



UN Guiding Principles on Business and Human Rights at 10

Submission from UN Human Rights (OHCHR) Business and Human Rights Unit

Introduction

The endorsement by the UN Human Rights Council in 2011 of the UN Guiding Principles on Business and Human Rights (UNGPs) was a pivotal moment in the evolution of the international human rights framework.

For historical reasons, the international human rights framework has focused primarily on preventing human rights violations by States. However, the growing reach and impact on human rights from increasingly globalised value chains and economic flows has come to reveal normative and governance gaps in human rights protection, with many States unwilling or unable to uphold their human rights obligations in the face of business-related human rights abuse.

The UNGPs and the underlying “Protect, Respect, and Remedy” framework provided normative clarity about the human rights responsibilities of business and of the core State duties to prevent harm. This was hailed by the then High Commissioner for Human Rights as a “human rights milestone.”¹

For his part, the UN Secretary-General noted in 2012 that

[t]he unanimous endorsement of the Guiding Principles by the Human Rights Council and the broad support that they have received from all stakeholders have made them an authoritative and broadly accepted basis, both inside and outside the remit of the United Nations, for moving the business and human rights agenda to a new stage, focused on implementation.²

The Secretary-General further identified [UN Human Rights \(OHCHR\)](#) as the “institutional focal point within the United Nations system for providing uniform guidance and clarification on issues relating to the interpretation of the Guiding Principles,” in close collaboration with the UN Working Group on Business and Human Rights.³

The following highlights some of the thematic activities and interventions undertaken by OHCHR’s Business and Human Rights Unit (BHRU) over the past decade in fulfilling its mandate in the area of business and human rights and supporting the effective implementation of the UNGPs.

It should be noted that OHCHR also conducts business and human rights activities through its field presences, other thematic teams, and through its support for human rights mechanisms, notably the [UN Working Group on Business and Human Rights](#) (including by organizing the [Annual Forum on Business and Human Rights](#)). While the BHRU supports this work in various ways, this submission is focused on the key activities of the BHRU itself.

¹ https://www.ohchr.org/Documents/Press/HC_contribution_on_Business_and_HR.pdf.

² <https://undocs.org/en/A/HRC/21/21>, para. 12.

³ *Id.* at para. 33.

Major BHRU-led initiatives

Leveraging its unique and authoritative platform as the UN's lead agency for human rights, and its particular institutional role in relation to the UNGPs, the BHRU has convened global policy processes aimed at enhancing the implementation of the UNGPs in key areas through inclusive, multi-stakeholder engagement, research, and analysis. These major processes have included the following:

The Accountability and Remedy Project

The [Accountability and Remedy Project \(ARP\)](#) is an inclusive, multi-stakeholder process of consultation and research that aims to strengthen implementation of the access to remedy pillar of the UNGPs through the development of recommended actions to enhance the effectiveness of the three categories of mechanisms referred to in the UNGPs.

- The first phase ([ARP I](#)), focusing on **judicial mechanisms**, took place between 2014 – 2016 ([report](#), [explanatory addendum](#), and [illustrative examples](#)).
- The second phase ([ARP II](#)) focused on **State-based non-judicial grievance mechanisms** and took place between 2016 – 2018 ([report](#) and [explanatory addendum](#)).
- The third phase ([ARP III](#)) focused on **non-State-based grievance mechanisms** and took place between 2018 – 2020 ([report](#) and [explanatory addendum](#)).

A fourth phase ([ARP IV](#)) began in 2020 to focus on enhancing the accessibility, dissemination, and implementation of the findings from the entire project.

The Human Rights Council requested and welcomed the outcomes of all phases of the project (see resolutions [26/22](#), [32/10](#), [38/13](#) & [44/15](#)). Each ARP report recognizes the access to remedy challenges faced by those affected by business-related human rights abuses and provides practical recommendations for improving remedial mechanisms' response to such cases.

