

## The mechanism of promoting corporate responsibility to respect human rights through international norms and how it works in Africa

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### アフリカにおける国際規範を通じた企業の人権尊重メカニズムの有効性

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#### 要 旨

企業活動による人権に対する負の影響を無くし対処する方法についての議論に、画期的な変化をもたらした「ビジネスと人権に関する指導原則（以下、UNGPs）」は、2011年に国連人権理事会（UNHRC）において満場一致で承認され、ビジネスと人権（以下、BHR）の統一基準として国際社会に受け入れられた。

UNGPsの特徴は、1つは企業に対し活動する国の国内法や規制に加えて、国際人権法に則り人権を尊重した事業を行うことを求めた点である。2つには、それ自体に法的拘束力が無く、市民社会組織（CSO）等のアクターがボトムアップ型で参加する取り組みによって浸透することが期待される、ソフトローの枠組みである点である。3つには、サプライチェーン上での取引関係、国際協力を通じたBHR推進プロジェクト、CSOのキャンペーン活動に活用され、これらを通じて社会へ普及していった点である。

先進国の中には、UNGPsに則った国家行動計画を策定した国や、人権に対する負の影響を特定、対処、防止することを企業に求めるデュー・デシリジェンス法を策定する国が現れた。しかし、アフリカにおけるUNGPsを通じたBHRの推進は、先進国ほどには進んではいない。UNGPsが人権の尊重を推進する上で前提とする仕組みは、なぜアフリカ諸国では想定通りに進まないのだろうか。本稿は、その仕組みを特定し、それが機能しない理由を探る。

このために本研究は、第一にUNGPsが前提とするBHR推進の仕組みを読み解く。第二に、どのような政策ツールや民間規制が指導原則の枠組みと相乗効果を持って使われるのかを説明する。次に、UNGPsの仕組みをアフリカ諸国で行われているBHR推進の取り組みに照らし合わせて、どのように機能したかを検討する。

この研究は、UNGPsがBHRを推進するために前提とするメカニズムを紐解き、それがアフリカの国々でどのように機能したのか、あるいはしなかったのかについて検討し、その機会と欠点は何かについて考察し、アフリカでのUNGPsを活用したBHRの推進が遅い理由の仮説を導き出す。本稿によって導かれた仮説は、次の研究で検証し、アフリカで企業が人権を尊重するように促進する方法を特定することに貢献することを目指す。

Keywords: UNGPs, Business and human rights, Africa, HRDD, the norm life cycle.



## Contents

1. Introduction
  2. Background
    - 2.1. The development of BHR institutional framework
    - 2.2. BHR issues in Africa
  3. Fundamental features of UNGPs' regulatory framework
    - 3.1. The soft law feature of UNGPs
    - 3.2. UNGPs' strategy to spread norms
      - 3.2.1. The norm life cycle as a premise of the promotion of UNGPs
      - 3.2.2. Criticisms of the UNGPs' BHR diffusion mechanism and a smart mix solution
    - 3.3. UNGPs' assumption to promote business respect for human rights
      - 3.3.1. UNGPs' assumption to influence companies through the major BHR actor's behavior
      - 3.3.2. Snapshot of other BHR tools and the influence of UNGPs
  4. UNGPs and BHR in Africa
    - 4.1. BHR promotion in line with UNGPs in Africa
    - 4.2. Example of UNGPs promotion with the involvement of local stakeholders in Africa
    - 4.3. Challenges of adopting the UNGPs' global governance to African countries
  5. Conclusion
- Bibliography

## 1. Introduction

Scholars, international organizations, policymakers, companies, and civil society have been debating how to manage and control the negative impacts of business activities, especially in developing countries, since the 1970s. This series of debates came to be known as Business and Human Rights (BHR). After a long discussion, a significant institutional change, the United Nations Guiding Principles on Business and Human Rights<sup>1</sup> (hereinafter UNGPs), was unanimously endorsed by the UN Human Rights Council (UNHRC) and became the unified standard of BHR. The international society came to expect companies to respect human rights in line with international human rights laws, in addition to domestic human rights regulations and rules<sup>2</sup>.

As an important market and a source of the global market, Africa is no exception to the adverse impacts of businesses. Business and Human Rights Resource Center (BHRC) reports cases of companies' negative human rights impacts in Africa and claims that major abuses occur daily (BHRC 2014<sup>3</sup>). However, the adverse impacts on human rights due to global business in Africa remains unsolved until today. The UNGPs are expected to address these problems, but they are not necessarily effective in promoting BHR in Africa.

Many scholars discuss the deficits of the UNGPs' BHR promotion mechanism. For example, Backer (2008) points out that the soft law features of the UNGPs do not have strong enforcement power compared to hard laws. However, Ruggie (2017) and Ratner (2020: 167) claim that hard and soft laws are meaningful and should not be dichotomized. UNGPs complement this limitation in enforcement power by adopting a "smart mix solution,"<sup>4</sup> which uses mixed public, private, mandatory, and voluntary methods. UNGPs are spread through public and private actions, including procurement contracts and buyers' audits (Ruggie 2015).

The system was implemented in developed countries. However, the progress of BHR promotion in line with UNGPs in Africa is challenging. It is criticized that the UNGPs' way of promoting BHR does not fit the African context (Brett 2018). However, the reason why UNGPs promotion mechanism do not work in Africa is still unclear. There is little discussion on how BHR promotion through UNGPs in Africa differs from that in developed countries.

This study explores how the UNGPs' mechanism to promote corporate responsibility to respect human rights works in Africa and identifies the reasons why it does and does not work. For this purpose, the study identifies the UNGPs' mechanism to promote BHR work in developed countries and explains which BHR-related tools and methods are used. Next, we examine how the mechanism functions in Africa. The research question is, "What are the UNGPs' mechanism and assumptions of promoting BHR, how does it work in African countries, and what are the limitations and opportunities to promote companies' responsible behavior in Africa?" This study contributes to finding potential reasons why BHR promotion in Africa did not accelerate with the emergence of UNGPs, which is critical for further research that discovers how to promote companies to respect human rights in Africa, which is one of the most lagging regions. The findings can also be applied to other developing countries.

The structure of this paper is as follows. After this introduction, Section 2 provides background on the development progress of BHR, focusing on institutional change and BHR issues in Africa. Section 3 presents an overview of the UNGPs' BHR promotion mechanism by explaining the UNGPs' fundamental features and strategies to promote BHR. It also discusses how the UNGPs' BHR promotion actions influence actors, and what tools and methods are employed in the process. Section 4 outlines how UNGPs facilitate business responsibility to respect human rights work in Africa and discusses the challenges and opportunities. Section 5 concludes the paper and examines the current state of BHR promotion in Africa, focusing on the UNGPs, and draws hypotheses about what may influence respect for human rights in Africa.

## 2. Background

### 2.1. The development of BHR institutional framework

This section explains the fundamentals of UNGPs. The focus of the long-lasting debate in the United Nations (UN) was on leading multinational corporations (MNCs) to operate with respect for human rights in countries whose states lack resources as central regulators or willingness to regulate. The UN first attempted to negotiate a code of conduct for MNCs in the 1970s but failed (Sagafi-nejad 2008; Ruggie 2013: XVI). By the 1990s, the debate had become about blaming MNCs for

human rights abuses committed outside of the territory, such as in developing countries (Wettstein 2016: 78). This is when the UN Sub-Commission on the Promotion and Protection of Human Rights began drafting “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.” (hereinafter Norms)<sup>5</sup> The discussion continued until 2003, when it presented the text draft of the Norms to the Commissions on Human Rights (formerly the United Nations Human Rights Council: OHCHR) (Sagafi-nejad 2008; Ruggie 2013: XVI; Weissbrodt & Kruger 2003; Sauvart 2015). The UN debate on a regulatory framework did not meet the agreement to develop a treaty at that time; it triggered a serious discussion on corporate responsibility to respect human rights among the major stakeholder groups, including governments, businesses, and civil society (Ruggie 2013: XVII)<sup>6</sup>. After deciding against developing an international norm on BHR, the UN Secretary-General appointed Professor John Ruggie as his “Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises” (hereinafter SGSR) in 2005 (Ramasastry 2013). Ruggie was appointed as an SGSR to work on a research project to understand the current state of BHR and identify gaps in the way companies respect human rights. After six years of Ruggie’s commitment as an SGSR, epoch-making institutional change occurred.

