

A vibrant, stylized illustration of a diverse group of people in a meeting. The background is white with scattered blue and yellow circles. Several people are depicted in various poses: one with red hair and a yellow top, one with dark curly hair in a red top, one in a grey hijab with a yellow top, one in a yellow hijab with a grey top, and one in a red top with a yellow wheelchair. They are surrounded by blue, striped, teardrop-shaped elements that resemble stylized trees or abstract shapes. A large grey rectangle is centered over the illustration, containing the title text.

Business And Human Rights

NATIONAL BASELINE
ASSESSMENT

EXECUTIVE SUMMARY



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS



The National Baseline Assessment on Business and Human Rights has been developed by the Yaroslav Mudryi National Law University in cooperation with the Ministry of Justice of Ukraine based on methodological and financial support from the Danish Institute for Human Rights and expert support from the civil society organizations «Labor initiatives», «Fulcrum UA», «Human Rights Information Centre», «National Assembly of People with Disabilities», UN Global Compact Ukraine.

The Danish Institute for Human Rights (DIHR) is an independent, national human rights institution modelled in accordance with the UN Paris Principles. The Institute, which was established by statute in 2002, carries on the mandate vested in the Danish Centre for Human Rights in 1987. This encompasses research, analysis, information, education, documentation and the implementation of national and international programmes.

The chief objective of the DIHR is to promote and develop knowledge about human rights on a national, regional and international basis predicated on the belief that human rights are universal, mutually interdependent and interrelated.

Національне оцінювання базових показників з питань бізнесу і прав людини проведено Національним юридичним університетом імені Ярослава Мудрого спільно з Міністерством юстиції України за методологічної та фінансової підтримки Данського інституту прав людини, а також за експертної підтримки ГО «Трудові ініціативи», ГО «Точка опори ЮА», ГО «Центр інформації про права людини», ВГО «Національна асамблея людей з інвалідністю», глобальної мережі UN Global Compact.

Данський інститут прав людини (ДІПЛ) – незалежна організація, що виконує функції національної інституції з прав людини відповідно до Паризьких принципів ООН. Інститут, який було засновано у 2002 р., успадкував мандат Данського центру прав людини, що діяв з 1987 р. Діяльність Інституту охоплює дослідження, аналіз, поширення інформації, освітню діяльність, розробку й імплементацію національних і міжнародних програм.

Основною метою ДІПЛ є просування й підвищення обізнаності з питань прав людини на національному, регіональному та міжнародному рівнях, в основі яких – розуміння універсальності, взаємодоповнюваності, взаємозалежності й взаємозв'язку прав людини між собою.



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Business & Human Rights (BHR) framework have acquired particular relevance during the last decade. Its logic is based on the statement that business actors have a significant impact on the enjoyment of human rights by people within the field of their modus operandi, and must therefore consider the risks that their operations might create and that can violate or contribute to violating human rights.

Impact that a business enterprise may have on human rights can affect various actors: its own employees, employees of its suppliers, customers, migrants, vulnerable groups (children, persons with disabilities, elderly people, etc.), communities and many others. Such an impact may be manifested in discrimination, forced labor, environmental damage and many other ways within a wide range of industries and economic activities (e.g. agriculture, textile industry, oil and gas industry, finance, education, healthcare and others).

The United Nations BHR framework does not introduce any legally binding instruments for businesses. However, it does make it clear that business actors must respect human rights.

Traditional human rights theory considers a state as the only subject that has obligations in the sphere of human rights. However, recent developments indicate that there are other important actors bearing respective obligations - businesses. Initially, the idea was built on the notion of corporate social responsibility, which emphasizes various aspects of ethical business conduct and does not introduce any legal requirements. Today it comprises a legal framework, which is expressed in documents of the United Nations, directives of the European Union, the Council of Europe resolutions, judicial decisions and national legislations.

The task of States is to create an effective mechanism for preventing human rights violations by businesses and minimizing the risks of such violations at the national level.

