



THE ESSENTIALS

# BUSINESS AND HUMAN RIGHTS

*Protect, respect, remedy*



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# EDITORIAL

To coincide with the 10th anniversary of the United Nations Guiding Principles on Business and Human Rights, the United Nations Working Group responsible for promoting the principles emphasised that “[t]he fundamental ambition of the Guiding Principles of fixing the imbalance between the State, people and markets, and of narrowing and ultimately bridging the gaps between economic forces and respect for individuals, particularly those most at risk, remains fully valid and urgent during today’s crises”<sup>1</sup>.

These Principles were endorsed by consensus by the United Nations Human Rights Council on 16 June 2011 and have since become the authoritative standard for incorporating respect for human rights into everyday business practices. They continue to influence different normative spaces with the aim of improving the prevention of business-related human rights harm and ensuring greater access to remedy and redress for rights-holders.

After establishing a national action plan to implement the Guiding Principles, France has played a pioneering role on several occasions in terms of corporate responsibility to respect human rights, a prime example of which is the enactment of the country’s Due Diligence Act 2017. As illustrated in this report by the CNCDH (French National Consultative Commission on Human Rights), which has been mandated by the State to monitor and evaluate the implementation of the country’s national action plan, France is playing a contributory role in “*reinforcing corporate social responsibility (CSR)*” on a national, regional and international level. Companies are gradually taking ownership of their responsibility towards human rights by embracing the Guiding Principles and generally contributing to sustainable development and meeting the growing and legitimate calls from citizens, consumers and investors for action in this particular area.

Despite its efforts and progress, France’s action in this area

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1. Human Rights Council, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, 22 April 2021, A/HRC/47/39, §5.

continues to be clouded in ambiguity and even contradiction. Both private and public business enterprises continue to commit serious human rights violations, particularly in their global value chains, and human rights and environmental defenders are increasingly subjected to reprisals. Persisting violations, at a time when the world is facing a convergence of crises (health, food, economic, climate, security, etc.), growing inequality and shrinking civic space, reflect the urgency of addressing the gaps in the implementation of the Guiding Principles, which the United Nations Working Group has described as a matter of urgent priority for the States.

The CNCDH, which I have the honour of chairing, is therefore calling on France to strengthen its ambitions to tackle the “*dehumanising effects of globalisation*” and thereby guarantee respect and effective protection for all human rights and make those rights the primary focus of a truly fairer and more sustainable global economy. Based on the recommendations issued by the CNCDH, France can adopt a more ambitious and coherent public policy on “Business and Human Rights” driven by a more robust human rights based approach, while encouraging companies to conduct their business activities in a responsible manner to effectively fulfill human rights for all.

Jean-Marie Burguburu,  
President of the CNCDH

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# MANDATE

Shortly after the United Nations Guiding Principles on Business and Human Rights (UNGPs) were endorsed in 2011, States were invited to develop national action plans (NAPs) to disseminate and apply the Principles. These Principles aim to prevent business-related human rights violations and ensure access to remedy, by clarifying the different but complementary responsibilities of States and businesses in this area. The 31 Guiding Principles are based on three pillars: “Protect”: States’ obligations to protect rights-holders from the negative impacts of business activities, “Respect”: the responsibility for companies to respect human rights in their activities and business relationships, and “Remedy”: the need to ensure that rights-holders have access to effective remedy.

In 2013, the French Ministry of Foreign Affairs consulted the National Consultative Commission on Human Rights (CNCDH) as part of the preparation of the country’s NAP. In 2015, the CSR Platform (of which the CNCDH is a member) was consulted on a draft NAP drawn up by an interministerial working group led by the Ambassador for Corporate Social Responsibility.

The Government published France’s national action plan in April 2017. The NAP vests the CNCDH with the responsibility to monitor and evaluate the National Action Plan for Human Rights and Business and actions implemented.

To produce this report on “*Business and Human Rights. Protect, Respect and Remedy*”, the CNCDH drew on its longstanding work on the subject, which was updated through questionnaires sent to a wide range of public and private stakeholders, followed by several series of individual and collective hearings.

The report aims to analyse the normative developments and the policies that have been spearheaded in France on the topic of business and human rights since the uptake of its national action plan on an international (part one), regional (part two) and national (part three) level. The CNCDH has issued 145 recommendations, 20 of which are considered priorities, in a bid to encourage France to ramp up its efforts to ensure respect and protection of human rights in the context of business activities. The aim is to improve how existing standards and mechanisms are put into practice, support future normative developments that involve levelling up, remove any obstacles in gaining access to remedy, and ensure that business enterprises are held accountable for any direct or indirect business-related human rights violations.

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# THE UNGPs

## UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The United Nations Guiding Principles on Business and Human Rights (UNGPs) were endorsed by consensus on 16 June 2011 by the UN Human Rights Council. Although they are not legally binding, they are based on the States' obligations under international human rights law and business practices in this particular area. The Principles aim to prevent business-related human

rights violations and ensure access to remedy, by clarifying the associated responsibilities of States and businesses. **The 31 Guiding Principles are based on three pillars, namely “Protect, respect and remedy”.**



# PILLAR 1 PROTECT

States have an obligation to respect, protect and fulfil human rights. This obligation implies that they must protect rights-holders from the negative impacts of business enterprises' activities within their territory or jurisdiction.

