the small private firms are showing a great

\(^{61}\) Richard Karmel, the challenges companies face in addressing human rights, Partner, Mazars UK  
\(^{62}\) Ibid.  
\(^{64}\) Asit Biswas, Cecilia Tortajada, The Evolution Of Chinese Corporate Social Responsibility, China Water Risk, 2020
reluctance to engage in CSR despite their enhancing economic performance.\textsuperscript{65}

Hence, the priorities to achieving fuller realization of the UNGPs include:

a. Ensuring not only the quantities but also the qualities of CSR projects in China
b. Strengthening the support of local government for CSR projects.
c. Increasing the awareness of CSR projects in small and medium enterprises.\textsuperscript{66}

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

The household registration system in China needs to be reformed to realize sustainable development based on respect for human rights. The problem of conditions for migrant workers in China have received attention for poor working conditions, worker suicides, lack of access to collective bargaining, and the growing gap between wages and living wage. The Hukou system in China creates particular challenges in relation to family life and mental health. Workers generally have no choice but to leave their family and children behind when they move to the city, in order that their family continue to enjoy basic rights and services that are not accessible outside of their birthplace.\textsuperscript{67}

The hukou system needs to evolve into a residency system providing a minimum standard of public service to all residents. It should remove barriers to labor mobility from rural to urban areas, as well as between cities, to help boost workers’ wages. Reforming the hukou household-registration system to provide equal access to quality services for all citizens and create a more mobile and versatile labor force is key to realizing sustainable development based on respect for human rights.\textsuperscript{68}

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?

To achieve successful implementation of CSR within businesses, businesses should set the following targets:\textsuperscript{69}

\textsuperscript{66} Ibid.
\textsuperscript{67} Wang, Xiaoguang & Oud, Malin, the Corporate Responsibility to Respect Human Rights in China and Globally: A Case-Based Learning Project Involving Business Leaders from Chinese state-owned enterprises and multinational corporations from diverse geographies, Peking University International Law Institute & Global Business Initiative on Human Rights, 2014
\textsuperscript{68} Carl Hanlon, Li Li & Jane Zhang, “China: A New Approach for Efficient, Inclusive, Sustainable Urbanization”, the World Bank, 2014
\textsuperscript{69} Hohnen, Paul, and Jason Potts. Corporate Social Responsibility: An Implementation Guide for Business.
a. Develop an integrated CSR decision-making structure;
b. Prepare and implement a CSR business plan;
c. Set measurable targets and identify performance measures;
d. Engage employees and others to whom CSR commitments apply;
e. Design and conduct CSR training;
f. Establish mechanisms for addressing problematic behavior;
g. Create internal and external communications plans; and
h. Make commitments public.

For the Chinese government, it should consider adopting the following public policies options to achieve meaningful progress.\textsuperscript{70}

a. Awareness-raising efforts to create a shared understanding of corporate responsibility among companies and the broader public, including what business can do to implement it.
b. Partnerships designed to create win-win situations in which various stakeholders work collectively toward a shared goal.
c. Soft law approaches that promote and incentivize voluntary action by business as a complement to state regulation.
d. Mandating instruments that allow governments to monitor and enforce corporate accountability.

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

First of all, UNGP is the first generally accepted global standard on human rights influence of industry and commerce. And it is the world’s first comprehensive guidance for companies to report on how they respect human rights. UNGP comes up with the three-basic-pillar principle system and policy framework, which not only stresses governments’ liability on human rights protection, but also prompts the companies to respect the human rights. The new set empowers the protection with public and private care, which evolves much larger scale of the society into human rights protection career, making it not just governments’ responsibility, compared with the traditional International human rights protection law.

As for the promising developments and practices for future, the attempt to switch UNGP to a hard law may be an important direction. To make an international pact really work, governments should try to localize the UNGP and carry out practical and targeted policy. Moreover, based on the governments’ attempt to switch UNGP to hard law, as stakeholders, companies can or are made to do more on human rights protection.
2. Where do gaps and challenges remain? What has not worked to date?
As is mentioned before, UNGP exists as a soft law. Even though governments are trying to make it a hard law, but with the nature of capital, most companies still want to get away with the extra cost on protection of human rights. And developed countries, economically ahead of the game, are much more willing to contribute, with developing countries having problems activating home market. How can UNGP become a proposed idea or even a part of barriers to entry is a main problem.

3. What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?
The companies are born to chase after profit, which is understandable. However, with benefiting from the society, they should be totally aware of the liability they take as a member of the society. They need to change their mindset, with relevant organizations (UN, NGOs, governments and so on) spreading the new ideology. And of course, we can’t expect too much for the moral response. Therefore, legal obligation that is valid and can be accountable is needed, which cannot be achieved or fully achieved under present policy framework.

4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?
With the developed county transmitting their industry chain to developing country, the cost of human rights protection is also transferred. The former becoming the biggest winner on the table by holding the key technology and IP, naturally with the most part of the profit, the latter are under great pressure of pollution, human rights protection and so on. Therefore, I think the main challenge is that how can we reasonably divide the obligation between different economies. After all, advanced economies occupies first mover advantage, and they didn’t pay the cost of human rights protection back in the old days.

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?
I think, given to present international situation, the developed countries and economies
need to take the responsibility in advance to show their determination, which will deliver a message that human rights protection is absolutely not a burden, but a propulsion to a better civilized society.

Moreover, the domestic law making projects need to make the UNGP really work.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share? No.
Business and human rights – towards a decade of global implementation

Input to The UNGPss 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

On 16 June 2011, the UN Human Rights Council adopted the Guiding Principles on Business and Human Rights: Implementing the UN "Protect, Respect and Remedy" Framework.

I believe that the importance of the UNGPs can be seen in the following ways:

1. The UNGPs proposes a "Protect, Respect and Remedy" framework on human rights from both the State and business logical perspectives. It is the first set of global standards for preventing and addressing the risk of adverse impacts on human rights associated with business activities.

2. In the context of business and human rights, the UNGPs framework proposes a programme of collaborative governance comprising three core principles: the state duty to protect against human rights abuses by third parties, including business activities; the corporate responsibility to respect human rights; and the need for effective access to remedies for human rights abuses. The framework clearly and completely establishes a strategy for collaborative governance. The inclusion of the business perspective is very important, which makes it an effective guiding principle.

3. The UNGPs recognizes the positive role of business in social development and the protection of human rights. It does not attribute the negative impact of business on
human rights in the marketplace solely to business enterprises, but situates the issue in the context of the relationship and power dynamics between business and other stakeholders, identifying "governance deficits" as the root cause of the negative impact of business on human rights.

Clearly defining the framework for collaborative governance, emphasizing multi-stakeholder participation, and emphasizing the active role of business are the most innovative parts of the UNGPs and, in my opinion, the most important takeaways for all stakeholders.

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

In terms of the content of the UNGPs, it makes an interesting division and interpretation of the three perspectives of state, corporation and remedy. It is grounded in the recognition of the State's duty to protect human rights, the corporate responsibility to respect human rights, and the need for access to remedy. It emphasizes both the interplay of the three as a unified whole and the focus on implementation at each individual level. However, both implementation at a single level and the interplay of several parties can be difficult.

Give examples of single-level implementation: The UNGPs require that “States must protect against human rights abuse within their territory. The State shall take appropriate steps to prevent, investigate, punish and punish the acts of third parties, including business enterprises, and redress such abuse through effective policies, legislation, regulations and adjudication.” This item requires a sound legal and management system at the national level, which does not correspond to the current international situation. At the same time, international human rights treaties are also broad in scope and there is still a lot of room for treaty interpretation, which can cause a lot of confusion among states parties.

Give examples of multi-party cooperation: The UNGPs highlight the need for multi-stakeholder dialogue, renewed multi-lateralism and transformational collective action. But in the field of business, especially in the case of multinational companies and overseas investments, there are not only human rights issues involved, but also multiple influencing factors such as economic development, national interests, political games, etc. How to recognize and balance these elements is an inherently complex issue.

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

Unlike other previous major UN documents on the issue of business and human rights, the UNGPs are not based on skepticism or negativity towards business, but rather on a recognition and clarification of the role and responsibility of business for social
development and the protection of human rights in the first place. The focus then becomes on whether business can engage with human rights protection in a more sustainable and rational way. There are also many questions in this area. Here I would like to take supply chain management as an example. According to the UNGPs, business enterprises must not cause adverse human rights impacts through their own activities or as a result of their 'business relationships', including entities in 'value chains'. As part of their corporate responsibility to respect human rights under the UN Guiding Principles, business enterprises should also address "relevant human rights impacts caused by their business partners through their operations, products or services, even if they are not themselves involved".

However, the reality is that:
- Due to the complexity and geographical diversity of supply chains, enterprises still face difficulties in identifying risks and tracking supply chains.
- Suppliers themselves also need to cooperate, but different business incentives and disincentives can make it difficult for them to do so.

In order to address such issues, it is necessary to:
- At the national level, enterprises should be assisted in identifying, preventing and mitigating human rights risks in their supply chains, assisted in assessing the risks, and ensure that their existing policies, legislation, regulations and enforcement measures effectively address those risks.
- Strengthening the awareness of responsibility and oversight mechanisms in the supply chain at corporate level.

Taking the above case as a summary:
1. The main obstacle of The UNGPs is how to discover and identify the human rights impact of objectively defining industry and commerce, and how to clearly define the boundaries of responsibility between corporate entities;
2. The priority is to give full play to the role of industry and commerce in protection, and the design of the system at the national level and effective cooperation guarantee at the international level are effective ways to promote the protection of industry and commerce and human rights.

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

At a more macro level, the root cause of the dilemma of business and human rights lies in the governance gaps brought about by globalisation.

Addressing this issue requires a fundamental reduction in governance disparities and conceptual disputes, which is a very ambitious proposition of our times.

In terms of the implementation of the UNGPs themselves, although they have been
articulated in terms of states, business enterprises and access to remedy, there can be many difficulties in actually implementing them, and the following challenges should be addressed.

- **Accountability issues:** Is there an independent government agency responsible for defining and addressing business and human rights issues? How are responsibilities divided between government and business?

- **Legal standard issues:** Are there clear legal definitions and guidelines can be used by state agencies and enterprises? How can implementation standards be introduced that are in line with the philosophy of The UNGPs and guarantee a certain level of enforceability?

- **Effective remedy issue:** Access to remedy is one of the core principles in the UNGPs, along with the state duty to protect and the corporate responsibility to respect. But how do states, businesses, institutions and international organisations work together? What is the mechanism for coordination? For example, what are effective grievance, redress, remedy and protection routes, especially for multinational companies and corporate extraterritorial human rights disputes?

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?*

In my view, this issue is in line with the fourth issue above. Each of these issues, including attribution of liability, legal standards and effective access to compensation, requires a multifaceted and complex process of collaborative governance from policy, standards and enforcement.

Here, however, I would like to emphasize the concern for SMEs, who are, in my view, the key players.

There are several reasons for this.

- **Key position:** small, medium and micro enterprises are a key component of industrial and commercial development, occupying a large market share and providing a large number of jobs. Take China as an example. At the end of 2018, there were 15.265 million small, medium and micro private enterprises, accounting for 84.4% of all enterprises, and 79.4% of all enterprise employees. The awareness and protection of human rights by SMEs will have a direct impact on human rights protection.

- **Face challenges:** SMEs are crucial to the future of work, but they also face more challenges than large corporate projects, especially in terms of financing, working conditions and regularity. Specifically:

  - **Access to finance:** Compared with large enterprises, employers of SMEs usually have higher transaction costs and interest rates, which limits their ability to obtain external
financing. With greater pressure on businesses to survive, it is difficult for enterprises to balance growth and human rights protection at the same time. (This is not to say that these two issues are on opposite sides of the fence)

- **Infrastructure.** While it is often difficult to secure infrastructure for SMEs, such as clean water, roads, electricity, SMEs are also often excluded from business and employer social circles and do not have sufficient resources to use new digital technologies. These issues also affect the safety and health of the SME workforce.

- **Skills shortages.** SMEs may suffer skill shortages, both at managerial and workforce levels, which means SMEs are less likely to invest in workforce training.

Helping SMEs to grow in a healthy and sustainable way is, in my opinion, a measurable goal. Achieving this goal can be driven by a number of quantifiable projects. For example, increasing the proportion of women in employment, increasing the wage level of employees in SMEs, closing the gender wage gap and providing SMEs with reasonable access to finance and security.