This National Baseline Assessment on Business and Human Rights in Ukraine (the NBA) utilizes the methodology developed by the Danish Institute for Human Rights and the International Corporate Accountability Roundtable. The main purpose of the NBA is to assess current status of implementation of the United Nations Guiding Principles on Business and Human Rights (the UNGPs) in Ukraine. Accordingly, the NBA covers three pillars of the UNGPs:

I. State duty to protect human rights from abuses by third parties, including business enterprises, which requires ensuring effective implementation of internationally recognised human rights standards at the national level.

II. Corporate responsibility to respect human rights requiring businesses to, among other things, conduct human rights due diligence with regard to potential adverse impact on human rights that they may cause or contribute to.

III. Access to effective remedies – judicial, state-based non-judicial and non-state based mechanisms.



Pillar I

STATE DUTY TO PROTECT HUMAN RIGHTS FROM ABUSES BY BUSINESSES

STATE DUTY: LAWS, POLICIES AND REGULATIONS.

Ukraine has ratified core international treaties on human rights: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of all Forms of Discrimination Against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, core International Labour Organization (ILO) Conventions, European Convention on Human Rights and Fundamental Freedoms.

At the same time, Ukraine has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as well as 38 ILO Conventions, including:

Migrant Workers' Convention No 97

Rural Workers Organisation Convention No 141

Asbestos Convention No 162

Chemical Convention No 170

Night Work Convention No 171

Part-Time Work Convention No 175

Home Work Convention No 177

Private Employment Agencies Convention No 181

Maternity Protection Convention (Revised) No 183

Domestic Workers Convention No 189, and 2014 Protocol to the Convention on Forced Labour No 29.

In January 2019, the Ministry of Justice announced implementation of the UNGPs in Ukraine, which is also considered as a key priority by the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson). The Government does not implement systemic measures to raise awareness and disseminate information about the UNGPs. There are no guidelines as to the UNGPs implementation.

As of May 2019, Ukraine has no clear policy statement on the expectation that all businesses domiciled in its territory and/or within its jurisdiction respect human rights. Ukraine does not identify specific business sectors or activities that may have particularly negative impacts on human rights. There is no guidance for businesses on respecting human rights that is appropriate to different industry sectors. Ukraine does not determine the impact business makes on vulnerable groups and communities.

The results of the NBA show the following problems in the spheres where business's impact on human rights is the most significant:

LABOUR:

- a)** high level of undeclared work / informal employment (according to official statistics, 22,9% of working people are employed informally);
- b)** lack of regulation of on-line work (there are facts of non-payment of wages, informal employment, discrimination);
- c)** lack of legal mechanisms to protect from forced labour and modern slavery (as of 2018, there are 286,000 people living in modern slavery in Ukraine, according to Global Slavery Index); there are facts of human trafficking for exploitation both in Ukraine and abroad);
- d)** ineffective mechanisms to protect from wage arrears (according to official statistics, wage arrears have reached 2.645 bln hryvnias nationwide as of January 2019);
- e)** sizable pay gaps, including gender pay gap (on average, women are paid 75 kopyok (0,75 hryvnias) for every hryvnia paid to men), significant imbalances between wages of managers and ordinary employees of the same enterprise (a manager's wage can be 200 or more times higher than an ordinary employee's wage), etc.;
- f)** insufficient labour guarantees for part-time employees and temporary workers;
- g)** insufficient protection of employees in mergers and acquisitions (including absence of requirement to consult with employees before making respective transactions);
- h)** poor guarantees on consulting with employees before making important management decisions, providing them with necessary information regarding corporate management;
- i)** incoherent government policy towards Ukrainian citizens working abroad (total number of labor migrants constitutes 4.5% of total working age population of Ukraine; the Ministry of Foreign Affairs of Ukraine is unable to provide consular assistance to Ukrainians working abroad in a timely manner and to promote protection of their rights, as they do not notify respective authorities about overseas employment);
- j)** lack of regulation on countering and preventing mobbing and harassment in the workplace.

The following sectors of business activity constitute the most significant risks to human rights:

A. Mining industry.

State-owned mines controlled by the Ministry of Energy and Coal Industry have the biggest wage arrears, which causes protests, demonstrations and strikes.

B. Informal sector: illegal amber mining.

According to various estimates, volume of illegal amber extraction varies from 120 to 300 tons per year in Ukraine, creating market volume of 200-300 mln US dollars. Thousands of Ukrainians work in the industry.