To achieve this aim, States must take appropriate steps to:

- ◆ Prevent human rights violations by business enterprises
- ◆ Investigate, punish and redress such abuse (Guiding Principle no. 1)

For example, the United Nations Committees regularly remind the States of this obligation.

States must also respect human rights and set an example in this area, especially as an economic actor.

- ◆ Business enterprises owned or controlled by the State must respect human rights.
- ◆ The State must also use public procurement, the financing it grants projects or public export insurance and guarantees, as leverage for promoting responsible business conduct that respects human rights.



In particular, the Committee on Economic, Social and Cultural Rights (CESCR) deduces that States have *“a positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence (...) to prevent abuses of Covenant rights in a business entity's supply chain and by subcontractors, suppliers, franchisees or other business partners.”*

Committee on Economic, Social and Cultural Rights, General Comment No. 24, 10 August 2017, §16





## PILLAR 2 RESPECT

Business enterprises must respect human rights wherever they operate.

The United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) in 1948 to the end that “*every individual and every organ of society (...) shall strive (...) to promote respect for these rights and freedoms and (...) to secure their universal and effective recognition and observance.*”

UDHR, Preamble

**The Guiding Principles recognise “[t]he role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights”.**

UNGPs, General principles, b)

The responsibility for business enterprises to respect human rights exists independently of:

- ♦ States’ abilities and/or willingness to fulfil their own human rights obligations.
- ♦ Their size, sector, operational context, ownership and structure (expectations may vary according to the severity of the enterprise’s adverse human rights impacts).

**All business enterprises must avoid infringing human rights. They must also implement a due diligence process** to identify and mitigate the actual or potential adverse human rights impacts that they may cause or to which they may contribute through their own activities, as well as the impacts that are directly linked to their operations, products or services by a business relationship, and also to prevent human rights violations and report on how they address them. Therefore, UNGP due diligence covers the **entire upstream and downstream value chain** and should be ongoing.

Stakeholders, especially rights-holders, must also be involved and consulted in a safe and effective manner at every stage of the due diligence process.

Business enterprises should also establish or participate in **operational-level grievance mechanisms** for individuals or communities who may be adversely impacted, and provide for remediation.



## PILAR 3 REMEDY

Pillar 3 of the UNGPs aims to ensure access to effective remedy in case of business-related human rights violations.

The third pillar is closely linked to the first two pillars.



*By emphasising that greater access to effective judicial mechanisms is “at the core of ensuring access to remedy”, with non-judicial mechanisms as an essential complement, the Guiding Principles have positioned accountability as a central element of the State duty to protect [Pillar 1] and the business responsibility to respect human rights [Pillar 2].*

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights at 10: taking stock of the first decade, 22 April 2021, A/HRC/47/39, §92.

### Three types of grievance mechanisms

**The UNGPs cover State-based and non-State-based judicial and non-judicial grievance mechanisms.**

The States should provide a comprehensive State-based system for the remedy of business-related human rights abuse and ensure that grievance mechanisms are publicly known, understood and supported. Business enterprises’ grievance mechanisms must facilitate the identification of their adverse human rights impacts by providing a channel for those affected to raise concerns and by allowing grievances to be addressed and remediated.

Remedies must be complementary, with the aim of guaranteeing access to effective remedy, ensuring proper redress for human rights violations, reinforcing their ability to deter and thereby helping prevent violations.

## Barriers

Unfortunately, as clearly identified by, for example, the Accountability and Remedy Project launched by the Office of the United Nations High Commissioner for Human Rights in 2014, many – if not most – of the barriers in accessing both judicial and non-judicial mechanisms identified in the Guiding Principles still largely remain, including for basic issues such as access to information.

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights at 10: taking stock of the first decade, 22 April 2021, A/HRC/47/39, §93.

These barriers include **uneven access to information, restrictions on the rules of standing and capacity to act** or jurisdiction limitations of national courts, the high **costs and length** of proceedings, the **statute of limitations**, the **burden of proof**, the **reprisals** experienced by individuals or groups looking to report business-related human rights violations or environmental damage, and so on.

Moving from paper to practice in tackling barriers to access to remedy is a “*major and urgent priority for the next decade – and a critical issue for realising human rights and sustainable development for all*”, as stated by the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises.

The Working Group recommends that “*rights-holders should be central to the entire remedy process, meaning among other elements that remedial mechanisms are responsive to the diverse experiences and expectations of rights-holders; that remedies are accessible, affordable, adequate and timely from the perspective of those seeking them; that the affected rights-holders are not victimised when seeking remedies; and that a bouquet of preventive, redressive and deterrent remedies is available for each business-related human rights abuse*.” (Working Group on the issue of human rights and transnational corporations and other business enterprises, Raising the Ambition - Increasing the Pace. A roadmap for the next decade of business and human rights, 2021, Goal 4).

