

BUSINESS AND HUMAN RIGHTS IN THE CENTRAL AND EASTERN EUROPE
with participation of the UN Working group on Business and Human Rights



Supported by:

OSCE Project Co-ordinator in Ukraine



Polish Institute
for Human Rights
and Business



Ombudsman
of Ukraine



Global Business and Human Rights
Scholars Association



September 23-25, 2020

**BUSINESS AND HUMAN RIGHTS IN THE CENTRAL AND EASTERN EUROPE:
KHARKIV FORUM'S SUMMARY**

I. Background of the CEE region

In the countries of Central and Eastern Europe, the level of UNGPs implementation remains extremely low. There are only a few positive examples in the region of the adoption of National Action Plans on Business and Human Rights (Lithuania, Czech Republic, Poland, Slovenia, Georgia). But the implementations of such NAPs are not stories of the success yet.

The countries of the region have the socialist past. Many of them were the part of the Soviet Union for a long time, others bordered with it to be ruled under the Soviet regime or influenced by it in political and economic ways very much.

Despite the quite different historical background, one face a very similar situation regarding corporate responsibility to respect human rights in the CEE region.

In turn, the low level of corporate respect for human rights is due to the following factors, which are also common for countries in the region, although in different degrees:

1. The absence of free private business for a long time, or concentration of State owned businesses in key sectors; strong state control on all economic processes and a large share of state participation in the economy which led to the lack of tradition for business to take responsibility and the lack of expectations of society for responsible business behavior;
2. Long period of undemocratic political regimes in region or being under its strong influence which led to a lack of tradition of understanding the values of human dignity and personal autonomy which core basis of corporate responsibility to respect for human rights; the idea of human rights was subordinate to state policy; collective interest prevailed over the individual/private, legal regulation was based on the principle of the supremacy of the state will, but not on the rule of law principle;
3. The fall of undemocratic regimes allowed civil society strengthening and development, but the main focus of the CSOs is still state's activities since the state is considered the main threat to human rights. In this sense one finds very few cases in the regions when human rights defenders work with human rights abuses by business. Politicization of human rights issues is still common in the region.

II. Aims and objectives of the Forum

Kharkiv International Forum on Business and Human Rights in the Central and Eastern Europe took place on 23-25 of September, 2020. Armenia, Belarus, Georgia, Lithuania, Kazakhstan, Moldova, Poland, Russian Federation, Slovak Republic, Slovenia, Ukraine had been represented by the independent BHR experts and / or scholars and business associations. Governmental representatives from Georgia, Lithuania, Slovenia and Ukraine responsible for the UNGPs implementation presented situation in their countries as well.

CSOs, experts and scholars from Brazil, Columbia, Germany, Great Britain, India, Kenia, the Kingdom of the Netherlands, N. Macedonia, Mexico, Portugal, Turkey, Switzerland, Uganda, USA took part in the Forum's discussions.

The main mission of the Forum was to promote the Business and Human Rights agenda in the Central and Eastern Europe region (CEE), to integrate business, academia and experts communities from the CEE countries to the broader dialogue on BHR issues, to raise awareness and build capacity of the business, civil society organizations, state bodies and academia on UN framework on BHR, to create the platforms to exchange developments and good practices on BHR for the different groups of stakeholders – governmental bodies, businesses associations, CSOs, academia, to ensure communication and exchange with other regions to draw from the best examples, practices around the world, and ways to address the key challenges on UN Guiding Principles on Business and Human Rights implementation etc.

One of the main results of the Forum is presenting the **CEE Business & Human Rights Association (CEEBHRA)** as a regional association of academics, business and civil society professionals and policymakers united to promote research, awaraness raising, capacity building and teaching of human rights in business context in (broadly understood) Central & Eastern Europe.

It is a non-profit, non-partisan association co-founded by:

- Olena Uvarova, Ph.D, Head of the International Lab on Business and Human Rights, Yaroslav Mudriy National Law University (Ukraine)
- Beata Faracik, LL.M., President of the Board of the Polish Institute for Human Rights and Business (Poland)

- Jernej Letnar Čerňič, Ph.D, Associate Professor of Constitutional and Human Rights Law, New University, Ljubljana (Slovenia)

WEBSITE: <https://pihrb.org/ceebhra/>

III. Key obstacles to UNGPs implementation in the region

UNGP is a general tool which should be used very differently and focused on the local contexts. The following problems remain common to many countries of the region which pose significant barriers to effective implementation of business and human rights standards:

