

RESPECTING HUMAN RIGHTS

**An introductory guide
for business**

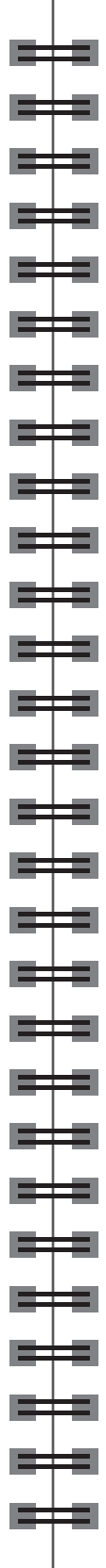


Global Compact Network
Germany

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Deutsches Institut
für Menschenrechte



RESPECTING HUMAN RIGHTS

**An introductory guide
for business**

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The Global Compact and the Global Compact Network Germany (DGCN)

The Global Compact was launched by the United Nations in 2000. It is a strategic and international platform for learning and dialogue on sustainable and responsible business, involving civil society organisations, business and national governments. Working with its partners, the Global Compact has shaped the international dialogue on sustainability and the development of business strategies and tools to achieve it. As a platform for multi-stakeholder learning and dialogue, the Global Compact convenes webinars, workshops, coaching, conferences and technical forums in its work. Through the local networks, which organise and run many of these events, businesses can advance sustainability topics which they feel ought to be tackled and play an active role in shaping the dialogue. The Global Compact Network Germany is one of the most active in the world with more than 300 current members.

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twentyfifty has particular experience in helping its clients to embed the corporate respect for human rights into their practices and culture. It has advised businesses across a wide spread of industries including oil, gas and mining, IT and telecommunications, food and drink, tourism, pharmaceuticals and the financial sector. Its services include human rights risk and impact analyses, strategy development, capacity building, support for internal change processes, stakeholder engagement, and coaching and mentoring services for corporate executives.

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The German Institute for Human Rights

The German Institute for Human Rights is an independent national human rights institution in compliance with the United Nations Paris Principles. It has been granted 'A' status, meaning that it complies fully with the Paris Principles.

The work of the Institute includes delivering policy advisory services, undertaking human rights education, information and documentation, conducting applied research on human rights issues, providing a specialist library on human rights, and cooperating with international organisations. In May 2009, the German Institute for Human Rights was designated the independent monitoring authority responsible for overseeing national implementation of the UN Convention on the Rights of Persons with Disabilities. The Institute's main priorities include protection against discrimination and racism, the ban on torture, women's and children's rights, the private sector and human rights, the rights of the elderly, migrants, security and development cooperation.

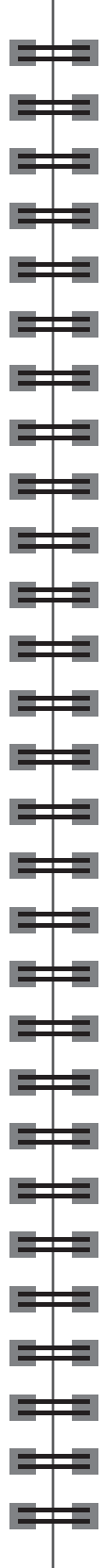
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Disclaimer

The case studies used in this publication are based on real-life cases documented in the media, by the companies themselves or in relevant publications. Our intention is not to present good practice or particularly critical cases but to draw readers' attention to a wide selection of scenarios that might impact on the human rights of workers in the supply chain, local communities or customers and to offer approaches that business can take to mitigate these risks. The cases selected are used only as examples and do not by any means cover the entire spectrum of possible impacts on the specific human right in question. Nor are they intended as an assessment of, or comment on, the overall performance of the business in question in the field of human rights.

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1 Opportunities and challenges



The intersection of business and human rights is currently a major issue on the international agenda. In June 2011, the United Nations Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights.

These Guiding Principles were drawn up by Professor John Ruggie, the Secretary-General's Special Representative for Business and Human Rights. They have since been adopted by numerous business-related initiatives. For instance, in 2011 the Organisation for Economic Co-operation and Development (OECD) revised its Guidelines for Multinational Enterprises, and added a section integrating these principles.

In October 2011, the European Commission published a new policy on corporate social responsibility (CSR). It invites Member States to develop national action plans by 2013. In Germany, implementation of the Guiding Principles is being discussed within, among other groups, the CSR Forum, which brings together various stakeholder groups at the invitation of the Federal Ministry of Labour and Social Affairs (BMAS). A large number of businesses have already begun to implement the requirements set out in the Guiding Principles.

Private sector companies and other stakeholders in the field of business and human rights are facing a great many challenges. How can minimum human rights standards be achieved and enforced within the global economy, and what instruments can be used? How can businesses raise standards and remain competitive where legislation in a country lags behind international standards, or is simply not enforced? And what added value does a human rights approach offer businesses if, for instance, competitors gain a competitive advantage by breaching standards?

Business and human rights – increasingly in the public eye

Businesses in Germany and throughout the European Union are aware of growing public interest in how they conduct their business. Where do they manufacture their goods and under what conditions? Are products safe? What environmental impact does production or new investment have? What are working conditions like in their supplier companies? These issues have long ceased to be the concern of a small

group of consumers or readers of trade journals. Television programmes that investigate businesses' environmental and social impact attract high viewing figures. These aspects are also explored in business magazines and newspapers, the financial press and similar publications and are increasingly taken into account in risk assessments made by businesses and investors. Such assessments are particularly important for businesses with global operations and a strong brand identity.

Increasingly, though, small and medium-sized enterprises (SMEs), too, are assessed on the basis of their impact on society. The new international standards and guidelines mentioned above can be seen partly as a political response to the concerns of consumers. They underline the fact that businesses should and indeed must increasingly face the issue of corporate social responsibility and ensure compliance with minimum human rights standards.

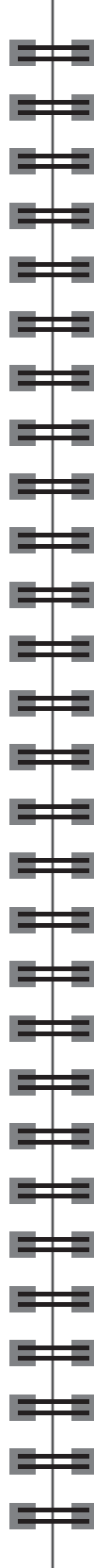
Sound business reasons for respecting human rights

Apart from these external factors, the prospect of positive impact within the company may motivate businesses to comply with human rights standards. Employees expect their employer to respect minimum human rights standards, both in their own country and in their international business activities. This is an important factor in recruitment, job satisfaction and long-term staff loyalty.

Improved processes and working conditions throughout the value chain are also an essential part of systematic product quality management. A properly applied human rights approach can help ensure stable long-term relationships with suppliers, thus minimising operational risks. It is a component of product quality, can be communicated to the customer and makes a crucial contribution to a positive company image.

Applying the Guiding Principles in practice

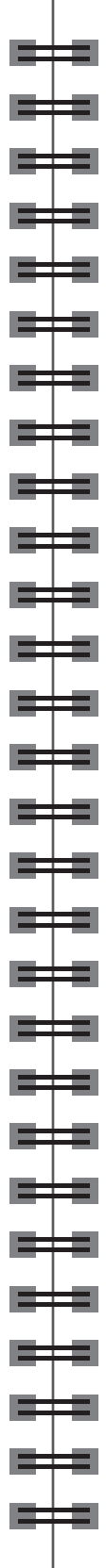
Both consumers and staff normally expect that businesses will first and foremost prevent any serious human rights violations. The Guiding Principles require businesses to exercise due diligence to identify and mitigate actual or potential adverse human rights impacts of their own activities



or through their business relationships; this is sometimes termed the 'do no harm' approach. In practice this means that when new investments or relationships are planned, or when business activities are to be expanded, these plans must be assessed for human rights impacts.

In addition to avoiding adverse impacts, a business can support the realisation of human rights. Examples include anti-discrimination programmes and health programmes for its own workforce, and for the workforce of suppliers. The basic principle is that respecting and supporting human rights calls for more than a one-off audit: an ongoing, long-term process is required.

No business can ever monitor all its activities comprehensively and around the clock, so it is essential to involve stakeholders and establish properly functioning grievance mechanisms. Grievance procedures should be open and easily accessible. This allows companies to identify problems at an early stage and respond appropriately. Grievance mechanisms should be accessible not only to the company's own workforce, but also to other groups potentially affected by the activities of the business. These might include the people living in the immediate environs of a factory who could be affected by noise or air pollution, or people who have to be moved from their homes to make way for new industrial sites.