In the context of the Accountability and Remedy Project, OHCHR has produced reports and other materials beyond the official ARP reports to the Human Rights Council, such as:

- [Report on the relationship between human rights due diligence and determinations of corporate liability](#)
- [Issues Paper on legislative proposals for mandatory human rights due diligence by companies](#)
- [Foundational papers on access to remedy and the technology sector](#)
- Submissions to the [fifth](#) and [sixth](#) sessions of the treaty process

The B-Tech Project

The [Business and Human Rights in Technology Project \(B-Tech Project\)](#) provides authoritative guidance and resources for implementing the UNGPs in the technology space. The B-Tech project is structured along four interrelated focus areas:

- Addressing human rights risks in business models;
- Human rights due diligence and end-use;
- Accountability and remedy; and
- The regulatory and policy responses to human rights challenges linked to digital technologies.

The project also explores the responsibilities of investors in the technology space, as a cross-cutting theme.

Being a multi-stakeholder effort, OHCHR works in close collaboration with tech companies and other key actors to develop practical guidance on how to respond to some of the most pressing challenges related to tech and on how tech companies can manage the potential human rights consequences of their businesses. The B-Tech team has published a series of **foundational papers**, which frame discussions among diverse stakeholders as part of a global process to produce guidance, tools and practical recommendations to advance UNGPs implementation in the technology sector. Published papers to date include:

- [An Introduction to the UN Guiding Principles in the Age of Technology](#)
- **Addressing human rights risks in business models**
 - [Addressing Business Model Related Human Rights Risks](#)
- **Human rights due diligence and end-use**
 - [Key Characteristics of Business Respect for Human Rights](#)
 - [Identifying Human Rights Risks Related to End-Use](#)
 - [Taking Action to Address Human Rights Risks Related to End-Use](#)
- **Accountability and remedy**
 - [Access to remedy and the technology sector: basic concepts and principles](#)
 - [Access to remedy and the technology sector: a "remedy ecosystem" approach](#)
 - [Designing and implementing effective company-based grievance mechanisms](#)
 - [Access to remedy and the technology sector: understanding the perspectives and needs of affected people and groups](#)
- **Regulatory and policy responses**
 - [Bridging Governance Gaps in the Age of Technology – Key Characteristics of the State Duty to Protect](#)

The project has also released a [briefing paper on rights-respectful investment in technology companies](#), highlighting the role and responsibilities of institutional investors.

Policy coherence and standard-setting processes

Since the endorsement of the UNGPs by the Human Rights Council in 2011, the BHRU has engaged with normative and policy processes to embed the UNGPs in governance frameworks related to business. This, and other types of engagement to promote the UNGPs, has taken place at the international (notably through the treaty process), regional, and national levels.

International level: Support to the business and human rights treaty process

During its first 10 years, the UNGPs have continued to spur and shape normative debates and standard-setting processes regarding business and human rights, both globally and locally. An important offspring of UN debates is the initiative regarding the elaboration of a treaty on the subject.

In 2014, the Human Rights Council decided in [resolution 26/9](#) to establish an [open-ended intergovernmental working group \(IGWG\) on transnational corporations and other business enterprises with respect to human rights](#). A working group of the Council, the IGWG is involved in the elaboration of an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

OHCHR supports this global regulatory effort by providing secretariat support to the process. Six sessions of the IGWG have taken place since 2015, and [a second revised draft of a legally binding instrument](#) was at the centre of substantive negotiations during the 6th session of the IGWG in October 2020. OHCHR views the treaty process as an opportunity to potentially enhance the protection of human rights in the context of business activities, and importantly, to improve accountability and access to effective remedies for victims of business-related activities.

Additionally, the Business and Human Rights Unit has developed substantive submissions to feed into the process, drawing connections between the Accountability and Remedy Project and the IGWG's [revised draft](#) and [second revised draft](#) of the legally binding instrument.

International level: Generally

A [2014 report](#) identified some developments, progress and challenges in advancing the business and human rights agenda within the UN system at that time. Being the institutional focal point within the UN system relating to the UNGPs,⁴ OHCHR has worked with a range of UN entities to increase uptake of the Guiding Principles.