### 6. Is there other information relevant to The UNGPs 10+ project that you'd like to share?

In addition to the UNGP 10+ project, I have seen a number of projects and issues related to business and human rights development from other UN agencies such as ILO, UNDP and UNCTAD. But how to translate these concepts into action for businesses, especially SMEs, in the face of complex regulations, is something I have always been interested in and thinking about.
Input to the UNGPs 10+/ Next Decade BHR project

*Please include links to relevant publications and materials, wherever relevant*

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?

   **Answer** Since 2011, the UNGPs has received wide acceptance from all kinds of stakeholders including governments and business industries, which shall be a huge success and a milestone in the field of BHR.

   The most important and promising practice behind the success is the SOFTENING of expressions. Moving from obligations to the Three Pillar on requirements on business part, extensive supports are attained, though with some compromises on the validity of enforcement. In the next decade, this kind of SOFTENING deserves further preservations.

2. Where do gaps and challenges remain? What has not worked to date?
The biggest concern nowadays is still the enforcement of UNGPs; and probably also including the universal education of related documents and the rise of realizations and cognitions of the concept of human rights for all global citizens.

The problems of human rights are more like a conflict between two professional groups including the legal circle, and the business society, while it should be a problem between the general public and the business.

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

Answer The key obstacles is that the business part still has not fully understood the importance of human rights through UNGPs.

Frequently, the importance of human rights on business is phrased as follows:
1. Compliance with both Local and International Laws.
2. Satisfying Consumer Concerns.
3. Promoting the Rule of Law.
5. Supply Chain Management.
8. Increasing Worker Productivity and Retention.

Yet this is not the logic of business! Maximizing profits is the core of business. The above contents are less convincible to connect human rights and business profits. Numbers and mathematical calculations are in need.

Fortunately, existing economic game theory, competition theory, as well as the structural model tools in the field of industrial organization are efficient enough to provide an estimation on the loss of not obeying UNGPs. Using this estimation as sharp signals shall push more companies to promote and fulfill the UNGPs.

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

Answer Health rights should be one important content of human rights. Usually, we associate human rights with business, with work, with education, yet throwing less
lights on health. Human capital is the foundation of sustainable development, with health being the main driver. Therefore, it is needed to attach equal importance on the concept of health rights and the implementation of health rights with other aspects.

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?

Answer For this, I still prioritize the universal education of human rights because it is the best way to form an universal alliance. Whenever one thing is accepted by everyone, it shall be a social norm. So does the Human Right.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

Answer I propose a slogan for UNGPs 10+ as “forward on all fronts that makes all differences”.


Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

According to the “polycentric governance” theory71, to effectively implement the UNGPs, international community, governments, corporates and civil society, they all have a role to play. The government and international community can 1) issue legislation and regulation to stipulate the relationship between business and human rights, 2) take judicial and non-judicial measures to redress human rights violation related to business, and 3) closely incorporate national business and human rights efforts into international law and legislation such as the Global Compact and UNGPs. In this regard, the progress during the past 10 years could be summarized as below:

Within UN human Rights mechanism:

The coming out of UNGPs in 2011 is a milestone of global cooperation on business and human rights. UNGPs serve a fundamental reference for follow-up regulations or “soft law” in international, regional and national levels, such as the Global Compact, ISO Standard 26000, OECD Guiding Principles for Transnational Corporations, and other CSR instruments and initiatives.

The establish of Working Group 72 on the issue of human rights and transnational corporations and other business enterprises in 2011 is a further step to establish international mechanism of business and human rights. The Human Rights Council renewed the Working Group’s mandate once in 3 years (in 2014 (resolution 26/22), 2017 (resolution 35/7) and 2020 (resolution 44/15) respectively).

The legal binding process started in 2014 73. An open-ended intergovernmental working group (IGWG) is established with the mandate to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights. Up until now, 6 sessions have been hold. However, this process generates intensive debate and divergence among countries.

In 2016, the OHCHR discussion moved to human rights violation remedies.

Within governments:

- Up until now, 24 States have produced a national action plan, 2 States (Georgia and South Korea) have included a Business and Human Rights chapter in their Human Rights national action plan, 23 States that are in the process of developing a national action plan or have committed to developing one, 6 States in which either the NHRI or civil society have begun steps in the development of a national action plan74.
- For example, in China, business and human rights have been mentioned in “Human Rights National Action Plan (2016-2020)”, which emphasizes the human rights education in enterprises and promotes the implementation of social responsibilities of Chinese enterprises in their overseas activities.

The enterprises can 1) separate legal personality and limited liability to include human rights norms into their internal regulation, 2) install operations and risk management

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72 The Working Group on the issue of human rights and transnational corporations and other business enterprise: 
74 States national plan on business and human rights: 
system. At this level, the recent progresses could be listed as below):

- More and more companies actively joint the global compact, and issue due diligence human rights reports. Up until now, there are 11,593 companies in 153 countries joint the global compact with 58,604 public reports.
- Companies care more about corporate social responsibility (CSR). Among the largest 250 companies in the world, 92% produced a CSR report in 2015, informing shareholders and the public about the firm’s activities. That’s up from 64% having such a report in 2005. Up until 31th January 2018, Fortune Global 500 firms spend around $20 billion a year on CSR activities.
- There are increasing numbers of companies that actively issue due diligence human rights reports. For example, in 11th October 2017, Coca Cola released its first corporate human rights report. In line with their increasing overseas activities, Chinese companies put more attentions on the implementation of corporate social responsibility in Africa.

The civil society can actively advocate and promote the implementation of business and human rights through social compliance mechanism, for example, campaigns, lawsuits, and other forms of pressure and partnership. NGOs’ participation in UN Human Rights Council to discuss corporates and human rights in the best illustration. Business & Human Rights Resource Centre, a NGO working on this area is one of the best example.

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

For countries and international community:
- Business and human rights regulations constitute a part of international soft law. There is no international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.
- There are limited numbers of regional regulation and national plan of Business and Human Rights

For companies:
- No direct obligations on companies to respect Human Rights under international law. Despite corporates engage in UNGP, their follow-up actions such as

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75 Information comes from Professor Liang Xiaohui’s slides.
76 https://www.unglobalcompact.org
78 https://www.business-humanrights.org/en/
reporting is lacking.

- According to Professor Liang Xiaohui, to discuss business and human rights, the notion of stakeholder in supply chain is inevitable. The gap now is that human rights due diligence tends to be limited within one corporate instead of considering the whole supply chain stakeholders.

For civil society:

- The awareness of business and human rights is generally lacking, especially in developing countries, which tend to prioritize the economic development by scarifying human rights.
- A third part to surveil corporates’ potential human rights violation doesn’t exist.

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

- The divergence of countries to formulate a Business and Human Rights Treaty makes it extremely difficult to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights A/HRC/RES/26/9. There exist large gap amount UN member states, especially the large countries (for example, the USA) regarding whether to construct a binding treaty on business and human rights. In 27 October 2020, during the Open-Ended Intergovernmental Working Group (OEIGWG) session on business and human rights, the US government issued a Communiqué directly stating its opposition to the treaty process.
- Lack enforcement of implementation of UNGPs. Companies joint the UNGPs and the Global Compact only for protecting their reputation instead of avoiding human rights violation.

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

According to Professor Liang, UNGPs successfully unified international community, countries and business groups to formulate a consensus on Business and Human Rights. However, the appeal to have international legal binding on corporates divides the developed countries groups and developing countries groups by creating new divergence, which represents the biggest systematical challenge in international level. In this context, how to solve the diversions by designing sophisticated and strict
international mechanism to encourage and guide both States and corporates for “protect, respect and remedy” human rights in business concept is the working direction to move forward.

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?

For countries and international community:
- Design sophisticated and strict international mechanism to encourage and guide both States and corporates, which narrows down the gap amount states.
- If it is temporary inapplicable to establish international treaty on business and human rights, it is useful to establish regional business and human rights treaty.
- Include Business and Human Rights into national human rights actions plan: EU contributed a lot in the early development of National Action Plans on business and human rights, their NAPs have also been criticized for shortcomings in process and content.

For companies:
- Respect human rights by following 3 operational principles:
  1. Issue Code of conduct as company’s international policy commitment to protect human rights
  2. Fulfill companies’ Human rights due diligence through 1) Identification (impact assessment), 2) Appropriate action (corrective measures); 3) Tracking (checking), and 4) Report (transparency)
  3. Provide remediation as reparations for victims of human rights violation conducted by companies
- Construct and strengthen feasible corporate remedy for human rights violation. Remedying human rights violations is “shameful” for companies since it implies companies’ failure in the field of human rights. But redressing human rights violations also often means opportunities for enterprises to improve and improve their management mechanisms, particularly complaints mechanisms, which will help enterprises prevent and reduce future human rights risks. Companies should improve management mechanisms to remedy human rights violations, and actively take coordinated action with other parties

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80 Refer to Professor Radu Mares’ slides
81 工商业与人权：中国政策理念的转变与业界实践的互动研究, 梁晓晖
in the supply chain or in the commercial ecology to address structural problems that lead to human rights violations.

Also, below are tips directly cited from OHCHR Business and Human Rights website\textsuperscript{82}:

1) embed the “Protect, Respect and Remedy” pillars in the context of engaging the private sector to realize the SDGs;
2) strengthen access to effective remedy for victims of business-related human rights abuse, which should be a key priority for operationalizing the State duty to protect and corporate responsibility to respect human rights, and which will eventually also contribute positively to preventing future adverse impacts on human rights;
3) make corporate human rights due diligence part of normal business practice, by scaling up emerging good business and investor practice, and through effective regulations;
4) connect the business and human rights and anti-corruption agendas;
5) integrate the UNGPs into the policy and practice of the various economic actors owned or controlled by the State;
6) develop and incentivize more responsible business and investor practice in conflict and post-conflict situations;
7) integrate gender-responsive measures in State and business policy and action, to respond to the unique experiences of women and girls as well as the structural discrimination or barriers that they face;
8) recognize the key role of human rights defenders in supporting a sustainable future for all and ensure corresponding action by States and business enterprises to safeguard defenders who raise concerns about business-related human rights impacts;
9) leverage the role of national human rights institutions;
10) harness the potential of trade and investment agreements to promote business respect for human rights;
11) apply the UNGPs in the context of climate change mitigation efforts as well as in the transition to a greener economy.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

\textsuperscript{82} https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx
The COVID-19 outbreak worldwide have triggered new challenges in the area of business and human rights such as forced unemployment, discrimination in workplace. Knowing how to deal with the emergent challenges is of equal importance. In this context, UNDP published a self-checking tool for business to implement their human rights due diligence under coivd-10 can be regarded as good practice.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

Progress has been achieved by the UNGPs include: 1) international standards has been established in line with the UNGPs, e.g. the relevant principles in the OECD Guidelines for Multinational Enterprises; 2) legislative and non-legislative tools to implement the UNGPs inside and outside of the UN have been developed, especially in the form of NAPs launched by more and more States; 3) in a broader sense, an increased awareness and better understanding concerning the relationship of business and human rights is being achieved. 84

As regards the promising developments and practices, some international businesses have launched comprehensive policy statements, which can be subjects to be studied.

Some statements are too general and even, in practice, are a method of publicity for the companies, while some provide a good example for companies which have not yet fully realized the obligations of corporations to respect human rights and the three-pillar framework under the UNGPs. Through such studies and reflections, it may be advantageous to summarize some standards or factors often being considered in practice for a more effective framework in companies’ policy statements in the future as well as a basis for a further development of the UNGPs.

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

1) States’ commitments to develop National Action Plans implementing the UNGP have been far too slow to materialize.
2) Different from States and corporations, stakeholder groups generally lack awareness about the UNGPs.

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

Although the UNGPs states all the human rights should be respected by corporations and it mentions international human rights treaties can be consulted. It does not incorporate explicit reference to the full body of human rights laws and standards that is relevant for the assessment of the corporate responsibility to respect human rights, and thus loopholes exist. 85

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

Effective collaborative partnership between the official government, corporations, and other civil organizations under the idea of “polycentric governance”. Only in this way, the sustainable development based on respect for human rights can be effectively realized. However, such partnership is absent or ineffective in practice.

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

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over the coming years?

The plan to develop a mandatory human rights due diligence regime with explicit standards and requirements under Principles 18-21 should be conducted and negotiated among States. Though there is no single model for mHRDD regimes, there could be some fundamental and common standards to be designed and incorporated.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

The third pillar of the UNGPs – remedy is a complicated issue, which needs both states’ and corporations’ endeavors. To realize the UNGPs, relevant states should be required to update their legislations and corresponding administrative measures within a limited period, which can be decided by themselves. In addition, States should supervise and monitor whether corporations have effective remedy systems for human rights.

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?