C. Textile and clothing industry.

Main problems are: unfair compensation, inadequate working conditions (non-paid overtime work, extremely low or high workplace temperatures, lack of breaks for rest, sedentary work; workers report visual deterioration, back and leg pain, allergies, etc).

Special attention should be paid to **child labour**. There is no regular government-led monitoring of child labour in Ukraine. There are websites offering jobs for children as young as 10 years old (children's personal information is publicly available there; parents' approval for employment is not required). There are no regular medical checks for self-employed children and teenagers, children working as undeclared workers in family enterprises, informal job settings or on the streets. The worst forms of child labour can be found in mining sector(children are involved into loading, transporting and sorting coal), and in amber extraction. Children living in government orphanages are the most vulnerable to trafficking.



ENVIRONMENT AND LAND

Among the most significant risks to human rights are: uncontrolled deforestation; lack of proper government control over pesticides use and lifted ban on asbestos; technical and technological wear and tear of capital goods; poor implementation of modern emissions management technologies and no-waste technologies; failure of certain pollutants to reduce emissions in time; lack of finance to reduce emissions; lack of sanitary protection zones between industrial and residential areas; lack of control over waste disposal; green areas within towns and cities are endangered.

A particular problem is illegal amber mining, which causes destruction of forests in Western Ukraine.

Earthsight (a UK-based non-profit organization) claims that some large European companies bribed Ukrainian forestry officials in order to get access to illegally produced Ukrainian timber.

Civil society organizations also report that some agri companies systematically use hazardous agrochemicals that are banned in the EU. These pesticides are often applied near residential areas in windy weather without proper control. Local communities are not warned about the respective activities in advance. There are reports indicating that villagers may be threatened for drawing public attention to agri companies that pollute the environment.



COMMUNITY CONSULTATION AND ENGAGEMENT.

Local communities do not have adequate access to public consultations regarding implementation of business projects that may impact such communities:

- it is required to hold public consultations when planning the project only; local communities have no opportunity to influence implementation of these projects at further stages;
- the requirement does not apply to a wide range of business projects, encompassing consultations over assessment of environmental impact and consultations over urban planning documentation only;
- businesses can dismiss any objections regarding their projects filed by local communities as there is no need to get a community's approval to implement the project.

It is not clear what constitutes a proper way to inform a local community about implementation of a planned business project or other activities (e.g. construction, sports events, etc.) that can impact such community as there is no clear guidance or regulation.

There is no regulation requiring to consult with indigenous peoples over implementation of business projects in areas of their compact settlement.

Article 10 of the Law of Ukraine «On National Minorities in Ukraine» stipulates that

The state guarantees national minorities the right to preserve the living environment in the places of their historical and modern settlement.

However, Ukrainian legislation does not stipulate any requirements to obtain consent of a national minority or indigenous peoples to implement a business project in respective areas.

TRADE AND INVESTMENT

Ukrainian legislation does not require companies to conduct human rights impact assessment with regard to potential impacts of trade and investment agreements before entering into such agreements. There are no requirements ensuring that goods and services imported

in Ukraine are not linked to violations of internationally recognised human rights. The state does not provide law enforcement and other relevant authorities with information and training on human rights issues related to trade and investment.

OCCUPATIONAL HEALTH AND SAFETY

There are about 650 regulatory acts touching upon occupational health and safety in Ukraine. ILO experts point to the necessity to systemize and reduce the respective volume. The Government has approved a framework for reforming Ukrainian occupational health and safety system on 12 December 2018.

Ukrainian legislation is based mainly on corrective measures (i.e. responding to emerging risks) rather than on prevention. Most attention is paid to damages recovery instead of risk management. Occupational health and safety services that should be organized by employers do not comply with ILO and EU standards as they typically do not take the following measures:

- identifying and assessing risks of hazardous effects that arise in the workplace;
- overseeing factors of working environment which can adversely impact employees health, including sanitary facilities, canteens, etc.;
- consulting on planning and organizing work process, including workplace arrangement, equipment maintenance, etc.;
- contributing to improvement of manufacture, as well as to testing and hygiene assessment of new equipment;
- monitoring workers health with regard to work process;
- promoting adaptation of work processes to employees;
- contributing to implementation of professional rehabilitation measures.

