



# HUMAN RIGHTS TRANSLATED

## A Business Reference Guide



**Castan Centre for Human Rights Law****Faculty of Law, Monash University, Clayton VIC 3800, Melbourne, Australia**

The Castan Centre is Australia's leading academic human rights centre. It brings together the work of national and international human rights scholars, practitioners and advocates in order to promote and protect human rights through teaching, scholarly publications and public education, including conferences, seminars, internships, applied research and consultancies. The Castan Centre's contribution to this publication is one outcome of an Australian Research Council Linkage grant, funded by the Australian government, Premier Oil and Futureye Pty Ltd.

<http://www.law.monash.edu.au/castancentre>

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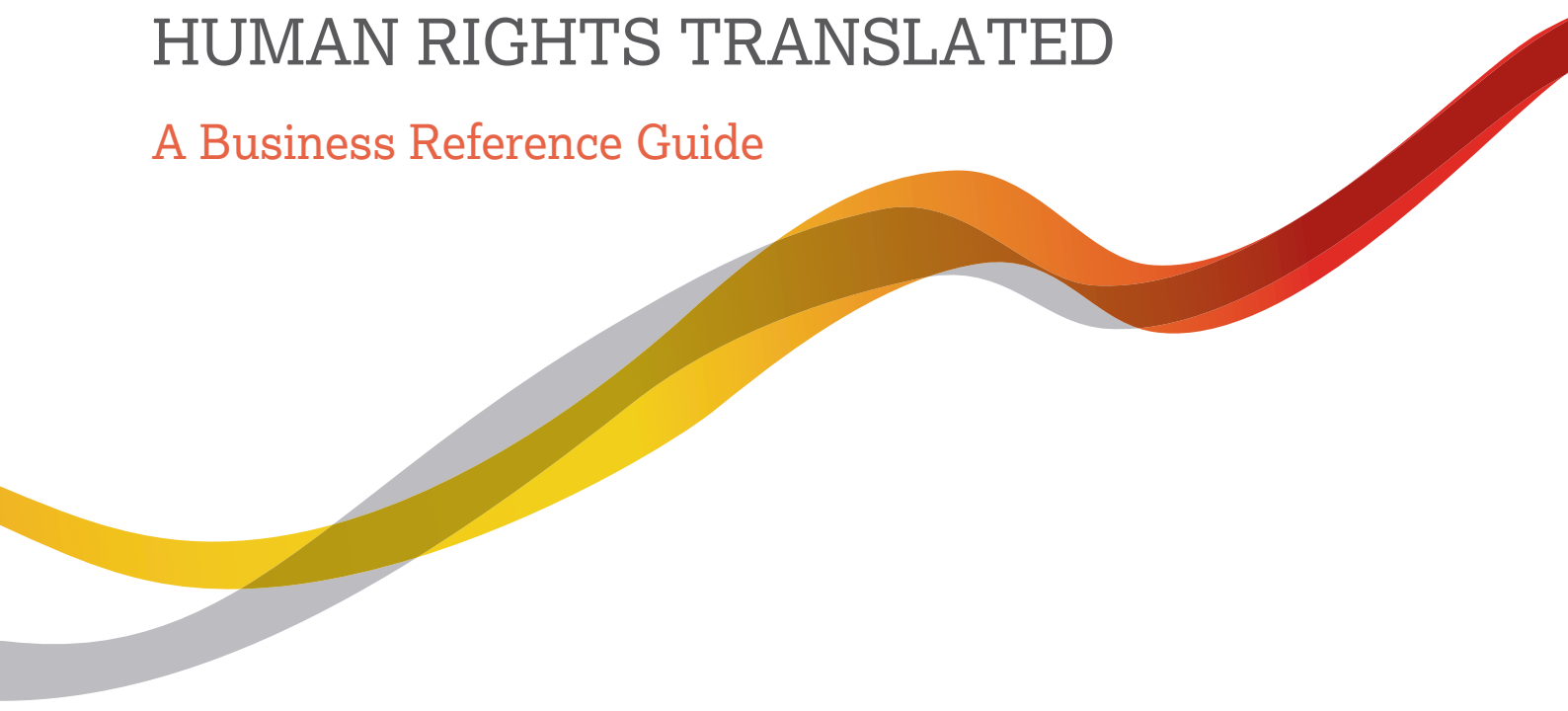


**MONASH** University  
Castan Centre for Human Rights Law



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United Nations **Human Rights**  
Office of the High Commissioner for Human Rights



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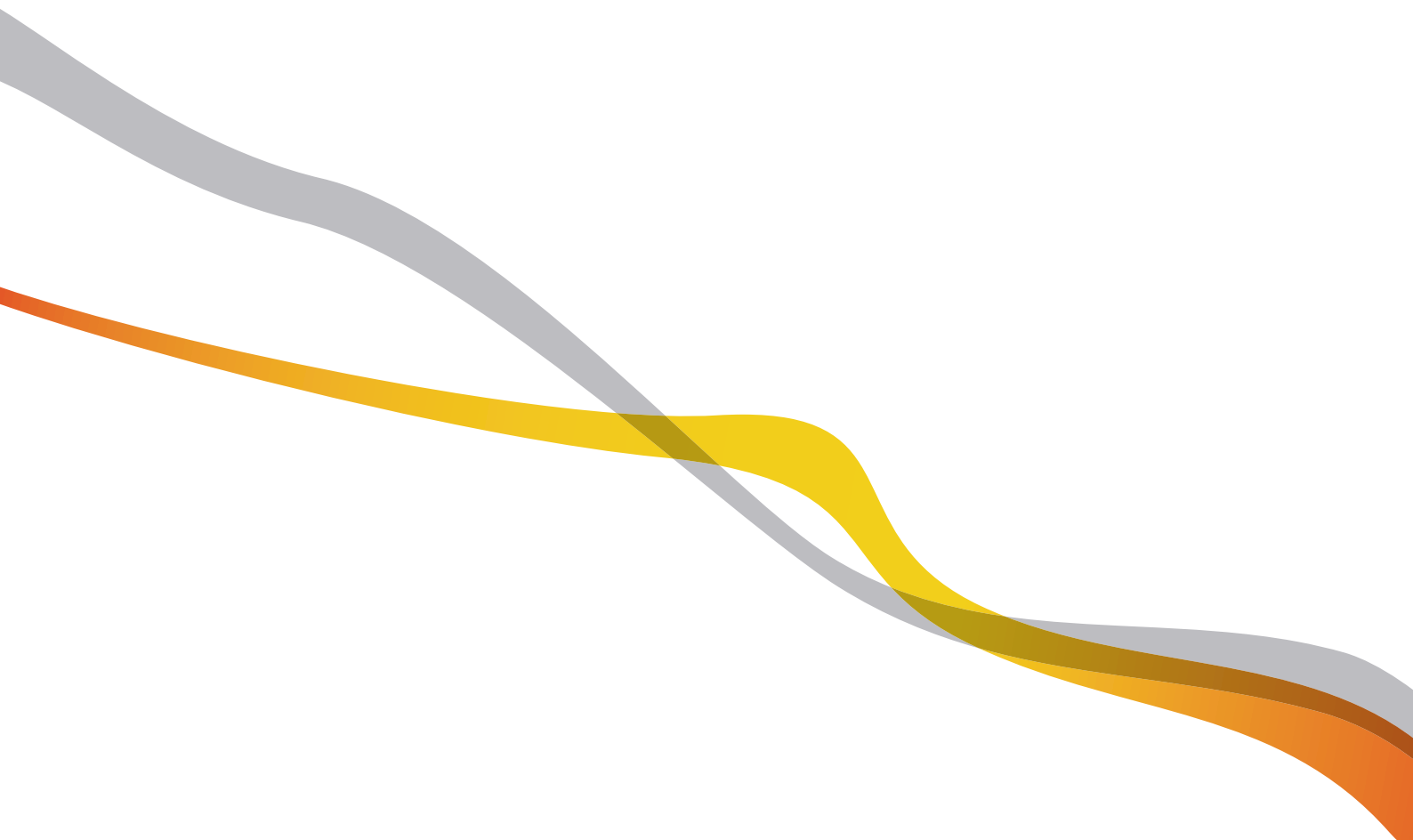
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## PREPARING TO USE THIS RESOURCE





# INTRODUCTION

**Business increasingly recognises the importance of human rights. Over 5,000 companies across 130 countries** are signatories to the UN Global Compact and have committed themselves to the Global Compact's ten principles,<sup>1</sup> including six that address human rights and labour standards. A 2006 survey of Global Fortune 500 companies found that nine out of ten companies responding to the survey reported having human rights principles or management practices in place.<sup>2</sup> More than half of the FTSE 100 listed companies have adopted a human rights policy. Meanwhile, the process of clarifying and operationalising business and human rights is being led by the United Nations Secretary General's Special Representative on Business and Human Rights (the Special Representative).<sup>3</sup>

The purpose of this publication is to contribute to this process of clarification by explaining universally recognised human rights in a way that makes sense to business. The publication also aims to illustrate, through the use of case studies and actions, how human rights are relevant in a corporate context and how human rights issues can be managed. The 'Navigating the Guide' card is provided to help managers make the best use of this reference publication.

This introduction briefly outlines the concept of 'human rights' and the main categories of rights, as well as the relationship between corporations and human rights. The aim is to give company managers a fuller understanding of what their stakeholders – including employees, shareholders, customers, local communities, civil society, governments and business partners – increasingly expect of them, both in terms of strategic policy and implementation at the local level.

1 The UN Global Compact Ten Principles are reproduced in the Appendix.  
 2 The 2006 survey was conducted as part of the mandate of the UN Special Representative on Business and Human Rights and is contained in A/HRC/4/2006/35/Add.3, available at [http://www2.ohchr.org/english/issues/trans\\_corporations/index.htm](http://www2.ohchr.org/english/issues/trans_corporations/index.htm).  
 3 The Mandate of the UN Special Representative is discussed at pages xii-xiii.

“The benefits of our human rights programme have so far been about reputation and the assurance process. But they are going to become more and more about the business growth agenda and commercial opportunity as well, giving us access to new markets, new suppliers and, in particular, new consumers.”

Neil Makin, Cadbury-Schweppes

## Business and human rights

Business is a major contributor to economic growth around the world and, as an essential vehicle for human progress, it helps underpin global human rights. An increasing number of companies are demonstrating their respect for human rights by working to embed international human rights standards within their core business practices. Many companies also make a substantive contribution by supporting projects that foster human rights, such as the enhancement of local economic development, schemes to distribute essential drugs, or programmes that provide training in democracy and the rule of law.

Governments have the obligation to respect, protect and fulfil human rights, including protecting individuals and communities from human rights violations by third parties. But in June 2008 the United Nations Human Rights Council emphasised for the first time that corporations have a responsibility to respect human rights. Corporations, non-governmental organisations (NGOs), trade unions, and indeed private individuals, often act in ways that can affect the rights of others. For example an employer that discriminates against an employee on certain grounds, such as race or gender, harms the individual's right to freedom from discrimination. As reflected in the statement from the Human Rights Council, there is an increasing public expectation for companies to respect human rights and also to strengthen their positive human rights contribution.

Good human rights practice may bring commercial rewards. There is growing evidence that good practice: enhances reputation, resulting in improved staff morale, leading to higher motivation, productivity, and the ability to attract and retain the best employees; strengthens the licence to operate, giving improved access to new markets, consumers and investors; creates more stable operating environments; and promotes better community relations. Conversely, companies implicated in human rights scandals often see their reputations and brand images suffer, resulting in the loss of share value, and face increased security and insurance costs, as well as expensive lawsuits, such as those pursued under the US Alien Tort Claims Act, and consumer boycotts. The price of getting it wrong cannot be underestimated.<sup>4</sup>

<sup>4</sup> See *Human Rights – It is your Business: The Case for Corporate Engagement* (IBLF 2005).

Companies that adopt explicit human rights policies along with mechanisms for their implementation and reporting are better prepared to prevent human rights abuses and to deal effectively with any allegations of human rights wrongdoing that may arise. Providing specific human rights training to support operational managers to become more familiar with the language and realities of human rights, the company's human rights policy commitments, and the potential for human rights to impact on day-to-day business decision-making, is increasingly a feature of effective business operations. Such efforts also help a business to identify business opportunities to support human rights. It is hoped that this publication will contribute to specific human rights due diligence processes.

### What are human rights?

Human rights are basic standards aimed at securing dignity and equality for all. International human rights laws constitute the most universally accepted standards for such treatment, but there is an intuitive aspect to the respecting of human rights that goes beyond laws and conventions. Put simply, what feels wrong is in all likelihood wrong.

International consensus has been achieved on what constitutes human rights in the form of the 1948 Universal Declaration of Human Rights (UDHR). The Universal Declaration was drawn up by representatives from many nations to prevent a recurrence of the World War II era atrocities and is the cornerstone of modern human rights law. At the World Conference on Human Rights in Vienna in 1993, all 171 participating countries reaffirmed their commitment to the aspirations expressed in the Declaration. Companies increasingly express support for its principles in their human rights policies.<sup>5</sup>

<sup>5</sup> According to a survey of Fortune Global 500 companies conducted on behalf of the UN Special Representative on Business and Human Rights and published in 2006, over 60% of respondents referenced the Universal Declaration within their human rights policies. See <http://www.reports-and-materials.org/Ruggie-survey-Fortune-Global-500.pdf>.

“Whatever other differences may exist in the world, starting with the 1948 Universal Declaration, human rights are the only internationally agreed expression of the entitlements that each and every one of us has simply because we are human beings. Thus, securing respect for human rights must be a central aim of governance at all levels, from the local to the global, and in the private sector no less than the public.”

**Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights, *Interim Report*, February 2006.**

The Universal Declaration is codified in international law through two 1966 treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), each of which has been ratified by over 150 States (over three-quarters of all nations). It is recognised that both sets of rights are indivisible and interdependent, and equally important. Collectively the three documents are known as the ‘the International Bill of Rights’. The two Covenants form the basis of this publication.

International human rights law imposes obligations on States to respect, protect and fulfil human rights. States are required to protect individuals against human rights abuses by third parties, including by corporations. This is usually done through domestic laws. Thus, while most international human rights standards are not directly legally binding on companies, businesses can infringe human rights by breaching the domestic laws in place to protect those rights.

### The International Covenant on Civil and Political Rights (pages 1–83)

Civil and political rights encompass rights to enjoy physical and spiritual freedom, fair treatment, and to participate meaningfully in the political process. They include the right to life, freedom from torture, freedom from slavery, the right to privacy, freedom from arbitrary detention, the right to a fair trial, freedom of religion, freedom of expression and assembly, as well as the rights of minorities and freedom from discrimination.

States that ratify this Covenant are obliged to respect and protect the rights it articulates and, without discrimination, ensure their enjoyment by all individuals within their territory and under their jurisdiction. Corporations have a responsibility to respect these rights.

### The International Covenant on Economic Social and Cultural Rights (Pages 85–137)

Economic, social and cultural rights comprise employment rights, such as the right to a fair wage, the right to safe and healthy working conditions, and the right to form and join trade unions, and social rights such as the right to education, the right to an adequate standard of health, and adequate standard of living, as well as the right to participate in cultural life and freedom from discrimination in relation to the enjoyment of the Covenant's rights.

Economic, social and cultural rights largely relate to “freedom from want”.<sup>\*</sup> States that ratify this Covenant are obliged to take steps towards the progressive realisation of the relevant rights, subject to the availability of resources. Thus, it is recognised that States may not be able to achieve the full realisation of the rights in this Covenant immediately, especially if they are poor. However, States have immediate obligations to take steps towards the full realisation of the rights, to the extent possible within their respective resource constraints. They also have immediate obligations to guarantee that

economic, social and cultural rights are exercised without discrimination. Moreover, measures that reduce the existing level of enjoyment of a right, or a failure to ensure minimum essential elements of each right, breach the Covenant, unless a State can prove that such measures are dictated by a genuine lack of resources.