# Grievance mechanisms in France

The grievance mechanisms available in France, which contribute to the implementation of Pillar 3 of the UNGPs, include the following:

## JUDICIAL MECHANISMS

Judges (civil, administrative or criminal) likely to be dealing with cases within their jurisdiction that relate to business-related human rights issues

On a regional level, cases may be referred to the European Court of Human Rights (ECHR)

## STATE-BASED NON-JUDICIAL MECHANISMS

OECD National Contact Point (NCP)

Labour inspectorate

Defender of Rights

French Development Agency (AFD)

French Directorate General for Competition, Consumer Affairs and Fraud Control (DGCCRF)

On a regional and international level: United Nations treaty bodies, ILO mechanisms, European Committee of Social Rights, etc.

## NON-STATE-BASED NON-JUDICIAL MECHANISMS

Mechanisms administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group

## Judicial mechanisms in France

Among the judicial courts, Paris Judicial Tribunal plays a special role with regard to the obligations arising from Act no. 2017-399 of 27 March 2017 on the duty of vigilance of parent companies and instructing undertakings. Any person that has standing may bring a case to the court:

- ♦ To ask it to order a company to fulfil its human rights and environmental due diligence obligations after giving it formal notice to do so.
- ♦ To hold a company civilly liable for failing to fulfil its due diligence obligations and compelling the enterprise to remediate the harm caused [Articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code; Article L. 211-21 of the French Judicial Organisation Code].

Criminal courts may be called upon to deal with issues relating to a legal entity's criminal liability, including complicity in war crimes, crimes against humanity or torture.

Disputes relating to employment law (redundancies, termination of contract, labour union elections, etc.) may be referred to the labour courts (judicial, administrative, specialised, etc.).

## State-based non-judicial mechanisms in France

- ♦ **OECD National Contact Point (NCP):** the French NCP can be contacted by any person, organisation or community who believes that the actions or activities of a multinational enterprise (based in France or committed in France) infringe the OECD Guidelines for Multinational Enterprises.
- ♦ **Labour inspectorate:** employees, trade unions, employee representatives or business enterprises can contact the labour inspectorate, whose inspectors are responsible for ensuring compliance with labour law.
- ♦ **Defender of Rights (DDD):** the Defender of Rights, an independent administrative authority, may deal with individual grievances, especially discrimination in the workplace or protection for whistleblowers.
- ♦ **French Development Agency (AFD):** complaints relating to the environmental and social incidents caused by AFD-funded projects may be submitted using the AFD's grievance mechanisms (or its subsidiary Proparco) by any affected person or group of affected persons.
- ♦ **DGCCRF:** reports can be sent to the DGCCRF in the event of a breach of consumer law or certain provisions of the Environmental Code, including misleading commercial practices.

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## Non-State-based non-judicial mechanisms in France

Business enterprises have implemented a number of mechanisms, including systems for reporting breaches of anti-corruption law and infringements of human rights and environmental due diligence obligations:

- ◆ Business enterprises subject to France’s anti-corruption law (known as “Sapin 2”) are required to set up an internal whistleblowing system whereby employees can report conduct or situations contravening the company’s code of conduct on bribery or influence peddling [Article 17 II 2° of Act no. 2016-1691 of 9 December 2016 on transparency, anti-corruption and the modernisation of economic life].

- ◆ Business enterprises that are subject to the Due Diligence Act must set up an alert mechanism that collects reporting of existing or actual human rights and environmental risks. [Paragraph 6 4° of Article L. 225-102-4 I of the French Code of Commerce (Article L. 225-102-1 as of 1 January 2025), created by Act no. 2017-399 of 27 March 2017 on the duty of vigilance of parent companies and instructing undertakings].

# 01

## PART ONE

### FRANCE'S ACTION AT INTERNATIONAL LEVEL TO ENSURE RESPECT FOR HUMAN RIGHTS IN THE CONTEXT OF BUSINESS ACTIVITIES

To date, there is no international convention that specifically governs business enterprises' activities in relation to human rights, although negotiations are currently underway to develop a treaty on the subject. However, several (non-binding) standards have been adopted by the United Nations (UN), the International Labour Organisation (ILO), the Organisation for Economic Co-operation and Development (OECD) and the International Organisation for Standardisation (ISO). In addition, human rights norms require States to respect, protect and fulfill human rights, including by business enterprises operating in their territory or under their jurisdiction.

Promoting and applying these different standards is an integral part of implementing the United Nations Guiding Principles on Business and Human Rights.

The CNCDH report provides a non-exhaustive review of France's actions within the UN, the ILO and the OECD to protect human rights in the context of business enterprises' activities and monitor compliance with those rights.



# WITHIN THE UNITED NATIONS

Two examples are featured here, for which the CNCDH has issued priority recommendations - the Universal Periodic Review (UPR) and negotiations on the draft Treaty on Business and Human Rights - before highlighting the contribution that the treaty bodies have made on this particular subject.

## Universal periodic review

The Universal Periodic Review (UPR) is a mechanism of the United Nations Human Rights Council that calls for each Member State to undergo a peer review of its human rights records. As such, France receives human rights recommendations from several Member States, particularly on the issue of “business and human rights”. However, France issues few recommendations to other Member States that explicitly address business enterprises’ activities.

### PRIORITY RECOMMENDATION

As part of the UPR, the CNCDH recommends that France should:

- ◆ Further promote the UNGPs by issuing recommendations for the three pillars.
- ◆ Encourage Member States to prevent business-related human rights violations, particularly by implementing mandatory human rights and environmental due diligence, including the right to a clean, healthy and sustainable environment.
- ◆ Mobilise other Member States to enshrine a universal human right to a healthy environment in a legally binding instrument.



