



BUSINESS AND HUMAN RIGHTS:

SEARCHING FOR
SUSTAINABLE MODELS

20-24

September 2021



«BUSINESS AND HUMAN RIGHTS: SEARCHING FOR
SUSTAINABLE MODELS»

20
SEPTEMBER

Workshop «Business and human
rights in curricula in economics and
law schools»

2 p.m. - 6 p.m.

5

21
SEPTEMBER

Panel discussion
«Business and Human Rights:
Searching for Sustainable Models»

9 a.m. - 6 p.m.

8

22
SEPTEMBER

Training for students and teachers:
«Applying Human Rights to Digital Tech»

2 p.m. - 4 p.m.

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REPORT ON THE RESULTS OF THE
ROUND TABLE «Best corporate
practices to respect human rights:
international experience and Ukrainian
context»

ANNEX

15

THE EVENTS ARE ORGANIZED BY THE INTERNATIONAL LAB ON BUSINESS AND HUMAN RIGHTS AT YAROSLAV MUDRYI NATIONAL LAW UNIVERSITY.

SUPPORTED BY:



Organization for Security and
Co-operation in Europe
Project Co-ordinator in Ukraine



Kingdom of the Netherlands



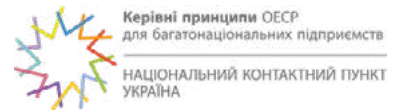
IN COOPERATION
WITH:



BR2R Global Business and Human Rights
Scholars Association



Polski Instytut
Praw Człowieka
i Biznesu



ACTUAL
WOMAN



INTRODUCTION

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.

The UN Guiding Principles on Business and Human Rights (the UNGPs) are the global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and they provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights. The Human Rights Council unanimously endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. The UNGPs covers three pillars:

- 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.

Since the 1-st Panel Discussion on Business and Human Rights during the Kharkiv International Legal Forum in 2017, Ukraine has seen significant positive changes in the implementation of human rights and business standards:

- the National Strategy for Human Rights includes Chapter 16 on Business and Human Rights (approved by the Decree of the President of Ukraine of March 24, 2021);
- the Action plan to implement the Concept of implementation of state policy on promoting social responsible business in Ukraine for the period up to 2030 (approved by the Cabinet of Ministers of Ukraine from July 1, 2020 № 853-r) includes the promotion of principles and standards of social responsible business in Ukraine in accordance with the OECD Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development, the UN Guiding Principles on Business and Human Rights and the UN Global Compact, as well as the positive experience and practice of business entities in socially responsible business;
- since 2019 implementation of the UN Guiding Principles on Business and Human Rights is one of the strategic activities of the Parliamentary Commissioner for Human Rights (Ukrainian Ombudsperson);
- The Secretariat of the Ukrainian Parliamentary Commissioner for Human Rights and the Ministry of Justice of Ukraine participated with reports at the UN Business and Human Rights Forum (November 2020), emphasizing Ukraine's commitment to implementing standards of responsible business conduct.

There are many other testimonies that business and human rights issues are attracting attention from both the state and non-state actors - academia and human rights defenders, civil society organizations, business and business associations, and so on.

However, the main barrier to real change remains the lack of a coherent government policy and systematic steps to raise public and business awareness of its impact on human rights, and the low level of involvement of CSOs in business and human rights initiatives.

The importance of these issues is enhanced by the significant intensification of efforts to strengthen standards of responsible business conduct and tools to ensure their effective implementation in the European Union and in the world as a whole:

- On March 10, 2021, the European Parliament supported the proposal for adoption «EU Directive on Mandatory Human Rights, Environmental and Good Governance Due Diligence»;
- 28 countries already have National Action Plans on Business and Human Rights;
- The six rounds of discussions was held on the draft International Legally Obligatory Treaty on Business and Human Rights;
- more and more European countries are adopting domestic legislation aimed at establishing mandatory tools for business to assess their impact on human rights (France, Great Britain, the Netherlands, Germany, Norway);
- national courts are increasingly turning to standards of responsible business conduct, assessing the business impact on human rights, including in their supply chains, as well as human rights violations committed in other countries;
- Investors' tools to assess possible risks of negative business impact on human rights are being developed, and the ESG strategies (ecology, social issues, governance) are being actively developed.

The business and human rights events are aimed to identify priority areas for implementation of the UN Guiding Principles on Business and Human Rights and actions should be taken at the national level, key stakeholders to be involved in and best practical tools.

All participants of the Panel Discussion are asked to review in advance the results of the Round Table «Best Corporate Practices for Respecting Human Rights: International Experience and Ukrainian Context», which took place on June 14, 2021 as part of the business and human rights week initiated by the Parliamentary Commissioner for Human Rights to the 10th anniversary of the UN Guiding Principles on Business and Human Rights (see annex 1).

The conclusions of the round table will be the starting point for the Panel Discussion.

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SEPTEMBER

14.00 - 18.00

Time:

2 p.m. - 6 p.m.