Finding your way around this publication

This publication highlights the human rights impacts of business activities. It starts by looking at fundamental human rights principles and the human rights that are particularly relevant in the business context. It will become clear that human rights comprise more than the ‘rights at work’, with which businesses are familiar from the ILO’s core labour standards.

It then considers the role that businesses should play in respecting these rights. Case studies illustrate where businesses have come up against, or even into conflict with, these rights in practice and explain the steps they have taken to fulfil their responsibilities.

The conclusion sums up the opportunities and challenges facing businesses that opt for a human rights approach.

2

Human rights: fundamentals and implications for businesses

2.1 The birth of the Guiding Principles

Business and human rights is by no means a new issue. The first wave of economic liberalisation and globalisation in the early twentieth century raised very similar questions. The creation of the International Labour Organization (ILO) in 1919 arose out of the question of how to ensure minimum standards of worker protection in the face of harsh global competition. Since then, the ILO has drawn up and adopted a total of 189 Conventions and more than 200 Recommendations on protecting workers' rights.

Further, the Preamble of the 1948 Universal Declaration of Human Rights calls on 'every individual and every organ of society' – including both private stakeholders and businesses – to 'promote respect for these rights ... and secure their universal and effective recognition and observance.'

Business and human rights has again attracted special attention during the second wave of economic liberalisation and globalisation from the mid-1980s, especially as the negotiations got underway that finally led to the creation of the World Trade Organization (WTO). Efforts to include the ILO's core labour standards as part of the negotiations failed, but paradoxically, this failure helped make the core labour standards even more recognised. As a result, the eight key ILO Conventions that lay out the core labour standards were supported and reaffirmed by the ILO in 1998 as the 'Declaration on Fundamental Principles and Rights at Work.' Since then, these core labour standards have provided a minimum reference framework for employment standards and have been incorporated in countless codes of conduct produced by individual companies or sectors. They were also incorporated in Principles 3 to 6 of the UN Global Compact.

The UN Global Compact, created in 2000 by then UN Secretary-General Kofi Annan, specifically addresses businesses and their responsibility for the social and environmental impact of their activities against the background of globalisation. When companies sign up to the Global Compact, they undertake to respect ten principles. Next to the principles relating to employment and labour two of the principles relate specifically to human rights:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Protect, respect and remedy

The debate about social standards was long marked by the dichotomy between legally binding instruments on the one hand and voluntary approaches by businesses or associations on the other. Within the UN Commission on Human Rights, the idea arose of developing binding UN standards for businesses. An initiative which failed in 2003, facing resistance by many national governments and businesses rejecting an extension of international law.

The Secretary General’s Special Representative for Business and Human Rights, Professor John Ruggie, was the first to break through this paralysing statutory/voluntary dichotomy and to revitalise the debate. In 2008, at the end of his first three-year mandate, Ruggie presented a framework (the ‘Protect, Respect and Remedy’ Framework) that clarified the respective roles of states and businesses. It helped to get the debate back on track and is still contributing to that process:

1) The State duty to protect

Ruggie firstly stressed the primary responsibility of the State to protect and fulfil human rights. As key subjects under international law, States have the obligation to protect all individuals living within their territory from human rights abuses, including those potentially caused, or contributed to by businesses.

2) The corporate responsibility to respect human rights

Businesses, like individuals, do have a role in safeguarding human rights, and that is to respect human rights. The Guiding Principles suggest that they should exercise due diligence to ensure that they identify and address adverse human rights impacts in all their activities, and their business relationships.

3) Access to remedy

Despite the best preventative efforts, in practice adverse impacts on human rights will still occur. States and businesses must therefore ensure that grievance mechanisms are in place that allow people to raise concerns and that guarantee appropriate redress for those found to be suffering harm.

The Framework makes it clear that all stakeholders must take their role if human rights are to be achieved. Businesses alone cannot guarantee that human rights will be respected, and the host State of a business must provide effective legal protections and put in place legal instruments to enforce these rights. This provides a framework all businesses operating in that country must comply with.

At the same time, businesses must ensure that they are not complicit in human rights abuses through their own activities or through relations with business partners involving their products or services. This is particularly important when businesses operate in countries without a fully functional rule of law.

The ‘Protect, Respect, Remedy’ Framework		
<p>The State duty to protect human rights</p> <p>States have a clear obligation under international law to protect and foster human rights and to ensure that these are also respected by other actors through effective strategies, regulations, and enforcement.</p>	<p>The corporate responsibility to respect human rights</p> <p>Businesses are responsible for respecting all human rights. They must act with due diligence and avoid violating the rights of others.</p>	<p>Access to remedy</p> <p>Victims of human rights violations by businesses need easier access to grievance and sanctions procedures, both judicial and non-judicial.</p>

The three pillars of the ‘Protect, Respect, Remedy’ Framework

Operationalising the UN Framework: the Guiding Principles

Building on this Framework, Professor Ruggie developed the Guiding Principles in his second term of office, which were unanimously adopted by the United Nations Human Rights Council in June 2011.

The **State duty to protect human rights** is described in **Guiding Principles 1 to 10**. According to Guiding Principle No. 1, a State must ensure that individuals under its jurisdiction are protected against human rights abuses by businesses. The State must therefore actively work to prevent human rights abuses by businesses. The extraterritorial duties of States are laid out in Guiding Principle 2. One particularly important aspect of this principle is that all businesses fall under the jurisdiction of the State. Guiding Principles 3 to 10 elaborate on issues and scope for action relating to the State duty to protect human rights.

The **corporate responsibility to respect human rights** is laid out in more detail in **Guiding Principles 11 to 24**. These constitute guidelines for businesses and suggest how they can comply with their responsibility to respect human rights.

Guiding Principles 11 to 14 stipulate that

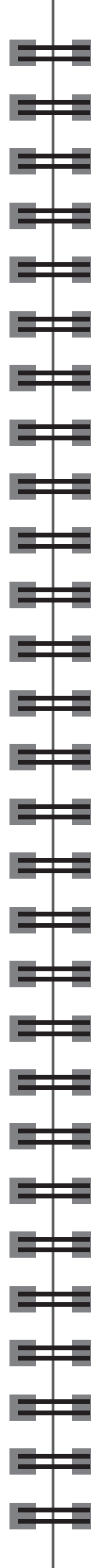
- all businesses must respect,
- all internationally recognised human rights,
- both within the framework of their own business activities
- and in their relationships with business partners, including their dealings with suppliers.

Guiding Principles 15 to 24 set out specific steps that businesses must take to meet these responsibilities. These include a high-level commitment to respect human rights, the requirement to undertake human rights due diligence, the need to ensure access to grievance mechanisms and the requirement to put in place processes to enable the remediation of any adverse impacts.

Specifically, Guiding Principle 18 establishes a requirement on businesses to assess human rights risks and identify any actual or potential adverse human rights impacts as a result of their own activities, or through their business relationships. It is essential that they draw on appropriate

human rights expertise in assessing impacts and, above all, engage meaningfully with actually, or potentially, affected groups. Businesses should also communicate externally about their impacts and the steps taken to mitigate them (Guiding Principle 21), and provide for remediation of adverse human rights impacts caused, or contributed to (Guiding Principle 22).

The principles addressing access to remedy and grievance mechanisms apply both to States and businesses. The pertinent Guiding Principles address State based and non-state based judicial and non-judicial mechanisms, as well as non-state based grievance mechanisms, e.g. operational-level mechanisms administered by a business enterprise alone or with external stakeholders. Guiding Principle 31 sets out effectiveness criteria for non-judicial grievance mechanisms. Individual company grievance mechanisms must also meet these criteria if the company is to be deemed to have put in place effective grievance mechanisms. Such mechanisms must be legitimate, accessible, predictable, equitable, transparent, and rights-compatible; they must be a source of continuous learning and based on engagement and dialogue.