Moreover, the requirement to organize an occupational health and safety service does apply to enterprises only, restricting its application to self-employed persons with employees and to other organizations (private and public).

Occupational diseases. Among the most widespread occupational diseases are respiratory diseases, musculoskeletal disorders and diseases of chemical etiology.

According to official statistics, the most dangerous sectors from occupational health and safety standpoint are: mining, agriculture, construction, metallurgical industry, forestry and fish farming. A particular problem is latency of workplace accidents.

Among the most vulnerable groups in Ukraine are: women (women living in rural areas, women with disabilities, internally displaced women, Roma women, elderly women), LGBTIQ, IDPs, Roma people, persons with disabilities, people with HIV/AIDS. There is no special institution mandated to counter discrimination and ensure equality in Ukraine. However, mandate of the Ukrainian Parliament Commissioner for Human Rights encompasses countering discrimination. In addition, there are the Government Commissioner for Gender Equality, the Commissioner of the President of Ukraine for Children's Rights and the Commissioner of the President of Ukraine for the Rights of People with Disabilities in Ukraine. These institutions have advisory mandates with no authoritative powers.

Women. Business advertising often translates discriminatory stereotypes, patriarchal views regarding roles and responsibilities of women and men in the family and in society.

Ukrainian labor legislation paves the way to vulnerability of women. Among other things, the Labour Code of Ukraine prohibits to involve pregnant women and women with minor children under 3 years old into working at night, during weekends and overtime as well as sending them on business trips. Although having been welcomed, cancellation of the list of jobs prohibited for women (about 500) in 2017 negatively impacted pregnant women and nursing mothers as there is now no restrictions to involve them into dangerous works.

There are problems that affect all groups of women: widespread hidden unemployment among women; employers force women to take unpaid leaves and work part-time more often if compared to men; employers often refuse to offer jobs to women as they can potentially get pregnant, give birth and take a childcare leave; employers rarely provide women with additional breaks for breast

feeding during work hours as well as rarely arrange special places for breast feeding.

There is no widespread practice of implementing corporate policies for gender equality, promoting increase of women's representation in corporate management, preventing sexual harassment or other related violations at the workplace.

There are no guidelines on implementing legislative requirements aimed at ensuring equal rights and opportunities for women and men, namely on remuneration, working conditions, work-life balance.

Among examples of positive practices was adoption of the Recommendations and tools for identifying gender discrimination and mechanism for providing legal aid in March 2019.

Vulnerable groups of women, including women with disabilities, internally displaced women, women living in rural areas, Roma women, women with HIV/AIDS, LGBTIQ women, are subjected to multiple discrimination and face additional barriers to employment.

Employees with family responsibilities. Ukrainian legislation does not provide workers with guarantees for balancing family and work responsibilities. The relevant draft law is under consideration of the Ukrainian Parliament. There is a discriminatory regulation regarding parental leaves (a father may, in a number of cases, take a parental leave only if he is a single parent).

Persons with disabilities face various barriers to employment, in particular: reasonable accommodation principle is applied inconsistently, and failure to comply with the principle does not entail any sanctions; employment quotas for persons with disabilities are ineffective as many employers hire such workers de facto only; there is a widespread stereotype among employers

that persons with disabilities can only perform work that does not require special qualification; there is no mechanism to ensure the right to work for persons with mental health issues.

A particular problem is low level of physical accessibility of public places, transportation, etc. to persons with disabilities.

Internally Displaced Persons (IDPs). IDPs are often discriminated by employers due to a risk of short-period employment. IDPs report about a pay gap if compared with non-IDPs employees. The most vulnerable categories of IDPs are mothers with minor children and persons older than 45.



It is problematic to gather information regarding on-the-job accidents occurred on temporarily occupied and uncontrolled territories of Ukraine. There is no mechanism to recover wage arrears of enterprises operating on such territories of Ukraine.

LGBTIQ. The UN monitoring bodies report that there is no effective and appropriate legal mechanisms for protection for victims of discrimination. There are documented cases of discrimination against LGBTIQ-people based on the grounds of sexual orientation and gender identity in employment, education, healthcare and other spheres (e.g. insults, threats, humiliation of dignity, forcing to quit the job, refusing to hire, disclosing confidential information to third persons and other).

