



Advanced

Human Rights: Risks & Obligations

A guide for businesses operating in emerging markets

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Introduction

The rising expectation on businesses to address and mitigate their human rights risks and impacts has been a vast area for organisations to understand, interpret and respond.

Countries are passing laws, investors are introducing new financing requirements, institutions are creating guidance, and victims are filing lawsuits to ensure that businesses uphold their human rights obligations and responsibilities.

What does this mean to a business? How does a business respond to the rising expectations? Where to begin? What are the tools?

This e-book aims to provide you with answers to those questions and more.



Chapter I

What are Human Rights?

According to the United Nations (UN), the idea of human rights is as simple as it is powerful: that people have a right to be treated with dignity. Human rights are inherent rights for all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or other status. Every individual is entitled to enjoy human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

The core international human rights instrument is the International Bill of Human Rights which comprises of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and ©The International Covenant on Economic, Social and Cultural Rights.

The International Labour Organization (ILO)'s Declaration on Fundamental Principles and Rights at Work commits all its member States to four categories of principles and rights:

- **freedom of association and the right to collective bargaining**
- **the elimination of compulsory labour; the abolition of child labour**
- **and the elimination of discrimination in respect of employment and occupation.**

These are covered by the ILO's eight core conventions containing instruments for basic principles and rights at work.

Together, these documents constitute the minimum reference point for what the UN Guiding Principles on Business and Human Rights (UNGPs) describe as internationally recognised human rights.

Top 10 Business and Human Rights Issues



Institute for Human Rights and Business (IHRB) in December 2020 published the Top 10 business and human rights issues for 2021 reflecting the turbulent year of pandemic-driven impacts on nearly every facet of life, from health to the economy, from the workplace to global trade.

The Top 10 list below reflects on the ongoing and unprecedented implications of COVID-19 across five key areas, and highlight five critical issues beyond the immediate effects of COVID-19 where the business and human rights agenda will demand attention in the coming years, within and post-pandemic.

Top 10 Business and Human Rights Issues



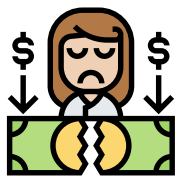
Redesigning supply chains for the pandemic-driven economy. COVID-19 negatively impacting the already vulnerable and poverty-level wage earners and migrant workers working in supply chains.



Preventing the misuse of COVID-related technology. Technology such as QR codes, facial recognition, geo-fencing, drones and others have been employed to prevent the spread of COVID. These may themselves lead to further risks to rights protections.



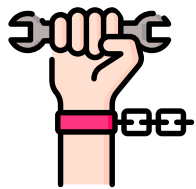
Uncertainties over the future of the modern workplace. COVID-19 has led to re-evaluating the tools and technologies at our disposal for work and understanding work-life balance due to remote work.



Mass-scale theft of migrant workers' wages. As the impacts of COVID-19 became apparent, many companies seemed to consider it acceptable[®] and that the consequences were negligible to withholding wages and violating employment contracts instead of laying off workers.



The crisis of crew change at sea. Over 400,000 seafarers "stranded" aboard ships working beyond their contract length, unable to come home. The isolation, poor working conditions are the contributing factors to increased suicide rates.



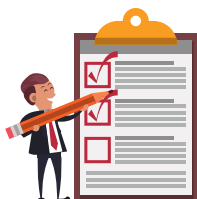
The resurgence of state-imposed forced labour. Forced labour is often associated with the exploitation of workers in private sector supply chains. It is an age-old issue, linked to slavery and patterns of economic exploitation, that has seen a resurgence in recent times due to the pandemic.



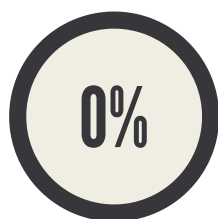
Growing climate-driven migration and its implications on human rights such as water contamination, agricultural impacts, overcrowding in urban areas causing housing crisis and leading to violence.



