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the People of Japan



**STATE OF IMPLEMENTATION OF THE
BUSINESS AND HUMAN RIGHTS CHAPTER
OF THE NATIONAL HUMAN RIGHTS
STRATEGY OF UKRAINE,
INTEGRATION OF THE UN GUIDING
PRINCIPLES ON BUSINESS AND HUMAN
RIGHTS TO NATIONAL HUMAN RIGHTS,
RECOVERY AND PEACEBUILDING
STRATEGIC DOCUMENTS**

REPORT



2022

State of Implementation of the Business and Human Rights Chapter of the National Human Rights Strategy of Ukraine, Integration of the UN Guiding Principles on Business and Human Rights to National Human Rights, Recovery and Peacebuilding Strategic Documents. Report

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Author:

Alevtyna Sanchenko, Head of the Center for Perspective Research and Cooperation on Human Rights in the Economic Field of the of the State institution "V.K. Mamutov Institute of Economic and Legal Research", National Academy of Sciences of Ukraine, director of the Office of Analytics and Consultations on Sustainable Development, candidate of legal sciences, leading researcher

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ABBREVIATIONS

| | |
|---------------|--|
| BRA | Business and Human Rights |
| BSR | Business social responsibility |
| BRHR | Business respect for human rights |
| CoE | Council of Europe |
| CSO | Civil society organisation |
| CSR | Corporate social responsibility |
| CSRD | Corporate Sustainability Reporting Directive |
| ECHR | European Convention on Human Rights |
| ESC | European Social Charter |
| ESG | Environmental, Social and Governance |
| EU | European Union |
| GoU | Government of Ukraine |
| HR | Human Rights |
| HRDD | Human Rights Due Diligence |
| HHRDD | Heightened Human Rights Due Diligence |
| IBHR | International Bill of Human Rights |
| ICCPR | International Covenant on Economic, Social and Cultural Rights |
| ICESCR | International Covenant on Civil and Political Rights |
| ILO | International Labour Organization |
| IWG | Interdepartmental Working Group |
| MoE | Ministry of Economy of Ukraine |
| MoJ | Ministry of Justice of Ukraine |

| | |
|--------------|---|
| MP | Member of the Parliament |
| NAP | National Action Plan |
| NBA | National Baseline Assessment on Business and Human Rights |
| NCP | National Contact Point |
| NGO | non-governmental organisation |
| NHRI | National Human Rights Institution |
| NHRS | National Human Rights Strategy |
| OECD | Organization for Economic Co-operation and Development |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| RBC | Responsible Business Conduct |
| SDGs | Sustainable Development Goals |
| SMEs | Small and medium-sized enterprises |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNGPs | UN Guiding Principles on Business and Human Rights |
| UNWG | UN Working Group on Business and Human Rights |

EXECUTIVE SUMMARY

The purpose of this Study initiated by the UNDP is to characterize the policy, legal and partly economic backgrounds for the UNGPs implementation in Ukraine, to assess the status of their integration in the current Ukraine's strategic policy and law framework with some focus on changes caused by the Russian invasion in Ukraine and to provide recommendations to the State power bodies on possible policy improvements with a view of the perspective post-war recovery, marked, *inter alia*, by Ukraine's EU-candidate country status.

The Study is the result of the **individual desk research**, accomplished with the use of a complex of general scientific and specific methods and approaches: formal-logical (system-structural and analytical-synthetic, and comparative legal methods, method of analogy and of ascent from the abstract to the concrete, etc.), praxeological, prognostic, and hermeneutic and others.

The Study refers to a vast area of Ukraine's foreign and domestic strategic policy on human rights and sustainable development, legislative and regulatory framework, international and European strategic policy and law norms and standards as well as positive practical advice.

The Study includes the summarized overview of Ukraine's policy and legal frameworks for the UNGPs implementation with specific attention to the National Human Rights Strategy (NHRS) that includes the chapter on BHR (§16); key findings on positive characteristics and shortcomings of the NHRS and other BHR-relevant strategic policy acts; recommendations on further developments helpful to ensure the appropriate UNGPs enactment in Ukraine.

In particular, the following issues are studied:

- 1. Contextual background: Ukraine's international commitments to implement the UNGPs;**
- 2. Status of implementation in Ukraine of the policy on BHR after 24 February 2022 and during the ongoing war;**
- 3. Status of implementation of the chapter on BHR (§16) of the National Human Rights Strategy of Ukraine and its Action Plan, in which the analysis is focused on:**
 - i) Analysis of the content of the chapter on BHR with regard to the UNGPs, identification of specific shortcomings;
 - ii) Assessment of the implementation of the chapter on BHR on the basis of the Government monitoring;
 - iii) Recommendations and suggestions on improvement of the chapter on BHR of the NHRS and the Action Plan of its realisation;

4. Analysis of other existing and upcoming national human rights, recovery and peacebuilding strategic documents in the light of integration of the UNGPs, which specifically tackles the strategic policy acts that are the most relevant for the UNGPs implementation:

- i) Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030;
- ii) National Economic Strategy of 2021;
- iii) Draft Ukraine Recovery Plan (URP) as an upcoming national human rights, recovery and peacebuilding strategic document potentially important for the cross-sectoral integration of the UNGPs.

The Study is wrapped up with some general concluding remarks and supplemented by four Annexes.

The Study objectives are as follows:

- i) To outline the key Ukraine's international commitments in the BHR area as the background and the driver of the UNGPs implementation;
- ii) To explore how the ongoing war and introduction of the martial law in Ukraine changed the canvas of the international commitments and the national policy and law priorities in the BHR area;
- iii) To depict the present human rights policy and action frames (NHRS and the Action Plan) in the particular BHR area and identify its shortcomings when compared with the UNGPs provisions;
- iv) To outline the GoU method to monitor and evaluate the NHRS implementation and identify its weak points;
- v) To find out the results of the BHR chapter of the NHRS realisation and the reasons for the failure;
- vi) To propose recommendations on redrafting the BHR chapter of the NHRS on the basis of the logical expediency, the UNGPs and actual needs;
- vii) To provide considerations on the efficient Action Plan on BHR as recommended by the UNWG guiding documents;
- viii) To map other BHR-related strategic policy acts and to identify their current potential to drive the UNGPs and their drawbacks that slow down the UNGPs integration;
- ix) To propose suggestions and recommendations to Ukraine's state power bodies and relevant stakeholders on useful approaches for the UNGPs implementation from the perspectives of policy coherence.

Ukraine's pace towards the EU membership and its Euro-Atlantic integration goal on the background of the long-lasting armed conflict as from 2014 and full-scale war since 24 February 2022, the consequent territorial, economic and human losses, formation of the active pro-Ukrainian partnership of the international community and states – all these phenomena frame the current realities of the Ukrainian political and socio-economic development.

The war hostilities heighten the value of human life, human rights, democracy and the rule of law, and thus increase the responsibility of the State institutions to ensure and protect human rights and of business entities to respect human rights. The unprecedented war challenges require the adequate decisions that by no means should violate human rights and fundamental freedoms. Though Ukraine has to temporarily restrict some human rights within the limits allowed by the international law, no compromise is possible to deprive people from their basic human rights.

The research provided brought to the following observations that reflect key findings and recommendations with regard to the purpose and objectives of the Study:

KEY FINDINGS

1. Contextual background: Ukraine's international commitments to implement the BHR principles

1.1. Ukraine as a UN Member State since 1945 has been gaining its international commitments and taking part in the UN international policy- and law-making during 77 years of its membership. All fundamental universal treaties as well as the Council of Europe conventions and charters on human rights, ILO conventions, the corresponding EU law acts form the general contextual background for the direct legal obligations of Ukraine to guarantee the protection of human rights in business.

1.2. The UN Guiding Principles on Business and Human Rights (UNGPs) of 2011 and the CoE Committee of Ministers Recommendation to member states CM/Rec (2016)3 on human rights and business do not impose any new international obligations on Ukraine and do not limit or undermine any legal obligations, which Ukraine has undertaken under the international law with regard to human rights. These documents provide for the comprehensive and meaningful frame of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.

1.3. Ukraine's National Development Strategy is oriented at the UN 2030 Agenda for Sustainable Development, and the SDGs. The UN requires that human rights are embedded in policies and practice to translate the ambitious SDGs into concrete action. The UN 2030 Agenda's paragraph 67 calls States to "foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with international standards and agreements and other ongoing related initiatives, such as the Guiding Principles on Business and Human Rights. The UN 2030 Agenda and the UNGPs are instrumental to advance corporate sustainability at the international and national levels.

1.4. The Ukraine's EU candidate status since June 2022 actualises the task to align the national policies with those of the EU and to harmonise the national legislation with the EU *acquis*. The EU is developing its social economy and is one of the leading global actors in the domain of BHR. Fifteen EU Member States implement the National Action Plans on BHR as required by the UNGPs, a renewed EU strategy 2011-14 for Corporate Social Responsibility and the CoE Recommendation CM/Rec (2016)3. The EU and the EU Member States are committed to the UNGPs implementation and advance the regulatory efforts in the area of BHR by developing and applying the human rights due diligence (HRDD) legislation. The EU-Ukraine Association Agreement has embedded the BHR principles and is a political and economic driving force for the UNGPs implementation in Ukraine. The EU accession conditions will include the BHR-related requirements, as the EU business conduct shall comply with the EU *acquis* norms on corporate respect for human rights, mandatory HRDD in supply chains in particular.

1.5. The forthcoming Ukraine's membership in the OECD entails the implementation of the OECD numerous "soft law" instruments in the field of BHR, specifically on HRDD in different areas of economic activities. Following the commitments under the OECD Declaration of 1979 and the OECD Guidelines for Multinational Enterprises (updated in 2011), Ukraine has introduced and is obliged to ensure the functioning of the National Contact Point for Responsible Business Conduct (NPC on RBC) as a State-based non-judicial grievance mechanism.

1.6. The recently adopted strategic policy acts, primarily the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030, the National Human Rights Strategy of 2021 and the National Economic Strategy for the period up to 2030, are adopted to meet the needs of Ukraine's sustainable development and are based on its international commitments and obligations. In combination they provide the general, though not comprehensive, policy, legal and practical grounds for the UNGPs' implementation.

2. Challenging changes in the Ukraine's BHR-related policy and law after 24 February 2022 and during the ongoing war

2.1. The pre-war Programme of the Government's Activities included the BHR-related key tasks in the area of economic development. It was planned to:

- i) Create a favourable environment for business development and conduct, making the market in Ukraine as fair and transparent as possible, and reducing the State regulation to the necessary minimum;
- ii) Establish favourable conditions for the development of a strong and competitive sector of SMEs;
- iii) Implement the international standards of corporate governance in the management system of state-owned companies in order to increase their level of income and investment attractiveness by means of introducing legislative changes aiming to improve the corporate governance of legal entities in which the State is a shareholder (founder or participant);
- iv) Implement the international standards and ensure the fulfilment of international obligations in the field of employment and labour migration;
- v) Strengthen the safety of life and health of workers, to implement the principles of risk analysis and investing in occupational safety;
- vi) Restart the system of social dialogue between an employee, an employer and the State, etc.

2.2. The full-scale war of the Russian Federation against Ukraine caused imposition of the martial law in Ukraine. The State is empowered to impose additional military service obligations, temporary (up to the end of the martial law period) restrictions on the right to privacy, freedom of religion and expression, the right to peaceful assembly, labour rights, property rights, education rights, and freedom of movement, on rights and legitimate interests of legal entities within the limits and to the extent necessary to ensure implementation and execution of the martial law. The international obligations of Ukraine and the will of people of Ukraine to develop the democratic state on the basis of the rule of law and human rights values are not changeable.

2.3. Alongside, the GoU, implementing some of the UNGPs Pillar I "The State duty to protect human rights", has introduced new legislation and launched new State programmes to support the population and business entities, primarily those who lost their jobs and business due to the war hostilities. The GoU actions are directed at support to business in the war settings that should prevent a collapse of Ukraine's economy. It acts to sustain and help business entities both purely Ukrainian and international not to become accomplices of any human rights abuses occurring during the war or hostilities undertaken during the war, but to be the drivers of the current recovery and further post-war reconstruction and reconciliation. The GoU followed the UNGPs attitude expressed in Principle 7 of the Pillar I under the heading "Supporting business respect for human rights in conflict affected areas".

2.4. The newly introduced State programmes and initiatives include: 1) Compensation to employers for employment of internally displaced persons; 2) Programme of Temporary Relocation of Enterprises from Regions Affected by the War; 3) Single Digital Interaction Platform for Business Relocation Assistance; 4) the expanded "5-

7-9%" Lending Programme; 5) New economic strategy in the conditions of war, as a set of State programmes. The first Programme "eRobota" encourages citizens to work in Ukraine by means of providing non-refundable State grant assistance for creating their own business, expanding small and medium-sized businesses, starting a new career, and constructing new infrastructure. Other programmes are being worked out.

2.5. The Parliament and the GoU have adopted and go on drafting laws and by-laws to reduce taxes, introduce the declarative principle of work under licenses, cancel superabundant inspections, regulate labour relations, simplify the business conduct, improve social insurance, functioning of the judiciary, etc. The overview of selected laws and draft laws to regulate the responsible business conduct under the martial law in Ukraine is presented in Annex 1 to this Study.

2.6. The currently elaborated GoU draft Ukraine Recovery Plan (URP) should become a solid conglomerate of strategic and operational goals and measures to be taken in 24 areas during the next decade (2022 – 2032). It allows accumulating efforts and resources of Ukraine and its partners abroad for its survival and further post-war progress. The draft URP is a potential policy frame to integrate the BHR agenda as a cross-sectoral issue in its relevant parts.

3. Status of the UNGPs integration in the chapter on business and human rights (§16) of the National Human Rights Strategy and its realisation through the Action Plan

3.1. The updated in 2021 **National Human Rights Strategy (NHRS)** embeds the political will to implement the UNGPs. The complex purpose of the NHRS includes the ensuring of the priority of human rights and freedoms as a determining factor in conducting economic activities alongside with the human rights priority in formation and implementation of the State policy, exercising the powers of State authorities and local self-government bodies. The NHRS in its BHR chapter (§16) specifically addresses the strategic direction to ensure respect for human rights in business. It determinates the BHR-related strategic goal of activities, the problem to be solved, tasks for achieving the strategic goal as well as the expected results and main indicators to measure the efficiency of the efforts taken.

3.2. Integration of the BHR-related strategic direction in the NHRS is generally appreciated. Although the content of §16 does not precisely meet the UNGPs. It has a number of shortcomings: 1) the wording of the strategic goal of implementing §16 is characterized by the unreasonable gap – the Pillar I "The State duty to protect human rights" is practically left aside; 2) development and implementation of the Action Plan on BHR is not foreseen; 3) the determined tasks to solve the problem in the BHR area, expected results and main indicators to evaluate the progress are not precise and not harmonized between each other. The specific detailed recommendations on the possible ways to eliminate these shortcomings in order to align the content of §16 with the UNGPs, while preserving the general structure of the NHRS, are suggested in subchapter 2.2 of this Study.

3.3. The revealed shortcomings of §16 are supplemented by the unfavourable approach towards ensuring of its implementation. The Action Plan on realisation of the NHRS for 2021 – 2023 (Action Plan) foresees only one activity – the study of best practices for implementing the UNGPs, Ten Principles of the UN Global Compact, and the CoE Committee of Ministers Recommendation to member states CM/Rec(2016)3 on human rights and business. No other follow up steps are planned. The Ministry of Justice (MoJ), responsible for this activity, reports about its realisation and submission of the study with the relevant proposals to the GoU. The study itself and the proposals are not accessible to public (as of September 2022). Based on an informant's reply, the MoJ proposed to develop a roadmap for the UNGPs implementation in Ukraine and to identify the central executive power body authorized to further develop on the BHR strategic direction. There is no information about the GoU's decision concerning these proposals neither on the e-Government web portal, nor on the MoJ web-site.

3.4. The NHRS includes a number of strategic directions that can be intertwined with §16 on BHR in the general UNGPs context when it concerns realisation of human rights in economic relations and possible or actual abuses of these rights. These are: right to a fair trial (§4); prevention and counteraction of discrimination (§8); equal rights and opportunities for women and men (§9); gender-based violence, exploitation, human trafficking (§10); labour rights and social protection (§13); ecological rights (§15); rights of foreigners and stateless persons (§19); rights of internally displaced persons (§21); rights of people living in the temporarily occupied territory of Ukraine (§22); raising awareness of human rights (§27). They are not taken into account in the monitoring of the UNGPs implementation in Ukraine.

3.5. The State monitoring is concentrated on the GoU law-making only and this is not enough. This way it does not provide the holistic panorama of the efforts taken by the State power bodies to realise the State's duty to protect human rights in business, of actions held by business to respect human rights, of the rights-holders' experience to exercise human rights in economic activities. Such state monitoring does not provide the adequate proofs of the practical results of the NHRS' implementation and does not stimulate further developments.

3.6. The reasons of the weak integration of the UNGPs in the NHRS and its weak implementation can be identified as follows:

- i) Poor awareness of the UNGPs and overall developments in the BHR area within the MoJ, which was responsible for the NHRS drafting, and within other relevant state power bodies, as well as across the Ukrainian business, CSOs and experts in various fields;
- ii) Insufficient institutional capacity to get and apply the knowledge on BHR by decision-makers of the ministerial level;
- iii) Concentration of responsibilities to implement the BHR chapter at the governmental level without stakeholder's engagement and without delivering responsibilities to the local level State authorities and actors;
- iv) Prior GoU focus on the war challenges and humanitarian response. The BHR policy aspects – heightened state duty to protect in the BHR area in the war time; corporate responsibility to respect human rights in conflict affected territories and in the rest of Ukraine's territory; heightened human rights due diligence in the war context; enhanced access to remedies for the human rights protection against the business-related abuses – were left aside of the GoU attention;
- v) Lack of the State budget allocations for the NHRS implementation, the BHR chapter, including.

4. Analysis of other existing and upcoming national human rights, recovery and peacebuilding strategic documents in the light of integration of the BHR principles

4.1. In recent years a number of strategic policy and legal acts in various sectors were adopted in Ukraine in the general context of implementation of the human-centred 2030 UN Agenda for Sustainable Development and the SDGs. And the Euro-integration – the Ukraine's EU candidacy status – is a very strong driver of multiple transformations in Ukraine. The EU-Ukraine Association Agreement is a powerful instrument of progressive and complex improvements in the national policy, law and practice, as well as of the applied advocacy in favour of the UNGPs' implementation in Ukraine.

4.2. Among the meaningful national strategic policy documents, the domains of which correlate with the BHR principles, are: the National Human Rights Strategy (2021); the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030 (2020); the National Economic

Strategy for the period up to 2030 (2021); the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030 (2019); the Strategy for the Development of the Financial Sector of Ukraine until 2025 (2021); the Strategy for Implementation of Digital Development, Digital Transformations and Digitalization of the State Finance Management System for the period until 2025 (2021); the Energy Strategy of Ukraine for the period until 2035 "Security, Energy Efficiency, Competitiveness" (2017); the Strategy of Human Development (2021); the National Strategy for Creating a Barrier-Free Space in Ukraine for the Period until 2030 (2021); the Strategy for the Digital Transformation of the Social Sphere (2020), etc. All together they form the general regulatory canvas in the BHR area; though, in many of them the BHR focus is not distinctly positioned.

4.3. Adopted in 2020 to implement **the commitments under the OECD, the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030** (Concept) and Action Plan for its realisation are the first strategic policy and programming documents to closely approach the BHR framework in Ukraine. Though the commitments under the OECD are not "hard" but provide for the State's voluntary action.

The Concept determines three main areas of development of socially responsible business (SRB): environmental protection, employment, and development of labour relations. It provides a set of measures in every area, which the SRB is supposed to adopt. It determines the ways for the State to follow in order to introduce the social responsibility in business, foresees a number of short-term and long-term results for the national economy and indicators for monitoring of its efficiency.

On the whole, the Concept and the Action Plan drive the implementation of certain principles of the UNGPs Pillar I "The State duty to protect human rights" and provide business entities with the policy and regulatory framework for realisation of the UNGPs Pillar II "Corporate Responsibility to Respect Human Rights". However, there is the lack of provisions on access to human rights remedies that could correspond with the UNGPs Pillar III "Access to remedies" – the established National Contact Point for Responsible Business Conduct (RBC) does not show its efficiency in the capacity of a State-based non-judicial grievance mechanism.

Given the lack of public information on the Concept's implementation, it is hardly possible to assess its efficiency. Up to the beginning of September 2022, no official web portal of the National Contact Point is accessible; no reviews or monitoring reports about the Concept's implementation are made public. The earliest overview of the state and development of SRB in Ukraine is scheduled for 2025, the next – for 2030.

4.4. **The National Economic Strategy for the period up to 2030** is the key strategic policy document to realise the main goal of the State policy – the increasing welfare of the Ukrainian population. It is the matrix for many sectoral strategies and policies, legislation and practice, and is the proper strategic policy document to integrate and implement the UNGPs.

However, the analysis of the Strategy's conceptual part and the selected strategic directions reveals some shortcomings. The BHR correlations are rather weak in the wording of the Strategy's landmarks, principles and values. This is especially unfavourable in the war context, which causes the necessity of the heightened State duty to protect human rights and increased social responsibility of business. Many of the twenty directions identified in the Strategy have the potential to provide for the clear and efficient integration of the UNGPs into the relevant ways and tasks of implementation, into the target indicators for progress monitoring and the expected results. The Direction 19 "Cultural and value transformation of Ukraine" addresses the human rights values in business, though it narrows the perception of the BHR approach in economic activities to the issues of public-private partnership and integrity (ethics) of business.

Up to September 2022, there is no information about the unified Action Plan for realisation of the National Economic Strategy or specific Action Plans for its every strategic direction. There is no specific Action Plan for implementation of Direction 19 with the focus on development of a value-based approach to doing business.

4.5. The war context caused the urgent necessity to elaborate **the Ukraine Recovery Plan** (URP) as a part of a broad-based political process for the recovery of Ukraine. The draft URP includes lists of measures for the post-war recovery and development of Ukraine in 24 areas; proposals for priority reforms and strategic initiatives; lists of legal acts, the adoption and implementation of which is necessary for the effective work and recovery of Ukraine in the war and post-war periods.

The analysis of the draft materials for the URP, elaborated by 24 working groups, reveals that the materials i) are structured differently; ii) different approaches to systematise and formulate proposals for actions are applied; iii) constitute a significant volume; iv) contain lots of specific issues, the examination of which requires expertise.

On the whole, the analysis proves that i) there are a number of areas where the BHR principles are applicable and options to apply them; b) there is no conceptual focus on the UNGPs implementation.

4.6. The suggestions elaborated in the frames of this Study (Annex 3) concern nine areas of the draft URP: European integration; Economic recovery and development; Financial system functioning, reform and development; Energy security; Public administration; Digitalization; Justice; Environmental safety; Human rights. The proposed suggestions and comments are focused on integrating the UNGPs into the planned steps, measures and activities in the course of three stages: “Wartime economy: All for Victory!” of 2022, “Recovery, restart of the economy and institutions” of 2023-2025, and “Structural modernization and full integration into the EU” of 2026-2032. The suggestions and comments on them are reasoned by the necessity to implement the Ukraine’s international commitments in the BHR area before the UN, ILO, EU, Council of Europe, and OECD. The references to the relevant provisions of the UNGPs, international and European policy and law acts, standards, guidelines, tools, etc., are provided for decision-makers to be used for the policy benchmarking and implementation activities.

The following **main strategic and operational recommendations** are proposed on the basis of the delivered key findings. Some other recommendations and arguments to them are provided in the text of the Study below.

RECOMMENDATIONS

1. Strategic

To strengthen the contextual background for the UNGPs integration in Ukraine’s policy, law and practice based on the Ukraine’s international obligations and commitments

- 1.1. Ukraine should terminate its withdrawal from fulfilment of some international human rights obligations under the ICCPR and the ECHR, taken after the introduction of the martial law caused by the full-scale war of the Russian Federation against Ukraine. Both the ICCPR and the ECHR are essential for the UNGPs implementation in Ukraine.**
- 1.2. It is important to turn the overall international and, in particular, European support to Ukraine’s resistance and fight for peace, sovereignty and entire independence undermined by the war unleashed by the Russian Federation, into advantages for the ensuring, respect for and protection of human rights of individuals and communities against the domestic and transnational business-related abuses.**

1.2.1. Ukraine's EU candidate-country status gained in June 2022 is the strongest political and economic driver to implement the UNGPs. The harmonisation of Ukraine's legislation with the EU *acquis* should cover in a systemic, not fragmentary, way the BHR-related norms and standards concerning the three UNGPs Pillars – State duty to protect human rights in business, business responsibility to respect human rights, access to effective remedies to protect human rights against business-related abuses through judicial, state-based and non-state-based grievance mechanisms.

The perspective membership in the OECD should accompany and complement the EU accession, as the OECD member countries and multilateral donors look at human rights as a means for improving the quality of economic cooperation development because of the crucial links between human rights violations, poverty, exclusion, vulnerability, and conflict.

In the ongoing war and the forthcoming post-war recovery contexts it is urgent to introduce, in compliance with the EU law and the OECD rules and standards, the State duty to protect human rights, heightened corporate respect for human rights, including hHRDD, do-no-harm requirements and "to build back better Ukraine" goals. The EU business would work and invest in Ukraine with full respect of the current BHR-oriented EU policy, advanced HRDD law, ESG, anti-corruption and non-discrimination norms, access to fair justice system and impartial dispute settlement, etc. The EU accession conditions will include the whole set of BHR-oriented requirements that concern various sectoral policies and legislation.

1.2.2. Ukraine's policy needs more cohesion both horizontal and vertical to efficiently implement the UNGPs, especially with regard to the new realities of the Ukraine's EU candidacy, the war and the forthcoming post-war recovery.

At least three acting strategic policy documents should be compatible with each other and riddled by the UNGPs – the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030, the National Human Rights Strategy, the National Economic Strategy for the period up to 2030. Each of the named documents should be reviewed and updated to meet the UNGPs provisions.

1.2.3. The draft Ukraine Recovery Plan, based on the Lugano Declaration and the Lugano Principles, should realise its BHR-potential into action and integrate the BHR agenda as a cross-sectoral issue in its relevant parts.

1.2.4. By integration of the UNGPs in the national strategic policy and law acts Ukraine will use the advantages that provide for:

- i) progress according to all indicators of the SDGs;
- ii) harmonization of policy, regulation and practice of the State and business entities with EU law and the European social market economy framework, as well as the frames of the globalized market;
- iii) attracting foreign direct investments to mitigate the negative consequences of the war;
- iv) access to global and regional credit and global and regional supply chains;
- v) creating decent jobs and solving the problem of outbound migration;
- vi) sustainable and fair economic growth;
- vii) improving people's sources of livelihood and social protection;
- viii) increasing women's economic opportunities;
- ix) reducing inequality on the whole.

2. Operational

To improve operational potential for the UNGPs integration in the national policy and legislation

2.1. To prevent the business-related human rights abuses and deal with them (including to form the policy and regulation background, to apply in practice, to conduct monitoring and evaluation, to file a lawsuit, to defend the victim, to settle the dispute, etc.), the thorough information campaigns and awareness raising about the UNGPs and their implementation practice is needed to be held for the decision-makers of the ministerial regional and local levels, for judiciary and legal practitioners, for NHRI, for business sector, for CSOs, including trade unions, human rights defenders and associations of experts, for academia, for mass media, etc.

2.2. To increase the human and institutional capacity necessary to implement the UNGPs – the relevant state authorities should have the BHR-knowledgeable officials with the relevant authorities and support.

This will help:

- i) improve the BHR-related strategic policy documents and plans of their realisation – their texts and their horizontal and vertical cohesion;
- ii) lead and coordinate their implementation in multi-stakeholder's environment;
- iii) provide monitoring of their implementation and evaluate the progress;
- iv) elaborate updating and introduce it.

2.3. To improve the acting BHR-related strategic policy documents

2.3.1. Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030 (Concept)

It is expedient to assess the Concept, update the Action Plan and introduce improvements in its strategic goal and directions, ways and means of realisation, expected results and monitoring indicators.

The work of the National Contact Point on RBC should be more set up for dealing with cases of the failure to adhere to the OECD rules and standards, i.e. the work of the state-based non-judicial grievance mechanism.

The monitoring procedure of the Concept's implementation should be reviewed. The monitoring results should be regular, transparent and open to the public.

The reasons for this work are the following (though not exhaustive): the State, business entities (domestic and foreign) and population are facing in the current war context and will face in the coming years lots of difficult challenges and problems to be solved with full regard to respect for human rights, recovery needs, and international law obligations. Ukraine's EU candidacy and the perspective membership in the OECD entail great amount of work on harmonisation of legislation and reconsidering the practice. The UNGPs' implementation could become an important component of these processes, and, as an option, a NAP on BHR could amend the Concept.

2.3.2. The chapter on BHR (§16) of the National Human Rights Strategy (NHRS)

Content

It should be revised to eliminate the numerous current gaps and shortcomings in its content (described in subchapters 2.1.1. and 2.2.1. of this Study). Primarily, the UNGPs Pillar I on the State duty to protect human rights against business-related abuses should be embedded; provisions on the State and business entities' responsibility to relatively provide efficient access to judicial, state-based and non-state-based grievance mechanisms for victims of human rights abuses caused by business should be well-established.

Combined effect

The BHR chapter (§16) should be considered as interconnected with other BHR-tangible chapters on: right to a fair trial (§4); prevention and counteraction of discrimination (§8); equal rights and opportunities for women and men (§9); gender-based violence, exploitation, human trafficking (§10); labour rights and social protection (§13); ecological rights (§15); rights of foreigners and stateless persons (§19); rights of internally displaced persons (§21); rights of people living in the temporarily occupied territory of Ukraine (§22); raising awareness of human rights (§27). This approach will provide the combined effect of the UNGPs implementation.