National and ethnic minorities. Only 38% of Ukrainians belonging to Roma community are employed due to lack of education and identification documents. There are cases of segregation and discrimination in primary and secondary education. In most regions of Ukraine, there are separate classes for Roma children in schools that suffer from lower quality of education if compared to general classes.

People living with HIV/AIDS. Due to significant stigmatisation, people living with HIV/AIDS face discrimination in housing and employment. According to studies conducted among Ukrainians living with HIV/AIDS in 2014-2017, 15% of respondents indicate having lost their jobs due to their HIV status, 41% - because of discrimination, and 35% - because of poor health condition caused by HIV status.

Ukrainian legislation does not include HIV status into the list of grounds on which discrimination is prohibited.



TAX

Tax evasion caused by excessive tax burden and complexity of tax legislation is highly relevant to Ukraine. According to International Association of Chartered Certified Accountants, Ukrainian shadow economy constitutes almost 46% of GDP (meanwhile Government estimates the volume being around 35%). Tax evasion is practiced

via offshore schemes, smuggling and «gray» imports, underdeclaration of profits, misuse of the simplified tax regimes, etc. According to Global Financial Integrity, almost ¾ of Ukraine's export contracts are «indirect» (i.e. involve offshore schemes). Tax officials are not trained on the issue of impact of tax evasion on human rights.

ANTI-BRIBERY AND CORRUPTION

According to a number of studies and investigative journalistic reports there is a significant level of corruption in public and private spheres, even though Ukraine has a broad legal framework for countering corruption (e.g., 2018 Corruption Perceptions Index conducted by Transparency International ranked Ukraine 120th out of 180 countries). 91% of Ukrainians think that there is corruption in public sphere and 82% - in business.

Authorities responsible for application of anti-corruption laws are not trained on human rights, including BHR issues and impact of corruption on human rights.

The Law of Ukraine «On Prevention of Corruption» requires businesses to develop and implement anti-corruption programs. The Law of Ukraine «On Public Procurement» stipulates that an enterprise that does not have an anti-corruption program or an official responsible for implementing anti-corruption measures is not allowed to take part in public procurement (if the cost of procured goods, services or works is equal to or above 20 mln hryvnias).

DUE DILIGENCE

Ukrainian legislation does not require business enterprises to undertake human rights due diligence. The Government does not provide business with guidances and best practices regarding human rights due diligence.

WHISTLEBLOWERS AND HUMAN RIGHTS DEFENDERS

There is no special legislation protecting rights of human rights defenders and/or whistleblowers in Ukraine. The only exception is the Law of Ukraine "On Prevention of Corruption" that provides for special protection of whistleblowers that are involved in preventing and combating corruption.

Non-governmental organisations have very limited ability to monitor activities of business entities. Human rights activists that work in the field of exposing human rights violations committed by business do not have any special guarantees ensuring their security. There is no training for law enforcement officials regarding human rights risks for human rights defenders and whistleblowers and ways to minimize these risks.



STATE-BUSINESS NEXUS

State-Business Nexus manifests itself in three main directions: state-owned enterprises, public procurement and privatization.

Ukrainian legislation does not require state-owned or state-controlled enterprises as well as enterprises that receive funding from the Government to conduct human rights due diligence. Moreover, businesses are not required to take human rights into account in their activities or when managing their supply chains.

Utility gas suppliers often overprice their customers. At least 3 million Ukrainians faced overpricing practices in 2018.

According to observations of the Independent UN Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights, rapid increase in prices for utility gas had particularly negative affect on people who live in poverty. It also negatively impacts women, elderly people, rural households, single parents, internally displaced persons and people living close to conflict zones.

The state purchases goods, works and services to meet public needs. Annual volume of public procurement in Ukraine is about 13% of GDP. There are no human rights lens in public procurement as government does not require that its counteragents should comply with human rights standards.

Government authorities do not require their counteragent suppliers to disclose information about their supply chains.

An online public procurement platform ProZorro received positive evaluations from international experts. Since its implementation as a hybrid (both centralized public and decentralized private marketplaces) system in 2016 ProZorro has been recognized as one of the most innovative public procurement systems globally. ProZorro processes more than 1,500 online auctions a day.

