

CORE Coalition Submission to the call for inputs on "Business and human rights: towards a decade of global implementation" (UNGPs 10+ / Next Decade BHR)¹

Summary

This submission is made by the CORE Coalition, the UK civil society network on corporate accountability, and jointly endorsed by the Business and Human Rights Resource Centre, Forest Peoples Programme, Amnesty International UK, Global Witness, Christian Aid and the Environmental Justice Foundation.

In the past decade, the UNGPs have provided an authoritative framework - "Protect, Respect and Remedy" - for governments and business enterprises to prevent, address and remedy the adverse human rights impacts of business activities. However, the UNGPs often have no force in domestic law and are not adequately protecting people or the environment from corporate abuse: forced labour in global supply chains generated \$150 billion in profit according to the ILO²; global deforestation increased by 77% in 2020³; 304 human and environmental defenders protecting their lands from corporate exploitation were killed in 2019 alone⁴; and more than 1,000 garment workers were killed or seriously injured in factory disasters in 2020.⁵ Abuse in the global operations, products, services and supply chains of UK and other businesses disproportionately impact vulnerable groups such as women, children and migrant workers.⁶

The UNGPs called for a 'smart mix' of measures – national and international, mandatory and voluntary. However, to date, we have failed to see such a smart mix. Instead, measures have been largely voluntary, with those touted as mandatory often lacking the necessary means to really be such, as is the case with the UK Modern Slavery Act 2015's Transparency in Supply Chains (TISC) provision. Voluntary initiatives have failed to significantly change the way companies manage their social and environmental impacts – while enabling companies to claim they have. In the absence of strong laws there has been a 'race to the bottom' on business and human rights. The need for well-regulated supply chains has been made more evident by the COVID-19 pandemic, which has exposed structural injustices in our society and economy and the burden of risk carried by workers (in particular, women and migrant workers) and other groups – such as indigenous peoples – in supply chains.⁷

Our submission focuses on the following:

- a) **PILLAR 1:** The failure of NAPs and the need for binding national regulation that holds companies accountable for their impacts on human rights and the environment (1.2-1.3; 2.1-2.3; 3.1; 5.1), and a UN Binding Treaty on Business and Human Rights (1.4., 2.5., 5.2.)
- b) **PILLAR 3:** Ongoing obstacles to legal remedy for victims of corporate human rights abuse, despite crucial developments in UK common law (1.5, 2.6, 3.3., 5.3)
- c) **Overarching issues:**

¹ <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx>

² https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm

³ <https://www.ft.com/content/b72e3969-522c-4e83-b431-c0b498754b2d>

⁴ <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2019>

⁵ https://cleanclothes.org/file-repository/transparency_position_paper_ccc_2020-10-15.pdf/view

⁶ https://www.christianaid.org.uk/sites/default/files/2019-05/Engendering%20Business%20and%20Human%20Rights_1.pdf

⁷ <https://www.business-humanrights.org/en/covid-19-coronavirus-outbreak>

- The interdependence of human rights and the environment (2.7, 5.5.; see also 4)
- The need for greater protection of human rights defenders and fulfilment of indigenous peoples' rights (1.6, 2.8, 2.13, 5.4)
- Neglected areas in UNGPs implementation: the financial sector, end use of products and services, and public procurement (2.9-2.11, 5.6, 5.7)
- The need for a more holistic approach which tackles the primacy of economic growth, damaging dominant business models and harmful state policies in other areas that inhibit corporate accountability, such as trade and investment (2.12, 3.2., 4., 5.8.).

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?

1.1. There is a growing recognition of the UNGPs as a means to help business implement its responsibility to respect human rights. This is reflected in company reporting and other voluntary measures, such as benchmarking initiatives and multi-stakeholder initiatives.⁸ There has also been a proliferation of international standards to guide business conduct, including in challenging operating environments such as conflict situations.⁹ However, our view is that real progress must be measured by action taken to prevent corporate abuse that leads to a reduction in abuses - predominantly through binding rules and regulations by governments - and the delivery of justice for those affected by the adverse impacts of corporations, as further detailed in this submission. For instance, research has documented serious, widespread limitations of multi-stakeholder initiatives¹⁰ - these must not replace robust due diligence and actions by specific businesses and corporate actors, nor legislation by governments.

