



# BUSINESS AND HUMAN RIGHTS IN UKRAINE

ACCELERATING SUSTAINABLE  
AND EQUITABLE DEVELOPMENT  
THROUGH IMPLEMENTATION  
OF THE UN GUIDING PRINCIPLES  
ON BUSINESS AND HUMAN RIGHTS



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# ABBREVIATIONS

<b>BHR</b>	Business and Human Rights
<b>BSR</b>	Business social responsibility
<b>BRHR</b>	Business respect for human rights
<b>CEB</b>	Central executive body
<b>CESCR</b>	UN Committee on Economic, Social and Cultural Rights
<b>CoE</b>	Council of Europe
<b>COVID-19</b>	Coronavirus disease 2019 (COVID-19), SARS-CoV-2
<b>CSO</b>	Civil society organisation
<b>CSR</b>	Corporate social responsibility
<b>CSRD</b>	Corporate Sustainability Reporting Directive
<b>ECHR</b>	European Convention on Human Rights
<b>ESG</b>	Environmental, Social and Governance
<b>EU</b>	European Union
<b>FDI</b>	Foreign direct investment
<b>FG</b>	Focus group
<b>HR</b>	Human Rights
<b>HRDD</b>	Human Rights Due Diligence
<b>ILO</b>	International Labour Organisation
<b>IMB</b>	Inter-ministerial body
<b>IT (ICT)</b>	Information Technologies (Information and Communication Technologies)
<b>LGBTIQ</b>	Lesbian, gay, bisexual, transgender, intersex, and questioning persons
<b>M&amp;A</b>	Mergers and acquisitions
<b>mHRDD</b>	mandatory Human rights due diligence

<b>MoE</b>	Ministry of Economy of Ukraine
<b>MoIA</b>	Ministry of Internal Affairs of Ukraine
<b>MOEs</b>	Municipally-Owned Enterprises
<b>MoF</b>	Ministry of Finance of Ukraine
<b>MoFA</b>	Ministry of Foreign Affairs of Ukraine
<b>MoJ</b>	Ministry of Justice of Ukraine
<b>NAP</b>	National Action Plan
<b>NBA</b>	National Baseline Assessment on Business and Human Rights
<b>NCP</b>	National Contact Point
<b>NFRD</b>	Non-Financial Reporting Directive
<b>NGO</b>	non-governmental organisation
<b>NHRI</b>	National Human Rights Institution
<b>NHRS</b>	National Human Rights Strategy
<b>NSBGM</b>	Non-State-based grievance mechanisms
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PwDs</b>	people with disabilities
<b>R&amp;D</b>	Research and Development
<b>SA</b>	Stakeholder analysis
<b>SDGs</b>	Sustainable Development Goals
<b>SME</b>	Small and medium enterprises
<b>SOEs</b>	State-Owned Enterprises
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNGP</b>	UN Guiding Principles on Business and Human Rights
<b>UNWG</b>	UN Working Group on Business and Human Rights

# EXECUTIVE SUMMARY

The purpose of this study launched by UNDP is to gather evidence and further quantify and update the National Baseline Assessment of 2019<sup>1</sup> on business and human rights in Ukraine to i) support the government and the various stakeholders in Ukraine to advance implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs); and ii) to inform future, tailored, UNDP support.

The study is the result of a scoping process that UNDP in Ukraine commenced in the first half of 2021.<sup>2</sup> UNDP held numerous consultations with key government institutions, academia and other significant stakeholders. In particular, the following four studies were conducted:

- (1) A stakeholder mapping/analysis and lessons learned mapping/analysis
- (2) A rights holder study
- (3) A sector/market study
- (4) A business and human rights (BHR) international best practice study

The aim of the studies was to analyse overall trends, needs and barriers with respect to duty bearers and rights holders, sectors and markets; and to identify best international practices on implementation of BHR with relevance to Ukraine and its country specifics. The study includes summarized policy and legal frameworks on BHR, necessary evidence-based baselines, key findings and recommendations to be taken into account when advancing and ensuring proper UNGP implementation in Ukraine, currently through implementation of the National Human Rights Strategy and Action Plan,<sup>3</sup> as well as in the wider context of the European Union-Ukraine Association Agreement, the Sustainable Development Goals (SDGs), and other factors.

During the inception phase, it was decided to take a deep dive into the information technology, retail, and agricultural sectors and markets to understand key constraints: as well as to identify opportunities to adhere to responsible business conduct.

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1 Business and Human Rights. National Baseline Assessment, 2019. Available at: <https://minjust.gov.ua/files/general/2019/07/10/20190710170813-19.pdf>.

2 Dafina Gercheva, Nicolaj Sonderbye. Responsible business conduct accelerates social and economic development, <https://www.ua.undp.org/content/ukraine/en/home/blog/2021/responsible-business.html>.

3 Action Plan for the implementation of the National Strategy in the field of human rights for 2021-2023, approved by Cabinet of Ministers of Ukraine Order 756-r of 23 June 2021, <https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80#Text>.

The objectives of the four studies are set out below:

**(1) Stakeholder mapping/analysis and lessons learned mapping/analysis:** (a) to map and identify key BHR stakeholders: duty bearers, such as government bodies, key businesses and business associations, and CSOs and right holders, as well as media and academia, to target awareness raising about the UNGP; (b) to develop a deeper understanding of the actors, their goals and influence and the networks, to enable successful UNGP implementation in Ukraine; (c) to foresee the ways in which these stakeholders may influence BHR policy outcomes; (d) to propose recommendations for stakeholder engagement in UNGP implementation; (e) to map and analyse BHR lessons learned in Ukraine, building on lessons from the United Nations Global Compact Network and on lessons from other relevant actors, such as the Organisation for Economic Cooperation and Development (OECD) national contact point, the European Business Association and so on; (f) to map and synthesize the positive studies and opportunities and explore how to build on these for implementation of the UNGPs; and (g) to explore how to build on lessons learned and best practices for implementation of the UNGP in Ukraine, from the perspectives of policy coherence and business conduct.

**(2) A rights holder study:** (a) to complement the 2019 National Baseline Assessment (NBA), based on qualitative baselines on the barriers faced by the rights holders to securing secure their human rights, in particular obtaining decent employment where their human rights and labour rights are respected, and accessing remedies to protect human rights in cases of business-related abuses; (b) to gather in-depth qualitative data on the barriers, challenges and opportunities faced by rights holders in accessing the job market and securing decent work where their human rights in Ukraine and in their community are respected; (c) to analyse barriers and opportunities for rights holders. Additional attention was paid to the investigation of the data and experience regarding the conflict-affected areas. This was illustrated with examples and included answers to questions such as: (1) Which sectors are likely not to respect human rights due diligence or exploit vulnerable workers, and what are the reasons for this? (2) Why are people opting to work in the informal sector and how can we ensure that rights are also respected in the informal or grey sector? and (3) Why are some rights holders unable to enter the job market?; (d) to map and analyse already existing studies and research undertaken by academia, the International Labour Organization, think tanks, academia and key experts in Ukraine; and (e) to provide concrete recommendations on how to advance the business and human rights agenda in Ukraine, including strategic entry points.

**(3) A sector/market study:** (a) to identify gaps, needs and challenges for enterprises adhering to responsible business conduct and assess where there may be prospects for decent jobs and sustainable growth (in addition to this overall sector assessment, the study examines the information technology, retail and agricultural sectors in depth; (b) to present how companies could scale up their business operations while respecting human rights (and environmental protection), due diligence, and UNGP implementation; (c) to identify market and investment opportunities for business enterprises (both larger but also small and medium enterprises) that are ready to adhere to responsible business conduct given the international trade dimension and further export and trade with bodies such as the European Union (EU) to stimulate and accelerate growth while at the same time adhering to the UNGPs, and future requirements from EU investors.

**(4) BHR international best practice study:** (a) to map and analyse the experience of the EU member states and other countries globally on developing and implementing National Action Plans (NAPs) as stand-alone documents based on international policy and law that could be applicable in the prospective NAP processes in Ukraine; (b) to gather qualitative data on how foreign NAPs focus on business respect for human rights in conflict-affected areas, in order for Ukraine to learn lessons and step up in this field; (c) to identify best practices for business (including state-owned companies) on operations and procedures respecting BHR; (d) to find international best practice regarding effective redress, including grievance mechanisms, used by businesses that can be applicable for Ukraine; (e) to map the role of national human rights institutions (NHRIs) in UNGP implementation, to be undertaken by the Ukraine's Parliamentary Commissioner for Human Rights (a NHRI); (f) to analyse compliance

with international law and policy practices on key stakeholder engagement in driving BHR, in NAP processes in particular, that could be applied in Ukraine with the gender perspective of stakeholder engagement being given due regard; and (g) to propose suggestions and recommendations to Ukraine's state power bodies and various stakeholders on expedient approaches and targeted interventions for the implementation of UNGP.

The year 2021 marked 10 years of the UNGPs. During these years they have been integrated in national policies by National Action Plans, in corporate policies and programmes such as human rights policies and human rights due diligence assessment, in many standards and benchmarks and in several rankings of sustainability. The situation looks positive in terms of attention to human rights from business companies globally. While challenges persist when it comes to companies and responsible business conduct in Ukraine, the following changes in particular are affecting the situation:

- (a) International and national policy and regulatory developments on responsible business conduct and corporate human rights due diligence. The 2030 United Nations Agenda for Sustainable Development,<sup>4</sup> with the SDGs at its core, has raised the significance of the UNGPs by setting out the integral value of environment, economy and equity, which should be regarded equally by public and private actors;
- (b) Growing understanding of the need for legal requirements based on the UNGPs, in particular, changes in European legislation (the European Green Deal, the EU Mandatory Human Rights Due Diligence Directive and the EU Corporate Sustainability Reporting Directive) and their impact on companies working in the EU and with EU companies; in 2021, the tenth anniversary of the UNGPs was marked by the third revised draft of the legally binding instrument on BHR;<sup>5</sup>
- (c) Examples of other states that already have adopted NAPs on the UNGPs. Human rights-based approaches, policies, legal frames and programmes oriented to UNGP and SDG implementation have been developed by policymakers and legislators at the international, regional and national levels, and primarily introduced by large and multinational businesses;
- (d) Ukraine's participation in European integration processes, including the EU-Ukraine Association Agreement as well as other significant agreements and initiatives (like the European Green Deal), its cooperation with the OECD and the Council of Europe provide for considerable opportunities to implement the UNGPs when harmonizing its policy and legislation with the European regional acquis on human rights protection and corporate responsibility to respect human rights;
- (e) A focus on financial sector environmental, social and governance (ESG) momentum and aligning the social aspect of ESG with UNGP performance requirements;<sup>6</sup>
- (f) International cooperation and support for UNGP implementation, integration of the UNGPs into existing structures, programmes and activities, at the global, regional and national levels;
- (g) Requirements from clients, partners and investors (results from in-depth interviews);
- (h) Enhanced collective action to tackle systemic challenges, and relevant multi-stakeholder initiatives, such as the barrier-free initiative, gender equality, Best Family Friendly Ranking, and the Extractive Industries Transparency Initiative.

4 Transforming our world: the 2030 Agenda for Sustainable Development. UN General Assembly Resolution 70/1 of 25 September 2015, [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

5 Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises. OEIGWG Chairmanship Third Revised Draft of 17.08.2021. URL: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LB3rdDRAFT.pdf>.

6 See Putting the "S" in ESG: Measuring Human Rights Performance for Investors, CASEY O'CONNOR AND SARAH LABOWITZ, 2017, NYU Stern Center for Business and Human Rights, [https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/14896888547\\_54/Metrics-Report-final-1.pdf](https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/14896888547_54/Metrics-Report-final-1.pdf). VII. See also Swetha Venkataramani "The ESG Imperative: 7 Factors for Finance Leaders to Consider", Available at: <https://www.gartner.com/smarterwithgartner/the-esg-imperative-7-factors-for-finance-leaders-to-consider>.

In January 2019, Ukraine officially started the UNGP implementation process. In March 2021, the new National Human Rights Strategy<sup>7</sup> was adopted, which included a BHR chapter for the first time. Stepping up the UNGP implementation process and responsible business conduct could bring massive benefits to Ukraine such as creating quality jobs, addressing outward migration, ensuring sustainable and equitable economic growth, improved livelihoods, women's economic empowerment, and reduced inequalities and progress across all SDG indicator.

## THE FOLLOWING SUMMARIZES THE KEY FINDINGS OF THE RESEARCH:

### The overall strategic findings of the studies combined

- I. Lack of human rights and business awareness and capacities among all actors: rights holders, especially vulnerable groups, state and local authorities, and the corporate sector.
- II. Policy incoherence at national, local, and corporate levels and lack of capacities to ensure substantive (not just formal) compliance of national, local, and corporate policies and practices with human rights standards and the principle of respect for human dignity; and ensuring that such policies and practices are consistent with each other.
- III. Increasing requests for responsible business conduct from the international community, companies integrated with global and European markets, investors, and civil society.
- IV. Lack of effective state and non-state remedies, in particular operational-level grievance mechanisms, to prevent and protect against business-related human rights abuse.

Ukraine is facing many challenges when it comes to ensuring corporate responsibility for human rights, in particular as regards labour issues, which include: informal employment, the unprotected status of gig-workers, the gender pay gap and gender segregation of the labour market, youth unemployment, wage arrears, weak guarantees of freedom of association and the right to collective bargaining, forced labour, occupational safety and health, environmental safety, violence against and prosecution of human rights defenders, discriminative practices within particular business models (such as discriminatory advertising, lack of reasonable accommodation) and lack of effective mechanisms for communication between local communities and business. The lack of access to effective state and non-state remedies increases the vulnerability of rights holders in situations of business-related abuses.

According to the results of the studies, the key problems that should be addressed as the first priorities to implement the UNGP are the following:

**1. Poor quality of state regulation and lack of policy coherence.** According to interviews and desk research, the state has a low capacity to ensure businesses respect for human rights.

Despite the BHR chapter in the National Strategy for Human Rights, other policy documents – particularly in the economic sphere – are adopted with no regard to the concept of business and human rights; there is no governmental institution responsible for the UNGP implementation and for policy coherence.

**2. Unbalanced state-business nexus** (in particular, state-owned enterprises (SOEs) and municipally owned enterprises (MOEs)). SOEs are active in areas such as energy, extractive industries, engineering, and infrastructure. Some of the companies have significant environmental problems, legacy issues, or oligarchs as minority owners. Ukraine also has a large portfolio of 14,000 MOEs supervised by local councils, mainly active in essential services

<sup>7</sup> President of Ukraine, Decree 'On National Human Rights Strategy', 24.03.2021 No 119/2021, <https://zakon.rada.gov.ua/laws/show/119/2021#Text>.

sectors such as healthcare, water and sanitation, administration, utilities and transport; these remain the key recipients of state aid, though they continue to underperform financially. Ukrainians mention these sectors as having major negative effects on their human rights (according to the omnibus of December 2021). Corporate governance practices of MOEs remain informal and less transparent.

The other side of the problem is corporate capture of the government, in which businesses use their political influence to take control of the decision-making apparatus of the state, such as regulatory agencies, law enforcement agencies, and legislatures.

**3. Weak human rights environment and lack of trust in human rights mechanisms.** Businesses' respect for human rights depends on the general environment in society regarding human rights. Therefore, as long as society does not demand such respect from businesses, it is not the priority of businesses. It is important to shape society's expectations from responsible business conduct. But the problem is interlinked, as irresponsible businesses in a weak human rights environment turn out to be uncompetitive compared to a business that uses business-as-usual models that negatively affect human rights.

Another demonstration of the weakness of the human rights environment is the low level of trust in human rights protection mechanisms. As all representatives of the rights holders noted in their responses to the survey, the existing system of human rights protection in Ukraine is not functioning properly. Various explanations have been proposed for this situation, including corruption of the controlling state bodies, and businesses having large financial and human resources giving them a significant advantage in court.

Ukraine has periodically introduced moratoria on inspections of business entities, including compliance with labour legislation, and occupational safety and health. In addition, due to the low quality of the legislation, the procedure for the conducting inspections by labour inspectorates has been invalidated by the courts. There is a lack of monitoring of human rights in the conflict-affected territory and the non-government-controlled area (NGCA) of Ukraine.

The study showed that despite a decade of the UNGPs being introduced into national legislation and practice, the key gap is still the lack of a working system of effective judicial and non-judicial remedies. Key factors that prevent access to effective remedies in BHR cases in several EU countries, such as Poland, Finland, and Germany, also apply to Ukraine:

- a. Lack of specific procedures to report human rights violations by businesses and lack of clear guidance for the courts, lawyers and claimants in cases of a mixed jurisdiction, which is important because BHR abuses might be of a complex nature.
- b. Lack of clear legal procedures for collective claims about BHR abuses in many countries and the need for each plaintiff to file separate suits.
- c. Lack of access to justice, including free legal aid, and lack of lawyers trained in BHR. This makes such trials very complex and expensive and burdens claimants disproportionately as they do not have the same resources as businesses to invest in court proceedings.
- d. The complicated nature of BHR abuses and lack of special judicial procedures is a reason why civil proceedings mainly take place in EU countries. The issue of shifting the burden of proof remains relevant for all EU member states.

#### **4. Lack of a meaningful participation of CSOs in inclusive dialogue with government and businesses.**

There are no tools for CSOs to represent the voices of rights holders to communicate with businesses effectively. Businesses respond to questions and complaints from the public either with force, through radical groups, or by filing lawsuits to protect businesses' reputation. Most public hearings are conducted de jure. Local communities lack any real tool to have an impact or the right to make their voices sound. They are vulnerable, including when it comes to access to information and the availability of tools with which they can determine an impact on the quality of the environment in which they live. This problem correlates closely with the lack of access to information about future or current projects, in particular, projects that local authorities are interested in.

There is also a lack of instruments for non-state monitoring (assessment) of businesses and human rights. CSO monitoring of human rights still focuses on state activities as the state is considered the main threat to human rights. The research finds very few cases in the regions when human rights defenders work on human rights abuses by businesses. While there are state labour inspectorates and other inspections of private sector activities and practices, CSO monitoring is crucial, especially in a weak human rights environment with a lack of trust in human rights mechanisms.

**5. Lack of human rights awareness and the ability for rights holders to claim their rights.** Most rights holders and communities lack knowledge of their socioeconomic and environmental human rights and are unable to claim their rights in case of a business-related negative impact. In most cases, the lack of awareness plays a crucial role in the failure to prevent risks of human rights violations. In general, no state institution makes regular or systemic efforts to raise awareness of the UNGPs in Ukraine or to equip businesses with relevant practical skills. It should be noted that small and medium enterprises (SMEs), unlike big businesses, have little opportunity to hire specialists to implement and ensure corporate responsibility for human rights policies. One of the barriers to the practical implementation of standards of responsible business conduct is the complexity of measurement and lack of clear indicators.

**6. In the context of the business-related negative impact on human rights, the most vulnerable groups are the following:** people with family responsibilities (especially women), older people (such as workers at a pre-retirement age); people with disabilities; lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) individuals; children; young people (especially those with no work experience); internally displaced persons; people living in rural areas and in small monofunctional towns, people living with HIV and AIDS; national minorities (particularly Roma); people living in locations near the 'contact line'; homeless persons, migrants; and stateless persons and persons in the process of obtaining the status of a stateless person.

**7. A situation of conflict significantly affects the business and human rights agenda.** Observance of human rights by enterprises in Donetsk and Luhansk regions are affected by the conflict and characterized by additional challenges and higher risks, particularly: 1) continuing hostilities on the territory of these regions; 2) the landmine threat in certain territories, primarily agricultural; and 3) enterprises' reduced access to sales markets because of the conflict. This is relevant both in relation to external markets, as a significant number of enterprises have been oriented towards the Russian Federation, and internally, because the largest settlements in the regions, which were previously the main sales markets, have remained in the NGCA. This, in turn, has put enterprises, especially those located near the 'contact line', in a survival mode. In most cases, key informants stress that businesses try to overcome such negative consequences by restricting or affecting the right of workers to decent work; 4) destruction of infrastructure, such as transport, which complicates access to opportunities for work in neighbouring areas; 5) the outflow of the most qualified workers, many of whom have left for safer regions or other countries; 6) an acute shortage of civil servants and other persons who are engaged for the protection of the human right to decent work; 7) severe problems with the state-business nexus.

From the NAP implementation which refers to BHR in conflict-affected areas, it can be assumed that Ukraine could seek to become a ground and nursery for innovative approaches to BRHR in such areas, as well as through research cooperation programmes supported by the UNDP and other international organizations.

**8. Lack of quantitative and qualitative surveys on businesses' awareness of the UNGPs and their capacity to implement human rights due diligence (HRDD).** The last effort to understand businesses' position and respect towards human rights was made in 2019 during the [National Baseline Assessment Business and Human Rights](#),<sup>8</sup> for which 28 respondent companies filled in the questionnaire, making the survey high value and a potential benchmark for further studies.

This study indicated that **business associations and companies do not distinguish between BHR, corporate social responsibility, and business social responsibility (BSR)**. Responsible business conduct is mostly described at the minimum level as compliance with constitutional and labour code provisions (labour safety, work schedule, decent wages, freedom of peaceful assembly, and so on) or human resource department issues, mostly focusing on employee-employer relations. This means that, on the one hand, employment rights are a focus for companies, but on the other hand, non-employment rights such as non-discrimination, inclusion, relations with suppliers, and gender equality in the community where a company operates can easily be overlooked.

Even in employee relations certain key human rights issues are overlooked: namely the right to freedom of association and the right to grievance, as the latter does not work effectively in companies. Although according to corporate sustainability reporting and focus-group results, most companies in various sectors – including information technology, retail, and agriculture – prefer not to disclose information about the number of complaints and their outcomes.

Unlike top managers and middle-position employees, those employees at entry level and lower-grade workers do not always feel secure in submitting a complaint, as they fear that directors may try to cover up the issue. Thus, any initiative to create national or sectoral hotlines or platforms could be considered as drivers for making businesses respect human rights. One of the participants using these platforms could be suppliers.

**Among business issues related to human rights; department diversity, inclusion and equality became the most popular.** Companies, especially in the information technology sector, started to pay attention to these issues: some companies signed women empowerment principles (WEPs) and some developed policies on non-discrimination and equal rights.

**The practice of working with suppliers on responsible business conduct and human rights is not yet developed among companies in Ukraine,** though the first step has already been made in terms of policies for suppliers and supplier audit procedures.

At the same time, there have been **recent significant changes in the level of the BHR concept implementation among companies.** In Ukraine, the number of the biggest taxpayer companies that publish human-rights-related information doubled from 27 in 2019 to 54 in 2020.<sup>9</sup> In addition, the number of human rights policies increased.

8 Business and Human Rights. National Baseline Assessment, 2019. Available at: <https://minjust.gov.ua/files/general/2019/07/10/20190710170813-19.pdf>.

9 ESG Transparency Index-2020. Available at: [cgpa.com.ua/novini/indeks-esg-prozorosti-kompanij-ukrayiny-2020](https://cgpa.com.ua/novini/indeks-esg-prozorosti-kompanij-ukrayiny-2020)

### **9. Investors, including foreign direct investment, and EU directives are two key drivers for increased business focus on human rights globally and nationally.**

Firstly, investors increasingly require ESG (environmental, social, and governance) performance information from companies.<sup>10</sup> Secondly, focus group discussions indicated that changes in European legislation concerning the European Green Deal, EU Mandatory Human Rights Due Diligence Directive, and EU Corporate Sustainability Reporting Directive will affect companies working in the EU and with EU companies. **State and local governments, just as investors and banks, could also be drivers for HRDD in Ukraine.** In capital investments, the share of investor funds from non-residents is quite low: at 0.5 per cent, while funds from the Ukrainian state and local governments account for 14.6 per cent, and bank loans equal 7.5 per cent.

**Export capacity could be an additional driver for companies in Ukraine.** According to surveys, when entering foreign markets Ukrainian exporters faced the following difficulties: lack of funding and financial support (35 per cent), difficulties finding partners (35 per cent), barriers and requirements in foreign markets (33 per cent), **lack of experience, knowledge, and staff** (25 per cent), **insufficient awareness of foreign markets** (23 per cent), logistics (22 per cent). Moreover, another survey<sup>11</sup> conducted by the Ministry of Economy of Ukraine found that most of 140 Ukrainian exporters are interested in information and participation in international exhibitions and fairs (35.9 per cent), information and involvement in trade missions (31 per cent), **export education** (25.5 per cent) and **export consulting** (20.7 per cent). BHR issues could thus be integrated into training programmes and consultancy plans.

### **10. The three sectors selected for this survey are in a list of nine sectors seen as risky, according to omnibus results.**

More than 2,000 respondents mentioned the following sectors where human rights have been violated: energy sector (26.1 per cent), healthcare (25.5 per cent), water and waste management (17.6 per cent), wholesale and retail (16.9 per cent), transport (15.5 per cent), financial services (15.5 per cent), agriculture (15.4 per cent), construction (12.7 per cent), IT and telecom (12.7 per cent). Very often people do not associate environmental problems with human rights. Thus the mining sector – the riskiest sector for the focus group participants as it affects both the environment and the social situation of local communities – was not mentioned. In addition, according to the data provided by YouControl, the 400 Ukrainian business entities with the biggest revenue in 2020 include extractive industries (dealing with iron ore, natural gas, crude oil, sand, and gravel); the agricultural sector (growing of cereals, legumes, and oilseeds); and the retail sector (retail trade of unused products, food, beverages and tobacco in non-specialized shops).

**In the selected sectors, among the largest companies, the agricultural sector is the most developed, with information technology ranking second, and retail lagging behind.** Agricultural companies have many policies, they prepare sustainability reports and develop the ESG strategy. The main drivers for the large agricultural sector are international stock exchanges and investors. At the same time, the placement of shares on the international stock exchange for IT companies has no impact on the disclosure of human rights policies and practices. The retail sector, which is in the top 10 sectors in terms of investment,<sup>12</sup> but mostly local ones, lacks policies and practices for responsible business and human rights.

In the selected sectors, **companies do not yet assess future human rights risks.** For example, the agricultural sector is characterized by an extremely high level of shadow employment, in which workers can be reluctant to be officially employed. Large companies were criticized by local SMEs for their unwillingness to take responsibility for their influence on the local community and to create added value for the regions.

10 Swetha Venkataramani "The ESG Imperative: 7 Factors for Finance Leaders to Consider", Available at: <https://www.gartner.com/smarterwithgartner/the-esg-imperative-7-factors-for-finance-leaders-to-consider>.

11 Results of the business survey "What needs to be changed in the state export support?": <http://exportstrategy.me.gov.ua/poll>.

12 One step closer towards money. Available at: <https://business.ua/uk/node/11790>.

**11. An effective NAP as a stand-alone strategic policy document is necessary for appropriate UNGP implementation in Ukraine and other United Nations member states.** The currently developed international and national policy and legal framework, guidance and other specific tools produced by the United Nations Working Group on Business and Human Rights (UNWG), UNDP, EU, the Council of Europe, the OECD, United Nations Global Compact, Danish Institute for Human Rights and other relevant actors in BHR<sup>13</sup> provide for a sound and systemic approach and methods to develop and implement NAPs.

The Guidance on National Action Plans on Business and Human Rights issued by the UNWG<sup>14</sup> is of particular importance and relevance for Ukraine, as it refers to international and national policy and the legal framework and includes a lot of practical information.

**International best practice can be drawn on to develop a good NAP formula.** NAPs prove to be efficient when they are:

- a. Designed to implement all three pillars of the UNGPs to ensure the United Nations “Protect, Respect and Remedy” framework at the national and local levels;
- b. Developed and implemented in a transparent and consistent way under the guidance and mandate of a government body (such as a steering committee or working group, with a lead ministry to coordinate its activity) and with formalized stakeholder input at the national and local levels;
- c. Drafted following the comprehensive five-phase approach recommended by the UNWG;
- d. Based on comprehensive empirical research (a National Baseline Assessment (NBA) is preferred) tackling the various sectors of activity and various stakeholders at the national and local levels;
- e. Developed in coordination with all relevant national policies and programmes, with relevant international commitments e properly regarded;
- f. Providing support for respect by business for human rights in conflict-affected areas, especially in countries like Ukraine;
- g. Structured, as recommended by the UNWG (in four sections), to cover strategic and operational goals in the priority areas and to define clear tasks, to include an action plan with concrete measures to be taken along with realistic indicators to evaluate its success;
- h. Secured by sufficient budgetary allocations;
- i. Regularly monitored, evaluated, and updated with non-government stakeholders involved; and
- j. Followed by qualitative and quantitative developments in BHR at the national and local levels.

**Based on the key findings above, the study proposes the following overarching recommendations. Further suggestions to enhance the operationalization of the recommendations are included in the narrative report sections.**

13 Primarily: Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. 2015, [www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf); National Action Plans on Business and Human Rights Toolkit, The Danish Institute for Human Rights (DIHR) and International Corporate Accountability Roundtable (ICAR), 2017. [www.humanrights.dk/tools/toolkit-national-action-plans-business-human-rights](http://www.humanrights.dk/tools/toolkit-national-action-plans-business-human-rights); National Baseline Assessment (NBA) Template, The International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR), 2018, <https://globalnaps.org/wp-content/uploads/2018/06/dihr-icar-national-baseline-assessment-template-june-2018-road-testing-version.pdf>; Human Rights Impact assessment guidance and toolbox, the Danish Institute for Human Rights (DIHR). URL: <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>. National Action Plans on Business and Human Rights: A Guidance for the mid-term review. HRIC (2020 edition). URL: [https://docs.wixstatic.com/ugd/6c779a\\_f05f97959ce040f9a777fd356512a52c.pdf](https://docs.wixstatic.com/ugd/6c779a_f05f97959ce040f9a777fd356512a52c.pdf)

14 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. 2015. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

## RECOMMENDATIONS

**Recommendation 1: Include the BHR agenda as an integral component of the general human rights environment in the country.**

Understanding of human rights as standards with directly obligations for state and non-state actors needs to be built, starting with the foundation of basic knowledge in primary and secondary school. The 10-year UNGP roadmap states that: “More systematic tracking of UNGPs implementation efforts by state institutions – including legal and policy developments and integration of human rights in the context of the state’s role as an economic actor – combined with greater use of peer review systems will help support more effective implementation and accountability and is a key part of a more ambitious and coherent strategy for the way forward”.<sup>15</sup> The first need for Ukraine in this context is to indicate the high-level state institution responsible for performing this task.

**Existing and future strategies and programmes should be reviewed to ensure they are in line with the business and human rights framework.** The state has a duty to protect, the corporate sector has a responsibility to respect, and both need to provide access to effective remedies (a methodology should be developed for the review). In general, laws and policies, in particular procurement regulation, investment policies, corporate laws and so on, should be leveraged to shape more responsible business conduct. The human rights aspects of investment agreements at the state, local and corporate levels should be assessed: this assessment should be transparent and inclusive and should be provided before making the final decision to conclude the agreement.

**Recommendation 2: Strengthen policy coherence and coordination on BHR at national and local levels.**

The NAP for the BHR in Ukraine needs to be anchored both nationally and locally. Duty bearers (local government and businesses), rights holders and relevant stakeholders should engage in dialogue at both national and local level to identify the most common adverse human rights impacts, and draw up a realistic, locally led NAP that can be realized progressively, and which can be monitored and evaluated.

**NAP at national level.** As implementation of the UNGPs lies within different policy areas, it raises a number of issues: (1) the need for policy coordination for responsible business conduct (both at governmental and parliamentary levels); (2) the need for a systematic approach to involving all stakeholders who could potentially be involved in implementing the UNGPs at national, regional and local levels; and (3) the need to identify a coordinating body that would have efficient a) powers and b) resources (financial and human) to perform such functions. To ensure alignment with the EU approximation process and EU regulations and policies related to business and human rights, the Deputy Prime Minister for EU Integration seems to be the most logical choice to host and lead overall inter-ministerial coordination. **The NAP at local level.** According to the Ministry of Regional Development’s regional human development index, there are significant differences in human development between the regions. **There is a need to analyse the BHR context, barriers and opportunities in each region and community in accordance with the existing legal needs of their residents.** Options may include (1) integration of BHR policies into regional and local strategic framework (oblast and hromada development strategies); or (2) development of specific BHR action plans for regions and communities.

<sup>15</sup> See UNGPs 10+ A Roadmap for the Next Decade of Business and Human Rights.

**The NAP processes should be well-resourced** with adequate budget lines for the activities to be implemented. It should receive significant government funding, which can be augmented where necessary with funding from other sources. Funding collaboration by various actors rallying around a common work plan and outcomes is desirable if government funding is limited.

**A lead government body or agency to be responsible for NAP drafting should be agreed upon at the start of the NAP process.** It should be given the necessary competencies and financial means to: a) convene inter-ministerial and multi-stakeholder meetings, b) lead external and internal consultations all over the country, c) involve independent experts for research and analysis, and d) coordinate the drafting process. This body could be authorized to continue its activities in the NAP implementation and updating phases. Establishing a special implementing body supported by an additional multi-stakeholder format (such as an advisory group or multi-stakeholder platform) for NAP implementation would also be expedient.

**A specific working group should be set up on BHR to monitor and evaluate progress made, ensure accountability and adapt plans to the context when needs arise.** Such a body does not currently exist in Ukraine, and BHR progress is not regularly monitored and evaluated against baselines and inclusive hearing processes.

**Recommendation 3: Integrate BHR into the upcoming amendments to the Ukraine – EU Association Agreement and Action Plan.**

As the experience of adopting the first National Strategy on Human Rights and the corresponding action plan for its implementation shows, integration of BHR policy into the European integration agenda would increase the probability of its implementation in the future. As the process of updating the Action Plan for the implementation of the Association Agreement between Ukraine and the EU is underway, there is an opportunity to integrate business and human rights issues into the European integration agenda, which is founded on common values and respect for democratic principles, rule of law, good governance, decent jobs and human rights.

**Recommendation 4: Enhance advocacy and unfold the many benefits of BHR to reinforce other priorities, such as sustainable and inclusive growth, access to financing, decent jobs, trade and anti-corruption.**

Lack of trust in human rights mechanisms is substantially caused by the weak rule of law in the country and widespread corruption. The BHR framework does not pretend to be a panacea for all the challenges facing society. But the business and human rights agenda, articulated in the UNGPs, and anti-corruption efforts, are interconnected. It is important to demonstrate how measures driving responsible business practices in relation to business and human rights and anti-corruption efforts, can mutually reinforce each other to ensure coherent policy.<sup>16</sup>

<sup>16</sup> See also Connecting the business and human rights and the anticorruption agendas Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, [www.ohchr.org/EN/Issues/Business/Pages/Connecting-business-and-human-rights-and-anti-corruption-agendas.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/Connecting-business-and-human-rights-and-anti-corruption-agendas.aspx).

**Recommendation 5: Ensure broad collaboration, empowering, and meaningful stakeholder participation for fostering greater transparency, effectiveness, trust, and ambitions in the UNGP implementation.**

Good practice requires that stakeholder engagement in BHR should be ensured for the UNGP implementation. This mechanism serves to identify and understand human rights risks, test and receive feedback on actions being taken, and remedy negative impacts; it has the power to ensure the accountability of duty bearers (state and business), to set and enforce legal norms, regulations and standards that will prove effective in particular cases and in the overall social and economic development.

The Government should pay attention to the UNGP requirements for strong multi-stakeholder participation in the implementation of mandatory human rights due diligence (HRDD) (Principle 18) and the non-judicial mechanisms adopted to ensure access to remedy for victims of business-related human rights violations (Principle 31.h).

Various categories of stakeholders should be involved in BHR with due regard to gender perspectives, including: governmental bodies and state-owned enterprises, Parliament, including relevant committees; NHRIs, Ombudsman institutions, and statutory equality bodies; the judiciary, alternative dispute resolution mechanisms, and informal justice actors; businesses, business associations, and informal sector actors; trade unions and other workers' associations; civil society organizations and representatives of affected groups or communities; academia, including research institutes, individual experts, educational institutions; media; international and regional actors, for example, relevant United Nations agencies and country teams, the World Bank, regional development banks, the EU, the Council of Europe, OECD, and the Organization for Security and Cooperation in Europe.

Good practice for NAPs provides for the establishment of a multi-stakeholder body (a National Steering Committee or a Working Group on BHR). In every phase of NAP processes (pre-drafting assessment and consultations, NBA, awareness-raising, drafting, implementation, monitoring and evaluation, and updating), various forms of stakeholder engagement could be used, such as forums, public meetings, local-level multi-stakeholder dialogue events, consultations (including written) and seminars, workshops, focus group discussions, in-depth and key informant interviews with knowledge bearers on the policy-, law- and decision-making, stakeholder assessments, surveys, e-discussions, written inputs via official websites or emails specifically responding to a draft NAP that is openly published on a website or circulated among several influential stakeholders, Internet platforms, web pages, and blogs.<sup>17</sup>

Stakeholder engagement should take place in a planned and transparent manner, ensuring capacity building of stakeholders, paying attention to levels of knowledge and expertise in the subject matter and any potential language, social, cultural, financial, or other barriers to participation; and integrating the gender perspective into all NAP processes and in every phase to ensure the principles of equality and non-discrimination.<sup>18</sup>

**The gender perspective for stakeholder engagement in BHR**, as recommended by the UNWG,<sup>19</sup> should be integrated into all NAP processes in every phase to ensure equality and non-discrimination in the systemic UNGP implementation. The current practice demonstrates that there has been too little attention to gender issues in most BHR frameworks and initiatives.

<sup>17</sup> Data from key-informant interviews

<sup>18</sup> See, for example: Engaging Communities. Shell Sustainability Report 2019. <https://reports.shell.com/sustainability-report/2019/contribution-to-society/social-performance/engaging-communities.html>

<sup>19</sup> OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide', 2012, p.8, [www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](http://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf)

**Recommendation 6: Conduct-tailored capacity development for state central and local authorities and engaging bodies of local self-governance to enhance policy coherence on BHR.**

Tailored training on business and human rights should be developed. The BHR development direction should be designed simultaneously at both central and local levels, from top-down, giving an understanding of the state approach to development, as well as from bottom-up, enabling refining of the chosen policy, taking into account the requests and needs on the ground.

The Parliamentary Commissioner for Human Rights (a NHRI) demonstrates the substantial potential to be one of the key drivers of understanding the business and human rights framework as a cross-cutting component of the human rights agenda and to provide it in different spheres of human rights protection (labour law, protection from environmental degradation, privacy rights protection and so on). BHR capacity building should be provided for the Office/Secretariat of the Parliamentary Commissioner for Human Rights.

**Recommendation 7: Develop human rights assessment (benchmarking) of state-owned enterprises and municipally-owned enterprises, and conduct it on a regular basis.**

The corporate human rights benchmark methodology could be used to develop the methodology focusing on the specificities of SOEs and MOEs in Ukraine. Human rights risks assessment should be conducted by SOEs and MOEs. The OECD National Contact Point operating within the Ministry of Economy of Ukraine has a good capacity to coordinate such efforts.

**Recommendation 8: Use a HRBA and ensure a strong focus on marginalized rights holders and communities at high risk of business-related human rights abuses.**

The interests of the most vulnerable groups (particularly, those identified in finding vi of this report) should be taken into consideration in all processes of human rights risk assessment in business operations at state, local, and corporate levels.

Trade unions, civil society organizations, and human rights defenders should be engaged in the project assessment for big businesses, with corporate and state investment agreements to indicate human rights risks.

**Recommendation 9: Strengthen knowledge and skills on BHR.**

It is strongly advisable to have multiple actors at both national and local levels in the country. The systematic work would be launched with the design and implementation of an awareness-raising campaign and tailor-made training for different target groups: government bodies, businesses, rights holders, and human rights defenders, as part of the BHR promotion. There is a need to expand motivation for work for businesses with respect to human rights issues, especially for managers and professionals involved in recruiting and exporters, particularly those dealing with areas under German, Dutch, and French law and EU human rights-related directives. Also, greater involvement of businesses is required to implement the dual education system. Finally, BHR theoretical knowledge

and practical skills should be included in the curriculums of higher educational institutions and business schools for economists, lawyers, managers, and CEOs. Training and educational programmes should propose a unified approach to understanding responsible business conduct, based on various approaches to implementing relevant principles (CSR, BHR, SDGs, ESG, and so on).

Together with the Export Promotion Office, there is a need to develop courses for exporters, especially SMEs, and those dealing with areas under German, Dutch, and French jurisdiction and EU human rights-related Directives (CSRD, Green Deal and Corporate Due Diligence and Corporate Accountability Directive, CBAM). After the course, financial support or consultations could be provided for SMEs to raise their capacities and correspond to export requirements. In addition, for business and human rights concepts – as well as the concept of responsible business conduct – to become

mainstream, human rights issues could be included in the business school curriculum to help CEOs and senior managers to understand human rights issues in business and ways for its mainstreaming in the business ecosystems, such as suppliers, communities and other stakeholders.

**Recommendation 10: Develop an easily accessible business and human rights online platform with toolboxes for different stakeholders.**

This platform could provide the materials (video, audio, and text) with both basic and advanced knowledge about business and human rights (both translated and originally developed), including information about the interconnections between BHR and SDGs, BHR and ESG, BHR and CSR, BHR and quality work agendas, as well as many other topical agendas. It could also provide training materials, human rights model policies, self-assessment instruments, indicators and benchmarks, and good practices.

Trade unions, civil society organizations, and human rights defenders – as potential drivers of the BHR agenda in the country – could use such a platform to exchange experiences, coordinate efforts, and so on at the national level. They could also be a focal point to communicate with the regional BHR hub in Central and Eastern Europe (<https://ceeca-bhr.org/>) and other BHR global, regional and national communities. As part of the platform, opportunities to establish national or sectoral hotlines or platforms for rights holders could be explored as a driver for respecting human rights in business. Suppliers could be among the participants in these platforms.

**Recommendation 11: Increase risks focus and advance BHR in the conflict-affected areas.**

Ukraine, facing additional human rights challenges, such as an armed conflict and internal displacement, needs to make a special effort to raise awareness that business affects human rights and can also affect the development of the conflict, actively or passively. It is therefore important that human rights are perceived as a cross-cutting element in all company activities, both during and after the conflict. The government should develop recommendations for businesses on the potential risks associated with certain economic activities, taking into account the conflict and internal displacement and focusing on the prevention of negative effects on human rights, rather than simply responding to those negative effects that have already occurred.

It is important to focus now – and in a potential NAP – on specific measures and actions, implementation, and control mechanisms concerning businesses' respect for human rights (BRHR) in conflict-affected areas, as envisaged by Principle 7 of the UNGP.

**Recommendation 12: Target business associations to ensure transformative and systemic change.**

As business associations are key stakeholders trusted by businesses, it is recommended that donors increase the capacity and knowledge of business associations in the selected sectors (agriculture, retail, and information technology) and in risky sectors (textiles and construction) on issues of responsible business conduct and human rights. The second step could be the development of sector-specific human rights issues and standards.

**Recommendation 13: Explore opportunities to include BHR requirements in state and local government capital investment projects, as well as bank loan conditions.**

The share of foreign direct investment in capital investments of Ukrainian companies is quite low in comparison with funds from the state, local governments, and bank loans. This fact suggests that state and local governments and banks could be key drivers in promoting responsible business conduct and the BHR agenda among businesses in Ukraine. It is recommended to study the opportunity to include BHR requirements in state and local governments capital investment projects, as well as bank loan conditions, and learn more details about relevant foreign experience.

**Recommendation 14: Enhance synergies and work through business associations to support businesses in responsible business conduct.**

Business associations, governmental and nongovernmental- organizations, investors, and donors should create synergies to assist companies in integrating human rights into business operations. One of the key drivers of the Business and Human Rights agenda for businesses could be business associations, which can organize advocacy events, develop templates of policies and procedures on human rights issues as well as benchmark sectoral standards for companies to adhere to. In order to ensure a systemic change, it is recommended to increase the capacity and knowledge of business associations on BHR and responsible business conduct. Support for export-oriented SMEs also seems appropriate.

**Recommendation 15: Enhance access to state and non-state remedies.**

There is a need to raise the awareness of business and human rights in the judiciary, free legal aid centres, and bar associations. A methodology should be developed to monitor court cases in business-related abuses, study the legal, procedural, and practical barriers to access to remedies for victims of human rights abuses by businesses, and train judges and lawyers to apply the BHR framework in relevant cases. It is recommended also to ensure class action lawsuits are facilitated. Trade unions, CSOs, and local governments should be recognized as actors who could use civil claims to protect the human rights of third parties (such as local communities). Lawsuits demanding performance of certain actions intended to prevent risks of human rights violations in the company's operations should be applied. Remedies need to be developed that could be used when a company files a reputation lawsuit against people who claim the company is violating their rights.

When analysing the effectiveness of the judicial remedy, it is important to take into account not only its actual existence in terms of a procedure or legal framework but also to analyse the actual access to this legal procedure for victims or affected communities. Non-judicial remedies need to be promoted (including, for example, the OECD National Contact Point (NCP) and remedies provided by investors).

Development of non-judicial remedies must be followed by strengthening and capacity building of the institutions that can complement the judicial system and provide support and knowledge to victims and affected communities; in Ukraine this could be a partnership between the NHRI and the state legal aid system. There is a need to build a system for referring business-related human rights violations to courts, other remedy mechanisms, the NCP and, so on. In Ukraine, the NHRI can help victims access remedies by referring cases to the legal aid system, for example. When developing an effective remedy system, it is also important to ensure that people, including the most marginalized rights holders, can understand their rights and where to go when they are violated. Lack of information about rights is one of the key reasons why people in Ukraine choose not to report human rights violations, along with other barriers such as ineffective judicial procedures, the cost of legal aid, and lack of physical access to remedies.

**Recommendation 16: Be cognizant of the international dimension of governments, businesses, and CSOs.**

Stakeholder participation in BHR has a significant value for developing and strengthening regional and international frameworks and cooperation between stakeholders, for enhancing their capacity via cross-learning, “twinning”, and training, via providing technical support. It promotes advanced decision-making in BHR at the international, regional, and national levels. There are also possibilities to build momentum for Regional Action Plans on BHR (RAPs) following the development and adoption of a NAP by one state in a region.<sup>20</sup>

**Recommendation 17: Move beyond NAPs and focus on HRDD requirements and implementation.**

The development of a clear mandatory HRDD standard at the EU level will not only have significant effect on the EU member states, their businesses, and the future business model, but it will also affect supply and value chains globally and in neighbouring EU association countries, such as Ukraine. Ukraine has a history of approximating its legislation to the EU acquis. Thus, the new EU Directives on non-financial reporting and mandatory HRDD may be implemented in Ukraine in the same way. Based on this, there is a need:

- a) to carefully study the national legal framework on BHR and HRDD against the findings with the EU Directive future requirements;
- b) to scope a potential HRDD regulation that should be broad and cover all types of entities (a discussion on SME should follow as well);
- c) to take into consideration that HRDD regulation should be inclusive and transparent, engaging all relevant stakeholders. It seems good practice to establish a special regulation and control body, like in Germany and the Netherlands;
- d) HRDD must be accompanied by effective remedies (judicial and non-judicial).

<sup>20</sup> Empowerment and Accountability Way Forward. By Nicolaj Sonderbye, UNDP Ukraine. 2021 UN Forum on Business and Human Rights. URL: <https://10unforumbhr2021.sched.com/event/oC1E/empowering-people-and-building-a-business-and-human-rights-community-in-central-and-eastern-europe?linkback=grid>; Asia & Africa National Action Plans Update to the UN Working Group on Business and Human Rights. October 2015. P.13. URL: [https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/Coalitions%20Third%20Submission%20to%20the%20WG%2020151012%20\(FINAL\).pdf](https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/Coalitions%20Third%20Submission%20to%20the%20WG%2020151012%20(FINAL).pdf)

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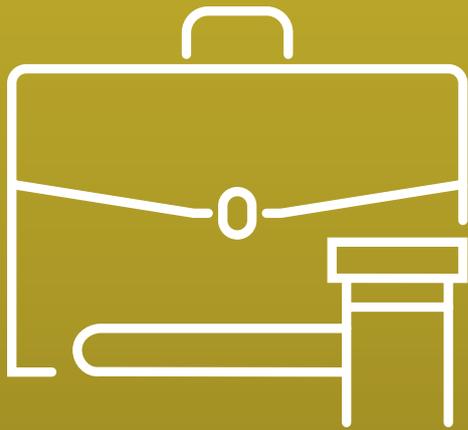
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# 1. INTRODUCTION



# 1.1. CONTEXTUAL BACKGROUND

Ukraine's transition to a developed market economy faces serious political, economic and security challenges<sup>21</sup>. The World Bank's Growth Survey in Ukraine identifies that achieving lasting growth is possible only when policies equitably distribute the benefits of economic growth in society, creating access for all<sup>22</sup>. Economic growth is sustainable only when it does not ignore vulnerable groups. The current model is not sustainable and does not meet this goal<sup>23</sup>. While private sector development can contribute to sustainable development, 'it is well known that unscrupulous and predatory business practices often have a negative impact on human rights'<sup>24</sup>, the rule of law, environmental safety, and the inclusivity of society.

According to official statistics in Ukraine, in 2019, 3.46 million people in Ukraine were employed in the informal sector, which is equal to 20.87% of the total employed population – 16,578 million<sup>25</sup>. Many Ukrainians choose to migrate for a variety of reasons, including a lack of decent job opportunities in Ukraine, an unsatisfactory level of environmental and food security, and a low level of responsible business conduct.

This trend could be reversed by strengthening the role of the business in ensuring Ukraine's sustainable development. The UN Guiding Principles on Business and Human Rights (UNGPs) define:

**I. State duty to protect human rights** from abuses by third parties, including business enterprises, which requires ensuring effective implementation of internationally recognised human rights standards at the national level.

**II. Corporate responsibility to respect human rights** requiring businesses to, among other things, conduct human rights due diligence with regard to potential adverse impact on human rights that they may cause or contribute to.

**III. Access to effective remedies** – judicial, state-based non-judicial and non-state based mechanisms.

Business and human rights framework is an important component 'to avoid the precipice and reorient the country towards a brighter future filled with shared prosperity and expanded opportunities for all Ukrainians'<sup>26</sup>.

21 Assessment of the Socio-Economic Impact of Covid-19 in Ukraine, Response and Recovery Plan, UN SEIA Report 2020, <https://ukraine.un.org/en/download/56579/103300>.

22 Ukraine Growth Study Final Document : Faster, Lasting and Kinder, Report, 2019, <http://documents1.worldbank.org/curated/en/543041554211825812/pdf/>.

23 Ibid. P. 6.

24 Dafina Gercheva, Nicolaj Sonderbye, Responsible business conduct accelerates social and economic development, <https://www.ua.undp.org/content/ukraine/en/home/blog/2021/responsible-business.html>.

25 Bonnet, Florence, Joann Vanek and Martha Chen. 2019. Women and Men in the Informal Economy – A Statistical Brief. Manchester, UK: WIEGO, 2019, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_711798.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_711798.pdf).

26 Dafina Gercheva, Nicolaj Sonderbye, Responsible business conduct accelerates social and economic development, <https://www.ua.undp.org/content/ukraine/en/home/blog/2021/responsible-business.html>.

As the UN Working Group on Business and Human Rights recently mentioned “Respecting people and the planet, by preventing and addressing adverse impacts across business activities and value chains, is the most significant contribution most businesses can make toward sustainable development”<sup>27</sup>.

Ukraine is facing many challenges to ensure corporate responsibility for human rights, in particular on labor issues (informal employment, unprotected status of gig-workers, gender pay gap and gender segregation of labour market, youth unemployment, wage arrears, weak guarantees of the freedom of association and the right to collective bargaining, forced labor), occupational safety and health, environmental safety, discriminative practices as part of particular business models (e.g. discriminative advertising), lack of effective mechanisms for communication between local communities and business, etc.

As one of the pieces of evidence, according to the 2021 ITUC Global Rights Index Report, Ukraine obtained the Rating 5 (No guarantee of rights)<sup>28</sup>, which justifies significant challenges in the field of work (violations of internationally recognised labour rights by governments and employers) in terms of freedom of associations, rights to collective bargaining, right to strike and access to justice. According to the respective methodology of the rating, the countries with the rating of 5 are the worst countries in the world to work in. While the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labor practices.<sup>29</sup> Further, in UNDP’s Human rights progress study (2016, 2018, 2020) we see a clear trend of violation of labour rights. When the rights holders were asked about which violation they most commonly faces people ranked ‘failure to receive salary payments’ as the most frequent (13% of respondents) next one is ‘discrimination for any reason’ with 5,8%<sup>30</sup>. The concept of business and human rights is highly dependent on the general human rights situation in a particular country and on the rule of law situation. There is a lack of access to justice, the trust in the justice system is low due to the weakness of the rule of law guarantees and because of the high level of corruption (see Annex B).

According to the survey of foreign investors, 48% of participants thought Ukraine’s investment attractiveness was declining, 42% did not see significant changes, and only 9% saw improvement<sup>31</sup>. From 2016 to 2020<sup>32</sup> three major obstacles to foreign investment in Ukraine remained the same: widespread corruption, a lack of trust in the judiciary, and market monopolisation and state capture by oligarchs<sup>33</sup>. In Ukraine, corruption (that is called “grand corruption”) is based on informal connections between government officials, members of parliament, prosecutors, judges, law enforcement agencies, managers of State Owned Enterprises and politically connected individuals/companies<sup>34</sup>.

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- 27 UNGPs 10+ A roadmap for the next decade of Business and Human Rights, UN Working Group on Business and Human Rights, [https://static.sched.com/hosted\\_files/10unforumbhr2021/9b/UNGPs%2010plus%20Roadmap.pdf](https://static.sched.com/hosted_files/10unforumbhr2021/9b/UNGPs%2010plus%20Roadmap.pdf), p. II.
- 28 Ukraine obtained the same assessment in 2015-2020 as well. In 2014, Ukraine was in group 5+ “No guarantee of rights due to the breakdown of the rule of law”, [https://www.ituc-csi.org/IMG/pdf/survey\\_ra\\_2014\\_eng\\_v2.pdf](https://www.ituc-csi.org/IMG/pdf/survey_ra_2014_eng_v2.pdf).
- 29 2021 ITUC Global Rights Index, [https://files.mutualcdn.com/ituc/files/ITUC\\_GlobalRightsIndex\\_2021\\_EN\\_Final.pdf](https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN_Final.pdf).
- 30 Findings of the Nationwide Public Opinion Poll. What Ukrainians Know and Think of Human Rights. The Progress Study 2018. Available at: [https://www.ua.undp.org/content/ukraine/en/home/library/democratic\\_governance/humanrightsresearch-2018.html](https://www.ua.undp.org/content/ukraine/en/home/library/democratic_governance/humanrightsresearch-2018.html).
- 31 Lack of Trust in Judiciary Major Obstacle to Foreign Investment in Ukraine, <https://ces.org.ua/en/lack-of-trust-in-judiciary-major-obstacle-to-foreign-investment-in-ukraine/>.
- 32 Dragon Capital and the Centre for Economic Strategy, Foreign Investor Survey, November 2020, [https://dragon-capital.com/content/uploads/2020-ForeignInvestorSurvey\\_Presentation\\_en.pdf](https://dragon-capital.com/content/uploads/2020-ForeignInvestorSurvey_Presentation_en.pdf), and European Business Association, Investment Attractiveness Index First Half of 2020, [https://eba.com.ua/wp-content/uploads/2020/07/EBA-InvestIndex\\_1H-2020\\_EN1.pdf](https://eba.com.ua/wp-content/uploads/2020/07/EBA-InvestIndex_1H-2020_EN1.pdf).
- 33 Special Report: Reducing grand corruption in Ukraine: several EU initiatives, but still insufficient results, European Court of Auditors, 2021, p. 10-11, [https://www.eca.europa.eu/Lists/ECADocuments/SR21\\_23/SR\\_fight-against-grand-corruption-in-Ukraine\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR21_23/SR_fight-against-grand-corruption-in-Ukraine_EN.pdf).
- 34 Chatham House: “Are Ukraine’s Anti-corruption Reforms Working?”, 2018, p. 23, <https://euaci.eu/what-we-do/resources/are-ukraines-anti-corruption-reforms-working-research-paper>; Strategic Advisory Group for Support of Ukrainian Reforms: “Reforms in Ukraine after revolution of Dignity: what was done, why not more, and what to do next”, 2019, p. 115, [https://ces.org.ua/wp-content/uploads/2019/07/SAGSUR-book\\_WEB\\_ed.pdf](https://ces.org.ua/wp-content/uploads/2019/07/SAGSUR-book_WEB_ed.pdf). See also “The system of clan capitalism in Ukraine The complexity of dismantling the «system». – Available at: <https://www.chathamhouse.org/sites/default/files/2021-11/2021-07-01-ukraine-rony-capitalism-ukrainian-lough.pdf>, Crony Capitalism in Ukraine Relationship between Political Connectedness and Firms’ Performance Oleksii Balabushko Oleksandra Betlii Veronika Movchan Ruslan Piontkivsky Mykola Ryzhenkov, Policy Research Working Paper 8471, <https://openknowledge.worldbank.org/bitstream/handle/10986/29900/WPS8471.pdf?sequence=1&isAllowed=y>. See also about importance of understanding of the interlinkages between corruption and business-related human rights abuses Report on connecting the business and human rights and the anticorruption agendas, Working Group on the issue of human rights and transnational corporations and other business enterprises, 17 June 2020, <https://www.ohchr.org/EN/Issues/Business/Pages/2020Survey.aspx>.

Despite a broad anti-corruption legal framework, the level of corruption not only in the public sector, but also in the business environment remains high, as evidenced by a number of sectoral investigations and journalistic investigations. According to Transparency International, Ukraine ranks 117th out of 180 countries in the ranking of perceptions of corruption<sup>35</sup>. 91% of Ukrainians see corruption in government circles and 82% – in business. 51% of all respondents believe that corruption is widespread in business, 77% of board members or CEOs say that unethical behavior is justified by the desire to save business. Lack of rule of law (66%), corruption (54%), and lack of bold reform agenda (45%) were identified by business representatives as the TOP-3 biggest obstacles to doing business in Ukraine<sup>36</sup>. During this research, many respondents said ‘the biggest barrier to implementing UNGPs in Ukraine is corruption, which leads to the law completely losing its effectiveness’<sup>37</sup>.

Furthermore, there are challenges specific to the BHR context in Ukraine: low awareness of human rights standards in general and BHR standards in particular, underdeveloped democratic traditions, low public trust in state institutions; prevailing paternalistic approaches to ensuring respect to human rights (it is commonly identified only with the state’s duty)<sup>38</sup>. On top of national, Ukraine as an Eastern European country faces tough regional challenges in the BHR field. They include considerable state involvement in business through SOEs as important players for national economy;<sup>39</sup> ‘collision of public, state and business interests; the weak rule of law and weak institutions; and prosecution of human rights defenders’<sup>40</sup>. Moreover, victims of such abuse have rather poor access to effective remedy, including alternative remedies<sup>41</sup>.

There is a growing global trend for governments and companies to take UNGPs as the minimum standards that form the proper corporate environment for businesses to make good efforts for inclusive development and “Leave no one behind”<sup>42</sup>, refocusing business processes on responsible business conduct, environmental protection; corporate responsibility to respect for human rights and the rule of law.

In January 2019, Ukraine officially started the UNGPs’ implementation process<sup>43</sup>. The plan to develop a NAP was announced in mid-2019<sup>44</sup> stemming from the National Baseline Assessment on BHR<sup>45</sup>. In March 2021, the new National Human Rights Strategy was adopted, which for the first time included the BHR Chapter<sup>46</sup>. Stepping up the UNGPs implementation and “responsible business conduct” could bring massive benefits for Ukraine in the form of decent job creation, addressing outward-migration, economic sustainable and equitable growth, improved livelihoods, women’s economic empowerment and reduced inequalities and progress in all SDG indicators<sup>47</sup>.

35 CORRUPTION PERCEPTIONS INDEX 2020, <https://www.transparency.org/en/cpi/2020/index/ukr>.

36 Rule of Law Should Be Ukraine’s Government #1 Focus to Achieve Economic Recovery and Growth in 2021 – New Survey by the American Chamber of Commerce in Ukraine and Citi Ukraine, <https://chamber.ua/news/rule-of-law-should-be-ukraine-s-government-1-focus-to-achieve-economic-recovery-and-growth-in-2021-new-survey-by-the-american-chamber-of-commerce-in-ukraine-and-citi-ukraine/>.

37 Interviews with civil society and human rights defenders representatives.

38 ‘Business and Human Rights: Key Challenges for New Democracies (Panel Discussion: Programme and Draft Resolution, Yaroslav Mudryi National Law University, Kharkiv, 25 September 2019)’ (September 2019).

39 According to the recent OECD study, ‘[c]ompared with most countries, Ukraine has a significantly large SOE portfolio, with 3,293 SOEs reported at the central level of government. Out of these entities, 1,535 were operational and 1,063 were profitable, with an overall profit of UAH 52.1 billion in 2019’, OECD, ‘OECD Review of the Corporate Governance of State-Owned Enterprises in Ukraine’ (n 253) 27.

40 Jernej Letnar Čerňič, ‘Mapping Business and Human Rights in Central and Eastern Europe’ (Cambridge Core Blog, December 2020).

41 Ibid.

42 Leave no one behind (LNOB) is the central, transformative promise of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs). It represents the unequivocal commitment of all UN Member States to eradicate poverty in all its forms, end discrimination and exclusion, and reduce the inequalities and vulnerabilities that leave people behind and undermine the potential of individuals and of humanity as a whole, <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>.

43 The Ministry of Justice initiated implementation of the United Nations Guiding Principles on Business and Human Rights, <https://minjust.gov.ua/m/informatsiya-schodo-rezultativ-provedennya-natsionalnogo-otsinyuvannya-bazovih-pokaznikiv-u-sferi-biznesu-ta-prav-lyudini-v-ukraini>.

44 ‘Ukraine | National Action Plans on Business and Human Rights’ (29 March 2019), <https://globalnaps.org/country/ukraine/>.

45 ‘The National Baseline Assessment on Business and Human Rights in Ukraine. Executive Summary’, Report developed by the Yaroslav Mudryi National Law University in cooperation with the Ministry of Justice of Ukraine, <https://legalforum.nlu.edu.ua/wp-content/uploads/2019/06/executive-summary.pdf>.

46 President of Ukraine, Decree ‘On National Human Rights Strategy’, 24.03.2021 No 119/2021.

47 Business and Human Rights Consultants / Research Consultants (National Experts), Background, [https://jobs.undp.org/cj\\_view\\_job.cfm?cur\\_job\\_id=100969](https://jobs.undp.org/cj_view_job.cfm?cur_job_id=100969).

## 1.2. OBJECTIVE, PURPOSE, SCOPE AND OUTLINE OF THE STUDY

The purpose of the study is to bring evidence and further qualify and update the National Baseline Assessment of 2019 on business and human rights in Ukraine and i) support the government and the various stakeholders in Ukraine on advancing the UNGPs implementation and ii) to inform future tailored UNDP support.

The study is the result of a scoping process that UNDP in Ukraine commenced in the first half of 2021. UNDP held numerous consultations with key government institutions, academia and other key stakeholders and embarked on the following four assignments:

1. A stakeholder mapping/analysis and lessons learned mapping/analysis
2. A rights holder study
3. A sector/market study
4. An international best practice study on BHR

The aim of the studies is to analyse the overall trends/needs/barriers for duty bearers and rights holders, sectors/markets and identify best and good international practices on the implementation of BHR of relevance of Ukraine and its country specifics.

During the inception phase it was decided to take a “deep dive” on the IT, retail and agricultural sectors/markets to understand key constraints – as well as identify the opportunities to adhere to responsible business conduct.

### **Scope and aim of the stakeholder mapping and analysis:**

- to map and identify stakeholders: duty bearers (government), key businesses and business associations, CSOs and right holders, media and academia to target the awareness raising of the UNGPs;
- to analyse the role of different stakeholders, their networks, goals and influence on the UNGPs implementation, with special attention to the role of the key CEBs, taking into account both nationwide, regional and local context;
- to foreseen the ways in which these stakeholders may influence the BHR policy outcomes;
- to propose recommendations for stakeholders’ engagement in UNGPs implementation;
- to analyze current donor programs in Ukraine to identify the possible partnership and cooperation within UNGPs implementation in Ukraine.

*The detailed methodology, questions and applied models of the stakeholder analysis are presented in the Annex A.8 to this report.*

**Scope and aim of the BHR Lessons learned study:**

- to map and analyse BHR lessons learned in Ukraine – building on lessons from the UN Global Compact Network and on lessons from other relevant actors (e.g. OECD National contact point, European business association etc.);
- to map and synthesize the positive studies and opportunities and explore options on how to build on these for the implementation of the UNGPs;
- to explore options on how to build on lessons learned and best practices for the implementation of the UNGPs in Ukraine (from the perspectives of policy coherence and business conduct).

**Scope and aim of the Rights holders study:**

- to complement the National Baseline Assessment (NBA) of 2019 based on qualitative baselines on the rights holders' barriers to realize human rights, in particular to obtain a decent job where their human rights and labour rights are respected, and to access remedies to protect human rights in cases of business-related abuses;

The need to complement the NBA (2019) is explained by the following reasons:

- i) NBA 2019 provided general overview of the BHR situation through broad number of spheres of legal regulation based on the methodology developed by Danish Institute for Human Rights and ICAR; concrete issues, e.g. human rights most affected by business in Ukraine, most risky markets and sectors, good practices etc, were not studied;
  - ii) NBA 2019 concentrated mostly on Pillar I of the UNGPs with little attention to Pillar II and Pillar III because of the lack of information;
  - iii) NBA 2019 was not inclusive. Because of limited time just few discussions and other types of communication with civil society organisations were conducted];
- to gather in-depth qualitative data on the barriers/challenges and opportunities for rights holders to access the job market and get a decent job that respects human rights in Ukraine and in their community;
  - to analyse barriers and opportunities for rights holders. This should be illustrated with examples and include answers to questions, such as: (1) Which sectors are likely not to respect human rights due diligence or exploit vulnerable workers and what are the reasons for this? (2) Why are people opting to work in the informal sector and how can we ensure that rights are also respected in the informal or "grey" sector? (3) Why are some rights holders not able to enter the job market?;
  - to map and analyse already existing studies/research undertaken by e.g. academia, ILO, think tanks, academia or key experts in Ukraine;
  - to provide concrete recommendations on how to advance the Business and Human Rights agenda in Ukraine, including strategic entry points.

**Scope and aim of the Sector and Market study:**

- to identify gaps/needs/challenges for enterprises adhering to "responsible business conduct" and assess where there may be particular prospects for decent jobs and sustainable growth. In addition to this overall sector assessment, the study IT, retail and agricultural sectors in-depth;
- to present options on how companies may be able to scale up their business operations while respecting human rights (and environmental protection), due diligence, and implementing the UNGPs;

- to identify market and investment opportunities for business enterprises (both larger but also SMEs) that are ready to adhere to “responsible business conduct” considering an international trade dimension and further export and trade with e.g. the EU to stimulate and accelerate their growth whilst at the same time adhering to the UNGPs, and the future requirements from EU investors.

**Scope and aim of the BHR International Best Practice study:**

- to map and analyse the experience of the EU Member States and other countries globally on developing and implementing NAPs as stand-alone documents based on the international policy and law, that could be applicable in the prospective NAP processes in Ukraine;
- to gather the qualitative data on how foreign NAPs focus on business respect for human rights in conflict-affected areas for Ukraine to learn lessons and step up in this field;
- to identify the best practices for business (incl. for state-owned companies) on operation and procedures respecting BHR;
- to find international best practice of effective redress, incl. grievance mechanisms, used by businesses that can be applicable for Ukraine;
- to map the part of NHRIs in the UNGPs’ implementation to be regarded by the Ukraine’s Parliamentary Commissioner for Human Rights (a NHRI);
- to make analysis of the compliant with international law and policy practices on key stakeholders’ engagement in driving BHR, in NAPs processes in particular, that could be applied in Ukraine; the gender perspective of stakeholders’ engagement is duly regarded;
- to propose suggestions and recommendations to Ukraine’s state power bodies and various stakeholders on expedient approaches and targeted interventions for the UNGPs implementation.

# 1.3. APPROACH AND METHODS

## 1.3.1. PRINCIPLES AND APPROACHES

### **International human rights as benchmarks:**

- International human rights standards and principles constitute the basis and benchmarks for the research. The questionnaire and interviews have been based at minimum on the International Bill of Human Rights and the ILO Core Labour Conventions, as well as other human rights instruments as relevant in the particular market sector context or in the context of conflict-affected territory.

### **Human rights-based approach and leave no one behind principle:**

- The research process itself needs to respect human rights by paying particular attention to human rights principles such as non-discrimination, participation, empowerment and transparency. This includes analysing to what extent the different categories of rights holders are meaningfully empowered about their human rights and able to claim their rights if these are violated by businesses.

Accountability, including by recognising the entitlements of rights holders to have their rights respected and the corresponding duties and responsibilities of duty-bearers to uphold and respect these rights.

The overall research, including interviews and focus groups involve rights holders' women and men, youth, elderly people, urban and rural population, and other identified groups, including the most marginalised. The duty barriers' opinion from the side of the business and authorities were collected for the purposes of validation of the gained finding and balancing the conclusions.

## 1.3.2. METHODS

The current assignment had been conducted in the limited timeframe and primarily applied qualitative data collection methods.

Data was gathered through desk review, stakeholder consultations, key-informant interviews, focus group discussions and companies' and representative of rights holders surveys. Desk research of national and international, mostly European, legislation, business policies and practices, as well as sector and market analyses were carried out, thus establishing up-to-date baselines for monitoring and evaluation. A multi-stakeholder approach was used to ensure a strong local ownership, relevance and sustainability of future interventions leaving no one behind.

The research team was following the National Baseline Assessment on Business and Human Right (2019), a participatory approach, the principles of confidentiality, inclusiveness and "all voices are heard" to gather accurate

and up-to-date data on the rights holders' barriers to realize human rights, in particular to obtain a decent job where their human rights and labour rights are respected, and to access remedies to protect human rights in cases of business-related abuses, on sector and market barriers and opportunities. The observations of the data collection and analysis phase were presented by the consultants at a validation workshop before the UNDP Ukraine team and members of the Inter-sectorial platform on Business and Human Rights. This included other stakeholders, such as the government of Ukraine, business representatives/associations, civil society organisations, international development partners and other key stakeholders to build the dialogue and find the best options to implement a long-term business and human rights project in Ukraine.

The research (incl. approaches to conduct in-depth interviews, focus-group discussions and surveys) fully correlates to the 33 articles and 48 specific rights stated in the two 1966 Covenants together with the UDHR of 1948 forming the minimum for identifying adverse human rights impact with reference to the UNGPs. The Sector and Market Research team analysed data of the overall trends and sector/market barriers/opportunities collected from the surveys as well as from the desk review, focus group discussions and key informant interviews. It was also planned to take a deep-dive and study three sectors, their barriers and market opportunities.

*See research methodology in Annex A.1, questionnaires in Annexes A.2 – A.4, lists of semi-structured preliminary key questions in Annex A.5, lists of participants of in-depth interviews in Annex A.6, screener to select participants of focus-group discussions in Annex A.7.*

## RIGHTS HOLDERS STUDY

**Focus groups.** The following groups of rights holders were identified as priority to participate in the focus groups during the study:

- a. employees of large and medium-sized companies (non-managerial employees),
- b. employees of small and micro businesses,
- c. community members representatives, affected by the business activities,
- d. unemployed people,
- e. rural women,
- f. representatives of youth,
- g. people who have work experience abroad.

*The questions for the FGs are in the Annex A.5.*

**In-depth interviews.** Interviews targeted the following groups of respondents: i) Trade Unions at the national and regional level, including leaders and legal service; ii) Organizations representing the rights and interests of people with disabilities, Roma, people living with HIV, LGBTIQ; iii) Organizations representing the rights and interests of youth; iv) Organizations that provide legal and other assistance to women and men living in locations close to the contact line; v) Representatives of academia who are dealing with issues of decent work, informal employment, business respect for human rights; vi) Organizations that focus on representing the rights and interests of women, including concerning discrimination in the field of work and employment; vii) Representatives of institutions that ensure access of rights holders to remedies and control of the observance of labor rights (particularly, consideration of collective and individual labor disputes, regional representatives of the Ombudsperson office, labor inspection, etc.); viii) The state and non-state institutions which provide employment services, generalize data, and analyze the situation in the respective area (state and non-state employment services, economic and social departments of regional state administrations); ix) International organizations (e.g. ILO); x) legal practitioners. *Questions for the interviews are provided in Annex A.5.*

*List of interviewees is provided in Annex A.6.*

**Questionnaire for CSOs hub representatives and the regional coordinators of the Ombudspersons Office** to get the voice of the rights holders representatives.

*Questionnaire is provided in Annex A.5.1.*

**All-Ukrainian poll «Thoughts and views of the population of Ukraine» (Omnibus)** was conducted by the Kyiv International Institute of Sociology in November – December 2021. During the study, the opinions and views of adults in Ukraine (aged 18 and older) on various socio-political and socio-economic issues were studied. The main stages of the study included the development and programming of the questionnaire (using OSA software for CATI), generating mobile phone numbers, conducting interviews with respondents, quality control of work performed, preparing the final data set, weighing the data set, preparing tables of one- and two-dimensional distributions. The survey was conducted using computer-assisted telephone interviews (CATI). The field phase of the study lasted from 03 to 11 December 2021. A total of 2,000 interviews were conducted as part of the study.

*Questionnaire is provided in Annex A.3.*

## SECTOR AND MARKET STUDY

Among different sectors in Ukraine, three sectors were selected for the purpose of this Report – IT, agricultural and retail sectors. These sectors were selected based on their role in the country's development in the COVID-19 pandemic and export capacity, as well as their human rights adverse impact including informal employment status. In the first half of 2021 Ukrainian IT companies and specialists paid UAH 6.5 billion for taxes, the biggest taxpayers were small companies (UAH 6.16 billion)<sup>48</sup>. Retail and pharma are two sectors which prospered under the Covid times selling essential goods for citizens. According to the Ukrainian State Statistics Service, Ukraine's retail trade turnover in 2020 was UAH 1,202 billion (\$45 billion), 10 % growth compared to 2019. Regarding the agriculture sector, it was severely hurt by the pandemic, but still remains the most promising sector of the economy and generated in 2020 approximately 9.3% of GDP. Regarding informal employment, the statistics demonstrate that the highest number of informal employed people are in the agricultural sector (first place) and retail (4th place). The three major business associations in Ukraine, namely the European Business Association, the American Chamber of Commerce in Ukraine and the Union of Ukrainian entrepreneurs, as well as sector associations – IT, agro and retail associations, were reached to participate in the first round of in-depth interviews and engage companies to fill out the survey on business and human rights.

**Focus groups.** The following groups of market actors were identified as priority to participate in the focus groups during the study:

- a. Human resources/CSR/compliance managers of large, medium-sized and small IT, agricultural and retail companies;
- b. representatives of business associations and employers' organizations on national and regional levels, international development partners and investors.

**In-depth interviews.** Interviews targeted the following groups of respondents: i) representatives of national and sectoral business associations, ii) investors and international development partners, iii) representatives of IT, agricultural and retail companies.

*Questions for the interviews are provided in Annex A.5.*

<sup>48</sup> How much taxes does the IT industry of Ukraine pay. Source: <https://biz.censor.net/r3284724>.

*List of interviewees is provided in Annex A.6.*

**Questionnaire for representatives of businesses** was disseminated by the European Business Association, the American Chamber of Commerce in Ukraine, the Union of Ukrainian entrepreneurs and sectoral associations (IT, retail and agro) to their members.

Due to time restrictions and limited sources the **following limitations** could be found:

- The survey that was conducted for rights holders research did not involve rights holders directly. The survey was developed and conducted for rights holders representatives (CSOs hubs) and regional coordinators of the Parliamentary Commissioner for Human Rights.
- Field visits that were planned at the very beginning of the research to meet with rights holders and affected communities could not be held because of COVID-19.
- The analysis of jurisprudence (court decisions of the Ukrainian courts) was limited by key cases to show the most key BHR issues.
- The market research was conducted through dissemination of questionnaires via key business and sectoral business associations which means that not many representatives of companies will reply, the research won't be quantitative. Thus such survey will be used to understand the business trends in terms of business and human rights.
- Only three sectors of the economy (IT, agricultural and retail) were analyzed in more detail to understand barriers and market opportunities for business enterprises in Ukraine. The research is qualitative and does not assume a representative business survey.
- Selected participants for focus groups won't be selected representatively, so the results of the discussions will be qualitative.
- Mentioned limitations could be removed during the new larger 3-5-year project aiming stepping up the implementation of the UNGPs.

## BHR INTERNATIONAL BEST PRACTICE STUDY

**Desk research** of the respective best and good practices in BHR (global, regional and per country) with a specific focus of this practice being applicable for the Ukrainian context and needs.

Desk research includes:

- a. Mapping of the major relevant publications and studies on the BHR issue globally, at the regional level and per country; due to the huge amount of publications, selection was based on the recent developments and those good practices or lessons learnt that might be applicable to the Ukrainian context;
- b. Some other relevant research and case studies are indicated by the involved key-informants during the interview stage and added when applicable;
- c. Specific focus is on research on each of the UNGPs Pillars and those country or business best and good practices which are relevant and applicable for Ukraine; these case studies are also subject to review with some key-informants;
- d. One of the key focuses is on the practices of a NAP drafting and implementation with key lessons learnt and their (lessons) possible transformation into a number of steps Ukraine might follow in the future (suggestions for the road map for a NAP).

**Semi-structured interviews** with key knowledge bears – key informants (being chosen from various expertise fields according to their focus on each of 4 key research topics identified in ToR, those being 1-3 UNGPs pillars and NAP country implementation experience and lessons learnt).

*List of interviewees is provided in Annex A.6.*

Though the full list of questions for the semi-structured interview is quite extensive (*please, see Annex A5.8-A.5.10. Questionnaires for key-informants*) there was a core list of questions that feed this study:

- a. What were the reasons to start the BHR discussion within the country and who was the first driver – the state or business;
- b. Lessons learnt from the first NAP in a given country: driving force and multi- stakeholders approach;
- c. Did the country manage to reach policy coherence on BHR or at least start the discussion about such necessity within the first NAP and approach some legal changes;
- d. Good practices of the state actors involvement and bridges built between various stakeholders during the NAP drafting, implementation and further;
- e. Existing remedies and their effectiveness and/or limitations, including the good practices of non-judicial remedies developments (both at the state level and within businesses own grievance mechanisms) etc.

**Written interviews** with business entities and other key-informants (based on the interview questionnaire).

The desk research part of the study as well as the key-informant interviews apart from being an extensive and unique tool to harvest a lot of countries' experience in implementing BHR, also brought some limitations that had to be taken into account when drafting the final report – time, legal context and some economic factors that influenced the BHR development.

The time frames for the current research were very short, and because of the extensive available information on best and good practices, it was decided to look at the nearest applicable countries approaches (the EU and Eastern Europe because of the similar legal and historical contact) but also where appropriate add global case studies, if lessons driven from that global experience are applicable to the current situation in Ukraine in terms of the context and legal framework.

During the desk research stage and also the interview stage all received results and hypotheses were explored, evaluated, peer reviewed and grouped. All relevant data for the final report was validated and referenced with the footnotes and the bibliography.

## 1.4. QUALITY ASSURANCE

The detailed methodology and approach of the research was developed together with UNDP BHR team and based on the terms of references developed by UNDP (*see Annex A.1*). Further, the structure, methods, and approaches were finetuned and adjusted during inception workshops and close consultations with UNDP.

As the time of implementation was short, close teamwork and coordination was key. This said, there were more researchers involved as well as the team was supported by the research assistant, Olena Mytnyk, the UNDP BHR team (overall steering and peer review by Nicolaj Sonderbye, Senior Democracy and Human Rights Advisor) and a sociological company.

The researchers involved in the project held regular weekly meetings to ensure exchange of findings and discuss key issues, as well as to monitor progress and to be able to identify any gaps, and issues that might affect the timely delivery of work, in case they arise. A shared working space on Google disk was created to support collaborative work among the team.

The materials used were selected on the basis of the input and perspectives they were able to provide for the study, with different sources of information used to analyse the situation and to review and cross-check the information.

Sources such as websites of official bodies, CSOs reports, news, court decisions, companies' reports etc. were used, ensuring simultaneously that they were all assigned the proper weight and efforts were undertaken to qualify conclusions made based on them.

Data integrity, quality, and reliability were maintained at every stage of the project.

The preliminary findings of the research were presented and discussed for further validation on 2nd of December 2021 during a sitting of the Intersectoral Platform on Business and Human Right coordinated by the Parliamentary Commissioner for Human Rights Liudmila Denisova and UNDP with participation of the Ministry of Justice of Ukraine, Ministry of Economy of Ukraine, Federation of Trade Unions of Ukraine, National Academy of Sciences of Ukraine, Federation of Employers of Ukraine, European Business Association.

## 2. STATUS AND KEY FINDINGS ON BUSINESS AND HUMAN RIGHTS IN UKRAINE

This section provides an overview of global and regional trends defining the future of BHR in Ukraine. It maps and analyses BHR lessons learned in Ukraine, synthesizes the positive studies and opportunities and explores options on how to build on these for the implementation of the UNGPs. The section identifies key barriers/challenges and opportunities for rights holders, in particular to obtain a decent work and with regard to business adverse human rights impact on communities. It also identifies gaps/needs/challenges for enterprises adhering to “responsible business conduct” and assesses where there may be particular prospects for decent jobs and sustainable growth.

# 2.1. OVERALL TRENDS DEFINING THE FUTURE OF BHR IN UKRAINE

## 2.1.1. INTERNATIONAL CONTEXT – A DRIVE TOWARDS A NEW GLOBAL BUSINESS MODEL

This year in June 2021 we marked the tenth anniversary<sup>49</sup> of the UNGPs. They are today recognized as the authoritative business and human rights common framework providing clear principles for the state and the businesses to prevent and address business-related human rights abuse<sup>50</sup>. The UNGPs have facilitated the socialisation of human rights norms among businesses, a prerequisite to ensuring corporate respect as well as corporate accountability for human rights<sup>51</sup>.

A growing number of governments and companies around the world have adopted the narrative of business and human rights, and the bar is now set higher. Moving from corporate social responsibility to Business and Human Rights is a critical one achievement of the first decade<sup>52</sup>. During the last 3-5 years, we see **a significant drive towards a new global business model and new 'business** and human rights thinking' from states, policy makers, legislators, investors and consumers. 'BHR is essentially about reorienting the role and purpose of corporations in society.'<sup>53</sup>

**At the international level**, since 2014, a legally binding instrument on BHR has been developed under the UN auspices. The third revised draft of this instrument released in August 2021<sup>54</sup> with 'acknowledging that all business enterprises have the capacity to foster sustainable development through an increased productivity, inclusive economic growth and job creation that respect internationally recognized human rights, labour rights, health and safety standards, the environment and climate, in accordance with relevant international standards and agreements' in preamble. The sixth round of discussions on the draft International legally binding treaty on business and human rights was held in October 2021<sup>55</sup>.

49 Stocktaking on the 10th anniversary of the UNGPs, <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPS10.aspx>. See also Business and Human Rights week initiated by the Ukrainian Parliament Commissioner for Human Rights within the Business and Human Rights Week on 10th Anniversary of the UN Guiding Principles in Business and Human Rights, <https://bit.ly/33fh2VE>.

50 Concept Note 10th United Nations Forum on Business and Human Rights 29 November –1 December 2021 The next decade of business and human rights: increasing the pace and scale of action to implement the Guiding Principles on Business and Human Rights, <https://www.ohchr.org/Documents/Issues/Business/2021ForumConceptNote.pdf>.

51 Surya Deva, From 'business or human rights' to 'business and human rights': what next?, Research handbook on human rights and business, 2020, p. 3.

52 Livio Sarandrea, Business and human rights; what to expect from a 10-year-old, JUNE 17, 2021, <https://www.undp.org/blog/business-and-human-rights-what-expect-10-year-old>.

53 Surya Deva, Ibid., p. 12.

54 Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>.

55 See 7th Session of the UN Intergovt. Working Group on a proposed treaty on business and human rights, <https://www.business-humanrights.org/en/latest-news/7th-session-of-the-un-intergovt-working-group-on-a-proposed-treaty-on-business-and-human-rights/>.

One of the clear manifestations of this significant trend is an **EU legislative initiative** that calls for the urgent adoption of a binding EU law that ensures companies are held accountable and liable when they harm – or contribute to harming – human rights, the environment and good governance. It must also guarantee that victims can access legal remedies<sup>56</sup>. On 10 March 2021, the European Parliament adopted a draft Directive on Corporate Due Diligence and Corporate Accountability. This now has the potential to become mandatory EU law, following which it would need to be implemented by Member States within two years<sup>57</sup>.

It aims to oblige companies to carry out effective human rights, environmental and good governance due diligence, create a liability regime allowing to hold them accountable and liable for not doing so, and provide victims with access to legal remedies<sup>58</sup>. These changes will also have a significant impact on the situation outside the EU, as, for example, companies from Eastern Europe and Central Asia are part of the supply chains of companies registered in the EU<sup>59</sup>. *Developments in the EU level that could impact Ukraine significantly are provided in Annex H.*

Far-reaching effect of the UNGPs' endorsement was the emergence of national action plans on business and human rights. The EU, followed by the Council of Europe and the UN Human Rights Council, has called for the development of NAPs 'to promote the implementation of the UNGPs within their respective national contexts'<sup>60</sup>. By the end of 2021, 30 states have published NAPs articulating their priorities and actions to implement the Guiding Principles<sup>61</sup>, while the other 15 have been developing such a plan, including Ukraine<sup>62</sup>.

The EU Action Plan on Human Rights and Democracy 2020-2024<sup>63</sup> reflects clearly this important trend focusing especially on developing tools and training material on business and human rights, responsible business conduct, private/public sector dialogue and due diligence. It is setting new standards for businesses.

More and more European countries are adopting **domestic legislation** aimed at establishing mandatory tools for business to assess their impact on human rights (France, Great Britain, the Netherlands, Germany, Norway).

There is a significant change in the attitudes of companies, which is due to changes in the attitudes and expectations of employees, consumers and society. CSOs monitor the functioning of companies in terms of human rights. Investors who a few years ago did focus on the protection of ecology and environment, now pay more and more attention to social issues. Investors' tools to assess possible risks of negative business impact on human rights are being developed, and the ESG strategies (ecology, social issues, governance) are being actively developed<sup>64</sup>.

National courts are increasingly turning to standards of responsible business conduct in assessing the actions of certain economic operators, including supply chains and human rights violations committed in other countries. As a result, EU businesses today are increasingly aware that they need to manage and mitigate.

56 European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html).

57 MEPs: Companies must no longer cause harm to people and planet with impunity, Press Releases, <https://www.europarl.europa.eu/news/en/press-room/20210304IPR99216/meps-companies-must-no-longer-cause-harm-to-people-and-planet-with-impunity>.

58 European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability 2020/2129(INL) Annex.

59 Report on the results of the round table "Best corporate practices to respect human rights: international experience and Ukrainian context" June 14, 2021, <https://rm.coe.int/report-al-eng-/1680a2ffc>.

60 DIHR and ICAR, 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks' (2014).

61 <https://globalnaps.org/country/>.

62 DIHR, 'Business and Human Rights National Action Plans – A Snapshot in 2020' (2020).

63 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020JC0005>.

64 See Putting the "S" in ESG: Measuring Human Rights Performance for Investors CASEY O'CONNOR AND SARAH LABOWITZ, 2017 NYU Stern Center for Business and Human Rights, [https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/14896888547\\_54/Metrics-Report-final-1.pdf](https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/14896888547_54/Metrics-Report-final-1.pdf).

The business and human rights standards implementation in Ukraine is an important element of the Ukrainian legal system harmonizing with the EU legal order and creating favorable conditions for Ukrainian companies operating in the EU markets and European companies operating in Ukraine, including Ukrainian companies involved in European supply chains.

The EU-Ukraine Association Agreement<sup>65</sup>, including the Deep and Comprehensive Free Trade Area, was signed in 2014. It is an exceptionally comprehensive (over 2140 pages in total) 'cross-pillar agreement' aiming at political and economic integration between the parties. It covers the broad spectrum of relations between the parties, including cooperation and convergence in the field of foreign and security policy and the area of freedom, security and justice. It also regulates trade and trade-related matters, economic and financial cooperation.

The legislative approximation is required in a vast number of areas, for instance, public procurement (Article 153), environment policy (Article 363), corporate governance, accounting and auditing (Article 387), consumer protection (Article 417).

The closest to the BHR agenda provisions of the EU-Ukraine AA are the following two:

- Article 293 (chapter 'Trade favouring sustainable development') represents the so-called 'social clause' and obliges parties to foster trade in products contributing to sustainable development, particularly those produced within the fair and ethical trade schemes and schemes respecting CSR and accountability principles.
- Article 422 (chapter 21 'Cooperation on employment, social policy and equal opportunities') prescribes that the parties: shall promote [CSR] and accountability and encourage responsible business practices, such as those promoted by the UN Global Compact of 2000, the [ILO Tripartite Declaration] of 1977 as amended in 2006, and the [OECD Guidelines] of 1976 as amended in 2000.

Under Article 463(3), the Association Council, an institution authorised to update or amend the incorporated *acquis* as listed in respective annexes, «may» do that 'to take into account the evolution of EU law [however it] is not automatically obliged to consider updating or amending the annexes when a corresponding EU act is modified'<sup>66</sup>.

The National Human Rights Strategy and the corresponding action plan for its implementation shows, the integration of BHR policy into the European integration agenda allows to increase the probability of its implementation in the future. As the process of updating the Action Plan for the implementation of the Association Agreement between Ukraine and the EU is currently underway, there is an opportunity of integrating business and human rights issues into the European integration agenda, which is founded in common values and the respect for democratic principles, rule of law, good governance, decent jobs and human rights<sup>67</sup>.

**The following global trends can accelerate positive changes in Ukraine:** (a) Enhance collective action to tackle systemic challenges; (b) Growing understanding of the need for legal requirements based on the UNGPs, in particular changes in European legislation (European Green Deal, EU Mandatory Human Rights Due Diligence Directive, EU Corporate Sustainability Reporting Directive) and their impact on companies working in EU and with

65 Association Agreement between the European Union and Ukraine, <https://www.kmu.gov.ua/en/yevropejska-integraciya/ugoda-pro-asociacyu>.

66 See detailed: Ihor Konopka Getting hard to resist Prospect of mandatory human rights due diligence in Ukraine, <https://lup.lub.lu.se/luur/download?fu=downloadFile&recordId=9058731&fileId=9058751>.

67 This recommendation is based on: "Empowerment And Accountability Way Forward", Nicolaj Sonderbye, UNDP Ukraine PDF, UN Business and Human Rights Forum, November 30th 2021: 'Moreover, to drive the NAP process forward, and facilitate a multi-stakeholder inclusive process, UNDP strongly recommends that BHR is integrated into the next updated Ukraine-EU Association Agreement and anchored with the Deputy Prime Minister for EU Integration. It also seems particularly relevant to link it with the EU Green Deal. With the upcoming EU Directive on Mandatory Human Rights and Environmental Due Diligence, as well as the increase in EU Member States' human rights and environmental due diligence regulations, it is of key importance to prioritise BHR and prepare Ukraine for the future. Trade with the EU and its Member States is of significant importance to Ukraine, with approximately 40-45 percent of its total exports going to the EU market.' [https://static.sched.com/hosted\\_files/10unforumbhr2021/7a/Empowerment%20and%20Accountability%20-%20Way%20Forward%20-%20Nicolaj%20Sonderbye%20-%20UNDP%20Ukraine.pdf](https://static.sched.com/hosted_files/10unforumbhr2021/7a/Empowerment%20and%20Accountability%20-%20Way%20Forward%20-%20Nicolaj%20Sonderbye%20-%20UNDP%20Ukraine.pdf).

EU companies; (c) Examples of other states that already have adopted the NAP on UNGPs; (d) Seize financial sector Environmental, Social and Governance (ESG) momentum and align the S in ESG with the UNGPs performance requirements<sup>68</sup>; (e) International cooperation and support of the UNGPs implementation, UNGPs integration into existing structures, programmes and activities, at the global, regional and national levels; (f) Requirements from clients, partners and investors (results from in-depth interviews).

## 2.1.2. NATIONAL POLICY AND LEGISLATIVE CONTEXT

Number of policy and legislative gaps revealed by the NBA (2019) pointed to the lack of coordinated government policy regarding business and human rights<sup>69</sup>. At the same time, during last 2 years, Ukraine has seen significant positive changes in the implementation of human rights and business standards:

- a. The National Strategy for Human Rights includes Chapter 16 on Business and Human Rights (approved by the Decree of the President of Ukraine of March 24, 2021);
- b. The Action plan to implement the Concept of implementation of state policy on promoting social responsible business in Ukraine for the period up to 2030 (approved by the Cabinet of Ministers of Ukraine from July 1, 2020 № 853-r) includes the promotion of principles and standards of social responsible business in Ukraine in accordance with the OECD Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development, the UN Guiding Principles on Business and Human Rights and the UN Global Compact, as well as the positive experience and practice of business entities in socially responsible business;
- c. The National economic strategy contains a separate section on vulnerable persons;
- d. The National Strategy for providing barrier-free space;
- e. The Platform on the inclusion of vulnerable persons in business activities (DiyaBusiness) was created and promoted;
- f. Legislative initiatives on the ensuring employment of vulnerable persons, in particular people with disabilities, and a number of other initiatives.

Since 2019 **implementation of the UN Guiding Principles on Business and Human Rights is one of the strategic activities of the Parliamentary Commissioner for Human Rights (the Ukrainian Ombudsperson):**

- a. In 2019, the BHR experts platform was initiated by the Ombudsperson and brought together representatives of CSOs, human rights defenders, and scholars to cooperate on BHR issues;
- b. In 2020, the tool “Business and Human Rights in times of COVID-19” was prepared on the initiative of Ukrainian Ombudsperson in cooperation with Danish Institute for Human Rights<sup>70</sup>;
- c. In 2021, the Ukrainian Ombudsperson Lyudmila Denisova initiated ‘The Week of Human Rights in the Area of Business’, dedicated to the 10th anniversary of the UN Guiding Principles on Business and Human Rights<sup>71</sup>;
- d. During the meeting with UN Resident and Humanitarian Coordinator in Ukraine Osnat Lubrani, Ms. Denisova stressed the need to strengthen bilateral cooperation in the implementation of the UNGPs, improve the

68 UNGPs 10+, Ibid. VII.

69 See details in National Baseline Assessment on BHR in Ukraine, 2019, <https://minjust.gov.ua/m/informatsiya-schodo-rezultativ-provedennya-natsionalnogo-otsinyuvannya-bazovih-pokaznikiv-u-sferi-biznesu-ta-prav-lyudini-v-ukraini>.

70 UN Guiding Principles on Business and Human Rights, <https://old.ombudsman.gov.ua/ua/page/sehl/profile-law/ker%D1%96vn%D1%96-princzipi-oon-z-pitan-b%D1%96znesu-%D1%96-prav-lyudini/>.

71 The events took place between June 11-18, 2021. It included a series of events, in particular: round table “Best corporate practices to respect human rights: international experience and Ukrainian context”, a quiz to test basic knowledge on business and human rights, training on business and human rights in the digital environment, competition of students’ research papers, collection of proposals to take measures aimed at implementing the UNGPs in Ukraine, etc.

institutional capacity of the national preventive mechanism and raise awareness of Ukrainian society about human and civil rights and freedoms<sup>72</sup>;

- e. The Secretariat of the Ukrainian Parliamentary Commissioner for Human Rights participated with reports at the UN Business and Human Rights Forum (November 2020) and in the Regional Forum on Business and Human Rights in Eastern Europe and Central Asia (2020, 2021), emphasizing Ukraine's commitment to implementing standards of responsible business conduct.

The Action Plan to implement the National Strategy was adopted by the Ukrainian Government in June 2021<sup>73</sup>. But it includes just one action to implement BHR chapter of the Strategy: to study best practices to implement the UNGPs (experts, representatives of academia, CSO and business associations communicated a lot and developed a joint proposal to include more than 50 actions, but all of them were rejected by the Ministry of Justice). During the Kharkiv Forum, 21 of September 2021, the Deputy Minister of Justice Valeriya Kolomiets, when asked about so limited scope of actions on BHR in the Action Plan<sup>74</sup> responded that the governmental institutions need to be realistic in identifying the actions that should be implemented, in particular they should consider the issue of lack of funding of such actions (the same position was voiced during the stakeholders consultations provided by the UNDP Ukraine team in 2021). It was also noted that the Ministry of Justice is responsible for human rights policy in general, but it could not be responsible for the BHR policy, and Ukraine needs to indicate the governmental institution responsible for the UNGPs implementation, in particular for the development of the stand-alone NAP.

In Ukraine, there are other program documents that have some BHR components as well (*see Annex E*). But a key characteristic of the UNGPs implementation process in Ukraine today is **the lack of policy coherence**: despite the BHR chapter in the National Strategy for Human Rights, other policy documents, in particular in the economic sphere, are adopted with disregard of the concept of business and human rights; there is no governmental institution responsible for the UNGPs implementation and for policy coherence; business and human rights issues are dealt with by individual representatives of different government bodies (mainly on their personal enthusiasm) who are not decision-makers.

It should be noted also that **decentralization** as one of priorities of Ukrainian national policies impacts on business and human rights agenda in Ukraine significantly and should be taken into consideration as a cross-cutting element. The Concept of Reforming Local Self-Government and Territorial Structure of Power was approved in April 2014. Thereafter, the Action Plan was approved to implement the Concept, thus launching the reform<sup>75</sup>. The reform transfers a significant part of powers, resources, and responsibility from the executive branch of the government to the bodies of local self-government.

Local councils (self-government) are indicated in all strategic and program documents as actors who are responsible for the implementation of these documents on the local level. BHR Chapter of the National Strategy for Human Rights mentions as key tasks of the Strategy to raise capacities of the local councils (self-governments) to implement UNGPs, Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business<sup>76</sup>.

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72 UN Resident Coordinator in Ukraine and Ombudsperson agreed on cooperation on a number of strategic areas, 19 February 2021, <https://ukraine.un.org/en/113079-un-resident-coordinator-ukraine-and-ombudsperson-agreed-cooperation-number-strategic-areas>.

73 "Action Plan for the Implementation of the National Strategy in the Sphere of Human Rights for 2021-2023, approved by the order of the Cabinet of Ministers of Ukraine of June 23, 2021 № 756-r", <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-dij-z-realizaciyi-nacionalnoyi-strategiyi-u-sferi-prav-lyudini-na-20212023-roki-i230621-756>.

74 Valeria Kolomiets, Deputy Minister of Justice of Ukraine during Kharkiv Forum, 21 September 2021, <https://youtu.be/5d0cOEwKMns?t=16385>.

75 See more: State Policy, Legislative Groundwork, and Provisional Results of the First Stage of Decentralisation of Power in Ukraine, <https://decentralization.gov.ua/en/about>.

76 See: Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, <https://rm.coe.int/human-rights-and-business-recommendation-cm-rec-2016-3-of-the-committee/16806f2032>.

As it was mentioned in the National Baseline Report ‘Sustainable Development Goals: Ukraine’<sup>77</sup>

‘Ensuring the sustainable development of towns, villages and communities to create a favourable living environment will require shifting the focus from administratively approved plans to strategizing for development consistent with the principles of universal design – i.e. for all people, including those with disabilities, women, children, elderly people etc. This would require partnerships, coordination and the inclusive participation of local communities, local authorities, civil society and businesses. The development strategies at the local level should be built based on principles of transparency, inclusiveness and scientific justification, with the simultaneous introduction of a system of indicators for further monitoring and public oversight of the process of implementation.’

Local councils could play an important role in implementation of the UNGPs.

At the same time, the decentralization reform process does not take into account the role of business for the development of a particular community<sup>78</sup>.

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77 National Baseline Report ‘Sustainable Development Goals: Ukraine’, 2017, p. 85, [https://www.undp.org/content/dam/ukraine/docs/SDGreports/SDGs\\_NationalReportEN\\_Web.pdf](https://www.undp.org/content/dam/ukraine/docs/SDGreports/SDGs_NationalReportEN_Web.pdf).

78 See for example, there is a very formal guide, without a human rights based approach and without explanation how the interests of children, people with disabilities or incapacities should be taken into account, <https://decentralization.gov.ua/uploads/library/file/347/1.pdf>.

## 2.2. A RIGHTS HOLDERS' PERSPECTIVE

The state and business should keep in mind 'not only all human rights, but also the holders of these rights. Human rights are not mere abstract aspirations; rather, they are vital to the dignity and development of real human beings. Keeping rights holders on the radar should help corporate executives in overcoming business dilemmas and making correct decisions about human rights'<sup>79</sup>.

The section discovers the common business-human rights related abuses in Ukraine. The most vulnerable groups and high-risk business sectors are overviewed.

The attention is paid to key challenges to ensure corporate responsibility for human rights, in particular on labor issues (informal employment, unprotected status of gig-workers, gender pay gap and gender segregation of labour market, youth unemployment, wage arrears, weak guarantees of the freedom of association and the right to collective bargaining, forced labor), occupational safety and health, environmental safety, violence and prosecution of human rights defenders, discriminative practices as part of particular business models (e.g. discriminative advertising, lack of reasonable accommodation), lack of effective mechanisms for communication between local communities and business, etc.

The lack of access to effective state and non-state remedies to protect increases the vulnerability of rights holders in situations of business-related abuses.

### 2.2.1. BUSINESS'S ADVERSE IMPACT ON HUMAN RIGHTS IN UKRAINE

Based on the key informant interviews, focus group discussions and surveys made **the most common business-human rights related abuses reported at the time of writing are the following:**

#### I. VIOLATIONS OF LABOUR RIGHTS INCLUDING POOR WORKING CONDITIONS.

The most serious and widespread violation of labor rights in Ukraine is informal employment. During focus groups that were conducted, respondents called this type of violation the most common in Ukraine. In some areas, such as the agricultural sector, informal employment is a common practice rather than an exception. Also, informal employment, according to respondents, is more common in small businesses and less in large ones. In this context, the most vulnerable categories are low-skilled workers.

<sup>79</sup> Surya Deva, From 'business or human rights' to 'business and human rights': what next?, Research handbook on human rights and business, 2020, p. 11.

Just for example, according to the official information of the State Labor Service of Ukraine, during 3 months of the inspection campaign, 3,030 inspection measures were carried out and 11,724 informal employees were admitted. As usual, the largest number of informal employees was found in trade (2,960), catering (2,359) and agriculture (2,405)<sup>80</sup>.

It should be noted also that the State Labor Service of Ukraine conducts an extensive information campaign<sup>81</sup> to raise awareness of employees about human rights risks caused by informal employment, as well as to inform employers about legal risks. An element of this campaign is also to inform employers about the benefits they receive in the case of formal employment of workers (see picture).

### What are the benefits of employers in case of formal employment?



#### Higher labor productivity

Your employees are happy and motivated. They change jobs less often. They are more proactive than informal workers.



#### Access to investments and new markets

You can take loans and attract investments to expand your business, find international partners, export goods and services.



#### Decrease in direct and indirect costs

You do not incur losses due to production stoppages, staff turnover, loss of reputation.



#### Stable competitive advantages

You compete fairly in terms of product quality and price.



#### Qualified team

Formal employment, comfortable working conditions and social guarantees will help you attract highly qualified specialists to your team.



#### Incentives from the state

By creating new jobs, you can receive partial compensation of the unified social contribution, salary and training costs for employees.



#### Social Responsible Business Image

Consumers give preference to businesses that deal with social issues, operate honestly and openly.



#### No fines

Despite the well-founded arguments, which are also traditionally used in the broader call to business to respect human rights, practice convincingly demonstrates that such arguments do not convince companies to refuse from business models based on informal employment.

80 Results of the inspection campaign to identify informal employment relationships, <https://dsp.gov.ua/main-news/pidsumky-inspektsiinoi-kampanii-z-pytan-vyivlennia-neoformlenykh-trudovykh-vidnosyn/>.

81 Booklet for employers, [https://dsp.gov.ua/wp-content/uploads/2021/06/buklet\\_dlya\\_robotodavciv\\_14\\_06\\_2021\\_compressed.pdf](https://dsp.gov.ua/wp-content/uploads/2021/06/buklet_dlya_robotodavciv_14_06_2021_compressed.pdf).

As focus groups showed, for most employees there is no added value in formal employment. These people prefer to receive additional funds here and now, rather than waiting for a future pension, the size and nature of which remains unclear. Other aspects of formal employment and regulation of the employer-employee relationship (which protects the rights of both parties) are not of value to respondents. During focus groups, many respondents noted that the workers themselves were not interested in being aware of their rights, in particular in the context of formal employment. Most respondents say that large companies in general are more likely to offer formal employment than small businesses. This applies in particular to large agricultural holdings.

According to the State Labor Service, the following forms of undeclared labour are widespread in Ukraine:

- 1) Informal employment in the formal sector: You work for a registered company, but you do not have an employment contract
- 2) Informal employment in the informal sector: You work for unregistered employers
- 3) Concealment of time worked and part of salary: You have an employment contract, but you receive part of the salary in an «envelope»
- 4) Disguised employment: Instead of an employment contract, you entered into a civil law agreement as a natural person or an agreement as a natural person-entrepreneur
- 5) Undeclared part-time work: You have an official place of work and additionally perform work without an employment contract

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), it's concerned at the **growing wage arrears**, which amount to nearly 3.33 billion hryvnias, and at the lack of access by unpaid workers to effective remedies. The Committee recommends that Ukraine ensures that all the regions have the material and human resources required to effectively monitor working conditions and that the orders of labour inspectors are duly complied with and implemented<sup>82</sup>.

There are special challenges of the **gig-economy**. Technology has driven the emergence of the gig economy, creating more seemingly flexible opportunities for people to earn income, such as ridesharing services like Uber and Lyft, or freelance labour matching platforms. Within these new business models, unique business relationships have emerged which do not often fit traditional labour frameworks. For example, workers with tasks that resemble those of regular employees may be classified as “self-employed” individuals, “freelancers”, or “entrepreneurs”, without access to the same rights and benefits legally due to regular employees. Due to the lack of guarantees similar to those of official employees, gig workers put their customers’ and their own health at risk, because even if there are signs of disease, financial pressures may prevent them from staying home when ill. Employers of such workers often neither provide them with personal protective equipment and disinfectants, nor instruct on measures for protecting themselves and customers. In the region problem of informal employment is topical, COVID-19 could make it even more sensitive, especially in the context of using digital tech<sup>83</sup>.

82 Concluding observations on the seventh periodic report of Ukraine, Committee on Economic, Social and Cultural Rights, 2020, <https://uhri.ohchr.org/en/search-human-rights-recommendations>.

83 Regional study on Business and Human Rights in Eastern Europe and Central Asia, Beata Faracik, Jernej Letnar Cernic, Olena Uvarova, UNDP Istanbul Regional Hub, 2021, forthcoming.

Available statistics still show a large **gender gap** in employment, wages, women's leadership positions, etc.<sup>84</sup>. CESCR recommends that Ukraine should continue its efforts to promote increased participation of women in employment in the public and the private sectors; promote women's full participation in the labour market, including by developing adequate and affordable day-care solutions and encouraging men to use their right to paternity leave and paid parental leave; reduce the gender pay gap, including by fully incorporating the principle of equal pay for work of equal value into the law on ensuring equal rights and opportunities for women, and developing methods for an objective appraisal of the work to be performed with a view to developing a classification of jobs that is free from gender bias<sup>85</sup>.

**Forced labour** is also a human rights violation still relevant for Ukraine<sup>86</sup>.

## II. LACK OF GUARANTEES OF OCCUPATIONAL HEALTH AND SAFETY.

In Ukraine, according to statistics, 16 million workers, 4,313 accidents at work were recorded. However, according to experts, reporting is incorrect or impossible, for example in the territories not under Ukraine's control. According to the State Labor Service, 68.7% work in conditions that do not meet sanitary and hygienic standards<sup>87</sup>. Participants of the focus-groups paid attention to the lack of guarantees of occupational health and safety.

In times of COVID-19, it creates some other risks for workers' rights that should be addressed. Examples of these risks include the lack of proper telecommuting skills among elder people, the need to balance family and professional responsibilities when preschool and school institutions have suspended work, the lack of computer support or proper Internet connectivity in rural areas, and the lack of proper workplace equipment for people with disabilities, etc. Continuous pandemic health risks, economic crisis in some industries, limited social connections as well as significant changes in the daily routines and new professional and social obligations – these and other factors significantly increased the feeling of stress for people, which can provoke domestic violence. In some countries, governments have drawn the attention of employers to their specific role in countering and preventing domestic violence<sup>88</sup>.

## III. VIOLATIONS OF MINIMUM AND LIVING WAGE LEGISLATION.

During the focus groups, participants reported various cases of violations of the law on the minimum wage. In one case, the woman was registered at the labor exchange and received appropriate social payments each month. After she got informal employment, her employer said she would pay her the difference between the money she receives at the labor exchange and the minimum wage.