Collaboration between OHCHR and the UN Global Compact on these issues has a strong history. Following the endorsement of the UNGPs, OHCHR has provided thematic advice and support to the Global Compact to help strengthen its capacity to drive societal change and business transformation. Since 2018, OHCHR has been one of the four co-Chairs of the UN Global Compact Expert Network, alongside International Labour Organization (ILO), UNEP, and UNODC. That network provides advice and inputs on Global Compact programmatic activities. Further, OHCHR and the Global Compact have jointly produced numerous materials relating to the UNGPs, including the [Guide on How to Develop a Human Rights Policy](#), [Human Rights Translated 2.0 - A Business Reference Guide](#), and the [OHCHR and Global Compact Course on the UNGPs](#).

There are clear links in the UNGPs to the ILO and ILO instruments, and OHCHR has long collaborated with ILO on the business and human rights agenda. The [ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#) was notably updated in 2017 to incorporate the UNGPs.

The UNGPs have also been increasingly incorporated into the work of the [United Nations Environment Programme Finance Initiative \(UNEP FI\)](#), which is a partnership between UNEP and the global financial sector to mobilize private sector finance for sustainable development. As such, OHCHR has advised UNEP FI on matters involving the interpretation of the UNGPs.

Outside of the UN, the BHRU has helped ensure policy coherence and develop interpretive guidance with the Organisation for Economic Cooperation and Development (OECD). Importantly, the [OECD Guidelines for Multinational Enterprises](#) were updated in 2011 to include a chapter on human rights aligned with the UNGPs. Further, the BHRU has been working alongside the Working Group on Business

⁴ <https://undocs.org/en/A/HRC/21/21>, para. 33.

and Human Rights, ILO, and OECD on a [Joint Project on Responsible Business Conduct in Latin America and the Caribbean](#), aiming to promote responsible business conduct practices in line with international standards.

Regional level

Beyond the work conducted in the Latin America region, OHCHR has provided thematic support to the development of the African Union (AU) Policy on Business and Human Rights. This policy draws on the UNGPs to guide AU Member States and businesses in their respective efforts to protect and respect human rights in the context of business activities in Africa. Building on this regional framework, OHCHR has prioritised its country engagement to strengthen UNGPs implementation in the region.

Following the European Commission's announcement of its intent to introduce a new regime for EU-wide mandatory supply chain due diligence which is meant to draw from the Guiding Principles, the BHRU has been working to promote alignment of this initiative with the UNGPs. In 2020, the BHRU released an [Issues Paper on legislative proposals for mandatory human rights due diligence by companies](#) that unpacks some of the main choices, complexities and policy trade-offs that policy-makers and legislators considering mandatory human rights due diligence legislation will be confronted with. This was complemented by a document outlining [Some Key Considerations for Mandatory Human Rights Due Diligence Regimes](#) to be taken into account when thinking about mandatory human rights due diligence, with more of a focus on the EU context.

National level

To help promote policy coherence with the UNGPs at the national level, OHCHR has provided strategic advice to governments developing National Action Plans on Business and Human Rights (NAPs), in cooperation with the UN Working Group on Business and Human Rights. Specifically, OHCHR has advocated for inclusive and tailored processes focused on context-specific salient human rights issues.

In this regard, OHCHR has offered thematic support to NAP drafting and consultation phases in multiple countries and has helped raise awareness among business actors of the relevance of NAP frameworks in their operating context.

Capacity building at the country level

In addition to assisting with NAP development, the BHRU often engages with a range of actors to help build capacities at the country level. Beyond assisting and advising governments, two aspects are worth highlighting:

Support to OHCHR field presences

Over the past few years, accountability issues related to human rights abuses involving business and economic actors has increasingly garnered urgent attention from UN Human Rights field presences across the world. The BHRU's work at the country and regional levels is gradually shifting from piecemeal interventions to a more comprehensive and strategic engagement. While concrete UNGPs implementation is progressing in some countries, UNGPs awareness and implementation remain

relatively low in some regions. To address these challenges, OHCHR has recently prioritized support to field presences, with a focus on Africa and the Latin America and Caribbean region.