1.2. Over 24 National Action Plans on business and human rights have been launched since 2011. This shows a positive trend towards greater policy coherence in this area and can help governments identify the gaps and measures necessary to fulfil their UNGPs commitments. The UK was the first state to produce a NAP in 2013, subsequently strengthened in 2016.¹¹ However, the UK NAP – and NAPs globally - have proved wholly inadequate in generating decisive action and legislation. The UK's NAP is also undermined by policies in other areas that negatively impact human rights, such as trade and investment agreements (see 3.2.).

1.3. In recent years there has been a global trend towards embedding the corporate responsibility to respect human rights (under the UNGPs) into law. The UK's Modern Slavery Act was part of the first generation of such laws. While the law has drawn greater attention to serious labour exploitation in the supply chains of UK companies, it does not require companies to take action on what they find, nor does it go beyond "modern slavery". Other states have since gone further than the UK, developing a "second generation" of laws which require for companies to take preventative action in the form of **human rights due diligence (HRDD)** - which has become the

⁸ <https://www.corporatebenchmark.org/>

⁹ https://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm; <http://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>

¹⁰ http://ciw-online.org/wp-content/uploads/MSI_Summary_Report_WSR_Sept2020.pdf

¹¹ <https://www.gov.uk/government/news/uk-national-plan-on-business-and-human-rights-update>

established means for companies to put their responsibility to respect human rights into practice; and a “third generation” of laws which combine such obligations with **legal liability** when companies breach their HRDD obligations and damage and loss occur (e.g., the French Duty of Vigilance law).¹² Notably, the EU has committed to tabling a legislative proposal on human rights and environmental due diligence, including legal liability, in Q2 2021, to protect human rights and the environment, and to provide access to remedy for victims of corporate abuse.

1.4. At the international level, the second revised draft of the **UN Treaty on business and human rights** is more closely aligned with the UNGPs than previous drafts (see 2.5 for detail).¹³

1.5. With regard to access to remedy, in recent years there has been an increasing trend of victims bringing **civil claims against UK domiciled parent companies** for the acts or omissions of their overseas subsidiaries. An evolution in UK common law now holds that UK parent companies *can* have a duty of care for harms caused by their overseas subsidiaries: the UK Supreme Court’s landmark judgment in Vedanta Resources Plc and Konkola Copper Mines Plc v Lungowe and Ors found that a UK parent company can, under certain conditions, be held liable for the operations of its overseas subsidiary. A similar ruling in Okpabi v Shell, heard at the UK Supreme Court in June 2020, would consolidate the principles from the Vedanta case. These developments must now be matched by developments in UK legislation: we are calling for a “failure to prevent” law on corporate human rights and environmental impacts. Progress on access to justice could be derailed further after Brexit unless provisions to prevent the use of *forum non conveniens* are retained in UK law. *Forum non conveniens* “... has been used tactically by multinational defendants and frequently had the effect of obstructing, delaying and denying justice to human rights victims”, as we argued in a previous submission to the European Commission.¹⁴

1.6. There is an **opportunity for the UNGPs 10+ project to support promising grass-roots developments** that can help businesses and States ensure more effective implementation of the UNGPs. The project should highlight that indigenous peoples’ rights - including the importance of customary, collective land rights - are a fundamental precondition to the success of various global initiatives related to business and human rights, including measures to promote sustainable supply chains that ensure ‘no harm’ to biodiversity and the global climate.