Companies are expected to respect economic and social rights, but that does not mean that they are expected to solve the problems of world poverty. Instead, they are expected to ensure that they are not interfering with the enjoyment of these rights, and, if a company finds that it has interfered with these rights, it should take remedial action. Likewise, when companies are asked to support these rights it means that they are being called on to make a meaningful contribution, for example by supporting human rights-related initiatives in the communities where they operate, rather than to take over State responsibilities to ensure the fulfilment, for example, of the right to health.

### Limits to Rights and Striking Balances

Few human rights are absolute. Some rights, such as the right to be free from torture, cannot be compromised under any circumstances. However, most civil and political rights can be restricted – although not arbitrarily – by States in exceptional circumstances, such as when limitations are necessary to protect national security, public order, public health, public morals or the rights of others. The fulfilment by States of economic, social and cultural rights is, meanwhile, subject to available resources.

**“Often some sort of balance must be struck between competing rights, values or interests. For example, freedom of information has to be balanced against privacy and confidentiality, while social and economic rights are subject to resource availability, compelling a State to make choices between competing claims on the public purse.”**

Paul Hunt, UN Special Rapporteur on the Right to Health<sup>\*\*</sup>

<sup>\*</sup> President Franklin D. Roosevelt coined the expression in his “Four Freedoms” speech of 6 January 1941.

<sup>\*\*</sup> Presentation by Professor Paul Hunt, UN Special Rapporteur on the Right to Health, Novartis International Symposium, Basel, Switzerland, 2 December 2004.

“The rights of transnational firms – their ability to operate and expand globally – have increased greatly over the past generation as a result of trade agreements, bilateral investment treaties, and domestic liberalisation ... In light of this transformation in the institutional features of the world economy, it is hardly surprising that the transnational corporate sector – and by extension the entire universe of business – has attracted increased attention by other social actors, including civil society and States themselves.”

**Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights, *Interim Report*, February 2006.**

#### **Expectations of business**

Much of the debate regarding human rights and business has focused on examples where multinational corporations have been accused of being directly responsible for, or being complicit in, human rights abuses. Multinationals come under particular scrutiny because of their perceived power and the reach of their global supply networks. Legitimate concerns are raised over the extent to which weak or impoverished governments may be willing or able to hold corporations to account for any wrongdoing. In short, should human rights abuses occur, there is a concern as to how corporate accountability can best be ensured.

Stakeholder anxieties may also surface when a company enters into a commercial partnership with a government that has a poor human rights record. The fear is that such governments may protect their investment interests at the expense of the rights of their people, for example by violating the right to protest peacefully against company operations, or by infringing the land rights of indigenous peoples to make way for commercial activities. In poor or inadequately governed countries, there is a growing expectation that companies should take steps to mitigate the worst effects of weak governance.

Companies that assume traditional government functions (e.g. the provision of infrastructure and utilities, or the running of detention or secure facilities) may face a greater level of scrutiny with regard to their human rights performance, and may be exposed to a greater risk of legal liability in the case of a breach of human rights laws.

Multinational companies can potentially be held liable in their home countries for human rights abuses perpetrated in host countries. The highest-profile cases have been brought under the Alien Tort Claims Act in the United States. Cases alleging corporate human rights wrongdoing have also been launched in the courts of other countries including the UK, Canada and Australia. Companies will benefit from a greater understanding of fundamental human rights principles to help them avoid the possibility of such litigation.

### International standards for corporate responsibility on human rights

Various guidelines have been developed at the international level on the human rights responsibilities of companies. These include:

- The OECD Guidelines for Multinational Enterprises (1976, revised in 2000)
- The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977, revised in 2000)
- The United Nations Global Compact (2000)
- The International Finance Corporation Performance Standards on Social and Environmental Sustainability (2006).<sup>6</sup>

These standards are not legally binding on companies, but all provide frameworks for appropriate company behaviour, that are used either as tools by companies themselves to guide performance, or as a benchmark by which governments and other stakeholders may hold companies to account.<sup>7</sup>

A number of voluntary initiatives have also been established, many of them are industry-specific and involve a blend of participation from business, governments, NGOs, trade unions and industry associations. Some involve collective action among industry peers in order to maximise influence and shared learning. Each requires corporate participants to adhere to, or be guided by, a set of human rights-related principles. They include (in chronological order):

- Ethical Trading Initiative (1998)
- Fair Labor Association (1999)
- Voluntary Principles on Security and Human Rights (2000)
- Kimberley Process Certification Scheme (2002)
- Equator Principles (2002)
- International Cocoa Initiative (2002)
- Extractive Industries Transparency Initiative (2003)
- Electronics Industry Code of Conduct (2005)

<sup>6</sup> The International Finance Corporation is an arm of the World Bank.

<sup>7</sup> Being held to account does not necessarily imply apportioning blame or legal responsibility, but can be interpreted as simply conforming to a decent standard of behaviour.

“...the [corporate] responsibility to respect [human rights] is a baseline expectation, [and] a company cannot compensate for human rights harm by performing good deeds elsewhere ... ‘Doing no harm’ is not merely a passive responsibility for firms but may entail positive steps.”

**Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights.**

*Protect, Respect and Remedy: a Framework for Business and Human Rights*, April 2008.

### Corporate responsibility to respect human rights: an emerging standard

At present international legal human rights duties for companies exist only in a few cases.<sup>8</sup> In 2005 the UN Secretary-General appointed Professor John Ruggie as his Special Representative on Business and Human Rights, with a mandate to, among other things, “identify and clarify standards of corporate responsibility accountability with regard to human rights” and shed light on the important, but ill-defined, concepts of ‘spheres of influence’ and ‘complicity’.<sup>9</sup>

<sup>8</sup> For example, all entities, whether they are governments or private bodies, are prohibited under international law from perpetrating genocide, certain war crimes and crimes against humanity, and slavery. Such violations are directly enforceable against individuals, including company directors if relevant, before the International Criminal Court in certain circumstances. They may also be enforceable against some companies under the Alien Tort Claims Act (US).

<sup>9</sup> For full details of the mandate and its progress, see: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative> and [http://www2.ohchr.org/english/issues/trans\\_corporations/index.htm](http://www2.ohchr.org/english/issues/trans_corporations/index.htm).



In 2008, the Special Representative presented to the UN Human Rights Council a conceptual and policy framework to guide the business and human rights agenda. The framework rests on differentiated but complementary responsibilities, and comprises three core principles:

- the State duty to protect against human rights abuses by third parties, including business
- the corporate responsibility to respect human rights
- the need for more effective access to remedies for victims of any human rights abuses that occur.

Each principle is an essential component of the framework: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business; and access to remedy, to ensure that some form of redress is available to victims in the case of abuses.<sup>10</sup>

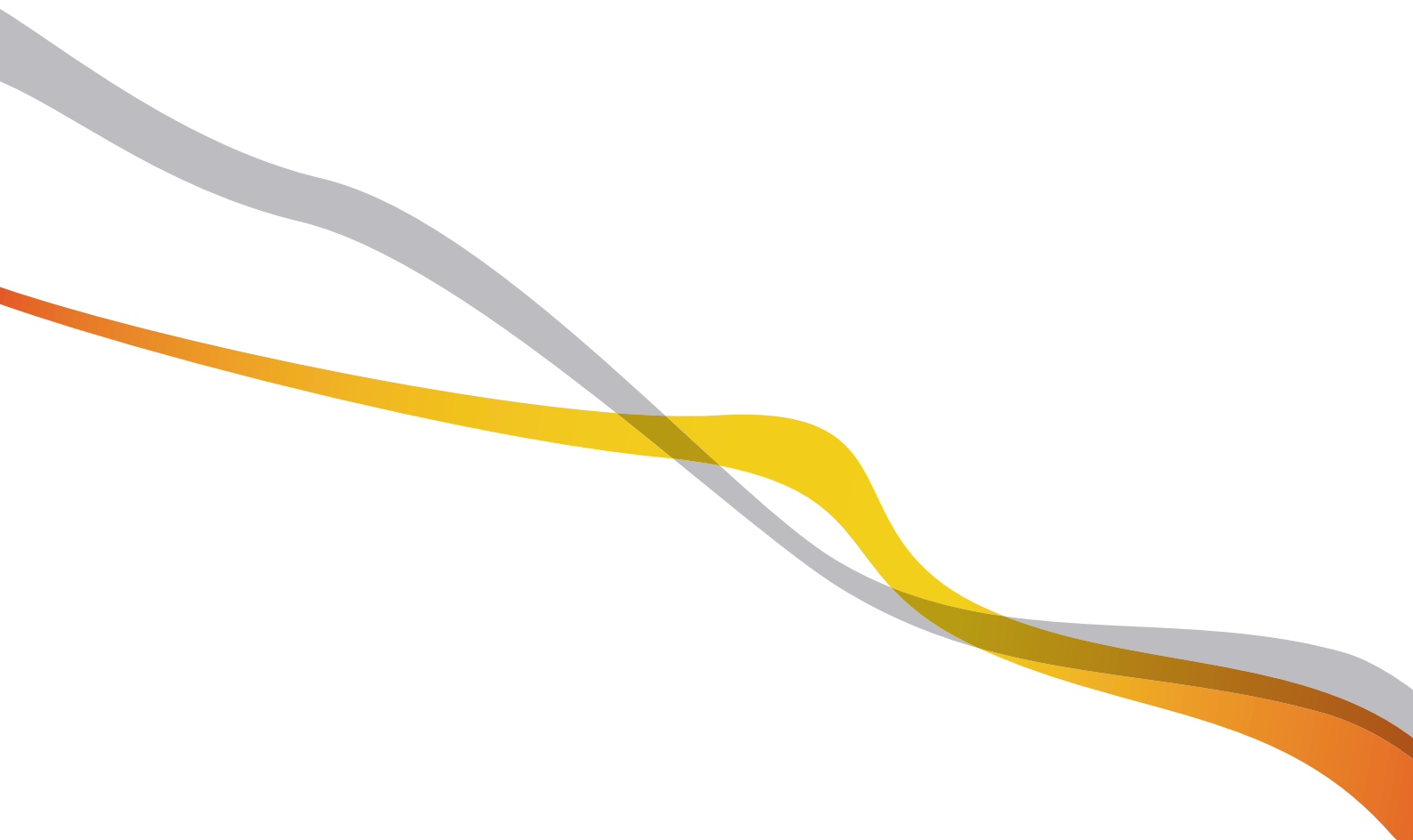
Of particular interest to business is the second pillar of the principle: the corporate responsibility to respect human rights. According to the Special Representative this is the baseline responsibility for companies, in addition to compliance with national laws. The responsibility to respect applies in relation to all internationally recognised human rights. To discharge the responsibility to respect requires specific human rights due diligence. This concept describes the steps a company must take to become aware of, prevent and address adverse human rights impacts. The scope of the due diligence is inevitably inductive and fact based, but comprises: the country context, any human rights impact a company's activities may have within that context, and whether the company might contribute to abuse through the relationships connected to their activities, such as with business partners, suppliers, State agencies and other non-State actors. How far or how deep this process must go will depend on circumstances.

<sup>10</sup> Companies participating in the UN Global Compact have pledged to respect and support human rights.

The framework by itself does not constitute a solution. But it does provide all parties concerned with corporate-related human rights issues with a common baseline from which to develop greater coherence and guidance. The framework was welcomed by the Human Rights Council, which has mandated the Special Representative to operationalise it. The process is expected to be finalised by 2011. As it evolves, the process will have significant implications for the conceptual and practical understanding of the nature and scope of the corporate responsibility to respect human rights.

This publication aims to complement the efforts of the Special Representative by explaining the content of the main internationally recognised rights that are the subjects of the corporate responsibility to respect.

Beyond the policy framework identified by the Special Representative, the United Nations Global Compact asks companies to commit to engage in activities that support human rights. This publication is also a tool for companies wanting to engage in activities in support of human rights.



# USER NOTES AND METHODOLOGY

**This guide can be used as a simple reference tool or employed more thoroughly to augment a company's existing human rights due diligence strategy, including the development and evolution of human rights policies, implementation of impact assessments, and in management systems that encompass training, communication, monitoring and reporting. See the 'Navigating the Guide' card accompanying this publication.**

## Descriptions of the rights

Readers are guided through each of the rights contained in the UN treaties – the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) – and given a description of what each right means in general terms and how it may be relevant to a company's activities. The descriptions take into account the text of the relevant treaty, as well as subsequent interpretations of the treaties by the relevant international bodies. Occasionally, reference is also made to the Conventions of the International Labour Organization (ILO), particularly where there is little guidance from the relevant UN treaty body.

International human rights are elaborated in many other UN and regional treaties, conventions and declarations, some of which may already be familiar to business readers.<sup>11</sup> The authors have chosen to focus on the two 1966 Covenants because of their wide international acceptance and the fact that they articulate the broad spectrum of internationally recognised human rights contained in the Universal Declaration of Human Rights.

No attempt is made to rank the rights in order of relevance to business. While some rights (such as those

<sup>11</sup> Among the most notable are: the Convention on the Elimination of all Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the International Convention on the Protection of all Persons from Enforced Disappearance (2006), the Convention on the Rights of Persons with Disabilities (2006), and Conventions of the International Labour Organization (ILO), as well as the European Convention on Human Rights (1950), the American Convention on Human Rights (1978), the African Charter on Human and People's Rights (1981) and the Arab Charter of Human Rights (2004).

on workplace health and safety) are likely to be priorities for all industries in all part of the world, and other rights (such as freedom from retroactive criminal law) are unlikely to affect business, no definitive rules exist. For example, it is not uncommon to find that rights, such as the rights to freedom of religion or expression, may require a different corporate response from one sector to the next and from one location to another.

**“There are few if any internationally recognised rights business cannot impact – or be perceived to impact – in some manner. Therefore, companies should consider all such rights.”**

**Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights.** *Protect, Respect and Remedy: a Framework for Business and Human Rights*, April 2008.

## Case studies

To bring reality to the report, each description of a right is illustrated by one or more short case studies<sup>12</sup> demonstrating how the right can be relevant to business. The companies profiled have been given a chance to comment.<sup>13</sup> The case studies are only reported to the extent that they are relevant to that particular right – other potential rights issues are omitted to avoid confusion. No implication is intended regarding a company's human rights record outside the context of a given

<sup>12</sup> The exception to this rule is where a particular right has only slight relevance to the business community.

<sup>13</sup> Regardless of whether a company commented, they should not be considered to have endorsed the case study.

case study. The objective is to extract lessons from the sometimes complex, real-life situations companies encounter around the world. The case studies are not meant to represent the ‘best’ or ‘worst’ examples – they are simply chosen as appropriate examples that illustrate the real-life relevance of the right concerned.

Some of the case studies address fluid situations, which may be subject to change. The case studies are up to date, to the best of the authors’ knowledge, as of August 2008. For information on any recent developments, readers are encouraged to visit the Business and Human Rights Resource Centre (<http://www.business-humanrights.org>), which is a leading independent resource on the subject. The website is updated hourly with news and reports about companies’ human rights impacts worldwide – positive and negative. Any reader from a company, government or civil-society organisation wishing to submit a clarification or response to any item is able to do so by sending an email to: [contact@business-humanrights.org](mailto:contact@business-humanrights.org).

Few of the human rights challenges illustrated in the case studies are clear-cut or have simple solutions. In a number of instances companies seem to have turned an ostensibly negative human rights impact around and have brought about long-term benefits, often by working collaboratively with industry peers or civil-society groups. Some companies that have faced difficulties in one context have learnt from such encounters and put good-practice models and management systems in place elsewhere to respect and promote human rights. On the other hand, some companies that have undertaken positive measures with regard to human rights in one context have been criticised by human rights groups regarding their actions in other contexts. Mixed records demonstrate that this is an evolving area and that observance of human rights by companies requires constant vigilance.

All material included in the case studies is taken, without exception or favour, from information in the public domain. No judgements are made in favour of, or against, the companies or activist groups profiled. In all cases, links are supplied indicating the web-based sources from which the case study has been taken. A variety of sources have been used to show a range of perspectives on the case study, including, in many instances, company corporate responsibility sites. Use of a particular website should not be taken as an endorsement of that source.<sup>14</sup>

<sup>14</sup> In some circumstances, weblinks may be broken or go out of date. Information regarding the relevant case study should nevertheless be available using common search engines.