The significant institutional change was the development of UNGPs that offered a solution to BHR discussions (Buhmann 2015). Before developing the UNGPs, Ruggie proposed the “Respect, Protect and Remedy” policy framework, the so-called Ruggie framework, in 2008<sup>7</sup>. Based on the Ruggie framework, he developed UNGPs, the unified standards of BHR. The norms were unanimously endorsed by the UNHRC in 2011. The significance of the UNGPs is as follows. First, it was the first guidelines in which the global community agreed with the scope of BHR since the 1970s when the debate over BHR began. Second, the UNGPs identified the scope of BHR as the state’s duty to protect human rights, the corporate responsibility to respect human rights, and access to remedies for business-related abuse victims following international standards. Third, following the UNGPs, companies’ scope to practice respect for human rights following international standards is not limited to direct or indirect business relationships throughout the supply chain. It includes communities, societies, and services affected by business. Thus, the scope of the UNGPs is the entire value chain, including consumers (Ruggie 2013).

The mandatory elements of the UNGPs are based on “the implications of existing legal standards for states and businesses; to supplement those with policy rationales intended to speak to the interests and values of both sets of actors; and in addition to Human Rights Council endorsement.” (Ruggie 2013: 46)<sup>8</sup> The legal standards on which the UNGPs rely are the fundamental human rights contained in the Universal Declaration of Human Rights (1948), the International Covenant on Human Rights (1966), and the International Labor Organization’s (ILO) core labor standards (1998). As a result, the UNGPs formed a common understanding in the international community that human rights violations by companies must be dealt with according to international human rights laws under state obligations and corporate responsibilities.

One of the issues addressed by the UNGPs was that domestic laws set by the state operationalize domestic human rights guarantees but are not necessarily consistent with international human rights law. Until now, many developing countries’ domestic laws set standards lower than those required by international human rights law. Furthermore, due to the limitations of domestic laws, companies cannot fulfill their responsibility to respect human rights simply by complying with developing

countries' domestic laws (Ruggie 2013; UN 2008). Indeed, the international community had difficulty managing internal affairs. Therefore, it was left up to autonomy (Ruggie 2013: xxxii), which became a structural limitation (Ruggie 2013: 77).

The UNGPs recommend promoting BHR using other tools. Human rights due diligence (HRDD) for companies to identify, mitigate, and prevent the direct or indirect negative impacts on human rights is an "effective tool" to promote BHR if it is appropriately implemented<sup>9</sup>. The UNGPs recommend the implementation of HRDD to all forms of business<sup>10</sup>. However, HRDD has been criticized for limited local stakeholder engagement in the HRDD process (Maher & Buhmann 2019).

In addition, an expanded network of stakeholders who participate in the BHR promotion process and influence public and private institutional design are prerequisites for the UNGPs (Ruggie 2013). With the cumulative progress that has been made with the formulation of public and private regulations influenced by the UNGPs, coherent actions and processes to promote BHR have been taken. The UNGPs influenced prominent BHR actors' behavior and accelerated the development of other private and public regulatory frameworks. Moreover, as multinational enterprises (MNEs) use these frameworks, international society recognized that respect for human rights according to international human rights law is a corporate responsibility, but not something to be implemented through companies' voluntary efforts.

Another epoch-making influence brought about by the UNGPs is the change in corporate social responsibility (CSR). CSR is becoming subject to public regulation, as it is carried out according to companies' voluntary intentions (Buhmann 2015). Today's CSR has changed to a series of concrete measures for a company to respect human rights under international standards throughout its business by knowing where human rights risks are and disclosing countermeasures of human rights risks (Ruggie 2013: 122). Gradually, CSR has come to demand respect and compliance with human rights following international standards beyond the national government's scope of administrative affairs in the company's home country (Buhmann 2015; 2016).

## 2.2. BHR issues in Africa

The negative impacts of global business on human rights in Africa remains an issue to be addressed, as negative human rights impacts and major abuses occur daily in Africa (BHRC 2014). There are various BHR issues in Africa. For example, the African National Human Rights Institutions (NANHRI) claimed that issues related to labor<sup>11</sup>, land<sup>12</sup>, environment, capacity building, and establishing focal points of BHR are crucial BHR issues in Africa (SOMO et al., 2018). It is expected that UNGPs promoting BHR in Africa will contribute to avoiding and mitigating these BHR issues. This section explains three types of adverse business impacts as examples, followed by difficulties in promoting BHR.

The first is the direct negative impacts of companies' operations on communities and individuals. For example, the famous oil spill accidents by Royal Dutch Shell adversely impacted the activities of the surrounding communities<sup>13</sup>. Another example is the large-scale investment associated with land acquisition. For instance, Addax Bioenergy Sierra Leone faced a land-related conflict between a foreign company and its communities (ActionAid 2013)<sup>14</sup>.

The second is the indirect adverse human rights impacts through supply chain relationships. Kansai Electric Power Co., Ltd. was criticized for supporting apartheid policies and human rights violations by importing uranium produced in Namibia (Makino 2014: 4).

The last belongs to both direct or indirect adverse impacts on human rights. For example, child labor is critical in Africa; the prevalence of child labor is highest in Africa (72.1 million, 19.6% of all children) (EU 2020). The ILO (2019) reported that in Burkina Faso and Niger, children comprise between 30% to 50% of the gold mining workforce. In Niger, between 30% to 50% of the gold mining workforce comprises children<sup>15</sup>. The US Department of Labor<sup>16</sup> reported that slave labor and child labor in cocoa farms in Ghana and Ivory Coast are an urgent matter. 21% of all children illegally labor on cocoa farms (Higonnet, Bellantonio, & Hurowitz 2017). In addition, the “lack of information on rights, responsibilities of business, and on available mechanisms, ineffective judicial systems, lack of independence of operational-level grievance mechanisms, lack of enforcement of decisions, and so forth” are recognized issues (Wilde-Ramsing 2018)<sup>17</sup>.

BHR under the UNGPs is embodied through the formulation of National Action Plans (NAPs), which present the state's expectations for business enterprises and the integration of BHR into other policies. However, this mechanism does not work well in Africa. The ability of the state to fulfill its role and obligation to respect human rights, which is a prerequisite for the penetration of UNGPs, is low. It has been noted that Africa is a region with significant challenges in government functions. In addition, civil society is weak (Chabal & Daloz 1999). This is expected to be a substantial obstacle to the spread of UNGPs in Africa<sup>18</sup>.

Many studies discuss that African state management system differs from that of developed countries. Instead of discussing differences in the system, this study takes a closer look at the prevention of the penetration of UNGPs in Africa.

### **3. Fundamental features of UNGPs' regulatory framework**

#### **3.1. The soft law feature of UNGPs**

UNGPs are soft law instruments created in a bottom-up, participatory manner (Ruggie 2013)<sup>19</sup>. The UNGPs strategy for the promotion of BHR is enormously dependent on its soft law characteristics. Therefore, this section explains soft law characteristics as the fundamental features of UNGPs.

Soft law is defined as law that “begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.” (Abbott & Snidal 2000: 422) Soft law emerged because the scope of the business of MNCs that transcends political boundaries exceeds the state's legally binding capacity and cannot be controlled by the domestic law of the home country. This created a disadvantage between public law and territorial companionship (Backer 2008: 6).

While hard law refers to legally binding instruments, such as treaties and international laws, soft law refers to instruments

that do not enforce legally binding international agreements. Soft law is a new system of governance that narrows significant gaps in the reach of public law and the actions of economic collectives (Backer 2008: 10). Soft law instruments in BHR include the foundational Universal Declaration, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration), the ILO Declaration on Fundamental Principles and Rights at Work, and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) (Ruggie 2013: 47).

While soft law instruments used to be criticized because they “[fall] short’ on one or more of the three dimensions of legalization,” (Abbott & Snidal 2000: 423) benefits are also identified. For example, softer legalization is more comfortable than hard legalization with its more relaxed legalization elements (423). Hard and soft laws cannot be dichotomized because they are not alternatives (422), but they are intricately related and complement each other (Ratner 2020: 169). Soft law solves economic actors’ problems beyond the control of public law, which arises because businesses have more influence than governments (Backer 2008: 26). Soft law frameworks, such as public-private partnerships, codes of conduct, and ethical rules for the regulation of MNCs’ behavior, have no legal effect but are effective (11).

