

A Practical Guide about the International Human Rights Frameworks and how Business fits into it

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Caption photo Front Page: Inhabitants in central Laos

Contents

Introduction	4
PART 1: Human rights obligations of business enterprises	7
1. Rights protecting life and security of the person, economic, social and cultural rights, civil and political rights	7
The human rights framework	7
How does business fit into the existing human rights frameworks?	10
2. Collective rights and indigenous peoples' rights	11
3. International crimes	12
The human rights framework	12
How does business fit into the existing human rights frameworks?	17
4. Labour rights	17
The labour rights framework	17
How does business fit into the existing human rights frameworks?	18
5. Sphere of influence and complicity	19
6. The African human rights system	20
PART 2: Human Rights Compliance Assessment Tool	21
1. Projects and services	21
2. Guidelines for the supply-chain	37
PART 3: Concluding remarks	38

Introduction

On 10 December 1948, the General Assembly of the United Nations (UN) adopted and proclaimed the Universal Declaration of Human Rights “as a common standard of achievement for all peoples and all nations”¹. It is not a legally binding document but “inspired more than sixty international human rights instruments that have been constructed on its foundation”².

International law “firmly establishes that states have a duty to protect against nonstate human rights abuses within their jurisdiction, and that this duty extends to protection against abuses by business entities.”³ Consequently, the human rights norms may be applied on business enterprises indirectly through national courts and tribunals. Of course, business must observe the laws in all countries in which they operate.

A growing number of international “soft law” instruments are undertaken to elaborate on the content of human rights relevant to business. States “may turn to soft law for several reasons: to chart possible future directions for, and fill gaps in, the international legal order when they are not yet able or willing to take firmer measures; where they conclude that legally binding mechanisms are not the best tool to address a particular issue; or in some instances to avoid having more binding measures gain political momentum.”⁴ Two of the widely referenced efforts are the Global Compact and the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.

The origin of the human rights principles of the Global Compact is in the Universal Declaration of Human Rights (UDHR).⁵ The Global Compact asks companies “to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption”.⁶ The OECD Guidelines for Multinational Enterprises demand from business “to respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments”.⁷ A National Contact Point has been put in place in the OECD countries for the purpose of “undertaking promotional activities, handling inquiries and for discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached procedural guidance.”⁸

A growing number of business enterprises have adopted human rights policies on a voluntary basis to comply with the existing international human rights hard and soft law. The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises reports “companies reference international instruments in formulating their policies”⁹. “Among the Fortune Global 500 firms, ILO [International Labour Organization] declarations and conventions top the list, followed by the UDHR. UN human rights treaties are mentioned infrequently. The Global Compact is cited by just over half, the OECD Guidelines just under. More than 80 percent also say they work with external stakeholders on their human rights policies.”¹⁰

¹ Preamble of the Universal Declaration of Human Rights.

² The United Nations office of Geneva, news and media, celebrated Human Rights Day at the United Nations Office in Geneva. There was a year-long campaign leading up to the Celebration of the Sixtieth Anniversary of the Universal Declaration of Human Rights, launched, 10 December 2007.

³ Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts”, UN Doc. A/HRC/4/035. 9 February 2007.

⁴ Id., page 14.

⁵ <http://www.globalcompact.org/AboutTheGC/TheTenPrinciples/humanRights.html>.

⁶ www.globalcompact.org.

⁷ OECD Guidelines for Multinational Enterprises, General Policies, II.2 (Revised 2000).

⁸ OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts (November 2000), page 25.

⁹ Report by the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts”, UN Doc. A/HRC/4/035. 9 February 2007.

¹⁰ Id., page 19.

Yet “even among the leaders, certain weaknesses of voluntarism are evident. Companies do not necessarily recognize those rights on which they may have the greatest impact. And while the rights they do recognize typically draw on international instruments, the language is rarely identical. Some interpretations are so elastic that the standards lose meaning, making it difficult for the company itself, let alone the public, to assess performance against commitments.”¹¹

This publication offers practical guidance to companies about the international human rights framework and how business fits into it. We discuss the recognized understanding of the “core human rights categories”:

- The rights protecting life and security of the person; economic, social and cultural rights; civil and political rights;
- The collective rights and indigenous peoples’ rights;
- International crimes; and
- Labour rights.

It is “essential” that business enterprises take all actions to follow the legal standards. Additionally, there are expected and desirable actions. This classification has been used elsewhere. The Business Leaders Initiative on Human Rights¹² (BLIHR) produced a “Human Rights Matrix” to allow a business to map what it sees as its “essential”, “expected” and “desirable” priorities against the broad spectrum of human rights categories.¹³ IPIS finds this classification a useful tool. However, BLIHR adds, “the Human Rights Matrix is a general version for the purposes of example only. Your business would need to produce its own version drawing on all the relevant data from your company’s activities across specific geographic areas. A great advantage offered by a rights-aware approach is that the categories (shown across the column headings of the Matrix) are universal and therefore global in application, as are many of the international standards upon which ‘essential’ actions are based.”¹⁴



The BLIHR uses the pyramid which shows “that any human rights strategy should align the essential, expected and desirable actions of a company. It makes no sense for a business to take desirable actions to address a human rights concern, such as providing charitable donations, if it is not already demonstrating its essential and expected action in the same area.”¹⁵

They define the three categories as follow¹⁶:

- **Essential** – is the action that *must* be taken by the company to follow relevant legal standards, e.g. international human rights law, national laws, and regulations, including in situations where a government is unwilling or unable to fulfill its obligations.
- **Expected** – is the action that *should* be taken by the company to meet the expectations of, and accept its shared responsibilities to, relevant stakeholders. What is expected may vary according to your business sector.
- **Desirable** – is the action through which the business *could* demonstrate real leadership. This can take a number of forms depending on the circumstances, but could include partnerships with other stakeholders, philanthropic and charitable donations or the donation of technical expertise to help the most disadvantaged.

¹¹ Id., page 20.

¹² It is a business-led programme with 13 corporate members.

¹³ The BLIHR, the United Nations Global Compact and the Office of the High Commissioner for Human Rights, A Guide for Integrating Human Rights into Business Management. See <http://www.blihr.org/Reports/GIHRBM.pdf>.

¹⁴ Id., page 13.

¹⁵ Id., page 13

¹⁶ Ibid.

We also include in our guide a Human Rights Compliance Assessment (HRCA) tool to provide company representatives an idea on how to apply the human rights in their business decisions and operations. We use the diagnostic assessment tool that was produced by the Danish Institute for Human Rights¹⁷. Their tool is designed to help companies detect potential human rights violations caused by the effect of their operations on employees, local residents and all other stakeholders.¹⁸ It runs on a database containing approximately 350 questions and more than 1,000 corresponding human rights indicators, developed from the Universal Declaration of Human Rights and over 80 other major human rights treaties and ILO conventions.¹⁹ The HRCA “underwent a large-scale consultation process in 2003-2004 involving over 40 companies and 40 human rights groups from 14 European countries. The process was designed to ensure that the standards and indicators in the tool reflected wider agreement between the human rights and business worlds on company responsibility for human rights.”²⁰ We added additional clarifications in the HRCA.

As an independent research institute that focuses on Sub-Saharan Africa, we elaborate a bit more on the African context. We assess the African human rights instruments, provide examples of good practises by business enterprises, which operate in Africa and we design reports with in-depth analysis of the supply chain responsibility of business enterprises in Africa.

¹⁷ http://www.humanrightsbusiness.org/010_about.htm.

¹⁸ http://www.humanrightsbusiness.org/040_hrca.htm.

¹⁹ Ibid.

²⁰ Ibid.

PART 1: Human rights obligations of business enterprises

1. Rights protecting life and security of the person, economic, social and cultural rights, civil and political rights

The human rights framework

The Universal Declaration of Human Rights (UDHR) constitutes a common standard of achievement for all peoples and all nations.²¹ It is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments.²² Both profound principles are accentuated in the Vienna Declaration and Program of Action which were adopted by 171 states at the World Conference on Human Rights on 25 June 1993. The Declaration “marks the culmination of a long process of review and debate over the current status of human rights machinery in the world.”²³

The General Assembly of the United Nations adopted the UDHR in 1948 and proclaimed it “as a common standard of achievement for all peoples and all nations, to the end that 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, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”²⁴

The Declaration consists of a preamble and 30 articles and defines human rights, embracing three critical areas: rights protecting life and security of the person, economic, social and cultural rights, civil and political rights. It is not a legally binding document but inspired more than 60 human rights instruments that have been constructed on its foundation.²⁵ There are nine core international human rights treaties (table 1). Two of those are not yet in force. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

Core human rights treaties*	Acronym	Date
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD	21 Dec 1965
International Covenant on Civil and Political Rights	ICCPR	16 Dec 1966
International Covenant on Economic, Social and Cultural Rights	ICESCR	16 Dec 1966
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	18 Dec 1979
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	10 Dec 1984
Convention on the Rights of the Child	CRC	20 Nov 1989

²¹ Preamble of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

²² Ibid.

²³ <http://www.ohchr.org/EN/AboutUs/Pages/ViennaWC.aspx>.

²⁴ Preamble of the Universal Declaration of Human Rights.