Overtime is often not paid by the employer. Working overtime is considered the norm in many companies. The problem is most often mentioned by agricultural workers, but it is also significant in other groups, especially for those professions where wages depend on production or the number of working hours.

Unpaid internships and non-payment of wages after the end of the probationary period. This problem was mostly articulated by young people.

84 Interim evaluation Implementation of the recommendations of the Universal Periodic Review (2017-2020), Stakeholder Report to the Interim Report (third cycle), <https://zmina.ua/content/uploads/sites/2/2020/12/vykonannya-rekomendaczij-universalnogo-periodychnogo-oglyad.pdf>.

85 Concluding observations on the seventh periodic report of Ukraine, Committee on Economic, Social and Cultural Rights, 2020, <https://uhri.ohchr.org/en/search-human-rights-recommendations>.

86 Farm Slaves Rescued in Ukraine, <https://www.iom.int/news/farm-slaves-rescued-ukraine>.

87 Occupational safety and health in the mining industry in Ukraine, ILO: [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms\\_670764.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_670764.pdf).

88 Business and Human Rights in times of Covid-19, Ibid.

#### IV. ENVIRONMENTAL DEGRADATION.

According to the National Strategy for Human Rights, there are a number of significant problems in Ukraine: anthropogenic impact on the environment threatening human health; low level of control over observance of the legislation on environmental protection; ignorance of the population about environmental rights, mechanisms for their implementation and protection.

In this context, mining industries are one the most risky that affect not only the environment but also the social situation of local communities. Environmental pollution, greenhouse gas emissions and related climate change have negative consequences for human health – especially those living in mining, quarrying, etc., regions. The most significant of all minerals in terms of environmental and community impact is coal mining<sup>89</sup>.

Residents of communities affected by pollution face significant barriers to accessing legal remedies. In the case of environmental harm, the plaintiff must prove wrongfulness, damage and causation. In this type of cases defendant can often be seen as the actor whose operations constitute ‘a source of increased danger’. If so, the defendant is subject to the special regime of tort liability, where he/she cannot avoid liability by proving he/she is not at fault. Wrongfulness can be interpreted in two ways: as an interference with the legitimate interests of the plaintiff, or as a non-compliance with relevant regulations. In the first case, wrongfulness is proven every time the defendant pollutes the environment and in that way harms the health of the plaintiff. Instead, in the second case, the defendant’s activity is considered wrongful only if it harms the health of the person through polluting the environment in excess of permissible levels. So far the courts prefer the second interpretation. Therefore to succeed in a civil claim the plaintiff must prove that the emissions of pollutants by the defendant exceed the permissible levels (it may be evidenced by administrative sanctions imposed on the defendant by environmental protection bodies). When it comes to the causal link between environmental pollution and health deterioration, courts rely heavily on expert findings. Since the standard of proof in civil cases remains high<sup>90</sup>, and the jurisprudence has not endorsed any mechanisms to alleviate the burden of proof, plaintiffs can usually succeed only if they can rely on a conclusive expert opinion finding causal nexus between pollution and health deterioration.

According to the focus groups held, there are deteriorating health of the local community, including an increase in cancer incidences, as well as a number of problems associated with respiratory health conditions caused by inhalation of harmful and polluted air, emissions, pesticides, etc.

The focus groups pointed to the specifics of the problems that are quite different in specific cases. In industrial cities there is an exhaustive list of enterprises that impact negatively on the environment. In agrarian regions, there are often a large number of small farms that have a partial impact on the environment. Their impact accumulates and leads to significant environmental problems. Key informants stressed that there is a need to change the general business models to make them more responsible for climate changes.

Several respondents claimed that neither the state and local authorities nor the businesses that cause environmental pollution are open to communicate with environmental activists and listen to the voice of the local communities. At the same time, key informants stressed that it’s a very common situation that local residents are not ready to claim environmental degradation because the local community is highly dependent on businesses that pollute the environment (as usual, such companies are key employers and tax payers for the community). Respondents can clearly see that the majority of the population is ready to accept the negative environmental consequences of business operations if the community receives related economic benefits from such activities. Accordingly, the issue of environmental impact is often not considered as crucial if a company provides additional benefits to local residents (such as road repairs, access to jobs, funding cultural events, etc.).

89 The impact of extractive industries on the environment and climate change and the Extractive Industries Transparency Initiative, 2021

90 See generally Bohdan Karnaukh, ‘Standards of Proof: A Comparative Overview from the Ukrainian Perspective’ 2021 2(10) Access to Justice in Eastern Europe 25.

## V. PRIVACY AND DIGITAL SAFETY.

In 2020, the Parliamentary Commissioner for Human Rights (a NHRI) received 2,031 reports of violations of human rights to personal data protection, which is almost twice as much as in 2019 (1,061). The analysis of the reports received by the Commissioner shows that most of them (almost 1,500) concerned violations of the human right to non-interference in private and family life during the collection of debts on individuals' financial obligations (collector activities). During the monitoring of compliance with the requirements of the legislation on personal data protection in the implementation of activities to collect debts on monetary obligations of individuals (collector activities), the Commissioner conducted 23 inspections and opened 23 proceedings regarding the violation of human and civil rights and freedoms, financial orders have been issued to financial companies by the Commissioner, which are subject to mandatory execution<sup>91</sup>.

According to the survey, half of the respondents (48%) are concerned about the amount of personal data collected about them on the Internet, and 17% believe that in the last 6 months there have been cases of leakage of their data<sup>92</sup>.

The Index of Personal Data Protection study is to analyze companies' policies ensuring respect for the digital rights of users with the focus on personal data protection.

On June 7, 2021 draft law № 5628 on personal data protection was registered in the Ukrainian Parliament<sup>93</sup>. As expected, all standards for personal data protection will be reconciled with the requirements of the EU General Data Protection Regulation (known as the GDPR)<sup>94</sup>.

## VI. LAND RIGHTS.

Focus group participants (small and medium-sized farmers) accused large agricultural companies (agricultural holdings) of signing land lease agreements on unfair terms, taking advantage of their monopoly position and / or low awareness of landlords. Power dynamics and poverty of the local population also plays an important role. Older people and disadvantaged people are most often affected by corporate abuse.

## VI. VIOLENCE AND PROSECUTION OF HUMAN RIGHTS DEFENDERS.

Well known Ukrainian CSOs have reported cases of violent attacks on activists who oppose illegal business practices<sup>95</sup>. According to the CSOs report, in some cases, local authorities, businesses, law enforcement and the courts work together against human rights defenders<sup>96</sup>.

The other category of cases is cases against ecology activists. For example, Technoprivod Invest Group LLC (the ultimate owner of KRONOSPAN HOLDINGS PLS, Cyprus) is planning to build a woodworking plant in the village of A town near Rivne. The technician declared the safety of the planned enterprise for the health of local residents and the state of the environment, creation of new jobs, etc. Local population was very concerned about plans for new

91 Annual and special reports, <https://www.ombudsman.gov.ua/uk/shchorichni-ta-specialni-dopovidi>.

92 At the initiative of the Ministry of Digital Transformation, the Ministry of Interior and with the support of the European Union Advisory Mission (EUCM), a nationwide study «Internet Security» was conducted. The study was conducted by the Kyiv International Institute of Sociology in 903 settlements, [https://docs.google.com/document/d/1cGY11Dw2q\\_jwA3nQ90BRyO9D0fIOkiE\\_/edit](https://docs.google.com/document/d/1cGY11Dw2q_jwA3nQ90BRyO9D0fIOkiE_/edit).

93 Draft law № 5628 on personal data protection, [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=72160](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72160).

94 See Index of Personal Data Protection, <https://uadigital.report/index-of-personal-data-protection-2021-eng.pdf>.

95 Activism 2021: monitoring report on the persecution of activists and human rights defenders in the government-controlled territory of Ukraine (July-September 2021) / O. Vinogradova, A. Moskvichova, T. Pechonchyk, L. Yankina. Kyiv: ZMINA, 2021, [https://zmina.ua/content/uploads/sites/2/2021/10/activizm2021-iiiua\\_web.pdf](https://zmina.ua/content/uploads/sites/2/2021/10/activizm2021-iiiua_web.pdf).

96 Interim evaluation. Implementation of the recommendations of the Universal Periodic Review (2017-2020), <https://zmina.ua/content/uploads/sites/2/2020/12/vykonannya-rekomendaczij-universalnogo-periodychnogo-oglyad.pdf>.

production near their homes. Especially since the village already has manufacturing plants (fertilizer production), whose activities affect the quality of the environment. Residents asked the CSO Ecoclub to study how the planned woodworking (plant) will affect the environment.

Ecoclub compared the characteristics of the expected pollution from the activities of the planned plant with the safe concentrations of pollutants and stated that the safe levels will be exceeded many times (estimated at 10 times). At the same time, the Ecoclub based its conclusions on the study of the environmental impact assessment conducted by the regional state administration (this is its competence), and this assessment is positive, Kronospan itself provided it to the public.

It should also be noted that the existing system of environmental impact assessment contains a conflict of interest. Because, as in the case of Kronospan, the regional state administration first sold the company's land for the construction of the plant, signed a memorandum of cooperation with this company, and then the same regional state administration carries out an environmental impact assessment. Although it is a stakeholder, including due to the fact that the plant will receive tax revenues from the budget<sup>97</sup>.

Activists also protested against Kronospan, protesting against the construction, including slogans such as «Kronospan – the second Chernobyl» and so on. As a result, Kronospan filed lawsuits (one against the Ecoclub, the other against one of the activists) for damaging his business reputation. With a claim for compensation of 150 000 UAH each.

Ecoclub lost the first two instances. But in May 2021, the Supreme Court ruled in favor of the Ecoclub, which contains important positions in the context of business and human rights:

“... the provisions of international agreements to which Ukraine is a party and the norms of national legislation enshrine and guarantee the rights of environmental organizations, as forms of self-organization of civil society, to participate in the discussion and dissemination of environmental information, including location, construction and reconstruction, which can adversely affect the state of the environment.

Thus, the Defendant's dissemination of information, taking into account its content and form of publications (references to the shortcomings of the ATS Report with its own comments, public notice on the preparation of a letter of appeal with these comments) is in line with measures to ensure publicity of environmental impact assessment On environmental impact assessment «, in particular in the form of participation in public discussions.

However, the dissemination of such information to ensure compliance with environmental safety requirements, environmental standards and limits on the use of natural resources in economic activities, stimulating public discussions on these issues, taking into account the above ECtHR standards, can not be considered dissemination of inaccurate and negative information about the person. features of the content of ecological legal relations and guarantees of citizens' rights in the field of environmental protection.

... In a democratic society in the conditions of social and legal state, public participation in solving socio-ecological problems is not only a measure of the realization of civil rights, but also a condition for the development of such a society and state.

In addition, the Court draws attention to the ECtHR's position in the case of *Widesz Aizsardzibas Clubs v. Latvia* (27.05.2004), in which the Court concluded that the applicant organization, as a non-governmental organization specializing in the relevant field, had fulfilled its role. Such participation of the association was important in a democratic society, so in order to carry out its task effectively, the association had to communicate information, facts and facts of public interest, evaluate them and thus promote the transparency of public authorities.” (decision of the Supreme Court of 26 May 2021 in case № 918/132/20)<sup>98</sup>.

97 See also [https://ecoclubrivne.org/kronospan\\_campaign/](https://ecoclubrivne.org/kronospan_campaign/).

98 Decision of the Supreme Court of 26 May 2021 in case № 918/132/20, <https://reyestr.court.gov.ua/Review/97517292>.

At the same time, the other trial – against the activist – is still ongoing. The company did not appear in court 5 times.

There is another case. After the death of one of the Glovo couriers from a traffic accident, the father of the deceased young man asked the company to ensure the safety of the couriers. He asked Glovo to provide couriers with insurance, buy them bicycle helmets, as well as conduct trainings on observance of traffic rules and investigate if they are violated. However, the company responded that the couriers are not employees of the company, but only «platform users». Then the father went to the court. His lawyer informed the public actively about this case. Based on that, Glovo filed a defamation defense lawsuit against the lawyer of the father of the deceased young courier<sup>99</sup>.

## VII. NON-DISCRIMINATION AND PROTECTION FROM VIOLENCE AND GENDER-BASED DISCRIMINATION AND HARASSMENT AT THE WORKPLACE.

According to the latest UNDP human rights perception survey, the share of Ukrainians who consider discrimination as a very serious problem increased to 18.2% in 2020 compared to 14.4% in 2016; another 43% of respondents consider discrimination to be a problem in general, but note that there are more serious problems; the share of those who do not consider discrimination a problem decreased to 20.5% in 2020 compared to 25.7% in 2016<sup>100</sup>.

One key informant reported on widespread of sexual harassment at the workplace in Ukraine. Even an assumption was made towards the presence of unreported cases of rape in the workplace. It was stressed that serious human rights violations take place due to the low level of safety for women, especially in large industrial enterprises, and the lack of mechanisms and policies to respond to discrimination and harassment in businesses environment. The vast majority of female respondents from interviews and focus groups pointed to gender stereotypes and a patriarchal culture as a key root cause for sexism, macho attitudes and behaviour, humiliation of honor and dignity by the CEOs, etc.

The respective issues have been raised by the human rights treaty bodies and the special procedures of the Human Rights Council. Particularly, an emphasis was done on the raising the awareness of employers in the public and private sectors of the prohibition of discrimination in employment against women, including women with disabilities<sup>101</sup>. It was recommended that Ukraine should raise awareness about legal protections against discrimination in the field of employment based on sexual orientation and gender identity, inform lesbian, gay, bisexual, trans and gender diverse persons about their rights at the workplace and provide legal aid services free of stigma and discrimination<sup>102</sup>.

In addition, since 2013, a coalition of civil society organizations created the Ukrainian Corporate Equality Index. The Index is a national survey of corporate policies, rules and practices of private companies to prohibit discrimination at the workplace and support the principle of equality and respect for diversity of employees based on sex, disability, sexual orientation and gender identity.

During the focus groups it was stressed that there is still a gender gap when it comes to the salaries of women and men. For example, in the IT sector ‘women are banally asking for lower wages, and employers agree to it because it benefits them’.

99 Death of Courier on Science Avenue: GLOVO Demands 150 thousand from his Father’s Lawyers, <https://www.newsroom.kh.ua/news/gibel-kurera-na-prospekte-nauki-glovo-trebuje-ot-advokatov-ego-otca-150-tysyach>.

100 ASSESSMENT OF THE HUMAN RIGHTS SITUATION, What Ukrainians know and think about human rights. Assessment of changes in 2020, [https://www.ua.undp.org/content/dam/ukraine/docs/DG/HR4U/UNDP\\_UA\\_humanrights2020\\_infographics\\_UKR.pdf](https://www.ua.undp.org/content/dam/ukraine/docs/DG/HR4U/UNDP_UA_humanrights2020_infographics_UKR.pdf).

101 Committee on the Elimination of Discrimination against Women: Concluding observations on the eighth periodic report of Ukraine, CEDAW/C/UKR/CO/8.

102 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his visit to Ukraine (Human Rights Council Forty-fourth session, 15 June–3 July 2020), A/HRC/44/53/Add.1

The underlined gender pay gap challenge is fully confirmed by the overall labour statistics. Thus, in 2020, the average monthly wages of women was only 79.6% of the average monthly wages of men<sup>103</sup>. The Ukrainian National Economic Strategy for the period up to 2030, within the framework of strategic goal 3, sets the task of ensuring transparent competitions for managers and members of supervisory boards of state enterprises in order to select competent candidates using a gender approach and gender balance<sup>104</sup>.

## VIII. IMPACT OF BUSINESS PROJECTS ON LOCAL COMMUNITIES.

The researchers find that there are particular two situations in Ukraine where the impact of a business has a significant adverse human rights impact on the communities, namely:

- a. Environmental impact caused by both big and small businesses,
- b. Other human rights impact caused by big business projects, such as the construction, metallurgy, extractive and coal mining, agricultural and other sectors

The current normative regulation of the environmental impact assessment procedure gives broad powers to the territorial bodies responsible for conducting such assessment. However, the possibility of their practical and effective application is significantly offset by the following factors: limited human, financial and expert resources of relevant bodies, which are objectively unable to give a qualified assessment of the environmental impact assessment report, and thus order of the interested business entity; authorized territorial bodies do not represent the interests of local communities that could be affected by the relevant activities; Ecology and natural resources units are not independent in their activities, as they are part of local executive bodies<sup>105</sup>.

As for the big business projects, several examples when building construction violates the requirements for taking into account public opinion and proper community information. There is a lack of effective protection mechanisms: formally the law on architectural activities and urban planning is well written, but in practice public hearings are held purely formally (usually attended by local government officials), control mechanisms do not work.

Few successful examples were mentioned (e.g., the case of the Metinvest Group in Mariupol was cited, when civil activists involved the authorities in their protests against environmental pollution, which entailed a significant modernization of the enterprise in order to reduce the negative impact). Also, it has been repeatedly pointed out that such attempts can be successful only with a sufficiently well-developed civil society in the community. At the same time, it was noted that in small settlements, similar rights will most likely not be protected due to the low activity of civil society and a lack of knowledge.

It was also mentioned that business is not used to communicating with representatives of civil society organizations who have questions or complaints about it. Business in such a situation or grossly deceives, provides inaccurate information, and promises to bring activities in line with the law. Or he attacks (we have had cases in which representatives of radical groups came in response to public protests in order to disperse the protest by force; the police do not intervene in such situations). Or uses legal mechanisms to oppose the public. As in the situation with a lawsuit to protect business reputation.

103 «Indicators for monitoring gender equality in Ukraine – 2021» (monitoring report) / State Statistics Service of Ukraine. Available at: [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/2021/2021\\_Indikator-Monitor.pdf](http://www.ukrstat.gov.ua/druk/publicat/kat_u/2021/2021_Indikator-Monitor.pdf)

104 The Law // [https://zakon.rada.gov.ua/laws/show/2866-15?find=1&text=%D0%A0%D0%BE%D0%B1%D0%BE%D1%82%D0%BE%D0%B4%D0%B0%D0%B2#w1\\_1](https://zakon.rada.gov.ua/laws/show/2866-15?find=1&text=%D0%A0%D0%BE%D0%B1%D0%BE%D1%82%D0%BE%D0%B4%D0%B0%D0%B2#w1_1) [in Ukrainian] <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text> [in Ukrainian] National Economic Strategy for the period up to 2030, Cabinet of Ministers of Ukraine Decree #179, of 03.03.2021 // <https://zakon.rada.gov.ua/laws/show/179-2021-%D0%BF#n25> [in Ukrainian].

105 [https://www.irf.ua/wp-content/uploads/2021/10/ecoclub\\_research\\_full.pdf](https://www.irf.ua/wp-content/uploads/2021/10/ecoclub_research_full.pdf).

## IX. THE FACTOR OF THE DIGITALISATION SHOULD BE TAKEN INTO CONSIDERATION

It involves the use of digital technologies and data to transform the current business model, reshape the way work is done, as well as to give another dimension to interactions with customers, contractors, government agencies and create new opportunities for generating revenue and creating products<sup>106</sup>. COVID-19 has demonstrated that digital tools can be effectively used to track the behaviour of a business in its supply chain, in relation to its employees and suppliers, to consumers and customers, and to the communities where the business operates.

However, digitalisation by itself cannot contribute to an increase in responsible business conduct because of a number of factors<sup>107</sup>. There are numerous risks associated with digital transformation: cybersecurity and privacy threats; increased digital fraud; spreading disinformation online; unsafe working conditions; asymmetric market and others. Some aspects of these risks have increased especially in connection with the COVID-19 crisis and, for some of them, SMEs proved to be unprepared. We also should take into consideration barriers to obtain digital skills that could make some rightsholders vulnerable. According to the National Strategy for Barrier-Free Environment in Ukraine up to 2030<sup>108</sup>, 40-49 age group is dominated by those who do not have sufficient digital skills, and the 60-70 age group is dominated by almost 85 percent. In addition, 57 percent of villagers do not have basic digital skills. However, despite the relatively small gap between villages and cities (7-8 percent) in this indicator there is a gap between regional centers and all other settlements. The surveys also show that unlike women, young men have more advanced digital skills. The share of those who have an intermediate and advanced level among men is 63.5%, while among women – 41.7%<sup>109</sup>.

## X. COVID-19 PANDEMIC INCREASES HUMAN RIGHTS RISKS, AND 'HAVE CLEARLY DEMONSTRATED THE URGENCY FOR GOVERNMENTS AND BUSINESSES ALIKE TO TAKE A SUSTAINABLE<sup>110</sup>, PEOPLE CENTRED PATH WHILE FIGHTING COVID-19 AND IN "BUILDING BACK BETTER"<sup>111</sup>.

In times of the COVID-19, there are threats to life and health, waves of misinformation, loss of jobs or earnings, increased governmental control curtailing individual rights, including through mobile apps developed by business, increased burden for caring for children and family members, shutdowns of businesses, supply chain disruptions, impossibility of free movement, corruption scandals and unfair competition, high prices for essential goods and services, incidents of discrimination, harassment and persecution, and many other risks to human rights.

According to "Business and Human Rights in times of Covid-19", the main risks of possible negative impacts of business on human rights in the context of COVID-19 for:

- i. Workers (safe working conditions, risks of excessive workload, work and family balance issues, the right to privacy, preventing discrimination and stigma, human rights risks in the situation of loss of jobs or earnings, modern slavery and forced labour) with special attention to the additional vulnerability of such categories of workers as service employees, informal workers, workers of the gig economy, seafarers, labor migrants and seasonal workers;

106 International Bank for Reconstruction and Development / the World Bank, "Promoting Digital and Innovative SME Financing", Accessed January 17, 2021: [https://www.gpfi.org/sites/gpfi/files/saudi\\_digitalSME.pdf](https://www.gpfi.org/sites/gpfi/files/saudi_digitalSME.pdf).

107 SMEs Digital Transformation in the EaP countries in COVID-19 Time: Challenges and Digital Solutions EaP CSF COVID-19 POLICY PAPER, <https://eap-csf.eu/wp-content/uploads/SMEs-digital-transformation-in-the-EaP-countries-during-COVID-19.pdf>.

108 National Strategy for Barrier-Free Environment in Ukraine up to 2030, <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text>.

109 Report on the results of an online survey among young people aged 14-34 «Digital technologies in youth work», <https://dismp.gov.ua/zvit-za-rezultatamy-onlajn-popytuvannya-sered-molodi-vikom-14-34-roky-tyfrovi-teknolohii-v-molodizhnij-roboti/>.

110 COVID-19: State and business respect for human rights critical to resilience and recovery, say UN experts, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25836&LangID=E>.

111 Concept note 2020 Virtual UN Forum on Business and Human Rights 16-18 November 2020 Preventing business-related human rights abuses: The key to a sustainable future for people and planet, <https://www.ohchr.org/Documents/Issues/Business/2020ConceptNote.pdf>.

- ii. Consumers, customers, contractors (ensuring health safety, the right to privacy, discrimination and stigma, consumer as weaker party of the contract, protecting from disinformation, responsible conduct in supply chains);
- iii. Communities, in which businesses operate (corrupt actions by businesses to circumvent the pandemic restrictions, central and local government decisions in favor of big business, the risk of environmental damage)<sup>112</sup>.

It needs to be taken into consideration that some individuals and groups could be under the more risks of negative impact on human rights in times of global emergencies. For example, at least a third of working women have faced problems and difficulties during Covid 19 that require joint efforts by the state and employers. Remote work in the absence of gender policy in the company leads to an increased burden on women. After all, during quarantine due to the COVID-19 outbreak, women, in addition to performing their professional duties, also performed homework (cleaning, cooking, etc.), as well as helping to teach children who also studied remotely at home<sup>113</sup>. The issue of informal employment has become very acute since quarantine<sup>114</sup>.

## 2.2.2. DECENT WORK AND INFORMAL EMPLOYMENT

The area of labour and employment relations was stressed by the rights holders interviewed and their representatives, state governance bodies, and other stakeholders for taking a deeper investigation regarding the business impact on human rights in Ukraine. During the series of the key informant interviews, the respondents were proposed to rank the opportunities for access to decent work<sup>115</sup> from 1 to 10 ten. The majority of the key informants provided quite a low rate (4-5), and it was marked even lower for certain vulnerable groups.

With regard to the **most common adverse human rights violations by business**, the following were highlighted:

- 1) undeclared labour (informal employment),
- 2) violation of collective agreements,
- 3) violations of the payment of wages,
- 4) violation of the order of dismissal;
- 5) occupational safety and health violations;
- 6) restrictions on the payment of benefits and compensations (for example, for medical workers – violations in the payment of «covid-19» allowances, non-execution of the N1 act (work related accident) for those doctors who died as a result of the COVID-19 disease)),
- 7) non-paid overtime work (especially in the private sector);
- 8) harassment at workplace, including sexual harassment.

The character of the human rights risks is different in the different sectors. For example, IT, retail and agriculture were mentioned in the context of unofficial employment, as well as the construction sector. The gig-platform sector, Glovo, Uber, Bolt etc. were characterized by some respondents as sectors without any guarantees of labour rights, etc.

112 Business and human rights in times of Covid-19, [https://ombudsman.gov.ua/files/2020/UN/BHR\\_covid19\\_eng.pdf](https://ombudsman.gov.ua/files/2020/UN/BHR_covid19_eng.pdf).

113 IMPACT OF COVID-19 ON WOMEN'S RIGHTS IN UKRAINE, [https://www.ua.undp.org/content/ukraine/uk/home/library/democratic\\_governance/covid-impact-on-women-rights-in-ukraine.html](https://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/covid-impact-on-women-rights-in-ukraine.html); see also Women in a pandemic and their needs "Analytical report based on the results of an online survey, <https://zmina.ua/content/uploads/sites/2/2020/06/opytuvannya-zhinky-v-umovah-pandemiyi-ta-yihni-potreby-2.pdf>.

114 According to an interview with the representative of CSO on labour rights protection.

115 According to the ILO web-site: Decent work involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. (<https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>).

Some groups of rights holders face additional barriers. The National Strategy for Barrier-Free Environment in Ukraine names certain factors of economic vulnerability of people. In particular, among them are:

- There are widespread stereotypes among employers about the employment of people from vulnerable categories.
- Childcare creates barriers to participation in the labor market.
- Psychological barriers to choosing / learning a profession or job are common among vulnerable populations.
- Caring for a child and caregivers creates barriers to participation in the labor market.
- Low level of development of social support after employment of vulnerable categories and lack of culture of full acquaintance with the processes of work in companies.
- Discrimination against vulnerable groups in the labor market is widespread when it comes to promotions and working conditions.
- Gender discrimination in childcare and maternity leave is widespread.
- Low level of inclusiveness procedures in enterprises and organizations<sup>116</sup>.

The majority of key informants noticed that at the current moment **both women and men are facing significant difficulties in accessing decent work**, and the examples of full compliance with the ILO definition are exceptions, rather than regular practice in the country.

The same respondents noticed that women often opt to work in the “small” and “micro” business sector, which is characterized by a low level of jobs’ sustainability, lower salaries, lower level, or entire lack of “social package”, widespread of precarious forms of employment, high informal employment rate, lack of opportunities for collective forms of representation and protection. Another employment opportunity for women lies in the budget sector, which is also less beneficial in terms of the level of income. It was stressed that women have fewer opportunities to be employed in the large-scale business enterprises mainly represented by the industrial<sup>117</sup> sector, which is highly “men” oriented and represents a strong bias and stereotypes towards women starting from the study time in the technical and higher educational institutions. In sum, this suggests, that there is a need to address the very root causes of gender stereotypes and discrimination at the labour markets and workplace. Moreover, there is a need to focus on gender equality and non-discrimination within business and human rights awareness raising and the support of women’s economic empowerment.

Moreover, a number of specific population groups were outlined as those, which **vulnerability in that area is much higher**, namely:

- (a) **people with family responsibilities** (especially women, who take care of small children and other family members).

The key informants noted a lack of municipal services or their low efficiency to make women able to enter the labour market successfully. Among such services the respondents outlined general childcare, care support to children with disabilities at schools, transport, street lightning and others.

Despite the fact that the law prohibits employers from specifying the age, gender and other characteristics of a potential employee in job advertisements, in practice employers express their wishes to the employment service.

<sup>116</sup> National strategy for the creation of barrier-free space in Ukraine for the period up to 2030, approved by the order of the Cabinet of Ministers of Ukraine dated April 14, 2021 № 366-r, <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text>.

<sup>117</sup> In 2020 47% of all large-scale enterprises in Ukraine operated in the sector of “Industry”, and in Donetsk region the share was more crucial – 70%. According to the open data of the State Statistics Service available at: [http://www.ukrstat.gov.ua/operativ/operativ2013/fin/kp\\_ed/kp\\_ed\\_u/arh\\_kp\\_ed\\_u.htm](http://www.ukrstat.gov.ua/operativ/operativ2013/fin/kp_ed/kp_ed_u/arh_kp_ed_u.htm) and <http://donetskstat.gov.ua/statinform1/ekonomichna-statystyka/ekonomichna-dialnist/dialnist-pidpriyemstv/kilkist-pidpriyemstv-za-yikh-rozmiramy-za-vydamy-ekonomichnoyi-diyalnosti/>

In 2019, the Center for Economic Strategy conducted a survey of unemployed women to find out why they are not active in the labor market. According to its results, 53% of women respondents chose childcare and the unavailability of alternative care options (kindergarten, nanny, relatives) as the reasons for their unemployment. This reason was most often put in the first place (29% of women surveyed). 28% of respondents cited their own desire to take care of their children as the main reason. Attracting the latter to the labor market (if they need it) can help to work remotely, and the former need to increase access to preschool education<sup>118</sup>;

(b) **elderly people** (primary, workers of pre-retirement age).

In almost all focus groups, attention is paid to the two age groups that are most at risk in terms of employment and respect for their rights. These are young people who are just looking for their first job, and people of pre-retirement (and sometimes younger) age. This applies not only to those specialties where there is a need for physical activity, but also exclusively intellectual.

At the same time, if we compare these two groups, the group of older people looks the most risky;

(c) **single parents and parents of many children** (especially women).

Another vulnerable group is those with children or dependent family members. Most often, this includes single-female headed households with children. Such workers are at risk because they are in dire need of work and cannot afford to take a break to change jobs for the better than employers often do. There need to be incentives in place that allow for flexibility to such workers that carry many responsibilities at the workplace and outside the workplace.

People raising children with disabilities should be singled out. In fact, these people not only face specific risks for the whole group, but also do not have the opportunity to delegate some of the responsibilities of raising children to schools and kindergartens;

(d) **people with disabilities**.

Most respondents state that people with disabilities (PwDs) find it harder to find decent work than most other people. However, it was found that there is a lack of accurate data about the actual employment situation of PwDs in Ukraine. On the one hand, the available administrative data of the Ministry of Social Policy supports this statement. Thus, the analysis of the Ministry's publications led to a conclusion that by the end of 2020 the number of employed PwDs decreased by 36% compared to 2015 year<sup>119</sup>.

At the same time, some experts say that the situation has improved in recent years, in part due to the legal requirements for employment and many support programs from volunteers and international donors. Nonetheless, there are certain barriers on the part of employers who do not know how to properly organize the work of people with disabilities for maximum results and a favorable environment.

Respondents shared a positive but isolated example. There is a center in Vinnytsia that deals with the employment of people with disabilities, trains these people, and adapts them to how to join the team;

(e) **young people** (especially, those with no work experience).

A significant barrier in Ukraine relates to the outdated content of educational programs of higher and vocational educational institutions in comparison with modern business needs.

118 Як покращення доступу до дошкільної освіти допоможе матерям на ринку праці, <https://www.irf.ua/wp-content/uploads/2020/12/yak-pokrashhennya-dostupu-do-doshkilnoyi-osvity-dopomozhe-zhinkam-na-rynku-praczi-3.pdf>.

119 417,897 PwDs employed by the end of 2020 (according to the 2020 Year Social Report: <https://www.msp.gov.ua/news/20083.html>) and 652,900 PwDs employed by the end of 2015 (according to the 2015 Year Social Report: <https://www.msp.gov.ua/timeline/Socialni-zviti.html>).

On the other side, a frequently encountered barrier for young people is the discrepancy between the level of offered wages and working conditions in comparison with the years spent and efforts to obtain education and knowledge.

There are still strong stereotypes and discrimination about young professionals, especially young women;

**(f) internally displaced persons.**

According to respondents, there is a tendency that IDPs have fewer opportunities to gain access to decent work. First, after moving, they find themselves in new communities, where their social connections are minimized.

Also, there is a negative attitude of many host communities towards the immigrants who have arrived. Firstly, this is determined by the general stagnation of the economy, when newly arrived people apply for a limited number of local vacancies. Secondly, the media play a certain role here, which often (especially in the first years after the start of the conflict) portray internally displaced persons in a negative light.

Also, IDPs are forced to rent housing, which leads to additional spending. Therefore, they more often agree to employment without official registration, and also much less often defend their rights, both labor and other categories of human rights;

**(g) people, living in the rural area and in small monofunctional towns, especially women;**

Remote rural areas and small monofunctional cities are characterized by a significant decrease in the range of employment opportunities, on the one hand, and an increase in the influence of business on local governance and community life in general, on the other. Faced with limited choices in the labour market, low transport mobility (lack of transport between the communities of the community), lack of related municipal services (for example, childcare), and so on, men and women are forced to significantly limit their requirements for the level of working conditions, wages fees, official employment status, etc.

**(h) people living with HIV and other chronic diseases.**

Women and men with HIV and other chronic diseases face barriers and challenges to decent work. Firstly, employers often believe that workers will not cope with their duties well enough, they believe that a person will deal with their medical treatment instead of work. Secondly, there is the stigmatization of these individuals, in particular, as a result of a lack of business awareness of the specifics of diseases.

**(i) national minorities (incl. the Roma);**

Among the existing barriers to employment of the Roma people is the well known stereotypes and prejudice in society against the Roma ethnic minority; lack of education and qualifications; the internal way of life in some closed Roma communities, which hinders socialization; language skills lack of experience in permanent work etc.<sup>120</sup>;

**(j) people living in the locations near the contact line;**

Regarding residents of settlements close to the contact line, key informants noted that these people are ready for any job opportunities because there is practically no work at the place.

As a rule, this is unofficial employment. In addition to the fact that this implies social insecurity (payments for temporary disability due to illness, lack of work experience, which is necessary for retirement benefits, the inability to obtain a subsidy, and so on), there is a significant number of cases when wages are not paid for such informal employment in full. Working conditions are also very harsh in most cases;

<sup>120</sup> [https://www.irf.ua/wp-content/uploads/2021/04/qualitative-research-report\\_roma-employment.pdf](https://www.irf.ua/wp-content/uploads/2021/04/qualitative-research-report_roma-employment.pdf).

(k) **stateless persons, persons who are in the process of obtaining the status of «stateless person»;**

In Ukraine, UNHCR estimates that around 35,000 persons fall under its mandate on statelessness with a vast proportion belonging to vulnerable and marginalized groups such as Roma, homeless persons, older people holding Soviet passports, as well as persons released without documents from penitentiaries (in particular persons who were never documented and/or who have their residence registration in NGCA). UNHCR works on methodology of updating this estimate<sup>121</sup>. The problems with documents make people opt to work informally and put them at high risk of forced labour and human trafficking;

(l) **homeless persons;**

There is a deep stigma towards these people. They rarely qualify for skilled work. They face disdain from employers, in particular, due to their unkempt appearance (due to the lack of self-care opportunities, as in most localities there is a significant shortage of appropriate facilities). Long-term unemployment exacerbates the habit of not working systematically, which negatively affects the wish to be employed officially.

**Regarding the barriers to obtaining decent jobs**, the following barriers were reported as the most significant as the most significant:

- 1) lack of enterprises where one could get a job and general lack of permanent jobs (especially in the agricultural sectors and rural areas);
- 2) imperfect legislation in the area of work relations;
- 3) discrimination in the labor market on a wide range of grounds and underdeveloped anti-discrimination labor legislation (particularly gender-based inequality);
- 4) low inclusiveness of the labour market for people with disabilities;
- 5) weakness and ineffectiveness of the system for control compliance with the relevant legal norms, corruption and lack of transparency in this area;
- 6) low conditions for the workers' local mobility (particularly, due to lack of public transport between the inhabited localities in the amalgamated communities and districts);
- 7) bias to the IDPs in many regions of the country, which is often supported by the media;
- 8) stereotypes of the HR and managers towards working women;
- 9) women's own stereotypes about their gender role of a homemaker.

**The problem of informal (full or partial) employment was identified as quite actual** for Ukraine. The key informants identified retail, agriculture, services, IT as sectors where such situations are widespread. This picture correlates with the results of the work of the State Service on Labour Issues.

**Among the reasons for informal employment**, the data obtained provide the following challenges:

1. livelihood reasons and lack of alternatives. Often there are no other available livelihood or job opportunities in their place of living, especially in small and remote settlements;
2. lack of understanding of the benefits of formal employment, both from the side of employees and employers;
3. low awareness of their labour rights and ignorance of how one could officially work independently;
4. reluctance of entrepreneurs to pay taxes and fulfill other employment-related obligations;
5. unwillingness to bear additional tax burden by both parties' employers and employees, when work officially;
6. uncertainty about the future, which is caused by controversial statements from the authorities and media about the future cut of the pension and social benefits;

121 Stateless persons. Official site of the United Nations High Commissioner for Refugees in Ukraine. – Available at: <https://www.unhcr.org/ua/en/stateless-persons>.

7. low participation of people and inability to influence the decision making towards public spending of r legislation, which aimed at liberalization of the relations between employers and employees, requires a collected taxes, corruption, and low transparency demotivates rights holders;
8. lack of clear and transparent explanation of the reasons and directions for spending of the collected taxes from the side of the authorities to businesses and employees, who are the main contributors to – the budgets of different levels, which demotivates them in taking higher financial obligations in the employment sphere.

## 2.2.3. KEY BARRIERS AND CHALLENGES FOR RIGHTS HOLDERS

### 2.2.3.1. GENERAL HUMAN RIGHTS ENVIRONMENT AND LACK OF TRUST TO HUMAN RIGHTS MECHANISMS

Based on the data gathered, the research finds that businesses' respect for human rights depends on the general environment in society regarding human rights and the rule of law. As long as the state and society does not demand such respect from businesses, it will not be the priority of business to be better than society.

Further, stagnation of the economy (the struggling of many businesses to survive), a lack of guidance to the business from the state, imperfect legislation, as well as the weak control for its enforcement, impunity, which allows similar violations, are key barriers.

In addition, the data show a low knowledge and participation of people at all levels, as well as their inability to influence and control over the spending of the funds, which were paid by them as taxes. Cases of corruption are not hidden; most cases are not punishable.

Also, the problem of the paternalistic approach on the territory of the country was noted, when from the beginning of the last century people were weaned from doing business and making independent decisions. Therefore, it is impossible to teach a little, but it is needed to start now. The example of Lithuania was cited, where small businesses were successfully brought out of the shadows by minimizing bureaucratic and tax procedures for them in order to teach them to work officially.

### 2.2.3.2. QUALITY OF STATE REGULATION AND LACK OF POLICY COHERENCE

It is worth noting that since the NBA on BHR 2019 was conducted, the national strategic and programme framework of socio-economic development has been enriched with a number of documents, which contain the elements of interaction between the areas of human rights and business.

On 24 March 2021, the Business and Human Rights chapter as part of the *National Human Rights Strategy* was adopted by the President of Ukraine. Overall, the Strategy aims at ensuring the priority of human rights and freedoms as a determining factor in the formation and implementation of public policy, the exercise of powers of public authorities and bodies of local self-governance, conducting economic activity. The document presents 27 strategic directions of implementation, including a dedicated one on ensuring the observance of human rights in the process of conducting economic activity. The UNDP, other UN agencies and development partners actively supported the development of the new Strategy and the respective Action Plan, and provided its recommendations, – several of which were included in the updated documents.

In Ukraine, there are other documents that have BHR components in its focus as well. During the recent 3 years, a set of important strategic and programme documents was adopted, which presumes advancing interests of both the rights holders and simultaneously the business enterprises. Mainly those documents target the issues of employment, job creation, and engagement of vulnerable groups to economic activity. *The key related ones are briefly described in Annex E.*

The analysis of the national strategic and programme documents shows that the state decision-makers pay significant attention to the issue of gender equality, gender-based discrimination, and women as a group of rights holders in the sphere of labour and employment relations. Besides, such a group as persons with disabilities gained specific attention, so some more details about existing barriers and planned measures were provided in the respective documents. In addition, the next groups of the population were determined as vulnerable: youth, parents of minor children and children with disabilities, other people with family responsibilities, elderly, Roma, people in rural areas.

A key characteristic of the UNGPs implementation process in Ukraine today is the lack of policy coherence: despite the BHR chapter in the National Strategy for Human Rights, other policy documents, in particular in the economic sphere, are adopted with disregard of the concept of business and human rights; there is no governmental institution responsible for the UNGPs implementation and policy coherence; business and human rights issues are dealt with by individual representatives of different government bodies (mainly on their personal enthusiasm) who are not decision-makers.

The ability of the state to lead guiding work on issues of respect for human rights by business is rated rather low by several key informants.

There are a few extra challenges here. For example, the precarisation of labour is growing rapidly in the country, grounded on the parallel normative framework, which is functioning in parallel to the usual labour and employment legislation and is more tailored to the interests of the business (as an example, the gig economy, which involves workers working with digital platforms). Also, there is a lack of in-depth discussion between the representatives of the rights holders (employees), duty barriers (employers) and the state to formulate win-win strategies for all the sides.

Besides, there is a tendency for the state to impose obligations on entrepreneurs without proper explanatory work about the ways and opportunities to implement the necessary changes. It is one of the reasons for informal employment as well.

Experts note corruption risks in the system of state control over business operations. For example, the reform of urban planning legislation in recent years has taken place with the stated need to adhere to the principles of deregulation and decentralization. However, these changes to the legislation were neither comprehensive nor consistent, but were aimed at solving certain problems of the construction industry. Decision-making by the responsible authorities has a high level of informal business influence, which stimulates the development of corrupt practices and complicates the implementation of effective safeguards against such manifestations. That is why at this stage the basis is laid for the implementation of corruption risks, the consequences of which can continue to be observed by residents of settlements – chaotic construction, low levels of amenities, uncomfortable living conditions<sup>122</sup>. Such construction contradicts the harmonious and planned development of the territory, distorts the nature of the environment, destroys and destroys the cultural heritage of the settlement, and does not provide the population with the necessary number of social facilities, which makes the area unsuitable for comfortable living<sup>123</sup>.

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122 Corruption risks in the system of control over the development and approval of urban documentation, [https://nazk.gov.ua/wp-content/uploads/2021/08/MistoBuDok\\_A4-18-1.pdf](https://nazk.gov.ua/wp-content/uploads/2021/08/MistoBuDok_A4-18-1.pdf).

123 It was emphasized also by the interviewer.

Due to non-observance of human rights, “grey” business gains a significant competitive advantage over a business that respects human rights (for example, savings on ensuring the safety of the workplace, savings on social guarantees for workers, and others). This makes responsible business an ally in efforts to ensure the implementation of the UNGPs. There is a lack of instruments to involve the responsible business in developing the business and human rights agenda in Ukraine.

### 2.2.3.3. UNBALANCED STATE-BUSINESS NEXUS (IN PARTICULAR, SOES AND MUNICIPALITY OWNED COMPANIES)

Ukraine has a significantly large SOE portfolio, with 3,293 SOEs<sup>124</sup>. SOEs are active in areas such as energy, machine-building, and infrastructure. Some of the companies have significant environmental problems, legacy legal issues, or oligarchs as minority owners. Along with centrally-owned SOEs, Ukraine also has a large portfolio of municipally-owned enterprises (MOEs) under the oversight of local councils (around 14,000<sup>125</sup>). Over the years, the number of MOEs has continued to increase. They are mainly active in essential services sectors such as healthcare, water and canalisation, administration, utilities, and transport sectors, and remain key recipients of state aid, though they continue to underperform financially. Compared to centrally-owned SOEs, corporate governance practices in MOEs remain informal and less transparent<sup>126</sup>.

Ukraine sets the expectations on responsible business conduct of SOEs. In particular, Action plan for the implementation of the Concept of implementation of state policy on promoting the development of socially responsible business in Ukraine until 2030 approved by the Cabinet of Ministers of Ukraine of July 1, 2020<sup>127</sup>, states as the action to develop and implement social responsibility policy and introduce corporate social responsibility issues in the activities of the SOEs. Art. 11 of the Law of Ukraine «On Governance of State Property» provides that the exclusive competence of the supervisory board of a state-owned unitary company includes: formation of corporate social responsibility and sustainable development policy. Ukraine also encourages SOEs to take specific measures on women’s rights. National strategy on the creation of barrier-free space in Ukraine for the period up to 2030 calls to ensure equal rights of women and men to representation in supervisory boards and governing bodies of state unitary enterprises, companies and state banks<sup>128</sup>.

In Ukraine, the problem is that the state-owned enterprises are widely engaged in cases of human rights violations, such as late payment or non-payment of wages (for example, wage arrears on the part of state-owned enterprises account for 43.2% of the total in the country, and for municipal enterprises – 5.6%, respectively), non-compliance with the provisions of collective agreements, the procedure for release of personnel, other violation of human rights.

Such examples on the part of the state reduces the motivation of private entrepreneurs to follow the canons of respect for human rights. It is important that in this case, it is the state that should set an example, both in the person of public authorities and in the case of state enterprises.

124 OECD Review of the Corporate Governance of State-Owned Enterprises UKRAINE, <https://www.oecd.org/corporate/SOE-Review-Ukraine.pdf>.

125 How to overcome the inefficiency of MOEs?, <https://ces.org.ua/municipal-enterprise-ownership-presentation/>.

126 OECD Review of the Corporate Governance of State-Owned Enterprises UKRAINE, <https://www.oecd.org/corporate/SOE-Review-Ukraine.pdf>; ‘How to overcome inefficiency of municipal enterprises?’, <https://ces.org.ua/en/how-to-overcome-inefficiency-of-municipal-enterprises/>.

127 Action plan for the implementation of the Concept of implementation of state policy on promoting the development of socially responsible business in Ukraine, Ibid.

128 National strategy on the creation of barrier-free space in Ukraine for the period up to 2030, Ibid.

#### 2.2.3.4. LACK OF TRANSPARENCY OF KEY ACTORS ON HUMAN RIGHTS ISSUES

There are no tools for CSOs that could represent the voices of rights holders to communicate with business effectively. Business responds to questions and complaints from the public either by force, through radical groups, or by filing lawsuits to protect business reputation.

For example, the problem area is the construction sector with significant human rights violations affecting communities. It was reported that some companies built on the site of historical monuments or the sites of archeological research; some companies do not consult or agree with the local community or hold public hearings / stakeholder consultations; some companies build without obtaining permits, in particular, the right to land, which creates high human rights and legal and physical protection risks for those people who buy housing. Some may end up losing their investment and become homeless. Mechanisms for community involvement in the development of urban planning documentation are also imperfect and deprive the public of effective tools to influence the approval of urban planning documentation, creating opportunities for the smooth implementation of the corruption scheme<sup>129</sup>.

The same situation was indicated related to the projects that impact the environment negatively. There is a lack of mechanisms by which the community can influence decisions, including investment projects that affect its interests.

All public hearings are conducted just de jure. Local communities do not have any real tool to impact or righter to make their voices sound. The same situations periodically arise with agricultural projects. The local government, which is supposed to conduct an environmental impact assessment of a particular project, is the main beneficiary of this project, and therefore there is a direct conflict of interest, and there is almost no chance of obtaining an objective assessment.

Local people, the community are vulnerable, including in terms of access to information and the availability of tools with which they can determine the impact on the quality of the environment in which they live. This problem correlates closely with the problem of lacking access to information about future or current projects, in particular projects that local authorities are interested in. But if such projects could impact human rights negatively the transparency and rights holders' engagement is a high-priority question.

#### 2.2.3.5. LACK OF HUMAN RIGHTS AWARENESS AND HUMAN RIGHTS CAPACITIES

All CSO representatives interviewed which are representing the following categories of rights holders (rural women, youth, employees, people living near contact line, people with disabilities, people living with HIV and others) stressed that **most rights holders/communities members are lacking knowledge on their socio-economic and ecological human rights and/or not able to claim their rights in case the business is a violator.**

Notable, that UNDP latest nationwide survey on human rights perception says the groups of rights identified above have the lowest scores as least respected<sup>130</sup>. And although the situation in 2020 was improved slightly compared to 2016, this problem remains extremely relevant for the sphere of business and human rights relations.

**In most cases, the lack of awareness plays a crucial role in failure to prevent the risks of human rights violations.** As an example, many people don't understand what kind of contract they sign to be employed. In some cases, employees signed contracts as freelancers, not labour contracts, but they were sure that they work according to labour law and have all related guarantees.

129 Corruption risks in the system of control over the development and approval of urban documentation, [https://nazk.gov.ua/wp-content/uploads/2021/08/MistoBuDok\\_A4-18-1.pdf](https://nazk.gov.ua/wp-content/uploads/2021/08/MistoBuDok_A4-18-1.pdf).

130 Assessment of changes in the observance of human rights in Ukraine 2020. UNDP Study. Available at: <https://www.ua.undp.org/content/ukraine/en/home/presscenter/pressreleases/2020/ukrainians-became-more-tolerant-and-active-in-defending-their-ri.html>.

Most respondents need information on ensuring the rights «to a decent standard of living» (34.2%), «to work and favorable working conditions» (26.5%), «to a safe life and environment» (25.6%). That is, about the rights that are most important for respondents<sup>131</sup>.

It should also be noted that business and human rights issues are not included in training programs conducted by international organizations<sup>132</sup>. For example, programs such as the 'Mayors for Economic Growth (2021-2024) in Ukraine' should include a component on responsible business conduct<sup>133</sup>.

During the key informant interviews, the representatives of rights holders outlined the high importance of building the capacity of business as duty bearers on the issues of respect for human rights.

The opinion was presented about positive changes in the business performance of small and micro-businesses, which established or expanded their economic activity with the support of different internationally funded projects. In this regard, the key factors are some additional learning and consulting given, as well as oversight conducted by the grants' providers. Simultaneously, a lack of guidance to entrepreneurs on the observance of socio-economic, ecological, and other rights was noted within national and local programmes, designed and implemented 5-10 years ago.

So, an emphasis on human rights in knowledge building should be introduced in both government and non-government interventions on business stimulation. The state and non-state guiding and advisory to business could contribute to the positive changes towards overcoming current barriers and challenges for rights holders and should be introduced throughout state and non-state programmes and projects for entrepreneurship development. Such an approach should support building new and more human-oriented business models.

As a positive example, Barrier-free in business: a new section on the Diia.Business portal. On the state portal you can now learn how to create a barrier-free business and provide inclusive working conditions for employees with disabilities<sup>134</sup>.

For the first time, businesses receive systematic information on how to implement the principles of barrier-free. Among the proposed topics:

- Inclusion and diversity in small and medium-sized businesses: a new trend or a must-have?
- How can a business hire a person with a disability? How to conduct a barrier-free interview?
- How to arrange a workplace for a person with disabilities?
- What are the examples of barrier-free business in Ukraine?
- How to build internal communications for the development of barriers in business?
- How to integrate barriers into business marketing communications?<sup>135</sup>.

It should also be noted that even expert research on human rights issues, including labor, often does not cover business (employers)<sup>136</sup>.

131 Analytical report on the results of the survey on ensuring the rights and freedoms of citizens of Ukraine, <https://dismp.gov.ua/opytuvannia-shchodo-zabezpechennia-prav-i-svobod-hromadian-ukrainy/>.

132 See as example, <https://www.ua.undp.org/content/ukraine/uk/home/presscenter/pressreleases/2021/undp-launches-training-programme-for-partner-business-membership-organizations-in-ukraine.html>.

133 EU and UNDP launch new Mayors for Economic Growth Facility in Ukraine, <https://www.ua.undp.org/content/ukraine/uk/home/presscenter/pressreleases/2021/eu-and-undp-launch-new-mayors-for-economic-growth-facility-in-ukraine.html>.

134 <https://www.ua.undp.org/content/ukraine/uk/home/presscenter/pressreleases/2021/barrier-free-business--a-new-section-on-the-dii-a-business-portal.html>.

135 <https://www.ua.undp.org/content/ukraine/uk/home/presscenter/pressreleases/2021/barrier-free-business--a-new-section-on-the-dii-a-business-portal.html>.

136 [https://www.ua.undp.org/content/ukraine/uk/home/library/democratic\\_governance/covid-impact-on-women-rights-in-ukraine.html](https://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/covid-impact-on-women-rights-in-ukraine.html).

There is a course *How to proceed: Business on sustainable development*<sup>137</sup>, but its description does not provide guidance on business and human rights / responsible business conduct.

In general, there is a lack of regular / systemic efforts of state institutions to raise awareness on UNGPs in Ukraine and / or to equip business with the relevant practical skills. It should be taken into consideration that SMEs, unlike big businesses, do not have the opportunity to hire specialists who would implement and ensure corporate responsibility to respect human rights. SMEs cannot redirect financial and human resources towards human rights capacities in most cases.

One of the barriers to the practical implementation of standards of responsible business conduct is the complexity of measurement and lack of clear indicators. The focus of business is on much more specific issues – such as environmental protection – where it is easier to offer metrics and indicators for measuring impact. One of the problems is the uncertainty of what we measure and what indicators we use when we talk about corporate responsibility to respect human rights. This barrier is particularly difficult for societies that do not have a strong tradition of respect for human rights.

States do little to develop guidelines and explanations for business, nor do they offer tools to help businesses apply standards of responsible business conduct. This is largely due to the lack of understanding and the importance of preventing the possible negative impact of business on human rights, and government and business continue to rely on an approach where reaction takes place on the human rights violations that have occurred.

The situation of armed conflict and internal displacement exacerbates the need for the state to fulfill its positive obligations to prevent human rights violations by third parties. To this end, the state should develop clarifications for economic actors on how to assess their potential impact on human rights in conflict and internal displacement.

### 2.2.3.6. STATE CONTROL'S GAPS

Experts emphasize corruption risks in the system of state control over business operations. For example, the reform of urban planning legislation in recent years has taken place with the stated need to adhere to the principles of deregulation and decentralization. Decision-making by the responsible authorities has a high level of informal business influence, which stimulates the development of corrupt practices and complicates the implementation of effective safeguards against such manifestations. That is why at this stage the basis is laid for the implementation of corruption risks, the consequences of which can continue to be observed by residents of settlements – chaotic construction, low levels of amenities, uncomfortable living conditions<sup>138</sup>.

Ukraine has periodically introduced a moratorium on inspections of business entities, including compliance with labour legislation, labour protection and occupational health. In addition, due to the low quality of the legislation, the procedure for carrying out inspections by labour inspectorates from time to time is invalidated by the courts. Thus, the work of labour inspectorates is blocked. This situation arose in 2019. A similar decision was made in September 2021, halting inspections of labour inspectorates for an indefinite period.

There is a lack of human rights monitoring in the conflict territory and occupied territory of Ukraine. According to the NBA 2019 (referenced to the Ombudsperson's report, OSCE monitoring mission, CSOs reports), there are a number of facts of forced labour, ecological harm, and unsafe working conditions.

137 [https://courses.prometheus.org.ua/courses/course-v1:Prometheus+SDB101+2020\\_T2/about](https://courses.prometheus.org.ua/courses/course-v1:Prometheus+SDB101+2020_T2/about).

138 Corruption risks in the system of control over the development and approval of urban planning documentation (in Ukrainian). – Available at: [https://nazk.gov.ua/wp-content/uploads/2021/08/MistoBuDok\\_A4-18-1.pdf](https://nazk.gov.ua/wp-content/uploads/2021/08/MistoBuDok_A4-18-1.pdf).

### 2.2.3.7. LACK OF INSTRUMENTS OF NON-STATE MONITORING

‘Meaningful stakeholder engagement, including effective social dialogue, means seeing affected individuals and communities, trade unions, human rights and environmental defenders, civil society organizations and others who play an essential role in monitoring State and business practice as partners’<sup>139</sup>. In Ukraine the main focus of the CSOs is still the state’s activities since the state is considered the main threat to human rights. In this sense one finds very few cases in the regions when human rights defenders work with human rights abuses by business.

### 2.2.3.8. CONFLICT AND ITS IMPACT ON THE BUSINESS AND HUMAN RIGHTS AGENDA

The general situation with the observance of human rights by enterprises in Donetsk and Luhansk regions that were affected by the conflict, in addition to the general trends for Ukraine, is characterized by additional problems and challenges.

Regarding the **key challenges to the BHR agenda**, including barriers to access to decent work, in addition to the crisis phenomena in the country’s economy that are relevant for the whole of Ukraine, the following were named:

- hostilities in the territory of these regions, which continue at the moment;
- mine threat of certain territories, primarily agricultural;
- reduction of access of enterprises to sales markets caused by the conflict. This is relevant both in relation to external markets (a significant number of enterprises were oriented towards the Russian Federation) and internal (the largest settlements of the regions, which were previously the main sales markets, remained on the non-government-controlled territory). This, in turn, has led to the fact that enterprises (especially those located near the contact line) are in conditions of survival, and in most cases, the business try to overcome such negative consequences by restricting or affecting the right of workers to decent work;
- destruction of infrastructure (including transport), which complicates access to opportunities for work in neighboring settlements;
- the outflow of the most qualified workers (many of them left for safer regions or other countries);
- an acute shortage of civil servants and other persons who are engaged in the protection of the human right to decent work;
- severe problems with the state-business nexus.

All respondents who dealt with the issue of human rights observance noted a significant deterioration in the situation with their observance in the region after 2014.

The largest number of violations in this region was noted for the mining, engineering sectors, retail, and agriculture. The non-payment of wages to employees is a significant human rights challenge. This was noted during the interview and is confirmed by open administrative information. Thus, the indicated debt in these two regions makes about 25%<sup>140</sup> of the total debt in the country.

Also, the threat caused by the incorrect way of conservation of mines was named as a possible problem, which caused the rise of groundwater with heavy metals, and in the future could lead to significant negative environmental problems.

139 UNGPS 10+ A roadmap for the next decade of Business and Human Rights, UN Working Group on Business and Human Rights, November 2021, p. 2.

140 As of 1st October 2021 the sum of wage debt in the Donetsk and Luhansk region is 982,184,000.00 UAH and in the country in total – 4,004,643,000.00 UAH (according to the data of the State Statistics Service). Available at: [http://www.ukrstat.gov.ua/operativ/operativ2021/gdn/svzp/arh\\_svzp\\_u\\_21.htm](http://www.ukrstat.gov.ua/operativ/operativ2021/gdn/svzp/arh_svzp_u_21.htm)

**At the same time, there is the specific favorable background for the BHR agenda implementation in the conflict affected Donetsk and Luhansk region:**

- the business and human rights issues were included in the provisions of the Donetsk Region Development Strategy until 2027 (at the beginning of 2020, a year before the respective chapter in the National HR strategy);
- separate initiatives in this direction have been already piloted (for example, the Donetsk Chamber of Commerce and Industry holds an annual competition «Entrepreneur of the Year of Donetsk Region», where the nomination «Most Socially Responsible Entrepreneur» is traditionally distinguished.);
- since 2014 in these areas work is underway on capacity building, dialog ensuring, etc. Therefore, most of the actors who operate there have some kind of collaboration skills;
- also, different initiatives are presented here, that work with all of the vulnerable groups identified during the research process, even those with whom the work is very limited usually;
- special attention to the economic development processes of these two regions from the side of the international community and foreign business, which is raised due to the government's initiatives within the Strategy on the economic development of Donetsk and Luhansk regions for the period up to 2030<sup>141</sup> adopted by the Government of Ukraine.

## 2.2.4. RIGHTS HOLDERS ACCESS TO EFFECTIVE REMEDIES WHEN THEIR HUMAN RIGHTS ARE VIOLATED BY BUSINESSES

### 2.2.4.1. STATE INSTRUMENTS

Concerning the access to the remedies, all respondents during focus groups and key informant interviews noted problems in this aspect.

In particular, with regard to access to decent work, it was noted that officially registered persons have access to legal remedies (while several respondents also added that this access is rather limited).

For workers who are employed informally, the majority of respondents indicated that such a person would not be able to protect his/her rights. Only a few key informants hypothesized that there are certain ways to protect their rights.

For example, it was mentioned to do it through the procedure for establishing an employment relationship. Some of them pointed to the role of labour inspections and tax departments that react actively to each complaint on unofficial employment. Any relevant evidence that a person was employed without registration (for example, selfie at the workplace or ID/badge photo) could be considered as appropriate evidence to protect violated rights).

Simultaneously, the mentioned measures were characterised as quite difficult to be realized.

Regarding community members who were negatively influenced by business activities, the vast majority of the respondents also noted that currently there is no access to remedies, and only a few said that this is possible under certain conditions.

<sup>141</sup> Strategy on the economic development of Donetsk and Luhansk regions for the period up to 2030, approved by the Cabinet of Ministers order #1078-p of 18.08.2021. Available at: <https://zakon.rada.gov.ua/laws/show/1078-2021-%D1%80#Text>.

Also, for all the above cases, when the possibility of access to legal remedies was indicated, it was noted that this can be realized only if there is a sufficiently high level of legal awareness and the availability of resources for the fight (including enough money for it).

In particular, the majority of the key informants noted the weak system of control on the part of public authorities over the corresponding violations and the limitation of their powers in this matter. For example:

- 1.1) Regarding the State Service on Labour Issues, recently it is in a state of reform and limitation of its powers, which leads to the fact that contacting this body does not guarantee the receipt of effective assistance.
- 1.2) Regarding the National Mediation and Reconciliation Service (NMRS). Firstly, the legislation stipulates that a collective labour dispute must affect at least 50 percent of the number of employees, otherwise, such a dispute cannot be registered with the NMRS. Secondly, the Law of Ukraine “On the Procedure for Settlement of Collective Labour Disputes (Conflicts)” does not have leverage that could be used to bring employers to liability.
- 1.3) Regarding the police bodies. Currently, in case of violations of labour legislation at enterprises, the corresponding checks and the necessary actions are carried out not by the prosecutor’s office, as before, but by the police within the criminal procedures. At the same time, police specialists are not sufficiently trained in this regard. For example, in recent years, criminal cases for non-payment of wages have practically not been opened.
- 1.4) Concerning the judiciary, the time frame for the consideration of complaints in the area of violations of labour rights, which is often delayed, was noted as an important barrier to access to effective remedies. For example, during the year in the courts, there were simultaneously up to 10 thousand cases related to violation of labour rights. Accordingly, cases can be reviewed for months or years, which reduces the motivation of workers to refer to this protection tool.

Also, a significant corruption component has been repeatedly noted by the majority of the rights holders’ representatives. For example, regarding the state labour inspectorate, an example was given during the interviews that even if a person whose right was violated by the employer turned to the state labour inspectorate, then in some cases the employees of this inspectorate could focus not on protecting the employee’s rights, but on obtaining personal benefits from the employer in exchange for the fact that during the verification the violations will not be formally revealed. Also, the respondents indicated the need to pay special attention to reducing the number of manifestations of corruption in the judiciary.

#### 2.2.4.2. NON-STATE INSTRUMENTS

About a half of the respondents of key informant interviews noted the need to strengthen the trade unions’ role in ensuring access to remedies. Sometimes it was mentioned that insufficiently strong position of the trade unions on this issue, sometimes – the lack of experience of some trade unions in the struggle with the use of tools to enter into a dispute with the employer.

At the same time, during desk research and interviewing representatives of trade unions, a significant number of measures were identified that were taken to improve the situation in the direction of increasing opportunities for ensuring decent work, protecting the rights of workers, both at the regional and national and international levels. Moreover, many efforts have led to real changes in this area. Thus, a situation was identified when, on the one hand, trade unions are promoting important changes in the direction of protecting the rights of workers, and on the other, that quite a lot of other stakeholders in this matter are not aware of this work. This reduces the effectiveness of the interaction of all parties. Therefore, it would be advisable to ensure greater involvement of trade unions in the implementation of UNGPs.

It should be noted that with the entry into force of the Law of Ukraine on Mediation<sup>142</sup>, completely new prospects open up for attracting non-state instruments to resolve possible contradictions and disputes connected to the business enterprises behavior and business-related human rights violations. The new Law applies to public relations related to mediation in order to prevent future conflicts (disputes) or to resolve any conflicts (disputes), including civil, family, labor, economic, administrative, and in cases of administrative offenses and in criminal proceedings to reconcile the victim with the suspect (accused). In this context, there are two interconnected pressing issues. On the one hand, it is raising awareness and knowledge of mediators about the BHR concept and features. And on the other, it is the development of accessible and efficient mechanisms of mediation in the BHR sphere and building capacity of the respective rights stakeholders on their application.

## 2.2.5. CONCLUDING REMARKS

**Among the key findings the next points should be outlined:**

- a) lack of strong political will to implement UNGPs and lack of policy coherence
- b) deregulation with lack of human rights assessment
- c) lack of rights holders' awareness about their rights and remedies to protect
- d) low awareness of BHR and limited expertise on BHR of state authorities and local administration
- e) lack of appropriate informational and awareness raising campaign on BHR maintained by the State
- f) unbalanced state-business nexus (in particular, SOEs and municipality owned companies)
- g) lack of a decent job and social security
- h) deficient access to judicial remedies for business-related human rights abuses
- i) lack of non-judicial remedies for business-related human rights abuses
- j) lack (almost no) effective mechanisms of public consultations related to business projects that impact the local community
- k) lack of instruments to involve the responsible business to develop the business and human rights agenda in Ukraine

In the context of business-related negative impact on human rights, **the most vulnerable groups include:** people with family responsibilities (especially women), elder people (primary, workers of pre-retirement age), people with disabilities, LGBTIQ, children, young people (especially, those with no work experience), internally displaced persons, people living in the rural area and in small monofunctional towns<sup>143</sup>, people living with HIV/AIDS, national minorities (particularly, Roma), people living in the locations near the contact line, homeless persons, persons, who released from places of deprivation of liberty, ex-combatants<sup>144</sup>; migrants, especially Ukrainian migrant workers who are vulnerable as Ukraine doesn't provide adequate protection abroad, stateless persons, persons who are in the process of obtaining the status of "stateless person"<sup>145</sup>.

142 Law of Ukraine on Mediation, № 1875-IX of 16.11.2021. Available at: <https://zakon.rada.gov.ua/laws/show/1875-20#Text>.

143 Monoprofile city is a city where one type of economic activity is the main source of income for its inhabitants: [http://www.mled.org.ua/media/docs/Single\\_Industry\\_Town\\_Guide\\_2014\\_UKR.pdf](http://www.mled.org.ua/media/docs/Single_Industry_Town_Guide_2014_UKR.pdf).

144 The respondents noted the vulnerability of this category. Firstly, participation in hostilities often entails psychological trauma (which, as noted by the respondents, is especially applicable for women). Secondly, sometimes employers have a bias towards ex-combatants, believing that people who have specialized in military service are weaker candidates for non-military jobs. See also: Жиленко, Р. В. Дослідження основних потреб учасників АТО та членів їх сімей в соціальних послугах / Р. В. Жиленко // Науковий вісник Ужгородського національного університету : серія: Педагогіка. Соціальна робота / голов. ред. І.В. Козубовська. Ужгород, 2018. Вип. 1 (42). С. 68-73; Бриндіков, Ю. Л. Теорія та практика реабілітації військовослужбовців учасників бойових дій в системі соціальних служб: дис. ... д-ра пед. наук : 13.00.05 / Хмельницький нац. ун-т ; Тернопільський нац. пед. ун-т ім. В. Гнатюка. Хмельницький ; Тернопіль, 2018. 559 с.

145 See also <https://www.ua.undp.org/content/ukraine/uk/home/presscenter/pressreleases/2020/ukrainians-became-more-tolerant-and-active-in-defending-their-ri.html>.

**The most high-risk business sectors for rights holders are:** extractive and coal mining; mechanical engineering; agriculture; retail; IT (ICT); construction; chemical industry; garment and textile sectors.

In the context of business size, there is simply no resource for small businesses to think about human rights first. Business is busy thinking how to survive, and not how to respect the rights of people. The second point is what makes big business. Rather, big business views this topic from a narrowly focused approach. Roughly speaking, compliance in the international arena in order to meet certain expectations of the international community. And to minimize risks, and not in order to really protect the rights of people.

## 2.2.6. RECOMMENDATIONS

**Capacity assessment of the bodies, responsible for the access to remedies**, and further equipping them with efficient instruments and respective normative framework transformation should be provided. The key objective is to identify the existing entry points in the local policy and legislative frameworks, as well as key state and non-state mechanisms for further development and strengthening their effectiveness and accessibility.

**The wide awareness-raising campaign and training tailor-made for different target groups**, namely the government bodies, businesses, rights holders, human rights defenders, as part of the BHR promotion, needs to be designed and implemented. There is a need to expand awareness and motivation work for businesses on human rights issues, in particular for managers and professionals who are involved in recruiting. Also, greater involvement of business in the implementation of the dual education system is required.

At the same time, an important factor in both information campaigns and training is the involvement of business representatives who are already implementing successful employment practices for young men and women from various vulnerable groups. So, it is important to use peer-to-peer techniques along with experienced business trainers and human rights professionals. Also, the vast majority of respondents mentioned the special role of education in ensuring legal awareness of the population. In particular, it has often been stated that a truly lasting effect will only be here if the basics of business and human rights are taught from school age. The dissemination and widening practices of school entrepreneurship are also advisable. And in general, more emphasis should be placed on educating both businesses and rights holders in small, remote communities, as large cities still have greater access to information and good practices.

Raising awareness of CSOs and the general public, supporting of CSOs working on business and human rights are crucial needs to promote responsible business conduct. There is a need to focus on gender equality and non-discrimination within business and human rights awareness raising and the support of women's economic empowerment.

Media representatives and public relation specialists should be involved in the process of project implementation, in particular, within the framework of:

- raising awareness of all duty bearers and rights holders' groups regarding respect for human rights by business;
- work with overcoming stigma regarding some vulnerable groups of the population (for example, IDPs, migrants, homeless people, people with disabilities, and so on);
- dissemination of information regarding both the identified violations of human rights by business and the measures that have been taken to overcome these violations and their consequences, as well as the best practices of human rights observance by entrepreneurs.

For this, the following are essential:

- training activities for media representatives;
- working with specialists from authorities at central and local levels, who are responsible for public relations.

**Special attention to the representatives of the vulnerable groups** identified by this study should be paid. In particular, this could be done through the inclusion of provisions regarding these groups in awareness raising programs; involvement of representatives of relevant groups (in particular, relevant CSOs) in the implementation of the project.

Mutual impact and interconnection of the BHR initiative and the national policy and strategic framework needs to be ensured.

From one side, the design of the initiative should be grounded on the current national goals and priorities. On the other hand, the BHR topic should further strengthen the respective policies, strategies, and programmes (particularly, related to the SDGs implementation, economic and social development, human rights advancement, and others). It is advisable to incorporate the BHR advancement priority in the strategic directions of the one UN in Ukraine.

On the one hand, the design of the initiative should be grounded on the current national goals and priorities. On the other one, the BHR topic should further strengthen the respective policies, strategies, and programmes (particularly, related to the SDGs implementation, economic and social development, human rights advancement, and others).

And, finally, it is advisable to incorporate the BHR advancement priority in the strategic directions of the one UN in Ukraine (namely, through the UN Sustainable Development Cooperation Framework 2023-2027 which is in the process of drafting)

**There is a need to place a separate emphasis on the conflict-affected Donetsk and Luhansk region in the development of the long-term BHR initiative**, which would enable significant support to the government of Ukraine and opportunities to further spread the gained lessons learned and best practices in the whole country.

The context of the regions allows designing and implementing interventions and scenarios workable in the future for other locations. Alongside the specific challenges rooted in the conflict, these regions are facing all problems in the field of BHR as Ukraine in general, and very often such trends are even more emerging.

In addition, the current state policy approach is that “Donetsk and Luhansk regions should become a territory for the implementation of special economic and legal conditions for the comprehensive implementation of the governance system and organisation of economic processes, which can be further scaled to the entire territory of Ukraine”<sup>146</sup>.

The attention of foreign trade partners and investors to Ukraine will be specifically focused on the situation towards human rights in the conflict-affected regions. The advancing BHR agenda would help promote the engagement of the Donetsk and Luhansk regions’ economies to the overall value and supply chains.

The local state administrations, business and civil society have already presented their interest and ability to be sustainable partners for the innovative approaches to local development, so the possible cooperation is advisable.

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<sup>146</sup> Strategy on the economic development of Donetsk and Luhansk regions for the period up to 2030, approved by the Cabinet of Ministers order #1078-p of 18.08.2021. Available at: <https://zakon.rada.gov.ua/laws/show/1078-2021-%D1%80#Text>.

## 2.3 CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS IN UKRAINE: SECTOR AND MARKET PERSPECTIVES

In 2021 the UN Guiding Principles on Business and Human Rights (UNGPR) turned 10 years old. The situation looks optimistic in terms of attention to human rights from business companies, but a bit pessimistic by the real results from companies. Just an example: only 20% of companies from Global compact members have human rights due diligence in practice. This figure and low implementation of human rights in the business environment led to the future adoption of mandatory human rights assessment in the European Union as a follow-up from national policies in France, Germany, and the Netherlands. The latest effort to understand the businesses' position towards and respect for human rights was made in 2019 during the [National Baseline assessment Business and Human rights](#)<sup>147</sup>, where about 60% of surveyed 28 respondent companies had an internal document on human rights issues including a sustainability or CSR strategy, and half of these companies state that the document is available for their employees but not for other stakeholders.

The purpose of this Sector/Market study is to conduct background/desk research, market and trade analyses with a business and human rights lens, to understand the gaps, needs, and opportunities for human rights integration into companies, and to provide up-to-date accurate qualitative data and complement the National Baseline Assessment on B+HR of 2019 (NBA).

The scope of the Sector/Market study is an analysis of the previous surveys on responsible conduct in the business environment, trade and export statistics, investors' requirements, and companies' human rights practices on their websites, sustainability reports, via in-depth interviews and focus-group discussions. For the purpose of this study, 17 in-depth interviews were conducted as well as 6 focus-groups with companies' respondents from three selected areas – IT, agricultural, and retail sectors. These sectors were selected based on their role in the country's development during the COVID-19 pandemic and in the export capacity, as well as their human rights adverse impact including an informal employment status.

The IT sector, being the second largest industry in Ukrainian exports with growing tax revenue in 2014–2017 by 27% per year (according to [Ukrainian IT Industry: Analytical Report](#)) has invested millions of dollars in the country

147 Business and Human Rights. National Baseline Assessment, 2019. Available at: <https://minjust.gov.ua/files/general/2019/07/10/20190710170813-19.pdf>.

recovery. Retail and pharma are two sectors that prospered in the Covid times selling essential goods to citizens. According to the Ukrainian State Statistics Service, Ukraine's retail trade turnover in 2020 was UAH 1.202 billion (\$45 billion), a 10 % growth compared to 2019. Regarding the agriculture sector, it was severely hurt by the pandemic, but still remains the most promising sector of the economy and in 2020 generated approximately [9.3% of GDP](#). Regarding informal employment, the statistics demonstrate that the highest number of informally employed people are in the [agricultural sector](#) (first place) and retail (4th place). The three major business associations in Ukraine, namely the European Business Association, the American Chamber of Commerce in Ukraine and the Union of Ukrainian entrepreneurs, as well as sector associations – IT, agro and retail associations, were reached to participate in the first round of in-depth interviews and engage companies to fill out the survey on business and human rights.

According to many data, it was a year of changes in terms of the Business and Human Rights concept. In Ukraine, the number of biggest corporate taxpayers which publish human rights-related information increased from 27 in 2019 to 54 in 2020<sup>148</sup>. The number of human rights policies increased: human rights policies as separate corporate documents were published on the websites of the 4 biggest taxpayers – foreign companies: ArcelorMittal, Carlsberg, Coca-Cola Beverages Ukraine Limited, PJSC “Abinbev Efes Ukraine”. Among different human rights issues diversity, inclusion and equality became the most popular, especially in the IT sector (e.g. IT Integrator, Intellias, from other sectors there are two state-owned companies – Energoatom and Ukrenergo).

The increase in business human rights performance is driven by several factors:

- Environmental, Social, and Governance (ESG) performance requirements for investors<sup>149</sup>,
- Changes in European legislation (European Green Deal, EU Mandatory Human Rights Due Diligence Directive, EU Corporate Sustainability Reporting Directive) and their impact on companies working in the EU and with EU companies (results from focus-group discussions),
- Requirements for clients, partners and investors (results from in-depth interviews),
- Multi-Stakeholders' initiatives, e.g. Free-barrier initiative, GE, Best Family Friendly Ranking, Extractive Industries Transparency Initiative.

The key barriers, gaps, and opportunities for human rights integration in the business environment and companies in Ukraine will be discussed via export and trade data, companies performance, and the results of in-depth interviews and focus-group discussions in the further chapters.

### 2.3.1. INTERNATIONAL TRADE DIMENSION, FURTHER EXPORT, AND TRADE WITH THE EU

According to the National Bank of Ukraine statistics, in 2021–2023, the Ukrainian economy will grow at a steady pace of about 4%. Consumer demand and revival of investment activity will be its main drivers. The growth rate is expected in many sectors. To compare, in 2019 the growth rate was 23.6% in construction; 10.5% in retail trade turnover; 0.1% in wholesale trade turnover; 1.1% in agriculture; 2.1% in cargo turnover; and 2.6% in passenger turnover; whereas industrial output decreased by 0.5%.

The market size of mergers and acquisitions (M&A) in Ukraine was estimated at the level of \$1.2 billion. In 2020, the most active sectors in concluding agreements were the Technology, Media and Telecommunications (TMT)

148 ESG Transparency Index-2020. Available at: [cgsa.com.ua/novini/indeks-esg-prozorosti-kompanij-ukrayiny-2020](https://cgsa.com.ua/novini/indeks-esg-prozorosti-kompanij-ukrayiny-2020)

149 Swetha Venkataramani “The ESG Imperative: 7 Factors for Finance Leaders to Consider”, Available at: <https://www.gartner.com/smarterwithgartner/the-esg-imperative-7-factors-for-finance-leaders-to-consider>.

sector (35 agreements), food industry (22 agreements), and agricultural sector (22 agreements). The TMT sector became the most active in the M&A market of Ukraine due to the interest of foreign investors in promising local companies and their willingness to invest in Ukrainian start-ups. The agricultural sector was barely affected by the COVID-19 pandemic which allowed it to remain in the top by the number of deals. In 2020 the interest of American companies in Ukrainian IT businesses increased and therefore 14 deals were closed.

## FOREIGN DIRECT INVESTMENT IN UKRAINE

As of 30 September 2020 the scope of foreign direct investment (FDI) in the economy of Ukraine amounted to 49 mln US dollars. Although in 2020 the share of closed agreements with foreign investors decreased due to restrictions related to the COVID-19 epidemic (124<sup>150</sup> closed agreements in 2020 compared to 144 in 2019). The main barriers<sup>151</sup> were defined as follows: (1) a decrease in market activity as a result of the pandemic, the suspension of active operations, (2) the process of arrangements has become more complicated and longer, (3) buyers began to make stricter requirements for potential goals to avoid risks.

The key areas for investments were: the industrial sphere with 39.8%, wholesale and retail trade – 16.3%, and financial and insurance activities – 9.4% (*Annex A, Table 1*). **The most efficient state investors in Ukraine are Cyprus, Netherlands, UK, and Sweden** (*Annex A, Table 2*). In the meantime, in capital investments, the share of investors' funds (from non-residents) is quite low – 0.5%, while funds from the Ukrainian state and local governments amount to up to 14.6%, and bank loans equal 7.5%. However, the situation could be changed with the new legislation on incentives for investments.

In 2021, the President of Ukraine signed the **Law on State Support of Investment Projects with Significant Investments**. It says that Ukraine will provide a number of incentives to investment projects amounting to over 20 mln EUR including 30% of state support for such investments. Other benefits include exemption from taxes and import duties relief. Construction of infrastructure facilities and other advantages will be available to investors who will create at least 80 jobs per project with a project duration not exceeding 5 years. The target sectors of the economy for the investment projects will be manufacturing, mining, minerals and waste recycling, transport, warehousing, postal and courier services, logistics, education, research, healthcare, arts, culture, sports, tourism, resort and recreational spheres. There is no information in the Law regarding the characteristics of the project and their human rights due diligence. However, the feasibility study for the investment projects provides an assessment of their social and environmental impact (*according to the Requirements for the feasibility study of an investment project with significant investments, a resolution of the Cabinet of Ministers of Ukraine, Annex J*), although they are quite vague. Moreover, on the website of Ukraine Investment, there is a presentation of the Law for investors which includes no information about the social and environmental criteria of May 19, 2021, No. 515.

Another example of legislation is the Law of Ukraine on state support of industrial parks.

At the same time, there are a lot of local investors – representatives of large and medium companies who want to invest from 200,000 USD to 1 mln USD into Ukrainian agriculture, IT, and other areas<sup>152</sup>. As consumer demand, altogether with investment activity, contributes to the development of the Ukrainian economy, **retail, and other consumer-oriented industries will show strong capacity for current and future growth. Therefore, business and human rights (BHR) risks in these areas supposedly could be quite high.**

150 M&A-market in Ukraine. Results of 2020 // GlobalScope, 2021: <https://www.capital-times.com/ua-ua/news/tpost/cxstabb541-capital-times-predstavlya-analtichnii-zv>.

151 Ibid.

152 One step closer towards money. Available at: <https://business.ua/uk/node/11790>.

## COUNTRY EXPORT AND IMPORT DIMENSIONS

Export and import of goods in 2021 exceeded their pre-crisis levels. Export was driven primarily by rising commodity prices, while import grew due to the rapid recovery of consumer and investment demand, including demand for pharmaceuticals and medical equipment to combat the spread of COVID-19. According to the Law of Ukraine about the State Budget for 2022<sup>153</sup>, taxes on international trade and foreign transactions are planned for the sum of 37,427,000 thsd. UAH, which forms 2.83% of the total revenues in 2022.

Almost **half of Ukraine's gross domestic product is formed by exports** (39.4% percent in January-October 2021), one of the main prerequisites for the effective functioning of the national economy is the large-scale growth of Ukraine's presence in foreign markets. In 2021, the export of Ukrainian goods and services increased by 37.5% compared to 2020. **The export dynamics increased mostly to the European countries** (+45.1%) and Asia (+25.2%). Goods amounted to 85.8% of the export structure of Ukrainian companies.

In January-October 2021, Ukrainian goods were mostly exported to China (12.0%<sup>154</sup> of the total export volume), Poland (8.2%), Turkey (5.9%), Italy (5.2%), the Russian Federation (5.1%), and Germany (4.4%). Ukrainian companies exported the following groups of commodities: base metals and preparations thereof (24.2% of the total export volume, incl. 21.2% of ferrous metals), plant products (21.3%, incl. 16.6% of cereals), mineral products (13.9%, incl. 11.9% of ores, slags and ashes), animal or plant fats and oils (9.5%), machines, equipment and mechanisms, electric and technical equipment (7.8%).

The main importers to Ukraine were China (15.0% of the total import volume), the Russian Federation (8.0%), Poland (7.0%), Belarus (6.3%), and Turkey (4.6%). Ukrainian companies imported the following groups of commodities: machines, equipment and mechanisms, electric and technical equipment (19.6%, incl. 11.2% of nuclear reactors, boilers, and machines), mineral products (19.6% of the total import volume, incl. 18.7% of the mineral fuel, petroleum, and petroleum distillation products), products of chemical and allied industries (13.3%), ground, air and water transport facilities (10.8%, incl. 10.3% of ground transport facilities excluding railway), base metals and preparations thereof (6.1%).

Ukrainian companies mostly exported services to the following countries: the Russian Federation (16.6% of the total volume of foreign trade in services), the USA (15.3%), Switzerland (8.1%), the United Kingdom of Great Britain and Northern Ireland (6.1%), Germany (5.6%), and Poland (3.8%). **The share of the services exported to the EU countries was 34.6% of the total volume.** Ukrainian companies mostly exported transport services (37.9% of the total volume, incl. 38.5% of pipe transport services and 21.1% of the air transport services), services in the sphere of telecommunications, computer and information services (30.3%, incl. 79.4% of computer services), services for the processing of material resources (11.9%, incl. 99.5% of the services for the processing of goods abroad) and business services (11.5%).

The main importers of services to Ukraine were companies from Turkey (13.2%), the USA (10.5%), the United Kingdom of Great Britain and Northern Ireland (7.5%), Germany (5.7%), Cyprus (5.1%), Ireland (5.0%). **The share of the services imported from the EU countries was 42.6% of the total volume.** Ukrainian companies mostly imported transport services (21.3% of the total volume, incl. 32.9% of the air transport services and 32.8% of the sea transport services), services connected with travel (22.8%), business services (14.5%, incl. 54.7% of professional and consulting services and 22.1% of services for operational leasing).

**As one can see, agricultural goods and IT services are key export products. Among countries, to which Ukrainian companies exported products and services, were EU-based Germany and Poland. Thus, EU human rights-related Directives will be relevant for exporters.**

153 Law of Ukraine about the State Budget for 2022. Available at: <https://zakon.rada.gov.ua/laws/show/1928-20?lang=uk#Text>.

154 State Statistics Service of Ukraine: <http://www.ukrstat.gov.ua>

According to the Ministry of Economy of Ukraine, the following factors<sup>155</sup> were the most influential for exports dynamics in the first half of 2021:

- Adaptation of business entities to the conditions of the global COVID-19 pandemic, which led to a slow recovery of global demand along with significant increase in prices in major markets;
- Significant raw material orientation of Ukrainian exports and significant dependence of domestic enterprises on the foreign market, given the existing volatility of world markets, which determines the dependence of volume inflows of foreign exchange resources on external price fluctuations;
- Continuation of military and trade aggression by the Russian Federation (embargo and other restrictions on deliveries of Ukrainian goods to the Russian market, a ban by Russia on transit of Ukrainian goods to third countries through its territory);
- Systemic problems of foreign economic activity development (VAT refund, customs and tax regulation).

### IMPACT OF COVID-19 AND EXPORTS' NEEDS

The changed conditions of economic activity caused by Covid-19 have led to higher product requirements, digitalization, and a longer decision-making process. According to the results of the Survey<sup>156</sup> of the companies' opinion on the business situation during the COVID-19 pandemic, in 2020 it was much more difficult to do business compared to 2019 (47% of responses). Respondents mentioned the following main problems for the business development in Ukraine: uncertainty about the future (56%), corruption risks (53%), the low purchasing power of consumers (52%), constant change in the "rules of the game" (52%), lack of a reliable judicial system (47%), high tax burden (47%), insecurity of private property/raiding (41%) and others. **As we can see, three of the seven main problems are directly related to Human Rights including corruption, consumers' challenges, and insecurity of private property.**

52% of respondents faced problems with orders or declining demand in the domestic market, only 13% of businesses adapted to the new market conditions, and 13% of companies noticed they did not need any adaptations. 48% of respondents noted they do not see any new possibilities caused by Covid-19 for business development, 29% noticed digitalization, 22% – business diversification, and **20% mentioned opportunities to enter new foreign markets due to changes in supply chains and the search for new partners.** Most respondents know about and use the following state programs for business development: partial unemployment benefits (27% and 11% respectively), temporary disability benefits (29% and 11%), Export Promotion Office support (18% and 10%), the 5-7-9 Program of accessible loans (42% and 6%), child benefits for individual entrepreneurs (22% and 5%), etc. It refers to the most eligible ways for the governmental support of business entities: reduction of other types of the tax burden (41% of responses), tax reduction in case of workplace creation (37%), soft loans (35%), reducing the single social contribution (33%), partial compensation of salary costs (18%), **export promotion** (18%), etc.

Business entities know about and profit from the following donor support programs: EBRD programs (37% and 16% respectively), USAID programs (32% and 12%), EU4Business (23% and 10%), UNDP programs (18% and 7%) and GIZ programs (14% and 11%), 61% of respondents have not profited from any programs for business support. Mostly, companies are searching the Internet for sectoral information (84%), Covid-19 rules for businesses in the sector (81%), information about the available state and non-state programs and support tools (65%), information about the available Covid-19 state and non-state programs and support tools (64%). Among the most useful information on studying foreign markets, exporters noticed information about the customers' preferences and

155 Export Infographics: <https://me.gov.ua/Documents/List?lang=uk-UA&id=e3c3c882-4b68-4f23-8e25-388526eb71c3&tag=TendentsiiEksportulInfografi-ka-eksport->

156 Results of the Survey of the business community opinion on the business situation during the COVID-19 pandemic: [https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/ubi\\_waves3-5-18.02-full-v16.pdf](https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/ubi_waves3-5-18.02-full-v16.pdf).

market trends (47%), competitors (46%), **entering barriers** (37%), entering models (37%), trade statistics (35%), purchase ability of customers (33%), **business culture** (33%), political situation and risks (26%), success stories (18%).

By entering the foreign market Ukrainian exporters faced the following difficulties: lack of funding and financial support (35%), difficulties in partner search (35%), barriers and requirements in foreign markets (33%), **lack of experience, knowledge, and staff** (25%), **insufficient awareness of foreign markets** (23%), logistics (22%).

According to the results of the other survey<sup>157</sup> conducted by the Ministry of Economy of Ukraine, most of 140 Ukrainian exporters are interested in information and involvement in international exhibitions and fairs (35.9%), information and involvement in trade missions (31%), exports education (25.5%) and exports consulting (20.7%). BHR issues could be integrated into training programs and consultancy plans.

In conclusion, agricultural products and IT services are among the key export items of Ukrainian companies. Germany and Poland were among the top EU Members States, to which Ukrainian companies exported most agricultural products (30.8%) and IT services (30.3% of services incl. 79.4% of computer services) for the processing of material resources (11.9%) in 2020 and 2021. Thus, EU human rights-related Directives will be relevant for exporters. At the same time, companies in Ukraine acknowledge their poor knowledge about entry barriers to the EU and would like to get more information and training on these issues. With the developments of EU Human Rights-related Directives, being aware of their requirements could help Ukrainian companies to turn this entry barrier into an entry competitiveness opportunity.

## 2.3.2. HUMAN RIGHTS POLICIES AND PRACTICES IN COMPANIES OPERATING IN UKRAINE AND THEIR SUPPLY CHAINS

### 2.3.2.1. BUSINESS PROFILE IN THE UKRAINIAN ECONOMY

In 2020 Ukraine had 512<sup>158</sup> large, 17,946 medium, 1,955,119 small, and 1,898,902 microentrepreneurship entities. Medium companies created 29.1% of the total production value, large companies – 28.5%, small companies – 26.9%, micro-companies – 15.5%. Medium and small enterprises had the highest value added at factor costs, resp. 30.8% and 28.4%. Large and medium companies more actively attracted capital investments (47.7% and 41.1% of the total) and had the highest financial results before taxation (36.3% and 40.6% of the total).

In 2020 small enterprises were the biggest employers with 35.19% of the total number of persons employed by enterprises, and large, medium, and micro-enterprises employed fewer persons (13.1%, 26.0%, and 25.8% of the total resp.). Among all business entities operating in 2020, 95.8% employed up to 9 persons, 3.3% employed from 10 to 49 persons, 0.7% employed from 50 to 249 persons, 0.2% employed 250 and more persons. On average, 1 Ukrainian large company employed 3,075 persons, medium company – 175 persons, small company – 5 persons, micro-enterprises – 2 persons. Medium and large enterprises paid the highest personnel costs (42.3% and 32.8% resp.). Enterprises with the highest turnover are companies employing 250 and more persons (41.8%).

According to the analysis of the balance sheet structure, large enterprises had the highest non-negotiable assets (55.5% at the end of the year) compared to the non-negotiable assets of medium (35.3%) and small enterprises (32.5%). Small enterprises had the highest current assets (67.4% at the end of the year) compared to current assets of medium (64.6%) and large enterprises (44.4%). All enterprises by their size had an equal share of non-negotiable

<sup>157</sup> Results of the business survey "What needs to be changed in the state export support?": <http://exportstrategy.me.gov.ua/poll>.

<sup>158</sup> Statistical publication "Activity of large, medium, small and micro-entrepreneurship entities" // Statistics Ukraine, 2020: [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/2021/zb/12/Dsvsimm\\_20.pdf](http://www.ukrstat.gov.ua/druk/publicat/kat_u/2021/zb/12/Dsvsimm_20.pdf).

assets and groups of leaving (0.1%), large companies have a higher amount of equity capital (40.2%) compared to the medium (19.4%) and small (17.2%) enterprises. The large enterprises had a higher share of the long-term commitments and provision (17.1%) compared to medium and small companies (14.5% and 13.4% resp.). Large companies had a lower share of current liabilities and provision (42.7%) as compared to medium (66.2%) and small enterprises (69.4%).

All sectors of the economy were presented mostly by small business entities (from 65.6% in healthcare up to 99.0% in the total number of entities in real estate transactions). Large business entities were dealing mostly in (1) production, (2) transport, warehousing, postal and courier activities, and in (3) financial and insurance sectors (0.5%, 0.2%, and 0.2% respectively of the total number of entities), medium business entities – in health care and social assistance (34.4%), production (10.3%), transport, warehousing, postal and courier activities (6.3%), financial and insurance activities (7.4%).

In the total turnover, medium (43.4%) and large business entities (36.1%) had the highest share. By economic sectors, medium business entities had the highest share in the turnover in financial and insurance activities (66.2%), in agriculture, forestry, and fisheries (47.8%), in wholesale and retail trade, repair of motor vehicles and motorcycles (44.7%). Large business entities had the highest share in turnover in transport, warehousing, postal and courier activities (50.6%), in production (49.2%). Small business entities had the highest share in turnover in real estate transactions (67.5%) and construction (45.0%).

The highest value added at factor costs was recorded by large business entities working in the production sector of the economy (49.8% of the total value added at factor costs by large companies in 2020), in wholesale and retail trade, repair of motor vehicles and motorcycles (20.7%) and in transport, warehousing, postal and courier activities (15.5%). A similar situation is observed with medium business entities which had the highest value added at factor costs by operating in production (31.9% of the total value added at factor costs by medium companies in 2020) and in wholesale and retail trade, repair of motor vehicles and motorcycles (20.9%). Small business entities had the highest value added at factor costs by operating in wholesale and retail trade, and repair of motor vehicles and motorcycles (37.3%).

According to the data provided by YouControl, among the TOP-400 Ukrainian business entities with the biggest revenue in 2020 the largest shares of enterprises are linked to the extractive industries (extraction of iron ore, natural gas, crude oil, sand and gravel), the agricultural sector (growing of cereals, legumes and oilseeds), and the retail sector (retail trade of unused products, food, beverages and tobacco in non-specialized shops). Available information on the management and financial performance of enterprises is critically scarce: among the TOP-330 companies in terms of revenue in 2020, only 82.3% have an official website with information about the company, of which only 35% post on the site information on measures to ensure respect for human rights or increase in social responsibility and 33.3% – on the composition of their governing bodies. The most profitable Ukrainian large and medium companies generally do not publish information about their activities in public sources of information.

In conclusion, all sectors of the Ukrainian economy were mostly presented by small and micro enterprises, but the **biggest contribution to the turnover was made by large and medium companies**. They paid the highest personnel costs, had the highest value added at factor costs, actively attracted capital investments, and recorded the highest financial results before taxation. Medium enterprises had the highest level of profitability of all business activities. Therefore, **large and medium Ukrainian enterprises could become change agents ready to adhere to responsible business conduct, incl. by integrating BHR standards to attract foreign investment**.

### 2.3.2.2. PROFILE OF THE KEY SELECTED INDUSTRIES: IT, RETAIL, AND AGRICULTURE

For the purpose of the Sector/Market Study the three sectors were selected – IT, retail, and agriculture.

To have a snapshot of the selected sectors in terms of Human Rights respect, the 5 largest companies in each sector were selected and their websites were analyzed regarding the description of human rights policies and approaches, as well as reporting on the results in accordance with these policies and approaches (*Annex I*). As a result of this snapshot analysis, the agricultural companies approach human rights most thoroughly, followed by IT companies, and the last position is held by the retail sector, with indicators being three times lower than the agricultural sector. The main drivers in the agricultural sector are international stock exchanges and investors. At the same time, the placement of shares on the international stock exchange for IT companies has no impact on the disclosure of human rights policies and practices. It could be explained by the fact that the number of human rights risks in the agricultural sector is higher than in IT companies, so international partners of IT companies do not pay attention to human rights, except for inclusive and diversity policies. The retail sector, which is in the top 10 sectors in terms of investment<sup>159</sup>, but mostly local ones, does not cover policies and practices for responsible business and human rights. This shows that retail customers, which are the population of Ukraine, are not yet paying attention to these issues. From the point of view of thorough coverage, the agricultural sector is also in the first place, where a company can have up to 15 different human rights-related policies, including a separate policy on Human Rights as Astarta has, on the websites of companies, which can be publicly downloaded. Among IT companies, only Luxoft provides policies that can be freely downloaded. Other companies, especially in the retail sector, do not mention such policies, with the exception of Epicentr, which describes its environmental responsibilities. Sustainability reporting is popular with agricultural companies (three companies) and IT (2 companies). Retail companies have not prepared sustainability reports so far.

#### IT SECTOR

The Ukrainian IT sector grows 20-25% annually. 68% of Ukrainian IT specialists work for outsource companies, 17% of employees focus on research and product development for one company, and 15% of employees create their own products. The share of IT services in the total export volume is 7%. The National Economic Strategy supposes that by 2030 Ukraine will become the biggest developer and provider of IT products in Europe and the European R&D hub. The Cabinet of Ministers of Ukraine has defined the following strategic goals<sup>160</sup> to make it happen:

- to become the most attractive place for highly qualified specialists and to stimulate the development of competitive and global IT education;
- to facilitate the development of a competitive telecom market that ensures the provision of high-quality IT services;
- to create the best place in the region for tech production and start-ups realization;
- to facilitate the development of Ukraine's image as the most powerful IT hub in Europe.

Therefore, it was planned to optimize the state regulation to reduce the tax burden on IT companies, provide financial and non-financial support for product-oriented IT companies, and ensure the protection of intellectual property,<sup>161</sup> and Diia.City Law appeared. The IT sector was defined as a driver for the development of other sectors of the economy and the technological base for the improvement of the quality of life. Implementation of all the planned actions could lead Ukraine to reaching the top 10 world exporters of IT services. In Ukraine, there are more than 14 IT clusters, namely the IT Ukraine Cluster and clusters in Kyiv, Kharkiv, Lviv, Dnipro, Chernihiv, Cherkasy, Chernivtsi, Ternopil, Khmelnytskyi, Vinnytsia, Odesa, Ivano-Frankivsk, Rivne, Konotop, etc.

159 One step closer towards money. Available at: <https://business.ua/uk/node/11790>.

160 National economic strategy 2030. Available at: <https://nes2030.org.ua>

161 Ibid.

The IT Ukraine Association operates at the national level and unites 72 IT companies representing the needs and interests of 65,000+<sup>162</sup> IT professionals. Members of the Association are mostly service companies (75% of the total number) employed from 201 to 800 (30%) and from 81 to 200 persons (20%). The IT Ukraine association actively develops cooperation with the state authorities to protect IT interests within the Diia.City framework, protect the private entrepreneurs' rights and reduce the burden on the payroll. Internationally the IT Ukraine Association promotes the Ukrainian IT services in export markets by cooperating with diplomatic missions and organizing international events and B2B meetings. The main goal of the Association is to protect the interests of IT companies in the field of taxation and legal aspects of doing business.

According to the focus-group discussions and in-depth interviews, IT companies are the most progressive in respecting human rights compared to Ukrainian retail and agricultural sectors because of the high competitiveness for qualified IT specialists. The main problem in the IT sector is associated with labor contracts as most IT specialists work as individual entrepreneurs without social guarantees. Large IT companies working for foreign markets adapt to the international requirements in gender equality, diversity and inclusion, and intercultural communication, and offer their employees additional services (medical insurance, training programs, etc). But some company members and employees negatively react to D&I initiatives, thus awareness-raising campaigns could help IT companies to make more impact on HR issues. Some IT companies started to monitor supply chains and assess HR-related risks.

## DIIA CITY<sup>163</sup>

Diia City is a special legal framework for the IT industry to be launched in January 2022 that will make it possible to create the most powerful IT hub in Central and Eastern Europe in Ukraine. On December 18, the President of Ukraine signed the draft law on Diia. The goal is to stimulate the development of the digital economy in Ukraine within the Diia City. Special legal regime; favorable conditions will be created for at least 25 years to:

- run a technological and innovative business
- attract investments
- develop the digital infrastructure
- attract talented workers from all over the world
- stimulate the creation of domestic innovative products (startups and product companies)
- shape a knowledge economy in Ukraine
- develop IT education

Diia City residents will be legal entities registered under the legislation of Ukraine which meet the criteria set out in special legislation on Diia City (Acquisition of Diia City resident status is voluntary). Criteria for companies and start-ups are presented in *Annex F.1, Table F.1.3*.

Qualified IT activities: software development and testing, including games, publication and distribution of software, including SaaS, teaching computer literacy, programming, testing, software technical support, digital marketing and ads using software developed by residents, R&D in IT and Telecom, cybersport, providing services related to the virtual assets flow, cybersecurity, robotics.

The residence in Diia City changes the taxation for IT companies. Diia City implies: 5% of personal income tax, 22% of the single social contribution from the minimum wage, and 1.5% of the military collection.

<sup>162</sup> IT Ukraine Association report for the first half of 2021: <https://itukraine.org.ua/en/report-for-the-first-half-of-2021.html>.

<sup>163</sup> Official web-site of Diia.City: <https://city.diia.gov.ua/en/>.

Company and its members taxes 9% of withholding tax or 18% income tax (the object of taxation is at the discretion of the company), 0% on the income of an individual received as dividends if they were not distributed for 2 or more years.

GIG-contracts as a new form of interaction with IT specialists will be introduced in Diia City. GIG specialists will receive the benefits of freelancing, as well as additional social guarantees. GIG-contracts are not employment relationships, so they are not subject to the Labor Code. This is the form of a civil contract, the parties will settle relations and fix the arrangements in the contract. GIG-contracts include the flexibility of the individual entrepreneur (FOP) model and add several social guarantees.

These social guarantees include:

- Annual paid leave (minimum 17 working days),
- Sick leave,
- Maternity leave (minimum 70 calendar days) with the preservation of the workplace and all statutory benefits,
- Reimbursement of travel costs in case of relocation of the GIG specialist,
- Deductions of or reductions in remuneration cannot be applied to GIG specialists as their responsibility.

## RETAIL SECTOR

Internal trade accounts for 27%<sup>164</sup> of the GDP and 23% of the total number of employees work in this sector of the economy. The wholesale and retail trade sector has the following barriers to growth: low labor productivity, outdated business processes, a large number of falsified counterfeits in imported products, a large volume of the shadow economy, and financial and administrative obstacles. According to the National Economy Strategy, it is planned to ensure products compliance with HACCP standards and supply chain monitoring and control (e-TTH), implement the European instruments of product quality and origin control.

The Association of retailers of Ukraine unites more than 70<sup>165</sup> Ukrainian and international trading companies, incl. ATB, Epicentr, Eldorado, Varus, UPG and others. The Association regularly organizes an annual international summit of top retail, development and B2B companies (RAU Summit), a specialized international exhibition of the retail and development industry in Ukraine (RAU Expo), an international forum for investors, retailers, and developers (RAU Investment Forum) and present awards to the best shopping centers in Ukraine, retailers, and leaders in retail trade based on the results of a survey of experts and consumer voting (RAU Awards). The website includes information about the news and companies' experience in marketing and innovations, but no annual sustainability reports are posted.

According to the focus-group discussions and in-depth interviews, there is a big difference in the business conduct of retail companies depending on their size and regions of operation. Large and medium-sized retail networks mostly have foreign head offices, comply with international requirements, and have managers responsible for respecting human rights. Small retail companies behave like SMEs in other sectors of the economy where responsible business conduct mostly depends on the owners' values. Retail companies focus on the rights of employees, consumers, and local citizens. The main risks are connected with informal, irregular, and overtime employment, poor working conditions, and bad-quality products for sale. For retail companies, respecting human rights means improving a company's reputation and therefore – its profitability, that's why companies are trying to resolve conflicts without publicity. Corruption and the state's passive position on protection of human rights lead to the irresponsible business behavior of some Ukrainian business entities.

164 Vectors of economic development 2030. Available at: <https://nes2030.org.ua/docs/doc-vector.pdf>.

165 Official web-site of the Association of retailers of Ukraine: <https://rau.ua/en/aboutus/>.

## AGRICULTURAL SECTOR

The agricultural sector plays a key role in the economy of Ukraine and accounts for 9%<sup>166</sup> of its GDP and 6% of tax incomes. Ukraine is a world leader in exporting different agricultural and food products, incl. sunflower oil and meal, rapeseed, corn, barley, and rye. Experts point to a large shadow market<sup>167</sup>, particularly in grain production and land lease that leads to the usage of shadow sales channels. According to the National Economic Strategy till 2030, Ukraine will become one of the global centers of food security, a world leader in food supply with a high added value and technology-intensive services for the agricultural sector. 125 billion US dollars of direct investments should be attracted to achieve this goal. It is planned to increase the export volume to 45 billion US dollars by 2030.

The Ukrainian agribusiness club (UCAB) is the leading agro association in Ukraine representing more than 132<sup>168</sup> companies on the agrarian market (agriproducers and input suppliers). The aim of the UCAB is to promote efficient agribusiness in Ukraine (recruitment processes and investment attraction) and develop proposals for the improvement of agricultural policy in Ukraine (protection of business interests by implementing advocacy and communication campaigns). In 2020 the association organized sectorial events, namely the XI International Conference “Large Farm Management”, UCAB Agro Technologies 2020, the Business conference “QUO VADIS, AGRO?”, SeedForum, and online seminars.

The expert group of the association conducted research<sup>169</sup> on consumer sentiment and elaborated an analytical assessment of dynamics and development prospects for the agricultural market, farm resources, and related services. The UCAB expert group provides information and data necessary to increase the efficiency of doing business, namely about the crop production (grain crops, oilseeds, sugar beet, fruit, vegetables), livestock (milk, beef, pork, poultry meat); seeds and agrochemicals, agricultural engineering, financial and insurance instruments, processing products. UCAB developed the Ukrainian Agribusiness Index reflecting producers’ judgmental estimate of the current situation in the agricultural sector as well as their expectations from the business conditions for the following year.

In 2016 the UCAB joined the international up\_Running project aimed at overcoming the existing barriers and boosting the development of new, sustainable, and financially viable projects regarding horticulture waste management for the production of energy. In 2020 the Association implemented educational projects to train farm managers and field commanders. The Association’s information policy is based on the UCAB experts’ professional analysis of the agro-industrial complex to address certain issues in the agricultural sector and the economy as a whole. No materials focused on sustainability and human rights issues are posted on the website.

According to the focus-group discussions and in-depth interviews, human rights-related risks in the agricultural sector are quite high. Business owners, managers, and employees, especially seasonal unskilled workers, do not analyze human rights-related issues and have no sufficient information on this issue. The agricultural sector is characterized by an extremely high level of shadow employment, where reluctance of workers to be officially employed also takes place. Agricultural companies depend on investments and implement HR-related policies to attract finances. Large agricultural companies have implemented Human Rights-related policies. However, there are some tensions between agricultural holdings and local farmers because international companies don’t hire local citizens, use technologies instead of manual labor, win in the market competitions by decreasing operational costs, and manipulate negotiation processes with employees in the recruitment process as well as with landowners for renting land on favorable terms. Large companies were criticized by local SMEs because of their unwillingness to take responsibility for their influence on the local community and to create added value for the regions. On the other hand, the majority of agricultural SMEs don’t have any formalized procedures and policies.

166 Vectors of economic development 2030. Available at: <https://nes2030.org.ua/docs/doc-vector.pdf>.

167 Ibid.

168 Official web-site of the Ukrainian agribusiness club: <https://ucab.ua/en/>.

169 UCAB report on the activity, 2020: [https://ucab.ua/files/UCAB\\_files/Report%20UCAB%202020%20eng%20.pdf](https://ucab.ua/files/UCAB_files/Report%20UCAB%202020%20eng%20.pdf).

The practices of agricultural companies, incl. when it comes to respecting human rights, need more attention and an in-depth analysis, especially in terms of the Green Deal and CBAM, where the impact on the agriculture sector will be increased. In Ukraine, business associations have started to discuss this issue and the Farm to Fork strategy.

In conclusion, the sectoral analyses showed different challenges for companies in different sectors. Each sector has its challenges. For the agricultural sector, there is a large gap between companies on stock exchanges and companies whose shares are not listed there, between official documents and policies, and their relations with stakeholders on the ground. At the same time, IT and retail sector companies have lack of capacity with respect to human rights and need to raise awareness and support. To change the sectoral situation for the better and have a systemic and transformative change, working with sectoral associations, whose capacity needs to be built in terms of business and human rights concepts, seems much needed and highly relevant as a recommendation of this study.