2.2 Key implications for businesses

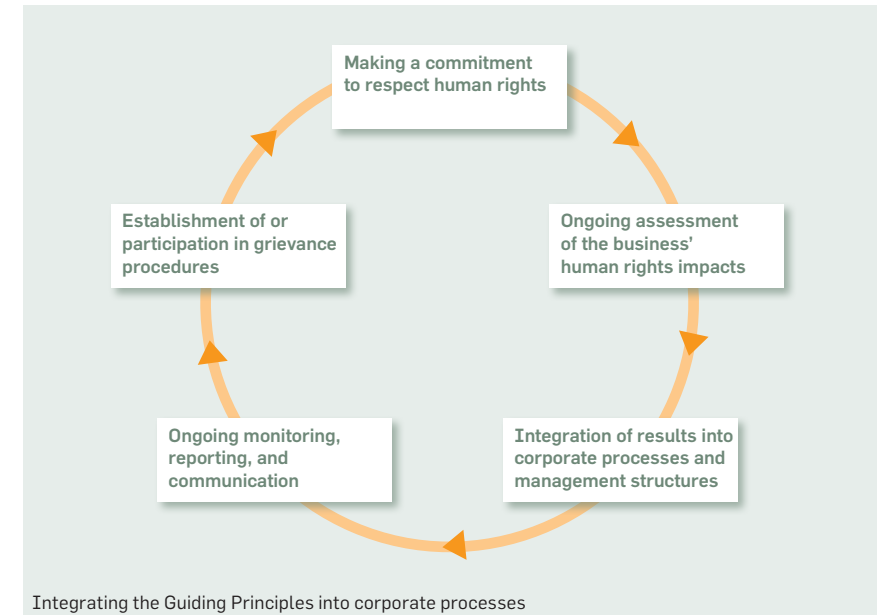
Recognition of the importance of the Guiding Principles can also be seen in the fact that they were integrated into the Guidelines for Multinational Enterprises of the OECD when revised in 2011; guided the revision of the Sustainability Reporting Guidelines of the Global Reporting Initiative (GRI) and included in ISO 26000 (Social Responsibility). Some States intend to take the Guiding Principles into account when new legislation is drafted, and civil society too is increasingly referring to them. There is also evidence that businesses have already embraced the principles and are taking steps to put them into practice. During his six-year mandate, John Ruggie managed to achieve a broad consensus on business and human rights and did much to clarify the obligations of States under international law and the responsibilities of businesses.

The notable implications of the UN Framework and the Guiding Principles for business practices are:

- Minimum human rights expectations of businesses go further than respect for workers' rights: business enterprises must take into account **both direct and indirect impacts** on other individuals affected by their business activities, including workers and others impacted throughout the supply chain, clients (in relation to product safety) and those living locally (e.g. in relation to environmental pollution and the release of toxins). Groups such as those who have to be resettled when companies set up or who lose access to safe drinking water supplies must also be taken into account.
- The underlying human rights principles of **participation and transparency** must be practiced, i.e. businesses must engage in meaningful dialogue with affected groups, and give these groups a say in decisions which affect them.
- All businesses, irrespective of their size, must accept their responsibility for respecting human rights **in their own activities and where they contribute to or are directly linked via relationships with business partners**, i.e. the responsibility for impacts throughout the value chain.
- Businesses must exercise **ongoing due diligence** to understand the impacts of their actions on human rights at all stages – at the start of an activity and in the course of that activity, before investments are undertaken, and when any change in business activities is planned.

This entails first and foremost to assess human rights impacts early on to prevent harm and identify potential adverse human rights impacts in good time.

- All in all, businesses should ensure that they meet their responsibility to respect human rights by **systematically integrating** the Guiding Principles into **specific management processes**, which should be fine-tuned on an ongoing basis.



On this basis, the European Commission made it plain in its new policy on corporate social responsibility that the concept of CSR is not limited to compliance with minimum **legal standards** but must embrace **further proactive activities**. CSR involves looking at the impacts of business activities on society as a whole.

2.3 The challenges involved in implementation

When businesses take steps to translate the corporate responsibility to respect human rights into practical action, they sometimes face tough challenges. Within the company, it is important that there is active leadership by senior level management and that resources are provided to ensure that respect for human rights is systematically integrated into business processes. It is not always necessary to put in place new management practices; generally, it is possible to build on existing management processes, for instance in human resources or supply chain management.

Businesses also face external challenges in implementation, some of which transcend the scope of the business itself. For example:

■ Competition

What should a company do if competitors fail to comply with even the minimum standards, thus perhaps gaining a short-term competitive advantage, because their lower social and environmental practices mean that they can offer lower prices or because they resort to corrupt practices?

This dilemma illustrates the crucial importance of the State's duty to protect human rights. The State is obliged under international law to create a level playing field. Businesses depend on this but cannot themselves enforce it. All they can do is actively demand that governments meet their obligations and to offer support where that is possible. In many countries, businesses can support greater human rights protection by supporting government's efforts to achieve minimum human rights standards.

■ Supply chain

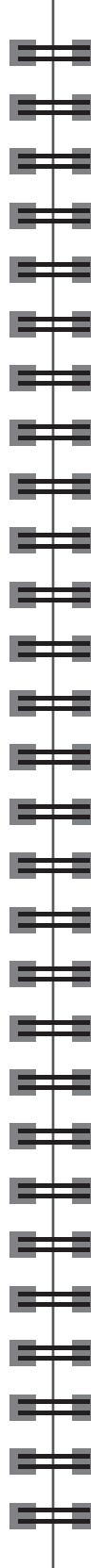
How can a business monitor every other company throughout its value chain in cases where it may be dealing with tens of thousands of suppliers, many of which regularly change their own suppliers or sources of raw materials?

For practical matters such as this, it is vital that businesses share their experience. Many companies have already developed effective ways of mastering the complexity of supply chains and have found ways of prioritising meaningfully.

■ Proportionality

Are the demands made of businesses not potentially infinite, since there is always something else that could be done, for instance to ensure transparency and participation rights or to minimise or reduce discrimination in business activities?

The concept of due diligence, which the Guiding Principles say is ongoing, suggests a learning process in which businesses must take pragmatic steps and develop and improve their understanding and practice overtime. An open participatory dialogue with those affected directly or indirectly by the decisions taken by a business is critical to identifying concrete demands. Dialogue of this sort can prevent these groups entertaining false hopes vis-à-vis the business. It also gives a business the opportunity to communicate the steps it is taking in line with due diligence, to explain how far it can reasonably go at present, and to set out its limits in terms of financial and human resources and the extent of its influence. This transparency makes it easier to deal with inflated or apparently limitless demands.



3

What are human rights?

Human rights are enjoyed by every individual and aim to provide equal protection to the human dignity of all people. The central pillar of re-establishing order in the wake of the Second World War was the **Universal Declaration of Human Rights**, adopted in 1948. The Declaration was a response to the absolute negation of human dignity by the Nazi regime. It therefore frames human rights primarily as the protection of the rights of every individual, without discrimination, from violation by an all-powerful state. **The 30 articles of the Universal Declaration of Human Rights embrace economic, social, cultural, civil and political rights.**

Human rights are universal and inalienable; indivisible; interdependent and interrelated. They apply worldwide even though they are not achieved to the same extent everywhere.

The State duty to protect human rights

The primary responsibility for protecting human rights lies with the state. The State is **obliged under international law** to respect, protect, and guarantee human rights. Breaking down these obligations into three levels of responsibility illustrates what is expected of States in order to achieve human rights:

- 1) Human rights preclude States imposing any unjustified limitations on civil liberties (the **duty to respect human rights**). There may, for example, be no limitation on the right to work. The State is obliged to refrain from actively violating human rights in any way, as would be the case, for instance, with forced resettlement programmes without compensation.
- 2) Human rights also require States to protect the rights of people within their territories from violation by third parties, such as businesses (the **duty to protect human rights**). This includes affording protection against unjustified dismissal and ensuring the quality of water and food.
- 3) Finally, the State must guarantee the recourse required to enable individuals to assert their human rights, for example by putting in

place a system of labour courts or introducing a health system (the **duty to fulfill human rights**). The State must ensure that all available resources are deployed to afford individuals within its territory effective protection against human rights abuses. The State must take into particular account the needs of individuals and groups in vulnerable situations, ensuring non-discriminatory access to their rights.

The **human rights principles of participation, transparency and non-discrimination** give a clear orientation for achieving human rights.

- **Participation** is the term used to describe the involvement of all stakeholders in political, cultural, religious and economic life. Participation empowers individuals to use their own potential and strengths to achieve their human rights.
- The **transparency** of State action is ensured largely by making available comprehensive information, which must be easily accessible for the population. It must be possible to question and discuss decisions made by State organs.
- The principle of **non-discrimination** aims to ensure equality of opportunity and requires particular account to be taken of disadvantaged individuals and groups, including individuals living in poverty and/or marginalised by society.

The authors of the Universal Declaration of Human Rights stated clearly that human rights can only be achieved if ‘every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures ... to secure their universal and effective recognition and observance’.

The Universal Declaration of Human Rights therefore already requires other actors within society, including businesses, groups within society, and associations, to accept responsibility for recognising and observing human rights. Unless every individual respects human rights and unless all participants support the implementation of human rights, it will not be possible to fully realise these rights and freedoms.