## Draft Treaty on Business and Human Rights

Since 2014, an Intergovernmental Working Group set up by the Human Rights Council has been responsible for drafting a treaty to regulate the activities of transnational corporations and other business enterprises with respect to human rights. Adopting a business and human rights treaty is essential for meeting the legitimate expectations of victims of business-related human rights violations, by strengthening the protection and respect for human rights as well as improving access to remedy, and also for strengthening legal certainty and creating a more level playing field by harmonising obligations in this area.

France's position has changed during the negotiations. After voting against resolution 26/9 of the Human Rights Council to establish this Working Group, France has constructively taken part in the various negotiations sessions, despite being limited by the division of competences between the European Union (EU) and its Member States. France is one of the driving forces for a more active involvement of the EU within the negotiations, and joined the "Group of Friends" in 2021 to support the Chair of the intergovernmental Working Group.

### PRIORITY

### RECOMMENDATION

The CNCDH recommends that France should:

- ♦ Pursue its active and constructive involvement in drafting a Treaty on Business and Human Rights to promote greater legal certainty and more effective protection of human rights.
- ♦ Continue mobilising its European partners to promptly give the EU a mandate to negotiate the future treaty on their behalf.

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## Contribution of the treaty bodies

The treaty bodies (committees) established by the main human rights treaties and comprising independent experts are responsible for overseeing the implementation of the treaties' provisions and their additional protocols. They examine the reports submitted by the States parties on the implementation of these treaties and they publish "concluding observations" containing their concerns and recommendations. They may also publish "general comments" on their interpretation of the treaties' provisions. In addition, some treaty bodies examine inter-state complaints, as well as individual complaints, and even carry out inquiries and investigations.

The treaty bodies play a dual role in implementing the UNGPs:

1. They provide **guidance to States parties on their obligations** to respect, protect and fulfill the rights stipulated in the treaties that establish them, including in the context of business enterprises' activities under their jurisdiction.

For example, "given the broad range of children's rights that can be affected by business activities and operations" the Committee on the Rights of the Child (CRC) adopted General Comment No. 16 in 2013 to "provide States with a framework for implementing the Convention as a whole with regard to the business sector" (17 April 2013, CRC/C/GC/16).

In 2017, the Committee on Economic, Social and Cultural Rights (CESCR) also adopted General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (10 August 2017, E/C.12/GC/24).

2. They themselves represent a **means of remedy** when they have been granted authority to receive individual complaints.



# WITHIN THE ILO

International labour standards, especially those arising from the 10 fundamental conventions, which are set out in the Declaration on Fundamental Principles and Rights at Work, and the principles defined in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (known as the MNE Declaration) form an integral part of the human rights under the UNGPs. France is one of the States that has ratified the most ILO instruments, although it has still not endorsed a number of key conventions.

## PRIORITY

### RECOMMENDATION

The CNCDH recommends that France ratify the Occupational Safety and Health Convention (1981, No. 155) which has since become a fundamental convention, and support the adoption of a new ILO convention on decent work in global supply chains.

The ILO has several mechanisms for overseeing the implementation of the international labour standards, such as a review of the Member States' periodic reports on the measures taken to give effect to the ratified conventions, representations procedures and complaints procedures. The MNE Declaration establishes a specific follow-up mechanism. The ILO's supervisory system, which is characterised by its tripartite structure (representatives for governments, employers and workers), is especially rich and unique. However, the system needs to be strengthened.

## PRIORITY

### RECOMMENDATION

The CNCDH recommends that France should:

- ♦ Take concerted action to reinforce the follow-up mechanism of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
- ♦ Appoint a national focal point on a tripartite basis in accordance with the aforementioned Declaration for the purpose of actively promoting the principles of the MNE Declaration, especially among the business community, while ensuring a coherent link with the promotion of the other relevant instruments.



# WITHIN THE OECD

The OECD possesses an extensive corpus of recommendations and guides for both private and public enterprises to encourage responsible business conduct, particularly the Guidelines for Multinational Enterprises adopted in 1976. These Principles cover information disclosure, employment and industrial relations, the environment, bribery, consumer interests, science, technology and innovation, competition and taxation. In 2011, a specific chapter on human rights was added. The Guidelines were updated in 2023, especially to strengthen the recommendations relating to the environment, biodiversity and climate change, and recommendations relating to science, technology and innovation, as well as to clearly confirm that due diligence applies to upstream and downstream value chains, and ensure better protection for at-risk persons and groups.

To promote and implement the Guidelines, the 51 adhering countries must set up National Contact Points (NCPs), which constitute a (non-judicial) means of remedy within the meaning of Pillar 3 of the UNGPs, through the case-handling procedure known as *specific instances*. France has adhered to the Guidelines and appointed an NCP, which is one of the most active NCPs, but whose effectiveness as a means of remedy is being questioned.

## PRIORITY RECOMMENDATION

The CNCDH recommends that France and the French National Contact Point (NCP) continue carrying out their activities and supporting those of the OECD aimed at strengthening the NCPs, so that they can fully perform their duties in accordance with the core criteria of visibility, accessibility, transparency and accountability, and that they deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the OECD Guidelines for Multinational Enterprises. In particular, the CNCDH refers to the other recommendations in its report on the composition, resources and practices of the French NCP.

