



UNDP's contribution to the call for inputs UNGPs-Next Decade Project

Q1. 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) Increased dialogue and awareness of Business and Human Rights (BHR). There has been a shift from CSR to BHR discourse, particularly in the European Union (EU) and developed countries. There have also been more opportunities for peer-learning and awareness-raising, particularly through the Annual Forum on BHR, the Regional Forums in Asia and the Pacific, Latin America and recently in Eastern Europe, national dialogues (such as the ones hosted by UNDP in Thailand, Myanmar, Malaysia, and elsewhere) and multi-stakeholder initiatives. A key driver of this change has been the UN Working Group (UNWG) itself, whose reports and guidance (such as the one on [Gender and BHR](#)) have unpacked the UNGPs and connected them with other areas, including corruption and conflict prevention.

b) Laws, policies and other initiatives promoting responsible business practices. Most notably, the last decade has seen the introduction of National Action Plans (NAPs) and the proliferation of mandatory Human Rights Due Diligence (mHRDD) policies and laws. In addition, the variety of benchmarking and multi-stakeholder initiatives have raised the profile of BHR and the stakes for businesses violating HR. Moreover, BHR has also permeated trade agreements and instruments. For instance, the Free Trade Agreement between Viet Nam and the EU includes so-called "sustainability" clauses that require Viet Nam to take steps to ratify ILO conventions. Following the EU Parliament's approval of the FTA, the Viet Nam government promptly became more interested in the BHR agenda and opened up programming to UNDP on the topic. Another example are the Withhold Release Orders issued by the U.S. government against Top Glove, FGV and others, which accelerated the sense of urgency in Malaysia to develop a NAP.

c) Donor engagement. Donors' targeted interventions have made a significant difference in expanding the discourse on BHR (as witnessed by SIDA's and EU's support to UNDP in Asia).

d) Continued engagement from organisations in the field. Actors with a field presence, such as UNDP in Asia and now the rest of the world, and ILO/OHCHR/OECD in Latin America have shown their continued efforts (rather than one-off activities) have moved the needle with governments and businesses alike; more such efforts are needed.

e) The BHR community has grown. This includes both new actors (businesses, business associations, some MSIs) as well as others who have 'learned the BHR language' and are using it (UN agencies, some civil society organisations and activists).

f) External oversight of businesses has grown. The efforts of initiatives such as the Corporate Human Rights Benchmark, albeit imperfect, have introduced external oversight and a way for the public at large to gauge whether corporations are living up to their words and adhering to the UNGPs. This is a powerful tool that raises businesses' reputational risk and that should be further developed.

Q2. Where do gaps and challenges remain? What has not worked to date?