4

Human rights in practice: the roles of States and businesses



The incorporation of all human rights into one document, the Universal Declaration of Human Rights, reflects the indivisibility and universality of human rights and the equal status of all human rights. However, with the start of the Cold War, the international community was unable to agree on the wording of a binding human rights agreement. As a result, the Universal Declaration of Human Rights spawned two binding human rights covenants:

- The International Covenant on Economic, Social and Cultural Rights
- The International Covenant on Civil and Political Rights

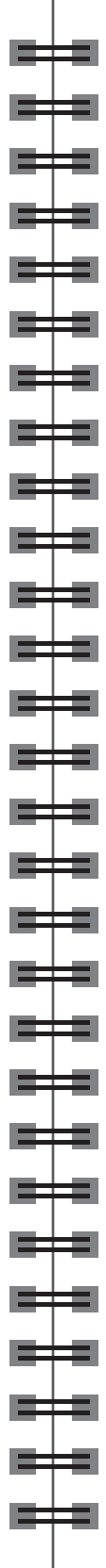
In December 1966, the two covenants were adopted unanimously by the UN General Assembly. They came into force in 1976 and became binding on their signatories. Businesses working to meet their human rights responsibility should consult at least these documents.

Alongside the two key human rights covenants, a number of other human rights conventions underpin the guarantee of human rights as well as various other international legal documents produced by UN specialised agencies, including the ILO. The most important of these in a business context are listed below. They provide specific guidance on certain issues.

- 2006 Convention for the Protection of All Persons from Enforced Disappearance (CPED)
- 2006 Convention on the Rights of Persons with Disabilities (CRPD)
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- 1989 Convention on the Rights of the Child (CRC)
- 1984 Convention Against Torture (CAT)
- 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)
- 1966 International Covenant on Civil and Political Rights (ICCPR)
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- 1948 Universal Declaration of Human Rights

Major human rights conventions with date of adoption

The following examples, taken from everyday business practice, illustrate a number of key rights set out in the International Covenant on Economic, Social and Cultural Rights and in the International Covenant on Civil and Political Rights that might be particularly relevant for the activities of businesses. The selection of the rights discussed here is not exclusive as, in line with the Guiding Principles, businesses must respect all human rights.



4.1 The right to work and rights at work

Article 6 of the International Covenant on Economic, Social and Cultural Rights states:

'The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. [...]

International Covenant on Economic, Social and Cultural Rights

- Article 7: Right to the enjoyment of just and favourable conditions of work
- Article 8: Right to form trade unions

Universal Declaration of Human Rights

- Article 23: Right to work, right to equal pay for equal work, right to form and join trade unions
- Article 24: Right to rest and leisure

The right to work

The right to work includes the right of everyone to the opportunity to gain their living by work which they freely choose and accept. No individual may be forced to accept work. States must take appropriate steps to give every individual access to the labour market. The right to work also covers protection against unfair dismissal. The State must also ensure non-discriminatory access to the labour market and must take steps to ensure equal opportunity on the labour market, especially for disadvantaged groups. The right to work does not mean that individuals are guaranteed a job. Nevertheless, States should aim to achieve full employment and support all citizens in their efforts to find work.

Rights at work – human dignity, working conditions and organisational rights

- Work must respect inherent human dignity, including both employment rights such as appropriate and fair pay, equal pay for work of equal value, and safe and healthy working conditions. Pay must be adequate to allow individuals to maintain an appropriate standard of living.

- Rights at work also include the right to safe and healthy working conditions including breaks, rest and relaxation, leisure, reasonable limitation of working hours, and periodic holidays with pay (Article 7 International Covenant on Economic, Social and Cultural Rights).
- The right to form and join trade unions and the right to strike are also enshrined (Article 8 International Covenant on Economic, Social and Cultural Rights).

The role of businesses

In the field of rights at work, especially in terms of ensuring fair, safe and healthy working conditions, businesses have a key responsibility to respect the rights of their workforce. Businesses are expected to accept responsibility for rights at work, particularly in situations in which the State is unable to discharge its obligations in full. Where a country has no adequate national standards, businesses must take their lead from international standards.

CASE STUDY

A living wage and working standards throughout the supply chain

Rights involved include: the right to safe, healthy and fair working conditions and the right to an adequate standard of living

The situation: Manufacturers are regularly accused of poor employment standards and low wages in their supply chains. The sectors most frequently criticised in this regard include textiles, agriculture, and electronics goods and toys. A **European retailer** with a supply chain involving almost two million workers is currently taking a lead in ensuring a living wage. It has undertaken to address the issue by 2015 for workers in suppliers' factories producing garments in Bangladesh, India and Sri Lanka. A living wage is understood to be a wage that enables workers and their families to live in dignity and meet the costs of food, housing, clothing, childcare, education and health care and still have some disposable income. The statutory minimum wage in many countries is below this level.

The approach taken

The business is taking the following steps:

- Factoring labour costs into production costs and subsequently into pricing
- Setting wage-related key performance indicators in its factories
- Investigating the gap between current pay levels and a living wage and defining concrete 'wage ladders'

- Training purchasers in sustainable purchasing practices so that they understand and take into account the impact of their decision on wage levels, etc.

In selected factories the company is going one step further and conducting extensive programmes on the rights of the workforce. It is initiating dialogue between managers and workers, supporting the introduction of human resources management systems, and offering productivity training.

The comprehensive approach taken by this company was born of the realisation that classic audits are no longer enough, because they merely aim to end human rights abuses.

The initial results recorded by suppliers are as follows:

- Basic wages in the factories have risen by between 12% and 54%.
- Productivity has risen by between 25% and 61%.
- Working time lost is down by 85%.
- Labour turnover is down by 65%.

Children's rights in the workplace

Article 24 of the International Covenant on Civil and Political Rights states:

'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor on the part of his family, society and the State. [...]

- UN Convention on the Rights of the Child
- ILO core labour standards (with age limits)

International Covenant on Civil and Political Rights
- Article 23: Right to marry and found a family

International Covenant on Economic, Social and Cultural Rights
- Article 10: Right to family life
- Article 13 and 14: Right to education

Article 24 of the International Covenant on Civil and Political Rights recognises children as being in need of special protection. The State, the family and society as a whole should provide this protection. The age at which children officially become adults varies from State to State, is influenced by social and cultural factors and is stipulated by the respective government, although the ILO's core labour standards define a minimum age.

- Children's rights include the right to protection against sexual and economic exploitation.
- Children should never be required to undertake hazardous, excessively arduous or underpaid work.
- Children who have to work often have limited or no access to education.
- Poor working conditions, poor treatment, a lack of food and water, and long working hours also pose health risks to children.

Nevertheless it is still difficult to completely eradicate child labour, since the income earned by children is often a vital part of a family's income and without which the family would be unable to meet their most basic needs, including food, drink and housing. A categorical ban on child labour, irrespective of the circumstances, can force children into the informal sector or into work in drugs or prostitution, which may put the child at further risk.

The role of businesses

This is a highly sensitive area for businesses. The first step can be to pay their workers a living wage so that they can feed their entire family and are not dependent on their children's income. However, if children are employed, long-term solutions must be sought. As a transitional solution, it is important at least to give the children adequate access to education.

CASE STUDY

Measures to eradicate child labour in the supply chain

Rights involved include: the prohibition of child labour, UN Convention on the Rights of the Child

The situation: Incidences of child labour are most frequent in labour-intensive industries, not only in developing countries but also in Europe. Sectors such as agriculture, textiles, mining, and the manufacture of toys and electronic goods are particularly likely to be affected.

The approach taken: A **European furniture retailer** has launched a far-reaching initiative to eradicate child labour in its supply chain in South Asia. Company representatives make unannounced visits to suppliers and business partners in the region and workshops are organised with suppliers, to encourage them to speak openly about their problems. The company's code of conduct requires suppliers to keep a record of all employees, including their date of birth. Where children are found to be employed, corrective measures to protect the children are agreed. These may include training measures or enrolment in a school. The company also has a children's ombudsman who is responsible for the full spectrum of children's rights. In partnership with the United Nations Children's Fund, UNICEF, the company organises workshops in Northern India in an effort to tackle the root causes of child labour in carpet manufacture, including poverty and indebtedness. One measure, for instance, involves setting up women's self-help groups to provide women with information about children's rights, food and nutrition, saving, and starting up small businesses to pay off their debts

CASE STUDY

Protecting children in the tourism industry

Rights involved include: the right to life, liberty and security of person, UN Convention on the Rights of the Child

The situation: 'Sex tourism' represents a serious threat to and a violation of the rights of children in the countries affected.

The approach taken: An **international hotel chain** has drawn up a human rights strategy that directly addresses the issue of sexual exploitation of children in the tourism sector. The company works with non-governmental organisations (NGOs) to combat child sex tourism both locally and globally. One measure, for instance, involves training hotel staff to identify cases of child abuse and to respond appropriately. Informational material sent to clients includes a brochure about sex tourism produced by the United Nations World Tourism Organization (UNWTO).

4.2 The right to an adequate standard of living (housing, food, and water)

Article 11 of the International Covenant on Economic, Social and Cultural Rights states

'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. [...]

- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (Food and Agriculture Organization of the United Nations (FAO), 2004)
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Food and Agriculture Organization of the United Nations (FAO), 2012)

Universal Declaration of Human Rights

- Article 25: Right to an adequate standard of living

This Article forms the basis for a whole series of rights, including the right to housing, the right to adequate food, and the right to water and sanitation. States are obliged to respect, protect, and guarantee these rights.

The right to housing

The right to housing means not only the right to a roof over one's head but also the right to live in safety, dignity and peace. This entails certain minimum standards. Housing must be fit to live in, affordable, accessible and locally and culturally appropriate.

The role of businesses

Companies that provide housing for their workers can directly influence the achievement of this right. Companies involved in buying and selling land, construction projects and structural developments involving the (forced) resettlement of the local population also directly impact this right. Resettlement may also impact the right to adequate food (see below) if the affected group loses access to productive resources as a result of the resettlement.

Companies must respect human rights when undertaking actions like these. This includes protecting the property of those being resettled as well as the individuals themselves and ensuring that they are given adequate compensation and appropriate housing. Resettlements that involve expropriation must always be legally regulated by the State and are acceptable only if the minimum provisions of the right to housing are respected. Alternative solutions must be considered before resettlements are undertaken. The affected population must always be consulted and given opportunities to express their grievances, adequate and appropriate compensation must be paid. Groups of disadvantaged people, such as indigenous groups, women and children, must be given special consideration in the case of any resettlement.

CASE STUDY

Resettlement for major projects

Rights involved include: the right to an adequate standard of living, the right to the highest attainable standard of health, right to adequate food, and the right to housing

The situation: A **mining company** with global operations has realised that particular care is needed when projects require resettlement. For one major project in Southern Africa, almost 1,000 households, representing nearly 10,000 people, had to be resettled. Although individual agreements were concluded with the households, the resettlement process and the impact of the mine on the surrounding population, especially on water quality, were criticised by a number of stakeholders.

The approach taken: An independent investigation conducted by the country's national human rights commission identified a number of impacts on the human rights of the communities living near the project, including a lack of compensation, inadequate involvement, the loss of farmland, and access to water. The company then commissioned an in-depth investigation of the resettlement process in line with the International Finance Corporation (IFC) Performance Standard on Land Acquisition and Involuntary Resettlement. A few weaknesses in the process were identified, including the failure to take adequate account of particularly vulnerable groups such as young people who reached adulthood during the resettlement period, the lack of systematic monitoring and evaluation procedures and, most importantly, the lack of an independent grievance mechanism.

As a result of this study, the company decided to revise its strategy and processes for cooperating with stakeholders and to build its internal capacity to manage social and community concerns. A company-wide grievance procedure was also put in place and higher standards introduced for resettlement processes. Finally, a company-wide forum was established for all those involved in resettlement, to improve the sharing of experience and facilitate institutional learning.

CASE STUDY

Biofuels and traditional land use

Rights involved include: the right of self-determination, the right to an adequate standard of living, the right to adequate food, the right to the highest attainable standard of health, the right to housing and the rights of indigenous peoples

The situation: A **biofuel joint venture** in South America withdrew from a controversial deal in the face of protests of indigenous groups, supported by an international NGO, which campaigned on their behalf. Some of the sugar cane the company had purchased for fuel production came from plantations that had been established on the land of indigenous groups. The boom in agricultural production had led to many farms being established or expanded in the region. Indigenous groups, it was claimed, had been evicted from their traditional lands, in some cases forcibly. The pesticides used on the plantations had also contaminated surrounding rivers, which the indigenous groups used for drinking water.

The approach taken: The company pledged that in future it would not purchase sugar cane from any land officially recognised as belonging to indigenous groups. It also offered assurances that it would consult the local authorities responsible for indigenous affairs when planning future investments. Finally, it announced a targeted social investment programme for the indigenous population.

The right to adequate food

Food is a universal basic need and underpins the exercise of all other rights. Food must be accessible and affordable, available in adequate quantities, of an appropriate quality, and be adapted to the cultural needs of the individual if the right to food is to be fully realised. The right to food should ensure that everyone is able to feed himself and his family.

It is the **duty of the State** to ensure, through its own production or through imports, that enough food is available. It must also ensure that this food is distributed as required to the different sections of the population and regions of the country. The State must ensure that food is safe, i.e. free of pollution and other contamination that may arise, for instance as a result of poor hygiene. The right to food also entails ensuring statutory access to productive resources, including land, water and seed.

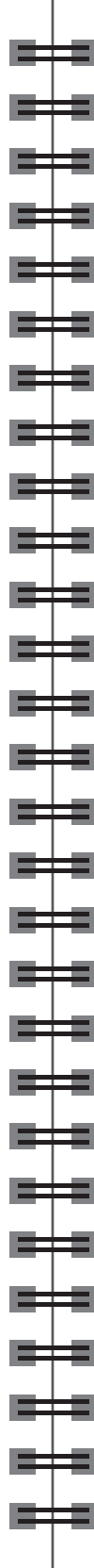
The role of businesses

Businesses have a duty to protect food from contamination and not to hinder the population in the receipt or production of food. The right to adequate food must be respected by companies, in particular when they provide food for their workforce or when they operate in the food industry. Companies that invest in land or buy land must ensure that they do not acquire land which gave previous users or owners access to food unless appropriate compensation is paid.

The right to water

The right to water guarantees everyone access to an adequate and affordable supply of water for personal use. This refers in particular to drinking water but also includes water for cooking, for personal hygiene and sanitation, and for keeping clothing and housing clean. This establishes a very close link between the right to sanitation and the right to water, although this publication does not deal with this link in detail. Water must be of good quality and free of any elements that would constitute a health hazard. The World Health Organization stipulates that a minimum of between 50 and 100 litres of water a day must be available to each individual.

The **duty of the State** is to guarantee non-discriminatory access to water. If water is not available free of charge, it must be affordable even for poorer sections of the population. When water utilities are privatised, the State is still responsible for monitoring water supplies and ensuring that non-discriminatory access is guaranteed to adequate quantities of affordable, safe and good quality water.



The role of businesses

Businesses not primarily involved in supplying water must respect the right to water. They must not pollute water used by the population or use excessive volumes of water, which would reduce the quantity available to the population. These responsibilities also apply to businesses providing water for their workforce.

CASE STUDY

Water use in food and drink production

Rights involved include: the right to water and sanitation, the right to an adequate standard of living, and the right to the highest attainable standard of health

The situation: Businesses in the **food and drink industries** are often accused of jeopardising the right of the local communities to water, because their production sites use excessive quantities of groundwater. This water is used both in the production process and in the production of agricultural inputs, such as sugar.

A drinks manufacturer with global operations was accused of having aggravated extreme water shortages in India by using huge volumes of water for drinks production and failing to process wastewater appropriately. This impacted on both the quantity of water and the quality of drinking water available to the local population. This incident triggered sustained protests, resulted in a production plant being shut down for a period of several months, and entailed a lengthy legal battle. Other companies have had similar experiences.

The approach taken: Many companies in the industry have since taken a closer look at their responsibility in the field of water, and have set themselves ambitious goals to protect water resources. The measures taken include conducting vulnerability analyses and introducing water management plans before any new production plant is built. Some companies have explicitly recognised the human right to water and sanitation and undertaken to contribute to a more positive impact on local water supplies, when they operate production facilities in areas struggling to cope with water scarcity.

The rights of indigenous peoples to self-determination

Article 1 of the International Covenant on Civil and Political Rights states:

'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. [...]

International Covenant on Civil and Political Rights
– Article 26: Rights of minorities

International Covenant on Economic, Social and Cultural Rights
– Article 1: Right of self-determination
– ILO Convention No.169
– United Nations Declaration on the Rights of Indigenous Peoples, 2007

There is no generally valid definition of an indigenous group. To put it at its simplest, indigenous groups are the frequently-marginalised 'first' settlers in an area, who have strong cultural roots in the area. It is frequently left to the groups themselves to self-identify as indigenous. They are often particularly disadvantaged. Article 1 of both, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (right of self-determination), deals with the rights of indigenous peoples. The right of self-determination covers their political status and their place within the international community. It regulates development and progress at a social, economic and cultural level and relates to the rights to use land and natural resources.

It is the duty of the **State** to protect the traditional homelands of indigenous peoples and guarantee their rights to use natural resources on land that has traditionally been theirs. If businesses are planning activities in the traditional homelands of indigenous groups, the State must give these groups an opportunity to voice their views. The indigenous groups must consent to any such activities. To comply with international human rights

standards, this consent is valid only if the group has been informed in advance about every detail of the project and its impacts.