To promote BHR, both hard and soft laws are meaningful and should not be dichotomized (Ruggie 2017; Ratner 2020: 167). It is argued that the UNGPs will eventually become hard laws by taking the form of soft law. UNGPs would be hardened by becoming a legally binding initiative of the government (Dumbuya 2014), spread and hardened through private law contracts, such as procurement contracts and buyer audits (Ruggie 2015). Therefore, UNGPs as soft law instruments will have increased influence by interacting with various public and private systems and stakeholders.

### **3.2. UNGPs' strategy to spread norms**

The important feature of soft law instruments is that they require the participation of diverse stakeholders to be effective<sup>20</sup>. UNGPs were developed on the premise that norms should be internalized by the people involved and have a “taken-for-granted-quality” mentioned by Finnemore and Sikkink (1998: 894) by bringing about successful normative change (Ruggie 2013: 129). Likewise, UNGPs are soft law instruments that use a constructive way of norm diffusion to internalize societal norms. Ruggie presented six strategic paths to norm internalization, namely, create a shared knowledge base, ensure process legitimacy, engage new communities of practice, road testing, gain endorsements, and achieve convergence. The following section discusses the details of the UNGPs’ strategy to spread norms.

#### **3.2.1. The norm life cycle as a premise of the promotion of UNGPs**

UNGPs promote BHR through the norm diffusion mechanism, namely, the norm life cycle. UNGPs use a polycentric governance approach to establish, disseminate, and implement norms through a distributed network (Ruggie 2017b). They use the distributed network approach that “turned out to be superior to relying only on UN processes and happenstance uptake by other relevant parties.” (Ruggie 2017b: 21) This approach triggered the “norm cascading” noted by Finnemore and Sikkink (1998), which enabled UNGPs to have a broader influence than their origin (Ruggie 2017b: 21)<sup>21</sup>. The premise of UNGPs is the patterned “life cycle,”<sup>22</sup> in which norms evolve through different segments of the life cycle.

Finnemore and Sikkink (1998) argue that the “life cycle” is the process of norm development through emergence, a tipping point, and a cascade. Finally, “norm internalization occurs; norms acquire a taken-for-granted quality and are no longer a matter of broad public.” (Finnemore & Sikkink 1998: 895) Norm promoters at the international level construct a transnational advocacy network to promote norms. They believe in the ideas and values embodied in the norms but do not target communities (Finnemore & Sikkink 1998: 898).

The three stages of the norm life cycle to internalize the norms first presented in 1998 was reevaluated and broadened “the five-stage ‘spiral model’ of human rights” in 1999 (Bates 2015). Thomas Risse, Stephen Ropp, and Kathryn Sikkink (1999) developed a five-stage spiral model that outlines the stages and processes through which human rights norms become socialized into domestic settings (Risse & Sikkink 1999). The spiral model of norms, in which international norms affect domestic institutional systems through transnational advocacy networks, is a diffusion process that influences flow from north to south. Forming a transnational network of local and international non-governmental organizations (NGOs) affects human rights-violating states to change their behavior by reaching out to the international community and issuing direct criticisms. In this form, the penetration of human rights norms was modeled as a spiral model. That is, “the diffusion of international norms in the human rights area crucially depends on establishing and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments.” (Risse & Sikkink 1999)

The so-called norm life cycle is one of the major frameworks of constructivism. However, this model, including the spiral model of norms, has been criticized for its deficits. Some of these deficits include issues with the structure of global injustice, such as the colonial imposition of modern normative order (Inayatullah & Balaney 2012), the issue of the infantilization of actors subject to socialization, and liberal bias (Epstein 2012: 143).

Others criticize that the norm life cycle focuses on the limited role of local actors in diffusing the norm. Acharya (2004), Wolff and Zimmermann (2016), and Zwingel (2012) explain that internalization occurs through diverse processes by local actors. They emphasize various techniques by which domestic actors localize international norms in line with national cultures and norms. Acharya (2011; 2013) reexamines actors’ roles that have been the target of socialization, to actors who impacts international norm formation instead. He claims that domestic actors who locally internalize norms influence international norms from the developing world to the rest of the world. Acharya clarifies that active role of local actors is essential. Likewise, Bettiza and Dionigi (2015), Steinhilper (2015), and Towns (2012), who researched the norm life cycle model, reconfirm the position of local actors by emphasizing the bottom-up diffusion process of norms from the south. Norm diffusion requires local stakeholders’ participation. Thus, UNGPs that use the norm life cycle diffusion method inevitably face the same limitation as the norm life cycle model. That is, the UNGPs face a structural issue that requires stakeholder engagement, including rights holders.

### 3.2.2. Criticisms of the UNGPs’ BHR diffusion mechanism and a smart mix solution

Simons and Handl (2019), by referring to Smith’s theory of the “relation of ruling,” (Smith 1996) criticize the UNGPs



because they are the technology that establishes the “relation of ruling.” They note that “[t]he relations of ruling are text-mediated and -based systems of ‘communication’, ‘knowledge’, ‘information’, ‘regulation’, ‘control’, and the like.” (Smith 1996: 175; Simons & Handl 2019: 116) They claim that UNGPs “help to govern the lives and actions of others whose subjectivity is unlikely to be fully captured within the textual record.” This critique indicates that people who created the UNGPs live outside of the texts that help to govern lives and actions. Based on Smith’s relation of ruling, “the textually constituted institutional reality will thereby exclude or limit certain experiences from the realm of institutional concern.” (149)

Simons and Handl (2019) also explain the relationship between the ruling consequence of marginalization for women<sup>23</sup>. They are critical of the UNGPs because women’s rights are categorized as “additional rights,”<sup>24</sup> since the UNGPs identify women as marginalized populations in the guiding document. Grosser (2016), a feminist scholar, claims that it is crucial to develop and institutionalize the new standards and new processes of regulation and governance relating to corporations and their responsibilities to society by citing Bebbington, Brown, Frame, and Thomson (2007: 360; Grosser 2016: 66). In addition, the UNGPs’ global governance as neo-liberal failed to capture the context of local problems and involve local stakeholders. Likewise, UNGPs must function effectively at the national level because they are methods used to legally bind companies to international human rights, using a method that differs from international treaties (Augusten 2018: 14).

To overcome their limitations, UNGPs proposed hard and soft legislation and a “smart mix” solution<sup>25</sup> that exercises guidance and incentives that impact non-regulatory CSR (Buhmann 2015). In international politics, the UNGPs’ soft law was seen as managing and governing cross-border corporate activities, and the smart mix approach’s practice and effectiveness were discussed (Ponte 2019; Buhmann 2015).

However, there are challenges when implementing BHR. The UN Working Group on the issue of human rights, transnational corporations, and other business enterprises (UN BHR Working Group) analyzed the cause of failures as governments lack leadership and are “not fulfilling their duty to protect human rights, either failing to pass legislation that meets international human rights and labor standards, passing legislation that is inconsistent or failing to enforce legislation that would protect workers and affected communities.” (UN 2018)

Therefore, UNGPs use constructive ways to spread norms and expand the network of stakeholders with relevant actors’ involvement, including non-state actors. As a result, UNGPs influence public and private institutional designs and their implementation.