Authorised governmental institution

To ensure the effective UNGPs implementation, the BHR chapter's drafting, realisation and intermediate monitoring should be led and coordinated by the authorised State power body provided with the sufficient human and institutional capacity. A special Inter-ministerial working group or a steering committee/working group with mixed members (civil servants, NHRI representatives, business, CSOs, academia, etc.) to promote and support the BHR chapter implementation can be established under the guidance of the authorised State power body.

Action Plan

The Action Plan of the NHRS implementation should be re-drafted; the activities on the UNGPs implementation should be more visible. Under the conditions when the GoU decides that the further actions to implement §16 should be a part of the general Action Plan on the NHRS realisation, it is expedient to apply a comprehensive approach when dealing with the UNGPs implementation. The planned activities should be:

- i) in line with the three Pillars of the UNGPs,
- ii) combined in a logical sequence in order to meet the strategic goal established in §16, to fulfil the determined tasks and to reach the expected results;
- iii) the result of the GoU's deliberations on how it plans to address the gaps and shortcomings in its actions on protection of individuals and communities from business-related human rights abuses;
- iv) held at the national, regional and local levels;
- v) based on the multi-stakeholder's engagement in planning, realisation and monitoring;
- vi) supported by the sufficient human and budgetary resources to guarantee the Action Plan realisation.

It is desirable that a standalone NAP on BHR is introduced with due regard to the UN Guidance on National Action Plans on Business and Human Rights and best practice of European and other foreign countries. The 2021 UNDP Study "Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights" provides the country specific profile of the UNGPs implementation aspects, observations on a NAP on BHR including.

Evaluation, monitoring

When defining the status of implementation of the UNGPs across the NHRS, it is reasonable that the regular State monitoring refers not to the strategic direction fixed in the BHR chapter (§16) only but also to the strategic directions that can be interconnected with it – mentioned above §§4, 8, 9, 10, 13, 15, 19, 21, 22, 27, when actions taken to realise them concern the BHR issues.

The monitoring should not be limited to the GoU law-drafting, but should also refer to the Parliament's contribution and information about the relevant activities gained from business entities and civil society organisations (stakeholders), which use the adopted by the Parliament and the GoU legal norms. The monitoring should provide the adequate proofs of the practical results of the NHRS' implementation and feed the further developments and/or update of priorities and resources dissemination.

2.3.3. The National Economic Strategy for the period up to 2030 (NES)

It is expedient to turn the NES, as a matrix for many sectoral strategies and policies, legislation and practice, to the proper strategic policy document to integrate and implement the UNGPs.

For this, as minimum, it is expedient to:

- i) Strengthen the BHR correlations in the wording of the NES landmarks, principles and values, list of unacceptable steps, prohibited directions of movement recognised to be critical obstacles for the economic development,
- ii) Realise the potential of the majority of the NES twenty directions of the strategic course of the national economic policy (rule of law, regulatory environment, management of state and communal property, international economic policy and trade, reputation (reputation development), investment attractiveness, entrepreneurship, digital economy, cultural and value transformation of Ukraine, etc.) by means of the clear and efficient integration of the UNGPs into the relevant ways and tasks of implementation, into the target indicators for monitoring of the progress and the expected results.
- iii) Develop more precisely the Direction 19 "Cultural and value transformation of Ukraine" that addresses the human rights values in business, though narrows the perception of the BHR approach in economic activities to the issues of public-private partnership and integrity (ethics) of business.

As far as there is no unified Action Plan for the NES realisation, an Action Plan on implementation of the NES Direction 19 with the focus on development of a value-based approach to doing business could become a meaningful instrument to implement the UNGPs. It could become a standalone National Action Plan on BHR elaborated under the general "umbrella" of the NES. Its drafting and further realisation could be based on the approach of the UN Guidance on National Action Plans on Business and Human Rights, best European and global practice.

2.3.4. Ukraine Recovery Plan (URP)

As the draft URP is an extremely voluminous document, comprising the materials of 24 working groups on developments in various sectors, which to a great extent are not BHR-oriented, the detailed BHR-based suggestions could be worked out in the course and in the result of substantive consultations between the BHR experts and the relevant experts from the executive power bodies, local self-government authorities, representatives of business, trade unions, academia, CSOs, and foreign experts – members of the sectoral working groups of the National Council on the recovery of Ukraine from the consequences of the war.

Also, it could be helpful to include the BHR experts in these working groups and, possibly, involve them in the activities of the GoU Reforms Delivery Office that is responsible for the information and analytical support of the working groups.

Overall choice of approach to integration of the UNGPs in the Ukraine's strategic policy acts depends on the political will and interest of Ukraine's governing bodies, sufficiency of the human and institutional capacity and allocated resources.

While the Concept and the NHRS are supplemented with their Action Plans having their specific priorities and structure, and, the NES is not supplemented with either general or sectoral Action Plans, it may be advantageous to develop a standalone NAP on BHR under the NES "umbrella". In this case, there will be no need to adhere to the "hard" structure of the Action Plans to the Concept and the NHRS in order to "squeeze" the BHR context through them. But there will be the possibility to apply the comprehensive approach tested by other States to properly develop on the UNGPs implementation following the UN Guidance on NAPs on BHR. The National Baseline Assessment (NBA) of 2019 and the 2021 UNDP Study "Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights" provide for the well-elaborated ground for the Ukrainian NAP on BHR.



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1. INTRODUCTION



1.1. CONTEXTUAL BACKGROUND: UKRAINE'S INTERNATIONAL COMMITMENTS TO IMPLEMENT THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Ukraine, as a UN Member State since 1945, has gained a bulk of international commitments and obligations that create the basis for implementation of the business and human rights (BHR) agenda, and the UN Guiding Principles on Business and Human Rights of 2011 (UNGPs)¹ in particular. Primarily, it has committed to fulfil the UN Charter of 1945, the Universal Declaration of Human Rights of 1948 (UDHR), International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR), International Covenant on Civil and Political Rights of 1966 (ICCPR), International Labour Organization's (ILO's) Declaration on Fundamental Principles and Rights at Work of 1998, a number of the ILO Conventions and also the UN conventions on non-discrimination and equality, combating corruption, etc. Noteworthy, that the UDHR, ICESCR and ICCPR, known as the International Bill of Human Rights (IBHR)², and the ILO Declaration are referred to in the UNGPs Principle 12 specifically as the minimum standards that business enterprises should stick to in order to demonstrate and practice their responsibility to respect human rights.

Paragraph 67 of the UN 2030 Agenda for Sustainable Development of 2015 (UN 2030 Agenda) calls for States to “foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with international standards and agreements and other ongoing related initiatives, such as the Guiding Principles on Business and Human Rights [...]”³. The Sustainable Development Goals (SDGs) and the 2030 Agenda are explicitly grounded on human rights, and the SDGs seek to realise human rights for all. In this context, Ukraine has committed to the 2030 Agenda and the SDGs. Since 2015, the state policy is being developed with regard to their provisions, and in 2019, the SDGs of Ukraine for the period until 2030 were established by the corresponding Decree of the President of Ukraine⁴.

1 UN Human Rights Council. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, endorsed by the Resolution 17/4 of 16.06.2011 (A/HRC/47/39) URL: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf; 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, 2021 (A/HRC/47/39). URL: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf>

2 International Bill of Human Rights. URL: https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation1.1_en.pdf

3 UN General Assembly Resolution 70/1 of 25.09.2015 “Transforming our world: the 2030 Agenda for Sustainable Development” (A/RES/70/1). URL: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1

4 About the Sustainable Development Goals of Ukraine for the period until 2030: Decree of the President of Ukraine of 30 September 2019 No. 722/2019. URL: <https://zakon.rada.gov.ua/laws/show/722/2019#Text>

Ukraine's commitments under the UN fundamental international law and strategic policy acts are supplemented by its obligations under the relevant European "hard" and "soft" law formed by the Council of Europe (CoE)⁵, European Union (EU)⁶, Organisation of Economic Cooperation and Development (OECD)⁷, etc. The European Convention on Human Rights (ECHR) of 1950⁸, the European Social Charter of 1961 (ESC)⁹, the European Social Charter (revised) of 1996¹⁰ and the EU-Ukraine Association Agreement of 2014¹¹ frame the basic direct legal obligations in the area of business and human rights (BHR), other CoE and EU *acquis*, and the OECD documents widen the necessary legal space and provide, *inter alia*, for the "soft" law grounds to ensure the BHR principles, standards and norms.

The CoE conventions ratified by Ukraine, and thus "hard" law, relevant to BHR establish the requirements to ensure workers' freedom of association, their right to collective bargaining, the prohibition of discrimination, child and forced labour, and the protection of health and safety at work. Their realisation is further supported by the corresponding European Court of Human Rights case-law¹² (its implementation is legally binding for Ukraine and all States-Parties to the ECHR) and decisions of its statutory bodies – the Committee of Ministers and the Parliamentary Assembly. Since 2016, Ukraine has been obliged to implement the Recommendation of the Committee of Ministers to member states CM/Rec (2016)3 on human rights and business¹³. It refers to the State duty to protect human rights; State action to enable corporate responsibility to respect human rights; access to remedy; additional protection of workers, children and indigenous peoples; protection of human rights defenders. As an implementation measure, the Recommendation envisages that Member States are responsible for review of their national legislation and practice to ensure that they comply with the Recommendation and evaluate the effectiveness of the measures taken at regular intervals; development and adoption of plans on the national implementation of the UNGPs ("National Action Plans") which address all three pillars of UNGPs and the Recommendation's provisions. Important to take note of the established control mechanism – no later than five years after its adoption – actually starting from 2021 – the Committee of Ministers shall work with the Member States to examine the implementation of this Recommendation, with participation of the relevant stakeholders. In 2019, the Parliamentary Assembly adopted Resolution 2311 (2019)¹⁴ and Recommendation 2166 (2019)¹⁵ promoting the application of the above-named Committee of Ministers' Recommendation. It is time for Ukraine to sum-up the steps and enhance efforts on the BHR development.

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- 5 Ukraine is a Member State of the Council of Europe since 1995; see: the Parliamentary Assembly Opinion (190)1995 "Application by Ukraine for membership of the Council of Europe". URL: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13929&lang=en>
 - 6 Following the European Council's decision of 23 June 2022 Ukraine is granted the EU candidate status as established in Article 49 of the EU Treaty; see: European Council conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, 23 June 2022. URL: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>
 - 7 Memorandum of Understanding on Strengthening Co-operation between the OECD and Ukraine of 2014. URL: <https://www.oecd.org/newsroom/oecd-bolsters-relationship-with-ukraine.htm>; Application for admission to the Organization for Economic Cooperation and Development is passed by the Government of Ukraine on 5.07.2022
 - 8 European Convention on Human Rights (1950), ratified by the Law of Ukraine No. 475/97-VR of 17.07.1997. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text
 - 9 European Social Charter (1961). URL: <https://rm.coe.int/168006b642>
 - 10 European Social Charter (Revised) (1996), ratified with statements by the Law of Ukraine of 14.09.2006 No. 137-V URL: <https://zakon.rada.gov.ua/laws/show/137-16#Text>
 - 11 EU-Ukraine Association Agreement, entered into force on 01.09.2017. URL: https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf
 - 12 See e.g.: Guide to the case-law of the European Court of Human Rights. Environment. Updated on 30 April 2022. URL: https://echr.coe.int/Documents/Guide_Environment_ENG.pdf
 - 13 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
 - 14 Parliamentary Assembly of the Council of Europe Resolution 2311 (2019) "Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?", adopted by the Standing Committee, acting on behalf of the Assembly, on 29 November 2019. URL: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28296&lang=en>
 - 15 Parliamentary Assembly of the Council of Europe Recommendation 2166 (2019) "Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?", adopted by the Standing Committee, acting on behalf of the Assembly, on 29 November 2019. URL: <https://pace.coe.int/en/files/28298/html>

However, the current war context limits Ukraine in actions to certain extent. Ukraine officially notified the Secretary-General of the United Nations about the withdrawal from some of its obligations under the ICCPR and the ECHR¹⁶. Due to the communication of the Secretary-General, since 01.03.2022 Ukraine will temporarily withdraw from fulfilling some international obligations; and this will not constitute the violation of international treaties.

The EU membership is a strategic goal of the Ukraine's Euro-integration activities. The recently granted Ukraine's EU candidate country status (since June 2022) actualises the task to align the national policies with those of the EU and to harmonise the national legislation with the EU *acquis*. The EU is developing its social economy and is one of the leading global actors in the domain of BHR and one of the main supporters of a meaningful implementation of the UNGPs in Europe and above. Its contribution in elaboration of an international binding treaty on BHR is pragmatic and significant. Implementation of the BHR-oriented approach to realisation of the EU-Ukraine Association Agreement should be regarded by Ukraine as reasonable and profitable – human rights and sustainable development are the core EU values; they are also essential elements of the Association Agreement. Given the importance of the EU market, these values are basic for its Common Commercial Policy.

Though currently there is no comprehensive EU BHR policy framework to ensure coherence between its human rights obligations, corporate social responsibility (CSR) policies and trade and investment policies, the EU is committed to BHR and currently advances its regulatory efforts. These efforts should be taken into account by the Ukrainian decision-makers of public and private sectors as the EU intends to more effectively integrate human rights considerations into the Common Commercial Policy and develops the EU-level mandatory human rights due diligence legislation. The legislative proposals for the Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence¹⁷ and the Directive of the European Parliament and of the Council on Corporate Sustainability Reporting¹⁸ as well as other relevant legislative initiatives (e.g.: proposals for the Digital Markets Act¹⁹, for the Digital Services Act²⁰, for a Directive on empowering consumers for the green transition²¹, etc.) will soon enrich the EU "hard" law which concerns the BHR directly. They should be addressed by Ukraine in the process of policy- and law-making in the general approximation process, which since 23 June 2022, when the European Council has adopted the decision to grant Ukraine the status of an EU candidate country²², should be more broad and specific at the time. A set of the EU accession conditions may include the requirements to integrate the BHR principles as part of the rule of law, human rights, recovery and investment conditions for Ukraine. The above-mentioned new EU law on BHR will be built-in into the EU *acquis* and standards that Ukraine will need to adhere to as a candidate country.

In 2022, Ukraine applied for the membership in the OECD. The OECD member countries and multilateral donors look at human rights more thoroughly as a means for improving the quality of development cooperation because of the growing recognition of the crucial links between rights violations, poverty, exclusion, vulnerability, and conflict. The OECD's BHR benchmarking is quite noticeable. In 2017, Ukraine has joined the OECD Declaration

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- 16 Ukraine: Notification under Article 4 (3) 1 of the International Covenant on Civil and Political Rights of 28.02.2022 No. 4132/28-110-17626. URL: <https://treaties.un.org/doc/Publication/CN/2022/CN.65.2022-Eng.pdf>
 - 17 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 23.2.2022 COM(2022) 71 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>
 - 18 Proposal for a Directive of the European Parliament and of the Council on amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, Brussels, 21.4.2021 COM(2021) 189 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189>
 - 19 Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM/2020/842 final. URL: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN>
 - 20 Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC COM/2020/825 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0825>
 - 21 Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information COM/2022/143 final. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143&qid=1649327162410>
 - 22 European Council conclusions, 23-24 June 2022. EUCO 24/22, Brussels, 24 June 2022. URL: <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf>

and Decisions on International Investment and Multinational Enterprises of 1976²³ (last amended in 2011), which is supported by a number of the OECD Council recommendations regarding the UNGPs and promoting the due diligence. The recommendations are addressed by governments to multinational enterprises and provide Due Diligence Guidance for Responsible Business Conduct²⁴, Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector²⁵, Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector²⁶, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas²⁷, OECD-FAO Guidance for Responsible Agricultural Supply Chains²⁸.

Following the commitments under the OECD Declaration of 1979 and the OECD Guidelines for Multinational Enterprises, Ukraine has introduced the National Contact Point for Responsible Business Conduct (NCP on RBC) as a State-based non-judicial grievance mechanism. In 2021 the first OECD study “Responsible Business Conduct Due Diligence Practices in Ukraine’s Energy Sector”²⁹ was made public. It provides a baseline understanding of RBC due diligence practices in Ukraine’s energy companies. It outlines key RBC risks that companies in Ukraine’s energy sector face and efforts through which these risks are identified, addressed and mitigated. In addition, it provides considerations on improving companies’ practices in aligning with OECD RBC instruments and standards.

The OECD Declaration and the OECD Guidelines for Multinational Enterprises gave impulse to the strategic policy document, namely the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030³⁰ and the relevant Action Plan³¹, which were adopted in 2021. However, the Ministry of Economy (MoE) neither makes public the results of the actions taken to implement the Concept, nor provides the information about the activities of the NCP on RBC. In general, as we see it, it is worth using the BHR-relevant policy, legal and operational instruments more efficiently in order to sustain the progress in driving the RBC.

The National Human Rights Strategy (NHRS)³² updated in 2021 embeds the political will to implement the UNGPs. In its §16 on BHR, it addresses the issues of respect for human rights in business activities, in other paragraphs – respect for other human rights which are intertwined with BHR – labour, ecological, access to fair trial and legal aid, non-discrimination and others. The National BHR Baseline Assessment of 2019³³, though mainly focused on the UNGPs Pillar 1 and not comprehensive enough, informed drafting of the NHRS. Nevertheless, the Action Plan

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- 23 OECD Declaration and Decisions on International Investment and Multinational Enterprises, adopted on 21 June 1976 on the occasion of the Meeting of the Council at Ministerial Level (amended in 1979, 1984, 1991, 2000, 2011). URL: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144>
 - 24 Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct, adopted by the Council at its meeting at Ministerial level on 30 May 2018. URL: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0443>
 - 25 Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, adopted by the OECD Council on 17 May 2017. URL: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0437>
 - 26 Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, adopted by the OECD Council on 13 July 2016. URL: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0427>
 - 27 Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, adopted by the OECD Council on 25 May 2011. URL: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0386>
 - 28 Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains, adopted by the OECD Council on 13 July 2016. URL: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0428>
 - 29 Responsible Business Conduct Due Diligence Practices in Ukraine’s Energy Sector, OECD, 23 June 2021. URL: <https://mneguidelines.oecd.org/responsible-business-conduct-due-diligence-practices-in-ukraine-energy-sector.htm>
 - 30 Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030, approved by the Order to the Cabinet of Ministers of Ukraine of 24.09.2020 No. 66-r. URL: <https://zakon.rada.gov.ua/laws/show/66-2020-%D1%80#Text>
 - 31 Plan of Actions on Fulfilment of the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030, approved by the Order of the Cabinet of Ministers of Ukraine of 01.04.2020 No. 853-r. URL: <https://zakon.rada.gov.ua/laws/show/853-2020-%D1%80#Text>
 - 32 National Strategy in the Field of Human Rights, approved by the Decree of the President of Ukraine of 24.03.2021 No. 119/2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>
 - 33 National Baseline Assessment on Business and Human Rights, 2019. URL: <https://legalforum.nlu.edu.ua/wp-content/uploads/2019/06/executive-summary.pdf>

on Realisation of the NHRS for the period up to 2023³⁴ is BHR-blind, providing only one activity on implementing the strategic direction on BHR fixed in §16 – research of good international practice of implementing the UNGPs, 10 principles of the UN Global Compact and the CoE Committee of Ministers Recommendation CM/Rec (2016)3 on human rights and business. Obviously, the NHRS chapter on BHR and the Action Plan need to be revised with regard to the UNGPs' provisions, documents of the UN Working Group on BHR (UNWG), UNDP's studies and guides, and good experience of their implementation by European and other foreign countries, which has been gained in the course of 10 years since the adoption of the UNGPs. More detailed assessment of the NHRS chapter on BHR and the Action Plan, and the relevant key findings are provided below in a separate section of this study.

Numerous other recently adopted Ukraine's strategic policy and legal acts – the National Economic Strategy of 2021³⁵, the Strategy of Human Development of 2021³⁶, the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030³⁷, the Strategy for the Development of the Financial Sector of Ukraine until 2025 of 2021³⁸, the Energy Strategy of Ukraine for the period until 2035 "Security, Energy Efficiency, Competitiveness" of 2017³⁹, the National Strategy for Creating a Barrier-Free Space in Ukraine for the Period until 2030⁴⁰, etc. and the corresponding implementation documents, especially those aimed at harmonization of Ukraine's legislation with the EU *acquis*, – form the general regulatory canvas in the BHR area, though there are gaps and shortcomings to be eliminated.

The UNDP in Ukraine contributes to the UNGPs' driving and making the perspective of their implementation practical. The Study "Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights" as the result of a scoping process that UNDP in Ukraine commenced in 2021 provides for analysis of overall trends, needs and barriers with respect to duty bearers and rights holders, sectors and markets; and identification of best international practices on implementation of BHR with relevance to Ukraine and its country specifics⁴¹. It provides for the informative support to the Government and to various stakeholders in Ukraine helping to advance implementation of the UNGPs.

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- 34 Plan of Actions for implementation of the National Strategy on Human Rights for 2021-2023, approved by the Order of the Cabinet of Ministers of Ukraine of 23.06.2021 No. 756. URL: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-dij-z-realizaciyi-nacionalnoyi-strategiyi-u-sferi-prav-lyudini-na-20212023-roki-i230621-756>
 - 35 National Economic Strategy for the period up to 2030, approved by Resolution of the Cabinet of Ministers of Ukraine No. 179 of March 3, 2021. URL: <https://zakon.rada.gov.ua/laws/show/179-2021-%D0%BF#n25>
 - 36 Strategy of Human Development, approved by the Decree of the President of Ukraine of 02.06.2021 No. 225/2021. URL: https://zakon.rada.gov.ua/laws/show/225/2021?find=1&text=%D0%B2%D1%96%D0%B4%D0%BF%D0%BE%D0%B2%D1%96%D0%B4#w1_1
 - 37 Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030, approved by the Law of Ukraine of 28.02.2019 No. 2697-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2697-19#Text>
 - 38 Strategy for the Development of the Financial Sector of Ukraine until 2025 (new edition), approved by the Decision of the National Commission for Securities and the Stock Market No. 140 of 02.03.2021, the Decision of the Board of the National Bank of Ukraine No. 97-rsh of 18.03.2021, and the Decision of the Guarantee Fund for Deposits of Individuals of 25.02.2021 No. 193. URL: https://bank.gov.ua/admin_uploads/article/Strategy_FS_2025.pdf?v=4
 - 39 Energy Strategy of Ukraine for the period until 2035 "Security, Energy Efficiency, Competitiveness", approved by the Order of the Cabinet of Ministers of Ukraine dated August 18, 2017 No. 605-r. URL: <https://zakon.rada.gov.ua/laws/show/605-2017-%D1%80#Text>
 - 40 National Strategy for Creating a Barrier-Free Space in Ukraine for the Period until 2030, approved by the Order of the Cabinet of Ministers of Ukraine of 14.04.2021 No. 366-p. URL: <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text>
 - 41 Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights, UNDP Study of 2021, published in 2022. URL: <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

1.2. CHALLENGING CHANGES IN THE UKRAINE'S BHR-RELATED POLICY AND LAW AFTER 24 FEBRUARY 2022 AND DURING THE ONGOING WAR

In recent years, Ukraine has been introducing the structural governance, legal and justice reforms conditioned by the State's international commitments and development needs. The transformations in all key areas of activities of the State and society are foundational for the necessary qualitative changes and basic for the ponderable economic progress, well-being and quality of life of population as it is established by the European integration and globalization benchmarks, SDGs primarily.

The Government of Ukraine (GoU) was focused on the set of strategic goals: i) Ensuring further economic progress by creating favourable conditions for business development and attracting investments, reforming the energy sector, modernization of industry and the infrastructure development; ii) Increasing the efficiency of public governance and the quality of public services; iii) Creating favourable conditions for development of human capital; iv) Support to public institutions tasked to fight corruption and ensure the rule of law, to form the basis for protection of private property and ensure equality before the law. Moreover, the GoU worked to settle the mainstreaming issues of non-discrimination and respect for human rights in public and business relations that, in particular, concern inclusion, integration of IDPs and Roma, gender equality, etc. to leave no one behind.

Based on the BHR agenda, it is reasonable to indicate some of the key tasks in the area of economic development, established by the Programme of the Government's Activities of 2020⁴²:

- To create a favourable environment for business, making the market in Ukraine fair and transparent, and reducing the State regulation to the necessary minimum;
- To establish favourable conditions for development of a strong and competitive sector of small and medium-sized enterprises (SMEs), providing them with access to finance and markets, and creating infrastructure for their development;
- To ensure a deep reform of the energy sector, creating conditions for Ukraine's energy independence;
- To ensure the fulfilment of international obligations in the field of employment and labour migration, of corporate governance in the management system of state-owned companies by means of introducing legislative changes;

42 Programme of Activities of the Cabinet of Ministers of Ukraine, approved by the Government Resolution of 12.06.2020 No. 471. URL: <https://www.kmu.gov.ua/diyalnist/programa-diyalnosti-uryadu>

- To strengthen the safety of life and health of workers, to implement the principles of risk analysis and investing in occupational safety;
- To restart the system of social dialogue between employees, employers and the State, etc.

However, just after the full-scale military invasion of the Russian Federation the martial law was imposed in Ukraine following the Law of Ukraine of 24.02.2022⁴³ approving the relevant Decree of the President of Ukraine⁴⁴. Paragraph 3 of the Decree envisages that in connection with the imposition of the martial law in Ukraine temporarily, for the period of the martial law, constitutional rights and freedoms of man and citizen provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine may be limited, as well as temporary restrictions on the rights and legitimate interests of legal entities within the limits and to the extent necessary to ensure implementation and execution of the martial law are introduced. This is provided for in part one of Article 8 of the Law of Ukraine 'On the Legal Regime of the Martial Law of 2015'⁴⁵.

These provisions empower the State to impose additional military service obligations, restrictions on the right to privacy, freedom of religion and expression, the right to peaceful assembly, labour rights, property rights, education rights, and freedom of movement.

In particular, what concerns the BHR area, the State is authorized, *inter alia*, to:

- introduce compulsory labour for able-bodied persons not involved in work in the field of defence and livelihoods and not reserved for enterprises, institutions and organizations for the period of martial law in order to perform work of a defensive nature and eliminate the consequences of emergencies that arose during martial law, and to involve them in martial law in socially useful work performed to meet the needs of the Armed Forces of Ukraine, other military formations, law enforcement agencies and civil defence forces, ensuring the functioning of the national economy and life support system of population and do not require, as a rule, special training of persons. For employees involved in the performance of socially useful work, the previous place of work (position) is retained for the time of such work;
- use the capacity and labour resources of enterprises, institutions and organizations of all forms of ownership for the needs of defence, change the mode of their work, make other changes in production activities and working conditions in accordance with labour legislation;
- forcibly expropriate private or communal property, confiscate property of state enterprises, state economic associations for the needs of the state under the legal regime of martial law in the manner prescribed by law and issue appropriate documents of the prescribed form;

in case of violation of the requirements or non-compliance with the measures of martial law, withdraw electronic communication equipment, television, video and audio equipment, computers and, if necessary, other technical means of communication; etc. from enterprises, institutions and organizations of all forms of ownership, individual citizens.

Following the "hard" law norms of the ICCPR and the ECHR⁴⁶, Ukraine officially notified the Secretary-General of the United Nations about the withdrawal from its obligations under the ICCPR and the ECHR⁴⁷ in February 2022.

43 On approval of the Decree of the President of Ukraine on imposition of martial law in Ukraine: Law of Ukraine of 24.02.2022 No. 2102. URL: <https://zakon.rada.gov.ua/laws/show/2102-20#Text>

44 On imposition of martial law in Ukraine: Decree of the President of Ukraine of 24.02.2022 No. 64/2022. URL: <https://www.president.gov.ua/documents/642022-41397>

45 On the Legal Regime of the Martial Law: Law of Ukraine of 12.05.2015 No. 389-VIII. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

46 Article 4 of the International Covenant on Civil and Political Rights, 1966. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>; Article 15 "Derogation in time of emergency" of the European Convention on Human Rights, 1950. URL: https://www.echr.coe.int/documents/convention_eng.pdf

47 Ukraine: Notification under Article 4 (3) 1 of the International Covenant on Civil and Political Rights of 28.02.2022 No. 4132/28-110-17626. URL: <https://treaties.un.org/doc/Publication/CN/2022/CN.65.2022-Eng.pdf>

Due to the communication of the Secretary-General, Ukraine will temporarily withdraw from fulfilling some international obligations since 01.03.2022; and this will not constitute the violation of international treaties.

Though, the above-mentioned laws and withdrawal from some of Ukraine's international commitments and obligations are planned to be applied temporarily, for the period of the martial law, and do not reflect the long term aims of the Parliament, President, GoU and people of Ukraine. Beyond the war, the temporarily adopted legal and regulatory provisions are expected to be cancelled and the law to be changed significantly to restore human rights. Ukraine's membership in international organisations and the EU candidate status clearly frame the democratic and human rights-oriented vector of its perspective development.

Since March 2022, in line with the UNGPs Pillar I "The State duty to protect human rights", the GoU has introduced new legislation and launched new State programmes to support the population and business entities, primarily those who lost their jobs and business due to the hostilities during the war in Ukraine.

The GoU actions have been and are grounded on understanding that support to business in the war settings should prevent a collapse of Ukraine's economy. It should sustain and help business entities both purely Ukrainian and international not to become accomplices of any human rights abuses occurring during the war or hostilities undertaken during the war, but to be the drivers of the current recovery and further post-war reconstruction and reconciliation. The GoU followed the UNGPs attitude clearly expressed in the principle 7 of the Pillar I under the heading "Supporting business respect for human rights in conflict affected areas".