²⁵ <http://www2.ohchr.org/english/law/index.htm#instruments>.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICRMW	18 Dec 1990
International Convention for the Protection of All Persons from Enforced Disappearance (not yet into force)		
Convention on the Rights of Persons with Disabilities (not yet into force)		
Optional Protocol to the International Covenant on Civil and Political Rights	ICCPR-OP1	16 Dec 1966
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	ICCPR-OP2	15 Dec 1989
Optional Protocol to the Convention on the Elimination of Discrimination against Women	OP-CEDAW	10 Dec 1999
Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	OP-CRC-AC	25 May 2000
Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	OP-CRC-SC	25 May 2000
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	OP-CAT	18 Dec 2002
Optional Protocol to the Convention on the Rights of Persons with Disabilities (not yet into force)		

* <http://www2.ohchr.org/english/law/index.htm#instruments>.

The consent of a State to be bound by a treaty “may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.”²⁶ It is obliged “to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”²⁷

The following overview sets out the principles in the core human rights instruments, consistent with the three critical areas of human rights, which are defined in the Universal Declaration of Human Rights.²⁸

	ICCPR	ICESCR	ICERD	CEDAW	CAT	CRC	ICMW
Right of self-determination	1.1	1.1					
Freely dispose of their natural wealth and resources	1.2	1.2					
Elimination of discrimination	2.1, 26	2.2					
• condemn discrimination			2, 3	2		2	7
• condemn practices of superiority			4	5.a			
Protection from exploitation				6		32, 34, 35, 36, 38, 39	
Rights protecting life and security of the person							

²⁶ Article 11 of the Vienna Convention on the Law of Treaties, 23 May 1969.

²⁷ Id., Article 18.

²⁸ Each cell specifies the articles in the treaty.

	ICCPR	ICESCR	ICERD	CEDAW	CAT	CRC	ICMW
The right to ...							
• life	6.1					6	9
• liberty*	9, 10, 12, 18					37.b, 37.c	16.1, 17.1
• security	9		5.b				16.1, 16.2
• be free from slavery	8.1						11.1
• be free from servitude	8.2						11.1
• be free of forced and compulsory labour	3						11.2
• be free from torture	7				2	37.a	10
• be free from cruel, inhuman or degrading treatment or punishment	7,10.1				16	37.a, 19	10
• equal before the courts and tribunals	14,15		5.a	15.1, 15.2			17.7, 18.1
• equal before the law	26						25, 27, 54
• be free from arbitrary arrest	9.1						16.4
• judicial remedy against human rights violation before a court	2.3		6		4, 14		15, 16.9, 18.6
Economic, social and cultural rights.							
The right to ...							
• enjoy the highest attainable standard of physical and mental health		12	5.e.iv			19, 23, 27.1 24.1	
• a standard of living adequate for well-being that includes: ...		11.1				27.1	
food		11.1, 11.2				24.2.c	
clothing		11.1					
housing		11.1	5.e.iii	14.2.h			43.1.d
continuous improvement of living conditions		11.1					
medical care and		12.2.d	5.e.iv	12.1		24	28, 43.1.e, 45.1.c
social security, including social insurance		9	5.e.iv	11.1.e		26.1	27.1, 43.1.e 45.1.c
• education		13	5.e.v	10		28, 29, 32	30, 43.1.a, 45.1.a
• the enjoyment of just and favourable conditions of work (e.g. remuneration, safe and healthy working conditions, a decent living, rest, leisure and reasonable limitations of working hours and periodic holidays with pay)		7.a	5.e.i	11.1.d, 11.1.f, 11.2			25
• form and join trade unions	22 (1)	8.1.a	5.e.ii				26, 40.1
• right to strike		8.1.d					
* The term "liberty" has many meanings: personal liberty and security; liberty to move freely and freedom to choose his residence.							

	ICCPR	ICESCR	ICERD	CEDAW	CAT	CRC	ICMW
• take part in cultural life and respect for cultural identity		15.1a	5.e.vi			30	31, 43.g, 45.d
• enjoy the benefits of scientific progress and its applications		15.1b					
• benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author		15.1.c					
Personal and political rights and freedoms							
The right to...							
• protect a person's privacy in matters concerning family, home and correspondence	17					16, 40.2.vii	14
• take part in public affairs	25(a)		5.c	7.b; 8			41
• to vote	25(b)		5.c	7.a			41
• access to public service	25(c)		5.c				
• own property and the prohibition of arbitrary deprivation of property	1.2	1.2	5.d.v, 5.d.i	15.2			15
• freedom of movement	12		5.d.ii, 5.f	15.4		10.2	39.1, 8
• freedom of expression	19		5.d.viii			12, 13	13
• freedom of religion, thought and conscience	18, 19, 20		5.d.vii			14.1	12
• freedom of peaceful assembly and association	21,22.1		5.d.ix			15.1	
• nationality	24.3		5.d.iii	9		8	29

Any state party to one of the core human rights treaties agrees to take all effective appropriate measures, including adopting legislative and administrative measures and other types of regulation to implement the provisions in the treaty. There are seven human rights treaty bodies. These bodies have committees of independent experts who monitor implementation of the core international human rights treaties, which are in force. They are created in accordance with the provisions of the treaty that they monitor.²⁹ The Committee examines each report from the state party and addresses its concerns and recommendations to the State party in the form of Concluding Observations or Concluding Comments. They can also publish its interpretation of the provisions of the treaties.

How does business fit into the existing human rights frameworks?

Four of the seven core human rights treaties make explicit reference to business enterprises. These are the following ones:

- The Convention on the Elimination of All Forms of Discrimination against Women (1979) contains provisions that explicitly and implicitly require States Parties to protect against abuse by business enterprises.
- The International Convention on the Elimination of all forms of Racial Discrimination (1965) explicitly mentions private organizations and individuals. States are required to take a wide range of measures to protect individuals or groups from private corporate acts that may violate the Convention.³⁰

²⁹ <http://www2.ohchr.org/english/bodies/treaty/index.htm>.

³⁰ The Committee on Racial Discrimination “makes it clear that regulation through legislative measures and policies is not sufficient per se. States should also adjudicate actions by private actors, that is, they must thoroughly investigate any claim of discrimination, prosecute the responsible individual or business, provide effective remedies (generally under criminal law), including the right to seek reparation. States must also monitor the human rights situation through an independent body – this may require, for example, conducting environmental impact assessments before any operating licenses are issued to extractive companies. In addition, States must take special measures to guarantee

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) makes explicit reference to recruitment agencies and implicit reference to the banking sector. In addition, the committee on Migrant workers has made recommendations concerning the regulation of recruitment agencies, the agricultural sector and the media.
- The Convention on the Rights of the Child does not explicitly refer to business enterprises or any similar terms though it does mention the mass media, which could involve business enterprises.³¹

The other three core human rights instruments do not contain a general provision which explicitly refer to the duty of States to ensure or protect rights against abuses by business enterprises or to prohibit acts by enterprises. However, this does not absolve States to take regulating and adjudicating measures. Several General Comments³² (GC) and Concluding Observations (CO) explicitly or implicitly refer to a duty to prevent business abuse, either in general terms or with respect to specific sectors. A detailed overview is provided in Part 2. Consequently, the adoption of the duty to prevent business abuse can be considered in domestic legal systems.

There exists no general obligation imposed on States under international human rights law to exercise extraterritorial jurisdiction against business enterprises in order to protect the internationally recognized human rights outside their national territory.³³ The view may be changing, especially as far as economic and social rights are concerned.³⁴ The International Covenant on Economic, Social and Cultural Rights provides that each State Party to the Covenant “undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights.”³⁵ In order to achieve this obligation, the UN Committee on Economic, Social and Cultural Rights noted in several occasions that State parties have an obligation to protect the rights of people under the jurisdiction of other States when they would be threatened by the activities of private actors whose behaviour a State may decisively influence.³⁶

2. Collective rights and indigenous peoples’ rights

The term “collective rights” refers to the group rights of peoples to be protected from attacks on their group identity and group interests. Examples are the right of self-determination, collective rights of indigenous peoples and of minorities, and group rights to be protected from the crime of genocide. Collective rights are defined in international law and international human rights bodies and tribunal have consistently held that the collective rights must be recognized and protected.

For instance, the right to self-determination of indigenous peoples are articulated in Article 1 the ICESCR and the ICCPR. The human rights committees who monitor the implementation of the Covenants often address indigenous peoples’ rights in its Concluding Observations. This does not only incorporate the material aspects of the right to self-determination but also the self-government aspects of that right.³⁷

the rights of specific groups, such as Roma. For example, States must, among others, offer professional training to Roma so as to promote their employment in public and business enterprises.” Mapping State obligations for corporate acts: An examination of the UN Human Rights Treaty System Report No. 1: International Convention on the Elimination of All Forms of Racial Discrimination. Prepared for the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises. With the support of The Office of the United Nations High Commissioner for Human Rights. 18 December 2006.

³¹ State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations’ core Human Rights Treaties. Individual Report on the United Nations Convention on the Rights of the Child and its Optional Protocols Report No. 6. Prepared for the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, with the support of The Office of the United Nations High Commissioner for Human Rights. July 2007.

³² Interpretation by the group of experts on the provisions of a treaty.

³³ O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, December 2006. See also, among others, the essays collected in F. Coomans and M. Kamminga (eds), Extraterritorial of Human Rights Treaties, Intersentia, Antwerp-Oxford, 2004.