1. Lack of awareness of state institutions, academic community, non-governmental organizations, business with the UNGPs on Business and Human Rights, developed standards and initiatives, good practices. Lack of understanding by business and by societies that sustainable business needs to be responsible. BHR is identified with charity within the framework of corporate social responsibility (CSR) very often.
2. Unappropriated economic conditions, in particular low level of income affects the priority of people's motivation. People link their expectations to states mostly.
3. Risks and challenges associated with the absence of strong democratic traditions, weak civil society, lack of the rule of law, high level of corruption in public and private sectors, and as a result low level of trust of people and absence of the request for new social contract from society. Maintaining a paternalistic approach to respect, protect and fulfill of human rights. The human rights sphere has traditionally been equated with state obligations.
4. Extremely strong merging business and state. Large public procurement system. Quasi-state sector of economy which leads to the lack of real competition and there is no incentive to run a responsible business conduct.
5. Weak state institutions on effective protection of human rights.
6. The impact of the international and regional human rights standards is partial and limited. The most structural and systematic impact are seen in Central Europe and Baltic States.

Most BHR issues are global (e.g. forced labour, low wages, etc.), yet some are more topical to CEE region and have special impact to human rights during COVID 19, e.g.:

- A. Civil and political rights. In countries of the region which have not strong democratic traditions business is used by state often as instrument to control people in situation of the protests (Belarus case shows it very well).
- B. Discrimination due to low tolerance of vulnerable groups in the society.
- C. Patriarchal business culture which leads to gender inequality.
- D. Labour rights. Trade unions in the post-Soviet countries of the regions didn't become strong institution which could fight for the worker's rights. Person whose labour rights had been violated by business should find the remedy to protect her/himself. High level of informal employment is common for the region. Migrant workers.
- E. Socio-economic rights
- F. Right to fair, independent and impartial tribunal.
- G. Human rights defenders
- H. Conflict and post-conflict situations in the region (Ukraine, Armenia, Azerbaijan, Georgia). The BHR framework has high importance for these countries especially in the context of the conflict, situation of the internal displacement and additional vulnerability of people affected by the conflict. The business sector should become a key recipient for the efforts of domestic and international organizations in their search for strategic partners to build a stable peace. It

is believed that corporate decisions – investing, producing and hiring – have the ability to encourage, limit or even destroy the agenda and scale of any attempt to build peace.

IV. Key priorities for the region

Based on an analysis of the experience of the CEE countries, summarized the problems inherent in EU and non-EU countries, examined the current standards on business and human rights and good practices of implementing them, realized the additional risks associated with post-Soviet heritage, the key priorities for all stakeholders should be following:

- 1) To ensure policy coherence
- 2) To focus on state owned companies
- 3) To show for nonEU countries that UNGPs implementation in nonEU countries of the region is an important element of the their legal system harmonization with the EU legal order and creating favorable conditions for national companies operating in the EU markets (and more globally) and European companies operating in nonEU countries, including companies involved in European supply chains. Strict HRDD by countries who have supply chains in the CEE
- 4) Access to justice in business related abuses cases

It is a key priority to raise awareness of business entities about their role in promoting democracy, rule of law, fighting corruption, contributing to sustainable development and social welfare.

WE CALL UPON:

the United Nations and its institutions (agencies):

- to take into account the specificities of the CEE Countries in the work on the implementation of the UNGPs on Business and Human Rights (lack of a stable tradition of economic freedom and sustainable corporate social responsibility practices, lack of understanding of the importance of balancing state guaranties and autonomous regulation space, the focusing of human rights defenders on the control of state actions in the sphere of political and civil rights mainly, special barriers for gender equality improving etc.);

- to draw attention of the countries of the region on the corporate responsibility to respect human rights, particularly within the considering periodic state reports on implementation of the UN human rights instruments;

- to hold a regional UN Forum on Business and Human Rights (by analogy, South Asia Forum in 2019, Asia Forum in 2016, African Regional Forum in 2014, Latin-America and the Caribbean Forum in 2013 fora), paying particular attention to the additional challenges of the CEE region;

- to consider the possibility of implementing the joint project with other international and regional organizations to promote standards of business and human rights in the countries of CEE that emerged after the collapse of the USSA;

- to develop a report on the role of human rights defenders in promoting business and human rights standards in post-Soviet countries, in view of the particular challenges they face;

the Council of Europe, the Organization for Security and Co-operation in Europe, the Organization for Economic Co-operation and Development, other regional organizations:

- to use the framework of business and human rights – state obligation to protect human rights from violations by third parties, including business, corporate responsibility to respect human rights, including human rights due diligence, access to effective remedies – as a cross-cutting element in all initiatives planned and / or implemented in the region;