According to Kyiv School of Economics, less than one percent of all tenders processed on ProZorro consider additional criteria for determining winners (other than price) due to lack of professional procurement officers capable of formulating complex contracts.

STATES' ROLE IN RELATION TO BUSINESS CONDUCTED IN CONFLICT-AFFECTED AREAS.

Ukraine has ratified core international humanitarian law treaties. At the same time, Ukraine has not ratified: Rome Statute of the International Criminal Court, Convention on Cluster Munitions and Arms Trade Treaty.

Ukraine is not a party to such business and human rights initiatives as the Voluntary Principles on Security and Human Rights, the International Code of Conduct for Private Security Service Providers. At the same time, Ukraine is a member of the Extractive Industries Transparency Initiative (EITI) and the Kimberley Process Certification Scheme (KPCS).

Among the gaps in ensuring respect for human rights of business operating in post conflict or conflict affected areas are: lack of official statement about BHR commitments; responsibilities regarding implementation of BHR standards are encompassed by mandates of various ministries and government institutions; lack of government manuals on BHR and other.

Among violations taking place in business operations on temporarily occupied and uncontrolled territories of Ukraine are: wage arrears; illegal dismissals; forced labor (forcing employees to work extra hours with no

compensation; introducing labour duty for persons who have utilities debts); overpricing; low quality of food products; distributing smuggled and other illegal products. Prices for some medical products are as high as 300% if compared with prices for the same products on the Government-controlled territory of Ukraine. More than 50% of goods entering temporarily occupied and uncontrolled territories of Ukraine as humanitarian aid are sold via stores and markets.

There is information about serious environmental accidents and problems with water supply on temporarily occupied and uncontrolled territories of Ukraine in Luhansk and Donetsk regions.

The annual report of the Ukrainian Parliament Commissioner for Human Rights for 2018 draws attention to the problem of environment in non-controlled territories. In particular, there are facts of exceedance of statutory limits of pollutants emissions into the atmosphere.

Pillar II

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Ukrainian companies do not generally provide information as to what they do in order to prevent human rights abuses in their operations, making it difficult to assess corporate responsibility to respect human rights in Ukraine. 29 Ukrainian companies, which are parties to UN Global Compact, clearly state their commitment to corporate social responsibility on their websites. For the purpose of this NBA, the research group has analysed websites of 50 Ukrainian companies (including the above 29). The NBA also contains data collected by the Ministry of Justice of Ukraine by conducting a survey on corporate responsibility to respect human rights.

There is no widespread practice of developing a specific human rights policy commitment and making it available on a website among Ukrainian companies. Some companies, particularly transnational ones, introduce such policy as a part of their corporate codes of conduct, but not as a separate statement.

However, most of these examples do not refer to basic international human rights standards set forth in the International Bill of Rights, the ILO Declaration on Fundamental Principles and Rights at Work or specific industry standards. There are no references that raise the issue of necessity to cover human rights in supply chain. Furthermore, human rights protection standards are not integrated into contracts between companies.

Ukrainian companies do not actively participate in initiatives that promote business responsibility to respect human rights, such as:

- UN Global Compact - 29 Ukrainian companies participating;
- Global Network Initiative - no Ukrainian companies participating;
- International Code of Conduct for Private Security Service Providers Association - 1 Ukrainian company participating;
- Extractive Industries Transparency Initiative - the Government of Ukraine is a partner.

No Ukrainian companies participate in such initiatives as the Voluntary Principles on Security and Human Rights Initiative, the Ethical Trading Initiative, the Fair Labour Association.

Corporate management practices that are commonly utilized by Ukrainian companies do not:

- include human rights standards to criteria for risk assessment and determining possible impact on human rights;
- provide for determining a company's actual and potential impact on human rights, including impact related to specific projects, transactions, products or services within its supply chains;
- include a company's impact on human rights to key indicators necessary for business development and entering new markets;

- provide for holding stakeholder consultations as part of a company's evaluation processes;
- pay attention to the rights and needs of vulnerable groups and provide for implementing gender equality principle at each stage of business process;
- provide for informing all relevant stakeholders about the results of a company's impact assessment;
- provide for allocating adequate resources, including financial resources and staff, to take the results of a company's impact assessment into account;
- provide for using a company's leverages to mitigate adverse human rights impact of its business partners.