Race-based discrimination at all levels is exacerbated by the pandemic. The COVID-19 pandemic has uncovered links between the virus, particular groups, and types of work - as data shows racial minorities have a disproportionately larger share among essential workers in the industrial world.



Increasing divides over business standards in key governance areas – Defending and strengthening existing international standards relating to business transparency and good governance, including adherence to environmental, labour, and human rights standards, will be a crucial challenge for 2021 in ongoing times of unprecedented change.



The need for financing just transitions toward a net-zero world – Central to avoiding climate catastrophe and moving to a net-zero economy, is the concept of “just transitions”. It is an evolving concept encompassing public policies and business action to address impacts – on workers and communities – of moves away from emissions-intensive production (the transition “out”) and measures to generate the lower zero-emissions products, services, and livelihoods of a sustainable society (the transition “in”).



Chapter II

The rising Human Rights expectations towards businesses

Where It All Started

The notion of human rights protection and respect started when heads of states gathered at the United Nations Headquarters at the dawn of the new millennium, to make the Millennium Declaration which aims to uphold the principles of human dignity, equality and equity at the global level.

They made a promise to spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognised human rights and fundamental freedoms.

The Protect, Respect and Remedy Framework (referred to as the UN Framework) was endorsed eight years later, marking the first time that a UN intergovernmental body had taken a substantive policy position on this issue. The framework consists of three pillars:

- The State duty to protect human rights
- The corporate responsibility to respect human rights
- Access to an appropriate and effective remedy for victims of business-related abuse.

Soon after, the UN Guiding Principles on Business and Human Rights (UNGPs) was issued as guiding principles for the implementation of the UN Framework which was quickly ratified by member States.



The Rising Expectations

In the last decade, the widespread and rapid uptake of UNGPs, coupled with increasing pressure and expectations from investors and the public, have driven the change in human rights approach and practice.


Countries are passing laws, institutions are creating internal guidance mechanisms, investors are introducing financing requirements, and victims are filing lawsuits to ensure that businesses uphold their human rights obligations and responsibilities.

The rising expectations around Human Rights within the business environment are not limited to the operational footprint, but also expanded to human rights risks and impacts within their supply chains.




Modern Slavery Legislations

The UK Modern Slavery Act (the "MSA") which came into force in 2015 seeks to comprehensively address both the definition and enforcement of modern slavery crimes, and the predicament of victims of the crimes. The MSA is a global benchmark for raising the profile of human rights, specifically modern slavery.



In 2018, **Australia** adopted the MSA as an Act that requires entities based, or operating, in Australia, with annual consolidated revenue of more than \$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. Other entities based, or operating, in Australia may report voluntarily.

Catching with this trend, in March 2021 the European Parliament voted by a large majority to introduce mandatory human rights due diligence requirements for companies based or operating in the EU.



The European Commission's recent finding alarmed that only one business in three was currently conducting appropriate due diligence measures about its value chain.

Leading the EU in this uptake, the German government reached an agreement on a draft human rights due to diligence law a week beforehand. It is however significantly less ambitious than the legislative proposal endorsed by the European Parliament.



Investor's Human Rights Requirements

From the investors side, international financial institutions have been taking note and leading companies at raising the bar in the human rights approach.

The **Equator Principles** Finance Institutions (EPFIs) comprised of 123 member banks from 37 countries, introduced the latest update on the principal framework for managing environmental and social risks in projects that they fund.

The update – known as EP4 – renews the focus on human rights and climate change with effect from October 1st, 2020.

The update requires that clients include assessments of potential adverse human rights impacts using UNGPs as guiding principles. This aims to mitigate the potential for legal claims or NGO investigations concerning the social aspects of the project.

This new requirement applies to many projects seeking fundings from the EPFIs.



Chapter III

Emerging trends for business in the Human Rights landscape

Five emerging trends shaping the business and human rights landscape in this new decade are briefly outlined below.