The newly introduced State programmes and initiatives include:

- Compensation to employers for employment of internally displaced persons (IDPs)⁴⁸ – the Procedure for providing an employer with compensation for labour costs for the employment of IDPs, approved by the GoU Resolution No. 331 of 20.03.2022⁴⁹;
- Programme of Temporary Relocation of Enterprises from Regions Affected by the War⁵⁰ launched to preserve the production and labour potential of Ukraine and to support all enterprises that wish to move production to the territory of Western Ukraine. The Programme realisation is ensured by the GoU normative acts: Resolution of 17.03.2022⁵¹ and the subsequent Order of 25.03.2022⁵²;
- Single Digital Interaction Platform for Business Relocation Assistance launched by the Ministry of Economy of Ukraine with the support of the Ministry of Digital Affairs and the national project "Diia.Business" in order to ensure efficiency and effectiveness of the business relocation process. The State Enterprise "Prozorro. Prodazhi" together with E-Tender and eDocs have developed an IT system that allows businesses to submit an application and receive assistance in moving their equipment to safe territories of Ukraine. The Platform includes three Prozorro sites for sales through which business can apply for relocation to safe regions and four Prozorro sites for sales through which business can place objects or offers to help a relocating business⁵³; "5-7-9%" Lending Programme is expanded – the relevant GoU resolutions on provision of the

48 Compensation to employers for employment of internally displaced persons. URL: <https://diia.gov.ua/services/kompensaciya-za-pracevlashtuvannya-vpo>

49 Procedure for providing compensation to the employer for labour costs for the employment of internally displaced persons as a result of hostilities during martial law in Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 331 of 20.03.2022. URL: <https://zakon.rada.gov.ua/laws/show/331-2022-%D0%BF#Text>

50 Program for the Temporary Relocation of Enterprises from Regions Affected by the War, March 2022. URL: <https://business.diia.gov.ua/cases/antikrizovirisenia/programa-uradu-sodo-timcasovogo-peremisenna-pidpriemstv-z-postrazdalih-pid-cas-vijni-regioniv>

51 On the peculiarities of the work of Joint-Stock Company "Ukrposhta" under the martial law: Resolution of the Cabinet of Ministers of Ukraine No. 305 of 17.03.2022. URL: <https://zakon.rada.gov.ua/laws/show/305-2022-%D0%BF#Text>

52 Plan of emergency measures for the transfer, if necessary, of the production capacities of business entities from the territories where hostilities are taking place and/or there is a threat of hostilities to a safe territory, approved by the Order of the Cabinet of Ministers of Ukraine No. 246 of 25.03.2022. URL: <https://zakon.rada.gov.ua/laws/show/246-2022-%D1%80#Text>

53 Single Digital Interaction Platform for Business Relocation Assistance. URL: <https://www.kmu.gov.ua/en/news/minekonomiki-v-ukrayini-zapustili-vedinu-platformu-cifrovoyi-vzayemodiyi-dlya-dopomogi-v-relokaciyi-biznesu>, https://prozorro.sale/marketplace_landing-page

financial state support are amended to allow any business to get a loan at 0% in banks of Ukraine during the martial law and one month after the war⁵⁴;

- New economic strategy in the conditions of war, as a set of State programmes, is agreed upon by the GoU on commission of the President of Ukraine, who underlines the urgent importance of official employment, tax payment and “no shadow economy”⁵⁵. The Strategy is targeted to provide for the economy’s survival and creation of the foundation for post-war recovery by means of new programmes for stimulation of economic advancement⁵⁶. Eight programs will deal with creating jobs through the support to business, public procurement, construction, lending, employment of those who have lost their jobs, etc.

The first recently launched Programme “eRobota” [Ukrainian for “eWork”] (as of 1 July 2022)⁵⁷ aims to encourage citizens of Ukraine to work in the native country by providing non-refundable State grant assistance to be used for creating their own businesses, expanding small and medium-sized businesses, starting a new career, and constructing new infrastructure. The implementation of the “eRobota” program is supported at the expense of the Reserve Fund of the State Budget of Ukraine, and it is planned to allocate UAH 42.8 billion for them (the GoU Orders of 21.06.2022⁵⁸ and of 24.06.2022⁵⁹). Part of the funds will be allocated by foreign partners⁶⁰. The Programme is supported by the GoU-funded retraining educational programme, including “Start in IT”⁶¹, which is launched by the GoU Resolution of 24.06.2022⁶², as well as the programme on provision of micro-grants for creation or development of one's own business that is updated due to the GoU Resolutions of 21.06.2022 and of 05.08.2022⁶³.

The Parliament and the GoU have adopted and go on drafting and considering for the adoption of various laws and by-laws to specifically regulate in the war context the BHR-relevant relations between the State, business entities and people as employees. They are aimed, *inter alia*, to support business by means of safe relocation, advancing the level of corporate governance, providing the state aid, reducing taxes, introducing the declarative principle of work under licenses, cancelling superabundant inspections; to balance the interests of business and employees in regulation of labour relations; to protect people by improvement of social insurance, ensuring access to justice, etc. Examples of such regulatory norms provided by the selected legislative acts and draft acts are included in Annex 1 to this Study.

54 On amendments to the Resolutions of the Cabinet of Ministers of Ukraine No. 28 of 24.01.2020 “On the provision of financial state support” and 29 “On approval of the Procedure for the use of state budget funds provided for ensuring the functioning of the Entrepreneurship Development Fund”, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 312 of 18.03.2022. URL: <https://zakon.rada.gov.ua/laws/show/312-2022-%D0%BF#Text>

55 Ukrainian society can only have those who protect our independence and those who work to ensure this protection – address of the President of Ukraine on June 9, 2022. URL: <https://www.president.gov.ua/videos/v-ukrayinskomu-suspilstvi-mozhut-buti-tilki-ti-hto-zahishaye-2661>

56 Statement by the Prime Minister of Ukraine Denys Shmyhal at a Government session. Communications Department of the Secretariat of the Cabinet of Ministers of Ukraine, posted 21 June 2022 17:09. URL: <https://www.kmu.gov.ua/en/news/promova-premyer-ministra-ukrayini-denisa-shmigalya-na-zasidanni-uryadu21062022>

57 <https://business.dia.gov.ua/wartime>

58 On the allocation of funds from the reserve fund of the state budget for granting grants for the purpose of creating or developing a business: Order No. 532 of 21 June 2022. URL: <https://zakon.rada.gov.ua/laws/show/532-2022-%D1%80#Text>

59 On the provision of state support to enterprises of the processing industry, start-ups in Ukraine and the conduct of an experiment on the organization of training of individuals under educational programs in the field of information technologies “Start in IT”: Order No. 531 of 24 June 2022. URL: <https://zakon.rada.gov.ua/laws/show/531-2022-%D1%80#Text>

60 <https://www.rada.gov.ua/news/razom/225037.html>

61 “Start in IT”. URL: <https://www.dcz.gov.ua/storinka/start-v-it>

62 About the implementation of the experiment on the organization of training of individuals under educational programs in the field of information technologies “Start in IT”: Resolution of the Cabinet of Ministers of Ukraine No. 737 of 24.06.2022. URL: <https://www.kmu.gov.ua/npas/pro-realizaciyu-eksperimentu-z-organizaciyi-navchannya-osib-za-osvitnimi-programami-u-s737-240622>

63 Some issues of providing business with grants: Resolution of the Cabinet of Ministers of Ukraine No.738 of 21.06.2022. URL: <https://www.kmu.gov.ua/npas/deyaki-pitannya-nadannya-grantiv-biznesu-738-210622>; On amendments to the procedures, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 738 of 21.06.2022: Resolution of the Cabinet of Ministers of Ukraine No. 903 of 05.08.2022. URL: <https://www.kmu.gov.ua/npas/pro-vnesennia-zmin-do-poriadkiv-zatverdzhenykh-postanovoiu-kabinetu-ministriv-ukrainy-vid-21-cherwnia-2022-r-738-903-050822>

Currently, the GoU efforts are also attached to the Ukraine Recovery Plan (URP)⁶⁴. Its generalized pre-draft was presented during the international Ukraine Recovery Conference held in June 2022 in Lugano. The GoU and the Conference participants discussed the approaches to the best possible response to the enormous challenges lying ahead, as Ukraine's recovery is a massive task and poses challenges of a magnitude that cannot be precisely measured at the point⁶⁵. The draft URP is being composed by all government agencies, MPs, academia, CSOs, experts of the UNDP and other international organisations on the basis of the Lugano Declaration and the Lugano Principles. It is planned to become a solid conglomerate of strategic and operational goals and measures in order to accumulate efforts and resources for Ukraine's survival and its further post-war progress. They are planned to be reached and taken in 24 areas within three stages starting from 2022 up to 2032. The analysis of the draft URP provided in the course of this Study provides for assuming it as a potentially wide frame to integrate the BHR agenda as a cross-sectoral issue in its relevant parts. As foreseen by the ToR of the Study, a set of the UNGPs-related recommendations and suggestions to the URP with brief arguments and references to international and European law norms, standards, and practical guides are drafted (see: Annex 3) and sent for consideration to the GoU Reforms Delivery Office.

For taking decisions of the national and local levels, elaboration and adoption of relevant regulatory provisions and programming documents with regard to the UNGPs in the war context, including the URP, it is helpful to consider the main findings and recommendations of the 2021 UNDP Study "Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights"⁶⁶. The Study refers also to specific application of the BHR principles in the war context. To strengthen such references, the 2022 UNDP Guide on Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts⁶⁷ should be taken into account. It should be regarded by the Ukrainian and European policy- and decision-makers when working in partnership for Ukraine's recovery.

However, adoption of fragmentary and emergent decisions to support business and ensure human rights under the current situation would not provide for the systemic and solid background for implementation of the UNGPs in Ukraine in the wartime and post-war period of recovery. We would rather advise to work out and launch a standalone NAP on BHR as recommended by the UN, CoE and EU or, at least, to introduce a specific well-elaborated part of a most relevant national-level strategic and programming document supported with sufficient resources.

64 Plan of Actions for the Post-War Recovery and Development of Ukraine, developed by the National Council for the Recovery of Ukraine from the Consequences of the War in accordance with the Decree of the President of Ukraine No. 266/2022 of 21.04.2022. URL: <https://www.kmu.gov.ua/diyalnist/nacionalna-rada-z-vidnovlennya-ukrayini-vid-naslidkiv-vijni/robochi-grupi>, <https://www.president.gov.ua/documents/2662022-42225>

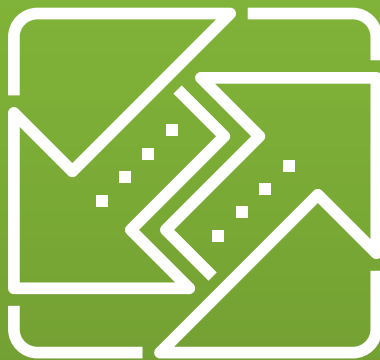
65 Ukraine Recovery Conference (URC 2022) 4-5 July 2022 – Lugano, Switzerland. URL: <https://www.urc2022.com/>

66 Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights, UNDP Study of 2021, published in 2022. URL: <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

67 Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A UNDP Guide, 2022. URL: https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Contexts_V2.pdf

2. STATUS OF THE UNGPS INTEGRATION

IN THE CHAPTER ON BUSINESS AND
HUMAN RIGHTS (§16) OF THE NATIONAL
HUMAN RIGHTS STRATEGY AND
ITS REALISATION THROUGH
THE ACTION PLAN



2.1. KEY FINDINGS

2.1.1. BHR CHAPTER OF THE CURRENT NATIONAL HUMAN RIGHTS STRATEGY: OVERVIEW AND SHORTCOMINGS

In 2021 the National Human Rights Strategy (NHRS)⁶⁸ was updated on the basis of results of implementing its previous edition, with regard to the realities and consequences of the armed conflict in 2014, as well as the new tendencies and objectives in the political and society life, needs of people.

The NHRS embeds the political will to implement the UNGPs. The complex purpose of the NHRS includes the ensuring of the priority of human rights and freedoms as a determining factor in conducting economic activities alongside with the human rights priority in the processes of formation and implementation of the State policy, exercising the powers of State authorities and local self-government bodies.

Thanks to advocacy from CSOs, academia and the UNDP in Ukraine, for the first time the Ukraine's NHRS integrates BHR principles and specifically addresses the separate strategic direction to ensure respect for human rights in business. In its §16 on BHR "**Ensuring adherence to human rights in the process of conducting economic activities**", the NHRS determinates the BHR-related strategic goal of activities, problems to be solved, tasks for achieving the strategic goal as well as the expected results and the main indicators to measure the efficiency of the efforts applied.

Briefly on the above-named parameters:

Strategic goal – business entities apply a human rights-based approach when conducting economic activities; victims of business-related abuses have access to effective legal remedies.

The problem to solve – cases of business-related human rights abuses in labour relations, protection of personal data, consumer rights, environment, etc.

Tasks to achieve the strategic goal –

- i) to implement the UNGPs and the Recommendation of the CoE Committee of Ministers to member states CM/Rec (2016)3 on human rights and business;
- ii) to strengthen the capacity of state authorities and local self-government bodies;

68 National Strategy on Human Rights, approved by the Decree of the President of Ukraine No. 119/2021 of 24.03.2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>

- iii) to raise awareness of business entities and their associations, trade unions, and other CSOs and promote updating of corporate policies on labour relations, corporate social responsibility, protection of environment, personal data, consumer rights, corruption prevention, combating trafficking in human beings, etc.;
- iv) to provide citizens with access to judicial and non-judicial human rights remedies in cases of abuses that occur during the economic activities.

Expected results –

- i) compliance of the Ukrainian legislation and state policy with the BHR standards and norms;
- ii) integration of respect for human rights to corporate policies of business entities;
- iii) access to judicial and non-judicial means to protect human rights in cases of business-related abuses.

Main indicators:

- i) share of business entities that have updated policies with regard to the UNGPs;
- ii) number of complaints to authorized state authorities concerning the business-related human rights abuses;
- iii) level of awareness of business entities and their associations, trade unions, and other CSOs about the UNGPs;
- iv) share of employers registered in the Social Protection Fund for Persons with Disabilities;
- v) share of employers who fulfil the standard of workplaces for the employment of persons with disabilities and of those who paid administrative and economic sanctions for failure to ensure this standard, provided for in Article 19 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine";
- vi) share of specifically adapted buses for transportation of persons with disabilities, primarily those using wheelchairs.

SHORTCOMINGS OF THE BHR INTEGRATION IN THE NHRS

With a general appreciation of integration of the BHR-related strategic direction in the NHRS, it is evident that the content of §16 on BHR does not precisely reflect and implement the UNGPs' provisions. Moreover, it has a number of inherent shortcomings:

- The wording of the strategic goal of realisation of §16 is characterized by the unreasonable gap – the Pillar I "The State duty to protect human rights" is practically left aside. This way it appears that the State withdrew from fulfilment of its relevant duties, and the focus is on the corporate responsibility to respect human rights (Pillar II) and on access to remedies (Pillar III). This wrong approach influences the content of tasks, expected results and main indicators, the content of the Action Plan for the NHRS realisation.
- There is the evident lack of the systemic and comprehensive approach to problem solving – the UNGPs' and the CoE Committee of Ministers recommendations to integrate the BHR into the national policy and law by means of implementing the Action Plan on BHR are ignored.
- While the problem to solve is defined clearly and objectively, the determined tasks, expected results and main indicators are not harmonized between each other, some are worded narrow, others – in a very general or, on the opposite, rather specific way, and all together they do not provide for the proper problem resolution.

In particular,

- There are no determined tasks to review and improve the state policy and legislation to make them compatible with the UNGPs, but it is expected that they comply with the BHR standards and norms.
- In the wording of the problem, some areas of possible business-related human rights abuses are named, but in the expected results there are no references to specific sectoral policies and legislation which should comply with the UNGPs.
 - i) The task and the expected result on updating corporate policies with regard to the UNGPs are not presented in as substantive manner as needed – integrating the BHR approach to corporate policies will not directly bring to absence of cases of business-related human rights abuses. It is necessary that business entities ensure the practical application of the updated corporate policies; the State should deal with those who respect human rights for all persons, not just declare the intentions to behave pro-BHR.
 - ii) The task on access to remedies foresees that only citizens of Ukraine are in focus of human rights protection, however, in the territory of Ukraine there are also undocumented Roma people, stateless persons and asylum seekers, amongst others, who can become victims of business-related human rights abuses (e.g. forced and undeclared labour, improper working conditions, gender, race, nationality or religion-motivated discrimination, etc.) and due to the law should be provided with access to justice and remedies to protect their rights.
 - iii) The task on access to remedies is 99% mirrored in the relevant expected result, not providing in the latter any references to expected improvements in the judicial and legal aid system reforms, development of state-based non-judicial grievance mechanisms, or non-state based mechanisms of dispute settlement at business operational level, or means of alternative dispute resolution (ADR), etc.
 - iv) The set of the main indicators should be made more operationalizable as there are no references – neither in the tasks nor in the expected results – to the oversight or monitoring, to a body or agency responsible for checking how these indicators are reached, etc. The main indicators referring to the protection of human rights of persons with disabilities are important but very specific. The last one, as it seems, could better fit to the implementation of the National Strategy for Creation of a Barrier-Free Space in Ukraine for the period until 2030. If to follow the approach of specification of the indicators, there could also occur the needs of other vulnerable groups or categories of population, including – with regard to the war hostilities – IDPs, veterans, families of military men, etc.

BHR IMPLEMENTATION WEAKNESS – THE ACTION PLAN TO THE NHRS

The shortcomings of the content of §16 on BHR of the NHRS are supplemented by the unfavourable approach of the GoU towards ensuring of its implementation. The Action Plan on realisation of the NHRS for 2021 – 2023 (Action Plan) is close to being the BHR-blind – it foresees only one activity on implementing §16 on BHR.

It was planned to conduct up to February 2022 the study on best practices for implementing the UNGPs, Ten Principles of the UN Global Compact, and the CoE Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business.

The Ministry of Justice, the Ministry of Economy, the Parliamentary Commissioner for Human Rights being a Ukrainian national human rights institution (NHRI) (on consent) were authorised to conduct the study and submit the proposals based on its results to the Cabinet of Ministers of Ukraine (item 59). No other activities, including the follow-up steps in concern to the study, were planned.

The Action Plan does not define the systemic parameters for the complex implementation of the strategic direction on BHR fixed in §16. It does not determine:

- i) the state authority responsible for the BHR strategic goal realisation;
- ii) specific activities and the timeframe to fulfil all the defined tasks and to get all the designated expected results based on the specified main indicators;
- iii) the list of authorities and stakeholders to be involved in the efforts to realise each of the activities and in evaluation of results;
- iv) particular resources and funds to be provided for the activities, etc.

On the whole, it is far from National Action Plans on BHR (NAPs) which have been adopted and are being adopted (following the UN (UNWG on BHR), CoE and EU recommendations and guidelines) and realised in the European countries and globally.

Generally, the current NHRS's Action Plan defines the parameters of: i) activities, ii) planned period, iii) responsible bodies, and iv) indicators of activities' realisation. The general frames of delivery of responsibility to state power bodies concerning the Action Plan realisation are provided by the GoU Order "On the approval of the Action Plan on Realisation of the National Strategy on Human Rights for 2021-2023" of 2021⁶⁹. In particular, it is established that the ministries and other state power bodies responsible for realisation of the Action Plan should:

- i) ensure its realisation within the limits of the relevant budget allocations, as well as at the expense of funds from international technical assistance and other sources not prohibited by law;
- ii) make the relevant information public on the unified (single) e-Government web portal and on their own official websites.

NHRS PROGRESS EVALUATION – THE NEED FOR A STAND-ALONE NAP ON BHR

The Ministry of Justice (MoJ) is authorised to ensure the monitoring of realisation of the Action Plan on the unified e-Government web portal. It is obliged every year by 20 July and by 20 February to inform the President of Ukraine and the GoU about the status of realisation of the Action Plan and to publish the information on its own official website. Every year until 1 April the MoJ is obliged to hold a public discussion of the progress of the NHRS implementation and the results of the Action Plan realisation for the previous year. Representatives of the responsible state authorities, local self-government bodies, the Parliamentary Commissioner for Human Rights (NHRI), CSOs, scientific institutions, international organizations and other interested parties should be involved. In addition, following part 5 of the NHRS and the GoU Resolution of 2021⁷⁰, the Interdepartmental Working Group (IWG) to assess the progress of the NHRS implementation was formed as a temporary advisory body under the GoU. The Chair of the IWG is the Deputy Minister of Justice of Ukraine on European Integration. The main tasks of the IWG are defined as follows:

- i) monitoring and evaluation of the progress of the NHRS implementation;
- ii) analysing the status of implementation and the causes of problems in the field of human rights;
- iii) preparing proposals and recommendations concerning the activities necessary to provide for the effective implementation of the NHRS and fulfilment of Ukraine's obligations to ensure and protect human rights and freedoms in accordance with the Constitution of Ukraine, international and European standards on human rights.

69 On the Approval of the Action Plan on Realisation of the National Strategy on Human Rights for 2021-2023: Order of the Cabinet of Ministers of Ukraine No. 756-p of 23.06.2021. URL: https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80?find=1&text=%D0%BA%D0%B5%D1%80%D1%96%D0%B2%D0%BD#w1_1

70 On the Formation of the Interdepartmental Working Group for the Evaluation of the Progress of the Implementation of the National Strategy on Human Rights: Resolution of the Cabinet of Ministers of Ukraine No. 516 of 12.05.2021. URL: <https://zakon.rada.gov.ua/laws/show/516-2021-%D0%BF#Text>

According to the brief information of the MoJ, three meetings of the IWG were held by September 2022. At the third meeting of 30.06.2022, the Methodology for assessing the progress of the NHRS implementation and the Analytical Report on the status of its implementation in 2021 were approved⁷¹.

Nothing was mentioned in the Analytical report about realisation of the BHR principles in general and the BHR chapter in particular. There is no information about the IWG proposals and recommendations on the activities necessary to provide for the effective implementation of the BHR principles in the NHRS and the BHR chapter.

The MoJ and the GoU would benefit from improvement of the NHRS progress evaluation mechanism – the IWG working methods and its interaction with the GoU and business as duty bearers, with the population of Ukraine as rights-holders. The IWG should be helpful to define and assess success and shortcomings and to further update, when needed, the Action Plan itself and necessary resources, allocations including, for its implementation. The IWG should serve to advancement of accountability of the responsible bodies and other actors before the GoU and of the GoU – before the population of Ukraine as rights-holders and tax-payers.

On the whole, adoption and realisation of a standalone NAP on BHR as recommended by the UNWG on BHR in its specific Guidance on NAPs of 2016⁷² would be much more instrumental for implementation of the UNGPs in Ukraine. The Guidance defines a NAP as an evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UNGPs. According to it, the fourth criteria indispensable for effective NAPs is that the NAP processes need to be reviewed and updated on a regular basis. They must respond to changing contexts and strive for cumulative progress.

The GoU may also find it useful to study and apply recommendations on a NAP provided by the Danish Institute for Human Rights⁷³ and, especially, by the UNDP in its 2021 Study on Business and Human Rights in Ukraine⁷⁴ referred to in the above sections of this Study.

2.1.2. ASSESSMENT OF THE CURRENT STATUS OF IMPLEMENTING THE BHR CHAPTER OF THE NHRS ON THE BASIS OF THE GOU MONITORING AND BEYOND

PROGRESS OF THE BHR CHAPTER OF THE NHRS IMPLEMENTATION – GOU MONITORING

As mentioned in the above subparagraph, the Action Plan on realization of the NHRS for the period 2021 – 2023 (Action Plan) foresees in its item 59 only one activity on implementing §16 on BHR – research of best practices for implementing the UNGPs, Ten Principles of the UN Global Compact, and the Recommendation of the CoE Committee of Ministers CM/Rec(2016)3 on human rights and business. The MoJ, the Ministry of Economy, the Verkhovna Rada of Ukraine Commissioner for Human Rights (on consent) are authorised to conduct the research and submit the proposals based on the results of the study to the GoU within the timeframe of February 2022.

71 IWG Meeting of 30.06.2022. URL: <https://minjust.gov.ua/m/zasidannya-vid-30062022>; Analytical Report on the status of implementation of the National Human Rights Strategy in 2021. URL: <https://minjust.gov.ua/files/general/2022/07/07/20220707113050-68.pdf>; Methodology for evaluating the progress of implementation of the National Human Rights Strategy, approved by the Minutes of the meeting of the Interdepartmental working group on conducting the assessment of the progress of the NHRS implementation No. 3 of 30.06.2022. URL: <https://minjust.gov.ua/files/general/2022/07/07/20220707113049-76.pdf>

72 Guidance on National Action Plans on Business and Human Rights, UN Working Group on Business and Human Rights (2016). URL: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf

73 National Action Plans on Business and Human Rights: Toolkit – 2017 edition. URL: <https://www.humanrights.dk/publications/national-action-plans-business-human-rights-toolkit-2017-edition>

74 Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights, UNDP Study of 2021, published in 2022. URL: <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

The MoJ, due to the Decree of the President of Ukraine on the NHRS of 2021⁷⁵, collects the information about the fulfilment of the Action Plan by responsible authorities and makes it public on its own official web-site⁷⁶. There are two monitoring reports for 2021 and one for the 1st half of 2022 and the Analytical report on the status of the NHRS implementation in 2021⁷⁷.

When it comes to §16 on BHR, the Analytical report provides for the distinct information of no actions taken in 2021 to reach the strategic goals defined for its implementation. At the same time, one of the main indicators – the number of complaints concerning the business-related human rights abuses which were sent to authorized state power bodies – proves the urgency of the UNGPs' implementation: the Parliamentary Commissioner for Human Rights (NHRI) reports about 5,422 complaints in 2021.

Alongside, the Analytical report points out to "a perspective direction of the UNGPs implementation in Ukraine" which, as stated, could be:

- 1) *either the development of a comprehensive national plan; or*
- 2) *the development of comprehensive legislative changes".*

As mentioned, these changes can concentrate, *inter alia*, on the following:

- Introduction of business entities' obligations to:
 - a) Conduct the "human rights due diligence";
 - b) Develop their policies on human rights, monitor their implementation and publicly report on the monitoring results (in particular, in the fields of labour relations, environmental protection, corporate social responsibility, personal data and consumer rights protection, prevention of corruption, combating human trafficking, etc.);
- Introduction of factors related to compliance with standards on human rights in public procurement, in the course of provision of state aid to business entities, in other cases of obtaining economic preferences from the state;
- Introduction of procedural guarantees of respect for human rights in business, in particular, non-judicial, which would allow to resolve the BHR-related conflicts;
- Awareness-raising activities – distribution in the business environment, with involvement of relevant stakeholders, of information about the importance to respect human rights in business.

The above-mentioned areas of activities on the UNGPs implementation are the basic ones in Ukraine and globally. Their efficient realisation depends on the interaction between the State, business and civil society thoroughly planned, coordinated and supported by sufficient resources. Though, regretfully, §16 on BHR of the NHRS does not provide for the strategic goal defining the State's duty to protect human rights in economic relations.

The second approach to ensuring the UNGPs implementation in Ukraine proposed in the Analytical report, which is the development of comprehensive legislative changes, is definitely narrow, not systemic, and will not lead to the expected results. The development of the BHR-corresponding legislative changes is only one of many instruments of the UNGPs implementation. Moreover, the development of any legislation is only the start; the legislative initiatives should be adopted by the State authorities and properly introduced in practice to ensure the expected outcomes of the legislative activity and meet the needs of the society.

75 National Strategy in the Field of Human Rights, approved by the Decree of the President of Ukraine No. 119/2021 of 24.03.2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>

76 Fulfilment of the Action Plan on realization of the National Strategy on Human Rights for the period of 2021 – 2023. URL: <https://minjust.gov.ua/m/vikonannya-planu-diy-z-realizatsii-natsionalnoi-strategii-u-sferi-prav-lyudini-na-2021-2023-roki>

77 Analytical Report on the status of implementation of the National Human Rights Strategy in 2021. URL: <https://minjust.gov.ua/files/gener-al/2022/07/07/20220707113050-68.pdf>

The first of the mentioned approaches – the development and **realisation** (should be added) of the comprehensive national **action** plan on the UNGPs implementation is the one recommended by the UN, CoE and EU. The Guidance on National Action Plans on BHR of 2016 elaborated by the UN Working Group on BHR⁷⁸ should be referred to.

The monitoring report for the 1st half of 2022 informs about the status of realisation of 28 activities which concern various strategic directions of the NHRS; 13 of them are reported as fulfilled, 1 – as partly fulfilled. It reports that the planned in item 59 study of best practices for implementing the UNGPs, Ten Principles of the UN Global Compact, and the Recommendation of the CoE Committee of Ministers CM/Rec(2016)3 is conducted and proposals based on the results of the study are submitted to the GoU in due time with the official letter of the MoJ No. 23901/4/4-22 of 25.02.2022⁷⁹. However, at present, no information about the content of the study and the MoJ's proposals submitted to the GoU is available to the public. According to an informant from the MoJ – a MoJ state expert of the expert group on human rights, the MoJ proposed to the GoU to develop a roadmap for the further implementation of the UNGPs in Ukraine and to identify which of the central executive power bodies would be authorized to develop on this NHRS' strategic direction.

However, there is no public information on the e-Government web portal about the GoU's considerations concerning the aforementioned proposals and governmental decisions on the further steps for realisation of §16 on BHR of the NHRS, which is supposed to ensure the implementation of the UNGPs. Thus, it is hardly possible to assess the efficiency of the work done in the light of the UNGPs implementation.

Given the mandate of the IWG envisaged by the Regulations on its functioning approved by the GoU⁸⁰, probably, it could be helpful that accurate proposals and recommendations for the activities to ensure implementation of the NHRS §16 on BHR are discussed and promoted at the GoU level at its next meetings.

PROGRESS OF THE NHRS IMPLEMENTATION IN THE BHR-TANGENT AREAS – GOU MONITORING

At the same time, it is expedient **to move beyond the modest frames of item 59 of the Action Plan** and refer to assessment of realisation of some other strategic directions (numbered in the subsequent paragraphs) of the NHRS in the light of the UNGPs. A number of them can be intertwined with the strategic direction of §16 on ensuring human rights in economic activities, in particular:

- labour rights and social protection (§13);
- ecological rights (§15) when it concerns the negative ecological impact of business operation;
- right to a fair trial (§4) and the legal aid in cases of business-related human rights abuses;
- prevention and counteraction of discrimination (§8) and equal rights and opportunities for women and men (§9) when it concerns realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights;
- gender-based violence, exploitation, human trafficking (§10);
- rights of foreigners and stateless persons (§19) when it concerns their realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights;
- rights of internally displaced persons (§21) when it concerns their realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights;

78 UN Working Group on Business and Human Rights. Guidance on National Action Plans on Business and Human Rights, 2016. URL: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf

79 Fulfilment of the Action Plan on Realization of the National Strategy on Human Rights for the first half of 2022. URL: <https://minjust.gov.ua/files/genera/2022/07/20/20220720102911-75.pdf>

80 On the Formation of the Interdepartmental Working Group for the Evaluation of the Progress of the Implementation of the National Strategy on Human Rights: Resolution of the Cabinet of Ministers of Ukraine No. 516 of 12.05.2021. URL: <https://zakon.rada.gov.ua/laws/show/516-2021-%D0%BF#Text>

- rights of persons living in the temporarily occupied territory of Ukraine (§22) when it concerns their realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights;
- raising awareness of human rights (§27) in concern to the BHR.