³⁴ O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, December 2006.

³⁵ Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

³⁶ U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 39; U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), The right to water, U.N. Doc. E/C.12/2002/11 (26 November 2002), para. 31. See among others O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, December 2006.

³⁷ Forest Peoples programme and Tebtebba Foundation, Indigenous Peoples’ Rights, Extractive Industries and Transnational and Other Business Enterprises, A submission to the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, 29 December 2006.

This includes that they have a right to freely dispose of their natural wealth and resources and to be secure in their means of subsistence.³⁸

Additionally, the UN Committee on the Elimination of Racial Discrimination has recognized indigenous peoples' ownership rights over water, subsoil and other natural resources pursuant to the right to property in Article (5)(d)(v) of the ICERD.³⁹ Article 27 of the ICCPR protects the linguistic, cultural and religious rights of indigenous peoples and includes, inter alia, land and resource, subsistence and participation rights.⁴⁰ These rights are vested in individuals, but exercised in community with other members of the group, thereby providing some measures of collectivity.⁴¹ A State to be bound by a treaty is obliged to give domestic legal effect to it.

3. International crimes

The human rights framework

In order to combat impunity against crimes under international law, certain international treaties imposes on all States parties⁴² an obligation to establish jurisdiction over the crimes, even whether or not they are punishable under national law⁴³ and they are committed abroad⁴⁴. The obligation concerns the prosecution of an individual for participating in or otherwise contributing significantly⁴⁵ to a crime of genocide⁴⁶, crimes against humanity⁴⁷, torture⁴⁸ and forced disappearances⁴⁹ and war crimes⁵⁰. The general accepted definition of the crimes under international law is provided in the following table:

Crime of genocide
(based on Article 6 of
the Rome Statute of the
International Criminal
Court)

“Genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; and
- (e) Forcibly transferring children of the group to another group.

³⁸ Id., page 28.

³⁹ Id., page 31.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² This is not only imposed on States parties to the relevant treaties but also on all States, on the basis of customary international law.

⁴³ International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 2. The Commission adopted the draft Code with the following understanding: “With a view to reaching consensus, the Commission has considerably reduced the scope of the Code. On first reading in 1991, the draft Code comprised a list of 12 categories of crimes. Some members have expressed their regrets at the reduced scope of coverage of the Code. The Commission acted in response to the interest of adoption of the Code and of obtaining support by Governments. It is understood that the inclusion of certain crimes in the Code does not affect the status of other crimes under international law, and that the adoption of the Code does not in any way preclude the further development of this important area of law.” See [Yearbook of the International Law Commission, 1996, vol. II \(Part Two\)](#), para. 46.

⁴⁴ O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, December 2006. See also, among others, the essays collected in F. Coomans and M. Kamminga (eds), *Extraterritorial of Human Rights Treaties*, Intersentia, Antwerp-Oxford, 2004.

⁴⁵ The prosecution relates to the commission of a crime, by complicity in a crime or by the attempt to commit a crime.

⁴⁶ Convention on the Prevention and Punishment of the Crime of Genocide (1948).

⁴⁷ Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity (1973).

⁴⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴⁹ International Convention for the Protection of all Persons from Enforced Disappearance.

⁵⁰ Grave breaches of the Geneva Conventions of 12 August 1949, and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

Crimes against humanity (based on Article 7 of the Rome Statute of the International Criminal Court)

“Crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender* as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid; and
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

For the purpose of the definitions above:

- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts [referred to in a-k above] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) “The crime of apartheid” means inhumane acts of a character similar to those [referred to in a-k above], committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; and

* It is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

War crimes (based on Article 8 of the Rome Statute of the International Criminal Court)

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

"War crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement; and

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(War crimes)

- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
 - (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition*;
 - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; and
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c)** In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

* A clarification is included in the Annex to the Rome Statute.

** This applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(War crimes)

- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages; and
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees, which are generally recognized as indispensable.
- (d)* Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; and
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

Torture (based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

*This applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

Forced disappearances (based on the International Convention for the Protection of all Persons from Enforced Disappearance)

“Enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

How does business fit into the existing human rights frameworks?

None of the treaties were drafted with business enterprises in mind. It would “therefore not be plausible to derive from them an obligation, for instance, for States where a company is incorporated, to launch an investigation against that company, leading possibly to the imposition of effective sanctions, if it appears on the basis of reliable information that the company has taken part in the commission of international crimes. Moreover, not all States have accepted the concept of criminal liability of corporate bodies – although the international crimes discussed above call, per definition, for sanctions of a criminal nature.”⁵¹

However, several States have accepted the concept of criminal liability of legal persons in order to ensure that business enterprises who are authors of international crimes are sanctioned for the crimes.

Additionally, both genocide and crimes against humanity are considered as *jus cogens norms* and is “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”⁵²

4. Labour rights

The labour rights framework

The International Labour Organization (ILO) was created in 1919, in accordance with Part XIII, known as the “Labour Charter”, of the Treaty of Versailles. In 1946, the ILO became the first specialized, agency of the United Nations. It has a tripartite structure, where workers and employers participate as equal partners with governments in the organization’s governance.⁵³

The ILO establishes international labour norms in conventions and recommendations. It also provides technical assistance and advisory services, and contributes to the development of independent employers’ and employee organisations.⁵⁴ The fundamental and priority Conventions are the following ones:

Fundamental conventions	Priority conventions
C29 Forced Labour Convention, 1930	C81 Labour Inspection Convention, 1947
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948	C122 Employment Policy Convention, 1964
C98 Right to Organise and Collective Bargaining Convention, 1949	C129 Labour Inspection (Agriculture) Convention, 1969

⁵¹ O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations, December 2006.

⁵² Article 53 of the Vienna Convention on the Law of Treaties, 1969.

⁵³ http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm.

⁵⁴ <http://www.ilo.org/public/dutch/region/eurpro/brussels/mandaat/arbeid.htm>.

C100 Equal Remuneration Convention, 1951	C144 Tripartite Consultation (International Labour Standards) Convention, 1976
C105 Abolition of Forced Labour Convention, 1957	
C111 Discrimination (Employment and Occupation) Convention, 1958	
C138 Minimum Age Convention, 1973	
C182 Worst Forms of Child Labour Convention, 1999	

The constitution of the ILO specifies the provisions that a member state (of the ILO) shall have to take when it ratifies a convention. More importantly, it will take such action as may be necessary to make effective the provisions of the Convention.⁵⁵ Reports on ratified Conventions are either due every two years for fundamental and priority Conventions, or every five years for all the other Conventions, unless they are specifically requested at shorter intervals.

What is significant is the International Labour Conference declared in its 86th session in 1998 that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labour;
- (c) The effective abolition of child labour; and
- (d) The elimination of discrimination in respect of employment and occupation.”⁵⁶

These principles are also addressed in the ILO Declaration on Fundamental Principles and Rights at Work. It is ‘an expression of commitment by governments, employers’ and workers’ organizations to uphold basic human values - values that are vital to our social and economic lives.’⁵⁷ The Declaration makes it clear that ‘these rights are universal, and that they apply to all people in all States - regardless of the level of economic development’.⁵⁸

The Members undertake that Conventions which they have ratified in accordance with the provisions of this Constitution “shall be applied to the non-metropolitan territories for whose international relations they are responsible, including any trust territories for which they are the administering authority, except where the subject-matter of the Convention is within the self-governing powers of the territory or the Convention is inapplicable owing to the local conditions or subject to such modifications as may be necessary to adapt the Convention to local conditions.”⁵⁹

How does business fit into the existing human rights frameworks?

The majority of existing international initiatives attempt to address business responsibility to respect labour rights. Consequently, a strong argument could be made “for direct corporate responsibilities under the ILO core conventions: their subject matter addresses all types of employers, including corporations; corporations generally acknowledge greater responsibility for their employees than for other stakeholders; and the ILO’s supervisory mechanism and complaints procedure specify roles for employer organizations and trade unions.”⁶⁰ But “logic alone does not make law, and corporations’ legal

⁵⁵ Article 19, para. 5(d) of the ILO’s Constitution.

See <http://www.ilo.org/ilolex/english/manualq.htm>.

⁵⁶ ILO Declaration on fundamental principles and rights at work, 19 June 1998.

⁵⁷ <http://www.ilo.org/dyn/declaris/DeclarationWeb.IndexPage>.

⁵⁸ Ibid.

⁵⁹ Article 35 of the ILO’s Constitution.

⁶⁰ Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises, “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts”, UN Doc. A/HRC/4/035. 9 February 2007.

responsibilities under the ILO conventions remain indirect.”⁶¹ The labour rights norms may be applied on business enterprises indirectly through national courts and tribunals.