All businesses should be considering these issues and building them into their planning for the upcoming years.



Focus on Social Issues

Environmental, social and governance (ESG) issues faced by businesses underpin sustainable and responsible investment strategies; and are increasingly imposing compliance, financing and reporting requirements on businesses. The social component of ESG has recently shifted into sharper focus, with human rights and other social issues faced by businesses becoming more clearly defined and strongly scrutinised by shareholders, investors, NGOs and the public.

Modern Slavery

There is a significant global regulatory trend toward the introduction of laws aimed at combatting modern slavery. Over the past decade, several jurisdictions have enacted domestic laws that impose mandatory requirements for businesses to report on the management of modern slavery risks in their supply chains, as discussed earlier.



Indigenous and Cultural Heritage

Business engagement with, and impacts on, indigenous peoples and cultural heritage is increasingly in the spotlight. We have seen an increase in shareholder and investor activism in relation to cultural heritage issues.



Hard and Soft Standards

The last decade has seen the development of numerous intergovernmental or industry soft law standards that establish voluntary codes of conduct for human rights protection and promote the integration of human rights risks into corporate risk management, due diligence and reporting requirements. Stakeholders now frequently expect companies to report publicly against specific soft law standards to which they state that they align.



Grievance Mechanism and Remedy

Claimants are increasingly using non-judicial dispute resolution mechanisms to bring human rights allegations against businesses. In addition, it is likely that businesses will be called upon to do more to implement their own operational-level grievance mechanisms to enable human rights concerns to be raised and resolved



Chapter IV

Recognising Human Rights is good business

There is growing evidence that there is real value for a company that embeds human rights considerations into its core business practices, and there can be significant costs to business when human rights are ignored.

The cost of breaching human rights can hurt a business significantly, from a financial point of view or in its credibility and brand reputation, such as protests, large legal fines and consumer boycotts, as well as being deselected as a preferred employer or as a business partner or supplier

Human rights reporting and benchmarking initiatives are increasingly shining a spotlight on companies' responses to modern slavery risks.



A report by the Australian Strategic Policy Institute into the use of forced labour in China's Xinjiang region implicated over 80 companies, including major apparel and electronics companies such as H&M, Amazon and Samsung.

This 'name and shame' method led many of the companies to provide official responses to the Business Human Rights Resource Centre.

Saying 'our business respects human rights' is no longer enough. People need to see that you are.

The social media boom means everyone can be a reporter. What may seem like an innocent or unintentional slip up can actually result in unwanted media headlines.

Embedding Human Rights helps a company **manage business risks** by:



Safeguarding reputation and brand image



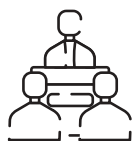
Highlighting human and environmental risks before business decisions are made



Reducing cost burdens associated with labour disputes, security issues and stakeholder damage control



Reducing the risk of costly litigation



Improving governance

Embedding Human Rights creates **new business opportunities** by:



Increasing staff loyalty, improving recruitment possibilities and fostering greater productivity through a settled workplace



Gaining a strategic advantage amongst competitors in emerging and niche markets



Strengthening brand reputation and customer loyalty



Strengthening a company's social licence to operate through stronger relationships with governments, business partners, NGOs, local communities, trade unions, sub-contractors and suppliers



Increasing access to finance by meeting investor expectations.



Chapter V

How should businesses respond?

Ensuring respect for human rights presents a growing challenge in light of evolving laws and standards, fuelled by increasing public scrutiny and stakeholder expectations.

Many are unsure about how to integrate human rights into day-to-day business activities and operations.

This section aims to provide some tips on how businesses can respond to the growing expectations.

