
csr
esg
corporate sustainability
responsible business conduct
oecd guidance
corporate social responsibility
diligence
human rights
bhr standard
corporate governance
ungps
environmental

5 regulatory initiatives have unfolded in the ‘business and human rights’ (BHR) field at the UN level

• two attempts have failed:

Draft UN Code of Conduct on Transnational Corporations 1990 (1990 Draft Code), and the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights 2003 (Draft UN Norms);

• two attempts have been successful:

Global Compact 2000, and the UN Guiding Principles on Business and Human Rights 2011 (UNGPs);

and • one attempt is a work in progress: the proposed legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (BHR treaty).

History of BHR standarts

‘rights versus responsibilities’

‘voluntary versus binding’

‘principled pragmatism’

‘soft versus hard’

‘conflict versus complementary’

UN, ILO, OECD complementary

UNGPs

OECD Guidelines for Multinational Enterprises (OECD Guidelines)

the International Labour Organization (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Sector-specific initiatives developed by industry bodies address reporting requirements, such as the International Council on Mining and Metals and the International Petroleum Industry Environmental Conservation Associa

The UN, ILO and OECD should:

- Continue to work together to promote convergence with the UNGPs, specifically the concept of human rights due diligence, both at a global/transnational standards level and in implementation efforts.
- Redouble efforts to engage international financial institutions and call on them to align their frameworks and investment activities fully with the UNGPs.

Guiding Principles On Business And Human Rights At 10:

Taking stock of the first decade

A/HRC/47/39

Report of the Working Group on the issue of human rights
transnational corporations and other business enterprise

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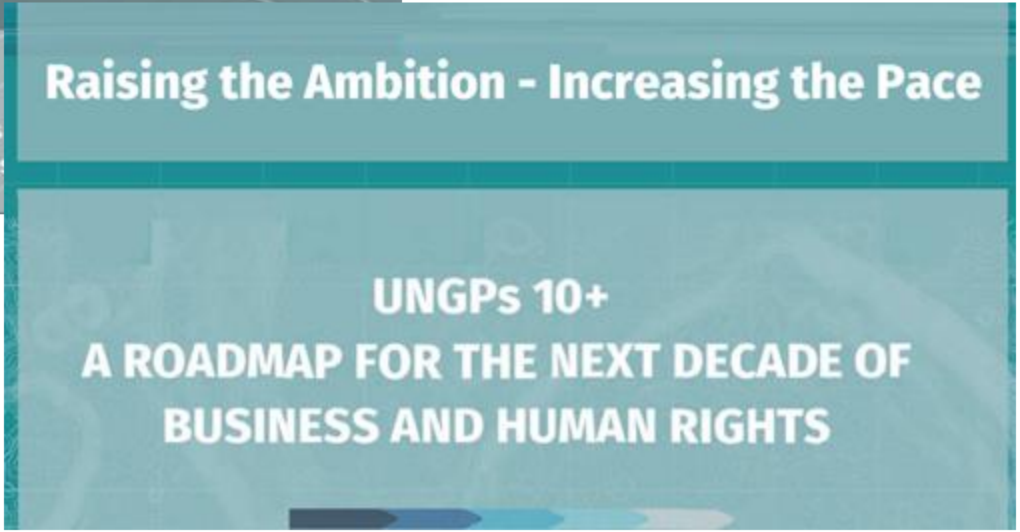


Raising the Ambition - Increasing the Pace

UNGPs 10+

A ROADMAP FOR THE NEXT DECADE OF BUSINESS AND HUMAN RIGHTS

The OECD Guidelines for Multinational Enterprises

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

The OECD Guidelines for Multinational Enterprises:

- are recommendations addressed by governments to multinational enterprises operating in or from adhering countries;
- provide non-binding principles and standards for **responsible business conduct** in a global context consistent with applicable laws and internationally recognised standards;
- are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

States and governments play a prominent role. They are directly signatories and hence are expected to ensure implementation. This makes the Guidelines the ‘only corporate responsibility instrument formally adopted by state governments’.

UNGPs & OECD

in 1976, the OECD launched OECD Guidelines for Multinational Enterprises.

Designed as a voluntary alternative addressing states rather than corporations directly.

This first iteration of the OECD Guidelines too contained one paragraph on the human rights responsibilities of corporations, which over the years developed into a major section aligned with the UNGPs after 2011.