The aim of the case studies is to offer insights for other companies that may find themselves in similar situations. We encourage readers to approach every case study with an eye to the lessons that emerge.

### Suggested practical actions

For each right in the report the authors offer suggested practical actions for company managers’ consideration. The suggested practical actions are based on relevant international standards, industry guidelines and existing good practice, as well as lessons that may be derived from the featured case studies. Some are aimed at assisting companies in ensuring that they respect human rights (and therefore avoid harm), whereas others focus on ways in which companies can promote the positive fulfilment of human rights. They are not a comprehensive list, but offer a sense of the steps that companies have already tried and tested in the given area, and which may be factored into a company’s wider human rights due diligence.

Some suggestions are policy or strategy focused and address how to integrate human rights due diligence within the company. Others are geared towards operational staff and are more relevant to those working on specific facilities or based in challenging locations. Where a right is particularly relevant to a certain type of business, specific suggestions are flagged for that industry using *italics*.

Many companies now have explicit human rights policies and a growing number conduct social impact assessments that factor in human rights considerations. The suggestions in this report are intended to complement such existing human rights approaches and help identify any risks that may have been overlooked. To get the most from this publication, managers may find it helpful to use it in conjunction with other tools featured in the Further Resources section.

### Further resources

A list of further resources begins at page 139. They are provided to give company staff further practical support in integrating human rights into day-to-day business decision-making. They consist of:

- Country risk tools – to enable managers to spot the human rights violations most prevalent in countries of operation
- Human rights impact assessment and compliance tools – that help managers identify and manage human rights-related risks effectively on the ground
- Human right policy development and implementation tools – to aid companies, and particularly senior managers, with the integration of human rights factors into their existing management approaches.

# GLOSSARY OF KEY SELECTED TERMS

## **Complicity:**

Complicity in the business and human rights context refers to the indirect involvement of companies in human rights abuses. Complicity arises when a company knowingly contributes to another's abuse of human rights but did not actually carry out the abuse itself. Some forms of complicity attract legal penalties. Companies may, however, face criticisms in regard to other forms of complicity: stakeholder expectations often go beyond legal minimum standards. Complicity may be alleged in relation to knowingly contributing to any type of human rights abuse, whether of civil or political rights, or economic, social or cultural rights.

## **Human rights due diligence:**

According to the Special Representative of the UN Secretary-General on business and human rights, human rights due diligence is the process required by companies to discharge their responsibility to respect human rights. The concept describes the steps a company must take to become aware of, prevent and address adverse human rights impacts. For the substantive content of the due diligence process, companies should look, at a minimum, to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the core conventions of the ILO. The due diligence process should consider three sets of factors: the country contexts in which the organisation operates, the potential and actual human rights impacts resulting from the organisation's activities, and the relationships connected to those activities. How far or how deep this process must go will depend on circumstances.

## **Human rights impact assessment:**

A human rights impact assessment is a process for systematically identifying, predicting and responding to the potential human rights impacts of a business operation or project. It is designed to complement the company's other impact assessment and due diligence processes, to be guided by a company's own core values and commitments, and to be framed by appropriate international human rights principles and conventions. It is also rooted in the realities of the particular business operation or project by recognising the context within which it will operate from the outset, and by engaging directly with those peoples whose rights may be at risk.

## **Human rights policy:**

A human rights policy is an explicit statement of a company's commitment on human rights. Some are stand-alone documents found on company websites or within reporting literature; others are integrated within statements of business principles, codes of ethics or codes of conduct. A typical human rights policy consists of four elements: a general statement of commitment to respect universal human rights, typically referencing or pledging support for the principles enshrined in the Universal Declaration of Human Rights and core conventions of the International Labour Organization; specific commitments on labour rights (e.g. on non-discrimination, workplace health and safety); specific commitments on wider (non-labour) human rights, which often reflect industry priorities (e.g. on security arrangements, internet privacy); and management systems to integrate the policy.

## **Sphere of influence:**

Beyond the responsibility to respect human rights, companies can support the promotion of human rights. The concept of 'sphere of influence' can be used to help map the scope of an organisation's opportunities to support human rights, including with respect to the categories of rights-holders and rights, and where they can have the greatest positive impact. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has described the concept of sphere of influence as encompassing a company's internal and external business networks, including its relationships with joint venture partners and government authorities. All companies have a sphere of influence, but larger companies will naturally have a larger sphere than smaller companies.<sup>15</sup>

## **Stakeholders:**

A company's stakeholders typically include employees, people within the community in which a business operates, clients, customers, consumers, shareholders, business partners, suppliers, franchisees, sub-contractors and governments.

<sup>15</sup> See, generally, OHCHR Briefing Paper, *The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity* (OHCHR, Geneva, 2004), pages 18–19.







# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)



# ARTICLE 1: RIGHT OF SELF-DETERMINATION

## The Right

This right allows peoples to determine their political status and their place in the international community. It includes the right of peoples to develop and progress in social, economic and cultural terms, to dispose of their land's natural resources and wealth, and not to be deprived of their own means of subsistence. The right to self-determination is concerned with freedom from domination by an alien power. It is a collective or group right held by 'peoples', often understood as peoples under colonial or comparable rule. The right of self-determination of indigenous peoples has also been recognised by the international community. As a right enjoyed by a group, it differs from most other human rights, which are framed as rights of the individual.

While in some cases the right of self-determination may lead to claims by peoples to independence from a State, self-determination also covers principles such as the rights of peoples to choose their political status, and to have a meaningful role in the political process.

### Related rights:

ICCPR Article 25 (Right to participate in public life), page 73

ICCPR Article 27 (Rights of minorities), page 81

ICESCR Article 1 (Right of self-determination), page 87

The aspects of the right of self-determination that have particular relevance to companies are the rights to pursue economic, social and cultural development and to dispose of a land's natural wealth and resources. A company's activities may impact negatively on the right if, for example, it is allowed to build a facility on land that has traditional significance to the peoples that inhabit the area. Likewise, if a company is given a licence to extract natural resources from the land by a government without consultation with the people who inhabit the land, the company may find itself affecting the inhabitants' right to dispose of their natural wealth and resources or their means of subsistence. By contrast, a company may facilitate enjoyment of the right when it consults with the people concerned, obtains their consent, and takes into account their perspective in designing the relevant project.

## Case studies

### Energy and mining sector, Self-determination issues West Papua, Indonesia

Freeport McMoRan Copper and Gold, through its Indonesian mining affiliate, PT Freeport Indonesia, owns a majority stake in one of the world's largest copper and gold mines, the Grasberg mine, in West Papua. There is a long-standing claim to self-determination by the indigenous Amungme people of West Papua, a part of Indonesia.

The Grasberg mine concession was allegedly granted by the Indonesian government without consultation with the local peoples and without compensation for indigenous landowners. Freeport McMoRan has faced allegations of complicity in this breach of the Amungme's right of self-determination, specifically their right to dispose of their natural resources.

The company says that it was the first corporation to recognise self-determination rights in Indonesia, particularly in a 1974 agreement with the Amungme people, which explicitly recognised traditional land rights (*hak ulayat*). It pays compensation (*recognisi*) to the Amungme for the release of *hak ulayat* rights, often in the form of mutually agreed community programmes. PT Freeport Indonesia has also allocated a proportion of the mine's profits to the Amungme people, through a land rights trust fund and share scheme, which according to Freeport has enabled the Amungme, "to become equity participants in the mine". In 2000, PT Freeport Indonesia agreed a Memorandum of Understanding (MoU) with the Amungme local community organisation and another tribal group, paving the way for continuous dialogue between the company and the surrounding community. An MoU Forum, consisting of representatives from various tribal community groups, the regional

government and PT Freeport, also reportedly meets regularly to discuss implementation of the 2000 MoU.<sup>16</sup>

Critics claim that extraction of the mine's resources has been accompanied by degradation of the surrounding environment, most notably through the dumping of untreated tailings into the Aghawaghon River system where the Amungme people live. Beyond any immediate environmental impact, this has implications because indigenous people view pollution and destruction of the natural habitat as attacks on their sacred places and on their culture, and thus has the potential to be viewed as a threat to the right of self-determination, given the traditional significance of ancestral lands.

In 2006, the Norwegian government excluded Freeport from its government pension fund on the advice of its Council of Ethics on the grounds of "severe environmental damage", related to its "disposal of 230,000 tonnes of tailings each day". In January 2006, Freeport wrote to the Council to deny the accusations. Freeport argued, among other things, that the Council's presentation of its operations was inaccurate and appeared "to be based largely on outdated information or biased reports issued by non-governmental organisations who are anti-mining or have a political agenda". The Council, however, concluded that the company had "not provided data or scientific evidence to support its claims that the mining [did] not cause severe and long-term environmental damage".

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<sup>16</sup> The Amungme continue to assert their right to self-determination over the territory.

#### Web-based sources:

<http://www.fcx.com/envir/wtsdeng.htm>

<http://www.fcx.com/envir/wtsd/pdf-wtsd/2006/WTSD.pdf>

[http://www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/Recommendation%20\\_15\\_February\\_2006.pdf](http://www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/Recommendation%20_15_February_2006.pdf)

<http://www.minesandcommunities.org/list.php?r=306>

## Energy and mining sector, Land rights issues Australia

An aspect of indigenous self-determination was acknowledged by the High Court of Australia in 1992, in the case *Mabo v Queensland*, where customary law rights to land were recognised, known in Australian law as 'native title'.

In the first regional land-use agreement for a major resource project to be concluded after the Mabo ruling, Hamersley Iron (a Rio Tinto subsidiary) signed the Yandicoogina agreement in 1997 with a local Aboriginal community over the construction by Hamersley Iron of an iron ore mine and associated infrastructure. The agreement was formally negotiated over one year and covered an area of 26,000 square kilometres in Western Australia. From the initial stages of planning, Hamersley Iron consulted with Aboriginal elders and

community representatives. The company publicised its internal planning on the project, and established direct lines of communication with the Aboriginal community through face-to-face meetings and interviews with their representatives through the National Native Title Tribunal and through the community land councils. Following a process in which all decisions were fully explained and ratified by a general meeting of the Aboriginal community, the parties reached agreement.

By meeting continually, consulting and negotiating with the local indigenous communities, Hamersley Iron demonstrated its respect for the significance of land and native title to Aboriginal communities in the areas where the mining projects are located.

### Web-based sources:

<http://www.atns.net.au/biogs/A000875b.htm>

<http://www.yamatji.org.au>

<http://www.hamersleyiron.com/>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to self-determination. Apply the policy globally.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees and security providers, the importance the company places on respecting the right of self-determination, and in particular any indigenous or marginalised peoples' right to dispose of their land and natural resources, and encourage business partners to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment and ensure that it determines if proposed developments encroach on the land or waterways of indigenous peoples or other groups who claim a right to self-determination. The findings should inform later decision-making on the project.
- Where projects are financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Indigenous Peoples, and IFC Performance Standards on Land Acquisition and Involuntary Resettlement. Other companies may also wish to consider these standards.
- Become familiar with the UN Declaration on the Rights of Indigenous Peoples and be guided by its provisions in interactions with indigenous peoples.<sup>17</sup>
- Consider the right to self-determination of the local community in any decision-making process that in-

volves the exploitation of natural wealth and resources or construction on land, where stakeholders are likely to be impacted but are not necessarily protected by the government negotiating the agreement. This is particularly important where business activities may impact on the traditional livelihoods of a local population or its means of subsistence.

- Consult in good faith with indigenous peoples through their own representative institutions prior to launching any activity that affects their lands and resources with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation of the activity in accordance with their cultures and traditions, and providing full information on the impact and benefits of the activity including in the indigenous language concerned.
- Establish ongoing community consultation processes and put in place mechanisms for paying adequate compensation for losses. Consider, among other things, inter-generational needs, especially if the project is likely to be of long duration. Consider using independent third-party mediators, particularly where complex differences of interest and priorities exist. Community consultations should be completed in the local language.

### Specific actions:

- Engage with governments and other stakeholders to explore the possibility of introducing legislation to protect land/resource-use agreements.
- While respecting community traditions, explore ways in which the company may be able to offer employment, skills training and other opportunities to members of those communities that claim a right to self-determination.

<sup>17</sup> Mining companies may also wish to consult *Mining and Indigenous Peoples Issues Review* published by the International Council on Mining and Metals, see Further Resources, page 142.



# ARTICLES 2 TO 5: OVERARCHING PRINCIPLES

## The Rights

Whereas Articles 1 and 6 to 27 are substantive rights in the International Covenant on Civil and Political Rights (ICCPR) and are explained in some detail, together with their relevance to companies, Articles 2 to 5 are overarching principles and are outlined below for the sake of completeness and to satisfy any curiosity on the part of the reader. As overarching principles, Articles 2 to 5 cannot be applied individually but only in conjunction with a specific right in the ICCPR.

**Article 2** contains the general obligations for a State to respect and to ensure that all individuals within its territory and subject to its jurisdiction enjoy the rights recognised in the ICCPR without discrimination, and to provide an effective remedy for victims.

Non-discrimination is a fundamental and overarching principle of international human rights. Everyone is entitled to enjoy human rights irrespective of his or her colour, gender, religion, ethnic, social or national origin, political or other opinion, property, birth, or other status. The Human Rights Committee, which monitors and interprets the ICCPR, has further interpreted the principle of non-discrimination to include other grounds of discrimination such as age, nationality, disability and sexual orientation. Article 2(1) obliges States to prohibit any distinctions, exclusions, restrictions and limitations

by both public authorities and private bodies on those grounds in the enjoyment of the rights set out in the ICCPR. This means that States have a responsibility to ensure that businesses carry out their activities and provide services in a non-discriminatory way. Reasonable and objective distinctions are permitted. For more discussion of the issue of discrimination, please see the commentary on Article 26 of the ICCPR at page 77.

**Article 3** requires States to ensure that all rights are enjoyed equally by men and women. States are allowed to adopt positive action to eliminate conditions that contribute to gender discrimination.

**Article 4** covers the issue of 'derogation', that is the circumstances in which a State may suspend rights due to a public emergency, such as a war or a natural disaster. It also specifies certain non-derogable rights, such as the right to be free from torture, which must never be limited regardless of a public emergency.

**Article 5** is known as a 'savings clause'. It specifies that the ICCPR will not be used by anybody (whether it be a government or another entity, such as a corporation) as a justification for engaging in an act aimed at destroying the rights of others. Nor can it be used as an excuse to lower domestic human rights standards.



# ARTICLE 6: RIGHT TO LIFE

## The Right

The right to life entails the right not to be deprived of life arbitrarily or unlawfully, and the right to have one's life protected. The right not to have one's life taken away by arbitrary killing is a fundamental right and includes a duty on governments to investigate such killings and punish offenders.

This right is of relevance to companies that employ, co-operate with, or benefit from protection by State security forces for their staff and installations.<sup>18</sup> The right is also of relevance to companies located in countries ruled by oppressive regimes if the company derives direct benefits from human rights violations by the State: both situations could lead to complicity on the part of the company in the State's violations of the right to life.

The right to life requires governments to refrain from unlawful or arbitrary killing. It also requires positive actions to implement the right to life. It has been interpreted broadly to include the right of access to the basic necessities enabling survival (e.g. food, essential medicines) and provision of reasonable protection from threats to one's life. Such threats may arise outside the context of violence, for example in the context of work

<sup>18</sup> These themes are addressed by the Voluntary Principles on Security and Human Rights.

### Related rights:

ICCPR Article 7 (Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment), page 13

ICCPR Article 9 (Rights to liberty and security of person), page 21

safety. Companies' actions may directly impact the right to have one's life protected if they adopt inadequate standards of occupational health and safety resulting in loss of life to workers or others. This duty extends beyond the workplace if products with lethal flaws are manufactured and sold.

Companies may also take actions that help promote the right to life. One example is using their distribution channels to disseminate information about how to avoid contracting HIV/AIDS or other infectious diseases. They can also produce and make accessible at low cost essential goods and services.