4 STEPS

How to integrate human rights into day-to-day business activities

- 1** Publicly **commit** to respect human rights and embed this policy in all parts of the organisation.
- 2** Undertake **assessment** of human rights risks and impacts. This helps understand where the gaps are in terms of meeting their human rights obligations and commitments.
- 3** Develop and implement **mitigation** measures based on level of risk and impact, with priority given to the actual or potential violations of human rights.
- 4** **Compliance** with the company's human rights policy should be confirmed through the development of a monitoring, evaluation and reporting program. When the program identifies non-conformances, appropriate actions should be taken. Determine how and when audits will be employed based on the level of risk and impact.

What is really important, and what we are encouraging everyone to do, is to demonstrate performance. Business and Human Rights Resource Centre consistently reports on the policy over practice approach across sectors in regards to human rights risks management. A commitment that is translated into implementation plan to raise awareness and build capacity internally to address human rights risks and impacts is crucial to enable successful business performance in this area.

“It is not good enough to have a policy alone. It is action that is important; actively and continuously review your practices and those of your value chain, identify issues and remedy them, measure, monitor and report on progress – that way you can add the most value to your business.”

Brent Wilton
Coca-Cola’s director of global workplace rights

Human Rights Risks in Supply Chain

It is important to emphasize that there is significant global activism, legislative and litigation trend toward combatting human rights abuse across value chains.

A number of countries have introduced, or are contemplating introducing legislation aimed at combating modern slavery risks, as discussed earlier.

Businesses should establish a pre-qualification or similar process to understand supplier's response to managing human rights risks and opportunities, and build human rights requirements into contractual documents for recourse when non-compliance occurs.

Focus on primary/ direct (tier 1) suppliers initially but eventually expand this focus into Tier 2 and Tier 3.



Chapter VI

The importance of participation and access to remedy

Important features in the area of business and human rights include rights to participate in decision-making process and an understanding of transparency, follow-up, and communication.

This means businesses need to provide sufficient project information to *right-holders* prior to engagement and give them the opportunity to provide input into the project's decision

Right-holders are those who can make legitimate human rights claims, while States and other actors are duty-bearers that are responsible and can be held accountable for their acts or omissions

Engagement can take a variety of forms, such as face-to-face meetings, online dialogues, group discussions, and formal public reports.

The engagement plan should ensure right-holders are informed of their rights and provided with opportunities to express their views on the activities that may impact them.

**Read our tips for
engagement
planning [here](#)**



This also means follow-up in engagement to make sure promises are delivered and commitments are made, and report back to the rights-holders about how their feedback has influenced project outcomes. These are vital to demonstrate transparency and meaningful participation.

If the relationship with rights-holders has already turned bad, then there is a need to address and provide remedy options to those affected.

Grievance management has a key role to play, so ensure that there is a robust and transparent grievance management process in place to address right-holders' complaints.

The UNGPs provide practical guidance on how remedy can be provided in the form of a grievance mechanism, i.e. appropriate channels where those affected can file claims and have them investigated and, ultimately be compensated through a fair and transparent process.

**Explore how Darzin
can provide you tools
for managing
grievances in line with
the UNGPs
requirements**



Chapter VII

Good practice case studies

These case studies explore the human rights risks and challenges faced by the organisation, good practice actions they have taken to resolve them and the results of such action.

Navigating offshore wind farm human rights impacts by Engie

Wind energy is playing a key role in the global transition to a lower carbon economy. The growth in production and demand, however, is coupled in some cases with negative human rights impacts, in particular where wind project land requirements clash with the needs of the existing communities. Research shows that wind energy projects are particularly at risk for abuses of indigenous people's rights, and causing or contributing to displacement and loss of livelihoods, causing or contributing to violence, intimidation, and threat, as well as labour rights.

In France, after winning the tender of an offshore wind farm off the islands of Yeu and Noirmoutier, Engie began communication with a regional committee representing local fishermen. Although the committee originally opposed Engie's plans, the company changed its plans and proposed to install fewer wind turbines therefore reducing the land used. This new proposal gained support from regional committee, though the fishermen were still opposed. Engie began a dialogue process with this committee and its fishermen and after 2 and a half years the local committee endorsed the project unanimously.