# 02

## PART TWO

### FRANCE'S ACTION AT REGIONAL LEVEL TO ENSURE RESPECT FOR HUMAN RIGHTS IN THE CONTEXT OF BUSINESS ACTIVITIES

The Council of Europe and the European Union are also two organisations where France can take action on a regional level to ensure protection and respect for human rights as well as access to remedy in the context of business activities.

# WITHIN THE COUNCIL OF EUROPE

The provisions of the European Convention on Human Rights (and its protocols), the European Social Charter, the revised European Social Charter and other European human rights protection instruments, as well as their interpretation by the European Court of Human Rights and the other supervisory bodies within the Council of Europe, help to determine the extent of the Member States' obligations and indirectly the responsibilities of business enterprises with regard to human rights and environmental issues in accordance with these instruments. The Council of Europe has also focused specific efforts on the subject of business and human rights, particularly Recommendation CM/Rec(2016)3 of 2 March 2016, in which the Committee of Ministers issues 70 recommendations based on the three pillars of the UNGPs. France is an active participant in developing and putting these efforts into practice.

## PRIORITY

## RECOMMENDATION

The CNCDH recommends that France should:

- ◆ Strengthen national and European implementation of Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States on human rights and business, including the recommendations related to private international law.
- ◆ Contribute to revising the Recommendation to include contemporary challenges, including issues related to the protection of the environment, the preservation of biodiversity and the fight against climate change, or the use of new technologies and artificial intelligence.
- ◆ Encourage the Council of Europe to reinforce the role and participation of all relevant stakeholders, including National Human Rights Institutions (NHRIs) and civil society (such as non-governmental organisations - NGOs, trade unions, consumer groups, academia and business) with the aim of increasing the openness and transparency of the process for reviewing the implementation of this Recommendation and involving them in identifying future priorities and actions.

**PRIORITY****RECOMMENDATION**

The CNCDH recommends that France support the uptake of new legally binding instruments within the Council of Europe that are likely to contribute to strengthening the framework for governing business activities in the area of human rights and the environment, particularly the right to a clean, healthy and sustainable environment, such as an additional protocol to the European Convention on Human Rights, as well as a convention on artificial intelligence, based on a human rights approach.

The Council of Europe's supervisory bodies (judicial and non-judicial), such as the European Court of Human Rights and the European Committee of Social Rights, play a contributory role in clarifying the States' obligations, including in the context of business activities, and represent a relevant means of remedy according to Pillar 3 of the UNGPs.

**PRIORITY****RECOMMENDATION**

The CNCDH recommends that France should:

- ♦ Submit a declaration to the Secretary General of the Council of Europe, in accordance with Article 2 of the Additional Protocol to the European Social Charter of 9 November 1995, to allow national NGOs under its jurisdiction to lodge collective complaints against it with the European Committee of Social Rights.
- ♦ Ramp up action to promote the collective complaints procedure of the revised European Social Charter among employer and employee representatives and NGOs.



# WITHIN THE EUROPEAN UNION

The European Union (EU) has spearheaded several norms that help regulate corporate activities with regard to human rights. It has an extensive body of rules that, while not specifically addressing corporate social responsibility, requires States to regulate corporate activities relating to human rights in certain areas (protection of fundamental rights, labour law, protection for whistleblowers, personal data protection, consumer protection, protection of the environment, etc.). The European Union has also progressively developed a policy on corporate social responsibility (CSR) and adopted a number of regulations aimed directly at governing corporate activities in the area of human rights, whether increasing information and transparency, restricting access to the European market according to criteria associated with these issues, arranging economic activities based on their contribution to sustainable development, and even imposing due diligence (sectoral or transversal).

The European Union's commitment to better regulate corporate activities in relation to human rights also involves external actions (diplomatic, trade and development policies) and its contribution to ensuring access to remedy.

France plays a leading and sometimes pioneering role in CSR within the EU, such as transparency of environmental, social and governance (ESG) information. However, France's actions are not without ambiguity, as illustrated in the case of the negotiations on the Corporate Sustainability Due Diligence Directive.

The CNCDH's report reviews France's action within the EU on the subject of business and human rights, and provides recommendations concerning the development of relevant EU instruments currently in the negotiations stage or their incorporation and implementation in France, especially the CSRD, the Corporate Sustainability Due Diligence Directive and the Forced Labour Regulation.



## Sustainability reporting - the CSRD

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Directive (EU) 2022/2464, known as the CSRD (Corporate Sustainability Reporting Directive), was adopted on 14 December 2022 and is one of a number of EU laws aimed at fostering transparency on how some companies integrate social and environmental challenges by requiring them to publish specific types of information. This legislation helps assess, monitor and manage companies' performance and their impact on society and the planet. It encourages responsible conduct.

The CSRD strengthens and harmonises the requirements for sustainability reporting, which applies to some companies, and extends its scope. Based on the new European Sustainability Reporting Standards (ESRS) adopted in July 2023, these companies will have to publish detailed information about their material impacts, risks and opportunities in relation to social, environmental and governance issues, according to the “*double materiality*” principle, i.e. they must not only include the risks to the actual company, but also the impact of their activities on people and the environment.