Format:

Hybrid
(Live & Virtual)
Working

languages:

English and
Ukrainian;
simultaneous
translation will be
provided

WORKSHOP

«BUSINESS AND HUMAN RIGHTS IN CURRICULA IN
ECONOMICS AND LAW SCHOOLS»

The round table is devoted to discussing the role of economics and law schools in raising awareness on responsible business conduct, ensuring corporate responsibility to respect human rights and other relevant issues on business and human rights. Participants from Ukraine, Brazil, the United Kingdom, Poland, Portugal, Slovenia, the United States and other countries will share their experiences of how these issues are already reflected in the training programs of future economists and lawyers, and whether there is a need for improvement based on experience of universities in Europe, the United States and other countries, trends in legal regulation, requests from participants in various business processes, including from investors.

QUESTIONS FOR DISCUSSION:

I. Formation and development of the concept of business and human rights. Correlations with other related concepts - corporate social responsibility (CSR), Environmental, Social, and Corporate Governance (ESG), responsible business conduct (RBC), Sustainable Development Goals (SDGs) etc.

II. Current trends:

- mandatory Human Rights Due Diligence, including in supply chains (at EU level; France, Norway, the United Kingdom, etc.) and their impact on Ukrainian companies;
- indicators of responsible business conduct and their consideration by investors, business partners, consumers;
- tools for providing sustainable business models;
- gender component of corporate responsibility to respect human rights;
- state policies on business and human rights (national action plans);
- corporate practices.

In general, the key question will be raised - are we witnessing a new global business model?

- III. Business and human rights in the curricula of economic and law schools:**
- experience of Europe, USA and other countries of the world, review of training programs and teaching methods;
 - potential of Ukrainian universities.

Presentation of the course «Business and human rights in the digital tech».

**OPENING
REMARKS**

2 p.m. - 2.15 p.m.

IURII BARABASH, Vice-Rector, Yaroslav Mudryi National Law University**MARYNA KUPCHUK**, Deputy Head of the International Investment Cooperation Division of the Investment Department of the Ministry of Economy, Secretary of the OECD National Contact Point**OLENA STEPANENKO**, Representative of the Ukrainian Parliamentary Commissioner for Human Rights on Socio-Economic Rights**SESSION I.
BUSINESS AND
HUMAN RIGHTS:
MUTUAL
IMPACT**

2.15 p.m. -

3.15 p.m.

BEATA FARACIK, President of the Board of the Polish Institute on Human Rights and Business, Poland**DIRK HOFFMANN**, Senior Adviser, Danish Institute for Human Rights**TARA VAN HO**, PhD, co-President of the Global Business and Human Rights Scholars Association, Lecturer, School of Law and Human Rights Centre, University of Essex, Great Britain**MICHAEL SANTORO**, PhD, Co-Founder of the Global Business and Human Rights Scholars Association (BR2R), founding Co-Editor of the Business and Human Rights Journal (Cambridge University Press), Professor of Management and Entrepreneurship at the Leavey School of Business at Santa Clara University, USA (online)**NICOLAJ SONDERBYE**, Senior Democracy and Human Rights Advisor, UNDP in Ukraine**Moderator** —————**OLENA UVAROVA**, PhD, Associate Professor, Head of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine**SESSION II.
BUSINESS AND
HUMAN RIGHTS:
TEACHING
EXPERIENCE**

3.15 p.m. -

4.15 p.m.

ANTHONY EWING, PhD, Lecturer in Law, Columbia Law School (online)**DANIELLE ANNE PAMPLONA**, PhD, Professor at Pontifical Catholic University of Parana, Brazil, Vice-Director of the Latin American Branch of the Global Business and Human Rights Scholars Association (online)**JERNEJ LETNAR ČERNIČ**, PhD, Professor of Human Rights and Constitutional Law, New University, Ljubljana, Slovenia**ASHLEY NANCY REYNOLDS**, Research Assistant, Eastern Europe & Central Asia, Business and Human Rights Resource Center**EKATERINA DEIKALO**, PhD, Associate Professor, expert on business and human rights in Belarusian Helsinki Committee, Belarus**Moderator** —————**BOHDAN KARNAUKH**, Associate Professor, co-director of Joint Master Degree Program «European and International Business Law», Yaroslav Mudryi National Law University, Ukraine

COFFEE BREAK

4.15 p.m. -

4.30 p.m.


**SESSION III.
BUSINESS AND
HUMAN RIGHTS:
EXPERIENCE OF
THE UKRAINIAN
UNIVERSITIES**

4.30 p.m. -

5.30 p.m.

EKATERINA BURYAKOVSKA, PhD, Associate Professor, Expert of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine

MYKHAILO SAVCHYN, PhD, Director of the Research Institute of Comparative Public Law and International Law, Uzhhorod National University Uzhhorod, Ukraine, Doctor, Professor, Ukrainian Free University, Munich, Germany

GANNA GULEVSKA, PhD, Associate Professor of Law and Social Sciences, Zaporizhzhya Institute of Economics and Information Technologies

LIUDMILA ADASHYS, PhD, Associate Professor of International Law, University of Customs and Finance International Law

OLENA DASHKOVSKA, PhD, Full Professor, Department of Theory and Philosophy of Law, Yaroslav Mudryi National Law University

DARIA NAGAIVSKA, PhD, Business Coach, Corporate Equality Index Expert, Transactional Analyst in Organizations

Moderator —————

OLEKSANDR SYDIELNIKOV, LL.M Rule of Law for Development at Loyola University Chicago, PhD

**SESSION
IV. BEST
PRACTICES:
PRESENTATION
OF THE COURSE
«BUSINESS AND
HUMAN RIGHTS
IN THE DIGITAL
TECH»**

5.30 p.m. - 6 p.m.