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

2.1. NAPs are plagued by major substantial shortcomings, as identified by ECCJ’s assessment in 2017, which remains pertinent and applies to the UK’s NAP.¹⁵ Specifically:

- NAPs are overly vague and focused on describing past government actions and policies, rather than forward-looking measures to prevent harm;
- They are primarily focused on a voluntary approach to the corporate responsibility to respect human rights - most action points focus on actions involving awareness-raising, training, research, and other voluntary measures;
- Most action plans fail to sufficiently explore regulatory options to prevent corporate-

¹² <https://corporatejustice.org/evidence-for-mhrdd-may-2020-.pdf>

¹³ https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf

¹⁴ <https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/EU-Commission-submission-on-Owusu.pdf?ext=.pdf>

¹⁵ <https://corporatejustice.org/news/2245-a-critical-assessment-of-national-action-plans-on-business-and-human-rights-2017-update>

related human rights abuses and ensure access to remedy;

- Asymmetry between the vast benefits companies receive for promotion of business activities compared to measures to ensure that their activities do not harm human rights;
- Focus on non-judicial mechanisms obscures consideration of domestic barriers to judicial remedy for victims of business-related human rights abuses.

2.2. A lack of national and regional regulation to ensure prevention and remedy. The UNGPs' status as a legally non-binding instrument means that they do not in themselves provide a mechanism to hold companies to account or to afford access to remedy for harms linked to business activity. The "smart mix" principle established in the UNGPs, requires states to act through "effective policies, legislation, regulations and adjudications". The legislative aspect of the "smart mix" has taken a back seat to voluntary corporate measures to respect human rights, and the vast majority of countries lack a coherent legal framework that clarifies companies' duties with respect to their human rights and environmental impacts throughout global business operations and supply chains. The European Commission's Study on due diligence requirements through the supply chain, which showed that only one in three businesses in the EU are currently undertaking due diligence which takes into account all human rights and environmental impacts.¹⁶ The UNGPs have also been used by some businesses to stall discussions around mandatory legislation. As a consequence, victims of business-related harm face insurmountable obstacles to seek remedy in countries where powerful and influential parent companies are domiciled, while companies are able to claim progress on human rights through ultimately ineffective voluntary measures. In the UK, there has also been very little progress on criminal liability for corporate human rights harm.

2.3. Weak national legislation that is failing to change corporate behaviour or bring the UNGPs fully into law. The Modern Slavery Act is an example: The Transparency in Supply Chains (TISC) provision of the Act 'requires' companies only to disclose the steps they are taking to prevent slavery in their supply chains but does not oblige them to take any steps – and limited penalties for non-compliance have not been enforced. While some companies have used transparency measures as an opportunity to advance efforts to address modern slavery, many have not. The provision also does not cover the wide spectrum of impacts businesses have across a range of human rights and the environment. Recent UK Government proposals to enhance the TISC provision are recognised by civil society as inadequate.¹⁷ Binding legislation at the national level must require corporations take action to prevent human rights and environmental abuse. We are concerned that some other countries, such as Australia, are following suit in this limited approach to regulating large companies.

2.4. Businesses have interpreted the UNGPs in a limited way, impeding their implementation in practice. A major concern is the basic challenge of common, consistent and valid understanding and interpretation of key areas of the UNGPs – such as that of human rights due diligence. There is a danger that limited, or self-serving, interpretations by businesses become adopted widely and directly influence upcoming legislation. For instance, due diligence itself is increasingly referred to by some businesses (and governments) as a "risk-based process". This language is not reflected in the text of the UNGPs themselves and risks undermining the UNGPs by shifting the focus of "risk" from those affected to risks to the business itself.

¹⁶ <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

¹⁷ https://corporate-responsibility.org/wp-content/uploads/2020/10/Civil-society-joint-response-to-Government-TISC-response_FINAL-261020.pdf

2.5. A failure to get broad international support from the UK and other States for the UN Binding

Treaty on Business and Human Rights. Many civil society organisations believe that the current draft is an improvement on previous drafts; while it also requires strengthening in key areas, such as those relating to the reversal of burden of proof, the extra-territorial obligation of states and the supremacy of the Treaty over domestic law in key areas.¹⁸