Allegations of complicity in violations of the right to life may arise if the products a company manufactures are misused by buyers in ways that the company could or should have foreseen, such as dual-use technologies sold to the Nazi regime and used to murder people during the Holocaust.<sup>19</sup> Companies that produce or supply weapons are also in a position to impinge on the right to life. Arms manufacturers should ensure that they do not deal in illegal weapons and that they comply with international arms embargoes.

<sup>19</sup> One may note that the ICCPR postdates the Holocaust.

## Case studies

### Beverage sector, Violence against and killings of union activists Colombia

Violence against trade unionists continues to be a pressing human rights issue in a number of countries and is related to the right to life. In 2007, the ILO's Committee of Experts report for governments stressed the importance of union activity being free from violence and threats. The report highlighted the prevalence of killings of trade unionists in Cambodia, Colombia<sup>20</sup> and the Philippines.

In *Sinaltrainal v The Coca-Cola Company*, a case brought in the US in 2001, the claimants alleged that The Coca-Cola Company and two independent Latin American bottlers, Bebidas y Alimentos and Panamerican Beverages, Inc. (Panamco), knew about and benefited from the killing of a trade union official at a Colombian bottling plant. Collusion with a right-wing paramilitary group accused of such violence was also alleged.

<sup>20</sup> The report drew attention to findings by the International Confederation of Free Trade Unionists (now the International Trade Union Confederation), which indicated that in Colombia in 2005 there were 70 murders, 260 death threats, 56 cases of arbitrary detention, 7 attempted murders, 3 disappearances and 8 forced relocations of trade union leaders and members.

#### Web-based sources:

- <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/Coca-ColalawsuitreColombia>
- <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1a.pdf>
- [http://www.businessweek.com/magazine/content/06\\_04/b3968079.htm](http://www.businessweek.com/magazine/content/06_04/b3968079.htm)
- [http://www2.coca-cola.com/ourcompany/wn20060310\\_labor\\_review.html](http://www2.coca-cola.com/ourcompany/wn20060310_labor_review.html)
- [http://www.thecoca-colacompany.com/citizenship/workplace\\_rights\\_policy.html](http://www.thecoca-colacompany.com/citizenship/workplace_rights_policy.html)

The claim against The Coca-Cola Company was dismissed in 2003, but was allowed to proceed against the bottlers. The court judged that the Bottlers Agreement that Coca-Cola had with Panamco established that the company “did not have a duty to monitor, enforce or control labour policies at a bottling plant”. In September 2006, a US Federal Court dismissed the claims against the two Coca-Cola bottlers and also rejected the claimants’ attempt to bring Coca-Cola back into the lawsuit. The court concluded that the “allegations fail to plead facts that sufficiently demonstrate the necessary relationship between the defendants and the paramilitaries”.

In 2007, The Coca-Cola Company issued a Workplace Rights Policy that includes a commitment to maintain “a workplace that is free from violence, harassment, intimidation and other unsafe or disruptive conditions due to internal and external threats”. The Coca-Cola Company says the policy, which is being implemented in company-owned operations worldwide, reinforces and reflects the company’s practice of respecting the rights of its employees to workplace security.

## Construction materials industry, Asbestos-related health issues

### Australia

James Hardie, Australia's largest manufacturer of asbestos-containing products during the 20th century, was involved in a case pertaining to the right to life. In 2004 a Special Commission of Inquiry (the Jackson Commission) was called in New South Wales to investigate the Medical Research and Compensation Foundation (MRCF), a fund set up by James Hardie in 2001 to compensate Australian victims of diseases caused by its asbestos products, and to determine whether the fund was adequate to meet the victims' claims.

Asbestos causes disabling respiratory and lung diseases, including the commonly fatal conditions of mesothelioma, asbestosis and lung cancer. Victims and their families accused James Hardie of violating their right to life by failing to warn them of the dangers associated with asbestos, alleging that the company was aware of the dangers as far back as the 1930s. They further claimed that the company shifted its assets offshore to the Netherlands, leaving behind an under-resourced compensation fund (MRCF) out of which claims were to be met. In August 2004, construction unions and several local authorities announced plans to boycott James Hardie products.

#### Web-based sources:

<http://www.actu.asn.au/Campaigns/PastACTUCampaigns/default.aspx> [click on James Hardie]

<http://www.ir.jameshardie.com.au/default.jsp?xcid=34>

<http://www.asic.gov.au/asic/asic.nsf>

In September 2004, the Jackson Commission found that the MRCF fund was under-funded by approximately AUD 2 billion. In late 2005, an agreement was reached between the company and the Australian Council of Trade Unions (ACTU) whereby James Hardie agreed to contribute more funds to the MRCF. In February 2007, 99.6% of shareholders approved the agreement.

In February 2007, the corporate regulator, the Australian Securities and Investments Commission (ASIC), brought civil claims against the company, as well as certain present and former James Hardie directors in respect of the alleged inadequate funding of the MRCF. It is also investigating the possibility of criminal charges. Three directors have since resigned, due to potential conflicts of interest in defending themselves against the claims while the company is a co-defendant. Proceedings remain pending.

James Hardie stopped making asbestos products in 1987. However, owing to the average 35-year latency of mesothelioma, compensation funds are likely to be needed until mid-century.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to life. Apply the policy globally.
- Adopt and enforce rigorous occupational environment, health and safety standards. Companies should apply the same standards globally, even where local regulation may be weak or non-existent.
- Require all business partners (e.g. sub-contractors and suppliers) to adhere to the company policies and urge them to develop similar standards of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees and security providers, the importance the company places on respecting the right to life and encourage them to develop a similar standard and take responsible action.
- *For defence industry companies or those that produce equipment used in weapons systems, do not produce or sell illegal weapons.*

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment and ensure that it determines any risks to the right to life of employees, customers, local communities and other relevant stakeholders. The findings should inform later decision-making on the project.
- Publish clear warnings of any potential health and safety hazards in the workplace in the local language.
- Ensure that any products that are potentially hazardous have clear warnings and instructions for use in the relevant, appropriate language.
- Enforce strict quality control product safety measures to prevent the likelihood of products contributing to injury or death.

- For companies that use public or private security guards to safeguard their facilities and personnel, comply with international standards governing the use of law enforcement officials, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Be guided by the Voluntary Principles on Security and Human Rights.
- Do not enter into or condone protection arrangements with any illegitimate armed actors, particularly in conflict areas or regions with poor human rights records.
- *For natural resource companies, adhere to the Voluntary Principles on Security and Human Rights.*
- *For defence industry companies or those that produce equipment used in weapons systems, conduct risk assessments to avoid sales of weapons systems and dual-use products/technologies (that can be used or misused with fatal consequences) to governments known to perpetrate gross human rights violations against their own people or those in neighbouring countries. Do not deal in illegal weapons, and comply with international arms embargoes.*

### Specific actions:

- Educate employees in the highest environmental, health and safety standards. Ensure all educational awareness campaigns are conducted in the local language and are easy to understand.
- Consider supporting disease-prevention education and health projects.
- Consider supporting efforts to provide human rights training for law enforcement officials.



# ARTICLE 7: RIGHT NOT TO BE SUBJECTED TO TORTURE, CRUEL, INHUMAN AND/OR DEGRADING TREATMENT OR PUNISHMENT

## The Right

This right has a special status in international human rights law and is subject to no restrictions or provisos in any circumstances.<sup>21</sup> In addition to freedom from torture, cruel, inhuman and/or degrading treatment or punishment, this Article also protects people from being subjected to medical or scientific experimentation without their consent. Torture is the most serious of the prohibited acts of ill treatment: it involves a very high degree of pain and suffering that is intentionally inflicted for a particular purpose (e.g. extracting a confession). Cruel and/or inhuman treatment also entails severe suffering of the victim, though of a lesser scale than ‘torture’, while degrading treatment is characterised by extreme humiliation of the victim.<sup>22</sup>

<sup>21</sup> See also the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

<sup>22</sup> The UN bodies have not issued specific definitions of the different types of prohibited treatment. The definitions contained in this section are influenced by the case law of the European Court of Human Rights: see, for example, *Ireland v UK* (1978) 2 EHRR 25. It cannot be presumed that interpretations of human rights within the separate systems will be the same, though the interpretations are the same on many occasions.

### Related rights:

ICCPR Article 6 (Right to life), page 9

ICCPR Article 9 (Rights to liberty and security of person), page 21

ICCPR Article 10 (Rights of detained persons to humane treatment), page 25

The right to freedom from inhuman or degrading treatment may be relevant to companies if, for example, staff members are subjected to severe harassment or dangerous working conditions that cause serious mental distress and anguish. Pharmaceutical companies and others engaging in medical or scientific research may impact on the right if medical or scientific experimentation is conducted without consent. Companies could potentially also face allegations of complicity in violations perpetrated by third parties, if their products are misused to commit acts of torture. Companies may attract allegations of complicity in breaches of the right to freedom from torture through the actions of oppressive regimes with whom they have a business relationship. Such relationships might be joint commercial ventures or the engagement of State security forces to protect company installations.

## Case studies

### Oil and gas industry, Security provision issues Colombia

BP has conducted oil and gas exploration and production in Colombia since 1987. In 1997, the company faced media allegations of complicity in acts of torture and other ill treatment perpetrated by security forces contracted by the company to protect its oil installations in Colombia.

The Colombian Prosecutor General's office (*Fiscalia*) investigated and in 1998 found that the allegations against BP were without substance. Reports nevertheless suggest that BP acted to suspend the security chief working for its privately contracted security firm.

Since the Voluntary Principles on Security and Human Rights were adopted by several extractive industry companies, NGOs and governments in December

2000, BP has tried to put them into practice in Colombia. BP has established an agreement with the Colombian government over the provision of armed forces as security providers. The agreement provides a forum for community grievances and is periodically audited.

BP Colombia has also incorporated the Voluntary Principles on Security and Human Rights into contracts with providers of private security, and has introduced codes of conduct to regulate behaviour. During 2002, an internal assurance exercise was conducted to measure levels of compliance with the Principles and provide a future road map. As a result, meetings are now held twice yearly to review compliance with the Voluntary Principles, to update risk assessments, and to analyse the business and human rights situation in Colombia.

#### Web-based sources:

<http://www.hrw.org/advocacy/corporations/colombia/Oilpat-01.htm>

<http://www.hrw.org/worldreport99/special/corporations.html>

<http://www.api.org/ehs/partnerships/community/principles-columbia.cfm>

<http://colombia.bp.com/go/doc/1660/195543/>

[http://www.bp.com/liveassets/bp\\_internet/globalbp/STAGING/global\\_assets/downloads/BP\\_Human\\_Rights\\_2005.pdf](http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/BP_Human_Rights_2005.pdf)

### Pharmaceutical sector, Clinical trial issues Worldwide

Article 7 states that "no one shall be subjected without his free consent to medical and scientific experimentation". Several companies and research bodies have faced media and legal scrutiny over consent processes used in clinical trials, irrespective of their medical success or failure. The cases illustrate the risks and operational challenges companies may encounter when conducting scientific experiments, including for potentially life-saving medicines, in a world with uneven medical and regulatory infrastructures.

A hepatitis E drug trial conducted jointly by the American Walter Reed Army Institute and GlaxoSmithKline in 2001 attracted attention.<sup>23</sup> Trialled on Nepalese soldiers, questions were raised over the possible coercion of the soldiers. A GSK spokesperson, however, says that "a lot of procedural safeguards" were in place and participants "were free to say no".

23 A. Jack, "GSK is criticised for army drug", *Financial Times* (28 February 2006), notes that the drug performed well and GSK was seeking a sponsor to develop it in China or India.

In Britain in 2006, six men became critically ill in a clinical trial organised by Parexel International for drug manufacturer, TeGenero. While testing on monkeys showed few ill-effects, bio-ethicists and the participants' lawyers have criticised the trial's consent process,<sup>24</sup> arguing that the consent form's language was coercive, as it reportedly threatened withdrawal of financial incentives for non-cooperation, and that the men were not adequately warned of the risks.

Pfizer has defended claims that during a 1996 meningitis epidemic in Kano, Nigeria, it failed to comply with clinical trial regulations and allegedly infringed Article 7's free consent provisions. In 2005 a US lawsuit was dismissed on jurisdictional grounds. In May 2007 Kano and Nigerian federal authorities began criminal proceedings against the company. The case is pending.

24 Elisabeth Rosenthal, "British rethinking rules after ill-fated drug trial", *New York Times* (8 April 2006). Martin Day, of the law firm Leigh Day & Co., representing four of the men, said: "They thought this was relatively risk free."

The case concerns the trial of an antibiotic, Trovan, on children suffering from meningitis at an infectious disease hospital during the epidemic. Approximately half of the children were administered Trovan with the remainder given a comparator drug. The children's representatives and Pfizer have differing views on the success of the trial.<sup>25</sup> The former argue that Pfizer knew of risks, but failed to warn the children or their parents, did not alert them to the experimental nature of the treatment and their right to refuse it, or explain that alternative conventional medicines were available. Pfizer emphatically denies the allegations and says that, before any child was admitted, the study's purpose was explained to each parent or guardian and consent was obtained orally in their

<sup>25</sup> In the US lawsuit, representatives of the parents queried dosage levels and linked side-effects with Trovan. A. Jack and D. Mahtani, "Pfizer to fight \$9bn Nigerian class action on drug trials", *Financial Times* (6 June 2007), suggested that Trovan performed marginally better (more children survived) than the comparator drug ceftriaxone, and that no clear link was demonstrated between a number of the deaths that occurred and the drugs.

#### Web-based sources:

<http://www.australasianbioethics.org/Newsletters/199-2006-04-11.html#consent>

<http://www.leighday.co.uk/doc.asp?doc=1070&cat=852>

<http://www.parexel.com/>

[http://www.gsk.com/responsibility/cr\\_issues/clinical\\_trials.htm](http://www.gsk.com/responsibility/cr_issues/clinical_trials.htm)

[http://www.pfizer.com/research/science\\_policy/global\\_clinical\\_trial\\_standards.jsp](http://www.pfizer.com/research/science_policy/global_clinical_trial_standards.jsp)

<http://www.ft.com/cms/s/54f45618-13ca-11dc-9866-000b5df10621.html>

<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/06/AR2006050601338.html>

native language (due to high illiteracy rates). Pfizer says the "study was conducted with the full knowledge of the Nigerian government and in a responsible and ethical way consistent with the company's abiding commitment to patient safety".

Pfizer and GSK pledge adherence to international standards governing clinical trials<sup>26</sup> and have internal policies in place to ensure voluntary informed consent. Pfizer's policy is to work "with investigators and local health authorities or community representatives to ensure the appropriateness of the informed consent process and the information provided during that process".

<sup>26</sup> For example, both companies pledge adherence to the ICH Harmonised Tripartite Guideline for Good Clinical Practice (GCP) and Declaration of Helsinki.

### Private security sector, Prisoner treatment issues Iraq

This case study illustrates how companies may be exposed to allegations of human rights abuse and may need to defend legal proceedings where they are contracted by governing bodies.<sup>27</sup>

Following the invasion of Iraq in 2003, the companies Titan<sup>28</sup> and CACI were contracted by the US government to provide interpreting and interrogation services to coalition forces in Iraq. The companies have faced allegations that their treatment of Iraqi prisoners at Abu Ghraib prison breached the prisoners' rights to be free from torture.

Compensation was claimed in 2004 in *Ibrahim et al v Titan and CACI*, a lawsuit filed in the US under the Alien Tort Claims Act, by the Iraqi Torture Victims Group on behalf of five Iraqis. Plaintiff Ibrahim Nasser Hussein, widow of a prisoner, Akram Hanoush Yakou, who allegedly died during interrogation, claims that her husband was tortured at the hands of the defen-

<sup>27</sup> See also page xi.