YULIA RAZMETAEVA, PhD, Associate Professor, Head of the Center for Law, Ethics and Digital Technologies at Yaroslav Mudryi National Law University

MARIA YASENOVSKA, President of the Kharkiv Regional Foundation «Public Alternative»

OLENA UVAROVA, PhD, Associate Professor, Head of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine

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SEPTEMBER

Time:

9 a.m. - 6 p.m.

**OPENING
SESSION.
BUSINESS AND
HUMAN RIGHTS
IN UKRAINE:
CHALLENGES
AND
ACHIEVEMENTS**

9 a.m. - 9.45 a.m.

Moderator

**SESSION I.
BUSINESS AND
HUMAN RIGHTS
FRAMEWORK:
GLOBAL TRENDS**

9.45 a.m. -

11.00 a.m.

**PANEL DISCUSSION «BUSINESS AND HUMAN RIGHTS:
SEARCHING FOR SUSTAINABLE MODELS»**

Format:Hybrid
(Live & Virtual)**languages:**English and Ukrainian; simultaneous
translation will be provided

Ambassador **HENRIK VILLADSEN**, Coordinator of the OSCE projects in Ukraine

IURII BARABASH, Vice-Rector, Yaroslav Mudryi National Law University

Greetings from the UN Working Group on Business and Human Rights: **ELŻBIETA KARSKA**, member of UN Working group on Business and Human Rights, Professor and the Head of the Department of Protection of Human Rights and International Humanitarian Law, Cardinal Stefan Wyszyński University in Warsaw, Poland

LYUDMILA DENISOVA, Parliament Commissioner for Human Rights (online)

VALERIA KOLOMIETS, Deputy Minister of Justice of Ukraine

MINISTRY OF ECONOMY OF UKRAINE (TBC)

OLENA UVAROVA, PhD, Associate Professor, Head of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine

QUESTIONS FOR DISCUSSION:

- **Obligations instead of recommendations, responsibilities instead of condemnation**
- **Not individual tools, but a holistic corporate culture to respect for human rights**
- **Diversity of approaches (business and human rights, corporate social responsibility, Sustainable Development Goals, ESG) and the need to coordinate them to ensure efficiency**
- **The growing role of non-state actors and increasing criticism of the passive position of state actors**

- **Benefits and challenges for large companies and for SMEs**
- **Digitalization as new human rights risk and new opportunities for responsible business conduct**

Moderator ————— **OLENA MYTNYK**, project coordinator GoLOCAL

Panelists ————— **DIRK HOFFMANN**, Senior Adviser, Danish Institute for Human Rights

Regulation:

speeches up to 7 minutes, discussion.

TARA VAN HO, PhD, co-President of the Global Business and Human Rights Scholars Association, Lecturer, School of Law and Human Rights Centre, University of Essex, Great Britain

NADIABERNAZ, PhD, Associate Professor in the LAW group at Wageningen University, the Netherlands (online)

CLAIRE BRIGHT, PhD, Assistant Professor in Private Law at Nova Law School in Lisbon and the Director of the Nova Centre on Business, Human Rights and the the Environment, Portugal (online)

SINIŠA MILATOVIĆ, DPhil MA, LLB, Business and Human Rights Specialist, UNDP

ASHLEY NANCY REYNOLDS, Research Assistant, Eastern Europe & Central Asia, Business and Human Rights Resource Center

NICOLAJ SONDERBYE, Senior Democracy and Human Rights Advisor, UNDP in Ukraine

COFFEE BREAK

11.00 a.m. -

11.30 a.m.



**SESSION II.
BUSINESS AND
HUMAN RIGHTS
IN EASTERN
EUROPE AND
CENTRAL ASIA:
REGIONAL
DEVELOPMENTS**

11.30 a.m. -

1.30 p.m.

QUESTIONS FOR DISCUSSION:

- **Rule of law in the region and how it affects economic activity in the region**
- **National Business and Human Rights Action Plans and other relevant policies**
- **State & Business Nexus**
- **State-owned companies as example of good practice**
- **Business efforts to implement standards of corporate responsibility to respect human rights**
- **Cross-cutting issues for the region: forced labor, in particular in the context of informal employment; discrimination etc.**

Moderator ————— **NATALIA STUPNYTSKA**, National Programme Manager for Rule of Law and Human Rights Programme of the OSCE Project Co-ordinator (PCU) in Ukraine

The draft of the regional research will be presented by —

BEATA FARACIK, President of Board of the Polish Institute on Human Rights and Business, Poland

JERNEJ LETNAR ČERNIČ, PhD, Professor of Human Rights and Constitutional Law, New University, Ljubljana, Slovenia

OLENA UVAROVA, PHD, Associate Professor, Head of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine

Commentators —

ALEH GULAK, Belarusian Helsinki Committee, Belarus

Regulation:
speeches up
to 7 minutes,
discussion.