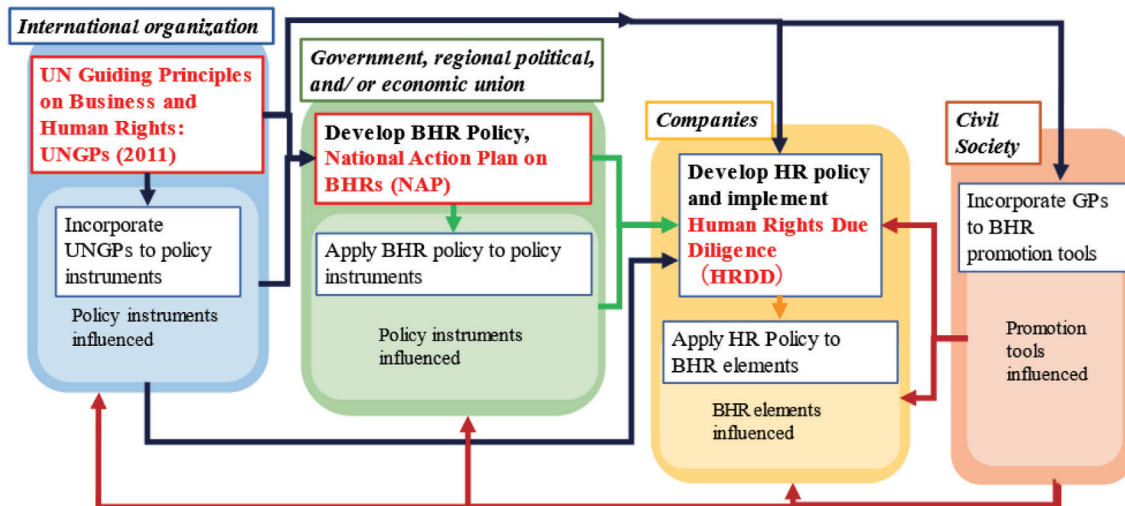
### **3.3. UNGPs’ assumption to promote business respect for human rights**

#### **3.3.1. The UNGPs’ assumption to influence companies through the major BHR actor’s behavior**

The causal relationship between UNGPs and prominent BHR actors’ behavior is not singular; however, UNGPs are the primary factor that changed BHR actors’ consensus on BHR to align with international human rights standards. Figure 1 presents how UNGPs (2011) influenced major BHR actors, including international organizations, governments, companies,

and civil society, and attracted the development of other private and public regulatory frameworks and other instruments.

**Figure 1. The simplified conceptual diagram of structural influence of UNGPs on corporate behavior through major BHR actors' actions**



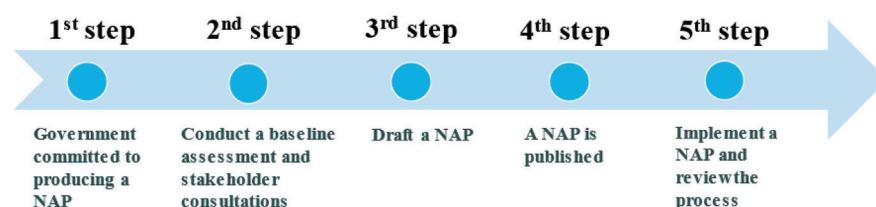
Source: Created by the author.

\* The causal relationship is not singular, although the diagram shows a simplified relationship.

First, starting from the square box of the international organization on the far left, UNGPs were unanimously endorsed by the UNHRC in 2011. Even before the UNGPs, during the development of the Ruggie framework in 2008, international organizations reflected the UNGPs' recommendations on policy instruments. For example, the OECD Guidelines (Narine 2015: 229; Buhman 2015) and the ILO MNE Declaration incorporated UNGPs (Ruggie 2013). The risk management frameworks adopted by financial institutions, such as the Equator Principles and the IFC Sustainable Framework, are also aligned with UNGPs. The UNHRC established the UN BHR Working Group in 2011. The updates of human rights elements of these international instruments gradually influenced other major BHR stakeholders, such as governments, companies, and civil society.

Second, UNGPs request that governments develop policies and legal systems to lead companies to respect human rights in line with internationally recognized human rights standards through the entire value chain. Thus, the first action of governments, including regional political and economic unions, is to develop a National Action Plan (NAP) on BHR. Then, governments conduct a baseline assessment and stakeholder consultations, draft a NAP, publish the NAP, start implementing the NAP, and review the process continuously. Figure 2 shows a simplified NAP development process. As of August 22, 2021, 26 countries<sup>26</sup> have already developed the NAPs, mainly in developed countries (OHCHR website<sup>27</sup>).

Figure 2. Simplified NAP development process to implement the BHR policy of UNGPs



Source: Created by the author and inspired by relevant documents, including UNGPs.

Regional unions and state governments apply BHR policies to other policy instruments, including regulatory instruments. For example, the French corporate duty of vigilance law of 2018 requires companies with more than 5,000 employees in France or more than 10,000 employees worldwide to have HRDD for their subsidiaries and business partners. Furthermore, the EU has examined the Due Diligence Report Act, which requests that companies implement HRDD. In addition, other European countries, including Germany, the Netherlands, Austria, Belgium, and Norway, proposed domestic laws that require domestic companies to respect human rights in their business activities outside the state's political territory<sup>28</sup>.

Furthermore, these BHR policies are applied to economic policy, foreign aid, and other policy instruments, including EU investment agreements and trade agreements that incorporate UNGPs<sup>29</sup>. Others include the Economic Partnership Agreement (EPA) and Free Trade Agreement (FTA) conditions (i.e., the EU, UK, and USA<sup>30</sup>), Development Aid (Official Development Assistance: ODA) conditions and projects (i.e., Norway<sup>31</sup>), public procurement conditions, official foreign investment support conditions (i.e., German<sup>32</sup>), the stewardship code (i.e., UK<sup>33</sup>), and Multi-Stakeholder Initiative (MSI) membership criteria (i.e., Germany and the Netherlands<sup>34</sup>).

Third, companies integrated UNGPs in their code of conduct, developed human rights policy (hereinafter HR policy), and implemented HRDD throughout their supply chains. The UNGPs' second pillar, the corporate responsibility to respect human rights, recommends that companies develop HR policy and implement and publish their HRDD process to respect human rights. As a result, companies ideally incorporate HR policy within the HRDD process, including the procurement policy and contracts, stakeholder dialog, and contact windows for potential victims and other stakeholders. Companies also publish a report to disclose the HRDD process, adopt private regulations or certificate schemes, and join the relevant MSI and action platforms<sup>35</sup>.

Fourth, civil society welcomed UNGPs and many BHR-related tools by civil society incorporated UNGPs. The tools that promote responsible business conduct, such as private regulations, certificates, guidance, and guidelines, integrated the UNGPs' BHR policy into their policies and principles. These tools include, for example, ten principles of the UN Global Compact, ISO 26000, the Swiss Platform for Sustainable Cocoa, and the Responsible MICA Initiative. In many cases, they are involved in engagements with other stakeholders through MSI. Through MSI platforms, civil society developed reporting and evaluation benchmarks and databases. For example, the Global Reporting Initiative (GRI), Corporate Human Rights

Benchmarks (CHRB), and KnowTheChain enable stakeholders to find companies' HRDD activities via online platforms. Moreover, civil society works closely with communities and rights holders through training, sensitization campaigns, and stakeholder dialog.

### 3.3.2. Snapshot of other BHR tools and the influence of UNGPs

UNGPs are “a Model Law which states could use to enact laws imposing obligations on businesses within their jurisdictions, or even adding human rights in the international investment agreements and making use of the international arbitration as an enforcement mechanism.” (Cirlig 2016: 229) UNGPs were developed under the assumption that norms should be internalized by involving other actors and tools, including BHR instruments and methods. Without a synergistic effect by working with and using other BHR instruments and methods, UNGPs would not diffuse even in developed countries, much less in developing countries<sup>36</sup>. This section examines the instruments and methods that supplement each other.

A wide variety of instruments and methods have been developed to supplement the limitations of UNGPs to promote BHR. This paper calls these instruments and methods BHR tools. Figure 3 and Figure 4 are plotted by the decision makers of BHR tools on the horizontal axis and the degree of enforcement power of these tools on the vertical axis. The political decision makers on the left side of the horizontal axis include the government and parliament. The private decision makers on the right side of the horizontal axis include private actors, such as civil society, companies, and unions.

The author classified these BHR tools in each quadrant of Figure 4 into four groups, as indicated in Figure 3. The first quadrant of Figure 3 is private regulatory frameworks, second is institutional frameworks, third is policy tools, and fourth is action platforms and other private actions. The BHR tools in the second quadrant are the most enforceable. The specific names of the tools are shown in Figure 4. Items indicated by a solid line are types of tools, and items circled by a dashed line are the names of the tools.