The study of the **NHRS implementation results, based on the MoJ monitoring reports of 2021 – 2022**⁸¹ in the mentioned strategic directions and connected with the BHR principles provides for the following summary:

- **Labour rights and social protection** (§13, which is connected here with §8)

Following item 31 of the Action Plan, in 2022, the MoJ developed and submitted to the GoU the draft law on imposing on the employer the obligation to prove in court the legality of his/her decision, action or omission in cases of discrimination in the field of labour relations; the draft law is not registered in the Parliament up to now.

Following item 48 of the Action Plan, in 2022, the Ministry of Economy in cooperation with the National Mediation and Conciliation Service and Joint representative bodies of the all-Ukrainian associations of trade unions and employers jointly develop the draft new version of the Law of Ukraine "On the procedure for resolving collective labour disputes (conflicts)" in terms of improving the procedure for regulating the resolution of collective labour disputes, as well as the procedure for conducting a strike. The draft law is expected to be submitted to the GoU.

- **Prevention and counteraction of discrimination** (§8) **and gender-based violence, exploitation, human trafficking** (§10)

Following item 28 of the Action Plan, in 2021, the draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offences and to the Criminal Code of Ukraine on Combating Manifestations of Discrimination" was developed and registered in the Parliament of Ukraine (registration No. 5488 of 13.05.2021⁸²) – the draft law is aimed to resolve the issue of unification of the notion and the legal term "intolerance" and of specification of the norms of Article 161 of the Criminal Code of Ukraine "Violation of the equality of citizens depending on their racial, national, regional affiliation, religious beliefs, disability and other characteristics".

Though, the above-mentioned draft law does not provide for regulation of characteristics of a person affected by human trafficking, as well as the definition of forms of sexual violence, in particular, committed in conditions of the armed conflict, etc.

Following item 36 of the Action Plan, in 2021, the Ministry of Social Policy elaborated the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improvement of the Procedure for Establishing the Status of a Victim of Human Trafficking". Its provisions are included into the draft law on authorities of local power bodies with regard to establishing of the National Social Service Agency (registration No. 5849 of 13.08.2021⁸³) registered in the Parliament, which amends the Law of Ukraine "On Combating Human Trafficking" and provides for the granting of relevant authorities to local self-government bodies.

81 Fulfilment of the Action Plan on realization of the National Strategy on Human Rights for the first half of 2021. URL: <https://minjust.gov.ua/files/general/2021/07/20/20210720095724-25.pdf>; Fulfilment of the Action Plan on realization of the National Strategy on Human Rights for the second half of 2021. URL: <https://minjust.gov.ua/files/general/2022/07/07/20220707113050-19.pdf>; Fulfilment of the Action Plan on realization of the National Strategy on Human Rights for the first half of 2022. URL: <https://minjust.gov.ua/files/general/2022/07/20/20220720102911-75.pdf>

82 On Amendments to the Code of Ukraine on Administrative Offences and to the Criminal Code of Ukraine on Combating Manifestations of Discrimination: draft Law of Ukraine No. 5488 of 13.05.2021. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/26573>

83 On Amendments to Certain Legislative Acts of Ukraine on the Delimitation of Functions between the Executive Power Bodies and Local Self-Government Bodies on Issues of Social Protection of the Population and Protection of Children's Rights in Connection with the Formation of the National Social Service Agency and its Territorial Bodies: Draft Law No. 5849 of 13.08.2021. URL: <https://itd.rada.gov.ua/billInfo/Bills/searchResults>

□ Raising awareness of human rights (§27) more or less in concern to the BHR

Following item 95 of the Action Plan on dissemination of information and educational work on human rights and freedoms, mechanisms of their implementation, protection and restoration, in 2022 the MoJ in cooperation with the Ministry of Culture and Information Policy and the Coordinating Centre for Legal Aid prepared, released and disseminated the information materials (booklets and leaflets) "Free legal aid: legal aid guaranteed by the state"; "Labour rights and guarantees under the martial law"; "Labour rights of servicemen and members of the territorial defence units"; "Terms, purpose, duration and amount of unemployment benefits"; "Social assistance in the conditions of the martial law"; "Category "internally displaced person": about the legal aid and social payments from the State"; "Financial issues under the martial law"; "Mediation: to settle the conflict (dispute) outside the court".

According on the published MoJ monitoring, since the adoption of the NHRS in March 2021 up to the middle of 2022 no actions have been taken by the governmental executive power bodies and their mentioned in the Action Plan cooperation partners to protect ecological rights (§15) when it concerns the negative ecological impact of business operation; the right to a fair trial and the legal aid (§4) in cases of business-related human rights abuses; equal rights and opportunities for women and men (§9), rights of foreigners and stateless persons (§19), rights of internally displaced persons (§21), rights of people living in the temporarily occupied territory of Ukraine (§22) when it concerns their realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights.

ONGOING BHR-RELATED LEGISLATIVE INITIATIVES – BEYOND THE GOU MONITORING

However, there are many relevant legislative initiatives that are submitted by both Members of the Parliament (MPs) and the GoU and registered in the Parliament and are under its consideration, recently adopted laws and by-laws that concern the abovementioned BHR-related strategic directions of the NHRS.

They concern the implementation of the BHR principles in various areas and can be attached to realisation of different BHR-related chapters of the NHRS. In particular, they concern the issues of:

- Human rights in economic activities (§16) – on protection of consumer rights; on public-private partnership; on electronic public services; on insurance; on financial services, etc.;
- Right to a fair trial and the legal aid (§4) in cases of business-related human rights abuses – on access to court decisions; on judicial control over the execution of court decisions in economic and civil justice; on activity of arbitration courts; on court fees; on execution of a court decision on securing a claim; on execution of judgements of the ECHR, etc.;
- Prevention and counteraction of discrimination (§8) – on elimination of discrimination against self-employed women; on combating discrimination in the field of insurance; on countering the direct or indirect discrimination and intolerance against individuals and groups of individuals; on combating gender-based discrimination in advertising, etc.;
- Ecological rights (§15) when it concerns the negative ecological impact of business operation – on the State environmental control; on introduction of liability for violations of the strategic environmental assessment procedure; on environmental insurance and guarantees of compensation for damage caused by activities of the increased environmental hazard; on waste management; on environmental activities and civil protection for the period of the martial law and the reconstruction period, etc.;

- Rights of internally displaced persons (§21) when it concerns their realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights – on improvement of ensuring the rights and freedoms of internally displaced persons; on exemption of certain categories of internally displaced persons from the negative consequences of non-fulfilment of monetary obligations under credit and loan agreements, etc.;
- Rights of foreigners and stateless persons (§19) when it concerns their realisation of human rights in economic (incl. labour) relations – on recognition of a stateless person; on improvement of the Law on legal status of foreigners and stateless persons.

The list of selected BHR and the NHRS-corresponding draft laws and laws also adopted after the updating of the NHRS of 2021 is given in Annex 2 to this Study.

In sum, the proposed above additional analytical review of the current law-making perspective in the BHR-tangible areas reveals the shortcomings of the MoJ monitoring of the NHRS implementation. It also proves the expediency to review the approach to the monitoring based on the overview of the relevant law-drafting activities. Moreover, it is not enough to concentrate such monitoring on the GoU law-making only. Without the information about the Parliament's contribution in ensuring the BHR principles, the monitoring does not provide the holistic panorama of the efforts taken by the State power bodies to realise the State's duty to protect human rights in business and in other areas of public and private relations by means of providing the grounds for exercising the human rights in Ukraine. Also, without the information about the relevant activities of business entities and civil society organisations (stakeholders), that use the legal norms adopted by the Parliament and the GoU in their everyday life and work, the monitoring would not provide the adequate proofs of the practical results of the NHRS' implementation and would not feed the further developments.

2.2. RECOMMENDATIONS AND SUGGESTIONS ON IMPROVEMENT OF THE CHAPTER ON BHR OF THE NHRS AND THE RELEVANT PART OF THE ACTION PLAN ON ITS REALISATION

2.2.1. IMPROVEMENT OF THE CONTENT OF THE CHAPTER ON BHR OF THE NHRS

As described in the above subchapter 2.1.1. “The BHR chapter of the current National Human Rights Strategy: overview and shortcomings”, the analysis of the content of the strategic direction of the NHRS outlined in §16 “Ensuring the respect for human rights in economic activities” revealed its shortcomings.

Provided we concentrate on improvements of the current NHRS and should take into account the adopted general structure of paragraphs outlining its strategic directions, it is reasonable to consider some recommendations and suggestions to the specific parts of §16 on BHR of the NHRS:

- the part “**The strategic goal**” (1st),
- the part “**Problem to solve**” (2nd),
- the part “**Tasks directed at achievement the goal**” (3rd),
- the part “**The expected results**” (4th), and
- the part “**Main indicators**” (5th).

In general, to introduce the improvements, it is expedient to eliminate the conceptual gap and bring the content of §16 in compatibility with the basic values of the UNGPs and, foremost, – with the enhanced perception of the UNGPs’ high topicality that has been formed in the course of a decade of their implementation. The UN Working Group on BHR reports that after 10 years “The UNGPs provide the authoritative framework and a key tool for States and businesses to avoid reverting to business as usual, but to forge a new and better normal that prioritizes respect for people and the environment – supported by other stakeholders and inclusive multilateralism”⁸⁴.

84 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 (A/HRC/47/39), 2021. URL: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf>

1. Firstly, it is necessary to improve the wording of **“The strategic goal”** of realisation of §16. For it is irrational to rely on business only in the matter of protecting human rights from abuses caused by business itself. The UN Working Group on BHR underlines that “the decade of the UNGPs implementation has underscored the point made in the UNGPs: voluntary approaches alone are not enough. The rise of mandatory measures will undoubtedly accelerate both uptake and progress”⁸⁵.

The wording of the strategic goal should include the provision reflecting the idea of the principles of the UNGPs Pillar I “The State duty to protect human rights”, especially, fundamental Principle 1, in addition to the 2 mentioned sub-goals. No doubt, the underlined State’s role in ensuring human rights in business is especially important in the wartime context and will not be less important during the post-war recovery and reconciliation.

The following formulation of the strategic goal of realisation of the strategic direction on BHR of the NHRS could be recommended (the proposed amendments are in Italics):

“Strategic goal – **the State takes appropriate steps to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication**; business entities apply an approach based on respect for human rights when conducting their economic activities; victims of business-related human rights abuses have access to effective **judicial and non-judicial remedies**”.

It is absolutely evident that the distinct addressing to the role of the State in ensuring human rights in business meets the direct State’s responsibility to ensure the relevant provisions on human rights, outlined in Chapter I “General Principles” and in Chapter II “Human and Citizens’ Rights, Freedoms and Duties” of the Constitution of Ukraine⁸⁶.

Addressing to the role of the State will provide for the frame to overcome the existing disadvantages on the way to protect human rights in business:

- a) inconsistency in activities of bodies of different branches and levels of the State power;
- b) lack of policy coherence within the State;
- c) bottle-necks in coordination of allocation and use of the State resources, the provided technical assistance and contribution of the stakeholders, etc.

Implementation of a combination of these factors would secure that all national general and sectoral policies (which are implemented into the regional and local ones) are intertwined through the common goal of the human-centred development and provided the necessary political, legislative, judicial, public and resource support. Important to consider, that the key standards of the UNGPs are explicitly introduced into the Sustainable Development Goals, in the context of the Paris Agreement, the EU-Ukraine Association Agreement and many other pertinent international treaties and instruments of their implementation.

Clarification about the remedies “judicial and non-judicial” widens the perspective for understanding the role of the State and non-State actors, including business itself, in this dimension of human rights protection against the diverse negative impacts of business.

85 Ibid.

86 Constitution of Ukraine: Law of Ukraine No. 254к/96-BP of 28.06.1996. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

2. Secondly, part 2 **“Problem to solve”**. The wording of this part – “cases of business-related human rights abuses in labour relations, protection of personal data, consumer rights, environment, etc.” – is fully acceptable to our mind. It reflects the actual problem of human rights abuses by business entities, which should be overcome with the help of the BHR chapter of the NHRS.

Yet, all in all, the problem of business-related human rights abuses is the result of a complex of interconnected problems, which the NHRS on the whole and the BHR chapter, in particular, should address. They include:

- i) weak policy cohesion;
- ii) inconsistency in activities of bodies of different branches and levels of the State power;
- iii) legislative gaps and non-compatibility with the relevant European norms and standards;
- iv) lack of capacity and awareness of all relevant stakeholders;
- v) lack of accountability of the state power bodies and business;
- vi) lack of institutional and financial resources.

3. Thirdly, part 3 **“Tasks directed at achievement the goal”** is recommended to review on the basis of remarks provided in subchapter 2.1.1. of this research.

The first of the tasks mentioned in §16 – “to implement the UNGPs and the Recommendation CM/Rec (2016)3 of the CoE Committee of Ministers on human rights and business” – is the general one. Tasks that follow actually outline the subtasks as the means to fulfil the first one.

So, it can be worded like (the proposed amendment is *in Italics*): “to implement the UNGPs and the Recommendation CM/Rec (2016)3 of the CoE Committee of Ministers on human rights and business, *and for this: [...]*”, then the enumerated subtasks can be presented.

The subtask “to strengthen the capacity of the State authorities and local self-government bodies” is really practical as it means that they strengthen their ability or the amount of the necessary ability to become more powerful and secure, or more likely to succeed in their work⁸⁷. The wording of this subtask lacks the specifics related to the kinds of BHR-corresponding activities for realisation of which the strengthened capacity is needed.

According to the UNGPs Pillar I “The State duty to protect human rights” fundamental Principle 1 and the amendment to the formulation of the strategic goal suggested above, it is reasonable to similarly amend the wording of this subtask (the proposed amendment is *in Italics*) like: “to strengthen the capacity of the State authorities and local self-government bodies *to prevent, investigate, punish and redress business-related human rights abuses through effective policies, legislation, regulations and adjudication*”.

Such formulation of this subtask will correspond with the first mentioned expected result “the ensured compliance of the Ukrainian legislation and the State policy with the standards of ensuring human rights and their protection in case of business-related human rights abuses”.

The next subtask mentioned in §16 “to raise awareness of business entities and their associations, trade unions, and other CSOs and promote updating of corporate policies on labour relations, corporate social responsibility, protection of environment, personal data, consumer rights, corruption prevention, combating human trafficking, etc.”, in our opinion, is reasonable to be divided into two separate parts that concern: a) awareness raising for all stakeholders, and b) the BHR-oriented corporate policies.

87 See the interpretation of the words “strengthen” and “capacity” in the Collins dictionary. URL: <https://www.collinsdictionary.com/dictionary/english/strengthen-the-capacity-of>

Having this in mind, it is important to: a) widen the stakeholders' circle with academia because it cannot be referred to the mentioned civil society organisations, whereas the UNGPs refer to its potential in BHR promotion, development and implementation; b) make accent in the course of the awareness raising on the benefits of the BHR-approach and ways of the UNGPs' implementation; c) focus not only on promotion of mere updating the corporate policies but updating with regard to the human rights due diligence, and as well – what is missing – on their realisation.

The recommended wording of the two separate subtasks is as follows (the proposed amendments are *in Italics*):

- “to raise awareness of business entities and their associations, trade unions, other CSOs and *academia on the business and human rights principles, benefits and ways of their implementation*”;
- “to promote updating and realisation of corporate policies in the fields of labour relations, corporate social responsibility, protection of environment, personal data, consumer rights, corruption prevention, combating human trafficking, etc., *in which the human rights due diligence is appropriately integrated.*”

The subtask on the mere “updating corporate policies” with regard to the UNGPs will not directly bring to solving the problem referred to in §16 – to absence of cases of business-related human rights abuses. It is necessary that business entities ensure the practical application of the updated corporate policies and integration of the current EU legislative initiatives and European practice on exercising human rights due diligence to identify, prevent and mitigate adverse impacts of economic activities and to account for how they (business entities) address such impacts. The well-rooted practice of human rights due diligence would be instrumental to implement the business models that do not undermine human rights.

The task and interest of the State should be to deal with those business entities that respect human rights, not just declare the intentions to behave pro-BHR or resort to the corporate philanthropy when it is beneficial for getting privileges of profits from the State. The heightened human rights due diligence, following the UNGPs principle 7, should be promoted by the State and applied by business entities in the context of war time and post-war recovery.

The expected result relevant to this subtask should be formulated accordingly.

The next subtask – “to provide citizens with access to judicial and non-judicial human rights remedies in cases of abuses that occur during the economic activities” should not be focused on access to remedies guaranteed to citizens of Ukraine only. Its scope should be widened and cover also undocumented Roma people, stateless persons and asylum seekers who live in Ukraine and can become victims of business-related human rights abuses (e.g. forced and undeclared labour, improper working conditions, gender, race, nationality or religion-motivated discrimination, etc.). Due to Ukraine's international commitments and obligations as well as the domestic law they should be provided with access to justice and remedies to protect their rights.

The recommended wording of this subtask is as follows (the proposed amendment is *in Italics*):

- “to provide citizens and *individuals-residents* with access to judicial and non-judicial human rights remedies in cases of abuses that occur during the economic activities”.

The term “**individuals-residents**” is used in the meaning of clause 14.1.213 of Article 14 of the Tax Code of Ukraine No. 2755-VI of 02.12.2010 – “an individual-resident – an individual who has a place of residence in Ukraine. If an individual also has a place of residence in a foreign country, he/she is considered a resident, if such a person has a place of permanent residence in Ukraine; if an individual has a place of permanent residence also in a foreign country, he/she is considered a resident if he/she has closer personal or economic ties (centre of vital interests) in Ukraine.

If it is impossible to determine the state, in which an individual has a centre of vital interests, or if an individual does not have a place of permanent residence in any of the states, he/she is considered a resident if he/she stays in Ukraine for at least 183 days (including the day of arrival and departure) during the period or periods of the tax year”⁸⁸.

4. Fourthly, it is necessary to improve the 4th part “**Expected results**” in order to harmonise its content with the content of strategic goal, problem to solve and tasks to achieve the goal.

The expected result 1 of §16 – “The ensured compliance of the Ukrainian legislation and the State policy with the standards of ensuring human rights and of their protection in case of business-related human rights abuses” – this will be expedient, provided there is the relevant task as suggested above. Moreover, it would be useful to amend this wording in order to provide the compatibility with the problem to solve established in §16; namely, to mention the areas of legislative and policy improvements – labour relations, protection of personal data, protection of consumer rights, protection of environment, etc.

At the same time, as the UN Working Group on BHR reports, “the experience of many decades has demonstrated that introduction of legal measures is essential but not sufficient to ensure business respect for human rights”⁸⁹. Thus, as it is considered, the State should ensure the appropriate implementation of the legislation and policy through the smart public governance based on accountability and democratic participation, smart public administration (characterised by at least five dimensions – technological, political-participatory, legal, subjective, and structural⁹⁰), supported by sufficient capacities and resources. The oversight and regular monitoring of implementation of the BHR-oriented policies and legislation should be provided.

The expected result 2 of §16 –

- 1) In accordance with the subtask on the stakeholder’s awareness raising, it is reasonable to determine a special expected result. Its wording can be as follows: “*business entities and their associations, trade unions, other CSOs and academia practice and promote the business and human rights principles, take the meaningful part in decision-making at the state and local levels to implement the UNGPs*”.

The UN Working Group on BHR underlines that efforts to promote implementation of the UNGPs help “bringing stakeholders together to learn from each other and to generate the diversity of responses that the complex nature of business and human rights requires”⁹¹.

- 2) In accordance with the amended subtask on updating corporate policies, the suggested wording is as follows (the proposed amendments are *in Italics*): “*business entities have implemented the corporate policies that regard the respect for human rights and provide for the exercise of human rights due diligence in accordance with the State policy and legislation based on the relevant EU law and best practice*”.

Such wording would help eliminate disconnection between the BHR-based improvements of the State policy and legislation and human rights due diligence in business practice.

88 Tax Code of Ukraine No. 2755-VI of 02.12.2010. URL: <https://zakon.rada.gov.ua/laws/show/2755-17#Text>

89 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 (A/HRC/47/39), 2021. URL: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGP10/Stocktaking-reader-friendly.pdf>

90 Gielda M., Dimensions of Smart Administration, Wroclaw Review of Law, Administration & Economics Vol 9:2, 2019. URL: https://repozytorium.uni.wroc.pl/Content/128800/PDF/4_Gielda_M_Dimensions_of_Smart_Administration.pdf

91 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 (A/HRC/47/39), 2021. URL: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGP10/Stocktaking-reader-friendly.pdf>

The expected result 3 of §16 – “access to judicial and non-judicial means to protect human rights in cases of business-related abuses” – its wording should avoid generalisation and be more specified in the part of the human rights remedies with references to expected improvements in the judicial and legal aid systems; improvement and development of state-based non-judicial grievance mechanisms like the Parliamentary Commissioner for Human Rights and the National Contact Point for Responsible Business Conduct; non-state based mechanisms of dispute settlement at business operational level; means of alternative dispute resolution (ADR) like arbitration courts and mediation, etc.

5. Fifthly, the complex of “**Main indicators**” (5th part of §16) should be a systemic and logical part of §16, which correspond with every task and expected results.

For instance, the operational indicators **for the subtask on strengthening the capacity** of the State authorities and local self-government bodies could be defined as: a) Developed capacity-building Initiatives; b) Number of capacity-building trainings; c) Number of BHR-based policy and normative acts adopted, etc.

The operational indicators **for the subtask on raising awareness** of stakeholders could be defined as: a) Developed awareness-raising initiatives of multi-stakeholder and sectoral formats; b) Number of awareness-raising activities of multi-stakeholder and specific sectoral formats; c) Number of awareness-raising activities of the national and regional/local levels; d) Level of awareness of stakeholders about the UNGPs (the one included in the acting §16); etc.

The operational indicators **for the subtask on promoting updating and realisation of corporate policies** could be defined as: a) Share of business entities that have updated corporate policies with regard to the UNGPs (the one included in the acting §16); b) Share of business entities that have introduced and exercise the human rights due diligence; c) Number of BHR-based initiatives taken by business entities; etc.

The operational indicators **for the subtask on providing citizens and individuals-residents with access to remedies** could be defined as: a) Number of applications to courts and number of judgements in cases of business-related human rights abuses; b) Number of complaints to the state-based non-judicial mechanisms of human rights protection in cases of business-related human rights abuses, number of consultations provided and decisions adopted (Centres for Free Legal Aid, Parliamentary Commissioner for Human Rights, National Contact Point for Responsible Business Conduct); c) Number of cases of business-related human rights abuses considered by the non-state-based non-judicial mechanisms (arbitration courts, mediation facilities, business ombudsman, business entities’ operational mechanisms, etc.), etc.

In general, the content of the Ukraine’s BHR chapter of the HNRS should ensure the integration of the UNGPs. The 2021 UNDP Study on Business and Human Rights in Ukraine reflects the country specific environment and recommendations for the UNGPs implementation. Alongside it should regard the further developments of the UNGPs provisions through 10 years of the European and global practice, regional and international policy- and law-making. When improving the BHR chapter of the NHRS, it is useful to regard different UNWG’s reports to the UN General Assembly and the Human Rights Council, as well as its other documents. The recent one – “UNGPs 10+ A Roadmap for the Next Decade of Business and Human Rights”⁹² of 2021 – sets out key action areas for the road ahead and for progressively getting closer to fuller UNGPs realisation.

The fundamental international HR law, 2030 UN Agenda and the SDGs, Ukraine’s UN, CoE membership and its EU and OECD – perspective memberships should constitute the immutable benchmarking.

92 UNGPs 10+ A Roadmap for the Next Decade of Business and Human Rights (2021). URL: <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

2.2.2. CONSIDERATIONS ON THE ACTION PLAN AND ITS REALISATION

As mentioned above, the Action Plan on realisation of the BHR chapter (§16) of the NHRS is actually missing. The general Action Plan of realisation of the NHRS for the period 2021 – 2023) in its item 59 includes only one activity on implementing the BHR chapter. It was planned to conduct a study of best practices for implementing the UNGPs, Ten Principles of the UN Global Compact, and the Recommendation of the CoE Committee of Ministers CM/Rec(2016)3 on human rights and business. No actions were planned to reach the strategic goal and fulfil the tasks defined in the BHR chapter. No meaningful engagement of stakeholders in the UNGPs implementation through the Action Plan was provided.

The GoU is recommended to stick to the systemic and comprehensive approach to the problem solving in the BHR area by means of integration of the UNGPs, the CoE Committee of Ministers Recommendation CM/Rec (2016)3, the corresponding EU *acquis* and the OECD standards into the national policy, law and practice.

To efficiently implement the UNGPs, the Action Plan should be developed thoroughly and in a logical sequence in order to meet the strategic goal, fulfil the tasks and reach the expected results. The UNWG on BHR provides recommendations and specific Guidance on development and implementation of National Action Plans (NAPs) on BHR⁹³. In concern to the structure of an Action Plan it recommends that “For every planned activity outlined in the NAP, the government should clarify: 1) the specific goal, 2) actions to be taken, 3) an attribution of clear responsibilities to relevant entities, 4) a timeframe for the implementation of the actions, and 5) indicators to evaluate the implementation and impact of the activity.” The Governments should make sure that the measures are specific, measurable and achievable.

The activities included in the Action Plan should be the result of the GoU’s deliberations on how it plans to address the gaps and shortcomings in its work on protection people from possible and actual business-related human rights abuses. As far as the BHR issues are quite new for application in our country, the Ukraine’s NAP should include various types of activities starting from awareness raising and capacity building of duty-bearers and rights-holders – of all stakeholders, drafting and adoption of the relevant policy, legislative and regulatory instruments tackling different sectors of the State-business-people relations (in the war context including) to practical activities on proper functioning of courts, development of State-based and non-State-based non-judicial grievance mechanisms of human rights protection in cases of business-related abuses. Taking into account the large territory of Ukraine, the NAP’s activities should be held at the national, regional and local levels. Having in mind a great spectrum and scope of activities to be realised, the GoU could benefit from authorisation of a ministry or a corresponding Government department (for instance, on European Integration) to lead the NAP’s realisation.

A coordinating inter-ministerial body could be established then to ensure the consistency and efficiency of activities on the BHR implementation. The Parliamentary Commissioner for Human Rights could be involved in the work of this Inter-ministerial body and authorised to lead the independent evaluation and monitoring of the NAP’s realisation in cooperation with the CSOs (including those representing business and trade unions), academia and NGOs in order to enhance the GoU accountability for the UNGPs implementation.

On the whole, elaboration and realisation in Ukraine of a standalone NAP on BHR with due regard to the UNWG Guidance on NAPs on BHR and best practice of European and other foreign countries is considered to be expedient.

93 Guidance on National Action Plans on Business and Human Rights, UN Working Group on Business and Human Rights (2016). URL: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf

The analysis of the current European and global experience provides for the opinion that NAPs prove to be efficient when they are:

1. 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;
2. Developed and implemented in a transparent and consistent way under the guidance and mandate of a government body (such as a steering committee or a working group, with a lead ministry to coordinate its activity) and with formalized stakeholder input at the national and local levels;
3. Drafted following the comprehensive five-phase approach recommended by the UNWG on BHR;
4. 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;
5. Developed in coordination with all relevant national policies and programmes, with relevant international commitments properly regarded;
6. Providing support for respect by business for human rights in conflict-affected areas, especially in countries like Ukraine;
7. 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;
8. Secured by sufficient budgetary allocations;
9. Regularly monitored, evaluated, and updated with non-government stakeholders involved; and
10. Followed by qualitative and quantitative developments in BHR at the national and local levels.

These and other recommendations (worked out by the author of this Study, including) are presented in the 2021 UNDP Study “Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights” (See: item 11 of the Executive Summary, Subsection 2.5.1. “National Action Plans on Business and Human Rights: The Globally Established Frames and Good National Practices”, and 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”)⁹⁴.

In general, when to consider the reasons of the weak integration of the UNGPs in the NHRS and its weak implementation, a number of aspects can be identified:

1. Poor awareness of the UNGPs and overall developments in the BHR area within the MoJ, which was responsible for the NHRS drafting, and within other state power bodies – the Ministries of Economy; Social Policy; Ecology and Natural Resources; Reintegration of TOT and IDPs; the GoU Secretariat; the Parliamentary Commissioner for Human Rights (NHRI); judiciary, as well as across the CSOs of Ukrainian business and trade unions, NGOs and experts in various fields.
2. Insufficient institutional capacity to get and apply the specific knowledge on BHR by decision-makers of the ministerial level.
3. Concentration of responsibilities to implement the BHR chapter on the governmental level without stakeholder’s engagement and without delivering responsibilities to the local level State authorities and actors.

⁹⁴ Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development through Implementation of the UN Guiding Principles on Business and Human Rights, UNDP Study (edited in 2021, published in 2022). URL: <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

4. Prior GoU focus on the war challenges and humanitarian response. The BHR policy aspects – heightened state duty to protect in the BHR area in the war time; corporate responsibility to respect human rights in conflict affected territories and in the rest of Ukraine’s territory; heightened human rights due diligence in the war context; enhanced access to remedies for the human rights protection from business-related abuses – were left aside of the GoU attention.
5. Lack of the State budget allocations for the NHRS implementation, the BHR chapter, including.