EKATERINA DEIKALO, PhD, Associate Professor, expert on business and human rights in Belarusian Helsinki Committee, Belarus

ELLASKYBENKO, Eastern Europe/Central Asia Researcher & Representative at Business & Human Rights Resource Centre

BOHDAN KARNAUKH, PhD, Associate Professor, co-director of Joint Master Degree Program «European and International Business Law», Yaroslav Mudryi National Law University, Ukraine

ARTEM DONETS, lawyer, Managing partner of Donets & Partners Law Firm

IHOR KONOPKA, Human Rights Lawyer

LUNCH BREAK

1.30 p.m. -
2.30 p.m.



SESSION III. SUSTAINABLE BUSINESS MODELS BASED ON RESPECT FOR HUMAN RIGHTS: THE ROLE OF STATE ACTORS IN UKRAINE

2.30 p.m. - 4 p.m.

QUESTIONS FOR DISCUSSION:

- The Chapter «Observance of human rights by business entities» in the National Human Rights Strategy and the Implementation Action Plan
- National action plans on business and human rights: the experience of other countries
- The role of national human rights institutions (Ombudsmans)
- The concept of implementation of state policy in the field of socially responsible business development in Ukraine for the period up to 2030
- OECD National Contact Points: How to make standards of responsible business conduct effective?
- Coordination of efforts of state bodies, state policy coherence
- Responsible business conduct by state-owned companies

Moderator —

IHOR KONOPKA, Human Rights Lawyer

Panelists ————— **VALERIA KOLOMIETS**, Deputy Minister of Justice of Ukraine

Regulation:
speeches up
to 7 minutes,
discussion.

OLENA STEPANENKO, Representative of the Ukrainian Parliamentary Commissioner for Human Rights on Socio-Economic Rights

KATERINA LEVCHENKO, Governmental Commissioner for Gender Policy

MARYNA KUPCHUK, Deputy Head of the International Investment Cooperation Division of the Investment Department of the Ministry of Economy, Secretary of the OECD National Contact Point

IHOR KOTELYANETS, Director of the Department of Sustainable Development and Internal Communications, Ukrzaliznytsia

MARYNA SAPRYKINA, Head of the Centre for CSR Development Ukraine

COFFEE BREAK

4 p.m. - 4.30 p.m.



SESSION IV. SUSTAINABLE BUSINESS MODELS BASED ON RESPECT FOR HUMAN RIGHTS: THE ROLE OF NON- STATE ACTORS IN UKRAINE

4.30 p.m. - 6 p.m.

QUESTIONS FOR DISCUSSION:

- **Corporate policies and their impact on the business environment**
- **Business associations: drivers of positive changes or custodians of traditions?**
- **Investors' impact and ESG indicators**
- **The role of CSOs and human rights defenders**
- **Experience of universities in teaching business and human rights disciplines, PhD programs, research areas**
- **Resource portals, guides and tools developed by expert organizations**

Moderator ————— **OLENA UVAROVA**, Associate Professor, Head of the International Lab on Business and Human Rights in Yaroslav Mudryi National Law University, Ukraine

- Panelists** ————— **MAXIME BELINGHERI**, Human Rights Manager, L'Oréal, France (online)
- Regulation:**
speeches up
to 7 minutes,
discussion.
- IRYNA KOSTYUK**, Leading expert on CSR and regulatory issues, Carlsberg Ukraine
- OLHA BOIKO**, Coordinator of the Committee on Industrial Ecology and Sustainable Development, European Business Association
- RON POPPER**, CEO of the Global Business Initiative on Human Rights (GBI)
- LARYSA ZHYGUN**, Government Relations Manager of the All-Ukrainian Integrity and Compliance Network, UNIC
- NINA RESHETAR**, Rule of Law and Human Rights Project Assistant, OSCE Project Co-ordinator in Ukraine
- ALEVTINA SANCHENKO**, PhD, Head of the Center for Advanced Studies and Cooperation on Human Rights in Economics of the Institute for Economic and Legal Research Mamutov NAS of Ukraine
- DARIA NAGAIVSKA**, PhD, Expert of the Corporate Equality Index, Project manager of NGO «Modern Woman»
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CONCLUSIONS AND NEXT STEPS

22

SEPTEMBER

Time:

2 p.m. - 4 p.m.

Format:

Live

(25 participants)

languages:

Ukrainian

TRAINING FOR STUDENTS AND TEACHERS «APPLYING HUMAN RIGHTS TO DIGITAL TECH»

The event is part of the project «Applying Human Rights to Digital Tech» implemented by the Kharkiv Regional Foundation «Public Alternative» with the support of the Human Rights Fund of the Embassy of the Kingdom of the Netherlands in Ukraine.

THE KEY ACCENTS.

Respect for human rights by business means preventing harm to the people and communities involved in the company's business, with a special focus on those people and communities that may suffer the most. The idea is that respect for human rights and human dignity should be an integral part of doing business.