- a) **Progress has been slow and uneven.** Although progress has been made in the EU, parts of Asia and Latin America, other regions (Eastern Europe and Central Asia, Africa, Arab states) are essentially at ground zero. Even in regions where we've had progress, there are important outliers, which, if left unaddressed, could lead to laggards and abusers having a competitive disadvantage. This lack of progress on the basics in much of the world should not be obscured by a rush to focus on new areas (such as digitalisation); the next decade will still primarily be about ensuring BHR is adopted worldwide.
- b) **Human Rights Defenders at risk.** A rise in activism has led to more abuses of HRDs. Stronger laws and institutions are required to protect whistleblowers, prevent SLAPPs, and otherwise allow HRDs to carry out their work, particularly in the light of the civic space which has been shrinking at an alarming rate worldwide.
- c) **SMEs and the informal sector have been left behind.** The (admittedly moderate) efforts to ensure that SMEs are included in the BHR discourse have not borne fruit yet. Yet, even this outpaces efforts to address human rights violations in the informal sector. There should be a renewed emphasis on SMEs and the informal sector to ensure BHR issues are addressed beyond just MNCs. Moreover, this might require a tweaking of the UNGPs' framework, because no evidence exists yet to show that it can be applied effectively to SMEs and the informal sector.
- d) **Tax justice is not yet a fully-fledged BHR issue.** This is evidenced by how little attention tax justice receives at the Global BHR Forums (especially in the second half of the 2010s). This needs to change, as corporations' failure to pay their fair share of tax is a key obstacle to fully realizing the UNGPs.
- e) **Debt relief is not on the radar as a BHR issue.** The obligation to respect human rights extends to private creditors (and international financial institutions). They should adhere to this obligation in providing debtors with debt relief, particularly in the wake of the Covid-19 pandemic. The UNWBG should coordinate with the Independent Expert on the effects of foreign debt to promote this agenda.
- f) **Big tech has not sufficiently embraced BHR.** The increasing dominance of big tech and the sharing economy has profound implications, including on data protection, privacy, surveillance and other issues, which have not been tackled properly.
- g) **Tripartism is elusive.** Trade unions have been weakened since the 1980s; the BHR movement should not, however, underestimate their reach by further marginalising them, as it has done on occasion because they appear to use different language and approaches (collective bargaining vs human rights). There are, however, no mechanisms as effective in protecting labour rights as collective organising through trade unions (as witnessed by tragedies such as the Rana Plaza disaster).
- h) **Environmental activism remains largely divorced from (business and) human rights advocacy.** The impact of climate change on human rights in the context of business operations is largely understood as an academic matter at best (at worst, it is given mere lip service). Advocacy around a joint environment-human rights nexus is nascent, and perhaps the UNGPs could strengthen the link between the two fields.
- i) **The tie in with the SDGs has not been successful.** Given the lasting power of the sustainable development agenda, a more concerted push to ensure the linkages are well understood is necessary. Linkages at the country level between the SDGs and the BHR agenda not well developed.

Q3. What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?

- a) **Gender equality** is not taken seriously enough, as the Covid-19 Pandemic revealed. Women were the first to be laid off, and in some industries, unnecessarily exposed to workplace risks. Currently, gender issues are an afterthought, and issues such as sexual- and gender-based violence against women and girls are largely sidelined. Discrimination of women in the workplace is still rife, and women and girls face additional barriers in accessing remedies, particularly when faced with intersecting forms of discrimination due to their age, class, and other factors.
- b) **The Private Sector needs to lead, not just follow.** While there are signs of that with large MNCs backing initiatives to adopt mHRDD laws in EU countries, other businesses are overwhelmingly either passive bystanders (or actively resistant) in the process. The champions of change in the private sector need to make their voices heard more and lead in the diffusion of BHR ideas and norms.
- c) **Outside of reputational hits, liability is largely non-existent.** Transparency in supply chains remains elusive and the consequences for non-compliance with international standards among MNCs remain very low. Jurisdictional limitations in home-state/advanced economies limit corporate liability for human rights abuses. Remediation levels are considered inadequate. More lawyers need to be engaged and incentives for filing civil suits on behalf of the indigent need to be found. In addition, other remediation mechanisms, including non-state and non-judicial ones, need to be engaged fully to ensure meaningful access to justice.
- d) **Different speeds between and within different regions** (see point 2(a)). BHR discourse needs to be 'normalised' beyond developed countries, front-running companies, NGOs and IGOs, to Africa, Arab states, Eastern Europe, as well as key countries such as China. As UNDP's study on Asia notes, this push should purposefully include the laggards and tackle the difficult issues – not just the easy ones.
- e) **The lack of effective measurement.** Efforts to measure the extent to which businesses respect human rights and adhere to the UNGPs are at their initial stages. We still don't know why corporations do (not) respect HR, we don't measure effects over time; the upshot is - we need better measurements in the field.
- f) **A focus on the implementation of NAPs.** We need to move the discourse beyond having a NAP to implementing one. The UNWG might initiate a periodic peer-review process of NAP implementation.
- g) **Strategic partnerships.** UNDP's experience has shown that strategic partnerships among governments, businesses, NGOs and other stakeholders remain a key driver for change and should be fostered.
- h) **Economic incentives.** Incentives created by the market (such as ESG investing) and governments (such as the U.S. Department of Labor's trafficking in persons watchlist) have a real effect on corporate behaviour. Such mechanisms should be expanded and deepened.
- i) The **ESG asset class is exploding but the S or Social "pillar" is being diluted** by references to "worker education initiatives" and the like. While important, these initiatives do not often correlate to human rights abuses of the severest nature. The UNWG should help define what ESG means for a ready and waiting global investor audience.
- j) **Legal aid, pro bono services, and/or access to justice** programming efforts have not been fully employed to address grievances or to drive capacity development of judiciaries.
- k) **Civil society groups** do not have the capacity to take on industry interests, and CSOs are unlikely to ever reach appropriate support levels in a post-C19 scenario involving ever-shrinking levels of civic space. This only underlines the importance of trade unions, and the need to strengthen them (while also figuring out how workers can best associate and organize in the fourth industrial revolution).
- l) **Consumer protection groups** are not fully apprised of the issues. The UNWG should consider how to leverage the power of these associations to ensure product safety and worker safety are conflated.