Work in these regions has placed a strong emphasis on activities involving direct engagement with companies, particularly through capacity-building, training, and multi-stakeholder dialogue. These activities aim at raising awareness among business and other relevant stakeholders of the UNGPs and its key concepts, as well as of the business value of managing human risks in an informed and efficient manner.

The RBCLAC project

The [Joint Project on Responsible Business Conduct in Latin America and the Caribbean \(RBCLAC\)](#) is funded by the European Union and implemented by OHCHR, ILO, and OECD in nine countries in the region (Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, and Peru), in cooperation with the UN Working Group on Business and Human Rights. This four-year project, which started in 2019, seeks to promote responsible business practices in line with [international standards, such as the UNGPs, the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#). In cooperation with the implementing organizations, RBCLAC has engaged in a wide variety of activities at the regional and the country level, with three main objectives:

- To support governments in the development or implementation of NAPs and related policies;
- To enhance the understanding and capacity of businesses and other stakeholders to implement human rights due diligence processes; and
- To facilitate the sharing of experiences and lessons learned on responsible business practices through multi-stakeholder platforms, including the Regional Forum on Business and Human Rights for Latin America and the Caribbean.

Under the project, OHCHR supports the country-level activities led by OHCHR field presences, including a variety of initiatives involving governments, business and business associations (including UNGC local networks), national human rights institutions, academia, civil society organisations, and community based organisations, including those of indigenous peoples and Afro-descendants. OHCHR has also produced knowledge-based products, such as a report on access to remedy in the LAC region and a compilation of business human rights due diligence practices. Additionally, OHCHR leads the organisation of the Regional BHR Forum, the largest multi-stakeholder gathering on business and human rights in the Americas. The [V Regional Forum](#), held online in September 2020, comprised 44 panels and gathered more than 4,000 participants.

Business engagement

The [BHRU regularly engages with business](#) regarding the implementation of the UNGPs and other substantive issues. Such engagement includes:

- **Global policy and standard setting:** OHCHR's global policy-related work often includes the active involvement and consultation of business. For instance, each phase of the [Accountability and Remedy Project](#) has benefited from inputs from a wide range of relevant stakeholders, including business enterprises and organizations. Other initiatives include the [B-Tech Project](#),

which applies the lens of the UNGPs to some of the core human rights challenges in tech and involves extensive engagement and participation from tech companies.

- **Capacity building:** OHCHR's work has a strong focus on capacity building to help business respond to the challenges of different operational contexts. A major work stream is the [Business Peer-Learning Project](#), where the BHRU facilitates national- or regional-level business peer-learning workshops to discuss challenges, lessons learned and good practices in the implementation of the UNGPs in a given context. Additionally, a major goal of [our project on Responsible Business Conduct in Latin America and the Caribbean](#) is to support responsible business practices in the region, with a focus on building capacity on human rights due diligence and access to remedy.
- **Ad hoc engagement with individual companies:** The BHRU is frequently approached by companies for advice on how to “get started” on human rights or on specific challenges. Advice is often provided informally, unless specifically agreed otherwise.
- **Business outreach:** The BHRU conducts extensive business outreach, for example through speaking at sector- or company-specific events or participating in webinars organized by companies or business organizations.
- **Participation in multi-stakeholder platforms and initiatives:** OHCHR advises a range of platforms and initiatives with business involvement, including the [International Cocoa Initiative](#), the [World Economic Forum](#), the [Centre for Sport and Human Rights](#), the [FIFA Independent Human Rights Advisory Board](#), and the [Geneva Centre for Business and Human Rights](#).