### 2.3.2.3. BUSINESS AWARENESS AND EXPECTATIONS ON UNGPS AND RESPONSIBLE BUSINESS CONDUCT

Business associations and companies have less information about the difference between BHR, CSR, and business social responsibility (BSR). Responsible business conduct is mostly described at the minimum level as compliance with provisions of the Constitution and the Labour Code (occupational safety, work schedule, decent wages, freedom of peaceful assembly, etc.). Within the framework of the research, 17 companies filled out the questionnaire. According to the survey's results, human rights issues are mostly associated with the work-rest schedule (83.33% out of 17 respondent companies), equal pay for work of equal value (83.33%), and working conditions (88.24%). *See more in detail in Annex F.2, Picture 6.* Less often business representatives mentioned business responsibility to respect human rights at the social and local community levels, incl. by reacting to environmental issues and realizing good governance initiatives (ESG Standards). During the interviews, other business actions and initiatives were called not obligatory and referred to as social responsibility of businesses (corporate politics, gender equality and inclusion, respect for each other within a team, support of professional development, and charity events).

Ukrainian companies mostly don't define the following risks as actual or potential ones in the company's operations: children working illegally (88.24% out of 17 respondent companies), inadequate health and safety at work (76.47%), violations in relation to labour conditions (70.59%), security forces interfering with the right to assemble or freedom of expression (70.59%), discrimination or harassment (64.71%), violations of union rights (64.71%), violations of the right to privacy (64.71%). Environmental pollution linked to business activities was defined as a risk in the company (29.41%) or in the broader sector (23.53%). *See more in details in Annex F.2, Pictures 12-19.*

Representatives of large and medium-sized Ukrainian enterprises are mostly familiar with the UN Global Compact (76.47% out of 17 respondent -companies) and the UN Guiding Principles on Business and Human Rights (72.22%), but only 35.29% have information about the ILO Tripartite Declaration and 41.18% – other initiatives (*Annex F.2, Picture 7*). Businesses haven't encountered human rights due diligence requirements from investors or international partners (73.33%) (*Annex F.2, Picture 22*). To ensure respect for human rights, Ukrainian companies considered human rights standards as the benchmark for risk and impact assessments (64.71%), explored which human rights issues might be relevant for the company and/or its suppliers (52.94%), and discussed managing its actual or potential human rights risks at the board or senior management level (52.94%) (*Annex F.2, Picture 11*).

Companies mentioned that raising awareness on of corporate responsibility to respect human rights (21.62% out of 17 respondent -companies) and of the current business and human rights developments (18.92%) will help to develop and implement the Human Rights policy (*Annex F.2, Picture 10*). Large and medium-sized businesses do engage in awareness-raising activities about its respect for to promote respect for human rights, incl. annual mandatory trainings (28.57%), meetings with invited specialists and open lectures (22.86%) as well as mailing out on important international dates (22.86%). *See more in details in Annex F.2, Picture 21.*

### 2.3.2.4. HUMAN RIGHTS PRACTICES IN THE BUSINESS ENVIRONMENT IN UKRAINE

The focus-group discussions and in-depth interviews demonstrated that exporting companies follow all the official requirements, pay taxes and have certificates to justify that businesses are socially responsible and respect human rights. To enter a foreign market, retail companies prepare manuals that include HR-related issues. Industrial and WTO standards contain HR modules, additionally, companies implement confidentiality policies. Large companies rather consider international compliance as a tool to minimize business model risks than to respect human rights. Companies with foreign investments change the business culture and implement socially responsible business practices. Business partners from the EU verify compliance during field visits and after that take the decisions about cooperation.

#### HUMAN RIGHTS POLICY AS A SPECIAL FOCUS OF COMPANIES

According to ESG Transparency Ranking-2020 conducted by CSR Ukraine and the Professional Association of Corporate Governance<sup>170</sup>, performance of companies-biggest largest corporate taxpayers in terms of human rights increased twice in 2020 compared to 2019 although it still remains low. The number of companies that publish human rights-related information increased from 27 to 54. Companies mostly mention human rights issues in the Codes of Ethics or in non-financial reports when they describe the employment practices of people with special needs. For example<sup>171</sup>:

- Oshadbank Bank of Ukraine (banking sector) – described the network of inclusive branches, which is in the Consolidated Management Report and on the website;
- Auchan (retail sector) informs about the employment of people with hearing impairments and Down syndrome and the signing of the Business Without Barriers Declaration of JSC «Oshadbank Bank of Ukraine» in the CSR 2020 Report;
- DTEK Group (energy sector) described the signing of the Business without Barriers Declaration and international THE VALUABLE 500 initiative (an association of company executives committed to improving the integration of employees and customers affected by disability restrictions) in the Integrated Report 2020;
- PJSC «Vodafone Ukraine» (telecommunication sector) provided information on training policies and procedures related to various aspects of human rights in the Annual Sustainability Report, which, in 2020, were attended by 97% of all employees.

Human rights policies as separate corporate documents were published on the websites of the 5 biggest taxpayers (*Annex F.1, Table F.1.4*). Among the various Human Rights issues the number of companies work on, the criterion of Gender Equality (Family-Work Balance Programs, Women's Promotion, Combating Sexual Harassment) has increased and companies adopted the relevant policies such as<sup>172</sup>:

- Energoatom (energy sector): published the Gender Policy;
- Coca-Cola Beverages Ukraine Limited (FMCG): implements a program to support women's entrepreneurship and promote gender equality in the workplace. One of the company's goals in the field of sustainable development is to achieve a gender balance (50% of management positions are held by women);
- IT Integrator (IT) implements a program for women's development and women's leadership. The company helps to solve the problem of gender imbalance in the national IT industry, implements internal programs for women's development, supports social activities that promote women in IT and STEAM;

170 ESG Transparency Index-2020. Available at: [cpga.com.ua/novini/indeks-esg-prozorosti-kompanij-ukrayiny-2020](https://cpga.com.ua/novini/indeks-esg-prozorosti-kompanij-ukrayiny-2020).

171 Ibid.

172 Ibid.

- UKRENERGO (energy) conducted a gender analysis of the Collective Agreement on gender non-discrimination, a study “Gender Portrait of Ukrenergo” and a series of training on the development of gender knowledge;
- Intellias (IT) has signed the Women Empowerment Principles (WEP), initiated by the UN Women and UN Global Compact. The company develops a strategy for gender equality, promotes professional and leadership development of women and organizes educational activities on non-discrimination and equal opportunities.

Business practices depend mostly on the number of employees and the sector of the economy. Large international companies operating in Ukraine comply with ESG standards and Sustainable Development Goals (SDGs) and are trendsetters in environmental protection practices. On the other hand, they do not realize any additional activities not foreseen by the head office. Most Ukrainian companies are on the brink of survival because of the Covid-19 pandemic.

According to the focus-group discussions and in-depth interviews, the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, but large and medium-sized companies have more capacity to realize different forms through which they meet this responsibility. Small companies have less impact on society and are more focused on business processes than on human rights issues, SDG, and corporate social responsibility. Public companies should have all corporate governance policies, incl. anti-corruption policies, compliance procedures, and training for employees on these topics. Non-public companies are not obliged to implement such policies and that is their goodwill. The quantity of companies voluntarily developing and implementing the policies is low. State-owned companies have outdated management practices and a higher injury rates compared to the private entities which define KPIs and conduct safety training for employees.

**Large public companies** should meet the requirements of international investors, incl. respecting human rights, corresponding to meeting society’s expectations, and preparing non-financial reports. They have formalized procedures and policies developed by head offices that employees should sign.

**SMEs** are not obliged to prepare non-financial reports, meet lower society’s expectations, and have fewer resources for implementing activities to respect human rights, especially in Covid-19 times without sufficient state financial support. Some SME owners and managers develop and implement all the policies at the start of their business. SMEs that want to start export activities need to improve production capacities and implement quality assurance and other standards that cost a lot, thus support from donors or the government is needed. Environmental protection requirements and respect for human rights were considered by companies as extra ones, although companies demonstrate their readiness to implement these requirements from partners after signing of a contract. Exceptions are made by participants of the global supply chains that should meet the requirements of western international companies and prepare reports on respecting human rights.

**Microbusinesses** are mostly family companies that carry care about their employees and tend to save workplaces during the Covid-19 pandemic thus they consider human rights requirements as non-relevant for their businesses.

**Human rights risks.** While big public companies with foreign investment have mechanisms to identify and assess human rights risks, private companies don’t use them (results of the in-depth interviews and focus-group discussions). The most high-highest risk sectors of the economy are presented by the manufacturing companies (physical security of employees working at energy, chemical, railway, and construction enterprises), and consulting companies (physiological support of employees, lack of internal policies and approaches to support women and people with disabilities). Activities of heavy industry companies are highly risky in the terms of human rights respect because plants were have not been renovated after since the Soviet Union collapse (huge plants, huge emissions to the atmosphere, soviet labor standards), only some privatized companies were adapted to meet the national and international norms. For further information, please refer to the chapter 2.2 “A Rights Holders’ Perspective”.

Most Ukrainian large and medium-sized Ukrainian companies among the survey participants have in place a CSR or Sustainability Policy (82.,35% out of 17 respondent -companies), Diversity and Inclusion policy (64.,71%) and/or Human rights policy (58.,82%) (*Annex F.2, Picture 8*). Developed Human rights policies include anti-discrimination provisions (64.,71%), are publicly available (64.,71%), and disseminated internally to all staff (52.,94%), companies take measures to ensure employees' compliance with their human rights policy (64.,71%) (*Annex F.2, Picture 9*). Some Ukrainian companies have a special mechanism for submitting reports/claims (30.,23%) that is available for employees (18.,60%) and report the results of consideration of incoming cases (18.,60%) (*Annex F.2, Picture 20*).

Businesses answered that TOP managers (45.,00% out of 17 respondent -companies,) as well as compliance managers (20.,00%), are responsible for human rights issues in the company (*Annex F.2, Picture 24*). The biggest challenges Ukrainian companies face in addressing human rights are poor enforcement of national laws by government bodies (52.,94%) and inconsistency between national laws and international standards (41.,18%). Businesses don't agree that addressing human rights would reduce the efficiency of economic activity of organizations and point to collaboration at the industry or sector level. *See more in details in Annex F.2, Picture 23*.

**United Nations Global Compact.** Forty<sup>173</sup> Ukrainian entities were participants of the United Nations Global Compact among 108 participants, from different sectors of the economy (ICT, retail, food and beverages production, gas and oil production, support services, etc.) as of 12 December 12, 2021. Among participants, there are 3 agricultural companies (MHP, Astarta, and Danone), 5 retailers (Metro Cash&Carry, Auchan Retail Ukraine, Intertop Ukraine, KKC First Department Store, and Foxtrot,) and 2 IT companies (Intellias and SoftServe). Most of the participants have parent companies in European countries (France, Germany, United Kingdom, Denmark, Netherlands). Among 10 principles of the Global Compact, there are ten related to human rights with 2 specific ones: Principle 1. Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2. make Make sure that they are not complicit in human rights abuse.

Most companies have implemented policies and practices related to supporting women's empowerment and advancing gender equality in the marketplace and realized the activities to achieve SDGs. But still, the Global Compact Participants in Ukraine have the potential for growth. Most of their Communication on Progress documents do not meet all the criteria, incl. criteria related to Human Rights, Labour, Environment, and Anticorruption.

**Trade for Sustainable Development (T4SD).** Trade for Sustainable Development<sup>174</sup> is a partnership-based programme of the International Trade Center that has 4 tools: Sustainability Standards, Sustainability Trends, Sustainability Community, and Sustainability Network. The Sustainability Community includes 71<sup>175</sup> Ukrainian entities, incl. 62 companies representing the Processing and Manufacturing sector and 9 companies from the Primary Production sector. The Sustainability map is built by using the following data sources: Initiative for Compliance and Sustainability, Export Promotion Office of Ukraine, OFDC Organic Certification Standard<sup>176</sup> and Food Safety System Certification 22000<sup>177</sup>. The companies' profiles on the website do not include any information related to the Human Rights respect or Sustainable Development Goals.

173 Participants of the United Nations Global Compact: [https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=&search\[keyword\]=Ukraine&search\[organization\\_types\]\[0\]=5&search\[organization\\_types\]\[1\]=19&search\[countries\]\[0\]=206&search\[per\\_page\]=50&search\[sort\\_field\]=&search\[sort\\_direction\]=asc&fbclid=IwAR0FLdo3VZqdNazqN7eVBD65hZrSLF2fa72MZSeq2Gh5GWnvvj3W5sHGWFEE](https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=&search[keyword]=Ukraine&search[organization_types][0]=5&search[organization_types][1]=19&search[countries][0]=206&search[per_page]=50&search[sort_field]=&search[sort_direction]=asc&fbclid=IwAR0FLdo3VZqdNazqN7eVBD65hZrSLF2fa72MZSeq2Gh5GWnvvj3W5sHGWFEE).

174 Market analysis tools: <https://www.intracen.org/itc/market-info-tools/voluntary-standards/>.

175 Sustainability map: <https://sustainabilitymap.org/network>.

176 OFDC Organic Certification Standard: <https://standardsmap.org/en/factsheet/161/overview>.

177 Food Safety System Certification 22000: <https://standardsmap.org/en/factsheet/26/overview>.

## **HUMAN RIGHTS AS A PART OF HR FUNCTION (DECENT WORK, PRIVACY, NON-DISCRIMINATION, RIGHTS TO ASSEMBLY, H&S).**

Globally<sup>178</sup> human rights are often assigned to the functions of HR professionals in companies. It means that from on the one hand, employment rights are a focus for companies, but on the other hand, non-employment rights such as discrimination, inclusion, relations with suppliers, and gender equality in the community where a company operates can be easily overlooked. The same situation is in companies working in Ukraine, which can be proved by the fact that practically all the respondents for of our in-depth interviews were HR professionals.

Among human rights related to HR functions the following ones<sup>179</sup> can be singled out:

1. right to **diversity, equality, and inclusion** (DEI) in the recruitment process and workplace, including respect for religious beliefs,
2. equal pay for equal work,
3. maternity and paternity rights,
4. protection against sexual harassment and domestic violence,
5. a right to be officially employed and paid fairly for your work,
6. a right to freedom of associations and strike,
7. a right to the grievance mechanism.

**DEI policies** have been a priority for many companies since 2019. DEI directors have become the most sought-after professionals as the demand for them in 2020 compared to 2019 increased by 90%<sup>180</sup> as compared to 2019. According to the Inclusiveness Level survey in Ukrainian companies<sup>181</sup>, the Level is 66% for white-collar workers (which can be considered satisfactory), and 72.8% for Human Resource Directors (HRD), which can be considered good. The gap in HRD and employees' feedback can be explained by the poor communication of HR initiatives and HR silo when HRD does a lot but the results are not seen by the team. Ukrainian companies in big cities got the high score for the criterion "Authenticity", which means that employees feel comfortable at work. The worst results are for the criterion "Security" which means that employees are poorly aware of their actions in case of human rights violations at work, they do not know how company representatives will behave if there are situations of discrimination, bullying, or harassment. This security aspect demonstrates one of the key issues for companies to pay attention to – a right to the grievance mechanism, which is a key UNGP third pillar. According to in-depth interviews and an analysis of corporate websites, a lot of attention towards DEI is placed by IT companies as this is one of the requirements from international partners now (e.g. SoftServe, Luxoft). Large agro companies are also in the process of developing such policies (e.g. Kernel).

**A right to the grievance mechanism** can be respected in big international, export-oriented companies or companies that work with international investors (results obtained from focus-groups and in-depth interviews). For some companies, it could be the prerequisite for obtaining certificates of different kinds. According to the National Baseline Assessment Business and Human Rights<sup>182</sup>, most respondents out of 28 respondent companies indicated that their companies have mechanisms for handling complaints submitted by their employees (90%), employees of their contractors (60%), and other persons such as consumers, community representatives, etc. (70%). The following issues were raised in the submitted complaints: improper conditions for people with disabilities, environmental pollutions, and discrimination against women. Although, according to corporate

178 Robert McCorquodale. Should human resources be managing human rights? // HRzone, 2017. Available at: <https://www.hrzone.com/lead/future/should-human-resources-be-managing-human-rights>.

179 Human Rights in the Workplace // Human Rights Careers. Available at: <https://www.humanrightscareers.com/issues/human-rights-in-the-workplace/>.

180 Rubis I. How inclusive Ukrainian business is. What the study showed // New time, 2021. Available at: <https://biz.nv.ua/ukr/experts/inklyuzivnist-v-ukrajinskih-kompaniyah-rezultati-ostannogo-doslidzhennya-novini-ukrajini-50165205.html>.

181 Idim.

182 Business and Human Rights. National Baseline Assessment, 2019. Available at: <https://minjust.gov.ua/files/general/2019/07/10/20190710170813-19.pdf>.

sustainability reporting and focus-group -results, the majority of companies in different sectors including selected ones – IT, retail, and agriculture – prefer not to disclose information about the number of complaints and results obtained. Employees at the entry-level and workers do not always feel secure submitting to submit the complaint as “directors try to cover up the issue”, unlike top-managers and middle-position employees. In terms of sectors, the IT sector is an exception, as according to focus-group results, being a highly-competitive sector, companies try to handle all complaints quickly and effectively from employees of all levels. Interestingly, that focus-group participants, except young ones, doubted the necessity to create one hotline for complaints about companies as “large companies will find ways to solve the issues while SMEs will be under scrutiny”. Young people were more optimistic about such possibilities. In Ukraine, there is a sectoral case of establishing an online platform to settle the complaints voluntarily at the financial market – [finskarga.com.ua](http://finskarga.com.ua). The platform was launched in 2020 by the Ukrainian association of fintech and innovation companies (UAFOC) under with support of from the USAID-based Financial Sector Transformation Project in partnership with 7 banks and 18 micro-finance organizations.

**Equal pay for equal work** is a global issue. According to the World Economic Forum, 136 years are needed to overcome economic inequality between men and women<sup>183</sup>. In Ukraine as of April 1, 2021 women made up 48% of the employed population by the age of 15-70 years in Ukraine (7.3 million out of 15.4 million employed). Interestingly, that in each age group is characterized by a higher percentage of men work than women. The highest employment rate is among women aged 40-49 (75%) and men aged 30-34 (82%). In Ukraine, the gender pay gap decreased in 2021 from 20,4% to 18% according to the State Statistics Service<sup>184</sup>. In the IT sector, the gender pay gap accounts for 26%<sup>185</sup>. Moreover, the senior the women the higher the gender pay gap<sup>186</sup>. In agriculture, the gender pay gap is 11%<sup>187</sup>, while in the retail sector – 18,5%. In Ukraine there is no legislation about mandatory disclosing of requiring to disclose the gender pay gap, like in the UK, thus a small number of companies report about the results of the gender pay gap audit. In terms of corporate policies, there are no special policies or corporate focuses on the gender pay gap decrease.

**Maternity and paternity rights** in Ukraine are guaranteed by Ukrainian legislation. Starting from May 9, 2021, a new paid leave and some other guarantees for fathers have been introduced like<sup>188</sup>:

1. new paid paternity leave at the child’s birth (to be provided to the husband whose wife has given birth to a child, as well as to the child’s father who is not married to the child’s mother, provided that they live together and have a common household. Such leave may be granted for a period of up to 14 calendar days within the first three months following the child’s birth),
2. the right to childcare leave until the child reaches three years old can be granted to one of the child’s parents),
3. the right of a father of children under 14 years, or of a child with a disability, as well as the father who brings up a child without the mother, to reduced work hours at the expense of the employer,
4. the right of a father of two or more children under 15 years, or of a child with a disability, or of an adopted child, to have additional paid annual vacation of 10 calendar days.

In large Ukrainian companies, international and national, export-oriented companies, such rights are respected in terms of corporate policies, including the work-life balance policy. The first ranking of family-friendly companies<sup>189</sup>

183 Gender pay gap: how the average salary of women and men in Ukraine differs // Word and deed, 2021. Available at: <https://www.slovoidilo.ua/2021/06/10/infografika/suspilstvo/hendernyj-rozryv-oplati-praczi-yak-vidriznyayetsya-serednya-zarplata-zhinok-cholovikiv-ukrayini>.

184 Women and men in the labor market // State Statistics Service of Ukraine. Available at: [http://ukrstat.gov.ua/operativ/pro\\_stat/Prosto/m&w/j\\_ch\\_na%20runky\\_praci.pdf](http://ukrstat.gov.ua/operativ/pro_stat/Prosto/m&w/j_ch_na%20runky_praci.pdf).

185 Ibid.

186 Yablonska T. Women in IT: portrait, career and salary. Analytics // Dou, 2020. Available at: <https://dou.ua/lenta/articles/it-woman-2020/>.

187 Women and men in the labor market // State Statistics Service of Ukraine. Available at: [http://ukrstat.gov.ua/operativ/pro\\_stat/Prosto/m&w/j\\_ch\\_na%20runky\\_praci.pdf](http://ukrstat.gov.ua/operativ/pro_stat/Prosto/m&w/j_ch_na%20runky_praci.pdf).

188 McKenzie B. Ukraine: New paid leave and other benefits for fathers // Lexology, 2021. Available at: <https://www.lexology.com/library/detail.aspx?g=65664df1-9285-4a51-be32-eba9219a96d7>.

189 Family-friendly companies’ Ranking-2021. Available at: [https://ukraine.unfpa.org/uk/BADVGE\\_rate](https://ukraine.unfpa.org/uk/BADVGE_rate).

has been launched in Ukraine in 2021 by CSR Ukraine and UNFPA under the auspices of the Government of Sweden where 50 corporate volunteers including large, small, and medium companies were evaluated. The majority of companies have corporate work-life balance policies (80%) and gender equality policies (78%) which are integrated into other corporate documents (Code of Ethics, DEI, etc). Only 16% of companies have their separate work-life balance or responsible parenting programs. All the companies introduced a flexible work schedule due to the COVID-19 pandemic, as well as the provision of “family hours” (additional paid hours or days before leave for parents who have children or family members, who need care), the inclusion of family members in health insurance programs). Less common practices among Ukrainian companies are the practice of providing financial assistance for the education of children of employees (10%) and the creation of corporate kindergartens (2%). In terms of the latter, Ukrainian IT companies (e.g. Intellias and others) are quite advanced in this, which is related to the work with clients 24 hours a day.

**The right to protection against sexual harassment and domestic violence** is a completely new topic for Ukrainian companies. According to a survey conducted by UNFPA in 2019<sup>190</sup>, only 8% experience offensive statements and unacceptable gender-based jokes, although many people, more than 4 mln in Ukraine, know somebody who suffered sexual harassment (13%), but only half of them asked for help<sup>191</sup>. 225% of employees in Ukrainian companies suffered from domestic violence, thus assistance from companies is highly needed. In terms of sexual harassment, in general, companies do not have a special policy on this. Although there is a case from IT company Squad which invested resources in the development of training on sexual harassment issues, established a network of employees-employee s-trainers and conducted trainings for employees which were very welcomed by many people within the company. In terms of protection against domestic violence, several companies developed special policies (Loreal, StarLightMedia) within the Business Coalition For Gender Equality and Against Domestic Violence established by CSR Ukraine and UNFPA. There are 35 companies-participants, including IT (Eleks, IT integrator) and agriculture companies (Kernel, Corteva).

**The right to be officially employed and be paid fairly for your work** is important for large Ukrainian, international and national ones, and export-oriented companies. In terms of official employment, one of the most risky sectors is IT where people are employed as individual entrepreneurs. Agriculture The agriculture sector has its challenges related to seasonal workers, who sometimes themselves do not want to be employed officially as they could lose rights to governmental benefits. Usually, companies try to monitor the average level of salaries and bonuses, especially in such highly competitive areas such as IT or agriculture or for white-collars and senior management employees. In agriculture, there is Agrohubs company which provides analytics for the large agricultural companies in Ukraine, among the key issues of analytics is including salary salaries and bonuses in the sector. If the case is about When it comes to workers in villages or small towns, unfortunately, this right is not respected according to focus- group discussions. There are no special corporate policies on this issue.

**The right to freedom of associations and strike** ensures legal protection of employees, but trade unions do not always effectively represent and protect the labor, socio-economic rights, and interests of workers. According to the legislation, the employer, if the employees are members of a trade union, must cooperate with the trade union on issues related to: carrying out overtime work at the enterprise; the order of granting leave, the transfer of annual leave; introduction, replacement, and revision of labor standards, etc. In addition, the employer must agree with the trade union body for employees who are members of elected trade union bodies: change in the terms of the employment contract; change in wage conditions; disciplinary action. During in-depth interviews, companies do not mention this right due to several factors: linkage of trade -unions towards with the Soviet past and unawareness of employees of their own rights and necessity of the trade-union establishment.

190 Gender Equality and Response to Domestic Violence in the Private Sector of Ukraine: Call for Action, Available at: <https://ukraine.unfpa.org/en/BADV2019eng>.

191 National survey on Gender Equality in Ukraine, July 2018. Available at: <https://www.kmu.gov.ua/news/ivanna-klimpush-cincadze-prezentuvava-rezultati-pershogo-nacionalnogo-opituvannya-shchodo-rivnosti-cholovikiv-ta-zhinok>.

In conclusion, human rights are mostly associated with Human Resources in companies, although the level of respect for human rights in the HR functions depends on the sector, as well as the size, scope of work, and export orientation of the company. The key overlooked issue is the right to freedom of association and the right to grievance, as the latter doesn't work effectively at companies. Thus an initiative to create national or sectoral hotlines or platforms could be considered a driver to respect human rights in business.

## **HUMAN RIGHTS AS A PART OF THE SUPPLY CHAIN FUNCTION (WORK WITH SUPPLIERS, LAND RIGHTS)**

The corporate responsibility to respect human rights requires companies to conduct human rights due diligence to identify, address and mitigate adverse human rights impacts with which they may be involved through their business relationships. According to the surveys conducted by the UN Global Compact<sup>192</sup>, over 90% of the surveyed companies globally report to have established policies and practices on human rights, but less than 20% mention that they conduct human rights due diligence or impact assessment. According to the [National Baseline assessment Business and Human rights](#)<sup>193</sup>, 40% of surveyed 28 companies had explored which human rights issues might be relevant for their company and/or its suppliers, and 45% of companies have conducted an assessment of their services/ products/supply chains impact on human rights. In comparison with the global figure (20%), the number of Ukrainian companies with human rights assessments looks quite high. There is a Compliance Officer (in agricultural companies) or a procurement department which are responsible for cooperation with suppliers. There is the Code of Interactions with suppliers (Kernel, MHP), or the Code of Supplier Conduct (Bayer) at companies in Ukraine. Suppliers should be aware of the corporate policies of their partners and should adhere to them, and this clause should be included in the Agreements with suppliers. Moreover, the partner has the right to check the implementation of its policies by the supplier company. Human rights issues are part of these policies. In addition, the companies have a "Business partner check" procedure, which means that before selecting a supplier or signing a contract with a particular company, the company will check the activities of this company, any information about court decisions on this company or involvement in criminal proceedings. If this is the case, the company will assess all risks including the continuation of cooperation with this supplier. It is important to mention that such practices are relevant for large national Ukrainian companies, and international or export-oriented companies. Unfortunately, regional companies as well as SMEs do not work with suppliers on the issue of responsible business conduct and human rights. In conclusion, the practice of cooperating with suppliers on the issues of responsible business conduct and human rights is not yet developed among companies in Ukraine, although the first step has already been made in terms of Policies for suppliers and check procedures.

## **HUMAN RIGHTS AS PART OF COMMUNITY ENGAGEMENT AND CSR FUNCTION (ENVIRONMENTAL SAFETY, COMMUNITY DEVELOPMENT)**

The issues of community engagement<sup>194</sup> are mostly relevant for agriculture companies and companies in mono-cities where one company provides employment and taxes for city welfare. Usually, this is the case for heavy industries as a result of Ukrainian history.

192 The basics of business and human rights for every company. Available at: <https://www.unglobalcompact.org/take-action/events/1725-the-basics-of-business-and-human-rights-for-every-company#:~:text=According%20to%20the%20most%20recent,due%20diligence%20or%20impact%20assessments>.

193 Business and Human Rights. National Baseline Assessment, 2019. Available at: <https://minjust.gov.ua/files/general/2019/07/10/20190710170813-19.pdf>.

194 According to UNICEF definition#, community engagement is a "foundational action for working with traditional, community, civil society, government, and opinion groups and leaders; and expanding collective or group roles in addressing the issues that affect their lives. Community engagement empowers social groups and social networks, builds upon local strengths and capacities, and improves local participation, ownership, adaptation and communication. Through community engagement principles and strategies, all stakeholders gain access to processes for assessing, analysing, planning, leading, implementing, monitoring and evaluating actions, programmes and policies that will promote survival, development, protection and participation". In companies, CSR or community relations managers (in agriculture sectors) are responsible for community engagement. (Minimum Quality Standards and Indicators for Community Engagement, Available at: [https://www.unicef.org/mena/media/8401/file/19218\\_MinimumQuality-Report\\_v07\\_RC\\_002.pdf.pdf](https://www.unicef.org/mena/media/8401/file/19218_MinimumQuality-Report_v07_RC_002.pdf.pdf)).

That's why the retail and IT sectors do not have a lot of challenges in social programs, mostly these projects are about charity or corporate volunteering. On the contrary, agricultural companies have one specific issue – land rights as they have to work with communities in rural areas and communities. Usually, companies sign Agreements with local councils where an amount per hectare is indicated, and later a company will pay this amount to the local budget. During the focus-group discussions local farmers were quite negative about large agricultural companies as “the approach to land use is mostly about consumerism and not paying attention to the long-term use and land recultivation”. In addition, there were accusations that large companies developed corporate policies in accordance with international norms, but in reality, they do not practice responsible business conduct. Thus the issue of responsible land use is of high priority for agricultural companies.

Another important issue for the community development is environmental protection, especially in agricultural regions and mono-cities in Eastern Ukraine where heavy industry is developed. According to focus-group discussions, environmental issues result in health issues, including the increase in cases of cancer, inhalation of harmful substances: emissions, pesticides, etc., as well as in the destruction of the whole ecosystem. Agricultural companies during in-depth interviews mentioned that they developed Environmental Policies (Astarta, Kernel, MHP, etc), one company – MHP – is in the negotiating with a local community over water shortage issues. Agricultural areas have some specifics. If “in large industrial cities there is an exhaustive list of enterprises that have the main negative impact on the environment, in agrarian regions the situation is radically different. There are often a large number of small farms that have a partial negative impact on the environment. Their impact accumulates and leads to significant environmental problems. If in the first case the respondents say that the problems can be reduced by modernizing specific plants, in the second case there is no final list of entities in terms of their negative impact on the environment.” Thus government control is crucial in such situations, as well as raising awareness about cumulative effects of the negative environmental impact.

In conclusion, community development issues are mostly relevant to the agricultural sector, although human rights risks are not on the map in their risk assessment methodology according to in-depth interviews. This leads to the fact that very often arising human rights issues are solved with financial stimulus. To motivate companies to practice responsible business conduct, it is necessary to cooperate with communities themselves for them to drive corporate focus on human rights.

### 2.3.3. CONCLUDING REMARKS

Currently, companies' respect for human rights as a concept and HRDD is mostly made on a volunteer basis as a legal framework for HRDD is not mandatory. Ukrainian legislation requires certain binding actions from companies in terms of labour, environmental, anti-discrimination, and information issues but up to now there are no binding requirements regarding HRDD. EU trends and legislation will have an impact on Ukrainian company regulation and companies themselves. The new Corporate sustainability reporting directive, which is expected in the EU in 2021, will have more requirements for companies, and this will automatically influence more companies in Ukraine. The European Green Deal and related CBAM expected to be adopted in 2022 will also have an impact on the adoption of new legislation and practices, especially in terms of environmental human rights and the development of new corporate practices.

The biggest change in Ukrainian regulation and business are likely to be brought by the European Commission Directive on Corporate Due Diligence and Corporate Accountability, which is expected to be adopted in March 2022. In the light of harmonization, the companies in Ukraine, which are a part of the value chain of EU-headquartered companies, should assess human rights risks and report on human rights due diligence.

Although some companies with trade relations with companies from Germany and the Netherlands will soon be covered by the jurisdiction of their national regulations.

BHR is an important concept for investors and foreign financial institutions. In Ukraine, this concept is quite developed among international companies, although Ukrainian companies, especially small and medium ones, have a lot of unresolved issues. The level of the company maturity in terms of human rights depends on the sector, export capacity, and size. Human rights due diligence is conducted in companies in Ukraine, but quite rarely. Human rights risks are not disclosed by companies. Although there are cases in Ukraine when investors suspended investments or started investigations after human rights violations. Usually, investors entering Ukraine order a social audit according to their standards where human rights is a part of Environmental and Social Performance.

The sectors of the Ukrainian economy are mostly presented by small and micro enterprises (SMEs), but the biggest contribution to the turnover was made by large and medium companies. Medium and large companies paid the highest personnel costs, had the highest value added at factor costs, actively attracted capital investments, and had the highest financial results before taxation. Medium enterprises had the highest level of profitability of all enterprises' activities. Therefore, large and medium Ukrainian enterprises have the biggest impact on stakeholders and meet the society's requirement to adhere to responsible business conduct.

There is a big difference between Ukrainian and international businesses, as well as between large Ukrainian businesses or export-oriented Ukrainian companies and others. Large international companies are more advanced in terms of human rights policies. As large Ukrainian businesses or export-oriented Ukrainian companies are considered under a big microscope by regulators and NGOs, thus they should follow human rights requirements, especially when they want to attract impact investors or investors like EBRD or IFC. Interestingly, such investors (like IFC) include the human rights agenda in the concept of environmental and social governance (ESG). And they screen companies and help them develop a roadmap to improve the situation, and if a company doesn't follow this or some issues arise the IFC could suspend the credit line.

Every year companies increased their performance with respect to human rights, and some of them launched new policies, such as IT or agro companies. As gender equality issues have been gaining momentum since last year, national companies developed special policies. The most active sectors include energy and IT as they feel the lack of candidates to fill the vacancies and requirements from international partners (for the IT sector). Sectoral associations do not have a special focus on BHR issues; CSR initiatives are mostly implemented in the educational field to achieve PR goals (engagement of qualified employees, an increase in customer loyalty and brand value). The main gap is the lack of information and probably knowledge of the BHR concept on the part of association management representatives .

Retail and other consumer-oriented industries will show strong capacity for current and future growth, as consumer demands grow, therefore business and human rights (BHR) risks in these areas supposedly could be quite high. Agricultural products and IT services are one of the key export items for Ukrainian companies which export them to EU-based countries such as Germany and Poland. Thus, exporters, including large, small, and medium businesses, should get knowledge about the requirements of EU human rights-related Directives. Being aware of their requirements could help Ukrainian companies to turn this entry barrier into an entry competitiveness opportunity.

In Ukraine, taking into account the turnover, large and medium Ukrainian enterprises could become change agents ready to adhere to responsible business conduct, incl. by integrating BHR standards to attract foreign investment. To do this, it's necessary to overcome barriers that were defined during the Sector/Market study such as:

- 1) Companies do not understand the Human rights agenda for business, e.g. human rights are mostly associated with Human Resources in companies so some key human rights issues could be overlooked; or human rights risks are not included in the risk mapping assessment of the companies, thus arising human right challenges are always solved ad-hoc.

- 2) Low human rights awareness in Ukrainian society in general as e.g. employees do not use the existing grievance mechanisms in the company or an opportunity to create a trade-union to stand for employees' rights, or people are ready to be employed unofficially or to put up with the negative environmental impact of the company in exchange for a financial stimulus.
- 3) There is a gap between business policies and business practices of large companies, and between large companies and SMEs in different sectors of the economy. Even although the IT sector looks like less risky in terms of human rights violations, there are some issues that can't be ignored such as IT-related schemes of employment via individual entrepreneurship contracts, gender pay gap, sexual harassment, and others. There is no understanding of the sectoral human rights risks.
- 4) Export-oriented companies do not know about the entry rules of the EU in terms of human rights and they need education in this regard, since up to now these requirements are considered by them as barriers.
- 5) The majority of companies do not have effective grievance procedures, and very often employees do not believe in the effectiveness and confidentiality of the existing ones.
- 6) The share of FDIs in capital investments of Ukrainian companies is quite low in comparison with funds from the state and local governments and bank loans which can be used for BHR integration in public procurement.

Business associations, governmental and non-governmental organizations, investors, and donors can form synergy to assist companies in integrating human rights into business operations. Although one of the key drivers of the Business and Human Rights agenda for businesses could be business associations, which can organize advocacy events, develop templates of policies and procedures on Human Rights-related issues as well as benchmarking sectoral standards for companies to adhere to.

Taking into account the limitation of this Research, only three sectors were chosen – IT, agriculture, and retail. For further research, it's recommended to increase the number of sectors and add two risky sectors of the Ukrainian economy: the textile sector because of informal employment, "grey" purchases of raw materials, esp. in Eastern Ukraine, and the construction sector due to informal employment and rising health and safety issues.

## 2.3.4. RECOMMENDATIONS

Based on the above sector/market findings in Ukraine, the research study presents the following recommendations to address the current barriers and nurture responsible business opportunities in Ukraine, including in the specific sectors assessed:

1. Together with the Export Promotion Office, it's necessary to develop courses for exporters, especially SMEs and those who fall under the jurisdiction of German, Dutch and French acts and EU human rights-related Directives (CSRD, Green Deal and Corporate Due Diligence and Corporate Accountability Directive). After the course, financial support or consultations could be provided for SMEs to raise their capacities and meet export requirements.
2. It is strongly recommended to increase the capacity and knowledge of business associations, in particular, in the selected pilot sectors (agriculture, retail, and IT) and in risky sectors, such as textile and construction, of responsible business conduct and human rights. The second step could be the development of sectoral – specific human rights issues and standards.

3. There is a need to work closely with business associations including specific sector associations to support awareness-raising and information campaigns to increase human rights awareness among CEO managers, employees, and community members. This should include exchanging best BHR practices in the business environment to measure and change the perception of human rights so it is not only perceived as a human resource issue.
4. The share of FDIs in capital investments of Ukrainian companies is quite low in comparison with funds from the state and local governments and bank loans. This fact suggests that state and local governments and banks could be the key drivers in promoting responsible business conduct and the BHR agenda among businesses in Ukraine. Thus, it's recommended to study the opportunity to include BHR requirements in state and local governments capital investment projects, as well as bank loans, and learn more details about foreign experience in this. An additional recommendation could be to add social and environmental KPIs in the assessment of national projects that fell under the auspice of the Law on State Support of Investment Projects with Significant Investments.
5. Human rights issues could be included in the business school curriculum to help CEOs and senior managers to understand human rights issues in business, and ways for its mainstreaming in the business ecosystems (suppliers, communities, and other stakeholders).

## **BUSINESS AND HUMAN RIGHTS IN UKRAINE: STAKEHOLDER MAPPING AND ANALYSIS**

This section summarizes the findings of the BHR stakeholders' mapping and analysis in Ukraine that will help the UNDP team to map and identify stakeholders: duty bearers (government), key businesses and business associations, CSOs and right holders, media and academia to target the awareness-raising of the UNGPs. The BHR stakeholders' analysis focuses on deepening the understanding of stakeholders, their networks, goals, and influence on the UNGPs implementation, with special attention to the role of the key CEBs, taking into account the both nationwide, regional and local contexts.

When designing a new BHR systemic change, it is crucial to apply a multi-stakeholder approach to ensure strong local ownership, relevance, and sustainability of future interventions leaving no one behind.

The BHR stakeholders' mapping and analysis will help the UNDP team to map and identify stakeholders: duty bearers (government), key businesses and business associations and CSOs and right holders, media, and academia to target the awareness-raising of the UNGPs. The purpose of the stakeholder analysis is to develop a deeper understanding of the actors, their goals and influence, and the networks, which will determine the successful UNGPs implementation in Ukraine.

SA underlines an understanding of power relations and potential alliances and conflicts among stakeholders, providing the foundation for planning stakeholder engagement throughout the UNGPs implementation in Ukraine.

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### 2.4.1. BHR RIGHT HOLDERS AND DUTY BEARERS: GENERAL OVERVIEW

Adoption of the UNGPs set an international framework for business and human rights principles stipulating human rights obligations for both states and businesses:

- (a) States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached<sup>195</sup>.

<sup>195</sup> Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

It should be noted that UNGPs apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership, and structure<sup>196</sup>. *The matrix of duties according to the UNGPs is outlined in Annex G (Table G.1).*

The scope of UNGPs refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises<sup>197</sup>. *The list of Human rights that are covered by the UNGPs please see in Annex G (Table G.2).*

Wherever there is a right, there is a corresponding duty to fulfil that right. Every particular right, therefore, entails the existence of those who hold the legal entitlement to it (the ‘right-holders’ or ‘claimholders’) and those who are under a duty to take appropriate measures to uphold the right (the ‘duty-bearers’). Such measures may be in the form of action that the duty-bearer should take — for example, passing legislation to help ensure a healthy environment or decent conditions of work — or action that the duty-bearer should not take, such as permitting the use of torture or denying access to education on grounds of race or gender<sup>198</sup>.

#### BHR Right holders

Identifying and empowering rights-holders to assert their rights.

#### BHR duty bearers

Identifying duty-bearers and ensuring that they have the responsibility, authority and resources needed to discharge their duties.

Human rights based approach determines the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations<sup>199</sup>.

When designing new programs and initiatives, the following **elements are necessary**, specific, and unique to ensure a human rights-based approach<sup>200</sup>:

- i. Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.
- ii. Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.

196 Ibid.

197 National Action Plans on Business and Human Rights. <https://globalnaps.org/ungp/guiding-principle-12/>.

198 Human Rights in UNDP. Practice note. [https://www.un.org/ruleoflaw/files/HRPN\\_English.pdf](https://www.un.org/ruleoflaw/files/HRPN_English.pdf).

199 The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. <https://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/>.

200 Ibid.

- iii. Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- iv. Programming is informed by the recommendations of international human rights bodies and mechanisms.

Other elements of good programming practices that are also essential under an HRBA, include<sup>201</sup>:

- i. People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
- ii. Participation is both a means and a goal.
- iii. Strategies are empowering, not disempowering.
- iv. Both outcomes and processes are monitored and evaluated.
- v. Analysis includes all stakeholders.
- vi. Programmes focus on marginalized, disadvantaged, and excluded groups.
- vii. The development process is locally owned.
- viii. Programmes aim to reduce disparity.
- ix. Both top-down and bottom-up approaches are used in synergy.
- x. Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
- xi. Measurable goals and targets are important in programming.
- xii. Strategic partnerships are developed and sustained.
- xiii. Programmes support accountability to all stakeholders

The outlined principles should be taken into account when designing, launching, implementing, monitoring, and evaluating programs, taking people and an inclusive stakeholder approach as a priority.

The first step to do that will be identifying the key rights-holders and duty-bearers (state and businesses) in Ukraine, and applying the UNGPs framework to the Ukrainian national context.

#### 2.4.1.1. BHR RIGHT HOLDERS

Following the Right-holders study (*section 2.2.*), the key groups of BHR right-holders were identified:

- a. Employees
- b. Unemployed people
- c. Shadow economy employees
- d. Youth
- e. Children
- f. Older persons
- g. People living in rural areas and in small monofunctional towns
- h. Women
- i. Community members
- j. Community members in conflict-affected areas
- k. Employees with family responsibilities
- l. People living with HIV

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201 The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. <https://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/>.

- m. Persons with disabilities
- n. LGBTIQ
- o. National minorities, Roma people
- p. Internally displaced persons
- q. People living close to the contact line
- r. Homeless persons
- s. Persons, who were released from places of deprivation of liberty
- t. Ex-combatants
- u. Migrants, especially Ukrainian migrant workers who are vulnerable as Ukraine doesn't provide adequate protection abroad
- v. Stateless persons
- w. Whistleblowers
- x. Human-Rights defenders
- y. Journalists

**“Leaving no one behind” principle** compels us to focus on discrimination and inequalities (often multiple and intersecting) that undermine the agency of people as holders of rights. Many of the barriers people face in accessing services, resources, and equal opportunities are not simply accidents of fate or a lack of availability of resources, but rather the result of discriminatory laws, policies, and social practices that leave particular groups of people further and further behind<sup>202</sup>.

However, 61% of Ukrainians consider discrimination to be a problem in society. Another fifth of respondents believes that this is not a problem at all, and about the same number could not answer this question. At the same time, the number of people who consider discrimination to be a very serious problem has increased from 14% to 18% in four years<sup>203</sup>.

**Legal empowerment of rights-holders should be a priority when designing and implementing policy in Ukraine.** Legal empowerment is designed to give people the power to (1) know and (2) use the law and is one of the most effective and responsive methods for achieving access to justice.

According to a study of legal needs and problems in Ukrainian communities, only 2/3 of people who have a legal problem try to solve it. And the vast majority of them do not turn to official bodies or legal aid providers, preferring to communicate with their relatives or acquaintances<sup>204</sup>.

However, legally empowered, even poor and marginalized people are able to make the law work in their own interests, achieving meaningful solutions to concrete injustices. It emphasizes a people-centric approach to justice by highlighting the priorities of individuals and communities in using the law to advance and protect their interests<sup>205</sup>.

202 Universal Values Principle Two: Leave No One Behind. <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>.

203 The results of the national sociological survey "What Ukrainians know and think about human rights: assessment of changes (2016 – 2020)". [https://www.ua.undp.org/content/ukraine/en/home/library/democratic\\_governance/what-ukrainians-know-and-think-about-human-rights--assessment-of.html](https://www.ua.undp.org/content/ukraine/en/home/library/democratic_governance/what-ukrainians-know-and-think-about-human-rights--assessment-of.html).

204 Justice needs survey, 2018. <https://drive.google.com/file/d/1jhAwjaCtIuxPAttHV4J6tlyJ9WKSdwPi/view>.

205 OECD Issues 2016 – Delivering Access to Justice For All. <https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf>.

Types of Legal empowerment interventions<sup>206</sup>:

**The Asian Development Bank identifies three orders of legal empowerment interventions:**

- First-order interventions include basic legal awareness-raising, or “legal literacy” work to educate the public about legal rights and obligations, institutional structures of the legal system, and specific mechanisms that marginalized groups can use to advance their interests. This can include print, broadcast and internet media, informational flyers, pamphlets and posters, radio and TV outreach, dramatic performances and digital tools.
- Second-order interventions focus on resolving legal problems and administrative challenges that are faced by marginalized groups. Interventions are community-driven and provide both formal and informal legal services, including mediation. Paralegals are a key mechanism for implementation at this level, as they are able to address informal/formal divides, understand local context, are cost-effective and responsive to local community needs.
- Third-order interventions are designed to affect policy constraints and systemic factors that shape the circumstances in which legal problems arise. They target persisting inequitable power relations that continually marginalize the poor. Activities include public interest litigation, policy and law reform advocacy, legislation drafting, administrative advocacy, justice system reform and corruption monitoring.

#### 2.4.1.2. BHR DUTY BEARERS (STATE)

States are obligated under international human rights law to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. Even if States do not fulfill their obligations, all business enterprises are expected to respect human rights, meaning they should avoid infringing on the human rights of others, and should address adverse human rights impacts with which they are involved. If abuses occur, victims must have access to effective remedies through judicial and non-judicial grievance mechanisms<sup>207</sup>.

Under international human rights law, States Parties have specific obligations to (i) respect, (ii) protect, and (iii) fulfil the rights contained in the conventions. Failure to perform these obligations constitutes a violation of such rights.

- i. The obligation to respect requires State Parties to refrain from interfering with the enjoyment of rights. For example, the right to housing is violated if the State Party engages in arbitrary forced evictions.
- ii. The obligation to protect requires State Parties to prevent violations of rights by third parties. For instance, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to just and favourable conditions of work. Also, when there is a conflict between culture and women’s rights, the human rights of women prevail.
- iii. The obligation to fulfil requires State Parties to take appropriate legislative, administrative, budgetary, judicial, and other measures toward the full realisation of rights. This includes the duty to promote human rights<sup>208</sup>.

206 Ibid.

207 OHCHR and Business and Human Rights. <https://www.ohchr.org/en/issues/business/pages/businessindex.aspx>.

208 Human Rights in UNDP. Practice Note. [https://www.un.org/ruleoflaw/files/HRPN\\_English.pdf](https://www.un.org/ruleoflaw/files/HRPN_English.pdf).

UNGPs provide for clear and specific obligations of the states with regard to business and human rights issues.

**Illustrative matrix of minimum duties that UNGPs address to the states<sup>209</sup>:**

Pillars	Principles
<b>Pillar I.</b> <b>The state duty to protect human rights</b>	<b>A. Foundational principles</b>
	1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication.
	2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.
	<b>B. Operational principles</b>
	3. In meeting their duty to protect, States should: <ul style="list-style-type: none"> <li>(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps;</li> <li>(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;</li> <li>(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;</li> <li>(d) Encourage, and where appropriate, require business enterprises to communicate how they address their human rights impacts.</li> </ul>
	4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.
	5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
	6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.
7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: <ul style="list-style-type: none"> <li>(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;</li> <li>(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;</li> <li>(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;</li> <li>(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.</li> </ul>	
8. States should ensure that governmental departments, agencies, and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.	

<sup>209</sup> Following Implementing the United Nations "Protect, Respect and Remedy" Framework. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

Pillars	Principles
	<p>9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.</p> <p>10. States, when acting as members of multilateral institutions that deal with business-related issues, should:</p> <ul style="list-style-type: none"> <li>(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;</li> <li>(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building, and awareness-raising;</li> <li>(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.</li> </ul>
<p><b>Pillar III. Access to remedy</b></p>	<p><b>A. Foundational principle</b></p>
	<p>25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative, or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.</p>
	<p><b>B. Operational principles</b></p>
	<p>26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical, and other relevant barriers that could lead to a denial of access to remedy.</p>
	<p>27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.</p>
<p>28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.</p>	
<p>31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:</p> <ul style="list-style-type: none"> <li>(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;</li> <li>(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;</li> <li>(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;</li> <li>(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;</li> <li>(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;</li> <li>(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;</li> <li>(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;</li> </ul> <p>Operational-level mechanisms should also be:</p> <ul style="list-style-type: none"> <li>(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.</li> </ul>	

Some of the abovementioned principles are outlined in the national Ukrainian legislation. Article 2 of the National Human Rights Strategy<sup>210</sup> stipulates that the goal of the Strategy is to ensure that human rights and freedoms are treated as a priority and a key factor in the public policymaking process and its implementation, in decision-making by public authorities and local self-government bodies, **as well as in the activities of business entities.**

Section 16 of the Strategy specifies measures aimed at UNGPs implementation in Ukraine:

### § 16. Ensuring respect for human rights when performing business activities

Strategic goal: business entities, when performing business activities, use an approach based on respect for human rights; victims whose rights have been violated by business entities have access to effective measures of legal protection.

The problem that the strategic area seeks to address: the violation of human rights by business entities (in particular, in the sphere of labour relations, personal data protection, protection of customers' rights and environmental protection, etc).

Objectives (tasks) aimed at achieving the goal:

- implement provisions of the UN Guiding Principles on Business and Human Rights and Recommendations (CM/REC(2016)3) of the Committee of Ministers to the Member States on Human Rights and Business;
- build capacity of public authorities and local self-government bodies required to implement the provisions of the UN Guiding Principles on Business and Human Rights and Recommendations (CM/REC(2016)3) of the Committee of Ministers to the Member States on Human Rights and Business;
- raise awareness of business entities and their associations, trade unions and other civil society institutions of the UN Guiding Principles on Business and Human Rights;
- assist business entities with the update of their policies (in particular, in the sphere of labour relations, protection of the environment, corporate social responsibility, protection of personal data and customers' rights, corruption prevention, combatting trafficking of human beings, etc.) to comply with the UN Guiding Principles on Business and Human Rights and other international documents in the human rights sphere;
- provide citizens with access to judicial and extra-judicial means of protecting their rights against violations arising in the course of business activities.

Expected outcomes:

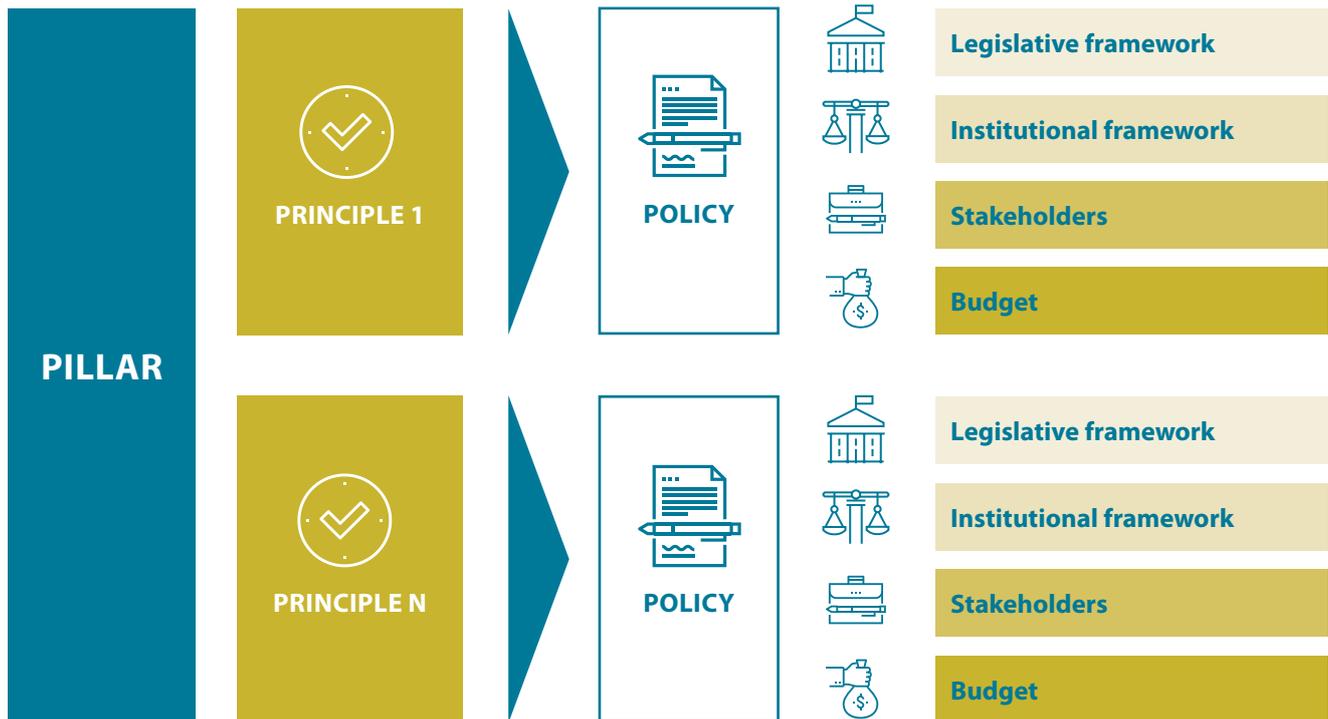
- legislation of Ukraine and public policy is in line with the standards of ensuring and protecting human rights if they are violated by business entities;
- business entities introduced policies ensuring human rights;
- access to judicial and extra-judicial means of protecting citizen's rights against violations arising in the course of business activities has been ensured.

210 National Human Rights Strategy. <https://minjust.gov.ua/files/general/2021/04/06/20210406204133-62.pdf>.

However, for the systematic and coherent UNGPs implementation in Ukraine, it is crucial to integrate the principles set out in the Guidelines into the national context, adapting them to national policies and practices. This will require the operationalization of principles at the level of public policy documents, national legislation, and, accordingly, the identification of a wide range of stakeholders to whom the UNGPs apply.

The UNGPs implementation model in Ukraine is schematically shown below:

### UNGPs implementation model



As can be seen from the proposed model, each principle corresponds to a separate area of public policy, which is either already existing and will need to be adjusted, or absent.

Accordingly, each policy area has (1) a legal framework; (2) an institutional framework; (3) stakeholders, and (4) a budget.

A preliminary analysis of public policy areas has shown that the issue of UNGPs implementation lies in over 40 public policy areas.

Map of policy areas that are under UNGPs implementation in Ukraine<sup>211</sup>



**Pillar 1:** State duty to protect

**Pillar 2:** Corporate responsibility to respect

**Pillar 3:** Access to remedy

211 The proposed list is conditional and is based on an analysis of the provisions of national legislation that defines the powers of public authorities in relevant policy areas. Please see the list of regulations that have been analyzed in Annex P. Bibliography.

Each policy area needs a particular approach, as it has its own (1) policy issues, (2) stakeholders (including key decision-makers, affected groups, and other interested stakeholders), and (3) appropriate tools to achieve policy targets.

**A focus on existing cross-sectoral policies will help integrate business and human rights issues into the national agenda.**

An option could be Ukraine’s European integration policy, which covers all available areas of public policy, has a well-developed legal framework, as well as an appropriate coordinating body that ensures coordination and coherence.

**Based on the policy analysis, three groups depending on the level of their sustainability were identified:**

- (1) **The first group is presented by policies with a developed legal framework but has problems with implementation, monitoring, and evaluation** (e.g., labour, employment, social protection, etc.).

In this case, there is a clearly defined public authority responsible for the relevant area, so the business and human rights project can strengthen existing policies through quality monitoring, evaluation, and improvement of remedies (judicial, extrajudicial) – and thus ensure compliance with the UNGPs.

- (2) **The second group consists of policies that are generally regulated, but in the future as a whole or some aspects are planned to be changed to comply with European or international standards** – such as policies for personal data protection or implementation of the Green Deal, the introduction of carbon-border management tax (CBAM), corporate governance reform or the National Bank’s ESG strategy, etc.

In this case, it is crucial (1) to integrate the UNGPs provisions into new legislative changes or administrative practices and (2) to provide an efficient framework for monitoring and evaluation.

- (3) **The third group is represented by policies that will require significant updating or amending legislation, administrative and judicial practice** (e.g., the introduction of mandatory human rights due diligence, the inclusion of non-price criteria for public procurement, etc.). Such amendments seem to be subject to particular reforms that will require the implementation of a complete policy cycle: from problem analysis, agenda development, and policy choice – to the development of a framework for monitoring, evaluation, and review.

<p><b>(1) Policies with a developed legal framework, but lacking efficient implementation, monitoring, and evaluation</b></p>	<p><b>(2) Policies that are to be amended in the nearest future following European or international standards</b></p>	<p><b>(3) Policies that will require significant updating or amending legislation, administrative and judicial practice</b></p>
<p>the business and human rights project can strengthen existing policies through quality monitoring, evaluation, and improvement of access to remedies (judicial, extrajudicial), ensuring compliance with the UNGPs.</p>	<p>it is crucial (1) to integrate the UNGPs provisions into new legislative changes or administrative practices and (2) to provide an efficient framework for monitoring and evaluation.</p>	<p>Such amendments seem to be subject to particular reforms that will require the implementation of a complete policy cycle: from problem analysis, agenda development, policy choice - to the development of a framework for monitoring, evaluation, and review.</p>

**The existence of a large number of conflicting policies (such as human rights policies and business deregulation policies) necessitates solutions to ensure policy coherence. This will require not only an analysis of the legal framework and law enforcement practices but also coordination and communication with stakeholders representing each policy area.**

There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shapes business practices.

However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws, and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices – including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments' human rights obligations<sup>212</sup>.

## THE INFRASTRUCTURE OF GOVERNMENTAL AUTHORITIES TO IMPLEMENT THE STATE DUTIES UNDER THE UNGPS

By various legal means, the state ensures the protection of human and civil rights and freedoms represented by legislative, executive, and judicial authorities and other state bodies exercising their powers within the limits established by the Constitution and in accordance with the laws of Ukraine (Constitutional Court of Ukraine decision of May 23, 2001, No. 6-rp / 2001)<sup>213</sup>. State power in Ukraine is exercised on the basis of its division into legislative, executive, and judicial. Bodies of legislative, executive, and judicial power shall exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine (Article 6 of the Constitution)<sup>214</sup>. Below please see **the list of BHR duty-bearers (state) in Ukraine:**



### President of Ukraine

#### Parliament

- Verkhovna Rada of Ukraine Committee on Law Enforcement
- Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations
- Verkhovna Rada Committee on Legal Policy
- Verkhovna Rada of Ukraine Committee on Economic Development
- Verkhovna Rada of Ukraine Committee on Finance, Tax and Customs Policy

212 Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework. [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

213 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the constitutionality of the provisions of paragraphs three, four, five of Article 248-3 of the Civil Procedure Code of Ukraine and on the constitutional appeal of Svitlana Budynska Serhiy Volodymyrovych on the official interpretation of the provision of the fourth paragraph of Article 248-3 of the CPC of Ukraine (case on the constitutionality of Article 248-3 of the CPC of Ukraine) of May 23, 2001, № 6-rp / 2001.

214 Constitution of Ukraine. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.



## NHRI

### Government

#### Cabinet of Ministers

- Deputy Prime Minister in European and Euro-Atlantic integration (human rights as part of EU – Ukraine Association Agreement, Green Deal)
- Ministry of Justice (National Human Rights Strategy coordination, implementation of general measures following ECHR's judgments, criminal/civil justice, free legal aid, UPR, execution of court decisions)
- Ministry of Social Policy (human trafficking, social security, equal opportunities policy, non-discrimination policy, rights of the child)
- Ministry of Economy (development of public policy in the spheres of: entrepreneurship development, PPP, investments, export promotion, state-owned enterprises, public procurement, international trade, labor rights, combating shadow employment, OECD National Contact Point)
- Ministry of Finance (state funding, PPP) – Ukrainian Startup Fund, Entrepreneurship Development Fund
- Ministry of Culture and Informational Policy (national minorities rights)
- Ministry of Reintegration (IDPs rights, reoccupation)
- Ministry of Environment and Natural Sources (environmental rights, ESG, Green Deal, Paris Agreement)
- Ministry of Digital Transformation (digital rights, AI development, digital security, personal data protection, Diia business platform, Diia Centers)
- Ministry of Youth and Sports (rights of the youth)
- Ministry of Internal Affairs (criminal justice, prevention human rights violations, investigation)
- Ministry of Foreign Affairs (preparation for ratification international agreements in the sphere of human rights)
- State inspections (Labor Inspection, Ecology Inspection)
- State Property Fund of Ukraine, Antimonopoly Committee, Accounting Chamber, Antimonopoly Committee of Ukraine, State Financial Monitoring Service (PPP monitoring and control)



### State institutions

- Export Credit Agency – the Agency will provide insurance, reinsurance and guarantees under contracts that ensure the development of exports. It will also participate in programs to partially compensate for the interest rate on export credits and provide advice to exporters.
- Entrepreneurship and Export Promotion Office – cross-functional and provides cross-sectoral cooperation with the Ministry of Economy of Ukraine, the Ministry of Digital Transformation of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Infrastructure of Ukraine and other government agencies, NGOs, private companies and associations.
- Ukrainian Startup Fund
- Entrepreneurship Development Fund
- Coordination Center for Legal Aid Provision



### Law enforcement agencies

- National Police of Ukraine
- General Prosecutor's Office



### Judiciary

- Supreme Court
- Lower courts
- National School of Judges
- Constitutional Court (constitutional complaint)



### Specialised Commissioners

- Government Commissioner for Gender Policy
- Government Commissioner for the Rights of Persons with Disabilities
- Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea
- Commissioner of the President of Ukraine for the Barrier-Free Environment



### Advisory bodies

- Intergovernmental working group on the monitoring and evaluation of the Human Rights Strategy (under MoJ)
- Working group on recodification (updating) of civil legislation of Ukraine (under MoJ)
- Interdepartmental Commission on International Trade (Ministry of Economy)



### Local level

- Local administrations, agencies, centers on entrepreneurship development
- State regional administrations

## 2.4.1.3. DUTY BEARERS (BUSINESS)

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation, and, where appropriate, remediation. Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes<sup>215</sup>.

Depending on the circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them<sup>216</sup>.

215 [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

216 National Action Plans on Business and Human Rights. <https://globalnaps.org/ungp/guiding-principle-12/>.

**Illustrative matrix of minimum duties that UNGPs address to the business<sup>217</sup>:**

Pillars	Principles
<b>Pillar II.</b> <b>The corporate responsibility to respect human rights</b>	<b>A. Foundational principles</b>
	<p>11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.</p>
	<p>12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.</p>
	<p>13. The responsibility to respect human rights requires that business enterprises:</p> <ul style="list-style-type: none"> <li>(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;</li> <li>(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.</li> </ul>
	<p>14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership, and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and the severity of the enterprise’s adverse human rights impacts.</p>
	<p>15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:</p> <ul style="list-style-type: none"> <li>(a) A policy commitment to meet their responsibility to respect human rights;</li> <li>(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;</li> <li>(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.</li> </ul>
	<b>B. Operational principles</b>
	<p>16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that: (a) Is approved at the most senior level of the business enterprise:</p> <ul style="list-style-type: none"> <li>(a) Is approved at the most senior level of the business enterprise;</li> <li>(b) Is informed by relevant internal and/or external expertise;</li> <li>(c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;</li> <li>(d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;</li> <li>(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.</li> </ul>
	<p>17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:</p> <ul style="list-style-type: none"> <li>(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products, or services by its business relationships;</li> <li>(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;</li> <li>(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.</li> </ul>

217 Following Implementing the United Nations “Protect, Respect and Remedy” Framework. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

Pillars	Principles
	<p>18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:</p> <ul style="list-style-type: none"> <li>(a) Draw on internal and/or independent external human rights expertise;</li> <li>(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.</li> </ul> <p>19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.</p> <ul style="list-style-type: none"> <li>(a) Effective integration requires that: <ul style="list-style-type: none"> <li>(i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;</li> <li>(ii) Internal decision-making, budget allocations, and oversight processes enable effective responses to such impacts.</li> </ul> </li> <li>(b) Appropriate action will vary according to: <ul style="list-style-type: none"> <li>(i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products, or services by a business relationship;</li> <li>(ii) The extent of its leverage in addressing the adverse impact.</li> </ul> </li> </ul>
	<p>20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:</p> <ul style="list-style-type: none"> <li>(a) Be based on appropriate qualitative and quantitative indicators;</li> <li>(b) Draw on feedback from both internal and external sources, including affected stakeholders.</li> </ul>
	<p>21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:</p> <ul style="list-style-type: none"> <li>(a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;</li> <li>(b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;</li> <li>(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.</li> </ul>
	<p>22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.</p>
	<p>23. In all contexts, business enterprises should:</p> <ul style="list-style-type: none"> <li>(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;</li> <li>(b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;</li> <li>(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.</li> </ul>
	<p>24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where the delayed response would make them irremediable.</p>

Pillars	Principles
<b>Pillar III. Access to remedy</b>	<b>C. Foundational principle</b>
	<p>29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.</p> <p>31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:</p> <ul style="list-style-type: none"> <li>(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;</li> <li>(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;</li> <li>(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;</li> <li>(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;</li> <li>(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;</li> <li>(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;</li> <li>(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;</li> </ul> <p>Operational-level mechanisms should also be:</p> <ul style="list-style-type: none"> <li>(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.</li> </ul>

UNGPs apply **to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership, and structure**<sup>218</sup>.

Criteria	Types of business companies
<b>Sales volume</b>	<ul style="list-style-type: none"> <li>• Micro</li> <li>• Small</li> <li>• Medium</li> <li>• Large</li> </ul>
<b>Geography of the market</b>	<ul style="list-style-type: none"> <li>• Operating within Ukraine</li> <li>• Exporters</li> </ul>
<b>Ownership</b> <sup>219</sup>	<ul style="list-style-type: none"> <li>• Private</li> <li>• State-owned</li> <li>• Utility company</li> </ul>
<b>Getting support or funding from state or local budget</b>	<ul style="list-style-type: none"> <li>• Companies involved in public procurement</li> <li>• Companies receiving support from the state (investments, PPP, loans, startups funding)</li> </ul>

218 [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

219 According to the Statistical Classification of Organizational Forms of Economic Entities, [http://www.ukrstat.gov.ua/norm\\_doc/2014/271/CKOF\\_102014.zip](http://www.ukrstat.gov.ua/norm_doc/2014/271/CKOF_102014.zip).

Types of enterprises according to the Statistical Classification of Organizational Forms of Economic Entities<sup>220</sup>:

<b>Private enterprise</b>	An enterprise operating on the basis of private property of one or more citizens, foreigners, stateless persons, and his (their) work or with the use of hired labour. An enterprise operating on the basis of private property of an economic entity – a legal entity is also private.
<b>State-owned enterprise</b>	An enterprise established by the decision of the Cabinet of Ministers of Ukraine. The decision to establish a state-owned enterprise determines the scope and nature of the main activities of the enterprise, as well as the body whose management includes the enterprise being created. Reorganization and liquidation of a state-owned enterprise are carried out by the decision of the body responsible for the establishment of this enterprise.
<b>Utility company</b>	An enterprise operating on the basis of the communal property of a territorial community.
<b>Subsidiary</b>	An enterprise whose sole founder is another enterprise (an enterprise dependent on another).
<b>Foreign enterprise</b>	An enterprise established under the legislation of Ukraine that operates exclusively on the basis of the property of foreigners or foreign legal entities, or an operating enterprise acquired entirely in the ownership of these persons. Foreign enterprises may not be established in areas defined by law that are of strategic importance for the security of the state.
<b>Enterprise of public association</b> (religious organization, trade union)	An enterprise founded on the property of a public association, religious organization, or trade union for the purpose of carrying out economic activities for the purpose of fulfilling their statutory tasks. The founder of such an enterprise is the relevant association of citizens, a religious organization, a trade union that has the status of a legal entity, as well as their association (union) if their statute provides for the right to establish enterprises.
<b>Consumer Cooperative Enterprise</b>	An enterprise formed by a consumer society (societies) or a union (association) of consumer societies in order to achieve the statutory goals of these societies, or unions (associations).
<b>Joint Stock Company</b>	Joint-stock company – a company whose authorized capital is divided into a certain number of shares of equal nominal value, corporate rights for which are certified by shares. The full name of the joint-stock company in the Ukrainian language must contain the name of its type (public or private) and organizational and legal form (joint-stock company). Joint-stock companies by type are divided into public joint-stock companies and private joint-stock companies. Changing the type of the company from private to public or from public to private is not its transformation. A separate type of a joint-stock company is a corporate fund that conducts joint investment activities. A corporate fund can be created only by founding. Depending on the order of activity, the collective investment institution can be of an open, interval, and closed type. In the name of the corporate fund, given in its charter, the words must be indicated "corporate investment fund", type, class (if the fund is specialized or qualifying) of the fund, and its affiliation to an exchange or venture fund.
<b>State Joint Stock Company</b>	Joint-stock company, the sole founder and shareholder of which is the state in the person of authorized state bodies.
<b>State Holding Company</b>	State holding company – a holding company formed in the form of a joint-stock company, at least 100 percent of the shares of which belong to the state.
<b>Holding company</b>	Holding company – a joint-stock company that owns, uses, and disposes of holding corporate blocks of shares (shares, units) of two or more corporate enterprises.
<b>Limited Liability Company</b>	A limited liability company is a company that has a share capital divided into shares, the amount of which is determined by the constituent documents. The maximum number of members of a limited liability company can reach 100 people. The members of the company are responsible within their contributions.
<b>Additional Liability Company</b>	An additional liability company is a company whose authorized (composed) capital is divided into shares of the amounts specified in the constituent documents. The members of such a company are liable for its debts with their contributions to the authorized (composed) capital, and in case of insufficiency of these amounts – with additional property belonging to them in the same amount for all participants to the contribution of each participant. The maximum amount of liability of participants is provided in the constituent documents.

220 Ibid.

**Understanding the type of the company is important for the design of BHR projects and implementing awareness-raising campaigns.** In particular, depending on the type of the company (1) key decision makers (2) decision-making, policy approval (3) entities that have an impact on the company (investors, partners, consumers) will differ.

**Specific focus should also be made on:**

- CEOs/members of the Supervisory board of the company/General Meeting
- HR departments
- Legal/compliance departments
- CSR departments
- External consultants (lawyers, CSR, compliance, ESG professionals, risk managers, SDG consultants)
- Business associations: EBA, ACC, FCC, sectoral associations (IT, Retail, Energy, Pharmacy, etc.)

## 2.4.2. BHR STAKEHOLDERS IN UKRAINE: NATIONAL LEVEL

Based on policy analysis, the following BHR stakeholders were identified on the national level:



**President of Ukraine**

**Parliament**

- Verkhovna Rada of Ukraine Committee on Law Enforcement
- Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations
- Verkhovna Rada Committee on Legal Policy
- Verkhovna Rada of Ukraine Committee on Economic Development
- Verkhovna Rada of Ukraine Committee on Finance, Tax and Customs Policy



**NHRI**

**Government**

**Cabinet of Ministers**

- Deputy Prime Minister in European and Euro-Atlantic integration (human rights as part of EU – Ukraine Association Agreement, Green Deal)
- Ministry of Justice (National Human Rights Strategy coordination, implementation of general measures following ECHR's judgments, criminal/civil justice, free legal aid, UPR, execution of court decisions)
- Ministry of Social Policy (human trafficking, social security, equal opportunities policy, non-discrimination policy, rights of the child)
- Ministry of Economy (development of public policy in the spheres of: entrepreneurship development, PPP, investments, export promotion, state-owned enterprises, public procurement, international trade, labor rights, combating shadow employment, OECD National Contact Point)
- Ministry of Finance (state funding, PPP) – Ukrainian Startup Fund, Entrepreneurship Development Fund
- Ministry of Culture and Informational Policy (national minorities rights)

- Ministry of Reintegration (IDPs rights, reoccupation)
- Ministry of Environment and Natural Sources (environmental rights, ESG, Green Deal, Paris Agreement)
- Ministry of Digital Transformation (digital rights, AI development, digital security, personal data protection, Diia business platform, Diia Centers)
- Ministry of Youth and Sports (rights of the youth)
- Ministry of Internal Affairs (criminal justice, prevention human rights violations, investigation)
- Ministry of Foreign Affairs (preparation for ratification international agreements in the sphere of human rights)
- State inspections (Labor Inspection, Ecology Inspection)
- State Property Fund of Ukraine, Antimonopoly Committee, Accounting Chamber, Antimonopoly Committee of Ukraine, State Financial Monitoring Service (PPP monitoring and control)



#### State institutions

- Export Credit Agency - the Agency will provide insurance, reinsurance and guarantees under contracts that ensure the development of exports. It will also participate in programs to partially compensate for the interest rate on export credits and provide advice to exporters.
- Entrepreneurship and Export Promotion Office - cross-functional and provides cross-sectoral cooperation with the Ministry of Economy of Ukraine, the Ministry of Digital Transformation of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Infrastructure of Ukraine and other government agencies, NGOs, private companies and associations.
- Ukrainian Startup Fund
- Entrepreneurship Development Fund
- Coordination Center for Legal Aid Provision



#### Law enforcement agencies

- National Police of Ukraine
- General Prosecutor's Office



#### Judiciary

- Supreme Court
- Lower courts
- National School of Judges
- Constitutional Court (constitutional complaint)



#### Specialised Commissioners

- Government Commissioner for Gender Policy
- Government Commissioner for the Rights of Persons with Disabilities
- Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea
- Commissioner of the President of Ukraine for the Barrier-Free Environment



#### Multi-stakeholder platforms

- Intersectoral platform on business and human rights
- Intergovernmental working group on the monitoring and evaluation of the Human Rights Strategy (under MoJ)
- National Tripartite Socio-Economic Council
- Council on Barrier-free Environment



### Business associations, networks

- Federation of Employers of Ukraine
- European Business Association
- American Chamber of Commerce in Ukraine
- American-Ukrainian Business Council
- British-Ukrainian Chamber of Commerce
- Canadian-Ukrainian Chamber of Commerce
- Danish Business Association
- French-Ukrainian Chamber of Commerce and Industry
- German-Ukrainian Chamber of Commerce and Industry
- Italian Chamber of Commerce in Ukraine
- Norwegian-Ukrainian Chamber of Commerce
- Polish-Ukrainian Chamber of Commerce
- Swiss-Ukrainian Chamber of Commerce
- International Turkish-Ukrainian Business Association
- Association "Ukrainian Club of Agrarian Business"
- Chamber of Commerce and Industry of Ukraine
- Ukrainian Union of Industrialists and Entrepreneurs
- Ukrainian Network of Integrity and Compliance (UNIC)



### CSOs

- International donors and organisations (*please see Annex G*)

## List of KEY CEBs that could be potentially responsible for the UNGPs implementation in Ukraine:

Responsible CEB	Sphere of public policy	Regulatory basis
Cabinet of Ministers of Ukraine (through the Deputy Prime Minister and the Office)	European integration	Law of Ukraine "On the Cabinet of Ministers of Ukraine" Resolution of the Cabinet of Ministers of Ukraine of October 4, 2017, No 759 "On the Government Office for Coordination of European and Euro-Atlantic Integration"
Ministry of Economy	Economic, social development and trade	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	State industrial policy	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	State foreign economic policy	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Public investment policy	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	State policy in the field of technical regulation, standardization, metrology and metrological activities	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Management of state property	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"

Responsible CEB	Sphere of public policy	Regulatory basis
Ministry of Economy	Entrepreneurship development	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Public-private partnership	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Intellectual property, innovation in the real sector of the economy	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Public procurement	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Consumer protection, state policy on price control, state regulatory policy and state policy on licensing, permitting system, supervision (control) in the field of economic activity	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	State statistics, state material reserve, export control	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	State agricultural policy, state policy in the field of agriculture and food security of the state, protection of plant variety rights, animal husbandry, seed production and nursery	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Labor, employment, labor migration, labor relations, social dialogue	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Economy	Industrial safety, labor protection, occupational health, state supervision and control over compliance with the legislation on labor and employment	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 459 "Issues of the Ministry of Economy"
Ministry of Justice	State legal policy	Resolution of the Cabinet of Ministers of Ukraine of July 2, 2014, No 228 "On approval of the Regulations on the Ministry of Justice of Ukraine"
Ministry of Justice	General management in the field of free primary legal aid and free secondary legal aid	Law of Ukraine "On Free Legal Aid" Resolution of the Cabinet of Ministers of Ukraine of July 2, 2014, No 228 "On approval of the Regulations on the Ministry of Justice of Ukraine"
Ministry of Justice	Legal education, legal awareness, informing the population, access of citizens to sources of legal information	Resolution of the Cabinet of Ministers of Ukraine of July 2, 2014, No 228 "On approval of the Regulations on the Ministry of Justice of Ukraine"
Ministry of Finance	Public financial, budgetary and debt policy	Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014, No 375 "On approval of the Regulation on the Ministry of Finance of Ukraine"
Ministry of Ecology and Natural Resources of Ukraine	Environmental impact assessment, strategic environmental assessment	Resolution of the Cabinet of Ministers of Ukraine of June 25, 2020, No 614 "Some issues of the Ministry of Environmental Protection and Natural Resources"

Responsible CEB	Sphere of public policy	Regulatory basis
Ministry of Ecology and Natural Resources of Ukraine	Environmental protection, environmental and within the powers provided by law, biological and genetic safety and on the implementation of state supervision (control) in the field of environmental protection, rational use, reproduction and protection of natural resources	Resolution of the Cabinet of Ministers of Ukraine of June 25, 2020, No 614 "Some issues of the Ministry of Environmental Protection and Natural Resources"
Ministry of Social Policy	Ensuring equal rights and opportunities for women and men	Resolution of the Cabinet of Ministers of Ukraine of June 17, 2015, No 423 "On approval of the Regulation on the Ministry of Social Policy of Ukraine"
Ministry of Social Policy	Preventing and combating trafficking in human beings	Resolution of the Cabinet of Ministers of Ukraine of June 17, 2015, No 423 "On approval of the Regulation on the Ministry of Social Policy of Ukraine"
Ministry of Digital Transformation	in the fields of digitalization, digital development, digital economy, digital innovations and technologies, e-government and e-democracy, information society development	Resolution of the Cabinet of Ministers of Ukraine of September 18, 2019, No 856 "Issues of the Ministry of Digital Transformation"
Ministry of Digital Transformation	in the field of digital skills development and digital rights of citizens	Resolution of the Cabinet of Ministers of Ukraine of September 18, 2019, No 856 "Issues of the Ministry of Digital Transformation"
Ministry of Digital Transformation	in the areas of open data, development of national electronic information resources and interoperability, development of broadband Internet and telecommunications infrastructure, e-commerce and business	Resolution of the Cabinet of Ministers of Ukraine of September 18, 2019, No 856 "Issues of the Ministry of Digital Transformation"
Ministry of Digital Transformation	in the development of the IT industry	Resolution of the Cabinet of Ministers of Ukraine of September 18, 2019, No 856 "Issues of the Ministry of Digital Transformation"
Ministry of Digital Transformation	in the field of development and functioning of the legal regime DiiaCity	Resolution of the Cabinet of Ministers of Ukraine of September 18, 2019, No 856 "Issues of the Ministry of Digital Transformation"

## STATE FUNDS

Stakeholder	Scope of activity	Regulatory basis
Ukrainian Startup Fund	The Ukrainian Startup Fund is a state fund launched on the initiative of the Cabinet of Ministers of Ukraine. The mission of the fund is to promote the creation and development of technological startups in the early stages (pre-seed and seed), in order to increase their global competitiveness.	Resolution of the Cabinet of Ministers of Ukraine of December 12, 2018, No 1110 "On approval of the Procedure for the use of funds provided in the state budget to the Ministry of Finance to ensure the functioning of the Innovation Development Fund" <a href="https://zakon.rada.gov.ua/laws/show/1110-2018-%D0%BF#Text">https://zakon.rada.gov.ua/laws/show/1110-2018-%D0%BF#Text</a>

Stakeholder	Scope of activity	Regulatory basis
Entrepreneurship Development Fund	<p>The main goal of the Fund for Entrepreneurship Development (hereinafter - FRP) is to provide financial and other accompanying support to private micro, small and medium enterprises (hereinafter - IHR) in Ukraine. FRP achieves its main goal mainly through operations with Ukrainian banks, non-bank financial institutions, and other financial service providers or similar institutions.</p> <p>Since this goal can be achieved only with a stable and developed banking system, an important task of the FRP is also to support the development of the banking sector, able to provide sustainable long-term financing for SMEs at an affordable price.</p>	Charter of the Fund for Entrepreneurship Development, approved by the order of the Ministry of Finance of Ukraine dated February 18, 2021, No 108 <a href="https://bdf.gov.ua/statut-25-08-2021.pdf">https://bdf.gov.ua/statut-25-08-2021.pdf</a>

## OTHER STATE AGENCIES, AUTHORITIES

Stakeholder	Scope of activity	Regulatory basis
Export Credit Agency	the Agency will provide insurance, reinsurance and guarantees under contracts that ensure the development of exports. It will also participate in programs to partially compensate for the interest rate on export credits and provide advice to exporters.	Resolution of the Cabinet of Ministers of Ukraine of February 7, 2018, No 65 "Issues of formation of the Export Credit Agency" <a href="https://zakon.rada.gov.ua/laws/show/65-2018-%D0%BF#Text">https://zakon.rada.gov.ua/laws/show/65-2018-%D0%BF#Text</a>
Entrepreneurship and Export Promotion Office	cross-functional and provides cross-sectoral cooperation with the Ministry of Economy of Ukraine, the Ministry of Digital Transformation of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Infrastructure of Ukraine and other government agencies, NGOs, private companies and associations.	Order of the Ministry of Economic Development and Agriculture of Ukraine of May 8, 2020, No 845 "On approval of the new version of the Regulations on the State Institution" Office for the Promotion of Export of Ukraine" <a href="https://zakon.rada.gov.ua/rada/show/v089">https://zakon.rada.gov.ua/rada/show/v089</a> Text
Coordination Center for Legal Aid Provision	<p>Coordination Centre for Legal Aid Provision (hereinafter – CCLAP) is a governmental institution. It was established within the system of the Ministry of Justice to implement the responsibilities of the Ministry in the field of free legal aid and more specifically, to develop and implement an effective system of free (primary and secondary) legal aid in Ukraine, and to ensure its accessibility and quality.</p> <p>CCLAP is fixed in legislation as a central coordinating institution in the area of legal aid provision.</p> <p>Key tasks of the Coordination Centre are:</p> <ol style="list-style-type: none"> <li>1) organizational, expert, analytical, informational, material, and technical assurance of the Ministry of Justice's powers for free legal aid provision;</li> <li>2) analysis of the law enforcement practice on free legal aid provision;</li> <li>3) submission to the Minister of Justice proposals on the public policy development and implementation in the mentioned field.</li> </ol>	Law of Ukraine "On Free Legal Aid"

## JUDICIAL SYSTEM (KEY STAKEHOLDERS)

Stakeholder	Scope of activity	Regulatory basis
Supreme Court	<p>is the highest court in the judicial system of Ukraine, which ensures the stability and unity of judicial practice in the manner and manner prescribed by procedural law.</p> <p>2. The Supreme Court:</p> <ol style="list-style-type: none"> <li>1) administers justice as a court of cassation, and in cases specified by procedural law – as a court of first or appellate instance, in the manner prescribed by procedural law;</li> <li>2) analyzes judicial statistics, generalization of judicial practice; 3) provides opinions on draft legislative acts relating to the judiciary, the status of judges, the execution of court decisions, and other issues related to the functioning of the judiciary;</li> <li>4) gives an opinion on the presence or absence in the acts in which the President of Ukraine is accused of signs of treason or other crime; submits a written petition at the request of the Verkhovna Rada of Ukraine on the inability of the President of Ukraine to exercise their powers due to their state of health;</li> <li>5) appeals to the Constitutional Court of Ukraine regarding the constitutionality of laws, other legal acts, as well as regarding the official interpretation of the Constitution of Ukraine;</li> <li>6) ensures the uniform application of the rules of law by courts of different specializations in the manner prescribed by procedural law;</li> <li>7) provides appellate and local courts with methodological information on law enforcement issues.</li> </ol>	The Law of Ukraine “On the judiciary and the status of judges”
National School of Judges	<p>The National School of Judges of Ukraine is a state institution with a special status in the justice system, which provides training of highly qualified personnel for the justice system and carries out research activities. Legislation on higher education does not apply to the National School of Judges of Ukraine.</p> <p>The National School of Judges of Ukraine shall be established under the High Qualification Commission of Judges of Ukraine and shall carry out its activities in accordance with this Law and the Statute approved by the High Qualification Commission of Judges of Ukraine.</p> <p>The National School of Judges of Ukraine shall provide:</p> <ol style="list-style-type: none"> <li>1) special training of candidates for the position of a judge; 2) training of judges, including those elected to administrative positions in courts;</li> <li>3) periodic training of judges in order to improve their skills; 4) conducting training courses, determined by qualification or disciplinary body, to improve the skills of judges who are temporarily suspended from the administration of justice;</li> <li>5) training of court staff and raising their level of qualification; 5-1) training of employees of the Judicial Protection Service and raising their level of qualification;</li> <li>6) conducting scientific research on improving the judicial system, the status of judges and the judiciary;</li> <li>7) study of international experience in the organization and operation of courts;</li> <li>8) scientific and methodological support for the activities of courts, the High Qualification Commission of Judges of Ukraine and the High Council of Justice.</li> </ol>	The Law of Ukraine “On the judiciary and the status of judges”

## CIVIL SOCIETY ORGANISATIONS

NGOs providing legal aid and promoting access to justice:

[Legal Development Network](#) – a union of non-governmental community-based organizations that promote people-centered justice by legal aid, legal education, strategic advocacy, and other legal empowerment tools.

Today the Network unites organizations in the majority of Ukrainian regions. These LDN's member organizations provide the population with basic legal information, actively cooperate with local authorities to solve individual problems and protect public interests, implement alternative dispute resolution, developing territorial communities and local leadership.

Every month, thousands of people address the offices of the Network and through its online services for legal assistance. A wide range of legal issues the lawyers of the Network deal with include but are not limited to: land, labour, social, and family cases. Much attention is paid to solving the problems of internally displaced persons and veterans.

[Ukrainian Helsinki Human Rights Union](#) – UHHRU provides legal aid through the Public advice centers network. There are 29 centers currently operating in Ukraine in 24 oblasts (regions). Their work is funded by the Government of Sweden, through the Swedish International Development Agency (SIDA), the Government of Canada through the Ministry of Foreign Affairs of Canada (Global Affairs Canada) in the Human Rights above all" (Human Rights First) program and the US Agency for International Development (USAID) under the "human rights in action" program.

[Community paralegals Association](#) – a community uniting 226 paralegals from all over Ukraine, who provide assistance to people in solving legal problems and developing their communities.

Paralegals do not have a legal education, but have undergone special training in basic legal issues and received the relevant certificates.

### CSOs (anti-corruption and compliance)

**Transparency International Ukraine**, an accredited chapter of the global anti-corruption network Transparency International, launched the monitoring portal DOZORRO on November 1, 2016.

DOZORRO is a network of civil society organizations, procuring entities, business, and everyone interested in improving the effectiveness of public procurement and maintaining equal rules of the game. Members of the community regularly inspect public procurement and report violations to designated public agencies.

### CSOs representing rights-holders:

- ❑ Discrimination based on disability: Fight for rights
- ❑ Labor rights: Labor Initiatives <https://trudovi.org/>, YurFem.ua <http://jurfem.com.ua/>
- ❑ Environmental rights: EcoAction <https://ecoaction.org.ua/>
- ❑ Non-discrimination: Human Rights Center ZMINA <https://zmina.ua/>, NGO "Fulcrum" <https://www.t-o.org.u>, Bezbar'yernist (Tokareva Ulyana)
- ❑ IDPs and people on Temporarily occupied territories: Vostok SOS <https://vostok-sos.org/>, Right to protection <https://r2p.org.ua/>, Donbass SOS <https://www.donbasssos.org/>
- ❑ NGO Rada Zhinok Donetchyny,
- ❑ Charitable Foundation Club "Svitanok" (focused on the rights of people living with HIV, people who use drugs, including economic and labour rights)

### 2.4.3. BHR STAKEHOLDERS: REGIONAL AND COMMUNITY LEVEL

The administrative-territorial structure of Ukraine is represented by 24 regions, the cities of Kyiv, Sevastopol<sup>221</sup> and the Autonomous Republic of Crimea<sup>222</sup>, forming 1421 communities in total.

Public administration at the oblast (regional) level is carried out by local state administrations (oblast, rayon, rayon in cities). Local self-government is implemented by local councils: regional (24 councils), district (119), district in cities (15), city (369), settlement (428), village (623)<sup>223</sup> councils.

The role of communities in ensuring human rights in Ukraine is crucial: in the vast majority of cases, both human rights protection and prevention of human rights violations depend entirely on the local community and local governments.

Decentralization reform, which began in Ukraine in 2014, further enhances the role of local governments in respecting human rights. The reform gave impetus to forming a viable institution of power closest to the citizen–local self-government – through the transfer of resources, finances, and powers to the localities. During the six years of the reform, 1,070 united territorial communities were formed, into which 4,882 communities voluntarily united. Voluntary association of territorial communities allowed the newly formed local governments to obtain the appropriate powers and resources that were previously managed by the cities of the regional level.

The availability of resources enables communities to independently identify priority projects, and implement programs needed by the community, including strengthening legal capacity and legal protection of community residents. At the same time, according to the regional human development index by the Ministry of Regional Development, there are significant differences in the indicator of human development among the regions. According to data for 2018, in nine regions (2017 – 13 regions) the value of the index is lower than the average in Ukraine (Kherson, Zhytomyr, Kirovohrad, Rivne, Chernihiv, Cherkasy, Dnipropetrovsk, Khmelnytsky, Sumy regions)<sup>224</sup>.

## STRATEGIC PLANNING OF REGIONAL DEVELOPMENT

### Regional level

In 2020, the Government adopted the State Strategy for Regional Development 2021-2027, which became the basis for the development of regional development strategies. Currently, regional development strategies for the period up to 2027 have been adopted in each region of Ukraine<sup>225</sup> and action plans for their implementation. Strategies identify the key areas of development of the region and the main programs for human capital development, improving the quality of life of residents, competitiveness of the region, and more.

### Community level

The Law of Ukraine “On Amendments to the Law of Ukraine” On Principles of State Regional Policy” stipulates, in particular, that development strategies of territorial communities are mandatory documents in the system of strategic planning of state regional policy.

221 Temporarily occupied territories as a result of armed aggression by the Russian Federation.

222 Temporarily occupied territories as a result of armed aggression by the Russian Federation.

223 <http://static.rada.gov.ua/zakon/new/NEWSAIT/ADM/zmist.html>.

224 <https://zakon.rada.gov.ua/laws/show/695-2020-%D0%BF#Text>.

225 <https://www.minregion.gov.ua/napryamki-diyalnosti/derzhavna-rehional-na-polityka/strategichne-planuvannya-regionalnogo-rozvitku/strategichne-planuvannya-regionalnogo-rozvytku-na-period-do-2027-roku / regional-strategiyi-rozvytku-na-period-do-2027-roku />.

Therefore, each community must now develop its own development strategy, which includes issues of social and economic development, in particular, issues of business development, innovation, environmental issues, social protection measures, and so on.

The Ministry of Community and Territorial Development of Ukraine has developed the Guidelines for the development, approval, implementation, monitoring, and evaluation of local community development strategies, which focus on the importance of stakeholder involvement in the process and cover standard methods of communication and consultation with stakeholders<sup>226</sup>.

This mechanism is a platform for involving all stakeholders in the community (local authorities, residents, business, and community activists) and can be used for further developments in the field of human rights protection at the regional level.

### Special target programs in communities

Adoption of free legal aid centers, free legal aid programs, and legal education (at the level of territorial communities of cities, towns, and united communities) is widespread in communities where free legal aid centers operate. Funds for these programs are used to provide on-site consultations, provide mobile access points to legal aid, conduct legal education activities, and print information materials. It is important that the content of such programs is focused on the needs of a particular community and meets the needs of its residents.

### Local state administrations

Executive power in oblasts and rayons, cities of Kyiv and Sevastopol is exercised by local state administrations. Local state administrations in the respective territory shall ensure the implementation of state and regional programs of socio-economic and cultural development, environmental protection programs, and in places of compact residence of indigenous peoples and national minorities – also programs for their national and cultural development.

### Regional and local councils

Local self-government is carried out by territorial communities of villages, settlements, and cities both directly and through the village, settlement, city councils, and their executive bodies, as well as through district and regional councils representing the common interests of territorial communities of villages, settlements, and cities.

### Regional Development Agencies

Regional Development Agencies (RDAs) ensure the formation of an effective system of institutional support for regional development in the regions,

According to international experience, RDAs are centers of cooperation between the private and public sectors on regional and community development, have significant innovation potential, cooperate effectively with regional, local and central authorities, help carry out strategic management of regional development, strengthen the capacity of local governments to ensure the development of territories, and in general act as a kind of catalyst for the socio-economic development of regions.

According to the law, the RDA is a non-profit institution formed on the basis of a partnership between the private and public sectors, employers' organizations, and their associations in order to effectively implement state regional policy.

<sup>226</sup> <https://www.minregion.gov.ua/wp-content/uploads/2021/10/metodychni-rekomendaciyi-shhodo-poryadku-rozroblennya-zatverdzhennya-realizaciyi-provedennya-monitoryngu-ta-oczinynategrealya-development-of-territorial-communities-1.pdf>.

The founders of the RDA may be the Verkhovna Rada of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol city councils and the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol city state administrations. At the same time, co-founders of agencies can also be regional chambers of commerce and industry, regional associations of entrepreneurs, regional offices of all-Ukrainian associations of local governments or associations of local governments, higher education institutions, research institutions, and relevant public associations in the region.

The formation of the RDA began in 2016. To date, 23 regions have decided to establish RDA; in 21 APR regions are registered, already operating, or are in the process of formation<sup>227</sup>.

### **Regional offices of European integration**

The main tasks of the Regional Offices of European Integration are the economic development of the region, stimulation of investments in the region, new jobs, training and advanced training of personnel, and support of small and medium business in the region.

The purpose of creating regional Offices of European Integration is to popularize Ukraine's choice of the European vector, communicate the reform process, and promote the socio-economic development of the regions.

The European Integration Offices will operate on the basis of the RDA and will ensure the implementation of Ukraine's European integration policy on the ground.

Sustainable development agencies, and in particular regional European integration offices, can become effective platforms for dialogue at the regional level on the formulation and implementation of business and human rights policies.

### **Regional Chambers of Commerce and Industry**

The Chamber of Commerce and Industry is a non-governmental non-profit self-governing organization that unites legal entities established and operating in accordance with the legislation of Ukraine and citizens of Ukraine registered as entrepreneurs and their associations.

The Chamber of Commerce and Industry may engage in entrepreneurial activity only to the extent necessary to fulfill its statutory tasks. Its profits are not distributed among the members of the Chamber of Commerce and Industry but are used to fulfill its statutory tasks.

## **ACCESS TO REMEDY: LOCAL PERSPECTIVE**

### **Free legal aid system**

The provision of state-guaranteed free legal aid (primary and secondary) is provided by a network of regional and local centers. The institutional structure of the BPD system is built by taking into account the area of the state, its administrative-territorial structure, population size, and density and is constantly adapted to the needs of the population.

As of December 31, 2020, there were 23 regional and 84 local centers in Ukraine. In small towns and villages, there are structural subdivisions of local centers – legal aid bureaus (438 in total). Including the legal aid bureau, today an extensive network of BPD systems has been created, which has more than 500 access points and covers the entire territory of Ukraine (except for the temporarily occupied territories)<sup>228</sup>.

227 <https://www.minregion.gov.ua/wp-content/uploads/2021/02/1.-zvit-pro-rezultaty-diyalnosti-agenczij-regionalnogo-rozvytku-u-2020-roczi.pdf>.

228 <https://www.legalaid.gov.ua/publiczna-informatsiya/bezoplatna-pravova-dopomoga-2020/>.

In 2020, 349,040 people applied to local centers for the provision of BPD. Of these, 347,933 (99.6%) are citizens of Ukraine, 908 (0.3%) are foreigners and 199 (<0.1%) are stateless. A total of 330,594 people received BPPD and 46,384 received BVPD.

The majority of clients are women (62%), middle-aged, or older (90% of clients are over 30 years old). At the same time, the share of men who apply for BVPD is higher than for BPPD – 44% (20,523 persons) and 38% (125,523), respectively. At the same time, some clients filed two or more appeals, as noted, in 2020, 510,118 cases of BPPD and 58,813 cases of BVPD were registered.

The key category of clients who apply for BVPD are low-income people – in 2020 they received 30,313 (51.5%) applications. Also, 10,125 (17.2%) appeals were received from war veterans and combatants, 8,167 (13.9%) – from persons with disabilities, 4,392 (7.5%) – from IDPs, 1,836 (3.1%) – from convicts, 1,817 (3.1%) – from children, 1,177 (2.0%) – from victims of domestic violence. In general, only 1.7% of appeals received other legal entities entitled to BVPD. Almost 60% of customers turn to local centers for the second time. Most customers appeal to local family centers. This is 15% of appeals. Issues of civil, land, and inheritance law are also relevant. In addition, clients' issues related to housing, labor, pension and administrative law, social security, as well as civil lawsuits and enforcement of court decisions. Significantly fewer appeals on criminal proceedings and administrative offenses, criminal and tax law, etc.

### Regional offices of the Parliamentary Commissioner for Human Rights

Public receptions of the Commissioner of the Verkhovna Rada (Parliament) of Ukraine for Human Rights have been established in each region of Ukraine, where regional representatives of the Commissioner work. They ensure the exercise of the Commissioner's powers in the field of parliamentary control over the observance of human and civil rights at the regional level.

In order to ensure the interaction of the Commissioner with citizens and representatives of civil society institutions, with the support of donors and international organizations, a network of Regional Coordinators of Public Relations from among local public activists was established.

There are two representatives in each oblast – a regional representative of the Commissioner, a civil servant with a mandate of the Commissioner who has direct contact with the Kyiv-based office, and a regional coordinator of the Commissioner from the public, who coordinates relations with local representatives of civil society organizations.

## 2.4.4. OTHER IMPORTANT BHR STAKEHOLDERS

### MEDIA

The results of the sociological survey "What Ukrainians Know and Think About Human Rights: An Assessment of Change (2016–2020)" showed that Ukrainians consider appealing to the media to be the most effective way to protect human rights (23%). Going to court is in second place (21%). The third is an appeal to the European Court of Human Rights (20%). However, it is worrying that 22% believe that there are no ways to protect their rights in Ukraine.

Only 20% of respondents successfully defended their rights. Approximately equal shares of respondents (40% each) never tried to defend their rights or tried to protect them, but these attempts were in vain. Nevertheless, such indicators are much better than in previous studies. The share of respondents who tried to defend their rights increased from 42% in 2016 to 60% in 2020.

And despite the fact that the majority of respondents failed to defend their rights in most cases, the number of those who successfully resolved these issues increased (from 14.5% in 2016 to 19.3% in 2020).

The most popular way to learn about human rights is through television (55%). The second most popular is the Internet (38%). Another 35% of respondents learn about human rights from friends, relatives, and colleagues. At the same time, the share of people who learn about their rights from television has decreased significantly since 2016 (from 75 to 54%), and those who learn about it from a source such as the Internet, by contrast, increased from 30 to 38%.

Among the ways in which respondents tried to defend their rights were the following (five of the most common): going to court (16%); appeal to relatives, search for the necessary acquaintances (15%); appeal to local authorities (14%), appeal to the police (12%); appeal to a lawyer, to the system of free legal aid (11%).

A representative survey in 2020 was conducted by the Ilko Kucheriv Foundation for Democratic Initiatives in cooperation with the ZMINA Center for Human Rights with the support of the United Nations Development Program (UNDP) in Ukraine<sup>229</sup>.

**Academia** (national research institutions, Law Faculties, institutes, universities)

### Professional associations

- Associations of legal professionals (Ukrainian Bar Association, Ukrainian National Bar Association, Associations of Judges, National Association of Mediators)
- CSR organizations/associations
- Compliance associations
- SDG professionals and associations

### Professionals

- Legal professionals (lawyers, attorneys, prosecutors, judges)
- Mediators
- CSR professionals
- Compliance managers
- Risk managers
- ESG professionals

**Synergy between different stakeholders is needed to thoroughly implement the BHR concept into the Ukrainian business environment. The following organizations could be singled out among these stakeholders:**

(1) governmental and non-governmental organizations (NGOs)

Rule of law, anti-corruption, and court reform are crucial for systematic changes in the business environment. During in-depth interviews and focus-group discussions Ukrainian companies also mentioned the need for local resources (experts, training and promotional videos, information materials, drafts of documents, audits) to educate CEOs and top managers on adhering to responsible business conduct.

229 The results of the national sociological survey "What Ukrainians know and think about human rights: assessment of changes (2016 – 2020)". [https://www.ua.undp.org/content/ukraine/en/home/library/democratic\\_governance/what-ukrainians-know-and-think-about-human-rights--assessment-of.html](https://www.ua.undp.org/content/ukraine/en/home/library/democratic_governance/what-ukrainians-know-and-think-about-human-rights--assessment-of.html).

As an example, currently large companies with more than 500 employees should disclose non-financial information in their Management reports, but most companies do not have knowledge and expertise on Management report requirements, related standards, and reports structure. In this case, the Ministry of Finance and the National Bank of Ukraine can organize training for businesses to increase their capacity on disclosing non-financial information in the Management reports. Another recommendation from businesses for governmental and non-governmental organizations is to integrate Human Rights related topics in the curriculum of secondary and higher education institutions as well as in the educational plans of Ukrainian Business Schools where senior managers study. According to the views of business representatives, NGOs also could play a watchdog function to monitor the human rights activities of companies.

## (2) business associations

Business associations could set a good tone at the top by collecting and disseminating best practices of responsible business conduct in Ukraine, organizing and supporting public advocacy BHR events, and uniting large, medium-sized, and small companies around BHR issues and SDGs. Associations could also be partners of information campaigns (1) to explain the benefits of respecting HR (for example, operating on foreign markets), (2) to promote companies adhering to responsible business conduct, and (3) to build an eco-system with support of governmental bodies, UN, CSOs, businesses, organizations with a high reputation that would constantly engage companies to participate in SDG events. In addition, business associations could develop templates of policies and procedures on Human Rights-related issues as well as benchmarking sectoral standards for companies to adhere to. In this case, donors could increase the capacity and knowledge of business associations on the issues of responsible business conduct and human rights.

## (3) donors and investors

Donors and investors have a great impact on changes in the business climate. Financial instruments are the most efficient to stimulate companies to respect human rights. In 2021, the National Bank of Ukraine developed and published the Sustainable Finance Development Policy 2025, which aims to shape the future landscape of sustainable finance in Ukraine<sup>230</sup>. The National Securities and Stock Market Commission) summarized the practice of applying corporate governance legislation and took another step towards the extension of sustainable finance instruments. The Regulator has prepared and developed an Annex On Corporate Governance And Sustainable Development (ESG) to the Corporate Governance Code. The Annex is based on the G20/OECD Corporate Governance Principles and reflects the recommendations given in the final reports on Corporate Governance and Sustainable Finance in Emerging Markets, the Committee on Development and Emerging Markets, International Organization of Securities Commissions (IOSCO). The ESG Annex describes the following key points:

- the rationale for implementing the ESG best practices;
- what is of interest to investors in terms of the ESG practice;
- the performance and reporting standards that companies can use to structure their sustainable practices;
- the Guidelines on how companies can implement the recommendations of the Code.

IFC and EBRD monitor the achievement of ESG goals by businesses searching for investment as well as providing support and helping to develop action plans when gaps are defined. Before making a decision to allocate money, investors can refer to external auditors who check business practices according to international standards (document analysis, field visits, etc.). Investors also have mechanisms for internal ESG assessment of the company.

230 NBU Presents Sustainable Finance Development Policy 2025. Available at: <https://bank.gov.ua/en/news/all/natsionalniy-bank-prezentuvav-politiku-schodo-rozvitku-stalogo-finansuvannya-na-period-do-2025-roku>.

Cooperation can be suspended by investors when baseline indicators are exceeded or some cases of violations during the media monitoring were found. In cooperation with investors, large companies have funds and resources to meet investors' requirements, unlike SMEs. In this case, it's important to support micro, small and medium-sized companies from different sectors of the economy with grants and direct investments, especially export-oriented ones. Such cases of support already exist, for example, IFC implements the Sustainable Agro Program to support farmers with "carbon credits" to monetise their actions aimed to reduce CO<sub>2</sub> emissions.

Investors and donors could provide some benefits to companies integrating human rights policies into their operations like development banks which provide reduced investment rates for companies with ESG performance. Accordingly, responsible business conduct could be promoted as a tool to minimize human rights-related risks, increase trust and attract investments at a lower rate of return.

## 2.4.5. CONCLUDING REMARKS

**When designing new programs, and initiatives, the following elements are necessary, specific, and unique to ensure a human rights-based approach:** (1) Assessment and analysis in order to identify the human rights claims of rights holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights; (2) Programmes assess the capacity of rights holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities; (3) Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles; (4) Programming is informed by the recommendations of international human rights bodies and mechanisms.

**Legal empowerment of rights-holders should be a priority when designing and implementing policy in Ukraine.** Legal empowerment programs may include: (1) first-order interventions include basic legal awareness-raising, or "legal literacy" work to educate the public about legal rights and obligations, institutional structures of the legal system, and specific mechanisms that marginalized groups can use to advance their interests; (2) second-order interventions focus on resolving legal problems and administrative challenges that are faced by marginalized groups. Interventions are community-driven and provide both formal and informal legal services, including mediation; (3) third-order interventions are designed to affect policy constraints and systemic factors that shape the circumstances in which legal problems arise.

**The existence of a large number of conflicting policies raises the need to ensure policy coherence** (both vertical and horizontal). This will require not only an analysis of the legal framework and law enforcement practices but also coordination and communication with stakeholders representing each policy area.

**Business associations, governmental and non-governmental organizations, investors, and donors can form synergy with companies to promote business and human rights.** One of the key drivers of the BHR agenda for businesses could be business associations, which can organize advocacy events, develop templates of policies and procedures on Human Rights-related issues as well as benchmark sectoral standards for companies to adhere to. In this case, donors could increase the capacity and knowledge of business associations on the issues of responsible business conduct and human rights. Another area for donor interventions could be support for export-oriented SMEs.

## 2.4.6. RECOMMENDATIONS AND SUGGESTIONS

1. Capacity building of the NHRI and Inter-sectoral platform on business and human rights that will be an integration space for communication of stakeholders from parliament, government, business, CSOs, etc.
2. Creation of a sub-group on BHR under the working group on monitoring and evaluation of the National Human Rights Strategy – for monitoring and evaluation of Chapter 16 of the National Human Rights Strategy
3. Development of the monitoring framework and indicators for Chapter 16 of the National Human Rights Strategy
4. Integration of the UNGPs implementation into the new Action Plan on the implementation of the EU-Ukraine Association Agreement and defining Vice-Prime Minister on European Integration as a Coordinator
5. Consider the development of the draft law of Ukraine “On the principles of state policy to ensure human rights in the course of economic activity”/“On implementation of the United Nations Guiding Principles on Business and Human Rights” to (1) establish a framework for BHR policy development, implementation, monitoring, and evaluation; (2) define the coordinating body and the system of duty-bearers responsible for UNGPs implementation in Ukraine; (3) ensure policy coherence (national, regional, and local levels); (4) provide multi-stakeholder approach (community – business – government – parliament – civil society);
6. Creation of specific platforms within (1) Parliament (a Parliamentary Committee), (2) business (business associations/federation of employers, etc.) (3) government as focal points to gather, integrate and communicate the position of relevant stakeholders
7. Local level: Capacity building, training, and legal protection (grass-root activists, human rights defenders, paralegals, legal aid centers, media), ensuring participatory democracy mechanisms
8. Regional level: capacity building of integration platforms uniting business, government, and rights-holders within chambers of commerce, agencies for regional development, and centers for entrepreneurship development; integration of BHR in regional strategic documents/development of specific regional action plans for business and human rights;
9. National level: coherence (within (1) public policies, (2) international development projects); training, awareness-raising, support, and guidelines for rights holders, business, and governmental agencies; dialogue and inclusive communication (rights-holders, human rights).