In case of elaboration and adoption of a standalone NAP on BHR following the above-mentioned UNWG Guidance on NAPs, many of the enumerated problems could be avoided.

3. ANALYSIS OF OTHER EXISTING AND UPCOMING NATIONAL HUMAN RIGHTS, RECOVERY AND PEACEBUILDING STRATEGIC DOCUMENTS

IN THE LIGHT OF INTEGRATION OF THE UN
GUIDING PRINCIPLES ON BUSINESS AND
HUMAN RIGHTS THE ACTION PLAN



3.1. KEY FINDINGS

3.1.1. CURRENT NATIONAL POLICY ACTS AND THE GROUNDS FOR INTEGRATION OF THE UNGPS

In recent years, a number of strategic policy and legal acts in various sectors of public relations were adopted in Ukraine in the general context of implementation of the human-centred 2030 UN Agenda for Sustainable Development and the SDGs, which drive the balanced social, economic and environmental agenda. Most importantly, the Euro-integration benchmark is a very strong driver of multiple transformations in Ukraine. The EU-Ukraine Association Agreement is a powerful instrument of progressive improvements. Ukraine's new EU candidate country status since June 2022 attributes even more substantive and volumetric task to efficiently harmonise the national legislation with the acting and developing EU *acquis*, including the BHR norms and standards, and to meet the future accession conditions. The spirit of the UNGPs is embedded in the UN, EU, CoE, and OECD policy, standards and norms.

As known, the UNGPs Pillar I provides that States have a duty to protect individuals and communities from business-related human rights abuses. As the UNWG states, the scope of this duty is considerable, as business enterprises can have a significant impact on virtually the entire spectrum of internationally recognized human rights. It applies to potential and actual impacts in all sectors, and requires both preventive measures and redress⁹⁵. The importance of specific policy in BHR area and the policy coherence in government actions to protect people against business-related human rights abuses is underlined in the UNGPs Principles 8 – 10. They indicate the necessity of vertical and horizontal policy coherence. The vertical one entails States having the policies, laws and processes to implement their international human rights law obligations in the BHR area. The horizontal one 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 (incl. trained and supported) and act in a manner compatible with the Governments' human rights obligations. Achieving policy coherence requires the operationalization of the State's international human rights obligations across the range of State departments and agencies that shape business practice or interface with business, as well as entities owned or controlled by the State. Alongside, 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 and when acting as members of multilateral institutions that deal with business-related issues. To that all, States are to provide for the policy coherence when the commitments of the SDGs intersect with the business and human rights agenda.

⁹⁵ Report on policy coherence in government action to protect again business-related human rights abuses, Working Group on the issue of human rights and transnational corporations and other business enterprises, A/74/198 19 20 July 2019. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/224/00/PDF/N1922400.pdf?OpenElement>

Among the current most meaningful Ukraine's national strategic documents, the domains of which correlate with the BHR principles, are: the National Human Rights Strategy of 2021⁹⁶; the Strategy of Human Development of 2021⁹⁷; the National Economic Strategy for the period up to 2030 of 2021⁹⁸; the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030⁹⁹; the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030¹⁰⁰; the Strategy for the Development of the Financial Sector of Ukraine until 2025 of 2021¹⁰¹; the Strategy for Implementation of Digital Development, Digital Transformations and Digitalization of the State Finance Management System for the period until 2025 of 2021¹⁰²; the Energy Strategy of Ukraine for the period until 2035 "Security, Energy Efficiency, Competitiveness" of 2017¹⁰³; the National Strategy for Creating a Barrier-Free Space in Ukraine for the Period until 2030¹⁰⁴; the Strategy for the Digital Transformation of the Social Sphere of 2020¹⁰⁵, etc.

These and other documents, including those of programming and implementation character, form the general regulatory canvas in the BHR area. Though, in many of them the BHR focus is not distinctly positioned because of the low awareness about the UNGPs on the governmental level and the absence of the comprehensive BHR policy. The updated NHRS with its BHR strategic direction of §16 on ensuring human rights in economic activities was developed more or less at the same time with many other strategic policy documents. Thus, there were no approved national BHR policy vector and specific benchmarking to be regarded in the course of elaboration of the tangent strategic documents. Nevertheless, it does not mean that the BHR-related provisions are completely missing in sectoral policy documents.

Even the touch-and-go analysis of the abovementioned documents can make it possible to attract attention of their "consumers" and decision-makers to the already established BHR-related provisions and the BHR potential that could and should be further developed in their implementing acts and practice.

CONCEPT OF REALIZATION OF THE STATE POLICY ON DEVELOPMENT OF SOCIALLY RESPONSIBLE BUSINESS IN UKRAINE FOR THE PERIOD UP TO 2030

Having stated that, first of all, it is reasonable to make an overview of the **Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030** (Concept) adopted in 2020 and Action Plan for its realisation. These policy and programming documents were the first ones to closely approach the BHR framework in Ukraine. They were adopted in the course of Ukraine's cooperation

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- 96 National Strategy in the Field of Human Rights, approved by the Decree of the President of Ukraine No. 119/2021 of 24.03.2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>
- 97 Strategy of Human Development, approved by the Decree of the President of Ukraine No. 225/2021 of 02.06.2021. URL: https://zakon.rada.gov.ua/laws/show/225/2021?find=1&text=%D0%B2%D1%96%D0%B4%D0%BF%D0%BE%D0%B2%D1%96%D0%B4#w1_1
- 98 National Economic Strategy for the period up to 2030, approved by Resolution of the Cabinet of Ministers of Ukraine No. 179 of 3 March 2021. URL: <https://zakon.rada.gov.ua/laws/show/179-2021-%D0%BF#n25>
- 99 Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030, approved by the Order to the Cabinet of Ministers of Ukraine No. 66-r of 24.09.2020. URL: <https://zakon.rada.gov.ua/laws/show/66-2020-%D1%80#Text>
- 100 Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030, approved by the Law of Ukraine No. 2697-VIII of 28.02.2019. URL: <https://zakon.rada.gov.ua/laws/show/2697-19#Text>
- 101 Strategy for the Development of the Financial Sector of Ukraine until 2025 (new edition), approved by the Decision of the National Commission for Securities and the Stock Market No. 140 of 02.03.2021, the Decision of the Board of the National Bank of Ukraine No. 97-rsh of 18.03.2021, and the Decision of the Guarantee Fund for Deposits of Individuals No. 193 of 25.02.2021. URL: https://bank.gov.ua/admin_uploads/article/Strategy_FS_2025.pdf?v=4
- 102 Strategy for Implementation of Digital Development, Digital Transformations and Digitalization of the State Finance Management System for the period until 2025, approved by the Order of the Cabinet of Ministers of Ukraine No. 1467 of 17.11.2021. URL: <https://zakon.rada.gov.ua/laws/show/1467-2021-%D1%80#Text>
- 103 Energy Strategy of Ukraine for the period until 2035 "Security, Energy Efficiency, Competitiveness", approved by the Order of the Cabinet of Ministers of Ukraine No. 605-r dated 18 August 2017. URL: <https://zakon.rada.gov.ua/laws/show/605-2017-%D1%80#Text>
- 104 National Strategy for Creating a Barrier-Free Space in Ukraine for the Period until 2030, approved by the Order of the Cabinet of Ministers of Ukraine No. 366-p of 14.04.2021. URL: <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#Text>
- 105 Strategy for the Digital Transformation of the Social Sphere, approved by the Order of the Cabinet of Ministers of Ukraine No. 1353 of 28.10.2020. URL: <https://zakon.rada.gov.ua/laws/show/1353-2020-%D1%80#Text>

with the OECD to meet the commitments under the OECD Declaration of 1979 and Guidelines for Multinational Enterprises updated in 2011¹⁰⁶.

As stated, the purpose of the Concept is to create a legal framework and hold the activities to implement international standards of socially responsible business in the activities of business entities to ensure the sustainable development of Ukraine and to increase the public welfare. The Concept introduced the notion of "socially responsible business" into the national law. It is defined as the responsible conduct of business entities, which regards the impact of their decisions and actions on society, on the surrounding natural environment, and which i) contributes to the sustainable development of society, particularly, to the well-being of the population; ii) takes into account expectations of business entities and society; iii) complies with the acting legislation and international norms of conduct; iv) is integrated into the activity of a business entity.

The Concept determines the main areas of development of socially responsible business: environmental protection, employment, and development of labour relations. In particular, in environmental protection the socially responsible business is supposed to: 1) implement the innovative environmentally safe and energy-efficient technologies; 2) prevent the negative impact on the natural environment; 3) dispose waste. In the area of employment it is supposed to: 1) develop the social responsibility strategies which take into account the interests of the community and society; 2) create new jobs; 3) publish management reports; 4) conduct charitable activities to support the socially vulnerable segments of population; 5) cooperate with educational establishments to support the talented youth and improve qualification of researchers and teachers, raise the level of professional training and promote lifelong learning; 6) publish an annual report on the measures taken to introduce the standards of socially responsible business. For the development of labour relations socially responsible business is required to: 1) establish dialogue with trade union organizations and facilitate the collective bargaining agreements; 2) ensure the objectivity of the assessment of professional qualities and the amount of remuneration for the conscientious and effective performance by employees of their professional duties; 3) create opportunities to ensure employment of young people and facilitate access of workers to education; 4) create the safe and ergonomic working conditions, etc.; 4) implement modern occupational safety and hygiene management systems; 5) form a list of social guarantees, in particular – health insurance of employees in order to stimulate the labour activity; 6) assist in hiring employees dismissed as a result of reorganization; 7) form and promote the corporate culture. The latter is required, as considered, for the low level of corporate culture which is one of the factors of financial and economic failure of a significant share of business entities.

The Concept determines the ways, which the State, actually implementing some of the principles of UNGPs Pillar I "The State duty to protect human rights", should follow in order to introduce social responsibility in business:

- Provide business entities with recommendations on improvement of their development strategies regarding the issues of occupational safety, health, and environmental protection, and involve them in the relevant law-making;
- Encourage business entities to conduct an open policy regarding the disclosure of information, in particular financial and non-financial, publish reports on realisation of their development strategies;
- Ensure cooperation between central and local executive authorities and business entities in combating corruption and unlawful remuneration, in protection of competition and ensuring transparent taxation;
- Provide business entities with recommendations on involvement of central and local executive authorities in protection of consumer interests, etc.;
- Carry out information and educational campaigns;

¹⁰⁶ Although the international commitments, their implementation depends on the State's voluntary decision on the approach applicable to it, as far as the OECD standards belong to the "soft" international law. The State's accountability mechanism for implementation of these commitments is rather symbolic – the National Contact Point for RBC works for information purposes mostly, there is no information about consideration of cases at the NCP Secretariat.

- Stimulate and encourage business entities to support the development of science and technology, manufacture of innovative products, introduction of innovations in industry;
- Disseminate information about the development of socially responsible business.

The Concept foresees a number of short-term and long-term results for the national economy and indicators for monitoring of its efficiency that at large correspond to its purpose and the requirements for business entities in the main areas. On the whole, the Concept provides business entities with the regulatory framework for realisation of the UNGPs Pillar II “Corporate Responsibility to Respect Human Rights”.

However, as it seems, there is the lack in all parts of the Concept of provisions on access to human rights remedies that could correspond with the UNGPs Pillar III “Access to remedies”. For instance, when it comes to the development strategies of business entities, there are no requirements for introduction of due diligence and operational mechanisms to protect human rights. Nothing is said about the expected results of functioning of the National Contact Point for Responsible Business Conduct established in 2018 in the structure of the Ministry of Economy. Following the OECD Declaration of 1979 and Guidelines for Multinational Enterprises, National Contact Points for RBC are authorised with the twofold mandate: i) to promote the OECD Guidelines for Multinational Enterprises and related due diligence guidance, and ii) to handle cases (referred to as “specific instances”) as a State-based non-judicial grievance mechanism¹⁰⁷.

The Action Plan for realisation of the Concept includes a complex of activities in five directions:

- Popularisation in Ukraine of principles and standards of socially responsible business (UNGPs including), conducting information-educational campaigns;
- Preparation and provision of recommendations to business entities regarding the socially responsible business policy;
- Encouraging business entities to stick to an open policy on information disclosure and to raise awareness of their employees about the socially responsible business conduct;
- Integration of principles of social responsibility of business into the activities of companies in Ukraine (with item 21 envisaging the integration of the BHR approach into the national strategic policy documents on human rights);
- Monitoring and evaluation of the progress in social responsibility of business. Dissemination of information about the results.

The Action Plan envisages no activities for the development of the National Contact Point for RBC. It was planned within a year and a half (mid 2020-2022) to ensure the functioning of its official web portal for posting on it information about the activities and measures taken to popularise the principles and standards of socially responsible business. Nothing is planned to ensure its functioning as a State-based non-judicial grievance mechanism to consider cases concerning the business-related human rights abuses. Up to the beginning of September 2022, no official web portal of the National Contact Point is accessible; no reviews or monitoring reports about the Concept’s implementation are made public. The earliest overview of the state and development of socially responsible business in Ukraine is scheduled for 2025, the next – for 2030.

Given the lack of public information on the Concept’s implementation, it is hardly possible to assess its impact on the development of social responsibility of business in Ukraine, its overall efficiency and needs for corrections or improvements in its strategic goal and directions, ways and means of realisation, expected results and monitoring indicators. In the context of the new realities of the Ukraine’s EU candidacy, the war and the forthcoming post-

107 What are National Contact Points for RBC? URL: <https://mneguidelines.oecd.org/ncps/>

war recovery, there is a need for heightened human rights due diligence¹⁰⁸, do-no-harm and to build back better Ukraine sustaining responsible business and decent jobs. With this context, it is expedient to conduct the Concept's assessment and update the Action Plan. The UNGPs' implementation could become its important component, and, as an option, a NAP on BHR could amend it because the State, businesses entities and population are facing now and will face in the coming years lots of difficult challenges and problems to be solved in a very rational way with full respect for human rights.

NATIONAL ECONOMIC STRATEGY FOR THE PERIOD UP TO 2030

The next strategic policy document worth to attach the foremost importance is the **National Economic Strategy for the period up to 2030**, adopted by the GoU in 2021. It is the key strategic policy document to realise the main goal of the State policy – the increasing welfare of the Ukrainian population. It is the matrix of other, including the above-mentioned, sectoral strategies and policies, legislation and practice.

The National Economic Strategy bets on the innovative, proactive economic growth willing to contribute to human development through the appropriate quality of services, education, science, labour market, social security, medicine, culture, natural environment and national security. The quality of life is considered a decisive factor of the development of human potential recognized to be the main and the most important potential in the 21st century. The human-oriented ideology of the Strategy is reflected in its mission – to create an opportunity for realization of [...] the rights and freedoms of every citizen of Ukraine through innovative, proactive economic growth taking into account the Sustainable Development Goals [...], as well as in its goal – “to create opportunities for Ukrainians as citizens, Ukrainians as entrepreneurs and investors”. The Strategy frames the grounds for being the lever to implement the three UNGPs – Pillar I “The State duty to protect”, Pillar II “The corporate responsibility to respect human rights”, Pillar III “Access to remedies”.

However, among the Strategy's landmarks, principles and values the complex BHR-oriented approach is missing; the gender equality is a sole aspect that is demarked, and ensuring of the equal rights and opportunities for women and men in all spheres of society is among the Strategy's expected results. The business-related human rights abuses are not included into the Strategy's list of unacceptable steps, prohibited directions of movement, which are recognised as critical obstacles for the economic development.

There are twenty directions of the “Strategic course of economic policy until 2030” presented in Section II of the Strategy:

- Direction 1. Macroeconomic policy
- Direction 2. The Rule of Law
- Direction 3. Regulatory Environment
- Direction 4. Management of state and communal property
- Direction 5. International economic policy and trade
- Direction 6. Reputation (reputation development)
- Direction 7. Investment attractiveness
- Direction 8. Information and communication technologies
- Direction 9. Agro-industrial sector and food industry
- Direction 10. Industry
- Direction 11. Energy

108 Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide, UNDP (2022). URL: <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>

- Direction 12. Mining industry
- Direction 13. Transport and infrastructure
- Direction 14. Creative industries and hospitality industry
- Direction 15. The sphere of services
- Direction 16. Regional development
- Direction 17. Entrepreneurship (entrepreneurship development)
- Direction 18. Digital economy
- Direction 19. Cultural and value transformation of Ukraine
- Direction 20. Quality of life.

The brief overview of the content of the Strategy's selected directions provides with the general understanding of its BHR-correlations and the potential to integrate the UNGPs.

The strategic **Direction 2. "The Rule of Law"** presents the vision of "Ukraine as a legal state that ensures human rights and freedoms, property rights, defends justice/fairness and the interests of society". The strategic goals in the frames of this direction include, *inter alia*, 1) "improvement of the legal system to ensure the functioning of an effective system of checks and balances, protection of the democratic system, implementation of the rule of law and human rights and freedoms"; 2) "ensuring of fair justice, based on the rule of law, protection of human rights and freedoms, individuals and legal entities". It is stated that continuing the judicial system reform is a necessary step for achieving the rule of law.

Goal 2 "Ensuring fair justice in Ukraine, based on the rule of law, protection of human rights and freedoms, individuals and legal entities" corresponds with the UNGPs Pillar 3 "Access to remedies". Regretfully, nothing is mentioned about the legal protection of human rights against the adverse business impact, about improving the access of victims of business-related abuses to State-based and non-State-based remedies and protection mechanisms.

At the same time, it is fair to mention as a positive factor that among the ways to achieve the strategic goal 2 there is the improvement of the alternative dispute resolution system. The tasks in this regard include the development of draft laws on: i) reforming the system of arbitration courts; ii) improvement of legislation on international arbitration and procedural codes to provide the wider support by the State courts of international courts, arbitrations and arbitration courts; iii) mediation; iv) institution of business ombudsman in Ukraine.

But the shortcoming appears again in the target indicators for monitoring and the expected results – there are no BHR-corresponding provisions.

The Strategy's **Direction 3. "Regulatory Environment"** provides the BHR-related strategic goal 1 "Ensuring the transparent and effective regulation of the activities of business entities" and the strategic goal 2 "Ensuring transparent and effective regulation of market relations".

Under goal 1, the Strategy foresees the optimization of the State supervision (control) over business which implies, *inter alia*, "introduction of audit as a preventive functional without the application of sanctions and establishment of the institute of public councils on state supervision (control)"; "introduction for business entities (with a medium and insignificant degree of risk) of civil liability insurance for damage that may be caused by their activities to third parties or their property". In addition, it envisages Improvement and optimization of labour legislation with the tasks, *inter alia*, to introduce new methods of out-of-court dispute resolution (mediation) and to bring the norms on the State control over the realisation of labour legislation in compliance with the norms of European law and ILO conventions.

As far as the Strategy identifies as problematic the imperfection of legislation on consumer rights protection, for it does not meet the EU *acquis* and requirements of the EU-Ukraine Association Agreement, goal 2 foresees the improvement of the quality of consumer rights protection. The framed tasks include: introduction of the principle of consumer rights protection in accordance with EU principles, harmonization of legislation on consumer rights protection in all areas provided for by the EU-Ukraine Association Agreement; increasing the role of public associations of consumers; involvement of public associations of consumers in the resolution of consumer disputes; introduction of a mechanism of the pre-trial resolution of consumer disputes.

Both the strategic goals under this Direction and the mentioned tasks have the relevance to the UNGPs Pillar I “The State duty to protect” and the Pillar III “Access to remedies”, though there is a lack of the distinct BHR focus. The repeated shortcoming concerns the target indicators for monitoring and the expected results – there are no BHR-corresponding provisions, for instance in the part of protection of human rights against business-related abuses in labour relations (e.g. discrimination, undeclared work, exploitation, child labour, etc.), and in the part of the increased level of the consumer rights protection.

Direction 6. “Reputation (reputation development)” and **Direction 7. “Investment attractiveness”** both are of high relevance to the BHR essence. The strategic goal of Direction 6. “Reputation (reputation development)” is to increase trust and respect for Ukraine on the part of interested parties, among which are international investors, potential international partners of Ukraine. Direction 7. “Investment attractiveness” is aimed, *inter alia*, at: i) stimulation of foreign investments by ensuring compliance with formal criteria (inflation, tax burden, etc.) of sovereign credit ratings to improve Ukraine's position in them; ii) creation of effective tools for attracting external investors by means of ensuring the implementation of mechanisms of tax benefits for investors (tax vacations, reimbursement of part of capital investments, special tax regimes) in most sectors of the economy, expansion and creation of new industrial parks, creation of conditions for doing business within industrial parks.

Following the globalised and European rules of RBC, foreign international investors, in particular those from the EU, will work in Ukraine when the norms and standards on RBC, rule of law, impartial justice and developed non-judicial mechanisms of conflict resolution, combating corruption and discrimination, ESG and BHR-oriented corporate management etc. are lawfully introduced and efficiently applied in Ukraine. European experts underline that the risks of foreign investors are only heightened now, hence they are to regard the requirements to follow the rules of mandatory human rights due diligence (mHRDD), and in case of Ukraine with the war context – the heightened human rights due diligence (hHRDD).

The closest relevance to introduction of the UNGPs into the National Economic Policy is observed in **Direction 19 “Cultural and value transformation of Ukraine”**. The Direction's vision is as follows: “Ukraine is a country of responsible citizens who strive for development, a country of inventors and creators, a favourable environment for preservation and development of the cultured people”.

The second of its strategic goals is “Proliferation and protection of the universally recognized human values”. As one of the ways to reach this goal, the Strategy identifies **the development of a value-based approach to doing business**. However, the relevant tasks are narrowed to two positions concentrated on the issues of integrity and public-private partnership: 1) formation and ensuring the effective functioning of the Council of Integrity with participation of representatives of the State authorities, territorial communities and business; 2) spread of the best practices of successful public-private partnership aimed at creating common welfare.

Definitely, these two tasks are important but they do not provide for the comprehensive approach to reach the goal of **the development of a value-based approach to doing business**. Up to the end of August 2022, there is no public information about the aforementioned Council of Integrity and its activities.

The target indicators for monitoring of the progress under the strategic goal 2 are identified favourably for the BHR principles: 1) doubling the share of business, which defines the approach to business and human rights as an important element of doing business; 2) the Integrity Strategy is among the top 5 priorities of 50 percent of businesses; 3) interaction within the society on the principles of ecological existence and gender equality.

Among the expected results of the activities under this Direction, the Strategy foresees the stimulating of the activity of responsible and honest business, which is focused on creating the common welfare; the stimulation of development of social entrepreneurship as the driving force of social innovations that enable to effectively perceive the social challenges. The connotation of the expected responsible and honest business focused on creating the common welfare is the most promising.

The presented fragmentary analysis of the National Economic Strategy for the period up to 2030 provides for the conclusions about both its evident shortcomings and good backgrounds for the perspective of the UNGPs implementation. The basic shortcomings are revealed in its conceptual part of Section I. "General provisions". For notwithstanding the stated Strategy's mission and the goal, the BHR correlations are rather weak in the wording of its landmarks, principles and values. This is especially unfavourable when to regard the war context that causes the necessity of heightened State duty to protect and increased social responsibility of business. There are also shortcomings in the Strategy's Section II. "The Strategic course of economic policy until 2030". Many of the twenty identified directions have the potential to provide for the clear and efficient integration of the UNGPs into the relevant ways and tasks of implementation, into the target indicators for monitoring of the progress and the expected results. Direction 19 "Cultural and value transformation of Ukraine" addresses the human rights values in business, though it narrows the perception of the BHR approach in economic activities.

Thus, there is the area for improvements which could drive the effective integration of the BHR principles into the Strategy, especially since the provisions of the Strategy must be taken as a basis during the drafting of the programming and sectoral strategic documents, laws and other legislative acts, relevant action plans in the economic sphere. However, up to the beginning of September 2022, there is no information about the unified Action plan for realisation of the National Economic Strategy or separate Action plans for every strategic direction. Provided separate plans are elaborated, the Plan on implementation of Direction 19 of the National Economic Strategy could become an alternative instrument to implement the UNGPs.

Nonetheless, it is important to recognise and appreciate the leading role and the significant potential of the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine, the National Human Rights Strategy with its §16, and the National Economic Strategy in concern to integration of the UNGPs in the national policy and law area, as well as in the practical activities in the public and private sectors of relations, following the Ukraine's international commitments and obligations.

Given the specifics of the current war-context State planning and programming for the short-term timeframe, which includes the determination of the present-day objective State budget allocations, the activities on the UNGPs implementation could be integrated in a balanced way into the acting Action Plans on realisation of the NHRS and the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine. Provided the Action Plan for realisation of the National Economic Strategy is elaborated, a National Action Plan on BHR could become its integral part.

3.1.2. UKRAINE RECOVERY PLAN – UPCOMING NATIONAL HUMAN RIGHTS, RECOVERY AND PEACEBUILDING STRATEGIC DOCUMENT: OVERVIEW AND SUGGESTIONS FOR INTEGRATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The draft Ukraine Recovery Plan (URP) is a part of a broad-based political process for the recovery of Ukraine launched at the Ukraine Recovery Conference in Lugano held on 4-5 July 2022¹⁰⁹. The Outcome Document of the Conference – the Lugano Declaration¹¹⁰ – provides with the set of seven guiding principles for Ukraine’s recovery process – “Lugano Principles”: 1. Partnership; 2. Reform focus; 3. Transparency, accountability and rule of law; 4. Democratic participation; 5. Multi-stakeholder engagement; 6. Gender equality and inclusion; 7. Sustainability. As evident, at least five of them are human rights-focused.

Principle 6. “Gender equality and inclusion” directly connects the recovery process with ensuring inclusiveness, gender equality and respect for human rights, including economic, social and cultural rights. It connects recovery with the need to benefit all, when no part of society should be left behind, and disparities are reduced.

The Lugano Principles and the UNGPs when regarded in integral combination could provide for the beneficial watercourse in drafting and implementing the URP aimed at accelerating the sustainable economic growth of Ukraine as a strong European country and “a magnet for international investments”.

The draft URP is oriented at five core assumptions: i) Start now and ramp up gradually; ii) Grow prosperity in equitable way; iii) Integration in EU; iv) Build back better at national and regional scales; v) Enable private investments¹¹¹.

As stated at the Ukraine Recovery Conference, “the recovery is a massive task and poses challenges of a magnitude that cannot be precisely measured at this point. However, the scale of the needed response and resources can already be anticipated”. To this end, the URP identifies a list of seventeen National programs as approach to recovery, which are targeted at achieving the key results.

To ensure the URP’s implementation, the National Council for the Recovery of Ukraine from the Consequences of the War (established following the Decree of the President of Ukraine No. 266/2022 of 21.04.2022¹¹², the Reform Office of the GoU supports its work) is authorized to develop the Action Plan for the post-war recovery and development of Ukraine. The Plan is envisaged to include lists of measures for the post-war recovery and development of Ukraine; proposals for priority reforms and strategic initiatives; lists of legal acts, the adoption and implementation of which is necessary for the effective work and recovery of Ukraine in the war and post-war periods.

The draft chapters of the Plan were elaborated by 24 working groups; the draft chapters were published on the official government websites to comment on them – experts, scientists, civil society and business were invited by the GoU to take part in the process.

109 <https://www.urc2022.com/>

110 Outcome Document of the Ukraine Recovery Conference URC2022: ‘Lugano Declaration’ (Lugano, 4–5 July, 2022). URL: <https://reliefweb.int/report/ukraine/outcome-document-ukraine-recovery-conference-urc2022-lugano-declaration-lugano-4-5-july-2022>

111 <https://recovery.gov.ua/>

112 The issue of the National Council for the Recovery of Ukraine from the Consequences of the War: Decree of the President of Ukraine No. 266/2022 of 21.04.2022. URL: <https://www.president.gov.ua/documents/2662022-42225>

Based on anticipation of the need to ensure human rights in economic activities during the war and in post-war periods, the suggestions and comments on nine draft chapters of the URP are elaborated in the frames of this research: European integration; Economic recovery and development; Financial system functioning, reform and development; Energy security; Public administration; Digitalization; Justice; Environmental safety; and Human rights (Annex 1 to this study).

The proposed suggestions and comments are focused on integrating the UNGPs in the planned steps, measures and activities in the course of three stages: "Wartime Economy: All for Victory!" of 2022, "Recovery, restart of the economy and institutions" of 2023-2025, and "Structural modernization and full integration into the EU" of 2026-2032. The suggestions are reasoned by the necessity to implement the Ukraine's international commitments in the BHR area before the UN, ILO, EU, Council of Europe and OECD. The decision-makers are provided with references to the relevant provisions of the UNGPs, international and European policy and law acts, standards, guidelines, tools, etc., which are useful for the policy benchmarking and implementation activities.

4. GENERAL CONCLUDING REMARKS



4.1. THE INTERNATIONAL BHR-RELATED BENCHMARKS FOR UKRAINE



4.1.1. Ukraine's national development strategy is oriented at the UN 2030 Agenda for Sustainable Development, and the SDGs. The UN requires that human rights are embedded in policies and practice to translate the ambitious SDGs into concrete action. The UNGPs are part and parcel of the UN mainstream of the SDGs implementation.

4.1.2. However, the full-scale war of the Russian Federation against Ukraine caused Ukraine to temporarily, since 28 February 2022 and up to the end of the martial law period, withdraw from fulfilling some of its obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Due to the communication of the Secretary-General, Ukraine's withdrawal from some international obligations will not constitute the violation of international treaties effective 01.03.2022.


4.1.3. The Ukraine's EU candidate status (since June 2022) actualises the task to align the national policies with those of the EU and to harmonise the national legislation with the EU acquis. The EU and the EU Member States advance the regulatory efforts in the area of BHR, develop and apply the HRDD legislation; the NAPs on BHR are being instrumental in addressing social face of economy. The EU-Ukraine Association Agreement embedded the BHR principles. The EU accession conditions towards Ukraine will include the BHR requirements.

4.1.4. The forthcoming Ukraine's membership in the OECD entails the implementation of the OECD numerous "soft law" instruments in the field on BHR, specifically on HRDD in different areas of economic activities.

4.1.5. The international BHR benchmarking is important, as global and, in particular, European business, would work with Ukraine where the relevant ESG and BHR-oriented standards and norms are introduced.