A prominent example of soft law’s normative role is the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, endorsed not only by states but also by global employers’ and workers’ organizations.⁶² All the parties concerned by this Declaration should respect “the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress.”⁶³ The principles are grounded on the fundamental rights, as expressed in Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work⁶⁴.⁶⁵

5. Sphere of influence and complicity

The Office of the United Nations High Commissioner for Human Rights (OHCHR) explained the meaning of the term, which involves “a certain political, contractual, economic, or geographic proximity.”⁶⁶ The extent of a company’s ability to act “may vary depending on the human rights issues in question, the size of the company, and the proximity between the company and the (potential) victims and (potential) perpetrators of human rights violations.”⁶⁷ The relationship a company has with its employees “lies at the centre of its sphere of influence”⁶⁸, companies may have “direct and close connections with the companies’ host or home governments, or with armed groups that control the territory in which they operate”⁶⁹ or through the “advocacy activities of their respective business associations before policy makers.”⁷⁰ Important human rights issues may arise “from the way a core firm exercises its influence over issues like the price and quality of a product.”⁷¹ At the basic level, core firms are able to influence price, simply through the process of supply and demand and price negotiations. Pressing a supplier too hard on the price of the product may have a negative impact on the labour standards enjoyed by the supplier’s employees, including their rights to receive fair wages, the right to safe and healthy working conditions and the right to reasonable limitations of working hours.⁷²

A business enterprise may be particularly complicit in human rights abuses.⁷³ International criminal cases, drawing on customary international law, provide a definition of complicity.⁷⁴ A corporation is complicit in human rights abuses when it provides practical assistance, encouragement, or moral support, which has a substantial effect on the perpetration of the crime. It has knowledge that its actions assist the perpetrator in the commission of the crime. Although there is some variation of the scope of liability, domestic law and jurisprudence also provide liability in aiding and abetting the commission of human rights abuses.⁷⁵ Complicity in human rights violations can be divided in four categories: direct, indirect and silent complicity, and complicity in case of Joint Venture. The first three categories of complicity are reflected in international law and jurisprudence, as well as the UN Global Compact and the OCHCR.

⁶¹ Ibid.

⁶² Id., page 14.

⁶³ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Article 8.

⁶⁴ These are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

⁶⁵ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Article 8.

⁶⁶ OHCHR Briefing Paper, The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity, OHCHR, December 2004, page 4.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Id., page 8.

⁷¹ Id., page 5.

⁷² Ibid.

⁷³ This view and text is taken from elsewhere in BankTrack (ed.), Human Rights, Banking Risks Incorporating Human Rights Obligations in Bank Policies, 17 February 2007.

⁷⁴ Statements of Trial Judgements by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda describe “aiding” and “abetting” as parts of “complicity”. The international criminal law standards of complicity are very similar to those recently articulated in the UN Global Compact (Principle II) and the Commentary to the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and by the OHCHR.

⁷⁵ Lilian Manzella, “The International Law Standard for Corporate Aiding and Abetting Liability”, July 2006, p. 23.

- Direct complicity occurs when an enterprise decides intentionally to participate through direct assistance in the commission of human rights abuses and that assistance contributes to the commission of the human rights abuses by another.
- Indirect or beneficial complicity occurs when the business enterprise takes an action that has a substantial effect on the abuses, even though it does not have a direct role.⁷⁶ The notion of indirect or beneficial complicity in human rights abuses is not confined to direct involvement in the execution of human rights violations by others.
- A business enterprise is complicit in case of Joint Venture when it has a contractual relationship with a partner and it knew or should have known of the abuses committed by the partner but does not intervene.⁷⁷

6. The African human rights system

The African regional human rights system was created by the Organization of African Unity's adoption of the African Charter on Human and Peoples' Rights. With the recent replacement of the Organization of African Unity by the African Union (AU), the African system is in a state of transition and is in the process of redefining the roles and functions of the new AU bodies. The AU objectives is, among others, to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights⁷⁸ and other relevant human rights instruments; to promote sustainable development at the economic, social and cultural levels as well as the integration of African economies and to promote co-operation in all fields of human activity to raise the living standards of African peoples.⁷⁹ Parties to the African Charter on Human and Peoples' Rights "shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them"⁸⁰. The charter does not provide obligations of non-State entities. However, the charter condemn "all forms of foreign economic exploitation"⁸¹.

⁷⁶ A business enterprise is indirectly complicit when it is aware that human rights violations are occurring, but does not intervene with the authorities to try and prevent or stop the violations. A business enterprise benefits from the opportunities created by human rights violations.

⁷⁷ OHCHR Briefing Paper, The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity, OHCHR, December 2004.

⁷⁸ African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

⁷⁹ The Constitutive Act, Article 3.

⁸⁰ African Charter on Human and Peoples' Rights, Article 1.

⁸¹ Article 21 of the Charter on Human and Peoples' Rights states that "(1.) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. (2.) In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. (3.) The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. (4.) States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. (5.) States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources."

PART 2: Human Rights Compliance Assessment Tool

1. Projects and services

Environmental Health and Safety: Does the company have emergency procedures in place to effectively prevent and address all health emergencies and industrial accidents affecting the surrounding community?

- The company policy has detailed emergency procedures, prevention plans, and training programmes to protect against dangers and handle emergencies.
- The company has measures in place to contain industrial accidents (e.g., on-site fire crews, airtight self-sealing blast-proof doors, etc.).
- The company has a clearly audible/visible alarm system that warns nearby communities of potential emergencies, if necessary.
- The company has developed emergency community evacuation plans with the appropriate local, regional, and national authorities, if necessary. Community residents are clearly informed about these plans and familiar with the evacuation procedures contained therein.
- The company maintains close contact with nearby communities, the relevant authorities, and external emergency services, and is able to notify them with minimal delays about potential emergencies.
- If the site is located far away from a hospital, the company has adequate medical resources and competent staff to provide preliminary relief and treatment to people who might suffer the consequences of an industrial accident.
- The company's emergency response procedures comply with the highest level of industry standard, or exceed the standard when necessary.
- Local authorities, NGOs [non-governmental organizations] and community representatives confirm that they have been informed about the company's emergency community evacuation plans and the procedures contained therein.

IPIS

Comment:

“Informed”

A good practise is to inform and consult stakeholders prior to making a final decision about the plans and procedures.

Local authorities, NGOs and community representatives confirm that any workplace emergencies or industrial accidents registered have been effectively contained with minimal harm to the health of the local population.

Environmental Health and Safety: Does the company have mechanisms for hearing, processing, and settling the grievances of the local community?

- The company has a policy prescribing the requirements of a fair hearing.
- Company policy requirements are followed in relation to all grievances.
- The company has a neutral mechanism responsible for hearing, processing, and settling disputes. That mechanism has representation from members of both the company and the local community.
- Members of the local community are informed about the company grievance process and are able to anonymously submit grievances if they prefer to do so.
- Local NGOs or other representatives are allowed to participate and represent community members

in any hearing held with respect to a grievance.

- Records show that the company systematically and objectively reviews any complaints filed and implements corrective action if necessary.
- Community members and local NGOs confirm that they have access to a grievance mechanism which addresses any concerns raised in a fair and transparent manner.

Land management: Does the company ensure that it does not participate in or benefit from improper forced relocations, and adequately compensates inhabitants in voluntary relocations?

- The company has a procedure for ensuring that it is not complicit in any forced relocations, unless the relocation is done in conformity with international law and all alternative solutions have first been explored.

**IPIS
Comment:**

Clarification on “displacement of people”

Project operations can cause displacement of people. Examples are pollutant emissions, flooding of land and disrupting people’s livelihood. Recognizing problems related to displacements, the Commission on Human Rights, by its resolution 2000/9 of 17 April 2000, appointed a Special Rapporteur on adequate housing, whose mandate is to focus on adequate housing as a component of the right to an adequate standard of living. The Special Rapporteur on adequate housing developed Basic principles and guidelines on development-based evictions and displacement and urges the governments and the international community to incorporate the provisions. While the principles and guidelines are not legally binding, “they are based on international human rights law”^a and “focus on providing guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions – for example under the pretext of serving the ‘public good’, such as those linked to development and infrastructure projects (including, for example, the construction of large dams, large-scale industrial or energy projects, or mining and other extractive industries) – are not undertaken in contravention of existing international human rights standards and do not thus constitute ‘forced evictions’.”^b Displacement of people can also be carried out in connection with conflict over land rights or with land acquisition measures associated private profits (city beautification programmes, unbridled speculation in land, etc.).

The guidelines apply to “acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection” [emphasis added].^c The guidelines state furthermore that “particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process.”^d

At a minimum, the guidelines require that, “regardless of the circumstances and without discrimination^e, evicted persons or groups, especially those who are unable to provide for themselves, need to have safe and secure access to: (a) essential food, potable drinking water and sanitation; (b) basic shelter and housing^f; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. They also need to ensure that members of the same extended family or community are not separated as a result of evictions.”^g

The guidelines further state that “identified relocation sites need to include: (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, and ensuring physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence, and access to remedies for any violations suffered.”^h.

To ensure these rights, “individuals and communities must have prior to displacement access to appropriate data, documents and intellectual resources that impact upon their rights. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources and other factors that affect the rights.”ⁱ.

^a Paragraph 3 of the Basic principles and guidelines on development-based evictions and displacement. The basic principles and guidelines can be found on the website of the OHCHR for Human Rights (annex of the document E/CN.4/2006/41): <http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>.

^b Id., para. 10: Adequate legal instruments are the Universal Declaration of Human Rights (Article 17), the International Covenant on Economic, Social and Cultural Rights (Art. 11, para. 1), the Convention on the Rights of the Child (Art. 27, para. 3), the non-discrimination provisions found in Article 14, para. 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and Article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, and consistent with the indivisibility of a human rights approach, Article 17 of the International Covenant on Civil and Political Rights states that “(n)o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”, and further that “everyone has the right to the protection of the law against such interference or attacks”. Article 16, paragraph 1, of the Convention on the Rights of the Child contains a similar provision. Other references in international law include Article 21 of the 1951 International Convention regarding the Status of Refugees; Article 16 of International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries (1989); and Article 49 of the Fourth Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949.