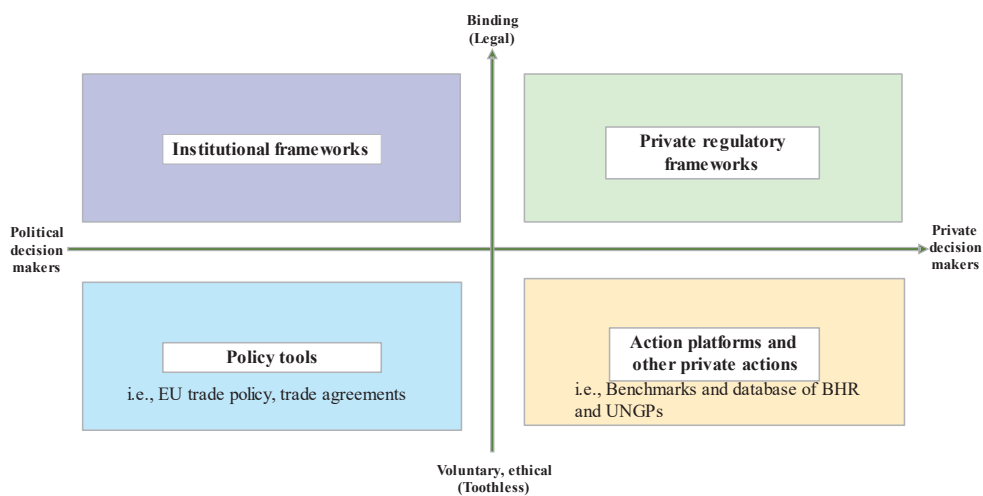
Examples of BHR tools presented in Figure 4 in the first quadrant are private regulatory frameworks, including the International Code of Conduct for Private Security Service Providers (IcoC) and the Roundtable on Sustainable Palm Oil (RSPO). It also includes procurement contracts and investment agreements. UN treaties, including the UN Convention on Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples, are also in the second quadrant. BHR tools in the third quadrant are policy tools developed and used by political decision makers. Guidelines and principles are in the third quadrant, such as the OECD Guidelines, the IFC Sustainability Framework, and UNICEF's Children's Rights and Business Principles. Others in the third quadrant include stewardship codes, ODA contracts and conditions, public procurement contracts and conditions, and ILO conventions. Finally, tools such as MSI, joint action platforms, and the ODA program lie in the third and fourth quadrants because these tools are led in collaboration between political and private actors.

MSI and joint action platforms, such as Voluntary Principles on Security and Human Rights (VPs), the Extractive Industries Transparency Initiative (EITI), the Bangladesh Accord, ISO26000, the Fair Labour Association (FLA), the Swiss Platform

for Sustainable Cacao, and the UN Global Compact (and UNGC 10 Principles) are shown in Figure 4. International cooperation assistance programs are listed between the third and fourth quadrants. The fourth quadrant is action platforms and other private actions. Instruments such as the Benchmarks and Database of BHR and UNGPs, private action platforms, industry associations, and philanthropic CSR programs are included in this quadrant. UNGPs are at the center of Figure 4 since the UNGPs were developed through the polycentric governance approach among state and non-state actors and are soft law instruments that do not have the binding legal power of international human rights laws. The tools shown in each quadrant of Figure 4 interact with each other and have a synergistic effect on the promotion of BHR.

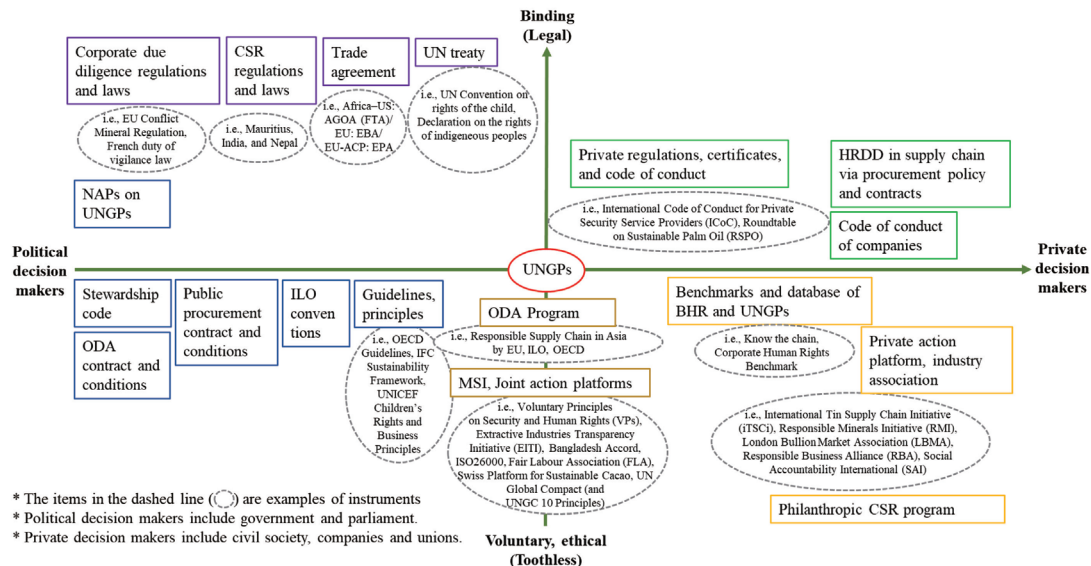
A wide variety of tools promote BHR in different ways. However, there is “no silver bullet solution” to BHR challenges (Ruggie 2013). The next section discusses the validity of the UNGPs’ mechanism that utilizes the tools explained in this section.

**Figure 3. Classification of BHR tools (categorized) that supplement the limitations of UNGPs to promote BHR**



Source: Created by the author.

**Figure 4. Conceptual diagram of tools that supplement the limitations of UNGPs to promote BHR plotted by their decision maker (horizontal axis) and degree of enforcement power (vertical axis)**



Source: Created by the author.

As discussed, the soft law of UNGPs and the norm life cycle characteristics diffuse norms effectively, influencing major stakeholders and producing synergistic effects in collaboration with other BHR tools and methods, especially in developed countries. However, progress has regional variations, particularly the acceptance of UNGPs in Africa, which is not high. It is necessary to examine the differences between developed and African countries.

## 4. UNGPs and BHR in Africa

### 4.1. BHR promotion in line with UNGPs in Africa

This section explains how UNGPs mechanism work in Africa. Figure 1 demonstrates how the UNGPs influence flows from the international organization on the far left of the figure to each stakeholder. However, in Africa, due to resource gaps, norm diffusion does not occur in the same way as in developed countries. For example, UNGPs promotion is predominantly led by the government's strong commitment in Europe; however, it is rare in Africa. Instead, African governments promote UNGPs in response to a Universal Periodic Review (UPR) recommendation, which the UNHRC and other member states use to apply pressure on African countries to take BHR actions. In parallel, international communities offer technical and financial assistance (Commonwealth Forum of National Human Rights Institutions: CFNHRI 2018)<sup>37</sup>. Figure 1 shows that UNGPs influenced companies through government commitments in developed countries. However, in Africa, BHR in accordance with the UNGPs is not as widespread as in developed countries. Unlike the case of developed countries shown in Figure 1, the surge of BHR promotion in UNGPs does not flow quickly to the next actor in Africa. For many African countries with limited government resources, it is challenging to produce a NAP, much less for a state to apply BHR policies

written in the NAP to other related policies.

Therefore, the influence of UNGPs flows at minimal from the government to companies and civil society. The essential influence of UNGPs is not transmitted along the arrow in Figure 1. Instead, it stems from external actors demanding foreign companies that invest or operate in Africa to implement HRDD. HRDD is instructed through procurement contracts, private regulations, and certifications that consumers, investors, and banks request of downstream companies in the supply chain. This puts pressure on companies to respect human rights. However, the acceptance of private regulations among local companies in Africa is low<sup>38</sup>. Civil society on the right end of Figure 1 also faces limited resources<sup>39</sup>. In addition, SOMO et al. (2018)<sup>40</sup> identified that remedies remain rare in the region, the formulation of NAPs is slow, and the limited capacity of national human rights institutions (NHRIs) and civil society organizations (CSOs) are a challenge. Thus, the technical and financial support of the international community is essential.

Although their resources are limited, civil society, including NHRIs, plays an indispensable role in Africa. For example, many baseline assessments in Africa are performed by civil society organizations, including NHRIs. Moreover, NHRIs are recognized in that they have “the scope to offer insights to African NHRIs that global platforms may be less well-placed to provide.” (CFNHRI 2018: 18) However, some NHRIs “have only one or two members,” and thus consider BHR a low priority and offer even fewer information-sharing opportunities<sup>41</sup> (CFNHRI 2018: 51-52). Nevertheless, NHRIs are becoming a focal point of BHR, where national dialogs and forums on BHR are conducted, and investigations are being conducted on the negative impacts of industry sectors with more significant risks of severe human rights impacts (CFNHRI 2018: 52).

