

Input MVO Platform UNGPs 10 +

June 2021 marks the tenth anniversary of United Nations Guiding Principles on Business and Human Rights (UNGPs). The UN Working Group on Business and Human Rights consults stakeholders to take stock of achievements to date, assess existing gaps and challenges and develop an ambitious vision and roadmap for implementing the UNGP's more widely and more broadly between now and 2030. Below is the input for this consultation from the MVO Platform.

(1) Where has progress taken place in UNGPs implementation over the course of the last decade? What are the promising developments and practices (by governments, businesses, international organizations, civil society organizations, etc.) that can be built on?

The UNGPs have been essential for realising the progress that has been made on the issue of business and human rights in the past ten years. The concept of due diligence has become increasingly well-established and widely understood by governments and companies, although much work remains to be done. Promising developments are the trend towards mandatory due diligence requirements in several European countries and at the EU level.

There is also an increasing awareness of the importance of a 'smart mix' of binding and voluntary policy measures, as prescribed by the UNGPs. In the Netherlands, the new government policy on Responsible Business Conduct (RBC) is built upon the smart mix framework, identifying five types of government instruments to improve adherence to RBC standards by companies: informing companies, incentivising companies (e.g. through subsidies), facilitating companies and MSIs, setting RBC conditions and imposing legal RBC requirements. This framework acknowledges the mutual dependence of voluntary and binding measures for effective government policies on RBC.

The experience of the Dutch government as well as Dutch companies, civil society organisations and business with setting up multi-stakeholder initiatives to promote RBC, which has been evaluated by the KIT (<https://www.rijksoverheid.nl/documenten/rapporten/2020/07/08/evaluation-of-the-dutch-rbc-agreements-2014-2020>), is useful for the further implementation of the UNGPs in the Netherlands and beyond. The increased awareness and experience of companies, governments and civil society with the UNGPs and monitoring adherence to the UNGPs is also an important building block for further implementation. The work that has been done on integrating the UNGPs in various policy instruments, e.g. financing conditions and responsible procurement policies, is also a first step towards better implementation of the Guiding Principles.

(2) Where do gaps and challenges remain? What has not worked to date?

Despite some progress on the implementation of the UNGPs, huge challenges remain. In the Netherlands, the Dutch government's National Action Plan to implement the UNGPs and previous RBC policy have not led to substantial improvements in terms of companies' adherence to the UNGPs. Monitoring reports have repeatedly shown low rates of commitment from companies to the Guiding Principles (and even lower numbers of companies reporting on actually implementing due diligence). The Dutch government's RBC policy to date has been far from effective, as shown by the overall policy evaluation conducted by the IOB (2019) and the KIT's evaluation of the government policy for RBC agreements (2020).

The one-sided focus on voluntary policy measures has been insufficient to ensure companies implement the UNGPs. Without a binding obligation to adhere to the UNGPs and means for stakeholders and governments to hold companies to account in case of non-implementation or violation of the Guiding Principles, far too few companies decide to implement the Guiding Principles voluntarily. This is reflected by the continued, structural and widespread occurrence of human rights violations in global supply chains.

The Dutch government itself has also failed to fully implement the UNGPs. Regarding Pillar 1, the government should do much more in terms of the state-business nexus, for example regarding the integration of RBC standards in public procurement processes. RBC standards also lack in part of the business financing instruments the government provides, as well as in the long-term economic support packages that were developed in response to the Covid-19 crisis. The government could also do more to ensure a clear and undisputed understanding of the UNGPs among all stakeholders, which is also

particularly relevant for the current discussions on mandatory requirements on business and human rights (e.g. making clear that due diligence covers the entire value chain rather than direct suppliers only, clarifying the scope of due diligence). Regarding pillar 3, companies and governments have only taken very limited steps to improve access to remedy for victims of human rights abuse. Although there are some promising signs (e.g. the development of sectoral grievance mechanisms), overall the Dutch government has taken little action to improve access to remedy (e.g. a 2015 study on the status quo of Dutch law and the duties of care of Dutch businesses (https://www.wodc.nl/binaries/2531-summary_tcm28-124392.pdf) did not lead to any follow up in government policies or regulations).

(3) What are key obstacles (both visible and hidden), drivers, and priorities that need to be addressed to achieve fuller realization of the UNGPs?

Key obstacles are companies' unwillingness to voluntarily adhere to RBC standards and governments' unwillingness or inability to hold companies to account for human rights violations in supply chains. Reasons for this corporate behavior vary, but an important underlying factor is that profit-oriented businesses will not see sufficient short-term benefits from investing in due diligence, and therefore will not take sufficient action unless legally required. Other factors are unawareness, the complex nature of certain BHR problems and low commitment at the executive level.

Obstacles for more ambitious government policies are lacking political will and commitment, limited political attention for BHR problems, the complex nature of certain BHR problems and strong resistance from business associations. Other obstacles include lacking policy coherence and commitment from all government departments and ministries.

Priorities for better implementation of the UNGPs should be ambitious and well-functioning legislative requirements for due diligence, proper enforcement and improved access to remedy.

(4) What systemic or structural challenges need to be tackled to realize sustainable development based on respect for human rights?

Structural challenges that need to be tackled are the profit-driven, shareholder-focused orientation of many companies, with a focus on outsourcing production and externalising costs. Another related challenge is the lack of accountability of companies on the issue of business and human rights and the strategies companies use to avoid such accountability (also see e.g. <https://www.mindthegap.ngo/>). Another structural challenge is the 'race to the bottom' in a competitive global economy, in which e.g. labour standards, law enforcement, wage levels and environmental regulations are factors through which countries compete against each other in order to attract foreign investment.

(5) In concrete terms, what will be needed in order to achieve meaningful progress with regard to those obstacles and priority areas? What are actionable and measurable targets for key actors in terms of meeting the UNGPs' expectations over the coming years?

Binding due diligence requirements, in line with the OECD Guidelines for Multinational Enterprises, are an essential part of the smart mix of measures. Strong enforcement of such binding regulations is essential for these requirements to be effective. Governments should ambitiously implement the UNGPs and revise their National Action Plans, as the Dutch government is currently doing. Governments should also be requested to improve monitoring of the implementation of RBC standards by companies (see e.g. the Dutch monitoring reports) and should continue to monitor and evaluate the effectiveness of their policies. Stronger political commitment and improved policy coherence, e.g. in the field of coherent public procurement and RBC conditions for government support, are other important elements of the smart mix that need improvement. Governments and companies should also take concrete steps to improve access to remedy for victims of human rights abuse.