During the last decade, human right impact assessment, human right due diligence rules and relevant standards are all important progress in UNGPs implementation. Meanwhile, the development of effective operational-level grievance mechanisms for individuals and communities may have great progress under the influence of UNGPs.

Developing a new version of UNGPs with higher justiciability will be a great progress.

Building a new organization or mechanism to improve the UNGPs implementation.

Intensifying global cooperation to incentivize transnational enterprises to comply with UNGPs better.
2. Where do gaps and challenges remain? What has not worked to date?

There is a consistent challenge that human right problems are politicalized by some states that destroys the seriousness and neutrality of protection of human right, especially some states punish foreign companies due to human rights problems and influence the relationship of states rather than cooperate with other states to solve these problems. Meanwhile, insufficiency of workers’ voices is also an important problem in some society. Internet gives everyone a channel to express, but only several kinds of people’s voices will be paid attention and workers’ voices are tend to be ignored.

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

The economical gap between northern and southern countries that possess different opinions towards transnational enterprises still remain as the key obstacles in my opinion. The main driver is of course a progressivism in international politics and the most important thing need to be done is to help states to reach unanimous consensus and bring us a new binding agreement.

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

The divergences between northern and southern countries and economies of different countries may be the structural challenges, which are pretty hard to change and lead to other relevant problems.

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?

A meaningful progress will inevitably ask states to make a more meaningful agreement which is pretty hard, but on the more concrete level human right impact assessment and human right due diligence can play a more critical role. Companies that perform these indications greatly should be encouraged and benefit from it in the sense that UN can be a platform to display these companies complied with these indications and denounce these companies violated them badly and construct a credit system of protection of human right step by step which displays different regional or worldwide
companies.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

   No more information I’d like to share.
Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

   (1) progress
   In 2008 and 2011, the “Protect, Respect and Remedy” Framework\(^{87}\) and UNGPs\(^{88}\), written by John Ruggie, the Special Representative of the Secretary-General(SRSG) on the issue of Business and Human Rights, were respectively recognized and endorsed by UN Human Rights Council(UNHRC), which marked the tipping point of the governance tendency regarding to Business and Human Rights under the UN.

   During the course of the last decade, the Framework and UNGPs have been warmly welcomed by stakeholders from all lines, both public sector and private sector. Among them, the difference was majorly and especially made in accord with 3 pillars: (a) states have a duty to protect people against human rights abuses including by businesses;


(b) businesses have a responsibility to respect the human rights of others; (c) and both of them have an obligation to ensure that victims of human rights abuses have access to effective remedies.

Take the corporate responsibility as an example, they should not only respect human rights, but also embed their responsibilities into their code of conducts and policies appropriate to their sizes and circumstances. The last decade has witnessed a worldwide response to operationalize the Framework in business enterprises.

Representing the voices from business community, IOE, ICC and BIAC to the OECD successively submitted three joint statements in 2011, indicating the strong support for working with the UN Working Group and the adoption as well as the implementation of the Framework on BHR and the UNGPs.\(^9\)

In May 2020, BP updated their Human Rights Policy to clarify their human rights commitments and address emerging human rights issues relevant to the industry of oil and energy.\(^9\)

Up till now, over 200 multinational corporations have developed their human rights policies to elaborate their commitments in support of UNGPs implementation in public and provide a basis for human rights practices through all business functions in corporate governance.

(2) Promising Developments and Practices than can be built on

As one of the most renowned multinational corporations around the globe, Unilever’s values and practices of embedding human rights into business have been demonstrated in a series of key policies, which provides an excellent example for counterparts to learn from.

The international corporation was committed to respect all internationally recognized human rights as relevant to their operations in Human Rights Policy Statement.\(^9\) It also published Code of Business Principles externally in support of transparency to describe the standards to follow and provide overall direction on all activities as well.\(^9\)

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Based on 12 fundamental principles grounded in internationally recognized standards on respecting workers’ rights and associated issues, it is in Responsible Sourcing Policy (RSP) that Unilever described their approach to responsible sourcing by guiding supply chain partners to start shifting their practices from doing no harm to doing good.

When it comes to the labor rights, Respect, Dignity & Fair Treatment has set out the expectations from employees and an environment Unilever provides to promote diversity, enhance mutual trust and create equal opportunities, with no discrimination or victimization.

Unilever endorsed the UNGPs in 2011 and the UN Women’s Empowerment Principles in 2013. UN Women, with the support of Unilever, created a Global Women’s Safety Framework in Rural Spaces (GWSF) in December 2018, and developed a practical Guide on implementation in 2019.

In 2014, Unilever created a Global Framework for Fair Compensation to set a fair and livable level of compensation process so as to ensure the pay for employees and be a living wage employer.

In 2019, Unilever committed to becoming the #1 employer of choice for people with disabilities and to increasing the number of employees with disabilities to 5% of our total workforce by 2025.
In a nutshell, Unilever has taken steps to implement the UNGPs since the very beginning till now. To operationalize the UNGPs and embed them into business, it not only published the general policies based on a couple of legal documents of international soft law, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work (ILODFPR) and OECD Guidelines for Multinational Enterprises, but also specify their policies into a variety of working areas from responsible sourcing policy with business partners to ensure the human rights of employees by on-going due diligence, fair compensation, women safety and increasing proportion of disabled employees.

From general policies to effective actions, Unilever’s development and practices in human rights could be a typical model for other MNCs to learn from and update their human rights policies and process.

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

The UNGPs implementation has been taken place around the world in the past decade, making particular progress in Europe, where EU called for National Action Plans (NAPs) on BHR from all Member States in a renewed EU strategy 2011-14 for corporates social responsibility (CSR). And numerous governments have adopted NAPs on BHR accordingly and sequentially, amongst which the UK was the first nation to produce its inaugural NAP on BHR entitled ‘Good Business – Implementing the UN Guiding Principles on Business and Human Rights’ (NAP) in September 2013.

However, just like what John Ruggie stated in his interim report in 2006, the implementation has varied significantly across different countries and regions, due to significant differences among various industry sectors and clear distinctions among different systems and abilities in terms of public governance.

An explicit instance is provided in Southeast Asia. At the time the UNGPs were adopted

\[\text{A renewed EU strategy 2011-14 for Corporate Social Responsibility, 7 March 2012,}\]
\[\text{UK’s inaugural NAP on BHR, Good Business – Implementing the UN Guiding Principles on Business and Human Rights,}\]
in 2011, Indonesia, Malaysia and Thailand all voted in support of the Framework, and several governments in the region subsequently indicated a potential willingness in developing NAPs to guide implementation. Whereas, the implementation within ASEAN has remained slow and uneven almost ten years since their endorsement of the UNGPs.\(^{103}\)

So far the **merely one NAP on BHR in Southeast Asia** was produced by the Government of Thailand in October 2019. \(^{104}\) Indonesia, Malaysia, Mongolia, Myanmar are in the process of developing a NAP or have committed to developing one, and the Philippines has begun steps in the development of a NAP. \(^{105}\) Overall, most of the countries in this region are lack of effective policies and performances to carry out their commitments to tackle severe human rights risks and violations.

As a matter of fact, the dissemination and implementation of UNGPs in Southeast Asia have lagged behind some other parts of the world resulting from a couple of factors:

First of all, **conflicts of land rights** such as forced evictions or displacement, prior and informed consent for land transfers, and disputes over compensation for loss of land are inevitable as a consequence of the rapid expansion of business activity in many sectors—energy, infrastructure, real estate etc. Secondly, violations of internationally recognized **labor rights** have also been widespread, including forced and child labor, migrant labor abuse and trafficking, inadequate wages, and poor health and safety conditions. \(^{106}\) Thirdly, broader **environmental impacts** of business activity have frequently been associated with negative consequences for the health and livelihoods of local populations whether through air and water pollution or through the disruptive impacts of projects on river or forest systems.

Although ASEAN remains affected heavily by human rights issues such as land rights violations, forced labor and disruptive environmental impacts, enterprises are not recognizing the problem in their own businesses and are failing to disclose them in their sustainability reports. \(^{107}\)

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\(^{107}\) Zafirah Zein, Why are companies in Southeast Asia lagging on human rights?, May 15, 2019, [https://www.eco-](https://www.eco-)
What’s worse, human rights disclosure of ASEAN Member States falls substantially short of the international norm set in the UNGPs both in terms of extent and quality. In other words, both public sector and private sector within ASEAN are falling behind on implementing the UN Framework of “Protect, Respect and Remedy.”

With transnational business activity remaining a crucial driver of economy in ASEAN, human rights risks and violations will be a tricky and long-term issue to handle for all Member States. The road ahead is still very long and steep.

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

In order to scale up the realization of the UNGPs, it is vital for both countries and sectors to devote themselves to contribution by comprehensive participation and radical implementation. However, there exist conspicuous uneven outcomes of UNGPs implementation in terms of different entities.

What exemplifies the latest uneven patterns of implementation from the perspective of nations is the lower participation than previous day in the negotiations of the Open-ended Inter-governmental Working Group (OEIGWG) for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights began in October 2020.\(^{108}\)

France was the only EU Member State to participate in this session. After noting the adoption of the French law on duty of vigilance, the delegation worryingly implied that there is a need for narrowing the company scope of the treaty, as it regretted the lack of thresholds after which obligations should apply. There’s no doubt that the participation of the EU as a bloc was disappointing. Even after six years, the EU still does not have a negotiating mandate. As a result, the EU’s participation will, once again, be limited to clarifying questions.\(^{109}\)

In the sixth session of the UN Treaty negotiations, the EU delegation was notably absent.


\(^{109}\) Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises, OEIGWG CHAIRMANSHIP SECOND REVISED DRAFT 06.08.2020, https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf
At this point, it is imperative that the EU and its Member States genuinely commit to the UN Treaty process at a critical time in its history.

Furthermore, the negotiations around the draft treaty remains highly contentious, leading to a crippling lack of participation from many key stakeholders—most notably a sizable percentage of the States that are home to the world's largest transnational corporations. Choosing to absent itself from the negotiations, the United States did the same with last year’s OEIGWG session to express its opposition to the BHR treaty process.\(^{110}\) Lack of participation from all stakeholders, the process was divided and seems to produce consensus at the expense of omitting some dissenting views.

Although the UN Treaty negotiations ended with the adoption of the final report and conclusions in the final day of the sixth session, there was no clear negotiated reforms to the text, which remained a broad space for an active participation of all stakeholders to contribute in the future.

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

In order to achieve meaningful UNGPs implementation, there exists several challenges to be dealt with. Take Myanmar Human Rights Commission (MNHRC) as an example, this rights body is hampered by two interlinked issues.\(^{111}\)

(a) The lack of human rights mindset of the commissioners.

In a report titled "Myanmar: A Little Less Conversation, A Little More Action Please" released by 20 civil society groups in December 2019, it is noted that the MNHRC has failed to properly investigate the arrests of 275 civilians and the killings of six civilians by the Myanmar military in Rakhine State in 2019.\(^{112}\)

Just as the statement of Ma Suu Chit, a member of the Seagull, an organization based in Mandalay working on human rights, peace and development, “how can we have

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commissioners that can effectively promote and protect human rights when the MNHRC is comprised of people who lack understanding in fundamental human rights, and have either formerly served in or have close ties to the military, which negatively impacts their reputation?”, a reform starting from human resources management by replacement with experimental experts in human rights affairs necessary is an essential solution to protect and promote human rights in Myanmar more effectively.

In response to the strong voice from civil society, the entire previous members in MNHRC was replaced with new commissioners by the Myanmar government in January 2020. But according to some observers, the reformation comes without any changes to relevant legislation or transparency in the selection process. The reform and restructure of MNHRC remains a tricky and long-term issue to handle.

(b) Structural issues at the heart of the MNHRC Law.
This is not the first time for civil society to call for reform of the MNHRC law in the history. Ever since the draft Law of MNHRC was published in July 2013, 38 civil society organizations has jointly submitted the Recommendations on the Myanmar National Human Rights Commission Law in requirement for amendment for some problematic provisions in August 2013. And the latest influential appealing for reformation was shown in a new briefing note of International Commission of Jurists (ICJ), entitled “Four Immediately Implementable Reforms to Enhance Myanmar’s National Human Rights Commission”, at the end of 2019. Apart from the reform regarding appointment and mandate of commissioners, ICJ provided implementable suggestions to the authorities of Myanmar: (i) To the Myanmar parliament: amend the 2014 MNHRC Law to include provisions that strengthen the MNHRC’s capacity and independence, and improve the appointment process for commissioners; (ii) To the Constitutional Amendment Committee: propose provisions guaranteeing the structural and financial independence of the MNHRC in amending the 2008 Constitution. Furthermore, it is necessary for

117 Ibid
the Government of Myanmar to adopt constitutional and legislative guarantees to enable the MNHRC to better protect and promote human rights for all persons in the country.