<sup>28</sup> The Titan Corporation was acquired by L-3 Communications in July 2005.

dants and died as a result of his injuries. In 2007, the District Court of Washington DC found that Titan's personnel had in fact been under the direct command of the US military rather than Titan itself. This finding led to the dismissal of the claims against Titan. Some claims against CACI remain pending.<sup>29</sup>

A number of CACI and Titan employees were implicated in a classified army report into the alleged prisoner abuse. Both companies have vigorously denied the allegations. In 2006, a CACI representative stated that "no CACI employee or former employee has been indicted by the United States for misconduct in the treatment of detainees in Iraq" and no CACI employee appears in the photographs released from Abu Ghraib, adding that the company was "disheartened that three of [its] employees [were] mentioned in possible connection with some alleged form of abuse and, if these acts occurred, the

<sup>29</sup> In June 2008 additional lawsuits were brought against the two companies, also for alleged mistreatment of prisoners in Iraq. The cases remain pending. CACI vigorously denies the claims, which it regards as "malicious and unfounded".

company does not condone them". CACI no longer provides interrogation services in Iraq or elsewhere, having concluded its contract with the US Army in 2005. A spokesperson for Titan at the time the allegations first surfaced noted that the company provided

interpreting rather than interrogation services, but stated that the company would co-operate fully with any government investigations and would take appropriate action in the event of any unethical behaviour being unearthed.

**Web-based sources:**

- <http://uniset.ca/other/cs6/391FSupp2d10.html>
- <http://writ.news.findlaw.com/sebok/20070605.html>
- <http://news.findlaw.com/cnn/docs/torture/ibrahimitan72704cmp.html>
- <http://ccrjustice.org/ourcases/current-cases/saleh-v.-titan>
- <http://ap.google.com/article/ALeqM5hXZIMqKrNDLSyKZOEj87zhuphgggD91KQABOO>
- <http://www.titan.com/home.html>
- [http://www.caci.com/iraq\\_faqs.shtml](http://www.caci.com/iraq_faqs.shtml)
- [http://www.caci.com/about/news/news2008/07\\_01\\_08\\_NR.html](http://www.caci.com/about/news/news2008/07_01_08_NR.html)

## Suggested practical actions

**Policy:**

- Adopt a human rights policy, ensuring that it provides for the prohibition of any form of torture, inhuman or degrading treatment. Apply the policy globally.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees, agents and security providers, the importance the company places on international prohibitions on torture and ill treatment, and encourage them to develop a similar standard and take responsible action.

**Policy implementation processes / Compliance:**

- Ensure that working conditions for all workers, including those under contract from a third party and migrant workers, comply with health and safety regulations, and employees are not exposed to risks that could place them in inhuman or degrading situations.
- Explore ways in which the company can mitigate the likelihood of its products or services being misused by third parties to perpetrate acts of torture and establish processes for action in the event of such misuse.
- Conduct a human rights impact assessment and ensure that it alerts the company to any of the risks associated with acting on behalf of local authorities, which may place the company at increased risk of complicity in human rights

violations. The findings should inform project decision-making.

- Put in place whistle-blower protection (e.g. an anonymous hotline) for employees exposing ill-treatment by colleagues or on company premises.
- For companies that use public or private security guards to safeguard their facilities and personnel, comply with international human rights standards. Be guided by the Voluntary Principles on Security and Human Rights.
- *For natural resource companies*, adhere to the Voluntary Principles on Security and Human Rights.
- *For pharmaceutical and related companies*, comply with international standards such as the ICH Harmonised Tripartite Guideline for Good Clinical Practice and the Declaration of Helsinki governing clinical trials across all global activities, and demand that employees or business partners secure the informed consent of clinical trial participants (particularly for locations where national regulation is weak or non-existent); such consent should be obtained in local languages as appropriate.

**Specific actions:**

- Consider speaking out publicly or privately – individually or in concert with other companies – against violations of this right believed to have occurred in the vicinity of company facilities, or in the territory of countries in which the company has operations.
- Consider supporting efforts to provide human rights training for law enforcement officials.

# ARTICLE 8: RIGHT NOT TO BE SUBJECTED TO SLAVERY, SERVITUDE OR FORCED LABOUR

## The Right

Slavery occurs when one human being effectively owns another. The right to freedom from servitude covers other forms of dominance, egregious economic exploitation, and degradation of human beings, which might arise for example in the context of the trafficking of workers (including sex workers), serfdom and debt bondage. Given the extreme nature of these human rights abuses, the rights to freedom from slavery and servitude are subject to no restrictions or qualifications.

Forced or compulsory labour is also prohibited, and is defined by the International Labour Organization (ILO) as “all work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>30</sup> The penalty must involve a minimum level of intensity,<sup>31</sup> but does not have to involve violence. The fact that the person is paid for their labour does not absolve it of being forced if the other elements of the definition are met. Unlike the freedoms from slavery and servitude, the right to freedom from forced labour can be restricted in certain circumstances such as national emergencies. Civic obligations, such as fire-fighting and special obligations in some circumstances on physicians to render medical aid,<sup>32</sup> are not classified as ‘forced labour’.

<sup>30</sup> ILO Convention 29, Forced Labour Convention (1930), Article 2(1). It seems likely that the definition in Article 8 will accord with that of the ILO.

<sup>31</sup> M. Nowak, *UN Civil and Political Rights: CCPR Commentary* (N.P. Engel, 2005, 2nd ed), page 206.

<sup>32</sup> M. Nowak, *UN Civil and Political Rights: CCPR Commentary* (N.P. Engel, 2005, 2nd ed), page 208.

Forms of bonded labour are found all over the world. Examples might include a person in debt being forced to work without pay to pay off that debt, or where a migrant worker lodges his or her identity papers with an employer and is forced to work to reclaim the documents.

Prison labour is permitted under Article 8; however, it should be noted that ILO rules prohibit the use by private companies of involuntary prison labour.<sup>33</sup>

Companies risk allegations of abusing these rights if they directly make use of slaves, forced, bonded or involuntary prison labour. Companies may also risk allegations of complicity if they benefit from the use of such labour by suppliers, subcontractors and other business partners.

Companies in the airline, shipping and other transportation industries, as well as those in the tourism sector, may come into contact with human trafficking where individuals are moved from one place to another for the purposes of forced or bonded labour, such as forced prostitution or domestic servitude.

When companies engage in collective action initiatives that help raise awareness about forced labour and human trafficking, they are promoting this right.

<sup>33</sup> See ILO Convention 29, Forced Labour Convention (1930), Article 2(c).

## Case studies

### Cocoa industry, Forced child labour issues Côte d'Ivoire and Ghana

Approximately 70% of the world's cocoa is produced in West Africa, mostly grown on smallholdings, which number approximately 1.5 million farms.<sup>34</sup> In 2000, the US State Department estimated that around 15,000 children worked on cocoa, coffee and cotton plantations in Côte d'Ivoire, a proportion of whom were trafficked from Mali and brought to Côte d'Ivoire as slaves.<sup>35</sup> Concern for the plight of children used as forced labour (and exposed to unsafe working conditions) prompted efforts by the cocoa industry to address the problem, whilst also prompting media scrutiny and calls for change from campaign groups.<sup>36</sup>

In 2001 the chocolate industry joined politicians, government officials, and civil society to endorse the Harkin-Engel Protocol and recognise "the urgent need to identify and eliminate child labour in violation of International Labour Organization (ILO) Convention 182<sup>37</sup> with respect to the growing and processing of cocoa beans and their derivative products". A foundation, the International Cocoa Initiative (ICI), was established to "oversee and sustain efforts to eliminate the worst forms of child labour" and the development of credible, mutually acceptable, voluntary, industry-wide standards and public certification by 2005. Research then conducted by the International Institute for Tropical Agriculture in 2002 showed little evidence of forced child labour but did reveal evidence of unsafe working conditions for children in agricultural communities.<sup>38</sup>

The ICI was set up in 2002 and involves industry, unions, anti-slavery NGOs and governments working together to make progress.<sup>39</sup> The ICI works with the ILO, governments of cocoa-producing coun-

tries, local NGOs, farmer groups and trade unions, and encourages political and business leadership to eliminate child and forced labour. ICI has developed a community action model for eliminating unacceptable forms of child labour, which is being implemented at the village level and is helping to rehabilitate victims of trafficking. Another industry group, the World Cocoa Foundation, works through cross-sector partnerships to improve cocoa-growing practices in West Africa and elsewhere.

While the goal of having in place child labour standards by June 2005 was not met, partly due to armed conflict in Côte d'Ivoire, industry made a commitment to roll out the certification system to over 50% of the Côte d'Ivoire and Ghana cocoa-producing areas by July 2008.

Campaigning by activists continues; in one instance this has involved litigation against a number of chocolate manufacturers and cocoa-bean producers for alleged involvement in trafficking and forced labour.<sup>40</sup> Furthermore, media scrutiny of human rights conditions in West African cocoa production has not abated.<sup>41</sup>

In 2007 the Republic of Ghana released the first cocoa-farming pilot 'certification' report based on visits to farms representing more than 10% of the country's cocoa production, putting it on track to meet the July 2008 target. Progress in Côte d'Ivoire has, according to government sources, been set back by the country's civil war, while ICI notes the identification of a number of human rights trafficking cases, prompting direct action to address them. ICI members are now replicating and scaling up programmes to other producer countries.

In April 2008 the ICI convened a meeting of senior government officials from Ghana and Côte d'Ivoire, cocoa and chocolate industry representatives, members of international agencies, civil society and child labour experts to explore lessons to be learnt from the projects already underway and avenues for future direction. In June 2008, a joint statement by

34 See <http://www.foodanddrinkurope.com/news/ng.asp?n=62111-nestle-cocoa-child-labour>.

35 See the US State Department, *Country Reports on Human Rights Practices – 2000* (Côte d'Ivoire).

36 In September 2000 a film was broadcast in Britain on Channel 4 television that raised concerns about slavery in cocoa production. Anti-Slavery International, Save the Children and Free the Slaves were among the NGOs that lobbied for change in 2000–1.

37 ILO Convention 182 on the Worst Forms of Child Labour encompasses provisions to prohibit child trafficking and all forms of forced child labour and slavery.

38 Anti-Slavery International welcomed full details of the IITA survey being made available in 2005.

39 ICI members include Archer Daniels Midland and Cargill (cocoa bean processors); Mars, Hershey, Cadbury, Nestlé, Kraft and Ferrero (chocolate manufacturers); the European Cocoa Association and the International Confectionery Association (trade associations); the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), and the International Trade Union Confederation (ITUC) (unions); and US National Consumers League, Free the Slaves and Global March (NGOs).

40 In July 2005, the International Labor Right Fund filed a suit under the US Alien Tort Claims Act on behalf of three former Malian slaves against Archer Daniels Midland, Cargill and Nestlé (see <http://www.business-humanrights.org/Links/Repository/302655/jump>). The companies vigorously deny the allegations.

41 A BBC report entitled "Labouring for chocolate" by Orly Ryan, 27 April 2007, reported on the impact of the initiative.



Senator Harkin, Representative Engel and the chocolate and cocoa industry announced that “the data collection element of the certification process covering an area that produces at least 50% of the cocoa farming output in each country has been completed,

and reports detailing the preliminary results of these surveys by the respective governments are expected to be released by July 1”. The statement said that independent verification “will not be fully completed until the end of the year”.

**Web-based sources:**

<http://www.state.gov/g/drl/rls/hrrpt/2000/af/773.htm>  
<http://www.cocoainitiative.org>  
<http://www.treecrops.org>  
<http://www.cocoafarming.org.uk>  
<http://www.worldcocoafoundation.org>  
<http://www.worldcocoafoundation.org/commitments/cote-divoire.asp>  
<http://www.organicconsumers.org/fair-trade/cocoa072005.cfm>  
<http://www.antislavery.org/homepage/campaign/cocoaabackground.htm>  
<http://news.bbc.co.uk/2/hi/business/6575713.stm>  
<http://www.chocolateusa.org/news-and-initiatives/child-labor-in-cocoa-growing.asp>

**Energy sector, Forced labour issues  
Myanmar**

Unocal faced allegations of complicity in using forced labour when, as part of a consortium, it began exploration for natural gas deposits in Myanmar during the 1990s.

The discovery of gas prompted construction of a USD 1.2 billion pipeline through the southern Myanmar rainforest to neighbouring Thailand. Myanmar troops provided security and built infrastructure for the project. According to the claimants in *Doe v Unocal*, a case brought in the US under the Alien Tort Claims Act, Unocal aided and abetted forced labour carried out by soldiers on the Yadana pipeline project. Local people claim that the troops forced them to work as porters, clear forests and build army camps. Unocal denied using forced labour on the project.

A settlement was finalised in April 2005 by which the company agreed to pay compensation and

provide funds to set up a fund to develop programmes to improve living conditions, education and health care, and to protect the rights of people in the pipeline region. It was anticipated that the programmes would provide substantial assistance to people who suffered hardships in the region. The precise terms of the settlement remain confidential. Unocal did not admit liability. The settlement was accepted by the court, and the case was closed on 13 April 2005.

In a joint statement released at the time of the settlement, Unocal reaffirmed “its principle that the company respects human rights in all of its activities and commits to enhance its educational programmes to further this principle”. The claimants meanwhile similarly reaffirmed “their commitment to protecting human rights”.

**Web-based sources:**

<http://www.earthrights.org/legal/unocal/>  
<http://www.unocal.com>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it prohibits the use of forced or bonded labour, either among direct employees, those contracted from third parties, or those within the supply chain. Apply the policy globally.
- Ensure company policies conform to ILO Convention 29 on Forced Labour, which provides an important foundation for companies operating in countries where forced/bonded labour is known to exist.
- Require all business partners (e.g. sub-contractors and suppliers) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees and security providers, the importance the company places on prohibitions of forced or compulsory labour, and encourage them to develop a similar standard and take responsible action.

- Train staff to be alert to signs of trafficking, and forced/bonded labour, noting that bonded labour may involve the withholding of passports, visas and other travel documents to force employees to stay in their posts, often without pay.

### Specific actions:

- Consider raising concerns with host authorities, independently or collectively with other companies sharing similar anxieties, and make it clear that the company does not tolerate the use of forced or bonded labour, and that consumers and investors often look harshly upon any links to slavery or servitude of any kind.
- Engage in collective action initiatives that help raise awareness about forced labour and human trafficking.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment and ensure that it alerts the company to any instances of forced or bonded labour in the vicinity of direct company operations and supplier facilities. Incorporate within assessment processes extensive stakeholder consultation with local trade unions and NGOs to support company intelligence. There is no easy way to identify the use of forced/bonded labour but companies should familiarise themselves with the risks when operating in countries where it is prevalent, and be alert to the possibility of deception on the subject by business partners. The findings should inform later project decision-making.
- Prohibit the use of forced labour in joint venture and supplier contracts, and encourage business partners to avoid its use.

# ARTICLE 9: RIGHTS TO LIBERTY AND SECURITY OF PERSON

## The Rights

The rights to liberty and security of person prohibit unlawful or arbitrary detention of any kind. 'Arbitrary' (or unreasonable) detention is prohibited even if authorised under a state's domestic laws. 'Lawful' detention, whether in a prison, a psychiatric institution, an immigration facility, or in some other incarceration facility, must always be authorised by government organs, such as courts or appropriate independent administrative bodies. All detainees must be able to challenge the legality of their detentions before judicial bodies. Corporations may attract allegations of complicity in government abuses of this Article if they facilitate the arbitrary or unlawful detention of persons.

This Article also recognises the right to security of people, whether in or out of detention. This part of the

Article has the greatest potential relevance for companies. Security of the person encompasses protection from physical attacks, threats of physical attack, or other severe instances of harassment. In this respect the right to security of person covers less severe forms of ill-treatment than those prohibited under Article 6 (the right to life) and Article 7 (freedom from torture, cruel, inhuman and/or degrading treatment or punishment).

Companies can protect the security of the person when they offer security provision and lend support to investigations into breaches of the right. Conversely, companies might negatively impact the right if, for example, they threaten staff with physical violence or are complicit in instances of severe harassment by others, such as contracted security personnel or other employees.