Source: BHRRC, 2021

De Beers plans to clean up diamond supply chain, be carbon neutral by 2030

Certain minerals (including tin, tantalum, tungsten and gold) have been linked with funding killings, violence, rape, and other human rights abuses in the Democratic Republic of Congo and other conflict zones.

These minerals can enter multinational companies' supply chains, and are used in consumer products, including laptops, mobile phones and cars. In the past years, various voluntary and regulatory measures have been implemented to ensure responsible sourcing of minerals and stem financing of related human rights abuses. However, Human Rights Watch warns that major jewellery brands are still not doing enough to combat human rights and environmental abuses in their gold and diamond supply chains.

Diamond mining giant De Beers in December 2020 outlined plans to be carbon neutral by 2030 and add to safeguards on the ethical sourcing of its diamonds, as companies across the sector make efforts to raise environmental and ethical standards.

The initiative is the latest example of a miner setting sustainability goals in an industry blamed for depletion of natural resources, smuggling and child labour in supply chains.

Source: Reuter, 2020

The company has tracked high-value diamonds from miner to retailer using blockchain to clear the supply chain of imposters and conflict minerals. The diamond producer, which in the past has been accused of failing to report levels of mercury at one of its mines in Canada, said it would look to halve its water footprint and achieve a net positive impact on biodiversity by 2030.

De Beers, through its CarbonVault initiative, has been trying to capture carbon from the atmosphere and lock it away in kimberlite, the rock in which diamonds are found.

The ethical practices are among the company's 12 sustainability goals being adopted for the coming decade, which also includes achieving gender parity across its workforce.

Source: Reuter, 2020

Nestle admits to forced labour in Thai seafood supply chains

In February 2016, Nestle led by example in combating human rights abuse in the supply chains by independently disclosing that it had found forced labour in its supply chains in Thailand. A year-long investigation by the company confirmed that forced labour was endemic in Thai seafood production, and in particular, sea fishing. High-profile media investigations, such as Ian Urbina's 'Outlaw Ocean' series in the New York Times, had revealed grave abuse of fishers on Thai vessels. As so-called 'trash fish' caught by wild-catch fishers are regularly used as feed for shrimp farming, reports indicated that the farmed shrimp supply chain was also linked to modern slavery. Given Thailand's position as a major exporter of seafood, the case illustrated the risks facing supply chains to multiple companies.

Nestle's decision to disclose the issue publicly was seen by NGOs as a ground-breaking effort to encourage more transparency about the reality of challenges within supply chains. Nestle also published a detailed action plan to support responsible sourcing from Thailand, involving supply chain mapping, training and partnerships with Thai NGOs, like the Issara Institute, to eradicate modern slavery. Nestle's response will be scrutinised by NGOs over time as a test case for the effectiveness of collaborative efforts to eradicate modern slavery.

Source: BRBDF, 2021

Summary

Implementing human rights across a company's activities and business relationships is not an easy task. It takes commitment, resources and time to embed respect for human rights.

It is important to be patient when dealing with these issues.

It takes time for a company to adopt a policy, a couple of years to ensure that the policy is effectively executed and then some further time before the company feels confident to report publicly on human rights performance.

About the author



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Hoa has over a decade of experience in managing social performance for development projects in Asia and the Pacific. This includes stakeholder consultation, social impact assessment, resettlement planning, human rights impact assessment, and training on and compliance review of social performance to the International Finance Corporation (IFC) Performance Standards.

Her recent experience includes developing guidelines for government departments and undertaking human rights due diligence audit, human rights risk and impact assessment in relation to United Nations Guiding Principles (UNGP) requirements.

In addition, she has six years experience in the stakeholder engagement software space as a business development manager and trainer. She provided advice on how to best use stakeholder knowledge to inform decisions and manage relationship risks.

Contact us for more information on how **Darzin** can provide you with smart tools to better manage rights-holders participation and access to remedy.



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