### PRIORITY

### RECOMMENDATION

**As part of the transposition of the CSRD**, the CNCDH recommends that France should:

- ♦ Insist that consideration be given to the risk of human rights infringements (individual and collective) for rights-holders rather than the risk for companies.
- ♦ Indicate more clearly that the “*interests of the undertaking's stakeholders*” and the “*undertaking's impacts on sustainability matters*” that must be taken into account in the business models and strategies of undertakings subject to the reporting

obligation must have been identified in consultation with the relevant stakeholders, and require the relevant undertakings to indicate which stakeholders were consulted and how.

- ♦ Emphasise that human rights form the backbone of social, environmental and societal reporting obligations, which are now referred to as «sustainability matters».

## Sustainability due diligence - the CSDDD



A directive on corporate sustainability due diligence, known as the CSDDD: was (at the time of publication of the CNCDH's report) under negotiation. This is the first EU initiative aimed at imposing cross-cutting due diligence on certain companies with regard to human rights and

the environment. France supports the adoption of European-wide legislation and has made a commitment in this direction in its national action plan on the UNGPs, shortly after the adoption of France's Due Diligence Act. However, its position within the negotiation process was ambiguous, particularly concerning the directive's scope of application.

### PRIORITY

### RECOMMENDATION

**As part of the negotiation process for the CSDDD and its future transposition into French law**, the CNCDH recommends that France should:

- ◆ Demonstrate transparency in the negotiation process.
- ◆ Specify a scope of application that covers all business activities, irrespective of their size and sector, including the financial sector and tech companies, while allowing for small and medium-sized businesses to adapt - and due diligence that extends to all their global value chains, both upstream and downstream.
- ◆ Include the protection of all internationally recognised human rights.
- ◆ Include a requirement for companies to reduce and report on their impact on climate change.
- ◆ Impose clear and robust due diligence obligations that go beyond mere compliance and which are based on the relevant international standards.
- ◆ Provide for effective and safe stakeholder involvement and consultation, including human rights and environmental defenders, by expressly including members of trade union organisations,

and making explicit reference to the obligation to respect the free, prior and informed consent of indigenous people and to their other rights.

- ◆ Adopt measures to support the companies concerned, as well as measures to inform and support rights-holders.
- ◆ Provide for robust monitoring and control procedures.
- ◆ Ensure that supervision by national administrative authorities does not exclude the possibility of holding a company liable, but is complementary to a judicial review.
- ◆ Oppose any provision providing for maximum harmonisation that would prevent the States from adopting provisions offering greater protection or which would allow them to restrict the scope of their legislation.
- ◆ Ensure that the directive maintains the freedom of the Member States to potentially refer cases to the courts to order companies to comply with their due diligence obligations.
- ◆ Allow for the possibility of reversing the burden of proof.

## Trade restrictions on certain goods - Forced Labour Regulation

The EU imposes restrictions on the trade of certain goods (or even bans) based on such criteria as human rights, which helps regulate companies' activities. This applies to the trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Regulation (EU) 2019/125), trade in arms (Council Common Position 2008/944/CFSP, as amended in 2019) or dual-use items (Regulation (EU) 2021/821).

A proposed regulation is also being negotiated to **prohibit products made with forced labour on the European Union market**. It covers products at any stage of extraction, harvesting, production or manufacture, irrespective of the size of the economic operator. Member States should designate competent authorities to detect any breaches

### PRIORITY

### RECOMMENDATION

With regard to the future regulation on the prohibition of products made with forced labour on the Union market, the CNCDH recommends that France should:

- ◆ Ensure that the regulation is based on a human rights approach, takes account of the views and interests of rights-holders at all stages of the investigation and decision-making process, and incorporates corrective measures to specifically protect those subjected to forced labour, offer adequate compensation and prevent the situation from reoccurring.
- ◆ Contribute to empowering the European Commission, after consulting with the competent national authorities, to establish a - rebuttable - presumption of forced labour for production sites or entire groups of products (in a specific sector) from a given region, where there is independent and verifiable information indicating widespread forced labour, with the effect of imposing a marketing ban or withdrawal on the product groups concerned.
- ◆ Support the inclusion of a certain adjustment to the burden of proof.

# EU external action - example of the trade policy

France is working within the EU to ensure that the EU's external action contributes to implementing the UNGPs, whether through its diplomatic policy on human rights, its development cooperation policy or its trade policy.

## PRIORITY RECOMMENDATION

The CNCDH recommends that France should:

- ◆ Ensure that trade agreements consistently include clauses for respecting all internationally recognised human rights by States and business enterprises.
- ◆ Ensure that clauses relating to compliance by parties to trade agreements with international instruments for protecting human rights, the environment and ILO conventions, are ambitious, include clear and binding terms, and aim to systematically protect human rights that are interdependent and indivisible.
- ◆ Make the implementation and compliance with conventions and other international texts, by which the States are previously bound in terms of human rights, an obligation of result, rather than an obligation of means.

The CNCDH makes recommendations to strengthen this action, such as in the area of trade policy, so that it is compatible with its human rights obligations and contributes to sustainable development and responsible business conduct among both private and public business enterprises.