### Related rights:

ICCPR Article 6 (Right to life), page 9

ICCPR Article 7 (Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment), page 13

## Case studies

### Textile industry, Personal security issues

#### Haiti

Grupo M is a major private company from the Dominican Republic that supplies to US brand name companies. It is the largest apparel producer in the Caribbean/Central American region. In 2003 Haitian workers employed in the export processing zone (EPZ) run by Grupo M complained of threats to their personal security. The case was taken up by the International Confederation of Free Trade Unions,<sup>42</sup> and later became a pilot for the International Finance Corporation's (IFC) core labour performance standards.

According to civil-society organisation the Haiti Support Group, workers who tried to organise themselves into unions were subject to regular threats and violence, and female workers complained of sexual abuse. Haiti Support Group director, Charles Arthur (referring to independent monitors' reports on the factory) alleged "intimidation, provocation, and humiliation" of workers by factory management. The Haitian Support Group called on companies that source products from Grupo M to urge their supplier to address the problems.

<sup>42</sup> The International Confederation of Free Trade Unions merged with the World Confederation of Labour in November 2006 to form the International Trade Union Confederation.

#### Web-based sources:

[http://www.haitisupport.gn.apc.org/fea\\_campaign\\_index.html](http://www.haitisupport.gn.apc.org/fea_campaign_index.html)

<http://www.labournet.net/world/0401/haiti2.html>

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/9f06d27d61b3152a85256d19006a63f1?opendocument>

<http://www.grupom.com.do/>

In October 2003 the IFC authorised a USD 3 million loan to finance the Grupo M<sup>43</sup> export zone in Haiti to help rejuvenate the garment sector in that country, mobilising significant other private sector investment and job creation. The IFC commissioned a site visit by an environmental and social specialist, and as a condition of the loan stipulated that Grupo M comply with the IFC's performance standards, including recognition of the rights of workers. The IFC also instigated a bi-national mediation team (Haitian-Dominican) to facilitate an agreement between the Grupo M management and Sokowa, a Haitian labour union, to resolve their dispute. A collective bargaining agreement was signed in December 2005 between Grupo M and the local union.<sup>44</sup>

The IFC will evaluate the project's compliance with the applicable environmental and social requirements during the lifetime of the project.

<sup>43</sup> According to IFC's summary project information, Grupo M "has been an innovator in adopting sustainable business practices since its founding [in 1986]. The Group has ISO9002 certification and has won awards for labour practice and corporate citizenship."

<sup>44</sup> This case study is also relevant to ICESCR Article 6 (the right to work) and ICESCR Article 8 (trade union rights).

## Security industry, Arbitrary detention issues

### Australia

GSL (Australia) Pty Ltd runs immigration detention centres under a contract with the Australian government.

Australia has a policy of detaining all aliens who enter the country without legal authority; they are detained indefinitely until they receive a valid visa, leave the country, or are released at the discretion of the relevant minister. Under this policy, many asylum seekers have been detained for very long periods of time. According to the United Nations Human Rights Committee (HRC),<sup>45</sup> Australia's policy of mandatory detention breaches the right to freedom from arbitrary detention in Article 9 of the ICCPR.<sup>46</sup> The Australian government disagrees with the HRC's interpretations of human rights in those decisions. In 2005, five human rights organisations submitted a complaint against GSL to the Australian National Contact Point (ANCP) for the OECD Guidelines for Mul-

tinational Enterprises. The organisations alleged that GSL was complicit in breaches of the right to freedom from arbitrary detention by the Australian government in "acquiescing in the mandatory detention of asylum seekers without charge or judicial review".

The ANCP did not consider it appropriate to receive this part of the complaint<sup>47</sup> on the grounds that the Guidelines did not provide "an appropriate avenue to review a host government's domestic policy settings". In other words, the ANCP found that that part of the NGO complaint was aimed at the laws and policies of the Australian government, rather than at the policies and actions of GSL itself.

This case highlights that companies can face allegations of complicity in alleged human rights abuses committed by third parties, including by governments to whom they may be contracted.<sup>48</sup>

45 The United Nations Human Rights Committee monitors the implementation of the ICCPR and its Optional Protocols for those countries that have ratified those treaties.

46 See, for example, *A v Australia*, UN doc. CCPR/C/59/D/560/1993, 30 April 1997. The decision in *A v Australia* has been upheld in numerous instances by the HRC. These decisions are only concerned with the actions of the Australian government; companies were not targeted, nor were they involved in these complaints.

47 The complaint also concerned allegations concerning ICCPR Article 10 at pages 26-27.

48 See also Introduction, page xi.

#### Web-based sources:

[http://www.bayefsky.com/.html/109\\_australiavws560.php](http://www.bayefsky.com/.html/109_australiavws560.php)

[http://www.bsl.org.au/pdfs/Subm\\_to\\_AustnNCP\\_re\\_OECD\\_MNE\\_guidelines\\_and\\_GSL.pdf](http://www.bsl.org.au/pdfs/Subm_to_AustnNCP_re_OECD_MNE_guidelines_and_GSL.pdf)

[http://www.bsl.org.au/pdfs/FinalStatement\\_GSL\\_Australia.pdf](http://www.bsl.org.au/pdfs/FinalStatement_GSL_Australia.pdf)

<http://www.gslpl.com.au>

[http://www.gslglobal.com/corporate\\_responsibility.html](http://www.gslglobal.com/corporate_responsibility.html)

[http://www.gslglobal.com/sectors/secure\\_environment/immigration\\_removal\\_centres.html](http://www.gslglobal.com/sectors/secure_environment/immigration_removal_centres.html)

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it encompasses the right to liberty and security of person, and prohibits any threat of violence, harassment or abuse of any kind being directed against employees (including union representatives) or other stakeholders. Apply the policy globally.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees, and security providers, the importance the company places on the rights to liberty and security of the person and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment and ensure that it identifies any known risk of threats of violence or abuse of any kind being directed against employees (including union representatives) or other stakeholders. The findings should inform later project decision-making.
  - Enforce clear codes against harassment in the workplace and institute grievance mechanisms so that any victims of abuse have access to redress. Standards should apply globally.
- Do not facilitate or condone the arbitrary detention of persons, including protestors that object to the company's activities.
  - Set realistic production targets, and insist on the same from suppliers and sub-contractors, to help eliminate any commercial pressures that have been shown to generate conditions leading to threats of physical violence.
  - For companies that use public or private security guards to safeguard their facilities and personnel, comply with internationally recognised human rights standards. Be guided by the Voluntary Principles on Security and Human Rights.
  - *For companies that run private mental health facilities*, ensure that involuntary confinements are authorised according to relevant legal standards.
  - *For security providers and companies that operate or manage government detention facilities*, conduct risk analyses and take any necessary precautions to ensure the company is unlikely to be complicit in government breaches of the rights to liberty and security of person.



# ARTICLE 10: RIGHT OF DETAINED PERSONS TO HUMANE TREATMENT

## The Right

The right of detained persons to humane treatment provides special protection for detainees, a group that is highly vulnerable to human rights abuses. Article 10 places duties upon detention authorities, such as prison authorities and psychiatric hospitals. These duties include: treating detainees with humanity and respect for the inherent dignity of the human person, separating convicted from remand prisoners, separating juveniles from other detainees, and providing a regime

that facilitates the social rehabilitation of detainees. 'Humane treatment' includes the provision of a minimum of services to satisfy prisoners' basic needs such as adequate food, clothing, medical care and means of communication.

The activities of companies that operate detention facilities or provide prison management services are those most likely to impact on these rights.

**Related right:**

ICCPR Article 7 (Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment), page 13

## Case studies

### Security sector, Detention issues, US bases at Guantanamo Bay

#### Cuba

This case study and the next (involving GSL) highlight the role that may be played by National Contact Points (NCPs), the national complaints mechanisms established under the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD Guidelines).<sup>49</sup>

From 1993, Kværner Process Services Inc. (KPSI)<sup>50</sup> conducted maintenance for the US Department of Defense at installations at Guantanamo Bay. Following construction of a detention camp for terrorist suspects in 2001, KPSI's activities expanded to include tasks connected to the functioning of that facility. KPSI's operations in Guantanamo Bay ceased in 2005 when its contract ended.

In June 2005, Forum for Environment and Development (ForUM) initiated a complaint with Norway's National Contact Point (NCP) for the OECD Guidelines. Referring to findings by the International Committee of the Red Cross, Human Rights Watch and Amnesty International (which highlighted serious human rights violations at the Guantanamo Bay detention facility), ForUM alleged that KPSI was complicit in alleged US government human rights abuses, including the inhumane treatment of detainees.

<sup>49</sup> National contact points (NCPs) are established by adhering governments to promote the OECD Guidelines, and to act as a forum for discussion of all matters relating to the Guidelines (see Article 10 of the Guidelines). NCPs are often called upon to facilitate the resolution of specific complaints regarding alleged breaches of the guidelines by companies (as occurred in these case studies).

<sup>50</sup> KPSI is a wholly owned subsidiary of Norway's Aker Kværner, now Aker Solutions ASA.3.

#### Web-based sources:

<http://www.akersolutions.com/Internet/AboutUs/default.htm>

<http://www.akerkvaerner.com/NR/rdonlyres/02D1A90D-6AF4-4EAF-9646-B5FE8BC81B31/14483/ValuesDrivenBusiness.pdf>

<http://www.oecd.org/dataoecd/23/33/37439881.pdf>

The NCP met with both ForUM and the parent company Aker Kværner during September and October 2005 to explore the issues and help the parties reach an understanding. In November 2005, the NCP made the assessment that "the activities carried out by the company at least in part can be said to have affected the inmates of the prison", as the camp needed KPSI's services in order to function. The NCP noted that "the provision of goods or services in situations such as those at Guantanamo requires particular vigilance with respect to corporate social responsibility", and strongly encouraged Aker Kværner to draw up ethical behaviour guidelines and to apply them in all countries in which it operates. The Norwegian NCP also stressed the importance of companies continually assessing activities in relation to human rights.

In response to the OECD assessment, information director, Torbjørn Anderson, said the company would "take the comments along into other projects we are still engaged in". In the company's 2006–7 Corporate Responsibility Report, Aker Kværner states that it strives to conduct all business in line with fundamental human rights norms, though in relation to the Guantanamo complaint "take[s] the position that [the company's] previous engagement had no significance to the detention facility operated by the US military", as the work typically involved maintaining sewage lines and power grids, improving drinking water and mowing lawns.

### Security sector, Immigration detention issues

#### Australia

Since 2003, GSL (Australia) Pty Ltd has managed various detention facilities for the Australian government under a contract with the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).<sup>51</sup> This agreement places foreigners who are in the country unlawfully under the guarded supervision of GSL until they are granted a visa, are

released at the discretion of the relevant minister, or are deported in accordance with national law.

In 2005, five human rights groups (the International Commission of Jurists (ICJ), Rights and Accountability in Development (RAID), the Human Rights Council of Australia (HRCA), Children Out of Detention (ChiOut) and the Brotherhood of St Laurence) raised a specific instance regarding GSL in Australia,

<sup>51</sup> DIMIA is now known as the Department of Immigration and Citizenship (DIAC).

alleging that the conditions in the immigration detention centres were inhumane.<sup>52</sup> The matter submitted to the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises resulted in a mediation session that took place in February 2006.

A key outcome of the mediation session was a joint statement on behalf of the company and human

<sup>52</sup> The matter also alleged complicity in breaches of ICCPR Article 9 by GSL. See above, page 23.

#### Web-based sources:

[http://www.bsl.org.au/pdfs/Subm\\_to\\_AustrNCP\\_re\\_OECD\\_MNE\\_guidelines\\_and\\_GSL.pdf](http://www.bsl.org.au/pdfs/Subm_to_AustrNCP_re_OECD_MNE_guidelines_and_GSL.pdf)  
[http://www.bsl.org.au/pdfs/FinalStatement\\_GSL\\_Australia.pdf](http://www.bsl.org.au/pdfs/FinalStatement_GSL_Australia.pdf)  
<http://www.oecd.org/dataoecd/42/11/38297552.pdf>  
<http://www.gslpl.com.au/>

rights groups, in which both parties welcomed the ANCP mediation. GSL Australia committed to uphold the human rights of those in its care and embed a human rights approach within its policy, procedures and contracts. GSL also agreed to enhance its human rights training, monitoring and auditing systems. The company also committed itself to an ongoing dialogue with the complainants so that they could monitor and assist GSL Australia's implementation of the agreed remedies. The human rights groups offered practical advice to assist GSL in interpreting human rights standards and in training staff.

### South African hospitality sector, Detention issues South Africa

The company Bosasa is contracted by South Africa's Department of Home Affairs to run the Lindela Detention/Repatriation Centre. According to the South African Migration Project of Queen's University (RSA), more than 4,500 refugees were processed and repatriated through Lindela in 2005.

The Lindela facility has been at the centre of allegations of violations to the right of detained persons to humane treatment. At least seven inmates died during 2005 and several thousand attended nearby clinics. The Zimbabwe Exiles Forum claims that physical assaults and other examples of ill treatment of detainees have occurred at the complex. Media sources reported that riots broke out in July 2006 among 58 Congolese nationals protesting their protracted period of detention. The Congolese refugees alleged that Bosasa officers attacked them.

#### Web-based sources:

[http://www.sarpn.org.za/documents/d0001524/Zim-exiles\\_Aug2005.pdf](http://www.sarpn.org.za/documents/d0001524/Zim-exiles_Aug2005.pdf)  
[http://www.int.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=vn20060903110931335C966711](http://www.int.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20060903110931335C966711)  
<http://www.bosasa.com/Social.aspx>

This case study illustrates challenges companies may need to address when they take on public service functions.<sup>53</sup> In a presentation to the South African Parliamentary Oversight Committee, Bosasa director, Papa Leshabane, revealed that the Department of Home Affairs gave the company less than ZAR 80 a day per refugee to provide food, medical care, security and sleeping accommodation. In response to the specific allegations of assaults on detainees by company personnel, Leshabane said that: "Bosasa is a sub-contractor to the department of home affairs and the protocol dictates that the department is the one to comment on issues relating to the facilities."

<sup>53</sup> See also Introduction, page xi.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right of detained persons to be treated humanely. Apply the policy globally.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees and security providers, the importance the company places on the right of detained persons to humane treatment and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment and ensure that it identifies the prevalence of prisoner mistreatment. In particular ensure that the assessment gauges the human rights conditions at any detention facilities for which the company provides goods or services. The findings should inform later project decision-making.
- *For companies that run places of detention*, provide detainees with the services required to satisfy basic needs, including access to necessary medical treatment, while ensuring respect for the detainees' dignity.
- *For companies that run places of detention*, establish human rights training for all company employees, in particular detention facility officers, in order to increase awareness of human rights norms and to minimise the risk of company employees breaching human rights law.

- *For companies that run places of detention*, comply with national and international standards, such as the Standard Minimum Rules for the Treatment of Prisoners, governing the treatment of persons in detention, whichever is the stronger, including requirements regarding the separate detention of adults and minors, and the separate detention of convicted and remand prisoners.<sup>54</sup> Investigate any breaches of these standards and take appropriate remedial action to prevent recurrences.

### Specific actions:

- In States where there is a record of routine prisoner abuse, consider carefully the implications of reporting individuals to the local police or security forces in relation to minor offences, bearing in mind the consequences for those individuals concerned. Consult with human rights experts to explore the best course of action.

<sup>54</sup> See, for a comprehensive list of such standards, <http://www2.ohchr.org/english/law/index.htm>.

# ARTICLE 11: RIGHT NOT TO BE SUBJECTED TO IMPRISONMENT FOR INABILITY TO FULFIL A CONTRACT

## The Right

This right prohibits the imprisonment of people who are unable to pay a debt when the debt in question is a private obligation (rather than a public debt such as the obligation to pay tax) and arises when a person is incapable (as opposed to unwilling) of paying the debt or fulfilling the contract. This right is directed at the State, which must restrict the types of punishment that can be imposed for inability to fulfil private contractual promises.

The activities of companies are unlikely to impact directly on this right, but they may need to respond in cases where employees or other stakeholders are affected.