^c Para. 4 of the Basic principles and guidelines on development-based evictions and displacement.

^d Para. 56(h) of the Basic principles and guidelines on development-based evictions and displacement.

^e The term “discrimination” is not further explained and In General Comment 7, the UN Committee states that the non-discrimination provisions in Articles 2.2 and 3 “impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.” General Comment 7, The right to adequate housing (Art.11.1): forced evictions: 20 May 1997. The right to adequate housing (Art. 11.1 of the Covenant): forced evictions.

^f Adequate housing must be in a place that enables access to employment, primary health-care, education and other social services and civic amenities. Housing configuration, spatial design and site/community organization should be determined locally and in harmony with a community's cultural preferences and attributes.

^g Para. 52 of the Basic principles and guidelines on development-based evictions and displacement.

^h Id., para. 55.

ⁱ Id., para. 32 and 33.

- When purchasing or renting property from governments or large-scale land owners, the company investigates the occupation of the land to ensure that no forced relocations have been performed, unless these have been done in conformity with international law.
- The company explores all alternative measures in consultation with the affected parties in order to mitigate any negative affects of a proper government relocation.

IPIS Clarification:

A good practise is to provide affected parties prior to consultations the appropriate documents and intellectual resources.

- The company ensures that adequate compensation (housing, land, money, etc.) is provided to all affected parties in case of relocation.

The ICESCR consists of the “right of everyone to an adequate standard of living for himself and his family, including adequate food and to be free from hunger.” This includes the right to water.^a The right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.^b The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.^c

In interpretation on the content of human rights provisions, the UN Committee on Economic, Social and Cultural Rights has issued the following comments, in relation to the right to adequate food and the right to water: (1) The Committee considers that the core content of the right to adequate food implies: (a) the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture, and (b) The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.^d (2) While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:^e Availability^f, Quality^g and Accessibility.^h

^a General Comment No. 15 (2002), The right to water (Articles 11 and 12 of the ICESCR). Para. 3 states: “Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in Article 11, paragraph 1, (see General Comment No. 6 (1995)). The right to water is also inextricably related to the right to the highest attainable standard of health (Art. 12, para. 1) and the rights to adequate housing and adequate food (Art. 11, para. 1).”

^b Definition by the Special Rapporteur on the right to food. See <http://www.ohchr.org/english/issues/food/index.htm>. This definition is in line with the core elements of the right to food as defined by General Comment No. 12 of the UN Committee on Economic, Social and Cultural Rights. The Committee declared that “the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural or other disasters.”

^c General Comment No. 15 (2002), The right to water (Arts. 11 and 12 of the ICESCR), para. 10.

^d The right to adequate food (Art.11): 12 May 1999. E/C.12/1999/5. (General Comments).

^e The right to water: 20 January 2003. E/C.12/2002/11. (General Comments).

^f The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions.

^g The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

^h Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions: (i) Physical accessibility: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, lifecycle and privacy requirements. Physical security should not be threatened during access to water facilities and services; (ii) Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights; (iii) Non-discrimination: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and (iv) Information accessibility: accessibility includes the right to seek, receive and impart information concerning water issues

Right to housing

This issue has been addressed in the principles “right to work” when housing is provided by farms. The ILO Recommendation No. 115 on Worker’s Housing contains a number of clauses that recognize the central importance of housing, and which augment other legal foundations of housing rights. Recommendation No. 115 states that: “it should be an objective of national housing policy to . . . [ensure] that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.”^a

The issue has also been addressed in the principle “project-related displacement”. Displaced people need to have access to basic shelter and housing.

^a Article 2 of the R115 Workers’ Housing Recommendation, 1961

Right to health

The right to health is recognized in several international human rights instruments^a and can be understood as “a right to an effective and integrated health system, encompassing health care and the underlying determinants of health, such as adequate sanitation, safe drinking water and health education.”^b In general terms a human rights-based approach requires that “special attention be given to disadvantaged individuals and communities; it requires the active and informed participation of individuals and communities in policy decisions that affect them; and it requires effective, transparent and accessible monitoring and accountability mechanisms. The combined effect of these - and other features of a human rights-based approach - is to empower disadvantaged individuals and communities.”^c

Regardless of the circumstances and without discrimination:

1. Prior and during any operation, information needs to be collected, evaluated and monitored about the health impacts of activities;
2. Maintain an active and informed participation of individuals and communities about any health impacts;
3. The health services, programs, goods and facilities, including the underlying determinants of health are available^d, accessible^e, acceptable^f and of good quality^g; and
4. Select appropriate indicators that will help monitor different dimensions of the right to health. In this way, banks are capable to identify and monitor its clients progress over time, enabling themselves to recognize when policy adjustments are required. Second, they can help to hold the client to account in relation to the discharge of its responsibilities arising from the right to health.

^a The following international human rights instruments precise the human rights obligations: Article 12, paragraph 2 (a), (c) and (d) of the International Covenant on Economic, Social and Cultural Rights, Article 24, paragraph 2 (a), (d) and (f) of the Convention on the Rights of the Child, Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, and Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women.

^b Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt: E/CN.4/2006/48, para. 4.

^c Id., para. 25.

^d This includes adequate numbers of mental health-related facilities and support services and adequate numbers of medical and other professionals trained to provide these services.

^e Accessibility means: accessible physically, geographically and economically, accessible without discrimination on any of the prohibited grounds and accessibility of information.

^f For example, mental health care and support services for indigenous peoples must be respectful of their cultures and traditions.

^g Health-care facilities, goods and services must be of good quality, including scientifically and medically appropriate. This requires, inter alia, skilled medical and other personnel, evidence-based psychosocial interventions, scientifically approved and unexpired drugs, appropriate hospital equipment, safe and potable water, and adequate sanitation.

Affected parties and relevant NGOs confirm that the company has done all it can to avoid forced relocations and if relocation has taken place, all affected parties have been consulted and received adequate compensation in conformity with international law.

IPIS

Clarifications: Compensation in conformity with international law

The right to effective (judicial and other effective) remedies is guaranteed by the core human rights conventions.^a The particular type of remedy required in a specific situation is not always specified by the convention or the UN Committees. It is more common to see broad recognition that protection of rights requires effective access to (judicial, administrative or other) remedies.

Theo van Boven, a Special Rapporteur for the United Nations Commission on Human Rights, issued a final report in 1993 on international law remedies arising from the violation of human rights norms. He stated that: "the principal right that these victims are entitled to under international law is the right to effective remedies and just reparations."^b He formulated a set of principles and guidelines that give content to the right to reparation for victims of gross violations of human rights^c. The forms of reparation could usefully serve for further discussion.

^a The right to remedies is explicitly provided in Article 6 of the ICERD, Article 2.1 of ICESCR, Article 14 of CAT, Article 2.3 of ICCPR and Article 83 of ICRMW. The right to remedies is implicitly provided in the other core human rights conventions: See CEDAW, General Recommendation 19, supra note 23 at para. 24(t), and ICRC, General Comment 5, supra note 21 at para. 24. See also Article 8 of the Universal Declaration of Human Rights. It states that every individual is entitled to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

^b Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. E/CN.4/Sub.2/1993/8 of 2 July 1993, para. 45.

^c He defines gross violations of human rights and fundamental freedoms as - at least - the following: genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on race or gender.

Land management: Before purchasing land, does the company consult with all affected parties, including both legal and customary owners, in order to seek their prior informed consent?

- The company has a method in place to verify all existing claims and titles to land, under state law (including colonial and post-colonial treaties) and the law and customs of indigenous peoples.

IPIS

Clarifications:

The law and customs of indigenous people

Indigenous peoples have a distinctive and profound spiritual and material relationship with their lands and with the air, waters, coastal sea, ice, flora, fauna and other resources. This relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities^a In summary, each of these examples underscores a number of elements that are unique to indigenous peoples: (i) a profound relationship exists between indigenous peoples and their lands, territories and resources; (ii) this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities; (iii) the collective dimension of this relationship is significant; and (iv) the intergenerational aspect of such a relationship is also crucial to indigenous peoples' identity, survival and cultural viability.^b However, one of the most widespread contemporary problems is the failure of States to recognize the existence of indigenous land use, occupancy and ownership, and the failure to accord appropriate legal status and legal rights to protect that use, occupancy or ownership.^c

The following documents may be helpful for business enterprises in evaluating and guiding the consideration of international measures, legislation, administrative measures and other actions affecting indigenous lands, territories and resources:

- Prevention of Discrimination and Protection of Indigenous Peoples and Minorities, Indigenous peoples and their relationship to land, Final working paper prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes, E/CN.4/Sub.2/2001/21, 11 June 2001^d; and
- Forest Peoples Programme and Tebtebba Foundation, Indigenous Peoples' Rights, Extractive Industries and Transnational Enterprises and Other Business Enterprises, A Submission to the Special Rapporteur on the Secretary-General on human rights and transnational corporations and other business enterprises, 29 December 2006.