## 2.5 INTERNATIONAL BEST PRACTICES OF SUCCESSFUL IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS

Since the UNGPs was unanimously adopted in 2011, international and national policy and regulatory developments on responsible business conduct and corporate human rights due diligence have made a considerable step forward. The 2030 UN Agenda for Sustainable Development<sup>231</sup> with the SDGs in its core has upraised the significance of the UNGPs by means of fostering the integral value of environment, economy and equity, which should be regarded equally by public and private actors.

Human rights-based approaches, policies, legal frames and programmes oriented at the UNGPs' and SDGs implementation have been developed by policy makers and legislators at the international, regional and national levels, and introduced by most large and multinational businesses. In 2021 the 10-th anniversary of the UNGPs was marked by the third revised draft of the legally binding instrument on BHR<sup>232</sup>. Some other important emerging initiatives, including the mandatory human rights due diligence requirements towards business, were developed and debated.

However, Ukraine's participation in the European integration processes, including through realization of the EU-Ukraine Association Agreement as well as other significant agreements and initiatives (like the European Green Deal), its cooperation with the OECD and the Council of Europe provide for considerable opportunities to implement the UNGPs when harmonizing its policy and legislation with the European regional acquis on human rights protection and corporate responsibility to respect human rights.

The political will to move towards BHR was expressed by Ukraine in 2021 with adoption of the revised version of the National Human Rights Strategy<sup>233</sup>, whose par. 16 focuses on ensuring human rights in the course of economic activities, par. 15 – on environmental human rights.

231 Transforming our world: the 2030 Agenda for Sustainable Development. UN General Assembly Resolution 70/1 of 25 September 2015. URL: [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

232 Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises. OEIGWG Chairmanship Third Revised Draft of 17.08.2021. URL: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LB3rdDRAFT.pdf>.

233 National Strategy in the Field of Human Rights : approved by the Decree of the President of Ukraine of March 24, 2021 №119/2021. URL: <https://www.president.gov.ua/documents/1192021-37537>.

These paragraphs, though not ideally shaped, especially when it comes to the UNGPs' Pillar I, open space for further targeted activities of the Government, business enterprises and the civil society.

Alongside, since 2020 the Concept of Realization of the State Policy on Promoting the Development of Socially Responsible Business in Ukraine until 2030<sup>234</sup>, since 2021 – the National Economic Strategy until 2030<sup>235</sup> and the Strategy of Human Development<sup>236</sup> are being implemented. These and other international and domestic sectoral policy and legal acts, when fine-tuned and realized in cohesion with due regard to the 2030 UN Agenda for Sustainable Development, the advancing European legal framework and practices should provide for the sound grounds for Ukraine's systemic stepping to the UNGPs implementation.

To realise what best and good practices at the global and European level could help Ukraine to step more effectively towards the UNGPs implementation, the study was targeted at four issues:

1. Best and good practices of a NAP on BHR as a stand-alone document at the international and national levels, being based on the relevant international policy and law framework, that can be applicable and should be used in the Ukraine's NAP processes; NAPs focus on business respect for human rights in conflict-affected areas is included;
2. Best practices for business (incl. for state-owned companies) on practices and procedures respecting BHR and identifying suggestions for targeted interventions in Ukraine;
3. International best practice of effective redress, incl. grievance mechanisms, used by businesses that can be applicable for Ukraine.
4. International and national best and good practices on the key stakeholders' engagement as a cross-cutting issue in BHR and in NAPs processes in particular, being based on the relevant international law and policy framework, that can be applied and should be used in Ukraine; the gender perspective of stakeholders' engagement should be duly regarded.

This section aims to bring evidence in the 4 above-mentioned areas to: i) support the Government of Ukraine and various stakeholders in the course of realisation of par. 16 on ensuring human rights in the course of economic activities of the National Human Rights Strategy and stepping towards the UNGPs' implementation, also through development and further realization of a stand-alone NAP; and ii) to inform future tailored UNDP support.

## 2.5.1. NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: THE GLOBALLY ESTABLISHED FRAMES AND GOOD NATIONAL PRACTICES

This Section is focused on studying of two main aspects important for the Ukraine' stepping towards the proper implementation of the UNGPs; the latter are regarded instrumental for the implementation of the 2030 UN Agenda for Sustainable Development alongside with the ILO conventions, Council of Europe standards, namely the European Convention on Human Rights, and the EU-Ukraine Association Agreement.

<sup>234</sup> Concept of Realization of the State Policy on Promoting the Development of Socially Responsible Business in Ukraine until 2030; approved by Order of the Cabinet of Ministers of Ukraine of 24.01.2020 № 66-r. URL: <https://zakon.rada.gov.ua/laws/show/66-2020-%D1%80#Text>.

<sup>235</sup> National Economic Strategy, approved by the Resolution of the Cabinet of Ministers of Ukraine of March 3, 2021 № 179. URL: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>.

<sup>236</sup> Strategy of Human Development, approved by the Decision of the National Security and Defense Council of Ukraine of 14 May 2021 enacted by the Decree of the President of Ukraine of 2 June 2021 №225 / 2021. URL: <https://www.president.gov.ua/documents/2252021-39073>.

Firstly, it concerns the basics for implementation of the UNGPs through National Action Plans on Business and Human Rights (NAPs) to be regarded by Ukraine: the general international law prerequisites for a NAP and generally defined framework for a NAP – aim, criteria, benefits, structure, processes.

Secondly, it presents the best and good practices of the UNGPs' implementation through NAPs in some European, Asian, African, and South American states. The focus is on NAPs' initiation and institutionalization – the part of the Government and other stakeholders in initiating, leading and supporting the process; holding of the National Baseline Assessment (NBA) to make the NAP well-grounded; on organization of NAPs' implementation, monitoring, evaluation and updating. The NAPs' support to business respect for human rights in conflict affected areas is an additional specific focus of the study, as Ukraine is one of the countries where the problem of human rights protection in conflict affected areas is sharp.

The Section provides for conclusions that give the ground for further recommendations for Ukraine on the path of a stand-alone NAP development. In addition, a set of recommendations to consider for the work-arrangements of an Inter-ministerial body (a National Steering Committee or a Working Group on BHR, etc.) responsible for the NAP processes is *provided in Annex O*.

### 2.5.1.1. INTERNATIONAL LAW PREREQUISITES FOR A NAP IN UKRAINE

Ukraine, as a UN State Member since 1945, has gained considerable commitments; since 2015 – to implement the 2030 UN Agenda for Sustainable Development<sup>237</sup> (2030 UN Agenda). The SDGs' implementation requires States to make efforts to ensure human rights in the business sphere also. The UNGPs are among the means of implementation of the Global Partnership for Sustainable Development (par. 67) of the 2030 UN Agenda. According to Prof. John Ruggie, the UNGPs' author, the starting point for meaningful SDGs engagement must be a reduction in adverse human rights impacts companies operations and relationships may have<sup>238</sup>.

The UN Human Rights Council encourages states to take steps to implement UNGPs, including developing a NAP or other similar framework<sup>239</sup>. The UN Working Group on business and human rights (UNWG) appraises NAPs as important instruments to promote the UNGPs' implementation<sup>240</sup>. It outlined a road map on promoting NAPs<sup>241</sup> and developed the Guidance on NAPs on BHR in 2014<sup>242</sup>.

The NAP implementation should be based on and ensure the core human rights principles established by the International Bill of Human Rights – universality and inalienability, indivisibility, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, accountability and rule of law<sup>243</sup>. The tool of a NAP is politically and practically beneficial for Ukraine participating in the European integration processes. NAP is able to provide for considerable success in harmonizing Ukraine's policy and legislation with the European regional law, when borrowing, adapting and transposing the best European practice. Ukraine's commitments in BHR under the European law are determined by the relevant Council of Europe (CoE), EU, and OSCE acquis.

237 Transforming our world: the 2030 Agenda for Sustainable Development. UN General Assembly Resolution 70/1 of 25 September 2015. (par. 67). URL: [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

238 The Sustainable Development Goals and the Guiding Principles. An open letter by Professor John Ruggie to the heads of the Business & Sustainable Development Commission, February 2016. URL: <https://shiftproject.org/the-sustainable-development-goals-and-the-guiding-principles/>.

239 Human rights and transnational corporations and other business enterprises. UN Human Rights Council Resolution 26/22 of 15 July 2014 (par. 2). URL: <https://undocs.org/A/HRC/RES/26/22>.

240 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council Twenty-third session (A/HRC/23/32 of 14 March 2013, p. 21). URL: <https://undocs.org/A/HRC/23/32>.

241 Outcome of the seventh session of the Working Group on the issue of human rights and transnational corporations and other business enterprises. (A/HRC/WG.12/7/1), February 2014. URL: [https://www.ohchr.org/A.HRC.WG.12.7.1\\_en.doc](https://www.ohchr.org/A.HRC.WG.12.7.1_en.doc).

242 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. The updated version of November 2015 (a first version published in December 2014). URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

243 Universal Declaration of Human Rights. The Foundation of International Human Rights Law. URL: <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>; Human Rights Principles. UNFPA, 2005. URL: <https://www.unfpa.org/resources/human-rights-principles>.

As a CoE Member State since 1995 Ukraine directly takes part in the CoE policy and lawmaking, and has taken considerable obligations and commitments. Ukraine voted for the Parliamentary Assembly Resolution 1757(2010) “Human Rights and Business”<sup>244</sup> and its Recommendation 1936 (2010) “Human Rights and Business”<sup>245</sup> and the more – for the Committee of Ministers’ Recommendation CM/Rec (2016)3 to Member States on human rights and business<sup>246</sup>. This Recommendation provides for adoption of NAPs to ensure the UNGPs’ implementation. The European Convention on Human Rights, the relevant case law of the European Court of Human Rights and the decisions of the European Committee of Social Rights are the legally binding benchmarks to implement. A CoE Handbook for legal practitioners “Human Rights and Business” (2019)<sup>247</sup>, “Human Rights and Business” HELP on-line tutored course, etc. are the tools to use as the source of professional inspiration and practical guidance. The CoE’s acquis on the UNGPs’ implementation should be a must for Ukraine to apply.

The European states have been guided in UNGPs implementation by a renewed EU Strategy 2011-2014 for Corporate Social Responsibility. In Section 4.8.2, “Implementing the UN Guiding Principles on Business and Human Rights”, the European Commission invited the EU Member States to develop by the end of 2012 National Plans for the implementation of the UNGPs<sup>248</sup>. The further EU policy acts imply UNGPs implementation – Next steps for a sustainable European future: European action for sustainability<sup>249</sup>, subsequent EU Action Plans on Human Rights and Democracy (2015-2019<sup>250</sup>, 2020-2024<sup>251</sup>), the European Commission Sector Guides on Implementing the UN Guiding Principles on Business and Human Rights<sup>252</sup>, etc. The recent EU strategic policies, instrumental initiatives and legal acts like A New Strategic Agenda 2019 – 2024<sup>253</sup>, the NextGenerationEU Recovery Plan<sup>254</sup>, the European Green Deal<sup>255</sup>, the European Parliament Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability<sup>256</sup>, etc. should mandatory be regarded for the NAPs’ topicality.

Ukraine’s cooperation with the OECD and OSCE is the additional open gate for getting knowledge and support in the process of the UNGPs implementation. For it is a matter of sound and secure internally European and international relations in Europe and beyond, the OECD massively contributes with a number of policy documents

244 Parliamentary Assembly Resolution 1757 (2010) Human Rights and Business, adopted by the Assembly on 6 October 2010 (32nd Sitting). URL: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17903&lang=en>.

245 Parliamentary Assembly Recommendation 1936 (2010) “Human Rights and Business”, adopted by the Assembly on 6 October 2010 (32nd Sitting). URL: <https://pace.coe.int/en/files/17904/html>.

246 Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers’ Deputies). URL: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c1ad4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1ad4).

247 Business and human rights – A handbook for legal practitioners (2019) by Claire Methven O’Brien. URL: <https://edoc.coe.int/en/fundamental-freedoms/7785-business-and-human-rights-a-handbook-for-legal-practitioners.html>.

248 A renewed EU Strategy 2011-14 for Corporate Social Responsibility. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Brussels, 25.10.2011 COM(2011) 681 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0681>.

249 Next steps for a sustainable European future: European action for sustainability. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Strasbourg, 22.11.2016 COM (2016) 739 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A739%3AFIN>.

250 EU Action Plan on Human Rights and Democracy (2015-2019). Joint Communication by the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy “Keeping human rights at the heart of the EU agenda”. JOIN (2015) 16 final, Brussels, 28.4.2015. URL: [https://ec.europa.eu/anti-trafficking/action-plan-human-rights-and-democracy-2015-2019\\_en](https://ec.europa.eu/anti-trafficking/action-plan-human-rights-and-democracy-2015-2019_en).

251 EU Action Plan on Human Rights and Democracy 2020-2024. European Commission Joint Communication to the European Parliament and the Council. Brussels, 25.3.2020 JOIN (2020) 5 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020JC0005>.

252 European Commission Sector Guides on Implementing the UN Guiding Principles on Business and Human Rights. URL: [https://ec.europa.eu/anti-trafficking/european-commission-sector-guides-implementing-un-guiding-principles-business-and-human-rights-0\\_en](https://ec.europa.eu/anti-trafficking/european-commission-sector-guides-implementing-un-guiding-principles-business-and-human-rights-0_en).

253 A New Strategic Agenda 2019 – 2024. The European Council, 20 June 2019 URL: <https://www.consilium.europa.eu/en/meetings/european-council/2019/06/20-21/>; <https://www.consilium.europa.eu/media/39914/a-new-strategic-agenda-2019-2024.pdf>.

254 NextGenerationEU. Make it Real. [https://europa.eu/next-generation-eu/index\\_en#ecl-inpage-36](https://europa.eu/next-generation-eu/index_en#ecl-inpage-36).

255 A European Green Deal. Striving to be the first climate-neutral continent, adopted by the European Commission on 14 July 2021. URL: [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en).

256 The European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability. Recommendations for drawing up a directive of the European Parliament and of the Council on corporate due diligence and corporate accountability. URL: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html#top](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html#top).

and tools like the Guidelines for multinational enterprises<sup>257</sup>, Due Diligence Guidance for Responsible Business Conduct<sup>258</sup>, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>259</sup>, Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector<sup>260</sup>, OECD-FAO Guidance for Responsible Agricultural Supply Chains<sup>261</sup>, Report on Due Diligence for Responsible Corporate Lending and Securities Underwriting<sup>262</sup>, Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains<sup>263</sup>, etc.

Ukraine's sound position in the UNGPs implementation provides for its effective co-operation with the UNDP, ILO, IOM, UNICEF missions, the EU, CoE, OSCE, OECD with its National Contact Points, World Bank and other international financial institutions, etc.

### 2.5.1.2. GENERALLY DEFINED FRAMES FOR A NAP

#### DEFINITION OF A NAP

A NAP on BHR is defined by the UNWG as an evolving policy strategy developed by a state to protect against adverse human rights impacts by business enterprises in conformity with the UNGPs on BHR<sup>264</sup>.

#### CRITERIA OF AN EFFECTIVE NAP

As identified by the UNWG<sup>265</sup>, **an effective NAP** should meet four **criteria**:

- 1) Founded upon the UNGPs and underpinned by the core human rights principles;
- 2) Respond to specific challenges of the national context, addressing to a country's actual and potential business-related human-rights abuse,
- 3) Developed and implemented through an inclusive and transparent process,
- 4) Regularly monitored, reviewed and updated in response to changing contexts, and strive for progress.

#### BENEFITS OF A GOOD NAP

**The value/benefits of NAPs** and the process of their development, as specified by the UNWG<sup>266</sup> and the European experts<sup>267</sup>, can be matched by the NAPs' providing for:

- A review of the extent of implementation of BHR at the national level to identify the country specific positive results, gaps and necessary reforms. This ensures a NAP's objectivity;

257 OECD Guidelines for Multinational Enterprises. (2011). URL: <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

258 OECD Due Diligence Guidance for Responsible Business Conduct (2018). URL: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

259 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016). URL: <https://mneguidelines.oecd.org/mining.htm>.

260 OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2017). URL: <https://www.oecd.org/daf/inv/mne/stakeholder-engagement-extractive-industries.htm>.

261 OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016). URL: <https://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf>.

262 Report on Due Diligence for Responsible Corporate Lending and Securities Underwriting launched at the 6th OECD Forum on Green Finance and Investment (October 2021). URL: <https://mneguidelines.oecd.org/rbc-financial-sector.htm>.

263 OECD (2017), Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains. URL: <https://mneguidelines.oecd.org/Practical-actions-for-worst-forms-of-child-labour-mining-sector.pdf>.

264 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. The updated version of November 2015. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

265 Ibid, p. i.

266 Ibid, p. 1.

267 Key-informants interviews held for this study.

- A greater coordination and coherence within Government on the range of business-related legal and policy frames and programs. This ensures a NAP's proper integration into the national framework;
- An inclusive process within the State administration and with stakeholders' engagement to identify national priorities, specific policy measures and action. This ensures NAPs legitimacy;
- Transparency, trust and predictability for domestic and international stakeholders. This ensures the reliability of working environment;
- A process of continuous monitoring, measuring and evaluation of NAP's implementation. This ensures the Governments and businesses' accountability;
- A catalytic platform for establishing multi-stakeholder coalitions supportive of progress on BHR as well as with regard to the achievement of broader agendas, such as the SDGs. This ensures participatory democracy and possibility to leave no one behind;
- A flexible yet common format that facilitates international cooperation, coordination, and exchanges of good practices and lessons learned. This ensures harmonization and consolidation of efforts.

The NAPs' meet the foundational Guiding Principles 1 and 2 of Pillar I that envisage: 1) taking appropriate steps to prevent, investigate, punish and redress human rights abuse through effective policies, legislation, regulations and adjudication; 2) clear setting out the expectation that all business enterprises domiciled in the territory of states and/or their jurisdiction respect human rights throughout their operations, including in their supply chains no matter where they are placed.

Meeting the operational Guiding Principles 8-10 of Pillar I, the NAPs provide the states with the possibility and the tool to achieve balancing decisions to reconcile different societal needs and take a broad approach to managing the BHR agenda. NAPs foster ensuring both vertical and horizontal domestic policy coherence. Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national, subnational and local levels, that shape business practices, including the departments and agencies responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour, human rights on conflict affected territories – to be informed of and act in a manner compatible with the Governments' obligations<sup>268</sup>.

## APPROACHES TO DEVELOPING A NAP

The UNWG recognizes that there is **no 'one-size-fits-all' approach to developing NAPs**. And its Guidance on NAPs clarifies on how states – Government institutions leading a NAP's drafting – should organize the pre-drafting and development process; draft the content; ensure implementation, monitoring and update of a NAP.

The characteristics of the NAPs' pre-drafting and drafting processes vary with respect to the form of cooperation within the government and the engagement of stakeholders as well as external experts.

The UNWG Guidance on NAPs<sup>269</sup> provides for a **five-phase approach to organization of their development and 15 steps of a model process**; deviations from the recommended process can be agreed among the stakeholders based on the national context:

268 United Nations.Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework (2011). URL: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

269 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. The updated version of November 2015. P. i. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

### Phase 1. “Initiation”

1. Seeking and publishing a formal Government commitment to engage in an open-ended NAP process<sup>270</sup>;
2. Creation a format for cross-ministerial collaboration and designation of a lead governmental body (a ministry, office, or agency); it should have the appropriate organizational capacity, political authority, and resources to develop a NAP<sup>271</sup>.

The major tasks of a lead government agency are: 1) to elaborate the Work Plan; 2) to be responsible for conduct of a NBA; 3) to be responsible for stakeholders’ engagement and consultations; 4) to conduct the NAP’s drafting process, 5) to decide when the NAP is ripe to be transferred to the Government for political deliberations and final decisions.

3. Creation a format for engagement with non-governmental stakeholders; awareness raising for all stakeholders and public officials should be held;
4. Development and publishing a Work Plan and allocating adequate resources for both the formats of activities.

### Phase 2. “Assessment and consultation”

5. Getting an understanding of adverse business related human rights impacts;
6. Identification of gaps in State and business implementation of the UNGPs (both the points 5 and 6 can be realized in the course of empirical research, National Baseline Assessment (NBA)). It is necessary to: 1) map adverse business human rights impacts; 2) study their correlation with government policies and laws, as well as business practices and policies; 3) produce crucial data to inform the NAP<sup>272</sup>.

Government should outline its various laws, regulations and policies in relation to the UNGPs Pillars I and III (UNGPs 1-10, 25-28, 30 and 31) and identify respective protection gaps. The same should be done with regard to businesses active or based in the country’s territory and their performance in regard to Pillars II and III (UNGPs 11-24 and 28-31). This includes assessing to what extent businesses carry out human rights due diligence and provide effective remedy through operational-level grievance mechanisms<sup>273</sup>.

7. Consultation stakeholders on the national and local levels in various sectors and identification of NAP priority areas.

### Phase 3. “Drafting of an initial NAP”

8. Drafting the initial NAP is held primarily on the basis of the Government decision by the lead Government body authorised to coordinate the work of an inter-ministerial body (a National Steering Committee, Working Group, etc.);
9. Consultations on the draft NAP with interested stakeholders, also through formalised multi-stakeholders’ consultative bodies before it is adopted by the Government and published.
10. Finalization and launching the initial NAP.

### Phase 4. “Implementation”

11. Implementation of actions and continuing of cross-ministerial collaboration;
12. Ensuring multi-stakeholder monitoring.

270 Ibid, P. 5.

271 National Action Plans on Business and Human Rights Toolkit The Danish Institute for Human Rights (DIHR) and The International Corporate Accountability Roundtable (ICAR), 2017. P.19. URL: [https://academy.ishr.ch/upload/resources\\_and\\_tools/dihr\\_icar\\_nap\\_toolkit\\_2017\\_edition.pdf](https://academy.ishr.ch/upload/resources_and_tools/dihr_icar_nap_toolkit_2017_edition.pdf).

272 See: The National Action Plans on Business And Human Rights Toolkit – Annex B : The National Baseline Assessment (NBA) Template, 2018. Developed by the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR). URL: <https://globalnaps.org/wp-content/uploads/2018/06/dihr-icar-national-baseline-assessment-template-june-2018-road-testing-version.pdf>.

273 Ibid., p. 7.

For the proper NAP's implementation the necessary financial resources should be made available. The modalities, Work plan and time framework of implementation and monitoring should be included into the NAP. The authorities to implement and monitor NAPs are frequently attributed to a "implementing body" – a deliberately defined government body or specific state agency.. It could be off-springs of the inter-ministerial body or mixed "government – stakeholders" formalised format that has elaborated the NAP earlier.

Monitoring should be held transparently and on a regular basis. Government should consider reporting on progress relating to NAP implementation to a multi-stakeholder monitoring body, non-governmental stakeholders, and take their recommendations and comments into account. Also, a Government focal point should be designated to respond to requests and concerns of non-governmental stakeholders regarding a NAP's implementation<sup>274</sup>.

A Guidance for the mid-term review of NAPs<sup>275</sup> can be used by the States. It provides for a set of general guidance that help prevent or diminish potential challenges, detailise some relevant points of the UNWG Guidance on NAPs.

The states could decide in favour of inviting the UNWG to consider appropriate points in the implementation of NAPs and review progress. The UNWG is mandated to hold country visits to assess the conditions of BHR on the ground and the level of the UNGPs' implementation with its own consent, or at the invitation of the States concerned. Reports from official country missions are submitted to the Human Rights Council<sup>276</sup>.

### Phase 5. "Update" –

13. Evaluation of impacts of the previous NAP and identification of gaps;
14. Consultation with stakeholders and identification of priority areas;
15. Drafting the updated NAP, consultations on, finalization, and launching it<sup>277</sup>.

## CONTENT AND STRUCTURE OF A NAP

**The content of NAPs** should outline the planned activities in the areas of policy, legislation, regulation and adjudication. It should explain how the State will provide support and guidance to business in connection with their discharge of the responsibility to respect human rights<sup>278</sup>.

The overall **structure and content of NAPs** are recommended to contain four sections:

**Introductory** – 1) to state the Government's a) commitments to protect HR against adverse business impacts; b) expectation that business respect HR in line with the UNGPs, including by implementing HRDD; c) ensuring access to remedy where adverse impacts occur; 2) to indicate the significance of the policies and actions outlined in the NAP for implementation by business of the corporate responsibility to respect human rights.

**Section II** – to describe the relevant international and domestic context providing: 1) a short introduction into the UNGPs; 2) clarification of the interrelation of the NAP and other Government policy strategies (on HR, development, CSR or labour-related standards); 3) an outline of the key national BHR challenges.

274 Ibid, pp. 9-10.

275 National Action Plans on Business and Human Rights: a guidance for the mid-term review. HRIC, 2020 edition. URL: [reviewhttps://docs.wixstatic.com/ugd/6c779a\\_f05f97959ce040f9a777fd356512a52c.pdf](https://docs.wixstatic.com/ugd/6c779a_f05f97959ce040f9a777fd356512a52c.pdf).

276 Working methods of the Working Group on Business and Human Rights. URL: <https://www.ohchr.org/EN/Issues/Business/Pages/WorkingMethods.aspx>.

277 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. The updated version of November 2015. Pp. i-ii. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

278 National Action Plans for Implementing the Guiding Principles. A Discussion Paper prepared by the UNWG for the States Pre-Forum Meeting, Second Annual UN Forum on Business and Human Rights (December 2. 2013), p.8. URL: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2013FBHRDocumentation.aspx>.

**Section III** – 1) to highlight the Government’s priorities in addressing adverse business-related HR impacts; 2) to describe current and planned activities on the Guiding Principles directed at States (Guiding Principles 1-10, 25-28, 30, and 31); 3) to clarify the modalities of implementation of planned activities, including responsibilities of relevant entities, a timeframe, and indicators to evaluate success.

**Section IV** – 1) to specify the modalities of monitoring which might include the creation of a multi-stakeholder monitoring group authorized to receive and comment on the regular Government reports; 2) to identify mechanisms for measuring progress; 3) to define a date for the next NAP update and the modalities of update<sup>279</sup>.

The UNWG promotes the NAPs progress worldwide. Starting from 2013 until December 2021 thirty UN Member States have launched NAPs; fifteen states are in the process of developing a NAP or have committed to developing it – three states (Ukraine including) have included a ‘Business and Human Rights’ chapter in their Human Rights National Policy acts; in 13 states there are some non-state initiatives on BHR promotion and towards the NAPs’ development<sup>280</sup>.

### 2.5.1.3. NATIONAL PRACTICES OF NAPs’ PRE-DRAFTING AND DRAFTING

First NAPs of some Western European countries (mostly adopted before the UNWG Guidance on NAPs is published) were based on the UNGPs’ Pillar I. and partly on Pillar III (Finland, Italy, Spain, etc.). And, in addition to State’s obligations and commitments in the area, NAPs describe how governments expect companies to conduct business with respect for human rights and also they specify what governments can do to support businesses and encourage them to observe human rights (The Netherlands, Denmark, Germany, etc.). NAPs endorsed in the countries of Central and Eastern Europe (Republic of Poland, Czech Republic, and Republic of Slovenia) as well as the most recent NAPs endorsed in Taiwan (2020), Uganda and Pakistan (2021) follow a more comprehensive approach. Those of 2019-2021 tackle upon all the three UNGPs’ Pillars<sup>281</sup>.

#### APPROACHES TO NAPs’ INITIATION

Noteworthy, that after the UNGPs’ adoption the **Governments** of many countries like Denmark, Finland, Germany, Italy, Lithuania, Norway, Sweden, the United Kingdom, etc. and others initiated the process of drafting their NAPs. In Switzerland and the Netherlands the **Parliament** called upon the Government to develop a NAP. The majority of those NAPs have been updated by now and are being updated due to the natural conclusion of the planned period.

Many Governments outside Europe initiated the NAPs development on recommendations of the UN in the result of their periodic reports’ review or of the EU in the context of negotiating the association or other framework agreements.

In a number of UN member states – Ghana, Kazakhstan, Nigeria, Morocco, South Africa, Tanzania, Zambia, and Philippines – either the NHRI or civil society organizations have begun steps in the NAP’s development<sup>282,283</sup> and in creating partnership with the Governments. So, the human rights, expert and multi-stakeholder formats were active first and inspired the Governments to deal with the BHR matters.

279 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. 2015, P. 1. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

280 <https://globalnaps.org/country/>.

281 National Action Plans on Business and Human Rights. URL: <https://globalnaps.org/country/>.

282 Ibid.

283 ‘ICAR Partners with LHRC, CHR, & Khulumani to Support the Development of National Action Plans on Business & Human Rights in Tanzania & South Africa’ by Khulumani Support Group, November 28, 2014. URL: <https://khulumani.net/statements/icar-partners-with-lhrc-chr-khulumani-to-support-the-development-of-national-action-plans-on-business-human-rights-in-tanzania-south-africa/2014/11/28/>.

For example, in Nigeria the National Human Rights Commission (NHRI) and the African Centre for Corporate Responsibility (CSO)<sup>284</sup>; in Ghana – the Commission on Human Rights and Administrative Justice (NHRI) and the Ghana Institute of Management and Public Administration (educational establishment)<sup>285</sup> have facilitated and led the processes of NBA and NAPs development. The International Corporate Accountability Roundtable (ICAR) has partnered with the Legal and Human Rights Centre (LHRC) in Tanzania, the Centre for Human Rights at the University of Pretoria (CHR) in South Africa, and the Khulumani Support Group in South Africa to support the development of National Action Plans (NAPs) on business and human rights in each country.

The good practice of a NAP initiation is the clear expression of the State/Government political will to develop a NAP in order to implement its international and constitutional commitments as it is done in the majority of the EU member states and beyond (in Colombia, Chile, Japan, Kenya, Pakistan, Taiwan, Thailand, etc.)

### **INSTITUTIONALIZATION PRACTICE OF NAPs' DEVELOPMENT: LEAD AGENCIES AND THEIR ASSIGNMENTS**<sup>286</sup>

Whereas NAPs are the Government strategies on the specific issue of BHR, they are developed primarily by countries' **Government agencies**.

In the majority of cases, the lead lays within one of the ministries – the Ministry of Foreign Affairs in Chile, Italy, Germany, the Netherlands, Spain, Poland, the UK etc. In Georgia the process was led by the Human Rights Secretariat under the Prime Minister's Office, while in Kenya – the Department of Justice under the Attorney General's Office, in Pakistan – the Ministry of Human Rights, and in Finland – the Ministry of Employment and Economy. In some cases, NAP processes have been led by the Office of the President through a Presidential Advisor on Human Rights, as in the case of Colombia.

Cross-ministerial and cross-agency cooperation is a key feature of the NAP processes. In Chile, Czech Republic, Finland, the Netherlands, the UK ad hoc working groups with such characteristics have been created to develop NAPs. In Italy, Belgium, France and Norway already existing Inter-ministerial working groups were entrusted with the task to develop NAPs. In Kenya the **National Steering Committee** (a multi-stakeholders' body) with the members delegated by the Government, private sector, and non-governmental organizations (including the United Nations) supported the process. Its mandate was to provide overall strategic guidance and direction for the development of the NAP. Germany has also opted for the Steering Committee formula, composed of ministries' and business associations' representatives, different networks of civil society organizations and trade union representatives.

In many countries (Chile, Denmark, Italy, France, Germany, the UK, the Netherlands, Norway, Pakistan and others) major or some tasks of such lead bodies (working groups, steering committees etc.) included defining the Work Plan, conducting a NBA, arranging and holding the stakeholder consultations, drafting a NAP, and making decision when a NAP is ready to be transferred to the Government for political deliberations and final decisions.

Since the substance of a NAP directly affects rights holders as well as businesses, Governments – in view of their further responsibility for implementation of the NAP – are interested in engaging stakeholders for consultations.

In countries like Germany and Kenya, different stakeholders, being participants of **Steering Committees**, extensively participated throughout the drafting process via meetings and expert-led hearings. In addition, in Kenya, to ensure fair coverage and wide-ranging participation, hearings were conducted across the country.

284 <https://globalnaps.org/country/nigeria/>.

285 <https://globalnaps.org/country/ghana/>.

286 The information presented in this part is mostly collected from the NAPs' texts. URL: National Action Plans on Business and Human Rights. URL: <https://globalnaps.org/country/>.

In other countries there are no standing structures for stakeholders' inclusion in the NAP processes. Thus, broad-based numerous stakeholder consultations were conducted before the start of the NAP drafting (in Spain, Chile, the UK, Norway, the Netherlands Georgia, Ireland).

The British Steering group hosted a series of workshops with interested non-governmental stakeholders. Separate workshops were held for multinational companies, small and medium-sized businesses, and civil society groups including NGOs and trade unions. During the drafting phase in the UK, as well as in the Netherlands, no further formal consultations with stakeholders were conducted. From the Netherlands experience, separate meetings with different stakeholders – with business, CSOs and implementing organisations – to discuss possible options for the NAP were most useful. Stakeholders might not have been speaking openly if they were put all together in one consultation meeting. Also in the British case, where the consultations were most extensive, the different stakeholder groups were consulted separately. The separate consultations made it possible to dig deeper into the substance of the matter and to avoid the stakeholders being caught up in disputes.

During the NAP drafting phase in many countries stakeholder consultations continued. In Italy the process was organized around two working groups, one "institutional" and the other "non-institutional" (made up of trade unions, NGOs, academia and companies) that contributed to drafting the NAP. Also the Inter-ministerial Committee on Human Rights of Luxembourg met in two different contexts: either limited to administrations and ministries or open to non-governmental bodies. This allowed for stakeholders from the private sector and civil society to participate on a voluntary basis during the development of the NAP.

There is also experience of some countries that have submitted their first NAP draft for expert and stakeholders consultations. The first version of the Spanish NAP draft was presented to the stakeholders for comments. The feedback urged the responsible Office to halt the drafting process and invest additional time in stakeholder consultations. The Chilean first draft of the NAP was shared with international organisations, as well as human rights and business experts, for review and comments to adequately reflect global human rights and business standards. The Working Outline of the Irish NAP has been published and discussed during a consultation event. The received written submissions led to further consultations with stakeholders. Also in Pakistan, following the preparation of the first draft, additional stakeholder consultations were conducted, focusing on provincial priority areas and implementation mechanisms.

It is not rare for the Government to conduct consultations after the NAP has already been drafted. Both Italian first and reviewed draft NAPs were published online for a public consultation, following which they were integrated with some of the observations and comments proposed, before being definitively presented. Chile also held one national multi-stakeholder consultation on the draft NAP and published it on the Ministry of Foreign Affairs' website.

The delegation of some tasks by Governments to external experts (both individuals and institutions) may take place on any phase of the process. For example, in the Netherlands, an external expert was involved in conducting 27 interviews with 50 representatives of the business community, civil society organizations, implementing organizations (export credit agencies) and other experts to identify most important viewpoints and ideas on the NAP and to gain support for the NAP amongst stakeholders. In Norway, an individual consultant was hired to conduct a mapping and gap analysis, assessing the different Government policies in the light of the UNGPs. In early 2013 the Office for Human Rights of the Spanish Ministry of Foreign Affairs commissioned two external experts to assist with the development of a draft NAP and the corresponding consultation process.

## NATIONAL BASELINE ASSESSMENT (NBA)

There is quite a different country practice concerning **the use of the NBA** as one of the preliminary steps to the overall NAP process in order to define how the requirements of Pillars I, II, and III of the UNGPs are being met by the State and business as duty-bearers.

Preliminary studies, surveys, internal mappings, background memorandum, or ‘stock-takings’ were undertaken as parts of the NAP processes in Belgium, Colombia, Finland, The Netherlands, and the United States. However, these documents were limited in scope<sup>287</sup>.

The UK became the first Government to publish and launch a NAP in September 2013 entitled «Good Business: Implementing the UN Guiding Principles on Business & Human Rights»<sup>288</sup>; it did not conduct the NBA before its adoption. The Institute for Human Rights and Business (IHRB) in 2012-2013 contributed to the NAP pre-drafting process by means of a review of relevant policies and approaches by over 70 States worldwide: most without NAPs, but nonetheless implementing particular practices of relevance to the business and human rights agenda. The review touched five main areas in which the State relates to business: 1) as an economic actor, 2) as a regulator and enforcer of law, 3) as the creator of the accountable marketplaces, 4) as a partner in development, and 5) as an enabler of trade and investment. In 2015 the IHRB passed its submission also to the review of the UK NAP<sup>289</sup>.

The Governments of Ireland and Sweden have intended to produce an NBA, despite having already adopted a NAP.

The Governments of Norway, Italy, the Czech Republic, Chile, Germany, Georgia, Scotland, South Korea, Thailand, Tanzania, Kenya, Mexico have committed to a comprehensive NBA. In practice NBAs may vary in length (from 10 to 350 pages) and detail, all are based on proper stakeholder consultation and represent a meaningful analysis of existing government laws and policies; business behaviours; corresponding human rights impacts; and identify gaps in the respective UNGPs implementation. They also specifically address the UNGPs under Pillar III about access to judicial and other remedy for victims of business harm. They represent a solid basis from which governments can then proceed<sup>290</sup>.

For example, the Chilean NAP contains 158 actions cutting across numerous State institutions<sup>291</sup>. The German NBA<sup>292</sup> is very thorough but does not formulate concrete recommendations. However, it gives a broad and detailed overview of every conceivable relevant piece of Government legislation explaining how and why respective legislation is relevant for rights fulfilment<sup>293</sup>.

287 Business and Human Rights National Action Plans: Comparative Review of Global Best Practice. Report commissioned and published by the Scottish Human Rights Commission as part of Scotland's National Action Plan for Human Rights (SNAP).2019. URL: [www.scottishhumanrights.com](http://www.scottishhumanrights.com), [www.snaprights.info](http://www.snaprights.info).

288 Good Business: Implementing the UN Guiding Principles on Business & Human Rights. HM Government Action Plan Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, September 2013. URL: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf).

289 <https://www.ihrb.org/focus-areas/mega-sporting-events/submission-review-uk-national-action-plan-business-human-rights>.

290 Business and Human Rights National Action Plans: Comparative Review of Global Best Practice. Report commissioned and published by the Scottish Human Rights Commission as part of Scotland's National Action Plan for Human Rights (SNAP).2019. URL: [www.scottishhumanrights.com](http://www.scottishhumanrights.com), [www.snaprights.info](http://www.snaprights.info).

291 Submission to the review of the UK National Action Plan on implementing the UN Guiding Principles on Business and Human Rights, The Institute for Human Rights and Business (IHRB), July 2015. URL: [https://www.ihrb.org/uploads/submissions/2015-07%2C\\_IHRB\\_Submission%2C\\_Review\\_of\\_the\\_UK\\_National\\_Action\\_Plan\\_on\\_Business\\_Human\\_Rights.pdf](https://www.ihrb.org/uploads/submissions/2015-07%2C_IHRB_Submission%2C_Review_of_the_UK_National_Action_Plan_on_Business_Human_Rights.pdf).

292 National Baseline Assessment. Umsetzung der UN-Leitprinzipien für Wirtschaft und Menschenrechte Erstellt für die Steuerungsgruppe im Prozess der Erarbeitung des Nationalen Aktionsplans zu Wirtschaft und Menschenrechten. Deutschen Institut für Menschenrechte (Stand 30.04.2015). URL: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Weitere\\_Publikationen/National\\_Baseline\\_Assessment\\_Umsetzung\\_der\\_UN-Leitprinzipien\\_fuer\\_Wirtschaft\\_und\\_Menschenrechte.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/National_Baseline_Assessment_Umsetzung_der_UN-Leitprinzipien_fuer_Wirtschaft_und_Menschenrechte.pdf).

293 Business and Human Rights National Action Plans: Comparative Review of Global Best Practice. Report commissioned and published by the Scottish Human Rights Commission, April 2019. URL: [http://www.snaprights.info/wp-content/uploads/2019/03/SHRC\\_BHR\\_NAP\\_Report.pdf](http://www.snaprights.info/wp-content/uploads/2019/03/SHRC_BHR_NAP_Report.pdf).

There are different practices on **agencies responsible for the NBA elaboration**. The UNWG encourages Governments to collaborate with or assign responsibility for the NBA to their NHRIs or with independent external experts<sup>294</sup>. Similarly, the NAP Toolkit states that the task of developing an NBA should be allocated to an organization or entity with “relevant expertise and competence . . . independent from political affiliation and corporate interests, such as the NHRI or academic research institution”<sup>295</sup>.

The existing NBAs were conducted by the relevant Government personnel, external experts from universities or independent research and consultancy institutions, and NHRIs.

Germany, Korea, Kenya and Georgia followed this recommendation. Germany and Korea gave their respective NHRIs sole responsibility for undertaking the NBA, Kenya and Georgia got the NHRI to coordinate the process with a Government agency and/or civil society specialist (in Kenya, the NHRI worked with the Department of Justice and the Kenyan National Commission on Human Rights). Such NBAs are guaranteed to be independent and underwritten by the relevant human rights expertise.

In Ireland the NBA was conducted by ReganStein and Leading Edge Group in 2019 on the basis of the guiding questions published by the Danish Institute for Human Rights (DIHR). The Chilean experience is very similar, where the DIHR commissioned an independent external expert institution, the Centre for Human Rights at the Diego Portales University, to elaborate an NBA.

On the whole, taking into account the 2014 UNWG Guidance on NAPs, the countries like Chile, Germany, Georgia, Kenya, Japan, Pakistan and others, including Ghana, Tanzania, etc. decided in favour of NBAs’ conducting and most of them adopted the mentioned above five-phase NAP’s development process: initiation; assessment and consultation; drafting; implementation; and update.

The overall overview of the current national practices of the NAPs’ pre-drafting and drafting allow advocating for the efficiency of the models where the Government consistently leads in the NAP’s processes, providing the proper institutionalization, stakeholders’ participation and sufficient resources.

Ukraine is suggested to consider the efficient model when the Government invests in ensuring of an institutional base for the NAP’s elaboration by means of: a) creation of a multi-stakeholders’ body of the Government level (e.g.: a National Steering Committee or a Working Group on BHR, etc.) including all relevant ministries and other governmental agencies, NHRI, involved experts; b) granting authorities and resources (financial incl.) to a key ministry/governmental agency to be responsible for coordination and maintenance of the multi-stakeholders’ body’s activities<sup>296</sup>; an Executive secretariat of such body can be based in this ministry/agency; c) formalisation the stakeholders’ input in the NAP’s processes. The best approach to such formalisation is an advisory body of non-governmental stakeholders as a part of a broader format of a National Steering Committee on BHR (or a Working Group on BHR, etc.) or an affiliated to it advisory body of non-governmental stakeholders led by the NHRI; its activities is supported by the sufficient resources (financial incl.) of the Government, international organisations and other relevant bona-fide donors.

More suggestions on the basis of the specific findings presented in this sub-section are set out in the following Concluding remarks.

294 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. 2015, p. 8. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

295 The National Action Plans on Business And Human Rights Toolkit, The Danish Institute for Human Rights (DIHR) and International Corporate Accountability Roundtable (ICAR) , 2017. URL: <https://www.humanrights.dk/tools/toolkit-national-action-plans-business-human-rights>.

296 Recommendations on the work-arrangements of an Inter-ministerial body (a National Steering Committee on BHR, a Working Group on BHR, etc.) responsible for the NAP processes is attached to the study in Annex O.

#### 2.5.1.4. NATIONAL PRACTICES OF NAPS' IMPLEMENTATION MANAGEMENT

The implementation of NAPs is frequently attributed to the so called “**Implementation Committees**”, to some specific Governmental institutions or to the newly created state agencies. They all could be off-springs of Steering Committees or mixed Working Groups that have elaborated the NAP earlier.

For example, to ensure the implementation of the Italian NAP, the Working Group on Business and Human Rights (GLIDU) was established within the CIDU (lead agency that drafted the NAP) and composed of all the administrations represented in it. While in Kenya, the Implementing Committee consists of representatives of state authorities and non-governmental stakeholders. In Chile, the NAP identifies specific governmental institutions responsible for implementing each action of it and refers to a supplementary document containing indicators and implementation timeline. In Japan, an Inter-Ministerial Committee was established following the launch of the NAP, while ministries and agencies are implementing the relevant activities. The Vice Minister for Human Rights and Access to Justice of Peru is responsible for the implementation of the NAP.

The following **tasks** are assigned **to the implementation authorities in different countries**:

- in Czech Republic, the Ministry of Human Rights has to run checks on the implementation of the NAP and assess developments in the field of human rights in business with a running deadline, and to produce an interim and final report on the implementation of the NAP by the end of 2020 and 2022 respectively;
- in Chile, each institution responsible for implementation has to report to the Executive Secretariat of the Inter-Ministerial Committee about the level of implementation of their measures to facilitate monitoring and follow-up. Such Committee publishes a yearly progress report;
- in Kenya, the NAP Implementing Committee developed a detailed work plan on how to implement and monitor the policy actions under this NAP. The work plan includes a timeline, measurable indicators and targets and clear designation of the agencies responsible for the implementation of each of the actions;
- in Japan, the Inter-Ministerial Committee controls annually the status of the NAP implementation. When controlling the implementation status, objective indicators are used to the greatest extent possible, including the use of existing evaluation indicators in related Government agencies;
- in Peru, the Vice Ministry for Human Rights and Access to Justice has the authority to formulate, coordinate, execute and supervise the policy on human rights and access to justice under its jurisdiction, in accordance with the respective national policy. Likewise, the National Human Rights Council, as one of its mandates, can issue an opinion on documents related to the implementation, execution and supervision of the NAP on Business and Human Rights.

The NAP of Peru is one of the most recent; it is published in 2021. According to it, the NAP implementation process consists of the following phases:

- Design and preparation of strategic commitments, formulated within the NAP framework;
- Monitoring activities (registration, reporting, analysis of information etc.);
- Preparation of the follow-up documents (balance sheet, annual report and control panel) that allow improving the process of generating public value; and,
- Total update of the NAP<sup>297</sup>.

297 Decreto Supremo N° 009-2021-JuS que aprueba el Plan Nacional de Acción sobre Empresas y Derechos Humanos 2021-2025. URL: <https://globalnaps.org/wp-content/uploads/2021/06/plan-nacional-de-accion-sobre-empresas-y-derechos-humanos-2021-2025pdf.pdf>.

The analysed practices of NAPS implementation prove that it is essential for the Government to identify a proper “implementing authority” to ensure the proper NAP’s implementation. This is important for Ukraine, also with a view of the relevant provision of the Presidential Decree on the National Strategy for Human Rights that prescribes the formation and the activities of an Interdepartmental working group<sup>298</sup>.

A multi-stakeholders’ body of the Governmental level, which was entrusted to develop a NAP, could be given the mandate to maintain its work and guide the NAP’s implementation according to the adopted Work Plan and Timeline that supplement the NAP. Clear operational procedures for the “implementing authority” should be adopted. Its comprehensive and cross-sectoral nature has to correspond to the NAP’s priorities and guarantee the stakeholders’ participation and transparency. The adequate resources shall be allocated for its work. The good practice of the NAP’s “implementing authority” proves for the expediency of drafting and publishing of its Annual implementation progress report to ensure the Government’s and businesses’ accountability. A NHRI (the Parliamentary Commissioner for Human Rights in Ukraine) can contribute with the regular or ad-hoc (when necessary) opinions on NAP’s implementation. These activities constitute a part of the NAP’s monitoring and evaluation.

### 2.5.1.5. NATIONAL PRACTICES OF NAPS’ MONITORING, EVALUATION AND UPDATING

In many cases the same agencies in charge of NAPs’ implementation also have **tasks of monitoring, evaluation and updating**.

For example, the Italian Working Group on Business and Human Rights (GLIDU) monitors NAP’s progressive implementation and provides for its updating and possible revision. The Kenyan NAP Implementing Committee has approved a detailed work plan on how to implement and monitor the policy actions under the NAP.

While in Chile a Multi-Stakeholder Advisory Group with representatives of civil society, trade unions, business, indigenous peoples, academia, and the National Institute of Human Rights (NHRI) has been created. The Advisory Group evaluates the progress contained in the Inter-Ministerial Committee’s progress report, and makes recommendations aimed at ensuring the effective implementation of NAP actions.

In Finland, individual ministries monitor the progress in their respective areas of responsibility, while the Committee for Corporate Social Responsibility (CCSR) composed of the representatives from ministries, employers’ organizations, business, labour organizations, and CSOs is responsible for the annual monitoring (reports) of the NAP’s implementation. There is no discussion however of whether the ministries or the CCSR will have to report to anyone on the implementation of the NAP based on monitoring activities.

The German NAP’s monitoring and evaluation practice, to experts’ mind, is worth following. The NAP (adopted by the Federal Cabinet in December 2016) having as a goal “responsible design of a sustainable and successful global economy”, underwent recurring effectiveness checks and adjustments under the guidance of the Governmental Inter-ministerial Committee on Business and Human Rights and due to methodology approved by it. A central example of this is the 2018-2020 “NAP monitoring”, a multi-phases company survey that was used to evaluate the voluntary implementation of the core elements of human rights due diligence in accordance with the NAP by German companies<sup>299</sup>. The mentioned Inter-ministerial committee provided this survey in cooperation with independent expert agencies – Ernst & Young GmbH auditing company with its consortium partners Adelphi Consult GmbH, Sustain Consulting GmbH and Focusright GmbH. All in all 5 monitoring reports were prepared and published.

298 See Part 5. Implementation and evaluation of the progress of the Strategy implementation, Decree of the President of Ukraine on the National Strategy for Human Rights of 24.03.2021 No.119/2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>.

299 Monitoring zum Nationalen Aktionsplan Wirtschaft und Menschenrechte, Auswärtiges Amt (13.10.2020). URL: <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-nap/2124010>.

On the basis of the study results, the Inter-ministerial committee in 2021 passed the Status report on the implementation of the National Action Plan “Business and Human Rights”<sup>300</sup>. The Federal Government further developed the non-binding approach of the NAP towards a Supply Chain Care Duty Act (LkSG). This important step, which was concluded with the adoption of the LkSG by the Bundestag in June 2021, will also have implications for other areas of action of the NAP<sup>301</sup>. In addition to the official monitoring of the German NAP a group of SCOs – members of the Multi-stakeholder Advisory Committee for Implementation of the NAP produced and published in 2021 the Shadow Report “Four years of the National Action Plan for Business and Human Rights (NAP)”<sup>302</sup>. This Report does not evaluate all 69 measures from the NAP, but deals with selected subject areas and measures for which SCOs see greatest need for comment and change and on which they work more intensively.

The need to regularly review and update the NAP is one of the four essential criteria of the UNWG Guidance for an effective NAP. This need responds to the eventual mutating and evolving political, social and cultural contexts and to the cumulative progress pursued for its implementation. Some of the NAPs that provide for review planning and measures updating adopt different modalities and time schedules to fulfil the review process. This leads to different outcomes. NAPs of Italy, Sweden, Poland, and Luxembourg foresee a precise year for a mid-term review in order to assess the results achieved, identify the gaps, and ensure the effectiveness of the NAP. In Italy the midterm review was conducted in November 2018 with the aim of updating its measures. The final text of this review was presented during the annual UN Business and Human Rights Forum. In line with the 2030 Agenda, the review process favored a multi-stakeholder approach which resulted in greater attention being paid to three aspects: 1) protection of vulnerable groups, with particular reference to human rights defenders; 2) training; 3) identification of the competent administrations for the implementation of the individual measures. The draft of the second Italian NAP 2022-2027 was published online for a public consultation in March 2021, concluded by October<sup>303</sup>.

Other NAPs foresee a periodical examination and, if necessary, a consequent update. The frequency of monitoring and evaluation is arbitrary. In Luxembourg the Inter-ministerial Committee on Human Rights evaluates the implementation of the NAP during its bimonthly meetings and during meetings with the Working Group. In Finland it is performed annually, annual reports on the NAPs implementation have been prepared in Chile, eventually followed by a review in Colombia, and Germany. The Swedish NAP was published in 2015 and in two years in February 2018, the Swedish Foreign Ministry published a follow-up report to it, saying that the majority of the measures included in the NAP have been implemented. The NAPs are reviewed every two years in Switzerland; every three years in Spain.

The UK included a commitment in its inaugural NAP to “to bring out an updated version of the action plan by end 2015.” Indeed, in March 2015 there was an event held to engage with stakeholders as a beginning to the consultation process that would produce eight issue-specific workshops and two workshops on conflict-affected areas. A total of 55 organizations were represented. After such broad consultations an updated NAP 2016 has been produced.

In both Japanese and Chilean NAPs it has been stipulated that by the expiry of the current NAP, the Inter-ministerial Committee will define a road map to prepare a new NAP on Human Rights and Business, which will be presented to the stakeholders.

300 Statusbericht des Interministeriellen Ausschusses Wirtschaft und Menschenrechte der Bundesregierung zur Umsetzung des Nationalen Aktionsplans “Wirtschaft und Menschenrechte”, 2021. URL: <https://www.auswaertiges-amt.de/blob/2476592/169c6c24c564c6b85da96d33099bcf3c/nap-status-bericht-2021-barrierefrei-data.pdf>.

301 Ibid.

302 Vier Jahre Nationaler Aktionsplan Wirtschaft und Menschenrechte (NAP) Schattenbericht der Zivilgesellschaft, prepared by CorA-Netzwerk für Unternehmensverantwortung, Forum Menschenrechte, and VENRO, August 2021. URL: [https://germanwatch.org/sites/default/files/Schattenbericht\\_2021\\_NAP.pdf](https://germanwatch.org/sites/default/files/Schattenbericht_2021_NAP.pdf).

303 Data from the key-informant interviews.

The presented practice is various because the countries stepped up into NAPs in different times and in different national contexts, having no previous experience of implementing the UNGPs but having national traditions of policy-making and administration. Thus, when developing and implementing NAPs the countries applied different approaches that could work with their contexts to ensure the Government's and businesses' (duty-bearers') accountability for NAPs' implementation – formalising a monitoring body and procedure or conducting the Government-led monitoring and review. However, none of these approaches are mutually exclusive, and can be considered complementary when appropriately combined<sup>304</sup>.

Nonetheless, the Government's reporting on the NAP's implementation progress, stakeholders' engagement in the NAP's monitoring and evaluation, their regularity and transparency are critical for the efficient realisation of this NAP's phase.

For Ukraine's practice (with due regard to the scale of the country and its profile) it can be expedient that monitoring and evaluation of the NAP's implementation are held in coordination at the national and regional levels by both the Governmental and non-governmental bodies.

At the national level the NAP's "implementing authority" (for instance, the National Steering Committee on BHR which could have been in charge of a NAP's development and also mandated to monitor its implementation) could be authorised to regularly monitor the NAP's implementation and provide annual Governmental Progress reports on compliance measures and commitments achieved. The NHRI (the Parliamentary Commissioner for Human Rights) could contribute with its opinions referred to the Government. The established at the initial phase of the NAP's development non-governmental multi-stakeholders' body (in Ukraine it could be the Inter-sectoral platform on BHR led by the NHRI) could produce annual "Shadow" reports on the NAP's implementation results. Both the Progress and the "Shadow" reports are publicly presented, discussed by the civil society and passed to the Government for the further policy-, law- and decision-making.

At the regional level the monitoring could be held by the regional and local divisions of the relevant Governmental agencies and by Regional offices of the NHRI in cooperation with the local self-government bodies, local stakeholders and their associations (both business and CSOs, right-holders). The results of the regional monitoring could be passed to the national NAP's "implementing authority", presented regionally and locally and used to update the relevant local policy- and decision-making on BHR.

The outcomes of the NHRI's national and regional monitoring could be included in its Annual reports on the human rights' adherence in Ukraine which are to be peer-reviewed by the Parliament and publicly presented before it and the society at various events.

The international reporting mechanisms should be considered helpful to promote the appropriate UNGP's implementation through the NAP – the UN and the CoE Treaty bodies and special procedures under them, the Universal Periodic Review, the UNWG country visits, etc. Both the national NAP's "implementing authority" and the relevant non-governmental multi-stakeholders' body are recommended to be involved into the international reporting mechanism.

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304 Business and Human Rights National Action Plans: Comparative Review of Global Best Practice. The Scottish Human Rights Commission, April 2019. P.21.  
URL: [http://www.snprights.info/wp-content/uploads/2019/03/SHRC\\_BHR\\_NAP\\_Report.pdf](http://www.snprights.info/wp-content/uploads/2019/03/SHRC_BHR_NAP_Report.pdf).

### 2.5.1.6. NAPS' SUPPORT TO BUSINESS RESPECT FOR HUMAN RIGHTS IN CONFLICT AFFECTED AREAS

The UNGPs Principle 7 calls that States should help ensure that business enterprises operating in conflict affected areas are not involved with gross human rights abuses, because such risk is heightened in these contexts. The UNGPs call on businesses to conduct enhanced human rights due diligence to identify, prevent and mitigate these risks<sup>305</sup> and treat them as a matter of legal compliance due to the heightened risks of gross rights abuses associated with operating in conflict-affected and high-risk areas.

Enhanced human rights due diligence is more important than ever, with the World Bank reporting<sup>306</sup> that the **number of people living in close proximity to conflict has more than doubled in the past decade** and, if trends continue, two-thirds of the world's poor will live in fragile and conflict-affected situations by the end of 2030.

Analysis of the NAPs demonstrates that implementation of this Principle is quite a weak point.

According to the Global Conflict Tracker<sup>307</sup> as per December 6, 2021, there are 32 countries involved in conflicts worldwide (civil wars, territorial disputes, interstate conflicts, political instability, criminal violence etc.).

While the Save the Children Fund in its report "Stop the War on Children: Killed and Maimed"<sup>308</sup> identifies the worst places in conflict to be for a child (Afghanistan, Central African Republic, Democratic Republic of Congo, Iraq, Mali, Nigeria, Somalia, South Sudan, Sudan, Syria and Yemen). The children involvement in the issue fortunately has not been underestimated by the Draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, that in the Article 16.3 remarks, among others, "the heightened risks of abuses, paying special attention to [...] the use of child soldiers and the worst forms of child labour, including forced and hazardous child labour"<sup>309</sup>.

The UNWG Guidance on NAP calls "to protect against adverse human rights impacts by business enterprises in conformity with the UNGPs"<sup>310</sup>, if and when developed by both 'home' and 'host' States, could become a valuable instrument also to address human rights challenges specific to or particularly relevant in conflict affected areas<sup>311</sup>.

However, only 4 out of 32 countries currently in conflict have approved and published the NAPs. In particular, Japan is involved in tensions in the East China Sea, Pakistan in conflict with India and the USA in confrontation with Iran. At present, out of 30 active NAPs nearly 1/4 does not even mention the Guiding Principle 7, conflict minerals or conflict-affected areas. It is particularly grave in case of the Japanese NAP, but also Kenyan, South Korean, Ugandan et alia<sup>312</sup>.

In some of the active NAPs, the Government (a NAP Steering Committee or Working Group) has reduced the endorsement of the issue to naming or quoting some international and/or regional instruments and standards.

The implementation mechanisms that could be found in some of the European NAPs are also weak and ill-equipped, despite the fact that on the regional level there are several important active topical instruments.

305 United Nations Guiding Principles on Business and Human Rights. Principle 7. URL: <https://globalnaps.org/ungp/guiding-principle-7/>

306 Fragility and Conflict: On the Front Lines of the Fight against Poverty. The World Bank publication, February 27, 2020. URL: <https://www.worldbank.org/en/topic/poverty/publication/fragility-conflict-on-the-front-lines-fight-against-poverty>

307 Global Conflict Tracker. US Council on Foreign Relations. URL: <https://www.cfr.org/global-conflict-tracker/?category=usConflictStatus>

308 Stop the War on Children: Killed and Maimed. Save the Children Fund. URL: <https://www.savethechildren.org/us/charity-stories/worst-conflict-affected-countries-to-be-a-child>

309 Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises. OEIGWG Chairmanship Third Revised Draft of 17.08.2021. URL: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LB3rdDRAFT.pdf>

310 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights. 2015, URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

311 Ibid, p. 26. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

312 See statistics provided by the Danish Institute for Human Rights. URL: <https://globalnaps.org/issue/conflict-affected-areas/>

First of all, “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Related and High-Risk Areas”<sup>313</sup>, adopted in 2011 and already at its third edition<sup>314</sup> is the first example of a concerted, multi-stakeholder, OECD-backed initiative for responsible supply chain management of minerals from conflict-affected areas. Its objective is to determine how companies can respect human rights and to provide practical guidelines aimed at avoiding any involvement in conflicts. The Guidance offers practical advice, with an emphasis on constructively concerted approaches to tackling complex challenges. It was developed through a multi-stakeholder process, with deep engagement from the OECD member countries (including the Czech Republic and Switzerland)<sup>315</sup> and eleven African countries that are members of the International Conference on the Great Lakes Region, industry, civil society, as well as the United Nations Group of Experts on the Democratic Republic of Congo.

The majority of the OECD member countries include in their NAPs measures regarding the information, dissemination and awareness raising among their ‘home’ business enterprises for the sustainable management of supply chains through different initiatives such as trainings, round tables, forums, bringing different stakeholders into contact and meeting with companies, business federations, trade unions, state and regional authorities, diplomatic staff (Belgium, Italy, Norway, Sweden and Switzerland). Denmark and France declare in their NAPs to provide financial assistance to the OECD Proactive Agenda work, which has a specific focus on conflict-affected areas. The UK and Spain mention in their NAPs that the State promotes (and monitors, in case of the UK) the application of the OECD Due Diligence Guidance, however without mentioning any specific mechanisms.

Based on the before mentioned the OECD Guidance, also the European Commission has presented a proposal for a regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas. Various EU countries have taken part in discussions and drafting (Belgium, Finland, France, Germany, Ireland, Italy, Sweden and the UK)<sup>316</sup>, resulting into the Regulation (EU) 2017/821 of the European Parliament and of the Council laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas<sup>317</sup>. Adopted in 2017, the Regulation entered into full force across EU countries on January 1, 2021.

Thus, it is possible that some of the member states, that did not update their NAPs yet (especially those with ‘older’ ones, like Denmark and Spain), might do so in the following NAPs editions, expanding the measures with regard to business and human rights in conflict-affected areas, in order to comply with the current Regulation. So far the NAPs of Luxembourg, Czech Republic, the Netherlands, Poland and Slovenia have rather limited reference to the issue in general. Even in the updated NAP version of Luxembourg (still under discussion), the major action in the related field consists in the “preparation of the regulatory framework to implement the EU Regulation”<sup>318</sup>. Nothing but the task to “establish one or more competent bodies responsible for the application, in the Czech Republic, of Regulation (EU) 2017/821”<sup>319</sup> has been put forward so far in the Czech NAP 2017-2022. The Dutch NAP only

313 Since 2017, Ukraine is awaiting for the ratification by the Parliament of the OECD Declaration on International Investment and Multinational Enterprises, Guidances (including the one on “conflict minerals”) and Decisions. URL: <https://zakon.rada.gov.ua/laws/show/757-2020-p#n5>. This has recently been re-introduced into the indicative work plan of the Committee on Foreign Policy and Inter-parliamentary Cooperation for the period of the sixth parliamentary session (September 2021 – January 2022). URL: <http://www.golos.com.ua/news/141487>

314 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Related and High-Risk Areas (2011). URL: <https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>

315 According to their NAPs

316 According to their NAPs

317 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0821>

318 Les 20 actions concrètes du PAN 2. Ministère des Affaires étrangères et européennes, Luxembourg. URL: <https://maee.gouvernement.lu/fr/directions-du-ministere/affaires-politiques/droits-de-l-homme/entreprises-droits-de-l-homme/pan-2.html>

319 The National Action Plan for Business and Human Rights (2017-2022). Ministry for Human Rights, Equal Opportunities and Legislation, the Czech Republic. URL: [https://globalnaps.org/wp-content/uploads/2017/11/cz\\_nap\\_bhr\\_2017-2022\\_-\\_draft\\_english\\_translation.docx](https://globalnaps.org/wp-content/uploads/2017/11/cz_nap_bhr_2017-2022_-_draft_english_translation.docx)

mentions the issue in relation to conflict minerals and OECD guidance<sup>320</sup>. In the planned and ongoing activities of the Polish NAP only “increasing the involvement of foreign institutions in issues related to human rights and business [...], with a view to exercising human rights, with particular regard to the situation of armed conflicts”<sup>321</sup> is brought up. Slovenia in its NAP, in a very generic way, “appeals to all actors involved in conflicts, including economic operators, to respect humanitarian principles and international humanitarian law”<sup>322</sup>.

On the other hand, some European country NAPs deal with the issue extensively, covering if not all, but the majority of actions of the Guiding Principle 7; and some go even beyond.

Belgium, Denmark, France, Germany, Ireland, Norway, Spain, Sweden and Switzerland, according to their NAPs, provide information, expertise and audit, advice and consultations to their ‘home’ business enterprises on possible risks of human rights situations when operating in conflict-affected areas. Such activities are performed and/or coordinated either by the National Contact Points or by the Ministries of Foreign Affairs.

Spain, Sweden and Switzerland rely on their representations abroad to raise awareness of human rights issues among businesses, provide country-specific advice and develop innovative initiatives based on the UNGPs to promote respect for human rights. Embassies should be prepared to capture information about potential problems related to human rights and ‘home’ companies, especially in conflict-affected countries.

In Norway also the Norges Bank (National Bank), when assessing markets and country risks, includes violent conflicts, human rights violations and political terror in its analyses<sup>323</sup>. In addition, no assistance is given to companies that are involved in gross human rights violations unless they show a willingness to cooperate on addressing the situation<sup>324</sup>.

The assistance provided by the governmental programs and research institutions of Denmark, Germany, Ireland and Italy is not limited only to the ‘home’ business enterprises. Parts of their NAP strategies in conflict-affected areas are also dedicated to overseas development assistance.

The Danish Institute of Human Rights has launched a Human Rights and Business Country Guide<sup>325</sup> in December 2013 available to all stakeholders. The German Institute for Human Rights, through the project, selected national human rights institutions in countries with which Germany engages in development cooperation to strengthen their work in the raw materials sector.

In the framework of technical cooperation, human rights analyses were conducted in the Andean countries. “Human Rights Risks in Mining – A Baseline Study”, presented by the Federal Institute for Geosciences and Natural Resources at the beginning of 2016, contains an in-depth analysis of the impact of mining on human rights. The Federal Government is promoting conflict-sensitive management of natural resources, particularly in Africa (Mali and the Democratic Republic of the Congo), in a project in which representatives of Government, the private sector, civil society and affected populations are brought together in a dialogue<sup>326</sup>. Irish expertise has been commissioned by multinational corporations and technical cooperation programmes to undertake third party

320 The National Action Plan on Business and Human Rights. Ministry of Foreign Affairs. The Netherlands, pp.15, 23. URL: <https://globalnaps.org/wp-content/uploads/2017/10/NAP-Netherlands.pdf>

321 The Polish National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2017-2020. Adopted by the Council of Ministers on 29 May 2017, p. 37. URL: <https://globalnaps.org/wp-content/uploads/2017/11/nap-poland.pdf>

322 The National Action Plan of the Republic of Slovenia on Business and Human Rights, November 2018, p. 29. URL: <https://globalnaps.org/wp-content/uploads/2017/11/slovenia-bhr-nap-english.pdf>

323 Business and Human Rights. National Action Plan for the implementation of the UN Guiding Principles. Norwegian Ministry of Foreign Affairs, p. 22. URL: <https://globalnaps.org/wp-content/uploads/2017/10/NAP-Norway.pdf>

324 Ibid, p. 26

325 Human Rights and Business Country Guide, The Danish Institute of Human Rights. URL: <https://globalnaps.org/human-rights-and-business-country-guides/>

326 German National Action Plan on Business and Human Rights 2016-2020. p. 22. URL: <https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>

audits in the context of supply chain due diligence on factory standards. The design and implementation of a long-term building inspection and enforcement regime for all buildings in Bangladesh has, for example, been greatly assisted by Irish engineering expertise<sup>327</sup>. The Italian Development Cooperation takes actions towards gender equality also supporting women economic empowerment in post conflict countries<sup>328</sup>.

Countries like Belgium, Norway, Spain and Switzerland quote in their NAPs also other than aforementioned OECD and EU international obligations and national instruments. Such obligations concern the operation of private security service providers, as well as import, export and transit of arms, ammunition, military and law enforcement equipment and dual-use goods in conflict-affected areas. In such areas, a company may unintentionally enter into a business relationship with an enterprise, such as a security company, that is guilty of gross human rights abuses. Private security service providers are at increased risk of becoming involved in human rights abuses. States that hire private security guards must ensure that these comply with the state's obligation to protect against human rights violations. The Voluntary Principles on Security and Human Rights<sup>329</sup> and the International Code of Conduct for Private Security Service Providers (ICoC)<sup>330</sup> are useful guidelines for private business enterprises on how best to ensure their security.

Switzerland helped to establish the International Code of Conduct Association, which requires private security providers to uphold human rights standards. The ICoC Association<sup>331</sup> has a grievance procedure to address claims brought by employees or third parties regarding human rights abuses by companies. Switzerland and the International Committee of the Red Cross were the driving force behind the Montreux Document on private military and security companies<sup>332</sup>. The purpose of this intergovernmental document is to promote respect for international humanitarian law and human rights by private military and security companies operating in situations of armed conflict. Spain is part of the Montreux Document, as mentioned in the country NAP.

According to the NAP of Norway, security personnel hired to protect Norwegian interests, whether private or public, pose a potential problem as the Norwegian Penal Code of 2005, which entered into force on October 1, 2015, also applies to certain punishable offenses committed on behalf of an enterprise registered in Norway when the offense is also punishable under the law of the country where it has been committed<sup>333</sup>.

In 2003, Belgium was the first country to give a binding character to the Common Criteria of the "EU Code of Conduct on Arms Export"<sup>334</sup> of 1998, which pays particular attention to human rights. The human rights criterion is further strengthened compared to the Common Position in the Flemish Arms Trade Decree, to avoid that as a general rule, goods are delivered, either directly or via untrustworthy or private companies, to actors who have been found guilty of human rights violations or other forms of crime, in a systematic and manifest manner. The Flemish Arms Trade Decree contains further criteria based on which an export or transit request can be refused. These include the attitude of the end-use country towards the death penalty, the prevalence of a high mortality rate due to armed conflict in the end-use country and the prevalence of gender-based violence, especially rape and other forms of sexual violence. All private companies that want to receive weapons or military equipment

327 The National Plan on Business and Human Rights 2017 – 2020. Ireland, p. 15. URL: <https://globalnaps.org/wp-content/uploads/2017/11/ireland-national-plan-on-business-and-human-rights-2017-2020.pdf>

328 Italian National Action Plan on Business And Human Rights 2016-2021, p. 19. URL: [https://globalnaps.org/wp-content/uploads/2017/11/italy\\_revised-nap\\_2016-2021.pdf](https://globalnaps.org/wp-content/uploads/2017/11/italy_revised-nap_2016-2021.pdf)

329 The Voluntary Principles on Security and Human Rights (2000). URL: <https://www.voluntaryprinciples.org/>

330 The International Code of Conduct for Private Security Service Providers. URL: <https://icoca.ch/the-code/>

331 Includes 209 members worldwide (7 governmental authorities, 99 private security services (2 in Ukraine) and 44 civil society organizations)

332 The Montreux Document on private military and security companies (2008), signed by Ukraine in 2008. URL: <https://www.icrc.org/en/publication/0996-montreux-document-private-military-and-security-companies>

333 Business and Human Rights. National Action Plan for the implementation of the UN Guiding Principles. Norwegian Ministry of Foreign Affairs (2015), p. 36. URL: <https://globalnaps.org/wp-content/uploads/2017/10/NAP-Norway.pdf>

334 The European Parliament resolution of 13 March 2008 on the EU Code of Conduct on Arms Exports – Failure of the Council to adopt the Common Position and transform the Code into a legally binding instrument . URL: <https://www.seesac.org/f/img/File/Res/EU-Documents/EU-Code-of-Conduct-on-Arms-Exports-512.pdf>

are also made aware of this aspect. Just like state end users, they are in fact required, prior to any export, to sign a declaration in which they must undertake, among others, not to use the goods for violations of human rights or international humanitarian law, and not to deliver them to another entity, nor to transfer or export them to another country for such activities<sup>335</sup>.

Norwegian legislation governing the export of arms, ammunition and other military equipment, associated technology and services for military purposes is strict and comprehensive. It is based on the principle that Norway does not permit such exports to areas where there is war, a threat of war, or countries where there is civil war. The Foreign Ministry's guidelines recommend that such applications should be rejected in cases where, for example, there is considered to be an unacceptable risk that the equipment to be exported is intended to be used for internal oppression or serious human rights violations. The Arms Trade Treaty (ATT), signed in April 2013, provides guidelines for the regulation of export control by states<sup>336</sup>.

Commendable are some of the actions taken in and by singular non-European countries, like Colombia, Taiwan, Thailand and the USA. The Colombian NAP 2020-2022 foresees the participation strategies for people in the reintegration process, as well as initiatives that strengthen the stabilisation and consolidation of the country implemented by the Agency for Reintegration and Normalisation, Presidential Advisory Office for Stabilisation and Unit for the Attention and Integral Reparation of Victims<sup>337</sup>. Moreover, the Government has taken measures for the benefit of those business enterprise (including SMEs) that have been affected by the violence in Colombia by providing a special credit line<sup>338</sup>.

In the meanwhile, Taiwan's Asustek Computer, Acer Corporation, Hon Hai Technology, HTC, and TSMC are all members of the Responsible Business Alliance and follow the "Responsible Business Alliance Code of Conduct"<sup>339</sup> to strengthen the management of supply chains. According to the NAP of Taiwan the Government will continue, on the basis of UNGPs, to consider the issue of administrative measures for outbound investment as applied to business and human rights<sup>340</sup>.

Thailand, the first Asian country to launch a NAP (2019-2022), provides for the institution-wise solution adopted for the conflict-affected areas: the Ministry of Justice is responsible for the "establishment of rights protection centres or working groups to manage the violation of rights in areas of conflict"<sup>341</sup>.

The presented overview of the national practices to implement Principle 7 of the UNGPs provides Ukraine with the vision of how the NAP on BHR could be used for ensuring business respect for human rights in the conflict affected areas. The domestic policies in the area of defense, law-enforcement and reintegration of population and territories affected by the current military conflict should be considered in cohesion with other sectoral policies when drafting a prospective Ukraine's stand-alone NAP. The relevant OECD, OSCE and EU acquis should be taken into account. Participation of the Ukraine's Government and other stakeholders in international formats of engagement for BHR implementing is of recommend.

335 Plan d'action national Entreprises et Droits de l'Homme. Belgique (2017), pp. 74-75. URL: <https://globalnaps.org/wp-content/uploads/2017/11/begium-nap-french.pdf>

336 Business and Human Rights. National Action Plan for the implementation of the UN Guiding Principles. Norwegian Ministry of Foreign Affairs (2015), p. 19. URL: <https://globalnaps.org/wp-content/uploads/2017/10/NAP-Norway.pdf>

337 Plan Nacional de Acción de Empresas y Derechos Humanos 2020-2022 "Juntos lo Hacemos Posible, Resiliencia y Solidaridad", Colombia, p. 54. URL: <https://globalnaps.org/wp-content/uploads/2021/06/colombia-2020-2022-plan-nacional-de-accion-de-empresa-y-derechos-humanos.pdf>

338 Línea De Crédito Para Las Empresas De Víctimas Del Conflicto Armado Interno En Colombia, 6 de agosto de 2020. URL: <https://www.bancoldex.com/soluciones-financieras/lineas-de-credito/linea-de-credito-para-las-empresas-de-victimas-del-conflicto-armado-interno-en-colombia-3752>

339 Responsible Business Alliance Code of Conduct (version 6.0 (2018)). URL: [https://www.responsiblebusiness.org/media/docs/RBACodeofConduct6.0\\_English.pdf](https://www.responsiblebusiness.org/media/docs/RBACodeofConduct6.0_English.pdf)

340 Taiwan National Action Plan on Business & Human Rights. Implementation of the United Nations Guiding Principles on Business & Human Rights (2020). URL: <https://globalnaps.org/wp-content/uploads/2021/10/taiwan-nap-on-business-and-human-rights-2021.pdf>

341 First National Action Plan on Business and Human Rights (2019-2022). Rights and Liberties Protection Department Ministry of Justice, Thailand, p. 98. URL: <https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-en.pdf>

### 2.5.1.7. CONCLUDING REMARKS

The studied international law provisions and international standards as well as national practices of their implementation suggest for the expediency of developing a specific strategic policy act aimed to implement the UNGPs.

**A stand-alone NAP** is a beneficial endeavour, also for Ukraine. The political will to introduce a NAP should be clearly stated by the Government and it should take responsibility for its drafting and implementation in a transparent and participatory way. The NAP should be one of the tools for Ukraine to accomplish the wider international agendas and political commitments – the UN SDGs, and the European integration and approximation goals.

**A good NAP formula** could imply that a NAP is:

- Directed at implementation of all 3 Pillars of the UNGPs to ensure the UN “Protect, Respect and Remedy” framework at the national and local levels;
- Developed and implemented in a transparent and consistent way under the guidance/responsibility of a Government body (a National Steering Committee on BHR, a BHR Working Group, etc. with a lead Ministry to coordinate) with the stakeholders’ formalized input at the national and local levels;
- Drafted following a complex five-phase approach as recommended by the UNWG;
- Based on the comprehensive empirical research (a National Baseline Assessment (NBA) is preferred) tackling the various sectors of activity and various stakeholders at the national and local levels;
- Developed in coordination and cohesion with all relevant national policies and programmes, relevant international commitments should be properly regarded;
- In countries like Ukraine, NAPs should provide support to business respect for human rights in conflict affected areas;
- Structured as recommended by the UNWG to cover strategic and operational goals in the priority areas and to define clear tasks, to include an Action Plan with the concretised measures to be taken and realistic indicators to evaluate its success;
- Secured by the sufficient budgetary allocations;
- Regularly monitored, evaluated, and updated with non-government stakeholders involved;
- Followed by qualitative and quantitative developments in BHR at the national and local levels.

### 2.5.1.8. RECOMMENDATIONS AND SUGGESTIONS

1. **Develop a stand-alone National Action Plan on business and human rights** in compatibility with the UNWG Guidance on NAPs, including allocate a sufficient budget for the NAP implementation;
2. **Currently, before a stand-alone NAP is developed, to amend: a) par.16 of the National Human Rights Strategy “Ensuring respect for human rights in the course of economic activity”** in order to implement Pillar I of the UNGPs on the State’s duties and commitments in BHR; b) the Plan of actions on realization of the National Human Rights Strategy, to allocate sufficient financial resources;
3. **Conduct an inter-ministerial and/or multi-stakeholder meeting to inform the decision on the format of lead and coordination of the NAP development** and implementation (before that the Ministry of Justice can lead the process);

4. **Adequate time should be taken to develop a NAP** (for example, developing a NAP in the Netherlands took in total 1,5 years to draft, and in Germany – 2 years) due to an inclusive multi-stakeholder process. It is worth investing time to get a clear perspective on the Governments' and stakeholders' priorities in the implementation of the UNGPs in Ukraine (also with regard to the size of the country and its overall profile). While an initial Time Plan should be developed and agreed upon, it should be handled with flexibility throughout the process.
5. Lack of time for thorough consultations between right-holders and duty-bearers also in the regions of Ukraine could prevent from generating the nuanced and differentiated positions and interests within the various broad cluster groups represented.
6. **Guidance, toolkits, standing operating procedures** may be useful for the Ukraine's participants of the NAP's processes and help in pre-drafting and drafting – the Guidance on NAP on Business and Human Rights of the UN Working Group on Business and Human Rights is widely applied. In addition, the Toolkit on National Action Plans for Business and Human Rights, the National Baseline Assessment (NBA) template, the Human Rights Impact Assessment Guidance and Toolbox developed by the Danish Institute for Human Rights, A Guidebook for National Human Rights Institutions on Business and Human Rights of the International Coordinating Committee of National Human Rights Institutions and the Danish Institute for Human Rights, and A Guidance for the Mid-Term Review of NAPs drafted by the Human Rights International Corner(HRIC).
7. When drafting a NAP, emerging business and human rights issues such as artificial intelligence, digitalization, climate change etc. have to be addressed. For example, the recently reviewed Italian NAP is also focused on such challenges. As well, the issues of business respect for human rights in conflict affected areas shall be properly addressed in the Ukraine's NAP.
8. Proper transparency regarding the assessment and drafting process should be provided by the Government of Ukraine. In particular, a Timeline and the Terms of Reference for the NAP's drafting processes should be made public. Moreover, it is good to openly provide the information about the budget set aside for the NAP's process, giving stakeholders confidence in the Government's current and longer term commitment to the process (example of Chile).
9. **A lead Government agency responsible for a NAP's drafting** should be agreed upon at the initial phase. It should be given the necessary competences and financial means to convene meetings, lead the internal and external consultations, and coordinate the drafting process. It could be an already existing agency, like an Inter-ministerial Committee for Human Rights in case of Italy, or a newly set up one, like Working Groups on BHR in the UK or the Netherlands, or a Steering Committees like in Germany and Kenya. An Executive Secretariat can be formed to ensure the work of the agency/body on BHR.
10. In case of Ukraine it could be useful to establish and guide a National Steering Committee on BHR under the auspices of a Vice-Prime Minister of Ukraine (on Economics or on European and Euro-Atlantic Integration) responsible for the UNGPs implementation in a stand-alone NAP format.
11. To ensure independent input into the process, **the Government may delegate some tasks to the external experts/consultants** (individual academics or institutions). For example, a bona fide NBA or NAP's progress evaluation could be undertaken by an independent body other than Government. NHRIs established and operating in accordance with the Paris Principles are highly appropriate to do this given their competence and mandate. For example, the Centre for Human Rights at the Diego Portales University in Chile has been involved as an independent external expert institution to produce an NBA. In the UK, the consultants were a group of academics from the Arts and Humanities Research Council, led by Professor Sheldon Leader of the University of Essex.

12. In order **to avoid obstructionism** by non-governmental stakeholders throughout the consultation and drafting processes, and during the implementation phase, as well as to capitalize on their expert knowledge, the **engagement of non-governmental stakeholders has proved to be central**. There are various mechanisms of stakeholders' engagement, starting from formal general consultations (conferences, forums, dialogues, seminars, training and workshops, etc.) to separate meetings with different categories, as well as the direct participation in the lead NAP agency's activity. A format of an **Advisory group of non-governmental stakeholders** is also recommended for supplementing the activities of a Governmental agency responsible for a NAP.
13. Extra resources should be allocated and effort made to consult with at-risk and vulnerable groups (people from other countries impacted by the operations of home country companies; indigenous people and national minorities like Roma; women; children, etc.). Information concerning all these processes should be made clearly and publicly available.
14. **A well-resourced NAP process with adequate budget lines** for activities to be implemented should get significant Government funding, which can be augmented where necessary with funding from other sources. A funding collaboration by different actors rallying around a common work plan and outcomes is desirable, if the Government funding is limited.
15. It is essential to **identify the proper implementing authority for the NAP** implementation. Whether it is a special new or existing state agency, an Implementing Committee or a set of institutions, their comprehensive and cross-sectoral nature has to correspond to the NAP's priorities and guarantee the stakeholders' participation. The NAP's tasks have to be clear and the implementation plan and timeline have to be duly drafted.
16. It is recommended to set clear provisions on terms, timing and frequency for monitoring, evaluation and update of the NAPs. Not always however, frequent monitoring guarantees timely and appropriate updates. One should bear in mind that "the Action Plan is a living document that needs to respond to the latest developments in the country and around the world", as stated in the Czech NAP.

A set of recommendations to consider for the Ukraine's practice on the work-arrangements of an Inter-ministerial body (a National Steering Committee on BHR, a Working Group on BHR, etc.) responsible for the NAP processes is attached to the study in *Annex O*.

## 2.5.2. CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

### 2.5.2.1 HUMAN RIGHTS DUE DILIGENCE LEGAL DEVELOPMENTS – GLOBAL AND REGIONAL ACCOMPLISHMENTS OVERVIEW

Decades of slow and but consequent development of the international human rights soft law did not bring much changes in terms of creating a unified and binding mechanism to ensure respect of human rights. Neither was the human rights due diligence introduced as a binding global norm. Previously some forms of the same character that are very close to the UNPGs approach to the human rights due diligence, emerged and were further developed in such soft law instruments as OECD Guidelines<sup>342</sup>, the International Organization for Standardization Guidance on Social Responsibility ISO 26000<sup>343</sup> and some others<sup>344</sup>, including the European Commission's renewed EU strategy

342 OECD Guidelines for Multinational Enterprises updated in 2011 <https://www.oecd.org/corporate/mne/oecdguidelinesformultinationalenterprises.htm>

343 ISO 26000 <https://www.iso.org/iso-26000-social-responsibility.html>

344 See detailed list and analysis of some of these norms in Ihor Konopka "Getting hard to resist. Prospect of mandatory human rights due diligence in Ukraine" JAMMO7 Master Thesis International Human Rights Law

2011-2014 for Corporate Social Responsibility<sup>345</sup> and the Recommendation CM/Rec(2016)3 of the Committee of Ministers of Council of Europe<sup>346</sup> to member states on human rights and business. But none of these regulations became binding or transformed into clear and precise national laws stipulating corporate social responsibility close to the meaning of the UNGPs. This chapter analyses existing approaches to implementation of the mandatory Human Rights Due Diligence<sup>347</sup> (mHRDD) provisions globally, regionally and nationally and concludes with some suggestions and recommendations to Ukraine.

## HRDD GLOBAL DEVELOPMENTS TO CONSIDER WHEN PLANNING UNGPS IMPLEMENTATION IN UKRAINE

Global development which should be taken into account in Ukraine is a process of drafting UN Legal Binding Instrument (UN LBI) to regulate BHR in the international human rights law, the activities of transnational corporations and other business enterprises (LBI, third edition of this draft published on 17 August 2021)<sup>348</sup>. Proposed UN LBI is based on recognising the fact that states are required to put in place obligations for companies to conduct “human rights due diligence proportionate to their size, risk of human rights abuse or the nature and context of their business activities and relationships – and to assess, prevent, mitigate and monitor and communicate on any actual or potential human rights abuses that may arise from their own business activities, or from their business relationships”.

The LBI recognises that a more holistic approach to corporate accountability is necessary, beyond a due diligence obligation. It includes a broader range of provisions designed to ensure prevention measures are effective and that access to remedy and justice is secured for affected people in the event of harm. By including provisions on companies' liability, obstacles to justice and remedy and prevention, the LBI would constitute a further level of protection for communities and individuals affected by corporate harm worldwide<sup>349</sup>.

Another crucial moment worth strengthening is that UN LBI is proposing to separate due diligence and liability for harm: “Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing or contributing to human rights abuses or failing to prevent such abuses”<sup>350</sup>.

By responding to a legal and governance gap at the global level, the LBI has the potential to contribute to achieving transnational accountability and justice, a key added value of the EU agreeing to an international binding instrument, as this cannot be addressed comprehensively in EU legislation alone. The provisions in the LBI are aimed at ensuring that transnationally operating corporations cannot escape responsibility through loopholes or gaps that prevent victims worldwide from successfully bringing a court case against a company in another jurisdiction (for example the home country of the company)<sup>351</sup>.

345 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>

346 <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>

347 By mHRDD we mean UNGPs approach based on Pillar 2 provisions, that can be summarised as businesses have responsibility to avoid cousin BHR impact, are responsible for setting measures to monitor and prevent BHR impact and are obliged to create a system of reporting such impact and its mitigation. See here [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

348 <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>

349 <https://corporatejustice.org/wp-content/uploads/2021/10/Briefing-Why-EU-legislation-and-a-UN-instrument-on-corporate-accountability-must-be-complementary.pdf>

350 More here <https://www.business-humanrights.org/ru/свежие-новости/commentary-the-second-revised-draft-keeps-human-rights-due-diligence-legal-liability-seperate-rightly-so/>

351 Ibid.

## DEVELOPMENT OF THE OBLIGATION TO REPORT ON THE EU LEVEL

First generation corporate reporting laws<sup>352</sup> were only requiring from business a mere fact of reporting (disclosure) of its human rights impact, without providing any binding measures or liability for not obliging or dwelling further on the company's actual conduct. Whereas Pillar II provisions call for further actions and asks the business to mitigate the risks and impact. But by learning how to report human rights impact, businesses will be obliged to find out the core information about its obligations in relation to BHR and minimum the standards in this sphere.

First development in this regard was the Directive 2013/34/EU regarding the disclosure of non-financial and diversity information by certain large undertakings and groups, also known as the Accounting Directive<sup>353</sup>. Later in 2014 EU adopted Directive 2014/95/EU<sup>354</sup> – also called the Non-Financial Reporting Directive (NFRD) – that laid down the rules on disclosure of non-financial and diversity information by large companies. The research of the Alliance for Corporate Transparency published in 2020, shows that the quality of corporate reporting practices under the EU Non-Financial Reporting Directive varies among the EU Member States. Most companies fail to disclose relevant, meaningful and comparable sustainability information. Only 36.2% of companies report on their climate targets, and an even lower percentage report on the alignment of such targets with the Paris Agreement. Similarly, only 23% of companies report on human rights issues<sup>355</sup>. Therefore the European Coalition for Corporate Justice<sup>356</sup> strongly recommends the EU to reform the above mentioned Directive and use this reform process to address the gaps and shortcomings of corporate sustainability reporting:

Expanding the scope of the Directive to include all public companies irrespective of their size to make sure investors have all necessary information. Authors also specifically point to the need to include in this Directive obligations for Non-EU companies trading in the EU, which might be relevant for Ukraine<sup>357</sup>.

Ensuring that non-financial statements are made available together with the annual report and that financially material information is disclosed. Clarification of the double-materiality definition. Integrating reporting requirements to cover the issues of governance and accountability for sustainability matters. Explanation of the general and thematic reporting requirements.

Improving the quality of corporate reporting will be central to the achievement of the EU goals as set out in the EU Green Deal<sup>358</sup> and Sustainable Finance Action Plan<sup>359</sup>. In 2021 the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD)<sup>360</sup>, which would amend the existing reporting requirements of the NFRD. The proposal:

- extends the scope to all large companies and all companies listed on regulated markets (except listed micro-enterprises)
- requires the audit (assurance) of reported information
- introduces more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards

352 Nearest applicable to Ukraine reporting obligation is the Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

353 Directive 2013/34/EU [https://www.accountancyeurope.eu/wp-content/uploads/Factsheet\\_2013\\_Accounting\\_Directive\\_with\\_NFI\\_1411.pdf](https://www.accountancyeurope.eu/wp-content/uploads/Factsheet_2013_Accounting_Directive_with_NFI_1411.pdf)

354 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

355 Reform of the EU Non-Financial Reporting Directive [http://corporatejustice.org/wp-content/uploads/2021/03/reform\\_nfrd\\_joint\\_position\\_alliance\\_for\\_corporate\\_transparency\\_final-49dd752b7c4b60a78445a7552004d2d3a3bced19ad48c3072961f9b1eccad53a.pdf](http://corporatejustice.org/wp-content/uploads/2021/03/reform_nfrd_joint_position_alliance_for_corporate_transparency_final-49dd752b7c4b60a78445a7552004d2d3a3bced19ad48c3072961f9b1eccad53a.pdf)

356 <https://corporatejustice.org>

357 Reform of the EU Non-Financial Reporting Directive. All large companies as defined in the Accounting Directive, that is fulfilling 2 out of the following 3 criteria: – Balance sheet total of at least EUR 20 million – Net turnover of EUR 40 million – Minimum 250 employees

358 More here [https://ec.europa.eu/clima/eu-action/european-green-deal\\_en](https://ec.europa.eu/clima/eu-action/european-green-deal_en)

359 <https://ec.europa.eu/environment/enveco/pdf/6.%20Sustainable%20finance.pdf>

360 [https://ec.europa.eu/info/publications/210421-sustainable-finance-communication\\_en#csrd](https://ec.europa.eu/info/publications/210421-sustainable-finance-communication_en#csrd)

These Directive amendment and scope expansion processes which are to be accomplished in 2022 offer a unique opportunity to address the gaps and shortcomings of corporate sustainability reporting, which in turn will support smoother achievement of the EU BHR goals and will have impact on the operations of Ukrainian export companies.

## DEVELOPMENT OF THE OBLIGATION TO BEHAVE ON THE EU LEVEL

While the EU is slowly developing its regional regulatory approach to comply with UNGPs, the separate laws on HRDD are being developed and introduced in some EU member states. This process was led by France with the Duty of Vigilance Law (in force), Germany with the Supply Chain law (already adopted and will be in full force in 2023), Norway with the Norwegian Transparency law (adopted not yet in full force), the Netherlands with the Dutch responsible business conduct bill (proposed draft), Austria with the Austrian Supply chain bill (same, proposed draft) and Belgium with the Belgian Duty of vigilance bill (same, just a draft proposal)<sup>361</sup>. All to be analyzed in detail in the next sub-chapter.

Some other EU Member States overgo through the long process of exploring the option of adopting this or that similar regulations, that might to a certain extent cover HRDD requirements<sup>362</sup>. In Finland the government invested into the preparatory stage before opening the discussion about the future HRDD regulation. As part of their analysis, assessment and research activities, the government commissioned another pertinent study on Finnish companies' human rights performance using the Corporate Human Rights Benchmark methodology<sup>363</sup>. It is clear that the fragmented landscape of regulatory measures governing responsible management of supply chains and due diligence has led to a need for further harmonization efforts at EU level. Finland's aim is also to push this agenda in other international fora such as the OECD and the UN, given the increasingly global character of business<sup>364</sup>.

These developments and some other regional (EU) and global processes inspired the European Commission to explore the possibility to further develop and unify its approach to BHR and come up with a proposal of a new comprehensive Directive on HRDD to cover all sectors. In 2018, the Action Plan on Financing Sustainable Growth<sup>365</sup> included, among other measures aimed at improving corporate governance, a commitment to assess by 2019 the possibility of introducing supply chain due diligence requirements for corporate boards.

In April 2020, the Commissioner for Justice, Didier Reynders, committed to a legislative initiative on HRDD. In May 2020, the European Commission presented its Communication on the post-COVID recovery<sup>366</sup>, which confirmed that "to ensure environmental and social interests are fully embedded into business strategies, the EC will put forward a new initiative in 2021 on sustainable corporate governance."<sup>367</sup> Same messages were coming from the EU Parliament and Council of the EU<sup>368</sup>. All efforts resulting in January 2021 when the Committee on Legal Affairs (JURI) adopted a Report on corporate due diligence and corporate accountability<sup>369</sup>, including a recommendation to the Commission on a proposal for a directive that would require business enterprises to address human rights, environmental and governance risks and impacts throughout their global value chains; recognise the need for penalties for non-compliance, including administrative sanctions; and create civil liability for harm caused or contributed to by controlled entities.

361 <https://corporatejustice.org/wp-content/uploads/2021/07/Corporate-due-diligence-laws-and-legislative-proposals-in-Europe-June-2021.pdf>

362 <http://corporatejustice.org/wp-content/uploads/2021/03/evidence-for-mhredd-january-2021-.pdf>

363 More here <https://www.hanken.fi/en/departments-and-centres/departments-management-and-organisation/ccr/research/projects/sihti-project>

364 See more in "Finland's Call to Action on Business and Human Rights Echoes Loud and Clear" by Alva Bruun & Dr Kent Wilska, Ministry for Foreign Affairs of Finland, here [https://media.business-humanrights.org/media/documents/BHRC\\_EUPresidency\\_mHREDD\\_Compodium\\_11-2020.pdf](https://media.business-humanrights.org/media/documents/BHRC_EUPresidency_mHREDD_Compodium_11-2020.pdf)

365 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52018DC0097>

366 <https://ec.europa.eu/info/sites/default/files/communication-europe-moment-repair-prepare-next-generation.pdf>

367 More steps are here <http://corporatejustice.org/wp-content/uploads/2021/03/evidence-for-mhredd-january-2021-.pdf>

368 Ibid.

369 [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2129\(INL\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2129(INL)&l=en)

The European Parliament in March 2021 adopted a resolution with recommendations to the Commission on corporate due diligence and corporate accountability<sup>370</sup>, the end of the process is expected in 2022<sup>371</sup>.

The Proposed Directive will define minimum standards expectations the EU has from companies working in the EU or being suppliers to the EU, which in many cases will be relevant to Ukrainian business. The most important messages and provisions of the forthcoming EU Directive<sup>372</sup> are:

- Stresses that human rights violations and breaches of social and environmental standards can be the result of an undertaking's own activities or of those of its business relationships under their control and along their value chain; underlines therefore that due diligence should encompass the entire value chain, but should also involve having a prioritisation policy;
- Considers that the scope of any future mandatory Union due diligence framework should be broad and cover all large undertakings governed by the law of a Member State or established in the territory of the Union, including those providing financial products and services, regardless of their sector of activity and of whether they are publicly owned or publicly controlled undertakings, as well as all publicly listed small and medium-sized undertakings and high-risk small and medium-sized undertakings;
- Stresses that due diligence obligations should be carefully designed to be an ongoing and dynamic process instead of a 'box-ticking exercise' and that due diligence strategies should be in line with the dynamic nature of adverse impacts;
- Highlights that comprehensive transparency requirements are a crucial element of legislation on mandatory due diligence;
- Considers that, to enforce due diligence, Member States should set up or designate national authorities to share best practices, carry out investigations, supervise and impose sanctions, taking into account the severity and repeated nature of the infringements; underlines that such authorities should be provided with sufficient resources and powers to realize their mission.

Clear guidelines for all EU member states and those who like Ukraine has an Association Agreement driving from this Resolution are:

- There is a need to consider at least carefully study national legal framework on BHR broadly and HRDD more specifically and to compare the findings with the EU Directive future requirements;
- BHR discussion at the EU level will not end in the nearest future but will only deepen and become more focused, thus it is time to move beyond NAPs to the next stage of HRDD design and implementation;
- The scope of potential HRDD regulation should be broad and cover all types of entities (discussion on SME is to follow as well);
- HRDD regulation should be transparent, engage stakeholders and would require establishment of the special regulation and control body;
- HRDD must come in hand with an effective remedy.

370 [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html)

371 <https://www.csreurope.org/newsbundle-articles/eu-due-diligence-law-proposal-delayed>

372 Extract from the European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), see full text [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html)

Comments and observations<sup>373</sup> to the Resolution from the Office of the High Commissioner of the UN are also pointing to the need to consider:

- Make the scope of the provision as broad as possible to include all entities and all kinds of relationships. A legislative approach that is limited to, or which causes companies to prioritize, those relationships with which companies have a direct commercial relationship (e.g. “Tier 1 suppliers”) would not be aligned with the UNGPs. Neither is it likely to prove particularly effective in many cases, given that serious abuses in supply chains are often found at points further upstream or downstream in value chains involving parties with which there might not be a direct (i.e. “Tier 1”) relationship.
- Effective HRDD process should include all steps: identification and assessment of actual and potential human rights risks, integration of the findings from human rights impact assessments across all relevant internal functions and processes, conduct of the appropriate action to prevent or mitigate impacts, including through the use of leverage, monitoring of the effectiveness of responses to human rights impacts and risks and communication of the progress. Missing any of these steps will endanger the effectiveness of the whole process and might turn it into mere box-ticking.
- Stakeholder consultation process should be at the center of any HRDD provisions development.
- A proper weight should be given to the need for companies to proactively seek out ways to enhance their leverage, and then to deploy it effectively, as part of a comprehensive human rights risk mitigation strategy. Attention should be given to the different ways that implementing institutions (at both the EU and Member State levels) could support companies in identifying ways to enhance their leverage, including through collaborative, multi-stakeholder and/or sector-level initiatives.

Basically this new EU regulation is called to instrumentalise and set criteria for businesses to guide them to meet all requirements earlier set by UNGP: analysis, eventuation, monitoring and redress. The last one (redress) being a very needed addition as previous generations of regulations only called for reporting and evaluation proving no redress mechanism and no liability for not complying.

Another important factor that needs additional analysis when considering the change, are the implications for the business under the new EU Directive, that some Ukrainian businesses<sup>374</sup> might face as well as the EU companies, are:

1. Develop and introduce a due diligence strategy;
2. Identify, assess, prevent, cease, mitigate, monitor, communicate, account for, address and remediate the potential and/or actual adverse impacts on human rights, the environment and good governance that may arise from their own activities and those of their value chains and business relationships;
3. Engage stakeholder to the development and implementation of the HRDD;
4. Publication and communication of the due diligence strategy;
5. Disclosure of non-financial and diversity information;
6. Regular monitoring and review of the HRDD strategy plus its results evaluation;
7. Establishment of the grievance mechanism.

Additional implications for the member states and possibly for those who, like Ukraine has Association Agreement with the EU are:

1. Change the national legislation and / or introduce the rules to ensure the business implements effective HRDD strategies;

373 EU Mandatory Human Rights Due Diligence Directive: Recommendations to the European Commission <https://www.ohchr.org/Documents/Issues/Business/ohchr-recommendations-to-ec-on-mhrdd.pdf>

374 At least those who have export relations with EU bases businesses and act as their suppliers. This Directive potentially could be a part of the EU *acquis communautaire* and be integrated into Ukrainian legal system.

2. Create an independent national monitoring mechanism;
3. Develop and share extra-judicial forms of redress to ensure an effective civil liability for potential harm;
4. Provide liability for non-compliance and ensure its implementation.
5. All these upcoming provisions have one huge gap – they are aimed at larger businesses and do not cover SME. For measures being developed for SME *please see Annex K*.

### 2.5.2.2. NATIONAL HRDD LEGAL DEVELOPMENTS – OVERVIEW OF THE MODELS CHOSEN BY THE EU MEMBER STATES

Since the start of BHR discussion and legal framework changes development at the EU level back in 2011-2012, quite a few Member States either developed or adopted some forms of HRDD laws<sup>375</sup>. These are France, Germany, Norway, the Netherlands, Belgium and Austria. While there will be lessons learnt by these countries, please see more detailed analysis of their legal provisions in the *Annex L*.

Important common characteristics of all national legal regulations on HRDD already adopted or being proposed at the EU level, are:

- HRDD obligations they stipulate and impose on business are UNGP / OECD based;
- they all require from businesses transparency of the human rights risk assessment process and publication of results;
- they are based on human rights standards, environments standards and in some countries on health and safety and working conditions standards, as well as follow both UNGPs and OECD developed criteria;
- they tend provide certain form of sanctions (most of them);
- regulation is compulsory for large and in some countries medium size businesses (thus additional regulations or at least guidelines will be needed in future for SMEs).

And finally the last argument in the whole global and regional discussion about the development and implementation of mandatory regulatory frameworks on HRDD, is its cost.

- Costs for public authorities as the monitoring of implementation would require more personnel.
- Additional costs may arise from the provision of guidance on implementation, sample reviews of reports and possibly the creation and maintenance of a database for the company reports.
- Company-level costs will depend on the sector and category of the business, but will inevitably apply.

But at the same time, the Study on due diligence requirements through the supply chain conducted by the EU in 2020 shows that benefits that would be brought by the mandatory HRDD regulations are worth the cost and will bring additional social benefits:

*These changes will provide significant economic benefits for firms related to their brand image, reputation and sales, if companies will, as a result of the new regulation, increasingly implement due diligence activities and these are known by consumers. Similarly, economic benefits in the area of human resources can be expected as sustainability measures and CSR activities can make a company more attractive for job applicants and therefore companies can attract talents even when they do not pay highly competitive salaries. Economic benefits can also be expected from better risk management, operational efficiency and innovation<sup>376</sup>.*

375 See comparative table of country developments here <https://corporatejustice.org/wp-content/uploads/2021/07/Corporate-due-diligence-laws-and-legislative-proposals-in-Europe-June-2021.pdf>

376 <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

### 2.5.2.3. CONCLUDING REMARKS

A decade of voluntary human rights due diligence measures as initially prescribed by the UNGPs has not brought adequate substantial change and set examples that many businesses would follow. Of course, there are many global business successful cases of introducing the HRDD measure and making it part of its public relation and / or sustainability strategy, but there are many more cases when businesses choose to ignore<sup>377</sup> their human rights and environmental obligations which call for introduction of binding legal frameworks at global, regional and national levels<sup>378</sup>. Such as the EU Directive initiatives mentioned in this chapter and national laws that are developing in parallel in some member countries.

The need for such regulation is quite clear and applies also to Ukraine, it is easier for business to have a clear guidance on its conduct specifically when it comes to such complicated and important topics as human rights.<sup>379</sup>

No doubt that further development of the EU framework will influence those Ukrainian companies that work in the EU market or are part of EU businesses' suppliers chain. So far in Ukraine businesses who are members of UN Global Compact have started the practice of including into their annual reports non-financial information without any specific requirement or common approach<sup>380</sup> resulting in companies all using different criteria and examples for reporting. There is also lack of clarity in the provision of the Law of Ukraine On accounting and financial reporting, this Law does not provide any specific guidelines on how to report non-financial results and what kind of criteria to use.

Another example of non-financial reporting guidance already used in Ukraine are initiatives of several global business self-regulators and / or financial institutions, who issued specific guidelines for their counterparts on such reporting to follow the trends of CSR reporting<sup>381</sup>. For example the Ministry of Finance in Ukraine is already collecting data on ESG reporting (for 2019-2020<sup>382</sup>). Though further unification and local guidelines in this regard might help Ukrainian business to comply with their partners standards both at the international / EU level and domestically.

Development of a clear mandatory standard that will cover at least some aspects of the HRDD at the EU level is a sign for all Member States to speed up their national policy coherence. This process will also positively influence neighboring and partner EU countries, such as those who have Association Agreements like Ukraine. Ukraine already has a history of developing new regulations based on guidance and minimum standards provided by EU Directives in the past within the Visa Liberalization Action Plan<sup>383</sup> and later within the EU-Ukraine Association Agreement<sup>384</sup>. These new EU Directives on non-financial reporting and mandatory HRDD could be implemented in Ukraine in the same way.

377 Looking at more than 3,000 companies listed in 35 countries, the latest Vigeo Eiris survey on corporate behavior regarding the respect of human rights reveals striking findings. Companies report more on their commitments to human rights than on the protection of the environment. However, only a minority of companies comprehensively commit on all areas associated with human rights for which they are responsible. Even fewer are those companies that go beyond adopting a defensive position, through the set up of risk mapping and prevention mechanisms (i.e. due diligence) to avoid human rights abuses. Nevertheless, this minority of leaders, mainly European companies, provide evidence that businesses operating at worldwide level can successfully incorporate the respect of human rights in their corporate strategy and in their operations across their whole value chain, including their supply chain. [https://www.vigeo-eiris.com/wp-content/uploads/2017/02/20170222\\_PR\\_HR\\_study\\_EN-def.pdf](https://www.vigeo-eiris.com/wp-content/uploads/2017/02/20170222_PR_HR_study_EN-def.pdf)

378 [https://www.americanbar.org/groups/business\\_law/publications/blt/2021/02/business-human-rights/](https://www.americanbar.org/groups/business_law/publications/blt/2021/02/business-human-rights/)

379 During many expert interviews within this study, interviewees mention low understanding and thus reluctance of the business to follow and introduce BHR standards, as such that impose some new additional obligations on them. It is also worth mentioning that many requirements set by UNGPs and / or by proposed changes to EU future regulations are already to certain extent are part of the national law and international obligations each EU or Council of Europe member state face.

380 <https://globalcompact.org.ua>

381 See for example Nasdaq ESG Reporting Guide 2.0 A Support Resource for Companies <https://www.nasdaq.com/docs/2019/11/26/2019-ESG-Reporting-Guide.pdf> or recommendations within Brasil State-Owned Enterprise Governance Program developed by B3 <https://www.b3.com.br/data/files/E3/B4/1E/4F/C1B2F510ACF0E0F5790D8AA8/State-owned-Enterprise-Governance-Program11.05.17.pdf>

382 See details here [https://mof.gov.ua/en/esg\\_performance-426](https://mof.gov.ua/en/esg_performance-426)

383 [https://ec.europa.eu/home-affairs/policies/international-affairs/collaboration-countries/visa-liberalisation-moldova-ukraine-and\\_en](https://ec.europa.eu/home-affairs/policies/international-affairs/collaboration-countries/visa-liberalisation-moldova-ukraine-and_en)

384 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29>

#### 2.5.2.4. RECOMMENDATIONS AND SUGGESTIONS

**Major areas Ukraine should prioritise and pay key attention to, when discussing its future HRDD policy are:**

- Scope of the law: it should protect all relevant human rights and environmental standards, as well as the rights of specific groups and individuals according to the company's operational context.
- The size of the companies such law will apply to, current practice is mainly about larger companies, though the debate about the need to engage SMEs has already started.
- Due diligence obligation: the law should establish the company's responsibility to respect human rights and the environment along their entire corporate structure and supply chains.
- The law should bring changes to the current legislation to ensure there is an access to justice, both through the national judicial and non-judicial system and through the internal company grievance mechanisms.
- The law might require an enforcement and monitoring agency establishment<sup>385</sup>.