2.6. Continued obstacles to legal remedy in the countries in which companies are domiciled.

The majority of human rights abuses perpetuated by UK corporations take place in countries in the Global South, but legal and systemic barriers make it difficult for people in those countries to hold UK corporations to account for abuses that occur. Under-resourced and over-stretched judicial systems in both host and home States, huge disparities in resources available to companies versus rights-holders and potential claimants, the importance of foreign investment from foreign corporations and the accompanying political influence they can hold, and a variety of judicial and supply chain techniques by corporations to evade accountability contribute to this situation.¹⁹ As such, host states (particularly countries in the Global South) are frequently unwilling or unable to hold companies accountable for their human rights and environmental impacts and to provide adequate remedies for victims. According to a European Parliament report, out of the 35 cases on which the study focused, only three resulted in a final judicial decision finding the defendant company liable. Out of the 20 civil law proceedings brought against companies, compensation was granted by the court in only two.²⁰ In the UK, while cases against UK companies Vedanta and Shell were allowed to proceed to the UK Supreme Court, in a similar case against Unilever, Kenyan workers and families have been denied this route to justice.²¹ The inconsistencies in the decisions show that legislation needs to make clear what is expected from parent companies in order to protect the communities affected by their operations.

2.7. A lack of recognition of the interdependence between the environment and human rights.

The UNGPs failed to recognise that human rights, environmental protection and climate change are interdependent. A safe, healthy and sustainable environment is essential to the fulfilment of the rights to life, food, health, water, housing, decent work, and other social and cultural rights. Many negative impacts caused by a business's actions or negligence, such as a dam collapse that devastates livelihoods, or intimidation and harassment of indigenous activists defending rainforests, demonstrate that human rights and the environment cannot be extricated from one another. An integrated approach to address social and environmental impacts and risks in business operations, supply chains, investment portfolios and business partnerships is necessary. Over the next decade, states, businesses and other parties must adapt to the challenges of the current decade and recognise that the realisation of human rights will be impossible without environmental sustainability and climate justice. The effects of not having an integrated approach forwarded by the UNGPs is already demonstrated by the way in which due diligence has been interpreted in the recent UK law on forest-risk commodities that focuses solely on deforestation impacts and risks (see 2.8 and 5.5. for further detail).

2.8. Increase in the harassment, torture and murder of human rights and environmental defenders.

Global Witness has reported continued increases in the number of land and environmental

¹⁸ <https://www.business-humanrights.org/en/blog/victims-rights-under-the-second-revised-draft-treaty-on-business-human-rights/>

¹⁹ <https://www.mindthegap.ngo/>

²⁰ [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf)

²¹ <https://corporate-responsibility.org/mixed-messages-supreme-court-parent-company-liability/>

defenders who are killed each year.²² This number is disproportionately made up of indigenous peoples defending their land, territories and resources; who are frequently the first victims of corporate activity pursued with no regard to the principle of free, prior and informed consent (FPIC). The FPIC standard has been incorporated into national laws in countries such as Bolivia, and has begun to be taken up in standard-setting by international organizations such as the World Bank's International Finance Corporation, the International Council of Metals and Mining, the Forestry Stewardship Council and Roundtable on Sustainable Palm Oil. However, regulation adopted by national legislatures, including the UK, fall short. In this regard, we are extremely concerned by the UK's recent statement at the UN General Assembly that it does "*not accept the concept of collective human rights in international law*"²³ as well as the UK Government's proposal for due diligence on deforestation which currently contains no meaningful provisions related to indigenous peoples and forest communities' human rights, including to land, territories and resources. Without such provisions, the proposed UK law could have the unintended consequence of giving legitimacy to lands that have already been taken from customary land owners without respect for their land rights and without their free, prior and informed consent.²⁴

2.9. Persistent challenges in applying the UNGPs to the finance sector. This relates to both the human rights due diligence requirement and the responsibility to provide remedy. Within the finance sector, there have been voluntary initiatives to give effect to the UNGPs such as the Dutch Banking Sector Agreement and that of the Thun Group of Banks. According to UNGPs architect Professor John Ruggie, the latter misconstrues the Guiding Principles in a corporate and investment banking context, since it "*reinterprets core elements of the Guiding Principles in such a way that banks, by definition, do not "contribute to" harm except through their own activities.*" Financial organisations should be held accountable for their roles linked, contributing to or causing human rights and environmental harms; both directly - for example, a bank or investor investing in an agribusiness involved in land grabs or that produces from farms using child labour²⁵ - and indirectly - for example, funding infrastructure projects that displace indigenous populations.²⁶ Financial sector organisations are increasingly recognising that the Paris Climate Agreement and accompanying increased pressure through legal action on human rights and climate²⁷, the increased focus on biodiversity loss (a now recognised driver of new zoonotic diseases), and the increased availability of information and pressure on human rights - is rapidly shifting their operating context. A clear and predictable compliance environment would better enable financial organisations to adapt to these shifts.