From the model of Myanmar, there is no escape from the conclusion that the composition of experienced experts and efficient provisions of both constitutional and legal level could be a prerequisite for a comprehensive system of a nation to mitigating risk and preventing human rights abuses.

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? According to a survey of the 2020 Corporate Human Rights Benchmark (CHRBR), a majority of global corporations are falling down on human rights. Half of them have at least one allegation of a serious human rights issue levied against them, but only four percent of companies adequately remedied the situation with the victim. In other words, most of global companies are neglecting their responsibility to respect human rights and incorporate the UNGPs into corporate management.

Under such circumstances, it is indispensable for global community to undertake a series of criteria’s and actions to measure the performances of the MNCs with regard to priority areas.

The World Benchmarking Alliance (WBA) offers an awesome model in methodology and assessment in this regard. It is developing multiple benchmarks to measure 2000 most influential companies in contributing to the SDGs across WBA’s seven systems transformations. The CHBHR, an important part of WBA, will rank these companies on their human rights performances with the indicators informed by the CHRB Methodology.

As the result of extensive multi-stakeholder consultation around the world, the CHRB Methodology focuses on policies, processes, practices of companies, and how they respond to serious allegations as well. Resting upon the public information disclosed by companies’ websites, other platforms or through the CHRB Disclosure Platform, the CHRB makes the most of the public information in its assessments so as to produce

119 The CHRB Methodology, https://www.corporatebenchmark.org/chrb-methodology
a transparent benchmark as a public good.\textsuperscript{120}

The comparability of the CHRB is conducted in different scenarios: across sectors or within sectors, by theme or by time. So far, there are a couple of 2020 Methodology reports for distinctive high-risk industries: agriculture, information and communications technology (ICT) manufacturing, automotive etc.\textsuperscript{121}

Furthermore, to assess the companies’ process of approaching responsibilities to human rights in UNGPs implementation, the CHRB methodology is specified in over 80 core indicators and aims to deal with three key areas of UNGPs: commitments, human rights due diligence and access to remedy.\textsuperscript{122}

According to the ranking and \textbf{Company Scoresheet} from CHRB in high-risk industries every year, it is a crucial evidence for every company to adjust its CSR strategy and track progress annually. For example, Eni Ranked Top by the 2020 Corporate Human Rights Benchmark.\textsuperscript{123}

To achieve the priority of “Meeting basic needs and respecting human rights” within the Action2020 platform of the World Business Council for Sustainable Development (WBCSD), the UNGPs establish an authoritative global standard on respective roles of businesses and governments in helping ensure that companies respect human rights in their own operations and through their business relationships.\textsuperscript{124}

Although global experience has demonstrated that it can be a lot more challenging in practice than it sounds, the CHRB assessment provides a successful start to quantify the meaningful progress of UNGPs implementation from the perspective of the second pillar. It is promising to launch a common set of human rights indicators to measure

\begin{footnotesize}
\footnotesuperscript{120} The CHRB Disclosure Platform, \url{https://business-humanrights.org/en/companies-disclosure-to-the-2016-corporate-human-rights-benchmark}
\footnotesuperscript{124} Solutions to Scale Up Business Action on Human Rights, \url{https://businessfightpoverty.org/articles/solutions-to-scale-up-business-action-on-human-rights/}
\end{footnotesize}
progress from other two pillars: state obligation and grievance mechanism.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?
In order to fuller realize the implementation of the UNGPs in the next decade, there remains a broad space for all stakeholders to take lead and make a greater difference.

Currently, the UNGP Reporting Database includes 124 companies from 11 sectors where the largest companies by market capitalization per sector are reviewed in multiple years.\(^{125}\) Whereas that’s not enough for a comprehensive implementation of UNGPs from my perspective.

When it comes to the UNGP reporting, more industries shall be involved in the assessment and reporting system for the sake of a great number of emerging sectors nurturing in this generation. The barriers among different sectors are disappearing, and more companies, especially global giants, are engaged in a batch of sectors. In that case, it is a pivotal choice to add more companies into the reporting list.

For instance, the Wal-Mart Stores, headquartered in the US, has been included in the company page for disclosure and review in the UNGP Reporting Database. \(^{126}\) However, the Lidl Group, which is an internationally retailer headquartered in Germany, have not been added to the company list in the reporting database. As far as I’m concerned, it is as well imperative to review corporations of similar business sectors. Besides, the company page has shown that the latest review for Walmart is in November 2017 and it is expected to release new disclosure of human rights like annual reports to update its process in approaching the UNGPs implementation. Hence the follow-up and tracking teams to monitor the global companies are so important internally as well as externally.

Apart from that, the production and escalation of UNGPs are accompanied by global environment transformation. As with many transformative concepts, the UNGPs came at the right hour when they were negotiated straight after the global economic crisis in 2008. In a similar way this reflection on the first ten years of the UNGPs hits precisely at another time of crisis, this time created by COVID-19.\(^{127}\) The impact caused by the coronavirus pandemic will last long and accompanied by the UNGPs project in the next


\(^{126}\) the UNGP Reporting Database, https://www.ungpreporting.org/database-analysis/explore-disclosures/

decade, which calls for stronger efforts and measures from all participators in the future.

At the upcoming 10th anniversary of the UNGPs, it is critical for all stakeholders to cooperate and collaborate with each other so as to pave the way for the achievement of UNGPs 10+ project. We will not succeed without the system transformation and co-working from the governments, the business sectors and the stakeholders across the world.
BHR-UNGP next decade-consultation questions- Xin ZHANG

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

In general, the Framework and UNGPs are founded upon three pillars: ‘the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies’ for the victims of corporate-related human rights abuses. The following progress have been achieved over the course of the last decade by such pillars accordingly:

- States across various regions have produced or are producing certain National Action Plans (the government-led policy strategies outlining strategic orientation and concrete activities to address specific policy issues, comprise the key policy tool for states that want to honor their duty to protect against adverse human rights impacts by business enterprises in line with the UNGPs);\(^{128}\)
- States across various regions have established certain domestic laws, regulations

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and initiatives in respect of implementation of the UNGPs;\textsuperscript{129}

- International organizations are progressing the implementation of UNGPs by producing related reports, guidelines and researches;
- Various corporations, especially transnational corporations have passed their corporate action plans and policies to conduct responsible business and fulfill corporate responsibility to respect human rights;\textsuperscript{130}
- Judicial practices in certain jurisdictions have developed pioneering judicial precedents supporting the protection of individuals against human rights abuses and violations by businesses and providing general principles for effective remedies for such abuses and violations (in particular, recent judicial practices are creating precedents for victims to seek for remedies before foreign courts for human rights violations conducted by transnational corporations);\textsuperscript{131}
- Teachings in respect of relevant issues have been developed by highly qualified publicists of various nations.

In respect of promising developments and practices, different actions can be respectively conducted corresponding to different bodies undertaking the human rights obligations, however, all such actions shall be under the “respect, protect and fulfill” regime of human rights obligations:

- States shall produce National Action Plans and establish domestic laws, regulations and initiatives to implement UNGPs;
- States shall establish effective remedies systems (including but not limited to judicial remedies) for victims suffering human rights abuses and violations by businesses;
- International organizations shall produce guidelines and actions initiatives; and
- Corporations (both domestic and transnational corporations) shall produce internal policies to undertake human rights obligations, and shall do responsible business with use of their expertise and networks to make positive differences.

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

One of the key challenges to the implementation of the UNGPs is the lack of awareness about the UNGPs themselves together with the broader human rights and business agenda not only among government officials, but also other stakeholder groups. Not

\textsuperscript{129} Id., at 37-52.


least due to the lack of awareness, this automatically goes hand in hand with challenges of coordinating across government departments.

It cannot be denied that the human rights and business discourse has reached well beyond the usual crowd gathering at the UN Human Rights Council sessions, and has also become a legitimate topic for discussion in such new groups as, for instance, the institutional investors circles. This was possible thanks to the efforts undertaken by various stakeholders, including progressive companies, and not least due to the regulatory developments influenced by the UNGPs’ endorsement that are driving human rights’ due diligence through global supply chains, such as the US federal government procurement requirements on trafficking and the UK Modern Slavery Act. Yet the almost 2000 participants that the UN Forum brings every year to Geneva still represent a relatively small circle of stakeholders, experts and businesses that should be familiar with issues covered by the UNGPs if the world is to see change.

Regardless of the geographical location, the lack of awareness and expert capacity is often coupled with another factor indicated by the majority of states and interviewees as one of the key challenges: the lack of resources, both financial and human, not only to be able to develop necessary policies, including National Action Plans, and regulations, but also to ensure their effective implementation, enforcement and monitoring. If the situation is relatively good in one area, in that there exists a fairly good regulatory framework, the key challenge might be the effective implementation and enforcement of laws governing corporate behavior. For instance, in the case of ASEAN, states have fairly robust legal frameworks governing the core areas of land, labor and the environment despite there still being room for improvement.

It is also almost pointless to adopt specific laws, for example in the area of environmental protection, and require Environmental Impact Assessment to ensure that companies’ activities will not cause adverse impact on the local populations’ rights to health or water, when the public authorities are lacking funding to purchase the equipment necessary to verify contamination levels in the field or are not able to employ sufficient numbers of staff to undertake such verification, as is for example the case in one of the African countries examined for the purpose of this study.

Another major factor impeding a state’s ability to undertake meaningful action regarding UNGPs’ implementation is the fear of deterring foreign investment, lack of good governance and prevalence of corruption, as well as political limitations imposed by foreign governments or multilateral institutions. Interestingly, while many of the responding governments pointed to opposition by economic groups as an obstacle to
progress, companies responding to the business version of the BHRRC survey often indicated weak government frameworks and enforcement as a challenge. Germany was an example of the first case, where particularly traditional large business associations seemed to have been taking much more conservative stances than some of their member companies would do individually. Misperceptions could have to do with wrongly perceived protectionism, fear of not being attractive to investment, or unwillingness to undertake additional legislative action that would require establishing a verification mechanism.\textsuperscript{132}

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**
There is no denying on their side that there is a clear need for stronger co-ordination within governments as well as governments and businesses together with other stakeholders to protect vulnerable people. In fact, many of them confirm very clearly that they would welcome wide-ranging support to help them advance actions resulting in improvement of companies’ impacts on human rights, including:

- Awareness-raising;
- Capacity building activities (including those amongst states and other key stakeholders on how to reach out to and motivate business enterprises still not familiar with the Principles, through NAPs or other policy measures);
- Business and Human Rights events;
- Technical assistance and training;
- Study visits;
- Experience, knowledge and best practices sharing and collaborative learning with countries that have similar characteristics although some cross-regional learning was also of interest (e.g. during the UN Forum or during AU-EU meetings).\textsuperscript{133}

**Drivers**
What drives the UN Guiding Principles implementation by states is, in some cases, the *positive willingness to be a leader* on this issue(s) in a particular region (for instance, Kenya, Colombia, the Netherlands and the UK). The emergence of a regional leader, and proof that ‘it can be done’, can in turn initiate (a positive) competition in the region as to which country will be next or which NAP will be better.


It is just as important to have an internal leader within the public administration who is committed to advancing the human rights and business agenda internally, is trusted and engaging with all relevant internal and external stakeholders on regular basis, as for example in Kenya, or as was the case in the EU at the time of the 2011 EC Communication on CSR adoption and implementation. The higher the position such a leader holds in the public administration hierarchy, the greater are the chances of implementation succeeding.

An important role in driving the UNGPs’ implementation can also be played by the international organizations both at global level (United Nations) and at regional level (EU, CoE, OAS). Yet, while this can be a positive role, in their responses to the survey carried out by the BHRRC in 2015 some of the governments pointed out the political limitations imposed by foreign governments or multilateral institutions as being one of the challenges affecting their ability to implement UNGPs.

The UN system’s role and in particular that of the UN Working Group on Business and Human Rights in providing support in UNGPs’ implementation has already been addressed a number of times in this paper (see, for instance, guidance development and providing expert advice by the UN WG HRB, technical assistance provision by the OHCHR and UN country teams, guiding role of the Concluding Observations and General Comments issued by the UN human rights treaty bodies, experience sharing and elements of peer-to-peer learning during the annual Forum on Business and Human Rights). However, it is worthy of mention that were it not for such support, particularly in the form of technical assistance and funding being provided to promote specific processes and work, many states would not have the capacity to undertake efforts in areas which they did not initially understand.