^a Prevention of Discrimination and Protection of Indigenous Peoples and Minorities, Indigenous peoples and their relationship to land, Final working paper prepared by the Special Rapporteur, Mrs. Erica-Irene A. Daes, E/CN.4/Sub.2/2001/21, 11 June 2001 at para. 121.

^b Id., at para. 20.

^c Id., at para. 124.

^d [http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/78d418c307faa00bc1256a9900496f2b/\\$FILE/G0114179.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/78d418c307faa00bc1256a9900496f2b/$FILE/G0114179.pdf).

- The company is committed to clarifying and settling all existing claims and conflicts of land title in compliance with international human rights law or state law, whichever is more protective of the rights of the claimants.
- Company guidelines ensure that no coercive measures are taken to affect land use by local people, in order to obtain transfer of their property interests.
- Company guidelines include consultations with all affected parties (including women and wives) prior to acquiring their property through a third party, and if indigenous peoples are involved, it requires their free informed consent.
- NGO's and indigenous peoples representatives confirm that the company is respectful of the land rights of local and indigenous people whenever it leases or purchases land.

Land management: Does the company honour the land, passage, and usage rights of local or indigenous peoples on company-controlled land?

- If operating in areas where indigenous peoples have right to access company-controlled land, the company has guidelines concerning the access and usage rights.
- The company investigates the rights of all communities with respect to access and usage rights and dialogues with all affected parties to find mutually acceptable solutions to land usage.
- Company security guards are educated about the rights of local or indigenous peoples to enter or use land on company controlled property.
- Company employees and security personnel are trained to interact appropriately with indigenous and local rights holders, allowing safe and unimpeded use of the land and its resources without harassment or intimidation.
- NGOs and community representatives confirm that the company respects the access and usage rights of indigenous and local people to company-controlled land.

Land management: Does the company consult with the local inhabitants and take measures to address and mitigate any disruptive effects that its operations may have on company land, the local community, and the natural resources in the area?

- The company has a policy on land management covering environmental protection.
- The company continually monitors its pollution output and maintains the highest level of environmental safety standards related to its particular industry sector.
- Before initiating new operations, or when changing or extending operations, the company discusses

its plans and activities with all affected parties and relevant experts to measure the impact and to determine how to avoid or mitigate any harmful effects.

IPIS Clarifications:

A good practise is to provide affected parties and relevant experts prior to consultations the appropriate data, documents and intellectual resources.

- If community resources are scarce, the company develops a schedule defining the amount, location and timing of resources needed for its activities, so that the local authorities know when to expect rising demand and have sufficient time to prepare.
- The company continually monitors its use of local resources, and if necessary, it arranges for alternative resources from outside to make sure that its activities do not deprive local inhabitants of basic services such as water or electricity.
- When leaving land, the company has an action plan in place to ensure that there are no harmful and disruptive effects left on the land.
- Relevant NGOs and local inhabitants confirm that the company consults with them concerning all disruptive activities and addresses any concerns raised by them.

Security Forces: Are company security guards trained when to intervene in security-related situations and how to use the minimal authorized force necessary?

- The company has a policy manual clearly defining the role and responsibility of security guards.

IPIS Comment:

Additional Information

The Voluntary Principles on Security and Human Rights provides a set of voluntary principles regarding security and human rights in the extractive sector. The principles are divided in three categories: risk assessment, relations with public security, and relations with private security.

The participants in the initiative are governments (of the United States, the United Kingdom, Norway and the Netherlands) plus companies operating in the extractive and energy sectors and NGOs.

More information is available at <http://www.voluntaryprinciples.org/>.

- All company security guards are carefully trained to handle different types of security situations to enable them to fully understand their duties and properly exercise their authority.
- The company investigates any security related complaints received by the community, remedies the problem, and keeps records of these incidents.
- Security guards who use unnecessary or excessive force are reprimanded, disciplined or dismissed for their actions, depending on the severity of the offence, and incidents are reported to the competent state authorities.
- Community representatives, local law enforcement officials and other relevant external parties confirm that company security guards only use the minimal force necessary to handle security-related situations.

Child Labour and Young Workers: Does the company comply with minimum age standards?

- The company has a clear policy regarding the minimum age for employment, which complies with national laws, but is no less than 15 years of age.
- The company requires candidates to provide copies of birth certificates or other official forms of identification to verify their age before being hired by the company.
- Hiring managers are aware of the forms of identification forgery commonly used in the country of operation and they are able to spot such forgeries.
- In countries where birth certificates are not common, or are frequently falsified, the company has a procedure for estimating the age of employment for young candidates, such as average height or knowledge of historic events.
- The company researches when classes are held in local schools, and ensures that children who have not passed the age of compulsory schooling are not hired by the company.
- The company does not hire any person under the age of 18 to perform work that interferes with their education.
- Company provided apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), are educational to the student, and do not interfere with the child's compulsory education.
- Employee records from the past year confirm that the company does not employ child workers.
- Local NGOs and schools confirm that the company is not employing child workers.

Child Labour and Young Workers: If the company becomes aware that it is employing children of school age, does it ensure that the children are enrolled in a remediation/ education programme, rather than being summarily terminated from employment?

- The company offers to hire the parents, guardians, elder siblings or other adult members of the extended family of any child found to be working for the company.
- The company establishes apprenticeship programs (or other such measures) that ensure the basic education of the child worker, while concurrently providing practical experience and financial support.
- NGOs and local community representatives confirm that the company has not summarily terminated the employment of any children found to be working for the company.

Child Labour and Young Workers: Does the company ensure that it does not hire minors (below 18 years of age) to perform work that is hazardous or harmful to their health, safety, or morals?

- The company has a policy or guidelines in place defining what tasks at the company are prohibited as hazardous or harmful to the health, safety, or morals of workers under the age of 18, which includes all relevant elements from the following indicators.
- The company does not hire or contract workers under the age of 18 to perform work that exposes them to psychological, emotional or sexual abuse. (II 3(a), International Labour Organization Recommendation 190).
- The company does not hire or contract workers under the age of 18 to work “underground, underwater, at dangerous heights or in confined spaces.” (II 3(b), International Labour Organization Recommendation 190).
- The company does not hire or contract workers under the age of 18 to work with dangerous machinery, equipment and tools, or to manhandle or transport heavy loads. (II 3(c), International Labour Organization Recommendation 190).
- The company does not hire or contract workers under the age of 18 to perform work in an environment which exposes them to “hazardous substances, agents or processes or to temperatures, noise levels, or vibrations damaging to their health.” (II 3(d), International Labour Organization Recommendation 190).
- The company does not hire or contract workers under the age of 18 to work for long hours, during

the night, or in a position that requires them to be unreasonably confined to the premises. (II 3(e), International Labour Organization Recommendation 190).

- Young workers are subject to medical examinations to ensure their fitness for the form of employment they are to undertake. (International Labour Organisation Convention 77, Article 2(1) (1946); International Labour Organization Convention 78, Article 2(1) (1946)).
- Managers demonstrate awareness of the above limitations concerning the work tasks of workers below the age of 18.
- Worker representatives or NGOs confirm that the company does not hire workers under the age of 18 to perform work that may be hazardous or harmful to their health, safety, educational, or moral development.

Conditions of employment and work: Does the company provide a living wage, which enables workers to meet the basic needs of themselves and their dependents?

- The company has a policy stating that worker's are entitled to a living wage, sufficient to meet basic food, clothing and housing needs, as well as provide for some discretionary income.
- The company knows whether minimum wage in the country of operation is sufficient to meet basic needs and to provide discretionary income.
- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of employees and their dependents, the company dialogues with local trade unions, NGOs, other companies, or state bodies responsible for regulating labour market matters to seek guidance on the proper standard of pay for the region.
- The company negotiates minimum wage standards by collective agreement with union representatives before implementing wage policies.
- The company does not use an excessive number of part-time positions as a method to avoid paying full wages and benefits to its workers.
- The company pays wages at regular times and does not take deductions from wages for disciplinary measures, or other deductions which are not authorised by national law without the freely given consent of the employee.
- Overtime hours are not required in order for workers to earn a living wage.
- Piece rate payment systems are monitored to ensure that the total salary paid meets living wage requirements.
- The company establishes prices with suppliers that expect the payment of living wages.
- Worker's representatives or NGOs confirm that the company pays workers a living wage.

Conditions of employment and work: Does the company have mechanisms for hearing, processing, and settling the grievances of employees?

- The company has agreed with worker's representatives about the requirements of a fair hearing.
- The fair hearing requirements are followed in relation to all grievances presented to the company.
- The company has established committees responsible for hearing, processing, and settling disputes. Those committees have equal representation of employers and workers. (ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977), Article 58).
- Company workers are aware of the company grievance process and are able to anonymously submit grievances if they prefer to do so.
- Worker representatives are allowed to participate with the employee in any hearing held with respect to a grievance.
- Records show that the company systematically and objectively reviews any complaints filed and implements corrective action when necessary.
- The grievance procedure is non-discriminatory and is able to respond to gender specific issues, such as sexual harassment.
- Company actors do not retaliate against workers who file grievances or complaints.
- Employees and worker representatives confirm that they have access to a grievance addresses the

concerns raised by them in a fair and systematic manner.