m) **The “Unease” of Doing Business.** Many countries look to fulfill the criteria set by the World Bank “Ease of Doing Business Report” to showcase progress on the business environment. This index and others like it, should calculate and incorporate in their rating efforts, the reputational risks of investing in countries that do not embrace the UNGPs. The UNWG might lobby the WB to consider incremental adjustments towards this end.

Q4. What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

a) **The lack of access to remedy.** The lack of access to remedy for victims of abuses has been well documented. Some causes are systemic (such as undeveloped free legal aid systems, high court fees, and others), while some are more particular to BHR (such as weak corporate remediation mechanisms, SLAPP lawsuits, etc.). There needs to be a reckoning with the ‘forgotten’ third pillar of the UNGPs, and (as Prof. Surya Deva of the UNWG insisted in another context) a de-emphasis on process and more of an emphasis on outcome of access to justice for all victims of human rights abuses by businesses.

b) **A re-think of ‘green growth’.** The UNGPs (and the SDGs) are predicated on the assumption that ‘green growth’ is possible. However, recent work by multi-disciplinary scholars suggests that it may be impossible to ‘decouple’ growth from increased use of resources and carbon emissions. Those implementing the UNGPs and SDGs need to grapple with this issue, which raises the question of the purpose of capitalism (to ensure seemingly endless growth or to provide for our needs within planetary constraints)?

c) **The progressive introduction of mHRDD.** Champions of BHR should promote the diffusion of mHRDD norms, ensuring that this trend ‘goes global’ following the impending adoption of an EU directive.

d) **Policy coherence.** There needs to be even greater coherence between BHR and RBC agendas. Many actors in the field are still confused about ongoing advocacy efforts for similar standards branded or named differently. Responsible parties should articulate an unequivocal message about the links and overlap between the two.

e) **There should be closer alignment between the BHR and ESG** language and approaches (and an articulation of what the ‘S’ in ESG means).

f) **Stronger public relations efforts.** Despite sporadic efforts to raise awareness about BHR, these usually occur only when a tragedy such as Rana Plaza happens. What’s lacking is a more coherent campaign, following in the footsteps of those on climate change, possibly with high level ‘BHR ambassadors’.

g) **Tackling the fourth industrial revolution.** BHR needs to grapple with its implications and the future of work, including how workers’ rights are to be defined (particularly in the ‘work from home’ post Covid-19 age), what the gender implications of this will be, etc.

h) **Bringing together disparate movements.** The BHR movement should link (and learn from) other movements that have preceded it, including those on climate change and the environment, women’s rights, LGBT rights and, particularly, the labour movement. Our experience has also shown that attempts to link human rights defenders and environmentalists have been piecemeal so far and should be intensified, while trade unions have been marginalised within the BHR movement.

i) **Extend BHR discourse to trade and investment.** This can be done by integrating BHR provisions into the new generation of free trade agreements and investment agreements, and including provisions in the BHR treaty detailing obligations of investors that would supersede, or be used in, interpreting

international investment agreements by arbitral tribunals. These measures would help ensure that investor-state dispute settlements are consistent with member states' human rights obligations.

