



Remarks by

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Thank you to UNDP for the opportunity to speak at this panel and for involving the UN Working Group on Business and Human Rights as a partner in the Regional Forum. It is an honour for me to participate.

The UN Working Group that I represent has a mandate from the UN Human Rights Council to promote global implementation of the UN Guiding Principles on Business and Human Rights – the UNGPs.

Under the UNGPs, all business enterprises have a responsibility to respect human rights, and the process of continuously conducting human rights due diligence (HRDD) is a core requirement for businesses in fulfilling that responsibility.

Since the endorsement of the UNGPs by the UN in 2011, corporate HRDD has become a norm of expected conduct. The concept was fully integrated into the OECD Guidelines for Multinational Enterprises.

HRDD is a way for enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved. Enterprises should identify and assess risks by geographic context, sector and business relationships throughout own activities (both HQ and subsidiaries) and the value chain.

The prevention of adverse impacts on people is the main purpose of human rights due diligence. It concerns risks to people, not risks to business. The UNGPs clarify that HRDD should be ongoing, as the risks to human rights may change over time; and be informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations. Risks to human rights defenders and other critical voices need to be considered.

The Working Group also considers that HRDD is a key tool in the global efforts to build forward better in the wake of the COVID-19 pandemic.

It enables companies to focus their attention on the most severe human rights risks and identify actual or potential risks to people as part of any response to the pandemic.

We heard this at the annual UN Forum last week, where companies and investors reaffirmed that having strong HRDD systems, supplier relationships and supply chain visibility in place prior to the pandemic have been crucial for companies to navigate the challenges of COVID-19.

Companies speaking at the Forum also acknowledged that they have had to change the way they conduct due diligence and address human rights impacts. They noted that the pandemic has limited in-person audits so they have had to find new ways to get visibility on the ground—ranging from strengthening and expanding existing worker voice channels, to conducting remote dialogues with workers, to piloting virtual auditing tools that can supplement other forms of due diligence.

The UNGPs also set out the legal and policy implications for how to operationalize the State duty protect through a “smart mix” of measures that include legally binding measures, particularly where voluntary measures continue to leave significant gaps in human rights protections. Indeed, the UNGPs anticipated the development of mandatory measures that codify the expectations of the UNGPs into hard law.

The Working Group is encouraged by the current momentum toward mandatory human rights due diligence (mHRDD) regimes across a growing number of jurisdictions, particularly in the EU context.

The consensus among participants across all sectors and all geographies at last week's UN Forum is that laws are coming. Our future is one of mandatory measures. We now have a strong evidence-base that voluntary measures aren't getting us where we need to be.

The announcement by the Global Compact in support of mHRDD at the Forum is a striking example of the growing consensus. Evidence highlighted at the Forum also underlined again and again that the vast majority of companies do not even have a commitment to respect human rights.

It is encouraging to note that increasingly, businesses and investors, alongside civil society organizations, are calling for effective mHRDD legislation. A number of company speakers at the Forum generally welcomed mHRDD. Multinational enterprises want consistency and policy coherence across the many jurisdictions where they operate; small and medium enterprises are looking for structure and guidance on how to effectively prioritise and integrate respect for human rights; and every business wants to level the playing field.

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.

Legislative initiatives like the one proposed at the EU level are critical for speeding and scaling up business respect for human rights.

Building out regulatory responses is a key issue for the Working Group's ongoing efforts to develop a roadmap to advance implementation of the UNGPs in the next decade, through our "UNGPs10+" project.

With the EU legal developments, the reach of mHRDD regimes is getting closer also in this region.

Yet, beyond Western Europe, there are few mHRDD developments. And despite efforts to the contrary, there are also very few countries with national action plans (NAPs). Not only have too few countries developed NAPs, but also where such plans exist, the overall picture is one of shortcomings, in terms of both process and content.

One of the main reasons for the weakness of even of NAPs – not to speak of the mandatory landscape – in many countries is corruption and corporate and regulatory capture of the state. If the legal and policy processes do not address this challenge and are underpinned by effective political will for change, it is hard to see how NAPs can make a difference in many contexts and provide stepping stones for more effective laws and policies.

During the 2019 UN Annual Forum, the Working Group stressed that it was time for Governments more actively to catalyse business respect for human rights. We noted that Government action was overdue and urgent to adequately address the challenges of today and prevent those of tomorrow.

This urgency has become even more acute in the current global crisis. States must act to protect workers and communities that are negatively affected by business decisions and activities. While the world is battling with the economic shocks from the pandemic, we need to start planning for a new and better future, where protection of and respect for human rights must be a key ingredient of a sustainable and just society and its economy.

We recognize that local realities and contexts, including capacity and resources of government entities and other stakeholders, mean that different countries are at different starting points and that journeys will look different. Yet, in all contexts there is potential for progress when learning from the experiences of others and striving toward continuous improvement.

In all contexts, two critical elements need to be present for developing effective legal and policy paths forward: Multi-stakeholder dialogue that includes both business associations and civil society organizations and, importantly, affected stakeholder voices, including unions, human rights defenders and those most at risk.

And there needs to be mechanisms for accountability and good governance.

Even if government-led legal and policy change in many regions lag behind, that does not mean companies cannot move. On the contrary. Their responsibility to respect human rights applies regardless of government performance. And effective human rights due diligence is a key part of meeting that responsibility.

In spite of slow progress overall, the good news is that effective due diligence can be done. Practice examples are building up, which can provide a starting point for a wider group of companies. This, together with the development of numerous tools and resources for business in recent years, means that enterprises can no longer cite a lack of knowledge as an excuse for not getting started.

The other good news is that proper human rights due diligence is also good for long-term business. It improves risk management overall and is good for both people and investments and enhances competitiveness.

We look forward to continued dialogues with stakeholders to envision a coherent and effective way forward for making human rights due diligence part of standard practice in this region.