At regional level, the EU leadership, regulations and encouragement addressed directly to its member states was instrumental in the countries from this region being the first to develop NAPs. Several of the interviewees working on human rights and business in Latin America also highlighted the instrumental role of the OAS resolutions in securing some of the states’ interest in the region to look closer at the UNGPs’ implementation.

Additionally, support from individual states plays an important role in some countries taking the final decision of moving from talking about the need for implementation to actual implementation. Among the activities that individual states can undertake is raising the issue of UNGPs’ implementation in the context of bilateral talks, in multilateral fora or in the framework of the Universal Periodic Review (in the form of concrete recommendations), ideally at the same time as offering their support (as was
the case with Norway using Kenya UPR to recommend the adoption of an NAP, and simultaneously expressing its readiness to share its own experience from the process. Support can range from providing technical assistance, engaging in peer-to-peer learning exercises, information sharing, job shadowing and wherever possible individual cooperation, if necessary providing funding for specific activities forming part of the process (e.g. development of the National Baseline Assessment, organisation of consultations with stakeholders, or workshops to assist national authorities, etc.). A good example in this respect is provided by the cooperation between Norway and Kenya, the support provided by Sweden via UNDP to advance work on NAPs in Asia, as well as US support for actions by CSOs in East African countries.

Last but not least, **tragedies initiated by human failure** such as Rana Plaza, Deepwater Horizon, and the Maricana massacre, also drive at least some states to put in place measures for preventing such tragedies in the future, including those presented through the UNGPs’ implementation.\(^\text{134}\)

**Priorities**

- National Action Plans, including producing legislations and initiatives, etc.;
- Providing effective remedies for victims suffering human rights violations; and
- Producing an international treaty protecting human rights from violations by businesses, including the establishment of an intergovernmental protection and remedy system.

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

- Discrimination;
- The protection of labor rights;
- Economic development of the most less-developed region in the world;
- The establishment of a stable and peace international political environment, especially the peace and removal of the risks of war in Middle East and East Europe.

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?**

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• Awareness-raising;
• Capacity building activities (including those amongst states and other key stakeholders on how to reach out to and motivate business enterprises still not familiar with the Principles, through NAPs or other policy measures);
• Business and Human Rights events;
• Technical assistance and training;
• Study visits;
• Experience, knowledge and best practices sharing and collaborative learning with countries that have similar characteristics although some cross-regional learning was also of interest (e.g. during the UN Forum or during AU-EU meetings). \(^{135}\)

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

Firstly, it is essential to theoretically prove that corporations are obligated to respect, protect and fulfill human rights since the traditional international human rights system only requires States to undertake such obligations. In this sense, the establishment of a binding international treaty system is necessary to provide sources of laws in respect of such obligations. The UNGPs 10+ project shall be reflected and implemented by laws with binding force so that the purposes can be achieved to the maximum extent.

Secondly, international standards to protect human rights against human rights abuses and violations by businesses shall be identified – in this sense, there will be a bottom line for domestic laws and regulations protecting human rights.

Thirdly, domestic, regional and international remedies systems for victims suffering from human rights abuses and violations shall be established. For instance, will regional human rights courts/tribunals govern the proceedings raised by victims suffered such violations? There shall be a combination and compromise for the new remedy system and the current one, or the current remedy system shall be modified to face and solve new challenges and obstacles.

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project

Please include links to relevant publications and materials, wherever relevant

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?

After noticing that not only the state but also businesses can be the subject to violate human rights, there had been endeavors to solve the BHR problems until UNGPs provides a more effective and realistic way through joint efforts from multiparty, making full use of the cooperation foundation of the United Nations as well as the freedom and vitality of businesses without challenging the basic theories of international law, to address human rights crises caused by business development.

China has accepted UNGPs, but it has not formulated any policies or action plans to implement the principles. Instead, China relies more on Pillar two to carry out UNGPs in industries that depend more on international trade, where UNGPs played an important role. Although UNGPs has a limited effect in the whole country, more and more businesses in China have realized the BHR problems even though the relevant practice and theories are insufficient, and UNGPs is ready there to be followed. However, the Chinese government’s reliance on Pillar Two cannot replace the implementation of Pillar One and Pillar Three. Next, with the promotion of UNGPs in
all kinds of businesses across the country, as well as the further refinement of UNGPs based on regional situations, the biggest problem of its implementation UNGPs facing will be gradually and finally solved.

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

**Government practice in China**

A. The conversion of UNGPs to domestic policies and legislation is absent.

B. Even where Environmental Protection Law, Labor Law, and Food Safety Law were formulated, BHR issues have still not been taken into account throughout the whole process from legislation and dissemination to implementation of these laws. The awareness of the adverse impacts on human rights from businesses is absent from the national to the individual level.

C. In the legal fields directly related to business activities, such as corporate law and securities law, BHR and CSR issues are not considered as integral elements in the system of modern corporate governance and regulation; these laws lack relevant provisions on the concepts, responsibilities, and obligations of BHR and CSR issues.

D. The government seldom actively publicizes and promotes UNGPs, resulting in that UNGPs are passively considered only in certain industries, certain large enterprises, certain regions, and after human rights crises.

E. There is no leading organization and guideline at the national level, and no consensus in domestic theory and practice on the following issues: what is the (legal) status of the state and enterprises in BHR issues; whether regulatory or cooperative method is more effective in China; should BHR issues be regulated by public law or private law?

F. Critical and serious issues in human rights protection have not been resolved, such as elimination of discrimination and violations against women in the working environment, food safety, environmental protection and sustainable development, and personal information protection.

G. There are no additional remedies from the nation or businesses other than the existing judicial remedy as the main but not fully effective remedy.

H. The Government does not pay sufficient attention to behaviors that may directly
infringe both commercial development and personal rights, like violations of property rights, including intellectual property rights.

**Business practice in China**

A. Companies rarely realize their social responsibilities.

B. Companies rarely know the existence of UNGPs, and do not understand how to combine CSR and BHR with their business objectives.

C. Businesses outweigh profits more than values and ethics.

D. The current main goal of Chinese enterprises is to establish a modern corporate governance structure that focuses on the equal protection of shareholders and creditors, and this concerns more about economic interests. It is not recognized that the protection of human rights and sustainable development are also an internal obligation of enterprises, not to mention that include CSR and BHR issues into corporate governance and daily operations.

E. Corresponding arrangements are not taken into consideration in the establishment of corporate governance structure, functional departments, and human resources.

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

**Theoretical level**

A. Explanations from perspectives of economics, corporate operation, and governance for that businesses should take responsibility to protect human rights are inadequate.

B. Human rights due diligence method and its quantitative tools need further refinement.

C. How to apply the supply chain theory when conducting human rights due diligence should be further clarified, as well as where the expectation of the end of a company’s responsibility is.

D. Under the UNGPs framework, the state is both a regulator and a partner. As a regulator, it is necessary to clarify the boundary between the government’s regulations and the right to independent operation by enterprises. Especially in China, improper interference by the state in private economic affairs of enterprises
may bring political risks.

**Practical level**

A. Acceptable ways for companies to change their perceptions that human rights protection is not their economic burden should be found. For example, integrate BHR department with existing corporate governance structures such as risk control department and integrity department to reduce reform costs; explain corresponding costs and profits to company executives from the perspective of accounting.

B. There is no professional knowledge and direct guidance for both government and businesses for lack of relevant independent agencies in the society.

C. Government does not have budgets or policies to support the development of BHR and CSR research and practice.

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

**Domestic challenges**

A. Unequal development opportunities for state-owned enterprises and private enterprises. The guarantee of equal opportunities for both state-owned businesses and private businesses is the starting point and basis for them to jointly assume their responsibilities for human rights protection.

B. Industrial policies are incoherent; political policies outweigh economic elements; free market has not yet been fully established.

C. Contradictions widely exist in this populous developing country. For example, the contradiction between the right to development and environmental protection; the problem to balance the potential costs of human rights protection measures and poverty alleviation.

D. Unbalanced development makes it more serious. It is difficult to apply the same human rights protection standard and implement the concept of human rights protection to all businesses across the country when regional economic development levels are of huge differences.

E. It is a question to go faster and further or to develop stably and smoothly. Since the
establishment of normative corporate governance has just started in China, it is a challenge to make all kinds of companies accept the concepts of BHR and CSR and involve them in their corporate governance and compliance systems.

F. Corruption in various fields has not been resolved.

International challenges

A. There exists conflict between developed and developing countries on how to balance the right to development and adoption of the same human rights protection standards.

B. In the rising trend of anti-globalization and during COVID-19, many nations face the problems of protecting development of domestic economy while improving both international trade and cooperation in economic and human rights protection between countries of different political systems.

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?

A. Enhance the awareness of all businesses to respect human rights.

B. Enforce existing laws that directly and indirectly regulate business respect for human rights.

C. Establish a BHR organization that can participate in legislation and organize researches, publicity, training, and investigation at the national level.

D. Establish the reporting mechanism by legislation. For example, listed companies need to disclose BHR issues in their bulletins, including the proportion of such expenditure in companies’ profits.

E. Establish the training mechanism to train independent professionals to solve problems and consults from businesses.

F. Enhance cooperation between businesses and BHR institutions, existing human rights protection organizations, and NGOs.
6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

A. Attention should be paid to the impact on human rights brought about by new technologies. Such as genetically modified food problems, food safety problems caused by abuse of pesticides, and air pollution problems caused by abuse of chemicals.

B. Attention should be paid to the impact of changes in trading manners brought about by the Internet on human rights. The emergence of e-commerce has increased the difficulty to define network platforms’ responsibilities and to supervise all parties’ behaviors. For example, the food delivery industry depending on the Internet has made it more difficult to find out, track and regulate food safety problems; network platforms strictly and closely regulated by the government may have a great impact on the Freedom of Speech of citizens because they can easily restrict the expression by deleting posts or disconnecting links.

C. Attention should be paid to the impact of tertiary industries and non-traditional industries on human rights. For example, the financial industry, with various financial derivatives nowadays, is the lifeblood of a nation’s economy. It produces invisible but influential products and imposes an indirect impact on consumers which can hardly be noticed. It is worth discussing whether the supply chain theory and stakeholder theory can be applied to such industries?

D. Attention should be paid to the impact of complex legal person structure like SPV on human rights because human rights violations happening in associated companies established for specific commercial arrangements and purposes are well hidden by the mixed personality of legal persons, and limited liability can make such companies pay less for its illegal behaviors.

(Yuxin ZHANG)
Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

The UNGPs has been playing an important role in the protection of the human rights in many perspectives. To begin with, the UNGPs was an attempt and solution to the long-discussed business and human rights issues. The way it works, as a soft law, provided an example and got the consensus of the international community. There were a lot of follow-ups out of the UN, such as in the EU, the OECD, the ISO and the World Bank.

Many countries also set up their National Action Plans or further regulations under the guidance of the GPs to protect human rights and regulate their corporates’ influence on human rights.

Plenty of companies, especially those international or big domestic ones like Nike and Coco-Cola, have issued their own Code of Conduct and followed the due diligence in the GPs, to make sure that they respected human rights and tried to reduce and eliminate
the adverse impacts as suggested. Though the GPs only asks companies to respect human rights, some of them even have been taking it further in there years, in the way that they were paying attention to promote the enjoy of human rights in poor areas.

Although many NGOs are not content that the GPs only works as a soft law with no mandatory obligations on corporations, they still have been playing a role in supervision and pointed out a lot of advantages and criticisms as references for the GPs further development.

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

First and foremost, the gap between industrial countries and the developing countries remains. The poor-developed countries always suffer from more severe human rights violations while they have less capitals and capacity to set up related rules and agencies to make sure that transnational companies and local ones really obey. The UNGPs is considered to be universal, but the differences of those two kinds of states remain under its system. And these countries may also differ in the perception of human rights because of the different developing levels.

Secondly, the capability of small companies to observe the GPs and their domestic laws concerning respect human rights are way lower than that of big companies. The logic of this point is similar to that of the above. The small companies may lack money to make its Code of Conduct, follow the whole due diligence requirement. And this situation may get worse in developing countries for those private companies which lack support from their governments.

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- As far as I am concerned, the main barricade is still the low level of economic development in many countries and areas, which results in the over-stressed importance people attach to the economy, and also in the lack of ability to really cope with its human rights problems.

- Priority- I think that raising people’s awareness of human rights protection are prior to other choices. Because economic issue is not something that can be dealt with within one day, and it would be too late if a country starts to pay attention to human rights only after it is fully developed. Raising awareness and taking actions while pursuing its economic goal should be considered the right way.
Governments have a lot of responsibilities. First, they are supposed to issue and follow drivers - the driver should be the well-being of human. After all, the promotion of human rights and the economic development all end in the expectation of human well-being.