4.1. THE CURRENT UKRAINE'S BHR-RELATED POLICY FRAME



4.2.1. The recent strategic policy acts, primarily the Concept of Realization of the State Policy on Development of Socially Responsible Business in Ukraine for the period up to 2030, the National Human Rights Strategy of 2021 and the National Economic Strategy of 2021, are adopted to meet the needs of Ukraine's sustainable development and are based on its international commitments and obligations. In combination they provide for the general policy, legal and practical grounds for the UNGPs' implementation, though, the BHR focus is not properly developed and distinctly positioned.

4.2.2. The war context caused the urgent necessity to elaborate the Ukraine Recovery Plan (URP) as a part of a broad-based political process for the recovery of Ukraine. The URP should become a solid conglomerate of strategic and operational goals and measures to be taken in 24 areas during the next decade (2022 – 2032). It allows accumulating efforts and resources of Ukraine and its partners abroad for its survival and further post-war progress. The URP is the potential policy frame to integrate the BHR agenda as a cross-sectoral issue in its relevant parts.

4.2.3. To integrate the UNGPs, these and other policy acts should be revised with the use of the BHR lens. The BHR-relevant vertical and horizontal policy cohesion should be ensured. The hHRDD requirements concerning RBC in the ongoing war context and post-war recovery should be properly regarded.



4.3. A NAP ON BHR



4.3.1. A comprehensive NAP on BHR would be beneficial for Ukraine. It should be developed to implement the national strategic policy provisions. The acting programming documents (action plans) that supplement the strategic policy documents do not provide for the complete frames of the UNGPs realisation.

4.3.2. A NAP should better be a standalone document elaborated in full compliance with the UNWG Guidance on NAPs of 2016 and the best foreign practice on NAPs.

4.3.3. Institutional capacity and BHR-awareness to draft a NAP, lead and evaluate its implementation should be ensured. The meaningful stakeholder's engagement is required.

4.3.4. NAP's activities should cover the national, regional and local levels to leave no one behind and embed the BHR in practice regarding the specifics of the country profile.

4.3.5. Sufficient resources should be attributed to sustain a NAP's implementation.




4.4. AWARENESS RAISING ON BHR



4.4.1. Cases of the business-related human rights abuses in Ukraine are caused by poor awareness among Ukraine's decision-makers, business and broad public about the UNGPs and the BHR developments that concern and impact all areas of economic and social relations in Europe and beyond.

4.4.2. The low BHR-awareness conditions the shortcomings of the current policy, legislation and practice. Their improvement is possible when decision-makers and business are trained to frame and apply regulations through the BHR lens, and the CSOs are trained to evaluate the efficiency of the BHR policy, legislation and practice.

4.4.3. BHR-oriented information campaigns and specific training courses and programmes for various target audience should be developed and promoted.

ANNEXES

ANNEX 1.

BRIEF OVERVIEW OF THE CURRENT LAW-MAKING TO REGULATE THE RESPONSIBLE BUSINESS CONDUCT UNDER THE MARTIAL LAW IN UKRAINE

The Parliament of Ukraine and the GoU have adopted and go on drafting various laws and by-laws to reduce taxes, introduce the declarative principle of work under licenses, cancel superabundant inspections, regulate labour relations, improve social insurance, functioning of the judiciary, etc. The specifics of the martial law and support to business are not supposed to level out the corporate respect for human rights.

The BHR-relevant laws and draft laws include:

- ❑ Tax Code of Ukraine is amended on 21.06.2022 to create favourable tax conditions for the activity of industrial parks in Ukraine¹¹³; this measure ensures their competitiveness and ability to attract investments, especially during the period of the martial law for the relocation of industrial enterprises from the Eastern regions of the country and, subsequently, provide for IDPs employment;
- ❑ Tax Code of Ukraine and the Law of Ukraine “On the Collection and Accounting of a Single Contribution to Mandatory State Social Insurance” are planned to be amended to reduce the tax burden on wages and provide substantial support to employers and employees¹¹⁴ (MPs’ draft law of 25.05.2022);
- ❑ certain legislative acts are amended on 27.07.2022 to regard the specifics of the financial sector in connection with the introduction of the martial law in Ukraine¹¹⁵ and support the stable operation of the financial sector during the war;

113 On Amendment of the Tax Code of Ukraine on Creating Favourable Conditions for the Activity of Industrial Parks in Ukraine: Law of Ukraine No. 2330-IX of 21.06.2022. URL: <https://zakon.rada.gov.ua/laws/show/2330-20#Text>

114 Draft Law on Amendments to the Tax Code of Ukraine and the Law of Ukraine “On the Collection and Accounting of a Single Contribution to Mandatory State Social Insurance” regarding the support of employers and employees in the conditions of the martial law No. 7406 of 25.05.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1325749>

115 On amendments to certain legislative acts of Ukraine regarding the specifics of the financial sector in connection with the introduction of martial law in Ukraine: Law of Ukraine No. 2463-IX of 27.07.2022. URL: <https://zakon.rada.gov.ua/laws/show/2463-20#Text>

- Law of Ukraine “On the Organisation of Labour Relations under the Martial Law in Ukraine”¹¹⁶ is adopted on 15.03.2022 to determine the specifics of civil service, service in local self-government bodies, labour relations of employees of all enterprises, institutions, and organizations regardless of the form of ownership, type of activity and branch affiliation, representative offices of foreign economic entities in Ukraine, as well as persons who work under an employment contract concluded with individuals. It establishes a special regulation of labour relations between employers and employees, in particular, regarding the conclusion and termination of employment contracts, changes in essential working conditions, transfer to another job, granting of vacations, maximum duration of work during the week and rest period, wages, etc. The norms are introduced to ensure a balance between the reduction of employers' expenses for vacation pay, overtime hours, working hours on holidays and weekends, etc., and ensuring the minimum necessary rights and guarantees of employees;
- Law of Ukraine “On Amendments to Clause 5-2 of Chapter 9 "Final and Transitional Provisions" of the Law of Ukraine "On State Aid to Business Entities" regarding the application of its provisions during the martial law” is adopted on 01.04.2022¹¹⁷ to simplify the mechanism of obtaining state funds by business entities for compensation of losses related to the martial law and to ensure the compliance with the provisions of the EU-Ukraine Association Agreement;
- Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Optimization of Labour Relations”¹¹⁸ is adopted on 01.07.2022. It establishes: a) the rules on electronic management of documents on labour relations; b) additional grounds for dismissal of an employee – the inability to provide an employee with the necessary working conditions and the absence of an employee at work and information about its reasons for more than four months; c) the notion of “co-employment” to ensure the opportunity for employees to find another job if they were forced to leave their workplaces; d) the clear term for the payment of wages for vacation time in compatibility with the ILO Convention No. 132; e) compensation to employees and employers for labour-related monetary sums lost as a result of war (for this purpose, a specific mechanism will be developed); f) the procedure for regulating working time and rest time during the period of wartime, in particular, with regard to the categories of employees whose working hours can be increased during the week, the mechanism of payment for work on a day off is restored, the procedure for granting annual basic leave is clarified. The Law states that introduction of extended working hours is a right but not an obligation of an employer. The procedure and conditions for applying the mechanism of suspension of the employment contract is clarified, the established norms rule to avoid possible risks of abuse by employers and ensure labour guarantees for employees in the conditions of the martial law. The Law envisages the possibility to apply the unscheduled measures of the State control over compliance with the labour legislation in order to protect the labour rights of employees, etc.;
- Law of Ukraine “On Joint-Stock Companies” is adopted on 27.07.2022¹¹⁹ to ensure advancing the level of corporate governance in business companies with regard to European practices and standards; this will contribute to the protection of investors' rights and the expansion of opportunities for attracting capital, improving Ukraine's position in the World Bank's rating of Doing Business according to the indicator "Protection of minority investors," and the fulfilment of Ukraine's obligations under the EU-Ukraine Association Agreement;

116 On the Organization of Labour Relations under the Martial Law: Law of Ukraine No. 2136-IX of 15.03.2022. URL: <https://zakon.rada.gov.ua/laws/show/2136-20#Text>

117 On Amendments to Clause 5-2 of Chapter 9 "Final and Transitional Provisions" of the Law of Ukraine "On State Aid to Business Entities" regarding the application of its provisions during the martial law": Law of Ukraine No. 2175-IX of 01.04.2022. URL: <https://zakon.rada.gov.ua/laws/show/2175-20#Text>

118 On Amendments to Certain Legislative Acts of Ukraine Regarding the Optimization of Labour Relations: Law of Ukraine No. 2352-IX of 01.07.2022. URL: <https://zakon.rada.gov.ua/laws/show/2352-IX#Text>

119 On Joint-Stock Companies: Law of Ukraine No. 2465-IX of 27.07.2022. URL: <https://zakon.rada.gov.ua/laws/show/2465-20#Text>

- Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding the administration of justice in conditions of the martial law or a state of emergency"¹²⁰ is adopted on 27.07.2022 to ensure the access to justice for participants of the judicial process and the work of judges with use of the Single State web portal of electronic services, including the mobile application "Diia";
- Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Facilitation of Enterprise Relocation Processes in the Conditions of the Martial Law and Economic Recovery of the State"¹²¹ is adopted on 28.07.2022 to ensure adaptation of the procedure of preparation for privatization and sale to the conditions of the martial law, clarification of certain law provisions on simplification of granting special permits for the use of natural resources, etc., which will increase the investment attractiveness of privatization objects, as well as the legislative acts on notary issues, mortgages, executive proceedings, state registration of property rights to real estate and their encumbrances, aimed at increasing the efficiency of pre-privatization preparation of state-owned objects;
- the GoU draft law on simplification of business conduct in Ukraine (deregulation)¹²² (of 22.08.2022) is submitted to the Parliament. It meets one of the goals of the National Economic Strategy for the period until 2030 to ensure the right to conduct economic activity (especially during the state of emergency and wartime) without obtaining a permit. It foresees the order of submitting a declaration to the relevant State authorities regardless of the location and place of a business entity, also online – through the Unified state web portal of electronic services, application or Diia portal. Currently, 48 permits, 19 licenses, and about 500 other public services for business have already been transferred to the declarative principle in Ukraine in order to establish the most convenient conditions for doing business. This helps entrepreneurs to restore their work that was suspended due to hostilities, or to start a new business;
- the MP's draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" to ensure that Ukraine fulfils its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms"¹²³ (of 13.06.2022) aims to improve the legal mechanism for ensuring an individual's right to a fair trial, increase the efficiency of the judicial system, improve the disciplinary responsibility of judges in case when their judgements are adopted in violation of the ECHR, the fact of which is established by the final judgement of the European Court of Human Rights.

120 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding the administration of justice in conditions of the martial law or a state of emergency: Law of Ukraine No. 2461-IX of 27.07.2022. URL: <https://zakon.rada.gov.ua/laws/show/2461-IX#Text>

121 On Amendments to Certain Legislative Acts of Ukraine on Facilitation of Enterprise Relocation Processes in the Conditions of the Martial Law and Economic Recovery of the State: Law of Ukraine No. 2468-IX of 28.07.2022. URL: <https://zakon.rada.gov.ua/laws/show/2468-20#Text>

122 On Amendments to Certain Legislative Acts of Ukraine on Simplifying the Conditions of Doing Business (Deregulation): Draft Law of Ukraine No.7689 of 22.08.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1447679>

123 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" to ensure that Ukraine fulfils its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms: Draft Law of Ukraine No. 7463 of 13.06.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1349215>

ANNEX 2.

THE LIST OF THE SELECTED BHR AND THE NHRS-CORRESPONDING DRAFT LAWS AND LAWS ALSO ADOPTED AFTER THE UPDATING OF THE NHRS OF 2021

There are the following BHR and the NHRS-corresponding draft laws and laws also adopted after the updating of the NHRS submitted by both Members of the Parliament (MPs) and the GoU:

HUMAN RIGHTS IN ECONOMIC ACTIVITIES (NHRS §16) (SELECTED DRAFT LAWS AND LAWS)

- Draft Law on Amendments to the Law of Ukraine "On the Protection of Consumer Rights" (regarding representation of the interests of consumers who are members of public organizations in courts of all instances) (MPs, registration No. 5741 of 08.07.2021)¹²⁴, included in the Parliament's Agenda on 06.09.2022;
- Draft Law on Amendments to Article 625 of the Civil Code of Ukraine on the Protection of the Rights of Utility Consumers (MPs, registration No. 5754 of 12.07.2021);
- Draft Law on the Protection of Consumer Rights (GoU, registration No. 6134 of 05.10.2021)¹²⁵ included in the Parliament's Agenda on 06.09.2022;
- Draft Law on Amendments to the Tax Code of Ukraine on the Implementation of Projects on the Terms of Public-Private Partnership (GoU, registration No. 3655 of 15.06.2020)¹²⁶, included in the Parliament's Agenda on 06.09.2022;
- Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving the Mechanism for Attracting Private Investments Using the Public-Private Partnership Mechanism to Accelerate the Restoration of War-Destroyed Objects and the Construction of New Objects Related to the Post-War Reconstruction of Ukraine's Economy (MPs, registration No. 7508 of 01.07.2022)¹²⁷, included in the Parliament's Agenda on 06.09.2022;
- Law of Ukraine "On amendments to Article 7 of the Law of Ukraine "On the Protection of Consumer Rights" regarding warranty obligations in electronic form" No. 1603-IX of 01.07.2021¹²⁸ to digitize the business processes and improve the services provided to the consumer during the warranty service of goods (MPs' submission);
- Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" No. 1667-IX of 15.07.2021¹²⁹ (MPs' submission);
- Law of Ukraine "On the Peculiarities of the Provision of Public (Electronic Public) Services" No. 1689-IX of 15.07.2021¹³⁰ (MPs' submission);

124 <https://itd.rada.gov.ua/billInfo/Bills/Card/27311>

125 <https://itd.rada.gov.ua/billInfo/Bills/Card/27942>

126 <https://itd.rada.gov.ua/billInfo/Bills/Card/2803>

127 <https://itd.rada.gov.ua/billInfo/Bills/Card/39902>

128 <https://zakon.rada.gov.ua/laws/show/1603-20#Text>

129 <https://zakon.rada.gov.ua/laws/show/1667-20#Text>

130 <https://zakon.rada.gov.ua/laws/show/1689-20#Text>

- ❑ Law of Ukraine "On the Cloud Services" No. 2075-IX of 17.02.2022¹³¹ (MPs' submission);
- ❑ Law of Ukraine "On Amendments to the Law of Ukraine "On Accounting and Financial Reporting in Ukraine"" No. 2435-IX of 19.07.2022¹³² (GoU submission);
- ❑ Law of Ukraine "On Amendments to Certain Laws of Ukraine on Ensuring the Stability of the Individual Deposit Guarantee System" No. 2180-IX of 01.04.2022¹³³ (MPs' submission);
- ❑ Law of Ukraine "On the Financial Services and Financial Companies" No. 1953-IX of 14.12.2021¹³⁴ (MPs' submission);
- ❑ Law of Ukraine "On the Insurance" No. 1909-IX of 18.11.2021¹³⁵ (MPs' submission);
- ❑ Law of Ukraine "On Amendments to the Budget Code of Ukraine" (on the regulation of the budgetary relations during the fulfilment of contracts concluded in the framework of the public-private partnership, including concession contracts) of 15.02.2022 No. 2043-IX¹³⁶ (GoU submission);

RIGHT TO A FAIR TRIAL AND THE LEGAL AID (NHRS §4)

IN CASES OF BUSINESS-RELATED HUMAN RIGHTS ABUSES (SELECTED DRAFT LAWS)

- ❑ Draft Law on Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on ensuring Ukraine's fulfilment of its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (MPs, registration No. 7463, of 13.06.2022)¹³⁷;
- ❑ Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving Judicial Control over the Execution of Court Decisions in Economic and Civil Justice (MPs, registration No. 7042 of 11.02.2022)¹³⁸;
- ❑ Draft Law on Amendments to the Laws of Ukraine "On Access to Court Decisions" and "On Electronic Trust Services" Regarding the Registration of Electronic Copies of Court Decisions (MPs, registration No. 6377 of 02.12.2021)¹³⁹, included in the Parliament's Agenda on 06.09.2022;
- ❑ Draft Law on Amendments to Certain Laws of Ukraine on Improving the Procedure for Formation and Activity of Arbitration Courts with the Purpose of Restoring Trust in Arbitration (GOU, registration No. 3411 of 29.04.2020)¹⁴⁰, adopted as a basis on 02.02.2021, to be submitted for the 2nd reading;
- ❑ Draft Law on Amendments to the Economic Procedure Code of Ukraine on Jurisdiction of Cases involving Foreign Legal Entities (MPs, registration No. 3566 of 29.05.2020)¹⁴¹, included in the Parliament's Agenda on 06.09.2022;
- ❑ Draft Law on Amendments to Article 5 of the Law of Ukraine "On Court Fees" on Exemption from Payment of Court Fees for Filing Lawsuits for Claims Arising from Labour Relations (MPs, registration No. 3647 of 12.06.2020)¹⁴², included in the Parliament's Agenda on 06.09.2022;

131 <https://zakon.rada.gov.ua/laws/card/2075-20>

132 <https://zakon.rada.gov.ua/laws/show/2435-20#Text>

133 <https://zakon.rada.gov.ua/laws/show/2180-20#top>

134 <https://zakon.rada.gov.ua/laws/show/1953-20#Text>

135 <https://zakon.rada.gov.ua/laws/show/1909-20#Text>

136 <https://zakon.rada.gov.ua/laws/show/2042-20#Text>

137 <https://itd.rada.gov.ua/billInfo/Bills/Card/39785>

138 <https://itd.rada.gov.ua/billInfo/Bills/Card/38957>

139 <https://itd.rada.gov.ua/billInfo/Bills/Card/28453>

140 <https://itd.rada.gov.ua/billInfo/Bills/Card/2160>

141 <https://itd.rada.gov.ua/billInfo/Bills/Card/2582>

142 <https://itd.rada.gov.ua/billInfo/Bills/Card/2777>

- Draft Law on Amendments to the Law of Ukraine "On the Implementation of Judgements and Application of the Practice of the European Court of Human Rights" (on improving the procedure for the implementation of judgements of the European Court of Human Rights) (MPs, registration No. 4316 of 04.11.2020)¹⁴³;
- Draft Law on Amendments to the Law of Ukraine "On Executive Implementation" regarding the specifics of the execution of a court decision on securing a claim (GoU, registration No. 4064-1 of 23.09.2020)¹⁴⁴;
- Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Payment of Court Fees" (MPs, registration No. 2427 of 13.11.2019)¹⁴⁵; etc.

PREVENTION AND COUNTERACTION OF DISCRIMINATION (NHRS §8)

(SELECTED DRAFT LAWS AND LAWS)

- Draft Law on Amendments to Certain Legislative Acts of Ukraine (Regarding Harmonization of Legislation in the Field of Prevention and Counteraction of Discrimination with European Union Law) (MPs, registration No. 0931 of 29.08.2019)¹⁴⁶, adopted in the first reading on 16.02.2016 and is still under consideration, to be submitted for the 2nd reading;
- Draft Law on Amendments to Article 20 of the Law of Ukraine "On Vacations" on Elimination of Discrimination against Self-Employed Women (MPs, registration No. 3831 of 13.07.2020)¹⁴⁷, included in the Parliament's Agenda on 06.09.2022;
- Draft Law on Amendments to Article 17 of the Law of Ukraine "On Insurance" regarding additional protection of the rights of insurance service consumers and combating discrimination in the field of insurance (MPs, registration No. 4630 of 22.01.2021)¹⁴⁸, included in the Parliament's Agenda on 06.09.2022;
- Draft Law on Amendments to Certain Legislative Acts of Ukraine on Bringing Them into Compliance with the Constitution of Ukraine to Counter the Direct or Indirect Discrimination and Intolerance Against Individuals and Groups of Individuals (MPs, registration No. 6325-1 of 06.12.2021)¹⁴⁹, included in the Parliament's Agenda on 06.09.2022;
- Draft Law on Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine to Counter Manifestations of Discrimination (MPs, registration No. 6327-1 of 06.12.2021)¹⁵⁰, included in the Parliament's Agenda on 06.09.2022;
- Law of Ukraine "On Amendments to the Law of Ukraine "On Advertising" on Combating Discrimination on the Basis of Gender" No. 1750-IX of 10.09.2021¹⁵¹ (MPs' submission);
- Law of Ukraine "On the Prevention and Counteraction of Anti-Semitism in Ukraine" No. 1770-IX of 22.09.2021¹⁵² (MPs' submission).

143 <https://itd.rada.gov.ua/billInfo/Bills/Card/4522>

144 <https://itd.rada.gov.ua/billInfo/Bills/Card/4134>

145 <https://itd.rada.gov.ua/billInfo/Bills/Card/453>

146 <https://itd.rada.gov.ua/billInfo/Bills/Card/3767>

147 <https://itd.rada.gov.ua/billInfo/Bills/Card/3217>

148 <https://itd.rada.gov.ua/billInfo/Bills/Card/5273>

149 <https://itd.rada.gov.ua/billInfo/Bills/Card/38513>

150 <https://itd.rada.gov.ua/billInfo/Bills/Card/38515>

151 <https://zakon.rada.gov.ua/laws/show/1750-IX#Text>

152 <https://zakon.rada.gov.ua/laws/show/1770-20#Text>

ECOLOGICAL RIGHTS (NHRS §15) WHEN IT CONCERNS THE NEGATIVE ECOLOGICAL IMPACT OF BUSINESS OPERATION (SELECTED DRAFT LAWS)

- ❑ Draft Law on the State Environmental Control (MPs, registration No. 3091 of 19.02.2020)¹⁵³, adopted as a basis on 15.07.2021, to be submitted for the 2nd reading;
- ❑ Draft Law on Amendments to Certain Laws of Ukraine on the Introduction of Liability for Violations of the Strategic Environmental Assessment Procedure (GoU, registration No. 5159 of 25.02.2021)¹⁵⁴, adopted as a basis on 16.08.2022, to be submitted for the 2nd reading;
- ❑ Draft Law on Amendments to the Code of Ukraine on Administrative Offenses Regarding the Introduction of Liability for Failure to Comply with the Requirements of the Law of Ukraine "On Strategic Environmental Assessment" (GoU, registration No. 5160 of 25.02.2021)¹⁵⁵, submitted for the repeated first reading on 16.08.2022;
- ❑ Draft Law on Environmental Insurance (GoU, registration No. 6018 of 09.09.2021)¹⁵⁶;
- ❑ Draft Law on Environmental Insurance and Guarantees of Compensation for Damage Caused by Activities of the Increased Environmental Hazard (MPs, registration No. 6018-2 of 29.09.2021)¹⁵⁷;
- ❑ Draft Law on Amendments to the Tax Code of Ukraine on Stimulating Environmental Tax Payers to Implement Environmental Protection Measures and Balance Budget Revenues (MPs, registration No. 6345-1 of 09.12.2021)¹⁵⁸;
- ❑ Draft Law on Amendments to Certain Laws of Ukraine on Improving the Environmental Audit Procedure (GoU, registration No. 6349 of 25.11.2021)¹⁵⁹;
- ❑ Draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding the State Environmental Monitoring System, Information on the State of the Environment (Environmental Information) and Information Support for Environmental Management (GoU, registration No. 7327 of 28.04.2022)¹⁶⁰, submitted for repeated first reading on 08.07.2022;
- ❑ Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Environmental Activities and Civil Protection for the Period of the Martial Law and the Reconstruction Period" No. 2132-IX of 15.03.2022¹⁶¹ (MPs submission);
- ❑ Law of Ukraine "On the Waste Management" No. 2320-IX of 20.06.2022¹⁶² (MPs submission);
- ❑ Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Improvement of the Mechanism of Regulation of Emissions of Pollutants into the Atmospheric Air" No. 2393-IX of 09.07.2022¹⁶³ (GoU submission); etc.

153 <https://itd.rada.gov.ua/billInfo/Bills/Card/1271>

154 <https://itd.rada.gov.ua/billInfo/Bills/Card/25758>

155 <https://itd.rada.gov.ua/billInfo/Bills/Card/25759>

156 <https://itd.rada.gov.ua/billInfo/Bills/Card/27689>

157 <https://itd.rada.gov.ua/billInfo/Bills/Card/27880>

158 <https://itd.rada.gov.ua/billInfo/Bills/Card/38533>

159 <https://itd.rada.gov.ua/billInfo/Bills/Card/28401>

160 <https://itd.rada.gov.ua/billInfo/Bills/Card/39521>

161 <https://zakon.rada.gov.ua/laws/show/2132-20#Text>

162 <https://zakon.rada.gov.ua/laws/show/2320-20#Text>

163 <https://zakon.rada.gov.ua/laws/show/2393-20#Text>

RIGHTS OF FOREIGNERS AND STATELESS PERSONS (NHRS §19)

WHEN IT CONCERNS THEIR REALISATION OF HUMAN RIGHTS IN ECONOMIC (INCL. LABOUR) RELATIONS
(LAWS ADOPTED DURING THE CURRENT IX-TH CONVOCATION OF THE PARLIAMENT)

- Law of Ukraine "On Amendments to the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" No. 1182-IX of 03.02.2021¹⁶⁴;
- Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Recognition of a Stateless Person" No. 693-IX of 16.06.2020¹⁶⁵, etc.
- Rights of internally displaced persons (NHRS §21) when it concerns their realisation of human rights in economic (incl. labour) relations and possible or actual abuses of these rights (selected draft laws)
- Draft Law on Amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" (MPs, registration No. 4487 of 11.12.2020)¹⁶⁶, included in the Parliament's Agenda on 06.09.2022;
- Law of Ukraine "On Amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" regarding the exemption of certain categories of internally displaced persons from the negative consequences of non-fulfilment of monetary obligations under credit and loan agreements" No. 1646-IX of 14.07.2021¹⁶⁷ (MPs' submission).

164 <https://zakon.rada.gov.ua/laws/show/1182-20#Text>

165 <https://zakon.rada.gov.ua/laws/show/693-20#Text>

166 <https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=4487&conv=9>

167 <https://zakon.rada.gov.ua/laws/show/1646-20#Text>

ANNEX 3.