Conditions of employment and work: Does the company take measures to protect workers from acts of physical, verbal, sexual, or psychological harassment, abuse, or threats in the workplace, including when determining and implementing disciplinary measures?

- The company distributes a prevention policy on workplace violence and harassment, which notifies employees of their obligations to refrain from violent, threatening or abusive conduct toward others.
- The company has a mechanism to receive reports of workplace violence, harassment and threats, which is specifically designed to competently address all types of workplace misconduct, including sexual harassment.
- The company promptly investigates all complaints of workplace violence, harassment, and threats and takes appropriate preventative and disciplinary action.
- Managers are trained to use appropriate management techniques, including proper disciplinary measures, and instructed to refrain from harassing, violent, threatening and abusive conduct.
- The company promptly addresses stress and tensions (such as racial tensions) in the workplace which can later lead to abusive, violent or harassing conduct.
- The company facilitates open communication and problem-solving groups designed to deter, monitor, prevent and report workplace violence.
- The company takes special measures to protect workers from the harassing, violent and threatening conduct of outsiders, such as customers, vendors and clients.
- When there is sufficient evidence that an employee has engaged in an act of violence, the company reports the individual to the appropriate government authority.
- Worker's representatives and employees confirm that the company has appropriate measures in place to protect employees from harassing, abusive and threatening behaviour.
- Worker's representatives and employees confirm that the company refrains from using corporal punishment, physical or mental coercion, and verbal abuse when implementing disciplinary decisions.

Conditions of employment and work: Does the company grant employees paid holiday and sick leave each year, as well as parental leave to employees who must care for a newborn or newly adopted child?

- Company employees are granted at least three weeks of paid holiday leave per year, in accordance with International Labour Organization standards. ILO C132, Article 4(2).
- Company policy provides paid sick leave in accordance with national law requirements. If national law provides no guidance or only limited protection, the company consults with union representatives during the collective bargaining process, workers, and/or local NGOs to establish a sufficient amount of sick time.
- The company does not force employees to use vacation time as a substitute for sick leave.
- The company policy allows female employees no less than fourteen weeks of maternity leave per child in accordance with International Labour Organization standards. ILO C183, 2000, Article 4. (The ILO Maternity Protection Recommendation of 2000 even suggests that this leave be extended to 18 weeks.)
- The company grants parental leave to employees who have recently adopted a child/children or have taken on the responsibility to care for foster and/or other dependent children.
- Part-time and short-term employees are provided with holiday leave on a *pro rata* basis.
- Workers representatives and trade unions confirm that all employees are granted paid holiday and sick leave each year, as well as parental leave to care for newborns or adopted children, and this is confirmed by relevant company records.

Conditions of employment and work: Does the company ensure that the work-week is limited to 48 hours, overtime is voluntary, infrequent, and does not exceed 12 hours per week, and that employees are given reasonable breaks while working, and sufficient rest periods between shifts?

- Company work hours are limited to 48 per week by both company policy and in practice (or fewer hours if provided by national law or industry standards). (International Labour Organization Hours of Work (Industry) Convention (C1, 1919); International Labour Organization Hours of Work (Commerce) Convention, Articles 3 and 4 (C 30, 1930)).
- The company ensures that overtime is voluntary, infrequent, remunerated at premium rate, and does not exceed 12 hours per week.
- Company employees are allowed at least 24 consecutive hours of rest in every seven day period (or more rest if provided by national laws or industry standards). (International Labour Organization Weekly Rest (Commerce) Convention, Article 6 (C106, 1957); International Labour Organization Weekly Rest (Industry) Convention, (C14, 1921).
- Company employees are given no less than a 30-minute break for every 4 hours of work, or more if the nature of the work or national laws or industry standards so require.
- The company strives to employ the number of workers necessary to meet production expectations, so that employees can complete their work tasks within the weekly and daily time limits defined in international standards, national and industry standards (whichever is most protective).
- Breaks are strategically scheduled to ensure that no employee is required to work for extended lengths of time during a shift without a rest period.
- The company is moving toward the development of a 40 hour work week. International Labour Organization Forty-Hour Week Convention (C47 1935).
- Managers are aware that employees are allowed to use toilet facilities whenever necessary and not just during designated breaks.
- If the company is located far away from any food supply, or if the employees have to take special measures, such as undressing from protective lab coats before they can eat, the break is extended to allow extra time for such activities.
- The number of fatigue related accidents at the company is not excessive for the type of industry.
- The company does not encourage employees to avoid taking breaks by rewarding those who do not use their break time.
- Employees confirm that they are provided with periodic breaks during the day to eat, stretch and use toilet facilities and that work hours are limited to 48 per week.

Conditions of employment and work: Does the company respect the privacy rights of its employees whenever it gathers private information or implements employee-monitoring practices?

- The company has a clear privacy policy, outlining its data collection and monitoring practices.
- Company policy or guidelines state what kind of personal information is retained on employees, where it is stored, who has access, and why the information is necessary.
- The company discloses to employees the specific purpose of collecting any information it retains.
- The company does not attempt to gain information from an individual with whom the employee has a privileged relationship, including a spouse, pastor, doctor, or lawyer, without the employee's prior written consent.
- The company informs a person if he/she is being specifically targeted for special monitoring.
- Employees are made aware of all workplace monitoring.
- Employees have access to all personal data collected about them, including data obtained through monitoring.
- The company does not reveal, retain or misuse any personal data about an employee that has inadvertently been collected during the monitoring process.
- The collection of data and the use of monitoring is accomplished in a non-discriminatory manner.

- There are no video cameras or monitoring mechanisms in toilet facilities or changing rooms.
- Worker's organisations and employees confirm that the company's monitoring practices are respectful of the right to privacy, and that employees are kept informed of the monitoring practices of the company.
- Employees confirm that the company requests only reasonable information from them, and that the purposes for requesting the information are clearly explained.

Forced labour: Does the company take all necessary measures to ensure that it does not participate in, or benefit from any form of forced labour, (this can include bonded labour, debt bondage, prison labour, slavery, servitude, or human trafficking)?

- The company ensures that employment contracts are fair, transparent, and understood by the workers.
- All workers are allowed to leave the employ of the company after reasonable notice.
- All workers are allowed to leave company premises at the end of their shifts.
- The company ensures, by proper investigation, that it does not use labour from agencies or firms involved in trafficking, debt bondage, or kidnapping.
- The company (or its recruiting agencies) does not charge workers recruiting or hiring fees that require the worker to be indebted to the company (or recruiting agency), or to work for the company (or recruiting agency) to pay off the debt.
- The company pays a living wage and does not compel workers to engage in a cycle of salary advancements in order to meet living expenses.
- The company does not withhold wages or threaten to withhold wages to compel overtime (or work itself), but makes payments on a regular basis, and in a timely manner.
- The company does not coerce or compel employees to work involuntary (overtime) hours (or work itself) by the use of threat or force.
- The company does not use prison labour, unless the prisoner has been convicted by a court of law, and labour voluntarily under the supervision and control of a public authority.
- The company does not require workers to lodge money deposits with the company.
- Workers and labour organisations confirm that the company respects the right to freedom from forced labour.

Forced labour: Does the company refrain from retaining the identity cards, travel documents, and other important personal papers of its employees?

- Those in the company responsible for collecting personal data from employees are instructed not to retain travel documents and identity cards.
- Company managers do not possess worker's personal travel or identity documents.
- To safeguard documents against loss, damage or misplacement, the company photocopies (or hand copies) the information from employee ID cards and travel documents and does not retain the originals for even a short amount of time.
- Company records demonstrate that the company immediately grants letters of release whenever the letter is needed for an employee to retain a job elsewhere.

Freedom of association: Does the company recognise the freedom association rights of its workers, including the right to bargain collectively?

- The company has a policy recognising the freedom of association rights of its workers.
- The company recognises worker's organisations for collective bargaining purposes.
- The company does not discriminate or take adverse actions against employees in retaliation for exercising employee rights, participating in union activities, or reporting suspected legal violations.
- The company engages in collective bargaining and holds regular consultations with authorised

worker's representatives concerning working conditions, remuneration, dispute resolution, internal relations and matters of mutual concern.

- The company makes copies of the current collective bargaining agreements available to worker's representatives so that the terms to be negotiated are easily accessible.
- The company allows worker representatives reasonable access to the company documentation needed to fulfil their duties; negotiate with the company, and ascertain the performance of the company regarding relevant matters.
- The company allows worker's representatives reasonable access to the employees and the company facilities necessary to carry out their responsibilities.
- The company provides reasonable notice of impending changes in operations that will affect employment at the company, such as anticipated mergers and layoffs.
- The company does not use undue influence, employee transfers, or other coercive tactics to improperly interfere with the ability of worker's representatives to effectively negotiate on behalf of its members during the bargaining process.
- The company does not use military actors to discourage strikes, intimidate workers, or interfere with the exercise of employee rights.
- The company takes efforts to protect employees from union-related harassment by other workers.
- Worker's organisations confirm that the company recognises their position, allows them access to employees and facilities, and engages with them in good faith during the collective bargaining process.

Freedom of association: If trade unions do not exist in the area of operation, or only state authorised organisations are allowed, does the company establish alternative measures to allow employees to gather independently to discuss work-related problems?