Lessons learnt<sup>386</sup> by several EU countries that already developed and started to introduce mHRDD regulations will help Ukraine shape smooth and comprehensive approach:

- Invest in comprehensive and inclusive process of consultations with businesses and affected parties before coming up with any policy or law proposals;
- Map existing international and national legal obligations to make sure the next HRDD step will be in complementing the existing legislation, policy coherence is the most important aspect of any changes;
- Invest in awareness raising campaign both for business to explore the needs, obligation and added value of HRDD obligation introduction;
- Invest time and resources in educating CSOs and society on the essence of business and human rights and building alliances around the topic;
- Engage EU business and business associations that could help ease the process for their Ukrainian partners and set positive examples of compliance.

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<sup>385</sup> More here [http://corporatejustice.org/wp-content/uploads/2021/04/eccj-position-paper-mhrdd-final\\_june2018\\_3.pdf](http://corporatejustice.org/wp-content/uploads/2021/04/eccj-position-paper-mhrdd-final_june2018_3.pdf)

<sup>386</sup> Based on experts interviews and finding presented at the 2d UN Forum on Business and Human rights in Easter Europe and Central Asia, more here <https://www.facebook.com/UNDP Eurasia/videos/2949482128649499>

## 2.5.3. ACCESS TO REMEDY

### 2.5.3.1. ACCESS TO REMEDY – OVERVIEW OF JUDICIAL REMEDIES EFFECTIVENESS AND GAPS

Several key experts as well as the desk analysis indicate that people generally lack knowledge on human rights, particular related to businesses and are not considering business as one of the violators of their rights<sup>387</sup>. The other issue also confirmed by the research in Ukraine<sup>388</sup> is that people rarely chose to seek justice because of generally low trust in the judiciary and the rule of law. The third factor obvious in the course of the conducted research is a lack of the business internal grievance mechanisms. The other factor influencing access to remedy is an effective or in some cases rather ineffective national remedy systems that lack crucial mechanisms, do not provide coherence, do not cover all aspects of various human rights violations or are too complicated for an affected persons and / or communities to use them.

The question about existing remedies looks easy on the surface as the range of possible remedies do not look that broad, being divided according to the Pliar 3 UNGPs<sup>389</sup> into:

- Judicial remedies
- Non-judicial state provided remedies
- Non-judicial non-state remedy (business grievance mechanisms)

But a desk research shows that globally and regionally most countries face similar obstacles and gaps when it comes to assuring the effectiveness of all three types of the remedies. Access to remedy or rather its careful evaluation to identify major obstacles and legal gaps should be an integral part of the good NAP process and good mHRDD process, both being useless without attention to improving remedies.

Analysis of the EU member states progress on improving its access to remedies in cases of BHR violations shows some same patterns<sup>390</sup>:

- First country NAPs usually missed concrete actions and even analysis if existing remedies and legal gaps;
- HRDD discussion previously also missed focus on responsibilities and access to remedies;
- Generally people lack knowledge on their rights and existing means to protect them, which is the reason they rarely use even existing remedies.

Results of the FRA 2020 research<sup>391</sup> Member States' practices and gaps in remedy mechanisms show common areas of concern and very few good practices when it comes to judicial and non-judicial effective and accessible remedies as prescribed by the UNGP operational principles<sup>392</sup>.

387 According to several experts who have extensive global experience consulting on BRH such neglect and low understanding of connection between business and human rights are particular for Europe and Eastern Europe, in African developing countries or in South America it is more oblivious to local population when business is overstepping and violating their rights on land and pollution cases. This lack of understanding of their own rights makes people not interested in pursuing the BHR agenda and demanding changes from business in Ukraine.

388 [https://www.ua.undp.org/content/ukraine/uk/home/library/democratic\\_governance/what-ukrainians-know-and-think-about-human-rights--assessment-of.html](https://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/what-ukrainians-know-and-think-about-human-rights--assessment-of.html)

389 As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy. [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

390 Based on expert interviews, NAP comparison and desk research

391 See all country reports and case studies here <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

392 State-based judicial mechanisms UNGP 26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

Though all EU-member states as other countries across the world have judicial remedies that can be used in some cases of violations related to business and human rights, not all of them have remedies that can be described as accessible, effective and providing direct redress in such cases. Main gaps the EU national judicial systems commonly faces when it comes to reporting human rights violations coming from business<sup>393</sup>:

- Lack of specific proceedings for each type of BHR violation,
- Complicated nature of some judicial proceedings, the need to navigate / use different laws,
- Crossborder litigation jurisdiction.

Another important factor most experts stressed on, is that when analysing the effectiveness of the judicial remedy, it is important to take into account not only its actual existence in terms of procedure or legal framework but also analyse the actual access to this legal procedure for real victims or affected communities in particular cases.

All experts interviewed within abovementioned FRA research commonly agree that courts remain the only channel to access justice in business-related human rights abuses. However, most interviewees point to a lack of specific procedures designed and adopted for such abuse.

Depending on the nature of the abuse, civil, criminal or administrative proceedings may be available. However, interviewees in all countries highlight that business-related human rights abuses are often atypical and those seeking judicial remedy can face a range of practical, procedural and financial barriers when turning to courts.

**In many countries interviewees pointed first of all to<sup>394</sup>:**

- Lack of specific proceedings to report HR abuse from business and lack of clear guidance for the courts, lawyers and claimants in cases of a mixed jurisdiction, which is important because BHR abuses might be of a complicated nature.
- Lack of clear legal proceeding for collective claims on BHR abuses in many countries and the need for each plaintiff to file separate suits.
- Lack of professional legal help and expert support in such cases is also an obstacle, as according to the same FRS research even in EU countries it is not so easy to find a legal company or a practicing lawyer with extensive practice in such cases due to their rare and complicated nature and also their cost.
- Lack of legal help and lack of lawyers among other factors make such trials very expensive which burdens claimants unproportionally as they do not have such resources as business to invest in court proceedings.
- Above mentioned complicated nature of BHR abuses and lack of special judicial proceedings as a reason why mainly civic proceedings are used in EU countries. In this case, the task of gathering evidence can be considerable, especially when claimants are in a third country and the forum state is in Europe. The issue of shifting the burden of proof remains open for all EU member states.
- There is also a question of possible criminal proceedings that might be an instrument in certain cases which provides the advantage of delegating the burden of collecting evidence to the public prosecutor. However, the role of victims in criminal proceedings varies across the EU. In most EU Member States, the public prosecutor leads the criminal proceedings and victims have no control over the course of the case.

<sup>393</sup> <https://fra.europa.eu/en/publication/2020/business-human-rights-remedies>

<sup>394</sup> Compilation of the findings in detail highlighted in the FRA report Business and human rights, access to remedy, 2020 and round of expert interviews within the current study.

- Some interviewees note that to initiate administrative proceedings an authority must issue a decision. This limits the scope of its application. However, in administrative proceedings, the main outcome is a decision concerning the operations of a specific company and not compensation or other forms of redress for those affected by these operations. In cases concerning environmental law, the administrative proceedings often offer an opportunity to stop harmful investment, either at the stage of proceedings before administrative bodies or at the spatial planning stage.

*For detailed analysis of gaps and lessons from some EU Member States regarding the judicial remedies, please see Annex M.*

### 2.5.3.2. NON-JUDICIAL REMEDIES OVERVIEW

#### STATE-OWNED NON-JUDICIAL GRIEVANCE MECHANISMS – ROLE OF THE NHRIS

According to the UNGPs an effective remedy is a range of many actions a state can take or a state can provide a framework to. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome<sup>395</sup>.

UNGPs specifically divide remedies on judicial, state non-judicial and non-state non-judicial taking into account complexity of the BHR violations and absence of one unified approach that could easily be implemented by all states based on their different economic, developmental and legal contexts. These can include quasi-judicial bodies, national human rights institutions (also referred as Ombudsman officers) and others, such as OECD NCPs or regional and local business associations and their self-regulating mechanisms.

State non-judicial mechanisms with a competence to proceed cases related to fundamental human rights exist in all EU, most of Eastern Europe and Central Asia countries as well as worldwide, but their powers and objectives are very different. These institutions are usually collectively referred to as National Human Rights Institution (NHRI) but can also locally be named Ombudsman or National Human Rights Committee or similar. Some of these institutions may have quasi-judicial powers, while others cannot take binding decisions, but may provide mediation or guidance or even represent victims before judicial bodies (for example in Finland, Poland and Sweden<sup>396</sup> – in consumer cases of general interest or in Ukraine in cases regarding discrimination or those that has great public interest). Recent research conducted by the Working Group on business and human rights<sup>397</sup> (UN WG) on the issue of human rights and transnational corporations and other business enterprises on the Role of national human rights institutions in facilitating access to remedy for business-related human rights abuses<sup>398</sup> provides a useful insight into the global examples of various NHRI work around the issue of BRH violations, presents best practices of how NHRIs can facilitate access to remedies and also points out important challenges faced by NHRI in different countries. Below are some key findings of this report and some good practices that might be a role model for Ukraine in future (*please see Annex N for details on good practices*).

According to the UNWG conclusions, NHRIs can facilitate access to remedies in business related cases of human rights violations in three ways: on a fundamental level, directly and indirectly (of course depending on its unique structure, legal powers and capacity in this or that countries these ways might be significantly changed or be rather limited).

<sup>395</sup> Ibid.

<sup>396</sup> For more detail see FRA country research <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

<sup>397</sup> <https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx>

<sup>398</sup> See the full text of the report <https://digitallibrary.un.org/record/3929864?ln=en>

<b>Foundational</b> <sup>399</sup>	<ul style="list-style-type: none"> <li>• Rise awareness about rights</li> <li>• Conduct research</li> <li>• Recommend legal reforms</li> <li>• Support development and implementation of NAPs</li> <li>• Strengthen the rule of law</li> </ul>
<b>Direct</b>	<ul style="list-style-type: none"> <li>• Build capacity of various actors</li> <li>• Provide legal assistance</li> <li>• Intervene in remedial processes</li> <li>• Support human rights defenders</li> <li>• Monitor corporate grievance mechanisms</li> </ul>
<b>Indirect</b>	<ul style="list-style-type: none"> <li>• Accept complaints</li> <li>• Investigate abuses</li> <li>• Conduct public enquiries</li> <li>• Mediate and consolidate disputes</li> <li>• Order compensations</li> </ul>

Of course it would be ideal if NHRI could play all three inter-linked and complementary roles and in turn enhance the overall chances of the affected rights holders getting an effective remedy. For example, if an NHRI provides legal assistance to affected communities or supports human rights defenders trying to hold companies accountable, this indirect role may result in actual remedy by some other remedy mechanism. Similarly, foundational contributions of an NHRI such as raising awareness about rights and remedies, making law and / or policy reform recommendations, and supporting the development of a national action plan on BHR will build a base to invoke different remedy pathways. Moreover, if an NHRI is able to provide direct remedies in some cases, that would reduce pressure on courts and the National Contact Point (NCP) of the relevant country<sup>400</sup>.

The extent to which an NHRI can invest efforts and resources into each of these roles of course depends on the legal framework in the given country, resources available and other stakeholder involvement. But there are few more key factors to be considered when planning such work, stress both by the UNWG and interviewed experts:

- Gender mainstreaming
- Close contact with affected communities and CSOs
- Multi-stakeholder engagement approach
- Investing in its own capacity building and knowledge.

### 2.5.3.3. NON-STATE BASED NON-JUDICIAL REMEDIES OVERVIEW

**Non-State-bases grievance mechanisms is currently pretty weak mean of actual protection though great potential for further development and collaboration**

The mere idea behind the UNGP was to somehow bridge the gap between the mandatory approach which is much easier to achieve and voluntary approach which is preferable for business. The composition of the Pillar 3 of UNGPs prescribed for such compromise and encouraged States to facilitate the development of effective non-State based remedies.

399 Ibid.

400 Ibid.

Available evaluation of existing non-State-based grievance mechanisms (NSBGM) shows<sup>401</sup> not so much optimism about them being a truly accessible and effective remedy in case of business related human rights violations. But in any case, some core mechanisms relevant also for Ukraine and common lessons learnt will be highlighted in the following sub-chapter.

For the purpose for the deep baseline research the NSBGM could be categorized into at least four substantially different categories:

1. company and corporate level grievance mechanisms (CCGMs) – this category includes, but is not limited to operational level grievance mechanisms (OLGMs);
2. grievance mechanisms of international development finance institutions (IDFIs);
3. grievance mechanisms related to international framework agreements (IFAs) concluded by multinational companies and trade unions;
4. multi-actor initiatives.

Not all will be mentioned in this research, due to lack of time and open data, especially about the effectiveness of the first category of NSBGM. Though some interviewed experts evaluated this internal business grievance mechanism as the weakest among all available, complaining that it is almost impossible to get credible information from the business<sup>402</sup>. Results of the Corporate Human Rights Benchmark's 2019 ranking gave the world's two hundred largest companies an average score of just 3.1 out of 15 for their remedy and grievance processes. Of the 229 companies assessed in 2020<sup>403</sup> only 104 had at least one allegation of a serious human rights impact meeting the CHRB severity threshold, with 225 allegations reported in total. Companies engaged in a dialogue with stakeholders in less than a third of cases and provided effective remedies that were satisfactory to the victims in only 4% of cases.

Forest People Programme 2020 assessment<sup>404</sup> of some of the core non-state-based grievance mechanisms shows general lack of effectiveness and indicated common points for improvement. The assessment was based on several criteria to evaluate the effectiveness<sup>405</sup>:

- accessibility,
- predicability,
- equity,
- transparency,
- legibility
- rights compatibility.

Major concerns that influence accessibility are information and knowledge about the existing NBSMG and their work. This of course includes the other accessibility concerns such as language or physician barriers in reaching out to the institutions or companies, but those could be nowadays mitigated by an online application and NGO support. Though the core issue of knowing where to complain, how to complain and when to expect the reply (and what kind of replay the victim can get) still remains open. It is therefore the responsibility of the company or the institution to raise awareness about the grievance mechanisms and its procedure. For grievance mechanisms that are housed by multi-stakeholder initiatives, groups, investors or development finance institutions, a requirement

401 Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis A report prepared for the Office of the UN High Commissioner for Human Rights – Manchester, 13 July 2018. <https://www.ohchr.org/Documents/Issues/Business/ARP/ManchesterStudy.pdf>

402 See for example Business and Human Rights Resource Centre company dashboard [https://www.business-humanrights.org/en/companies/?company\\_name=&sector=&headquarters=&has\\_dashboard=on&letter=#company\\_index\\_form](https://www.business-humanrights.org/en/companies/?company_name=&sector=&headquarters=&has_dashboard=on&letter=#company_index_form)

403 More here <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf>

404 See full report here [https://www.forestpeoples.org/sites/default/files/documents/Non-Judicial-Grievance-ENG-v04\\_0.pdf](https://www.forestpeoples.org/sites/default/files/documents/Non-Judicial-Grievance-ENG-v04_0.pdf)

405 Only lessons applicable to Ukraine will mentioned

to raise awareness of the mechanism with communities should be included in all contracts or agreements with companies. Raising awareness with communities should be conducted in the relevant local languages and in a culturally appropriate manner. Compliance with this requirement should also be verified by the multi-stakeholder initiative, group, investor or development finance institution<sup>406</sup>.

Important part of accessibility is the cost of the proceeding, business and states should aim at making these mechanisms available and think about the cost compensation mechanisms.

Clarity and timeframes of the process is another factor that makes NSBGM pretty weak in providing the effective remedy. Victims should know not just when to expect the answer, but also receive this answer in a timely manner. Usually lack of people and resources and funding might bring delays, but an effective remedy is not a remedy one has to wait forever.

To provide victims and affected communities with enough information to make a decision about the effectiveness of the mechanisms available, NSBMG should make as much information about its previous work and previous complaints results as possible (guaranteeing confidentiality were appropriate of course). In this regard, the comparison of different national NCPs shows that not all of them follow the same standards of publishing information about their previous work that might be quite discouraging for potential claimants<sup>407</sup>. There also should be appropriate training and ethical procedures envisaged for the staff any of NSBGM. Cooperation with CSOs can also help, especially to ease the path for victims in complicated procedures.

## THE OECD AND NCPs OVERVIEW

The Organization for Economic Co-operation and Development (OECD) adopted the Guidelines for Multinational Enterprises (the Guidelines) back in 1976. These Guidelines constitute recommendations addressed by governments to companies operating in or from the adhering countries and are an instrument to inspire the companies to stick to responsible business conduct. Being several times amended since the first release, the Guidelines are non-binding but promote responsible business conduct in such areas as: employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interest, science and technology, competition, and taxation. The Guidelines are backed by a complaint mechanism, called National Contact Points (NCPs), which are tasked with their implementation and handling cases of alleged breaches of the Guidelines by companies operating from or in these countries. Ukraine also has its NCP established in 2017<sup>408</sup>.

The major issue with the NCPs local version is that they do not have one unified format and very much depend on the construction chosen by the member country. The other difficulty researchers point out to is the interpretation of the Guidelines itself that NCPs made. The Guidelines can be interpreted in different manners, a similar factual case brought to two different NCPs may give very different results. For example, an interpretation made by the Swedish NCP does not oblige the UK NCP to come to the same conclusion, and vice versa. It is however expected that an NCP will respect its own interpretation. Civil society organizations are calling on the harmonization of the Guidelines' interpretation<sup>409</sup>.

Similar gaps and shortcoming in the grievance mechanisms work were highlighted within the OECD Watch NCPs efficiency recent evaluation<sup>410</sup>. This evaluation of 40 NCPs revealed a number of general trends. While mostly NCPs are doing their best to achieve their role, there are common issues that might be improved in several areas.

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406 More here [https://www.forestpeoples.org/sites/default/files/documents/Non-Judicial-Grievance-ENG-v04\\_0.pdf](https://www.forestpeoples.org/sites/default/files/documents/Non-Judicial-Grievance-ENG-v04_0.pdf)

407 The website of the Ukrainian NCP has no such information.

408 See more here <https://ncp.gov.ua/?lang=en>

409 See more in FIDH Corporate accountability guide, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a>

410 See more here <https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/ncp-evaluations-analysis/>

Organization and governance	Procedures	Communications
Affiliation of NCPs with the state executive body (some are located in the trade ministries for example and this rise a question of their impartiality);	Only 13 NCPs issue determinations in complaints as to whether the company has breached the Guidelines, something that is fundamental for establishing clear expectations of companies and vital for investors seeking to invest in responsible companies;	Some NCPs do not publish any information about the cases they received and resolved (including Ukraine);
Lack of CSOs involvement including in the advisory body;	Not all NCPs have clear and transparent rules of complaints;	Just few have annual plans and annual reports published and updated <sup>411</sup> (Ukraine's most recent information is dated by the year 2018 for example).
General staff and resources shortage.	Lack of the follow up mechanisms after the decision was taken.	Companies involved in public procurement Companies receiving support from the state (investments, PPP, loans, startups funding)

Analysis of NCPs decisions for the year 2020 done by OECD Watch also confirms low effectiveness of this remedy instrument. Out of 14 complaints registered by NGOs and communities during the year, only one reached agreement<sup>412</sup>. To make the NCP remedy more effective, quite a few procedural and standard gaps should be addressed in future.

### 2.5.3.4. CONCLUDING REMARKS

Protection or Pillar III provisions remain a crucial part of the UNGPs and changes they bring to countries' framework on BHR. Without consistent and comprehensive work aimed at establishing an effective system of remedies, other BHR actions will not bring expected results. Desk research supported by experts interviews confirms this conclusion and provides several key insights to be utilised by Ukraine when approaching this stage of UNGPs implementation.

1. As above-mentioned, a comprehensive national analysis of existing policies and legislation is needed to evaluate existing barriers and working mechanisms. Establishing an effective system of remedies to be in line with UNGPs standards is no different. Ukraine will need to evaluate its existing system of judicial and non-judicial remedies to make a plan on how to enforce them and make sure they are providing a remedy in cases related to business and human rights violations.
2. As shown by the NAP process analysis in many countries, generally first rounds of NAPs missed the chapters and tasks related to the effective remedies and their amendments. Taking Ukraine already has its counterpart and neighboring countries' experience being carefully analysed, Ukraine should learn from their lessons and make policy and legislation analysis part of our NAP from the beginning.
3. Adequate analysis of existing legislation and its gap, conducted together with an overview of Ukraine's international human rights obligations will provide a baseline for further planning of legal and policy amendments. This should go together with case law analysis, being based on ECHR case law and national case law – to utilize information about existing legal barriers on judicial remedies.
4. General lack of information about their rights and about the business related human rights violation is one of key factors people choose not to report minor human rights violations and situations get worse until serious actions are needed. One of the important tasks an effective remedy should provide is to build a system where different kinds of human rights violations can be reported and amended at various levels of decision making.

<sup>411</sup> More concerns and each NCP score is available here <https://www.oecdwatch.org/ncp/>

<sup>412</sup> More here <https://www.oecdwatch.org/wp-content/uploads/sites/8/2021/06/OECD-W-State-of-Remedy-2020.pdf>

5. Awareness raising campaigns aimed at the general public (consumers and workers and local communities) are a crucial part of UNGPs Pillar III action plans. But such awareness raising campaigns should also be targeted at businesses, not just showing them that human rights violations are something their actions can bring to, but also inspiring them to change their conduct, become more conscious and present benefits a business can get respecting and adhering to human rights standards (for example access to investors, financing and global markets, more happy staff and staff retention etc.). Previous experience of countries where business had been part of NAP and or HRDD implementation process also shows better results with UNGPs implementation.
6. Building an effective remedy system ensuring accountability when business violates human rights and introducing mHRDD – are interlinked. Missing out on one of the components will weaken the other. Ukraine should utilise the learning from EU Member States' experience on mHRDD highlighted in the study. They should also look at the practices of those countries who have established specialised bodies to follow up on business and review complaints, like Germany or the Netherlands.
7. Apart from making amendments into the judicial remedies framework, there is a need to ensure that legal and paralegal professionals know enough about business related human rights violations and are able to provide professional assistance and work with such cases. Judges, prosecutors and lawyers and other relevant legal/paralegal professionals need additional targeted education and training. It is important to utilize already established focal points and institutions. In Ukraine such partner for raising awareness among lawyers could be the Legal Aid System<sup>413</sup>, who has previous successful experience in adding new competencies to their portfolio and building their capacities on providing access to justice in such important topics as domestic violence, discrimination, criminal process etc. The National School of Judges could be a provider of systemic capacity building for judges for example.
8. When working on strengthening the non-judicial remedies, Ukraine should first of all examine the potential of NHRI, and invest in targeted capacity development of BHR. Analysis shows that active and consistent involvement of NHRIs to advance the UNGPs and NAPs implementation brings more effective results on the country level, including when providing access to remedies.
9. NHRIs can and should utilize maximum from their mandate (especially those who like Ukrainian NHRI has a highest A+ accreditation<sup>414</sup>) and concentrate on different roles they can perform, from being drivers of the awareness raising campaign to providing mediation and support in individual cases speeding up complicated processes and liaising with affected communities. NHRI should cooperate with all responsible national state actors to strengthen access to remedies in all possible ways, in Ukraine such cooperation should at least involve the State Legal Aid System and those professional bodies that have mandates and capacity to engage in education and promotion of BHR.
10. Another non-judicial remedy mechanism that will need additional tailoring and strengthening in Ukraine is NCP, OECD remedy mechanism. Previous global analysis shows substantial gaps in NCPs effectiveness, but also some better results in those countries who invested into addressing organizational gaps in NCP structure, have transparent rules and procedures and make each decision public. Another lesson learnt is the importance of engaging professional mediation to NCP problem resolution methods to make this remedy effective.
11. Finally there is a need to build cooperation and increase the capacity of the business community to engage into the UNGPs promotion. Leading roles could be taken by those businesses and business associations that have some good practice to showcase and can inspire others. Key factor is to build partnership in this awareness work among various stakeholders and equality engage state and private actors in joint awareness campaigns.

413 <https://www.legalaid.gov.ua/pro-systemu-bpd/>

414 <https://ennhri.org/our-work/nhri-accreditation/>

### 2.5.3.5. RECOMMENDATIONS AND SUGGESTIONS

1. Invest, lead and coordinate the Inter-sectoral Platform on BHR to ensure the proper multi-stakeholders' engagement in the UNGPs implementation and further NAP's processes to ensure accountability in the NAP implementation, build confidence and trust in the NAP both nationally and internationally, ensure greater buy-in from CSOs and the corporate sector to support with implementation measures;
2. Establish regular cooperation with the OECD National Contact Point at the Ministry of Economy of Ukraine to provide access to remedy;
3. Enhance capacity building of staff at all levels (nationally and regionally) to be able to identify BHR violations and analyse them in practice at various levels (individual complaints and policy evaluation);
4. Review the structure of the NHRI operations to ensure the issue of the BHR abuses and its monitoring is mainstreamed into all NHRI activity at the central – between different departments – and local – between regional representations and local CSOs' coordinators – levels, including the specific focus on gender-related issues and other vulnerable communities;
5. Invest attention and efforts in the systematic analysis of individual complaints with regard to the UNGPs' requirements by all relevant Secretariat's departments; a specific methodological approach is elaborated and applied by the staff;
6. Build capacities and engage external experts to continue thorough and specific BHR research, policy development and consultations;
7. Invest resources and build a network on BHR educators to ensure on-going educational campaigns on BHR targeted at least at the civil society, vulnerable communities including;
8. Invest in capacity building of the state and non-state actors to promote BHR in Ukraine (including building capacities of the NHRI, Legal Aid System, mediators' network, etc. to ensure victim access to legal support and effective remedies).

### 2.5.4. KEY STAKEHOLDERS' ENGAGEMENT IN BUSINESS AND HUMAN RIGHTS – A CROSS-CUTTING ISSUE

This Section is focused on the topic of stakeholders' engagement considering it a decisive factor of any democratic decision-making and a beneficial component of the modern business activities. Such combination of dual characteristics makes the stakeholders' engagement a cross-cutting issue of the UNGPs' implementation.

The study presented in this Section deals with the general policy and legal frames of stakeholders' participation in BHR for the UNGPs' implementation. The UNGPs highlight the importance of stakeholders' participation in corporate human rights due diligence (Principle 18) and in providing the non-judicial remedy to victims of business-related human rights violations (Principle 31.h).

Alongside the study underlines the cross-cutting significance of stakeholders' engagement in every phase of the NAPs processes. Various national practices to engage stakeholders in phases of the NAPs processes are presented.

The UNGPs' requirements and international practice of a gender-based stakeholders' engagement, including in the NAPs processes, are also in the focus of the study.

Based on both the general policy and legal frames and the national practices of stakeholders' engagement, the factors to encourage stakeholders to take part in 'the NAPs processes are identified.

In addition, the briefs on the value and formats of international dimension of stakeholders' participation in BHR are provided; Governments and companies are in the capacity of stakeholders.

The Section provides for conclusions that might be taken into account in the course of Ukraine's democratic policy, legal and practical developments when implementing the UNGPs and reaching the UN SDGs.

#### 2.5.4.1. THE INTERNATIONAL LAW AND POLICY FABRIC OF THE STAKEHOLDERS' ENGAGEMENT

One of the core human rights principles is participation and inclusion. It implies that all people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups<sup>415</sup>. Societies do develop in a democratic way when all groups of their population are represented and enjoy their human rights, for an informed and empowered participation is an essential, cross-cutting ingredient of a sound and resilient democracy.

It is widely recognized that currently there is an increasing need to assess and communicate the multiple impacts of international and domestic policies and actions – both in the public and private sectors<sup>416</sup>, in particular with regard to the 2030 UN Agenda for Sustainable Development – to ensure they are effective in delivering a variety of sustainable development and business and human rights' benefits and challenges. Broad stakeholder participation is crucial and indispensable for fostering greater transparency, effectiveness, trust and ambition in such policies and actions. It is a tool to apply the participatory and human rights-based approach (HRBA), to leave no one behind and ensure accountability when driving policy transformations at any level of decision-making and governance.

According to the UN Statement of Common Understanding on HRBAs to Development Cooperation and Programming<sup>417</sup>, a HRBA in processes include participation, non-discrimination, empowerment, transparency, and accountability; the importance of accountability is emphasized by recognizing entitlements of rights-holders and the obligations of duty bearers.

Thus, it is only natural, that the theme of stakeholders' engagement runs across the **UNGPs**. They are regarded **"a manifestation of multi-stakeholder governance"** Through such "polycentric governance", each actor is encouraged to work together and contribute in overcoming business and human rights problems in accordance with their functions and capacities at their level.<sup>418</sup>

415 Human Rights Principles, The United Nations Population Fund. 2005. URL: <https://www.unfpa.org/resources/human-rights-principles>

416 Power, Procedure, Participation and Legitimacy in Global Sustainability Norms. A Theory of Collaborative Regulation. By Karin Buhmann. Routledge, 2019. URL: <https://www.routledge.com/Power-Procedure-Participation-and-Legitimacy-in-Global-Sustainability/Buhmann/p/book/9780367273453>; Business and Human Rights in Europe. International Law Challenges. Ed. by Angelica Bonfanti. Routledge, 2020. URL: <https://www.routledge.com/Business-and-Human-Rights-in-Europe-International-Law-Challenges/Bonfanti/p/book/9780367586034>; Corporate Social Responsibility, Human Rights and the Law. By Stéphanie Bijlmakers. Routledge, 2019. URL: <https://www.routledge.com/Corporate-Social-Responsibility-Human-Rights-and-the-Law/Bijlmakers/p/book/9780367459055?source=igodigital>; Human Rights-Compatible International Investment Agreements. Virtual Consultation for Central and Eastern Europe and the Central Asia region. April 21st, 2021. URL: [https://www.ohchr.org/Documents/Issues/Business/ConceptNote\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Business/ConceptNote_EN.pdf); Fragility and Conflict: On the Front Lines of the Fight against Poverty. The World Bank publication, February 27, 2020. URL: <https://www.worldbank.org/en/topic/poverty/publication/fragility-conflict-on-the-front-lines-fight-against-poverty>; Golden opportunity for EU to take global lead on human rights in business – UN expert. URL: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27431&LangID=E>; European Papers Insight Corporate Human Rights Responsibility, States' Duty to Protect and UNGPs' National Action Plans: Some Thoughts After the UK 2016 NAP Update. By Marco Fasciglione, 2016. URL: [https://www.researchgate.net/publication/307647235\\_European\\_Papers\\_Insight\\_Corporate\\_Human\\_Rights\\_Responsibility\\_States%27\\_Duty\\_to\\_Protect\\_and\\_UN\\_GPs%27\\_National\\_Action\\_Plans\\_Some\\_Thoughts\\_After\\_the\\_UK\\_2016\\_NAP\\_Update](https://www.researchgate.net/publication/307647235_European_Papers_Insight_Corporate_Human_Rights_Responsibility_States%27_Duty_to_Protect_and_UN_GPs%27_National_Action_Plans_Some_Thoughts_After_the_UK_2016_NAP_Update); Oxfam submission to the UN Working Group on Business and Human Rights in the context of the "UNGPs 10+ / Next Decade BHR" consultation, 2021. URL: <https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/oxfam.pdf>.

417 The Statement from the United Nations on Common Understanding of Human Rights-Based Approaches to Development Cooperation and Programming (2003); See also, The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies, HUM. RTS. BASED APPROACH PORTAL, <http://hrbaportal.org/the-humanrights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> (last visited Nov. 3, 2017).

418 Executive summary. National Action Plan on Business and Human Rights. Lessons from State Best Practices in Protecting Citizens from the Impact of Businesses. By Ahsinin A., Muttaqien A., Busyrol M., Ratu F., Nafisah D. (2020), p. 8. URL: <https://globalnaps.org/wp-content/uploads/2021/03/elsam-bhrrc-report-on-bhr-naps-2020.pdf>

And in the course of 10 years of their application the UNGPs have helped enable the multi-stakeholder dialogue grounded in a “lingua franca” – a common language understood by both private and State actors<sup>419</sup>. Noteworthy, that the multi-stakeholder dialogues, expert consultations, and collaborative research across all regions world-wide was a defining feature of the UNGPs’ development.

The UNGPs highlight the importance of stakeholders’ participation in corporate human rights due diligence (Principle 18) and for the non-judicial mechanisms adopted to ensure access to remedy to victims of business-related human rights violations (Principle 31.h). Furthermore, the Guidance on National Action Plans on Business and Human Rights of the UN Working Group on Business and Human Rights notes that “NAP processes, including NAP development, monitoring and update must be both inclusive and transparent and take the views and needs of individuals or groups who may be impacted and other relevant stakeholders into account”<sup>420</sup>.

According to the UNGP Reporting Framework and its implementation guidance, a **stakeholder** is any individual or organization that may affect, or be affected by a company’s actions and decisions. In the UNGPs the primary focus is on affected or potentially affected stakeholders, meaning individuals whose human rights have been or may be affected by a company’s operations, products or services. Other particularly relevant stakeholders in the context of the UNGPs are the legitimate representatives of potentially affected stakeholders, including trade unions, as well as civil society organizations and others with experience and expertise related to business impacts on human rights<sup>421</sup>.

The OHCHR defines the **stakeholder engagement or consultation in the context of respect for human rights** as “an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches”<sup>422</sup>.

This definition highlights **several elements** that are critical to stakeholder engagement, which should be:

**Based on dialogue:** stakeholder engagement is not just about conveying information; it should be a two-way exchange of information and views.

**Ongoing:** it is an ongoing process focused on building a mutually beneficial relationship based on trust, but not a formal single use exercise to, for example, meet some licensing requirements or to report when necessary that an enterprise (a company) has an experience to resort to the stakeholder engagement.

**Focused on potentially affected stakeholders:** engagement should be focused on people who are or may be affected by a company’s operations, or on their legitimate representatives, and not just on any proxy organizations with which a company has friendly relations. Herewith, companies shall take into account that local communities are mostly not homogenous and can consist of a variety of different groups, and thus impacts on them may be quite distinct.

**Focused on stakeholders’ interests and concerns:** stakeholder engagement is (primarily) about the impacts associated with a company’s activities; more broadly, it is about what potentially affected stakeholders want to discuss with a company in relation to the company’s impacts<sup>423</sup>.

419 Nicola Jägers, “UN Guiding Principles at 10: permeating narratives or yet another silo?”, *Business and Human Rights Journal*, vol. 6, No. 2 (2021)

420 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights (Geneva, November 2016). URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

421 Glossary. The UNGP Reporting Framework and its implementation guidance. URL: <https://www.ungpreporting.org/glossary/stakeholder/>

422 OHCHR, ‘The Corporate Responsibility to Respect Human Rights: An Interpretative Guide’, 2012, p. 8, URL: [https://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf)

423 ‘Doing Business with Respect for Human Rights’ Guide. The Global Compact Network Netherlands, Oxfam and Shift. Chapter 3.7. Understanding stakeholder engagement. URL: <https://www.businessrespecthumanrights.org/en/page/348/stakeholder-engagement>

The Governments' and companies' approach to establish and maintain participation of stakeholders in ensuring respect for human rights in the BHR context enables all stakeholder groups (at-risk groups especially) to be involved in each phase of the relevant processes that could in any way affect them. The participatory stakeholders' engagement helps create ownership by right-holders over their development, which in turn requires access to information to ensure effective participation<sup>424</sup>.

The stakeholders' engagement as a strategic tool is widely used in public and corporate relations at international, national, subnational and local levels. It is important for public and corporate actors to amplify senses and messages and make decisions with regard to stakeholders' perspectives, having in mind the sustainable development and BHR contexts.

The analysis of international practice of stakeholders' engagement provides for variety of examples of **multi-stakeholder bodies** which can be formal and institutionalized or informal and institutionalized, as well as formal and ad hoc and informal and ad hoc<sup>425</sup>.

**The high-level of stakeholders' participation** should be collaborative and empowering. Those who lead the high-level stakeholders' engagement shall: a) be partners with stakeholders in each aspect of decision-making including the development of alternatives and the identification of preferred solutions, and b) empower them by placing decision-making in the hands of stakeholders.

**The mid-level stakeholders' participation** implies involvement when those who lead this kind of stakeholders' engagement work directly with stakeholders throughout the process to ensure that stakeholder concerns and aspirations are consistently understood and considered<sup>426</sup>.

In general, the stakeholders' engagement can take the forms of forums, public meetings, workshops, focus group discussions, stakeholder assessments, surveys, written consultations, e-discussions, etc.

Embodied in any form but with a human rights lens the process of stakeholders' engagement in development of national and local policies, including NAPs, law- and decision-making is key to identifying and understanding human rights risks, testing and getting feedback on actions being taken, and remedying negative impacts when they occur. This is equally important for the State, business and people<sup>427</sup>.

Taking stock of the first UNGPs' decade, the UNWG concludes that "meaningful progress will require all stakeholders to continue a systemic approach, and persistent efforts to leverage the multiple actors beyond States that frame policies, practices and indeed regulations that shape business behaviours in a smart mix of measures, which cumulatively will make the difference we need"<sup>428</sup>. Ukraine needs more experience in telic stakeholders' engagement into its policy- and decision-making to fulfil the commitments under the UNGPs, 2030 UN Agenda for Sustainable Development, as well as the current key international agreements like the EU-Ukraine Association Agreement, which besides the economic benefits of cooperation introduces the rule of law and human rights values, in order to implement the human-rights based approach in public and business relations.

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424 National Action Plans on Business and Human Rights Toolkit. The Danish Institute for Human Rights, tHE International Corporate Accountability Roundtable, 2017 Edition. P. 49. URL: <https://globalnaps.org/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf>

425 Establishing Multi-Stakeholder Bodies in ICAT Stakeholder Participation Guidance. Guidance to support stakeholder participation in design, implementation and assessment of policies and actions. May 2018. URL: <https://climateactiontransparency.org/wp-content/uploads/2018/05/ICAT-SP-Ch-6-How-to-establish-multi-stakeholder-bodies.pdf>

426 Stakeholder Engagement and Consultation. In Introduction to Professional Communications in the Technical Fields, By Suzan Last. University of Victoria. 2019 URL: <https://pressbooks.bccampus.ca/technicalwriting/chapter/stakeholderengagement/>

427 Bringing a Human Rights Lens to Stakeholder Engagement. Shift, 2013: URL: <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Shift-Workshop-Report-3-Bringing-a-Human-Rights-Lens-to-Stakeholder-Engagement.pdf>

428 Guiding Principles on Business and Human Rights at 10: taking stock of the first decade. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the UN Human Rights Council Forty-seventh session 21 June–9 July 2021 (par. 115) p. 22. URL: <https://undocs.org/A/HRC/47/39>

## 2.5.4.2. STAKEHOLDERS' ENGAGEMENT TO IMPLEMENT THE UNGPS THROUGH NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS (NAPS)

### GENERAL FRAMES FOR STAKEHOLDERS' ENGAGEMENT IN BHR

The UNGPs recommend that NAPs are adopted by states and realized as specific but complex BHR Government policy strategies to meet the obligations and interest of both duty-bearers and right-holders in a participatory way.

The UNWG emphasizes the important role of non-governmental stakeholders, including business entities and associations, in calling upon their Governments to develop NAPs as the base for systemic approach and support Government initiatives on NAPs, provided, where necessary, the capacity building opportunities of all stakeholders is enhanced.

The UNWG advises that non-governmental stakeholders contribute to NAP development also by initiating research studies that may feed into the baseline study for NAPs<sup>429</sup>. The UNWG has developed and promotes its Guidance on NAPs<sup>430</sup> and relies on stakeholders' support in holding Governments accountable for unjustified deviations from its proper application.

**The beneficial nature of stakeholders' engagement in the NAP processes** is in its potential to ensure effectiveness and transparency of a NAP and other relevant policy design and implementation, as well as to build consistent support and participation, including in addressing the potential business-related human rights risks and overcoming barriers to efficient NAP's implementation. Stakeholders' participation is beneficial for both the rights-holders and the duty-bearers (States and business enterprises); its usefulness could be tracked across the majority of implications delivered by the UNGPs.

The Government should work to consult with a **wide range of national stakeholders**. All rights-holders and other stakeholders should be identified from the start so that their input can later be sought. The following categories of stakeholder should be considered:

- Executive government, including all relevant government departments, agencies, offices, and State-owned enterprises, as well as police and other law enforcement agencies;
- Judiciary and administrative tribunals, alternative dispute resolution mechanisms, and informal justice actors;
- Parliament, including relevant committees;
- Businesses, including significant industry sectors, business associations, SMEs, the self-employed, sole traders, cooperatives, non-profits, and informal sector actors;
- Labour unions and other workers' representative associations;
- Representatives of affected groups or communities of rights-holders<sup>431</sup> and human rights defenders, inside and outside the State's territorial jurisdiction who may potentially be affected by the conduct of companies based in or controlled from the State;
- NHRIs, ombudsman institutions, and statutory equality bodies;

429 Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights (Geneva, November 2016), P. iii. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

430 Ibid.

431 It is important to pay special attention to persons that may be particularly exposed and affected by business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities, and who, at the same time, may have less recourse to remedies. See in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the UN Human Rights Council Twenty-third session. A/HRC/23/32 of 14 March 2013 (71 (d)) p. 21. URL: <https://undocs.org/A/HRC/23/32>; Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights (Geneva, November 2016), P.4. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

- Civil society organizations with mandates addressing relevant issues;
- Media, including general news and specialist sources;
- Academia, including research institutes, individual experts, and relevant educational institutions, such as business schools;
- International and regional actors, for example, relevant UN agencies and country teams, the World Bank, regional development banks, the EU, CoE, OECD, OSCE, etc.<sup>432</sup>

A **particular range of stakeholders** engaged shall be defined / mapped depending on a number of factors:

- the policy or action's subject matter within a NAP;
- the stake of different stakeholder groups in a NAP's specific policy or action;
- the way and extent to which they may be affected in the result of a NAP's specific policy or action or a NAP as a whole;
- their expectations of the participation process.

A proper stakeholder mapping will prevent Governments' not reaching out to all disempowered and at-risk stakeholders and so excluding them from the NAP processes.

A draft stakeholder mapping should be made public and disseminated for comment and validation.

**Implications for a State** in relation to stakeholders' participation in a NAP processes include:

- enabling stakeholder participation via a permanent multi-stakeholder structure (body) composed of members drawn from across stakeholder categories on a representative basis and tasked with providing input at all stages of the NAP process;
- development and publishing a clear plan and timeline of stakeholder participation, which should be regularly updated throughout the whole NAP process, and disseminated via appropriate channels; timelines for stakeholders' submissions and feedback should be realistic given the time, resources, and capacities of all stakeholders;
- undertaking capacity-building of stakeholders (an introductory training, etc.) as necessary to enable meaningful participation for all and especially those rights-holders who are marginalized or discriminated against;
- facilitating regular consultation meetings and variety of other forms of stakeholders' engagement throughout the NAP process;
- ensuring that consultations take place in a manner appropriate to the stakeholders in question, with attention paid to levels of knowledge and expertise in the subject matter and any potential language or social, cultural, financial, or other barriers to participation<sup>433</sup>.

432 National Action Plans on Business And Human Rights. A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks. The Danish Institute for Human Rights (DIHR), The International Corporate Accountability Roundtable (ICAR), June 2014. p. 42-43. URL: <https://media.business-humanrights.org/media/documents/files/documents/DIHR - ICAR National Action Plans NAPs Report.pdf>

433 National Action Plans on Business and Human Rights Toolkit. The Danish Institute for Human Rights, The International Corporate Accountability Roundtable, 2017 Edition. P. 49. URL: <https://globalnaps.org/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf>

Governments are strongly recommended to ensure and strengthen the **stakeholders' participation in the NAP processes in all phases making 15 steps:**

Phase	Steps - actions taken
<b>1. Initiation</b>	<ol style="list-style-type: none"> <li>1. Seek and publish a formal Government commitment</li> <li>2. Create a format for cross-departmental collaboration and designate leadership</li> <li>3. Create a format for engagement with nongovernmental stakeholders</li> <li>4. Develop and publish a work plan and allocate adequate resources</li> </ol>
<b>2. Assessment and consultations</b>	<ol style="list-style-type: none"> <li>5. Get an understanding of adverse business-related human rights impacts</li> <li>6. Identify gaps in State and business implementation of the UNGPs</li> <li>7. Consult stakeholders and identify priority areas.</li> </ol>
<b>3. Drafting of initial NAP</b>	<ol style="list-style-type: none"> <li>8. Draft the initial NAP</li> <li>9. Consult on the draft with interested stakeholders</li> <li>10. Finalize and launch the initial NAP</li> </ol>
<b>4. Implementation</b>	<ol style="list-style-type: none"> <li>11. Implement actions and continue cross-departmental collaboration</li> <li>12. Ensure multi-stakeholder monitoring.</li> </ol>
<b>5. Update</b>	<ol style="list-style-type: none"> <li>13. Evaluate impacts of the previous NAP and identify gaps</li> <li>14. Consult stakeholders and identify priority areas</li> <li>15. Draft updated NAP, consult on, finalize, and launch it</li> </ol>

A key means to meet these recommendations is to establish a **multi-stakeholder body (a working group or an advisory committee)** as an effective mechanism to ensure a participatory approach process relevant to a wide range of stakeholders. Such a body should be tasked with providing stakeholders' input at all stages of the NAP process.

Participation of business in the NAP-supporting multi-stakeholder body is crucial to the overall effectiveness of the process, as companies would not support State decisions or actions affecting them which are adopted without their involvement. Much of the specialized knowledge and insight into the specific business and BHR problems and of stakeholders' interconnected networks can come from profiled non-governmental organizations (NGOs), civil society groups, trade unions, and independent experts.

A multi-stakeholder body is usually provided a centralized point of reference by a lead ministry or body, assigned the responsibility for overseeing and coordinating the overall NAP process, which helps to promote efficiency of activities and Government's accountability to non-governmental stakeholders.

When a **governmental multi-stakeholder steering group** responsible for a NAP is established, it must by no means develop into a form of ad hoc 'representative body' replacing 'overall consultation'. Where such governmental multi-stakeholder steering group is established, its activities shall be supplemented by broader bona fide consultations.

The desk analysis of international practice and experts' data provide for the knowledge of a great variety of **forms of stakeholders' participation** in the NAPs-supporting processes:

- national-level multi-stakeholder public and expert consultations and seminars;
- local level multi-stakeholder dialogue events held all over a country or concentrated in several areas with wider participation of stakeholders from the neighboring locations;

- thematic workshops held either concurrently with all stakeholders or separately with companies and civil society respectively tackling the cross-cutting or specific for duty-bearers and right-holders issues of the BHR agenda;
- focus groups with vulnerable right-holders or with right-holders having specific occupation;
- in depth and key-informant interviews with knowledge-bearers on the policy-, law- and decision-making in the BHR areas;
- providing written input via an official web site or email specifically to a draft NAP that is openly published on the website or circulated among several influential stakeholders, etc.<sup>434</sup>

## STAKEHOLDERS' ENGAGEMENT IN NAPS PROCESSES: FROM PHASE TO PHASE

Governments benefit from the practice of engagement of the national and local-level stakeholders in the UNGPs implementation. The multi-stakeholders' approach to the national decision-making on the NAP content and its further implementation provide for the complex reflection and realization of all-range States' duties to protect people against business-related human rights abuses and set out clear expectations that all business enterprises respect human rights throughout their operations.

Experts underline as the advantage of NAPs that they bring all the UNGPs' implementation efforts under one umbrella, thus making it easier to make cross-linkages between individual activities, to arrange better communication between all stakeholders during the development process that will lead to a higher level of efficiency in gaining consensus on activities in NAPs, to facilitate broader buy-in once NAPs are developed.<sup>435</sup> It is important to look strategically and identify actions that are meaningful for realization of every relevant Principle, help to advance the implementation of UNGPs as a whole and stimulate further discussion, "without losing champions among stakeholders and business"<sup>436</sup>.

The UNWG Guidance on NAPs defines **specific steps for stakeholders' engagement in every phase of a NAP development**:

**Phase 1 "Initiation"** provides for steps 3 and 4 when it is recommended to create a format for engagement with non-governmental stakeholders and outline and update a clear time plan on the NAP process.

At the end of it a format for non-governmental stakeholders' participation should be established; the relevant stakeholders should participate in outlining the time plan, in awareness-raising on BHR, they should know what the Government expects from them and when, what they can do and what they can expect from the Government.

**Phase 2 "Assessment and consultation"** provides for the steps 5-7 when it is recommended in a participative way to identify gaps, priority areas and consult stakeholders.

The relevant stakeholders should be invited to participate and provide input in identification of the main adverse business-related human rights impacts and the gaps in Government and corporate responses; the national baseline assessment (NBA) template<sup>437</sup> can be used. Consultation within a multi-stakeholder body and general broader consultation is required.

434 Data from key-informant interviews

435 National Action Plans on Business and Human Rights. A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks. The Danish Institute for Human Rights (DIHR), The International Corporate Accountability Roundtable (ICAR), June 2014. p. 15. URL: [https://media.business-humanrights.org/media/documents/files/documents/DIHR\\_-\\_ICAR\\_National\\_Action\\_Plans\\_NAPs\\_Report.pdf](https://media.business-humanrights.org/media/documents/files/documents/DIHR_-_ICAR_National_Action_Plans_NAPs_Report.pdf)

436 Data from key-informant interviews.

437 National Baseline Assessment (NBA) Template. The International Corporate Accountability Roundtable, the Danish Institute for Human Rights (Road-testing version – June 2018). URL: <https://globalnaps.org/wp-content/uploads/2018/06/dihr-icar-national-baseline-assessment-template-june-2018-road-testing-version.pdf>

The at-risk stakeholders should be involved. Up to the end of this phase non-governmental stakeholders should have been able to provide inputs on what the NAP should include – the priorities associated with the UNGPs' implementation in the national and specific local contexts in various areas and sectors.

**Phase 3 “Drafting of initial NAP”** provides for step 9 when it is recommended to consult on the draft NAP with interested stakeholders.

The relevant stakeholders should be invited to consultations on the draft of the initial NAP; their written comments on the NAP, including on good practice in the field of human rights can be efficient. This way a NAP gains enhanced legitimacy and effectiveness, and support from non-governmental stakeholders for the subsequent implementation phase.

**Phase 4 “Implementation”** provides for step 12 when it is recommended to ensure multi-stakeholder monitoring.

In the course of this phase Governments should consider setting up an independent multi-stakeholder monitoring group. It should be composed of legitimate representatives from all relevant stakeholder groups, and might be built upon the group created in step 3 of the Phase 1. Governments should consider reporting on progress relating to NAP implementation to the multi-stakeholder monitoring group on a regular basis and take its recommendations into account.

**Phase 5 “Update”** provides for steps 13-15 when it is recommended to take into account the stakeholders' view in the evaluation process, consult with them on identification of priority areas and on the draft updated NAP before it is finalized.

Recommended that evaluation of the previous NAP effectiveness in regard to its actual impact, a re-assessment of the most relevant BHR challenges should be conducted by an independent entity – NHRI, or other experts – and should include consultations with relevant stakeholders providing for their input to identify shortcomings and priority areas, express views on effective and adequate actions necessary to address the identified gaps<sup>438</sup>.

On the whole, Governments should maintain the stakeholders' engagement throughout the NAP process; such inclusiveness would help them learn from experience, enhance the transparency of regular reporting before the society on their actions taken and further planned, and facilitate access to appropriate financing for the relevant policies and actions supporting the UNGPs' implementation.

The work on stakeholders' engagement shall be supported with the necessary financial resources as CSOs need support to increase their capacities (through training) and to ensure their presence in the meetings and workshops. This is especially significant for CSOs and stakeholders based outside of capitals, including indigenous peoples and marginalized communities.

## NATIONAL PRACTICES TO ENGAGE STAKEHOLDERS IN NAPS PROCESSES

The State practice reveals that in at least 27 NAP processes<sup>439</sup> CSOs, unions, NGOs, rights-holders or other social organizations were invited or able to participate (using a variety of mechanisms) in the elaboration of the national baseline and/or the formulation, implementation and evaluation of NAPs.

Country practices are various, but many states have engaged the non-governmental stakeholders in the process of NAPs development.

<sup>438</sup> Guidance on National Action Plans on Business and Human Rights. UN Working Group on Business and Human Rights (Geneva, November 2016), P. 4. URL: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

<sup>439</sup> National Action Plans on Business and Human Rights. The NAP processes in Belgium, Chile, Colombia, Czechia, Finland, France, Georgia, Germany, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Malaysia, Mexico, the Netherlands, Norway, Poland, Scotland, Spain, Sweden, Switzerland, Thailand, Ukraine, United Kingdom and United States of America. URL: <https://globalnaps.org/>

## The studied practices prove the cases of establishment of multi-stakeholder bodies and conducting awareness-raising and consultations with stakeholders<sup>440</sup>.

The desk research and the knowledgeable experts<sup>441</sup> inform that in **Phase 1** all countries that adopted NAPs have created formats for cooperation between ministries and other government agencies like NHRI, Ombudsman etc., and many Governments – in Belgium, the Czech Republic, Denmark, Finland, Germany, Ireland, Italy, Kenya, Luxembourg, Norway, Spain, etc., have also worked closely with stakeholders in the format of multi-stakeholder bodies. They were composed of members from the Government, private sector, trade unions, academia, and non-governmental organizations (including the United Nations). They help to steer the NAP development processes or advise on a wider range of issues of relevance to UNGPs' implementation.

### MULTI-STAKEHOLDER BODIES

Scotland adopted this approach through the Better World Action Group for Scotland's National Action Plan for Human Rights, which oversaw the development of the NAP and overall consultation. In France a NAP was analyzed, debated and supplemented by the multi-stakeholder CSR Platform, set up by the Prime Minister as a forum for dialogue and consultation involving various players in French society. In Germany the NAP prescribes a comprehensive Steering Committee comprising representatives of the 6 major ministries, the German NHRI, the German business association for sustainable development, 3 representatives from Germany's largest trade association, a civil society representative from the Human Rights Forum, a trade union representative, and a civil society representative. The NHRI is responsible for coordinating the meetings. In Czech Republic the Business and Human Rights Working Group (BHRWG), being a multi-stakeholders body, was tasked by the Minister for Human Rights to draft the NAP. The Georgian experience of the stakeholders' engagement in the NAP development is the partnership of the Government's Human Rights Secretariat with the Public Defender of Georgia (the Georgian NHRI) and the Civil Development Agency (CiDA – a local NGO). Wider groups of stakeholders were engaged in commenting and discussing the initial draft NAP. In Kenya a National Steering Committee was assigned the mandate to provide overall strategic guidance and direction for the development of a NAP. The Nairobi Process of the Institute for Human Rights and Business (IHRB) took part in the National Steering Committee for the NAP process and was requested to provide expert support to the Attorney General's Office for the process; the CSO "Kenya Human Rights Commission" was appointed to the Steering Committee to provide representation of the Kenyan CSOs<sup>442</sup>. In Mongolia, where a NAP is in the process of elaboration, a 60-members Working Group – a multi-stakeholder body, formally appointed by the Government.

### CONSULTATIONS

In Spain early consultation meetings with different non-governmental stakeholder and multiple government ministries groups, which informed the initial NAP drafting, were held by the led ministry in collaboration with external experts.

The British steering group hosted a series of workshops with interested non-governmental stakeholders in the first half of 2012. Separate workshops were held for multinational companies, small and medium-sized businesses, and civil society groups including NGOs and trade unions. At the end of the process, a workshop with representatives

440 See: Stakeholder Participation Guidance. Guidance to support stakeholder participation in design, implementation and assessment of policies and actions, ICAT Second Draft, May 2018. URL: [https://www.researchgate.net/publication/330754216\\_Stakeholder\\_Participation\\_Guidance\\_Guidance\\_to\\_support\\_stakeholder\\_participation\\_in\\_design\\_implementation\\_and\\_assessment\\_of\\_policies\\_and\\_actions](https://www.researchgate.net/publication/330754216_Stakeholder_Participation_Guidance_Guidance_to_support_stakeholder_participation_in_design_implementation_and_assessment_of_policies_and_actions) The Guidance serves to raise awareness of the benefits of stakeholder participation; assist governments and practitioners in planning and implementing effective participatory processes; provide guidance on stakeholder participation to strengthen the assessment of GHG, sustainable development and transformation impacts; and provide guidance on assessing the effectiveness of stakeholder participation in design, implementation, and assessment.

441 Data from the key-informants involved in the study.

442 Lessons Learned in Building Better National Action Plans on Business & Human Rights. Kenya, 26 April 2016. Institute for Human Rights and Business. URL: <https://www.ihrb.org/focus-areas/kenya/submission-building-better-national-action-plans-business-human-rights>

from all three stakeholder groups was convened. Moreover, at the Conference in 2012, international expert groups from other governments, inter-government organizations, civil society groups and the UN Working Group on Business and Human Rights were invited to share their comments. This consultation process brought a number of recommendations for action that fed into the drafting of the NAP. All the workshops were facilitated by academics.

In the Netherlands, the stakeholder consultations were carried out mostly by an external consultant with the inter-governmental working group providing input on an interview protocol and the selection of interviewees. The consultant conducted a total of 27 interviews with more than 50 people representing all stakeholder groups. A summary of his analysis was then discussed in three separate meetings with the main stakeholder groups of NGOs, experts and academics, businesses and business associations, and state-linked agencies, hosted by the inter-ministerial working group.

In Norway, the Norwegian 'Kompakt', a network of stakeholders which has figured as a consultative group for the Government on CSR since 1998, played an important role. Its recommendations were a key determinant of the Government's decision to engage in the development of an NAP, and it is the key forum for stakeholder consultations.

In Britain and The Netherlands, where stakeholders' consultations were most extensive, different stakeholder groups were consulted separately, while in Spain joint stakeholders' consultations with separate meetings were organized. The separate consultations made it possible to dig deeper into the substance of the matter and to avoid the stakeholders being caught up in disputes.<sup>443</sup>

Interviewed for this study experts informed that often opportunities to contribute to consultations within the NAP processes come as a result of calls made by CSOs (including local ones) to the Government.

## **AWARENESS-RAISING**

Collaboration between various stakeholders provides for specific awareness-raising events (separate activities or wide campaigns, collaborative initiatives) in connection to a NAP initiation and implementation process as well as activities in systemic formats constantly open for broader public and within the broader UNGPs and SDGs agendas. The capacity building measures are important to ensure also that vulnerable groups are involved to be able to contribute to the NAP and UNGPs implementation.

Often NHRIs (like in case of the Moroccan National Human Rights Council) take the responsibility to raise awareness among businesses, parliament, civil society and state authorities about the UNGPs and the importance of developing a Business and Human Rights NAP. In the course of the German NAP process the NHRI leading the multi-stakeholder body and other stakeholders involved a series of 12 thematic workshops, 3 plenary conferences.

In Chile trainings about BHR specifically targeting indigenous people and trade unions in the country's three macro geographical zones were delivered<sup>444</sup>. In Peru a series of events and workshops at the national and sub-national levels were held by the Ministry of Justice and Human Rights in cooperation with the NHRI of Peru Defensoria del Pueblo the UN Office of the High Commissioner on Human Rights (OHCHR) and the Democracy and Human Rights Institute of the Pontificia Universidad Católica del Perú to increase the knowledge and capacities of stakeholders on BHR and NAP development.

443 Developing National Action Plans on Business and Human Rights. By Andreas Graf. Swiss Peace Foundation, Essential 04/2013, P.14 -16. URL: [https://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/Essentials/Essential\\_4\\_2013.pdf](https://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf)

444 Business and Human Rights National Action Plans: Comparative Review of Global Best Practice, commissioned and published by the Scottish Human Rights Commission. April 2019. URL: [https://globalnaps.org/wp-content/uploads/2019/05/shrc\\_bhr\\_nap\\_report.pdf](https://globalnaps.org/wp-content/uploads/2019/05/shrc_bhr_nap_report.pdf)

11 public exchanges with the participation of businesses, public servants and CSOs were organized by the Ministry of Justice and Human Rights; the events were focused on the UNGPs generally supplemented with a focus specific topic, such as, child labour, gender, human rights defenders, international standards, etc.<sup>445</sup>

Italian experts from the National Research Council (NRC) inform about the active CSOs and academia participation in stakeholders' awareness-raising in the NAP's processes, which includes the practice of collaboration between the Bar Association and judicial authorities in the form of a series of seminars on BHR. The Business & Human Rights Summer School led by the educational and research institutions, NRC incl. and functioning in cooperation with the Inter-ministerial Group for Human Rights provide students, researchers, NGO workers, lawyers, CSR experts and other public- and private-sector practitioners with knowledge of the legal mechanisms and tools applicable in the field of BHR while keeping up with current relevant developments at national, regional and international level<sup>446</sup>.

Stakeholders from many countries are engaged in the BHR agenda through **the United Nations Global Compact**<sup>447</sup>, the world's largest corporate sustainability initiative as a dialogue and training platform for businesses, investors, civil society, labor organizations, local authorities and Government, has provided for various awareness-raising and collaborative activities in many countries in the NAPs processes and beyond (to implement its 10 principles, SDGs). Its Business guide "Stakeholder engagement in human rights due diligence"<sup>448</sup> contributes to awareness raising among companies on the design and conduct the meaningful community and stakeholder engagement as part of a company's human rights due diligence in line with the UNGPs.

The organized international expert environment on sustainable business contributes to stakeholders' engagement globally – **Business for Social Responsibility (BSR)**<sup>449</sup>, a Global Compact member, provides insight, advice, and collaborative initiatives with its global network of the world's leading companies. The initiatives like Global Network Initiative: Protecting Human Rights in the Digital Age, Electronic Industry Citizenship Coalition enable the companies to get knowledge and more rapidly and effectively develop solutions on issues of conflict minerals, environmental management, carbon emissions, working hours, and student workers. The initiatives like HERhealth allow Increase the ability of low-income women to take charge of their health, HERfinance – expand financial inclusion of low-income workers in global supply chains. The specifically tailored training tools HERhealth Toolkit for Managing Workplace Health Systems and HERfinance Digital Wages Toolkit provide management direction in assessing the quality of a company's health and social functions from the respect to human rights perspective.

**The Business & Human Rights Resource Centre**<sup>450</sup>, a world-wide non-government organization with regional researchers based in 21 countries provides for the comprehensive awareness-raising to advance human rights in business and eradicate abuse. It works to engage a wide variety of stakeholders, rights-holders and duty-bearers including, improving access to information and awareness-raising, accountability, and transparency; it supported NAPs development and implementation in many countries. One of the organization's goals is to amplify voices of the countries' human rights advocates, including journalists, communities, and NGOs, of Government and corporate actors in order to push in decision-making and practice for more responsible business practices in line with the UNGPs. The peers across the organization engage with companies on discussions about best practices and statements of support for NAPs and emerging legislation. Also, it uses a well-laid-out method for engaging with businesses through the response mechanism which allows ask businesses to respond to allegations of human rights issues raised by third parties, such as journalists and NGOs. To date, the Centre collected more than 6,800

445 Civil Society Participation in the Development of a Business And Human Rights National Action Plan in Peru. By Alvaro F. Amaya. The Danish Institute for Human Rights and Diakonia. July 2021 P. 21. URL: [https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/4/2021/09/A4\\_Peru\\_Civil-society-participation\\_EN\\_V4.pdf](https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/4/2021/09/A4_Peru_Civil-society-participation_EN_V4.pdf)

446 Data from the key-informant interview and the country NAPs' expert studies.

447 The United Nations Global Compact. URL: <https://www.unglobalcompact.org/>

448 Stakeholder engagement in human rights due diligence: A business guide. published by Global Compact Network Germany and twentyfifty Ltd. (2014). URL: [https://www.globalcompact.de/migrated\\_files/wAssets/docs/Menschenrechte/stakeholder\\_engagement\\_in\\_humanrights\\_due\\_diligence.pdf](https://www.globalcompact.de/migrated_files/wAssets/docs/Menschenrechte/stakeholder_engagement_in_humanrights_due_diligence.pdf)

449 BSR. Going Global. URL: <https://www.bsr.org/en/about/story>

450 Business & Human Rights Resource Centre. URL: <https://www.business-humanrights.org/en/about-us/>

company responses. The Centre works closely with the UNWG and other key UNGPs advocates at the international level. One of the Centre's major and the most initiatives in recent awareness-raising is the launch of the Central & Eastern Europe & Central Asia Resource Hub on Business & Human Rights<sup>451</sup> – a platform for stakeholders in Central and Eastern Europe and Central Asia to share their perspectives and resources on BHR topics<sup>452</sup>.

**In Phase 2** stakeholders provide their support in National Baseline Assessment (NBA). For example, the Mongolian Working Group started its work with holding NBA; in Argentina, Italy (Scuola Superiore Sant'Anna), the Czech Republic (Masaryk University), Norway (FAFO Institute for Applied International Studies), the Netherlands and Spain NBAs were drafted by stakeholders from academia. In Mexico the NBA developed by CSOs was accepted and used by the Governments as an 'official' version; in Myanmar CSOs started the NBA drafting process and communicated it to the Government; in Serbia the Belgrade Centre for Human Rights (CSO) produced the NBA based on the Danish Institute and ICAR's National Action Plan Toolkit<sup>453</sup>.

In Tanzania, while the Government in 2013 committed to 'establish a Plan of Action that promotes meaningful participation and consensus of all stakeholders' (Tanzania Ministry of Constitutional and Legal Affairs 2013, Chapter 4, section 2.4.2), the 'Shadow' National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks in Tanzania" was development and release by the Legal and Human Rights Centre (LHRC) and the International Corporate Accountability Roundtable. In Germany the lead NAP agency (Ministry of Foreign Affairs) commissioned the NHRI – German Human Rights Commission to elaborate NBA, and in Zambia its NHRI – the Human Rights Commission, with support from Danish Institute for Human Rights developed the NBA combining both desk research and 2 sets of stakeholder consultations<sup>454</sup>. The Irish Government appointed companies providing high-quality expert services – Regan Stein and Leading Edge Group, to draft the NAP.

**In Phase 3** several countries – Colombia, Kenya, Luxembourg, Taiwan, etc., have opened spaces for participation by holding public consultations with stakeholders on the draft NAPs with the aim to ensure that all stakeholders can contribute to this process; some countries – Finland, Poland, Spain, Sweden, Italy and Switzerland have invited written feedback through a dedicated website or email.

The key informant, who illustrated the Polish practice, informed that the Ministry of Foreign Affairs published the first draft NAP in December 2016 and thus opened a 1,5 month-long process of public consultations. The draft NAP was also presented to a circle of CSOs' representatives at the roundtable of the Helsinki Foundation for Human Rights in which representatives of the Ministry of Economic Development, National Labour Inspectorate and Office of the Ombudsman participated and first comments and recommendations on the draft NAP were discussed<sup>455</sup>.

The Government of Thailand was committed to create a NAP drafting process as inclusive as possible, also by providing information on the NAP process available on the Ministry of Justice website, opening calls for input and comments and engagement with wider civil society and business actors. The Government communicated with the Thai BHR Network and 6 consultations were held between 2017 and March 2018, so that local communities could provide input on the NAP<sup>456</sup>.

451 The CEECA Resource Hub. URL: <https://ceeca-bhr.org/ru/home-page-ru/>

452 Data from the key-informant interviews.

453 Data from the key-informant interview and the country NAPs' expert studies.

454 Implementation of the UN Guiding Principles on Business and Human Rights Study. European Parliament Directorate-General for External Policies (February 2017) P45. URL: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO\\_STU\(2017\)578031\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf)

455 Data from the key-informant interview.

456 1st National Action Plan on Business and Human Rights (2019-2022), Rights and Liberties Protection Department, Ministry of Justice, Thailand. <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/nap-thailand-en.pdf>

The Governments quite actively used the consultation method to involve stakeholders in the process of the NAP drafting – in France 12 consultations were held between November 2015 and June 2016, Kenya – 9, Sweden – 5, the United States and Colombia – 4 consultations. Around 8 states conducted consultations with stakeholders outside the capital city, including vulnerable areas, to reach right-holders from affected groups and communities, especially those from marginalized groups, indigenous peoples, human rights defenders, journalists and civil society organizations, because they have information and experience to contribute to and enrich the NAP preparation process<sup>457</sup>.

**In Phase 4** non-governmental stakeholders support states by monitoring and assessing the effectiveness of the steps undertaken to implement the UNGPs. In Italy the lead Government agency (Ministry of Foreign Affairs) held multi-stakeholder meetings once–twice a year to address the NAP implementation and the mid-term revision processes. The CSO International Human Rights Corner (IHRC) contributed into the mid-term NAP review<sup>458</sup> process, which favored a multi-stakeholder approach. The Spanish NAP foresees a process of regular multi-stakeholder consultation and yearly reporting to a parliamentary committee during the implementation phase. In Germany the 2016-2020 NAP's monitoring procedure was held in 2018-2020 to evaluate the voluntary implementation of the core elements of human rights due diligence in accordance with the NAP by German companies. In addition to the official monitoring of the German NAP a group of SCOs – members of the Multi-stakeholder Advisory Committee for Implementation of the NAP produced and published in 2021 the Shadow Report "Four years of the National Action Plan for Business and Human Rights (NAP)"<sup>459</sup> It deals with selected subject areas and measures for which SCOs see greatest need for comment and change and on which they work more intensively. Alongside, the Government provides support to stakeholders in the course of NAP's implementation. There is a Business & Human Rights Helpdesk (Helpdesk Wirtschaft & Menschenrechte), which started as a NAP helpdesk, run by two (semi) governmental agencies GIZ and DEG. They provide free advisory services to companies and other stakeholders on due diligence processes<sup>460</sup>. A Swedish example of non-governmental stakeholders' support to states in UNGPs' implementation and monitoring is the activities of the CSOs SwedWatch which provides monitoring and investigation of the extent to which companies, investors and authorities are taking responsibility for human rights and the environment. It has highlighted discrimination against migrant workers, child labour, hazardous working environments and other severe working conditions and focusing on this SwedWatch helps the government public procurers in monitoring their supply chains imposing social criteria in procurements, This allows the authorities to contribute towards improved working conditions in global supply chains, which meets the UNGPs Pillar II requirements<sup>461</sup>.

**Companies as duty-bearers** develop their stakeholders' engagement mechanisms to meet the UNGPs and NAPs<sup>462</sup>.

For example, the Royal Dutch Shell chooses engaging with communities as an important part of its due diligence approach to managing human rights and providing access to remedy. The network of around 100 community liaison officers acts as a bridge between the local community and the business. In 2019 Shell developed a tool to check if its community feedback mechanisms to be fully effective according to the UNGPs. The tool is used to assess where additional support is needed and to lay out plans for improvements.

457 Executive summary National Action Plan on Business and Human Rights. Lessons from State Best Practices in Protecting Citizens from the Impact of Businesses. By Ahsinin A., Muttaqien A., Busyrol M., Ratu F., Nafisah D. (2020), p. 21-22. URL: <https://globalnaps.org/wp-content/uploads/2021/03/elsam-bhrrc-report-on-bhr-naps-2020.pdf>

458 National Action Plans on Business and Human Rights: A Guidance for the mid-term review. HRIC (2020 edition). URL: [https://docs.wixstatic.com/ugd/6c779a\\_f05f97959ce040f9a777fd356512a52c.pdf](https://docs.wixstatic.com/ugd/6c779a_f05f97959ce040f9a777fd356512a52c.pdf)

459 Monitoring zum Nationalen Aktionsplan Wirtschaft und Menschenrechte, Auswärtiges Amt (13.10.2020). URL: <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-nap/2124010>

460 Helpdesk on Business & Human Rights. URL: <https://wirtschaft-entwicklung.de/en/helpdesk-on-business-human-rights/>

461 Swedwatch. URL: <https://swedwatch.org/about-swedwatch/>

462 Examples recommended by key-informants involved in the study.

The community feedback mechanisms implemented in Shell's major operations and projects allow receiving, quickly tracking and responding to questions and complaints from community members, design better projects, comply with social and environmental regulations and align with international standards, including those from the World Bank and the International Finance Corporation<sup>463</sup>.

BASF engages with the local communities residing around its sites in various forms of neighborhood dialogues. The company's tools depend on the specific site context. At larger production sites there is a Community Advisory Panel (CAP), internal requirements for which are developed based on the UNGPs for grievance mechanisms. CAP meets regularly to be a continuous, long-term discussion forum for open dialogue between citizens and the BASF site management. It consists of a group of individuals who live near or around a chemical facility and who represent the fabric of their community. CAP provides the community with direct involvement opportunity, while the company is able to better address the local expectations<sup>464</sup>.

**In Phase 5** there is the example of non-government stakeholders' work on the analysis of human rights impacts of private foreign investments held in 2005 – 2009 by the Canadian Rights & Democracy CSO, Oxfam International and the International Federation for Human Rights (FIDH) and community-based organizations in Argentina, Peru, Philippines, Democratic Republic of Congo, Tibet, Bolivia, United States, Ecuador, and Cameroun. The Human Right Impact Assessment (HRIA) tool "Getting it Right"<sup>465</sup> used for the studies focuses on local communities as experts and human rights advocates. Also the Danish Institute for Human Rights (NHRI), along with lots of elaborations on UNGPs implementation in Denmark and beyond, contributes to the analysis of NAPs' actual impact, re-assessment of the most relevant BHR challenges by means of Its Human rights impact assessment guidance and toolbox. It provides assistance to Governments and different stakeholders in identifying, understanding, assessing and addressing the adverse effects of the business activities on the human rights of impacted workers and community members. The stakeholder engagement is the core cross-cutting component of the HRIA requiring both background research and the fieldwork. The results of HRIA are of multi-use for Governments and all stakeholders of BHR<sup>466</sup> and can be applied for any kind of policy-, law- and decision-making, the NAP update including.

The key-informants involved in this study, in addition to discussions about different stakeholders' contribution in various phases of NAPs' implementation, pointed out at the integral roles of academia, at importance of their commissioning relevant research into specific areas and providing guidance and advice on gaps in policy and legislation aimed at securing UNGPs, sustainable development and better policy coherence. As an example of a relevant research drafted in Norway can be "Sustainable Public Procurement under EU Law. New Perspectives on the State as Stakeholder" which examines the effectiveness of modernization of the EU public procurement law, discusses the interface of company law and public procurement law and the implication of the new rules on sustainable public procurement for sustainable companies, specifically for small- and medium-sized enterprises (SMEs)<sup>467</sup>.

463 Engaging communities Shell Sustainability Report 2019. URL: <https://reports.shell.com/sustainability-report/2019/contribution-to-society/social-performance/engaging-communities.html>

464 <https://www.basf.com/global/en/who-we-are/sustainability/management-goals-and-dialog/stakeholder-dialog/community-advisory-panels.html>

465 Community-Based Human Rights Impact Assessment: The Getting it Right Tool. Training Manual. Oxfam and the International Federation for Human Rights (FIDH), 2011. URL: [https://s3.amazonaws.com/oxfam-us/www/static/media/files/COBHRA\\_Training\\_Manual\\_-\\_English.pdf](https://s3.amazonaws.com/oxfam-us/www/static/media/files/COBHRA_Training_Manual_-_English.pdf)

466 The Guidance and Toolbox provides information for: human rights practitioners and consultants conducting impact assessments for business projects and activities; businesses, in particular staff who are responsible for commissioning and overseeing impact assessments; financial institutions providing support to businesses, in particular staff who are responsible for the implementation of social safeguard and performance standards; national human rights institutions exercising their mandate to promote and protect human rights; government departments and state institutions that are responsible for providing guidance to businesses on respecting human rights or setting standards for due diligence; non-governmental and civil society organisations that support and/or represent workers, individuals and communities that are adversely affected by business projects or activities; other stakeholders with an interest in impact assessment and/or business and human rights. See: Introduction to human rights impact assessment. The Danish Institute for Human Rights. URL: <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox/introduction-human-rights-impact-assessment>

467 Sustainable Public Procurement under EU Law. New Perspectives on the State as Stakeholder, Edited by Beate Sjøfjell and Anja Wiesbrock. Cambridge University Press, December 2015. URL: <https://www.cambridge.org/core/books/sustainable-public-procurement-under-eu-law/EE5E73A2CF3B8068252839DAAF769544#fndtn-information>

The described practices and models of stakeholders' engagement in the UNGPs implementation, including via the NAP processes, is a good and useful for Ukraine illustration of the multi-stakeholder governance in the area of BHR, where the State does benefit from participation of both governmental and non-governmental stakeholders; each of them play its supplementing part in the broad context of the UNGPs' three Pillars' implementation.

It could be considered as expedient for Ukraine to follow the best of German model of multi-stakeholders' governance in the NAP's processes<sup>468</sup> starting from the initial phase (with a comprehensive Steering Committee comprising representatives of all range of stakeholders; the German NHRI – Institute for Human Rights and the business network Econsense responsible for coordinating the stakeholder consultation process) to the NAP's updating (with the Inter-ministerial Committee for Business and Human Rights led by the Ministry of Foreign Affairs and the non-governmental Multi-stakeholder Advisory Committee for Implementation of the NAP led by the NHRI). This model of UNGPs implementation is the most comprehensive one also in the sense of stakeholders' engagement. Its implementation requires adequate management, resources and time, but it proves to be efficient.

### 2.5.4.3. THE UNGPS' REQUIREMENTS AND INTERNATIONAL PRACTICE OF A GENDER-FOCUSED STAKEHOLDERS' ENGAGEMENT

With a view of the UN core principle of gender equality, the UNGPs require states and businesses to pay special attention to gender considerations. Due to structural and social factors women and girls experience unique and aggravated forms of gender-based discrimination in the context of business operations.

In addition to listing the general State regulatory and policy functions in Principle 3 the UNGPs require the States to provide businesses with appropriate guidance and advice on methods on how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by women<sup>469</sup>. Principle 7 (b) on supporting business respect for human rights in conflict affected areas requires that States should provide adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence. The commentary to this Principle stipulates that innovative and practical approaches are needed, in particular, to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict<sup>470</sup>.

Thus, both States and business as duty-bearers shall consider the gender dimension when providing the stakeholders' engagement in UNGPs' implementation and in NAPs processes.

The UNWG Report "Gender Dimensions of the Guiding Principles on Business and Human Rights" notes that states and business enterprises should address gender in order to discharge their respective human rights duties and responsibilities. Women and girls, as estimated, face additional hurdles in seeking access to effective remedies and intersecting and multiple forms of discrimination. The human rights impacts of such discrimination in the context of business activities is sometimes compounded by their age, colour, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status. It is, therefore, critical that measures taken by States and business enterprises to implement the UNGPs are gender responsive<sup>471</sup>. The Report uses the gender framework to provide specific guidance (including illustrative actions) for each of the 31 principles of the UNGPs. The selective illustrative actions show how States and businesses can integrate a gender perspective throughout their operations.

468 National Action Plans. Germany. NAP Development Process. URL: <https://globalnaps.org/country/germany/>

469 UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. 2011, P. 5. URL: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

470 Ibid, P. 9.

471 Gender Dimensions of the Guiding Principles on Business and Human Rights. UN Working Group Guidance note, 2019. P.6. URL: <https://www.undp.org/publications/gender-dimensions-guiding-principles-business-and-human-rights>

Prioritizing of the women stakeholders’ engagement in UNGPs’ implementation is traced in the course of this study in the text of the UNWG guidance to Principles 3, 7- 9, 11, 16- 19, 24, 25, 28-30.

**The women stakeholders’ engagement in UNGPs’ implementation**

(on the basis of the UNWG Report “Gender Dimensions of the Guiding Principles on Business and Human Rights”(2019))

Phase	Steps - actions taken
<b>Principle 3.</b> Illustrative actions	States should take proactive measures to ensure meaningful participation of women and women’s organizations in developing or updating laws and policies.
<b>Principle 7.</b> Gender guidance	States should promote women’s participation in peacebuilding and transitional justice processes. These measures should be taken, individually and collectively, by both host and home States. Illustrative actions to this principle foresee that States should foster multi-stakeholder collaborative partnerships to change social norms that tolerate, normalize and justify gender discrimination or sexual harassment and gender-based violence.
<b>Principle 8.</b> Gender guidance	States, in line with their international human rights obligations, should treat gender equality as a cross-cutting issue to be integrated in the strategies, policies, programmes and actions of all governmental entities. And the stakeholders’ perspective is ensured by the illustrative actions which foresee that States should consider setting up an inter-ministerial body to coordinate efforts to promote substantive gender equality in line with international human rights law and policy frameworks across all governmental bodies.
<b>Principle 9.</b> Illustrative actions	States action to ensure the effective participation of women and women’s organizations before and during the negotiation of trade and investment agreements. Gender guidance and In
<b>Principle 11.</b> Illustrative actions	Business enterprises should: a) create an enabling environment for women to have access to all opportunities on an equal basis with men; b) take steps to support women workers in forming trade unions and taking up leadership positions in them; c) explore innovative ways to promote women’s rights and engage in advocacy to change discriminatory laws and social practices.
<b>Principle 16.</b> Illustrative actions	Business should adopt at the highest level a gender equality policy that is developed in a participatory manner, in meaningful consultation with women, women’s organizations, women human rights defenders and gender experts.
<b>Principle 17.</b> Illustrative actions	Business enterprises need to identify priority areas where risks of adverse impacts are most significant, this should be done with the participation of potentially affected communities, including women and women’s organizations.
<b>Principle 18.</b> Gender guidance	In identifying and assessing any actual or potential adverse human rights impacts, business enterprises should adopt a gender responsive approach, draw on gender experts, and conduct meaningful consultations with potentially affected women, women’s organizations (including grass-roots organizations) and women human rights defenders. Illustrative actions to this Principle provide that the presence of women’s organizations and/or trade unions in the consultation process may address the power asymmetry that generally exists between business enterprises and affected communities. Illustrative actions to Principle 20 require business enterprises to engage women, women’s organizations and local community groups to assess the effectiveness of their gender-transformative responses.
<b>Principle 19.</b> Illustrative actions	Business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes and to develop collaborative partnerships with women’s organizations.

Phase	Steps - actions taken
<b>Principle 24.</b> Illustrative actions	Business enterprises, where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, should ensure that any decision in prioritizing action is informed by the meaningful participation of potentially affected women and women’s organizations.
<b>Principle 25.</b> Illustrative actions	States should ensure the participation of women and women’s organizations in carrying out legislative, administrative or judicial reform to improve access to effective remedies for business-related human rights abuses.
<b>Principle 28.</b> Illustrative actions	Grievance mechanisms established by international financial institutions should take specific measures to make potentially affected women aware of those mechanisms, draw on input from women’s organizations, adopt a gender-responsive approach in all stages of the complaint process and recommend gender transformative remedial measures.
<b>Principle 29.</b> Illustrative actions	Business enterprises should ensure that potentially affected women, women’s organizations and women human rights defenders meaningfully participate in designing and administering operational-level grievance mechanisms. Moreover, the composition of bodies processing complaints should be gender-balanced.
<b>Principle 30.</b> Illustrative actions	The entire process of developing, and reviewing the effectiveness of grievance mechanisms established under human rights-related standards of industry associations, multi-stakeholder bodies or other collaborative initiatives should involve the participation of women representatives.

## GENDER-FOCUSED STAKEHOLDERS’ ENGAGEMENT ACROSS THE NAPS PROCESSES

The defined in the UNWG Report gender-based approaches to stakeholders’ engagement should also be used by duty-bearers and the right-holders all across the NAPs processes aimed at implementing the Guiding Principles. States should apply the gender framework and guidance in developing and revising all the relative initiatives and measures.

States should apply the gender-based approach when forming the inter-governmental bodies (steering committees/working groups) for NAPs processes. Gender ministries or gender focal points should be involved in the NAPs processes. As well, provided the multi-stakeholder bodies are established and guided by state institutions, the gender focus should be applied when mapping the stakeholders – members of such bodies.

When drafting and implementing NAPs, States and business enterprises should address gender-blind policies, laws and frameworks for accountability. States should advocate in the NAPs for gendered due diligence and impact assessments; gender-sensitive remedy frameworks; gender-inclusive value chains; gender-sensitive safeguarding frameworks; and gender inclusion in assessing the impact of investment, formulating trade and tax policies, among others.

Business enterprises should ensure meaningful participation of potentially affected women, women’s organizations, women human rights defenders and gender experts in all stages of human rights due diligence.

The DIHR Summary Report “Addressing the Gender Dimensions of Business and Human Rights” indicates that the NAPs consultations provide important opportunities for hearing the voices and responding to the issues raised by diverse groups of women – workers, business owners and community members; those from indigenous and other minorities and marginalized communities; those who own land and those who do not own land, migrants and so forth. It is recommended that consultations preferably are ongoing rather than a one-of exercise.

In addition to consulting with women directly, consulting gender experts and other civil society groups with experience in integration of gender into policy and those working directly with women can assist in ensuring relevant gender issues are adequately covered and responded to in the NAPs. Ensuring adequate financial and time resources to engage women and seek gender perspectives is important.

The NAP implementation phase should also provide for the gender-based stakeholders' engagement in order to ensure that gender considerations are clearly embedded, including through concrete and measurable action points and targets; as well as gender consideration as part of mandatory measures (mandatory human rights due diligence) proposed. It is necessary to foster collaboration between different stakeholders as a means of ensuring effective and efficient use of resources and expertise, including on gender, through networks and partnerships. Technical support for gender integration should be provided to stakeholders and rights-holders who need it<sup>472</sup>.

The UNWG determines that NHRIs, CSOs, trade unions, women's organizations, human rights defenders, lawyers, law firms, judges, journalists and academics should make use of the gender framework and guidance in their respective roles in promoting substantive gender equality and implementing the UNGPs. It is noted that agencies, organizations and foundations funding projects to support the dissemination and implementation of the UNGPs by States and/or businesses should explicitly integrate a gender perspective in such projects in line with the proposed gender framework and guidance.

The States' and business enterprises' engagement of women's organizations and all other relevant actors to ensuring systematic changes to discriminatory power structures, social norms and hostile environments, sensitisation, awareness raising among the society, appropriate programmes and well-resourced measures in the NAPs for empowering women and girls would work for elimination all forms of discrimination against women and achieve substantive gender equality.<sup>473</sup>

## NATIONAL PRACTICES OF GENDER-FOCUSED STAKEHOLDERS' ENGAGEMENT IN NAPs

The adopted NAPs address the gender perspective both from the angles of the specific topic and of the stakeholders' engagement. The following are the examples of the NAPs provisions on gender-based stakeholders' engagement<sup>474</sup>:

The Chilean NAP provides for the actions of the Ministry of Labour: to seek to increase the incorporation and participation of women in the labour market through programmes benefiting this group " Bonus to Reward the Work of Women", "Programme to Develop Labour Competences for Women", "Chile Solidario"; to promote and ensure the participation of women workers in trade unions; for The Ministry of Economy, Development and Tourism: to encourage the organisation of training and support for the effective exercise of gender parity at democratic representation bodies within cooperatives.

In Pillar II of the French NAP it is mentioned that regional business networks are committed to human rights, women's rights. These networks, which support multi-stakeholder dialogue and operations, develop tools and initiatives adapted to the needs of businesses (micro, small, medium and large enterprises) using cooperative approaches.

472 Addressing the gender dimensions of business and human rights: a summary report from three thematic gender learning exchanges on the digital transition, national action plans and feminist approaches. The Danish Institute for Human Rights, 2020. Pp. 16-17. URL: [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Addressing\\_the\\_Gender\\_Dimensions\\_of\\_Business\\_and\\_Human\\_Rights\\_2020\\_English\\_accessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Addressing_the_Gender_Dimensions_of_Business_and_Human_Rights_2020_English_accessible.pdf)

473 Gender Dimensions of the Guiding Principles on Business and Human Rights. Report. United Nations Development Programme (UNDP) and the United Nations Working Group on Business and Human Rights . p. 68-69. URL: <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>

474 What National Action Plans say on Gender and women's rights. URL: <https://globalnaps.org/issue/gender-womens-rights/>

In accordance with the Georgian NAP, the Ministry of Economy and Sustainable Development is responsible for creating an analytical expert group in order to strengthen women entrepreneurship, for creating and functioning platforms with interested parties' involvement.

In German NAP it is stated that the Federal Government actively supports the Women's Empowerment Principles and is committed to having as many enterprises as possible subscribe to them.

In Japan, the Act on the Promotion of Women's Participation, the NAP establishes the goal to continue efforts to realize decent work, including ensuring work-life balance that contributes to women's participation and advancement in the workplace. The Government has engaged in further promotion of women's participation in society by organizing the World Assembly for Women (WAW!).

Among the policy actions in the NAP of Kenya there is the development of procedural guidelines for use by businesses, individuals and communities in their negotiations for land access and acquisition; the guidelines will ensure and safeguard the participation of women, persons living with disabilities, youth, children and other marginalized groups. It is established that human rights impact assessments should involve meaningful consultation with potentially affected groups and other relevant stakeholders and include particular gendered impacts.

The Polish NAP with regard to implementation of Pillar II envisages the Increasing of women participation in corporate decision-making bodies. The NAP of Thailand foresees the task to review and develop mechanisms to manage natural resources and the environment by focusing on participation of all sectors, women and ethnic groups including.

Among the strategic objectives of the NAP of Uganda there is the review and enactment of laws ensuring meaningful consultations with vulnerable groups, such as women, persons with disabilities, indigenous persons, ethnic minorities etc.; to conduct community dialogue meetings with rights holders prioritizing women, youth, older on human rights compliance and accountability by business actors.

This modest mapping of the NAPs provisions concerning the gender policy and women participation in BHR through NAPs is based on the real lack of such objectives and actions foreseen in the NAPs. As the DIHR underlines in its Summary Report mentioned above, there has arguably been too little attention to gender issues in most BHR frameworks and initiatives, including the UNGPs, which has been noted by several actors, including the United Nations Working Group on Business and Human Rights in its 2019 Report on Gender Dimensions of the Guiding Principles on Business and Human Rights.

#### 2.5.4.4. FACTORS TO ENCOURAGE STAKEHOLDERS' PARTICIPATION IN THE NAP PROCESSES

The thorough study of the internationally established and recognised policy- and legal frameworks, experts' considerations, views and suggestions,<sup>475</sup> analysis of various practices of stakeholders' engagement in the NAP processes and beyond in different country contexts bring to consideration a number of factors, which would encourage the stakeholders of all categories.

As far as NAPs are the Government policy acts that are developed and implemented under the Government responsibility, much depends on States.

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<sup>475</sup> Data from the key-informant interviews, considerations from "Civil Society Participation in the Development of a Business And Human Rights National Action Plan in Peru". By Alvaro F. Amaya. The Danish Institute for Human Rights and Diakonia. July 2021 P. 21. URL: [https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/4/2021/09/A4\\_Peru\\_Civil-society-participation\\_EN\\_V4.pdf](https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/4/2021/09/A4_Peru_Civil-society-participation_EN_V4.pdf)

A set of factors to encourage stakeholders' participation in the NAP processes could be considered. Among them are the following:

1. The stakeholders should have trust in the NAP processes. States should have a positive equitable attitude towards all stakeholders without any discrimination or privilege (gender perspective should be regarded), respect and consider their opinions in the NAP processes and further on.
2. As the NAP processes involve different stakeholders with different interests, experience and positions, States should be neutral, apply human rights-based approach and ensure realization of the stakeholders' right to participate during the NAP processes and beyond.
3. It is important that States ensure the institutional stability of the NAP processes through commissioning a competent Government agency with authorities to lead the work in the professional and participative way. States should work with full and timely transparency and consistency and in a manner appropriate to stakeholders. The NAP processes, including the stakeholders' engagement, should be well-resourced.
4. It is important that States provide stakeholders with the possibility to join multi-stakeholders' bodies on BHR established by States or to create formats/platforms on BHR for collaboration themselves, when they are engaged in the NAP processes.

Sub-groups of stakeholders within multi-stakeholders' bodies/platforms can be useful as a space for sharing and strengthening specific BHR perspectives and approaches (gender-, minority-, disability-, age-based, etc.). This strengthens their participation and capacities; the diversity of capabilities, knowledge and skills amongst stakeholders is a positive feature.

5. Capacity-building of stakeholders on BHR is crucial for their informed and effective participation. Stakeholders' empowerment in BHR is important, as they are motivated to participate in those fields that they know well. When well-aware and trained in BHR, they feel more confident engaging in discussions and activities within the NAP processes.

States and relevant national or international donors should consider providing financial support to stakeholders from CSOs, at-risk, marginalized and far-established communities for their participation in capacity-building events and in activities of multi-stakeholders' bodies on BHR.

6. Participation of the powerful national human rights institutions and authoritative leaders as good-will ambassadors in the NAP processes encourage stakeholders' engagement, especially at the sub-national and local levels, and enhance the confidence for stakeholders' to participate in the BHR advocating and implementation in their contexts.
7. The stakeholders and States should benefit from the supportive role of international agencies, donors and cooperation partners, including the capacity building in the NAP process. It should be consistent with international standards and enhance trust in the NAP processes.

#### 2.5.4.5. INTERNATIONAL DIMENSION OF STAKEHOLDERS' PARTICIPATION IN BHR: VALUE AND FORMATS FOR STATES AND COMPANIES

Studies of country experiences of the UNGPs implementation have shown that NAPs have a significant value also for developing and strengthening regional and international frameworks and cooperation between stakeholders. NAPs raise opportunities for States and their Governments and other stakeholders from different countries to enhance their capacity via "cross-learning", "twinning"<sup>476</sup>, and training, via providing the technical support also.

476 See, for ex.: Working Paper on Advancing National Action Plans, Regional Action Plans, and Twinning on Women, Peace and Security prepared by the Civil Society Advisory Group to the UN on Women, Peace, and Security (2009). URL: <https://www.peacewomen.org/content/working-paper-advancing-national-action-plans-regional-action-plans-and-twinning-women-pea-0>, [http://www.peacewomen.org/assets/file/cso\\_advisory\\_group\\_naps\\_raps\\_and\\_twinning.pdf](http://www.peacewomen.org/assets/file/cso_advisory_group_naps_raps_and_twinning.pdf)

There are considerations on possibilities of building momentum for Regional Action Plans (RAPs) also in the result of development and adoption of a NAP by one State in a region. This would provide an opportunity for neighbouring States to share economic resources, experiences, and strategies going forward regarding the cross-border nature of business operations and relationships<sup>477</sup>. This perspective is proved by one of the interviewees involved in the study who informed that the adoption of the Thailand NAP – first one in Asia, encouraged many other Governments in the region to engage in similar efforts. Governments in India, Pakistan, Indonesia, Malaysia and Mongolia are working with the help of the UNDP offices on their own policy frameworks on the UNGPs to be launched<sup>478</sup>.

## STATES/GOVERNMENTS AS STAKEHOLDERS IN INTERNATIONAL FORMATS

A number of international formats and initiatives provide for States' engagement at the global and regional levels in the development and implementation of the human rights-based international policies and actions, on BHR including. They help States to consult and exchange with other States experiences and lessons learned from the implementation of the UNGPs, also in NAPs formats, to collect and share evidence of effective practices to establish concrete requirements for companies on the basis of the State duty to protect,<sup>479</sup> to adjust their policy priorities and integrate UNGPs into the national policy, law and practice.

### **The international and regional stakeholders' engagement in BHR with Governments' participation is provided (but not exclusively) by:**

- The UN Forum on Business and Human Rights, established by the UN Human Rights Council, provides a key global platform for stakeholder dialogue on how to increase the pace of implementation of the UNGPs by States, businesses and other actors. The Regional Forums on Business and Human Rights transfer its messages to States and stakeholders of Pacific, South Asia, Asia, Africa, Latin America and the Caribbean;
- IGWG – the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, mandated to elaborate an international legally binding instrument on business and human rights;
- Global Alliance of National Institutions for the Promotion and Protection of Human Rights (GANHRI) is one of the largest human rights networks worldwide. It represents more than 110 NHRIs – independent bodies, established by the state, with a broad constitutional or legal mandate to promote and protect human rights domestically. NHRIs ensure that States meet their international obligations and that all efforts are made to implement them at the national level. They are critical links between Government and civil society insofar as they address the 'protection gap' between the rights of individuals and the responsibilities of the State. The Edinburg Declaration (adopted by the Tenth International Conference of the International Coordinating Committee of 2010) emphasizes the important role NHRIs can play in addressing corporate-related human rights challenges, both as a body at the international level, at the regional level and individually at the national level;
- UN Women is the UN entity dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. It supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to ensure that the standards are effectively implemented and truly benefit women and girls worldwide;

477 National Action Plans on Business and Human Rights. A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks. The Danish Institute for Human Rights (DIHR), The International Corporate Accountability Roundtable (ICAR), June 2014. p. 17. URL: [https://media.business-humanrights.org/media/documents/files/documents/DIHR\\_-\\_ICAR\\_National\\_Action\\_Plans\\_NAPs\\_Report.pdf](https://media.business-humanrights.org/media/documents/files/documents/DIHR_-_ICAR_National_Action_Plans_NAPs_Report.pdf)

478 Data from a key-informant interview.

479 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the UN Human Rights Council Twenty-third session. A/HRC/23/32 of 14 March 2013 (par. 71 (e)), p. 21. URL: <https://undocs.org/A/HRC/23/32>

- EU Fundamental Rights Forum, established by the EU Agency for Fundamental Rights, is a platform for the dialogue about human rights challenges that Europe faces today. The Forum unites politics, business, trade unions, civil society, the arts and sports;
- High Level Group on Corporate Social Responsibility of the EU Member States' representatives, established by the European Commission, is a mechanism for the European Commission to sound out Member States on its own initiatives. It meets every six months to share different approaches to CSR and encourage peer learning. The high-level is also a focus of major dissemination events;
- Steering Committee for Human Rights mandated by the Council of Europe Committee of Ministers unites representatives of Governments of all 47 CoE Member States and provides for dialogue on possible actions by the CoE, including possibilities for standard-setting work and higher engagement with private business actors, to support an enhanced understanding and full protection of human rights by businesses. The CoE Committee of Ministers Recommendation 2016(3) on human rights and business, drafted by this Steering Committee, provides guidelines on how to implement the UNGPs at the European regional level. The CoE Online Platform for Human Rights and Business provides a comprehensive overview of the actions taken;
- Organization for Economic Co-operation and Development (OECD) works together with governments, parliaments, international organizations, business and labour, civil society, as well as citizens from across the globe on establishing evidence-based international standards and finding solutions to social, economic and environmental challenges. It provides a particular forum and knowledge hub for data and analysis, exchange of experiences, best-practice sharing, and advice on public policies and international standard-setting. The OECD Guidelines for Multinational Enterprises are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting and, thus, implementing its Chapter IV. Human Rights. The Chapter sets out the framework for recommendations concerning enterprises' respect for human rights. It draws upon the UN Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the UNGPs for its Implementation;
- OECD Working Party on Responsible Business Conduct promotes RBC worldwide. It includes the 48 countries that have adhered to the Guidelines, – 36 OECD member countries, as well as Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Kazakhstan, Morocco, Peru, Romania, Tunisia, Ukraine and the EU, and works closely with stakeholders from business, workers' organisations and civil society;
- OECD Global Forum on Responsible Business Conduct (RBC) is the annual flagship OECD event on RBC. The Forum is a leading event for governments, businesses, trade unions and civil society to promote international dialogue on RBC and contribute to the effective implementation of the OECD Guidelines for Multinational Enterprises;
- International Organization for Standardization (ISO) is a global network of national standards bodies. ISO 26000:2010 provides guidance for social responsibility, helps organizations and businesses translate principles into effective actions and shares best practices relating to social responsibility, globally. ISO 26000 can help organizations wishing to implement the OECD Guidelines for Multinational Enterprises;
- International Association for Public Participation (IAP<sup>2</sup>) unites members from governments, industry, civil society organizations, universities, and more. They are involved in the public participation process by supporting citizens, clients, and colleagues for improved decision-making and best practice promotion;
- others.

Many multi-stakeholder bodies and initiatives of the international level – global and regional, can guide and help Governments hold and develop the stakeholders' engagement with the aim to realize the UNGPs. Irrespective of the level, the underlying objective of such multi-stakeholder bodies and initiatives is dialogue to support the policy-, law- and decision-making, as well as networking. Their activities are based on the UN, ILO, EU, OECD, CoE and other relevant international norms and standards on human rights-based business conduct.

## COMPANIES AS STAKEHOLDERS IN INTERNATIONAL FORMATS

Taking direct action to address human rights issues through the stakeholders' engagement at the national and local levels, the companies should benefit from partnerships with other companies, labour and civil society organisations and SCOs, as well as multinational initiatives, in order to take opportunities to increase their positive impact. By drawing on the research, access, expertise and scale of stakeholders and partners, companies can learn more, make better decisions and drive change faster.

### **Key collaborations – multi-stakeholders' initiatives for companies' engagement that drive the UNGPs and the SDGs are:**

- UN Global Compact – a voluntary initiative of the UN Secretary General calling the companies to commit to respect human rights, to implement 10 universal sustainability principles and take steps to support the UN SDGs. It unites almost 15000 companies from 162 countries;
- ILO – Multinational Enterprises and Enterprise Engagement Unit (MULTI);
- World Economic Forum (WEF) is the International Organization for Public-Private Cooperation. It engages the foremost political, business, cultural and other leaders of society to shape global, regional and industry agendas with Global Future Councils on: Human Rights; Equity and Social Justice; Future of Work; Transparency and Anti-corruption;
- OECD Global Forum on Responsible Business Conduct (GFRBC) is the annual flagship OECD event to debate the key global social and economic challenges related to RBC, the leading event for governments, businesses, trade unions and civil society to promote international dialogue on RBC and contribute to the effective implementation of the OECD Guidelines for Multinational Enterprises;
- International Organization of Employers (IOE) is the largest global network of the private sector. It is the sole representative of business in social and employment policy debates taking place in the ILO, across the UN, G20 and other emerging forums;
- International Corporate Accountability Roundtable (ICAR) is a coalition of 40+ member and partner organizations committed to ending corporate abuse of people and the planet. It advocates for protections and strong enforcement of the law to protect the public by enacting safeguards against corporate abuse, including those who speak out against corporate wrongdoing, and combating the rise of the corporate state;
- Consumer Goods Forum (CGF) with its Social Sustainability Committee, Human Rights Coalition – Working to End Forced Labour and the Sustainable Supply Chain Initiative (SSCI);
- AIM-PROGRESS – a multi-stakeholder initiative to promote responsible sourcing practices and sustainable supply chains for fast-moving consumer goods (FMCG) manufacturers with common suppliers;
- EU Multi-stakeholder forum (MSF) on corporate social responsibility brings together employers, employees, NGOs, academics and socially-responsible investors every two years to update each other on their CSR activities and to discuss further steps for the EU in encouraging more CSR take-up;
- European Corporate Social Responsibility Alliance is a European Commission partnership initiative guided by the ambition to make Europe a Pole of Excellence on CSR in support of a competitive and sustainable enterprise and market economy. It is launched with members of the business community and support from business organisations such as BusinessEurope, SMEunited (formerly called UEAPME) and CSR Europe.;
- CSR Europe is the European Business Network for Corporate Sustainability and Responsibility, a Platform of 10.000+ Enterprises;
- Business for Inclusive Growth (B4IG) working on building an inclusive recovery; Inclusive sourcing; and Impact measurement;

- Alliance for Corporate Transparency brings together civil society organisations working on critical sustainability issues with the objective of improving the EU legal framework for corporate sustainability reporting and developing mandatory EU standards;
- Interfaith Center on Corporate Responsibility (ICCR) – a coalition of over 300 global institutional investors, pioneered to use of shareholder advocacy to press companies on environmental, social, and governance issues;
- Investor Alliance for Human Rights – a membership-based, non-profit initiative of ICCR focusing on the investor responsibility to respect human rights, corporate engagements that drive responsible business conduct, and standard-setting activities that push for robust business and human rights policies;
- Extractive Industries Transparency Initiative (EITI) implementing the global standard to promote the open and accountable management of extractive resources;
- Corporate Human Rights Benchmark (CHRB) assessing the human rights disclosures of 230 global companies across five sectors identified as presenting a high risk of negative human rights impacts), etc.
- Oxfam International privately funded international organization that provides relief and development aid to impoverished or disaster-stricken communities worldwide; etc.

Strong multi-stakeholders' initiatives (MSIs), which bring together companies, civil society groups, and labor unions in order to set and enforce labor standards, in supply chains including, are critical for the implementation of mandatory human rights due diligence (mHRDD) by Governments around the world and supranational bodies, like the European Union, that have the power to set and enforce adequate labor standards, and the responsibility to do so.

#### 2.5.4.6. CONCLUDING REMARKS

1. The stakeholders' engagement is a decisive factor of any democratic decision-making and a beneficial policy component of modern business activities. Such a combination of dual characteristics makes stakeholders' engagement a cross-cutting issue of the UNGPs' implementation. It is equally critical for realization of the State duty to protect human rights from the business-related abuses and for business enterprises' responsibility to respect human rights, and for both the duty-bearers – to provide access to remedies.
2. The OHCHR defines the stakeholder engagement or consultation in the context of BRHR as "an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches".<sup>480</sup>
3. Broad collaborate, empowering and meaningful stakeholders' participation is essential for fostering greater transparency, effectiveness, trust and ambition in the UNGPs implementation. It is a tool to apply the participatory and human rights-based approach, leave no one behind in BHR and ensure accountability of duty bearers (States and business enterprises).
4. The UNGPs highlight the importance of stakeholders' participation in corporate human rights due diligence (Principle 18) and for the non-judicial mechanisms adopted to ensure access to remedy to victims of business-related human rights violations (Principle 31.h).
5. Good practice proves that stakeholders' engagement in BHR can take various forms (forums, public meetings, dialogue events, consultations (incl. written), workshops, focus group discussions, stakeholder assessments, surveys, e-discussions, Internet platforms, web pages and blogs, etc.), it serves to identify

480 OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide', 2012, p. 8, URL: [https://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf)

and understand human rights risks, test and get feedback on actions being taken, and remedy negative impacts.

6. In many countries stakeholders' engagement is an integral component of steps and actions taken in the NAP processes. It is recommended by the UNWG on every of the 5 phases – initiation, assessment and consultations, drafting of initial NAP and consulting on it, implementation (incl. monitoring and reporting), update (incl. evaluation of the NAP's results, identification of new priority areas, consultations on a new draft NAP).
7. Good national practice of NAP's implementation provides for establishing of a multi-stakeholder body (a working group or an advisory committee) in the initial phase of the NAPs' processes as an effective mechanism to ensure the meaningful stakeholders' input and support to Government. Such a body could be a mixed one and include representatives of relevant ministries and of stakeholders, being guided by a lead Government agency. Another applicable approach is the establishment of a separate non-governmental multi-stakeholders body being guided by a NHRI.
8. For better results, a particular range of stakeholders, engaged in NAP's processes, should be carefully mapped at the start; participation of business, local CSOs, especially representing at-risk and vulnerable communities is a must; gender perspective should be duly regarded.
9. Specific concern shall be focused on the stakeholders' engagement in regard to protecting human rights of people living on the conflict-affected territories, women and girls including, on supporting business to respect for human rights of these people.
10. Good practice of stakeholders' engagement advocates for the necessity to empower them with specific knowledge on BHR and to provide resources for their participation in multi-stakeholder bodies and other events held in the course of the NAP's processes.
11. Good practice of business enterprises on stakeholders' engagement provides for the community feedback mechanisms that allow receiving, quickly tracking and responding to questions and complaints from community members, design better projects, comply with social and environmental regulations and align with international standards established by the UNGPs, World Bank and other international financial institutions.
12. Efficient stakeholders' participation, as proved by national practices, is conditioned by a number of factors:
  - People's trust in the NAP processes;
  - Neutrality of States towards interests, experience and positions of stakeholders and application of the human rights-based approach;
  - Institutional stability of the NAP processes;
  - Functioning of multi-stakeholders' bodies on BHR or platforms for collaboration;
  - Stakeholders' empowerment in BHR;
  - Participation in multi-stakeholders activities of NHRIs (in Ukraine – the Parliamentary Commissioner for Human Rights), and/or authoritative leaders (incl. as good-will ambassadors) and/or CSOs;
  - Supportive role of international agencies, donors and cooperation partners.
13. The gender perspective of stakeholders' engagement in BHR, as recommended by the UNWG<sup>481</sup>, should be integrated into all NAPs processes and in every phase to ensure the principles of equality and non-discrimination in the systemic UNGPs' implementation. The current practice demonstrates that there has arguably been too little attention to gender issues in most BHR frameworks and initiatives.

481 Gender Dimensions of the Guiding Principles on Business and Human Rights. Report. United Nations Development Programme (UNDP) and the United Nations Working Group on Business and Human Rights. URL: <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>

14. International dimension of Governments, business and CSOs as stakeholders' participation in BHR has a significant value for developing and strengthening regional and international frameworks and cooperation between stakeholders, to enhance their capacity via "cross-learning", "twinning", and training, via providing the technical support. It promotes the advanced decision-making in BHR at the international, regional and national level.

There are considerations on possibilities of building momentum for Regional Action Plans on BHR (RAPs) also in the result of development and adoption of a NAP by one State in a region.