Furthermore, NAP development status in Africa varies<sup>42</sup>. For instance, countries that engage in either NHRIs or primarily civil society-led activities are Morocco, Tanzania, Mozambique, South Africa, Zambia, Nigeria, Mauritius, and Ghana. The government has led the NAP development process in Kenya. It is awaiting the Attorney General’s approval since the final release of the NAP in July 2019 (Globalnaps 2021)<sup>43,44</sup>. Although the government of Ghana has not yet committed to developing a NAP, the Ghana Institute of Management of Public Administration (GIMPA) has conducted a national baseline assessment study<sup>45</sup>. The government of Liberia has committed to the development of a NAP, and Uganda has developed a draft of a NAP<sup>46</sup>. Using Figure 2 to illustrate the stages of the NAP formulation process in Africa, Step 1 includes two countries (Liberia and Mozambique), Step 2 includes two countries (Ghana<sup>47</sup> and Zambia), Step 3 includes Uganda, and Step 4 includes Kenya<sup>48</sup>.

The Sierra Leone government has not officially committed to developing a NAP yet; the Sierra Leone Human Rights Commission (HRCSL) produced a BHR baseline assessment in collaboration with the Danish Institute for Human Rights (DIHR), but it is not formally recognized as a product of the NAP development process<sup>49</sup>. However, with UN Development Programme’s (UNDP) support, HRCSL engaged in BHR training aligned with the UNGPs for foreign investments in 2021. The Mozambique government committed to developing a NAP in 2016 and conducted a baseline assessment with civil society with foreign resources, but it was not officially published.

The African regional BHR forum was held in Ethiopia in 2014. The formulation of NAPs in Africa is underway (AU 2017)<sup>50</sup>.

South Africa is one of the countries that supports the development of a treaty for UNGPs. The South African government with Ecuador proposed the United Nations Human Rights Council in June 2014 (A/HRC/26/L.22/Rev.1, A/HRC/RES/26/9) to establish an intergovernmental working group to consider a binding treaty of UNGPs. It is now reviewing the third draft of the treaty (UNHRC 2020). Moreover, many institutional changes, especially in Europe, that occurred after UNGPs endorsement,<sup>51</sup> have not yet occurred in Africa. For example, while the mandatory environmental impact assessment is required for developers in Africa, in many cases, an assessment of the human rights impacts is not compulsory. African countries do not have a regulatory framework in place that strictly requests businesses to assess their potential human rights impacts Kibugu (2019)<sup>52</sup> proposed mandatory African HRDD legislation developed by France to challenge this situation. There is much work to be done on BHR in Africa. For example, UNGPs-based NAPs are not as advanced as in many developed countries; it is unclear how UNGPs can effectively promote BHR in Africa.

#### 4.2. Example of UNGPs promotion with the involvement of local stakeholders in Africa

The progress of BHR promotion in line with UNGPs varies from country to country. Some countries have made progress, while others have not. This section introduces examples of efforts to promote BHR in line with UNGPs in African countries to determine the differences between developed countries<sup>53</sup>.

In many cases, developed countries that request African countries promote BHR in UPR recommendations provide technical and financial assistance to African countries. Similarly, in Africa, with the collaboration of international institutions, EU member countries promote regional and country-wise BHR. These efforts fall into the third and fourth quadrants of Figure 4.

The first example is the African regional BHR forum, which was supported by the Government of Denmark. The forum was organized with the help of the African Union Commission's Department of Political Affairs, the UN Economic Commission for Africa (UNECA), the UN High Commissioner for Human Rights, the UNDP, and the UN Global Compact (OHCHR 2014). Despite the absence of governments' commitment to NAPs, these countries have progressed to BHR promotion with the collaboration of local CSOs<sup>54</sup>.

The second example is the business and human rights workshops held with foreign donors' financial and technical supports. For example, a workshop was held in Tanzania funded by the Bureau of Democracy, Human Rights, and Labor of the US Department of State in Kenya and Tanzania to encourage the implementation of UNGPs. The Centre for Research on Multinational Corporations (SOMO), DIHR, the Kenya National Commission on Human Rights (KNCHR), the Kenya Human Rights Commission (KHRC), the Commission for Human Rights and Good Governance (CHRAGG) Tanzania, and Business and Human Rights Tanzania (BHRT) jointly implemented the cross-border BHR project. The Swedish International Development Cooperation Agency (SIDA) also co-founded the project. The project invited stakeholders, including national-level CSOs, international NGOs, inter-governmental organizations, and NHRIs, as well as Kenya, Mozambique, South Africa, Tanzania, Uganda, and Zambia. It was clarified that national-level CSOs, NHRIs, and national human rights commissions (NHRCs) play a vital role in promoting BHR (SOMO et al., 2018).



Among the participating countries, Kenya has developed a NAP and Uganda has drafted a NAP<sup>55</sup>. Mozambique committed to producing a NAP, while Zambia conducted a baseline assessment and stakeholder consultations. Tanzania and South Africa are processing NAP development, not by the government, but by NHRIs and CSOs. In countries that received financial and technical assistance, the promotion of UNGPs has progressed<sup>56</sup>.

Additionally, the DIHR<sup>57</sup> confirmed the significance of the role of NHRIs and NHRCs in BHR promotion in African countries and discussed their roles by presenting the cases of Kenya, Niger, Nigeria, and Uganda. Even before NAP development, these countries advanced BHR promotion with the active engagement of NHRIs and NHRCs.

Therefore, although African countries face the limited resources of CSOs, NHRIs, and NHRCs, they are stakeholders who promote BHR in Africa. Their cooperation in the promotion process is an opportunity for African countries to effectively promote BHR among significant stakeholders, which makes African countries capable of promoting BHR. Technical and financial assistance from foreign donors and international institutions are also vital to fill gaps in the capacity of CSOs, NHRIs, and NHRCs.

### 4.3. Challenges of adopting the UNGPs' global governance to African countries

By being accepted broadly in international society, UNGPs gradually became more enforceable than voluntary private regulations. In spite of not becoming a binding regulation, they gradually spread to developing countries. However, there are issues that need to be addressed. Below, we discuss the problems of adopting the UNGPs' global governance to the African context.

First, constructivism features, such as the norm life cycle, enable UNGPs to promote BHR in developing countries through the influence of developed countries. However, the UNGPs' polycentric approach, praised for promoting norms through civil society networks in developed countries, does not work efficiently. The assumption is that the internalization of the norm occurs with a diverse process by local actors (Acharya 2004); however, local African actors do not have enough resources to join BHR in the process. Furthermore, the lack of actors means that the action platforms and other private actions positioned in the four quadrants of Figure 3 and Figure 4 cannot function effectively. As a result, UNGPs do not gain taken-for-granted acceptance in society.

Second, the UNGPs' global governance as a neo-liberal generated international legal system does not capture the context of local problems, including rights holders and marginalized populations, as discussed by Simons and Handl (2019) by referring to the "relation of ruling." Moreover, the UNGPs' developed country-leading global governance approaches alone are not enough to motivate companies to conduct responsible business behavior with respect to human rights in Africa (Brett 2018). Brett (2018) argues that a norm spiral is an unfit approach in Africa to institutionalize the reparation policy for the post-Cold War debate. It failed to identify rights holders, including groups and victims. It was also unable to cite colonialism and slavery (28-29). Therefore, there is a need to "look beyond both the law and the international system, focusing instead on the contingencies of ideological competition within hegemonic political culture." (42)

In addition, the global governance of UNGPs does not work in Africa because the state management system in Africa is different from that in developed countries. For example, companies engaged in projects involving large-scale land acquisition in Africa face rights issues related to the land rights of communities and individuals, yet UNGPs do not provide absolute solutions for this problem<sup>58</sup>.