## Suggested practical actions

### Specific actions:

- Do not enforce any domestic avenue of redress against a contractor who fails to meet contractual obligations due to a genuine inability to fulfil them, if that remedy could result in the penalty of imprisonment.
- Provide protection for employees or other relevant stakeholders that might be unfairly imprisoned contrary to the provisions of this Article due to their failure to fulfil a contractual obligation.
- On a case-by-case basis, consider speaking out publicly or privately – individually or in concert with other companies – against violations of this right where it affects company stakeholders or others in the vicinity of company operations.
- As appropriate, provide dependants of employees affected with financial or other support.



# ARTICLE 12: RIGHT TO FREEDOM OF MOVEMENT

## The Right

This right has four parts. It allows people who are lawfully in a country to move freely throughout the country, to choose where to live within the country, and to leave the country. These three parts of the right may be limited by restrictions on movement that are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.<sup>55</sup> The right to freedom of movement also gives people the right not to be arbitrarily prevented from entering their own country.

<sup>55</sup> These restrictions are similar to those permitted to other rights, and are discussed under ICCPR Article 19 (freedom of opinion and expression). For example, a person who is imprisoned after being convicted of a crime can therefore have his/her movements restricted for the purpose of maintaining public order.

### Related rights:

ICESCR Article 11 (Right to an adequate standard of living: right to housing), page 113

Companies' activities may impact on the right if, for example, a community has to be relocated because of company operations, which restricts the freedom of those people to choose where they live. Development-related relocation is permissible only if absolutely necessary and so long as it is not conducted arbitrarily or in an unreasonable manner. To this end, freedom of movement must be recognised and considered as part of any discussions concerning relocation. Resettlement should be lawfully achieved after consultation with, notice and compensation for, and ideally consent from, those affected. Bonded labour,<sup>56</sup> in situations where a worker's passport or travel documents are withheld, breaches the right to freedom of movement.

<sup>56</sup> Bonded labour is discussed in more detail under ICCPR Article 8 at page 17.

## Case studies<sup>57</sup>

### Mining sector, Resettlement issues

#### Ghana

In the context of Newmont's Ahafo mining project in Ghana, the company has found it necessary to resettle about 500 families. Newmont has engaged in stakeholder consultation to manage the resettlement process, meeting with the Resettlement Negotiation Committee (RNC) established by community representatives in 2004 to negotiate over resettlement and crop compensation.

The process is being independently monitored, and Newmont has put in place a number of alleviating measures. For example, resettled persons have been provided compensation by way of either cash or improved housing at new sites, and the use of the land on which the new house is built. Newmont notes that for the first time "the homes and residential plots came with a legal title". The company also reports that it is helping to provide infrastructure at the resettlement sites, such as water and sanitation facilities, and is monitoring environmental impacts, such as erosion, at those sites. A grievance procedure is available for persons who wish to make complaints on any issue, including those related to resettlement.

The project has not, however, been without criticism. In 2005 a number of Ghanaian and international NGOs urged the International Finance Corporation (IFC) to postpone consideration of a loan for the project<sup>58</sup>

<sup>57</sup> See also the case study on the Guatemala Nickel Company on related challenges at page 115.

<sup>58</sup> The IFC approved loans of USD 125 million in January 2006 for Newmont Mining's Ahafo gold mining project. An IFC board official then explained that the "board recognised that it is a risky venture, but agreed that it is good to have the IFC around pushing for higher standards and social and environmental compliance".

#### Web-based sources:

<http://allafrica.com/stories/200801250548.html>

<http://www.newmont.com/en/operations/ghana/ahafo/docs/indreviews.asp>

[http://www.newmont.com/en/pdf/howandbeyond/NB20\\_04-Ghana.pdf](http://www.newmont.com/en/pdf/howandbeyond/NB20_04-Ghana.pdf)

[http://www.newmont.com/ESR06/BtM-Values\\_and\\_Value.pdf](http://www.newmont.com/ESR06/BtM-Values_and_Value.pdf)

<http://www.beyondtheminine.com/?l=2&pid=240&parent=253&id=303>

because of concerns over environmental and human rights impacts. The Ghanaian Chronicle had reported that while many families were broadly satisfied with their new homes, some in the village of Ntotroso were experiencing food shortages (partly due to inflation and the cost of having to buy – rather than grow – food in a marketplace focused on serving more affluent Newmont workers). Complaints have also arisen over loss of access to farmland and the crop compensation, which is felt by some to be inadequate and overly bureaucratic.

Newmont says that in May 2006, following a period of consultation, it launched an Agriculture Improvement and Land Access Programme (AILAP) to "help farmers maintain or exceed the levels of crop productivity they experienced prior to the start of the mine, and to ensure compensated farmers were able to access land to farm at no charge". The company also announced plans for a study to "identify appropriate mitigation measures for the loss of fallow land based on recent revisions to [Ghanaian] law". Newmont asserts that it has provided food packages for those most in need and started a scheme for vulnerable households designed to foster long-term self-sufficiency.

According to an independent review commissioned jointly by the IFC and Newmont, approximately 2000 farmers had registered for the AILAP scheme by January 2007 and "100% of beneficiaries [had] managed to find land"; others had also reportedly benefited from in-kind and cash assistance. The counselling component of the Vulnerable People Programme was highlighted as having been "wide ranging and responsive to specific needs".

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring it takes account of the freedom of movement. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees and security providers, the importance the company places on the right to liberty of movement, including the right of people to choose where they live and on respecting international resettlement standards, and encourage them to develop a similar position and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment and ensure that it gauges the likelihood of the company infringing international norms with respect to resettlement and other aspects of freedom of movement. The findings should inform later project decision-making.
- Where financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Indigenous Peoples, and IFC Performance Standards on Land Acquisition and Involuntary Resettlement. Other companies may also wish to consider these standards.
- Population relocations should be guided by the Basic Principles and Guidelines on Development-based Evictions and Displacement<sup>59</sup> developed by the UN Special Rapporteur on the Right to Adequate Housing, which stress, inter alia, the importance of comprehensive impact assessments, the rights of evicted persons to return, resettlement, and fair and just compensation, and that all affected persons be

notified (in writing or by other means where illiteracy is common) sufficiently in advance with a view to minimising the adverse impacts of evictions.

- Consult in good faith with the relevant communities through their own representative institutions prior to launching any activity that affects the right of people to choose where to live with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation and providing full information on the impact and benefits, and any compensation on offer, including in the local language concerned.
- Establish ongoing community consultation processes and provide adequate compensation to impacted persons. Consider using independent, mutually acceptable third-party mediators. Consultations should be completed in the local language.

### Specific actions:

- Explore, in consultation with resettled communities, ways in which the company may be able to contribute to sustainable education, employment and enterprise initiatives for affected groups,
- When appropriate, consider making a public or private approach to the relevant authorities to protest any violations of the freedom of movement by the State, particularly in cases that affect a company stakeholder.

<sup>59</sup> UN document E/CN.4/2006/41.



# ARTICLE 13: RIGHT OF ALIENS TO DUE PROCESS WHEN FACING EXPULSION

## The Right

This Article ensures that foreigners ('aliens') who are legally present in a country are not expelled from that country without due process in accordance with the law, including the right for an alien to be given the opportunity to present reasons why he or she should not be expelled and to have any expulsion decision reviewed. Due process (that is, fair procedures) regarding a deportation need not take place under Article 13 if there are compelling needs of national security.<sup>60</sup>

It is unlikely that the activities of a company would have any direct impact upon this right. However, where employees or other stakeholders are adversely affected, they may have a positive role to play in assisting those persons.

<sup>60</sup> Due process is always required in certain removal cases, regardless of concerns for national security. For example, a State cannot deport a person to another State where there is a real risk that that person may be subjected to torture or ill-treatment (contrary to Article 7 of the Covenant) upon return to that State. Therefore, when a credible claim of possible torture upon deportation arises, a State must pay the closest scrutiny to the fairness of the procedure in determining the risk of torture before any removal is ordered.

## Suggested practical actions

### Specific actions:

- On a case-by-case basis, consider supporting, financially or legally, any alien employee, such as a migrant worker, who faces expulsion on contentious grounds or who is deprived of legal counsel.
- On a case-by-case basis, contemplate a public or private approach to the relevant authorities to protest any violations of the right by the State, particularly in cases that affect a company stakeholder.
- On a case-by-case basis, contemplate offering dependants of employees affected by alien expulsion, or pending expulsion, some degree of financial or other support.

# ARTICLE 14: RIGHT TO A FAIR TRIAL

## The Right

The right to a fair trial and equality before the courts is required in both criminal and civil proceedings to ensure the proper administration of justice. The rights include the entitlement to a public hearing before an impartial court or tribunal. Criminal proceedings demand extra guarantees for the accused such as the presumption of innocence, the right to examine witnesses on an equal basis with the prosecution, the right to an interpreter if the defendant does not understand the language used in the court, and the right to a review of conviction and sentence by a higher tribunal according to law.

It is rare that the activities of a company would have any direct impact upon this right. Companies could negatively impact on this right if they attempt to corrupt the judicial process, for example, by bribing judges or jurors, or destroying relevant evidence. Companies may facilitate the right by helping to provide legal representation to employees who cannot otherwise afford it.



## Case studies

### Tobacco sector, Fair trial issues

#### Australia

The case of *McCabe v British American Tobacco Australia Services Ltd (BAT)* illustrates how a company may find itself embroiled in matters concerning the right to a fair trial.

In a compensation case brought by a smoker against the tobacco company, the Supreme Court of Victoria, Australia, struck out the company's defence on the grounds that BAT had hampered her case. The trial judge found that, prior to the filing of the case, the company, allegedly acting on legal advice, had systematically destroyed thousands of documents, including documents and computer disks containing evidence about the chemical effects of nicotine, the health effects of smoking, marketing and other aspects of the tobacco industry. The trial judge found that the destruction of these documents hampered McCabe's ability to establish her case, and thus "denied her a fair trial".<sup>61</sup>

In December 2002, the Victoria Court of Appeal overturned the Supreme Court decision, ruling that there is no absolute obligation to save documents that

might one day be relevant in litigation. The Victoria Court of Appeal did, however, warn that companies should not destroy documents that could be relevant to reasonably anticipated litigation with a view to perverting the course of justice.<sup>62</sup> The Court also highlighted some US cases where companies were punished by courts for destroying evidence that was likely to be relevant in future litigation.

McCabe's family<sup>63</sup> was reported to be seeking access to documents that allegedly detailed how other documents were deliberately destroyed or hidden to thwart McCabe's original case. In December 2007, a Victorian court ruled that the McCabe family could have access to certain internal BAT documents, though BAT may appeal that ruling. Legal proceedings continue regarding access to documents created by BAT's former legal advisers. It is possible that the family will be able to reopen the original compensation case if they ultimately win their legal battle to gain access to the documents.

61 See *McCabe v British American Tobacco* [2002] VSC 73, paragraph 372.

62 McCabe did not specifically claim that BAT had sought to pervert the course of justice, so no finding on that matter was made in the case.  
63 Rolah McCabe, the original plaintiff, died in October 2002.

#### Web-based sources:

<http://www.austlii.edu.au>

<http://www.bat.com/>

<http://www.theage.com.au/news/national/mccabe-rollercoaster-hits-high-as-saga-rolls-on/2007/12/15/1197568332300.html>

[http://www.vctc.org.au/article.asp?ContentID=Litigation\\_industry\\_Aus](http://www.vctc.org.au/article.asp?ContentID=Litigation_industry_Aus)

<http://www.tobacco.org/articles/lawsuit/mccabe/>

<http://www.tobacco.org/news/244222.html>

## Suggested practical actions

### Policy implementation processes / Compliance:

- Ensure that company policies and procedures prohibit actions to pervert the course of justice, such as by bribing or otherwise attempting to influence members of the judiciary, or by withholding or destroying evidence that might be critical to a fair trial.

### Specific actions:

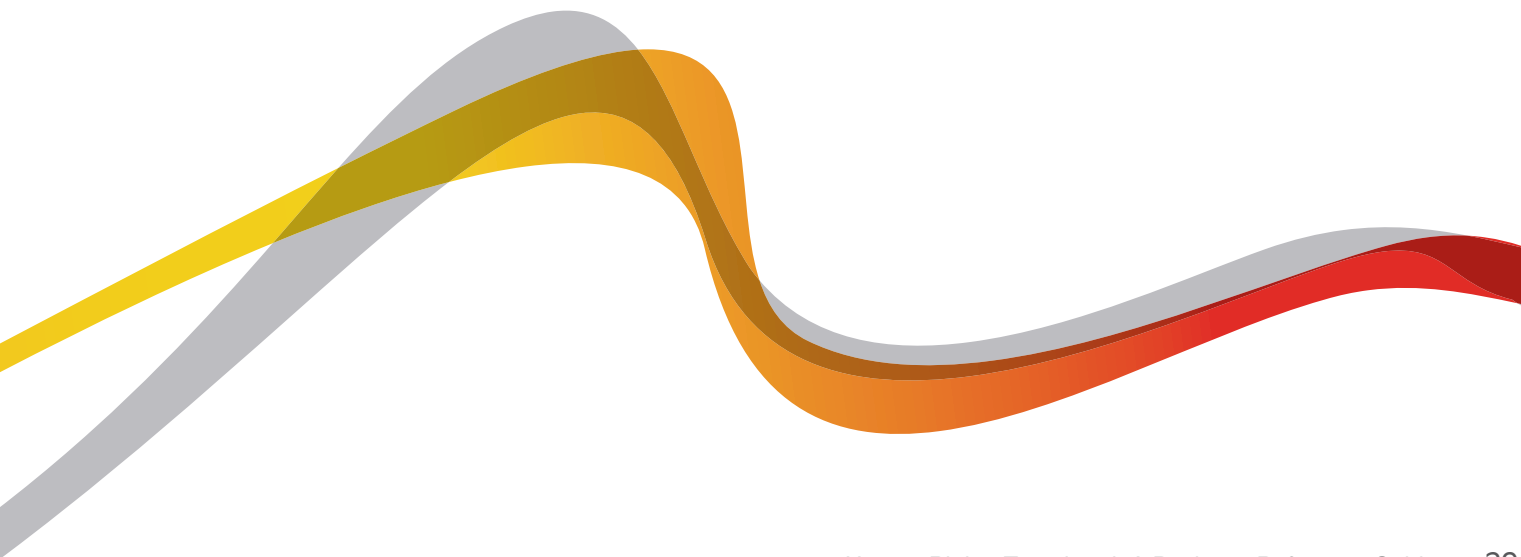
- On a case-by-case basis, consider a public or private approach to the relevant authorities where the company has concerns about access to a fair trial, particularly where a company employee or other stakeholder is affected.
- On a case-by-case basis, offer legal or financial support to any employee or stakeholder whose right to a fair trial appears to be in jeopardy.

# ARTICLE 15: RIGHT TO BE FREE FROM RETROACTIVE CRIMINAL LAW

## The Right

The right to freedom from retroactive criminal law prohibits the State from imposing criminal penalties for an act done that was not illegal at the time it was committed. It also prevents States from imposing heavier penalties for crimes than those that were prescribed at the time the crime was committed. Furthermore, criminal laws must be reasonably clear and precise, so that people are capable of knowing whether their conduct is criminal under the law or not.

It is unlikely that the activities of a company would have any direct impact upon this right, unless they somehow lobby for or otherwise directly benefit from or facilitate the enactment of such laws.



## Suggested practical actions

### Specific actions:

- On a case-by-case basis, contemplate a public or private approach to the relevant authorities to protest any violations of the right by the State, particularly in cases that affect a company stakeholder.
- On a case-by-case basis, commit to support, financially or legally, employees, direct dependants or other stakeholders, whose right to freedom from retroactive criminal law the company deems to have been breached by the State.

# ARTICLE 16: RIGHT TO RECOGNITION AS A PERSON BEFORE THE LAW

## The Right

Article 16 guarantees that an individual be endowed with the capacity to be a person before the law. That is, a human being must be recognised as a person with 'legal personality'. Denial of a person's independent legal recognition is often a precursor to the denial of other fundamental human rights such as the rights to liberty and to life. Examples of breaches of this Article are laws that treat married women as the property of their husbands, children as the property of their parents, or the property of a married woman as the property of her husband.