- to include information on specific challenges on business and human rights in the CEE region (Council of Europe Handbook on Business and Human Rights for Law Practitioners, OECD Guidelines, etc.);
- to pay particular attention to the business responsibility to respect human rights in initiatives to promote protection the human rights of internally displaced persons, persons residing in conflict areas etc., to consider possible models of public-private partnerships for the implementation of initiatives to protect such persons who are vulnerable due to the conflict situation and forced displacement;

the States of the CEE region:

- to initiate the process of implementation of the UNGPs on Business and Human Rights and to increase the effectiveness of their implementation in the countries which have realized some appropriate steps already, with inclusion of civil society and NHRIs; and taking into account the specific challenges of the region;
- to pay particular attention to the spheres of legal regulation that are traditionally regarded as neutral in matters of human rights protection – public procurement, investment, tax law, corporate law etc.;
- to participate in the discussion of the draft of the legally binding international document on business and human rights, to draw attention of the UN Working Group to the additional risks and challenges which are presented in the region;
- to hold regional working meetings, conferences, discussions with businesses, non-governmental organizations, academic community on the implementation of standards on business and human rights, to determine priority areas of cooperation in this area;
- to increase public sector involvement in the implementation of private sector initiatives, in particular such as: Extractive Industries Transparency Initiative, the Voluntary Principles on Security and Human Rights, the Kimberley Process for the Certification of Rough Diamonds, the Ten Principles of the UN Global Compact, to disseminate information about such initiatives in their countries;
- to provide clear policy statements on the expectation that all businesses domiciled in state's territory and/or within its jurisdiction respect human rights; to identify specific business sectors or activities that may have particularly negative impacts on human rights; to develop the guidance for businesses on respecting human rights that are appropriate to different industry sectors; to determine the impact business makes on vulnerable groups and communities;
- to disseminate information on existing standards on business and human rights, and to raise public awareness of such standards;
- to pay special attention to the potential influence of business on women's rights and human rights of vulnerable groups;
- to integrate standards on business on human rights in the public procurement;
- to conduct an assessment of existing interstate agreements, domestic legislation, and national policies for compliance with standards of protection of human rights against violations by business and promotion of corporate responsibility to respect human rights; to adopt and operationalise a clear government policy to promote the protection of human rights against business abuses, to prevent and mitigate the effects of human rights abuses, and evaluate the impact of these processes on business. Such policies should be based on a preliminary assessment of whether policies, legislation, other tools

are in place to adequately protect human rights against violations by businesses, including in situations of conflict and internal displacement;

- to collect and disseminate good practices on business and human rights, and inform business about the possibility of obtaining consultations from the state institutions and / or experts on business and human rights issues;
- to cooperate with business, facilitate implementation of its initiatives, accompany companies and provide them with methodological support at all stages of work to identify potential risks of their business operations for human rights;

Business, regardless of company size and business:

- to raise awareness of CEOs and employees of corporate responsibility to respect human rights, to participate in awareness raising campaigns for consumers, contractors / suppliers, communities in which the company operates;
- to participate in the initiatives of the state, non-governmental organizations, academic community to discuss business and human rights issues;
- to recognize commitment to human rights, particularity human rights of vulnerable individuals, groups, including IDPs, and communities;
- to operationalise recommendations provided in UNGPs within their own companies with special focus on adopting, publishing and operationalizing a human rights policy of the company and on developing the human rights due diligence procedure (if one does not already have one);
- to ensure own awareness of national policies on human rights, including on conducting economic activities in the conflict zone and on internal displacement situation, and to follow the recommendations of the state bodies;
- to adopt employment policies and appropriate working conditions, favoring the employment of vulnerable individuals and groups, including internally displaced persons, persons at risk, discriminated groups and minorities, using gender lenses and taking into account the factors of conflict and internal displacement;
- to develop a policy on corruption prevention, enforce the risk management procedures, including impact assessments, gender-based assessments, training programs and mechanisms;
- to update company policies in the field of human rights, responding to the risks in the company's activities, supply chains and other relationships to which the company is involved;
- to make company's policies on human rights public, particularly through posting on the company's website, where necessary in different languages. Communicate company's policies to employees, update their awareness of company's policies on human rights periodically;
- to stay updated on the conflict and internal displacement situation to gain an understanding of the company's operations impact to the ongoing conflict and internal displacement, and act accordingly;
- to cooperate with existing peacekeeping operations, programs and projects, including assistance programs for internally displaced persons;
- to develop human rights due diligence procedure (if one does not already have one); to monitor the impact of the company's activities, evaluate the effectiveness of the measures which have been taken;