Third, limited stakeholders' engagement in UNGPs is pointed out, and rights holders and civil society are not involved in the process in developing countries due to limited stakeholder engagement in HRDD<sup>59</sup> (Maher & Buhmann 2019). Specifically, it is criticized that the UNGPs' mechanism that promotes the norm through civil society networks is based on developed countries' social systems and causes low community involvement in developing countries; furthermore, it causes impact assessment problems (Vanclay Esteves 2011; Maher & Buhmann 2019). This applies to African countries, many of which are LDCs. Moreover, in Africa, voluntary regulations and CSR frameworks are less effective (Amodu 2020) and require active stakeholder involvement (OHCHR 2014<sup>60</sup>; BHRC 2014). In some societies, the participation of women and youth in decision making systems, even among rights holders, is customarily limited. In such societies, community chiefs represent their views, and it is difficult for foreign companies to interact with all rights holders through self-help efforts alone. Therefore, the involvement of community-based stakeholders is necessary. The question is how to do this.

To solve specific challenges of Africa, several methods have been proposed. Amodu (2020) suggested the synergistic effect of the Companies Act, which presupposes the need to increase shareholder value and efforts utilizing the Responsible Stakeholder Model (RSM). The involvement of many resources and stakeholders and a voice in the mechanism to execute it is necessary (OHCHR 2014; BHRC 2014). Moreover, the EU promotes BHR through a trade partnership agreement and exercises influence on African countries' BHR policies by using selective conditionality<sup>61</sup>. The UNGPs' mechanism simply does not work in Africa. However, the details need to be discussed. To conclude, the following section examines opportunities and challenges in this matter.

## 5. Conclusion

This paper discusses the UNGPs' mechanism to promote BHR and analyzes how it does and does not work in Africa. The UNGPs' soft law feature allows norms to spread in a constructive way, which expands the network of stakeholders with the involvement of relevant actors, including non-state actors. Simultaneously, UNGPs introduce changes in public and private regulations. The UNGPs' assumption, namely, norm cascading, worked well to promote BHR, especially in developed countries. However, the acceptance of UNGPs in Africa is not high. Moreover, the UNGPs' mechanism simply does not work in Africa, where the state's capacity to fulfill its role and obligation to respect human rights, which is a prerequisite for the penetration of UNGPs, is low. BHR stakeholders' resources are limited to actively engage in the process as UNGPs do in developed countries.

This paper introduces examples of countries that have progressed in BHR promotion with technical and financial assistance from international institutes and donor countries despite these challenges. Moreover, international institutes and EU member countries actively support African countries to promote BHR. Such initiatives are conducted with national-level CSOs,

NHRIs, NHRCs, and international cooperation agencies. The case of the BHR workshop in Tanzania demonstrates that BHR promotion in collaboration with national-level CSOs, NHRIs, and NHRCs makes it more effective. As a result, BHR promotion progress has been seen even in countries whose governments have not yet committed to UNGPs and NAPs. However, how to encourage the active engagement of these actors in promoting BHR remains unknown.

Active engagement of national-level CSOs, NHRIs, and NHRCs enabled by the technical and financial support of foreign aid is an opportunity for African countries to overcome the constraints of the limited resources of these stakeholders to promote BHR. Indeed, the author confirmed the limitation of the NHRC's resources and the opportunities that foreign aid provided to Sierra Leone in an interview with the NHRCSL officer in 2019. Although Sierra Leone performed a baseline assessment of BHR, due to limited resources, they had difficulties continuing BHR studies and promotion. However, recently, the NHRCSL has restarted the promotion of BHR in line with the UNGPs with the technical and financial support of UN agencies and donors<sup>62</sup>. At the time of training, the author witnessed that employees of foreign investments joined that event and learned the fundamental issues of BHR. In addition, it helped local management staff understand what BHR is and how to deal with BHR issues.

Therefore, if civil society, NHRIs, and NHRCs differentiate the penetration of BHR in line with the UNGPs mechanism, it could promote BHR diffusion. The author intends to explore this issue in subsequent research.

#### Note

- 1 UN Doc. A/HRC/17/31. March 21, 2011.
- 2 The UNGPs define that companies should follow international standards beyond the national laws and regulations.
- 3 BHRC. (2014). "Business & human rights in Africa: Time for a responsibility revolution."  
<https://www.business-humanrights.org/en/latest-news/business-human-rights-in-africa-time-for-a-responsibility-revolution/>. (Accessed June 19, 2020).
- 4 Regarding details of a smart mix solution, please see note number 25.
- 5 UN Doc. E/CN.4/Sub.2/2003/12/Rev.2. Aug 26, 2003.
- 6 Ruggie defined that governments, businesses, and civil society are the major stakeholder groups of business and human rights issues (Ruggie 2013: XVII).
- 7 UN Doc. A/HRC/8/5. April 7, 2008.
- 8 Moreover, Ruggie (2014) mentioned that UNGPs are the policy guidance based solely on existing legal standards, such as customary international law and treaties.
- 9 For example, McCorquodale, R., Lise, S. M. I. T., Neely, S., & Brooks, R. (2017).
- 10 OECD due diligence guidance recommends that companies should implement HRDD through the supply chains of business operations up to workplaces and affected communities in developing countries.
- 11 Labor includes decent work, forced labor, and child labor.
- 12 Examples of land rights violations include the negative impacts of large-scale land acquisition in the mining and agricultural sectors.
- 13 Royal Dutch Shell, which has been mining oil since the 1950s in the oil-rich Niger Delta region of Nigeria, caused oil spills. The accidents enormously damaged the safety of residents, the ecosystem, and the economic activities of surrounding communities (Emoyan, Akpoborie, & Akporhonor 2008).
- 14 ActionAid UK. (2013). "Broken Promises."  
<https://actionaid.org/publications/2013/broken-promises>. (Accessed October 2, 2021).

- 15 ILO. (2019). “Child labour in mining and global supply chains.”  
[https://www.ilo.org/manila/publications/WCMS\\_720743/lang--en/index.htm](https://www.ilo.org/manila/publications/WCMS_720743/lang--en/index.htm). (Last accessed July 20, 2021).
- 16 US Department of Labor. “Child Labor in the Production of Cocoa.”  
<https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking/child-labor-cocoa>. (Accessed July 20, 2021).
- 17 Wilde-Ramsing, J. (2018). “Addressing human rights impacts of business in Eastern and Southern Africa: Current state of affairs and the way forward.”  
<https://www.somo.nl/addressing-human-rights-impacts-of-business-in-eastern-and-southern-africa-current-state-of-affairs-and-the-way-forward/>. (Accessed June 20, 2021).
- 18 The author understands that promoting BHR through UNGPs is not the only factor in promoting BHR in Africa. However, the author understands that the state’s role to promote BHR as UNGPs present is vital in addition to voluntary efforts of multiple stakeholders, such as companies and civil society.
- 19 The author recognizes that the definition of soft law is ambiguous and debates over its legitimacy exist; however, this study does not discuss that. Instead, this study understands that UNGPs have acquired the soft law position in the international sphere. The legitimacy, authority, and justification of UNGPs are discussed, for example, by Mares (2012). Mares (2012) argues that soft law is not superior to long-term domestic hard law and that soft law is merely an “aspiration” that may lose the international community’s support. This study assumes that UNGPs have the endorsement of the international community. However, this does not guarantee that UNGPs have absolute authority.
- 20 The key actors in the development of soft law are firms, activist organizations, and other non-state groups (Abbott & Snidal 2000: 423).
- 21 Ruggie (2017b) states that “the UNGPs straddled these two worlds: a formal mandate established by an intergovernmental body; an informal and polycentric process of development; a formal endorsement; and a combination of ongoing implementation, both formal and informal.”
- 22 Finnemore and Sikkink (1998) introduced the norm life cycle as follows: “norms evolve in a patterned “life cycle,” and those different behavioral logics dominate different segments of the life cycle.”
- 23 The rights holders and marginalized populations’ engagement is not discussed much (Simons & Handl 2019).
- 24 It should advise on appropriate methods, including HRDD, and how to effectively consider issues of gender, vulnerability, and marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families (UNGP’s Principle 3, commentary).
- 25 A smart mix of measures is the strategy to use measures that are a mixture of national and international, and mandatory and voluntary, to foster business respect for human rights (UNGP’s Principle 3, commentary). Smart mix measures require that different stakeholders work together to identify an effective and equitable policy. In the technology business case, they are technology business, governments, and civil society. Source: OHCHR. (2019). ““Smart mix” of measures needed to regulate new technologies – Bachelet.” <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24509&LangID=E>. (Accessed June 14, 2021).
- 26 The recent number is 27 countries (Updated October 24, 2021).
- 27 OHCHR. “State national action plans on Business and Human Rights.”  
<https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>. (Accessed June 19, 2021).
- 28 European Coalition for Corporate Justice (ECCJ). (2021). “Comparative table: Corporate due diligence laws and legislative proposals in Europe.”  
<https://corporatejustice.org/publications/comparative-table-due-diligence-proposals-europe/>. (Accessed May 11, 2021).
- 29 For example, the EU–Vietnam FTA incorporates UNGPs in the FTA instrument. It states that it “promote[s] trade and investment in full compliance with internationally recognised human rights, environmental and labour standards and agreements” with a system to “provide tools to address human rights concerns related to the implementation of the IPA, but must be accompanied by scrutiny by the EU and its Member States, and by an independent monitoring and complaints mechanism, providing affected citizens and stakeholders with effective recourse to remedy and a tool to address potential negative impacts on human rights.” (EU Parliament. (2020).  
[https://www.europarl.europa.eu/doceo/document/TA-9-2020-0027\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0027_EN.html). (Accessed May 11, 2021).)
- 30 Zamfir, I. (2019); Zerk, J. (2019); Aaronson, S. A., & Chaffour, J. P. (2011). “The Wedding of Trade and Human Rights: Marriage of