SUGGESTIONS AND COMMENTS ON THE DRAFT CHAPTERS OF THE UKRAINE RECOVERY PLAN ON INTEGRATING OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

| № | Working Group | Section/Area/ Direction and Stage (selected) | Task/ Goal (selected) | Measure/Step/ Activity (selected) | Suggestions on the content and/or further implementation, incl. references to the UN Guiding Principles on Business and Human Rights (UNGPs), BHR principles, relevant standards, guidelines, tools, etc. useful for the policy benchmarking and implementation activities |
|---|--|--|---|---|--|
| 1 | EUROPEAN INTEGRATION Working group 1 “The quality of life in Ukraine is comparable to the quality of life in the countries of the European Union” | | | | |
| | | 2.2. Economics of wartime: All for victory! Stage 2022 | 1. Ensure the implementation of reforms in the framework of commitments under the Association Agreement between Ukraine and the EU, as well as plans for 2022 | 2. Formation of a plan-schedule for submission to the Government of NPA projects in the field of European integration for 2023 | To regard UNGPs’ Pillar I “The State duty to protect human rights”, incl. on general State regulatory and policy functions, mentioning, inter alia, that States shall ensure that laws and policies governing the creation and ongoing operation of business enterprises do not constrain but enable business respect for human rights. To include into the plan-schedule the draft NPAs’ implementation of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups with due account of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting; 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; Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting; Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 with Annex; etc. |
| | | | | 4. Analysis of draft laws in the field of European integration for 2022, taking into account the following criteria: [...] whether they provide for the establishment of additional regulatory requirements for business entities and which ones. | To ensure that legislative requirements for business entities meet the UNGPs Pillar I “The State duty to protect human rights”, inter alia, to 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”, Pillar II “The corporate responsibility to respect human rights” (principles 11- 24) and Pillar III “Access to remedy” (principles 28-31). |

| № | Working Group | Section/Area/ Direction and Stage (selected) | Task/ Goal (selected) | Measure/Step/ Activity (selected) | Suggestions on the content and/or further implementation, incl. references to the UN Guiding Principles on Business and Human Rights (UNGPs), BHR principles, relevant standards, guidelines, tools, etc. useful for the policy benchmarking and implementation activities |
|---|---------------|---|---|--|---|
| | | | 3. Implement cross-sectoral measures to support the economy and deepen sectoral ties with EU countries | | <p>To amend the list of Measures/Steps with “Development and implementation of the National Action Plan on Business and Human Rights” taking note of</p> <ol style="list-style-type: none"> 1) basic international human rights law treaties – International Bill of Human Rights, International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, ECHR, etc.; 2) Paragraph 67 of the 2030 Agenda which commits States to “foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with international standards and agreements and other ongoing related initiatives, such as the Guiding Principles on Business and Human Rights [...]”; 3) EU acquis, starting with the European Commission’s renewed EU strategy 2011-2014 for Corporate Social Responsibility that refers to the UNGPs on Business and Human Rights and foresees their implementation by the EU Member States through National Action Plans. For instance, the New EU Strategic Agenda for 2019-2024 develops on Protecting citizens and freedoms, European model for future and the EU Pillar of Social Rights, the content of which correlates with the UNGPs’ Pillars (on the state duty to protect human rights, the responsibility of business entities to respect human rights, etc.). Lots of EU law acts do implement the UNGPs in various fields; 4) OECD relevant documents; 5) current National Action Plans of the EU Member States and best NAP practice globally. |
| | | | 7. Create an international coordination “Platform for Reconstruction of Ukraine” as a single entry point for all actions for the reconstruction of Ukraine, under the joint leadership of the European Commission, which represents the EU, and the Government of Ukraine | 1. Association of partners and organizations supporting Ukraine, including EU member states, other bilateral and multilateral partners, as well as international financial institutions, within the framework of the “Ukraine Reconstruction Platform”. | <p>When creating the named Platform, - to regard the participatory human rights based-approach and the BHR principles on the meaningful stakeholders’ engagement in decision-making on economic activities as a tool to leave no one behind and ensure accountability, as foreseen by the 2030 UN Agenda for Sustainable Development.</p> <p>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)</p> |
| | | 2.3. Recovery, restart of the economy and institutions stage, 2023-2025 | 4. Implement cross-sectoral measures to integrate into EU internal markets, ensure food security and operate a logistics network with EU countries | 3. Concluding an Agreement on conformity assessment and acceptability of industrial goods; [...] 9. Ensuring national and world food security and minimizing the terrible losses from Russian aggression, in particular, in terms of broken food supply chains, by restoring, | <p>To base the recovery, restart of the economy and institutions on the BHR principles and UNGPs. The draft UN Legal Binding Instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises (https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WG-TransCorp/Session6/LBI3rdDRAFT.pdf) should be taken into account.</p> <p>When preparing the Agreement on conformity assessment and acceptability of industrial goods as well as restoring, forming new economic chains and maintaining the competitiveness of enterprises, to regard Pillar II “The corporate responsibility to respect human rights” Principles 11-15, 17-21 of the UNGPs; UN Guide on Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts, 2022; the EU acquis on BHR, particularly – the human rights and environmental due diligence instruments (nowadays – the European Parliament and the Council proposal to the European Commission for a Directive on corporate sustainability due diligence (2022) and the relevant laws of Germany, France, Netherlands, Belgium, Norway, Austria;</p> |

| № | Working Group | Section/Area/ Direction and Stage (selected) | Task/ Goal (selected) | Measure/Step/ Activity (selected) | Suggestions on the content and/or further implementation, incl. references to the UN Guiding Principles on Business and Human Rights (UNGPs), BHR principles, relevant standards, guidelines, tools, etc. useful for the policy benchmarking and implementation activities |
|--|---------------|---|--|---|---|
| | | | | forming new economic chains and maintaining the competitiveness of enterprises; | |
| | | 2.4. Structural modernization and full integration into the EU, stage 2026-2032 | 2. Restore Ukraine within the framework of the "Platform for Reconstruction of Ukraine" | 4. Supporting the recovery of Ukraine's economy and society by promoting sustainable and inclusive economic competitiveness, sustainable trade and private sector development, while facilitating the country's green and digital transition. | To integrate the UNGPs into the National Human Rights Strategy, National Economic Strategy, Concept of implementation of State Policy on Promoting the Development of Socially Responsible Business in Ukraine for the period up to 2030 , Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030, Concept of "Green" Energy Transition of Ukraine by 2050 , etc. and their Action plans |
| 2 ECONOMIC RECOVERY AND DEVELOPMENT Working group 4 "To restore a safe environment for people to live and do business comfortably in Ukraine within 12 months after the end of the war" | | | | | |
| | | 2.1. Wartime Economy: All for Victory! Stage 2022 | 1.1. To resume the activities of enterprises as quickly as possible, ensuring the build-up of supply in the market | 1.1.5. Implementation of the policy for the procurement of goods, works and services for recovery through Prozorro [...] 1.1.6 Creation of the Prozorro. Aid platform for direct assistance to businesses from companies/ entrepreneurs to restart business | To integrate BHR principles into the policy for procurement of goods, works and services for recovery, promote the socially responsible procurement as, when procuring at lowest cost, state bodies can sustain systematic human rights abuses. The UNGPs Pillar I "The State duty to protect human rights", under the heading, "The State-business nexus" (principles 4-6), specifically address the State's role and impacts when government and public authorities engage in commercial transactions. Governments should introduce human rights due diligence (esp. principle 17 of Pillar II "The corporate responsibility to respect human rights") into their procurement policies and practices to support SDG target 12.7 on sustainable public procurement. View: <ul style="list-style-type: none"> • "Public Procurement and Human Rights: A Survey of Twenty Jurisdictions", International Learning Lab on Public Procurement and Human Rights, 2016; • UN Global Compact Report "New Models for Sustainable Procurement", 2010, • UN Global Compact Report "Future Proofing Procurement – Using Innovation Today to Prepare for Tomorrow", 2016. • Public buyers who want to use procurement to strategically deliver positive social outcomes have a wide range of legal and practical tools available. View: • European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs Paper "Making socially responsible public procurement work: 71 good practice cases", 2020; • Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. |

| № | Working Group | Section/Area/ Direction and Stage (selected) | Task/ Goal (selected) | Measure/Step/ Activity (selected) | Suggestions on the content and/or further implementation, incl. references to the UN Guiding Principles on Business and Human Rights (UNGPs), BHR principles, relevant standards, guidelines, tools, etc. useful for the policy benchmarking and implementation activities |
|---|---------------|--|-----------------------|---|---|
| | | | | 1.1.11. Organization of transparent work on the timber market: [...] | To implement the UNGPs Pillar II “The corporate responsibility to respect human rights” principles 11-15, 17-21; the Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market - EU business entities that place wood products on the EU market for the first time are required to carry out a due diligence procedure and are prohibited from trading in illegally harvested wood and products made from it; |
| | | | | 1.1.15. Introducing a rule on the sale of certain types of raw materials by extraction companies exclusively on organized commodity markets (exchanges) in Ukraine. | To implement the UNGPs Pillar II “The corporate responsibility to respect human rights” principles 11-14, 17-21; Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market; 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; OECD Due Diligence Guidances for Responsible Business Conduct, for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas |
| | | | | 1.1.20. Implementation of corporate governance of economic entities of the state sector of the economy in accordance with the OECD Guidelines for corporate governance of State-owned enterprises in which the state is a shareholder (founder, participant). | To implement the UNGPs Pillar I “The State duty to protect human rights” principles 4-6, under the heading, “The state-business nexus”. Ex.: Principle 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. Notably - Principle 7 addresses the issue of supporting business respect for human rights in conflict-affected areas when States should help ensure that businesses are not involved with human rights abuse - help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships, assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence, etc. View: <ul style="list-style-type: none"> • UN Working Group on the issue of human rights and transnational corporations and other business enterprises Report on the State, State-owned enterprises, and Human Rights (A/HRC/32/45), 2016; • UN Global Compact Guide for Integrating Human Rights into Business Management, 2006; • UNCTAD Guidance on Good Practices in Corporate Governance Disclosure, 2006; • UN Office of High Commissioner on Human Rights “The Corporate responsibility to respect human rights: An interpretive guide”, 2012; • UNGPs Reporting Framework, Shift Initiative, • UN Global Compact 10 Principles; • UN Global Compact-PRI Guidance on Responsible Business in Conflict-Affected & High-Risk Areas: A Resource for Companies and Investors, 2010; Report “Organizing the Human Rights Function within a Company”, 2014; • European Commission Study “Implementation of the UN Guiding Principles on Business and Human Rights”, 2017; • Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups; • Proposal of the European Parliament and of the Council of 21 April 2021 for a Corporate Sustainability Reporting Directive (CSRD); etc. |

| № | Working Group | Section/Area/ Direction and Stage (selected) | Task/ Goal (selected) | Measure/Step/ Activity (selected) | Suggestions on the content and/or further implementation, incl. references to the UN Guiding Principles on Business and Human Rights (UNGPs), BHR principles, relevant standards, guidelines, tools, etc. useful for the policy benchmarking and implementation activities |
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| | | | 1.2 To simplify regulatory environment, expand business support programs focused on small and medium-sized businesses | 1.2.2 Additional content for Diia. Business portal regarding support for businesses | <p>Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size.</p> <p>So, it is necessary to provide specialized consultations on UNGPs' implementation to increase opportunities for small and medium-sized businesses, especially those working in supply chains. Take integrate the basics of the UNGPs, in particular, Principle 14 of Pillar II "The corporate responsibility to respect human rights" of the UNGPs.</p> <p>View:</p> <ul style="list-style-type: none"> • The Corporate Responsibility to Respect: An Interpretive Guide (Office of the UN High Commissioner for Human Rights); • UN Guiding Principles on Business and Human Rights: Resources for SMEs, 2020; • European Commission guidance to aid SMEs in implementing the Guiding Principles "My Business and Human Rights: A Guide To Human Rights For Small And Medium-Sized Enterprises, 2012; • IOE, "SMEs and the Responsibility to Respect Human Rights", 2019; • OECD "Due Diligence Guidance for Responsible Business Conduct", 2018; ISO's 26000:2010 Guidance on Corporate Social Responsibility (incl. SME specific guidance); • UN Global Compact Guide to Traceability for SMEs, 2016, Practical Guide for Continuous Improvement for Small and Medium Enterprises, 2011, Report "Support your SME Supplier", 2015, etc. |
| | | | 1.3 To support businesses in preservation and increase of employment, stimulate citizens to return from abroad | 1.3.4 Liberalization of labour legislation through transition to contractual regulation of relations between employers and employees 1.3.13 Improvement of the system of collective contractual regulation of social and labour relations. | <p>The liberalized labour policy and legislation in favour of employers (duty-bearers) should not cause violation of rights of employees as rights-holders, esp. having in mind their critically vulnerable position in the time of war.</p> <p>To regard, primarily, UNGPs' Pillar II "The corporate responsibility to respect human rights" principles 11- 24;</p> <p>International Labour Organization's Declaration on Fundamental Principles and Rights at Work, ILO Conventions ratified by Ukraine (158, 173 and also 98, 103, 111, 117, 122, 132, 140, 142, 150, etc.), EU Employment and Social Policy (European Pillar of Social Rights) and legislation; UN Global Compact 10 principles on human rights and labour, etc.</p> |
| | | | | 1.3.10. Development of fast reskilling programs for employees to change occupation and forward talent to sectors with larger demand as a part of solution to ease unemployment caused by war. | To integrate to the reskilling programs for employees training courses on the BHR principles and the specific issues of the UNGPs implementation in various sectors, core ILO conventions, relevant EU and CoE acquis, OECD guidelines, etc. |

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| | | 2.2. Recovery, restart of the economy and institutions stage, 2023–2025 | 2.1. To reduce regulatory and administrative load upon businesses and introduce new instruments of support for small and medium-sized businesses | 2.1.1 Effective regulation of access to markets | <p>To regard the UNGPs, in particular, Pillar II “The corporate responsibility to respect human rights”.</p> <p>View:</p> <ul style="list-style-type: none"> • UN Guide for Business: How to Develop a Human Rights Policy, 2011; • The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (Office of the UN High Commissioner for Human Rights); • UN Guiding Principles on Business and Human Rights: Resources for SMEs, 2020; European Commission guidance to aid SMEs in implementing the Guiding Principles “My Business and Human Rights: A Guide to Human Rights for Small And Medium-Sized Enterprises, 2012; • IOE, “SMEs and the Responsibility to Respect Human Rights”, 2019; OECD “Due Diligence Guidance for Responsible Business Conduct”, 2018; • OECD Guidelines for multinational enterprises, 2011; • ISO’s 26000:2010 Guidance on Corporate Social Responsibility (incl. SME specific guidance), etc. <p>Inter alia, to pay attention to SME’s participation in public procurement, which is quite limited compared to their role in national economies. Easier access to public procurement markets can help SMEs find new opportunities and grow. In a time of crisis, greater SME participation in public procurement can also make a significant contribution to economic recovery.</p> <p>In this regard, it is necessary to implement the UNGPs Pillar I “The State duty to protect human rights” principles 1,3, 4-6 under the heading “The state-business nexus”; to take note of the SME-friendly provisions introduced by the 2014 public procurement directives - Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC/</p> |
| | | | | 2.1.2 Transformation of state supervision 2.1.3 Improvement of mechanism to protect businesses from the state | <p>To regard of UNGPs, in particular, Pillar I “The State duty to protect human rights” principles 1,3, 4-6 under the heading “The state-business nexus”;</p> <p>UN Global Compact Guide for Integrating Human Rights into Business Management, 2nd Edition (2009);</p> <p>EC (2010) Smart Regulation in the European Union, COM(2010) 543 final;</p> <p>DFID, World Bank, IFC and OECD “Charter of Good Practice in using Public Private Dialogue for Private Sector Development”, 2006;</p> <p>World Bank Review of World Bank Group Support to Structured Public-Private Dialogue for Private and Financial Sector Development, 2009;</p> <p>Centre for International Private Enterprise REFORM Toolkit “Making the Most of Public-Private Dialogue: An Advocacy Approach”, 2011; OECD “Policy framework for investment”: User’s toolkit, 2011; etc.</p> |
| | | | | 2.4.7 Improvement of the investment environment. | <p>To regard of UNGPs, in particular, Pillar I “The State duty to protect human rights” principles 4 under the heading “The state-business nexus”, 8- 9 under the heading “Ensuring policy coherence”;</p> <p>The State should ensure that all existing and future investment agreements are compatible with its international human rights obligations. It should invoke international investment agreements to encourage responsible business conduct on the part of investors and hold them accountable for abusing internationally recognized human rights.</p> <p>View:</p> <ul style="list-style-type: none"> • UN Principles for Responsible Contracts: Integrating the Management of Human Rights Risks Into State-Investor Contract Negotiations, Principle 4, (U.N. Doc. A/HRC/17/31/Add.3 , May 25, 2011); • United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2021: Investing in Sustainable Recovery (New York, 2021); |

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| | | | | | <ul style="list-style-type: none"> UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report on human rights-compatible international investment agreements (U.N. Doc. A/76/238, 27 July 2021); London School of Economics and Political Science, Centre for the Study of Human Rights, "Guide to implementing the UN Guiding Principles on Business and Human Rights in investment policymaking" (London, 2016); InvestEU Programme 2021 – 2027; The Principles for Responsible Investment Initiative; Research Handbook on Human Rights and Business, 2020; OECD Guidelines for Multinational Enterprises, 2011, etc. |
| | | | | <p>2.4.11. Organization of transparent work of the wood market and providing for the cascade principle of wood sales</p> <p>2.4.12. Development of the Ukrainian production of critical components required for woodworking and furniture manufacturing industries</p> | <p>To implement the UNGPs Pillar II "The corporate responsibility to respect human rights" principles 11-15, 17-21; the Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market - EU business entities that place wood products on the EU market for the first time are required to carry out a due diligence procedure and are prohibited from trading in illegally harvested wood and products made from it;</p> |
| | | 2.3. Structural Upgrading and Comprehensive Integration into the EU stage 2026–2032 | 3.2 To provide for functioning of a flexible and business-oriented regulatory system | 3.2.1 Introduction of efficient regulation on the basis of the risk-oriented approach and the principles of the Small Business Act for Europe in respect of regulation and support of the SMB (small and medium businesses) | <p>Smarter and simpler regulation makes it cheaper and easier for people, businesses and organisations to comply. Flexible and business-oriented regulatory system should be based on the corporate responsibility to respect human rights in order to meet the requirements of the EU acquis, Small Business Act for Europe incl.</p> <p>When improving the regulatory system the State should regard the UNGPs Pillar I "The State duty to protect human rights" and Pillar III "Access to remedy" principles 26-27; SMB should regard the UNGPs Pillar II "The corporate responsibility to respect human rights", in particular, Principle 14, and Pillar III "Access to remedy" principles 28-31.</p> <p>To take note of:</p> <ul style="list-style-type: none"> UN Guiding Principles on Business and Human Rights: Resources for SMEs, 2020; EC (2010) Smart Regulation in the European Union, COM(2010) 543 final; European Commission guidance to aid SMEs in implementing the Guiding Principles "My Business and Human Rights: A Guide To Human Rights For Small And Medium-Sized Enterprises, 2012; IOE, "SMEs and the Responsibility to Respect Human Rights", 2019; ISO's 26000:2010 Guidance on Corporate Social Responsibility (incl. SME specific guidance), 2010; OECD Guiding Principles for Regulatory Quality and Performance, 2005, which brings the recommendations in the 1997 OECD Report on Regulatory Reform up to date, and also builds on the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation; OECD Guidelines for multinational enterprises, 2011; OECD "Due Diligence Guidance for Responsible Business Conduct", 2018; APEC-OECD Integrated Checklist on Regulatory Reform: A Policy Instrument for Regulatory Quality, Competition Policy and Market Openness, 2005; OECD Reviews of Regulatory Reform, Regulatory Reform In Sweden. Government Capacity to Assure High Quality Regulation In Sweden, 2007; etc. |

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| | | | 3.3 To provide for transition of the economy to new innovative development trends | 3.3.3 Prioritization of the environmentally neutral production enterprises and closed cycle production enterprises. | <p>The EU Better/Smart Regulation initiative mainstreams the SDGs and leads to a better environment.</p> <p>To integrate the UNGPs Pillar I “The State duty to protect human rights” into the State policy and legislation regarding the ecology safety and ecological rights; Pillar II “The corporate responsibility to respect human rights”, in particular, Principle 15 (b), 17, and Pillar III “Access to remedy” principles 28-31 – should be regarded by enterprises.</p> <p>The EU environmental policy is in conformity with the UNGPs - the core of it is the “polluter pays principle”: those responsible for environmental damage should pay to cover the costs. View:</p> <ul style="list-style-type: none"> European Commission toolkit “Ensuring that polluters pay” presenting economic instruments used in the EU Member States to make polluters pay. |
| 3 | ECONOMIC RECOVERY AND DEVELOPMENT | | | | <p>Financial sector actors are key for ensuring corporate respect for human rights, at a minimum; the full range of their activities should respect the rights established by the International Bill of Human Rights, the ILO Core Conventions, ECHR, and the UNGPs supplemented by relevant European policy and law documents.</p> |
| | Working group 6 | Area: “State (public) finances” | 1. Effective regulation of the financial sector and improving supervisory approaches | 1. Effective financial sector regulation and improving supervisory approaches. 2. Boosting financial sector’s resilience to challenges. 3. Improving the financial sector’s quality of corporate governance and risk management. | <p>To regard the UNGPs Pillar I “The State duty to protect human rights”; principle 3 provide for adoption and implementation of human rights-oriented policy and legislation in any sector of business activities and periodical assessment of the adequacy of such laws and address any gaps. Financial sector’s quality of corporate governance should be based on environmental, social and governance (ESG) considerations and human rights. It should follow the UNGPs Pillar II “The corporate responsibility to respect human rights” - public or private financial institutions are called to adopt and embed relevant policies across the whole of their institutions and activities and conduct ongoing and iterative human rights due diligence (principle 17) where they may cause, contribute to, or be linked to negative impacts on people. The financial institutions should, where appropriate, also play a role in access to remedy with regard to UNGPs Pillar III “Access to remedy”.</p> <p>It is important that the Government</p> <ul style="list-style-type: none"> ensures the policy coherence regarding the human rights responsibilities of investors in the context of State institutions tasked with promoting sustainable economic development. Particular attention should be placed on the role of investors in encouraging companies to carry out human rights due diligence as the first step towards the realisation of the SDGs; promotes implementation of sustainable financing practices based on effective corporate governance, which includes environmental, social and governance (ESG) as well as human rights factors, also by means of developing requirements for a) environmental and social risk management, respect for human rights in banks; (b) disclosure of ESG and human rights due diligence by banks; supports the creation of guidance for institutional investors, including public pension funds, sovereign wealth funds, development finance institutions, as well as small and medium-sized investment firms, on respecting human rights throughout their investment activities, including on how this relates to fiduciary duties and to broader sustainability and ESG investing. <p>The EU legislative environment on sustainable finance and sustainable governance currently consists of: (i) the existing legislation and proposed initiatives on the EU taxonomy; (ii) the proposed corporate sustainability reporting directive (CSRD); (iii) the Sustainable Finance Disclosures Regulation; and (iv) the sustainable corporate-governance (SCG) initiative.</p> <p>Take not of:</p> <ul style="list-style-type: none"> UN Working Group on the issue of human rights and transnational corporations and other business enterprises Addendum Report “Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights”, 2021 (A/HRC/47/39/ Add.2); |

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| | | | | | <ul style="list-style-type: none"> • Due diligence has entered financial regulation, e.g., in the EU taxonomy and sustainable finance regulation (Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088); • EU Platform on Sustainable Finance Final Report on Social Taxonomy Platform on Sustainable Finance, 2022; • Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions "Action Plan: Financing Sustainable Growth" (COM/2018/097 final); etc. |
| | | Subgroup 1: Tax policy | Building a tax system that takes into account the requirements for Ukrainian integration into the global economy as a reliable tax jurisdiction, that provides taxpayers with the opportunity to fulfil their responsibilities necessary for the recovery and sustainable development of the country; | 1. Development of the Concept of transformation of the tax system of Ukraine | <p>Tax policy matters for human rights, as realization of rights requires resources. Taxes are the preeminent means through which governments raise revenues needed to deliver essential public goods and services and to protect rights. Taxation affects equality and non-discrimination, which are the basic principles of the human rights regime, by means of distribution of resources within and between countries, entrenching or alleviating social, economic and political disparities. Tax policy, like human rights law, is at the base of relationship between individuals and the state.</p> <p>To regard the UNGPs Pillar I "The State duty to protect human rights" in policy-and law-making, in particular principle 8 for ensuring policy coherence; Pillar III "Access to remedy" principles 25-27, 31.</p> <p>To integrate human rights, in particular, BHR principles (UNGPs) into the Tax policy strategic objectives. Ex.: "Building a tax system that takes into account the business and human rights principles as a part of requirements for Ukrainian integration into the global economy as a reliable tax jurisdiction, that provides taxpayers with the opportunity to enjoy rights and fulfil their responsibilities necessary for the recovery and sustainable development of the country.</p> <p>It can be recommended to use taxes for encouraging longer-term investments by imposing greater taxes on short-term capital gains relative to long-term capital gains.</p> <p>View:</p> <ul style="list-style-type: none"> • Report of the UN Special Rapporteur on Extreme Poverty and Human Rights to the UN Human Rights Council on taxation and human rights, 2014 (A/HRC/26/28) |
| | | | VII. Environment Tax | <ol style="list-style-type: none"> 1. To reconsider the environment tax rates for waste disposal using the "polluter pays more" principle 2. To carry out analytical work and introduce an environmental taxation mechanism change regarding carbon dioxide emissions (CO₂) 3. To carry out analytical work necessary for the approximation of the current system of national environmental taxation to the EU tax system | <p>To use the UNGPs Pillar II "The corporate responsibility to respect human rights", esp. in regard to principle 17 on Human rights due diligence, as arguments to use the "polluter pays more" principle when reconsidering the environment tax rates for waste disposal, changing the environmental taxation mechanism regarding carbon dioxide emissions (CO₂), etc.</p> <p>View:</p> <ul style="list-style-type: none"> • Report of the UN Special Rapporteur on extreme poverty and human rights "Climate change and poverty", 2019 (A/HRC/41/39) • The European Commission Report "Taxation in support of green transition: An overview and assessment of existing tax practices to reduce greenhouse gas emissions", 2021; • Study for the European Commission Directorate General for Taxation and Customs Union "On energy taxation indicators", 2021; • European Commission Evaluation of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity {SWD(2019) 332 final} |

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| | | Area "Development of the banking system, non-bank financial services and capital markets" | Subgroup 4: Banking system and non-bank financial services market: Ensuring the stability of the financial system and providing businesses with affordable bank lending; Capital markets: Activation and efficiency increase of capital markets and organized commodity markets, as well as integration of Ukrainian capital markets into the European financial area in order to attract foreign investment in equity and debt capital of real sector enterprises. | Introduction of the legislative field for functioning of investment funds in Ukraine in accordance with European rules of activity, such as Undertakings for Collective Investment in Transferable Securities (UCITS), alternative investment funds (AIFs), longterm investment funds (ELTIFs), venture capital funds (EuVECA), social entrepreneurship funds (EuSEF) and money market funds (MMFs). | <p>The institutional investors and banks should avoid causing or contributing to negative impacts on human rights associated to their activities or business relationships.</p> <p>The draft Law of Ukraine "On Investment Funds" should regard the UNGPs, in particular, it shall require from investees to respect human rights by means of adoption of human rights policies, governance, due diligence, introducing effective grievance mechanisms and the provision of remedy for victims of human rights abuse where the investee has caused or contributed to adverse human rights impacts; meaningful public disclosure of how the institution is addressing salient human rights risks and impacts connected with investment activities.</p> <p>The implementation of the law should be supported by practical instruments like A Roadmap for Action on putting the investor responsibility into practice.</p> <p>View:</p> <ul style="list-style-type: none"> UN Working Group on the issue of human rights and transnational corporations and other business enterprises Addendum Report "Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights", 2021 (A/HRC/47/39/Add.2); Summary Report of the Virtual workshop: The roles and responsibilities of public investment funds in implementing respect for human rights, 2021; UN Working Group on the issue of human rights and transnational corporations and other business enterprises Submission to the Principles for Responsible Investment (PRI) Human Rights Framework Consultation, 2020; OECD Guidelines for Multinational Enterprises, 2011; Investor Toolkit on Human Rights, The Investor Alliance for Human Rights, 2020; Human Rights at Development Finance Institutions: Connecting the dots between environmental and social risk management and development impact, The Danish Institute for Human Rights, 2021 |
| 4 | ENERGY SECURITY Working group 9 "Energy security is an integral component of the citizens' quality of life" Key framework of the Plan: "Ukrainian consumers should be provided with reliable access to energy resources, and vulnerable consumers should be protected from energy poverty" | | | | <p>The energy security is connected with human rights. Access to regular, adequate, safe, affordable, reliable, and diverse energy resources (UN SDG 7) is fundamental to eradication of poverty, and to promoting social equity and economic development.</p> <p>The level of energy security can be considerably affected by the human rights situation in a country, which can be defined by a political regime or emergency situations, incl. natural disasters, pandemics, conflicts and wars.</p> <p>As well, it depends on the corporate responsibility of business entities to respect human rights in the energy sector and sectors linked to it (financial, construction, etc.). This especially concerns businesses of the extractive industry ("black" energy sources) which often operate in environments marked by human rights violations, can cause human rights abuses themselves or be connected with them through their business relations and in supply chains. But also consuming of other toxic fuels like wood, kerosene, dung, and crop waste, production processes for solar technologies may generate pollutants harmful to human health and the environment, on-shore wind farms can impact negatively on rural communities.</p> <p>The Energy Strategy of Ukraine for the period until 2035 "Security, Energy Efficiency, Competitiveness" of 2017 should be improved also with regard to the human rights-based approach and the BHR principles, summarised in the UN Guiding Principles on Human Rights (2011) and implemented in SDGs, global and European treaties, strategic policy documents and law, national policy, legislation and regulatory frames.</p> |

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| | | Wartime Economy: All for Victory! Stage 2022 | 1. European integration and efficient operation of energy market | 1.2. Analysis of Ukraine's current international commitments regarding energy reforms and creating a roadmap of reforms for negotiations on the EU membership | <p>To regard the UN SDG 7 "Ensure access to affordable, reliable, sustainable and modern energy" being fundamental to eradication of poverty, and to promoting social equity and economic development. The take note that SDGs integrated the UNGPs; they are being implemented in global and European treaties, strategic policy documents and law, tackling the energy security.</p> <p>To regard the provisions of the UNGPs Pillar I "The State duty to protect human rights" in policy-and law-making to provide appropriate human-rights oriented regulatory and policy frameworks for renewable energy investments and operations as the leading players in the global energy transformation include development finance institutions, private banks and public investors, export credit and insurance agencies and other government bodies like environmental agencies.</p> <p>The sustainability of the renewable energy sector depends now and in the longer term on the ability of upstream and downstream companies to identify and effectively address human rights and social risks on the basis of the UNGPs.</p> |
| | | Structural Upgrading and Comprehensive Integration into the EU Stage 2026–2032 | | 1.4. Attracting strategic and/or financial investors into companies in Ukraine's energy sector (while preserving the influence of the state on natural monopolies for reasons of energy security, with partial or full privatization of other companies); | <p>To regard the UNGPs Pillar II "The corporate responsibility to respect human rights" in regulating operation of state-owned and private business entities; particular attention to be paid to principles under the heading "Human rights due diligence" being currently implemented in the EU law.</p> <p>To regard the UNGPs Pillar III "Access to remedy" – both in the part of the State responsibility (principles 25-27, 31) and the part of business responsibility (28-31).</p> <p>Future contracts, incl. with investors, might best be designed from a sustainable development, ESG considerations and the UNGPs perspective. It is important to highlight the human rights issues relevant to the renewables sector including supply chains as well as operational impacts.</p> <p>It is expedient to develop the approach to private investment, making human rights due diligence part of investment requirements and reasonable incentives could be a way to build human rights respect into projects from the start.</p> |
| | | | | 1.5. Bringing functions and powers of state management bodies in the energy sector in line with the EU standards. | <p>The State management bodies in the energy sector should be trained to demonstrate commitment to its international human rights obligations, also in the process of sound project preparation and evaluation, screening processes, contracting activities, etc. They should be guided by the UNGPs and other relevant standards and norms and, inter alia, give consideration to ethnic tensions and violent conflicts, taking place in the world, in order to ensure that planned projects do not exacerbate these tensions. Adherence to the safeguard policies of international development banks may also contribute to the protection of affected people.</p> <p>Approval of the criteria and procedure for selecting projects for "green" financing with regard to the UNGPs Pillar II "The corporate responsibility to respect human rights", incl. Human rights due diligence, and Pillar III "Access to remedy" (principles 28-31) would be expedient.</p> <p>The State management bodies should be trained to establish and manage non-judicial grievance mechanism (like OECD National Contact Point) or cooperate with the established ones to remediate human rights abuses.</p> <p>The state power bodies as well as the state-owned and private companies in energy sector will favour from developing and promoting good practices and solutions for businesses in the renewables sector, working in partnership with peers, rights-holders and other stakeholders to identify and implement appropriate responses to human rights risks within the sector.</p> |