2.10. Persistent challenges in applying the UNGPs to the end use of companies' products and services – a neglected area of research and policy with regard to Pillar II of the UNGPs, reflected

²² <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>

²³ <http://webtv.un.org/search/third-committee-14th-meeting-general-assembly-75th-session/6211097852001/?term=&lan=English&cat=Meetings%2FEvents&sort=date&page=4>

²⁴ https://corporate-responsibility.org/wp-content/uploads/2020/10/CORE-response-to-DEFRA-consultation_FINAL_021020.pdf

²⁵ https://www.fian.org/files/files/The_Human_and_Environmental_Cost_of_Land_Business-The_case_of_MATOPIBA_240818.pdf

²⁶ <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/bolivia-pueblos-ind%C3%ADgenas-iniciar%C3%A1n-acciones-legales-nacionales-y-ante-la-comisi%C3%B3n-interamericana-de-derechos-humanos-contra-el-proyecto-hidroel%C3%A9ctrico-chepete-el-bala/>

²⁷ <https://www.inclusivedevelopment.net/anz-agrees-to-landmark-settlement-with-cambodian-farmers-displaced-by-sugar-company-it-financed/>; http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf

in a large accountability gap with regard to Pillar I. While user-chain responsibility is the flip-side of supply chain responsibility and an equally important element of the value chain of companies, there is much less clarity as to what is expected of companies to ensure that their products and services do not contribute to human rights violations, or of the steps required when a company's products or services are linked to abuses via a business relationship. This is evident in the financial sector as well as other sectors where products and services are linked to multiple uses. For example, the pharmaceutical industry has supplied drugs which have been used by States to administer the death penalty.²⁸ Automotive manufacturers have sold pick-up trucks to dealers in conflict zones that have been used by armed groups.²⁹ Earth removing equipment has been sold to agents in situations where they have been used for the demolition of homes in violation of peoples' rights.³⁰ In all these cases, issues of knowledge, foreseeability and proximity to human rights violations come into play. Companies must take more preventive action to ensure their products are not used for such purposes, including the use of smart technology and contractual clauses that impose conditions on purchasers relating to the resale and use of products. There has been a tendency for companies exporting dual use products, especially within the armaments industry, to hide behind governmental controls, assuming that it is acceptable to sell products that have received export licenses or that are not subject to export controls. This needs challenging with regard to all three Pillars of the UNGPs.

2.11. The potential of sustainable public sector procurement to address risks of modern slavery in corporate supply chains has not been sufficiently harnessed.³¹ Governments are mega-consumers of many manufactured products and services. However, little consideration has been given to the human rights impacts of the state (central and local) and other public bodies.³² This includes export credit and development finance agencies. This lack of policy coherence undermines fulfilment of the UNGPs.

2.12. The failure of the UNGPs to fundamentally change business behavior. The false notion that negative impacts on human rights and the environment can be externalised costs for communities, workers and nature, so long as profit and shareholder value increases, remains the default position of business almost 10 years after the adoption of the UNGPs. Embedding the UNGPs into law must be coupled with a rebalancing of corporate governance away from a singular focus on shareholder interests. See section 4 – in particular, 4.1. – for further detail.