Q5. 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) **Cross-sectional – access to remedy:** the UNWG, member states, civil society, companies, NHRIs, UN agencies and donors should focus on developing: stronger free legal aid systems, reduced court fees, raised awareness among judges, victim-friendly *forum non conveniens*/choice of law rules, cooperation between NHRIs, and use of other mechanisms for accessing remedies (corporate, non-judicial, etc.). They should also insist on ending criminal defamation and SLAPP. The ultimate goal should be an access to remedy for all victims of human rights abuses caused or contributed by businesses.

b) **Cross-sectional – gender equality:** member states, businesses, UN agencies and other stakeholders should make a stronger push for adopting a gender perspective in implementing the UNGPs. Stakeholders should take their lead from the UNWG, which has jointly published (with UNDP) a [set of Guidelines](#) for implementing the UNGPs to promote gender equality, reiterating that (i) gender equality will not necessarily be achieved through a 'gender neutral' approach, but through a proactive set of measures; (ii) data should be disaggregated by sex and states and businesses should set progressive targets on gender equality; and (iii) women's organisations should be prominently involved in the implementation of UNGPs.

c) **UNWG:** (i) keep unpacking UNGPs through reports with guidance; (ii) set up a system/entity (with a multi-stakeholder advisory board) to monitor implementation of the Roadmap for the next decade of implementation of the UNGPs; (iii) create group of BHR Friends with relevant UN agencies and donors to meet quarterly; (iv) Develop a new manual (with UNDP and DIHR?) and peer-review mechanism on how to monitor implementation of NAPs; (v) develop stronger links with 'peripheral' aspects of BHR (tax justice advocates, Independent expert on foreign debt, etc.); (vi) keep organizing global and regional annual fora on BHR.

d) **Donors:** agree on a trust fund for BHR, sustain and increase ongoing support to field based initiatives.

e) **UN agencies:** (i) normalise BHR by operationalising massive awareness raising and capacity building programs in 5 regions (UNDP); (ii) connect the dots between programmes that fit under the BHR umbrella (following the example of Asia or Latin America); (iii) organise regional forums on Business and Human Rights in all regions; (iv) set up a BHR coordination centre/steering body to be advised by the UNWG and operationalized by UNDP and OHCHR.

f) **Member States:** (i) adopt and implement NAPs that include provisions on transnational respect of HR by companies; (ii) adopt advanced mHRDD laws; (iii) engage in inter-governmental negotiations on the binding treaty; (iv) raise the profile of BHR by issuing recommendations during UPR processes; (v) increase resources at the disposal of NHRIs, and amend their mandates (where necessary), to lead on advocacy for the adoption of NAPs and to investigate human rights abuses by businesses.

g) **Civil Society:** (i) establish regional networks and amplify their influence by getting them to speak with one voice; (ii) link efforts on BHR, tax justice, climate justice, debt relief (in the manner of Oxfam and others) to more holistically address abuses by businesses and the future of capitalism.

UNDP Business and Human Rights team's contribution to the call for inputs by the UN Working Group on Business and Human Rights for the Next Decade process.

h) **Companies:** (i) scale up peer pressure initiatives; (ii) get more involved in supporting mHRDD also to level the playing field; (iii) champion BHR, join benchmarking initiatives and share data more transparently; (iv) improve remediation mechanisms to meet UNGP standards;

i) **Academia:** (i) tie research to key BHR issues; (ii) make research more widely available (bypassing academic journals' paywalls that make access onerously expensive for CSOs, activists and others); (iii) accelerate the introduction of cross-disciplinary BHR courses in business and law schools.

j) **Media:** train journalists and dedicate more resources to report (systematically) on BHR cases.

k) **NHRIs:** (i) build capacity to effectively investigate human rights violations by businesses; (ii) raise awareness on BHR and UNGPs among businesses, civil society, governments and other stakeholders; (iii) advocate for the adoption of NAPs.

l) **Trade unions:** adopt the BHR discourse in their struggle for labour rights.