

UN Guiding Principles on Business and Human Rights at 10

*The Impact of the UNGPs on Courts
and Judicial Mechanisms*



Disclaimer

This report has been prepared in conjunction with the 'UNGPs 10+' project organized by the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises to mark ten years since the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs) by the UN Human Rights Council in 2011.

This report is designed to provide an overview of the application of the UNGPs by judicial and quasi-judicial mechanisms, and is prepared on the basis of material available generally up to January 2021. It is not intended nor is it to be used as a substitute for legal advice. The information provided to you in this report is not intended to create and does not create an attorney-client relationship with Debevoise or with any lawyer at Debevoise. You may inquire about legal representation by contacting the appropriate person at Debevoise.

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TABLE OF ABBREVIATED TERMS

ACHR	American Convention on Human Rights
ACHPR Reporting Guidelines	State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, adopted by the African Commission at its 62nd Ordinary Session (May 2018)
ACtHPR	African Court on Human and Peoples’ Rights
ADR	Alternative dispute resolution
AfCFTA	African Continental Free Trade Area
African Charter	African Charter on Human and Peoples’ Rights
African Charter Protocol	Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights
African Commission	African Commission on Human and Peoples’ Rights
BHR	Business and human rights
BIT	Bilateral investment treaty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of All Forms of Racial Discrimination
COMESA	Common Market for Eastern and Southern Africa
CRC	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate social responsibility
Debevoise	Debevoise & Plimpton LLP
DIHR	Danish Institute for Human Rights
EC	European Commission
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States

ECtHR	European Court of Human Rights
ESG	Environmental, social and governance
EU	European Union
Hague Rules	Hague Rules on Business and Human Rights Arbitration
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMM Framework	International Council on Mining & Metals Sustainable Development Framework
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTRM	International Criminal Tribunal Residual Mechanism
ICTY	International Criminal Tribunal for Yugoslavia
IFC	International Finance Corporation
ILO	International Labour Organization
ILO Declaration	ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 1977 (as amended in 2017)
ISO	International Organization for Standardization
Malabo Protocol	Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights
NAP	National action plan
NBA	National baseline assessment
NCP(s)	National contact point(s)
NGO(s)	Nongovernmental organization(s)
NHRI(s)	National human rights institution(s)

NSR Policy	Costa Rica's National Social Responsibility policy or Política Nacional de Responsabilidad Social
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises 1976 (as amended)
OEWG	Open-Ended Intergovernmental Working Group on Transnational Corporation and other Business Enterprises with respect to Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCA	Permanent Court of Arbitration
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
SDGs	Sustainable Development Goals
SOMO	Centre for Research on Multinational Corporations
SRSO	Special Representative of the Secretary General
STL	Special Tribunal for Lebanon
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UN Working Group	United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises
UPR	Universal Periodic Review
UPRWG	Universal Periodic Review Working Group
VPSHR	Voluntary Principles on Security and Human Rights
WTO	World Trade Organization



M. Republic of Tunisia

(1) Court Decisions

609. There do not appear to be any judicial or quasi-judicial decisions that apply or reference the UNGPs in Tunisia.

(2) NCP Decisions

610. In 2018, Tunisia formally re-established its NCP by decision of the Minister for Development, Investment and International Cooperation.⁸²⁵ The NCP has a tripartite structure comprised of representatives from the State, businesses, and trade unions.⁸²⁶ While no complaints have been submitted to Tunisia's NCP, Tunisia has supported the NCPs of the U.S. and France in two separate instances.⁸²⁷

(3) Other Developments

611. The Tunisian government and civil society have made efforts to engage with BHR best practices, particularly following the civil unrest in Tunisia in late 2010 that sparked the Arab Spring. For instance, the Tunisian government, the ILO and trade union groups signed a Memorandum of Agreement for the implementation of the Decent Work Country Programme 2017-2022.⁸²⁸ One of the stated priorities is a global reform of social protection in Tunisia.⁸²⁹

N. Republic of Turkey

(1) Court Decisions

612. The Turkish judiciary has not yet engaged in an analysis of the UNGPs. Turkish courts have, however, recognized businesses' human rights obligations pursuant to binding treaties, as well as to other nonbinding principles.

613. For example, in a 2017 decision, the Court of Cassation found that a company violated its nondiscrimination obligations, noting that discrimination is prohibited under Turkish law, and recognizing (without applying) similar prohibitions in the UDHR, ECHR, European

⁸²⁵ OECD, "Annual Report on the OECD Guidelines for Multinational Enterprises 2019" (2020), p 38 ([link](#)).

⁸²⁶ *Id.*, p 37.

⁸²⁷ OECD Database, "Health and safety concerns in Egypt and Tunisia" (14 March 2013) ([link](#)); OECD Database, "Perenco, and Avocats Sans Frontières (ASF) and I Watch" (26 July 2018) ([link](#)).

⁸²⁸ ILO, "One more step towards decent work in Tunisia" (21 July 2017) ([link](#)).