While not legally binding, the OECD Guidelines do contain a soft enforcement mechanism - NCPs.

After aligning the OECD Guidelines with the UNGPs, the NCPs are gaining increasing significance in the struggle for accountability within the broader BHR movement today.

OECD Guides

"OECD Due Diligence Guidance for Responsible Business Conduct":

This is guidance developed by the OECD in 2018, which provides practical ways of implementing the OECD Guidelines for Multinational Enterprises.

\+ sectoral, e.g.:

- OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

Responsible business conduct and human rights


OECD Home > Industry and entrepreneurship > International investment > Responsible business conduct and human rights

- Industry and globalisation
- SMEs and entrepreneurship
- International investment
  - Guidelines for multinational enterprises
  - Investment policy
- Entrepreneurship and business statistics
- Tourism

Responsible business conduct and human rights

Business and human rights issues are becoming a global priority. As businesses aim to 'do good while doing no harm, implementing Responsible Business Conduct standards, such as the OECD Guidelines for Multinational Enterprises, across business operations and supply chains can help gain and retain a social license to operate.

» Find out more about Responsible Business Conduct (RBC) and human rights

» Read the blog on RBC and human rights - bridging the gap between knowledge and action

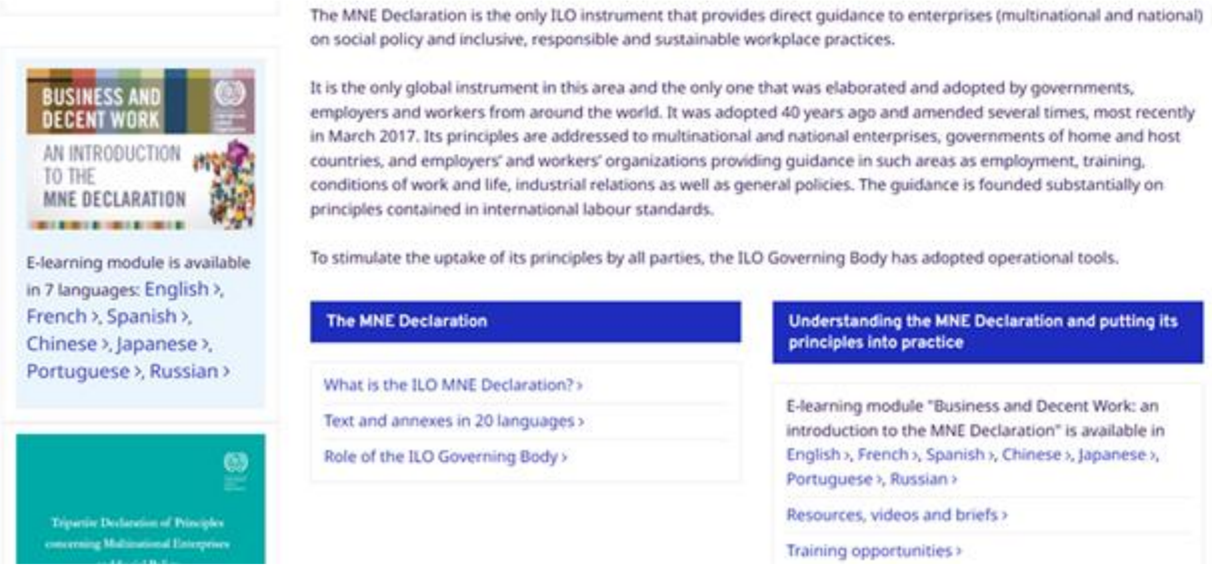
» The OECD Due Diligence Guidance is featured in the Working Group on Business and Human Rights report on human rights due diligence

» Read more about why RBC matters

70 YEARS UNIVERSAL DECLARATION OF HUMAN RIGHTS

ILO ”Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy”

A document that provides direct guidance to business enterprises (both multinational and domestic) on social policy and inclusive, responsible and sustainable business practices.



UN Global Compact

'I propose that you, the business leaders gathered in Davos, and we, the United Nations, initiate a global compact of shared values and principles, which will give a human face to the global market'.

UN Secretary General Kofi Annan proposed the idea, 31 January 1999

The Global Compact was formally launched in 2000 with nine principles in the areas of human rights, labour rights and the environment.

In June 2004, a tenth principle relating to anti-corruption was added.

The ten principles are 'derived' from the Universal Declaration of Human Rights, the ILO Declaration of Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and the UN Convention Against Corruption.