2.13. Insufficient communication of the UNGPs to rights-holders. Independent and reliable information needs to be made available in languages and formats understandable to rights-holders, including those whose cultures come from an oral tradition. Many of those on the front line of rights abuses have little knowledge of their own rights, have never heard of the UNGPs, do not have the resources to gain in-depth technical knowledge and are not clear on what the concept of due diligence is, let alone how the process could integrate their own self-determination and decision-making. Those that do have more in-depth knowledge on their rights and the

²⁸ <https://retrieve.org/lethal-injection/helping-pharmaceutical-companies-stop-medicines-used-kill/>

²⁹ <https://www.unav.edu/web/global-affairs/detalle/-/blogs/toyota-wars-and-the-next-generation-in-counter-insurgency-strategies>

³⁰ <https://www.theguardian.com/business/2020/oct/12/jcb-challenged-over-machinery-used-to-demolish-palestinian-homes>

³¹ <https://corporate-responsibility.org/wp-content/uploads/2018/09/ICAR-Core-Report-Who-Made-Our-Clothes-UK-Public-Sector-Apparel-Procurement.pdf>

³² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3170285

complex workings of supply and value chains, perhaps due to seeking justice on specific violations they are experiencing, still require easily accessible information on the UNGPs.

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

3.1. Enabling corporate accountability by converting the standards included in the UNGPs into legally binding and enforceable standards on human rights and the environment, including legislation on mandatory human rights and environmental at the national level, with liability for harms that companies or the entities that they exercise control over, cause, contribute to or are directly linked to. In the absence of developing such urgently needed regulatory frameworks, there are limited incentives for companies to prioritise human rights and environmental issues over commercial interests. A further obstacle is the risk of weak legislation on mandatory due diligence that puts the emphasis on the process, rather than the outcomes – leading to a tick-box approach by business. To address this risk, due diligence must be seen as the *means* rather than the *purpose* of legislation – the purpose being the protection of human rights and the environment (further elucidated under 5.1).

3.2. Preventing corporate capture of state power and the collusion of states and private actors that inhibits corporate accountability. Corporate lobbies pushing back initiatives to regulate business activities substantially out-number those representing the public and/or environmental interest, i.e., NGOs, trade unions, academics, victims, and consumers.³³ Businesses have also aligned with repressive states to undermine defenders and communities. States duties to protect human rights in the context of business and human rights, as established in the UNGPs, are under threat from trade and investment agreements. Investor-state dispute settlement (ISDS) provisions are of particular concern. As noted by 10 UN Experts in 2015, ISDS threatens “the regulatory function of many States and their ability to legislate in the public interest” and may have a “detrimental impact... on the enjoyment of human rights as enshrined in legally binding instruments, whether civil, cultural, economic, political or social”.³⁴ In the UK, the Government’s ongoing pursuit of trade deals during the pandemic and without a Trade Bill offering full democratic scrutiny of trade and investment agreements by Parliament raises severe concerns for future impacts on human rights.

3.3. Alongside legislation, addressing barriers to legal routes to justice for victims of corporate abuse, including under resourced judicial systems and an imbalance in power. Practical barriers in the UK include the cost for overseas claimants in bringing a claim and the risk of low financial rewards (the impact of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act; alongside the EU Rome II Regulation (Rome II);³⁵ lack of resources and expertise among Government prosecutors;³⁶ and the risk of the return of *forum non conveniens* after the UK leaves the EU.³⁷ See 5.3. for specific recommendations on this area.

4. What systemic or structural challenges need to be tackled to realize sustainable

³³ <https://www.mindthegap.ngo/harmful-strategies/utilising-state-power/avoiding-regulations-through-corporate-lobbying/>

³⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031>

³⁵ <https://corporate-responsibility.org/wp-content/uploads/2020/11/CORE-Coalition-submission-Justice-Committee-inquiry-into-the-future-of-legal-aid-FINAL.pdf>

³⁶ <https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/barriers-to-access-to-remedy/>

³⁷ See footnote 26.

development based on respect for human rights?