The role of businesses

Companies must avoid causing any adverse impact on the traditional homelands of indigenous peoples, and on the natural resource base upon which they depend. In the run-up to any project, businesses should involve indigenous village communities in the development of the project, inform them about planned activities and their impact, and obtain their consent (see debate on 'free prior informed consent' – FPIC). This is the only way to prevent a violation of the human rights of indigenous groups. In particular, companies that extract mineral resources, pharmaceutical companies that use specific plant raw materials, and companies involved in the agricultural sector must frequently confront this aspect of human rights.

CASE STUDY

Indigenous groups and tourism in East Africa

Rights involved include: the right of self-determination, the right to an adequate standard of living, cultural rights, the right to education, and the rights of indigenous peoples

The situation: When tourists travel to Ethiopia, they have the opportunity to visit indigenous groups in their settlements and to gain an insight into their lifestyle and customs. Negative feedback on tours of this sort, which are organised by local tour operators, alerted a **European travel company** to the challenges that tourism poses for nomadic, indigenous communities in the region.

The body painting and typical jewellery of the ethnic groups involved make them popular with visitors and their cameras. Villagers pose for photos and expect tourists to pay. Gradually, the villagers began to compete with one another for this source of income. Some began to sport over-elaborate costumes and jewellery that no longer reflected their lifestyle in an effort to boost their income. Some tour guides demanded the 'photo money' back from the villagers as payment for bringing the tourists to the villages. This spawned an aggressive competition for tourists and led to misunderstandings between tourists and the local people.

The approach taken: The travel company decided to draw up a code of conduct for guides, fostering their awareness of the importance of ethically responsible encounters with local groups, not only as part of their own tours but also in relation to the tours organised by other operators. A forum was also set up with two affected ethnic groups in conjunction with a local research centre. The meeting was also attended by representatives of the authorities, development organisations, NGOs and local travel companies. During the meeting, the challenges were discussed with the two ethnic groups and shared priorities identified. It emerged that access to education was the greatest challenge. This explains why there were no indigenous tour guides who could explain the customs of their villages to the tourists, because the villagers had no appropriate training and were unable to communicate in English.

As a result of this forum, a project was initiated in which, with the support of the travel company, members of an ethnic group are being trained as English-speaking local guides once they leave school. The first cohort, of almost 20 students, has already begun training, and the scheme is to be extended and opened to other ethnic groups. Students are given opportunities to practise what they have learnt on real tourists. The forum has also helped two groups that were formerly in conflict to recognise their common interest in achieving a better distribution of income and diversification of the products offered. Over and above this, in cooperation with indigenous groups, a code of conduct has been drawn up for visitors and the communities they visit. The long-term goal is to further develop tourism in this region with the help of this measure and other activities. The travel company also hopes to stem the adverse impacts of forced resettlements which are intended to allow the region to be used for agricultural purposes. The experience of this pilot project will also be applied in other countries.

4.3 The right to the highest attainable standard of health

Article 12 International Covenant on Economic, Social and Cultural Rights

'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. [...]

States have a duty to protect people from harmful impacts on their health. They must take preventive action, monitor developments, and take medical measures to protect the population from communicable diseases. The first step includes measures to improve hygiene in the country and to protect people from environmental pollution. The State is also required to make health care non-discriminatory. Every citizen must be accorded autonomy over their body and the methods of treatment used. Nobody may be subjected to forced medication or health-related experiments.

The role of businesses

Businesses are required to ensure that working conditions pose no hazard to the health of workers or, at least, to minimise any health hazards. Over and above this, the activities of the company must not cause any pollution that could result in a health hazard for staff, customers or the population at large. Businesses are expected to respect national laws, and where these are inadequate to take their lead from international standards. Adequate account must be taken of especially vulnerable groups, such as children and indigenous peoples. Companies must pay special attention to their suppliers. They are urged to oblige suppliers to respect human rights and to monitor compliance appropriately, for instance by conducting unannounced inspections.

Businesses operating in branches known to pose a substantial risk to the safety of workers and in terms of pollution – such as the chemical industry and mining companies – are particularly called on to step up the action they take to protect their staff and the population, especially

groups living in the area surrounding production units in the country in question.

Pharmaceutical companies are also in a particular position, because they determine the quality and the price of their products. Access to drugs is largely dependent on the price of these products, and companies can make a direct contribution here to achieving the right to health. In the field of research too, these businesses can actively foster human rights by ensuring that their services help target medical care effectively. This may, for instance, entail conducting research into diseases that are particularly prevalent in developing countries.

CASE STUDY

The opportunities and health risks posed by products

Rights involved include: the right to the highest attainable standard of health, the right to life, and the right to freedom from discrimination

The situation: Ultrasound technology can be used to guarantee the right to health, but it can also make it possible to undertake gender-specific abortions, as is the case in India. A **global diversified company** recognised the risks entailed by the use of its equipment to identify the sex of the foetus and initiated appropriate steps.

The approach taken: Sales staff was trained, terms of contract were revised, audits were conducted, and the follow-up and monitoring of the use of the equipment sold was stepped up. Equipment was also clearly marked with stickers pointing out that it is illegal to determine the gender of a foetus for the purposes of selective abortion. These measures were introduced before subsequent legislation was enacted and still go beyond legal requirements. The company also launched a poster campaign to draw attention to the status of women in Indian society. Advancing the interests of women and girls has, moreover, been made the focus of the local CSR strategy. The company is working through Indian business associations to sensitise other companies to the issue.

4.4 The right to life and physical integrity

Article 6 of the International Covenant on Civil and Political Rights states:

'(Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. [...])'

International Covenant on Civil and Political Rights
– Article 7: Ban on torture

International Covenant on Economic, Social and Cultural Rights
– Article 11: Right to an adequate standard of living
– Article 12: Right to the highest attainable standard of health

Universal Declaration of Human Rights
– Article 3: Right to life and liberty

The right to life entails protecting the life of every human being. Every individual is entitled to this protection from birth, which also precludes ending a human life arbitrarily. As well as the duty to do no harm, the State is obliged to take preventive measures. The State may not restrict this right even under emergency situations.

- The State is obliged to take legal measures to protect the life of every individual within its jurisdiction. This includes measures to ensure survival, for instance ensuring access to food, water, housing and health care.
- The State is also required to protect the life of the individual from any interventions of others.

The role of businesses

Businesses must themselves respect the right to life and bring their production safety standards into line with this obligation. Equally, they must minimise any health hazards arising from their products and services. The right to life is particularly important for companies working in the field of security and those that cooperate with State security personnel, rely on the services of private security services, or themselves provide

private security services. Businesses are called upon to monitor the private security services they use to protect the security of the company and to ensure that they perform their work in compliance with human rights standards. The defence industry is particularly called upon to respect the right to life in relations with its business partners and to take precautionary action to minimise the risk that this right will be violated.

CASE STUDY

The use of private security staff

Rights involved include: the right to life and physical integrity, the right to freedom from arbitrary arrest, the right to freedom from discrimination, and the right to freedom of assembly

The situation: Companies operating in the mining and energy sectors in developing countries regularly confront cases of misconduct on the part of State or private security forces. Businesses in sectors such as construction, finance, and tourism also frequently rely on security forces to protect their plants and operations. Human rights impacts that can arise from the use of security forces include discrimination, the use of excessive force against striking staff or activists, and confrontation with indigenous groups.

The approach taken: An oil company with global operations has started to incorporate human rights clauses into contracts with security forces. They include the obligation that all security forces be trained in the Voluntary Principles on Security and Human Rights as well as in the current legislation and international standards and act in compliance with these laws and standards (which include the Universal Declaration of Human Rights, the ILO core labour standards, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). Clauses of this sort are now included in almost 80% of contracts with private security forces. Parallel to this the company has begun to provide relevant training for the staff of some major subsidiaries. Training is based on guidelines produced by IPIECA, the global oil and gas industry association for environmental and social issues, and on corporate guidelines.

CASE STUDY

The physical integrity of garment workers

Rights involved include: the right to life and physical integrity, the right to freedom from discrimination, and the right to freedom from torture

The situation: A group of American retailers and department store operators were the target of an NGO campaign because they bought stock from a Jordanian textile factory in which extremely severe cases of abuse of female workers were alleged to have taken place. According to reports by NGOs and victims, migrant workers from Sri Lanka and Bangladesh in particular had been insulted, beaten, harassed and, in some cases, subjected to sexual abuse by supervisors and managers. Pregnant workers were deported. The female workers lived in shared accommodation with no heating or hot water and regularly worked 13-hour shifts for six or even seven days a week.

The results: The American companies intended to await the outcome of a Jordanian government investigation before taking any steps. NGOs criticised this response, which they deemed to be inadequate. The companies' supplier monitoring system, they pointed out, had also failed to reveal the incidents because female workers had been specifically briefed to answer the questions that would be asked during audits.