## PRIORITY RECOMMENDATION

The CNCDH recommends that the parties to trade agreements should make ratification of all the fundamental ILO conventions a prerequisite for entering into such trade agreements. It also recommends that France ensure that trade agreements are used as a lever to encourage the ratification of all human rights conventions and treaties, as well as the main multilateral agreements on the environment, climate and biodiversity, while making sure that trade agreements explicitly mention human rights and environmental due diligence of business enterprises and investors, as well as the States' obligation to protect human rights and the environment.

# 03

## PART THREE

# FRANCE'S ACTION AT NATIONAL LEVEL TO ENSURE RESPECT FOR HUMAN RIGHTS IN THE CONTEXT OF BUSINESS ACTIVITIES

“

*States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*

Guiding Principle no. 1,  
UNGPs.



# ADOPT AN APPROPRIATE NORMATIVE FRAMEWORK

“

The UNGPs call on States to consider a *“smart mix of measures - national and international, mandatory and voluntary - to foster business respect for human rights.”*

UNGP Commentary, p.5

The French normative and institutional framework on business and human rights is characterised by its diversity.

There have been **three main stages in strengthening the normative framework for CSR in France** which successively aimed to:

- ◆ Encourage companies to be transparent about the social and environmental impacts of their activities (the New Economic Regulations (NRE) Act 2001).
- ◆ Impose due diligence obligations on companies in this particular area (Anti-Corruption Act 2016, and Due Diligence Act 2017 on human rights and the environment).
- ◆ Bind companies with an obligation on responsible management practices (PACTE Act of 2019 to drive business growth and transformation).

In addition to these stages, there are many other laws and measures that help regulate companies' activities in the area of human rights, whether respecting equality and diversity in the workplace, combating human trafficking and online hate, protecting whistleblowers, the environment and consumers, and so on.

The CNCDH report offers recommendations on France's normative framework and its implementation, especially concerning the Act on due diligence of parent companies and instructing undertakings.

## Due diligence Act



The Due Diligence Act (*Loi sur le devoir de vigilance*) is an “innovative and bold” piece of legislation that introduces “a preventive, educational and partnership-based approach incumbent on certain legal entities whose responsibility [for respecting human rights and] protecting the environment and the ecological

*transition is vitally important”* (CGEDD and IGJ report, Justice for the Environment, October 2019, p. 35).

Although the Act is already achieving results, practices are still inconsistent, and the Act’s implementation continues to fall short of meeting the many stakeholders’ expectations and complying with the UNGPs

### PRIORITY

### RECOMMENDATION

Regarding the Due Diligence Act, the CNCDH recommends:

- ♦ Extending the Act’s scope to encompass all types of corporations and reviewing the threshold relating to the number of employees.
- ♦ Ensuring effective and safe stakeholder involvement and consultation at all levels, including in the host country, by the people and groups affected, including human rights and environmental defenders. To this end, the CNCDH also recommends:
  - Specifically emphasising the obligation to respect free, prior and informed consent of indigenous people and their other rights.
  - Making it mandatory to engage stakeholders in the due diligence process.
  - Avoiding placing any restrictions on the involvement of trade unions or elected employee representatives in the alert and reporting mechanism, but making their involvement mandatory in all the stages of the due diligence process, and

not only involving trade unions and elected employee representatives of the parent company, but also of the group’s subsidiaries, or international trade union federations.

- ♦ Strengthening the involvement of trade union organisations or elected employee representatives, particularly by explicitly referring to the information, consultation and negotiation mechanisms stipulated by the French Labour Code, as well as by allocating resources in terms of delegation hours, expertise and training at all levels in the decision-making process.
- ♦ Reversing the burden of proof in cases involving companies’ civil liability on the basis of this Act.
- ♦ Specifying that Article L. 225-102-4 II of the French Commercial Code (Article L. 225-102-1 II as of 1 January 2025) does not require the reiteration of a formal notice to be sent to a defaulting company in relation to the initially criticised due diligence plan, as long as the main allegations remain unchanged.



# LEAD BY EXAMPLE

The State also has a duty to set an example when it comes to corporate respect for human rights. The State's need to lead by example lies at the crossroads of its personal responsibility to respect human rights, such as with regard to companies that it controls or in which it is a shareholder, and its obligation to protect.

The State must use its influence, particularly in the context of public procurement or public aid granted to companies, to encourage sustainable business practices that respect human rights and the environment.

## PRIORITY

## RECOMMENDATION

**The CNCDH recommends that France to ensure that the companies, in which it holds a controlling or significant interest, respect, protect and promote human rights in their activities and management practices.**

The State should set an example by:

- ◆ Adopting, publishing and implementing, especially by the French Government Shareholding Agency (*Agence des participations de l'État, APE*), a human rights and environmental due diligence policy.
- ◆ Asking companies subject to the Due Diligence Act 2017 to adopt, publish and effectively implement a human rights and environmental due diligence plan, and requesting all companies to prepare and imple-

ment human rights guidelines that make explicit and full reference to the international Bill of human rights and international human rights conventions, ILO standards (including the Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy), OECD Guidelines for Multinational Enterprises (updated in 2023) and the UNGPs. The subsidiaries, subcontractors and suppliers of the organisations concerned must also be required to comply with these guidelines.

- ◆ Developing training programmes and tools for APE employees that specifically include human rights.