⁸²⁹ *Id.*

Social Charter, Treaty Establishing the European Economic Community, as well as the ILO Conventions and Recommendations.⁸³⁰

614. In 2016, Turkey established the Human Rights and Equality Institution of Turkey (“**TIHEK**”), a national human rights institution that has the authority to decide victims’ applications and impose fines in relation to the prohibition of discrimination, and to review cases of human rights violations and discrimination *ex officio*. The TIHEK likewise has not referred to the UNGPs, although it has decided complaints against private companies, particularly in discrimination cases, where it has looked to international human rights instruments to determine the applicable legal framework.⁸³¹

(2) NCP Decisions

615. Turkey has established an NCP, which is based in the Ministry of Industry and Technology. Complaints are submitted to the Ministry’s General Directorate of Incentives and Foreign Investment.⁸³²
616. While the Turkish NCP has increasingly offered its good offices to disputing parties for mediation, it has not yet decided a complaint on its merits. Most recently, the Turkish NCP received a complaint filed by groups advocating for the rights of women fish processors in Senegal against a Turkish steel manufacturer, requesting that the NCP urge the company to comply with its OECD obligations after the company allegedly failed to adequately conduct due diligence to assess the impact of its planned mining and steel complex on land used by the fish processors.⁸³³ This complaint is currently pending.

⁸³⁰ Hukuk Dairesi, 23.1.2017, File No. 2016/2979, Decision No. 2017/506. The Court of Cassation has used the identical sentence identifying Turkey’s international obligations in at least 29 other decisions.

⁸³¹ See, e.g., TIHEK Decision No. 2018/97 (15 October 2018) (ECHR, European Council Directive of 27 November 2001 on establishing a general framework for equal treatment in employment and occupation); TIHEK Decision No. 2019/22 (9 April 2019) (CERD, ECHR); TIHEK Decision No. 2019/62 (12 November 2019) (CRPD); TIHEK Decision No. 2020/176 (11 August 2020) (UDHR, ICESCR, CEDAW, ILO Discrimination (Employment and Occupation) Convention (C111)); TIHEK Decision No. 2020/8 (14 January 2020) (ICESCR, CEDAW, ILO Discrimination (Employment and Occupation) Convention (C111), ILO Maternity Protection Convention (C183), Beijing Declaration and Platform for Action, “General Comments” of the UN bodies, decisions of the European Court of Human Rights).

⁸³² Republic of Turkey Ministry of Industry and Technology, “Specific Instance Review Procedure” ([link](#)).

⁸³³ OECD Watch, “LSD et al. v. Tosyali Holding Ltd” (28 August 2020).



(3) Other Developments

617. In the last few years Turkey has sought to promote greater business respect for human rights. Although Turkey has not yet drafted an NAP specific to business and human rights,⁸³⁴ in March 2021 President Erdoğan unveiled a Human Rights National Action Plan, which reported that the government is preparing national guidelines that take into consideration the UNGPs.⁸³⁵
618. Turkey’s Capital Markets Board (“**CMB**”) has encouraged respect for human rights among business enterprises through a set of corporate governance principles. For instance, in 2014, Turkey’s CMB issued a Communiqué that outlined disclosure requirements for listed companies, including a set of Corporate Governance Principles that recognized that:
- (i) “Corporations shall be sensitive toward their social responsibilities and comply with regulations and ethical rules with respect to environment, consumers, public health;

⁸³⁴ Altug Ozgun & Atakan Gungordu, “Business & Human Rights Series: 02 An Overview of Turkish Legal Framework” ICLG (26 November 2020) ([link](#)).

⁸³⁵ Address by His Excellency President Recep Tayyip Erdoğan on the Occasion of the Announcement of the Human Rights Action Plan (2 March 2021).

- (ii) Corporations shall support and respect internationally recognized human rights; and
- (iii) Corporations shall combat any kind of corruption including embezzlement and bribery”.⁸³⁶

619. In October 2020, the Turkish CMB revised the Communiqué to provide that listed companies must report on their compliance with a set of “sustainability principles” in their annual reports, and explain any departures from these principles as well as the effect of this noncompliance on their environmental and social risk management.⁸³⁷ The framework of “sustainability principles” draws on the SDGs and includes the formulation of a “Corporate Human Rights and Employee Rights Policy” and compliance with the UDHR, ILO Conventions ratified by Turkey, and human rights and environmental legislation (with a particular emphasis on prohibition of discrimination). The framework also calls on companies to identify the international reporting standards they have adopted as well as the international organizations and principles of which they are members or signatories.⁸³⁸

⁸³⁶ Capital Markets Board of Turkey, The Communiqué on Corporate Governance (II-17.1), published in the Official Gazette (3 January 2014) numbered 28871, Section 3.5.2.

⁸³⁷ Capital Markets Board of Turkey, Sustainability Principles Compliance Framework ([link](#)); The Communiqué (II-17.1.a) Amending the Communiqué on Corporate Governance (II-17.1), published in the Official Gazette (2 October 2020) numbered 31262.

⁸³⁸ Capital Markets Board of Turkey, Sustainability Principles Compliance Framework ([link](#)).