Human rights policies, impact assessments and action plans cannot be separated from day-to-day work. Eliminating the risks to people that arise from the day-to-day operating of a company – for example, in procurement, marketing, mergers and acquisitions, product design, and management – is critical to a company's responsible conduct and «social license to act.» This means that companies need to ask themselves what risks arise for people as a result of the very nature of how they make money and how they are served.

However, the fact that a business model or strategy carries risks to human rights does not necessarily mean that the company will not be able to comply with human rights or that the business model must be abandoned altogether. Rather, the challenge is to demonstrate that the company is taking reasonable steps to prevent, mitigate, and eliminate harm to human rights. These actions will vary from company to company, but in general companies must be prepared to:

- **Analyze** incentives for managers and key functions (product design, marketing or sales team) to encourage actions that prevent or mitigate negative human rights impacts, not just actions that benefit customers and increase company profits;

- **Conduct stress testing** and, if necessary, improve the design of technology in such a way as to significantly minimize the risks of serious human rights violations, compared to optimization solely to maximize income or provide maximum benefit or convenience for most people;
- Examine plans **for testing and entering new markets** as closely as possible, with an emphasis on whether the local context does not increase the risks to human rights within the business model used. This may be due to factors that do not depend on the company, but which it must take in consideration - in general, the low level of human rights protection in the country where the company operates, low level of digital literacy, etc .;
- **Collaborate** with colleagues, professional associations, clients, civil society and government to develop and implement standards of responsible conduct and technological design that reduce the human rights risks associated with relevant business models;
- **Check** whether the company plays a constructive role in the development of laws and other regulations aimed at strengthening the protection of human rights for those groups of people who are directly or indirectly exposed to the risk of the company's business model.



WITHIN THE BUSINESS AND HUMAN RIGHTS WEEK INITIATED BY THE UKRAINIAN PARLIAMENTARY COMMISSIONER FOR HUMAN RIGHTS ON 10TH ANNIVERSARY OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

The Council of Europe Project «Internal Displacement in Ukraine: Development of Long-Term Solutions. Phase II»

REPORT ON THE RESULTS OF THE ROUND TABLE

**«BEST CORPORATE PRACTICES TO RESPECT HUMAN RIGHTS:
INTERNATIONAL EXPERIENCE AND UKRAINIAN CONTEXT»**

June 14, 2021

Organized by the International Lab for Business and Human Rights of the Yaroslav Mudryi National Law University and supported by the Council of Europe Project «Internal Displacement in Ukraine: Development of Long-Term Solutions. Phase II»

1. INTRODUCTION

The Parliamentary Commissioner for Human Rights in Ukraine initiated the Business and Human Rights Week, which took place from 11 to 18 June 2021, and included a series of events, in particular: a quiz to test basic knowledge on business and human rights, training on business and human rights in the digital environment, competition of students' research papers, collection of proposals to take measures aimed at implementing the UN Guiding Principles on Business and Human Rights in Ukraine, etc.

The round table on best corporate practices to ensure respect for human rights became one of the events of the Business and Human Rights Week in Ukraine.

2. THE STRUCTURE OF THE EVENT AND PANELISTS

The round table covered two discussion sessions.

The first focused on policies and standards of responsible business conduct. As the roundtable took place on the eve of the 10th Anniversary of the UN Human Rights Council's approval of the UN Guiding Principles on Business and Human Rights, participants discussed the changes in corporate culture and corporate responsibility to respect human rights over the past 10 years.

The discussion was attended by **TAMILA LARINA**, Director of the Department for Monitoring Social Rights of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, **BEATA FARACIK**, President of the Board of the Polish Institute for Human Rights and Business, Co-founder of the Central and Eastern European Business and Human Rights Association (Poland), **MAXIME BELINGHERI**, Human Rights Manager, L'Oréal (France), **JERNEJ LETNAR ČERNIC**, Professor of Constitutional and Human Rights Law, New university, Faculty of Government and European Studies, Kranj/Ljubljana, Co-Founder of the Central and Eastern European Business and Human Rights Association (Slovenia), **DANIELLE ANNE PAMPLONA**, Full Professor at Pontifical Catholic University of Parana, Vice-Director of the Latin American Branch of the Global Business and Human Rights Scholars Association (Brazil).

The vision of changes in the Ukrainian companies conduct during the last 5-10 years was presented by **OLHA BOIKO**, Coordinator of the Committee on Industrial Ecology and Sustainable Development, European Business Association, **IRYNA FEDOROVYCH**, Expert of the Corporate Equality Index, Director of the NGO «Center for Social Action», Co-chair of the Coordination Council of the Coalition against Discrimination in Ukraine, **DARIA NAGAIVSKA**, Expert of the Corporate Equality Index, Project manager of NGO «Modern Woman», **MARINA KUPCHUK**, OECD National Contact Point, Ministry of Economy of Ukraine.

The discussion was moderated by **OLENA UVAROVA**, Head of the International Business and Human Rights Lab at Yaroslav Mudryi National Law University. **NICOLAJ SONDERBYE**, Senior Democracy and Human Rights Advisor, UNDP in Ukraine, and **KATERYNA DEIKALO**, Business and Human Rights Expert, Belarusian Helsinki Committee, joined the discussion.