Tools and guidance development

Following the endorsement of the UNGPs by the Human Rights Council, OHCHR reprinted the [UNGPs in an accessible booklet format](#) in 2011. This publication has remained one of UN Human Rights' most downloaded documents ever since. The Business and Human Rights Unit has developed many [resources](#) in the past ten years to help different audiences understand and implement the Guiding Principles, such as:

- **General**
 - [Frequently Asked Questions on the Guiding Principles on Business and Human Rights](#): explains the background and content of the UNGPs and how they relate to the broader human rights system and other frameworks
 - [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#): unpacks the Guiding Principles regarding the corporate responsibility to respect human rights
 - [Guide on How to Develop a Human Rights Policy](#): provides instruction on how businesses can develop and implement a human rights policy within their companies aligned with the UNGPs
 - [Human Rights Translated 2.0 - A Business Reference Guide](#): using real-life case studies, illustrates how human rights are relevant in a corporate context and how to manage human rights issues
 - [OHCHR and Global Compact Course on the UNGPs](#): an interactive web-based tool that covers the key concepts of the UNGPs and what businesses are expected to do in order to respect human rights

- [Trailhead module on the UNGPs](#): an online tool that covers the relationship between human rights and business, an introduction to the UNGPs, and how businesses respect human rights
- **Access to remedy**
 - [Accountability and Remedy Project materials](#): provides guidance on how to enhance accountability and access to remedy in cases of business-related human rights abuse
 - [Opinion on the Porgera remediation framework](#): covers operational-level grievance mechanisms, the issue of waivers of legal claims, the nature of remedies, and stakeholder engagement
- **Mandatory human rights due diligence**
 - [Issues Paper on legislative proposals for mandatory human rights due diligence by companies](#): unpacks some of the main choices, complexities and policy trade-offs that policy-makers and legislators considering mandatory human rights due diligence legislation will be confronted with, and covers some of the advantages and disadvantages of different courses of action
 - [Some Key Considerations for Mandatory Human Rights Due Diligence Regimes](#): provides a summary of some key considerations to be taken into account when thinking about mandatory human rights due diligence, with more of a focus on the EU context
 - [Report on the relationship between human rights due diligence and determinations of corporate liability](#): provides analysis and clarification of the relationship between human rights due diligence and determinations of corporate legal liability
- **Technology sector**
 - [B-Tech project materials](#): provides authoritative guidance and resources for implementing the UNGPs in the technology space
- **Financial sector**: OHCHR has issued expert opinions to
 - [BankTrack](#) covering the factors that would influence how a bank is involved with an adverse human rights impact (i.e., cause, contribution, and direct linkage); the responsibilities of banks with respect to remediation in situations where a bank has contributed to an adverse human rights impact; and the role of operational-level grievance mechanisms in this context
 - [OECD](#) covering what is meant by being “directly linked” and the extent to which minority shareholders and investment in sovereign bonds are covered by this provision
 - [SOMO](#) covering whether the UNGPs apply to institutional investors holding minority shareholdings, whether such shareholdings constitute a “business relationship,” and the role of leverage in such circumstances
- **Maritime sector**
 - [Maritime Human Rights Risks and the COVID-19 Crew Change Crisis: A Tool to Support Human Rights Due Diligence](#): a tool to help businesses uphold their responsibility to respect human rights in the maritime sector during the COVID-19 related crew change crisis through urgent measures
- **COVID-19**
 - [Business and human rights in times of COVID-19](#): provides a brief and non-exhaustive overview of some key considerations and recommendations for action based on the UNGPs’ three-pillar “Protect, Respect and Remedy” framework in the context of COVID-19

- **Climate change**
 - [Key Messages on human rights, climate change and business](#): explores the main legal and policy implications of the UNGPs for States and businesses with regard to human rights and climate change
- **Discrimination against LGBTI+**
 - [Standards of Conduct for Business on Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People](#): provides specific guidance on how companies can align their policies and practices in the workplace, marketplace and communities in which they do business, with international standards on the human rights of LGBTI people
- **State-investor contract negotiations**
 - [Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations](#): tool to help parties negotiating State–investor contracts to integrate the management of human rights risks into contract negotiations more effectively, so as to ensure that projects bring benefits to people
 - [Training modules on the Principles for Responsible Contracts](#): covers what it means to integrate the protection of, and respect for, human rights into State-investor contracts

UN Human Rights
Business and Human Rights Unit
2021