



**Remarks by Anita Ramasastry
Member, Working Group on the issue of human rights and transnational corporations and
other business enterprises**

**Peer-learning event: Second generation of National Action Plans and effectiveness of a
smart mix of voluntary and mandatory human rights due diligence
Exchange between State representatives and experts**

Egmont Palace, Brussels, 7 June 2022

Excellencies, Distinguished Experts, Ladies and Gentleman,

It is my pleasure to address you today as I am in the last 2 months of my mandate as a member of the UN Working Group on Business and Human Rights. I am grateful to Belgium for hosting another peer learning workshop that brings together EU and European states to discuss the relevance of a second, or even third, generation of national action plans on business and human rights, and as we begin to move in many States towards a new regulatory model of human rights due diligence.

As many of you know, we celebrated last year, the 10th anniversary of the UN Guiding Principles on Business and Human Rights (UNGPs). This was a major milestone as the UN Human Rights Council reaffirmed and once again endorsed the UNGPs. It is today the only globally accepted authoritative framework concerning business respect for human rights.

What have we learned after a decade and what does it mean for our discussions today?

First, the UN Working Group presented a stock taking report to the UN Human Rights Council in June of last year. In that report, we acknowledged the significant normative power of the UNGPs. It has given stakeholders – governments, civil society, unions and business a common language. It has helped us all speak about Protect, Respect and Remedy. We speak of human rights due diligence as a key concept to ensure business respect for human rights. We speak of effective access to remedy under Pillar III.

And we have seen the permeation of this common language in many places. For many years the UN Working Group has focused on global governance and policy coherence – noting how the UNGPs have made their way into other key multilateral fora – from the OECD, to the ILO to the EU and beyond. We have seen roadmaps at the African Union. We have many regional fora focused on business and human rights, we have national action plans, and many multistakeholder initiatives. The common denominator or bond for all of these actions and organizations is that the UNGPs are at the core of efforts to promote business respect.

At the same time, the UN Working Group noted that the uptake of the UNGPs on the ground, and within companies still was sorely lagging. The leading companies – ones who are the champions and early adopters, are now the ones joining the call for mandatory human rights due diligence. But moving down value chains, and into SMEs, bringing the UNGPs to companies around the globe is still in the making.

So, for the next decade, where do we go?

The UN Working Group has published a Roadmap for the next decade. We call this the “Decade of Action”. We call for States and Business to raise the ambition and increase the pace. To channel my former UN Working Group colleague, Dante Pesce, we need to speed up and scale up. The Roadmap is relevant to today’s discussion in two major respects. The first is that we need both national action plans as well as mandatory human rights due diligence. The UN Working Group has noted consistently that the time for voluntary measures alone is over, and that States need to rebalance the smart mix to include mandatory human rights due diligence alongside other measures. This is key. This is why the UN Working Group is encouraged by the EU’s new draft corporate sustainability due diligence directive and the other developments in European States, as well as key countries such as Japan, to move forward with new commitments. We were heartened by the G7 statement that committed to more binding rules relating to sustainable supply chains.

The second key issue is the coexistence of national action plans on business and human rights. States cannot sit and just wait for due diligence to arrive like magic. There is much preparation to create an effective business and human rights ecosystem that will make mandatory human right due diligence effective. This is where national action plans come in to play. States can use national action plans, as well as more coordinated planning, to pave the way for this business and human rights ecosystem

The UN Working Group over the past decade has made numerous recommendations to States concerning the steps they need to take to implement Pillar I – and we have recommended the national action plan as a method that allows for States to develop shared commitments in partnership with business and civil society. Too often, we have seen States simply restate what they are already doing, without taking on new measures. I do realize that many States present have innovated in particular areas and we need less summarization and more innovation in national action plans. But think of national action plans now as the launch pad for due diligence readiness.

The UN Working Group is developing a short checklist building on our prior reports and NAP guidance to aide states in their human rights due diligence readiness. Some of the areas where we believe States should act NOW include:

- Support for SMEs. Some States have created help desks to provide advice to SMES who are exporters, for example;

- Procurement reform;
- Economic diplomacy - linking more of trade-based incentives to business commitment to the UN GPs. This can be done with stronger focus on export credit, development finance, trade missions and trade support;
- Stronger state non judicial remedy mechanisms. This can include better national contact points, stronger national human rights institutions, and new types of mechanisms;
- Removal of barriers to access to judicial remedy. Reform to address strategic litigation against public participation is a critical piece of this puzzle;
- Examining how well State-owned enterprises are subject to the UNGPs. This has been a blind spot for many;
- Ensuring that key sectors such as the financial sector and other service providers such as lawyers, accountants, auditors are also subject to human rights due diligence requirements; and
- Improving requirements for stakeholder engagement, especially relating to indigenous communities and the right to Free Prior and Informed Consent.

So, today's workshop is a great place to talk about the synergies between national action plans and regulatory developments. We need both. It is going to be a challenge for any regulatory to take on a new administrative role with mandatory human rights due diligence. This is why we need other incentives and requirements that are linked to the UNGPs.

I will conclude by noting that the UN Working Group's Roadmap really builds on the points I have raised in these brief remarks.

The Roadmap has 8 key action areas.

The first, is that we need the UNGPs to be a compass for meeting global challenges. Goal 1.4 of this first action area focuses on continued coherence and alignment of international standards. I cannot emphasize more that given the investment that so many of us have made in the UNGPs as a bedrock, we need to continue with the alignment in our new phase of regulatory action.

The second action area of the State duty to protect human rights asks states to seize the mandatory wave and develop a full smart mix. The full smart mix requires States to develop more requirements through Guiding Principles 4, 5 and 6 relating to the State as an economic actor. This means really integrating requirements for business to respect human rights into the key State levers relating to its economic integrations with business – from procurement, to State-owned enterprises, to all situations where businesses receive bailouts. As the UN Working Group highlighted in its roadmap for responsible recovery focused on the pandemic, companies who received bailouts or support during the pandemic should have been asked to align their decision making with the UNGPs. Factories should have been asked to ensure the safety and health of their workers, both local and global. Imported goods should be free from forced labor.

Action area 6 focuses on more and better leverage to drive faster change. Here we highlight the critical role of the financial sector and the need to align the S in ESG with the UNGPs. There is surely a critical role for States and the EU to play in ensuring proper and harmonized reporting standards. Similarly, in Action area 6 we focus on the need to ensure that key shapers such as professional service providers are included within the scope of mandatory human rights due diligence.

Action area 8 is also relevant to today's discussion. The UN Working Group recommends further international cooperation. If we do want to harmonize and continue to reap the benefits of our common language and framework, this requires increased technical cooperation between States and regions. It also requires businesses to partner across sectors and regions to also build capacity. Civil society and stakeholder engagement will be critical across all efforts to develop global standards. Rights holders from all regions will be key to developing common and consensus-based approaches to what will work. And this is a key action area in the Roadmap as we call for more and better stakeholder and rights holder engagement.

I will conclude by noting that while regional races to the top are going strong in Asia, Latin America, Eastern Europe, and Central Asia, and are now starting across Africa, much of Europe as well as the US, Canada, and Australia seem left out of this equation. I have long been advocating for a European or WEOG forum on business and human rights. This could be an annual event. It could be modest and could be virtual. This peer learning event is a good start to what I hope will be continued interactions as we move forward into this next decade.

Thank you. It has been an honor and a privilege to be part of this ongoing journey.