The second session focused on corporate respect for human rights in situations of conflict, internal displacement and transitional justice. It was opened by **GANNA KHRYSSTOVA**, Senior Project Officer, Council of Europe's project «Internal Displacement in Ukraine: Building Solutions. II Phase».

Distinguished speakers took part in the discussion: **TARA VAN HO**, Lecturer in the University of Essex School of Law and Human Rights Centre, Director of the post-graduate taught programmes in human rights, member of the Essex Business and Human Rights Project (United Kingdom), **ZLATA KOSTYUK**, Corporate Social Responsibility Specialist, Auchan (Ukraine), **SINISA MILATOVIC**, B+HR Asia, UNDP, **NICOLÁS CARRILLO-SANTARELLI**, Lecturer and Researcher of International Law in the La Sabana University (Colombia).

OLENA LUNYOVA, Advocacy Manager, ZMINA Center for Human Rights, Member of the Working Group on Reintegration of the Temporarily Occupied Territories of the Commission for Legal Reform in Ukraine, moderated the discussion.

3. THE MAIN THESES OF THE DISCUSSION

3.1. Achievements and changes

3.1.1. Participants of the discussion noted significant changes in attitudes towards business and human rights idea during the last 10 years. Thus, if soon after the approval of the UN Guiding Principles on Business and Human Rights (UNGPs), even at a high state level, one could hear the statement that “business and human rights are a certain oxymoron”, incompatible concepts, now the discussion on UNGPs is becoming common practice. Much has been done to raise awareness, to strengthen discussions on existing business models and their compliance with human rights.

3.1.2. For the Eastern European region (non-EU countries), business and human rights are an area that is just beginning to attract attention, and there is a significant difference between countries.

In Ukraine, the first significant breakthrough in the development of responsible business conduct occurred after 2015, when the most active companies began to call business to be a driver of positive changes and to pay more attention to human rights in their business operations.

Since the past (2020), despite the pandemic, Ukraine has made positive changes that give a positive signal not only to the state but also to business:

- a) development and adoption of the Concept of socially responsible business, approved by the Cabinet of Ministers of Ukraine, and an action plan to it (designed for 2030);
- b) the National economic strategy, which contains a separate section on vulnerable persons;
- c) the National Strategy for providing barrier-free space;
- d) creation and promotion of the Platform on the inclusion of vulnerable persons in business activities (DiyaBusiness);
- e) legislative initiatives on the ensuring employment of vulnerable persons, in particular people with disabilities, and a number of other initiatives;
- f) the BHR Chapter was included in the National Human Rights Strategy.

All these acts are the result of cooperation between the state, representatives of responsible businesses and civil society organisations.

At the same time, these initiatives have virtually ignored the question of the possible impact of business, positive or negative, on the ongoing conflict in Ukraine, as well as on mitigating or intensifying its consequences, including internal displacement.

3.1.3. There is a significant change in the attitudes of companies, which is due to changes in the attitudes and expectations of employees, consumers and society. CSOs monitor the functioning of companies in terms of human rights. Investors who a few years ago did focus on the protection of ecology and environment, now pay more and more attention to social issues. Changes in legal regulation, which are imminent, are also having a significant impact.

3.1.4. EU member states are showing progress on business and human rights, although not fast enough. First of all, we are talking about changes in the legal regulation. Legislative steps are a major impetus, particularly at the EU level as a whole (especially Green Deal and Sustainable Finance, which have paid considerable attention to social elements) and at the national level of concrete countries (Germany has adopted a law on human rights due diligence in supply chains; Norway has also

introduced relevant legislative changes; in France and the Netherlands, relevant legislations already operate). An EU directive on mandatory human rights and the environment due diligence is expected to be adopted, although some business groups oppose these changes.

These changes will also have a significant impact on the situation outside the EU, as, for example, companies from Eastern Europe and Central Asia are part of the supply chains of companies registered in the EU.

3.1.5. In regions that do not have binding legal regulation, this is partially offset by the active development of jurisprudence in cases concerning the negative impact of business on human rights. Latin America is an example.

At the same time, Eastern Europe is currently staying away from these trends. Ukraine, which is largely an example of positive developments in business and human rights in the region, is currently limited to the adoption of declarative acts that do not introduce mandatory instruments.

3.1.6. Companies that operate globally have a fairly high level of awareness of human rights expectations of them - and not only on the part of employees, but on the part of consumers, residents of communities, contractors, society as a whole. These companies bring their human rights policies to countries where standards of responsible business conduct are not yet popular. Ukraine is an example of a country where global companies, by their example, spread business and human rights standards.

3.1.7. Cooperation is a significant change that has taken place. Companies have realized that they cannot address human rights alone. For a while, companies competed even on this topic. But the change that is taking place is that companies do not compete, but cooperate in the field of human rights - both among themselves and with civil society organizations, the state and so on.

3.1.8. The positive practices of companies that become examples for other business representatives are important. Thus, last year L'Oréal has committed to a living wage, not only for L'Oréal's employees, but also for the strategic suppliers' employees (target to be achieved by 2030). It is the living wage - the level that covers a person's basic needs - housing, food, water, health and education - and the needs of dependents. The idea is that all employees and their families should be able to provide themselves with a basic but decent, way of life, which is not necessarily ensured by national minimum wages. This approach to living wage is also a tool to help eliminate gender inequality. All over the world, poverty still mainly has a female face. In 2020, the International Labor Organization (ILO) estimated that women were paid on average about 20 percent less than men worldwide. This means that more women than men are paid less than the living wage. Improving wages will have a disproportionate positive impact on women and help reduce the gender pay gap.