As above, a chronic lack of corporate accountability for human rights abuses and environmental harm, despite well-documented abuses – which stands alongside increasing corporate power and an ability to undermine state duties to protect human rights, through provisions including ISDS. Additionally:

4.1. The primacy of economic growth, which stands at odds with social wellbeing, environmental sustainability and climate justice. Indicators such as the Human Development Index fail to recognise a strong correlation between countries' high income levels and negative environmental impacts.³⁸ From child labour to the absence of a living wage, from oil spills to mass deforestation, from harassment of human rights defenders to land grabbing – profits from these activities are accounted for as economic growth, with the assumption that 'decent work' is attached to GDP growth (see for instance, SDG 8).³⁹ The call for continued global economic growth equivalent to 3% per year is incompatible with necessary action to protect the climate. An example in national law is Section 108 of the UK Deregulation Act 2015 which requires any person exercising a regulatory function to have "regard to the desirability of promoting economic growth". This model has been sustained by harmful economic policies on trade, investment, tax injustice and other areas, and by financing models adopted by Public Development Banks.

4.2. Mainstream business models – and our dominant economic model - prioritise profits and shareholder value at the expense of human rights, the environment and climate resilience. Research shows the alarming increase in shareholder profits at the expense of workers, society and the environment,⁴⁰ alongside increasing monopoly and monopsony power. Calls for a move away from a singular focus on shareholders' interests have come from the British Academy's Future of the Corporation project,⁴¹ the Business Roundtable (a US association of leading chief executives) and the Financial Times⁴²; with the founder of the World Economic Forum also calling for a move away from neoliberalism.⁴³ Lead firms wield vast power over their suppliers to define the contractual terms of production to their advantage, pushing social and environmental impacts further down the supply chain. The COVID-19 crisis has laid bare the inherent flaws of the current economic system and exacerbated the unfair purchasing and labour practices (e.g., low prices, mass production and ever shorter lead-times; the move to sub-contracted rather than directly employed labour; repression of trade unions and freedom of association; the offloading of responsibilities onto suppliers), and power of big business. For instance, fashion brands responded to the crisis by invoking the pandemic as a way to cancel or suspend orders and to dishonour existing contractual obligations, protecting shareholders over human rights. This has destroyed the livelihoods of millions of underpaid garment factory workers in countries like Bangladesh and Cambodia, where there is no adequate social security safety net and where, in many instances, the suppliers have had to incur the financial risk of production.⁴⁴

4.3. Systemic inequalities within and in between countries. For instance, post-colonial racial injustices are central to the underdevelopment and exploitation of natural resources and people

³⁸ <http://hdr.undp.org/en/content/2019-human-development-index-ranking>

³⁹ <https://sdgs.un.org/goals/goal8>

⁴⁰ <https://www.tuc.org.uk/research-analysis/reports/how-shareholder-first-business-model-contributing-inequality>

⁴¹ <https://www.thebritishacademy.ac.uk/programmes/future-of-the-corporation/>

⁴² <https://www.ft.com/content/3732eb04-c28a-11e9-a8e9-296ca66511c9>

⁴³ <https://www.weforum.org/agenda/2020/10/coronavirus-covid19-recovery-capitalism-environment-economics-equality/>

⁴⁴ <https://www.business-humanrights.org/en/big-issues/covid-19-coronavirus-outbreak/supply-chain-workers/>

in the Global South. Inequality in land ownership, which is often central to social and economic inequality, environmental degradation and conflict, has led to a privileged land-owning elite acting with impunity. Centuries of discrimination, prejudice and active suppression of indigenous people - and their rights their customary lands, territories and resources - exacerbates unequal power dynamics and human rights violations associated with business operations and investments. Home countries of most multinational corporations – mainly in the Global North - externalise the costs of human rights abuses and environmental damage generated by their business operations, the majority of which happen in the Global South.

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?

Placing accountability at the center of the UNGPs – from the UN Working Group (UNWG), to States, to enterprises and investors, to NGOs and other collective bodies involved in the advancement of the UNGP project – should be the main target of the next decade.