RESULTS OF THE SURVEY ON CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

28 companies representing a wide range of industries (e.g. agriculture, oil and gas industry, construction, transportation, finance, advertising, entertainment, legal services, tobacco industry, automotive industry, etc.) participated in the survey.

The majority of companies indicated having more than 250 employees, working on the national level or internationally, supplying goods or services abroad, sourcing goods or services from abroad, not being a subsidiary company.

In general, representatives of the participant businesses demonstrated understanding of the link between business and human rights:

- all respondents agreed that working conditions, work-rest schedule, as well as personal data protection and employee privacy are human rights issues;
- the majority of respondents agreed that level of remuneration, equal pay for women and men for equal scope of work, participation in trade unions, child labor, discrimination and harassment at the workplace, employees' ability to practise their religion or belief, employees' ability to raise concerns or grievances regarding employment, business impact on the environment and local communities are human rights issues.

At the same time, only a few respondents indicated that activities of security forces (private or public) that protect business assets may impact human rights; about 50% of respondents agree that paying taxes is a human rights issue.

All respondents indicated that respecting human rights is a matter for businesses, as well as for governments, and agreed that human rights are relevant to every business, regardless of its size and sphere of its economic activity.

At the same time, about 40 % of respondents indicated that respecting human rights is equal to voluntarily giving back to society (e.g. by means of charitable donations, funding local initiatives, scholarships). This repeats a common belief, that philanthropy or other forms of corporate social responsibility are equal to corporate responsibility in the sphere of human rights.

The majority of respondents (about 80%) disagreed that human rights are mainly a consideration for those operating abroad.

About 60% of respondents indicated that their company has an internal document that defines its human rights policy:

- About 80% of these respondents stated that their company's human rights policy is defined by an internal document devoted to another sphere (e.g., corporate social responsibility, sustainability, etc.).
- A document defining human rights policy of about 30% of respective companies is not publicly available.

- 80% of these respondents state that employees of their organisation are familiar with the respective internal document as their company provided respective training. Most of these respondents indicate taking measures to ensure employees' compliance with their company's human rights policy (e.g., by introducing incentives or fines).
- 78% of these respondents indicate that their company's human rights policy includes anti-discrimination provisions.

At the same time, only 50% of internal policies provide for conducting assessment of the organization's impact on human rights.

About 50% of respondents indicated that their company's officials occupying managing positions (e.g. managing director, CEO, chairman of the board, etc.) are responsible for ensuring human rights compliance. A few respondents indicated respective responsibilities being allocated to human resources managers, financial managers, marketing and communication specialists, specialists in corporate social responsibility, etc.

The survey also revealed that only 40% of participating companies had ever explored which human rights issues might be relevant for their company and/or its suppliers. Only 45% of companies indicated having carried out assessment of their services/products/supply chains impact on human rights. 50% of respondents stated, that they consider human rights as a benchmark for risk and impact assessment.

About 60% of respondents indicated having discussed managing their company's actual or potential human rights risks at senior management level, while about 50% stated that their company consulted with stakeholders, including workers and local communities, on issues related to human rights.

The participants were also asked to indicate whether according to their assessment any of mentioned categories of human rights related risks present a risk (actual or potential) in their company's operations, in its economic sector, and/or in its extended supply chain. Among the risks that had been picked up were environmental pollution, discrimination and harassment, privacy violations, inadequate health and safety at work. Union rights violations and illegal child labour are the lowest risks or constitute no risk at all according to the responses.

Most respondents indicated that their companies have mechanisms for handling complaints submitted by their employees (90%), employees of their contractors (60%), and other persons such as consumers, community representatives, etc. (70%). Among the issues ever raised in the respective complaints, respondents indicate improper conditions for people with disabilities, environmental pollutions, discrimination against women.

40% of respondent companies indicated that they had been queried about their measures for prevention of human rights abuses by a client, supplier or investor. Meanwhile, only 25% of respondents mention having queried their clients or suppliers with respective question.