The internationally recognized NGO fair wage network has become a partner of L'Oréal in this task, helping to develop a strategy to calculate the living wage and minimum required according to the local context and the list of criteria outlined by an independent body (household size, etc.).

Unilever is also committed on the living wage. This collaboration was not hampered by the fact that L'Oréal and Unilever compete in the market.

3.1.9. The issue of involving businesses in ensuring the rights of IDPs, victims of armed conflict, is primarily raised in the context of socio-economic issues (for example, promoting the employment of IDPs, stimulating the business of IDPs, etc.). And this is an important area. But it is equally important that the role of business is not limited to these basic issues, as the role of business in responding to

conflict needs to be larger. This is important to consider when introducing transitional justice, or more broadly public policy in transition.

3.1.10. It is worth taking into account the fact that during an armed conflict, business can play very different roles (victims, violators, beneficiaries, etc.). Therefore, it is very important to determine the role of a business during an armed conflict. Because there may be situations when economic interests may even become a source of armed conflict in the region. Therefore, it is very important to investigate and establish which corporate actors and how they participated in the conflict. Such an investigation gives society a chance to understand what happened. And this knowledge, firstly, will allow the prevention of such conflicts in the future, and secondly, this knowledge will be able to ensure the restoration (reconstruction) of society.

3.2. Challenges

3.2.1. Uncertainty remains about the direction of further development of the business and human rights framework - to a binding regulation that aims to help human rights holders and victims of business related violations, or mainly to voluntary standards on business and human rights. We are still between these two alternatives. Yes, there are some legislative steps, but all these initiatives are initiatives of the Global North. Central and Eastern Europe, like other regions, seems to be out of these processes.

3.2.2. The concept of business and human rights is highly dependent on the general human rights situation in a particular country or region and on the rule of law situation. Eastern Europe vividly illustrates this thesis. There is a lack of access to justice, the trust in the justice system is low due to the weakness of the rule of law guarantees and because of the high level of corruption. Business is often part of corrupt schemes. In such circumstances, it is difficult to count on the effective implementation of business and human rights standards.

This situation is a challenge not only for the countries of the region, but also for companies registered in the EU, because they need to control their supply chains. What standards should they apply when entering into relations with companies from Ukraine and Moldova? Or by what standards should they interact with state-owned companies in the Russian Federation?

In this context, the practice of applying political and economic sanctions to non-democratic countries, which now extends to businessmen and companies by including them in the relevant blacklists, is also noteworthy.

Interestingly, the situation of massive human rights violations in some countries in the region, especially when the state demands from businesses to violate human rights (for example, to stop accessing the Internet so that citizens can not agree to conduct a peaceful demonstration) contributes to that more attention is being paid to business and human rights standards. The dual nature of this situation is that on the one hand the situation is glaring given the scale of the violations. But on the other hand, it has allowed businesses to demonstrate the importance of human rights standards and the need to uphold them, even when the state itself violates them.

3.2.3. It is necessary to realize that situations are very different depending on the size of the company and depending on the national context. We can find examples of companies that have human rights policies etc. At the same time, we can find many companies, especially small and medium-sized

businesses, that have no idea what they need to do - except perhaps when it is part of their contractual obligations and they have to answer questionnaires about modern slavery or child labor, etc.

3.2.4. A significant challenge is the formal attitude of companies to their human rights obligations. Even among those companies that have human rights policies, either corporate social responsibility policies, or the SDGs, or the ESG strategy, the vast majority treat them formally.

This is partly due to the fact that companies do not have a proper understanding of the concept of business and human rights and the practical skills of its application in practice.

3.2.5. One of the barriers to the practical implementation of standards of responsible business conduct is the complexity of measurement and lack of clear indicators. The focus of business is on much more specific issues - such as environmental protection - where it is easier to offer metrics and indicators for measuring impact. One of the problems is the uncertainty of what we measure and what indicators we use when we talk about corporate responsibility to respect human rights. This barrier is particularly difficult for societies that do not have a strong tradition of respect for human rights.

3.2.6. Often companies do not have a proper understanding of human rights themselves. They may use human rights terminology without understanding the true meaning of the concept. There may be a situation, for example, when a company does not even perceive employee rights as human rights, believing that these are different things.

Even those companies that seek advice or develop human rights policies, i.e. show interest in and awareness of the importance of human rights issues, assume that it is sufficient to invite an external consultant and do not understand that human rights should be a cross-cutting element of all processes in the company. A consultant should not just write a policy for a company. The consultant should help to understand the essence of human rights standards.

In Ukrainian practice, there are examples that companies consider it sufficient to translate the human rights policies used by Western companies, or to conduct one 2-hour human rights training for company managers to believe that they have done enough to implement human rights standards to their own activities.