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

The low level of awareness in many countries is a main challenge. For example, the gender gap is a worldwide issue that must be paid enough attention, especially in some districts like the Mid-East. Business as an essential area where a majority of people make a living, has a long-standing problem of the discrimination towards females and other sex minority groups. The reasons are always religious, traditional or cultural, and the problem is common in many areas and countries’ society, which make it a structural challenge with no doubt. The UNGPs, as an international document aiming at protecting human rights, should work together with other human rights documents, trying to reduce the gap and make corporations a more friendly, safe and comfortable environment for the disadvantaged. And I believe that, the discrimination problems concerning other groups and areas are also worth highlighting and need to be tackled to realize the true equality and sustainable development.

Also, the NGOs keeps complain the lack of rules that set mandatory obligations to corporations. And some criticism also point out that the GPs has no grievance system for individuals to seek to when their rights are infringed by company or state actors, which is also a problem needs further solutions.

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?

For UN and other governmental organizations, more documents related and other kinds of support are needed. Countries and corporations need more detailed guidance in the implementation of the GPs, and poor-developed states also need material support and helping to build up their domestic system to protect human rights. There groups should also work together with the NGOs to advocate the importance of human rights by ways like education and propaganda.

Governments have a lot of responsibilities. First, they are supposed to issue and follow
their NAPs, providing more rules and legislation in regards of business and human rights. Second, make sure that corporations do obey the rules and their responsibilities, and punish those violate the laws and provide legal solutions to the individuals affected by the companies’ adverse impacts by helping them to get remedies. Besides these, governments are also obliged to promote the awareness of the respect and protection of human rights in the society. They should also provide support to corporations to improve their human rights conditions.

Companies should follow the GPs and the national laws that may affect them. Respect human rights not only of their staff, but also the other stakeholders. Build up their sense of social responsibility.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

I am sorry, none.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

Foremost, we cannot emphasize the importance of UNGPs too much before we consider the progress thanks to them. Three fundamental Pillars outline the basic principles defining the scope of the expected duties and responsibilities of nations and companies in this field. UNGPs clarify the duty of the states to protect human rights, companies’ responsibilities to also respect basic human rights, and also the possible remedy for the violation of the principles. Also, as the first global standard aiming at preventing, or to say, minimizing the potential risk of various companies’ adverse impacts on human rights related to business activities, UNGPs is a remarkable step in the long process of trying to establish global standards in such a newly-founded area.

With the implementation of UNGPs in 2011, considerable progress has been made concerning Business and Human Rights. Comparing UNGPs’ impact on states and companies, I think these guiding principles have a greater influence on the business part
for these principles uplifted companies’ responsibility from pure moral level to the legal level. Although it mainly belongs to the soft law, which has rather limited enforcement, UNGPs still at least provide a baseline for companies to regulate their business activities with at least minimal attention that is supposed to be paid to respecting human rights. Following the exemplary role of some big companies, for example, Unilever and Coca-Cola, more and more companies are inclined to follow the existing models and give more or less some consideration to the human rights issue. By 2019, more than 200 companies on the Fortune Global 500 list had developed and published a corporate human rights policy. Situations such as work discrimination, child labor, etc. are in the process of being improved. It will take quite a long time to see the change of the situation and the far-reaching influences of UNGPs. It is also worth mention that in the last decade, certain IGOs (OECD, EU, WB) have made their policies and guiding principles under the influence of UNGPs. As is shown, UNGPs to a certain extent occupies a central place in the vast body of rules dealing with CSR in the soft law system.

Based on the current development of the BHR project, this unfinished career concerning the protection of human rights in the business area still has a vast space for further improvement. The promising developments will be made with the perfection of UNGPs on the theoretical level, which is based on the accumulation of the experiences in the practice, since BHR is always a practical issue with practical concerns. Its compliance with both local laws is an important issue to consider. Another possible improvement may happen in terms of the implementation of these principles, which is far from satisfactory. As far as I am concerned, the growing influence and effect of the growing civil society organizations, who are supposed to play a part in supervising both the state and the business, may also contribute to the further development in this area.

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

There are always gaps and challenges requiring further attention and effort. I think one of the main concerns here is that the effective implementation of the UNGPs is problematic. It is plausible that UNGPs has outlined a fundamental and essential framework and clarify the basic duties and responsibilities of the states and companies. However, in nature, UNGPs are in nature soft law, which will inevitably cause the gap between the theoretical and ideal principles, and the actual practice in reality. Firstly, UNGPs is not mandatory binding on the state and companies. Secondly, as a general guiding principle, UNGPs could hardly offer instructions for certain complex situations, which is of course not the fault of UNGPs, but it is also the reality we have to face that
in many cases the situations are far more complex than expected. Therefore, I think there is still a lot to be done for narrowing the gap between these abstract principles and the application in actual problem-solving situations. It has to be admitted that this is not the exclusive gap that UNGPs meet, which is cliché, but this gap may have more influence in the B&HR area than other areas considering the practical aim and nature of this area.

Another thing worthy of mentioning is Pillar 3, which I think is still not work to date. It addresses that states are supposed to provide access to remedy through proper administrative and legislative means, and businesses are required to take responsibility to remediate any infringement of rights that they caused. It is true that more and more specific regulations and ordinances are made by the states, and more and more companies are taking actions such as making human rights policy, but the actual effective grievance mechanisms in practice have still not worked to date.

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

A very fundamental obstacle is that the companies in the market in nature are driven by profits, and therefore, human rights issues are not their foremost concern. Once a company is faced with the dilemma and has to make their hard decision between profits and moral obligation, without an effective judicial mechanism to regulate their business activities, this company may betray their obligation for human rights. When it comes to the state’s duty and the role of social organizations, there are more obstacles than one may expect. The standpoint of a government, its relationship with the companies, the social systems of the country, etc., all these factors may influence the support from the state in the realization of the UNGP within a state.

It is also noticeable that in the “Big Triangle” relationship between the government, the business and the individuals, individuals and the company are not in unequal status. It should be fully aware that there is an interrelationship between the government and business. The government may exert its influence on this issue through judicial, administrative, and legislative means, and has the potential to stand with business, which may be a hidden accomplice of business. As a whole no doubt individual is the weak part and is exposed to more risks compared with the other two parts. According to GP 24, “business enterprises should first seek to prevent and mitigate those [impacts] that are most severe” and the severity of impacts are judged by the standard of scale, scope, irremediable character. In reality, the subjects who are qualified to identify and evaluate the impacts of business activities on human rights, are under the control of
the companies and the government. Sometimes the news media also fail to perform their duties. To a certain extent, the result of a BHR case may be strongly influenced by its social influence. It is of great importance to voice for the disadvantaged groups, but at the same time, the power of capital may play a negative role in the process, which will make the situation worse.

As for the drivers, although it is impossible to change the companies’ nature, that is chasing profit, at the primary stage, being a company respect basic human rights could bring it better reputation, which will finally benefit it in profit. This may be the very direct driver for companies.

As for the priorities, effective implementation at the national level is of great importance to maintain current progress in this BHR. Due diligence as the actual way to manage human rights in business is also the priority for fuller realization of UNGPs.

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

Given the economic development of the whole world, I think the worldwide unbalance development between the developed and developing countries is a fundamental challenge. As is shown in the last few years, the outstanding improvement in BHR that has been made is mostly by European countries. However, where human rights are encountering greater challenges and more urgent attention are those developing countries. Due to the industrial transfer and the industrial reconstructing, laborers in labor-intensive industries including the processing industry, garment industry, etc. are exposed to more risks of the violation of their basic human rights. And accordingly, these countries normally have very limited protection for these disadvantaged groups at the legal level. These developing countries are actually in the dilemma of whether to prioritize the economic growth and the comprehensive national strength may be at the expense of its people's human rights to a certain extent. It seems that the developing countries are generally in a more passive position and therefore the higher requirement for the nation to respect human rights is harder to be accepted by these countries. On 7th October 2020 a newly introduced law in Indonesia aiming at weakening environmental protections and workers’ rights in order to make Indonesia a more attractive place to investors removed and cut basic protections including mandatory paid leave for childbirth, increased limits on work overtime and cut severance pay. It aroused fierce opposition. When it comes to the international monitoring and
implementation UN, since lacks a powerful judicial mechanism, real progress can hardly be made in such situations.

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?

In order to achieve meaningful progress with regard to those obstacles and priority areas, the issue concerning due diligence is one of our main concerns. Also, the establishment and the further perfection of an effective grievance mechanism is important.

Also, under the UNGPs, the appropriate actions of the companies include both prevention and aftermath remedy. However, it may be the situation that, from the perspective of its profit-motivated business activities, to make certain aftermath remedy may cost the company less compares with fulfilling their human rights due diligence as required. This logic is against the original goal of the UNGPs. Therefore, the mere emphasis on an effective grievance mechanism is not enough. Besides, more attention and effort should also be paid to encourage and reward corporate human rights due diligence practices.

As for the government and business interrelationship, more public opinion-based oversights from for example the NGOs, Workers and trade unions can be of great importance. Both the government and the business should clarify their duties and obligations in the form of specific regulations or laws. These two subjects should keep a balance between cooperation and keep a proper distance. I think more actionable and measurable targets can be achieved by putting regulatory limits and making certain regulations and covering more aspects and clarify their legal obligations.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?

The unstable social-political situations, for example, economic crisis and epidemics, can bring greater challenge and exert deep influence on the current development in BHR. Since last year, everyone who lives on Earth can hardly deny that our lives have been profoundly influenced by the COVID-19 crisis, which has added another layer of complexity to ongoing efforts to improve business environments. For example, it has
been reported that an increase in child labor in Jordan during the COVID-19 crisis. The crisis increased the burden of some poor families. Given the increase in the unemployment and poverty rates, more children from poor families may be taken away from school in order to provide additional income for the family to meet the basic needs. Thus, the number of children entering the labor market increase, which increases the possibility of companies’ employment of child labor and increases the risk to violate human rights in business. One may argue that the situation is always changing. Yes but I still personally deem the worsening of the global political-economic situation an obstacle to achieving the fuller realization of the UNGPs. The current achievement and promising improvement of the protection of human rights in business will be under the influence of the COVID-19 crisis in the decades to come.
Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

Progress taken place in UNGPs implementation:
I will show the progress from three aspects: non-EU countries, EU member states and the UK government-the first in the world to formulate a NAP on BHR- a good example to learn from.

(1) In non-EU countries. Much progress has already been achieved, with i.e. relevant key international standards like OECD Guidelines for Multinational Enterprises becoming aligned with the UNGPs, new tools being developed to provide guidance to governments and stakeholders and a basis being set for constructive discussion. This led to increased awareness and better understanding, building trust and engagement among various stakeholders.

(2) In EU member states. The EU Member States have played a pioneering role in the early development of National Action Plans on business and human rights, their NAPs have also been criticized for shortcomings in process and content. In terms of content, while all four NAPS scrutinized by ICAR and ECCJ made an explicit commitment to the UNGPs, they
focus heavily on past actions and soft/voluntary measures (such as awareness raising or training) at the expense of exploring forward-looking and regulatory options. Commitments to future action tend to remain vague and lack sufficient information about concrete steps to be taken and the agencies responsible for implementation.

(3) **UK government** has done a lot to accomplish the obligations from three pillars

**Pillar 1: duty of the state to protect human rights**

Pillar 1 of the UNGPs sets out the duty of the state to protect human rights. In order to give effect to this, the government has:

1. Introduced the Modern Slavery Act.
2. Launched the Modern Slavery Assessment Tool.
3. Published a Policy Procurement Note and detailed guidance document, setting out a risk-based approach to mitigating modern slavery in government supply chains and specific measures to be adopted at each stage of the commercial life-cycle.
4. Implemented the requirements of the OECD 2012 common approaches for undertaking environmental and social due diligence.
5. We continued to work closely with the UK Private Security Company (PSC) sector through the Security in Complex Environments Group, which provides a valuable forum to strengthen further industry standards for UK-based PSCs operating internationally.
6. Invested £1.5 million from the FCDO’s Human Rights and Democracy Programme in promoting the UNGPs and supporting business and human rights.
7. Developed partnerships with other countries seeking to implement UNGPs.
8. Strengthened international rules relating to digital surveillance

**Pillar 2: government expects business to respect human rights**

1. Under pillar 2, the government expects business to respect human rights. To support practical action by businesses, the government has:
2. Amended and subsequently strengthened the Companies Act to require certain companies to report on material human rights impacts, where relevant for an understanding of the business, as part of their annual reports.
3. Provided guidance to companies on the transparency in supply chains requirement of the Modern Slavery Act and launched a contacts database for businesses to register for tools and resources to support effective reporting under the Act.
4. Partnered with the cyber growth partnership industry guidance on accessing human rights risks relating to cyber security exports.
5. Provided funding for the Corporate Human Rights Benchmark Initiative, a private sector initiative that seeks to rank the largest companies in the world on their human rights performance.
6. Supported the UNGPs’ Reporting Framework, a voluntary, comprehensive guide for

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companies to report on how they respect human rights.