*States should take additional steps to protect against human rights abuses by business enterprises that (...) receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”*

United Nations Guiding Principle  
no. 4..

## PRIORITY RECOMMENDATION

The CNC DH recommends that the need for the State to set an example should also involve ensuring that:

- ♦ The sustainable public procurement policy of the State and the local and regional authorities includes human rights as a cross-cutting issue and refers to them explicitly and unequivocally, so as to permeate the three pillars (economic, social and environmental) of sustainable development.
- ♦ Any public aid payments, particularly in the form of export credits, development funding or investment insurance, must be subject to compliance with human rights and environmental due diligence.



# GUARANTEE ACCESS TO REMEDY

Finally, France needs to take “appropriate measures”, in accordance with Pillar 3, to **guarantee access to effective remedy, through both judicial and non-judicial mechanisms**, in case of human rights violations committed by business enterprises within its territory and/or under its jurisdiction.

In terms of access to remedy, France has bolstered its legal arsenal in recent years. **However, the pathway to remedy is still strewn with obstacles.**

The **rules on jurisdiction may be hard to apply** when a dispute involves one or more foreign elements. **In criminal matters**, it remains difficult to hold the parent company liable for damage caused by one of its subsidiaries abroad. Although **civil liability** law has achieved progress by enacting the law on due diligence and enshrining ecological harm in the civil code, it is still limited in its scope and conditions of application.

## PRIORITY

### RECOMMENDATION

The CNCDH recommends **removing the barriers that prevent the French criminal courts from exercising jurisdiction in respect of acts committed abroad and facilitating prosecution for complicity by a French parent company for an offence committed by one of its subsidiaries abroad:**

- ◆ By amending Article 113-6(2) of the French Criminal Code so that French courts can exercise jurisdiction over the most serious offences committed abroad by a French company without being subject to the double criminality requirement.
- ◆ By removing Article 113-8 of the French Criminal Code or otherwise rescinding the requirement that victims or their beneficiaries must submit a prior complaint or that the authority in the country where the act was committed must submit an official denunciation.
- ◆ By amending Article 113-5 of the French Criminal Code to remove the requirement that a final decision must be first taken by the foreign court.
- ◆ By amending Article 689-11 of the French Criminal Procedure Code to remove the conditions preventing the exercise of true universal jurisdiction over the crimes enumerated in the Rome Statute, including when such crimes are business-related.

**PRIORITY****RECOMMENDATION**

The CNCDH recommends that **ecocide be recognised as a crime under French law.**

In addition, other considerations are involved when turning access to remedy into a reality, particularly in terms of protection against reprisals and access to information.

**PRIORITY****RECOMMENDATION**

The CNCDH recommends that France combat gagging procedures, especially by ensuring, including as part of the negotiations relating to the proposed EU directive on strategic lawsuits against public participation (SLAPPs):

- ◆ That the burden of proof is reversed where abuse proceedings are reported, by requiring the defendant to prove that proceedings based on trade secrets regulations are not abusive.
- ◆ That a fast-track procedure is set up to recognise in the short term that a complaint for defamation or infringement of trade secrets constitutes an abuse of procedure.

The CNCDH recommends that France should **strengthen its commitment to Human rights and environmental defenders**, especially by:

- ◆ Adopting a strategy on human rights and environmental defenders, modelled on the recommendations issued during the Human Rights Defenders World Summit held in Paris in 2018.
- ◆ Ensuring that its next National Action Plan for implementing the UNGPs features specific commitments and indicators concerning human rights and environmental defenders in relation to business activities, and providing more clearly identified contacts within ministries and embassies whom human rights and environmental defenders could contact when they feel threatened, and even creating a whistleblowing procedure for human rights and environmental defenders.
- ◆ Ensuring that business enterprises involve and consult with human rights and environmental defenders and take their situation into account when performing their human rights and environmental due diligence.

### The United Nations Guiding Principles

The United Nations Guiding Principles on Business and Human Rights aim to prevent business-related human rights violations and ensure access to remedy for rights-holders. The UNGPs were adopted in 2011 and are based on three pillars, i.e. protect, respect and remedy.

### Mandate

The French National Consultative Commission on Human Rights (CNCDH) has long been interested in corporate accountability for human rights and France's role in this particular area. In 2013, the CNCDH was asked to provide its opinion as France began preparing its national action plan for implementing the United Nations Guiding Principles on Business and Human Rights, and in 2017 it was granted a mandate to monitor and evaluate the plan's implementation.

### Report

In this context, the CNCDH has produced its first report, which provides an overview of France's policies on business and human rights at international, regional and national level, in light of France's international human rights obligations and the United Nations Guiding Principles.

The recommendations issued by the CNCDH in this report are aimed at improving the implementation of the relevant norms and learning lessons for an ambitious and coherent "Business and Human Rights" public policy based on a human rights-based approach and focused on ensuring effective respect and protection of human rights by the State and business enterprises.

### Appendix

The report is accompanied by an appendix (available online), which sets out the main normative and institutional frameworks (international, European and French) relating to the topic of business and human rights.

### The Essentials

"The Essentials" brochure summarises the three pillars of the UN Guiding Principles, illustrates France's action on the subject at international, regional and national level, and presents the priority recommendations