15. Strong multi-stakeholders' initiatives (MSIs), which bring together companies, civil society groups, and labor unions in order to set and enforce labor standards, in supply chains including, are critical for the implementation of mandatory human rights due diligence (mHRDD) by Governments around the world and supranational bodies, like the European Union, that have the power to set and enforce adequate labor standards, and the responsibility to do so.
16. The multi-stakeholders' initiatives in BHR should be actively developed and supported in Ukraine in order to implement the UNGPs, reach the SDGs, to become a reliable EU partner and an advanced actor of the BHR-oriented global market.

#### 2.5.4.7. RECOMMENDATIONS AND SUGGESTIONS

1. Ukraine needs more experience in telic stakeholders' engagement into its policy-, law- and decision-making to fulfil its commitments under the UN, ILO, CoE treaties on HR, the UNGPs, 2030 UN Agenda for Sustainable Development, OECD and OSCE soft law. This equally concerns the core international agreements like the EU-Ukraine Association Agreement, trade and investment agreements, whereas Ukraine is considered "a supply chain" for the European business and multinational enterprises. Such core international agreements besides the economic benefits of cooperation introduce the rule of law and human rights values, in order to implement the human-rights based approach in public and business relations.
2. The prospective stand-alone Ukrainian NAP as a complex strategic document should provide for the objectives and tasks to promote and implement the BHR framework in a participatory way through the effective stakeholders' engagement.
3. Its specific concern should be focused on the stakeholders' engagement in regard to protecting human rights of people living on the conflict-affected territories, women and girls including, on supporting business to respect for human rights of these people.
4. Awareness-raising on UNGPs, role, methods, forms and practice of stakeholders' engagement in implementation of the UNGPs, boosting cross-stakeholder familiarity and trust could be a decisive factor for Ukraine's new "social agreement" and drive progress in its social development and sustainable economic growth. A campaign should addressed to different stakeholders – both the rights-holders and duty-bearers (state and business), vulnerable groups of stakeholders should be reached in a proper way.
5. Establish a multi-stakeholder body responsible for the NAP's processes (a National Steering Committee on HBR or a Working Group on BHR) at a Vice-Prime-Minister level or at the Ministerial level, ensure a continued focus on the NAP, guarantee a gender perspective in the NAP's processes.
6. Enhance and support the activities of the Parliamentary Commissioner for Human Rights (the Ukrainian NHRI), including its Inter-sectoral Platform on BHR aiming to ensure the proper multi-stakeholders' engagement in the NAP's processes, guarantee a gender perspective in the NAP implementation.

# ANNEXES

## ANNEX A.1. RESEARCH METHODOLOGY

### i. Methodology for Rights holders; Sector and Market and BHR lessons learnt study

#### Scope and aim of the studies:

The proposed research plan provides outlines for: (1) Rights holders study; (2) Sector and Market study; (3) BHR lessons learnt study. Best practices study will be developed by a separate team. The issue of communication of our teams will be covered in the relevant section of this methodology.

#### (1) RIGHTS HOLDERS STUDY/STUDIES

##### Scope and aim of the study:

- to complement the National Baseline Assessment (NBA) of 2019 based on qualitative baselines on the rights holders' barriers to realize human rights, in particular to obtain a decent job where their human rights and labour rights are respected, and to access remedies to protect human rights in cases of business related abuses;
- to analyse barriers and opportunities for rights holders, This should be illustrated with examples and include answers to questions, such as: (1) Which sectors are likely not to respect human rights due diligence or exploit vulnerable workers and what are the reasons for this? (2) Why are people opting to work in the informal sector and how can we ensure that rights are also respected in the informal or "grey" sector? (3) Why are some rights holders not able to enter the job market?;
- to map and analyse already existing studies/research undertaken by e.g. academia, ILO, think tanks, academia or key experts in Ukraine;
- to provide concrete recommendations on how to advance the Business and Human Rights agenda in Ukraine, including strategic entry points.

#### (2) SECTOR AND MARKET STUDIES

##### Scope and aim of the studies:

- to identify gaps/needs/challenges for enterprises adhering to "responsible business conduct" and assess where there may be particular prospects for decent jobs and sustainable growth. In addition to this overall sector assessment, the study ICT, retail and agricultural sectors in-depth;
- to present options on how companies may be able to scale up their business operations while respecting human rights (and environmental protection), due diligence, and implementing the UNGPs;
- to identify market and investment opportunities for business enterprises (both larger but also SMEs) that are ready to adhere to "responsible business conduct" considering an international trade dimension and further export and trade with e.g. the EU to stimulate and accelerate their growth whilst at the same time adhering to the UNGPs, and the future requirements from EU investors.

A maximum of 10-15 recommendations from studies 1) – 2) to inform future directions of a long-term UNDP project and the development of this topic, comprehensive measures aimed at eliminating the identified gaps, and regarding the various categories of rights holders' representatives (women, men, youth, skilled, unskilled, marginalized, etc.) working in various sectors, ensuring that no one is left behind.

### (3) BHR LESSONS LEARNT STUDY

#### Scope and aim of the study:

- to map and analyse BHR lessons learned in Ukraine – building on lessons from the UN Global Compact Network and on lessons from other relevant actors (e.g. OECD National contact point, European business association etc.);
- to map and synthesize the positive studies and opportunities and explore options on how to build on these for the implementation of the UNGPs;
- to explore options on how to build on lessons learned and best practices for the implementation of the UNGPs in Ukraine (from the perspectives of policy coherence and business conduct).

The study will be complemented with the stakeholders' mapping and analysis. The aim of the component is to identify and map key stakeholders to target the awareness raising of the UNGPs: duty bearers (government); key businesses and business associations; CSOs; rights holders; media; academia.

Based on the stakeholder analysis, a series of stakeholder consultations and/or workshops will be organised.

The results of the study will be a comprehensive stakeholder mapping, analysis and overview of lessons learned in Ukraine which will be presented at a multi-stakeholder meeting.

**Timeline:** The research will be carried out according to the timeline presented below:

#### 1. INCEPTION PHASE: (01.10.2021 – 25.10.2021)

At this stage, the following tasks are expected to be performed:

- 1.1. Identification, discussing, and finalizing the approach and methods of the research, incl. the use of the sociological company support, detailed working plan, list of respondents for key informant interviews and focus group discussions, preliminary structure, and the list of questions for these activities.
- 1.2. Identification and mapping of all key duty bearers (government), key businesses and business associations and CSOs and rights holders, media and academia to target for the awareness raising of the UNGPs.
- 1.3. Conduction of background/desk research, mapping, and analyzing already existing studies in Ukraine (*annex A*) as well as sector, market and trade analyses from a B+HR lens, the gaps, needs and opportunities to provide up-to-date accurate qualitative data and complement the National Baseline Assessment on B+HR of 2019 (NBA).
- 1.4. Conducting the first round of key informant interviews, 20 interviews with representatives of target market sectors and business association, investors, human rights defenders, trade unions and CSOs that work with right-holders, e.g.:

Team 1: Rights holders study/studies

- Fight for Right <https://eng.ffr.org.ua/treninhy-konsultatsiyi-dlya-biznesu> (people with disabilities)
- Yurfem (women rights)
- Public Alternative
- NGO Sphera (LGBTIQ)
- Antonina Bondarenko, starosta of the Denezhnikove and Spivakivka villages of the Novoaydar rural territorial community of the Schastyinsky district of the Luhansk region, founder of the Novoaydar District NGO "Rural Women Society "Akacia" (an organization of rural women who work near the contact line, including dealing with employment issues));
- Natalia Karbowska, ICF "Ukrainian Women's Fund";
- Larysa Bychkova, Director of the NGO "East Donbas Regional Development Agency" (Severodonetsk, Luhansk region), consultant and coordinator of the All-Ukrainian Agrarian Rada in Luhansk and Donetsk regions, former Head of the Department of Agroindustrial Development of the Luhansk Regional State Organization.
- Natalia Bezeleva, Head of the CF "Svitanok" (focused on the rights of people living with HIV, people who use drugs, including their economic and labour rights);
- Oleksandr Voroshkov, advisor on IDPs in Donetsk Oblast, representative of Donetsk Oblast center for social services, CoE's expert, NGO Kramatorsk-SOS coordinator

Team 2: Sector and Market studies

- Andryy Lytvyn, Acting Director of the State Institution "Entrepreneurship and Export Promotion Office";
- Tatyana Saharuk, Executive Director of UN Global Compact Network in Ukraine;
- Svitlana Mikhaylovska, Deputy Director of the European Business Association;

- Andy Hunder, President of the American Chamber of Commerce in Ukraine;
- Olena Voloshyna, Head of the International Finance Corporation (IFC) in Ukraine;
- Alina Sokolenko, Head of the Association of Sustainable Development Experts, director of the consulting company's groups;
- Nataliia Zabrudska, Ukrainian Chamber of Commerce and Industry;
- Vitaliy Sedler, President of IT Association Ukraine, CEO Intellias;
- Yuliya Bereshchenko, Business development and IR director at Astarta-Kyiv;
- Marta Trush, HR director at Auchan Retail Ukraine;
- Natalia Koliadko, HR director at EPAM Systems Ukraine;
- Roman Slastyona, General Director of the Ukrainian Agrarian Business Club Association;
- Oleksandra Gnatik, Head of PR & Media Communications at EVA.

Processing of data obtained during interviews with periodic discussions of intermediate results at coordination meetings of experts and UNDP representatives. Reporting to the UNDP on the key findings (25.10.2021).

- 1.5. Writing the detailed inception report with methods, approach, key observations and tentative findings from the inception phase (up to 15 pages) and presenting it at an online validation workshop before the UNDP Ukraine team and the IRH.

## **2. DATA COLLECTION AND ANALYSIS, FIELD PHASE AND VALIDATION (26.10.2021 – 30.11.2021)**

- 2.1. Adjustment of the structure, methods, and approaches to the study following the feedback received at the online validation workshop.
- 2.2. Participation in the discussion of the methodology for conducting focus groups and surveys with key right-holders and market actors, which will be carried out by representatives of the organization engaged in sociological research.
- 2.3. Conducting focus groups, in-depth key informant interviews and validation/tri-angulation interviews following the sociological surveys and focus groups under the selected and approved methodology and the list of respondents with possible field mission:

### **2.3.1. Conducting focus groups and in-depth key informant interviews under the selected and approved methodology and the list of respondents (01.11.2021 – 30.11.2021)**

The focus groups and in-depth key informant interviews will be held with the assistance of the sociological company.

The Team 1 and Team 2 will:

- 1) Design focus group screeners and guides;
- 2) Design of in-depth interview guides;
- 3) Complement the sociological company deliverables, analyse and validate the data (as this is collected) and triangulate the observations / findings during the data collection phase.

The sociological company will:

- 4) Contribute to the design of focus group questions and facilitate and guides the focus groups (in cooperation expert teams / and following expert teams' instructions/guidance);
- 5) Following expert teams' selection invite participants for up to 20 focus groups;
- 6) Decrypt the 20 focus group discussions;
- 7) Contribute to the design of in-depth key informant interview questions and conduct up to 20 key informant interviews (in cooperation with expert teams and following their instructions/guidance);
- 8) Following expert teams' selection of key informants / experts invite participants/key informants for these interviews;
- 9) Decrypt the entries of 20 in-depth key informant interviews mentioned and to transfer them in audio and in text formats (in Ukrainian) to the expert teams.

The deadline for the sociological company deliverables is 15 November, 2021.

### 2.3.2. Conducting sample surveys of companies through dissemination of the questionnaire to key business associations and associations of selected industries (01.11.2021 – 15.11.2021)

The questionnaires will be disseminated through:

- a) three major business associations in Ukraine, namely the European Business Association (<https://eba.com.ua/>), the American Chamber of Commerce in Ukraine (<https://chamber.ua>), and the Union of Ukrainian entrepreneurs (<https://sup.org.ua>);
- b) three associations of selected industries.

The aim of the surveys is to get an overall picture that will complement the NBA 2019 and understand the awareness of RBC and if businesses know about the UNGPs or refer to other principles e.g. ESG, Global Compact, CSR, SDGs or not at all.

The surveys will identify whether companies are aware about UNGPs and do they have 1) BHR principles in place, 2) do they do HRDD, and 3) do they have a grievance mechanism in place.

Working tasks:

- ▣ developing the questionnaire on BHR and responsible business conduct to get the business insights on the issues (*annex B*);
- ▣ communicating with three major business associations in Ukraine, namely the European Business Association (<https://eba.com.ua/>), the American Chamber of Commerce in Ukraine (<https://chamber.ua>), and the Union of Ukrainian entrepreneurs (<https://sup.org.ua>), with the aim to disseminate questionnaire on BHR and responsible business to get the business insights on the issues;
- ▣ communicating with three associations of selected industries with the aim to disseminate questionnaire on BHR and responsible business to get the business insights on the issues;
- ▣ processing of data obtained during surveys with periodic discussions of intermediate results at coordination meetings of experts and UNDP representatives.

### 2.3.3. Conducting consultations with duty bearers (government) (November, 2021)

3-5 interviews with the duty bearers to explore options on how to build on lessons learned and best practices for the implementation of the UNGPs in Ukraine from the perspectives of policy coherence.

Processing of data obtained during consultations and preparing summaries of key findings.

## 3. REPORTING PHASE (30.11.2021 – 20.12.2021)

- 3.1. Preparing the final report, taking into account the feedback received at the validation workshop during the previous phase.
- 3.2. Debriefing of the key findings and recommendations.
- 3.3. Updating and finalizing the final report in accordance with the feedback received from UNDP.
- 3.4. Preparation and holding of a public presentation at a multi-stakeholder event.

## 4. TEAMWORK, COORDINATION AND QUALITY ASSURANCE:

As the time of implementation is shorter, close teamwork and coordination is key. This said, there are more researchers involved as well as the team is supported by the research assistant, Olena Mytmyk, the UNDP BHR team (overall peer review by Nicolaj Sonderbye) and a sociological company)

The researchers involved in the project will hold regular weekly meetings to ensure exchange of findings and discuss key issues, as well as to monitor progress and to be able to identify any issues that might affect the timely delivery of work, in case they arise. A shared working space on Google disk has been created to support collaborative work among the team.

Nicolaj Sonderbye and Olena Mytnik will also hold a weekly status meeting. Olena Mytnik will also report on a weekly basis (every Thursday cob, starting from 14/10) on the overall progress to UNDP and ensure coordination between the research studies, the sector/market studies and the two researchers contracted for the best practice studies.

Starting from 20/10, the teams will hold a bi-monthly meeting with UNDP where each team will report on their progress and work deliverables. The best practice team will also be invited for this meeting to report on their progress and to ensure coherence.

## 5. DATA COLLECTION METHODS

### 5.1. Desk research covers:

- Update and create a list of groups of key rightsholders and market actors, as well as mapping the most important stakeholders;
- Mapping of major publications and initiatives on the BHR issue in Ukraine, as well as foreign publications, reports, other research, and communications related to Ukraine;
- Review of the Ukrainian legislation, policies, strategic and program documents, companies' sustainability reports and websites, jurisprudence connected to the business and human rights issues, CSOs reports on human rights. The primary attention will be paid to the national-level documents adopted within the 2019 – 2021 years. The lower-level documents (region and community) will be investigated selectively based on their availability and applicability to the topic of the research;
- Mapping and analysis of IT, agricultural and retail sectors, the gaps, needs and opportunities, market and trade analyses from a B+HR lens, market and investment opportunities analysis for business enterprises (both larger but also SMEs) that adhere to responsible business conduct;
- Mapping and analysing BHR lessons learned in Ukraine – building on lessons from the UN Global Compact Network and on lessons from other relevant actors (e.g. OECD National contact point, European business association etc.);
- Mapping and synthesizing the positive studies and opportunities and explore options on how to build on these for the implementation of the UNGPs.

### 5.2. Survey of business associations includes

- developing the questionnaire on BHR and responsible business conduct to get the business insights on the issues (*annex B*);
- communicating with three major business associations in Ukraine, namely the European Business Association (<https://eba.com.ua/>), the American Chamber of Commerce in Ukraine (<https://chamber.ua>), and the Union of Ukrainian entrepreneurs (<https://sup.org.ua>), with the aim to disseminate questionnaire on BHR and responsible business to get the business insights on the issues;
- communicating with three associations of selected industries with the aim to disseminate questionnaire on BHR and responsible business to get the business insights on the issues:
  - **IT sector** – IT association in Ukraine <https://itukraine.org.ua/>,
  - **retail sector** – The Association of retailers of Ukraine <https://rau.ua>,
  - **agricultural companies** – The Ukrainian agribusiness club <https://ucab.ua/en/>.

The three sectors were selected based on their role in the country's development in the COVID-19 pandemic and export capacity, as well as the informal employment status. The IT sector, being the second largest industry in Ukrainian exports with growing tax revenue in 2014–2017 by 27% per year (according to [Ukrainian IT Industry: Analytical Report](#)) has invested millions of dollars in country recovery. Retail and pharma are two sectors which prospered under the Covid times selling essential goods for citizens. According to the Ukrainian State Statistics Service, Ukraine's retail trade turnover in 2020 was UAH 1,202 billion (\$45 billion), 10 % growth compared to 2019. Regarding agriculture sectors, it was severely hurt by the pandemic, but still remains the most promising sector of the economy and generated in 2020 approximately [9.3% of GDP](#). Regarding informal employment, the statistics demonstrate that the highest number of informal employed people are in the agricultural sector (first place) and retail (4th place).

Within the selected industries companies will be chosen as well. Selection of companies will be based on the TOP-400 list of Ukrainian business entities with the biggest revenue in 2020. Companies will be ranked by their income in 2020 and included into 3 groups according to selected industries. Each group will consist of up to 5-10 businesses that are market leaders in Ukraine (*annex F*). Selected companies will be invited to fill online questionnaires and participate in focus-groups discussions and in-depth interviews. Also it is planned to engage companies through business associations to participate in the research.

Such an assessment could have an international trade dimension and look at e.g. the market from the EU and the new and perhaps growing trends on mandatory human rights due diligence. This activity could be very useful for businesses and stimulate and accelerate their implementation of the UNGPs and will be addressed by a social research company via additional FGDs and IEs, and by the IC researchers in the development of narrative.

### 5.3. Focus groups with the representatives of the key rights holders and market actors (at least 20 focus groups).

The target participants are:

- employees from identified sectors of economy (ICT, agricultural and retail sectors);
- representatives of business associations and corporate sector;
- representatives of international development partners and investors;
- representatives of vulnerable groups (employees with family responsibilities, persons with HIV, persons with disabilities, LGBTIQ; Roma, internally displaced persons);
- human rights defenders;
- Trade Unions;
- CSOs that work with right-holders.

At least 6 people will be interviewed in each focus group. It is highly recommended to achieve the representation of women and men in focus group discussions not falling below 40% as a parity threshold, as well as to ensure engagement of both youth (up to 35 years) and elder participants. Gender related questions will be integrated in focus-group guides.

The duration of each focus group is not more than 2 hours. If it is impossible to gather a full focus group, additional interviews are provided. It is also possible to conduct 4-5 interviews with underrepresented vulnerable groups, if necessary. The focus groups will be conducted in collaboration with a sociological research company.

### 5.4. Key informant interviews with human rights defenders, trade unions and CSOs (at least 20 interviews).

The list of human rights defenders, trade unions and CSOs to be interviewed at national, regional, and local levels.

### 5.5. Key informant interviews with companies represented the target market sectors (at least 15 interviews – 5 representatives from 3 target sectors)

The target participants:

- CSR, HR and Compliance managers of big Ukrainian companies working in ICT, agricultural and retail sectors;
- representatives of business associations;
- representatives of international institutions supporting business development;
- investors.

All interviews will be conducted by phone or through IT services (zoom, Skype, Microsoft Teams). In case of a favorable sanitary-epidemiological situation, it is possible to conduct a number of face-to-face key informant interviews.

### 5.6. Consultations with duty bearers (government)

- Vice Prime Minister for EU integration
- Ministry of Environmental Protection and Ministry of Energy to explore political will and as it may be interesting to explore the linkages between BHR and the EU green deal, and climate change adaptation, environmental protection.
- other governmental agencies in charge of BHR issues

## 6. ESSENTIAL ASPECTS OF THE RESEARCH:

- **International human rights as benchmarks:** International human rights standards and principles constitute the basis and benchmarks for the research. The questionnaire and interviews will be based at minimum on the International Bill of Human Rights and the International Labour Organization (ILO) Core Labour Conventions, as well as other human rights instruments as relevant in the particular market sector context or in the context of conflict affected territory.
- **Human rights-based process:** The research process itself needs to respect human rights by paying particular attention to human rights principles such as non-discrimination, participation, empowerment and transparency.
- **Focus on accountability** including transparency, access to information and access to remedy: The research process and content need to emphasise accountability, including by recognising the entitlements of rights holders to have their rights respected and the corresponding duties and responsibilities of duty-bearers to uphold and respect these rights. The broad range of rights-holders will be engaged in the research, including workers and community members, representatives of the different vulnerable groups. Interviews and focus groups will involve women and men, including through gender-responsive engagement methods as necessary. The steps will be taken to ensure that the modes of engagement and participation address any barriers that may be faced by vulnerable and marginalised individuals (e.g., by offering transport or holding meetings in appropriate locations) etc.

## ii. Methodology for Business and Human Rights International Best Practice study

### Scope and aim of the study:

International best practices study aims to map and analyse available international models of successful implementation of BHR (including UN support), including:

- international best practices and lessons learnt of key stakeholders' engagement in BHR at the global level;
- practices of a National Action Plan (NAP) as a stand-alone document and its process (e.g. the involvement and steering of a NAP process; what is to be expected from a ministry to lead and guide such a process in a meaningful and participatory manner and to ensure a coherent coordination with all relevant stakeholders (resort ministries, businesses, labour associations, CSOs, academia, human rights defenders, lawyers, judiciary, the Ombudsperson's Office etc.). Practices of at least five countries shall be analysed with at least three of them EU;
- best practices for business (incl. for state-owned companies) on practices and procedures respecting BHR and identifying suggestions for targeted interventions in Ukraine. Specifically this will include an analysis of the latest EU proposal on mandatory human rights due diligence directive (if adopted), and what impact it may have on Ukraine's corporate sector collaborating with large EU companies;
- international best practice of effective redress incl. grievance mechanisms used by businesses that can be applicable for Ukraine;

### Expected result:

- to recommend concrete and operational interventions that will inform UNDP's programming, incl. on elaboration of a National Action Plan (NAP) as a stand-alone document;
- to contribute to implementation of the Action plan for the new National Human Rights Strategy in Ukraine.

The study will explore options on how to build on lessons learned globally and international best practices from the three pillar themes and from countries that may be particular relevant for Ukraine and for its adherence to responsible business conduct and the UNGPs.

### 1. INCEPTION PHASE AND PRELIMINARY OBSERVATIONS (10.10.2021 – 30.10.2021)

- 1.1. Conduct a kick-off meeting with UNDP to discuss and agree on the approach and methods of desk-research,
- 1.2. Agree and finetune the methods, approach and scope of work incl. the division of work amongst the team members,
- 1.3. Start gathering data and existing studies/research for the analysis,
- 1.4. Conduct a background desk research, map and analyse already existing studies/research undertaken by state and non-state actors,
- 1.5. Draft a key informant interview work plan – identify key actors for the first round of key informant interviews, prepare lists of semi-structured questionnaire for the interviewees,
- 1.6. Conduct the first round of key informant interviews with experts of various categories and international community,
- 1.7. Present all observations and data collected at an online validation workshop before the UNDP,
- 1.8. Draft an inception report (including preliminary annexes),
- 1.9. Submit the final version of the inception report (of maximum 15 pages, excluding annexes).

### 2. DATA COLLECTION AND ANALYSIS (01.11.2021 – 15.11.2021)

- 2.1. Conduct the second round of key informant interviews / focus group discussion with experts of various categories and international community,
- 2.2. Analyze the qualitative data and identify areas needed to strengthen the capacities of duty bearers and right holders to develop and implement a NAP on BHR,
- 2.3. Draft the summary of the preliminary findings and early recommendations;
- 2.4. Present the preliminary findings and early recommendations at a UNDP validation workshop.

### 3. FINAL REPORT WRITING PHASE (15.11.201 – 05.12.2021)

- 3.1. Write up a draft report on analysis and provide it for further peer review by UNDP Ukraine,
- 3.2. Finalise the report in accordance with the feedback received from UNDP Ukraine and other project teams and provide it for peer review and approval by UNDP Ukraine and the IHR,
- 3.3. Prepare and hold a public presentation of the main findings and recommendations at a multi-stakeholder event.

#### Data collection methods:

- ▣ desk research of the respective best practices on BHR (global, regional and per country) with a specific focus of this BP being applicable for the Ukrainian context and needs;
- ▣ semi-structured interviews and focus group discussions (where appropriate) with key knowledge bears (being chosen from various expertise fields according to their focus on each of 4 key research topics identified in ToR, those being 1-3 UNGPs pillars and NAP country implementation experience and learns learnt);
- ▣ survey (written interview) with business entities and other informants (based on the interview questionnaire);
- ▣ peer review by UNDP of the final findings and recommendations.

#### Desk research will cover:

- ▣ mapping of major relevant publications and research on the BHR issue globally, on the regional level and per country;
- ▣ specific focus will be on research on each of the UNGPs pillars and country or business best practices being relevant and applicable for Ukraine;
- ▣ one of the key focuses will be on the practices of NAP preparation and implementation with key lessons learnt and its possible transformation into a number of steps Ukraine might follow in future (suggestions for the road map of NAP).

#### Semi-structured interviews:

It is proposed to draft a list of knowledge bearers for the first round of interviews (up to 5-6) and conduct them in a semi-structured way with a list of preliminary questions which can be expanded based on particular expert focus and knowledge.

It is also important to include into the list of key informant interviewed experts from different fields to ensure variety of knowledge and expertise and its relevance to the chosen research approach (“to match” experts and their contribution to each of 4 proposed report chapters, those being UNGP pillars 1-3 and NAP).

### iii. Methodology for Stakeholder mapping and analysis

#### Scope and aim of the stakeholder analysis

The BHR stakeholders’ mapping and analysis will help the UNDP team to map and identify stakeholders: duty bearers (government), key businesses and business associations and CSOs and right holders, media and academia to target the awareness raising of the UNGPs. The purpose of the stakeholder analysis is to develop a deeper understanding of the actors, their goals and influence and the networks, which will determine the successful UNGPs implementation in Ukraine.

The objectives of the SA are:

- ▣ to identify key stakeholders on UNGPs implementation in Ukraine with regards to UNGPs pillars;
- ▣ to assess stakeholders’ interests in the UNGPs implementation;
- ▣ to foreseen the ways in which these stakeholders may influence the BHR policy outcomes;
- ▣ to propose recommendations for stakeholders’ engagement in UNGPs implementation.
- ▣ SA underlines an understanding of power relations and potential alliances and conflicts among stakeholders, providing the foundation for planning stakeholder engagement throughout the UNGPs implementation in Ukraine.

The study also analyzes current donor programs in Ukraine to identify the possible partnership and cooperation within UNGPs implementation in Ukraine. Based on this analysis, a set of recommendations to the UNDP was developed, as outlined below.

The preliminary results of the SA were presented at a multi-stakeholder Annual meeting of the Intersectoral Platform on Business and Human Rights guided by Parliamentary Commissioner for Human Rights in Ukraine on December 2, 2021.

## APPROACH

SA methodology is designed following the principles and approaches outlined in the [UNDP Guidance Note Social and Environmental Standards \(SES\) on Stakeholder Engagement](#) and Leaving No One Behind: A UNSDG Operational Guide for UN Country Teams.

The Human Rights Based Approach and Leaving No One Behind was integrated into design of the SA methodology. While human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation, they are also being applied during stakeholders' mapping and analysis.

## CONCEPTS

In this study we refer to concepts and terms as defined in UNDP Guidance Note Social and Environmental Standards (SES) on Stakeholder Engagement<sup>482</sup>.

**Stakeholders:** Stakeholders are persons, groups, or institutions with an interest in the project or the ability to influence the project outcomes, either positively or negatively. Stakeholders may be directly or indirectly affected by the project. The range of potential stakeholders is diverse and may include target beneficiary groups, locally affected communities or individuals, national and local government authorities, civil society actors, including non-governmental organizations (NGOs) (both domestic and at times international), indigenous peoples, politicians, religious leaders, the academic community, private sector entities, workers organizations, UN agencies and donors, and other special interest groups. Importantly, stakeholders may include groups opposed to proposed interventions. The "stake" that each of these different groups has in the project will vary.

**Stakeholder analysis:** Stakeholder analysis is the process of identifying a project's key stakeholders and assessing their interests in the project and the ways in which these stakeholders may influence the project's outcomes. An understanding of power relations and potential alliances and conflicts among stakeholders is necessary. Stakeholder analysis provides the foundation for planning stakeholder engagement throughout the project cycle.

**Stakeholder engagement:** Stakeholder engagement is an overarching term that encompasses a range of activities and interactions with stakeholders throughout the project cycle. The SES defines stakeholder engagement as an ongoing process that may involve, to varying degrees, the following elements:

- ❑ stakeholder analysis and planning
- ❑ disclosure and dissemination of information
- ❑ consultation and meaningful participation
- ❑ dispute resolution and grievance redress
- ❑ stakeholder involvement in monitoring and evaluation
- ❑ ongoing reporting to affected communities and other stakeholders.

## METHODS

SA seeks answers to the following questions:

- ❑ Who are the key BHR stakeholders in Ukraine: in the general context and in terms of specific groups (public authorities, business, civil society, media, academia; how each of the stakeholders are related to the UNGPs pillars and principles implementation)?
- ❑ What are the interest/ influence of BHR stakeholders related to the UNGPs? How will stakeholders' interests be affected (positively/negatively) by the UNGPs? Which stakeholders are the most vulnerable and subject to potential adverse impacts? Which stakeholders wield the most influence to affect UNGPs implementation? Whose capacity needs to be supported to enable them to participate in UNGPs implementation process?
- ❑ What should be the key interventions concerning stakeholders' engagement in UNGPs implementation in Ukraine?

482 UNDP Guidance Note Social and Environmental Standards (SES) on Stakeholder Engagement. [https://info.undp.org/sites/bpps/SES\\_Toolkit/SES%20Document%20Library/Uploaded%20October%202016/UNDP%20SES%20Stakeholder%20Engagement%20GN\\_Final\\_Dec2020.pdf](https://info.undp.org/sites/bpps/SES_Toolkit/SES%20Document%20Library/Uploaded%20October%202016/UNDP%20SES%20Stakeholder%20Engagement%20GN_Final_Dec2020.pdf)

**SA includes six interconnected stages:**

- ❑ Stage 1 – identifying the scope of the UNGPs implementation in Ukraine
- ❑ Stage 2 – identifying stakeholders with regard to UNGPs pillars
- ❑ Stage 3 – stakeholders grouping
- ❑ Stage 4 – stakeholders mapping
- ❑ Stage 5 – detailed analysis of each stakeholder, specifying stakeholder’s interests and mapping power relations and influence
- ❑ Stage 6 – developing recommendations on stakeholder engagement across different BHR stakeholder groups.

The detailed description of each stage please see below.

**Stages of the Stakeholder Analysis**

Stage #	The aim of the stage	Key questions to consider
<b>Stage 1</b> – identifying the scope of the UNGPs implementation in Ukraine	<p>The aim of this stage is to identify and map key policies that lay upon UNGPs implementation.</p> <p>Each policy area needs a particular approach, as it has its own (1) policy issues, (2) stakeholders (including key decision-makers, affected groups, and other interested stakeholders), and (3) specific tools to achieve policy targets.</p>	<ul style="list-style-type: none"> <li>❑ What is the UNGPs scope and how it is reflected on the level of national public policies?</li> <li>❑ What are the key policies laying within UNGPs scope: general, sectoral and cross-sectoral?</li> <li>❑ What are the key policies with regard to three UNGPs pillars: (1) state duty to protect, (2) corporate responsibility to respect, (3) access to remedy?</li> </ul>
<b>Stage 2</b> – identifying stakeholders with regard to UNGPs pillars	<p>The aim of this stage is to identify stakeholders: duty bearers (government), key businesses and business associations and CSOs and right holders, media and academia to design the UNGPs implementation process in Ukraine<sup>483</sup>.</p>	<ul style="list-style-type: none"> <li>❑ Who are the UNGPs targeted beneficiaries?</li> <li>❑ Who might be adversely impacted (directly or indirectly)?</li> <li>❑ Who are the UNGPs main supporters and opponents?</li> <li>❑ Who may be responsible for carrying out activities on UNGPs implementation?</li> </ul>
<b>Stage 3</b> – stakeholders grouping	<p>The aim of this stage is to group BHR stakeholders:</p> <ol style="list-style-type: none"> <li>a. (1) rights holders, (2) duty bearers (government), (3) duty bearers (business)</li> <li>b. (1) affected groups, (2) core decision-makers, (3) other with interest or influence</li> </ol>	<ul style="list-style-type: none"> <li>❑ Who are directly responsible for aspects of UNGPs decision-making?</li> <li>❑ Who are UNGPs intended beneficiaries, adversely affected persons and groups, rights holders representatives?</li> <li>❑ Who may have an interest in the UNGPs implementation or who may influence it?</li> </ul>
<b>Stage 4</b> – stakeholders mapping	<p>The aim of the stage is to map BHR stakeholders at:</p> <ol style="list-style-type: none"> <li>(1) nationwide</li> <li>(2) regional</li> <li>(3) local level</li> </ol>	<ul style="list-style-type: none"> <li>❑ Who are the key BHR stakeholders at the nationwide level?</li> <li>❑ Who are the key BHR stakeholders at the regional level?</li> <li>❑ Who are the key BHR stakeholders at the local level?</li> </ul>

483 See Annex H. General list of stakeholders

Stage #	The aim of the stage	Key questions to consider
<p><b>Stage 5</b> – detailed analysis of each stakeholder, specifying stakeholder's interests and mapping power relations and influence</p>	<p>The aim of the stage is to discern the stakeholders' capacity, influence and interests in the UNGP implementation and how they may be affected.</p>	<ul style="list-style-type: none"> <li>❑ What is the degree influence of each stakeholder to affect project outcomes?</li> <li>❑ What is the importance of each stakeholder group to the success of the project?</li> <li>❑ What are the relationships between different stakeholders/groups of stakeholders?</li> <li>❑ What type of stakeholder engagement is mandated by national law, international obligations or other requirements?</li> </ul>
<p><b>Stage 6</b> – developing recommendations on stakeholder engagement across different BHR stakeholder groups.</p>	<p>The aim of this stage is to provide recommendations and suggestions on BHR stakeholder engagement during UNGPs implementation in Ukraine.</p>	<ul style="list-style-type: none"> <li>❑ Which stakeholders is it essential to involve?</li> <li>❑ Who is preferable to involve?</li> <li>❑ Who needs to be consulted?</li> <li>❑ Who needs to be informed?</li> <li>❑ At which stage of the project does the stakeholder need to be involved/ consulted/informed?</li> </ul>

**Data collection methods:** desk research, analysis of the key informants' interviews and focus groups results (following Rights holders and Market/Sector studies).

**Strengths of the approach:** The combination of desk research and results of key informants' interviews and focus groups provided a systemic view on a BHR stakeholder landscape.

**Limitations to the approach:** However, this report is based mostly on desk research, that's why the key findings and recommendations should be tested during multi-stakeholders' meeting.

## ANNEX A.2. BUSINESS AND HUMAN RIGHTS: QUESTIONNAIRE FOR RIGHTS HOLDERS

### Your age

- A) 15–24
- B) 25–29
- C) 30–34
- D) 35–39
- E) 40–49
- F) 50–59
- G) 60–70
- H) 71 and older

### Your sex

- A) Male
- B) Female
- C) Prefer not to say

### Place of your residence

- A) Urban
- B) Rural

### 1. Which human rights do you think are most often violated by businesses in your region?

(List of the Human Rights based on the International Bill of Human Rights forming the minimum for adverse businesses human rights impact). Please, choose up to 10 answers that seem to suit you.

Right to self-determination (indigenous peoples rights)	
Right to non-discrimination	
Right to work (training, contract, termination)	
Right to equal pay for equal work	
Right to a living wage (minimum wage)	
Right to safe and healthy working conditions	
Right to equal opportunity for everyone to be promoted	
Right to rest, leisure and paid holidays	
Right to form and join trade unions and right to strike	
Right to social security, including social insurance	
Right to protection of mothers before and after childbirth	
Right to Children’s & young people’s protection from exploitation (no child labor)	
Right to adequate food and its fair distribution	
Right to adequate clothing	
Right to adequate housing	
Right to water and sanitation	
Right to health	
Right to education	
Right to take part in cultural life	
Right to benefit from scientific progress	
Right to material gains from inventions	
Moral rights of authors (protection of copyright)	
Right to life	
Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment	
Right to free, prior and informed consent to medical or scientific experimentation	

Right not to be subjected to slavery, servitude or forced labor	
Right to liberty and security of person	
Right of detained persons to humane treatment	
Right not to be subjected to imprisonment for an inability to fulfill a contract	
Right to freedom of movement	
Right of aliens to due process when facing expulsion (seeking asylum)	
Right to a fair trial	
Right to be free from retroactive criminal law	
Right to recognition as a person before the law	
Right to privacy	
Right to freedom of thought, conscience and religion	
Right to freedom of opinion	
Right to freedom of expression	
Right to freedom of information	
Right to freedom from war propaganda	
Right to freedom from incitement of racial, religious or national hatred	
Right to freedom of peaceful assembly	
Right to freedom of association	
Right to protection of the family and the right to marry	
Right to protection of the child and right to acquire a nationality	
Right to participate in public affairs	
Right to equality before the law, equal protection of the law, and rights of non-discrimination	
Rights of minorities (culture, religious practice and language)	
Other	

Please explain why (optional) and illustrate with examples. It may be human rights violations to some categories of rights holders, e.g. discrimination at the work place, or adverse human rights impact by a business in your area that affect a community (e.g. pollution that may affects food security, water, health, life etc.):

**2. In your opinion, what are the sectors in which the most human rights violations by business occur?**

Agriculture	
Forestry	
Mining	
Processing industry	
Power industry	
Water supply and/or waste management	
Construction	
Wholesaling and retail	
Transportation	
Post and/or courier services	

Hospitality and/or catering	
Information and/or telecommunications	
Finance and/or insurance	
Tourism	
Advertising	
Education	
Healthcare	
Recreation and/or entertainment	
Legal services	
Other (please, indicate):	

Please explain why (optional), and try to illustrate with examples and try to be specific if this relates to some rights holders (e.g. young women, women, migrant workers, young men, elderly etc):

**3. According to your experience and/or opinion which groups of the population are facing the biggest challenges and barriers in accessing decent work?**

(Decent work – productive work for women and men in conditions of freedom, equity, security and human dignity, which delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men)

Please choose up to 5 ones from the below list:

Young women in the age up to 34 years	
Young men in the age up to 34 years	
Women between the age of 35-49	
Men between the age of 35-49	
Women between the age of 50 and older	
Men between the age of 50 and older	
Women with disabilities	
Men with disabilities	
Women belonged to national minorities	
Men belonged to national minorities	
Women belonged to the LGBT community	
Men belonged to the LGBT community	
Women migrants	
Men migrants	
Women living in the locations close to the contact line	
Men living in the locations close to the contact line	
Women living in the rural area	
Men living in the rural area	
Women living in the urban area	
Men living in the urban area	
Women single	

Men single	
Women with family responsibilities	
Men with family responsibilities	
Women living with HIV	
Men living with HIV	
Other (please, indicate)	

Please explain why and illustrate with examples (optional)

**4. Who plays a key role in your community to increase access to decent work?**

National level authorities	
Local level authorities	
Businesses	
Workers themselves	
CSOs	
Trade Unions	
Other (please, indicate)	

**5. In your opinion, what are the key reasons why people choose partial or full informal employment? Please assess the possible reasons provided in the list below (ranking each option from 1 to 5, where 1 is the lowest level of influence and 5 is the highest one):**

People can obtain a higher fee for their work	
People would lose social welfare benefits if employed formally	
High rate of deduction from the official salaries (taxes and social contributions)	
Business pressure on people towards agreeing on the informal employment	
People cannot find regular decent formal employment and do not have any alternative	
There is a common attitude that the State does nothing for people, so why they should pay taxes and social contributions	
There is a common attitude that not declaring small secondary income is acceptable	
There is a lack of proposal of regular decent formal jobs in the labour market provided by the business	
The State's current measures on control over the issue are not enough to ensure full formal employment	
Other (please, indicate)	

**6. In your opinion, is there an efficient system established in Ukraine for the human rights protection in case of violations by businesses?**

- A) Yes
- B) The system established but access is difficult for the victims
- C) The system requires reform towards ensuring equal opportunities for potential claimants and respondents
- D) The system established but it provides a disproportional pressure on the the business as potential respondent
- E) The current system does not function properly
- F) There is no relevant system

Please, explain and illustrate with examples (optional):

**7. In your opinion, what does it take to get a business interested to respect human rights? Please assess the possible ways provided in the list below (ranking each option from 1 to 5, where 1 is the lowest level of influence and 5 is the highest one):**

Awareness raising and wide informing the business about the human rights concept conducted by the authorities	
Strengthened advocacy on the issue of respecting human rights from the different types of rights holders associations	
Strengthening the State's control over the business and increasing sanctions in case of violations	
Minimizing the State control over the business and introducing the obligatory reporting on the activities taken towards ensuring respect to human rights	
Excluding the business entities, which violated human rights, from the public procurement	
State incentives or specific support to businesses (please explain)	
Wide dissemination of the cases of high level of respect to human rights by businesses, naming those, who are using this approaches	
Wide dissemination of information on cases of human rights violations by businesses, with the disclosure of the names of violators	
Other (please, indicate)	

Please explain and illustrate with examples/options/recommendations for UNDP to consider (optional):

## ANNEX A. 3. QUESTIONNAIRE FOR OMNIBUS

### 1. Have there been cases in your life when a business has violated your rights:

Yes, there have been violations by private companies	
Yes, there have been violations by state and / or municipal companies	
Both on the part of private and on the part of state and / or municipal companies	
No, there were no such cases	

### 2. If so, what are these rights:

Right to obtain wage	
Occupational safety	
Other labor rights	
The right to a safe environment	
Land rights	
The right to privacy	
Other	

### 3. Have you tried to protect your rights:

Yes, through the company's grievance mechanism	
Yes, through state control bodies	
Yes, through the court	
Yes, through other mechanisms	
All or several of these options	
No.	

### 4. Was the remedy to protect effective:

Yes, I defended my right successfully	
Partially	
I had different experiences of defense – both positive and negative	
No, I failed to defend my right	

### 5. If business violated your rights, what sectors were these companies from (a respondent can choose several options)?

Agriculture	
Forestry	
Mining	
Processing industry	
Power industry	

Water supply and/or waste management	
Construction	
Wholesaling and retail	
Transportation	
Post and/or courier services	
Hospitality and/or catering	
Information and/or telecommunications	
Finance and/or insurance	
Tourism	
Advertising	
Education	
Healthcare	
Recreation and/or entertainment	
Legal services	
Other	

## ANNEX A.4. BUSINESS AND HUMAN RIGHTS: QUESTIONNAIRE FOR COMPANIES

### 1. Which sectors best describe your company's work?

Agriculture	
Forestry	
Mining	
Processing industry	
Power industry	
Water supply and/or waste management	
Construction	
Wholesaling and retail	
Transportation	
Post and/or courier services	
Hospitality and/or catering	
Information and/or telecommunications	
Finance and/or insurance	
Tourism	
Advertising	
Education	
Healthcare	
Recreation and/or entertainment	
Legal services	
Other:	

### 2. How many staff are employed in your company?

Up to 10	
11-50	
51-250	
251-500	
501-1000	
1001-5000	
Over 5000	

### 3. How far, geographically, does your company operate?

Locally	
Regionally	

Nationwide	
Internationally and overseas	

**4. Does your company supply goods or services overseas?**

Yes	
No	
Difficult to answer	

**4.1. If yes, to which countries does your company supply goods or services?**

**5. What position do you hold within the company?**

Managing position (Managing Director, CEO, etc.)	
Human Resources manager	
Finance manager	
Marketing and communication manager	
Corporate Social Responsibility manager	
Other:	

**6. Listed below are several business and workplace issues. Please tick the box beside the issue to indicate whether or not you think it is a Human Rights issue.**

	Yes	No	Difficult to answer
Working conditions			
Work-rest schedule			
Remuneration			
Joining trade unions			
Children working			
Discrimination and harassment in the workplace			
Personal data protection and employee privacy			
Employees' ability to practice their religion or belief			
Men and women being paid equally for work of equal value			
Employees' ability to raise concerns or grievances regarding employment			
Organization's impact on the environment and local communities			
The conduct of security forces (private or public) when protecting business assets			
Payment of taxes			
Other issues			

**7. Are you familiar with any of these human rights frameworks/principles? Please tick the box beside the issue to indicate whether or not you have some information about the initiative.**

	Yes	No	Difficult to answer
United Nations Guiding Principles on Business and Human Rights			
UN Global Compact			
ILO Tripartite Declaration			
Other initiatives			

**8. Does your company have any of these human rights related policies in place?**

Policies	Yes	No	Difficult to answer
Human rights policy			
CSR/Sustainability Policy			
Gender Equality Policy			
Diversity and Inclusion policy			
Non-financial/sustainability/ ESG report			

Other human rights related policy, please mention:

**9. Please answer the following question if your company has any kind of human rights policy (as separate document or part of other policy) (if not, please go to the next question):**

	Yes	No	Difficult to answer
Is it a separate internal document devoted to human rights that defines your organizations' human rights policy?			
Is your organizations' human rights policy publicly available (e.g. on its website)?			
Has your organisation disseminated its human rights policy commitments internally to all staff (e.g. by trainings)?			
Does your organization take measures to ensure employees' compliance with its human rights policy (e.g., by introducing incentives or fines)?			
Did the process of developing your organization's human rights policy include consultations with organization's employees and other stakeholders?			
Does your organizations' human rights policy include anti-discrimination provisions?			
Does your organizations' human rights policy provide for conducting assessment of the organization's impact on human rights?			
Has your organization signed up to any pledges or initiatives that have a human rights component? (e.g. IFC Performance Standards, UN Global Compact)?			

**10. If not, what obstacles should be overcome to develop and implement such a policy?**

Increase awareness on corporate responsibility to respect human rights	
Equip with skills of developing the relevant policies	
Increase awareness of the current business and human rights developments	
Know investors' expectations on responsible business conduct, equip with skills of ESG indicators	
Other:	

**11. Has your company ever done any of the following actions to ensure respect of human rights?**

	Yes	No	Difficult to answer
Explored which human rights issues might be relevant for your organisation and/or its suppliers			
Make an assessment of human rights risks			
Considered human rights standards as the benchmark for risk and impact assessments			
Carried out assessment of its services/products/supply chains' impact on human rights			
Consulted with stakeholders, including workers and local communities, on issues related to human rights			
Discussed managing its actual or potential human rights risks at board or senior management level			

**12. From the following categories of human rights related risks please indicate whether according to your assessment these present a risk (actual or potential) in your company's operations?**

	No risk	Yes, a risk in my company	Yes, it's a risk in the wider sector	Yes, it's a risk in my supply chain	Not Sure
<b>Discrimination or harassment</b> (e.g. of women/ persons living with disabilities/ethnic or religious minorities in hiring, or in the workplace in relation to promotion, remuneration, dismissal decisions)					
<b>Violations in relation to labour conditions</b> (e.g. excessive or unpaid overtime, lack of labour contracts, non-payment of wages or wages below legal minimum wages)					
<b>Children illegally working</b> (e.g. in hazardous jobs)					
<b>Violations of union rights</b> (e.g. joining a union, collective bargaining, right to strike)					
<b>Inadequate health and safety at work</b>					
<b>Environmental pollution linked to business activities</b> (e.g. air, water or soil pollution)					
<b>Irregularities in land acquisition processes</b> (e.g. identifying the original landowner; forced evictions, or inadequate compensation for land)					

<b>Security forces interfering with the right to assemble or freedom of expression</b>					
<b>Violations of the right to privacy</b> (e.g. in relation to customer or employee data)					

**13. Does your company have any mechanisms in place to detect and respond to human rights abuses / negative impact?**

No, we have no mechanism in place	
Yes, we have a special mechanism for submitting reports/claims (anonymous if preferred)	
This mechanism is available both for employees and for people from outside the company	
We report the results of consideration of incoming cases	
We conduct surveys of employees and/or consumers/customers on possible negative impact on human rights by the company	
Other, or further explanation:	

**14. Does your company do any awareness-raising / training activities about its respect for human rights?**

Annual mandatory trainings	
Meetings with invited specialists, open lectures	
Days or weeks of increased attention to specific issues/violation of human rights	
Mailing out on important international dates	
Other:	

**15. In your view, are there any benefits for companies to respect human rights? Please, explain your company's main benefits to adhere to human rights or what according to you would be the determined factor and incentive to convince you company to respect human rights.**

**16. Have you encountered human rights due diligence requirements from investors or international partners? Please explain**

**17. Which of the following, if any, are the biggest challenges your company faces in addressing human rights?**

	Yes	No	Difficult to answer
Lack of understanding about what its responsibilities in the sphere of human rights are			
Lack of available internal resources			
Lack of relevant knowledge among employees			
Inconsistency between national law and international standards			
Poor enforcement of national law by government bodies			
Addressing human rights would reduce the efficiency of economic activity of organization			
Lack of collaboration at industry/sector level			
Lack of relevant knowledge among the contractors' company employees			
Business culture does not place a high value on the issue			

Lack of communication and trust with civil society actors			
Fear of increasing risk of reputational damage			
Other:			

**18. Who is responsible for human rights issues in your company? Is the CEO or senior management also involved?**

**19. What assistance would you need to integrate human rights policies in your company? Please explain (incentives, training, tools, manuals etc.)**

**20. Additional comments (if wished)**

## ANNEX A.5. LISTS OF SEMI-STRUCTURED PRELIMINARY KEY QUESTIONS

### A.5.1. Semi-structured preliminary key questions for the interviews with human rights defenders, trade unions and CSOs

1. Please tell me about your background, what you do and how BHR features in the context of your work/role.
2. How do you assess in general the situation concerning BHR in Ukraine?
3. What actors (gov, business, csos, academia) are the ones driving the agenda forward?
4. Which issues are of core concern in your country? Best practices?/Challenges?
5. What are the biggest barriers to implementing UNGPs and more broadly human rights in business that
  - ❑ business in your country faces
  - ❑ affect public administration
  - ❑ affect civil society organizations
  - ❑ affect human rights defenders
  - ❑ academics

[Open question but points below might provide a hint if the interviewee is not sure what we are asking about]

6. Which of the following, if any, are the biggest barriers business in Ukraine faces in addressing human rights? (open question – suggestions below are in case the interviewee is unsure)
  - ❑ Lack of understanding about what its responsibilities in the sphere of human rights are
  - ❑ Lack of available internal resources
  - ❑ Lack of relevant knowledge among employees
  - ❑ Inconsistency between national law and international standards
  - ❑ Poor enforcement of national law by government bodies
  - ❑ Addressing human rights would reduce the efficiency of economic activity of organization
  - ❑ Lack of collaboration at industry/sector level
  - ❑ Lack of relevant knowledge among the contractors' company employees
  - ❑ Business culture does not place a high value on the issue
  - ❑ Lack of communication and trust with civil society actors
  - ❑ Fear of increasing risk of reputational damage

Other:

7. How do businesses in Ukraine respect human rights? Do they have human rights policies? Do they conduct due diligence processes?

Can you provide a good case and bad case examples of the BHR in the private sector?

8. Does trade and relations with the EU have an impact on business in Ukraine and how it approaches BHR issues / ESG issues? Is the EU Green/sustainable agenda affecting uptake by business in Ukraine of the international standards? Do OECD-based corporations doing business in Ukraine respect OECD Guidelines for Multinational Enterprises?
9. Does foreign sustainable / responsible investment have an impact on business behaviour in Ukraine?
10. Do rights-holders have effective ways to access remedies concerning business-related human rights abuses? Which? What about other judicial, quasi-judicial or non-judicial bodies?
11. What needs to be done in your opinion, to advance the BHR agenda in Ukraine? Do different stakeholders in your country have the capacity to advance the BHR agenda?
12. What role can international organizations like the UN (UNWG on BHR) or UNDP or OSCE play? (e.g. can the procurement policies and how the public procurement is carried out have impact on how business behaves?; should IGOs undertake capacity building efforts?)

### A.5.2. Semi-structured preliminary key questions for the key informant interviews with human rights defenders, trade unions and CSOs and others

(concerning the barriers for the rights holders to obtain decent jobs, get access to remedies, and regarding employment in the informal sector and within the rights holders' study)

1. Please share your background in the field of human rights: what issues and groups of women and men do you focus on?
2. What do you think, to what extent is access to decent work ensured in Ukraine? (from 1 to 10, where 1 – not provided, 10 – ensured as much as possible)  
  
(Productive work for women and men in conditions of freedom, equity, security and human dignity, which delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.)
3. What are the barriers to accessing decent work? Are there any additional barriers for vulnerable groups of women and men? Which ones and for which groups?
4. As to your experience, in which sectors of the economy are human rights violations occurring most often? Please give examples of such violations.
5. What measures do you think can be taken to improve the situation in this area?
6. In your opinion, why do women and men agree to informal employment?
7. Do all categories of the population have an opportunity to work officially? If not, what does hinder this?
8. In your opinion, which groups of women and men work more often without proper official documentation?
9. How do you think, in what way is it possible to promote the observance of human rights even for those working in the informal sector?
10. In general what do you think, at what level does business in Ukraine respect human rights? (from 1 to 10, where 1 – do not respect, 10 – as much as possible) Is it possible to ask for an example of such respect and/or disrespect?
11. Who plays a key role in improving the situation towards business respect for human rights? (e.g. authorities, workers themselves, trade unions, academics, etc.) What exactly do you think they need to do?
12. What do you think, whether the trade and external relations with the EU, foreign investment make an influence on the business in Ukraine and its approaches to respect for human rights?
13. In your opinion, which way can protect themselves those persons, whose rights are violated by businesses? What barriers could women and men face in this case? How can the efficiency of the protection process be increased?
14. Have you ever encountered such a document as the UN Guiding Principles on Business and Human Rights? (In the case of an affirmative answer – to clarify whether Ukraine's perception of the approaches to this document will affect the situation with access to decent work? How exactly?)

### A.5.3. Questions for the focus groups discussions with rights holders' representatives

#### General questions for all respondents' groups

1. Please introduce yourself and let us know what story you are here to share with us,
2. Can you name any human rights violations, which are rooted in business activities in Ukraine? Please provide concrete examples and/or evidence.
3. Did you face any negative impact on human rights caused by business (employer, producer or any other) in your life? Could you provide examples?
4. Have the number of human rights violations by businesses increased or decreased in your community since the beginning of the conflict in 2014? Could you provide any examples or evidence of this?
5. Which groups of people are at most risk to human rights violations by businesses?  
  
Please provide examples and/or evidence. (if there are difficulties with the answers, it is possible to suggest categories (women, migrants, people with disabilities, young people, older people, LGBT+, people with HIV, people with family responsibilities, incl. children, etc. (the list will be continued)

6. Has a person who has faced a violation of his or her rights access to remedies to protect? What mechanism / procedures could be used? Are such mechanisms / procedures effective or not? Please provide examples or evidence.
7. Have you encountered situations when a person in such a case successfully defended his/her rights, or, conversely, was defeated? Please explain how and be specific.
8. How is it possible to make businesses interested in respecting human rights?
9. Apart from accessing finance from investors, would it be a good idea to help with an IT mechanism / platform where they could complain anonymously about a possible violation of their rights? Will make companies more accountable and enhance transparency? Or a platform that can shame or blame malpractices and the reputation of a company which may be very effective?
10. Would they/the employees be more loyal to their employer if their rights were protected? Would they be better workers, (increase the staff retention?)

Additional questions for certain respondents' groups

**For employees:**

1. Do you know about human rights policies that your company has, if any?
2. Has the company informed you about your human rights? Has it organized special training to raise your human rights awareness? Any other special activities?
3. Do you feel secure at the workplace (both physically and mentally)? Could you explain why and provide examples?
4. Are you able to convey your point of view at your workplace to the management if your rights are violated? Do you have examples from your professional experience or from your colleagues' experience to protect your rights at the workplace? Please provide examples.
5. How likely is it that your complaint would be heard and taken into account? Please provide examples, if you or other employees have tried this and if there is a grievance mechanism at place at your workplace.
6. Could you say that you have access to a decent job? Please explain what "decent job" means for you.
7. Do Ukrainians have barriers to access decent jobs? If so, what main barriers could you name?
8. Do you know examples of unofficial employment? If so, what are the reasons to be employed non-official for people?

**For community members affected by business activities**

1. Do the businesses in your location communicate with the community on the issues of its adverse human rights impact on the community's life? What channels do the businesses use? Provide examples please.
2. What human rights were or could be impacted by business in your community? What instruments to minimize risks of negative impact could be used? Provide examples please.
3. Is there any positive human rights impact by the presence of business in your area of residence? Please explain by providing concrete examples (for example more access to better paid and decent jobs, pension schemes, climate change adaptation leading to more environmental protection/less pollution, more jobs or better job security for women, youth, IDPs, PwDs etc).
4. Are there some groups within your community that are at heightened risk for adverse human rights impact from businesses? Can you give examples of how they are at heightened risk and how their rights may be violated by businesses?

**For unemployed people**

1. How long have you been unemployed?
2. Do you have experience of employment? If so, what are the reasons for your unemployment status now?
3. Do you have experience of unofficial employment? If so, what are the reasons to be employed non-officially?
4. What are the main barriers to access a decent job for you? (It could be detailed by additional questions, e.g. could be age / sex / any other personal characteristics considered as barrier to be employed? could family responsibilities be considered as such a barrier? Does the respondent assess a possible workplace through the lenses of a decent job?)
5. Do you agree to be employed if you have concerns about the safety of your future workplace (physical or mental)?
6. Are there some groups more vulnerable in the labor market? Could you provide examples?
7. To what extent, in your opinion, is the level of employers' requirements for the qualifications of workers justified, in comparison with the proposed salary?

**For rural women**

1. Which groups of women in your community face the greatest challenges in finding decent work?
2. Is it possible to get a decent job in your place of residence?  
If yes, then clarify in which sectors this work is.  
If not, then clarify whether it is possible to get access to such work in other places nearby (e.g. by using public transport regularly) or remotely.

**For representatives of youth**

1. Are you planning in the future to stay in the settlement in which you currently live, or would you like to change it? (In case of choosing the 2nd option, respondents should be asked about the reasons of such decision)
2. In your opinion, young people are more inclined to accept informal employment than middle-aged people? Why?

**For people who have work experience abroad**

1. Why did you prefer working in other countries to working in Ukraine?
2. Were you equipped with knowledge about risks of employment abroad? If so, by whom?
3. Did you have information about access to remedies to protect your rights in case of their violations or risks of such violations?
4. What measures can be taken to make people choose to work in Ukraine?

**A.5.4. Semi-structured preliminary key questions for the interviews with representatives of business associations and investors**

1. How do you understand the business obligation to respect human rights?
2. Does Ukrainian business respect human rights?
3. Which actions do companies implement in this regard?
4. Are there some distinctions in different economic sectors / dependent on companies size / dependent on export activities and investments attraction?
5. Is it beneficial for companies to respect human rights? Why? Why not?
6. What kind of BHR policies and standards do companies have (Code of Conduct, CSR policy, D&I policy, Anti-harassment Policy and Complaint Procedure, etc.)?
7. Do Ukrainian companies identify and assess human rights risks?
8. Which risks are extremely high? In which sectors? Which actions companies are undertaking to minimise them?
9. Do Ukrainian companies have a grievance mechanism? How does it work?
10. Please describe the decision making process when you consider supporting some businesses. Do you take into consideration BHR issues (analysis of BHR policies and standards, non-financial reports, media monitoring, etc.)?
11. Do you have some mechanisms to stop financial support of businesses / membership in the business association when companies are violating human rights? How does this mechanism work?
12. What cases have you known regarding violations of human rights by businesses?
13. What Human Rights issues are extremely important for Ukrainian companies? and Why?
14. What kind of help Ukrainian companies need to have more focus on Human Rights?
15. What role business associations, CSOs, government, donors, international support organizations could play in promoting BHR?

**A.5.5. Semi-structured preliminary key questions for the interviews with CEO/ compliance managers of companies (duty bearers)**

1. How does your company understand the business obligation to respect human rights? What does it mean?
2. Does your company respect human rights? Which actions does your company implement in this regard?
3. Is it beneficial for companies to respect human rights? Why? Why not?
4. Does your company have developed and enforced BHR policies (Code of Conduct, CSR policy, D&I policy, Anti-harassment Policy and Complaint Procedure, etc.)?

5. Do you have any standards on Human rights integrated in the company?
6. What Human Rights obligations has your company undertaken and why?
7. Does your company prepare non-financial/sustainability reports? How does your company define the most important sections for the report?
8. Does your company identify and assess human rights risks?
9. Which risks are extremely high? Which actions your company is taking to minimise them?
10. Does your company have a grievance mechanism? How does it work?
11. At the meetings with partners, stakeholders and employees have you been asked any questions reg. human rights?
12. What Human Rights issues are extremely important for Ukrainian businesses to focus on?
13. What kind of help do you need to have more focus on Human Rights?
14. What role of business associations/CSOs could play in promoting BHR?
15. What role could the government and donors play in promoting BHR?

#### **A.5.6. Semi-structured preliminary key questions for the focus groups discussions with sectorial HRs and CSR managers**

1. How does industry understand the business obligation to respect human rights (and the concept of RBC)? What does it mean?
2. Does industry respect human rights?
3. Which actions do companies in the industry implement in this regard? (Do they have human rights principles in place? Do they apply regularly HRDD? What do they do when human rights adverse impact occurs (grievance mechanism) as per the UNGPs?)
4. What functions in sectoral companies are responsible for business and human rights?
5. Is it beneficial for companies to respect human rights? Why? Why not?
6. What kind of BHR policies and standards do companies in the industry usually have (Code of Conduct, CSR policy, D&I policy, Anti-harassment Policy and Complaint Procedure, etc.)?
7. Do companies in the industry identify and assess human rights risks?
8. Which risks are extremely high? Which actions companies are undertaking to minimise them?
9. Do companies in the industry have a grievance mechanism? How does it work?
10. What stakeholders usually ask questions on reg. human rights?
11. What cases have you known regarding violations of human rights by any company in the sector?
12. What Human Rights issues are extremely important for companies in the sector to focus on (pls rate them)? and Why?
13. What kind of help do you need to have more focus on Human Rights?
14. What role of business associations/CSOs could play in promoting BHR?
15. What role could the government and donors play in promoting BHR?

#### **A.5.7. Semi-structured preliminary key questions for the focus groups discussions with representatives of business associations, corporate sector, international development partners, investors**

1. How do you understand the business obligation to respect human rights? What does it mean?
2. Does Ukrainian business respect human rights? Which actions do companies implement in this regard?
3. Are there some distinctions in different economic sectors / dependent on companies size / dependent on export activities and investments attraction?
4. Is it beneficial for companies to respect human rights? Why? Why not?
5. What kind of BHR policies and standards do companies have (Code of Conduct, CSR policy, D&I policy, Anti-harassment Policy and Complaint Procedure, etc.)?
6. Do Ukrainian companies identify and assess human rights risks?
7. Which risks are extremely high? In which sectors? Which actions companies are undertaking to minimise them?
8. Do Ukrainian companies have a grievance mechanism? How does it work?

9. Do companies practice due diligence?
10. Please describe the decision making process when you consider supporting some businesses. Do you take into consideration BHR issues (analysis of BHR policies and standards, non-financial reports, media monitoring, etc.)?
11. Do you have some mechanisms to stop financial support of businesses / membership in the business association when companies are violating human rights? How does this mechanism work?
12. What cases have you known regarding violations of human rights by businesses?
13. What Human Rights issues are extremely important for Ukrainian companies? and Why?
14. What kind of help Ukrainian companies need to have more focus on Human Rights?
15. What role of business associations, CSOs, government, donors, international development partners could play in promoting BHR?

#### **A.5.8. Semi-structured preliminary questions to key-informants of BHR International best practice study – representatives of business entities**

1. Is there a corporate policy on HR in your company? Is it based one the ESG, OECD principles or CRS, RBC, UNPG or other principles, international norms, conventions or legislation? If yes, please explain with examples.
2. Are the employees aware of the company's HR policy? If yes, please provide examples on how you introduced the policy to employees or other measures you take to keep your HR policy in focus of your team.
3. How can employees get access to its content? Is it public (published on the company website)?
4. Who was the driving force and part of the process of drafting the BHR policy in the company? Do the CEO and all your senior management know, understand and use such HR policy to take strategic and operational decisions? Can you provide any examples on how your HR policy influences the company's strategy and operations?
5. Were the employees engaged in the process of drafting the HR policy and/ or its implementation?
6. Does the company's HR policy make focus on due diligence?
7. Is a HRDD policy applied by the company? How? Please, provide some examples, if any.
8. Do you support the European Commission's proposal for a directive on sustainable corporate governance (forthcoming new EU Due Diligence Directive) and what changes can it bring to your business operations?
9. Does the company's HR policy include the grievance mechanism as a remedy in cases of HR abuses caused by the company and its partners in the supply chains?
10. Do the company's employees know about the grievance mechanism and use it? Please, provide some examples, if any.

#### **A.5.9. Semi-structured preliminary questions to key-informants on the practice of key stakeholders' engagement in BHR**

1. Why is it important for your organization to engage stakeholders in BHR?
2. Does your organization exploit a strategy of key stakeholders' engagement in BHR?
3. What are the main components of your organization's strategy of engagement the key stakeholders in BHR?
4. How are the key stakeholders mapped by your organization? Please, identify methods and approaches that proved to be efficient.
5. What forms of your organization's activities on BHR are the most attractive for the key stakeholders and efficiently help your organization to reach its goal?
6. How does your organization maintain the key stakeholders' engagement in BHR?
7. Is there a kind of unique, specifically tailored initiative to maintain the key stakeholders' engagement in BHR?
8. What are your organization's most positive/significant results of key stakeholders' engagement in BHR?

#### **A.5.10. Semi-structured preliminary questions to key-informants on the practice of NAP's on BHR**

1. Why is the NAP on BHR important for your country?
2. What agency (governmental, parliamentary, a business entity/association of business entities, academic, an NGO/ association of NGOs, etc.) was the leading promoter of a NAP on BHR in your country?
3. In your view, how to drive this process in the best way? Where should the process be anchored?
4. Is it practical to engage more with academia, journalists, and youth (as consumers) to drive the advocacy for the NAP?
5. What is the right way to ensure an inter-ministerial approach to the NAP's drafting and implementing processes?
6. Were you personally and/or your organization involved in the NAP on BHR pre-drafting process and what was your / your organization's role?
7. What were the main stages of the NAP's on BHR drafting process?
8. What was the main benchmark for the NAP on BHR content?
9. Is it practically useful to link it to other agenda's such as the SDG, EU green deal, ESG, EU approximation etc.? Is the NAP on BHR coherent with other national policies and which?
10. In which way was the NAP on BHR adopted/endorsed (vote in the Parliament, decision of the Government, Presidential act, etc.)?
11. How is the NAP's on BHR implementation process arranged (a specifically established implementation mechanism, a work plan, a body responsible for coordination of its implementation, evaluation, reporting and updating)?
12. Is there a practice to allocate NAP budget lines to monitor NAP's activities?
13. How is the NAP on BHR implemented on the regional and local levels? Please, provide some examples, if any.
14. Do you find the NAP on BHR helpful for your citizens and the state to meet the provisions of the UN Guiding Principles on Business and Human Rights? Are there any visible results? Please, provide some examples, if any.

## ANNEX A. 6. LISTS OF PARTICIPANTS OF IN-DEPTH INTERVIEWS

### List of key informants for the rights holders study

1. Oleksandr Voroshkov, advisor on IDPs in Donetsk Oblast, CoE's expert on the IDPs rights, NGO "Kramatorsk-SOS" coordinator;
2. Antonina Bondarenko, starosta of the Denezhnikove and Spivakovka villages of the Novoaydar rural territorial community of the Schastyinsky district of the Luhansk region, founder of the Novoaydar District NGO "Rural Women Society "Akacia" (an organization of rural women who work near the contact line, including dealing with employment issues);
3. Natalia Karbowska, Director on strategic development, ICF "Ukrainian Women's Fund";
4. Larysa Bychkova, Director of the NGO "East Donbas Regional Development Agency" (Siverodonetsk, Luhansk region), consultant and coordinator of the All-Ukrainian Agrarian Rada in Luhansk and Donetsk regions, former Head of the Department of Agroindustrial Development of the Luhansk Regional State Organization;
5. Hryhorii Osovyi, Head of the Federation of Trade Unions of Ukraine;
6. Oleksii Miroschnychenko- Executive Vice President of the Confederation of Employers of Ukraine;
7. Oleksandr Okis – Head of the National Service of Mediation and Reconciliation;
8. Serhii Haidai – Head of the Luhansk Regional State Administration, Regional Military-Civil Administration;
9. Artur Himchak – Head of the Donetsk branch of the National Service of Mediation and Reconciliation;
10. Liliya Amelicheva – Associate Professor of the Vasyl' Stus Donetsk National University, J.D. (the dissertation was devoted to the decent work ensuring issues), labour arbiter;
11. Oleh Klymovych – Deputy Director of the Donetsk Regional Employment Center;
12. Mykola Nadulichnyi – Head of the Luhansk Association of Organizations of Persons with Disabilities; Adviser to the Head of the Luhansk Regional State Administration on rights of persons with disabilities;
13. Uliana Tokareva, Head of the NGO "Women's League of Donechchyna";
14. Natalia Bezeleva, Head of the CF "Svitanok" (focused on the rights of people living with HIV, people who use drugs, including their economic and labour rights);
15. Lyudmila Kharchenko, Adviser on Ensuring Equal Rights and Opportunities for Women and Men of the Head of Luhansk Regional State Administration, Regional Military-Civil Administration;
16. Marina Pugacheva, Head of the NGO "Mariupol Women's Association" Berehynia" (an organization working on the contact line with the most vulnerable groups);
17. Oleksii Pichakhchy, Head of the Donetsk Regional Organization of the Trade Union of Machine Building and Metalworking workers of Ukraine.
18. Oksana Holovko, Director of the Department of Investment/Innovative Development and External Relations of the Donetsk Regional State Administration, Regional Military-Civil Administration;
19. Kateryna Samburska, Head of the Economic and Legal Department of the Dobropillya Territorial Organization of the Trade Union of Coal Industry Workers of Ukraine, Deputy Chairman
20. Sofia Kordonets, Project Manager of the project "Legal assistance to stateless persons in Ukraine", CF "Right to Protection" (NGO dedicated to protecting the rights of asylum seekers, refugees, stateless and undocumented persons, internally displaced and conflict-affected persons)
21. Olena Melnyk, Deputy Director of the Employment Policy Implementation Department – Head of the Department for Employer Services and Implementation of Active Employment Programs of the Employment Policy Implementation Department of the State Employment Center
22. Andrii Volkov – Senior Protection Officer, Head of the Field Office of the Center for Civilians in Conflict (iNGO) (Donetsk and Luhansk regions). In the past, this specialist worked for the FAO (Head of the Kramatorsk Field Office, where this UN agency implemented several humanitarian and development projects in the agricultural sector targeting the Donetsk and Luhansk regions (incl. both government-/and non-government-controlled areas);

23. Olena Rofe-Beketova, Head of the Kharkiv with You Charitable Foundation, Coordinator of the #SaveKharkiv initiative group, member of the advisory council on cultural heritage protection at the Department of Urban Planning and Architecture of Kharkiv Regional State Administration;
24. Natalia Kholodova, Project Coordinator of Ecoclub NGO (Rivne) (the organization has been operating for about 20 years, main focus – energy efficiency. The organization works not only in Rivne, but throughout Ukraine)
25. Khrystyna Kit, Head of NGO Ukrainian Women Lawyers Association “JurFem”, lawyer, PhD in Law
26. Valentina Yemelyanenko, Gender Adviser of Berdyansk City Major,
27. Artem Donets, Lawyer with a practice concerning certain issues of the topic of business and human rights
28. State Labour Service (Head of Department)
29. Konstantin Kharakoz, judge, Kharkiv court
30. Inna Kudinska, NGO “Labour initiatives”
31. Andriy Vasylyev, Trade Union on Constructive Industry
32. Ganna Sharygina, NGO “Sphera”
33. Victoria Har, Fight for rights
34. Trade Union Nova Poshta
35. Office of Ombudsperso
36. Center of Free Legal Aid
37. Confederation of Trade Unions
38. Fund of Employment in Storozhynets

#### **List of key informants for the Sector and market study**

1. Andriy Lytvyn, Acting Director of the State Institution “Entrepreneurship and Export Promotion Office”;
2. Tetyana Sakharuk, General Director of UN Global Compact Network in Ukraine;
3. Svitlana Mykhailovska, Deputy Director of European Business Association;
4. Nataliia Zabrudska, Ukrainian Chamber of Commerce and Industry;
5. Vitaliy Sedler, President of IT Association Ukraine, CEO Intellias;
6. Yuliya Bereshchenko, Business development and IR director at Astarta-Kyiv;
7. Marta Trush, HR director at Auchan Retail Ukraine;
8. Natalia Koliadko, HR director at EPAM Systems Ukraine;
9. Ivan Chalyy, editor-in-chief of the journal “Practice of International Financial Reporting Standards”
10. Alina Sokolenko, Head of the Association of Sustainable Development Experts, director of the consulting company's groups;
11. Roman Slastyona, General Director of the Ukrainian Agrarian Business Club Association;
12. Olena Voloshyna, Head of the International Finance Corporation (IFC) in Ukraine;
13. Andy Hunder, President of AmCham;
14. Oleksandra Gnatik, PR Director for EVA company
15. Tatiana Briukhanova, HR director for Foxtrot
16. Lidiya Klochan, HR director for Harvest
17. Anna Tolmachova, HR director for METRO Cash and Carry

**List of key informants for the BHR International best practice study**

1. Ella Skybenko, Eastern Europe/Central Asia Senior Researcher & Representative of the Business and Human Rights Resource Centre
2. Siniša Milatović, UNDP BHR consultant who works for the Bangkok Hub as well as the IRH
3. Livio Sarandrea, BHR lead / officer at UNDP Regional Hub in Bangkok
4. Sean Lees, BHR Expert at the Regional Hub in Bangkok
5. Kevin Lehmann, expert at the Bangkok Hub
6. Ron Popper, CEO of the Global Business Initiative on Human Rights (GBI)
7. Olena Uvarova, Associate Prof., Head of the International Lab on Business and Human Rights at Yaroslav Mudryi National Law University, Ukraine
8. Ihor Konopka a graduate of the Faculty of Law of the Taras Shevchenko National University of Kyiv and the Faculty of Law of Lund University he also completed an internship in the Department of Human Rights and Business of the Danish Institute of Human Rights and is the author of a master's thesis on the prospect of introducing mandatory human rights due diligence in Ukraine.
9. Ashley Nancy Reynolds, Research Assistant, Eastern Europe & Central Asia, Business and Human Rights Resource Centre
10. Johannes Blankenbach, EU / Western Europe Researcher & Representative of the Business and Human Rights Resource Centre
11. Beata Faracik, Co-founder and President of the Board at Polish Institute for Human Rights and Business (NGO)
12. Dirk Hoffmann, Senior adviser, Human Rights and Business, The Danish Institute for Human Rights
13. Prof. Dr. Jernej Letnar Čerňič, Nova Univerza, Slovenia
14. Marco Fasciglione, PhD, Institute for Research on Innovation and Services for Development (Italy)

## ANNEX A.7. SCREENER TO SELECT PARTICIPANTS OF FOCUS-GROUP DISCUSSIONS

### WHICH RESPONDENTS ARE SUITABLE FOR PARTICIPATION IN THE STUDY

	<p>Target groups</p> <ul style="list-style-type: none"> <li>❑ HRs/CSR/compliance managers of large, medium-sized and small ICT, agricultural and retail companies;</li> <li>❑ representatives of business associations, international development partners and investors;</li> <li>❑ employees from different sectors of the economy, incl. ICT, agricultural and retail industries, including former employees;</li> <li>❑ broad categories of community members affected by business activities and possible adverse human rights impact by businesses, incl. in conflict affected areas (GCA);</li> <li>❑ representatives of vulnerable groups (employees with family responsibilities, persons with HIV, persons with disabilities, LGBTIQ; Roma, internally displaced persons)</li> <li>❑ human rights defenders, trade unions, CSOs.</li> </ul> <p>All respondents should be interested in participating in the study.</p>
<b>1</b>	<p><b>One focus-group, number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>❑ HRs/CSR/compliance managers of large, medium-sized and small ICT companies</li> <li>❑ at least 2 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> </ul>
<b>2</b>	<p><b>One focus-group, number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>❑ HRs/CSR/compliance managers of large, medium-sized and small agricultural companies</li> <li>❑ at least 2 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> </ul>
<b>3</b>	<p><b>One focus-group, number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>❑ HRs/CSR/compliance managers of large, medium-sized and small retail companies</li> <li>❑ at least 2 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> </ul>
<b>4</b>	<p><b>One focus-group, number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>❑ export consultants and representatives of exporting companies (incl. Natalia Mykolska and the Ukraine Investment &amp; Trade Facilitation Center)</li> <li>❑ at least 3 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA)</li> </ul>
<b>5</b>	<p><b>One focus-group, number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>❑ representatives of business associations, incl. the American Chamber of Commerce in Ukraine (<a href="https://chamber.ua">https://chamber.ua</a>) and the Union of Ukrainian entrepreneurs (<a href="https://sup.org.ua">https://sup.org.ua</a>), sectoral and regional business-associations</li> <li>❑ at least 3 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA)</li> </ul>

6	<p><b>One focus-group, number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>❑ international development partners and investors, incl. representatives of the Councils of investors (Ukrainian-German, Ukrainian-British, Ukrainian-Austrian)</li> <li>❑ at least 3 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA)</li> </ul>
7	<p><b>One focus-groups, number of participants – at least 6 persons each</b></p> <ul style="list-style-type: none"> <li>❑ employees of large and medium-sized companies (non-managerial employees)</li> <li>❑ at least 2 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 2 representatives of youth (up to 35 years)</li> </ul>
8	<p><b>One focus-group, number of participants – at least 6 persons each</b></p> <ul style="list-style-type: none"> <li>❑ employees of small and micro businesses (non-managerial employees)</li> <li>❑ at least 2 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 2 representatives of youth (up to 35 years)</li> </ul>
9	<p><b>One focus-group with community members representatives, affected by the business activities – at least 6 persons.</b></p> <p>Women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 2 representatives of youth (up to 35 years)</p>
10	<p><b>One focus-group with unemployed people – at least 6 persons</b></p> <p>Women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 2 representatives of youth (up to 35 years)</p>
11	<p><b>One focus-group with rural women – at least 6 persons.</b></p> <p>Incl. at least 2 women 20-25 years old and at least 2 women over 50 years old</p>
12	<p><b>One focus-group with representatives of youth – at least 6 persons.</b></p> <p>Women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA)</p>
13	<p><b>One focus group with people who have work experience abroad</b></p> <ul style="list-style-type: none"> <li>❑ at least 2 years of work experience</li> <li>❑ women and men, mixed by age and marital status, living in Kyiv and outside, incl. in conflict affected areas (GCA), for at least 2 representatives of youth (up to 35 years)</li> </ul>

## ANNEX B. HUMAN RIGHTS AND RULE OF LAW ENVIRONMENT IN UKRAINE

<b>Population</b>	Total 42 mln, city (69%)\ rural (31%)
	Population engaged in economic activity: 16,3 mln
	The number of economically inactive working-age population: 7 mln.
	Unemployment rate according to ILO methodology: 9,9% <sup>484</sup>
	Employment in the informal sector of the economy (official data): 19,3% <sup>485</sup>
	<i>Human Development Index</i> <sup>486</sup> <i>Index 0.779; Rank: 74</i>
<b>Country economic ratings</b>	<i>Index of Economic freedom</i> <sup>487</sup> <b>2021 OVERALL SCORE 56.2; WORLD RANK 127</b>
	<i>BDO IBC Overall ranking</i> <sup>488</sup> <b>2018 OVERALL SCORE 45,27; WORLD RANK 131</b>
<b>Human Rights Rating</b>	<i>World Press Freedom Index</i> <sup>489</sup> <b>2021 Score: 32.96; RANK 97/180</b>
	<i>Freedom House rating</i> <sup>490</sup> 2021 Score: 62 (total: 100), Partly Free
	<i>ITUC Global Rights Index</i> <sup>491</sup> No guarantee of rights
	<i>The Global Gender Gap Report</i> <sup>492</sup> 2021 Score: 0,714; RANK <b>74 / 156</b>
	<i>Women, Business and the Law (2021) INDEX</i> <sup>493</sup> Score 79,4
	<i>Environmental Performance Index</i> <sup>494</sup> 2020 Score: 49.5 RANK <b>60 / 180</b>
<b>Rule of Law</b>	<i>CORRUPTION PERCEPTIONS INDEX</i> <sup>495</sup> 2020 Score: 33/100 Rank <b>117/180</b>
	<i>The World Justice Project Rule of Law Index</i> <sup>496</sup> 2020 SCORE: 0.51 RANK <b>72/128</b>

484 Ситуація на ринку праці та діяльність Державної служби зайнятості у січні-вересні 2021 року, [https://www.dcz.gov.ua/sites/default/files/infofiles/09\\_sytuaciya\\_na\\_rp\\_ta\\_diyalnist\\_dsz\\_1.pdf](https://www.dcz.gov.ua/sites/default/files/infofiles/09_sytuaciya_na_rp_ta_diyalnist_dsz_1.pdf).

485 Ситуація на ринку праці та діяльність державної служби зайнятості у січні-вересні 2021 року, [https://www.dcz.gov.ua/sites/default/files/infofiles/09\\_sytuaciya\\_na\\_rp\\_ta\\_diyalnist\\_dsz\\_1.pdf](https://www.dcz.gov.ua/sites/default/files/infofiles/09_sytuaciya_na_rp_ta_diyalnist_dsz_1.pdf).

486 <http://hdr.undp.org/en/countries/profiles/UKR>.

487 <https://www.heritage.org/index/>.

488 <https://www.bdo-ibc.com/index.php?id=35>.

489 <https://rsf.org/en/ukraine>.

490 <https://freedomhouse.org/country/ukraine/freedom-world/2021>.

491 2021 ITUC Global Rights Index, [https://files.mutualcdn.com/ituc/files/ITUC\\_GlobalRightsIndex\\_2021\\_EN\\_Final.pdf](https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN_Final.pdf).

492 [https://www3.weforum.org/docs/WEF\\_GGGR\\_2021.pdf](https://www3.weforum.org/docs/WEF_GGGR_2021.pdf).

493 Women, Business and the Law 2021, [https://www.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2021\\_ENG\\_v2.pdf](https://www.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2021_ENG_v2.pdf).

494 <https://epi.yale.edu/downloads/epi2020report20210112.pdf>.

495 <https://www.transparency.org/en/cpi/2020/index/ukr>.

496 <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>.

<b>SDG achievement Rank</b>	36 / 165 75.51/100
<b>Trade Union density rate</b> <sup>497</sup> (year of data)	43,8% (2015)
<b>NAP / NBA</b>	The Ukrainian Ministry of Justice announced that it was beginning a process to develop a National Action Plan on Business and Human Rights in January 2019. A National Baseline Assessment was published in June 2019. <sup>498</sup> On 24 March 2021, the Business and Human Rights chapter as part of the National Strategy was adopted by the President of Ukraine.
<b>NCP OECD</b>	On March 15, 2017, the Agreement was signed between the Government of Ukraine and OECD on joining the Declaration on International Investments and Multinational Enterprises, Guidelines for Multinational Companies and procedural decisions of the OECD Council. In this regard, the National Contact Point was established under the Ministry of Economic Development and Trade. <sup>499</sup> No complaints were filed to NCP.
<b>UN Global Compact local network</b>	86 active members, 64 among them are companies that are members of the UN Global Compact in Ukraine. Among them are 32 SMEs <sup>500</sup>

Ukraine has rather strong international commitments grounded on the Universal Declaration of Human Rights. The State ratified the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), core International Labour Organization (ILO) Conventions, European Convention on Human Rights and Fundamental Freedoms and other important international documents.

At the same time, Ukraine has not ratified the Optional Protocol to the ICESCR (on communications), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as well as 38 ILO Conventions, including: Migrant Workers' Convention No 97, Rural Workers Organisation Convention No 141, Asbestos Convention No 162, Chemical Convention No 170, Night Work Convention No 171, Part-Time Work Convention No 175, Home Work Convention No 177, Private Employment Agencies Convention No 181, Maternity Protection Convention (Revised) No 183, Domestic Workers Convention No 189 and 2014 Protocol to the Convention on Forced Labour No 29.

497 ILOSTAT, <https://ilostat.ilo.org/topics/union-membership/>.

498 <https://legalforum.nlu.edu.ua/wp-content/uploads/2019/06/executive-summary.pdf>.

499 <https://ncp.gov.ua/?lang=en>; <https://mneguidelines.oecd.org/ukraine-signs-oecd-agreement-to-strengthen-investment-climate.htm>.

500 UN Global Compact, Our Participants, <https://www.unglobalcompact.org/>.

## **ANNEX C. MAPPING STUDIES/RESEARCH IN THE FIELD OF BUSINESS AND HUMAN RIGHTS, OBSERVANCE AND RESPECT TO SOCIO-ECONOMIC RIGHTS, DECENT WORK AND EMPLOYMENT ISSUES**

The identified studies/research were divided into four groups according to the type of organization that undertook, or initiated and supported the respective investigation process.

### **I. International and Regional Organizations**

Informality and COVID-19 in Eurasia: The Sudden Loss of a Social Buffer, OECD 2021 (<https://www.oecd.org/eurasia/COVID-19-informality-Eurasia.pdf>);

Business and Human Rights in Central and Eastern Europe: Rebuilding trust for new social contract, Session of the UN Forum on Business and Human Rights, November 18, 2020. (<https://2020unforumbhr.sched.com/event/fD4b/business-and-human-rights-in-central-and-eastern-europe-rebuilding-trust-for-new-social-contract>);

Migration and Forced Labour: Building an Effective Response in Eastern Europe and Central Asia: Concept Note of the Side event for the 1st Regional Forum on Business and Human Rights in Eastern Europe and Central Asia “Making human rights a priority for business”, November 25, 2020. ([https://0390f3de-97a3-4a91-8e0b-e06fa3e6db1d.filesusr.com/ugd/713ee4\\_e6ee8cdb24a64780b3bcb1af5875bd75.pdf](https://0390f3de-97a3-4a91-8e0b-e06fa3e6db1d.filesusr.com/ugd/713ee4_e6ee8cdb24a64780b3bcb1af5875bd75.pdf));

Assessment of the socio-economic impact of COVID-19 in Ukraine / United Nations Country Team (UNCT), 2020 (<https://ukraine.un.org/index.php/en/103300-assessment-socio-economic-impact-covid-19-ukraine>);

Analytical Report. COVID-19 in Ukraine: Impact on Households and Businesses / UNDP, UN Women and FAO, 2020 ([https://www.ua.undp.org/content/ukraine/uk/home/library/democratic\\_governance/covid-19-in-ukraine--impact-on-households-and-businesses.html](https://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/covid-19-in-ukraine--impact-on-households-and-businesses.html));

Women and Men in Leadership Positions in Ukraine: 2017-2020 / UNDP, 2021. ([https://www.ua.undp.org/content/ukraine/en/home/library/democratic\\_governance/women-and-men-in-leadership-positions-in-ukraine--2017-2020.html](https://www.ua.undp.org/content/ukraine/en/home/library/democratic_governance/women-and-men-in-leadership-positions-in-ukraine--2017-2020.html));

Working Paper. Undeclared Work in Ukraine: Nature, Scope and Measures to Tackle It / produced within the EU-ILO Project: Enhancing the Labour Administration Capacity to Improve Working Conditions and Tackle Undeclared Work, 2018 ([https://www.ilo.org/wcmsp5/groups/public/--ed\\_dialogue/--lab\\_admin/documents/projectdocumentation/wcms\\_630068.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--lab_admin/documents/projectdocumentation/wcms_630068.pdf)).

### **II. International and National NGOs and other think-tanks**

Gender employment and welfare study Conducted by Info Sapiens in cooperation with Ring Ukraine / Info Sapiens in cooperation with Ring Ukraine, 2019 ([https://sapiens.com.ua/publications/socpol-research/77/Gender\\_employment\\_and\\_welfare\\_Study.pdf](https://sapiens.com.ua/publications/socpol-research/77/Gender_employment_and_welfare_Study.pdf));

Code of practice for employers Promoting equality and non-discrimination at work in Ukraine. Guiding Principles / Confederation of Employers of Ukraine. Available at: <http://employers.org.ua/media/Code%20of%20practice%20for%20employers.pdf>.

### **III. International and National Academia circles**

Konopka, Ihor, Getting hard to resist. Prospect of mandatory human rights due diligence in Ukraine. JAMM07 Master Thesis; Lund University; Supervisor: Radu Mares, Spring 2021 (<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9058731&fileId=9058751>);

Letnar Černič, Jernej. Contours of National Action Plans on Business and Human Rights in Central and Eastern Europe, Philosophy of Law and General Theory of Law 1/2021;

Sanchenko, Alla. About the System of Remedies for Rights Protection in the Context of the UN Guiding Principles on Business and Human Rights, Economics and Law. 2020, № 1 (in Ukrainian);

- Tokunova, Anastasiia. International legal approaches to the principle of justice as a basis for ensuring socio-economic human rights // Electronic scientific publication "Comparative and Analytical Law" / State Higher Educational Institution "Uzhhorod National University" of the Ministry of Education and Science of Ukraine, 2019, №5, P. 172-176 ([http://pap-journal.in.ua/wp-content/uploads/2020/08/PAP\\_5\\_2019.pdf](http://pap-journal.in.ua/wp-content/uploads/2020/08/PAP_5_2019.pdf) (in Ukrainian));
- Tokunova, Anastasiia. UNGPs as a Legal Instrument for Sustainable Development achievement / Entrepreneurship, Economy and Law. 2018. № 12. P. 125-129 (<http://pgp-journal.kiev.ua/archive/2018/12/23.pdf> (in Ukrainian));
- Tokunova, Anastasiia. Means of state guidance to ensure respect for human rights in the process of entrepreneurship activity // Strengthening the foundations of business and human rights: drivers for Ukraine: a collection of scientific and practical materials of an international project. Science. ed .. V.A. Ustimenko., Kyiv, NAS of Ukraine, Institute of Economic and Legal Research, 2019, P. 104-114. (in Ukrainian);
- Tokunova, Anastasiia. Implementation of the UNGPs in the framework of the restoration and peacebuilding in the eastern regions of Ukraine / Law and Public Administration, 2019. № 2 (35). Vol. 2. P. 28-33 ([http://pdu-journal.kpu.zp.ua/archive/2\\_2019/tom\\_2/6.pdf](http://pdu-journal.kpu.zp.ua/archive/2_2019/tom_2/6.pdf) (in Ukrainian));
- Tokunova, Anastasiia. Promoting gender equality in the context of the UN Guiding Principles on Business and Human Rights // Promoting respect for human rights in business in the context of implementing the Sustainable Development Goals in Ukraine: Coll. scientific-practical mater. / Science. ed .. V.A. Ustimenko., Kyiv, NAS of Ukraine, Institute of Economic and Legal Research, 2020, P. 123-134. (in Ukrainian);
- Uvarova, Olena. Business and Human Rights: Key Questions for the Theory of Law (Philosophy of Law and General Theory of Law 1/2021 (in Ukrainian));
- Uvarova, Olena. Business and Human Rights in Conflict: An Interdisciplinary Search for a New Concept, Philosophy of Law and General Theory of Law 1/2019 (DOI: <https://doi.org/10.21564/2227-7153.2019.1.186454> (in Ukrainian));
- Uvarova, Olena. National Baseline Assessment on Business and Human Rights in Ukraine, Ministry of Justice of Ukraine in cooperation with Danish Institute for Human Rights, 2019 (<https://minjust.gov.ua/files/general/2019/07/10/20190710170813-19.pdf> (in Ukrainian, summary in English);
- Uvarova, Olena. Business and Human Rights in Times of Global Emergencies: Comparative Perspective, Comparative Law Review, 2020. (DOI: <http://dx.doi.org/10.12775/CLR.2020.009>);
- Uvarova, Olena. Corporate Responsibility to Respect Human Rights in Times of Internal Displacement: the Gender Component, 2020 (<https://rm.coe.int/pub-alter-gender-bisness/16809f2b00> (in Ukrainian));
- Uvarova, Olena; Buryakovska, Kateryna. Business and Human Rights; training manual for law students, Manual for law students, Erasmus plus project, 2019 ([https://nlu.edu.ua/wp-content/uploads/2021/05/III\\_1.pdf](https://nlu.edu.ua/wp-content/uploads/2021/05/III_1.pdf) (in Ukrainian));
- Business and Human Rights : key challenges for new democracies : collection of papers / Ed. by Olena Uvarova, Kharkiv, 2019, 130 p. (ISBN 978-966-937-778-4 (in Ukrainian));
- SMEs Digital Transformation in the EaP countries in COVID-19 Time: Challenges and Digital Solutions EaP CSF COVID-19 Policy Paper / Olena Uvarova, Eastern Partnership Civil Society Forum, 2021, 67 p. (<https://eap-csf.eu/wp-content/uploads/SMEs-digital-transformation-in-the-EaP-countries-during-COVID-19.pdf>);
- Strengthening the foundations of business and human rights: drivers for Ukraine: a collection of scientific and practical materials of an international project. Kyiv: NAS of Ukraine, Institute of Economic and Legal Research, 2019. – 200 p. ([http://www.iepd.kiev.ua/wp-content/uploads/2019/05/Drayveri\\_block\\_200str\\_100ekz.pdf](http://www.iepd.kiev.ua/wp-content/uploads/2019/05/Drayveri_block_200str_100ekz.pdf) (in Ukrainian));
- Promoting respect for human rights in business in the context of implementing the Sustainable Development Goals in Ukraine. Kyiv: National Academy of Sciences of Ukraine, Institute for Economic and Legal Research, Commissioner for Human Rights of the Verkhovna Rada of Ukraine, 2020. – 248 p. ([http://www.iepd.kiev.ua/wp-content/uploads/2020/07/%D0%9A%D0%BD%D0%B8%D0%B3%D0%B0-%D0%9F%D1%80%D0%BE%D1%81%D1%83%D0%B2%D0%B0%D0%BD%D0%BD%D1%8F-%D0%BF%D0%BE%D0%B2%D0%B0%D0%B3%D0%B8-%D0%9F%D0%9B\\_%D0%A6%D0%A1%D0%A0.pdf](http://www.iepd.kiev.ua/wp-content/uploads/2020/07/%D0%9A%D0%BD%D0%B8%D0%B3%D0%B0-%D0%9F%D1%80%D0%BE%D1%81%D1%83%D0%B2%D0%B0%D0%BD%D0%BD%D1%8F-%D0%BF%D0%BE%D0%B2%D0%B0%D0%B3%D0%B8-%D0%9F%D0%9B_%D0%A6%D0%A1%D0%A0.pdf) (in Ukrainian));
- Summary of the discussions from the consultation on Human Rights-Compatible International Investment Agreements. Report from for Central and Eastern Europe and the Central Asia region held on April 21st, 2021, Polish Institute for Human Rights and Business and Yaroslav Mudryi National Law University [https://www.ohchr.org/Documents/Issues/Business/2021\\_06\\_05\\_CEE\\_CA\\_Consultations\\_HR-Compliant\\_IAs\\_Summary.docx](https://www.ohchr.org/Documents/Issues/Business/2021_06_05_CEE_CA_Consultations_HR-Compliant_IAs_Summary.docx) (last accessed 24 October 2021));

#### IV. State Bodies of Ukraine

Secretariat of the Parliamentary Commissioner for Human Rights in Ukraine. Business and Human Rights in times of COVID-19, Uvarova, Olena, 2020 ([https://ombudsman.gov.ua/files/2020/UN/BHR\\_covid19\\_eng.pdf](https://ombudsman.gov.ua/files/2020/UN/BHR_covid19_eng.pdf)).

## ANNEX D. INITIATIVES AND PROJECTS

### UNDP in Ukraine projects

#### HUMAN RIGHTS FOR UKRAINE (HR4U) PROJECT<sup>501</sup>

The project is being implemented to foster inclusive and sustainable human development in Ukraine and to further promote ongoing democratization processes in the country, focusing on human rights and access to justice for all. Through the project, UNDP is continuing to prioritize its work with key national partners and stakeholders – such as the National Human Rights Institution, national and local authorities, civil society, and human rights defenders – uniting their efforts to promote human rights across Ukraine and improve access to justice, especially for vulnerable groups. Launched in January 2019, the project will run until the end of 2023.

In 2021, under the Human Rights for Ukraine project, UNDP launched a pilot initiative “Business and Human Rights in Ukraine – Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights” to further identify and quality baselines, gaps and opportunities and to fully understand the current situations of rights holders and duty bearers.

#### STRENGTHENING MSME BUSINESS MEMBERSHIP ORGANIZATIONS IN UKRAINE: PHASE II<sup>502</sup>

The objective of the project’s Phase II is to scale-up the support for the MSME sector in Ukraine and improve its competitiveness through developing more professional, demand-driven and client-oriented BMOs.

The objective will be achieved by strengthening organizational development, improving the governance and operational management of BMOs, facilitating access to and utilization of business development services by MSMEs, as well as facilitating a professional public-private dialogue to improve the regulatory framework and overall business environment for MSMEs. Due consideration will be given to women’s economic empowerment and promoting “green” practices among MSMEs.

Lessons learned, as well as, inputs from the Project are in high importance for implementing UNGPs among Ukrainian MSMEs.

#### SUPPORTING GREEN RECOVERY IN UKRAINE<sup>503</sup>

The project will provide an important stimulus for transition to a greener economy and more sustainable financial system – support implementation of the new business models, creation of the new green jobs, improved social inclusion of the citizens and unlock private green and sustainable finance.

This objective will be achieved through delivery of the following outputs:

- 1) improved legal framework on the national level for a better green transformation of the economic and financial relations,
- 2) reduced transaction costs on the green finance market; and
- 3) better evaluation and management of the climate-related risks on the corporate level.

Cooperation with the Project will enrich the potential of UNGPs implementation in Ukraine as part of Green, EU-UA agenda.

501 <https://www.ua.undp.org/content/ukraine/en/home/projects/human-rights-for-Ukraine.html>

502 <https://www.ua.undp.org/content/ukraine/en/home/projects/strengthening-msme-business-membership-organizations-in-ukraine-.html>

503 <https://www.ua.undp.org/content/ukraine/en/home/projects/supporting-green-recovery-in-ukraine.html>

ENHANCING WOMEN'S POLITICAL PARTICIPATION AT THE SUBNATIONAL LEVEL<sup>504</sup>

The project aims to promote gender equality at the subnational level through (1) increasing the civil and political participation of women, especially rural women and women with disabilities who are running in upcoming local elections; (2) mentoring elected local women councillors; and (3) strengthening institutional capacity for gender-responsive decision-making in amalgamated territorial communities. The project operates in four oblasts of Ukraine – Kherson, Mykolaiv, Zakarpattia and Khmelnytskyi oblasts – to enhance public awareness about the need for the full, equal, free and democratic participation of women, on equal terms with men, in political and public life.

The overall objective of the project is to promote women's political participation and representation at the subnational level through (1) a capacity development and mentoring programme for women elected as local councillors, especially rural women and women with disabilities; and (2) strengthening the institutional capacity for gender-responsive decision-making in amalgamated territorial communities.

SOCIAL COHESION THROUGH YOUTH PARTICIPATION<sup>505</sup>

The project aims to create the grounds and methodological framework to equip youth policy implementation infrastructure with the necessary knowledge and materials to lead a dialogue on national unity and social cohesion with young women and men in Ukraine.

It is implemented through the development of educational and training materials and preparatory activities, in partnership with the Ministry of Youth and Sport and the All-Ukrainian Youth Centre (AUYC), which serves as a knowledge hub for subnational youth centres. The developed and piloted methodologies, materials and programmes will be co-owned by the Ministry of Youth and Sports, as the policy-making institution, and the AUYC, which will facilitate the securing of the necessary funding and government support for the continuation of project activities in the future, thus ensuring the sustainability of the project's results beyond the project timeline.

SUPPORT TO ECONOMIC RECOVERY OF EASTERN UKRAINE<sup>506</sup>

The conflict in Donetsk and Luhansk oblasts in eastern Ukraine has had a significant and detrimental impact on human welfare, and on social and economic conditions overall. Assessments indicate that unemployment, especially among disadvantaged groups (IDPs, women, youth, disabled, etc.), is expected to constantly increase due to the decline in economic activity and thereby limited opportunities to support livelihoods and generate income in the Donbas.

To address these challenges, the project aims to provide social stabilization support to eastern Ukraine by addressing the urgent social and economic needs of internally displaced persons (IDPs) and local population affected by the armed conflict through creating job opportunities and improving support to small- and medium-sized enterprises (SMEs).

The project is implemented in the Government Controlled Areas of Donetsk and Luhansk oblasts, including communities located near the contact line, and in three neighbouring oblasts – Dnipropetrovsk, Kharkiv and Zaporizhzhia.

504 [https://www.ua.undp.org/content/ukraine/en/home/projects/enhancing-women\\_s-political-participation-at-the-subnational-lev.html](https://www.ua.undp.org/content/ukraine/en/home/projects/enhancing-women_s-political-participation-at-the-subnational-lev.html)

505 <https://www.ua.undp.org/content/ukraine/en/home/projects/social-cohesion-through-youth-participation.html>

506 <https://www.ua.undp.org/content/ukraine/en/home/projects/support-to-economic-recovery-of-eastern-Ukraine.html>

## RESTORATION OF GOVERNANCE AND RECONCILIATION IN CRISIS-AFFECTED COMMUNITIES OF UKRAINE<sup>507</sup>

The “Restoration of Governance and Reconciliation in Crisis-Affected Communities of Ukraine” project is part of the overall Recovery and Peacebuilding Programme, supported jointly by the governments of Sweden and the Swiss Confederation (SIDA and SDC).

With a total budget of U.S. \$3 million, the Project’s aim is to overcome the negative consequences of the armed conflict in the Donbas, reduce the risk of its reoccurrence, and address existing grievances. This Project establishes a reliable monitoring system for conflict-affected areas. It provides technical and advisory assistance for the reorganization of local governance and the resumption of basic services. The Project also promotes reconciliation and social cohesion in order to:

- ❑ enable the development of local governance structures, in cooperation with the central authorities, which will address immediate reconstruction and social cohesion needs in conflict-affected communities. Such governance structures will function in partnership with community leaders, civil society (including women’s groups), and other local entities, and ensure that these structures are responsive to citizens’ needs;
- ❑ support the emergence of a reconciliation and peace-building policy through the efforts of the government, civil society, and the private sector, which is to uphold the values of inclusiveness among the citizenry through an ad hoc communication strategy, and to develop formal and informal dialogue and conflict resolution mechanisms to address dividing issues, as well as combat hate speech and other forms of political and cultural intolerance;
- ❑ promote the building of trust within local communities, between communities and the representatives of central agencies and security structures deployed in their areas, and between communities and local governance structures.

## ILO projects

ILO DECENT WORK COUNTRY PROGRAMME 2020-2024 in Ukraine  
(the previous research covered the period 2016 – 2019):

Key labour market challenges of the country remain low employment rates with a pronounced gender gap, high labour emigration, elevated youth unemployment and inactivity, and a notable skills mismatch. The global health crisis has negatively affected Ukraine’s performance in several of these areas and made addressing structural labour market issues even more urgent.

Key challenges in the area of working conditions and social protection are a lack of prevention culture concerning safety and health at work, increased levels of informality, high wage arrears, a notable gender pay gap, and insufficient coverage and financial sustainability of the social insurance system. Social dialogue needs to be intensified covering key topics of labour and social policies.

The DWCP aims to address challenges where the ILO has the key technical expertise to offer. The three priorities for the 2020–24 programme are 1) improved social dialogue, 2) inclusive and productive employment, and 3) improved working conditions and social protection.<sup>508</sup>

507 <https://www.ua.undp.org/content/ukraine/en/home/projects/restoration-and-reconciliation-sida-sdc.html>

508 [https://www.ilo.org/budapest/what-we-do/decent-work-country-programmes/WCMS\\_774454/lang--en/index.htm](https://www.ilo.org/budapest/what-we-do/decent-work-country-programmes/WCMS_774454/lang--en/index.htm)

## INCLUSIVE LABOUR MARKETS FOR JOB CREATION IN UKRAINE

In view of the complex labour market situation the new ILO program funded by Denmark goes for an integrated approach based on three pillars. The program will modernize the services of the Ukrainian public employment services enabling them to offer more effective and inclusive active labour market policies.

A strong skills component aims at closing the skills mismatch by better aligning the skills of new labour market entrants with the demand from the private sector. Finally, the program will support social dialogue mechanisms to solve critical issues such as informal employment, wages, or gender discrimination.<sup>509</sup>

Improving compliance with key International Labour Standards in Ukraine<sup>510</sup>

The project assists the government, social partners and the judiciary to respect and apply the fundamental principles and rights at work when developing and implementing new labour legislation.

## TOWARDS SAFE, HEALTHY AND DECLARED WORK IN UKRAINE

The long-term objective of the project funded by the European Union is that men and women workers in Ukraine enjoy safe, healthy and declared work. The expected short-term impact is an improved compliance of Ukraine with key international and European standards on occupational safety and health (OSH) and labour relations. The two outcomes to be achieved are (1) legal framework on OSH is brought closer to international labour standards and (2) systems and procedures for a roll-out of labour inspection services are in place.<sup>511</sup>

The National Action Plan to Reduce Undeclared Work 2021 (National Action Plan) was adopted, on 27 April 2021, by the multilateral national Workgroup (WG) led by the State Labour Service (SLS). The WG integrates representatives, at national and regional levels, of public authorities (e.g., Ministry of Economy, State Labour Service, Pension Fund, Ministry of Social Policy, National Police, State Fiscal Service) and social partners (e.g., Federation of Employers of Ukraine, Confederation of Employers of Ukraine, and Federation of Trade Unions of Ukraine).<sup>512</sup>

Organize and regularly conduct national/regional and/or sectoral awareness-raising campaigns to inform individuals and economic entities on UDW, particularly concerning UDW risks and adverse consequences, relevant obligations of workers and employers, sanctions imposed for failure to declare work and/or to pay taxes and social security contributions, positive impact of work and income declaration; importance of taxes and social security contributions, worker registration procedures, labour agreements and their content, etc.<sup>513</sup>

## OECD

## KICK-OFF OF THE OECD ANTI-CORRUPTION REVIEW OF THE ENERGY SECTOR IN UKRAINE

The in-depth anti-corruption review of the energy sector will become a useful instrument for policy makers, ownership entities, SOEs and law enforcement bodies in identifying trends and good practices, common problems in energy sector, as well as recommendations aimed at ensuring integrity within the selected sector.<sup>514</sup>

509 [https://www.ilo.org/budapest/what-we-do/projects/WCMS\\_617840/lang--en/index.htm](https://www.ilo.org/budapest/what-we-do/projects/WCMS_617840/lang--en/index.htm).

510 [https://www.ilo.org/budapest/what-we-do/projects/WCMS\\_751641/lang--en/index.htm](https://www.ilo.org/budapest/what-we-do/projects/WCMS_751641/lang--en/index.htm).

511 <https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/lang--en/index.htm>.

512 [https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS\\_803985/lang--en/index.htm](https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_803985/lang--en/index.htm).

513 [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms\\_803986.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_803986.pdf).

514 <https://www.oecd.org/countries/ukraine/oecd-anti-corruption-review-of-the-energy-sector-in-ukraine.htm>.

OECD REVIEW OF THE CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES IN UKRAINE

**Chapter 14. Stakeholder relations and responsible business**

...

14.4. Responsible business conduct D. SOEs should observe high standards of responsible business conduct.

Expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established. Similarly to private companies, SOEs should work towards minimising risks and observing high standards of responsible business conduct, including on issues related to the environment, employees, public health and safety, and human rights.

In Ukraine, the concept of responsible business conduct (RBC) remains nascent, although relevant regulations and policies have been introduced. <...>

RBC-related principles and standards, including due diligence mechanisms, have been introduced in a number of SOEs at supervisory and management board levels. For example, Naftogaz has established a Committee on Health, Safety, Environment and Reserves, which is responsible for developing a health, safety and environment strategy, policies, plans and risk assessment mechanisms. The company has also created an integrated management unit that monitors RBC-related risks, and has adopted relevant environmental, social (including health and safety), and anti-corruption policies. Along with communicating risks, Naftogaz discloses relevant indicators and adheres to Global Reporting Initiative (Naftogaz Group).

