

Implementing the UN Guiding Principles on Business and Human Rights

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Global Trends & Current Challenges

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Meet your lecturer



About me

- PhD in international law
- Worked/studied in France, Ireland, NL UK and US

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My research – key questions

- How to hold corporations accountable for human rights/environmental impact?
- How do corporations approach human rights in their operations?

Outline: Global Trends and Current Challenges

1. Introduction

- UN Guiding Principles on Business and Human Rights



2. Legalization

- Domestic/EU BHR legislation
- Business and Human Rights Treaty
- UNGPs in legal proceedings



3. Fragmentation

- Legislation by sector/area/issue



Introduction: the UN Guiding Principles

2011 UN Guiding Principles on Business and Human Rights



State duty to protect human rights against corporate abuse



Corporate responsibility to respect human rights



Access to remedy

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, **business enterprises should carry out human rights due diligence**

UN Working Group on Business and Human Rights

Mandate: to disseminate/
overview implementation of
UNGPs

Country visits

Annual reports:
e.g. anti-
corruption,
conflict, gender

Support states
adopting National
Action Plans

Legalization

- (a) Domestic/EU BHR legislation
(b) Business and Human Rights Treaty
(c) UNGPs in legal proceedings

Domestic/EU BHR legislation

- Legislation on corporate responsibility for labour, human rights and the environment not new
- **Recent development** following adoption of UNGPs in 2011
 - laws aiming to hold corp. accountable for **global operations** e.g. subsidiaries & supply chains
 - Human rights + Environment + Climate?



What is BHR legislation?

Transparency Disclosure Reporting

- E.g., UK Modern Slavery Act 2015

Due diligence

- French duty of vigilance law 2017
- Draft EU Directive on Corporate Sustainability due diligence 2022

Import/export bans

- Draft EU regulation on prohibiting products made with forced labour on the Union market 2022
- Uyghur Forced Labor Prevention Act 2021

Business and human rights legislation in the European Union

- Many EU regulatory initiatives related to business and human rights
- E.g. Import control measures (forced labour, deforestation, etc.), reporting, etc.



Legalization

- (a) Domestic/EU BHR legislation
- (b) Business and Human Rights Treaty
- (c) UNGPs in legal proceedings

Towards a Business and Human Rights Treaty?

- Frustration in the NGO community at the slow pace of change
- 2013: Rana Plaza disaster in Bangladesh (1,134 died)
- 2013: US Supreme Court decision in *Kiobel v Royal Dutch Petroleum*
- 2013: Creation of the Treaty Alliance, with hundreds of participating organizations



Towards a Business and Human Rights Treaty?

2014: UN Human Rights Council resolution (Ecuador and South Africa)

Creation of an Open-ended intergovernmental working group to negotiate an international instrument on business and human rights

Key issues

- Which companies?
- What is a victim?
- How far should prevention go?
- What forms of liability?
- Extraterritorial jurisdiction?
- Links with investment treaties and arbitration?
- Companies direct obligations?

Legalization

(a) Domestic/EU BHR
legislation

(b) Business and Human
Rights Treaty

→ (c) UNGPs in legal proceedings

UNGPs in legal proceedings

- 2021 UN Office for the High Commissioner for Human Rights Report
- Comprehensive overview of the impact of the UNGPs on courts and judicial mechanisms.
- No decision so far citing the UNGPs by Central/Eastern Europe Domestic courts.

Debevoise
& Plimpton

UN Guiding Principles on
Business and Human Rights at 10

*The Impact of the UNGPs on Courts
and Judicial Mechanisms*

<https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/debevoise.pdf>.

Milieudefensie et al v Royal Dutch Shell, 2021

CASE NOTE

RECIEL
Review of European, Comparative & International Environmental Law

WILEY

Business and human rights implications of climate change litigation: *Milieudefensie et al. v Royal Dutch Shell*

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Abstract

In *Milieudefensie et al. v Royal Dutch Shell*, the District Court in the Hague ordered the respondent company to cut its global carbon dioxide emissions by 45 percent by 2030, as compared with 2019 levels. The landmark judgement represents the first imposition of a specific mitigation obligation on a private company over and above reduction targets set by existing 'cap-and-trade' regulations and/or other governmental mitigation policies. In interpreting Royal Dutch Shell's duty of care under Dutch tort law, the Court referred extensively to international soft law, including the United Nations Guiding Principles on Business and Human Rights. This note considers the implications of this case for corporate responsibility for environmental and human rights.

Fragmentation

→ (a) Legislation by
sector/area/issue

Legislation by sector/area/issue

Challenging to transform the UNGPs into legislation

Discussion points

- Comprehensive v fragmented approach
- What works best? What is better? For whom?

- **Modern Slavery** legislation (California, UK, Australia)
- **Child Labour** due diligence law in the Netherlands
- Export/Import bans Uyghur/**Xinjiang region**
- **Sectors** singled out in EU Draft Directive on corporate sustainability due diligence: extractive, textile, agriculture

- Legalization trend: domestic, EU and international law
- Use of UNGPs in courts: still not widespread
- Comprehensive v fragmented approach



Thank you!

BUSINESS AND HUMAN RIGHTS

History, law and policy -
Bridging the accountability gap

Nadia Bernaz



HUMAN RIGHTS AND INTERNATIONAL LAW