[One important difference is the nature of corporate engagement. Firms have to join the UNGC actively and thus become part of a 'club' of likeminded companies. The UNGC also maintains an infrastructure to actively engage those corporations that want to partner with other stakeholders or learn about corporate sustainability and responsibility.]

Human Rights	Business should support and respect the protection of international human rights; and make sure they are not complicit in human rights abuses.
Labour Rights	Business should uphold the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labor; the effective abolition of child labor; the elimination of discrimination in respect of employment and occupation.
Environ-ment	Business should support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption	Business should work against all forms of corruption, including extortion and bribery.

UNGPs limitations

1) the voices of affected rights holders and CSOs did not get as much attention as that of the other actors that were vital for the UNGPs' approval.
2) by grounding the business responsibility to respect human rights on social expectations, the UNGPs provide a weak normative basis.
3) states' respect and fulfil obligations are also relevant in the BHR field, especially in relation to state-owned enterprises. Similarly, there are good reasons for businesses to have the 'protect' and 'fulfil' types of responsibilities in certain situations.
4) Pillar II's minimum reference point for businesses to ascertain which human rights they should respect has serious gaps. For example, it makes no reference to environmental rights or the relevant standards protecting the environment and mitigating climate change. The standards that articulate the rights of women, children or indigenous peoples are also not included.
5) the conscious choice of business-friendly terminology is also problematic. Instead of 'violation' or 'abuse', Pillar II's preferred terminology is 'adverse impact', a term which can hardly carry the weight of serious human rights abuses committed by or linked to businesses.

Contribution of the UNGPs in setting globally accepted standards by a wide range of stakeholders

the UNGPs have:

• influenced the content of other international standards such as the OECD Guidelines 2011 and the ILO Tripartite Declaration 2017;

• informed the evolution of soft and hard norms at national levels such as Modern Slavery Acts of the UK and Australia, the French Duty of Vigilance Law, and Indian National Guidelines on Responsible Business Conduct;

• been embraced by many (multinational) corporations and major industry associations;

• been used by investors, banks and international financial institutions to set expectations for their clients;

• invoked by CSOs in amicus briefs submitted in court cases;

• impacted how bodies such as the International Olympic Committee and FIFA govern mega-sport events; and

• informed curricula in law, business and management schools.

CSR and BHR – and even RBC (responsible business conduct)

– share the common starting point of corporations having responsibilities beyond their shareholders.

Key differences exist regarding the normative basis of corporate responsibilities, the nature and extent of these responsibilities, the process of identifying individuals and communities to whom responsibilities are owed, and the modus operandi of enforcing corporate responsibilities in cases of noncompliance.

CSR

‘umbrella term’ for a wide variety of initiatives and processes, which corporations put in place to make sure it meets social and moral expectations while pursuing its economic interests.

As opposed to BHR’s clear focus on human rights issues, CSR has always been characterized by a much broader scope both in terms of issues addressed and in terms of instruments and initiatives used to address them.

The term is a brilliant one; it means something, but not always the same thing, to everybody. To some it conveys the idea of legal responsibility or liability; to others, it means socially responsible behavior in an ethical sense; to still others, the meaning transmitted is that of 'responsible for,' in a causal mode; many simply equate it with a charitable contribution; some take it to mean socially conscious; many of those who embrace it most fervently see it as a mere synonym for 'legitimacy,' in the context of 'belonging' or being proper or valid; a few see it as a sort of fiduciary duty imposing higher standards of behavior on businessmen than on citizens at large.

Dow Votaw, 'Genius Becomes Rare: A Comment on the Doctrine of Social Responsibility Pt. I' (1972) 15/2 CMR 25, 25 both CSR and BHR can be seen as a part of a broader movement interested in promoting and establishing corporate responsibility beyond profit-maximization and wealth creation.

BHR has traditionally focused more on binding regulation, while CSR has become almost synonymous with voluntary, business-led initiatives for the promotion of responsible business practices.

social challenges in the vocabulary of business opportunities and with a perspective on creating win-win situations. Ethics and profits, in other words, are no contradiction, but go hand in hand.

It leaves the profit-maximization mantra of modern shareholder value-oriented corporations untouched and, in fact, extends it as a guiding ideal to tackle a variety of social and environmental issues, providing an opportunity for governments to privatize public problem solving and to retreat from essential public domains.