Civil society organizations:

- to establish a regional network (working group) to analyze the situation on business and human rights in the region, to develop recommendations with special attention to the specific challenges of the region;
- to evaluate the national policies of the countries of the region through the lenses of business and human rights framework;
- to raise awareness of civil society actors on business and human rights issues, to analyze the specific risks of the region for their activities;
- to monitor realisation of corporate responsibility to respect human rights;
- to provide expert support to public authorities, businesses, investors upon their request for effective fulfillment of business obligations to respect human rights, especially in the situations of conflict and internal displacement;
- to pay special attention to ensuring corporate responsibility to respect women's rights, rights of vulnerable individuals, groups and communities; to support victims of human rights business abuses, with particular attention to vulnerable individuals and groups;
- to participate in dialogues with the participation of national and international stakeholders, to share their experiences;
- to produce expert reports, analytics, recommendations and other relevant materials on the topic of business and human rights.

Academic community:

- to disclose human rights business commitments through the prism of ideas of human dignity and personal autonomy;
- to conduct comparative studies of the impact of legal, historical, political and economic context on the implementation of recognized standards on business and human rights;
- to explore the role of non-state actors in the area of legal regulation and human rights in particular; the role of non-state actors, especially business, in promoting democracy, the rule of law and sustainable development;
- to analyze the risks and challenges associated with the absence of strong democratic traditions, high levels of corruption, low public confidence in justice system;
- to review the paternalistic approach to respect, protect and fulfill of human rights;
- to provide a scientific basis for public-private partnerships to address complex social situations that entail mass human rights violations (including in situations of conflict and internal displacement);
- to promote awareness of state bodies, academic community, non-governmental organizations, business of the UNGPs on Business and Human Rights, developed standards and initiatives, good practices.

Law schools:

- to include courses on business and human rights, with special attention to the rights of vulnerable individuals and groups, in particular IDPs, to the normative (mandatory) part of the curriculum for law students;
- to train skills of legal professionals to develop policies on human rights commitment, with particular attention to the fulfillment by the corporate responsibility to respect human rights;

- to disseminate examples of best practices in legal protection against human rights abuses by businesses.

V. Special recommendations for the COVID-19 situation:

CEE countries should realize that the regulatory models that include standards of responsible business conduct are more likely to effectively balance the competing interests of different non-state actors in society, to offer more flexible and effective tools to respond to global threats. There is a need to strengthen the capacity of governmental and non-governmental institutions to respond to challenges related to COVID 19 or other global challenges. The following steps will help to achieve this purpose:

1. Raising awareness of business about corporate responsibility to respect human rights and the need of human rights due diligence to indicate the actual and potential impact on human rights, especially in crisis situations.

2. The state uses such tools:

- providing state aid to business to support it in a crisis situation, business participation in public procurement depends on responsible business conduct (for example, in situation of COVID 19, on the implementation of business measures to save jobs, the current level of wages of employees, and to minimize the negative impact on suppliers etc.);

- development of recommendations and guidelines for business to minimize the risks of human rights violations in situation of the global emergency as COVID 19, while reducing the use of mandatory regulations (business, having autonomous space for decision-making, can better take into account each situations and find the optimal solution); the development of such recommendations can be carried out by the state in cooperation with CSOs, expert organizations, academics circles;

- such regulation does not mean easing the requirements for business, as there is a general principle of human rights due diligence which means that business is responsible for the negative impact on human rights if the business cannot prove that it has exercised due diligence to identify , prevent and minimize the risks of negative impact on human rights.

3. The basic guideline of state policy in a situation of global crisis should be the principle of the Sustainable Development Goals: "Leave no one behind." An important element of a democratic society is following: a policy that benefits society as a whole but places too much burden on the most vulnerable is unacceptable. The fairness of the means is as important as the nobility of purpose. Therefore, business rescue programs cannot be implemented at the expense of the most vulnerable individuals, groups and communities.

4. The obligation of the state to protect human rights from violations by third parties, in particular from the negative impact of business, implies the need to identify additional areas of vulnerability in a crisis and develop additional protection mechanisms. Under COVID 19, the vulnerability of gig workers, migrant workers, informal workers, supply chain workers, and seasonal workers has increased. Additional vulnerabilities have emerged for persons with family responsibilities, people with disabilities, the elderly persons, women, rural residents, and others.

5. Businesses should review and update the company's existing policies (particularly on labor issues, the environment, corporate social responsibility, personal data protection, consumer protection,

corruption prevention, etc.) to ensure compliance with the UNGPs and other international human rights instruments, taking into account the additional challenges posed by COVID 19.