Similar standards, due diligence and disclosure mechanisms have been introduced in other SOEs, including Ukrenergo. A number of SOEs have also established corporate social responsibility units that are responsible for implementing sustainability projects. In particular, Naftogaz and its subsidiaries report that they provide contributions to local communities where they operate, while Ukrhydroenergo engages in crossborder collaboration to ensure the sustainability of water reservoirs (Naftogaz Group).

On a broader scale, most of the SOEs have yet to adopt RBC policies and introduce due diligence mechanisms. Along with a lack of clarity regarding the meaning of RBC, relevant practices are often limited to company operations, and lack implementation throughout business relationships or supply chains.<sup>222</sup> In addition, certain sectors experience particularly high levels of RBC-related challenges. Notably, state-owned coal mines have high levels of emissions, while their activities and unsustainable mine closures have contributed to excessive water and land pollution. Moreover, workers in state-owned mines often face non-payment of their wages and face health and occupational safety risks, while measures to minimise hazards remain limited (ILO, 2018).<sup>515</sup>

It should be noted that Ukraine has a significantly large SOE portfolio, with 3,293 SOEs. SOEs are active in areas such as energy, machine-building, and infrastructure. Some of the companies have significant environmental problems, legacy legal issues, or oligarchs as minority owners.

Along with centrally-owned SOEs, Ukraine has a large portfolio of **municipally-owned enterprises (MOEs)** under the oversight of local councils. Over the years, the number of MOEs has continued to increase. They are mainly active in essential services sector as healthcare, water and canalisation, administration, utilities, and transport sectors, and remain key recipients of state aid, though they continue to underperform financially. Compared to centrally-owned SOEs, corporate governance practices in MOEs remain informal and less transparent.

Ukraine sets the expectations on responsible business conduct of SOEs. In particular, Action plan for the implementation of the Concept of implementation of state policy on promoting the development of socially responsible business in Ukraine until 2030 approved by the Cabinet of Ministers of Ukraine of July 1, 2020, states as the action to develop and implement social responsibility policy and introduce corporate social responsibility in the activities of the SOEs. Art. 11 of the Law of Ukraine "On Governance of State Property" provides that the exclusive competence of the supervisory board of a state-owned unitary company includes: formation of corporate social responsibility and sustainable development policy. Ukraine also encourages SOEs to take specific measures on women's rights. National strategy on the creation of barrier-free space in Ukraine for the period up to 2030 calls to ensure equal rights of women and men to representation in supervisory boards and governing bodies of state unitary enterprises, companies and state banks.

**CoE Business and Human Rights Component**

515 <https://www.oecd.org/corporate/SOE-Review-Ukraine.pdf>.

The CoE Project “Internal Displacement in Ukraine: Building Solutions”<sup>516</sup> pays attention to gender aspects of internal displacement related to such actors as local decision-makers, legal professionals, civil society, and business.<sup>517</sup>

Webinar “Best corporate practices to respect human rights” on June 14, 2021 was supported by the Project.<sup>518</sup>

## The Ukrainian Ombudsperson

Parliamentary Commissioner for Human Rights is actively promoting the UNGPs. In 2019, the BHR experts platform was initiated by the Ombudsperson and brought together representatives of CSOs, human rights defenders, and scholars to cooperate on BHR issues. In November 2020, Olena Stepanenko, Ombudsperson’s Representative on Social and Economic Rights, was the speaker of the regional session on BHR in Central and Eastern Europe during the UN Forum on BHR, and also she participated in the 1st Regional Forum on BHR in Eastern Europe and Central Asia. Also in 2020, the tool “Business and Human Rights in times of COVID-19” was prepared on the initiative of the Ukrainian Ombudsperson in cooperation with the Danish Institute for Human Rights. It is in free access in English and Ukrainian on the special BHR webpage on the official Ombudsperson’s website. During the meeting with UN Resident and Humanitarian Coordinator in Ukraine Osnat Lubrani, Ms. Denisova stressed the need to strengthen bilateral cooperation in the implementation of the UN Guiding Principles on Business and Human Rights, improve the institutional capacity of the national preventive mechanism and raise awareness of Ukrainian society about human and civil rights and freedoms. In 2021, Ukrainian Ombudsperson Lyudmila Denisova initiated ‘Business Human Rights Week’, dedicated to the 10th anniversary of the UN Guiding Principles on Business and Human Rights. It took place on June 11-18, 2021. It included a series of events, in particular: a quiz to test basic knowledge on business and human rights, training on business and human rights in the digital environment, competition of students’ research papers, collection of proposals to take measures aimed at implementing the UN Guiding Principles on Business and Human Rights in Ukraine, etc. The round table “Best corporate practices to respect human rights: international experience and Ukrainian context” was one of the events of the Business and Human Rights Week in Ukraine.

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516 <https://www.coe.int/en/web/kyiv/idps2>.

517 <https://rm.coe.int/infographics-2020-engl/1680a15a79>.

518 <https://www.coe.int/en/web/kyiv/-/webinar-best-corporate-practices-to-respect-human-rights-was-organized-on-june-14-2021>.

## ANNEX E. NATIONAL STRATEGIC AND PROGRAM DOCUMENTS

**National Economic Strategy until 2030**<sup>519</sup>. In the context of achieving the economic vision, the mission of this Strategy is to create opportunities to realize the existing geographical, resource and human potential of the country to ensure the appropriate level of welfare, self-realization, security, rights and freedoms of every citizen of Ukraine through innovative economic innovative outpacing economic growth, taking into account the Sustainable Development Goals and the need to achieve climate neutrality no later than 2060. The aim of the Strategy is to create opportunities for Ukrainians as citizens, Ukrainians as entrepreneurs and investors.

**The National Human Rights Strategy**<sup>520</sup> and **Action Plan**<sup>521</sup>. In 2021 the National Human Rights Strategy and Action Plan for its implementation was adopted. The overall aim is to address systematic problems in the human rights area, ensure that human rights are protected, respected and fulfilled on the basis of Ukraine's legal commitments and human rights principles of equality and non-discrimination, and to address new challenges that have arisen. The strategy incorporates BHR for the first time and recognizes the [United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#) as a benchmark, calls on the government to protect human rights, and requests that all businesses of every size, shape and sector respect them. One of the key indicators of the Strategy's success is the level of awareness of business entities and their associations, trade unions and other civil society institutions on UNGPs.

In May 2021, the Cabinet of Ministers of Ukraine established an [intersectoral working group](#) to evaluate progress in the implementation of the National Human Rights Strategy and its action plan. **The representatives of business are not included in the Group.**

**National Action Plan on the implementation of the Convention on the Rights of Persons with Disabilities until 2025**<sup>522</sup>. The document includes specific provisions on the labour and employment issues of people with disabilities, including creation of favorable conditions and special actions for employment, creating favorable conditions for enterprises established by NGOs of people with disabilities, overcoming stereotypes towards this target group, etc.

**Strategy on promoting the realization of the rights and opportunities of persons belonging to the Roma national Minority in Ukrainian society for the period until 2030**<sup>523</sup>. The aim of the Strategy is to create conditions for the realization of the rights and opportunities of persons belonging to the Roma national minority, taking into account the challenges associated with difficult life circumstances and the desire for full self-realization in cultural, social, economic and political life of the society. One of the objectives of the Strategy is dedicated to ensuring employment and increasing the employment rate of persons belonging to the Roma national minority.

**Strategy for Integration of Internally Displaced Persons and Implementation of Medium-Term Decisions on Internal Displacement until 2024**<sup>524</sup>. The Strategy aims to promote the further integration of internally displaced persons by removing obstacles to the exercise of their rights and fundamental freedoms, ensuring full access to administrative, social, cultural and other services, and capacity building for internally displaced persons in host communities. The strategy outlines employment as one of the spheres of key importance and attention in local programming and engagement with socially responsible business.

**National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026**<sup>525</sup>. The aim of the Strategy is to create favorable conditions for the development of public initiative and self-organization, formation and operation of civil society institutions, cooperation between citizens, these institutions and public authorities, bodies of local self-governance,

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519 On the approval of the National Economic Strategy until 2030, Decree of the Cabinet of Ministers of Ukraine, №179, 03.03.2021. Available at: <https://zakon.rada.gov.ua/laws/show/179-2021-%D0%BF#n25>.

520 National Strategy in the Sphere of Human Rights, approved by the Decree of the President of Ukraine of March 24, 2021 № 119/2021, <https://zakon.rada.gov.ua/laws/show/119/2021#Text>.

521 Action Plan for the Implementation of the National Strategy in the Sphere of Human Rights for 2021-2023, approved by the order of the Cabinet of Ministers of Ukraine of June 23, 2021 № 756-r, <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-dij-z-realizaciyi-nacionalnoyi-strategiyi-u-sferi-prav-lyudini-na-20212023-roki-i230621-756>.

522 On approval of the National Action Plan on the implementation of the Convention on the Rights of Persons with Disabilities until 2025, № 285-p, 07.04.2021. Available at: <https://zakon.rada.gov.ua/laws/show/285-2021-%D1%80#Text>.

523 On approval of the Strategy on promoting the realization of the rights and opportunities of persons belonging to the Roma national Minority in Ukrainian society for the period until 2030, Order of the Cabinet of Ministers of Ukraine, № 866-p, 28.07.2021. Available at: <https://zakon.rada.gov.ua/laws/show/866-2021-%D1%80#Text>.

524 On approval of the Strategy for Integration of Internally Displaced Persons and Implementation of Medium-Term Decisions on Internal Displacement until 2024, Order of the Cabinet of Ministers of Ukraine, № 1364-p, 28.10.2021. Available at: <https://zakon.rada.gov.ua/laws/show/1364-2021-%D1%80#Text>.

525 About National Strategy on Promoting the Development of Civil Society in Ukraine for 2021-2026, Decree of the President of Ukraine, № 487/2021, 27.09.2021. Available at: <https://zakon.rada.gov.ua/laws/show/487/2021#Text>.

including the fulfillment and protection of rights and freedoms of a human and citizen, satisfaction of public interests, ensuring civic participation in the adoption and implementation of government decisions. Besides, the document has an emphasis on the opportunities and need to strengthen the interaction and partnership of civil society institutes with public authorities, bodies of local self-governance, political institutions, and business.

**Concept of the State Target Social Program on Combating Human Trafficking until 2025**<sup>526</sup>. The Concept of the noted State programme suggests strengthening partnerships between relevant government institutions, civil society, and business as an element of a comprehensive approach to the problems' solving.

In addition, several guiding documents targeting both the state and private sectors of economic activity were endorsed in line with the **National Action Plan to implement the recommendations set out in the concluding observations of the UN Committee on the Elimination of Discrimination Against Women to the eighth periodic report of Ukraine on the implementation of the CEDAW until 2021**<sup>527</sup>. Namely, the Methodical recommendations on the introduction of provisions aimed at ensuring equal rights and opportunities for women and men towards labour relations into collective agreements<sup>528</sup> and the Methodical recommendations on conducting gender audits by enterprises, institutions and organizations.<sup>529</sup>

**Strategy for Environmental Safety and Adaptation to Climate Change until 2030**<sup>530</sup>. The strategy sets 12 strategic goals, starting with the reduction of industrial pollution. There is a certain emphasis on the impact of business on the state of the environment, primarily on environmental pollution by air emissions and discharges into water bodies from industrial enterprises. One of the ways to implement the strategy is to ensure the development of effective partnerships between the state, businesses, the public and the scientific sector on environmental protection and low-carbon development. At the same time the emphasis on the implementation of standards of responsible business behavior should be strengthened.

**The Key Directions of the realization of state policy in the field of employment and stimulating the creation of new jobs**<sup>531</sup> and its **Action Plan until 2022**<sup>532</sup>. The noted documents provide a framework vision and primary actions in several directions, including towards development of the national economy as a basis for productive employment and job creation, and ensuring the creation of decent work conditions and de-shadowing of relations in the field of employment.

#### **Concept for the implementation of state policy in the field of socially responsible business development in Ukraine.**

In 2020 the Concept for the implementation of state policy in the field of socially responsible business development in Ukraine until 2030 and its Action Plan was adopted<sup>533</sup>. The aim of the Strategy is to establish a regulatory framework and implement measures for the implementation of international standards of socially responsible business in the activities of companies to ensure sustainable development of Ukraine and improve public welfare. The Strategy doesn't mention UNGPs or human rights, but sets activities and tasks related to BHR agenda covering this under concept of social responsibility including:

- in the field of environmental protection: introduction of innovative environmentally friendly and energy efficient technologies; prevention of negative impact on the environment; waste disposal;
- in the field of employment: development of strategies of social responsibility of subjects of economic activity taking into account interests of community and society; creation of new jobs; publication of management reports; implementation of charitable activities aimed at supporting socially vulnerable groups; annual publication of a public report containing information on the implementation of measures by business entities to implement standards of socially responsible business;

526 On approval of the Concept of the State Target Social Program on Combating Human Trafficking until 2025, Order of the Cabinet of Ministers of Ukraine, № 800-p, 14.07.2021. Available at: <https://zakon.rada.gov.ua/laws/show/800-2021-%D1%80#Text>.

527 On approval of the National Action Plan to implement the recommendations set out in the concluding observations of the UN Committee on the Elimination of Discrimination against Women to the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women until 2021, Order of the Cabinet of Ministers of Ukraine, № 634-p, 05.09.2018. Available at: <https://zakon.rada.gov.ua/laws/show/634-2018-%D1%80#Text>.

528 On approval of the Methodical recommendations on the introduction of provisions aimed at ensuring equal rights and opportunities for women and men towards labour relations into collective agreements, Order of the Ministry of Social Policy of Ukraine, № 56, 29.01.2020. Available at: <https://zakon.rada.gov.ua/rada/show/v0056739-20#Text>.

529 On approval of the Methodical recommendations on the Methodical recommendations on conducting gender audits by enterprises, institutions and organizations, Order of the Ministry of Social Policy of Ukraine, № 448, 09.08.2021. Available at: <https://zakon.rada.gov.ua/rada/show/v0448739-21#Text>.

530 On approval of the Strategy for Environmental Safety and Adaptation to Climate Change until 2030, Order of the Cabinet of Ministers of Ukraine, № 1363-p, 20.10.2021. Available at: <https://zakon.rada.gov.ua/laws/show/1363-2021-%D1%80#Text>

531 On approval of the Key Directions of the realization of state policy in the field of employment and stimulating the creation of new jobs until 2022, Order of the Cabinet of Ministers of Ukraine, № 1396-p, 24.12.2019. Available at: <https://zakon.rada.gov.ua/laws/show/1396-2019-%D1%80#Text>.

532 On approval of the Action Plan on implementation of the Key Directions of the realization of state policy in the field of employment and stimulating the creation of new jobs for the period up to 2022, Order of the Cabinet of Ministers of Ukraine, № 216-p, 03.03.2020. Available at: <https://zakon.rada.gov.ua/laws/show/216-2020-%D1%80#Text>.

533 the Concept of implementation of state policy in the field of promoting the development of socially responsible business in Ukraine // <https://zakon.rada.gov.ua/laws/show/66-2020-%D1%80#Text>; The Action plan // <https://zakon.rada.gov.ua/laws/show/853-2020-%D1%80#Text>.

- in the development of labor relations: establishing a dialogue with trade unions, promoting the conclusion of collective agreements; ensuring the objectivity of the assessment of professional qualities and the amount of remuneration for conscientious and effective performance of professional duties of employees; creating opportunities to ensure youth employment and facilitate employees' access to education; creation of safe and ergonomic working conditions, carrying out of improving and cultural actions; introduction of modern occupational safety and health management systems; formation of the list of social guarantees, in particular concerning medical insurance of workers for the purpose of stimulation of labor activity; assistance in employment of employees of the business entity dismissed as a result of reorganization.

According to the Concept, companies in Ukraine will be encouraged to adhere to international standards and principles of responsible business conduct during their activities.

**National Strategy for Barrier-Free Environment in Ukraine for the period until 2030** was adopted in 2021, and it is focused mostly on the rights of persons with disabilities and other vulnerable groups.<sup>534</sup> The Strategy focuses on the leading documents on the creation of a barrier free environment, in particular, the Convention on the Rights of Persons with Disabilities, ratified by the Law of Ukraine of 16 December 2009 № 1767-VI, European Social Charter (revised), approved by the Law of Ukraine of 14 September 2006. № 137-V, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the Biarritz Partnership International Initiative. The goal of the Strategy is to create a barrier-free environment for all persons, to ensure equal opportunities for everyone to exercise their rights and receive services on an equal basis with others by integrating physical, informational, digital, social and civil, economic, and educational barrier-free environments into all areas of public policies.

The Strategy determines 6 strategic directions, and an economic barrier-free environment is outlined as one of them. The vision of this direction emphasizes, that all citizens, regardless of age, gender, marital status, or state of health, have the conditions and opportunities for employment, financial and other resources for entrepreneurship or self-employment. The development of the above-noted Strategy was performed in line with the *President of Ukraine Decree about ensuring the creation of a barrier-free environment in Ukraine*.<sup>535</sup>

It paved the way for the Ministry of Digital Transformation of Ukraine to launch the “Business without Barriers” section of the Diia.Business portal under support of United Nations Development Programme (UNDP) and with the financial support of the Government of Denmark. Entrepreneurs, small and medium ones, have access to systematic information on how to implement the principles of a barrier-free approach to doing business. The portal is in line with the “Business without Barriers” Declaration initiated by Ukraine’s First Lady Olena Zelenska and signed by large Ukrainian and international companies. The declaration was signed by representatives of the following companies: Ukrposhta, Oschadbank, Ukrzaliznytsia, Auchan, 1+1 Media, DTEK, Socar, work.ua, ATB, Danone.

## Management Reporting

The Management Report is a document that contains financial and nonfinancial information, which characterizes the state and the prospects of the development of an enterprise and discloses the main risks and uncertainties of its activities. Management report Structure is presented in Table 1.

**Table 1.** Management report Structure<sup>536</sup>

Report	Large and medium-sized business	Banks
Regulation	Methodical recommendations for compiling a management report, affirmed by the order of the Ministry of Finance of Ukraine 07 December 2018 982. Amended 18 January 2019	Instruction on the procedure of compiling and publishing of financial statements of Ukrainian banks. Affirmed by the National Bank of Ukraine Resolution 24 October 2011 373. Amended 01 January 2019
Contents	Organizational structure and description of company's activity	Nature of the business (description of the external environment bank operates in)

534 National strategy for the creation of barrier-free space in Ukraine for the period up to 2030, approved by the order of the Cabinet of Ministers of Ukraine dated April 14, 2021 № 366-r, <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text>.

535 About ensuring the creation of a barrier-free environment in Ukraine, Decree of the President of Ukraine, № № 533/2020, 03.12.2020. Available at: <https://zakon.rada.gov.ua/laws/show/533/2020#Text>.

536 Methodical recommendations for compiling a management report (2019), Instruction on the procedure of compiling and publishing of financial statements of Ukrainian banks (2019)

Report	Large and medium-sized business	Banks
	Operating results	Management goals and strategies to achieve these goals
	Liquidity and liabilities	Resources, risks and relations
	Environmental aspects	Activity results and prospects of the further development
	Social aspects and HR policy	Key performance indicators
	Risks	
	Research and innovations	
	Financial investments	
	Development prospects	
	Corporate governance	

The necessity of a management report implementation in Ukraine is caused by the processes of harmonization of European Union legislation on accounting with the national regulatory framework. For 2020 according to ESG Transparency Ranking in Ukraine prepared by the Professional Association of Corporate Governance and Centre for Corporate Social Responsibility, among large companies that are required to prepare Management Reports by law, slightly more than half (58.5%) prepared them.

Although the number of companies that prepared a management report compared to 2019 increased from 36% to 58.5%. Important to mention that mostly companies described their integration of Sustainable Development Goals into the company's CSR strategy in the management or non-financial reports.

Amendments to the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" (2017) added a new element of mandatory reporting for some businesses, namely the governance (management) report – a document that should contain financial and non-financial information characterizing the state and prospects development of the enterprise and reveals the main risks and uncertainties of its activities (since January 1, 2018). According to the guidelines of the Ministry of Finance of Ukraine from 2018, this report should include a number of information on management practices, namely on the organizational structure, description and performance of the enterprise, liquidity and liabilities, environmental and social aspects, personnel policy, risks, research and innovation, financial investment and development prospects. Corporate governance information is also required for issuers of securities. This reporting is mandatory only for large enterprises, the average number of employees whose date of preparation of annual financial statements exceeds 500 people. It should include:

- 1) a brief description of the model of the enterprise;
- 2) a description of the policy pursued by the enterprise regarding: – impact on the environment; – social issues and social protection of employees; – respect for human rights; – fight against corruption and bribery;
- 3) the result of such a policy;
- 4) the main risks associated with these issues related to the activities of the enterprise, as well as the ability of the enterprise to effectively manage these risks;
- 5) the main non-financial indicators that characterize the activities of the enterprise. There is no obligatory information about steps taken on address human rights abuses in the own operations or supply chains<sup>537</sup>

## National Economic Strategy

At the initiative of the President of Ukraine Volodymyr Zelensky, on November 6, 2020 the results of the Audit<sup>538</sup> of the Ukrainian Economy carried out by the Cabinet of Ministers of Ukraine were presented. The export of Ukraine mostly consists of goods with a low added value (Table 2), and the unrealized export potential of Ukraine in 2019 was 24 billions US Dollars. The countries with the largest unrealized export potential for Ukraine are China, Germany, Turkey, Italy, Poland, India and Egypt.

537 the Law of Ukraine «On Accounting and Financial Reporting in Ukraine» (2017) [<https://zakon.rada.gov.ua/laws/show/996-14#Text>] METHODOLOGICAL RECOMMENDATIONS for compiling a governance report APPROVED by the order of the Ministry of finance of Ukraine 12/07/2018 № 982 // <https://zakon.rada.gov.ua/rada/show/v0982201-18#Text>

538 The Audit of Ukrainian Economy 2030: <https://nes2030.org.ua/docs/doc-audit.pdf>

**Table 2.** Export statistics in 2020<sup>539</sup> (in US Dollar thousand)

Code	Product label	Exported value in 2019	Exported value in 2020
<b>Total</b>	<b>All products</b>	<b>49,853,049</b>	<b>49,388,093</b>
10	Cereals	9,633,332	9,417,292
72	Iron and steel	8,735,990	7,690,483
15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats	4,732,236	5,759,568
26	Ores, slag and ash	3,590,242	4,420,742
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television	2,772,039	2,546,419

Among the most influential global trends, the Cabinet of Ministers of Ukraine noticed the following<sup>540</sup>:

- ❑ growing competition for direct capital investments in developing countries;
- ❑ accelerated digitalisation and shrinking of supply and value chains;
- ❑ possible growth of economic nationalism and protectionism;
- ❑ structural political, economic, social and technology changes;
- ❑ exponential acceleration of data processing and life gamification;
- ❑ rapid development of robotization and bioengineering;
- ❑ expansion of the global control system;
- ❑ media as transmitting tool without verification of information;
- ❑ preference for business models for sustainable development.

Some trends are directly related to Human Rights and could cause huge risks for respect for private and family life and democracy development. The Government has defined factors that are crucial for the fulfilling life of Ukrainians as citizens, entrepreneurs and investors (*Table 3*).

**Table 3.** Factors crucial for the fulfilling life of Ukrainians

Ukrainian as a citizen	Ukrainian as an entrepreneur and investor
quality medicine	the rule of law
progressive education	effective regulatory environment
modern culture	macroeconomic stability
clean environment	stable governmental politics
safe environment	high return on investment
quality social security	conditions for foreign trade
service state security	large domestic market

The Cabinet of Ministers of Ukraine defined the economic vision<sup>541</sup> as a free country of citizens having a high level of well-being that is an effective service digital state, reliable economic partner in the world and an example of development for all Eastern Partnership countries. To implement this vision, the following is planned:

- ❑ to form competitive conditions for business and investments and to renew confidence in the state;
- ❑ to win the competition for capital in the global market;

539 International Trade Statistics: <https://www.intracen.org/itc/market-info-tools/statistics-export-country-product/>

540 The Audit of Ukrainian Economy 2030: <https://nes2030.org.ua/docs/doc-audit.pdf>

541 The vectors of economic development 2030: <https://nes2030.org.ua/docs/doc-vector.pdf>

- ❑ to stimulate innovations development and modernization of economic sectors to ensure their competitiveness in the global market;
- ❑ to facilitate the development of human capital and win the competition for talents.

**European and Euro-Atlantic integration are defined as the main directions of the development of the national economy.** It is noted that the Strategy will be realized under the **principles of the rule of law, protection of private property and zero tolerance to corruption.**

This vector of economic development is directly linked to the direct foreign investments, capital investments, the budget and indirectly linked to the real GDP and added value per employee. Therefore were defined the following strategic aims:

- ❑ legal system with an effective system of incentives and benefits that protects democracy, ensures the rule of law as well as human rights and freedoms;
- ❑ fair justice in Ukraine is based on the rule of law, protection of human rights and freedoms, individuals and legal entities;
- ❑ modern law enforcement agencies protect human rights and freedoms, legal order and legality, the interests of society and the state;
- ❑ an efficient anti-corruption system ensures effective prevention, detection and punishment of corruption.

According to the Strategy, Ukraine will become a much more attractive country for doing business. To achieve this goal the Cabinet of Ministers of Ukraine defined 14 tasks:

- ❑ to review 100% of legal acts to reduce regulatory pressure on economic activity;
- ❑ to unify the state regulatory instruments for economic and professional activities,
- ❑ to implement a unified system of permits and a system of their accounting;
- ❑ to adopt a framework law on self-regulation and ensure the creation of self-regulative organizations;
- ❑ to implement the declarative principle of doing business for economic activities with low and medium risks;
- ❑ to ensure the digital interaction with regulatory authorities and harmonization of national legislation with EU laws;
- ❑ to sign the ACAA Agreement (Access of Ukrainian goods to the EU market);
- ❑ to replace the labor code with a new labor law;
- ❑ to improve Ukraine's position in the Global Competitiveness Index under the components "Extent of market dominance" (TOP-40) and "Intellectual property protection" (TOP-60);
- ❑ to secure Ukraine's position in TOP-10 Doing Business Index and in TOP-30 Global Competitiveness Index under the components "Burden of government regulation" and "Business regulation".

For 2021-2022 it was planned to expand the export geography that will lead to the export development of production with added value in 2022-2025 and the export of high-tech production and services. To achieve this, the Cabinet of Ministers of Ukraine has developed an detailed plan that consists of 4 goals:

- ❑ to ensure mutually beneficial trade with other countries to achieve expanded access to their products markets;
- ❑ to increase the competitiveness of Ukrainian goods and services, to create the positive image of Ukraine and ensure the active role of Ukrainian producers in international markets;
- ❑ to modernize a frontier infrastructure and ensure an effective customs regulation;
- ❑ to implement balanced import policy with a complex evaluation of the potential influence to stimulate an investment import.

Strengthening of European and Euro-Atlantic integration, implementation and updating of the European Union Association Agreement and creation of the good image of Ukrainian producers abroad were defined as effective tools for developing export potential. **Ukraine has the lowest reputation compared to benchmark countries** (Poland, Turkey, USA, Germany and Canada). Ukraine has the highest reputation scores in Canada (54 points) and Great Britain (54 points), lower scores in Italy (49), Japan (47), France (47), USA (45), and Germany (43).

**Human rights protection and responsible business conduct could become effective enablers to improve Ukraine's image in the global community.**

## Strategy for economic development of Donetsk and Luhansk regions to 2030

Exports of goods and services of Donetsk and Luhansk regions in 2019 compared to 2013 decreased by 71% and amounted to 4905.6 million US dollars, imports – by 74% and amounted to 2670.8 million US dollars.

With the beginning of the armed aggression of the Russian Federation against Ukraine, many Ukrainian industrial enterprises in the temporarily occupied territories of Donetsk and Luhansk regions ceased their activities. The Strategy<sup>542</sup> defines the following strategic aims to overcome the consequences of military aggression:

- ❑ improving the quality of life of the population in the territories of Donetsk and Luhansk regions;
- ❑ **creation of a favorable business climate in the region, which will stimulate investment and development of small and medium enterprises;**
- ❑ **development of value chains, international trade, production and exports;**
- ❑ **development of modern agriculture and processing industry;**
- ❑ providing energy resources necessary for the development of the region;
- ❑ providing transport infrastructure network necessary for the development of the region;
- ❑ reducing unemployment and increasing labor market flexibility;
- ❑ **preservation of the environment, restoration and sustainable use of natural resources, prevention of ecological catastrophes and improvement of the ecological situation in the region.**

The Operational plan approved by the Cabinet of Ministers of Ukraine in August 2021 includes the following actions to achieve defined strategic goals:

- ❑ launch of a military-political risk insurance system in Donetsk and Luhansk regions;
- ❑ development of business support infrastructure;
- ❑ providing access to funding programs, including international ones;
- ❑ **adaptation of the program of state support of investment projects** to the conditions of the region;
- ❑ formation of a positive image of Donetsk and Luhansk regions;
- ❑ establishment of the Consortium Financing Fund;
- ❑ **technical support of foreign economic activity;**
- ❑ development of industrial parks and modernization of agriculture;
- ❑ **introduction of new forms of labor relations** to increase the flexibility of the labor market and de-shadow the economy;
- ❑ **development of environmental monitoring systems;**
- ❑ collection and utilization of industrial and household waste;
- ❑ adaptation to climate change, protection and sustainable use of land, conservation of biodiversity, restoration of ecosystems, reduction of emissions of pollutants from stationary sources;
- ❑ maintenance of level and purification of mine waters, etc.

The Strategy corresponds to the National economic strategy 2030 and takes into account the features of doing business in Donetsk and Luhansk regions, but doesn't have a special focus on Human Rights, responsible business conduct and risk assessment.

## The Export Strategy of Ukraine

In December 2017 the Cabinet of Ministers of Ukraine approved the Export Strategy<sup>543</sup> of Ukraine (a "road map" of strategic trade development) for 2017-2021. In the Strategy, the following strategic goals were determined:

- ❑ creating favorable conditions that stimulate trade and innovation for export diversification;
- ❑ development of business and trade support services that can increase the competitiveness of enterprises, incl. SMEs;
- ❑ improving the skills and competencies of enterprises, incl. SMEs, necessary for participation in international trade.

542 The Strategy for economic development of Donetsk and Luhansk regions to 2030: <https://zakon.rada.gov.ua/laws/show/1078-2021-p#Text>

543 The Export Strategy of Ukraine: <https://zakon.rada.gov.ua/laws/show/1017-2017-p#n13>

ICT was defined as the most prospective sector for export growth. The EU market was named as the top priority market with the stable increasing export, others were mentioned as markets where Ukrainian producers have significant potential for export, incl. Turkey, China, India, Egypt, Saudi Arabia, Canada, the United Arab Emirates, the United States of America, Israel, Belarus, Georgia, Moldova, Japan, Indonesia, Thailand, Bangladesh, Lebanon, the Philippines, Nigeria and Switzerland.

The Plan of tasks and measures for the implementation of the Export Strategy of Ukraine includes seven tasks:

- ❑ strengthening the integrated institutional framework to stimulate innovations;
- ❑ strengthening the innovation potential of enterprises;
- ❑ **improving the legal and economic conditions for international trade;**
- ❑ improving the coordination of trade support institutions involved in the implementation of trade policy and export development;
- ❑ improving the coordination and interaction of the network of institutions that provide business and trade support services to exporters;
- ❑ stimulation of entrepreneurial activity among enterprises, in particular SMEs, and youth;
- ❑ **improving management skills among employees of existing enterprises, including SMEs.**

The Plan does not include any aims and indicators in the BHR sphere, but the 3rd and the 7th tasks could be monitored and implemented using the BHR lens. Different tasks of the Plan were achieved from 0% to 78%<sup>544</sup> that demonstrates the significant potential to review the approach and step up efforts at export development.

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544 Monitoring of the Export Strategy of Ukraine: <http://exportstrategy.me.gov.ua/progress/zavdannya-7-pokrashchennya-upravlinskyh-navychok-sered-pracivnykiv-diyuchykh-pidpryyemstv>

## ANNEX F.1. KEY STATISTICS AND INFORMATION FOR SECTOR AND MARKET ANALYSIS

**Table F.1.1.** FDI by areas of economic activity

FDI by areas of economic activity	% to the total amount
Industrial	39,8%
Wholesale and retail trade, repair of motor vehicle and motorcycles	16,3%
Financial and insurance activity	9,4%
Real estate operations	9,3%
Information and telecommunications	5,9%

**Table F.1.2.** The most efficient state investors

The most efficient state investors	% to the total amount
Cyprus	31,1%
Netherlands	20,2%
UK	6,1%
Sweden	6,0%
Germany	4,6%
Austria	3,3%

**Table F.1.3.** Criteria for companies and start-ups

Criteria for companies	Criteria for start-ups
<ul style="list-style-type: none"> <li>❑ carrying out IT activities established by the legislation on Diia City</li> <li>❑ 90% share of income from these IT activities</li> <li>❑ average salary not less than the equivalent of € 1200</li> <li>❑ 9+ employees or GIG-employees</li> <li>❑ absence of the «negative» criteria</li> </ul>	<ul style="list-style-type: none"> <li>❑ carrying out IT activities established by the legislation on Diia City</li> <li>❑ 90% share of income from these IT activities</li> <li>❑ activities</li> <li>❑ registered not earlier than 24 months before the date of application</li> <li>❑ annual income is not more than UAH 7 million</li> <li>❑ absence of the «negative» criteria</li> </ul>

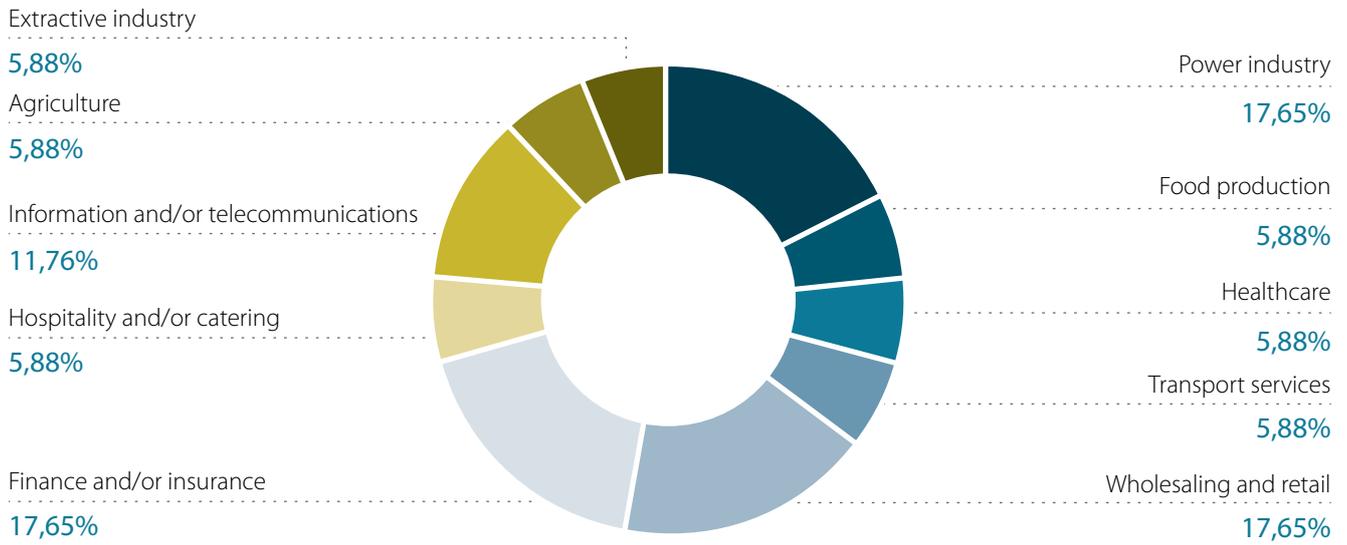
**Table F.1.4.** Human rights policies published on the websites of 5 biggest tax-payers

Company	Sector	Policy Title
PJSC ArcelorMittal Kryvyi Rih	Metallurgy	Human Rights Policy
PJSC Carlsberg Ukraine	Beverages	Human Rights and Labor Rights Policy
Coca-Cola Beverages Ukraine Limited	FMCG	Human Rights and Company Policy on Equal Opportunities Policy on personal diversity and consideration of individual characteristics*
PJSC "Abinbev Efes Ukraine"	Beverages	Human Rights Policy
IT Integrator	IT	Policy on Equal Employment Opportunities

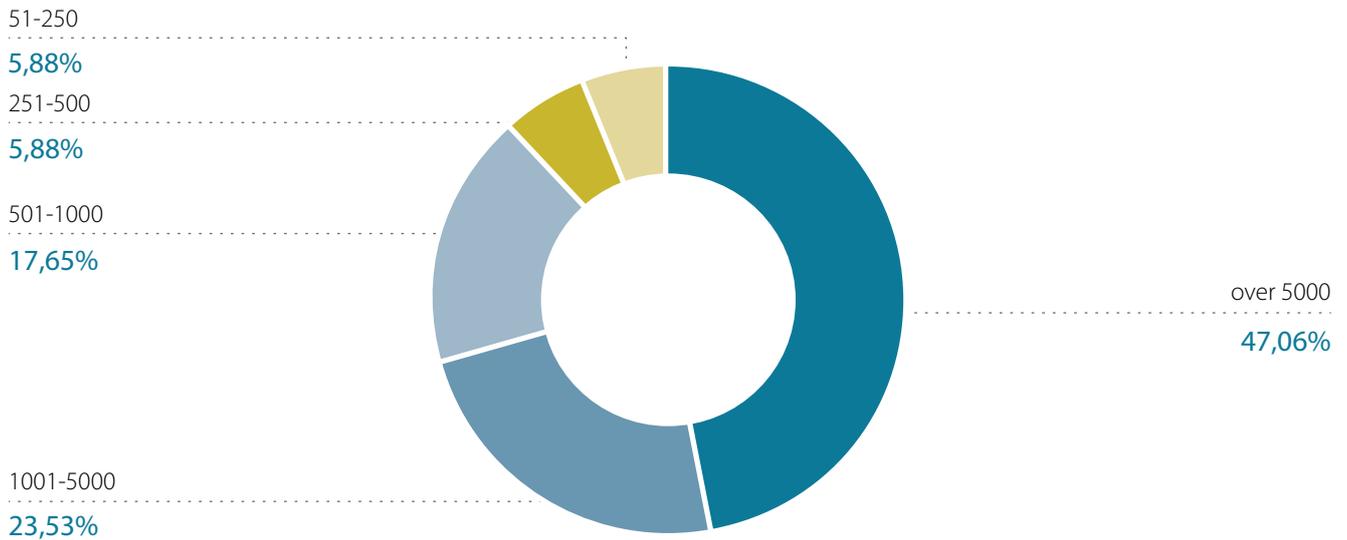
\*Carlsberg's Policy on personal diversity and consideration of individual characteristics describes the commitments of the Carlsberg Group in the field of D&I, including the definition of goals, approach, and priorities.

## ANNEX F. 2. RESULTS OF THE SURVEY FOR COMPANIES

**Picture F.2.1.** Sectors of economy which describe companies work



**Picture F.2.2.** Number of staff employed in the company

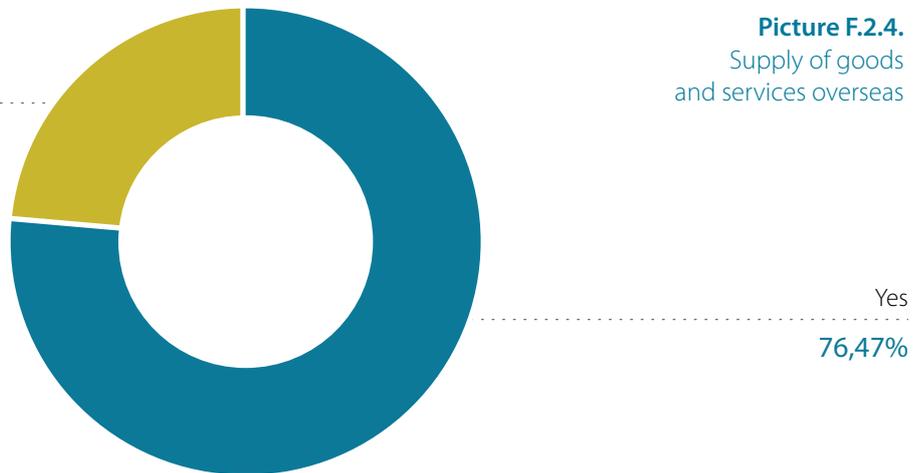


**Picture F.2.3.**  
Territories where the company operates

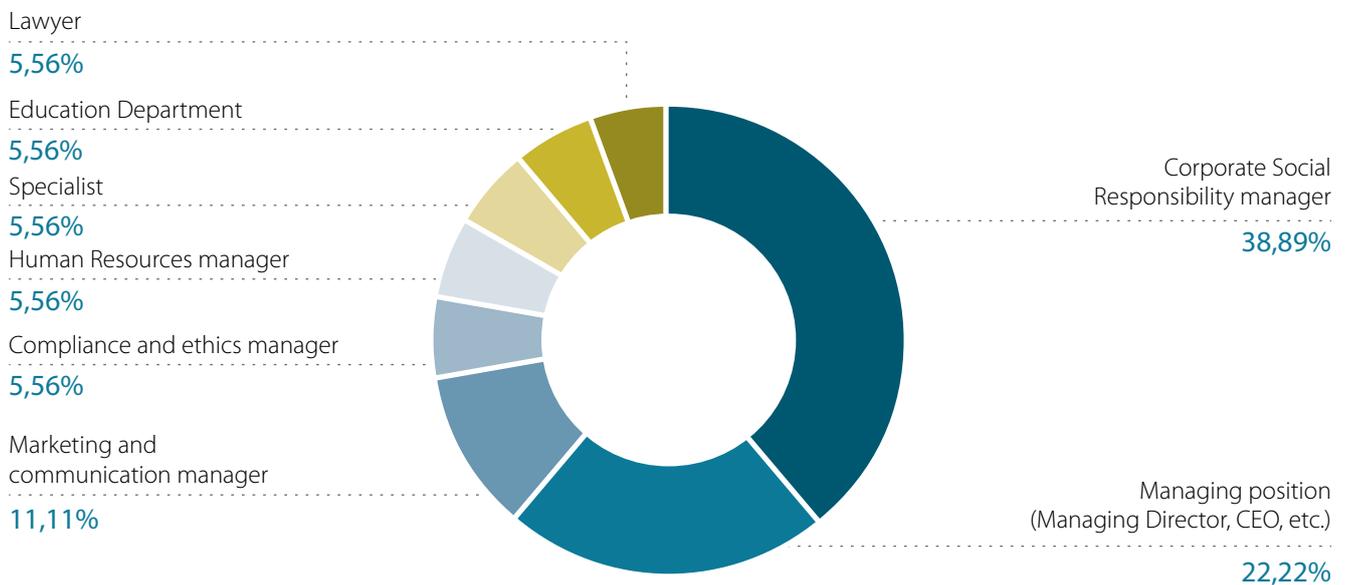


No  
23,53%

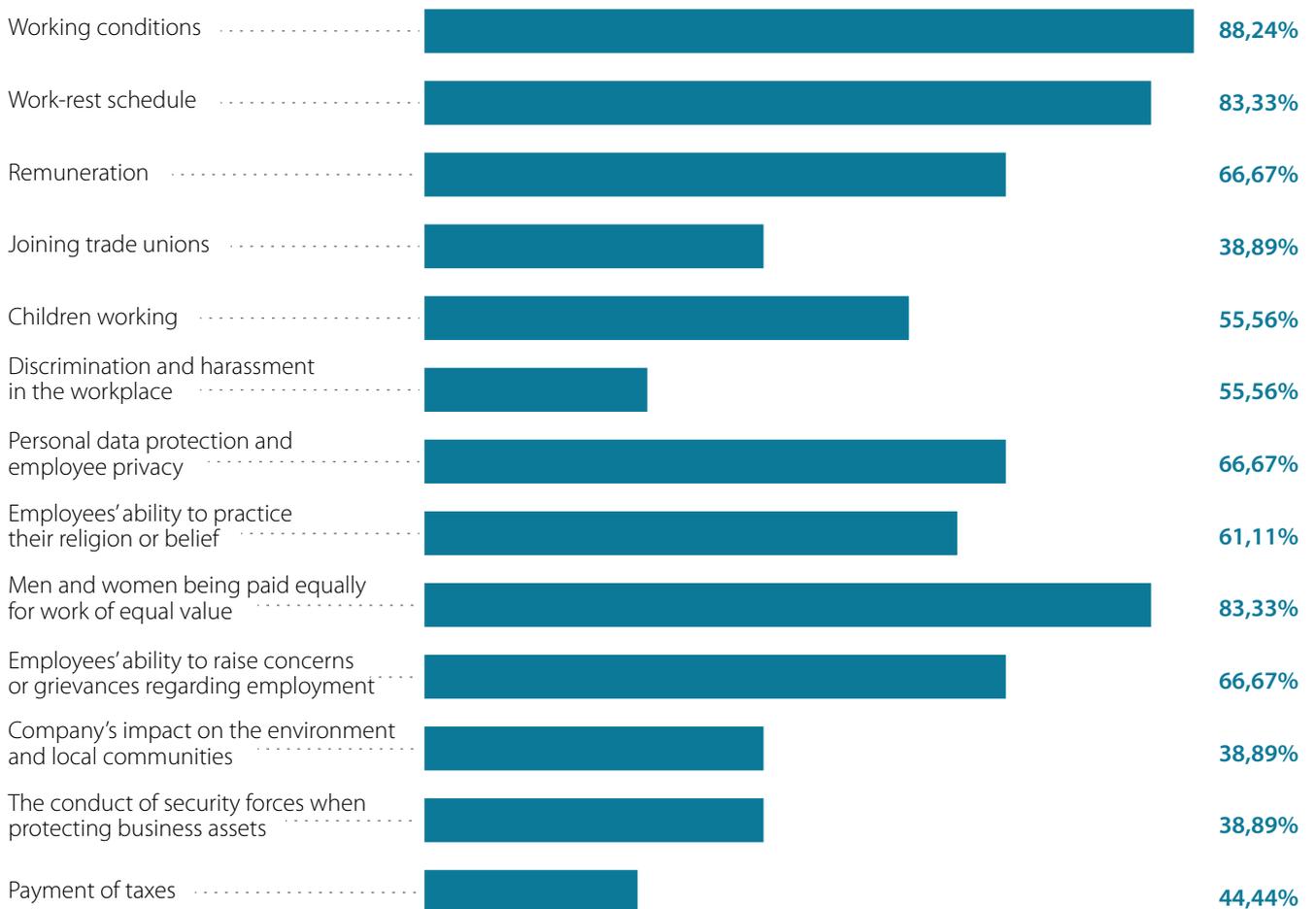
**Picture F.2.4.**  
Supply of goods and services overseas



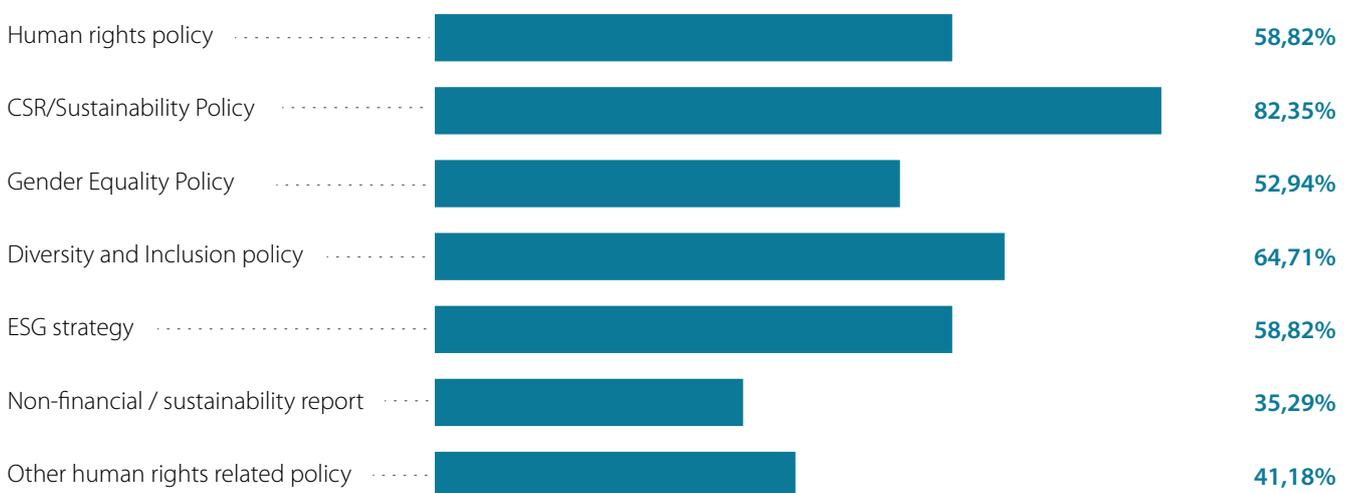
**Picture F.2.5.** Position of the responders in the company



**Picture F.2.6.** Human Rights issues chosen by companies



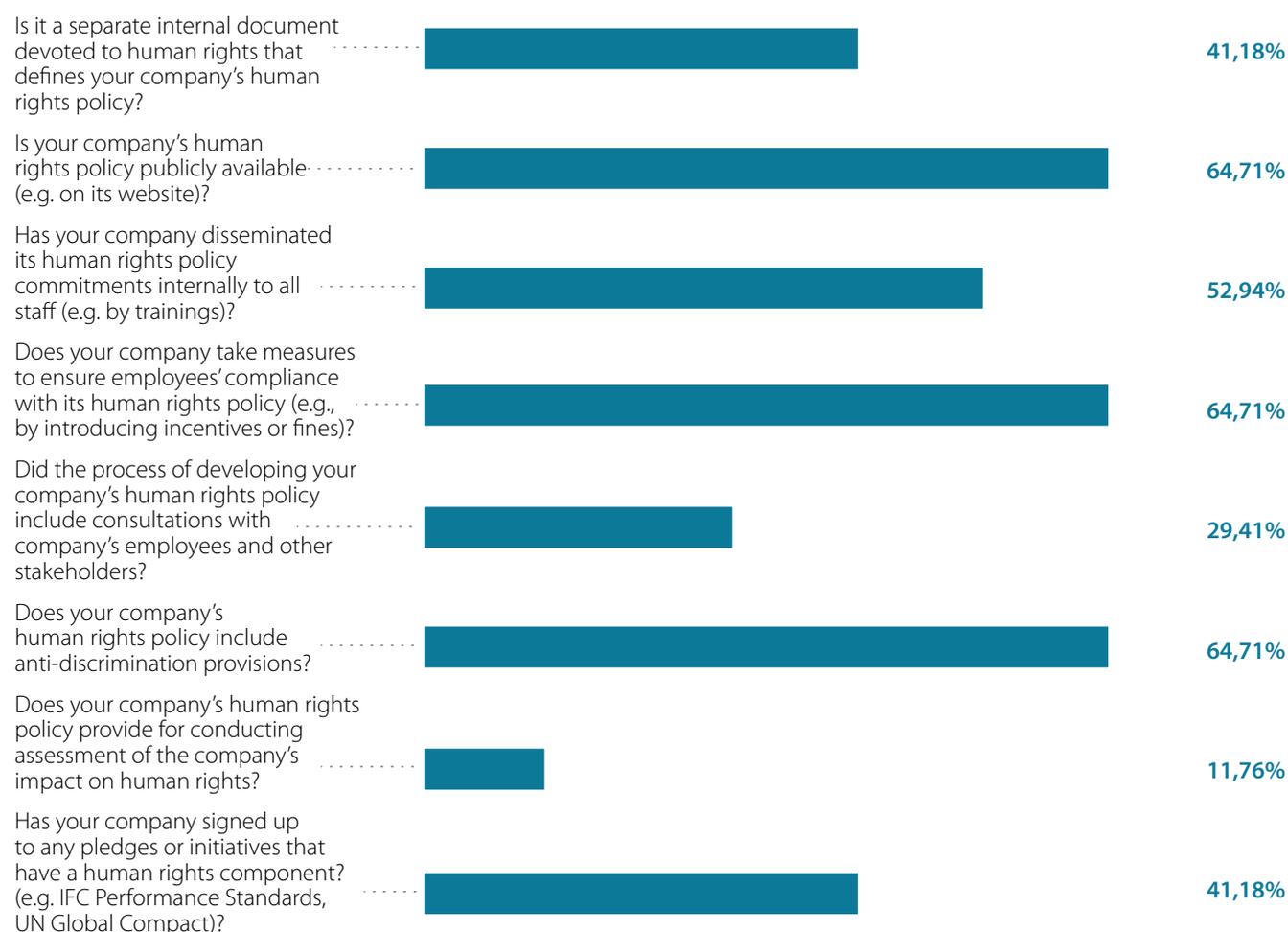
**Picture F.2.7.** Human rights related policies implemented by companies



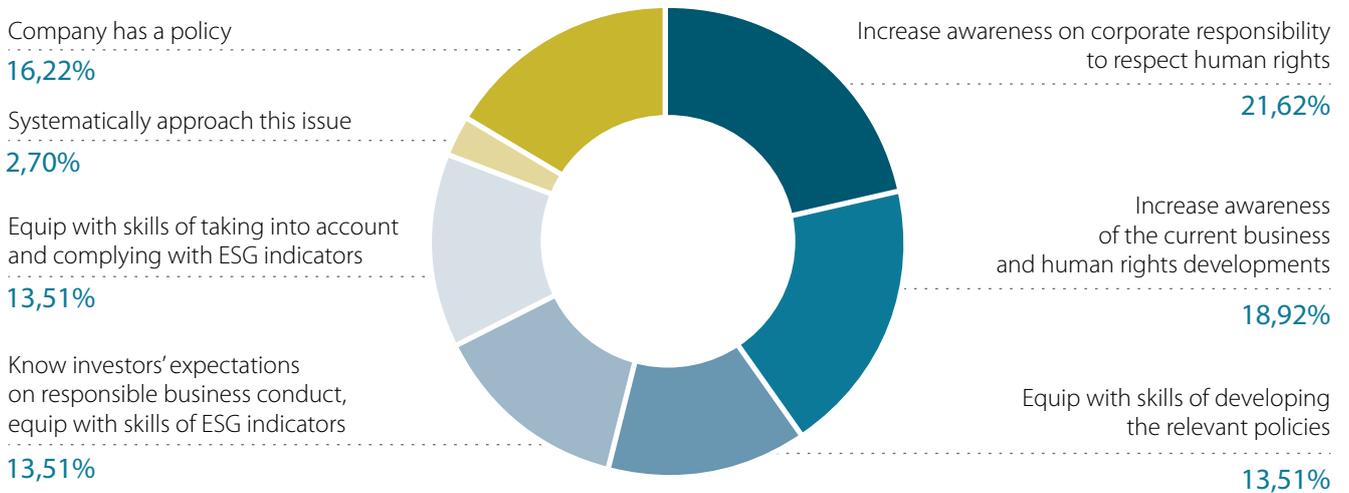
**Picture F.2.8.** Awareness level of human rights frameworks and principles



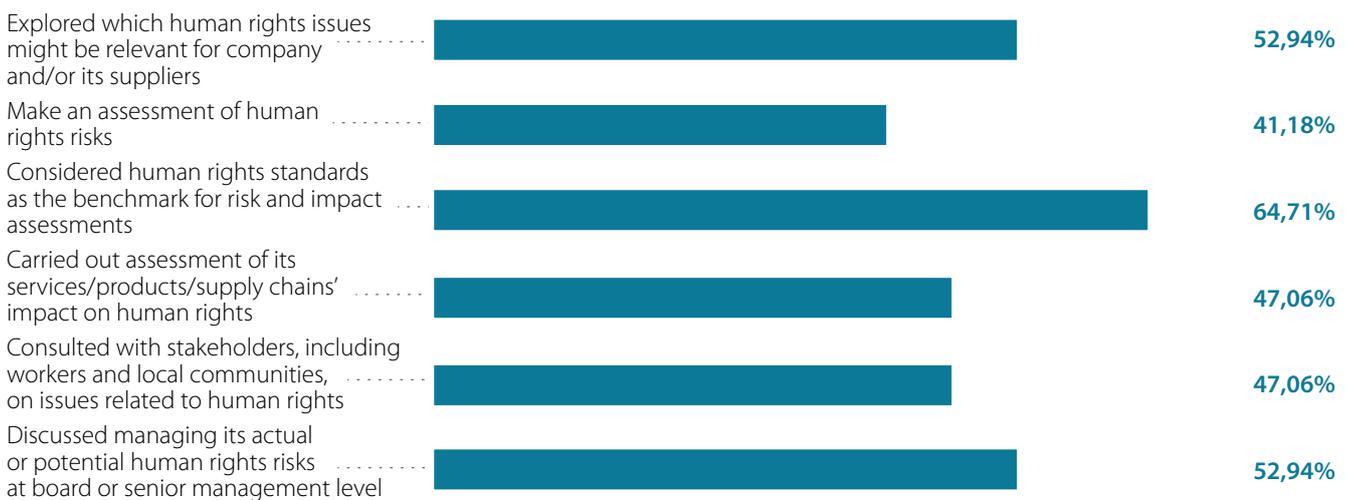
**Picture F.2.9.** Human Rights Policies implemented by companies



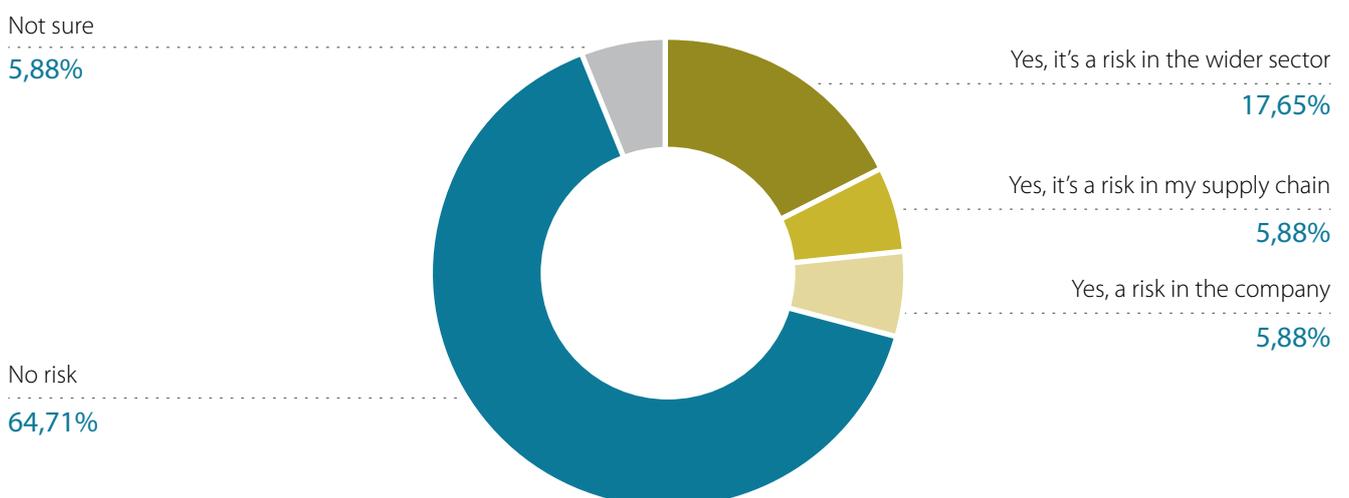
**Picture F.2.10.** Obstacles to overcome to develop and implement human rights related policy



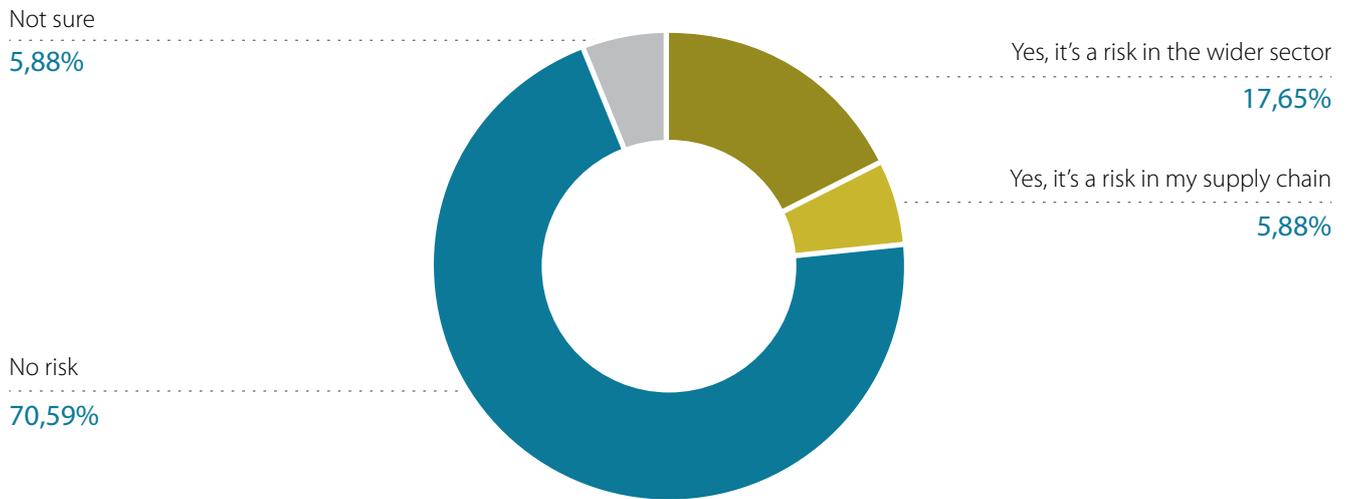
**Picture F.2.11.** Actions done by companies to ensure respect of human rights



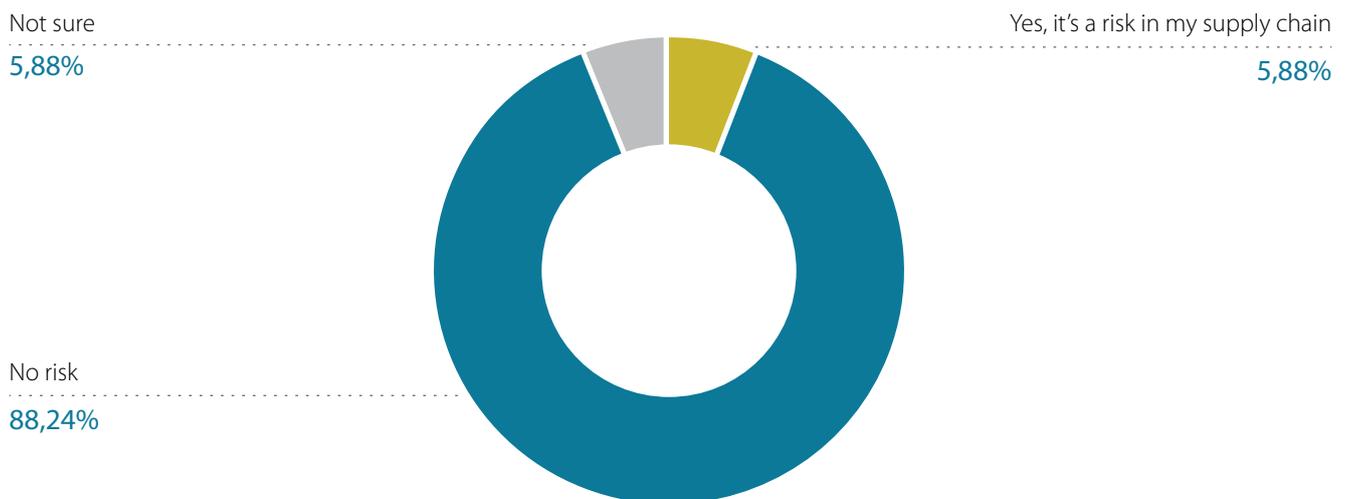
**Picture F.2.12.** Human rights risks in company's operations related to discrimination or harassment



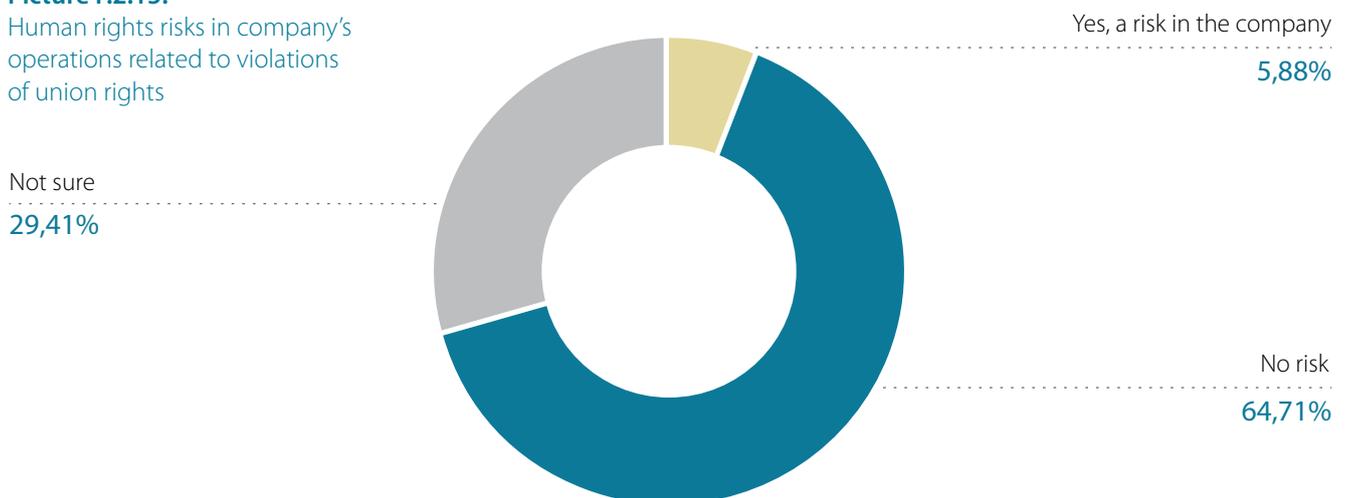
**Picture F.2.13.** Human rights risks in company's operations related to violations in relation to labour conditions



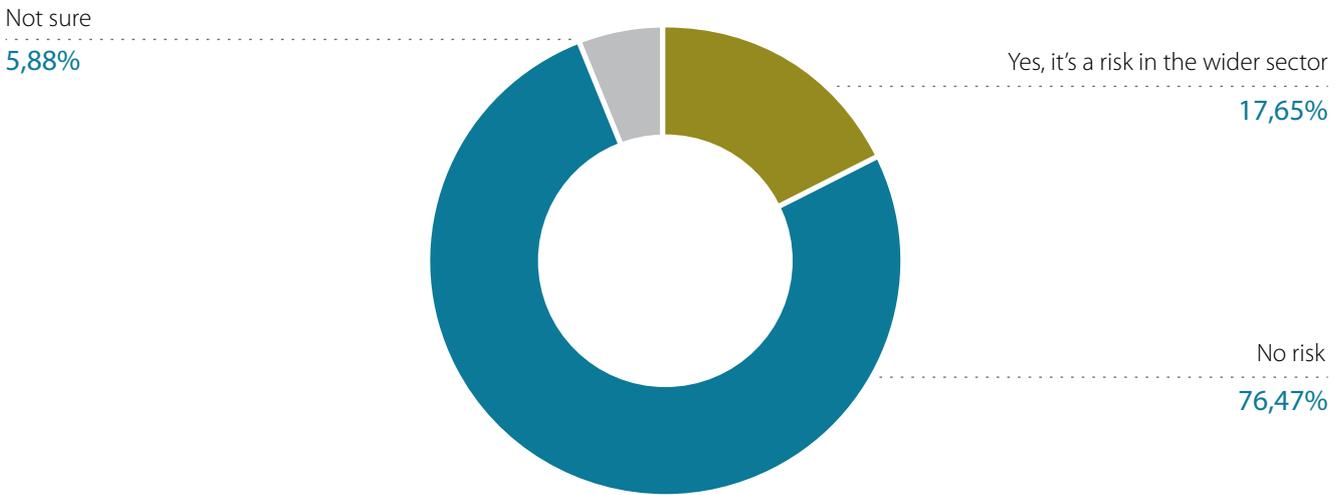
**Picture F.2.14.** Human rights risks in company's operations related to children illegally working



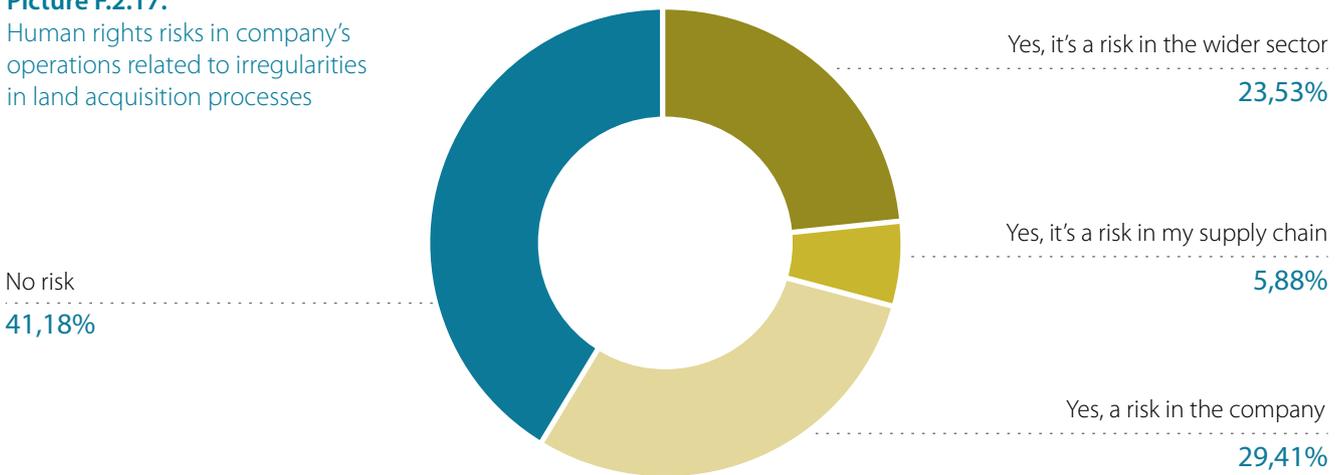
**Picture F.2.15.** Human rights risks in company's operations related to violations of union rights



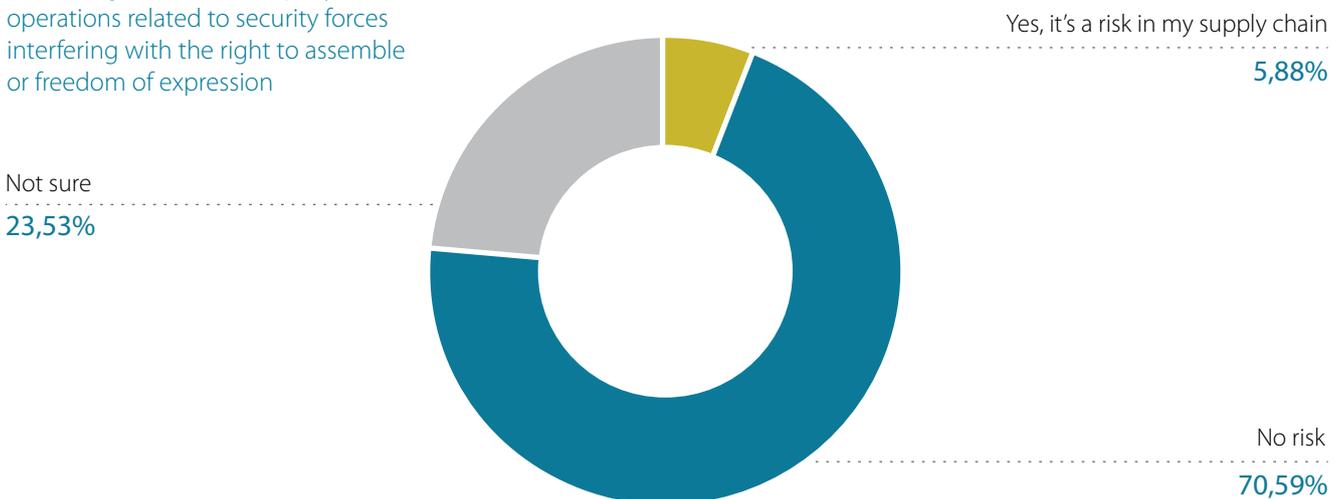
**Picture F.2.16.** Human rights risks in company's operations related to environmental pollution linked to business activities



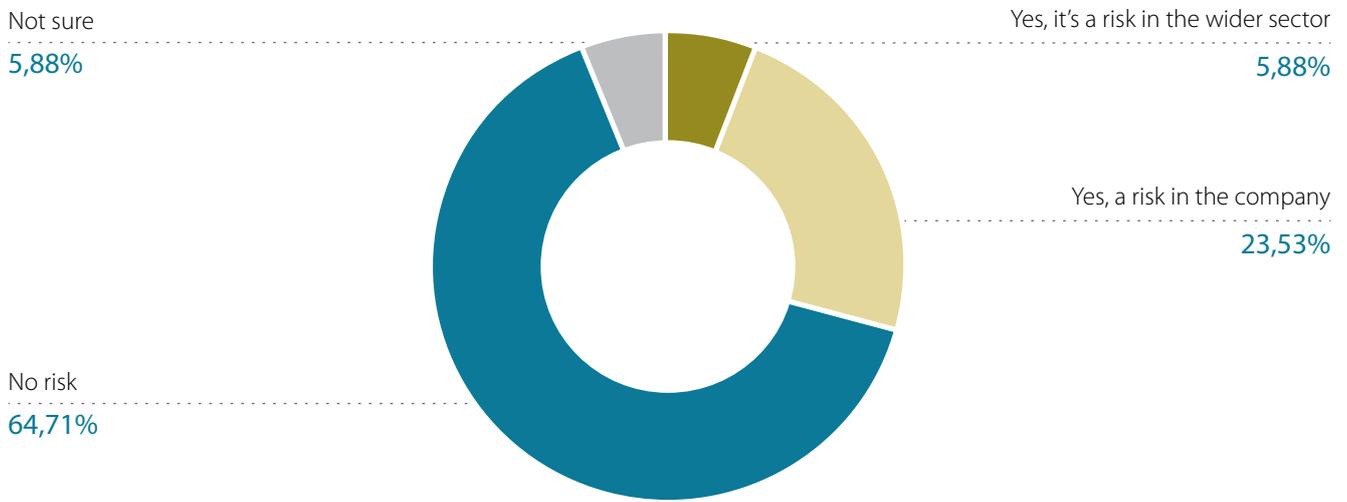
**Picture F.2.17.** Human rights risks in company's operations related to irregularities in land acquisition processes



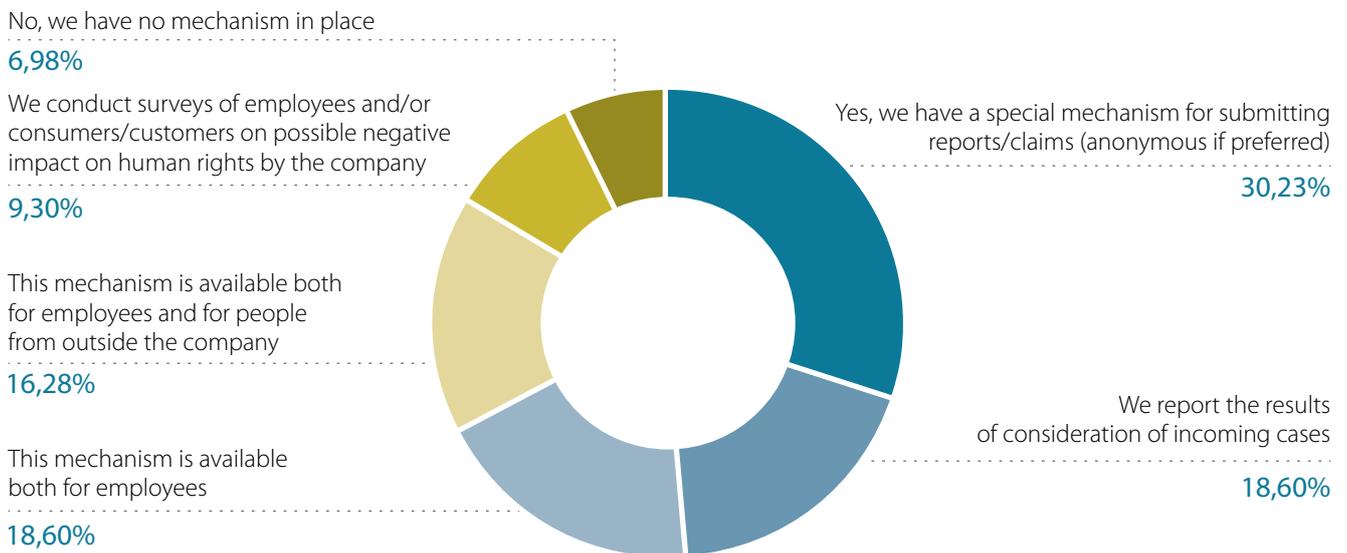
**Picture F.2.18.** Human rights risks in company's operations related to security forces interfering with the right to assemble or freedom of expression



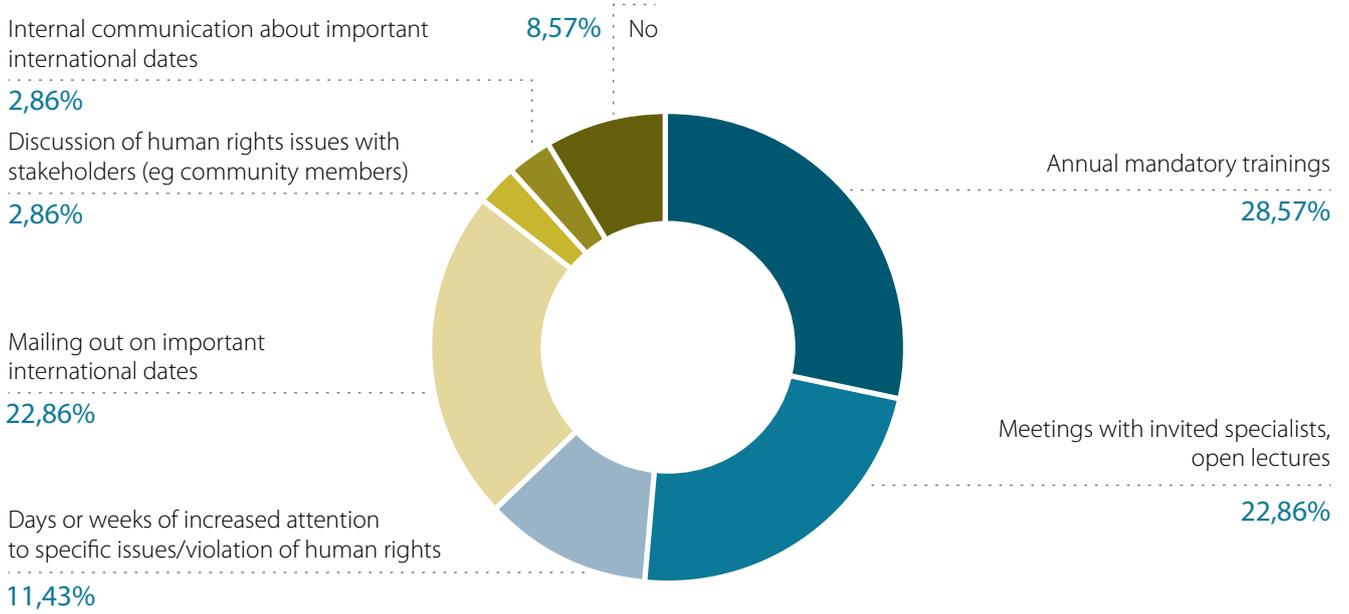
**Picture F.2.19.** Human rights risks in company's operations related to violations of the right to privacy



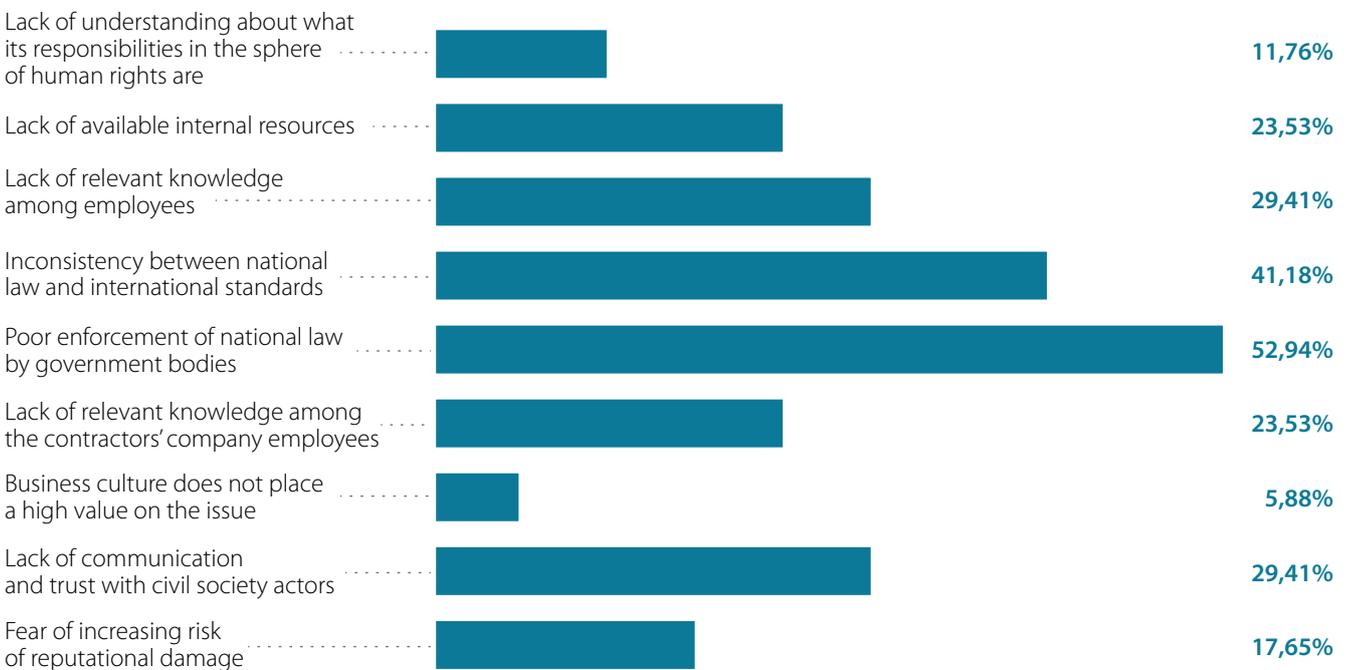
**Picture F.2.20.** Mechanisms in place to detect and respond to human rights abuses or negative impact



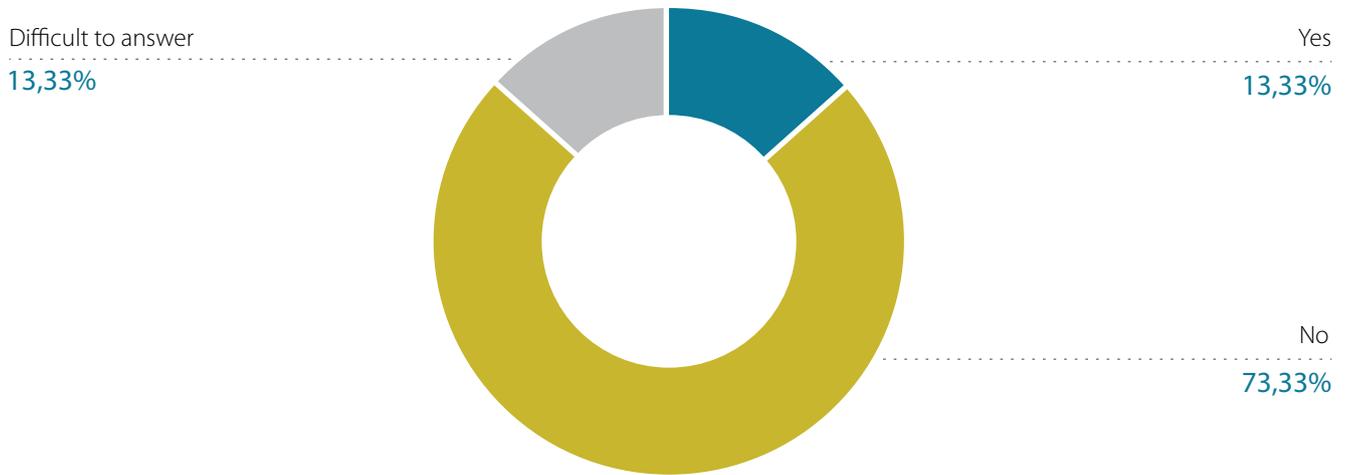
**Picture F.2.21.** Awareness-raising / training activities about its respect for human rights



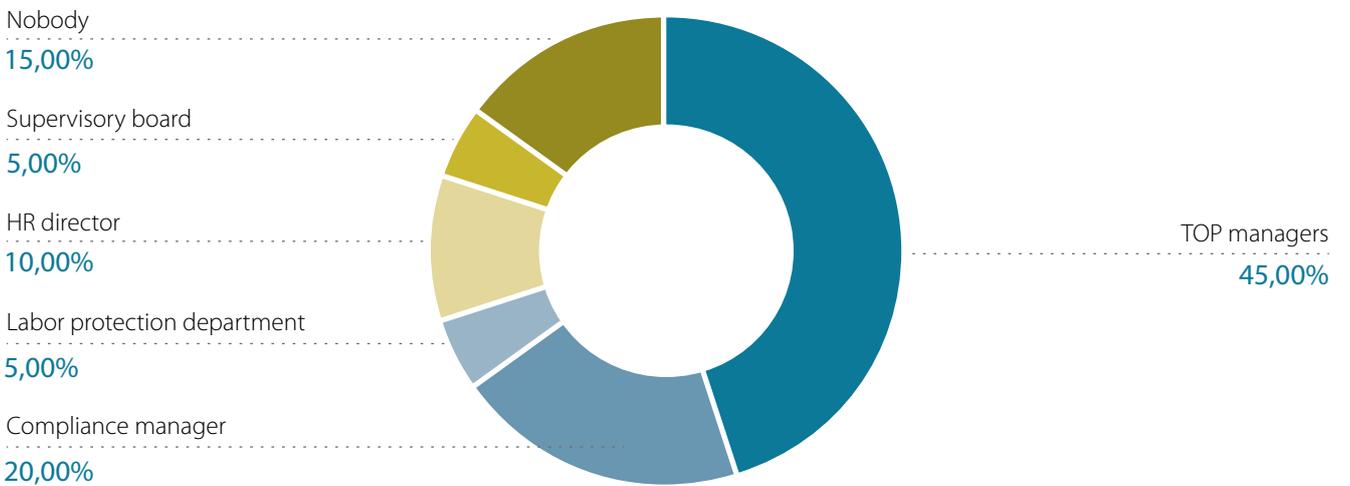
**Picture F.2.22.** Biggest challenges companies face in addressing human rights



**Picture F.2.23.** Human rights due diligence requirements encountered by companies from investors or international partners



**Picture F.2.24.** Functions responsible for human rights related issues in companies



## ANNEX G. BHR IN UKRAINE: STAKEHOLDER MAPPING AND ANALYSIS

**Table G.1.** UNGPs: pillars, principles and duty bearers<sup>545</sup>

Pillars	Principles	Duty bearers (to whom the principles are addressed) <sup>546</sup>
<b>Pillar I.</b> <b>The state duty to protect human rights</b>	C. FOUNDATIONAL PRINCIPLES	
	1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.	S
	2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.	S
	D. OPERATIONAL PRINCIPLES	
	3. In meeting their duty to protect, States should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.	S
	4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.	S
	5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.	S
	6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.	S
	7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;	S

<sup>545</sup> Following the “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>546</sup> S – state, B – business, O – others

Pillars	Principles	Duty bearers (to whom the principles are addressed) <sup>546</sup>
	<ul style="list-style-type: none"> <li>(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;</li> <li>(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;</li> <li>(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.</li> </ul>	
	8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.	S
	9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.	S
	<p>10. States, when acting as members of multilateral institutions that deal with business-related issues, should:</p> <ul style="list-style-type: none"> <li>(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;</li> <li>(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;</li> <li>(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.</li> </ul>	S
<b>Pillar II.</b> <b>The corporate responsibility to respect human rights</b>	C. FOUNDATIONAL PRINCIPLES	
	11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.	B
	12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.	B
	<p>13. The responsibility to respect human rights requires that business enterprises:</p> <ul style="list-style-type: none"> <li>(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;</li> <li>(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.</li> </ul>	B
	14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.	B

Pillars	Principles	Duty bearers (to whom the principles are addressed) <sup>546</sup>
	Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.	
	<p>15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:</p> <ul style="list-style-type: none"> <li>(a) A policy commitment to meet their responsibility to respect human rights;</li> <li>(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;</li> <li>(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.</li> </ul>	B
D. OPERATIONAL PRINCIPLES		
	<p>16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:</p> <ul style="list-style-type: none"> <li>(a) Is approved at the most senior level of the business enterprise;</li> <li>(b) Is informed by relevant internal and/or external expertise;</li> <li>(c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;</li> <li>(d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;</li> <li>(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.</li> </ul>	B
	<p>17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:</p> <ul style="list-style-type: none"> <li>(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;</li> <li>(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;</li> <li>(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.</li> </ul>	B
	<p>18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:</p> <ul style="list-style-type: none"> <li>(a) Draw on internal and/or independent external human rights expertise;</li> <li>(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.</li> </ul>	B

Pillars	Principles	Duty bearers (to whom the principles are addressed) <sup>546</sup>
	<p>In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.</p> <p>(a) Effective integration requires that:</p> <ul style="list-style-type: none"> <li>(i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;</li> <li>(ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.</li> </ul> <p>(b) Appropriate action will vary according to:</p> <ul style="list-style-type: none"> <li>(i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;</li> <li>(ii) The extent of its leverage in addressing the adverse impact.</li> </ul>	B
	<p>20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:</p> <ul style="list-style-type: none"> <li>(a) Be based on appropriate qualitative and quantitative indicators;</li> <li>(b) Draw on feedback from both internal and external sources, including affected stakeholders.</li> </ul>	B
	<p>21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:</p> <ul style="list-style-type: none"> <li>(a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;</li> <li>(b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;</li> <li>(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality</li> </ul>	B
	<p>22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.</p>	B
	<p>23. In all contexts, business enterprises should:</p> <ul style="list-style-type: none"> <li>(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;</li> <li>(b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;</li> <li>(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.</li> </ul>	B
	<p>24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.</p>	B

Pillars	Principles	Duty bearers (to whom the principles are addressed) <sup>546</sup>
<b>Pillar III.</b> <b>Access to remedy</b>	C. FOUNDATIONAL PRINCIPLES	
	25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.	S
	D. OPERATIONAL PRINCIPLES	
	26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.	S
	27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse	S
	28. States should consider ways to facilitate access to effective non-Statebased grievance mechanisms dealing with business-related human rights harms.	S
	29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.	S
	30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.	S
	31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: <ul style="list-style-type: none"> <li>(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;</li> <li>(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;</li> <li>(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;</li> <li>(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;</li> <li>(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;</li> <li>(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;</li> <li>(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;</li> </ul> Operational-level mechanisms should also be: <ul style="list-style-type: none"> <li>(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.</li> </ul>	S

**Table G.2** Human rights that are covered by the UNGPs

Right to self-determination (indigenous peoples rights)
Right to non-discrimination
Right to work (training, contract, termination)
Right to equal pay for equal work
Right to a living wage (minimum wage)
Right to safe and healthy working conditions
Right to equal opportunity for everyone to be promoted
Right to rest, leisure and paid holidays
Right to form and join trade unions and right to strike
Right to social security, including social insurance
Right to protect mothers before and after childbirth
Right to Children's & young people's protection from exploitation (no child labor)
Right to adequate food and its fair distribution
Right to adequate clothing
Right to adequate housing
Right to water and sanitation
Right to health
Right to education
Right to take part in cultural life
Right to benefit from scientific progress
Right to material gains from inventions
Moral rights of authors (protection of copyright)
Right to life
Right not to be subjected to torture, cruel, inhuman and / or degrading treatment or punishment
Right to free, prior and informed consent to medical or scientific experimentation
Right not to be subjected to slavery, servitude or forced labor
Right to liberty and security of person
Right of detained persons to humane treatment
Right not to be subjected to imprisonment for an inability to fulfill a contract
Right to freedom of movement
Right of aliens to due process when facing expulsion (seeking asylum)
Right to a fair trial
Right to be free from retroactive criminal law
Right to recognition as a person before the law
Right to privacy
Right to freedom of thought, conscience and religion
Right to freedom of opinion
Right to freedom of expression
Right to freedom of information
Right to freedom from war propaganda
Right to freedom from incitement of racial, religious or national hatred
Right to freedom of peaceful assembly

Right to freedom of association
Right to protect the family and the right to marry
Right to protection of the child and right to acquire a nationality
Right to participate in public affairs
Right to equality before the law, equal protection of the law, and rights of non-discrimination
Rights of minorities (culture, religious practice and language)

**Table G.3.** BHR Stakeholders in terms of UNGP’s pillars: duty bearers mapping

UNGP Pillars and Principles	Duty bearers
<p><b>1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.</b></p>	<p><b>Prevention (policy, legislation, regulation)</b></p> <p><i>Cabinet of Ministers of Ukraine</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Internal Affairs of Ukraine (policy development in the sphere of criminal and administrative liability) – Criminal Code, Code on Administrative Offences</li> <li>❑ Ministry of Justice of Ukraine (policy development in the sphere of criminal and administrative liability) - Criminal Code, Code on Administrative Offences</li> </ul> <p><i>Parliament</i></p> <ul style="list-style-type: none"> <li>❑ Verkhovna Rada of Ukraine Committee on Law Enforcement</li> <li>❑ Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations</li> <li>❑ Verkhovna Rada Committee on Legal Policy</li> </ul>
	<p><b>Investigation</b></p> <ul style="list-style-type: none"> <li>❑ National Police of Ukraine</li> <li>❑ State inspections (Labor Inspection, Ecology Inspection)</li> <li>❑ General Prosecutor’s Office</li> </ul>
	<p><b>Punishment and redress</b></p> <ul style="list-style-type: none"> <li>❑ Criminal justice system</li> </ul>
<p><b>2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.</b></p>	<ul style="list-style-type: none"> <li>❑ Ministry of Justice (National Human Rights Strategy, EU-Ukraine Human Rights Dialogue)</li> <li>❑ Intergovernmental working group on the monitoring and evaluation of the Human Rights Strategy</li> <li>❑ NHRI</li> <li>❑ Intersectoral platform on Business and Human Rights</li> </ul>
<p>3. In meeting their duty to protect, States should:</p> <p>(a) <b>Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights</b>, and periodically to assess the adequacy of such laws and address any gaps;</p>	<p><b>Policymaking (human rights)</b></p> <ul style="list-style-type: none"> <li>❑ Ministry of Justice (National Human Rights Strategy coordination, implementation of general measures following ECHR’s judgments, criminal/ civil justice, free legal aid, UPR)</li> <li>❑ Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations</li> <li>❑ NHRI</li> <li>❑ Ministry of Social Policy (human trafficking, social security, equal opportunities policy, non-discrimination policy, rights of the child)</li> </ul>

UNGP Pillars and Principles	Duty bearers
	<ul style="list-style-type: none"> <li>❑ Ministry of Economy (labor rights, combating shadow employment)</li> <li>❑ Ministry of Culture and Informational Policy (national minorities rights)</li> <li>❑ Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine (IDPs rights, reintegration, conflict-affected areas)</li> <li>❑ Ministry of Ecology and Natural Resources of Ukraine (environmental rights)</li> <li>❑ Ministry of Digital Transformation (digital rights, AI development, digital security, personal data protection, Diia,business,Diia,City, Diia,Centers)</li> <li>❑ Ministry of Youth and Sports (rights of the youth)</li> <li>❑ Ministry of Internal Affairs (criminal justice, prevention human rights violations, investigation)</li> <li>❑ Ministry of Foreign Affairs (preparation for ratification international agreements in the sphere of human rights)</li> </ul>
<p>(b) <b>Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;</b></p>	<p><b>Policymaking (corporate law)</b></p> <ul style="list-style-type: none"> <li>❑ Ministry of Justice</li> <li>❑ Working group on recoding (updating) of civil legislation of Ukraine (advisory body to the Cabinet of Ministers of Ukraine)</li> <li>❑ Verkhovna Rada Committee on Legal Policy</li> </ul>
<p>(c) <b>Provide effective guidance</b> to business enterprises on how to respect human rights throughout their operations;</p> <p>(d) <b>Encourage, and where appropriate require, business enterprises to communicate</b> how they address their human rights impacts.</p>	<p><b>Providing guidance to business</b></p> <p>National level:</p> <ul style="list-style-type: none"> <li>❑ Ministry of Digital Transformation - <a href="#">Diia business platform, Diia Centers</a></li> <li>❑ Ministry of Economy - OECD National Contact Point, Export-Credit Agencies</li> </ul> <p>Local level:</p> <ul style="list-style-type: none"> <li>❑ Local administrations</li> <li>❑ <a href="#">agencies, centers on entrepreneurship development</a></li> </ul>
<p>4. States should take additional steps to protect against human rights abuses <b>by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies</b> such as export credit agencies and official investment insurance or guarantee agencies, <b>including, where appropriate, by requiring human rights due diligence.</b></p>	<p><b>State-owned enterprises</b></p> <p><i>Policy making</i> (incl. <a href="#">Corporate Governance Reform</a>)</p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> </ul> <p><i>Policy Implementation and control</i> –</p> <ul style="list-style-type: none"> <li>❑ Entities managing state-owned objects (Central Executive Bodies) in specific sectors</li> </ul> <p><b>Export promotion</b></p> <p><i>Policy making</i> (<a href="#">Export Promotion Reform</a>)</p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> </ul> <p><i>Policy implementation:</i></p> <p><a href="#">Export Credit Agency</a> - the Agency will provide insurance, reinsurance and guarantees under contracts that ensure the development of exports. It will also participate in programs to partially compensate for the interest rate on export credits and provide advice to exporters.</p>

UNGP Pillars and Principles	Duty bearers
	<p><a href="#">Entrepreneurship and Export Promotion Office</a> - cross-functional and provides cross-sectoral cooperation with the Ministry of Economy of Ukraine, the Ministry of Digital Transformation of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Infrastructure of Ukraine and other government agencies, NGOs, private companies and associations. And the work of our institution is coordinated by the Secretariat of the Cabinet of Ministers of Ukraine.</p> <p><b>State support of business</b></p> <p><i>Policy making:</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy (policy on entrepreneurship development)</li> <li>❑ Ministry of Finance (state funding)</li> <li>❑ Ministry of Digital Transformation (simplification of precedures, Diia. Business platform, Diia.centers)</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> <li>❑ Verkhovna Rada of Ukraine Committee on Finance, Tax and Customs Policy</li> </ul> <p><i>Policy implementation:</i></p> <ul style="list-style-type: none"> <li>❑ <a href="#">Ukrainian Startup Fund</a></li> <li>❑ <a href="#">Entrepreneurship Development Fund</a></li> <li>❑ Diia business: <a href="https://business.diia.gov.ua/en/services">https://business.diia.gov.ua/en/services</a></li> </ul>
<p>5. States should exercise adequate <b>oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services</b> that may impact upon the enjoyment of human rights.</p> <p>6. States should promote respect for human rights <b>by business enterprises with which they conduct commercial transactions.</b></p>	<p><b>Public-private partnership</b></p> <p><i>Policy making</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Ministry of Finance, Ministry of Ecology and Natural Sources, State Property Fund of Ukraine, Antimonopoly Committee</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> </ul> <p><i>Policy implementation</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Ministry of Finance, Ministry of Ecology and Natural Sources, State Property Fund of Ukraine, Antimonopoly Committee</li> <li>❑ State regional administrations</li> </ul> <p><i>Control:</i></p> <ul style="list-style-type: none"> <li>❑ Accounting Chamber, Antimonopoly Committee of Ukraine, State Financial Monitoring Service</li> </ul> <p><b>Public procurement</b> (<a href="#">Public Procurement reform</a>)</p> <p><i>Policy making:</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> </ul> <p><i>Policy implementation:</i></p> <ul style="list-style-type: none"> <li>❑ CEB, governmental agencies</li> <li>❑ PROZORRO</li> </ul>

UNGP Pillars and Principles	Duty bearers
<p>7. Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:</p> <p>(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;</p> <p>(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;</p> <p>(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;</p> <p>(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.</p>	<ul style="list-style-type: none"> <li>❑ Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine</li> <li>❑ Ministry of Economy</li> <li>❑ Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea</li> <li>❑ Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations</li> </ul>
<p>8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.</p>	<p><b>State-owned enterprises</b></p> <p><i>Policy making</i> (incl. <a href="#">Corporate Governance Reform</a>)</p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> </ul> <p><i>Policy Implementation and control</i> –Entities managing state-owned objects (Central Executive Bodies) im specific sectors</p> <p><b>Export promotion</b></p> <p><i>Policy making</i> (<a href="#">Export Promotion Reform</a>)</p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> </ul> <p><i>Policy implementation:</i></p> <p><a href="#">Export Credit Agency</a> - the Agency will provide insurance, reinsurance and guarantees under contracts that ensure the development of exports. It will also participate in programs to partially compensate for the interest rate on export credits and provide advice to exporters.</p> <p><a href="#">Entrepreneurship and Export Promotion Office</a> - cross-functional and provides cross-sectoral cooperation with the Ministry of Economy of Ukraine, the Ministry of Digital Transformation of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Infrastructure of Ukraine and other government agencies, NGOs, private companies and associations. And the work of our institution is coordinated by the Secretariat of the Cabinet of Ministers of Ukraine.</p>

UNGP Pillars and Principles	Duty bearers
	<p><b>State support of business</b></p> <p><i>Policy making:</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy (policy on entrepreneurship development)</li> <li>❑ Ministry of Finance (state funding)</li> <li>❑ Ministry of Digital Transformation (simplification of procedures, Diia. Business platform, Diia.centers)</li> <li>❑ Verkhovna Rada of Ukraine Committee on Economic Development</li> <li>❑ Verkhovna Rada of Ukraine Committee on Finance, Tax and Customs Policy</li> </ul> <p><i>Policy implementation:</i></p> <ul style="list-style-type: none"> <li>❑ <a href="#">Ukrainian Startup Fund</a></li> <li>❑ <a href="#">Entrepreneurship Development Fund</a></li> <li>❑ Diia business: <a href="https://business.diia.gov.ua/en/services">https://business.diia.gov.ua/en/services</a></li> </ul>
<p>9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.</p>	<p><i>Policy making (investment activity)</i></p> <p>Ministry of Economy</p>
<p>10. States, when acting as members of multilateral institutions that deal with business-related issues, should:</p> <p>(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;</p> <p>(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;</p> <p>(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.</p>	<p><i>Policy making (multilateral international cooperation)</i></p> <ul style="list-style-type: none"> <li>❑ Ministry of Economy, Trade Representative of Ukraine</li> <li>❑ Ministry of Foreign Affairs</li> <li>❑ Interdepartmental Commission on International Trade</li> </ul>

UNGP Pillars and Principles	Duty bearers
<p>11. Business enterprises should respect human rights. This means that <b>they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.</b></p>	<p><b>Approval of the policy / HRIA/ due diligence / remediation mechanism:</b></p> <ul style="list-style-type: none"> <li>□ CEO / General Meeting</li> <li>□ Supervisory board of the company</li> </ul> <p><b>Development and implementation:</b></p> <ul style="list-style-type: none"> <li>□ HR departments</li> <li>□ Legal / compliance departments</li> <li>□ CSR departments</li> <li>□ External consultants (lawyers, CSR, compliance, ESG professionals, risk managers, SDG consultants)</li> </ul>
<p>15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:</p> <p>(a) <b>A policy commitment</b> to meet their responsibility to respect human rights;</p>	
<p>(b) <b>A human rights due diligence</b> process to identify, prevent, mitigate and account for how they address their impacts on human rights;</p>	
<p>(c) <b>Processes to enable the remediation</b> of any adverse human rights impacts they cause or to which they contribute.</p>	
<p>A. Foundational principle</p> <p>25. As part of their duty to protect against business-related human rights abuse, <b>States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy</b></p>	<p>Access to justice policy:</p> <p><b>Legal needs assessment</b></p> <ul style="list-style-type: none"> <li>□ Ministry of Justice</li> <li>□ Coordination Center for Legal Aid Provision</li> </ul> <p><b>Legal aid provision</b></p> <ul style="list-style-type: none"> <li>□ Ministry of Justice</li> <li>□ Coordination Center for Legal Aid Provision</li> <li>□ Verkhovna Rada of Ukraine Committee on Legal Policy</li> <li>□ National Bar Association</li> </ul> <p><b>Awareness raising (rights holders)</b></p> <ul style="list-style-type: none"> <li>□ Free legal aid system</li> <li>□ CSOs</li> <li>□ Media</li> </ul> <p><b>Judicial mechanisms</b></p> <ul style="list-style-type: none"> <li>□ Ministry of Justice (development and monitoring of policy on justice)</li> <li>□ Verkhovna Rada of Ukraine Committee on Legal Policy</li> <li>□ Supreme Court</li> <li>□ National School of Judges</li> <li>□ Constitutional Court (constitutional complaint)</li> </ul> <p><b>Execution of court decisions</b></p> <ul style="list-style-type: none"> <li>□ Ministry of Justice (State Enforcement Service)</li> </ul>
<p>B. Operational principles</p> <p>State-based judicial mechanisms</p> <p>26. <b>States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms</b> when addressing business-related human rights abuses, including considering <b>ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.</b></p>	

UNGP Pillars and Principles	Duty bearers
<p>State-based non-judicial grievance mechanisms</p> <p>27. States should provide <b>effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system</b> for the remedy of business-related human rights abuse.</p>	<p><b>Non-Judicial mechanisms</b></p> <ul style="list-style-type: none"> <li>▣ Ombudsman (including regional offices)</li> <li>▣ State inspections – Labor inspection, Ecology inspection</li> </ul>
<p>Non-State-based grievance mechanisms</p> <p>28. States should consider <b>ways to facilitate access to effective non-State based grievance mechanisms</b> dealing with business-related human rights harms.</p>	<ul style="list-style-type: none"> <li>▣ Trade unions</li> <li>▣ Commissions for consideration of labor disputes at enterprises</li> <li>▣ Mediators</li> </ul>

**Table G.4** International organizations and donors

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
<p><b>UNDP in Ukraine</b></p> <p>1, Klovsky Uzviz Str., Kyiv, 01021, Ukraine</p> <p>E-mail: registry.ua@undp.org</p>	<p>Human Rights for Ukraine</p>	<p><a href="https://www.ua.undp.org/content/ukraine/en/home/projects/human-rights-for-Ukraine.html">https://www.ua.undp.org/content/ukraine/en/home/projects/human-rights-for-Ukraine.html</a></p>	<p>The project is being implemented to foster inclusive and sustainable human development in Ukraine and to further promote ongoing democratization processes in the country, focusing on human rights and access to justice for all. Through the project, UNDP is continuing to prioritize its work with key national partners and stakeholders – such as the National Human Rights Institution, national and local authorities, civil society, and human rights defenders – uniting their efforts to promote human rights across Ukraine and improve access to justice, especially for vulnerable groups. Launched in January 2019, the project will run until the end of 2023.</p> <p>In 2021, under the Human Rights for Ukraine project, UNDP launched a pilot initiative “Business and Human Rights in Ukraine - Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights” to further identify and quality baselines, gaps and opportunities and to fully understand the current situations of rights holders and duty bearers.</p>
	<p>Social cohesion through youth participation</p>	<p><a href="https://www.ua.undp.org/content/ukraine/en/home/projects/social-cohesion-through-youth-participation.html">https://www.ua.undp.org/content/ukraine/en/home/projects/social-cohesion-through-youth-participation.html</a></p>	<p>The project aims to create the grounds and methodological framework to equip youth policy implementation infrastructure with the necessary knowledge and materials to lead a dialogue on national unity and social cohesion with young women and men in Ukraine.</p> <p>It is implemented through the development of educational and training materials and preparatory activities, in partnership with the Ministry of Youth and Sport and the All-Ukrainian Youth Centre (AUYC), which serves as a knowledge hub for subnational youth centres. The developed and piloted methodologies, materials and programmes will be co-owned by the Ministry of Youth and Sports, as the policy-making institution, and the AUYC, which will facilitate the securing of the necessary funding and government support for the continuation of project activities in the future, thus ensuring the sustainability of the project’s results beyond the project timeline.</p>