4.5 The right to freedom of conscience and religion

Article 18 International Covenant on Civil and Political Rights states:
'Everyone shall have the right to freedom of thought, conscience and religion. [...]

Universal Declaration of Human Rights
Article 18: The right to freedom of conscience and religion

This right gives everybody the freedom to adopt a religion, a faith or a philosophy without fear of discrimination, to practice it alone or as part of a community, and to provide relevant instruction. This right may be expressed in specific rituals or items of clothing. It is also the right of every individual not to adopt religious beliefs and not to practice a religion. The State may restrict this right only in the interests of public safety.

The role of businesses

Businesses must respect their workers' freedom of religion. Conflicts may arise with respect to specific items of clothing or jewellery required by certain religions which constitute an obstacle or a hazard in working operations. In some cases, employers must accept workers performing religious rituals during working hours and must realise that religious holidays may vary from one faith to another. Businesses must seek and achieve a balance between safety, religious freedom, the rights of other workers and the interests of the company. An open corporate culture can strengthen the coexistence of different faith groups, thus contributing to intercultural exchange.

CASE STUDY

Religious symbols at the workplace

Rights involved include: the right to freedom of conscience and religion and the right to freedom from discrimination

The situation: Against the backdrop of the global economy and multicultural workforces, businesses face the challenge of how to respect the religious rights of their workers around the globe, even in difficult legal, cultural or political contexts and in terms of company regulations, such as dress or uniform codes.

An **international airline** was accused of infringing on the religious freedom of a female employee. The woman had been forced to take unpaid leave for failing to comply with the corporate uniform policy and wearing a Christian cross around her neck so that it was clearly visible. The employee felt that she was being subjected to discrimination because her cross was not seen as an exception to the ban on visible items of jewellery while Muslim and Sikh employees were permitted to wear visible religious symbols, such as headscarves or bracelets. This case attracted a great deal of media attention, as a result of which a major Christian investor threatened to withdraw its investment in the company.

The approach taken: In response to this incident, the company revised its uniform policy in consultation with its own employees and religious groups. All staff members are now permitted to wear visible symbols of their religious affiliation, including around their neck. Religious diversity at the workplace is also being reflected in the provision of prayer rooms, respect for different dietary requirements, and a monthly newsletter which provides information about religious celebrations.

4.6 The right to freedom of opinion

Article 19 International Covenant on Civil and Political Rights states: **'Everyone shall have the right to hold opinions without interference. [...]**'

Universal Declaration of Human Rights
– Article 19: Right to freedom of opinion and information

The right to freedom of opinion entitles individuals to hold opinions without external interference. People are also free to express their opinions, share them publicly, discuss them with others and use all available media to disseminate their opinions. Exercising this right may be subject to certain restrictions where it affects the rights of others, including the right to privacy. It may also be restricted or banned by law where the expression of certain opinions might adversely affect public morals or constitute a hazard to public security. This right is particularly relevant to the media. Alongside the more traditional branches of the media, from newspapers to radio, television and film, the internet is vitally important because of the option it offers to disseminate opinions around the globe.

The role of businesses

Businesses can support the right to freedom of opinion and expression by resisting any form of censorship and urging restrictive States at national and international level to take steps to ensure freedom of opinion and information.

CASE STUDY

Misuse of products by governments

Rights involved include: the right to freedom of opinion, right to freedom of assembly, right to freedom from arbitrary arrest, right to privacy

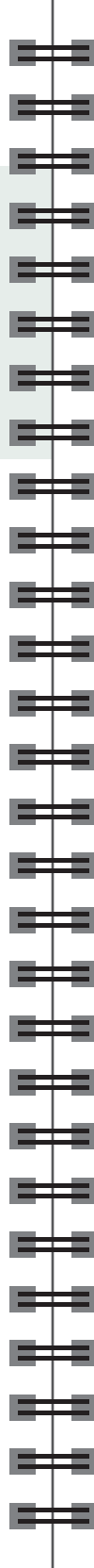
The situation: When they sell goods or services in States or to governments suspected of violating human rights, businesses run the risk that these products or services could be abused for the purpose of violating human rights, opening the business to the accusation of complicity in such violations.

Mobile telephone and internet providers in many countries, for instance, face a dilemma: on the one hand, their products can promote the right to freedom of opinion, while on the other, they are subjected to the legal control and filtering requirements laid down by the respective governments.

A **European telecommunications joint venture** supplied mobile telephone technology to Iran. It contained as standard Lawful Intercept capability along with the facility to monitor signals. According to media reports, the technology was then used by the government to monitor communications between political dissidents relating to the presidential elections.

The approach taken: In response to these reports, the company initiated talks with a range of stakeholder groups, responded publicly to the accusations on its own website, and explained the background and legal requirements. It admitted publicly that it should have investigated potential human rights impacts more thoroughly before supplying the monitoring technology.

The involvement of stakeholders allowed the company to better gauge the human rights risks involved in new technologies. As a result, the company started systematically to review its own products in terms of risks of this sort. The company stopped supplying monitoring technology to any country worldwide without question, and stipulating only compliance with the minimum requirements for Lawful Intercept capabilities. It also devised a product abuse strategy, and the processes used to analyse potential impacts of sales on human rights were scaled up. The company thus committed itself to exercising due diligence when selling products in countries with poor human rights records and high levels of corruption.



4.7 The right to freedom of association

Article 22 International Covenant on Civil and Political Rights states:

'Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. [...]

Universal Declaration of Human Rights

- Article 20: Freedom of assembly and association

International Covenant on Economic, Social and Cultural Rights

- Article 8: Right to form and join trade unions, right to strike

Article 22 of the International Covenant on Civil and Political Rights lays out the right to form societies, associations and trade unions. This covers associations such as political parties, religious groups, sports clubs or other sorts of associations as well as NGOs. The exercise of this right may be restricted by law only in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

The role of businesses

For businesses, the field of trade unions and other forms of workforce representation is particularly important. The issue can become especially relevant if, for instance, a business operates in countries in which trade unions are banned. In general, all businesses must take care not to obstruct the founding or activities of associations or other groups through their business activities.

CASE STUDY

The right to form and join trade unions and freedom of association

Rights involved include: the right to freedom of association, the right to safe working conditions, and the right to just and favourable conditions of work

The situation: In many countries trade unions are subject to intimidation and their work is undermined and, in some cases, actively opposed. This is

a problem that demands a response from responsible businesses. A study conducted by an NGO accused numerous European businesses, including a **British chain store**, a **German logistics company** and a **German mobile phone company**, of exploiting the weak legal position of trade unions in the USA to deprive trade unions of their rights in US subsidiaries. Managers, for instance, were urged to curtail the trade union activities of their staff and were even trained to do so. Cases were also reported of staff being dismissed because they had encouraged colleagues to become active in trade unions. When strikes took place, businesses threatened to employ strike-breakers who would then replace the striking workers on a permanent basis. Although this measure is permissible under US law, it is in clear contravention of the core labour standards of the International Labour Organization (ILO Convention No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948), with which the businesses in question had undertaken to comply.

The approach taken: Companies that cooperate proactively with trade unions can achieve positive results in various areas, including safety at work, as demonstrated by the example of an **international steel producer**. At the global level, the company established a close partnership between trade unions and the management. A joint health and safety committee was established that identifies and monitors measures to harmonise the company's safety performance around the globe. This includes setting up relevant committees at local level. These measures have helped reduce the number of accidents at work and scale down other risks to workers.

4.8 The right to privacy

Article 17 International Covenant on Civil and Political Rights states:

'No-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. [...]

Universal Declaration of Human Rights
-Article 12: Right to privacy

Under the provisions of Article 17, States have a duty to protect the privacy of every individual against interference on the part of the State, private individuals or the media. This includes protecting the privacy of employees against interference on the part of employers. The exercise of this right may be restricted by the State on grounds of national security or public safety or of interventions by State authorities based on legitimate public interest and enshrined in law. One example is the issue of a search warrant.

The role of businesses

Businesses confront the right to privacy in a number of ways. Telecommunications companies and data processing and data gathering businesses must guarantee that the data available to them cannot be used by unauthorised persons to interfere unlawfully in customers' privacy.

Given the backdrop of modern-day surveillance and data gathering, all businesses must ensure compliance with the right to privacy, particularly in conjunction with personal data. Measures to monitor employees (e.g. to determine whether they use the company internet for private purposes) or security measures including CCTV can also impact on the right to privacy if they do not fully comply with statutory provisions. Emissions caused by manufacturers that damage residential buildings can also be considered as breaching the right to privacy.