6. Companies' non-financial reports should include information on measures to ensure corporate responsibility to respect human rights in times of COVID 19.

7. Non-state actors have to intensify the use of means of leverage on business in a crisis¹. Thus, investors should include criteria for responsible business conduct in investment agreements. In addition, investors and other non-state actors (business associations, trade unions) can make public statements about their expectations of human rights responsible business conduct in times of the crisis.

8. In a crisis, the role of trade unions is growing. Trade unions must respond to all facts of negative business impact on human rights (by peaceful protests, negotiations, appeals to the administration to resolve the conflict; appeals to the state authorities in case of a dispute with the business), monitor changes in legislation to respond promptly to cases where human rights are narrowed or their guarantees of protection from negative business impact are weakened.

9. Civil society organizations, expert organizations, and academic institutions should be involved in making recommendations for business, tools for assessing the risks of negative impact on human rights in a crisis, minimizing them, and translating recommendations and guidelines developed by international and regional organizations to ensure their accessibility for a wide range of people. Non-governmental organizations can also conduct special monitoring of state actions to protect human rights from violations by business under COVID 19 and business conduct in compliance with standards of corporate responsibility to respect human rights.

10. Corporate social responsibility initiatives should not be a substitute for corporate responsibility to respect human rights. There are common cases when a business makes PR for itself thanks to the CSR initiatives and at the same time violates human rights. The situation of the crisis caused by COVID 19 provided several vivid examples: for example, in Ukraine, some big companies, which attracted a lot of media attention in connection with the purchase of necessary materials for hospitals, were then exposed for corruption aimed at obtaining opportunities to operate, despite the fact that their activities were prohibited due to quarantine. CSR cannot continue to play a leading role in replacing human rights issues.

PREPARED BY:

Ms. Beata Faracik, President of the Polish Institute on Human Rights and Business, Poland

Ms. Olena Uvarova, PhD, Associate Professor, Head of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine

CONTRIBUTED BY:

Ms. Lyudmila Denisova, Parliamentary Commissioner on Human Rights, Ukraine

Ms. Olena Stepanenko, Representative of the Ukrainian Parliamentary Commissioner for Human Rights on Socio-Economic and Humanitarian Rights

Ms. Valeriya Kolomiets, Deputy Minister of Justice of Ukraine on European Integration

¹ See <https://www.opendemocracy.net/en/shaping-new-social-c-ontract-through-pandemic/>.

Ms. Marina Kupchuk, Investment Department of the Ministry of Economic Development, Trade and Agriculture of Ukraine

Mr. Jernej Letnar Čerňič, PhD, Professor of the Faculty of Government and European Studies, Nova Univerza, Slovenia

Ms. Nataša Bergelj, Head of Human Rights Department at the Ministry of Foreign Affairs of Republic of Slovenia

Ms. Aistė Jakštienė, Second Secretary of Human Rights Division of the Ministry of Foreign Affairs of the Republic of Lithuania

Ms. Meriko Kajaia, Human Rights Secretariat of the Government of Georgia

Ms. Ekaterina Deikalo, PhD, Associate Professor of the International Law Chair, Faculty of International Relations of the Belarusian State University, Belarus

Mr. Aleh Gulak, Head of the Belarusian Helsinki Committee, Belarus

Ms. Lyra Jakuleviciene, PhD, Dean of the Law School, Professor of International and EU law, Mykolas Romeris University, Lithuania

Mr. Arnas Liauksminas, member of Human Rights Laboratory, Mykolas Romeris University, Lithuania

Ms. Mariya Yasenovska, President of the Kharkiv Regional Foundation «Public Alternative», Ukraine

Ms. Yulia Razmetaeva, PhD, Associate Professor, Yaroslav Mudryi National Law University, Ukraine

Ms. Tatyana Zinovych, Director of the Legal Policy Research Centre, Kazakhstan

Ms. Ganna Shvachka, PhD, Head of Charity Fund “Ukraine-Slovakia SOS”, Head of Civic Association «SME SPOLU», Slovak Republic

Ms. Marina Kapustina, Lawyer of the international law firm bnt attorneys in CEE, Bratislava, Legal expert of the public organization Sme Spolu, Slovak Republic

Ms. Salome Zurabishvili, Executive Director, CIDA and Global Compact Network Georgia

Mr. Pancho Valchanov, President of the Institute for Business and Human Rights, Moldova

Ms. Olha Boiko, European Business Association, Ukraine