5.1. National governments and regional authorities must implement binding legislation to mandate companies to undertake combined 'human rights and environmental due diligence' across their supply chains and operations, and to hold companies to account when they fail to prevent human rights abuses and environmental harms, including civil and criminal liability provisions. In the UK, such a law would build on and consolidate the advances in UK case law outlined above, give domestic legal force to the UNGPs, and help to overcome jurisdictional, legal and procedural barriers that prevent many civil cases against companies from being taken. We urge that legislation is based on a duty of care with the standard being the *action* of companies, rather than the *process* of human rights due diligence. The voices, knowledge and perspective of people affected by and vulnerable to corporate human rights impacts must be central to the design and implementation of legislation. While legislation alone will not have the capacity to deliver change in the systemic challenges listed above, it is a beacon to speed and scale up UNGP implementation and contribute to a just and equitable economic recovery from the COVID-19 crisis. The UNGPs clearly recognise the principle of extraterritorial jurisdiction – including direct legislation and enforcement - under the commentary to UNGP 2.

5.2. Active State support for the UN Binding Treaty on Human Rights.

5.3. UN and State action on access to remedy for victims of human rights abuse. The UNWG should collect systemic data from the victims of human rights abuses where a business claims to have supported 'remedy' or used its leverage in voluntary systems – to understand how rights holders perceive the success and accountability of outcomes. In tandem, States must urgently provide more resources for judicial systems, remove or amend legislation and policies that block effective access to remedy for victims of harm by businesses in their jurisdictions (see 3.3 for further detail).

5.4. Increased participation and meaningful consultation between business, governments and human rights defenders, including indigenous peoples. Land, human rights and environmental defenders, including indigenous peoples, traditional and local communities, should be meaningfully involved at all stages in the development of legislative initiatives – including right from the start - to ensure that legislative developments do not leave different rights holders behind. Indigenous peoples are increasingly setting out their free, prior and informed consent

rules and local laws which detail norms around their right to prior consultation and consent, and to self-determination related to their land, territory and resources. States and businesses must respect these community land rights and FPIC rules where they already exist, and where not available ensure funding is available for indigenous peoples and their representatives to independently formulate them. Clear recognition that indigenous peoples have the right to development as determined by their own desires, aspirations and worldview, alongside their right to self-determination and self-governance, is fundamental for a rights-based sustainable development agenda, in line with the Sustainable Development Goals (SDGs).

- 5.5. Corrective action must be taken to recognise the interdependence between human rights, the environment and climate in the implementation of the UNGPs.** The UNWG must provide clear and coherent guidance to states and businesses on the linkages between human rights, the environment and climate, acknowledge the strategic priority of the environment in international cooperation for institutions and parties to the Paris Agreement on climate change, and promote compliance with multilateral environmental agreements. A joined-up approach to tackling human rights and environmental harm in corporate supply chains must be integrated into legislative initiatives, such as the EU legislative proposal on mandatory human rights and environmental due diligence and the UK's deforestation due diligence proposal.
- 5.6. The UNWG should provide more guidance on the types of actions required by the financial sector that affect rights holders and States should integrate the financial sector in legislative and other provisions** – for instance the UK's deforestation due diligence proposal, the EU legislative proposal on mandatory human rights and environmental due diligence and the UN Treaty on Business and Human Rights.
- 5.7. Public sector procurement should be more effectively harnessed as a lever to ensure corporate respect for human rights.** Only companies that fulfil their human rights and environmental due diligence should qualify for public procurement and export credit support. There should also be consideration of the inclusion of public sector procurement in binding legislation on human rights and environmental due diligence, with a carefully considered and tailored approach (for instance, on penalties) and adequate and support and resourcing for public sector organisations, particularly given that public services around the world have been hard hit by cuts to funding in the last decade.
- 5.8. A more systemic and holistic approach to business and human rights** that includes a rebalancing of corporate governance away from a singular focus on shareholder profit and towards a model elevating human rights and environmental protection as a primary goal, and which recognises the impact of trade, tax and other economic policies in enabling corporate impunity. The UK must allow full parliamentary scrutiny of trade agreements alongside a termination of Investor-State Dispute Settlement (ISDS) clauses and Bilateral Investment Treaties the UK is party to in order to guarantee the Government retains its right to regulate – to protect human rights and address future crises.
- 5.9. Ensure the UNWG is transparent and well-funded,** and that those resources are used to better support CSOs, people and communities affected by corporate abuses to be active participants in all decision-making processes.