CASE STUDY

Monitoring staff

Rights involved include: the right to privacy, the right to safe working conditions, and the right to just and favourable conditions of work

The situation: A **discounter chain** was accused of spying on its own staff in certain German branches by using private detectives and secret cameras and was alleged to have recorded such information as the frequency and duration of toilet breaks and intimate details of the private life and love life of staff.

The impacts: These accusations led to drops in sales and seriously damaged the company's reputation. The company countered with a major campaign to restore its image and the production of a data protection strategy. It was also required to pay a hefty fine of over EUR 1 million.

4.9 The right to freedom of movement

Article 12 International Covenant on Civil and Political Rights states:

'Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. [...]

This right means that everyone lawfully within the territory of a State is free to move within that State, to leave the State and to choose where to live. It also covers the freedom to enter the State. The State may restrict this right where necessary to maintain public order, ensure national security or uphold public morals and public health.

The role of businesses

This article is relevant for businesses when, for instance, the activities of the company entail resettlement, which by its very nature restricts the rights of individuals to choose where they live.

Any resettlement must be absolutely essential and reasonable once the conflicting rights of the various interest groups have been weighed. Businesses in the tourist sector may, for instance, restrict the rights of access of fishermen to coasts or stretches of beach when large holiday resorts are built, thus limiting the fishermen's opportunities to earn their living.

CASE STUDY

Working conditions of migrant workers

Rights involved include: the right to freedom of movement, the right to appropriate conditions of work, the right to freedom from forced labour, and the rights of migrant workers

The situation: In conjunction with the use of migrant workers, either in their own business or in their supply chain, companies have been accused of infringing labour standards and the right to freedom of movement. Migrant workers are especially vulnerable to exploitation. They frequently work under poorer conditions than their local colleagues, and, in some cases, their

ID cards or passports are withheld from them. Because they often have to pay recruitment fees, they may also end up working for no pay at all or for a very low wage.

The approach taken: A global consumer electronics group identified the recruitment and employment of migrant workers as one of the major challenges in its supply chain. They are often recruited through employment agencies, some of which demand high fees. As a result of supplier audits, the company reimbursed workers for the excessive recruitment fees paid. The code of conduct for suppliers was also revised to afford protection against involuntary labour. The new code of conduct obliges suppliers to accept responsibility for the entire recruitment process and all fees incurred. Over and above this, management practices were specified in terms of contractual provisions, grievance procedures, cooperation with employment agencies and the handling of ID cards and passports.

4.10 The right to protection of the family

Article 23 International Covenant on Civil and Political Rights states

'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.'

Universal Declaration of Human Rights

- Article 16: Right to marry and found a family International Covenant on Economic, Social and Cultural Rights
- Article 10: Right to family life

The State and society must protect the right to marry and found a family.

- The State must ensure that the family, as recognised and defined in that State, is afforded adequate protection.
- The right to found a family must be respected.
- This article also protects marriage. Spouses must have equal rights and must enter voluntarily into marriage. When a marriage is dissolved, both spouses must have equal rights and obligations, and the protection of any children must be guaranteed.

The role of businesses

For businesses, this article is relevant in that working conditions must make it possible to achieve a reasonable life-work balance, so that employees can manage family commitments.

CASE STUDY

Creating a family-friendly working environment

Rights involved include: the right to protection of the family, the right to the highest attainable standard of health, the right to freedom from discrimination, and the UN Convention on the Rights of the Child

The situation: Businesses and their partners can negatively impact the right to protection of the family in many ways, for instance if they discriminate against parents in their recruitment, insist on pregnancy tests before

employing young women, or stick to rigid working time models. Businesses can, however, also create a working environment that makes it possible to combine work and family life more easily, thus specifically supporting the right to protection of the family.

The approach taken: An African mobile phone provider launched a comprehensive programme to promote and protect working mothers. The company goes well beyond the minimum standards laid down by law. Mothers are offered comprehensive medical care including prenatal check-ups and vaccinations for babies up to the age of nine months. A special room has been set aside for breastfeeding mothers, and free childcare services are provided by qualified experts. Shift patterns and working hours have been brought into line with the needs of working mothers, and the company actively encourages mothers to breastfeed their babies for the first seven months.

5

Respecting human rights – responsibility and opportunity

Human rights are a core element of international law, comparable to the protection of fundamental liberties afforded by the German constitution. Human rights are an integral part of the constitution of many States. More recent constitutions in particular, such as those of South Africa and Brazil, make explicit and detailed reference to human rights conventions. Human rights are indivisible. They embrace civil and political rights (as set out in the International Covenant on Civil and Political Rights) and economic, social and cultural rights (as set out in the International Covenant on Economic, Social and Cultural Rights).

The UN Framework and the Guiding Principles on Business and Human Rights are based on the realisation that the State is primarily responsible for guaranteeing human rights. A properly functioning State based on the rule of law is a key precondition for the observance of human rights. It also ensures a reliable framework for economic activities and investment. A functioning legal order depends on the majority of people complying with human rights, including in the context of business activities. Police surveillance and legal action can only ever uncover and punish violations and serious human rights abuses after the event.

To prevent human rights violations, all stakeholders within society must play an active part.

This is underscored in the Universal Declaration of Human Rights and in the two major human rights covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which means that business stakeholders, too, are required to take their responsibilities. Businesses can become important ambassadors for human rights if they credibly translate human rights into practice. In the business context, respecting human rights is important both in terms of the company's own workforce and in terms of its impacts, whether direct or indirect, on other stakeholders.

A pro-active approach to human rights opens up numerous opportunities for businesses, and helps them avoid risks:

- Failure to respect human rights entails operational risks including delays to projects because of labour or community disputes at individual production sites, the risk of damaging the reputation of the company if scandals become known, and the potential claims for damages the company could face in the courts.
- Active management of human rights risks can increase job satisfaction and enhance staff loyalty to the company.
- Consumers, too, are increasingly interested in the environmental and social origin of the products they buy. Transparency and a willingness to improve, especially in the field of human rights, can enhance the value of products and increase consumers' trust in the company.
- Compliance with core labour standards helps improve product quality in many cases.
- Observance of human rights standards across a company, including the impact on the surrounding communities, can help to improve the company's standing within society and helps, for instance, to ensure safety and security at production sites, to forge stable relations with suppliers, and to make it easier to attract staff.

The Guiding Principles make it clear that in all their activities, companies should help foster respect for human rights, even if States are unable or unwilling to protect human rights. This is no easy task, but it applies to all companies that sell products in these countries, operate in the extractive sector there, manufacture there, or cooperate with suppliers in these countries.

Companies should be able to demonstrate how they have applied due diligence to ensure that human rights are not being violated. What is important here is transparent communication of steps taken and outcomes but also an explanation of the limitations on the company's ability to mitigate human rights risks.

The reality is that in many countries, businesses face harsh competition and also feel the downward pressure on prices when buying raw materials. The problems become particularly acute when competitors themselves do

not actively human rights and tolerate, or even condone, human rights violations. The Guiding Principles do not deal in any depth with this situation, although it is a major factor in the day to day operations of many transnational enterprises. In this context much of the experience gained in tackling corruption can be applied to human rights. In the anti-corruption context, businesses and governments often work hand in hand to create a level playing field.

Compliance with standards such as the Guiding Principles and the OECD Guidelines for Multinational Enterprises can create legal certainty for businesses and, particularly in situations in which no specific regulations exist at national level, can provide valuable orientation in realising human rights standards. In future, more and more experience will be gained in achieving the Guiding Principles. Discussions and, even more importantly, targeted cooperation with suppliers and other businesses in the sector can provide valuable assistance and, in the long term, can help simplify processes.

Discussion and debate within multi-stakeholder networks such as the UN Global Compact and its local networks can be a first step in this direction. National human rights institutions can also be important partners on the ground.



Further reading

A Guide for Business – How to Develop a Human Rights Policy

www.globalcompact.de/publikationen/guide-business-how-develop-human-rights-policy

Business & Human Rights Resource Centre

www.business-humanrights.org

Guide to Human Rights Impact Assessment and Management (HRIAM)

www.ifc.org/hriam

Guiding Principles on Business and Human Rights

www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

How to do business with respect for human rights.

A guidance tool for companies.

www.gcnetherlands.nl/docs/how_to_business_with_respect_for_human_rights_gcn_netherlands_june2010.pdf

Human Rights Translated

www.globalcompact.de/publikationen/human-rights-translated-business-reference-guide

Human Rights and Business Dilemmas Forum

<http://human-rights.unglobalcompact.org>

Organisational Capacity Assessment Instrument

www.globalcompact.de/tools/ocai

The Corporate Responsibility to Respect Human Rights.

An Interpretive Guide, Office of the High Commissioner for Human Rights

www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

UNGC Business & Human Rights Learning Tool

www.globalcompact.de/publikationen/human-rights-business-learning-tool



