



Replies by the Government of Finland to the questionnaire by the Working Group on the issue of human rights and transnational corporations and other business enterprises

30 November 2020

The Government of Finland welcomes the UNGP10+ initiative of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises and presents the following replies to the questionnaire on *Business and human rights: towards a decade of global implementation* sent by the Working Group.

1) Where has progress taken place in UN Guiding Principles on Business and Human Rights (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 major achievement of the UNGPs has been to clarify the state duty to respect, protect and fulfil human rights and fundamental freedoms, the responsibility of business to respect human rights and access to remedy. This framework has made it possible to start a constructive dialogue on each party's role in respecting human rights. The UNGPs have also been the founding rock on which the OECD has built its due diligence guidance, taking the issue to a more practical level and clarifying what due diligence means in different sectors and operational environments.

In the European Union, international due diligence standards are increasingly included in various legislations, from sustainable finance to non-financial reporting. Adding due diligence elements to legislation would have been much more difficult without internationally approved standards on due diligence, as there would have been the risk of fragmentation. The EU has also funded various capacity building programs on the UNGPs in third countries and under the auspices of international organisations. A number of the EU Member States, including Finland, has adopted or is in the process of developing a National Action Plan (NAP) on business and human rights as encouraged and guided by the UN Working Group.

Finland was one of the first countries in the world to publish a National Action Plan (NAP) to implement the UNGPs. Since the approval of the NAP in 2014, Finland has built stakeholder dialogue, offered support and guidance, and implemented a capacity building program to public financing institutions (both to those offering development funding and those offering export credit).¹ The Finnish policy on State-Ownership Steering states that the UNGPs need to be taken into

¹ For more information, please see the Ministry of Economic Affairs and Employment's website, <https://tem.fi/en/enterprises-and-human-rights>.



account in both the own activities of Finnish state-owned companies as well as in their supply chains.²

Finland has incorporated responsible business conduct and due diligence into its implementation of the Agenda 2030 for Sustainable Development.³

During its Presidency of the Council of the European Union Finland highlighted the business and human rights agenda and in connection to its business and human rights conference organised in Brussels published an Agenda for Action.⁴ This document presented various concrete measures to spur the implementation of the UNGPs in the European Union.

Last summer, the Government of Finland published a judicial study on possible mandatory due diligence, which relies heavily on the UNGPs.⁵ The Government is also having a study made on the status of human rights performance of Finnish companies.⁶ The study is based on the methodology of the Corporate Human Rights Benchmark and the results will be published in early 2021.

In 2018, the Government of Finland launched a capacity-building program for its state instruments that provide support to the private sector. Later the Government extended the project to the end of 2021 and it now covers numerous (currently more than 7) private sector financial instruments or actors. The objective of the program has been to equip each of the instruments with the understanding and tools to align their policies, procedures and practices with the expectations of the UNGPs. The programme has been designed and delivered by Shift, the leading center of expertise on the UNGPs. At the same time, the program has provided an opportunity for Shift to contribute in various ways to the robust dialogue currently taking place in Finland on business and human rights among a variety of stakeholders and actors.

The Shift project has concluded, for instance, that more clarity is needed on the requirements relating to assessing and addressing human rights within existing environmental and social risks policies and procedures of the state financial sector instruments.

The Government published an interim report of the project in fall 2019⁷.

² Government Resolution on State-Ownership Policy (2020), https://vnk.fi/documents/10616/1221497/State+Ownership+Policy_08042020.pdf/581f2a9c-ca52-83ac-44e6-0d6684950125/State+Ownership+Policy_08042020.pdf.

³ See for example: Voluntary National Review 2020 Finland – Report on the implementation of the 2030 Agenda for Sustainable Development, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162268/VNK_2020_8_Voluntary_National_Review_Finland.pdf?sequence=4&isAllowed=y.

⁴ Agenda for Action on Business and Human Rights – Outcome Paper of the Business and Human Rights Conference organized by Finland's Presidency of the Council of the European Union (2019), <https://tem.fi/documents/1410877/3084000/Agenda+for+action+final+02122019.pdf/11ee0f42-9a5e-222e-5cdd-524b4a40e461/Agenda+for+action+final+02122019.pdf>.

⁵ Ernst & Young Oy: Helminen, Sakari; Alenius, Jani; Walta, Ville; Donner, Sofia (2020), <http://urn.fi/URN:ISBN:978-952-327-553-9>.

⁶ SIHTI (Status of Human Rights Performance of Finnish Companies) research project, <https://www.hanken.fi/en/departments-and-centres/department-management-and-organisation/ccr/research/projects/sihti-project>.

⁷ For more information please see: <https://tem.fi/documents/1410877/2869440/Aligning+Finland%E2%80%99s+State+Financing+for+Private+Sector+Activity+Abroad+with+the+UN+Guiding+Principles+on+Business+and+Human+Rights/4d24f756-66e8-c78b-49f0->



In addition, as of 2019, the Government has been contributing to and funding an initiative called 'Valuing Respect' led by Shift. The goal of the initiative is to develop tools and approaches that can help companies and their stakeholders to better evaluate the human rights impacts of their work.⁸

The Government of Finland provides support to civil society organisations for their work to raise the awareness of business and other stakeholders on the corporate responsibility to respect human rights and promote responsible business conduct as part of global sustainable development. The support is aligned with the language and standards of the 2030 Agenda for Sustainable Development and the UNGPs.

The Government of Finland continues to participate actively in the dialogue on implementing the UNGPs on a national, European and international level.