- The company allows employees to engage in regular employee meetings, where employees can freely discuss concerns regarding working conditions.
- Meeting rooms are made available for employee-only meetings to discuss wages and working conditions.
- Management meets regularly with employee representatives to discuss work-related problems and any grievances employees may wish to raise.
- Workers are able to detail the last workers meeting and there are meeting minutes or other documentation from the meeting.
- Employees confirm that they are given the opportunity to attend meetings regarding their work conditions, and staff representatives meet regularly with management to discuss these issues.

Non-discrimination: Does the company ensure that its compensation, benefit plans, and employment-related decisions are based on relevant and objective criteria?

- The company has policies in place to ensure that hiring, placement, remuneration, advancement, training, discipline, retirement and termination decisions within the company are based only on objective factors, and are not connected to the gender, age, nationality, ethnicity, race, colour, creed, caste, language, mental or physical disability, organisational membership, opinion, health status (including HIV/AIDS), marital status, sexual orientation, birth, or civic, social, or political characteristics of the worker.
- The company has a method for ensuring that company benefits and services, such as sick leave, holiday, housing, health care, transportation etc. are provided in a non-discriminatory manner.
- Job descriptions are clearly defined, utilised by all hiring managers, and frequently updated to ensure that employees are hired and granted promotions by the company only on the basis of the skills, qualifications and experience required for the position.
- Employment advertisements do not reference irrelevant characteristics, such as race, unless listed as part of an equal opportunities promotion.
- The company does not ask applicants questions regarding their marital status, intent to have children, or number of dependents, which is sometimes used as a method to avoid hiring women because of

fear that their duties at home will interfere with their dedication to work.

- The company does not require applicants or employees to take pregnancy tests, get abortions, or sign agreements not to become pregnant.
- The company has a method for ensuring that pay is based on objective factors and is implemented in a non-discriminatory way.
- Wage records do not show pay discrepancies for work of equal value.
- The company makes reasonable accommodations to allow disabled workers job opportunities with the company.
- The company has a training programme in place, where instruction is made available, without discrimination, to help workers achieve the qualifications necessary to acquire positions at all levels within the company.
- Hiring managers receive training regarding the company's non-discrimination policies.
- Workers have access to a complaints mechanism where they can report complaints of discrimination, and they are familiar with the mechanism.
- An individual or department in the company is responsible for monitoring company compliance with non-discrimination standards and policies.
- Worker's representatives confirm that the company's employment practices are non-discriminatory.

Non-discrimination: Does the company seek to maintain a work environment that is culturally respectful and sensitive to the needs of all workers?

- Company benefits and vacation policies allow for the observance of different cultural/religious holidays.
- Company training programmes are culturally appropriate, gender neutral, and respectful of diversity.
- Training manuals and company literature do not use examples or illustrations that stereotype or categorise any groups of people.
- The company allows employees to dress in traditional cultural garments if the clothing is appropriate for business and does not increase the risk of accidents in the workplace.
- Worker's representatives and employees confirm that the work environment is culturally sensitive and non-discriminatory.

Workplace Health and Safety: Does the company ensure that its workers are afforded safe, suitable and sanitary work facilities?

- The company has effective health and safety prevention and remediation policies and procedures in place which comply with industry, national and international standards.
- The company's health and safety standards are made available to employees in a language they understand.
- The company has a disciplinary plan which applies to all violations of the company's health and safety standards.
- The company documents accidents and adjusts its processes to prevent recurring problems.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- The company has a procedure or process for receiving and responding to health and safety complaints, such as designating a health and safety representative or committee.
- Responsibilities for health and safety tasks are clearly outlined at all levels of the company and there is a system for monitoring the accountability of the tasks.
- Workers and managers are trained to respond to workplace emergencies and first aid kits are readily available.
- Escape exits are free from obstruction.
- There are fully functional fire extinguishers and first escapes on all workplace premises.
- Work premises and equipment are maintained and kept clean (International Labour Organization

Convention 120, Article 7).

- The workplace has sufficient and suitable ventilation, with fresh or purified air, appropriate for the climate and industry of operation (International Labour Organization Convention 120, Article 8).
- Workplace temperature is comfortable and steady (International Labour Organization Convention 120, Article 10).
- The workplace has sufficient and suitable lighting (International Labour Organization Convention 120, Article 18).
- Potable water is available for all workers (International Labour Organization Convention 120, Article 12).
- Sufficient and suitable washing facilities and sanitary conveniences are provided and properly maintained (International Labour Organization Convention 120, Article 13).
- Sufficient, suitable and comfortable seats/chairs are supplied to the workers (International Labour Organization Convention 120, Article 14).
- If employees use uniforms or other work-specific clothing, the company provides suitable facilities for changing, storing, and drying their clothing (International Labour Organization Convention 120, Article 15).
- Clean and sanitary food storage facilities and designated eating areas are available for all employees (International Labour Organization Convention 161, Article 5 (b)).
- Residential or overnight facilities are clean and sanitary and meet the basic needs of the workers (International Labour Organization Convention 161, Article 5 (b)).
- The company provides clean and sanitary toilet facilities appropriate for both genders (International Labour Organization Convention 161, Article 13).
- Special attention is paid to the health and safety of pregnant women, disabled employees and other vulnerable workers.
- Employees are given access to health and safety information about the company.
- Health and safety inspections confirm that the workplace is safe, clean, comfortable and hygienic.

Workplace Health and Safety: Does the company supply its employees with the protective equipment and training necessary to perform their tasks safely?

- Company policy and procedure dictate that all employees are provided with the protective equipment and training necessary to safely perform the functions of their position.
- The company keeps itself informed of scientific developments with respect to harmful materials and safety equipment in its sector to ensure that its processes provide appropriate protection for the industry dangers present in its operations.
- All workers are protected against processes, substances and techniques, which are obnoxious, unhealthy, toxic or harmful (International Labour Organization Convention 120, Article 17) including the following:
 - A. exposure to harmful chemicals or biological agents
 - B. exposure which can cause undesired physical, physiological or psychological changes
 - C. exposure to loud noise
 - D. exposure to toxic fumes, emissions, smoke, gases, smells, or other forms of air pollution
 - E. exposure to vibration
 - F. exposure to radiation
 - G. exposure to electrical shocks and currents
 - H. exposure to flames
 - I. exposure to incendiary or explosive agents
 - J. exposure to snow, ice, or other slippery surfaces
 - K. exposure to extreme temperatures
 - L. exposure to falling objects (e.g. on construction sites or oil platforms)
 - M. exposure to asbestos, coal, and other substances that cause respiratory ailments if inhaled or ingested
 - N. exposure to bright light or sun
 - O. exposure to dangerous machinery (e.g. saws, presses)

P. exposure to lead and benzene

Q. exposure to cigarette or cigar smoke (e.g. bars and restaurants)

R. exposure to flying debris, particles or sparks exposure to any other harmful, chemical, agent, or threats.

- Company-provided safety gear takes into account gender differences and the special needs of pregnant women.
- Company employees have the right to access information about company health and safety risks and the need for protective equipment.
- Knowledgeable experts provide hands-on demonstrations in a language that is understandable to the employees on how to use each new machine, equipment piece, substance, or work technique that will be introduced to the working environment before they become incorporated into the work routine.
- Workers receive periodic updates on their training to refresh their knowledge and update their skills.
- All individuals who are reassigned to different work tasks receive hands-on training from a knowledgeable expert in a language they understand before commencing their new tasks.
- An accurate record is kept by the employer detailing who has been trained, for what tasks the employee has been trained, how he/she has been trained (duration, method), and by whom (name of instructor).
- If an accident occurs, the company evaluates the incident, implements appropriate corrective measures, and provides an internal educational campaign on the risks associated with the injury causing activity.
- Workers do not show injuries or illnesses that are a result of improper exposure and lack of protective gear.
- Employees, worker's unions and safety inspectors confirm that company employees are adequately trained and provided with the necessary protective equipment to carry out all their work-related tasks.

2. Guidelines for the supply-chain

Relations with suppliers, contractors and other associates: Does the company screen and monitor all major suppliers, contractors, sub-suppliers, joint-venture partners, and other major business associates for commitment on human rights/social issues?

- The company has a procedure to evaluate and select suppliers/associates based on human rights/social commitment and performance.
- The company inserts a clause in all contractual agreements indicating that suppliers and other associates are expected to respect human rights in all areas of operation.
- The company maintains records of the commitments made by suppliers/associates to human rights/social issues.
- The company requires a written agreement from each supplier/associate stating that it will inform the company of all relevant business with other supplier/subcontractors/associates.
- The company requires a written agreement from each supplier/associate stating it will promptly address issues of non-conformance if they arise.
- The company requires a written agreement from each supplier/associate stating that it will participate in any human rights/social compliance monitoring activities organised by the company.
- The company monitors the human rights/social compliance of its suppliers and business partners through regular questionnaires and spot checks in the form of on-site visits/audits.
- NGOs confirm that the company screens and monitors all major suppliers, contractors, sub-suppliers, joint-venture partners, and other major business associates for commitment on human rights/social issues.

PART 3: Concluding remarks

This guide provides business enterprises an overview of the international human rights frameworks. It also uses the Human Rights Compliance Assessment tool created by the Danish Institute for Human Rights. It should be used as a tool for businesses and does not absolve them from not working out detailed principles for the specific sector which they are operational. It is imperative for business managers to take the frameworks and use it in their daily operations.

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