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	Social cohesion through youth participation	<a href="https://www.ua.undp.org/content/ukraine/en/home/projects/social-cohesion-through-youth-participation.html">https://www.ua.undp.org/content/ukraine/en/home/projects/social-cohesion-through-youth-participation.html</a>	<p>The project aims to create the grounds and methodological framework to equip youth policy implementation infrastructure with the necessary knowledge and materials to lead a dialogue on national unity and social cohesion with young women and men in Ukraine.</p> <p>It is implemented through the development of educational and training materials and preparatory activities, in partnership with the Ministry of Youth and Sport and the All-Ukrainian Youth Centre (AUYC), which serves as a knowledge hub for subnational youth centres. The developed and piloted methodologies, materials and programmes will be co-owned by the Ministry of Youth and Sports, as the policy-making institution, and the AUYC, which will facilitate the securing of the necessary funding and government support for the continuation of project activities in the future, thus ensuring the sustainability of the project's results beyond the project timeline.</p>
	Strengthening MSME Business Membership Organizations in Ukraine: Phase II	<a href="https://www.ua.undp.org/content/ukraine/en/home/projects/strengthening-msme-business-membership-organizations-in-ukraine.html">https://www.ua.undp.org/content/ukraine/en/home/projects/strengthening-msme-business-membership-organizations-in-ukraine.html</a>	<p>The objective of the project's Phase II is to scale-up the support for the MSME sector in Ukraine and improve its competitiveness through developing more professional, demand-driven and client-oriented BMOs.</p> <p>The objective will be achieved by strengthening organizational development, improving the governance and operational management of BMOs, facilitating access to and utilization of business development services by MSMEs, as well as facilitating a professional public-private dialogue to improve the regulatory framework and overall business environment for MSMEs. Due consideration will be given to women's economic empowerment and promoting "green" practices among MSMEs.</p> <p>Lessons learned, as well as, inputs from the Project are in high importance for implementing UNGPs among Ukrainian MSMEs.</p>
	Supporting Green Recovery in Ukraine	<a href="https://www.ua.undp.org/content/ukraine/en/home/projects/supporting-green-recovery-in-ukraine.html">https://www.ua.undp.org/content/ukraine/en/home/projects/supporting-green-recovery-in-ukraine.html</a>	<p>The project will provide an important stimulus for transition to a greener economy and more sustainable financial system – support implementation of the new business models, creation of the new green jobs, improved social inclusion of the citizens and unlock private green and sustainable finance.</p> <p>This objective will be achieved through delivery of the following outputs:</p> <ol style="list-style-type: none"> <li>1) improved legal framework on the national level for a better green transformation of the economic and financial relations,</li> <li>2) reduced transaction costs on the green finance market; and</li> <li>3) better evaluation and management of the climate-related risks on the corporate level.</li> </ol> <p>Cooperation with the Project will enrich the potential of UNGPs implementation in Ukraine as part of Green, EU-UA agenda.</p>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
	Enhancing women's political participation at the subnational level	<a href="https://www.ua.undp.org/content/ukraine/en/home/projects/enhancing-women_s-political-participation-at-the-subnational-lev.html">https://www.ua.undp.org/content/ukraine/en/home/projects/enhancing-women_s-political-participation-at-the-subnational-lev.html</a>	<p>The project aims to promote gender equality at the subnational level through (1) increasing the civil and political participation of women, especially rural women and women with disabilities who are running in upcoming local elections; (2) mentoring elected local women councillors; and (3) strengthening institutional capacity for gender-responsive decision-making in amalgamated territorial communities.</p> <p>The project operates in four oblasts of Ukraine – Kherson, Mykolaiv, Zakarpattia and Khmelnytskyi oblasts – to enhance public awareness about the need for the full, equal, free and democratic participation of women, on equal terms with men, in political and public life.</p> <p>The overall objective of the project is to promote women's political participation and representation at the subnational level through (1) a capacity development and mentoring programme for women elected as local councillors, especially rural women and women with disabilities; and (2) strengthening the institutional capacity for gender-responsive decision-making in amalgamated territorial communities.</p>
	Support to Economic Recovery of Eastern Ukraine	<a href="https://www.ua.undp.org/content/ukraine/en/home/projects/support-to-economic-recovery-of-eastern-Ukraine.html">https://www.ua.undp.org/content/ukraine/en/home/projects/support-to-economic-recovery-of-eastern-Ukraine.html</a>	<p>The conflict in Donetsk and Luhansk oblasts in eastern Ukraine has had a significant and detrimental impact on human welfare, and on social and economic conditions overall. Assessments indicate that unemployment, especially among disadvantaged groups (IDPs, women, youth, disabled, etc.), is expected to constantly increase due to the decline in economic activity and thereby limited opportunities to support livelihoods and generate income in the Donbas.</p> <p>To address these challenges, the project aims to provide social stabilization support to eastern Ukraine by addressing the urgent social and economic needs of internally displaced persons (IDPs) and local population affected by the armed conflict through creating job opportunities and improving support to small- and medium-sized enterprises (SMEs). The project is implemented in the Government Controlled Areas of Donetsk and Luhansk oblasts, including communities located near the contact line, and in three neighbouring oblasts – Dnipropetrovsk, Kharkiv and Zaporizhzhia.</p>
	Restoration of Governance and Reconciliation in Crisis-Affected Communities of Ukraine	<a href="https://www.ua.undp.org/content/ukraine/en/home/projects/restoration-and-reconciliation-sida-sdc.html">https://www.ua.undp.org/content/ukraine/en/home/projects/restoration-and-reconciliation-sida-sdc.html</a>	<p>The “Restoration of Governance and Reconciliation in Crisis-Affected Communities of Ukraine” project is part of the overall Recovery and Peacebuilding Programme, supported jointly by the governments of Sweden and the Swiss Confederation (SIDA and SDC).</p> <p>With a total budget of U.S. \$3 million, the Project's aim is to overcome the negative consequences of the armed conflict in the Donbas, reduce the risk of its reoccurrence, and address existing grievances. This Project establishes a reliable monitoring system for conflict-affected areas. It provides technical and advisory assistance for the reorganization of local governance and the resumption of basic services.</p>

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			<p>The Project also promotes reconciliation and social cohesion in order to:</p> <ul style="list-style-type: none"> <li>▣ enable the development of local governance structures, in cooperation with the central authorities, which will address immediate reconstruction and social cohesion needs in conflict-affected communities. Such governance structures will function in partnership with community leaders, civil society (including women's groups), and other local entities, and ensure that these structures are responsive to citizens' needs;</li> <li>▣ support the emergence of a reconciliation and peace-building policy through the efforts of the government, civil society, and the private sector, which is to uphold the values of inclusiveness among the citizenry through an ad hoc communication strategy, and to develop formal and informal dialogue and conflict resolution mechanisms to address dividing issues, as well as combat hate speech and other forms of political and cultural intolerance;</li> <li>▣ promote the building of trust within local communities, between communities and the representatives of central agencies and security structures deployed in their areas, and between communities and local governance structures.</li> </ul>
<p><b>EUAM Ukraine</b>  <a href="https://www.euam-ukraine.eu/ua/">https://www.euam-ukraine.eu/ua/</a>            4 V, Volodymyrskyi Uzviz,            Kyiv, Ukraine, 01001            E-mail: hom.office@euam-ukraine.eu</p>		<p><a href="https://www.euam-ukraine.eu/ua/">https://www.euam-ukraine.eu/ua/</a></p>	<p>EUAM has worked closely with its Ukrainian counterparts to expedite a sustainable reform of the civilian security sector, providing strategic advice and practical support for specific reform measures in accordance with EU standards and international principles of good governance and human rights.</p> <p>The EUAM mandate is implemented according to three pillars of activity:</p> <ul style="list-style-type: none"> <li>▣ Strategic advice on civilian security sector reform, in particular, the need to develop civilian security strategies;</li> <li>▣ Support for the implementation of reforms, through the delivery of practical advice, training and other projects</li> <li>▣ And cooperation and coordination, to ensure that reform efforts are coordinated with Ukrainian and international actors.</li> </ul> <p>EUAM consulted MoJ in National Human Rights Strategy development.</p>
<p><b>Council of Europe Office in Ukraine</b>  <a href="https://www.coe.int/en/web/kyiv">https://www.coe.int/en/web/kyiv</a>            8, Illinska str., 7 entrance, 6 floor            Kyiv 04070, Ukraine            kyiv@coe.int</p>	<p>Internal Displacement in Ukraine: Building Solutions (2017 – 2022)</p>	<p><a href="https://www.coe.int/en/web/kyiv/idps2#:{%2238403826%22:[3]}">https://www.coe.int/en/web/kyiv/idps2#:{%2238403826%22:[3]}</a></p>	<p>In 2021-2022, the Project will encompass three major components:</p> <ol style="list-style-type: none"> <li>I. Advancing the scope and implementation of the legal and regulatory framework on the protection and restoration of human rights of IDPs and other conflict-affected civilian population</li> <li>II. Strengthening local authorities in responding to the needs of IDPs and conflict-affected population</li> <li>III. Facilitating the integration of IDPs by promoting and implementing target digital solutions</li> </ol>

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	Enhancing decentralisation and public administration reform in Ukraine	<a href="http://www.slg-coe.org.ua/?lang=en">http://www.slg-coe.org.ua/?lang=en</a>  <a href="https://www.facebook.com/slgcoe/">https://www.facebook.com/slgcoe/</a>	<p>The Programme is composed of the three inter-related components:</p> <ol style="list-style-type: none"> <li>(1) Improvement of legislative framework on local self-government in line with the European standards and good practice.</li> <li>(2) Enhancing capacities of local and regional authorities to deliver efficient and service oriented public administration.</li> <li>(3) Raising awareness of the results and impact of decentralisation of power and local self-government reform among general population.</li> </ol>
	Protecting national minorities, including Roma, and minority languages in Ukraine (2018-2021)	<a href="https://www.coe.int/en/web/kyiv/national-minorities">https://www.coe.int/en/web/kyiv/national-minorities</a>  <a href="https://www.facebook.com/NationalMinoritiesAndRomaCoE">https://www.facebook.com/NationalMinoritiesAndRomaCoE</a>	<ul style="list-style-type: none"> <li>▣ Strengthening the protection of national minorities and minority languages in Ukraine by reinforcing relevant policies, improving consultations with national minorities, strengthening the capacities and competences of public authorities dealing with the protection of national minorities and raising public awareness.</li> <li>▣ Facilitating the receipt of identity documents by Roma without IDs, including internally displaced Roma.</li> <li>▣ Institutionalizing and reinforcing the recognition of the profession of Roma health mediator in Ukraine; improving access of Roma communities to public health care and social services.</li> </ul>
	Promoting social human rights as a key factor of sustainable democracy in Ukraine (1 August 2019 - 31 July 2021)	<a href="https://www.coe.int/en/web/kyiv/socialrights">https://www.coe.int/en/web/kyiv/socialrights</a>  <a href="https://www.facebook.com/CoEsocialrightsUA">https://www.facebook.com/CoEsocialrightsUA</a>	<p>Objective 1: Social rights policies and practices are coherent and synergised at the national level and aligned with European standards in the field of social and economic rights, providing for proper protection and implementation of social rights.</p> <p>Objective 2: Reporting procedure on the implementation of the European Social Charter is improved and the quality of the national reports submitted to the ESCR is improved, providing accurate and complete data.</p> <p>Objective 3: Awareness on human social rights and the system of the European Social Charter is increased among target groups (including legal professionals, social/civil servants, students of law and social science) and public in general to enhance implementation and protection of social rights.</p>
	European Union and Council of Europe working together to strengthen the Ombudsman's capacity to protect human rights (10 July 2019 till 10 July 2021)	<a href="https://www.coe.int/en/web/kyiv/ombudsperson">https://www.coe.int/en/web/kyiv/ombudsperson</a>	<p>Overall aim of the Project – is to ensure better protection of the human rights in Ukraine as a result of alignment of Ukrainian legislation with the European standards and enhanced operational capacities of the Ombudsman's Office in the areas of personal data protection and prevention of ill-treatment in places of deprivation of liberty.</p>

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	Combating violence against children in Ukraine (until 31 December 2021)	<a href="https://www.coe.int/en/web/kyiv/combating-violence-against-children-in-ukraine">https://www.coe.int/en/web/kyiv/combating-violence-against-children-in-ukraine</a>	<p>The Council of Europe Project Combating violence against children in Ukraine focuses on supporting Ukraine in strengthening its response to child sexual exploitation, including in the digital environment, promoting child-friendly practices with focus on ensuring the rights of child victims and witnesses in proceedings and promoting the rights of the child in the digital environment.</p> <p>The Council of Europe project Combating violence against children in Ukraine is a direct follow-up to the to the previous Council of Europe project on Combating violence against women and children (2017/DG II/VC/3800) implemented in 2017-2018.</p>
	Support for judicial institutions and processes to strengthen access to justice in Ukraine (by 31 December 2022)	<a href="https://www.coe.int/en/web/kyiv/support-for-judicial-institutions-and-processes-to-strengthen-access-to-justice-in-ukraine">https://www.coe.int/en/web/kyiv/support-for-judicial-institutions-and-processes-to-strengthen-access-to-justice-in-ukraine</a>	<p>Objectives:</p> <ul style="list-style-type: none"> <li>▣ Provide Ukraine with an expert support for reforming of legislation, governing the functioning of judiciary and access to justice in accordance with the standards and recommendations of the Council of Europe.</li> <li>▣ Promote the development of judicial procedures of the Supreme Court and courts of lower instances to ensure uniform application of law and improve access to justice, considering the COVID-19 pandemic and the relevant Council of Europe standards.</li> <li>▣ Improve the procedures of access to justice by providing free legal aid, with emphasis on civil and administrative cases and taking into account the COVID-19 pandemic.</li> </ul> <p>Areas of cooperation:</p> <ul style="list-style-type: none"> <li>▣ Support for the legislation reforming in order to implement the standards and recommendations of the Council of Europe in the judiciary field.</li> <li>▣ Support to the Supreme Court and courts of lower instances for ensuring access to justice and uniformity of case law in line with the Council of Europe standards.</li> <li>▣ Support to the Supreme Court and courts of lower instances for ensuring compliance with the principle of legal certainty in line with the Council of Europe standards.</li> <li>▣ Support to the national authorities for improving the legislation on and the quality of legal aid within the system of free legal aid in civil and administrative cases, taking into account the relevant European practice and the recommendations of the Council of Europe.</li> </ul>
	Combatting Violence against Women in Ukraine (COVAW) (1 January 2021 - 31 December 2022)	<a href="https://www.coe.int/en/web/kyiv/combating-violence-against-women-in-ukraine-covaw-">https://www.coe.int/en/web/kyiv/combating-violence-against-women-in-ukraine-covaw-</a>	<p>The COVAW project will specifically aim to contribute to the success of the Action Plan through supporting the following priorities:</p> <ul style="list-style-type: none"> <li>▣ adoption of necessary legislation for the ratification of the Istanbul Convention by working with the relevant Committees of the Verkhovna Rada;</li> <li>▣ increased awareness of the authorities at different levels regarding the problem of violence against women and domestic violence in Ukraine and the need to combat it; sharing information about the Istanbul Convention and other international standards in this area;</li> </ul>

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			<ul style="list-style-type: none"> <li>❑ raising awareness of society on combating stereotypes and gender inequality, risks of domestic violence and the international standards to combat it, including the Istanbul Convention.</li> <li>❑ strengthened capacities and increased knowledge of relevant professionals and stakeholders, including in selected amalgamated communities;</li> <li>❑ identification of gaps hindering prevention of violence against women, protection of victims of this violence, prosecution of perpetrators or integrated policies at a central or local level;</li> <li>❑ legislative reforms and improved policy to aid victims of violence against women and domestic violence.</li> </ul>
	Youth for Democracy in Ukraine (1 March 2020 – 31 December 2021)	<a href="https://www.coe.int/en/web/kyiv/youth-for-democracy-in-ukraine#%2271492240%22:11">https://www.coe.int/en/web/kyiv/youth-for-democracy-in-ukraine#%2271492240%22:11</a>	The Project covers work with the representatives of the local authorities and youth organisations in order to contribute jointly in strengthening youth participation and civic engagement of young people in both rural and urban settings (including young people with disabilities, youth from minorities, as well as young migrants, refugees, IDPs and those affected by conflict) by developing the capacities of youth policy stakeholders and improving the quality of youth policy and youth work based on the Council of Europe standards.
	Strengthening local democratic governance in Ukraine (July 2018 - September 2021)	<a href="https://www.coe.int/en/web/kyiv/strengthening-local-democratic-governance-in-ukraine#%221107460424%22:10">https://www.coe.int/en/web/kyiv/strengthening-local-democratic-governance-in-ukraine#%221107460424%22:10</a>	The project is developed within the priorities of the Government of Ukraine approved on 12 June 2020, where the reform of local self-government and development of local democracy are identified as key areas of assistance. In consultation with local authorities and their associations, the project will aim to improve the quality of local democracy by creating conditions for ethical decision-making and more citizen-oriented, responsive and transparent local governance. The project represents a demand-driven proposal based on the needs and recommendations voiced by the relevant stakeholders and beneficiaries during the implementation of the project “Strengthening democracy and building trust at local level in Ukraine” implemented by the Congress of Local and regional Authorities of the Council of Europe in Ukraine from July 2018 to September 2021.
	Strengthening civil participation in democratic decision making in Ukraine	<a href="https://www.coe.int/en/web/kyiv/promoting-civil-participation-in-democratic-decision-making-in-ukraine#%2247092042%22:31">https://www.coe.int/en/web/kyiv/promoting-civil-participation-in-democratic-decision-making-in-ukraine#%2247092042%22:31</a>	<p>The implementation of the project is aimed at:</p> <ul style="list-style-type: none"> <li>❑ Reducing the distance between citizens and public authorities,</li> <li>❑ Strengthening the dialogue and cooperation in the decision-making process;</li> <li>❑ Providing and expanding opportunities for involving citizens in public affairs management in line with the Council of Europe standards and best practices.</li> </ul> <p>Building on the results achieved of the pilot project in 2017-2018 that helped to strengthen the inclusive dialogue between NGOs and Kyiv local authorities, the new project aims at:</p> <ul style="list-style-type: none"> <li>❑ Improvement of the national legislative and institutional framework for civil participation;</li> <li>❑ Raising awareness of the Council of Europe standards;</li> <li>❑ Improving mechanisms for engaging citizens at the local level;</li> <li>❑ Strengthening the capacity of public servants and NGOs.</li> </ul>

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<p><b>OSCE Project Coordinator in Ukraine</b></p> <p><a href="https://www.osce.org/project-coordinator-in-ukraine">https://www.osce.org/project-coordinator-in-ukraine</a></p> <p>16 Striletska Street, 01030 Kyiv, Ukraine office-pcu@osce.org</p>	<p>Combatting human trafficking</p>	<p><a href="https://www.osce.org/project-coordinator-in-ukraine/combating-human-trafficking">https://www.osce.org/project-coordinator-in-ukraine/combating-human-trafficking</a></p>	<p>The focus of the Coordinator's anti-trafficking activities lies in prevention, the strengthening of prosecution of perpetrators and assistance to victims.</p> <p>As perpetrators are increasingly using cyberspace for this crime, special attention is paid to the IT-aspects of this phenomenon, including the need to promote cyber hygiene and safe use of the internet among Ukrainians.</p> <p>The Co-ordinator's assistance includes providing expertise to develop laws and regulations; awareness-raising campaigns; and training law enforcement authorities, labour inspectors, social service providers, teachers, the media, and civil society representatives. A key tool is the National Referral Mechanism, which facilitates co-operation between state offices and non-governmental organizations to help victims obtain access to proper assistance.</p>
	<p>Human rights</p>	<p><a href="https://www.osce.org/project-coordinator-in-ukraine/human-rights">https://www.osce.org/project-coordinator-in-ukraine/human-rights</a></p>	<p>The Co-ordinator works with the security sector and law enforcement agencies to help them implement human rights-based approaches, assists parliamentarians draft laws that safeguard individual freedoms, and supports law enforcement reform both by participating in developing and implementing its strategy.</p> <p>To make the justice system an effective tool for human rights defence, the Co-ordinator offers training courses to judges, helps civil society to diagnose the system by means of trial monitoring, and supports the comprehensive reform of execution of court decisions. To enable access to justice in conflict-affected areas, the Co-ordinator supports research and provides a platform for discussion on ways to address the specific issues identified.</p> <p>An important area of work is the ongoing transformation of the country's legal education system, based on improved standards, with better external and internal evaluation and higher requirements for those who join the circle of legal professionals. To help raise the quality of education, the Co-ordinator promotes innovative approaches to the content and methodology of teaching law courses, supports academic mobility and the development of legal clinics, where students can get practical skills. It also assists in making human rights education a part of school curricula, offers relevant training courses and resources to teachers, and builds a network of human rights educators.</p>
	<p>Environmental activities</p>	<p><a href="https://www.osce.org/project-coordinator-in-ukraine/environmental-activities">https://www.osce.org/project-coordinator-in-ukraine/environmental-activities</a></p>	<p>Following an assessment of conflict-related environmental risks, the Co-ordinator focuses its efforts on establishing a system of monitoring that would enable the government and citizens to better understand the risks and prepare adequate response measures, and in promoting policies for the sustainable use of resources, especially in water management.</p> <p>An important portfolio of projects implemented by the OSCE aim at improving Ukraine's preparedness to meet challenges to chemical and biological security. They include efforts to strengthen the regulatory system and capacities to identify controlled and toxic agents; improve control over cross-boundary movement of dangerous substances; and enhance Ukraine's emergency response capacity, and the safety of its laboratories.</p>

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	Environmental activities	<a href="https://www.osce.org/project-coordinator-in-ukraine/environmental-activities">https://www.osce.org/project-coordinator-in-ukraine/environmental-activities</a>	<p>Following an assessment of conflict-related environmental risks, the Co-ordinator focuses its efforts on establishing a system of monitoring that would enable the government and citizens to better understand the risks and prepare adequate response measures, and in promoting policies for the sustainable use of resources, especially in water management.</p> <p>An important portfolio of projects implemented by the OSCE aim at improving Ukraine's preparedness to meet challenges to chemical and biological security. They include efforts to strengthen the regulatory system and capacities to identify controlled and toxic agents; improve control over cross-boundary movement of dangerous substances; and enhance Ukraine's emergency response capacity, and the safety of its laboratories.</p> <p>Working across the borders with Ukraine's neighbours, the OSCE also assists with projects to improve co-operation on adapting the Dniester basin to the challenges of water quality and quantity, climate change and wildlife, and to reduce the radiological risks generated by wildfires in the Chernobyl Exclusion Zone.</p>
	Conflict prevention and resolution	<a href="https://www.osce.org/project-coordinator-in-ukraine/conflict-prevention-and-resolution">https://www.osce.org/project-coordinator-in-ukraine/conflict-prevention-and-resolution</a>	<p>While multiple OSCE measures and mechanisms have been enacted to address the crisis in and around Ukraine, the Project Co-ordinator, in line with its mandate, focuses its efforts on assisting Ukrainian stakeholders in addressing the consequences and consolidating social cohesion in the country during difficult times.</p> <p>On a nationwide level, the Co-ordinator promotes dialogue as a tool of conflict prevention and resolution, and as an essential governance instrument for policy-making at all levels. To achieve this objective, it provides assistance to strengthen Ukraine's community of mediators and dialogue facilitators through the training and development of learning materials and tools, provides methodological support to strengthen conflict analysis and management, and organizes and runs dialogue meetings on conflict-prone issues.</p> <p>In mitigating the impact of the crisis across the country, the Co-ordinator helps develop and launch a system of assistance for crisis-affected people, including former combatants and their family members.</p>
	Rule of Law	<a href="https://www.osce.org/project-coordinator-in-ukraine/rule-of-law">https://www.osce.org/project-coordinator-in-ukraine/rule-of-law</a>	<p>The Co-ordinator supports comprehensive reform of the judiciary by participating in developing and implementing its strategy; providing expert support and enabling inclusive participation of stakeholders in discussions over the substance of the changes. The Co-ordinator also helps Ukraine's parliamentarians draft laws that safeguard individual freedoms, by offering training courses, developing methodologies and providing expert opinions.</p> <p>To improve the quality of the justice system in the country, the Co-ordinator helps to introduce standards-based judicial education with evaluation approaches in place, and develops courses and methodologies. It also helps to promote gender-sensitive justice by supporting a network of gender focal points in courts, offering relevant training courses to judges.</p>

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			<p>The Co-ordinator also promotes the use of international human rights protection tools by Ukrainian courts, delivers training courses and facilitates professional discussions in the legal community. In addition, civil society receives methodological support and trainings to monitor court proceedings and identify gaps that need improvement.</p> <p>The country's Constitutional Court benefits from the Co-ordinator's advice, access to international expertise and support in improving its transparency. Specific assistance is provided to strengthen a newly introduced mechanism of constitutional complaint, enabling citizens to address the Court in the event they believe that constitutional provisions are violated by acts of government.</p> <p>To help the judicial system professionally and independently address a wide range of issues within anti-corruption reform, the Co-ordinator works with the newly established Anti-corruption Court and other law enforcement bodies, and assists in the engagement of citizens and key stakeholders in the dialogue on the ongoing transformations.</p>
	Good governance	<a href="https://www.osce.org/project-coordinator-in-ukraine/good-governance">https://www.osce.org/project-coordinator-in-ukraine/good-governance</a>	<p>The Co-ordinator contributes to increasing the role of civil society organizations in decision-making process, including through public consultations, and provides support to initiatives that strengthen the sustainability of civil society organizations.</p> <p>That includes the development of policy and legislative frameworks based on good international practices, training courses offered to officials and activists on ways to co-operate, the promotion of good governance standards for public associations, and support for the elaboration and practical use of financial mechanisms to foster the institutional development of civil society organizations.</p> <p>The Co-ordinator promotes the inclusion of facilitated dialogue into civil service culture, so that citizens are involved in decision-making at all levels of governance. The Co-ordinator also offers methodologies and training courses for the use of dialogue to support reforms, and to prevent or manage conflicts arising in the process of complex change.</p>
	Policing	<a href="https://www.osce.org/project-coordinator-in-ukraine/policing">https://www.osce.org/project-coordinator-in-ukraine/policing</a>	<p>The Co-ordinator helps to ensure the reform puts into practice the principles of democratic policing that require law enforcers to pursue transparency and accountability to all citizens, their representatives, the state and the law.</p> <p>The Co-ordinator helps to develop comprehensive, problem-specific training courses, offers re-training to serving officers, and supports the development and introduction of modern police education approaches for newly recruited cadets. Assistance is also provided in developing instructions and sub-laws, notably to support police responses to domestic violence, human trafficking and cybercrime.</p>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
	Gender Equality	<a href="https://www.osce.org/project-coordinator-in-ukraine/gender-equality">https://www.osce.org/project-coordinator-in-ukraine/gender-equality</a>	<p>The Project Co-ordinator helps Ukraine execute the National Action Plan for the implementation of the 1325 Resolution, developed jointly with other international partners.</p> <p>Notably, in assisting Ukraine develop a system to provide psycho-social rehabilitation to crisis-affected people, the Co-ordinator places a special focus on families of former combatants and internally displaced persons; a majority of whom are women. To promote gender equality and combat gender-based violence in Ukraine, the Co-ordinator helps amend domestic violence and gender-related legislation, runs awareness-raising campaigns and organizes training courses for social service providers, the media, and law enforcement officers. Special attention is paid to gender mainstreaming in the legal sphere, the Co-ordinator promotes gender-sensitive constitutionalism, educates judges and brings them together through a network of gender focal points in courts.</p> <p>Gender aspects are taken into account in the planning and implementation of all the Co-ordinator's projects, as well as in its daily work in line with the office's Strategy for the Promotion of Gender Equality.</p>
	Cyber/ICT security	<a href="https://www.osce.org/project-coordinator-in-ukraine/cyber-ict-security">https://www.osce.org/project-coordinator-in-ukraine/cyber-ict-security</a>	<p>The OSCE Project Co-ordinator helps the country respond to this security challenge by enhancing awareness of Ukrainians about safety rules in digital space, building the capacity of a new cyber-police force and promoting co-operation between various agencies in handling ICT-facilitated crimes, notably regarding the trafficking of human beings.</p>
	Media freedom and development	<a href="https://www.osce.org/project-coordinator-in-ukraine/media-freedom-and-development">https://www.osce.org/project-coordinator-in-ukraine/media-freedom-and-development</a>	<p>The Project Co-ordinator works to improve the safety and editorial independence of journalists, supports research and discussion platforms on conflict-sensitive journalism, offers training courses and promotes better self-regulation as a way to address violations of media ethics. Sustainability of local print media reformed from state or municipal to independent outlets is also an important area of focus.</p>
<b>International Renaissance Foundation</b> <a href="https://www.irf.ua/en/">https://www.irf.ua/en/</a> 04053, Kyiv, 46 Sichovyh Striltsiv St. irf@irf.ua	European Program	<a href="https://www.irf.ua/en/program/eu-en/">https://www.irf.ua/en/program/eu-en/</a>	<p><b>Program goal:</b></p> <p>Support Ukraine's European integration as a means of implementing effective pro-European reforms in the areas of democratization, human rights, good governance and the rule of law based on world best practices:</p> <ul style="list-style-type: none"> <li>▣ International expert dialogues and advocacy</li> <li>▣ Public Synergy Project</li> <li>▣ Facilitating the implementation of the Association Agreement</li> <li>▣ Strengthening international support for Ukraine</li> </ul>
	Human Rights and Justice	<a href="https://www.irf.ua/program/human_rights-en/">https://www.irf.ua/program/human_rights-en/</a>	<p><b>Program goal:</b></p> <p>Prevent human rights violations, promote the implementation of effective anti-discrimination legislation and practices in Ukraine, promote access to justice and vulnerable groups for the poor and vulnerable people:</p> <ul style="list-style-type: none"> <li>▣ Strengthening the legal capacity of local communities</li> <li>▣ Monitoring and documenting human rights violations</li> <li>▣ Reforming criminal justice</li> </ul>

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	Social capital	<a href="https://www.irf.ua/program/civic_initiatives_of_new_ukraine-en/">https://www.irf.ua/program/civic_initiatives_of_new_ukraine-en/</a>	<p><b>Program goal:</b></p> <p>Strengthening the organizational and advocacy capacity of local initiatives of self-organization of citizens that emerged during the protests of 2013-2014 and creating conditions for civil dialogue, understanding and reconciliation in Ukraine.</p> <ul style="list-style-type: none"> <li>▣ Development of communication capacity of public initiatives, public media and journalism</li> <li>▣ Creation of effective mechanisms for networking, cooperation and exchange of experience, which has shown its importance, between public activists from different regions of Ukraine</li> <li>▣ Development of local public media</li> <li>▣ Project "Expert support of the European Emergency Program</li> </ul>
	Roma Program	<a href="https://www.irf.ua/en/program/roma-en/">https://www.irf.ua/en/program/roma-en/</a>	<p>Program goal is to support NGOs and activists in involving representatives of the Roma community in social processes and combating discrimination</p> <ul style="list-style-type: none"> <li>▣ Advocacy and support</li> <li>▣ Legal protection</li> <li>▣ Youth leadership</li> <li>▣ Roma education</li> <li>▣ Roma health and social mediators</li> </ul>
	Environmental Policy and Advocacy Initiative for Ukraine (EPAIU)	<a href="https://www.irf.ua/en/program/ecology-en/">https://www.irf.ua/en/program/ecology-en/</a>	<p>Environmental Policy and Advocacy Initiative for Ukraine (EPAIU) is aiming at the civil society organizations development that act in the environmental field – institutionally capable, transparently governed, accountable and publicly recognized, and help improve the quality and inclusiveness of environmental policy making and implementation by means of strengthening inputs from civil society into designing, advocating, implementing and monitoring environmental policies and practices at all levels, and raising public awareness of, and demand for a problem-relevant, more inclusive, rights-based and conflict-sensitive approach to environmental policy and decision-making. The EPAIU has being implemented with a support of Sweden.</p>
	EU4USociety project	<a href="https://www.irf.ua/en/program/eu4usociety-en/">https://www.irf.ua/en/program/eu4usociety-en/</a>	<p>The overall goal of the Project is to strengthen the involvement, sustainability, capacity, relevance and influence of Ukrainian civil society in addressing current domestic, regional and global challenges. A long-term consequence of the Project will be a contribution to building a sustainable democratic public policy and a culture of public participation in Ukraine.</p> <ul style="list-style-type: none"> <li>▣ human rights-based digital transformation</li> <li>▣ responding to climate change</li> <li>▣ humanity and mutual assistance: Humanitarian initiative</li> <li>▣ stability and sustainability of civil society</li> </ul>
	Democracy	<a href="https://www.irf.ua/program/democracy-en/">https://www.irf.ua/program/democracy-en/</a>	<p><b>Program goal:</b></p> <p>Creating effective tools to fight corruption and increase the accountability of public authorities to citizens:</p> <ul style="list-style-type: none"> <li>▣ Investigative journalism</li> <li>▣ Combatting corruption</li> <li>▣ Ecology initiative</li> </ul>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
<p><b>USAID</b>  <a href="https://www.usaid.gov/uk/ukraine">https://www.usaid.gov/uk/ukraine</a>            4 Igor Sikorsky Street,            Kyiv, Ukraine, 04112            Email: kyvinfo@usaid.gov</p>	<p>Business investment and lending            Implementer: Western NIS Enterprise Fund/Horizon Capital            Project Period: September 21, 1994 – December 31, 2023</p>	<p><a href="https://wnisef.org/">https://wnisef.org/</a>   <a href="https://www.facebook.com/wnisef">https://www.facebook.com/wnisef</a></p>	<p>USAID created the Western NIS Enterprise Fund (WNISEF), a regional private equity fund for Ukraine and Moldova, in 1994, capitalizing it with \$150 million, and for two decades WNISEF invested in small and medium-sized companies in the region. In 2014, USAID re-directed the remaining funds toward promoting policies and practices that support private sector development. WNISEF now focuses on developing economic leadership and local economies and building social investments and export promotion.</p>
	<p>Competitive Economy Program            Implementer: Chemonics Int.            Project Period: October 16, 2018 – October 15, 2023</p>	<p><a href="https://www.facebook.com/usaidcep.ua">https://www.facebook.com/usaidcep.ua</a></p>	<p>USAID COMPETITIVE ECONOMY PROGRAM (CEP) is a \$42 million activity to advance a strong, diverse, and open Ukrainian economy by supporting SMEs and business startups to become more competitive in domestic and international markets. CEP's principal objectives are to foster a better business enabling environment, provide support for competitive industries and firms, and boost Ukraine's exports and trade. CEP supports the development of select industries that have the potential to grow rapidly, increase revenue, and generate investment and jobs in an environmentally sustainable way. CEP is focused on several key sectors — information technology (IT), furniture and wood processing, tourism, and film industry.</p> <p>A key CEP approach to fostering businesses in competitive sectors is to create opportunities to enhance business and export knowledge and skills and assure access to finance. To support trade, CEP also strengthens Ukraine's participation in and compliance with World Trade Organization (WTO) rules and requirements.</p>
	<p>Economic Resilience Activity            Implementer: DAI Global            Project Period: August 27, 2018 – August 26, 2023</p>	<p><a href="https://era-ukraine.org.ua/en/">https://era-ukraine.org.ua/en/</a></p>	<p>The USAID Economic Resilience Activity (ERA) is a six-year program (2018-2024) implemented by DAI Global LLC, aimed at improving the economy of eastern Ukraine in response to Russia's aggression. ERA's target geographic regions include the Ukrainian Government-controlled areas of Donetsk and Luhansk Oblasts, and selected cities in the Azov Sea region.</p> <p>The Russia-backed conflict in eastern Ukraine and Russia's hybrid war in the Azov Sea have upended the economy of the region, cut the region off from important markets, catalyzed the decline of traditional industries, displaced 1.5 million from their homes and jobs, and left millions of Ukrainians economically stressed.</p> <p>Not only eastern Ukraine bears the brunt of the problems caused by the Russia-backed conflict, this region, as the survey data show, has the lowest level of support for Ukraine's Euro-Atlantic trajectory, in part due to low economic security and low trust in government institutions.</p> <p>To address these challenges, the USAID Economic Resilience Activity promotes the development of a resilient, inclusive, and growth-oriented economy in eastern Ukraine.</p>

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	<p>Economic Resilience Activity</p> <p>Implementer: DAI Global</p> <p>Project Period: August 27, 2018 – August 26, 2023</p>	<p><a href="https://era-ukraine.org.ua/en/">https://era-ukraine.org.ua/en/</a></p>	<p>ERA empowers eastern Ukrainians to establish and grow micro, small, and medium enterprises (MSMEs) in promising economic sectors, to innovate, and to expand to new markets across Ukraine, the European Union (EU), and other new international markets.</p> <p>ERA emphasizes the inclusion of internally displaced persons (IDPs), women, young adults, Roma, veterans, the elderly, and other vulnerable groups among its beneficiaries to ensure that they also share in the region's economic success. ERA is also working with local and regional stakeholders to define a viable vision for the future of the region's economy.</p> <p>The USAID Economic Resilience Activity's work is centered on three pillars:</p> <ul style="list-style-type: none"> <li>■ Inclusion: building the capabilities of vulnerable populations to capitalize on entrepreneurial and MSME economic opportunities;</li> <li>■ Growth: helping micro, small, and medium businesses innovate, invest, and expand markets; and</li> <li>■ Transformation: working with coalitions and leaders to articulate a vision for the future and put in place a modern, diverse, and SME-friendly economy.</li> </ul>
	<p>Global Labor Program: Ukraine</p> <p>Implementer: American Center for International Labor Solidarity (Solidarity Center)</p> <p>Project Period: February 1, 2016 – January 30, 2022</p>		<p>The Global Labor Program (GLP) strengthens worker organizations and other civil society advocates for workers' rights, promoting access to justice for workers, ensuring equal employment opportunities for women and vulnerable groups, and developing the ability to effectively reduce trafficking in persons and labor rights violations. GLP works to strengthen the effectiveness of partner Ukrainian trade unions across the country, including their leadership, focusing on anti-corruption and freedom of association initiatives for internally displaced persons (IDPs), migrants, workers, and the disabled.</p>
	<p>Democratic Governance East (DG East)</p> <p>Implementer: Chemonics International</p> <p>Project Period: October 1, 2018 – September 30, 2023</p>	<p><a href="https://www.facebook.com/DemocraticGovernanceEast">https://www.facebook.com/DemocraticGovernanceEast</a></p>	<p>USAID's Democratic Governance East (DG East) is a five-year activity to improve trust and confidence between citizens and government in eastern Ukraine, contributing to USAID's broader goal of mitigating the impacts of Russia's aggression against Ukraine. DG East works to increase participation in community problem-solving, develop more efficient, modern service delivery, integrate separated, marginalized, and isolated communities; build citizen confidence in and understanding of key reforms; and strengthen inclusive and democratic citizen engagement.</p>

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	Countering Trafficking in Persons (TIP) Project Implementer: International Organization for Migration Project Period: July 20, 2004 – January 1, 2023	<a href="https://www.iom.int/">https://www.iom.int/</a> <a href="https://www.facebook.com/IOMUkraine">https://www.facebook.com/IOMUkraine</a>	The USAID Countering Trafficking in Persons Initiative is part of a broader U.S. Government effort to reduce trafficking in persons in Ukraine by transitioning services for victims of trafficking, such as registration, referral and reintegration assistance to full Ukrainian ownership. This includes efforts to strengthen the Ukrainian government's national referral mechanism, increase government funding for counter trafficking efforts, and increase the involvement of non-governmental service providers in the national referral mechanism. The project also develops economic opportunities and improves the social well-being of IDPs in response to ongoing conflict in Ukraine, one of the root causes of human trafficking in the country.
<b>GIZ</b> <a href="https://www.giz.de/en/worldwide/32413.html">https://www.giz.de/en/worldwide/32413.html</a>	Introducing an emissions trading scheme (ETS) in Ukraine	<a href="https://www.giz.de/en/worldwide/65310.html">https://www.giz.de/en/worldwide/65310.html</a>	<p><b>Programme description</b></p> <p>Title: Support for the establishment of an emissions trading scheme (ETS) in Ukraine</p> <p>Commissioned by: Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU)</p> <p>Country: Ukraine</p> <p>Lead executing agency: Ministry of Environmental Protection and Natural Resources of Ukraine</p> <p>Overall term: 2017 to 2022</p> <p><b>Context.</b> Climate change is having a noticeable impact all over the world and poses major challenges for national governments. Emissions trading schemes are intended to make a significant contribution to combating climate change. Under these schemes, governments set upper limits or 'caps' for greenhouse gas emissions in their countries. Companies then receive 'emission allowances', permitting them to emit defined quantities of greenhouse gases. Ukraine's economy is traditionally dominated by heavy industry. In terms of economic output, the country's carbon dioxide emissions are three times the EU average. This is one of the main reasons why Ukraine has made a commitment to adapt its climate policy. One of the commitments under the Association Agreement between the European Union and Ukraine is the introduction of an emissions trading scheme (ETS).</p> <p><b>Objective.</b> Ukraine establishes an emissions trading scheme to help mitigate climate change.</p> <p><b>Approach.</b> The project is supporting the Ministry of Environmental Protection and Natural Resources of Ukraine in establishing an emissions trading scheme (ETS). It is working closely with the Ministry to set up the fundamental component of the ETS: the monitoring, reporting and verification (MRV) system. Furthermore, the project is assisting the Ministry in making the necessary changes to its legislation and establishing a data management system. With all of this in place, the country will be able to create a reliable and precise emissions database – the fundamental requirement for an ETS, which successfully determines and records companies' greenhouse gas emissions. German experts advise the Ministry's employees on calculating the cap for greenhouse gas emissions and the impacts this will have for Ukraine's economic development. In order to ensure that an established ETS is effective and enjoy a high level of public support, all key stakeholders are involved in this process.</p>

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	Trade support between Ukraine and the European Union	<a href="https://www.giz.de/en/worldwide/101455.html">https://www.giz.de/en/worldwide/101455.html</a>	<p><b>Project description</b></p> <p>Title: Utilisation and implementation of the Association Agreement between the EU and Ukraine in the field of trade</p> <p>Commissioned by: German Federal Ministry for Economic Cooperation and Development (BMZ)</p> <p>Co-funded by: European Union (EU)</p> <p>Country: Ukraine</p> <p>Lead executing agency: Ministry of Economy of Ukraine</p> <p>Overall term: 2020 to 2024</p> <p>The harbour of Odessa.</p> <p><b>Context.</b> Ukraine's economy has been in a difficult position for several years, with the conflicts in Crimea and Eastern Ukraine hindering its development since 2014. Now the COVID-19 pandemic has affected small and medium-sized enterprises (SMEs) in particular. As a consequence, in 2020 Ukraine had the lowest gross domestic product in the whole of Europe. Investments in the country are associated with high risks.</p> <p>To provide impetus for economic development, the Ukrainian Government signed the Association Agreement with the European Union (EU), which came into force in 2017. The resulting free trade zone makes it easier for Ukraine to sell products in the EU, but also requires Ukraine to adapt to the regulatory conditions and laws of the European Union. This is a major challenge for politics, administration and business. Ukrainian companies lack the innovative potential and expertise to comply with EU standards and utilise new economic opportunities.</p> <p><b>Objective.</b> The Ukrainian Government promotes SMEs, innovations and exports for sustainable economic growth.</p> <p><b>Approach.</b> This project helps Ukrainian companies enter the EU market. To this end, it supports the responsible authorities with technical and legal preparation for the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The Agreement will result in a visa-free regime for Ukrainian goods on the European market.</p> <p>The project supports SMEs in all regions of Ukraine in business clusters and networks. It also implements capacity development measures for local economic promotion and intermediaries and promotes innovation projects, allowing entrepreneurs to get to know new tools and business approaches in specialist forums, training courses, individual consultations and international exchange programmes.</p>
	Promoting the improvement of the economic situation of vulnerable groups in the Sea of Azov region	<a href="https://www.giz.de/en/worldwide/89450.html">https://www.giz.de/en/worldwide/89450.html</a>	<p><b>Project description</b></p> <p>Title: Fostering economic participation of vulnerable groups including internally displaced persons (IDP) in the Sea of Azov region</p> <p>Commissioned by: German Federal Ministry for Economic Cooperation and Development (BMZ)</p> <p>Country: Ukraine</p> <p>Lead executing agency: Ministry of Development of Economy, Trade and Agriculture of Ukraine</p> <p>Overall term: 2020 to 2024</p>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
			<p><b>Context.</b></p> <p>For years, Ukraine's economy has been suffering from structural problems such as outdated production processes, while there are numerous large companies and few small and medium-sized enterprises. Job placement services are poorly developed and state support for the private sector and investment is insufficient. Outdated training and education, Ukraine's demographic development and emigration are exacerbating the shortage of experts. Domestic political upheaval and the foreign policy crisis resulting from the annexation of the Crimea and the conflict in eastern Ukraine have intensified the structural problems.</p> <p>This development particularly affects the Zaporizhzhya oblast and the region of Mariupol in the Donetsk oblast, as the Sea of Azov has been blocked for international shipping since the Russian occupation of the Crimea. The port cities of Mariupol and Berdjansk are especially hard hit here, with massive job losses in the ports and in related companies. This has led to a huge decline in employment opportunities in the region, thus impeding the economic participation of further sections of the population. As a result of constant job cuts in large companies in traditional branches of the economy such as coal or steel, the situation is expected to worsen in the near future if no appropriate countermeasures are taken. Micro, small and medium-sized enterprises (MSMEs) need support in order to create jobs and cushion the impact of looming mass unemployment.</p> <p>On top of the weak economic situation, the Zaporizhzhya and Donetsk oblasts need to cope with the influx of around 547,000 internally displaced persons (IDPs). The handful of local MSMEs and the job cuts at large companies are making it more difficult for the host communities to integrate IDPs into the labour market. A lack of employment prospects primarily affects IDPs who are qualified for professions for which there is no demand in the host regions. Others lack certain additional or key qualifications that are needed in order to find employment on the local labour market.</p> <p>The situation of other disadvantaged groups in the target region is also precarious. Alongside women – in particular single mothers – this also includes the long-term unemployed, young people, people with disabilities and veterans. Without employment and adequate income they are excluded from essential elements of economic participation such as self-determination, self-responsibility and from participation in social life.</p> <p><b>Objective.</b></p> <p>The economic participation of the population, and especially disadvantaged groups, in the Sea of Azov region has improved.</p> <p><b>Approach.</b></p> <p>On behalf of the German Federal Government, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH supports the local population and in particular disadvantaged groups in improving their entrepreneurial skills by means of training courses and internships. The aim is to make it easier for participants to embark upon a career.</p>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
			<p>By providing training courses and professional advice, the project helps existing micro and small enterprises and young start-ups in the region to improve their business processes. As a result, companies will grow and create more jobs. The project provides training for start-up founders in drawing up business plans and accompanies them in implementing their business idea.</p> <p>In addition, the project promotes local communities in establishing and expanding structures to provide corporate services, for example by setting up a tourism office. It also supports the regional administration in implementing the regional development strategy for 2021 to 2027 using training seminars, conferences and exchange forums.</p>
	<p>Improving employment opportunities for internally displaced persons and supporting vocational education (VET) reform in Ukraine</p>	<p><a href="https://www.giz.de/en/worldwide/80994.html">https://www.giz.de/en/worldwide/80994.html</a></p>	<p><b>Project description</b></p> <p>Title: Vocational integration of internally displaced people/ EU4Skills</p> <p>Commissioned by: German Federal Ministry for Economic Cooperation and Development (BMZ), European Union (EU)</p> <p>Co-funded by: European Union</p> <p>Country: Ukraine</p> <p>Lead executing agency: Ministry of reintegration of temporarily occupied territories of Ukraine; Ministry of Education and Science of Ukraine</p> <p>Overall term: 2017 to 2023</p> <p><b>Context.</b> The conflict in eastern Ukraine has forced 1.4 million people from the Donetsk and Luhansk regions to leave their homes and settle in other regions of the country. One of the most pressing problems for internally displaced persons (IDPs) and people living in the host communities is the lack of employment opportunities. Moreover, the qualifications of the IDPs often do not match the job profiles in demand on the labour market. Women are disproportionately affected.</p> <p>Vocational retraining courses are rarely geared to the needs of the labour market, nor are they equally accessible to everybody. In addition to personal and family problems, unemployment also triggers social conflicts when population groups compete for scarce jobs.</p> <p>Most of the existing vocational training courses do not offer participants enough opportunities to acquire qualification profiles relevant for the labour market. Vocational schools often work with outdated equipment and curricula. Moreover, vocational education and training has a poor image in Ukraine and is not considered to be a career-enhancing option.</p> <p><b>Objective.</b> The employability both of IDPs and the population of the host communities in the Kharkiv, Dnipropetrovsk, Poltava and Zaporizhia regions and in the government-controlled areas of the Donetsk and Luhansk regions has improved.</p> <p>The effectiveness of the reform of the vocational training system has improved. The implementation of the reform is supported in seven focus regions: Chernivtsi, Lviv, Mykolaiv, Poltava, Rivne, Zaporizhia and Vinnytsia.</p>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
	Improving employment opportunities for internally displaced persons and supporting vocational education (VET) reform in Ukraine	<a href="https://www.giz.de/en/worldwide/80994.html">https://www.giz.de/en/worldwide/80994.html</a>	<p><b>Approach.</b></p> <p>The project consists of two components. In the first component, which is financed by the German Federal Ministry for Economic Cooperation and Development (BMZ), training opportunities for IDPs are being created in cooperation with private and public educational institutions, representatives of initiatives and associations as well as with the Bildungswerk der Bayerischen Wirtschaft e. V. (Educational Association of the Bavarian Economy).</p> <p>These are geared specifically to the local labour market. In order to tailor the training courses precisely to demand, the project conducts studies in the focus regions on labour market requirements. For example, job seekers are trained as IT specialists, office administrators, electricians, assistant cooks and sewing machine repairers. The training courses offered are free of charge for the participants. Depending on the requirements of the job specification, they can last from a few weeks to half a year.</p> <p>The second component is financed by the European Union (EU), Germany, Finland and Poland and is carried out jointly with the Kreditanstalt für Wiederaufbau (KfW) and partners from Finland, Poland and Estonia.</p> <p>The project supports the development of efficient vocational training with effective coordination and financing mechanisms. The introduction of a skills-based training and examination system is intended to promote modern forms of teaching and learning. These will improve the quality of the system and its demand-led approach.</p> <p>The project also focuses on cross-cutting issues. These include cooperation between the public and private sectors as well as initiatives and associations, gender aspects and the use of digital potential. The partnership with employers plays a central role in implementing the reform. Joint efforts by stakeholders at government level and in the regions and municipalities increase the effectiveness of implementation.</p> <p><b>Results.</b></p> <p>By the end of 2019, more than 1,000 IDPs and people affected by the conflict from six regions in eastern Ukraine had already enhanced their employability through further training. Above all, the adaptation of curricula to the needs of the labour market, careers guidance and training in personal skills – such as improving social skills and teamwork – have also supported this goal.</p> <p>Within the first two years, support was also provided for five regional partnerships with stakeholders from different sectors. Together they have implemented innovative projects to facilitate the framework conditions for improved employability.</p>

International donor / organisation	Program/ project name	Program / project website, social networks	Program/ project objectives
<p><b>Swedish International Development Agency (Sida)</b></p>	<p>PROSTO project</p>	<p><a href="https://prosto.in.ua/en/">https://prosto.in.ua/en/</a></p>	<p>The Project specifically focuses on supporting hromadas in the establishment and modernization of Administrative Service Centers (ASCs), improvement of access to services for citizens, setting up a dialogue between hromada residents and self-governments.</p> <p><b>The Project's main areas of activity are:</b></p> <p>Policy and advocacy – support in advancing legislation and public policies to improve the availability and quality of administrative services in hromadas.</p> <p>Expert support – consulting hromadas on how to establish or modernize ASCs, increase the quantity and quality of services provided.</p> <p>Training programs – training activities for hromada self-government, ASC management, and staff so that they could provide services to hromada more effectively. In addition to professional competencies, training focuses on business ethics and gender equality.</p> <p>Citizen engagement and information – strengthening the ability of hromadas to inform about ASC services and to involve residents in the democratic processes in hromadas.</p> <p><b>EXPECTED OUTCOMES</b></p> <p>Increased involvement of hromada political leaders in the improvement of access to services for residents, including cooperation with starostas, inter-municipal cooperation, and various ASC models.</p> <p>Improved capacity of ASC staff to provide services to hromada residents in an efficient, quality, gender-sensitive and inclusive manner.</p> <p>Increased level of citizen involvement in the democratic processes in hromadas, strengthened dialogue between the local self-government and hromadas, improved civil participation and request for the provision of services.</p> <p>Strengthening of the voice of hromadas in issues related to the provision and improvement of administrative services at the national level, its reflection in advocacy documents and legislation.</p> <p><b>PARTNERS</b></p> <p>The Project cooperates with:</p> <ul style="list-style-type: none"> <li>▣ local self-governments;</li> <li>▣ Ministry of Digital Transformation of Ukraine;</li> <li>▣ Ministry for Communities and Territories Development of Ukraine;</li> <li>▣ relevant Committees of the Verkhovna Rada of Ukraine;</li> <li>▣ regional state administrations;</li> <li>▣ ASC management;</li> <li>▣ associations of hromadas and local self-governments;</li> <li>▣ reform coordination structures;</li> <li>▣ strategic advisory groups, experts, etc.</li> </ul>

## ANNEX H. EU DEVELOPMENTS IN THE BUSINESS AND HUMAN RIGHTS

### EU NON-FINANCIAL REPORTING DIRECTIVE VS EC CORPORATE SUSTAINABILITY DIRECTIVE

The European Union Directive on Non-Financial Reporting (2014/95/EU, NFRD) requires companies to include non-financial statements in their annual reports or in a separate filing from 2018, including information on:

- ❑ environmental protection,
- ❑ social responsibility and treatment of employees,
- ❑ respect for human rights,
- ❑ anti-corruption and bribery,
- ❑ and diversity on company boards.

In the light of the newly-approved the Green Deal the European Commission undertook a commitment to review the NFRD as a part of Sustainable Finance strategy and public consultation was launched on Corporate Sustainability Reporting Directive (CSRD) which would amend the existing NFRD reporting requirements and will cover up to 55000 companies. The Proposal:

- ❑ extends the scope to all large companies and all companies listed on regulated markets (except listed micro-enterprises),
- ❑ requires the audit (assurance) of reported information,
- ❑ introduces more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards including double materiality perspective: i.e. companies should report (i) information necessary to understand how sustainability matters affect them, as well as (ii) information necessary to understand the impact they have on people and the environment,
- ❑ requires companies to digitally 'tag' the reported information, so it is machine readable and feeds into the European single access point.

**Meanwhile, NFRD was harmonized with the Ukrainian legislature and a new term – Management Report – appeared in the Ukrainian regulation and provided additional requirements for large companies and banks to report on non-financial indicators including gender equality and human rights. The impact of CSRD will be the same.**

### THE EUROPEAN GREEN DEAL

The European Green Deal was adopted by the European Commission in 2019 and is a set of policy initiatives aimed at making Europe climate neutral in 2050 followed by the Action Plan. The Green Deal focuses on the importance of environmental human rights in many sectors including biodiversity, transport, food, energy, construction and agriculture. It was a driver for the introduction of other legislation on the circular economy (Circular Economy Action Plan), building renovation, biodiversity, farming (a Farm to Fork strategy) and innovation. The key activities are planned in the following sectors:

- ❑ Agriculture: under a Farm to Fork strategy the shift will be made from compliance to rewards, e.g. reward farmers for managing and storing carbon in the soil, reduction of emissions and use of chemicals and promoting organic farming and sustainable packaging.
- ❑ Energy-intensive industries like extractive, aviation and shipping: the plan is to revisit fossil fuel subsidies and tax exemptions
- ❑ Construction: the focus is on refurbishments, use of energy efficient building methods (climate proofing buildings), increasing digitisation and energy performance of buildings.
- ❑ Transportation: within a Sustainable and Smart mobility strategy the focus will be on research and development in transport technologies (batteries, clean hydrogen, low-carbon steel-making, etc), adoption of sustainable and alternative fuels in road, maritime and air transport, fix of the emission-standards for combustion-engine vehicles.
- ❑ Forestry: Under EU forest strategy the key activities will be aimed at afforestation, forest restoration and preservation.
- ❑ Automotive industry: under the Fit for 55 legislation package, all new cars on the European market must be zero-emission vehicles from 2035.

**In the nearest future the European Green Deal will have a significant impact on companies in Ukraine in three ways:**

- ❑ EU-headquartered companies operating in Ukraine will start climate-focussed innovations and changes in the business models which will make them to be a benchmarking standard for other companies in Ukraine
- ❑ EU-headquartered companies, investment and banking sector will demand the higher standards in environmental practices of Ukrainian companies
- ❑ The Ukrainian government will harmonize the Ukrainian legislature with the EU Green Deal which will demand climate-positive practices from energy-intensive industries, including agriculture, transportation, construction and other sectors, and perhaps the compliance standards in these areas will be set.

**MANDATORY BUSINESS AND HUMAN RIGHTS DUE DILIGENCE**

The Concept of mandatory human rights due diligence for companies is being discussed in EU and in EU Members States, as well as in non-EU Member States in Europe. Some countries have already become the pioneers:

- ❑ France adopted its supply chain legislation the “Duty of Vigilance Act” (Loi de Vigilance) in 2017. It requires all large French companies – with over 5,000 employees in France or over 10,000 worldwide – to undertake due diligence with the companies they control and all their contractors and suppliers. The Duty of Vigilance Act requires companies to develop a vigilance plan in consultation with stakeholders and trade unions for company’s own activities and their controlled subsidiaries, contractors and suppliers with regard to possible violations of human rights and environmental standards. Companies that fail to comply with their due diligence obligations under the Duty of Vigilance Act are subject to sanctions and are liable for damages caused by an improperly prepared and monitored vigilance plan, even if these damages are directly caused by third parties.
- ❑ Netherlands adopted “Child Labor Due Diligence Act” (Dutch Due Diligence Act) in 2019 and obliges companies to investigate whether their goods or services have been produced using child labor and to develop a plan to prevent child labor in their supply chains. Companies must submit a declaration to the Dutch regulator affirming that they have exercised an appropriate level of supply chain due diligence to prevent child labor. Companies that fail to comply with the Dutch Due Diligence Act can be fined up to EUR 870,000 or 10% of the company’s total worldwide revenue, if a fine of up to EUR 870,000 is not deemed an appropriate penalty. If a company receives two fines for breaching the Dutch Due Diligence Act within five years, the responsible company director is liable for up to two years of imprisonment under the Dutch Economic Offences Act.
- ❑ Germany: The “Act on Corporate Due Diligence in Supply Chains” was adopted in 2021 and will enter into force in 2023 to initially cover companies with 3,000 or more employees, and from 2024 onwards companies with 1,000 or more employees. These companies must identify risks of human rights violations and environmental destruction at direct suppliers and, if they gain “substantiated knowledge” of a potential abuse, also at indirect suppliers. The jurisdiction is not covered by other companies in the global supply chain, but in the future it could be possible for non-governmental organizations and German trade unions to represent private claimants in German courts if there are violations of standards in the supply chain. If a company fails to comply with due diligence requirements, the sanctions in the form of penalty payments up to EUR 50,000 in administrative enforcement proceedings and/or fines will be imposed.

Taking into account examples of France, Netherlands and Germany, in February 2021 the European Parliament’s Legal Committee adopted a “Draft Directive on Corporate Due Diligence and Corporate Accountability” (Draft Directive) calling on the European Union to legally require companies to respect human rights and the environment in their value chains. This Draft Directive requires companies to:

- ❑ identify, assess, prevent, cease, mitigate, monitor, communicate, account for, address and remediate the potential and/or actual adverse impacts on human rights, the environment and good governance that may arise from their own activities and those of their value chains and business relationships;
- ❑ take all proportionate and reasonable measures and efforts within their means to prevent adverse impacts on human rights, the environment and good governance from occurring in their value chains;
- ❑ properly address adverse impacts (first point above) when they occur;
- ❑ undertake a risk assessment and effectively implement a due diligence strategy (to be published on the company’s website);
- ❑ conduct an ongoing monitoring, review the risk assessment and evaluate if the due diligence strategy is still working, at least once a year and revise it accordingly; and
- ❑ provide a grievance mechanism and remediation process for potential or actual adverse impacts on human rights, the environment and good governance. Companies must also report on substantiated concerns raised through their grievance mechanisms and regularly report on the progress made in these cases.

The Draft Directive on Corporate Due Diligence and Corporate Accountability (Draft Directive) is expected to be adopted in December 2021, and if not in early 2022. It means that it should be then transposed into the national laws of EU member states and then harmonized with Ukrainian legislation. **It will also have an impact of EU association countries vis-a-vis EU approximation and companies in Ukraine which are a part of the supply and value chains of EU-headquartered companies. It could help them assess human rights and report on human rights due diligence which will make rights holders' lives better.**

Furthermore, taking into account that Germany and Netherlands are amongst the key investors in Ukrainian economy, the impact of their national regulations on their supply chain or companies who sell at their market (Child Labor Due Diligence Act) will have an immediate impact. Thus, awareness raising on the UNGPs and the impact of this legislation and the EU upcoming legislation and tailored assistance to companies and/or business associations relevant German, Dutch and French acts could be one of the first steps that could be supported by development partners, such as UNDP, the EU and bilateral donors, Embassies and Export Agencies.

## ANNEX I. ANALYSIS OF TOP-5 COMPANIES' WEB-SITES IN IT, RETAIL AND AGRICULTURE

According to BakerTilly, the largest agricultural holdings in Ukraine in 2021 in terms of land, employees and storage capacity are Kernel, UkrLandFarming, MHP, Agroprosperis, Astarta Kyiv. Three of these companies have strong policies and are accountable for their implementation. Importantly, these companies have also started assessing their suppliers in the context of environmental and social assessment. It is important to note that these three companies are listed on the stock exchanges: Warsaw (Kernel and Astarta) and London (MHP), and also actively cooperate with the European Bank for Reconstruction and Development and other investors. The other two companies At the same time, there is a company that received 0 points because it does not disclose anything on its website.

Among the largest retailers, according to Forbes Ukraine, are ATB, Fozzy Group, Epicenter, Metro Cash & Carry and Rozetka.ua, among them only 1 – international. Among these companies, only Metro showed a loss last year. And Fozzy – did not disclose its profit / loss. The largest profit last year was in ATB (UAH 5.8 billion), Epicenter (UAH 3.2 billion), EVA (UAH 540 million). It is important to note that retailers are one of the largest employers among private companies. At the same time, the websites of companies, with the exception of the Fozzy Group, are focused on the online client, but do not contain, except for Epicenter, information about policies and the results of their implementation. The rosette showed the highest revenue growth in 2020 (+ 48%), but their website does not contain any information about the policies and performance of these policies.

Among IT companies, according to DOU, TOP-5 largest companies are: EPAM, SoftServe, GlobalLogic, Luxoft Ukraine and Ciklum. It is important to note the growth of companies in 2021, the Big Five increased by 4,000 professionals, and the TOP-50 by a total of 12%. At the same time, IT companies' websites are mostly targeted at potential employees and contain very little information on human rights policies and the results of these policies, with the exception of SoftServe and Ciklum. At the same time, the style of teaching results is more creative and less detailed compared to agricultural companies. Interestingly, among the top 5 is EPAM, which is listed on the New York Mercantile Exchange, but coverage of human rights issues is lacking on the company's website.

The total number of points that a company could receive is 6 ( 2 – for policies and approaches, and 4 – for coverage of results of these policies).

Companies	Policies (2 points)	Activities (4 points)	Total	Comments
<b>AGRICULTURE: TOTAL FOR TOP-5 IN AGRICULTURE SECTOR - 19 POINTS</b>				
<b>Kernel</b> <a href="https://www.kernel.ua/wp-content/uploads/2020/12/FY2020_Kernel_Annual_Report.pdf#page=42">https://www.kernel.ua/wp-content/uploads/2020/12/FY2020_Kernel_Annual_Report.pdf#page=42</a>	2	4 (Annual Report with Sustainability Performance Pages)	6	<ul style="list-style-type: none"> <li>▪ Code of Conduct</li> <li>▪ Supplier Environmental and Social Assessment (Code of Interaction with Suppliers)</li> <li>▪ Corporate Governance Charter (since 2018) also covering compliance issues</li> <li>▪ Antidiscrimination policy</li> <li>▪ Anti-corruption Clause</li> <li>▪ Environmental Protection Policy</li> <li>▪ Sustainable Development and Corporate Social Responsibility Polciy</li> <li>▪ Compliance with International Sustainability and Carbon Certification (ISCC)</li> <li>▪ Occupational health and safety management system</li> <li>▪ Equality, Diversity, and Inclusion Policy</li> <li>▪ Good Neighborhood Policy</li> </ul>

Companies	Policies (2 points)	Activities (4 points)	Total	Comments
<b>UkrLandFarming</b>	1	0	1	The company stated general approaches towards People, environment, clients on its web-site, without mentioning any Policies. The company doesn't provide information about implementation of its approaches.
<b>MHP</b> <a href="https://mhp.com.ua/">https://mhp.com.ua/</a>	2	4	6	<ul style="list-style-type: none"> <li>▪ Code of Conduct</li> <li>▪ Supplier Code of Conduct</li> <li>▪ Anti-corruption Clause</li> <li>▪ Environmental Policy</li> <li>▪ Occupational health and safety management system</li> <li>▪ Good Neighborhood Policy</li> </ul>
<b>Agroprosperis</b>	0	0	0	No information on the web-site
<b>Astarta</b> <a href="https://astartaholding.com/files/uploads/3838c460ac05715b7e6f9573a9855c84.pdf">https://astartaholding.com/files/uploads/3838c460ac05715b7e6f9573a9855c84.pdf</a>	2	4 (Annual Report with Sustainability Performance Pages)	6	<ul style="list-style-type: none"> <li>▪ Code of Conduct</li> <li>▪ Supplier Environmental and Social Assessment (Code of Interaction with Suppliers)</li> <li>▪ Corporate Governance Charter (since 2018) also covering compliance issues</li> <li>▪ Antidiscrimination policy</li> <li>▪ Anti-corruption Clause</li> <li>▪ Environmental Protection Policy</li> <li>▪ Sustainable Development and Corporate Social Responsibility Polciy</li> <li>▪ Compliance with International Sustainability and Carbon Certification (ISCC)</li> <li>▪ Occupational health and safety management system</li> <li>▪ Equality, Diversity, and Inclusion Policy</li> <li>▪ Good Neighborhood Policy</li> </ul>
<b>RETAIL: TOTAL FOR TOP-5 IN RETAIL SECTOR – 5 POINTS</b>				
<b>ATB</b>	0	0	0	The site is designed for consumers. No information on the web-site
<b>Fozzy Group</b>	1	0	1	The company stated general approaches towards People, environment, clients on its web-site, without mentioning any Policies (Except of Quality Policy). The company doesn't provide information about implementation of its approaches.
<b>Epicenter</b>	1	2	3	The company focuses on environment, and provide a detailed description of its environmental approaches and results. Other Human-rights aspects are not covered on the web-site
<b>Metro Cash and Carry</b>	1	0	1	The company stated general approaches towards People, environment, clients on its web-site, without mentioning any Policies (Except of Quality Policy). The company doesn't provide information about implementation of its approaches.

Companies	Policies (2 points)	Activities (4 points)	Total	Comments
<b>Rozetka</b>	0	0	0	No information on the web-site
<b>IT: TOTAL FOR TOP-5 IN IT SECTOR – 16 POINTS</b>				
<b>EPAM</b> <a href="https://www.epam.com/about/who-we-are/corporate-responsibility">https://www.epam.com/about/who-we-are/corporate-responsibility</a>	1	2	3	<ul style="list-style-type: none"> <li>▪ Code of Ethical Conduct</li> <li>▪ ESG Quick facts</li> <li>▪ Social Responsibility Programs</li> <li>▪ The company doesn't provide detailed information about Policies and results.</li> </ul>
<b>SoftServe</b>	2	4	6	<ul style="list-style-type: none"> <li>▪ Code of Conduct</li> <li>▪ Conflict of interest</li> <li>▪ Environmental Responsibility</li> <li>▪ Diversity and Inclusion principles</li> </ul>
<b>GlobalLogic</b>	0	0	0	Difficult to evaluate as after joining Hitachi Group the company address all inquiries towards Hitachi Sustainability Reports.
<b>Luxoft Ukraine</b>	2	1	3	<ul style="list-style-type: none"> <li>▪ Quality Policy</li> <li>▪ Environmental Health and Safety Policy</li> <li>▪ Accessibility</li> <li>▪ Modern Slavery Statement</li> <li>▪ Diversity and Inclusion Policy</li> </ul> <p>Not much information is provided about results of the Policies' implementation</p>
<b>Ciklum</b> <a href="https://www.ciklum.com/csr/csr-report-2020.pdf">https://www.ciklum.com/csr/csr-report-2020.pdf</a>	1	3	4	The Company published Sustainability Report where describes results of CSR issues including HR-related issues. There are not so many information about Human rights-related policies on the web-site, just general description of approaches. In the sustainability report there could be found the following policies: Code of Conduct, Whistleblower Policy, Zero-tolerance policy toward bribery and corrupt conduct

## ANNEX J. REQUIREMENTS FOR INVESTMENT PROJECTS WITH SIGNIFICANT INVESTMENT

The feasibility study in accordance with the Law on State Support of Investment Projects with Significant Investment should contain the following information about the project:

- ❑ analysis of social and economic indicators of the project and assessment of the social effect of the project implementation based on the results of cost-benefit analysis;
- ❑ identification of groups of the population living and / or working in the area of influence of the project and on which the project will have a direct impact;
- ❑ analysis of social problems that will be solved or that may lead to the project implementation:
- ❑ assessment of the current (initial) state, which indicates the status of social problems of certain groups before the start of the project;
- ❑ assessing the impact of the project on certain populations in the affected area by predicting future changes in the current (initial) situation with and without the project, providing a classification of each identified impact in terms of its relative importance, taking into account the number of affected the scale of social consequences (social benefits and costs);
- ❑ strategy for mitigation of negative impacts identified in the previous stages and baseline assessment of costs for its implementation, as well as their distribution over time, including proposals for actions that will avoid, minimize or compensate for adverse social consequences of the project (if any) , as well as measures to mitigate such consequences, which may result in the need for changes in technical requirements, project design or other aspects;
- ❑ the number of jobs that are planned to be created during the project implementation period, by years;
- ❑ the amount of the average salary of employees during the project implementation period;
- ❑ the amount of average wages in the region and the sphere (type) of economic activity in which it is planned to implement the project;
- ❑ economic indicators of project implementation, in particular economic net present value (ENPV), economic rate of return (EIRR) (in case of impossibility of its calculation, justifications are indicated), cost-benefit ratio (BCR);).

## ANNEX K. HRDD DEVELOPMENTS WITH A FOCUS ON SMES

All above mentioned measures are focused on bigger businesses, leaving SMEs beyond the scope of BHR. The Organization for Economic Co-operation and Development (OECD) who previously developed and widely publicized first its Guidelines for Multinational Enterprises<sup>547</sup> and later Due Diligence Guidance for Responsible Business Conduct<sup>548</sup> both also more directed on bigger companies, in 2021 commissioned the Introductory paper on SMEs and Responsible Business Conduct in the Garment and Footwear Sector<sup>549</sup> that focuses on the ways the structure and sourcing practices of SMEs can impede or enhance their capacity to implement meaningful due diligence and what challenges SMEs face when trying to implement due diligence.

Some findings of this study could be of interest and further inspiration for Ukraine to start dialog about SMEs inclusion into the due diligence implementation:

- ❑ SMEs tend to have a lower level of leverage due to their size and their orders generally represent a small amount of their suppliers' total production. Given their size and position in the supply chain, SMEs also lack leverage over their customers to influence their decisions and are more likely to be impacted by poor purchasing practices.
- ❑ SMEs' due diligence costs tend to be higher given their position in the supply chain, low leverage over their suppliers and lack of financial liquidity and small margins. SMEs often face finance-related barriers to doing business, complying with complex and changing regulatory frameworks or implementing standards.
- ❑ SMEs are in general less informed and aware about due diligence. Technical content and terminology can represent a barrier to accessibility of relevant information.
- ❑ The support of government and larger businesses is needed to ensure that SMEs implement due diligence in a favorable environment. Particularly the government's role will be crucial to develop a level playing field and ensure SMEs remain competitive while implementing due diligence. Given the particular characteristics of SMEs, governments can generate a great deal of value by creating an enabling environment to promote supply chain due diligence among SMEs. Multi-stakeholder initiatives, industry associations and CSOs have also an important function in ensuring that the development of communication and learning tools are reasonably accessible for SMEs to learn about the standards and tools for implementing due diligence<sup>550</sup>.

Also OECD during the years developed an extensive base of guidelines and manuals for businesses in different sectors of economics to help them adapt to changes in legal requirements and effectively implement due diligence, such guidelines are available in garment industry<sup>551</sup>, minerals<sup>552</sup> supply chain, agriculture<sup>553</sup>, etc. All of which are relevant when designing the policy coherent changes in a country.

This is by no means an exclusive list of global good practice initiatives on providing guidelines and overview of best practices of due diligence in different sectors of economics worldwide<sup>554</sup>.

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547 <https://mneguidelines.oecd.org/guidelines/>

548 <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

549 <http://mneguidelines.oecd.org/Introductory-paper-on-smes-and-responsible-business-conduct-in-the-garment-and-footwear-sector.pdf>

550 Ibid.

551 <https://www.oecd.org/corporate/mne/responsible-supply-chains-textile-garment-sector.htm>

552 <https://www.oecd.org/corporate/mne/mining.htm>

553 <https://mneguidelines.oecd.org/rbc-agriculture-supply-chains.htm>

554 See for example Good Practice Guidelines on Conducting Third-Party Due Diligence by Partnering Against Corruption Initiative (PACI) and World Economic Forum available here [https://www3.weforum.org/docs/WEF\\_PACI\\_ConductingThirdPartyDueDiligence\\_Guidelines\\_2013.pdf](https://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf) or Impact Due Diligence: Emerging Best Practices by Pacific Community Ventures on BP in investment and HRDD available here <https://www.pacificcommunityventures.org/2019/07/02/impact-due-diligence-emerging-best-practices/>

## ANNEX L. OVERVIEW OF THE SEVERAL NATIONAL REGULATIONS ON MHRDD AMONG THE EU MEMBER STATES

**France** was the first EU country to introduce national due diligence legislation in 2017 – the Duty of Vigilance law in 2017<sup>555</sup>. This act is covering big businesses over 5000 employees, is based on the human rights and UNGPs standards and requires companies to comply with Due vigilance (DV): establish and implement an annual vigilance plan (UNGP-based) and publish this plan in the company annual report. A report published by several NGOs after two years of the law being implemented showed pretty poor results, not so many businesses complied even with these minimum requirements set by the law, moreover the French government has taken little action to enforce compliance<sup>556</sup>.

The enforcement of the DV Law relies exclusively on the courts, as “any interested person” may request the court to order, including under penalty, a company to comply with its obligations (Article L. 225-102-4 II of the French Commercial Code), or to order compensation for the damage caused by its lack of vigilance (Article L. 225-102-5). The relatively low number of legal actions brought against defaulting companies so far can be explained, amongst other things, by the difficulties of accessing information held by the company that is essential to characterize the lack of vigilance or causality (names of suppliers, prevention measures implemented, etc.). Neither the publication of non-financial statements nor the publication of vigilance plans can currently remedy this asymmetry of information<sup>557</sup>. This led to further discussion at the national level in France to bring changes to the DV to create mechanisms for third parties to access information held by companies which, as in the case of access to administrative documents, could in the event of refusal give rise to a judicial review and to review the liability for non-compliance providing the specific civil liability regime and criminal liability of parent companies<sup>558</sup>.

In the absence of a government registry, CCFD-Terre Solidaire and Sherpa, with the support of Business & Human Rights Resource Centre, have launched the website<sup>559</sup> to identify companies subject to the law and make accessible those vigilance plans that have been published.

As a success case of French big business trying to comply with the DV Act (and make a business case from and set example to others), L'oreal and its cooperation with the Danish Institute for Human Rights is worth exploring. In 2019 the company signed a partnership agreement with the DIHR to conduct a gap analysis to identify areas for improvement in L'Oréal's Human Rights programme. The aim was to draw from the DIHR's widely recognised expertise and insight to strengthen the L'oreal human rights work and DV reporting<sup>560</sup>. L'Oréal also works with the Fair Wage Network. This NGO will provide the Group with a comprehensive and up-to-date database that can be used to define, build and deploy a living wage strategy throughout its operations, for employees of L'Oréal and its suppliers<sup>561</sup>.

In 2019 the **Netherlands** adopted the “Child Labor Due Diligence Act”<sup>562</sup>, to be fully in force from 2022 (to provide companies with a period to adopt and learn how to implement the new law). This law obliges companies to investigate whether their goods or services have been produced using child labor and to develop a plan to prevent child labor in their supply chains. The law imposes administrative fines, criminal sanctions for non-compliance and also requires reporting to a specially established regulator and applies to all companies that sell or supply goods or services to Dutch consumers, regardless of where the company is based or registered, without exemptions for legal form or size.

Key feature of this Law is the creation of a special regulator who will oversee the implementation and compliance. However, instead of actively investigating or initiating enforcement, the regulator relies on affected parties and stakeholders to bring violations to its attention. The complainant will file a complaint with the offending company, requesting a response and instructing the company to resolve the issue. If the company does not resolve the matter within six months, the Dutch regulator will step in to act as a mediator.

555 <https://www.business-humanrights.org/en/latest-news/frances-loi-de-vigilance/>

556 <https://www.euractiv.com/section/development-policy/news/french-law-on-multinationals-responsibility-for-workers-abroad-achieves-few-results/>

557 <https://media.business-humanrights.org/media/documents/2021.05-Position-Paper-DV-Public-Enforcement.pdf>

558 Ibid.

559 <https://www.business-humanrights.org/en/latest-news/new-website-launched-to-identify-companies-covered-by-french-duty-of-vigilance-law/>

560 See the company 2020 DV annual report here [https://www.loreal-finance.com/system/files/2021-03/L%27Oréal\\_Plan%20de%20Vigilance%202020\\_VA\\_0.pdf](https://www.loreal-finance.com/system/files/2021-03/L%27Oréal_Plan%20de%20Vigilance%202020_VA_0.pdf)

561 <https://www.loreal-finance.com/en/annual-report-2019/ethics-1-3-0/human-rights-a-key-issue-1-3-2/>

562 Wet Zorgplicht Kinderarbeid; Dutch Due Diligence Act <https://www.business-humanrights.org/en/latest-news/dutch-senate-votes-to-adopt-child-labour-due-diligence-law/>

If the Dutch regulator determines that a company has violated the Dutch Due Diligence Act, the regulator will issue a legally binding course of action to the company. Failure to follow these instructions or complete the work within the allotted timeline may result in fines or additional penalties for the offending company<sup>563</sup>.

Though the Law itself cover only one specific field – prevention of child labor in the supply chains, it also gave start of further incountry discussion and lead to the proposal of the Dutch Responsible Business Conduct Bill<sup>564</sup> coming from several political parties that should be imposed on companies bigger than 250 employees domiciled in or operating in the Netherlands. The draft is based on OECD approach to the HRDD and requires companies to publish annual reports in line with the OECD DD Guidance. It also goes for the creation of the public regulator with the function of investigation of failures and complaints, issue of fines and provisions criminal liability for company directors for repeated failure within 5 years to stop activities that cause or contribute to negative impacts or to provide remedy.

In **Germany** the Supply Chain Law<sup>565</sup> was adopted in 2021. The country's NAP implementation process for the last couple of years was around building momentum and gathering stakeholders to first discuss and then develop the Law. It will be in full force in 2024 obliging the companies with less than 1000 employees to compiler, but the first stage for the companies larger than 500 will come into force already in 2023. Similarly to its neighbors, Germany provides adaptation time for business to prepare for full HRDD<sup>566</sup> implications. Despite the deep discussion on what such law should cover and how strict should be rules applying to the companies, the final adopted version of the law only covers in full company` own operations (incl. subsidiaries) and direct suppliers. Apart from this companies are required to identify risks linked to indirect suppliers and prevent and mitigate if they obtain "substantiated knowledge" of abuses. No new civil cause of action was created by the Law. However, it enables injured parties to authorize DE trade unions and NGOs to conduct civil proceedings in DE on their behalf<sup>567</sup>.

Though there was some critique<sup>568</sup> from the CSOs and academia on the final version of the German Law, it has several very important aspects worth further careful examination and assessment when the Law will come into full force:

- ❑ The law covers all aspects of Human rights risks the company might face: forced labor, child labor, discrimination, violation of freedom of association, problematic employment and working conditions as well as environmental damage;
- ❑ The company is obliged to identify and assess those risks at least once a year and communicate them internally to all relevant decision makers;
- ❑ This assessment must also include Human Rights environmental risks analysis of the company direct suppliers, if there is a risk in the course of such an analysis, the management must adopt a policy statement on its human rights strategy in order to prevent adverse impacts on human rights and the environment;
- ❑ Company must take measures to prevent, minimize and remedy identified negative impacts, it can for example temporary suspend the contract with supplier if identified any risk;
- ❑ There is also an obligation to set up a grievance mechanism for misconduct relating to human rights and environmental standards caused by the economic activities of the company or its direct or indirect suppliers;
- ❑ All reports should be made public and available on the company website.

The Federal Office for Economic Affairs and Export Control<sup>569</sup> will monitor compliance and conduct onsite inspections, the same institution will also consider the complaints from those affected by the violations. If the company fails to comply with due diligence requirements, the Law provides a form of penalty payments up to EUR50,000 in administrative enforcement proceedings and/or fines.

563 <https://www.dlapiper.com/en/middleeast/insights/publications/2021/03/human-rights-due-diligence-legislation-in-europe/>

564 <https://www.mvoplatfom.nl/en/wp-content/uploads/sites/6/2021/03/Bill-for-Responsible-and-Sustainable-International-Business-Conduct-unofficial-translation-MVO-Platform.pdf>

565 <https://dsrserver.bundestag.de/btd/19/286/1928649.pdf>

566 This Law is based on the mix UNGPs and OECD approach.

567 <https://corporatejustice.org/wp-content/uploads/2021/07/Corporate-due-diligence-laws-and-legislative-proposals-in-Europe-June-2021.pdf>

568 See discussion within the Session III – The Onset of Mandatory Human Rights due Diligence in the EU and its Member States: The Implications for Eastern Europe and Central Asia within the Forum on Business and Human Rights in Eastern Europe and Central Asia video available here <https://www.facebook.com/UNDP Eurasia/videos/2949482128649499>

569 Bundesamt für Wirtschaft und Ausfuhrkontrolle

## ANNEX M. EXAMPLES OF PRACTICES FROM EU MEMBER STATES ON ADDRESSING SOME OF THE ISSUES OF CONCERN

### BURDEN OF PROOF

Main concern of many legal professionals and reason victims choose not to report BHR abuses to courts – is lack of effective mechanisms of shifting the burden of proof in such cases<sup>570</sup>. While it is commonly understood that a private person either a former employer or a customer of a business in general has less financial and expert resources to proof and support their claim, in practice effective mechanisms of shift of the burden of proof in different legal proceedings concerned BHR abuses is still a much debated but not effectively and commonly addressed problem across EU Member States.

**Poland.** Depending on the type of the procedure, the rules concerning the burden of proof differ. According to the Civil Code and Code of Civil Procedure (whose provisions are applicable in the consumers' cases) a person whose rights were affected needs to prove the abuse/violation of his/her rights. While in civil proceedings, the court can order delivery of the necessary documents as part of the proceedings, yet at the stage when the case is being submitted to the court the burden of proof is fully on the affected party. Also standard rules concerning compensation are applicable in this context. A customer needs to prove that the product had a hidden defect to be able to demand compensation for the losses caused by the product. Situation is somewhat different in cases concerning warranty (orig. *rekojmia*). According to the Civil Code, if the product's defect is revealed within a specific time after its purchase, it is assumed that the defect was there already at the time of purchase. In this case, the burden of proof is shifted<sup>571</sup>.

**Germany.** To elaborate on the challenges posed by rules on the burden of proof in the context of business and human rights, interviewees referred to the example of a person living next to a road that cars which surpass emission limits pass by. Should individuals aim to initiate administrative proceedings against authorities to enforce emission limits and take action against the car manufacturers, the concept of subjective legal protection (*Subjektiver öffentlicher Rechtsschutz*) would apply. This means that the claimants need to prove that they are directly affected by the surpassing of emission limits of the respective cars (*unmittelbare Rechtsbetroffenheit*). In the case for a person living nearby the above-mentioned road, this would mean that they would have to prove that emission limits have indeed been surpassed in the place where they live, which would be challenging given that claimants may not necessarily live next door to a measuring station. He therefore welcomes the fact that environmental associations are now able to file a claim against the authorities without having to prove that individuals are directly affected, yet criticizes the fact that individuals remain nearly unable to initiate such proceedings in practice<sup>572</sup>.

**Italy.** The issue of a plaintiff access to internal business documents needed for litigation is ruled by the Legislative Decree No. 231 of 8 June 2001, Provisions on the administrative liability of legal persons, companies, and associations (including those without legal personality), pursuant to Article 11 of Law No. 300 of 28 September 2000<sup>573</sup> this scheme shall be implemented by companies, and include the risks connected to their activities and the measures/actions to be undertaken to reduce such risks and to avoid committing a criminal offence. The scheme is divided into two parts: a) a general part, which is more or less the same for all companies, aimed at reporting the actions implemented by the company in order to comply with the applicable legislation; and b) a specific part, which is different for each company, aimed at reporting the actions that the company shall implement in order to avoid a list of potential criminal offences. Moreover, since the entry into force of Legislative Decree No. 254 of 30 December 2016, Implementation of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, modifying Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups,<sup>574</sup> the non-financial reporting approach was introduced in Italy: pursuant to the decree, all companies exceeding a threshold in terms of number of employees must complement the annual budget with a description of the organisational and management scheme. However, transparency cannot be achieved through a mere description of the scheme. This shall be publicly available, and it shall be possible to use it as evidence against companies in judicial

570 <https://fra.europa.eu/en/publication/2020/business-human-rights-remedies>

571 Country research – Business and human rights – access to remedy – Poland. <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

572 Country research – Business and human rights – access to remedy – Germany. <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

573 Decreto legislativo 8 giugno 2001, n. 231, Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell'articolo 11 della legge 29 settembre 2000, n. 300, available at: [www.gazzettaufficiale.it/eli/id/2001/06/19/001G0293/sg](http://www.gazzettaufficiale.it/eli/id/2001/06/19/001G0293/sg)

574 Decreto legislativo 30 dicembre 2016, n. 254, Attuazione della direttiva 2014/95/UE del Parlamento europeo e del Consiglio del 22 ottobre 2014, recante modifica alla direttiva 2013/34/UE per quanto riguarda la comunicazione di informazioni di carattere non finanziario e di informazioni sulla diversità da parte di talune imprese e di taluni gruppi di grandi dimensioni, available at: [www.gazzettaufficiale.it/eli/id/2017/01/10/17G00002/sg](http://www.gazzettaufficiale.it/eli/id/2017/01/10/17G00002/sg)

proceedings, should they not comply with the measures envisaged in the organisational and management scheme to avoid perpetrating a criminal offence, such as, for instance, environmental rights violations<sup>575</sup>.

**UK.** Specific legislation can shift the burden of proof. For example, under the UK Bribery Act where bribery is found, then the burden shifts to the company to show (on the balance of probabilities) that, notwithstanding the occurrence of the bribery, the company nonetheless operated objectively sufficient risk mitigation measures. Another specific law which permits the shift is the UK Equality Act, so in cases an employer is facing discrimination charges from its employees this principle can be applied by the court<sup>576</sup>.

## COLLECTIVE REDRESS

Generally there are two types of collective judicial remedies, one is collective redress mechanisms and the other is class action. The class action is initiated by a plaintiff – an individual or an association/NGO – in order to protect the interests of a specific category of subjects. If the action is officially recognised by the court or other authority with powers as a class action, all the other consumers that had to cope with the same policy have the possibility to join the action and obtain compensation. Collective redress mechanisms is a judicial proceeding initiated by more than one person who shares a common purpose or who were subject to the same rights'violation. They entrust the case to the same lawyer. The main difference between the two procedures is the following one: the class action might be initiated and carried out by one complainant (an individual subject or an association/NGO) and other subjects who opt-in are beneficiaries of the action; in the collective redress mechanism, all the subjects are parties in the proceeding<sup>577</sup>.

**Italy.** The Law No. 31 of 12 April 2019, Provisions concerning class action lawsuits has been recently reformed. The reform will envisage the possibility for the competent court to impose upon the company concerned the obligation to disclose the relevant documents if the complainants can demonstrate that such documentation is needed to make a decision on the case. Another positive element of the new legislative framework concerns the possibility for victims to share the costs of proceedings: this new provision might turn class action lawsuits into a useful tool in cases of violations of environmental rights, which often affect communities or large groups. Finally, thanks to the reform, the provisions governing class action lawsuits are now included in the Civil Procedure Code, which thus provides for the possibility of protecting not only consumers' rights but also all groups of people whose rights have been homogeneously violated<sup>578</sup>.

**Germany.** The instrument of Sample Declaratory Actions in Civil Proceedings provides recognized consumer protection organizations<sup>14</sup> the legal standing to file a civil action against a company to determine the existence or non-existence of the legal and factual requirements giving rise to claims involving mass damages to consumer rights. Consumers can opt into this claim by way of registering at the Federal Office of Justice (BfJ). For those who do, limitation periods for their individual legal claim are stayed until the action filed by the association has been decided upon. The consumer can then file individual proceedings on the basis of the action's findings in order to achieve financial compensation. The Sample Declaratory Action is limited in its material scope, applicable only to matters affecting consumers. So far, it has only been applied to matters relating to the right to property<sup>579</sup>. Action for an injunction (Unterlassungsklage) is a civil law instrument which, amongst others, can be found under the law on actions for an injunction (UkIaG). It provides consumer associations the right to address a business with a request to stop their harmful actions, as well as to file a civil claim should the business refuse to do so. The business, in turn, can declare that they will stop their action by way of a cease-and-desist declaration, which means that they enter into a contractual relationship with the association. The association can claim financial compensation should the business fail to comply with their contractual obligations. The Act on actions for an injunction is an instrument aimed at consumer protection<sup>580</sup>.

**UK.** The UK does have only very limited provision for collective redress claims for abuses by business enterprises, and these are restricted to the procedures that exist under the Consumer Rights Act 2015 for consumer activity that does not amount to human rights abuses. The current UK approach is of representative actions and the Group Litigation Order, each of which require each individual claimant to complete a claim, and require all claimants agreement on a lead claimant. This process is very costly and time-consuming.<sup>581</sup>

575 Country research – Business and human rights – access to remedy – Italy. <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

576 Country research – Business and human rights – access to remedy – UK [https://fra.europa.eu/sites/default/files/fra\\_uploads/uk\\_country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/uk_country_report.pdf)

577 Country research – Business and human rights – access to remedy – Italy. <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

578 Ibid.

579 Country research – Business and human rights – access to remedy – Germany [https://fra.europa.eu/sites/default/files/fra\\_uploads/de\\_country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/de_country_report.pdf)

580 Ibid.

581 Country research – Business and human rights – access to remedy – UK [https://fra.europa.eu/sites/default/files/fra\\_uploads/uk\\_country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/uk_country_report.pdf)

## CROSS-BORDER LIABILITY

Cross-border litigation is a particularly challenging instrument in cases of business related human rights violations. There several factors interviewed experts stressed on:

- ❑ The complexity of the process, especially when it comes to companies based outside EU and or victims and / or effected communities being based our of EU;
- ❑ The length of the judicial proceedings;
- ❑ Their cost (often very high for the victims) including the distance and no possibility to participate in certain cases in person;;
- ❑ Organisational side of the legal proceedings in such cases, including staying in touch with all parties and gathering evidence;
- ❑ Language barriers and also legal barriers (lack of knowledge and understanding of the complexity of the process which might be discouraging for victims).

In this regard, interviewed experts and previous study all point to the crucial role of NGOs in such cases – to be a bridge between victims and affected communities and lawyers and legal companies, to ease organisational process, language barriers, encourage and support victims, etc.

Another crucial element is affordable or free legal aid. Some German lawyers noted that litigation cost in such cases is higher than the damage itself. At the same time in Germany as well as in some other EU countries there are few possibilities for victims to get such free legal aid.

As a good practises from Germany in cross-border litigations the following aspects can be highlighted:

- ❑ Where the actions of businesses based in Germany or their subsidiaries or subcontractors are the subject of the claim, third country nationals are generally free to file a claim in civil law or to file a complaint with investigating authorities which may potentially end in criminal proceedings in Germany;
- ❑ Third country nationals are by law able to apply for legal aid;
- ❑ The equivalent of international human rights law is usually easy to be identified under criminal law in Germany;
- ❑ The German Code for Civil Procedure (Zivilprozessverodnung) allows for the court to travel to consulate to hear witnesses, or for the consul to be in charge of hearing witnesses<sup>582</sup>.

Another important EU litigation feature easing the litigation between these member countries is common system ruling cross-border liability based on judicial cooperation, the existence of the Court of Justice of the European Union and the mutual recognition of the jurisdictions of EU Member States. This standard procedure makes it easier for consumers to understand the functioning of the procedure itself, in addition to forcing legal professionals to conform to an easier and more concise way of dealing with complaints, which is far different from the Italian one. Moreover, the notification system, too, is far smoother, since all communications concerning the proceedings are shared with the parties by the competent chancellor's office. However, it is worth stressing that the EU non-judicial complaint system can only be applied to compensation cases not exceeding the €2,000 threshold (so-called 'European small claims procedure', ESCP)<sup>583</sup>.

Another good example of EU legal harmony is the European Data Protection Council, to which all data protection trans-border cases should be directed. Another example is the European Consumer Centre, where e.g. Polish consumers, whose rights were affected by EU-based companies, are provided with the relevant support. While this is happening with the exclusion of the judicial path and additionally there was no evaluation undertaken of its effectiveness, there is a conviction that this system works relatively well<sup>584</sup>. But this regulation is not so effective when claims concern companies based outside the EU.

582 From Country research – Business and human rights – access to remedy – Germany [https://fra.europa.eu/sites/default/files/fra\\_uploads/de\\_country\\_report.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/de_country_report.pdf)

583 From Country research – Business and human rights – access to remedy – Italy. <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

584 From Country research – Business and human rights – access to remedy – Poland <https://fra.europa.eu/en/country-data/2020/business-and-human-rights-access-remedy-country-research>

## ANNEX N. BEST PRACTICES OF AN NHRI GLOBALLY THAT CAN BE OF USE TO UKRAINE

NHRI can facilitate a dialog between various stakeholders (affected communities and business) at an early stage and thus prevent violations from escalating into serious conflicts. They may also set up an early warning mechanism, as done by the NHRIs of Colombia<sup>585</sup> and Peru<sup>586</sup>. Similarly, the NHRI of Chile<sup>587</sup> has developed a mapping of conflicts related to business activities. Instead of being reactive to abuses, such a proactive or pre-emptive approach on the part of NHRIs should be beneficial for all parties. In Thailand, the NHRI conducted an internal research of their own caseload to retrospectively look into the BRH claims they received in the past, after they had a capacity building and education on BHR related violations<sup>588</sup>. In many countries<sup>589</sup> NHRIs conducted a public inquiries to systemic human rights violations thus giving a voice to numerous victims of such systemic problems and also stimulating public discussion. Such public inquiry reports can also provide recommendations to all stakeholders on the further actions and could be a further advocacy tool.

NHRI can hold state agencies accountable when they are not able to protect people from the business human rights violations by representing victims in courts or being part of the court proceedings as a third party<sup>590</sup> or by presenting an amicus<sup>591</sup>.

Another very important indirect role of the NHRI is to help educate business and provide it with guidance and support in their effort to fulfil UNGPs obligations. Thus Korean NHRI has developed a manual for State-owned enterprises to provide them practical guidance to identify, prevent and remediate adverse impacts on human rights<sup>592</sup>.

Mixed approach of research and later education was adopted recently in Thailand with the support of the UNDP. Local NHRI first launched a pilot project on the promotion of HR in the tourism sector which consisted of two parts. First part being research and then the second – education.

Considering that the hotel and tourism industry is one of the key business sectors in Thailand, the NHRI launched a pilot project on the promotion of human rights due diligence in the tourism sector. This project was also in response to a concerning report conducted by Schystresande and Fair Action in 2015, which examined the working conditions of Burmese migrants at hotels contracted by Sweden's three major tour operators, as well as hotel suppliers. The report revealed that the contracted hotels and their suppliers did not comply with national labour law and did not conduct HRDD in line with the UNGPs beyond their first-tier suppliers.

Subsequently, the NHRI commissioned a study on human rights due diligence focusing on the tourism industry and hotel operations. Through consultations with hotels, the NHRI produced 'The Human Rights Due Diligence Handbook and Checklist for the Hotel Industry'. The content of the Handbook includes an explanation of human rights due diligence and its process, human rights issues in the hotel industry, the benefits of human rights due diligence for business, and a checklist to assist hotels with due diligence procedures<sup>593</sup>.

585 Defensor del Pueblo, Colombia, Doctrina Defensorial En Derechos Humanos Y Empresas (2018), [https://f5355d0a-667b-4461-bfa1-e12600732440.filesusr.com/ugd/134a42\\_4bbf8ab7ea51413cbf4b3ace3542b9a1.pdf](https://f5355d0a-667b-4461-bfa1-e12600732440.filesusr.com/ugd/134a42_4bbf8ab7ea51413cbf4b3ace3542b9a1.pdf)

586 See [https://www.defensoria.gob.pe/areas\\_tematicas/paz-social-y-prevencion-de-conflictos/](https://www.defensoria.gob.pe/areas_tematicas/paz-social-y-prevencion-de-conflictos/).

587 "INDH presenta Mapa de conflictos socioambientales en Chile y anuncia recurso de protección en favor de habitantes de Quintero" (5 September 2018), <https://www.indh.cl/indh-presenta-mapa-de-conflictos-socioambientales-en-chile-y-anuncia-recurso-de-proteccion-en-favor-de-habitantes-de-quintero/>.

588 See [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd\\_2020/nhri\\_case\\_stories/thailand\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2020/nhri_case_stories/thailand_nhri_bhr_case_study_2020.pdf)

589 See for example the sexual harassment inquiry conducted by the Australian Human Rights Commission Respect@Work: Sexual Harassment National Inquiry Report (2020) and some other examples at the UN WG report

590 See, for example, University of Stellenbosch Legal Aid Clinic v Minister of Justice and Correctional Services 2016 (6) SA 596 (CC); National Credit Regulator v Standard Bank of South Africa Limited [2019] ZAGPJHC 182 or Submission of the National Human Rights Commission, Bangladesh: [https://www.ohchr.org/Documents/Issues/Business/Remedy/NHRC\\_Bangladesh.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf).

591 For example, NHRIs of Colombia, India, Nepal and Georgia have done this. See, for example, the amicus brief filed in the case of Hidroeléctrica La Vega I, <http://biblioteca.oj.gob.gt/library/index.php?title=48603&query=@title=Special:GSMSearchPage@process=@field1=encauzamiento@value1=DERECHOS%20HUMANOS%20%20GUATEMALA%20%20@mode=advanced&recnum=16>.

592 National Human Rights Commission of Korea, "Human Rights Management Manual for State Owned Enterprises" (2018), <https://www.humanrights.go.kr/site/program/board/basicboard/view?menuid=002003003002&pagesize=10&boardtypeid=7019&boardid=7603529>

593 See more here [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd\\_2020/nhri\\_case\\_stories/thailand\\_nhri\\_bhr\\_case\\_study\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2020/nhri_case_stories/thailand_nhri_bhr_case_study_2020.pdf)

Similar experience has NHRI in Northern Ireland, who in 2019 in partnership with the Department of Finance produced a Procurement Guidance Note: 'Human Rights in Public Procurement'. The Procurement Guidance Note recognises that decisions made in public procurement processes can have consequences on the enjoyment of human rights, and establishes guidance for the adoption of a human rights-based approach. It also sets out the legal obligations for contractors to consider human rights when conducting procurement processes, and includes measures to prevent and mitigate human rights violations. The NHRI continues to work in partnership with the Department of Finance to implement the Guidance Note<sup>594</sup>.

NHRIs can also build a system of referring cases of business related human rights violations to courts, other remedy mechanisms, to NCP etc. In Ukraine, for example NHRI can help victims access the remedies by referring cases to the Legal Aid Service. In general cooperation between two actors and their capacity building on knowledge on BRH is highly desirable.

At last but not least, in some countries, NHRIs has capacity promote UNGPs and BHR at the national level and monitor the development of the implementation of the NAP, as such institutions do in France<sup>595</sup> or Spain or Denmark<sup>596</sup> for example.

Other important findings highlighted by the UNWG, that Ukraine may take into consideration, are challenges NHRIs commonly face when engaging into active promotion of BHR at all three levels<sup>597</sup>. These challenges relate to:

❑ **The specific mandate of the NHRI and whether it includes the possibility to deal with BHR violations.**

Even in the absence of an explicit mandate to deal with business related human rights violations, some NHRIs have interpreted their mandates creatively. For example, although the Ombudsperson in Poland can only deal with abuses by a public entity, the Ombudsperson has interpreted "public entity" broadly allowing it to initiate civil court actions against private entrepreneurs that are publicly financed. Similarly, while the mandate of the Public Defender of Georgia – except for discrimination cases – is limited to the actions or acts of State and local self-government authorities, public institutions and officials violating the rights and freedoms<sup>598</sup>, it monitors the public services provided by private companies.

❑ **Another challenge relates to the knowledge about the business related human rights violation among the staff of the NHRI.**

Therefore there is a need to invest in the internal and sustainable capacity development of the NHRI staff on how to deal with complaints related to BHR violations and effectively respond to them and refer them to legal remedies, if need be.

- ❑ **Questions of political will and NHRI independence<sup>599</sup> and ability to work in transparent and freeway is also a key in such cases;**
- ❑ **Ideally NHRIs should also pay significant attention to its internal independence and impartiality, including additional human resource skills development on participatory approaches and ensuring close dialogue with affected communities;**
- ❑ **In circumstances of conflicts, crises or or pandemics, such as COVID-19, some NHRIs might find themselves in the need to offer "guidance to States in ensuring a human rights-compliant response to the pandemic" and work "to protect groups in vulnerable situations"<sup>600</sup>.**

There is a potential of NHRIs to explore further collaboration with other state and non-state actors on BHR. This has been explored by the UN WG and mentioned by key informants interviewed.

NHRIs should cooperate with all responsible national state actors to strengthen access to remedies in human rights related matters in all possible ways. As above-mentioned, in certain situations NHRIs might choose to participate in judicial proceedings and / or educate the judiciary on BHR related issues. If there are other actors dealing with business related human rights claims, such as other state institutions<sup>601</sup> or non-state bodies, NHRI should seek cooperation with them.

594 See more here <https://nihrc.org/our-work/other-sites/business-human-rights>

595 See French case study for example here [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/nhri\\_conference\\_report\\_and\\_case\\_studies\\_2019.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/nhri_conference_report_and_case_studies_2019.pdf)

596 <https://www.humanrights.dk/our-work/business/working-companies>

597 See more information here <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/50/PDF/G2116150.pdf?OpenElement>

598 Ibid.

599 The European Network of National Human Rights Institutions has raised such concerns about potential threats faced by NHRIs of Poland and Armenia previously, see for example ENNHRI, "NHRIs under Threat", <http://ennhri.org/news-and-blog/category/nhris-under-threat/>

600 See more here OHCHR, GANHRI and UNDP, COVID-19 and National Human Rights Institutions, note 100, 9.

601 The UK government has also funded non-judicial redress mechanisms that sit outside of government, such as the ethical trading initiative. The ethical trading initiative (eti) is a UK-based multi-stakeholder initiative involving companies, trade unions and NGOs that focuses on improving working conditions within business supply chains. The eti has a number of processes for responding to allegations that the eti's code is being breached including: a process for investigating alleged code violations, oversight of grievance mechanisms administered by member companies or their suppliers and (in certain circumstances) the development of programmes that respond to patterns of violation. More here <https://corporateaccountabilityresearch.net/njm-report-ii-redress-in-the-uk>

For example, cooperation between the NHRI and NCP is highly recommended. The Australian Human Rights Commission, which sits on the Australian NCP's multi-stakeholder Governance and Advisory Board, provided feedback on proposed updates to the NCP's procedures to ensure that the NCP is accessible (including to vulnerable complainants) and independent.<sup>602</sup> The German Institute for Human Rights has also "participated in the peer review" of the German NCP and "identified opportunities for improvement".<sup>603</sup>

Last but not least point for further attention and possible involvement for the NHRI in the light of the complicated nature of the BHR violations, is its involvement and support in cases of cross-border and transnational cases. Though the NHRI does not hold explicit mandate to involve in such cases, there are examples on how the institution can facilitate dialog and support victims and colleges in affected countries by sharing knowledge and keeping an eye on such cases or signing memorandums of understanding<sup>604</sup>.

Ideally state non-judicial remedies should be of supplemental character not the substitute of the judicial remedy but to complement them and provide additional support to victims and affected communities. The other added value of state non-judicial remedies that is worth further developing and strengthening, on which stressed many interviewees, is a potential of state non-judicial remedies in promoting the issue of BHR and many models they can take, as well as their accessibility for victims and affected communities. State Non-judicial remedies are also a key instrument in speedy case by case evaluation process, also allowing a platform for the mediation and can be used as laboratories for new instruments and approaches testing.

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602 Submission of the Asia-Pacific Forum of National Human Rights Institutions, <https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/nhris/asia-pacific-nhri-network.pdf>; Submission of the Australian Human Rights Commission, <https://www.ohchr.org/Documents/Issues/Business/Remedy/AustralianHumanRightsCommission%20.pdf>

603 Submission of the German Institute for Human Rights: [https://www.ohchr.org/Documents/Issues/Business/Remedy/German\\_Institute\\_for\\_Human\\_Rights\\_Germany.pdf](https://www.ohchr.org/Documents/Issues/Business/Remedy/German_Institute_for_Human_Rights_Germany.pdf).

604 See for example the memorandum of understanding between the NHRIs of Qatar and Nepal to protect the human rights of migrant workers more here [http://nhrcnepal.org/nhrc\\_new/doc/newsletter/295903891Nepal\\_NHRC\\_Chair\\_Anup\\_Speech\\_MoU\\_Sign\\_QatarNHRC\\_Eng\\_18Dec2016.pdf](http://nhrcnepal.org/nhrc_new/doc/newsletter/295903891Nepal_NHRC_Chair_Anup_Speech_MoU_Sign_QatarNHRC_Eng_18Dec2016.pdf).

## **ANNEX O. RECOMMENDATIONS TO CONSIDER FOR THE UKRAINE'S PRACTICE FOR THE WORK-ARRANGEMENTS OF AN INTER-MINISTERIAL BODY (E.G. A NATIONAL STEERING COMMITTEE ON BHR, A WORKING GROUP ON BHR, ETC.) RESPONSIBLE FOR THE NAP PROCESSES**

1. An Inter-ministerial body (IMB) with all relevant Government agencies, NHRI and experts should be established in the first (initial) phase of the NAP process.
2. The members of the IMB should formally agree on the structure, competences, working procedures and the time plan of the work. The work shall be held transparently.
3. A lead agency of the IMB should be agreed upon at the very beginning of the process. It should be given the necessary competences, resources and financial means to convene meetings, lead the internal and external consultations, with stakeholders including, and coordinate the NAP drafting process. An Executive Secretariat of IMB to ensure the work can be established in the lead agency.
4. The IMB should identify/map the stakeholders who to involve in the NAP processes and agree on the plan of interaction, which should be made public. Specific questions to various stakeholders' categories should be defined by the members of the IMB.
5. The IMB should mandate an external consultant(s)/expert(s) or a research institution or an NHRI to conduct an independent analysis of the shortcomings and gaps in the UNGPs' implementation (the National Baseline Assessment (NBA) is highly recommended).
6. The IMB should hold a process of extensive stakeholder consultation. This could be done via cooperation with a stand-alone non-governmental multi-stakeholders' body (an Inter-sectoral Platform on BHR, an Advisory Group on BHR, etc.) led by an NHRI with the resource support from the Government, international organisations and other bona-fide donors. This participatory format should provide conducting awareness-raising events at the start, consultations, public dialogues, in-depth interviews, requesting written input, etc. A combination of methods would be useful.
7. The IMB should engage in the internal mapping of the Government activities that relate to the UNGPs' implementation (positive policy coherence and evident shortcomings).
8. As a result of the Government activities' internal mapping, the independent gap analysis (NBA) and the stakeholder consultations, the members of the IMB should jointly agree on a catalogue of policy areas that are to be addressed in the NAP drafting phase.
9. The IMB should collaborate with the involved academics that could be given the tasks of providing input for the internal mapping, working with stakeholders' feedback, contributing to the NAP drafting, as well as its further evaluation and updating.
10. The IMB should ensure the NAP drafting on the basis of the UNWG Guidance on NAPs with regard to the country specific context. The initial NAP should be consulted on with the non-governmental stakeholders.
11. Adequate time should be given to develop the NAP; the initial IMB time plan should be handled with flexibility throughout the process.
12. The IMB activities should be maintained after the NAP adoption in order to coordinate its implementation, collaborate with non-governmental stakeholders and external consultants/experts, conduct its regular monitoring with stakeholders' involvement and develop its periodic updates.

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