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| | | | | | <p>View:</p> <ul style="list-style-type: none"> • Scoping papers: Human rights and energy transition, The Danish Institute for Human Rights, 2022; • UN Working Group on the issue of human rights and transnational corporations and other business enterprises Report on human rights-compatible international investment agreements (A/76/238), 2021; • United Nations Conference on Trade and Development “The Least Developed Countries Report 2017: Transformational Energy Access” • OECD Guidelines for Multinational Enterprises, 2011; • OECD Due Diligence Guidance for Responsible Business Conduct, 2018; • OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, 2017; • OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 2016 (Third edition); • Business & Human Rights Resource Centre ‘Towards Responsible Renewable Energy: With Rising Allegations of Abuse, Are 50 Wind & Hydropower Companies’ Human Rights Policies Fit for Purpose?’, 2016; • IPIECA Guide to operating in areas of conflict for the oil and gas industry, 2008; • Conflict Sensitive Business Practice Guidance for Extractive Industries, International Alert, 2005; • etc. |
| 5 | PUBLIC ADMINISTRATION Working group 10 | | | | <p>“One of the main directions of the reform – human-centeredness”</p> |
| | | <p>I. Reform of the system of central executive authorities and approximation of governance to the EU standards</p> <p>Recovery, restart of the economy and institutions Stage 2023 –2025</p> | <p>Goal 1. Compact, result-oriented, efficient and accountable system of central executive authorities.</p> | <p>Organize the interaction of the state with citizens and businesses by conducting functional audits of customer-oriented functions of institutions</p> | <p>The reform policy should be based on the General principles of the UNGPs, grounded in recognition of: (a) States’ existing obligations to respect, protect and fulfil 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.</p> <p>The State policy should regard the UNGPs Pillar I “The State duty to protect human rights” and Pillar III “Access to remedy” principles 26-27, 31.</p> <p>The BHR principles to be integrated in the reform policy:</p> <ul style="list-style-type: none"> • legitimacy; • accessibility with due regard to non-discrimination, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men; • transparency and accountability with meaningful stakeholders engagement and dialogue; • equitability; • predictability; • rights-compatibility: ensuring that outcomes and remedies accord with internationally recognized human rights; • be a source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing possible grievances and harms; etc. <p>View:</p> <ul style="list-style-type: none"> • OECD Guide for helping competition authorities assess the expected impact of their activities, 2014 |

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| | | | | Develop general guidelines for policy-based reviews. Identify areas that need to be reviewed on an annual basis. | Guidelines for policy-based reviews shall regard the UNGPs Pillar I "The State duty to protect human rights" with particular attention to principles under the headings "General State regulatory and policy" (esp. principle 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); "Ensuring policy coherence", etc. View: <ul style="list-style-type: none"> OECD Guide for helping competition authorities assess the expected impact of their activities, 2014 |
| | | Recovery, restart of the economy and institutions Stage 2023 –2025 | Goal 3. Consolidation of management of state-owned enterprises and state-owned property | Introduce corporate governance of state-owned enterprises based on best international practices, in particular, using the gender quota system | To regard the UNGPs Pillar I "The State duty to protect human rights" with particular attention to principles 4-6 under the heading "The State-business nexus", principle 7 under the heading "Supporting business respect for human rights in conflict-affected areas". View: <ul style="list-style-type: none"> UN Working Group on the issue of human rights and transnational corporations and other business enterprises document A/HRC/32/45 – Report on State-owned enterprises, 2016 (on action to be taken by States, including policy coherence, legal obligations, reputation and credibility); World Bank Toolkit "Corporate Governance of State-Owned Enterprises", 2014 (on legal and regulatory framework, state ownership arrangements, performance management systems, financial and fiscal discipline, boards of directors, transparency and disclosure, and protection of shareholders in mixed ownership companies); OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015; OECD Review of the Corporate Governance of State-Owned Enterprises UKRAINE, 2021, etc. |
| | | | Goal 7: Improving the system of advanced training of civil servants to ensure their professional development in order to meet the needs of civil service Stage 1: June 2022 – end of 2022 | Update the priority areas for advanced training and the content of advanced training programs for civil servants during the martial law period and the post-war period. Prepare and adopt the necessary legal framework. | To integrate the BHR framework as a priority area for advanced training and the content of advanced training programs for civil servants, esp. regarding the UNGPs Pillar I "The State duty to protect human rights" under the heading "Supporting business respect for human rights in conflict affected areas", the Pillar III "Access to remedy" principles 25-27, 31. Take note of the UN guidance "Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide", 2022; UN Working Group on the issue of human rights and transnational corporations Report "Implementing the Third Pillar: Lessons from Transitional Justice" (A/HRC/50/40/Add.4), 2022. |
| | | Recovery, restart of the economy and institutions Stage 2026 –2032 | Goal 8: Introducing a single procedure for all decisions, within which all public institutions use all available tools to ensure human rights and freedoms. | Complete the bringing the legal and normative acts regulating the relations between the state, citizens and business in line with the basic principles of the Law of Ukraine "On Administrative Procedure". | The Law "On Administrative Procedure" and the connected legal and normative acts should regard the UNGPs General principles, principles of Pillar I "The State duty to protect human rights" with particular attention to principles 4-6 under the heading "The State-business nexus", and the Pillar III "Access to remedy" (principles 25-27, 31). To regard principle 25 that reminds States to "take appropriate steps to ensure" that those affected by business-related human rights abuses within their territory and/or jurisdiction "have access to effective remedy", principle 27 on State-based non-judicial grievance mechanisms: "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". |

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| | | | | <p>Improve the legislation based on the practice of implementing the Law of Ukraine “On Administrative Procedure”, in particular, the implementation of the procedure for appealing against negative decisions of subjects of authority.</p> | <p>To take note:</p> <ul style="list-style-type: none"> UN Working Group on the issue of human rights and transnational corporations and other business enterprises Report to the UN General Assembly (A/71/162) on access to effective remedies under the Guiding Principles on Business and Human Rights, 2017; EU Code of Good Administrative Behaviour (and complaints), 2000 For practice see, ex.: The Netherlands Enterprise Agency “Objecting to and appealing against a government decision”, instruments - Code for Good Public Administration, Failure to Give Timely Decisions (Penalty Payments and Application for Review) Act, etc. OECD, Regulatory Reform In Sweden. Government Capacity to Assure High Quality Regulation In Sweden, 2007, etc. |
| | | <p>II. Parliamentary Reform</p> | <p>1.1. Improving the quality of legislative initiatives of the People’s Deputies of Ukraine Stage 2: 01/2023–12/2023</p> | <p>Task 1.1.3. Improving the requirements for drafting the explanatory notes and other supporting documents to draft laws, in particular those related to: 1) financial and economic rationale; 2) special requirements to European integration-related draft laws; 3) impact assessment; 4) gender analysis; 5) preparation of a post-legislative scrutiny plan; 6) set of the list of secondary legal acts required to implement the law as well as organisational, technical and other measures required to implement the law.</p> | <p>To amend the Law of Ukraine “On Amendment the Rules of Procedure of the Verkhovna Rada of Ukraine / other acts of the parliamentary law” by integrating the BHR principles and the BHR-related aspects to the explanatory notes and other supporting documents to draft laws. Particular use could be in the impact assessment review and gender analysis with regard to the UNGPs. Human rights impact assessment (HRIA) analyses the effects that business activities have on rights-holders (workers, local community members, consumers and others). HRIA follows a human rights-based approach, which integrates human rights principles such as non-discrimination into the assessment process. View for ex.:</p> <ul style="list-style-type: none"> IFC Guide to Human Rights Impact Assessment and Management, 2010; IFC Performance Standards on Environmental and Social Sustainability, 2012; Danish Institute for Human Rights, Human rights impact assessment Guidance and Toolbox; Danish Institute for Human Rights and IPIECA, Guide on integrating human rights into environmental, social and health impact assessments; Danish Institute for Human Rights, Sector wide impact assessments (SWIA). <p>The set of the list of secondary legal acts required to implement the law in the areas covered by the UNGPs should also be oriented at the relevant constitutional provisions in combination with the corresponding UN, EU, CoE, OECD commitments of Ukraine.</p> |
| | | | <p>3.1. Establishing and maintaining high-quality communication channels between the Verkhovna Rada of Ukraine and citizens</p> | <p>3.1.4. Developing and approving the Communication Strategy of the Verkhovna Rada of Ukraine for 2023–2026</p> | <p>When drafting the Law of Ukraine “On Public Consultations” to take note of the BHR principles and UNGPs provisions on meaningful stakeholder’s engagement. The UNGPs Pillar I “The State duty to protect human rights” benchmarks “General State regulatory and policy framework”, which foresees communication of the state power bodies with stakeholders, business entities incl., also to ensure that laws and policies which govern the creation and ongoing operation of business enterprises cause no negative implications for human rights. Driving the BHR principles and the UNGPs is advised to become one of the priority areas in the development of interaction between the Parliament and civil society within the Communication Strategy of the Verkhovna Rada of Ukraine for 2023–2026.</p> |

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| | | | 3.2. Expanding the mechanisms for involving citizens in the activities of the Verkhovna Rada of Ukraine | 3.2.2. Improving organisational and legal aspects of the operation of the electronic resource "Public Discussion of Draft Laws" on the official website of the Verkhovna Rada of Ukraine " | The UNGPs highlight the importance of stakeholders' participation and dialogue. The electronic resource "Public Discussion of Draft Laws" could become a tool to engage both duty-bearers and rights-holders into law-making in the BHR area, especially to implement Pillar II "The corporate responsibility to respect human rights" principles. However, implementation of each of the UNGPs principles can be in the focus of law-drafting. |
| 6 DIGITALIZATION Working group 13 Strategic Goal: Citizens and businesses have access to quality, affordable and convenient public services, digital solutions and electronic identification | | | | | |
| | | War-time economy and institutions "All for the victory!" Stage 2022 | 1. Development of public e-services 5. Improvement of the government regulation of the use of electronic trust services, creating favourable conditions for the provision and receiving of electronic identification services | Improving public regulatory policy and the deregulation process, increasing the transparency and quality of public policy in this area | The same rights that people have offline must also be protected online. The digital transformation can be both an enabler and threat to human rights. The misuse of digital technologies can inadvertently aggravate the underlying patterns of discrimination and exclusion. Non-discrimination is one of the basic principles of the international order and the human rights law. Moreover, misuse of digital technologies may also bolster the authoritarian tendencies of certain regimes by enhancing their surveillance capabilities. The rule of law would be undermined in this case. To take into account - the UNGPs Pillar I "The State duty to protect human rights" benchmarks "General State regulatory and policy framework" principles 1-8. Principle 3, inter alia, warns that also State inaction can cause discriminatory consequences in practice; Pillar II "The corporate responsibility to respect human rights". It is expedient to hold human rights assessment "Digital Rights Check" when developing and implementing digital projects or project components, and Human Rights Impact Assessment of Digital Activities. View: <ul style="list-style-type: none"> UN Human Rights Council (2012), "The promotion, protection and enjoyment of human rights on the Internet", A/HRC/20/L.13; UN Human Rights Council (2019), "Surveillance and human rights - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression", A/HRC/41/35 para. 60; Council of Europe (2020), "Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems; European Commission Independent High-level Expert Group on Artificial intelligence (2019), "Ethics Guidelines for Trustworthy AI"; Danish Institute for Human Rights, Guidance on Human Rights Impact Assessment of Digital Activities, 2022 (Guidance seeks to provide support to those working with HRIA of digital projects, products and services); Danish Institute for Human Rights and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) "The Digital Rights Check" (developed for staff and partners working in technical development cooperation and in development finance working on digital projects); Ranking Digital Rights (2020), "Ranking Digital Rights Corporate Accountability Index Draft Indicators"; Latonero (2018), "Governing Artificial Intelligence: Upholding Human Rights & Dignity", Data & Society, etc. |

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| | | | 7. Ensuring conditions for the stable functioning of the digital economy during martial law | Analysing EU regulations in the field of e-commerce in order to determine the compliance of current legislation of Ukraine for further development of regulations (acts), which will implement the provisions of EU regulations in the field of e-commerce | To regard, as minimum, the UNGPs Pillar I "The State duty to protect human rights" benchmarks "General State regulatory and policy framework" principles 1-8; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council; Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM/2020/842 final; Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC , COM/2020/825 final. |
| 7 | JUSTICE | | | | |
| | Working group 18 "To meet the public demand for justice" | | | | |
| | | 2.10. Developing mechanisms for alternative (out-of-court) and pre-trial settlement of dispute | 2.10.2. Improving the procedure of settling the dispute with the participation of a judge | 1. Encouraging the use of out-of-court methods of dispute settlement, for certain categories of cases, establishing a mandatory pre-trial dispute settlement procedure using mediation and other practices. Development and adoption of legislative changes | To implement into the law and practice the UNGPs provisions on the state judicial and non-judicial mechanisms to ensure access to remedy to victims of business-related human rights violations foreseen by the Pillar III "Access to remedy", principles 25 -27, 31. State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution. It is useful to expand the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes – or involve some combination of these – depending on the issues concerned, any public interest involved, and the potential needs of the dispute parties. To take note of: <ul style="list-style-type: none"> • Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters; • European Code of Conduct for Mediators; |
| | | | | Development of judicial mediation. Introduction of a mechanism to ensure the implementation of international mediation – based dispute settlement agreements | To amend the Action Plan on realisation of par. 16 of the National Human Rights Strategy on ensuring human rights in economic activities with 1) comprehensive best practice study on <ul style="list-style-type: none"> a) experience of judicial mediation in BHR-based disputes following the UNGPs; b) application of out-of-court methods of dispute settlement, incl. non-judicial mediation, in EU countries and globally; 2) development of recommendations to introduce best practice of alternative ways of dispute resolution in BHR cases, possible legislative changes incl. |
| | | | | 2. Developing mediation Development of the Action Plan for the implementation of the Law of Ukraine "On Mediation". | The UNGPs Pillar III "Access to remedy", principles 25 -27, 31 envisage the use of State-based non-judicial and operational-level mechanisms, including mediation, for settlement of disputes between the business as duty-bearer and the rights-holders to remedy the harm caused by business. To integrate into the Action Plan for the implementation of the Law of Ukraine "On Mediation" activities on promotion of mediation in the BHR area of dispute settlement, that can be applied in |

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| | | | | Carrying out a broad public outreach campaign explaining the essence of mediation. | <p>1) economic court procedure with mediation introduced, 2) arbitration, which can be preceded by mediation or be transformed into mediation , 3) the complaints based grievance procedure of the OECD National Contact Point for Responsible Business Conduct, 4) company-based operational-level grievance mechanisms, 5) the National Human Rights Institution (Ombudsman)-based mediation.</p> <p>View:</p> <ul style="list-style-type: none"> • Resolution 38/13. adopted by the UN Human Rights Council on 6 July 2018 "Business and human rights: improving accountability and access to remedy" (A/HRC/RES/38/13); • UN Working Group on the issue of human rights and transnational corporations and other business enterprises Report "Role of national human rights institutions in facilitating access to remedy for business-related human rights abuses" (A/HRC/47/39/Add.3), 2021: • The Hague Rules on Business and Human Rights Arbitration, 2018; • UNCITRAL Arbitration Rules, 2021; • Permanent Court of Arbitration (PCA) Rules 2012; • Rules of International Arbitration Institutes |
| 8 | ENVIRONMENTAL SAFETY | Working group 21 | "Integration of climate goals into all sectors of economy and life of society" | | <p>Environmental safety is relevant to all scope of human rights in various directions and dimensions of human activities. The enjoyment and/or realisation of all human rights is under the impact of the climate change, though it may be felt differently and disproportionately by different individuals and groups.</p> <p>Environmental safety is relevant to all scope of human rights in various directions and dimensions of human activities. The enjoyment and/or realisation of all human rights is under the impact of the climate change, though it may be felt differently and disproportionately by different individuals and groups.</p> <p>Goal 13 of the SDGs "Climate action" addresses the urgent action to combat climate change and its impacts; its implementation is connected with all 17 SDGs, it considerably influences the progress of their achievement.</p> <p>UNGPs are referred to in the 2030 Agenda for Sustainable Development (par. 67) as the means to address to States and business sector for protection of human rights and environmental standards in accordance with international standards and agreements.</p> |
| | | <p>Direction 1: Climate policy: mitigation and adaptation to climate change</p> <p>Recovery, restart of the economy and institutions stage, 2023 –2025</p> | | Develop and implement a climate policy regulatory framework and financial instruments (ETS, green finances, the Climate Fund, mechanisms for the gradual reduction of consumption and emissions of ozone-depleting substances and fluorinated greenhouse gases), as well as launch pilot projects to mitigate and adapt to climate change. | <p>The climate policy should regard the UNGPs Pillar I "The State duty to protect human rights" benchmarks "General State regulatory and policy framework" principles 1-8 - States are expected to take a range of effective measures to protect against business-related climate change within their territory and/or jurisdiction.</p> <p>To regard also the UNGPs Pillar II "The corporate responsibility to respect human rights" principles and envisage that business enterprises (incl. the relevant financial institutions, etc.) may not be able to discharge their responsibility to respect all internationally recognised human rights unless they integrate climate change considerations into their corporate policies with account of human rights due diligence processes, as it is stated in the UNGPs under the heading "Human Rights Due Diligence". The war context arises the need for the heightened human rights due diligence.</p> <p>The climate policy is expected to tackle also the remediation for the human rights violations by means of diverse judicial and non-judicial mechanisms applied against both States and businesses for causing, contributing to, or failing to prevent climate change - the UNGPs Pillar III "Access to remedy" should be regarded.</p> <p>To take note of:</p> <ul style="list-style-type: none"> • Report of the UN Special Rapporteur on extreme poverty and human rights "Climate change and poverty", 2019 (A/HRC/41/39); • European Convention on Human Rights, 1950; • Guide to the Case-Law of the European Court of Human Rights – Environment (in French), European Court of Human Rights, 2021; |

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| | | | | | <ul style="list-style-type: none"> European Court of Human Rights Factsheet "Environment and the European Convention on Human Rights", 2022; European Commission Recommendation (EU) 2018/1149 of 10 August 2018 on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821 of the European Parliament and of the Council (to help businesses identify conflict-affected and high-risk areas in the context of conflict minerals); IFC Performance Standards on Environmental and Social Sustainability, 2012 |
| | | Direction 2: Environmental safety and effective waste management | Introduction of a risk-oriented approach to environmental safety in accordance with the requirements of EU legislation, aimed at preventing damage to the environment and human health: | <p>Minimization of environmental safety risks (chemical and radiation safety); Reduction and prevention of industrial pollution and introduction of the "polluter pays" principle;</p> <p>Effective waste management</p> | <p>To regard the wider policy and law frame that the EU legislation only as it is based on the global international standards and norms. To take account of the UNGPs Pillar II "The corporate responsibility to respect human rights" with specific focus on the Human Rights Due Diligence principles. Under the current war context it is expedient to refer to the heightened human rights due diligence, which should be on-going with regard to the changing human rights risks. Such human rights and environmental safety risks may arise also because of the exploitation of the natural resources on the territory beyond control of the Government of Ukraine not for the benefit and without the consent of the local communities and the state; and because of the possible support provided by entities on the territories beyond control of the Government of Ukraine to the exploitation of natural resources. The State and business could benefit from the regular Human Rights Impact Assessment (HRIA) as a part of the due diligence harm prevention processes. HRIA includes assessing and responding to any actual and potential human rights impacts that might arise from or be directly linked to business activities. The EU environmental policy is in conformity with the UNGPs human rights due diligence principles of Pillar II "The corporate responsibility to respect human rights" and Pillar III "Access to remedy". The core of the EU environmental policy is the "polluter pays principle": those responsible for environmental damage should pay to cover the costs.</p> <p>Sound waste management is a basic component of a safe, clean, healthy, and sustainable environment. The State is expected to provide – with due account of the UNGPs Pillars I, II, III – the necessary policy framework, institutional mechanisms, mandate for local governments, instrumental guides and tools to achieve waste reduction in the circular economy frames, possibly through integrated solid waste management plans and services based on 3Rs (reduce, reuse and recycling) and on the latest technology, such as IoT (Internet of Things) algorithms.</p> <p>The EU's Circular Economy Action Plan of 2020 and New Consumer Agenda of 2020 include, inter alia, the new regulation on Empowering Consumers for the Green Transition in addition to two existing consumer law Directives: the Consumer Rights Directive and the Unfair Commercial Practices Directive.</p> <p>To take note of:</p> <ul style="list-style-type: none"> UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Guide "Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts", 2022; Danish Institute for Human Rights and IPIECA, Guide on integrating human rights into environmental, social and health impact assessments; Danish Institute for Human Rights, Human rights impact assessment Guidance and Toolbox; Danish Institute for Human Rights, Sector wide impact assessments (SWIA); European Commission toolkit "Ensuring that polluters pay" presenting economic instruments used in the EU Member States to make polluters pay; |

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| | | | | | <ul style="list-style-type: none"> • European Court of Auditors Special Report “The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions”, 2021; • OECD Analyses and Recommendations “The Polluter-Pays Principle”, 1992; • UNEP Executive Director Note “Reduce, reuse and recycle concept (the “3Rs”) and life-cycle economy”, 2004; • Proposal for a directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, 2022; • UN Centre for Regional Development, Reduce, Reuse and Recycle (the 3Rs) and Resource Efficiency as the basis for Sustainable Waste Management, 2011; • Guidance for Companies on Respecting the Human Rights to Water and Sanitation, 2021; etc. |
| 9 | HUMAN RIGHTS Working group 24 “Lack of prioritization of human rights protection during martial law” | | | | 2030 Agenda for Sustainable Development expressly states that no one should be left behind, and no human right ignored. Human rights need strengthened protection in wartimes, including from business-related abuses. 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda explicitly cite the Guiding Principles on Business and Human Rights (UNGPs) and promote them as an instrument of protection of human rights in the context of private sector contributions to solving sustainable development challenges. The UNGPs call States to realise their duty to protect human rights, including against abuse by business- Pillar I principles “The State duty to protect human rights”; businesses – to exercise a responsibility to respect human rights throughout their activities and business relationships – Pillar II principles “The corporate responsibility to respect human rights”; and both States and business – to provide victims of business-related human rights impacts with access to remedy - Pillar III principles “Access to remedy”. Pillar I “The State duty to protect human rights” addresses, inter alia, the issue of supporting business respect for human rights in conflict-affected areas, where the risk of gross human rights abuses is heightened (principle 7). |
| | | Direction II. Protection of rights of internally displaced persons and residents of temporarily occupied territories Recovery, restart of the economy and institutions Stage 2023 –2025 | Goal 2. To ensure that the state policy on guaranteeing and protecting IDP rights is based on the systematic analysis of IDP needs | 1. To review the IDP Integration Strategy and its Implementation Plan taking into account drastic changes in circumstances after 24 February 2022 | To integrate the BHR approaches and UNGPs into the State IDP Integration policy and Strategy, its Implementation Plan as it is established in the 2030 UN Agenda for Sustainable Development par. 67 and SDG 17 on partnership and cooperation (incl. public-private partnership, etc.). As IDPs are in vulnerable position, their needs analysis should include the issues of prevention and remediation of possible business-related human rights abuses. UNGPs refer to the rights of specific groups of persons in vulnerable or marginalized situation - specific attention in the IDPs Integration Strategy to be paid to business contribution based on its responsibility to respect human rights and implement Human Rights Due Diligence also by means of meaningful consultations to gauge human rights risks (Pillar II “The corporate responsibility to respect human rights” principles 17-21). As well, the IDP Integration Strategy should refer their needs to get protected via state-based judicial mechanism, state-based non-judicial grievance mechanisms and/or non-state grievance mechanisms (Pillar III “Access to remedy” principles 26-31). To take note of: <ul style="list-style-type: none"> • International Standards for Responsible Business in Conflict-Affected and Fragile Environments: An Overview. International Dialogue on Peacebuilding & State building; • UN Global Compact-PRI Guidance on Responsible Business in Conflict-Affected & High-Risk Areas: A Resource for Companies and Investors, 2010; • OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, 2006; • DCAF and ICRC Toolkit for Addressing Security and Human Rights Challenges in Complex Environments (Third Edition), etc. |

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| | | Direction III. Strengthening the institutional capacity of the Ukrainian Parliament Commissioner for Human Rights | Goal 1. To shape a vision of activity areas of the Office of the Ukrainian Parliament Commissioner for Human Rights based on analysis and independent assessment | 2. To develop and publish the Strategy for the Activities of the Ukrainian Parliament Commissioner for Human Rights in Key Areas taking into account recommendations of civil monitoring experts, international organisations, inter alia, for the period of the martial and post-martial law | <p>To regard in the Strategy development the UNGPs Pillar I principles on the State duty to protect human rights, which require taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication; Pillar III "Access to remedy", specifically principles on State non-judicial grievance mechanisms.</p> <p>The Ukrainian Parliament Commissioner for Human Rights institution is a member of the Global Alliance of National Human Rights Institutions (GANHRI). In March 2009 GANHRI established the Working Group on Business and Human Rights with the purpose to:</p> <ul style="list-style-type: none"> • Create capacity building actions for NHRI and regional networks on business and human rights, including in the priority areas identified by NHRIs; • Strengthen NHRI advocacy in international and regional events on business and human rights and enhance NHRI visibility and communication on relevant information and best practices on business and human rights. <p>The Edinburgh Declaration (2010) articulated the role and commitments of NHRIs in advancing human rights in the context of business activities and emphasised the important role they can play in addressing corporate-related human rights challenges, both at the international, regional and national level.</p> <p>It is expedient that the Strategy for the Activities of the Ukrainian Parliament Commissioner for Human Rights in Key Areas include the Business and Human Rights Agenda aimed at implementation of the UNGPs within its mandate to analyse business-related human rights impacts, facilitate remedy as a state-based non-judicial mechanism of remediation of business-related human rights abuses and advise state actors, etc..</p> <p>Specific attention to be paid to rights of vulnerable groups of population – IDPs (women and children), marginalised groups and communities, national minorities, persons with disabilities, etc.</p> <p>The Strategy for the Activities of the Ukrainian Parliament Commissioner for Human Rights in the part of the Business and Human Rights Agenda would benefit when addressed to:</p> <ul style="list-style-type: none"> • its mandate, capacity and resources to deal with BHR matters; • handling complaints in BHR area; • application of alternative dispute resolution (ADR) methods in BHR area; • enforceability of remedies applied by the Parliamentary Commissioner in BHR area; • indirect facilitation of access to remedy in BHR matters (incl. awareness raising and capacity building of different actors, influencing policy and legislation, research, monitoring and compliance, and activities facing business actors, etc.); • public inquiries in BHR area; • cooperation with other actors and mechanisms in BHR area. <p>The Strategy should tackle the activities of the Ukrainian Parliament Commissioner for Human Rights on promotion of implementation of the National Human Rights Strategy, incl. in the BHR part (par. 16 on ensuring human rights in the process of economic activities).</p> <p>To take note of:</p> <ul style="list-style-type: none"> • The Edinburgh Declaration, 2010; • UN Special Rapporteur on the Human Rights of IDPs, Report on internal displacement and the role of national human rights institutions (2019); • Danish Institute for Human Rights "Peer learning initiative on business and human rights for national human rights institutions", 2020-2021; • Danish Institute for Human Rights Report "NHRIs and access to remedy for business-related human rights abuses", 2020; • Danish Institute for Human Rights Case studies and workshop report "Remedy in business and human rights cases", 2019; • Danish Institute for Human Rights Report "Lessons from research on National Human Rights Institutions". 2018; etc. |

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| | | | | 3. To hold wide public consultations with human rights organisations and international partners on necessary changes in powers of the Ukrainian Parliament Commissioner for Human Rights, including the role of the Commissioner under the martial law and cooperation with other human rights control institutions. | To include in the Agenda of wide public consultations discussions on the BHR-related mandate of the Ukrainian Parliament Commissioner for Human Rights and the implementing activities, as well as the issue of development of a standalone National Action Plan on Business and Human Rights. It is expedient to involve in consultations, among others, the OECD National Contact Point (Ministry of Economy of Ukraine) and the Business Ombudsman, academic research institutions and individual researchers-experts in BHR. |
| | | Recovery, restart of the economy and institutions stage, 2023 –2025 | Goal 2. To strengthen legislative guarantees for independence of the Ukrainian Parliament Commissioner for Human Rights and to introduce efficient activity support mechanisms | 2. To create possibility of involving experts, including civil monitoring experts, in the process of fulfilling thematic mandates of the Parliamentary Commissioner for Human Rights | To increase the efficiency of the of fulfilling thematic mandates of the Commissioner, it could be useful to introduce a provision in the Law on the Parliamentary Commissioner for Human Rights (Article 10 “Secretariat of the Commissioner” of Section III. “Organization of Commissioner’s activity” addressing the authorities of the Secretariat to involve experts, including civil monitoring experts, in the process of fulfilling thematic mandates of the Parliamentary Commissioner for Human Rights. The pull of experts on BHR could be composed on the basis of a bidding and selection procedure by the Commissioner’s Representative on adherence of social and economic rights in cooperation with other Commissioner’s Representatives who are responsible for realisation of mandates in cross-cutting areas (non-discrimination and gender equality, data protection, etc.). The experts could be involved on ad-hoc basis or could provide the secondment. |
| | | | | 3. To establish an expert advisory council at the Ukrainian Parliament Commissioner for Human Rights in order to provide expert support for the Commissioner to address systematic human rights infringements, to define its composition and rules of procedure 6. To increase the involvement of civil society in the fulfilment of mandates of the Commissioner (Ombudsman+ Model) ensuring the functioning and involvement of the relevant regional tools | To ensure the BHR principle on wide stakeholders engagement in support to realisation of the Commissioner’s BHR mandate, the National Strategy on Human Rights in the BHR part and other relevant acts, it is expedient to revitalise and strengthen the Inter-sectoral Platform on Business and Human Rights under the guidance of the Ukrainian Parliament Commissioner for Human Rights and the Commissioner’s Representative on adherence of the social and economic rights; the initiative was launched in 2020. The Regulation, Roadmap and the operational plan of the Inter-sectoral Platform on Business and Human Rights, should be developed on the basis of the UNGPs, and the relevant national strategic policy and law acts. The Inter-sectoral Platform is supposed to join experts and representatives from different sectors (governmental institutions, local authorities, business sector, trade unions, business associations, profile civil society organisations, academic institutions) and various fields of knowledge and experience. It is supposed to provide the ad-hoc and systemic expert support to the activities of the Commissioner in the BHR area, to serve a leverage to drive the BHR agenda on different levels of policy- and decision-making and in practical implementation to ensure Ukraine’s international commitments and bring closer Ukraine’s membership in the EU. |

ANNEX 4.

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