Among the biggest barriers participant organizations face in addressing human rights are the following:

- Business culture does not place a high value on the issue (50%);
- Lack of communication and trust with civil society actors (50%);
- Lack of relevant knowledge among contractors' employees (50%);
- Fear of increasing risk of reputational damage (40%);
- Poor enforcement of national law by government bodies (40%).

The respondents did not indicate the following issues as barriers for addressing human rights: lack of understanding about what its responsibilities in the sphere of human rights are; lack of available internal resources; lack of relevant knowledge among employees; inconsistency between national law and international standards; risk of reducing the efficiency of economic activity of an organization; lack of collaboration at industry/sector level.

Respondents identified that the following measures would be useful for their organisation in order to help it to ensure respect for human rights in its operations:

- Raising awareness about human rights protection in public sector.
- Increasing media attention to business and human rights issues.

- Organising conferences, consultations, trainings on human rights for businesses, distribution of educational materials, short videos, etc.
- Ensuring observation of human rights by the Government;
- Raising awareness about human rights issues among contractors in supply chains.

About 40% of respondent companies would like to receive advisory support on BHR issues from the Secretariat of the Ukrainian Parliament Commissioner for Human Rights. Among the other possible sources of such support are legal community (20%), government authorities, the UN Global Compact, etc.



Pillar III

ACCESS TO EFFECTIVE REMEDY

ACCESS TO STATE-BASED REMEDY

Ukrainian legislation provides for: civil liability for inflicting property and non-property damage in violation of somebody's rights; administrative sanctions for infringing business regulation (e.g. fines, cancellation of a license, etc.). Criminal liability may be applied to entities for a limited range of criminal offenses, including corruption offenses. Criminal liability is usually applied to individuals acting on behalf of legal entities in case a criminal offence takes place. Legal entities are subject to criminal liability for a very limited range of criminal offenses, such as corruption offenses. There is no special mechanism for addressing human rights violations committed by business enterprises.

The Government does not use limiting access to state financing or to participation in public procurement, etc. as a response to human rights violations committed by business enterprises.

Civil liability and criminal liability may be applied to business enterprises for committing human rights violations overseas. Administrative sanctions can be applied for violations that were committed on the territory of Ukraine.

The Government of Ukraine is making efforts to raise public awareness about laws and regulations protecting victims of human rights abuse. The Nationwide Legal Awareness Project "I HAVE A RIGHT!" is one of such positive examples.

The Government of Ukraine does not provide BHR training for judges and law enforcement officials, attorneys, etc.

General barriers to access to justice deteriorate in cases related to negative impact of business on human rights: high court fees and other legal costs that particularly underline financial inequality between parties in cases involving individuals and business enterprises; lack of practice of involving experts on business and human rights (*amicus curiae*); ineffective mechanism for enforcing judicial decisions, etc.

Ukraine guarantees the right to free legal aid for certain vulnerable categories of citizens. Ukrainian free legal aid system does not provide victims of corporate human rights abuse with free legal aid necessary to sue respective business entities.

There is the National Contact Point for Responsible Business Conduct (NCP for RBC) operating within the

OECD framework, which provides a non-judicial grievance mechanism. NCP for RBC may consider individual complaints against Ukrainian companies. As of the time of preparing this NBA, no complaints were filed to NCP, which indicates lack of respective awareness among Ukrainians.

Mandate of the Ukrainian Parliament Commissioner for Human Rights also provides for considering individual complaints against business enterprises. There is a high demand for such mechanisms in Ukraine.

Mediation is used as an alternative dispute resolution method in Ukraine, but its effectiveness is affected by the lack of respective regulation.



CONCLUSIONS

Numerous policy and legislative gaps revealed by the NBA point to the lack of coordinated government policy regarding business and human rights. Business practices that does not comply with international standards of corporate responsibility in the sphere of human rights as well as a number of problems related to employment, environment protection, anti-discrimination, tax, combatting corruption, healthcare and other indicate the lack of human rights lens in respective government policies and business activities.

Full text of the National Baseline Assessment on Business and Human Rights is available on the web-sites:

Ministry of Justice of Ukraine: minjust.gov.ua

Yaroslav Mudryi National Law University: nlu.edu.ua