In addition, it is difficult for large Ukrainian companies, including state-owned ones, to convince management that sustainable development strategies with a focus on human rights can benefit; that there should be a separate department of human rights in a company, that the company's budget should allocate funds for this, etc.

3.2.7. Lack of understanding of the concept of human rights and the need to perceive it as a cross-cutting component in the company's operations leads to the inability to overcome another challenge - the ability of both states and businesses to develop human rights regulations, policies and instruments in the national context. Simply transposing the norms and practices that work in the EU will not be effective. Ukrainian companies implement human rights policies when they are part of a multinational company or when it is their obligation to the legislator. There is no good will here or it is not enough.

3.2.8. States do little to develop guidelines and explanations for business, nor do they offer tools to help businesses apply standards of responsible business conduct. This is largely due to the lack of understanding and the importance of preventing the possible negative impact of business on human rights, and government and business continue to rely on an approach where reaction takes place on the human rights violations that have occurred.

3.2.9. The lack of guidance and other systemic efforts by states is a manifestation of another more global challenge - states do not demonstrate self-reflection in their efforts in business and human

rights. They do not analyze their mistakes. What we really need is greater cooperation between states, especially on issues that are interstate, and greater criticism of states for their efforts. As an example of the lack of sufficient efforts on the part of states - the issue of prevention of forced labor between Poland and Ukraine. There are appropriate efforts by companies and NGOs that are developing tools to help companies that really want to conduct proper human rights due diligence. But there is a really wide space for state action.

3.2.10. Due to the role that NGOs play in promoting business and human rights, there is potentially a potential conflict of interest at some stage - when NGOs that monitor companies are at the same time the only actors who can provide support companies, advise them.

3.2.11. The situation of armed conflict and internal displacement exacerbates the need for the state to fulfill its positive obligations to prevent human rights violations by third parties. To this end, the state should develop clarifications for economic actors on how to assess their potential impact on human rights in conflict and internal displacement.

4. RECOMMENDATIONS

4.1. Raising awareness of business and human rights standards remains a key challenge. All stakeholder groups should be involved in this process - business, business associations, community representatives, human rights and other non-governmental organizations, and the expert community, including at the international level.

Societies facing additional human rights challenges, such as armed conflict and internal displacement, need to make a special effort to raise awareness that business affects human rights and can also affect the development of conflict, actively or passively. It is therefore important that human rights are perceived as a cross-cutting standard of all company activities, both during and after the conflict.

4.2. The importance of cooperation and joint efforts should be emphasized at all levels - cooperation between states, between businesses, between the state, business, civil society, representatives of local communities.

The situation of armed conflict and internal displacement exacerbates the need to find models of cooperation. The task of developing mechanisms to mitigate the negative consequences for those affected by the conflict is particularly important. If an entity has directly or indirectly contributed to the occurrence of such consequences, the corporate responsibility to respect human rights implies the need for such an entity to take all possible measures to mitigate such consequences and maximize the restoration of the situation. It is important that such measures were not replaced by corporate social responsibility.

4.3. The importance of developing a regulatory framework at the state level. States should be clear about their expectations of responsible business conduct, as well as provide the institutional support that businesses can count on that promote respect for human rights and prevent violations. States should develop recommendations for businesses on the potential risks associated with the relevant economic activities, as well as taking into account the situation of conflict and internal displacement.

4.4. The need to focus on preventing negative impacts on human rights, rather than just responding to those negative impacts that have already occurred. This also requires the development of appropriate tools that would take into account the national context, the situation of conflict and internal displacement, the size of the company, the scope of its activities and so on.

4.5. In a situation of ongoing conflict, it is difficult to plan a post-conflict process of transitional justice. But this is important to do just when the conflict is still going on - it is necessary to determine, in particular, what role business will play in this process, in what format it can or should be involved in the work of Truth Commissions and other transitional justice institutions. It is also important that the state is aware of the need to investigate and identify human rights violations by businesses during the conflict. First, it is important for the further process of transitional justice. Second, it is an important component of responding to society's request to know the truth.

4.6. The processes of active digitalization lead to maximum transparency, as a large amount of information about the activities of economic entities becomes available, greater transparency of their activities is achieved. This means that companies and governments must take on more responsibility. An expert community can make communication simpler, a language more understandable to business.

4.7. It is necessary to conceptualize what constitutes a human rights due diligence procedure during conflict and internal displacement. The development of such a concept should be intersectional, complex, involving experts from various fields of knowledge, including practitioners engaged in conflict resolution.



З усіх питань, які стали предметом обговорення на Панельній дискусії і додаткових заходах з проблематики бізнесу і прав людини, просимо звертатися за електронною адресою координаторки заходів Олени Уварової: o.uvarova@nlu.edu.ua.

Усі матеріали Панельної дискусії будуть розміщені на її веб-сторінці Міжнародної лабораторії з бізнесу і прав людини Університету <https://nlu.edu.ua/naukovczyam/osvitno-naukovi-czentry-ta-laboratoriyi/mizhnarodna-laboratoriya-biznesu-i-prav-ljudyny/>.

Дякуємо за участь у заходах Форуму і за інтерес до проблематики бізнесу і прав людини! Сподіваємося на нові плідні дискусії