- Convenience or Permanent Match?”  
[https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_forum\\_e/wtr11\\_15feb11\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm). (Accessed May 11, 2021).
- 31 Faracik (2017) notes that Norway's development aid policy states that it ensures that human rights are respected in priority countries receiving Norwegian development aid. Moreover, Norway seeks to ensure respect for human rights through international cooperation (40).  
[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO\\_STU\(2017\)578031\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf). (Accessed May 11, 2021).
- 32 OHCHR. (2019). “Brief Country Report on UNGP implementation GERMANY.”  
<https://www.ohchr.org/Documents/Issues/Business/ForumSession8/StatAndSub/Germany.pdf>. (Accessed March 11, 2021).
- 33 Invesco. (2021). “UK Stewardship Code Report March 2021 – Invesco.”  
[https://www.invesco.com/corporate/dam/jcr:20377804-9582-471b-b81b-0231648ea930/2020\\_UK\\_Stewardship\\_Code\\_3.29.21.pdf](https://www.invesco.com/corporate/dam/jcr:20377804-9582-471b-b81b-0231648ea930/2020_UK_Stewardship_Code_3.29.21.pdf). (Accessed May 26, 2021).
- 34 Germanwatch. (2020). “Requirements for effective multi-stakeholder initiatives to strengthen corporate due diligence.” <https://germanwatch.org/en/18894>. (Accessed May 26, 2021).
- 35 The OECD Due Diligence Guidance provides detailed recommendations to help companies practice HRDD.
- 36 There is no guarantee that UNGPs will necessarily spread when combined with other policy tools as evident in the fact that UNGPs are not always actively promoted in all countries. However, this study understands that the diffusion of UNGPs requires a synergistic effect through working with other BHR tools, as explained in this section.
- 37 CFNHRI. (2018). “A Guide to Business and Human Rights for Commonwealth Forum National Human Rights Institutions.”  
[https://cfnhri.org/wp-content/uploads/2020/01/Guide\\_to\\_BHR\\_for\\_CFNHRIs\\_final.pdf](https://cfnhri.org/wp-content/uploads/2020/01/Guide_to_BHR_for_CFNHRIs_final.pdf). (Accessed June 19, 2021).
- 38 Twelve African countries adopted ISO 26000 as a national standard (ISO 26000 (2021)).  
<https://iso26000.info/all-countries/>. (Accessed July 29, 2021)). Only two companies in one country in Sub Saharan Africa are registered as a certified organization (Social Accountability Accrediting Service (2021)).  
[http://www.saasaccreditation.org/SA8000\\_Certified\\_Organisations\\_Pie\\_Chart\\_by\\_Country](http://www.saasaccreditation.org/SA8000_Certified_Organisations_Pie_Chart_by_Country). (Accessed July 29, 2021)).
- 39 Chabal and Daloz. (1999: 28) argue that civil society is weak in Africa because it has been brought in from Western countries and did not originate in Africa. This study develops its argument on the general perception that resources are scarce.
- 40 SOMO, DIHR, KNCHR, KHRC, CHRAGG and BHRT. (2018). “Business and Human Rights: Addressing Human Rights Impact of Business in Eastern and Southern Africa.”  
<https://www.somo.nl/download/22069/>. (Accessed July 29, 2021).
- 41 NHRIs engage capacity development programs through projects of such organizations as UN Global Compact and the NHRI EU Project.
- 42 Information of NAP development status is collected from DIHR and OHCHR websites.
- 43 Globalnaps. (2021). “National Action Plans on Business and Human Rights.”  
<https://globalnaps.org/>. (Accessed June 19, 2021).
- 44 The cabinet approved the Kenya NAP with some updates on 2019 version (Updated October 24, 2021).
- 45 In addition, Ghana's Commission for Human Rights and Administration of Justice (CHRAJ) committed to examining current gaps in the realization of business and human rights in the country in 2019 (DIHR 2020). IHRB engaged in the capacity development of NHRI in Ghana.
- 46 The Uganda NAP was adopted in August 2021 (Updated October 24, 2021).
- 47 The government of Ghana has not announced that it will develop a NAP.
- 48 Kenya and Uganda are at Step 5 (Updated October 24, 2021).
- 49 HRCSL undertook a formal inquiry into mining-related human rights abuses in the Bumbuna, Tonkolili District, where a range of workforce and community grievances had culminated in violence and police intervention leading to many deaths and serious injuries (OHCHR 2013). They received the support of DIHR from 2011 to 2014.
- 50 AU. (2017). “The African Union organizes Stakeholders Validation Workshop on the Draft AU Policy Framework on Human Rights and Business.” <https://au.int/en/node/32242>. (Accessed March 11, 2021).
- 51 For example, the UK Modern Slavery Act requires that companies report their actions to prevent forced labor in supply chains.

The French Duty of Vigilance Law requires companies to conduct HRDD and report their activities to address the adverse impacts identified.

- 52 Kibugu. (2019). “Is it time for African countries to introduce mandatory due diligence on human rights?” <https://www.business-humanrights.org/en/blog/is-it-time-for-african-countries-to-introduce-mandatory-due-diligence-on-human-rights/>. (Accessed June 20, 20210).
- 53 Note: This study presents the NAP formulation process as one criterion for determining that UNGPs are promoted in Africa. However, the progress in UNGPs promotion does not prove that states and corporations are making progress in respecting human rights. This paper discusses the penetration of UNGPs as an instrument to promote BHR among others.
- 54 See 4.1. for specific country names.
- 55 Kenya and Uganda have adopted NAPs (Updated October 24, 2021).
- 56 In this way, the resource constraints explained in 4.1. improve.
- 57 DIHR. (2020). “National human rights institute and access to remedy in business and human rights.” <https://globalnaps.org/wp-content/uploads/2020/03/nhris-and-bhr-remedy-part-2.pdf>. (Accessed June 7, 2021).
- 58 Multiple and complex land management systems further exacerbate the land-related conflict in African countries.
- 59 Stakeholder engagement is the prerequisites of HRDD as presented by the OECD Due Diligence Guidance. HRDD with limited stakeholder involvement implies that it fails to develop a practical process of identifying and correcting the adverse impacts of business on society.
- 60 OHCHR. (2014). “African Regional Forum on Business and Human Rights, 16-18 September 2014, Addis Ababa (Ethiopia).” <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/AfricaRegionalForum.aspx>. (Accessed June 19, 2021).
- 61 “The EU Economic Partnership Agreement with the East African Community (EU-EAC EPA) does not explicitly refer to the human rights clause (HRC). However, they endorse the non-execution clause in this agreement (Article 96), which can be construed as implicit recognition of the HRC.” (Zamfir 2019: 5) Velluti (2016) noted that the HRC reinforced the incentives of developing countries for the respect of human rights (18) while pointing out that Sustainability Impact Assessment (SIA) does not adequately consider the problems that developing countries have without thoroughly assessing the impact on rights holders (27). FTAs are listed in the second quadrant of Figure 4, yet due to space limitations, this paper does not discuss all the details.
- 62 The author interviewed a chair person of NHRCSL in August 2021 at a BHR workshop held in Sierra Leone.

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