(7) Continued to update and promote the joint FCDO-DIT Overseas Business Risk (OBR) service, providing information about business environments in the countries where UKTI has a presence.

(8) Continued to provide financial support to the UN Global Compact.

Pillar 3: access to remedy for human rights abuses by businesses

Pillar 3 supports the access to remedy for human rights abuses by businesses. In order to support access to remedy the government has:

(1) Tasked our trade promotion teams, in the markets where they operate, to advise UK companies on establishing or participating in grievance mechanisms, and collaborating with local authorities where necessary.

(2) Encouraged companies to extend effective grievance mechanisms to their overseas operations.

(3) Supported projects through the FDCO human rights and democracy programme fund to work on remedy procedures in other countries.

(4) Commissioned an independent survey of the UK provision of access to remedy.

Some promising developments and practices can be built on:

(1) Provided guidance to companies on the transparency in supply chains

(2) Developing a policy commitment and embedding respect for human rights

(3) UK government: Introduced the Modern Slavery Act; Launched the Modern Slavery Assessment Tool; Published a Policy Procurement Note and detailed guidance document

(4) Companies covered by Section 54 of the UK Modern Slavery Act of 2015 (MSA) will, for the second year in a row, release reports on steps taken to consider the risks associated with, and end, suspected human trafficking or coerced labor by suppliers. In California, where disclosure requirements have been on the books for several years, statements produced pursuant to the California Transparency in Supply Chains Act 2010 (CATSCA) have been, on the whole, comparatively more limited than MSA disclosures. Recently, however, some statements have been used as a hook on which to hang putative, consumer class actions.

(5) the expanded anti-human trafficking provisions of the US Federal Acquisition Regulations (FAR), introduced in 2015, are beginning to impact some companies’ compliance undertakings. Under the new provisions, which apply to all federal contracts and subcontracts awarded after March 2, 2015, contractors and subcontractors and their employees and agents are prohibited from certain activities, including engaging in severe forms of trafficking, using forced labor, and charging employee recruitment fees.

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A final and noteworthy development is France’s “Duty of Vigilance” bill. If the bill is passed in its current form, it would require certain large French companies to set out and effectively implement an annual “vigilance plan.” Under the current proposals, such vigilance plans would have to establish the measures the company will take to prevent the violation of human rights and fundamental freedoms, significant personal injury or damage to the environment, hazard to health, and active or passive corruption. As well as internal measures within the company and any subsidiaries it controls (directly or otherwise), the plan should also set out the steps the company plans to take to address these risks in its established supply chain worldwide.139

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

Different types of gaps and challenges emerge, both with regard to business and State practice as well as the wider environment.140 The gaps are as below:

(1) Business Practice
In general, there is much room for improvement regarding transparency on the concrete details of risk assessments and human rights due diligence processes. Often human rights due diligence is not understood properly. Performance seems to be particularly weak on the “taking action” and “tracking of responses” components of human rights due diligence set out in the Guiding Principles. A common observation is that beyond the small group of early adopters — mostly large corporations based mainly, but not exclusively, in some Western markets — there is a general lack of knowledge and understanding of the corporate responsibility to respect human rights. An apparent gap in current supply chain management is that human rights due diligence tends to be limited to tier-one companies.

(2) Government Practice
A lack of government leadership in addressing governance gaps remains the biggest challenge. While some home Governments have introduced due diligence or disclosure legislation, such efforts also remain patchy. Governments are not providing enough guidance on human rights due diligence and support tailored to national business audiences, including small and medium-sized enterprises. A lack of policy coherence in government practice is part of the overall picture, and Governments are not leading by example in their own roles as economic actors.

(3) System issues and market failure
A number of the risks to human rights in which business enterprises may be involved include child labour, forced labour, discrimination against women, minorities, migrants and others in the workplace and community, lack of living wages, lack of participation of affected workers,

139 https://www.lexology.com/library/detail.aspx?g=9aaebce4-1307-43de-9210-c9f21205206c
community members and indigenous peoples, forced resettlements or lack of access to remedy. These risks concern systemic issues and are in many contexts linked to root causes or fundamental development issues, such as poverty, corruption and weak rule of law.

(4) Other Challenges
The “first-mover challenge”, in which business enterprises that are transparent about risks and challenges are criticized for not doing enough whereas less responsible competitors go below the radar of NGOs and journalists.

Some aspects has not worked to date:
(1) Lack of available expertise on the Guiding Principles among the majority of consultancy firms advising on “corporate social responsibility”.

(2) Insufficient incentive structures for addressing impacts on people as there is currently a lack of systematic mechanisms for investors, public agencies interacting with the private sector and regulators to reward good practices.

(3) Lack of common understanding about which metrics and indicators to use to track and evaluate performance.

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:
(1) The importance of multiple sources of social and economic pressure for change. Such pressure can come not only from invigorated regulatory interventions by governments, but also from consumers, banks, international financial institutions, and civil society organisations, all of which play a potentially important role in mobilising pressure for meaningful UNGP implementation.141

(2) Uneven implementation outcomes
The extent to which the UNGPs have achieved recognition and impact has varied widely across countries, sectors and individual companies.

(3) Other Factors

Drivers:  
- Willingness to be a leader globally, in the region, etc.
- An engaged internal leader within the public administration
- Encouragement / Pressure from the international organizations and other states
- Support from other states (experience sharing, funding to assist in undertaking such activities as National Baseline Assessment).

Priorities:  
(1) National Action Plans for effective implementation;
(2) Mandatory Human Rights Due Diligence;
(3) Non-Financial Reporting & Corporate Transparency;
(4) Access to Justice for victims of corporate abuse;
(5) A UN Treaty on business and human rights

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

The challenges includes discrimination, basic food supply and environment, setting independent institutions and demographic changes.

(1) Discrimination
“People who are vulnerable must be empowered”, and includes explicitly children, youth, persons

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with disabilities, people living with HIV, older persons, indigenous peoples, refugees, internally displaced persons, migrants, people living in areas affected by complex humanitarian emergencies and in areas affected by terrorism, and people living under colonial and foreign occupation. It envisages a world where women and girls enjoy full gender equality and all legal, social and economic barriers to their empowerment are removed.\textsuperscript{144}

(2) Basic food supply and environment
No matter how free individuals are to speak out and protest, they are not truly free if they lack food, education or adequate housing. The reverse is also true. Societies in which people have access to fundamental social protections, and economic resources and opportunities, are less vulnerable to social fracture and the spread of extremism.\textsuperscript{145}

An integrated approach to food security and the environment should take into consideration the food, water, energy, environment and climate nexus, while reorienting food production, distribution and consumption.\textsuperscript{146}

(3) Setting independent national human rights institutions
Currently, 79 of all 193 UN Member States (39 percent) have NHRIs that are fully compliant with international standards. Seven countries have achieved this milestone since 2015. Several other Member States have NHRIs working towards compliance. However, at the current rate of progress, only 54 percent will have these critical institutions by 2030.

(4) Demographic changes
The global population reached 7 billion in 2011 and will continue to grow, albeit at a decelerating rate, to reach a projected 9 billion in 2050 (United Nations, Department of Economic and Social Affairs, Population Division, 2011). Beyond aggregate global population growth, demographic development is characterized by heterogeneity, as countries are at different stages of their demographic transition. While global population growth is slowing, it is still high in some developing countries, and while the world population as a whole is ageing rapidly, some countries are witnessing an increase in the proportion of youth in their overall population.\textsuperscript{147}

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?

Ways to overcome obstacles:

\textsuperscript{144} https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=225&menu=3170
\textsuperscript{145} https://www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/sustainable-development.aspx
\textsuperscript{146} https://sustainabledevelopment.un.org/content/documents/2843WESS2013.pdf
\textsuperscript{147} https://sustainabledevelopment.un.org/content/documents/2843WESS2013.pdf
• Awareness-raising;
• Capacity building activities
• Business and Human Rights events (e.g. role of the UN Forum on BHR)
• Technical assistance and training;
• Study visits;
• Experience, knowledge and best practices sharing and collaborative learning with countries that have similar characteristics although some cross-regional learning was also of interest (e.g. during the UN Forum or during AU-EU meetings, special ‘labs’);
• Improved co-ordination within governments as well as across governments.
• An ongoing process.

Implementing the corporate responsibility to respect human rights takes time. Moreover, for many companies, the nature of human rights risks associated with their operations, products or services will change over time, as their operating contexts, activities and business relationships also change. Implementation is therefore an ongoing process.  

actionable and measurable targets of key actors:

(1) governments should develop and implement National Action Plans on Business and Human Rights.
(2) strengthen access to justice and access to adequate remedies for victims of business-related human rights abuses.
(3) Companies should obey the advice provided by UNGP on how to assess and address human rights risks in their supply chains.
(4) The responsibility to respect human rights applies across the company’s own activities and also to its business relationships; The responsibility to respect human rights is distinct from a company’s efforts to support or promote human rights: both should be beared.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share? The Working Group’s thematic work addresses several topics that need to be more fully considered for the vision of the UNGPs to be realized during the next decade and beyond. This includes the need to:

(1) embed the “Protect, Respect and Remedy” pillars in the context of engaging the private sector to realize the SDGs;
(2) strengthen access to effective remedy for victims of business-related human rights abuse, which  

149 See https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx
should be a key priority for operationalizing the State duty to protect and corporate responsibility to respect human rights, and which will eventually also contribute positively to preventing future adverse impacts on human rights;

(3) make corporate human rights due diligence part of normal business practice, by scaling up emerging good business and investor practice, and through effective regulations;

(4) connect the business and human rights and anti-corruption agendas;

(5) integrate the UNGPs into the policy and practice of the various economic actors owned or controlled by the State;

(6) develop and incentivize more responsible business and investor practice in conflict and post-conflict situations;

(7) integrate gender-responsive measures in State and business policy and action, to respond to the unique experiences of women and girls as well as the structural discrimination or barriers that they face;

(8) recognize the key role of human rights defenders in supporting a sustainable future for all and ensure corresponding action by States and business enterprises to safeguard defenders who raise concerns about business-related human rights impacts;

(9) leverage the role of national human rights institutions;

(10) harness the potential of trade and investment agreements to promote business respect for human rights;

(11) apply the UNGPs in the context of climate change mitigation efforts as well as in the transition to a greener economy.
BHR-UNGP next decade-consultation questions-

Luoyi ZHOU

Business and human rights – towards a decade of global implementation

Input to the UNGPs 10+/ Next Decade BHR project
Please include links to relevant publications and materials, wherever relevant

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?

- **Broder coverage:** Previously, discussions about business and human rights were mostly centered on large Western extractives and retailers operating in developing countries. However, UNGPs have moved the conversations forward to a more comprehensive picture, covering all kinds of business relationships throughout the whole industry chain.

- **Supported by enterprises:** UNGPs have gained support from a great number of audience, including influential companies. For example, Coca-Cola has publicly stated its support, noting that UNGPs are a “foundation and flexible framework for companies like ours”.

- **Source of relevant national and international standards:** Both international and national governing bodies have adopted different regulatory standards and guidelines that align with the UNGP to drive human rights due diligence, such as the [UK Modern Slavery Act](https://www.gov.uk/modern-slavery-act), the [Anti-human Trafficking Compliance Guidance for U.S. Government Contractors](https://www.ofm.dhs.gov/ trafficking_compliance_guidance), and the [OECD Guidelines for Multinational](https://www.oecd.org/greentag/49688093.pdf).
Enterprises. The UNGPs have also generated soft law sources, especially concerning the role of non-state actors.

- Effective communication and increased transparency: While communication is a real driver for improved management of human rights issues, UNGPs invite enterprises to communicate their human rights challenges and progresses to the wider public through their periodical reports, statements, media coverage or even social media posts.

- Collaborations between different stakeholders: It is widely recognized that companies are not able to address systematic human rights challenges alone. UNGPs provide a framework for constructive discussion in the field of business and human rights and led to increased awareness among various stakeholders.

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

- Lack of enforcement mechanism: So far, UNGPs lack of an overarching accountability mechanism that could make the framework legally enforceable.

- State duty to protect vs. extraterritorial jurisdiction: Under international human rights law, states have obligations to protect people within their territory from human rights violations. Yet the dimension of extraterritorial jurisdiction remains to be complex and unclear. For example, to what extend do state have power to regulate enterprises within their territory yet committing human rights abroad?