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

Globally the implementation of the UNGPs has been inconsistent. Nine years after the endorsement of the UNGPs States still do not have an international or even a European formal platform where they could exchange experiences and recent developments in a constructive manner. There is a risk that the gap between countries widens. The lack of a formal platform for States has been a major miss-used opportunity to spur the implementation of the UNGPs.

It would also be important to monitor the application of due diligence by companies. However, there are still many challenges related to monitoring. Available data, namely company disclosure, varies heavily, even though there is already non-financial reporting regulation for example in the EU. Poor comparability and the lack of data are some of the key reasons for the EU to renew the non-financial reporting regulation. Another issue on monitoring relates to international comparability and used methodologies. Many entities and some States, such as Finland, have executed studies on company performance on human rights. One key element would be to compare company performance of companies located in different countries. However, the research methodology used would need to recognise the differences between human rights issues of companies operating in different markets. Finding appropriate key performance indicators that would function for all companies operating in very different market can be challenging.

Access to remedy for business-related harms is still a major challenge. Therefore, more attention should be paid to the remedy pillar as an intrinsic part of the UNGPs. OHCHR has done excellent work in this regard and any future work on access to remedy should be built on the OHCHR's Accountability and Remedy Project.

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⁸ For more information please see: <https://shiftproject.org/what-we-do/valuing-respect/>.



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

One of the key obstacles is that the implementation of the UNGPs varies among States. There are numerous States that are not active in implementing the UNGPs. This does not create a level playing field among States.

Furthermore, implementation of UNGPs has not become mainstream among businesses either.

Capacity building is needed for private sector actors to be able to fill the requirement for considering additional human rights standards as relevant in the particular context and to pay special attention to ensuring the participation of the persons and groups that are most at risk of actual or potential negative human rights impacts, including indigenous peoples.

In addition, there is a need to adopt a stronger gender lens in the implementation of the UNGPs. While the UNGPs acknowledge the importance of gender at several points, more attention needs to be paid to the differentiated impacts of business-related human rights abuses on women and the additional barriers that they face in accessing effective remedies to redress such abuses. Differentiated impacts and additional barriers also apply to persons with disabilities who are often absent from the discussions related to business-related human rights impacts and therefore deserve more attention going forward.

We should also continue to make efforts to ensure that civil society, including human rights defenders, can play their key role in supporting the implementation of the Guiding Principles in a non-discriminatory manner and be meaningfully involved in the human rights impact assessment process, in order to help identify, prevent, mitigate and account for actual and potential human rights impacts. Civil society actors, including human rights defenders, are best placed to identify persons and groups that face discrimination at community level and thus are at risk of being left behind. They can also provide up-to-date, accurate and comprehensive information on the local context, as well as advice on how to consider the specific challenges faced by women, children and persons or groups at risk, including indigenous peoples, persons with disabilities, national or ethnic minorities, religious and linguistic minorities and migrant workers and their families. Furthermore, civil society, including human rights defenders, can have a key role in advocacy and awareness-raising on the state duty to protect, the corporate responsibility to respect and the need for access to effective remedy.

In addition, more attention should be paid to the UNGPs, environment and climate. Environmental rights and human rights are having interdependent connections as environmental degradation and climate change may potentially affect the fulfilment of human rights. Thus, more discussion on the interplay between these would be needed. In this regard, the Government welcomes the work anticipated by the Working Group on developing an Information Note on what all three pillars of the UNGPs entail for States and business enterprises in relation to environment and climate change. Environmental human rights defenders should be considered key actors in implementing the UNGPs alongside broader civil society.



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

The growing challenging of human rights standards and principles in many part of the world is also making the realization of sustainable development based on respect for human rights increasingly difficult. Therefore, the systemic challenges for advancing sustainable development based on human rights should be linked to and tackled within the broader efforts for addressing the corrosive narrative and attempts to challenge human rights as universal, indivisible and legally binding standards on which our multilateral system is built on.

Thus, there is a need to defend the joint values and binding human rights standards and norms on a broader level. It will be difficult to promote UNGPs in an international environment where the views on the binding nature of human rights are becoming divided and even the states' obligations in this regard are being challenged. Systematic approach for defending the jointly agreed norms, principles and standards is therefore needed at the global, regional and national level in all relevant policy measures and dialogues.

Moreover, the linkages between the UNGPs and the SDGs could be further clarified. The private sector is having a growing role in the realization of SDGs, in all parts of the world, including in fragile contexts to which international assistance has dramatically increased during the past decade. There is, thus, a need for more capacity building for the private sector to better understand their role and responsibilities in the effort to realize the SDGs, also in fragile contexts. It is important to remind private sector actors of the fact that the 2030 Agenda for Sustainable Development needs to be implemented in accordance with the UNGPs and other human rights, labor rights and environmental standards and that the private sector plays a vital role in achieving the goals of the Paris Agreement. While, in order to fulfil the minimum requirement of 'do no harm', the due diligence process needs to be conducted in relation to all planned business activities in all contexts, conflict and post-conflict situations increase the existence and severity of the risks remarkably and therefore enhanced human rights due diligence is critical in high-risk contexts, such as conflict and fragile 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?

One priority would be to set up a formal platform for States to exchange experiences. This would provide insights and hopefully through capacity building would encourage all States to be more active. Ideally, such a platform would be based on dialogue rather than the usual, heavy reporting machinery practiced by the UN or other international organisations.

Moreover, a more systematic global review of the implementation of UNGPs is needed. Such a review could build-upon experiences of existing similar type of exercises such as those conducted by the OECD, the UN Universal Periodic Review or the WTO Trade Policy Review. In addition to governments also CSOs, including private sector and trade unions, should be engaged in the review process. This type of review could create some peer pressure and positive spin for States and other stakeholders to strengthen their work on the UNGPs.

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