



# BUSINESS AND HUMAN RIGHTS IN UKRAINE

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



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# ABBREVIATIONS

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

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

# EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

The objectives of the four studies are set out below:

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

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

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

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

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

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

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

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

5 Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises. OEIGWG Chairmanship Third Revised Draft of 17.08.2021. URL: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>.

6 See Putting the "S" in ESG: Measuring Human Rights Performance for Investors, CASEY O'CONNOR AND SARAH LABOWITZ, 2017, NYU Stern Center for Business and Human Rights, <https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/1489688854754/Metrics-Report-final-1.pdf>. VII. See also Swetha Venkataramani "The ESG Imperative: 7 Factors for Finance Leaders to Consider", Available at: <https://www.gartner.com/smarterwithgartner/the-esg-imperative-7-factors-for-finance-leaders-to-consider>.

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

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

### The overall strategic findings of the studies combined

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

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

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

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