- Responsibility vs. obligations: As the second pillar, UNGPs highlight that companies have the “corporate responsibility to respect” human rights. However, the term “responsibility” implies that companies may not necessarily have the positive obligation to fulfill such rights. One would also question if UNGPs are a voluntary code of conduct or they should be enforced.

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

In line with answers stated in question 2, the key obstacles, drivers and priorities to be addressed would be the following:

- An effective grievance and remediation mechanism at both national and international level;
- Translation of UNGPs into concrete, actionable and industry-specified policies within each company;
- Transparency in data collecting and sharing;

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

- Structural unequal distribution in wealth and social welfare within and across countries: For example, an underprivileged Myanmar national would still accept an indecent job in neighboring Thailand that pays less than the required minimal wage in Thailand, but still higher than what he/she could get in Myanmar. As well, people who work in informal sector would not be willing to reveal the bad work condition at the risk of losing their job. From customer side, one may still opt for a product/service at a much lower price despite they are aware of the potential unethical involvements simply because he/she is not able to paying a higher price. Such supply-demand relationship in turn consolidates the human rights abuses.
- The rapid development of technology, AI and ICT with unclear impact on 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?

For states:
- Reinforce the existing commitments;
- Conduct a thorough and overarching baseline assessment or country profile to inform the situation of BHR in its territory. Such document can be used as a reference to evaluates its achievements and/or ways forward in the future;
- Issue clear and actionable guidelines for enterprises;

For enterprises:
- Publicly endorse and support UNGPs and engage stakeholders;
- Formulate policies and code of conduct that align with UNGPs at the senior management level;
- Incorporate human rights diligence as an integrate part of any operation;
- Periodically monitor, evaluate and report;
6. **Is there other information relevant to the UNGPs 10+ project that you'd like to share?**

This year, the world has experienced the unprecedented COVID-19 pandemic which significantly impacted many business and the global supply chain. Such impact should be considered in the UNGPs 10+ project. As well, there need to be a BHR mechanism for the context of a potential public health emergency.

**Reference:**

Corporate Human Rights Benchmark  

Where We’re At: Taking Stock of Progress on Business and Human Rights  
https://shiftproject.org/where-were-at-taking-stock-of-progress-on-business-and-human-rights/
Business and human rights – towards a decade of global implementation

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?

- Progress
The “Protect, Respect and Remedy” framework has been constructed and developed in UNGPs implementation, which is different from the “Respect, Protect, and Fulfill” framework.

The “Respect, Protect, and Fulfill” framework was developed by the United Nations, in the context of work in the 1980s by the Committee on Economic, Social, and Cultural Rights on the right to food.150 This classical framework requires the state duty to respect, protect, and fulfill human rights, but the “Protect, Respect and Remedy” Framework consists of multiple subjects, such as the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; the need for more effective access to remedies. This framework was developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. And the Guiding Principles was endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011. 151

The change of this theoretical framework shows that the United Nations has taken a completely different approach in the field of business and human rights, that is, to abandon the regulation of

business and seek to cooperate with it and to enhance the global partnership to solve human rights challenges. In my opinion, The transformation of the theoretical framework has mainly led to the progress in practice.

The “Protect, Respect and Remedy” Framework has been well received by key stakeholder groups: a number of individual governments have utilized it in conducting their own policy assessments; several major global corporations are realigning their due diligence processes based on it; civil society actors have employed it in their analytical and advocacy work; several major international organizations have drawn on it in adapting their own business and human rights policies and standards; and civil society actors have employed it in their analytical and advocacy work.

• Promising Developments and Practices
   Though the reports and other documents of the Working Group on the issue of human rights and transnational corporations and other business enterprises, we can find out many promising developments and practices in UNGPs implementation.

   For example, many companies produce public reports summarizing their efforts and results, increasingly within a framework of sustainability reporting. They have begun to report their impacts publicly with tools and frameworks that explicitly include the Guiding Principles. The most commonly used framework is the Sustainability Reporting Guidelines of the Global Reporting Initiative, currently used by 6,000 companies (2015). Investors are also increasingly supportive of companies reporting on impacts on human rights. In that respect, the Working Group is pleased to note the public support by a large group of investors (as of July 2015, 82 investors representing $4.8 trillion of assets under management) to the UN Guiding Principles Reporting Framework.152

   With a view to overcoming the challenges faced by victims in gaining access to effective remedies, in 2014 the Office of the United Nations High Commissioner for Human Rights launched the Accountability and Remedy Project. The project has provided specific guidance to States in removing barriers to access to judicial remedies and in turn improving corporate accountability. In March 2016, the Council of Europe listed steps that member States should take to ensure that everyone had access to an effective remedy.153

   In addition to the formulation of norms, the implementation of norms is a crucial link in protecting human rights. Therefore, both the initiative reporting system of enterprises and the access to effective remedies are good practices for the protection of business and human rights. In Asian countries, including China, the implementation of norms is relatively weak, so these mechanisms

are highly instructive.

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

Although we’ve made progress in many areas, there are some gaps and challenges that cannot be ignored. The fragmentation of international law is one of them. The norms that protect business and human rights are laid down in a variety of laws, such as the international human rights law, investment law and trade law. And all of them are soft law, lacking a certain degree of enforcement power. To some extent, it is not just a challenge of business and human rights, but of all human rights issues. However, because the subjects involved in business and human rights are more diverse and the interests involved are more complex, the problem is more prominent.

Another challenge is the incoherent and the inconsistent implementation of the national relevant legal and policy frameworks, result in the weak implementation of the Guiding Principles. It has been a common finding of country visits conducted by the Working Group. Numerous challenges exist with regard to achieving policy coherence in implementing the Guiding Principles. These challenges include: government ministries, departments and agencies working independently in “silos” with poor communication and a lack of common policy understanding or objectives; a lack of coordination and collaboration between and across government bodies; poor information and knowledge management and exchange on business and human rights policy and its relevance to different government bodies; insufficient training, guidance and support on policy implementation.\(^{154}\)

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

In order to achieve fuller realization of the UNGPs, the key obstacle that needs to be solved is to remove the barriers and set reasonable standard to cross-border trade cooperation. And to establish governance by business enterprises of their own affairs.

The corporate governance is also the drivers and priorities to achieve fuller realization of the UNGPs. It is necessary to transform human rights regulation from the norms of public law to the values of the private sector, including enterprises. “Private business activity, investment and innovation are major drivers of productivity, inclusive economic growth and job creation. We acknowledge the diversity of the private sector, ranging from microenterprises to cooperatives to multinationals. We

call upon all businesses to apply their creativity and innovation to solving sustainable development challenges.”

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

Improving and addressing structural discrimination against vulnerable or marginalized groups is critical to realize sustainable development. In the case of gender issues, structural discrimination against women has led to a persistent disadvantage for women in business and industry. Women are more likely to be victims of human rights violations. In China, gender discrimination in employment is the most prominent manifestation.

Women comprise almost half of the world’s population. Despite non-discrimination provisions in the constitutions and laws of many countries, in practice women continue to experience various forms of discrimination and violence in all spheres of life due to discriminatory social norms, patriarchal power structures and gender stereotypes. The 2030 Agenda for Sustainable Development, in which gender is considered both as a stand-alone and cross-cutting issue, seeks, among other things, to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.

In addition to discrimination against women, structural discrimination against disabled groups, sexual minorities and elderly groups is also widespread. To achieve sustainable development, we must face up to these structural issues.

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?

On the one hand, we need to set standards to ensure that human rights violations do not occur in cross-border trade. Global supply chains in cross-border trade present significant human rights risks and challenges. States act as gatekeepers when they provide much needed support to businesses by providing trade finance and advisory services aimed at expanding export opportunities. As gatekeepers, States can use their leverage to promote a race to the top by setting out clearly the expectation that businesses respect human rights as a precondition for receiving government support for export activities. States can also promote responsible imports by restricting the flow of goods in

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supply chains that involve serious human rights abuses.\textsuperscript{157}

On the other hand, we need to stimulate the initiative and enthusiasm of enterprises so that they can actively solve business and human rights issues. According to the system of “Polycentric Governance”, in addition to public governance and civil governance, the corporate governance, which internalizes elements of the other two, in many cases surpass the scale and effectiveness of public governance in particular issue areas.\textsuperscript{158}

In the coming years, targets can also be set in terms of “Protect, Respect and Remedy”. States must develop better legal norms for the protection of business and human rights and strengthen the enforcement of laws. Besides, states must report to treaty bodies on the implementation of the international human rights treaties that they have ratified. Companies should apply a range of methodologies to track their performance and impacts, including social impacts. Companies apply a range of methodologies to track their performance and impacts, including social impacts. At the same time, remedy should continue to be strengthened, both at the international level and at the domestic level.

6. Is there other information relevant to the UNGPs 10+ project that you’d like to share?

(1) More and more attention has been paid to the issue of corporate compliance, which is not only related to the legal operation of enterprises and the protection of human rights of employees, but also related to the strict implementation of international anti-corruption laws. Every Chinese company should attach importance to corporate compliance.

(2) For a country, establishing a good business environment is a prerequisite for attracting foreign investment and promoting economic development. A good business environment is closely related to the legal system for protecting human rights. In order to promote economic development, attention must be paid to the protection of business and human rights.


\textsuperscript{158}Radu Mares, \textit{International Soft Law}——Is there a consensus on what is responsible business conduct? (PowerPoint, 16.11.2020)
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?

- **Progress Taken Place**
  In order to make human rights framework to be effective, attention and resources need to be focused on the most severe risks to people. The UNGPs refer to this as the company’s salient human rights issues, of which their severities are defined by their scale, scope and irremediability. Consequently, an internal human rights risk prioritization workshop was held with the members of the Committee, based on the collected information and analysis, led by Mazars. This led to the identification of our four initial salient human rights issues: (i) health and safety, (ii) working conditions, (iii) discrimination and harassment and (iv) under-aged labor.

- **Promising Developments and Practices**
  I think the softening of expressions can be regarded as a promising development and practices. It will reduce the burden laid on developing countries and narrow the gap between developed counties and developing countries. In addition, the cooperation and conversation built based on this foundation will promote the development of human rights protection.

2. Where do gaps and challenges remain? What has not worked to date?
With the joint efforts made by people around the world, the awareness of individuals to protect and safeguard human rights has been improved. However, we have to admit that
there are gaps and challenges remain and have not been solved to date. They can be concluded as follows:
Lack of comprehensive remedies. With the development of globalization, more and more multinational companies have been built. They tend to develop business in different countries and set many foreign subsidiaries or branches, which are located in developing countries whose law systems are not sound mostly. However, we cannot find guidance on UNGPs about how to control and remedy transnational business activities which violates human rights violations in other countries to ensure that companies under their jurisdiction cannot be regarded as domestic or foreign human rights violations.
Unbalanced development among different region. In general, the condition of balance established between business and human rights in EU countries is better than that of Asia. Although, we have seen great development in the field of economy and technology in Asia, vast popularities and territory still impact the effect of human rights protection. Therefore, the unbalanced development should be emphasized.
Inefficiency of international law enforcement. It is not an easy work for us to find a strong and effective judicial mechanism in UNGPs, causing the lack of mandatory binding effect in international law for UNGPs.

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
Lack of good governance and prevalence of corruption, which will impede the efficiency and reputation of UNGPs;
Lack of mandatory binding effect, which results in human rights protection does not be taken seriously.

• Drivers and Priorities
In order to achieve fuller realization of the UNGPs, dedicated regulatory agencies are needed. Officials in agencies can monitor and supervise behavior of individuals to reduce the possibilities of corruption. Moreover, the joint efforts need to be strengthened to improve the willingness to fulfill the liabilities under UNGPs.

4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?
Personality rights should be paid more attention. With the rapid development of science and technology, the abuse of personal information has become more and more common. In the past, we are used to associating human rights with business, work, education and so on, but shedding little light on rights of personal information or personality rights.
Therefore, it is needed to attach equal importance on the concept of personality rights and provide enough protection of personal information in the age of big data.

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?
Concrete legal accountability should lay on business enterprises to ensure that individuals in different countries especially in less developed countries can obtain the effective remedy when suffering the human rights abuse.

6. Is there other information relevant to the UNGPs 10+ project that you'd like to share?
As far as I can see, the core problem, that is "why should enterprises pay attention to human rights" has not been solved successfully, for many enterprises that do not implement human rights protection well but earn great profit and enjoy enormous market share. Therefore, I strongly propose that there should be some evaluation or supervision about the fulfillment of enterprises’ liabilities and whose result can influence the development of certain companies.