It is unlikely that the activities of a company would have any direct impact upon this right, though they may be complicit in the abuses of this right by others.

## Case studies

### Banking sector, Holocaust looted-assets issues Switzerland

This case highlights the risks for companies of being held complicit in third-party human rights abuses even many years after those abuses occurred.

In Hitler's Germany, Nazi laws were in place that denied legal status to Jews and Jewish people's property was removed without any compensation to or recognition of the rights of the former owner. Decades after the events of the Holocaust, a class action suit was brought in the US against a number of Swiss banks, including UBS and Credit Suisse, to recover certain assets. Most related to dormant accounts held by Holocaust victims, but some claims related to assets looted from Holocaust victims by the Nazis and subsequently deposited in accounts held with the banks. It was alleged that the banks knowingly accepted these looted assets and therefore were complicit in the denial of the recognition of Jews as legal persons with legal rights over the looted property.<sup>64</sup>

An audit of 63 Swiss banks by the Independent Committee of Eminent Persons (ICEP)<sup>65</sup> found "no organised discrimination against the accounts of victims of Nazi persecution, or concerted efforts to divert the funds of victims of Nazi persecution to improper purposes". The Committee did, however, find "evidence of questionable and deceitful actions by some individual banks in the handling of accounts of victims". Regarding looted assets, some "potentially looted assets were identified", but it was generally very difficult for the ICEP to identify such assets.

<sup>64</sup> Note that the ICCPR postdates the Holocaust.

<sup>65</sup> ICEP (also known as the Volcker Committee) was established in 1996 by agreement between the World Jewish Restitution Organization, the World Jewish Congress and the Swiss Bankers Association, and was charged with the responsibility of finding bank accounts in Switzerland belonging to non-Swiss nationals, which had remained dormant since World War II.

#### Web-based sources:

<http://www.swissbankclaims.com>

<http://www.credit-suisse.com/responsibility/en/index.html>

[http://www.ubs.com/1/e/investors/history/1990\\_2000/2000.html](http://www.ubs.com/1/e/investors/history/1990_2000/2000.html)

In 1998, the Swiss banks agreed to pay USD 1.25 billion in settlement of all claims of Holocaust victims and their heirs against the Swiss banks and the Swiss government. In 2000 a New York court approved this settlement. The banks did not admit liability.

The majority of the payments were to be allocated with regard to bank accounts originally held by Holocaust victims. Of the five other groups of potential claimants, a smaller amount was allocated to the looted assets group. "Because all survivors had assets taken by the Nazis, there is no claims process for this group. Instead, needy survivors may be eligible for services such as food packages, medical assistance and emergency cash grants to be distributed through Court-approved humanitarian relief programmes."<sup>66</sup>

In a joint press release in July 2000, major Swiss banks Credit Suisse and UBS welcomed the settlement and the opportunity to "compensate those who suffered as a result of the errors and omissions of the past" and "to mitigate the consequences of one of the greatest tragedies in our history".

By 23 January 2007, some USD 205 million had been allocated to programmes serving needy survivors who have been identified as part of the "looted assets" class of claimants.<sup>67</sup>

<sup>66</sup> See Special Master's "Plan of Allocation", which dictates the distribution of the USD 1.25 billion.

<sup>67</sup> The Settlement Agreement, as amended, also left open the possibility of specific actions, undertaken outside the settlement's framework, to recover looted or stolen artworks.

<http://www.crt-ii.org/ICEP/slideshow.pdf>

<http://www.nyed.uscourts.gov/pub/rulings/cv/1996/667236.pdf>

## Suggested practical actions

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring any country analysis checks for violations of the right to recognition of persons before the law. The findings should inform later project decision-making.
- Do not acquire property that has been removed from a person in violation of the right to recognition before the law.

- Do not facilitate the removal of property from a person in violation of this right.

### Specific actions:

- On a case-by-case basis, speak out publicly or privately to the relevant authorities where the company has concerns that the State may have breached this right, particularly where it affects company employees or stakeholders.

# ARTICLE 17: RIGHT TO PRIVACY

## The Right

This right protects people against arbitrary, unreasonable or unlawful interference with their privacy, family, home or correspondence, as well as attacks on their honour and reputation. 'Arbitrary', or unreasonable, restrictions on privacy are prohibited even if authorised under a State's domestic laws. Governments have duties to protect against interferences with privacy by State agents or private bodies such as employers and the media.

The right to privacy is not absolute. Governments can, for example, authorise restrictions on privacy by measures that are necessary to protect a legitimate public interest, such as public order (e.g., search warrants to facilitate the detection of crime and apprehension of criminal suspects) or national security (e.g., lawful surveillance of terrorist suspects).<sup>68</sup>

Companies' activities may impact on the right to privacy, especially in the workplace. Privacy has become a particularly important issue in this electronic age in which large amounts of data are stored and more sophisticated methods of obtaining that data are being devised. Companies are frequently involved in the large-scale gathering of personal data on customers, employ-

ees and other stakeholders; there is a consequent need to ensure the confidentiality of such information.

Companies may impinge on the right to privacy or risk being complicit in other human rights violations, if, for example, IT or telecommunications firms were to unlawfully or arbitrarily hand over sensitive customer data to the State without consent.

The notion of privacy has been interpreted by the European Court of Human Rights to include freedom from unreasonable interference in the enjoyment of one's private space. For example, under this theory, a company's emission of gas fumes into a residential area could harm the privacy rights of residents in that area.<sup>69</sup>

<sup>69</sup> In *Lopez-Ostra v Spain* [1994] 20 EHRR 227, a case that came before the European Court of Human Rights, the Court found that gas fumes from a nearby tannery adversely affected the applicants' private and home lives. It must be noted that the European Court and Convention are institutionally separate from the UN and its human rights system. It cannot be presumed that interpretations of human rights within the separate systems will be the same, though the interpretations are the same on many occasions.

<sup>68</sup> The limits that are generally allowed to most civil and political rights are discussed under ICCPR Article 19 (freedom of opinion and expression), at page 53.

## Case studies

### Internet search engines, Internet user privacy issues

#### United States

Modern technologies like the internet have given rise to a communications revolution, but for search engine providers that handle enormous amounts of private data, this poses challenges in relation to the right to privacy.

In 2006, a team working for the search engine company AOL made available the internet search histories of over 650,000 of its users as a resource for academic researchers. Although the AOL team had replaced the names of its users with random serial numbers, *New York Times* reporters and others were able to connect back the data to identify a number of the users. According to the *New York Times*, *Forbes* and other sources, the search histories in question included names, social security numbers, and information on medical conditions. Following these reports, not-for-profit organisation, Electronic Frontier Foundation, asked the Federal Trade Commission (FTC) to investigate.

AOL responded at once by removing the data from its site and issuing an apology. AOL spokesman Andrew

Weinstein explained to Associated Press that “This was a screw up, and we’re angry and upset about it.” He added that it “was an innocent enough attempt to reach out to the academic community with new research tools, but it was obviously not appropriately vetted, and if it had been, it would have been stopped in an instant”. Reports suggest that several AOL employees were dismissed over the incident and that the then chief technology officer resigned.

To prevent such a situation happening in the future, the company’s CEO, Jon Miller, is reported to have told employees of plans to create a task force to develop new best practices on privacy and to look at how search and other data should be stored. Other steps that the company was considering included tightening restrictions on access to databases containing search data and other sensitive member data; looking into ways to ensure that such information is not included in research databases; and adopting education programmes for employees on how to protect sensitive information.

#### Web-based sources:

[http://news.com.com/2100-1030\\_3-6107830.html](http://news.com.com/2100-1030_3-6107830.html)

[http://www.forbes.com/business/2006/08/08/aol-internet-data-cx\\_po\\_0808aol.html](http://www.forbes.com/business/2006/08/08/aol-internet-data-cx_po_0808aol.html)

<http://www.business-humanrights.org/Categories/Individualcompanies/A/AOLpartofTimeWarner>

[http://about.aol.com/aolnetwork/aol\\_pp](http://about.aol.com/aolnetwork/aol_pp)

<http://www.corp.aol.com>

### Newspaper and publishing industry, Media intrusion issues

#### United Kingdom

Publishers and other news media are in a position to affect the privacy of the subjects of the articles they print, even where the right to privacy is not clearly enshrined in domestic law.

An example is a case in which supermodel Naomi Campbell sued Mirror Group Newspapers (MGN Ltd.)<sup>70</sup> over the publication in its *Mirror* newspaper in 2001 of photographs showing her leaving a Narcotics Anonymous meeting. In *Campbell v MGN Limited*, the court had to weigh her right to privacy against the right to freedom of expression and the public’s legitimate interest in the activities of a celebrity who had arguably courted media publicity.

In 2004, the House of Lords (Britain’s highest court) voted by a three-to-two majority to overturn an earlier Court of Appeal ruling to find that Ms Campbell’s right

to privacy had been breached.<sup>71</sup> The House of Lords found that while the newspaper was entitled to inform the public of Ms Campbell’s drug problem and the fact that she was seeking treatment, in order to “put the record straight” in light of relevant denials by Ms Campbell, it was deemed to be too great an intrusion into her private life to secretly photograph her using a long lens at the place of treatment.

Lord Hope, who voted in the majority in favour of Ms Campbell, said:

*Despite the weight that must be given to the right to freedom of expression that the press needs if it is to play its role effectively, I would hold that there was here an infringement of Miss Campbell’s right to privacy that cannot be justified.*

<sup>70</sup> MGN Ltd. is part of the Trinity Mirror Group, one of the largest newspaper publishers in the UK.

<sup>71</sup> In legal parlance, the newspaper was found to have breached Ms Campbell’s rights regarding confidential information.



**Web-based sources:**

<http://www.legalday.co.uk/current/cases/campbellmgn.htm>  
<http://media.guardian.co.uk/mediaguardian/story/0,7558,1212887,00.html>  
<http://www.trinitymirror.com/>  
[http://news.bbc.co.uk/2/hi/uk\\_news/3689049.stm](http://news.bbc.co.uk/2/hi/uk_news/3689049.stm)  
<http://www.kemplittle.com/html/stay-posted/archive/short-lines/naomi-campbell-0504.html>

## **Providers of clinical and laboratory genetic testing, Privacy of medical records and genetic data issues**

### **Australia**

Victorian Clinical Genetics Service (VCGS)<sup>72</sup> is the primary provider of clinical and laboratory genetic diagnosis and counselling to the people of Victoria and Tasmania, Australia. The storage and uses made of health records and the results of genetic tests raise questions in relation to the right to privacy.

VCGS is funded and contracted by the Victorian government to perform these services on behalf of Victoria's Department of Human Services (DHS) as a not-for-profit company. The privacy of patient records is protected according to the principles of Victorian and federal privacy legislation. According to the company, all staff sign a confidentiality agreement as a condition of employment and annual privacy training is provided as part of ongoing professional development.

Amongst the laboratory test VCGS provides is the newborn screening (NBS) programme, started in the late 1960s. This screening aims to alert a hospital to a serious health condition that might be treatable if detected in time, before the baby gets sick. NBS cards have been stored indefinitely since the start of the programme, which has an uptake of more than 98%. The cards are stored in a secure off-site facility. After a minimum period of two years the cards may be transferred to the parents on request. The Department of Health Services owns the cards and VCGS is charged with delivering the programme and is custodian of the NBS cards.

Media sources have alleged that the company believes that it owns the newborn screening cards containing the blood samples and thus "ultimately controls who can get access to the blood, and DNA, of more than 2 million people born in Victoria. Its collection is the largest in Australia and the only one not in government hands."

<sup>72</sup> VCGS trades as Genetic Health Services Victoria and VCGS Pathology.

**Web-based sources:**

<http://www.theage.com.au/articles/2004/07/04/1088879374782.html>  
<http://www.vcgspathology.com.au>  
<http://www.genetichealthvic.net.au>

This case raises questions about the right to privacy of the people from whom the samples were taken. There has, for example, been concern that samples of this kind could be used in paternity suits or to assess health insurance risks. Currently the samples can only be accessed in an identified way with permission, and may only be accessed for research if approval is gained from a Research Ethics Committee. The samples are used for forensic identification at the request of the Coroner's Court or by court order.

Retention of the samples has significant potential public health benefits, such as retrospective diagnosis from the stored blood spot, even after the individual is deceased, to help provide counselling to the family. Approved research can provide information that is of public health interest or information that can provide a better understanding on how diseases develop, identifying potential opportunities for intervention.

The company's website highlights improvements it has made to the newborn screening programme that affect the right to privacy. These include the conclusion of a Memorandum of Understanding with the Victoria police to ensure screening cards can only be requested with an appropriate court order, and a safeguard so that "parents can nominate that there is no secondary access to the card without their explicit permission". Mechanisms have also been put in place to carry out regular audits of the company's practices and to review the protocols for accessing sensitive data. According to the company, no information held by Genetic Health is shared with insurers. The company states that it follows comprehensive national guidelines on the collection and testing of genetic material, and the retention of laboratory records and diagnostic materials.

## Internet search engine providers, Internet user privacy issues China

A subsidiary of the internet company Yahoo! Inc., Yahoo! Hong Kong (YHKL),<sup>73</sup> and Chinese firm Alibaba<sup>74</sup> have faced scrutiny from NGOs, including Amnesty International, Human Rights Watch and Reporters without Borders, for allegedly passing personal data to the Chinese authorities that reportedly led to the imprisonment of several political dissidents. Privacy rights issues are central to the allegations.

In one instance the NGOs claim Yahoo! Hong Kong (YHKL) provided information that helped convict a journalist called Shi Tao, who was sentenced in April 2005 to 10 years in jail in mainland China for allegedly leaking state secrets. In March 2006, Hong Kong lawmaker Albert Ho filed a complaint with Hong Kong's privacy commissioner in which he presented a document reported to be a copy of the Chinese court's criminal verdict for Shi Tao, in which it said that YHKL had provided the material that confirmed the journalist's identity. In March 2007 the Hong Kong privacy commissioner announced that there was insufficient evidence to prove YHKL's involvement. The commissioner also noted that the case fell outside of Hong Kong's jurisdiction. Mr Ho has disputed the findings.

In 2007 the Shi Tao allegations became part of a lawsuit pursued against Yahoo! Inc. in a US Federal Court under the US Alien Tort Claims Act. The lawsuit ended in November 2007 when the case was settled out of court. The terms of the settlement are confidential. Yahoo! had earlier asked for the case to be dismissed, arguing that it had no choice but to comply with a lawful Chinese government request for information connected to an investigation by the authorities, as not to do so might place Yahoo's Chinese staff in legal jeopardy. The company said:

*Yahoo! deeply sympathizes with the plaintiffs and their families and does not condone the suppression of their rights and liberty by their government. But Yahoo! has no control over the sovereign government of the People's Re-*

*public of China ('PRC'), the laws it passes, and the manner in which it enforces its laws. Neither Yahoo Inc. or YHKL therefore, can be held liable for the independent acts of the PRC just because a former Yahoo subsidiary in China obeyed a lawful government request for the collection of evidence relevant to a pending investigation.*

In a statement welcomed by a number of NGOs, Yahoo! co-founder Jerry Yang noted that "Yahoo! is dismayed and distressed by the impact of people imprisoned in China and around the world," and is "fully committed to protecting human rights in the business world's most challenging markets". Yahoo! has opposed unsuccessful shareholder proposals to force the adoption of stronger policies regarding government requests for user information. Yahoo! argues that to do so would give the company "insufficient flexibility" to respond to legal requirements and legitimate government requests.

Since January 2007, Yahoo!, Google and Microsoft have participated in an initiative with the Center for Democracy and Technology, Business for Social Responsibility, and other companies, academics, investors, technology leaders and rights organisations to produce a set of principles to guide company behaviour on privacy issues (and related human rights issues such as freedom of expression).

In February 2008, Jerry Yang wrote to US Secretary of State, Condoleezza Rice, reportedly urging the US State Department's diplomatic assistance in the release of Shi Tao and other political dissidents. In May 2008, as part of a new Yahoo! Business and Human Rights Programme that includes Guiding Principles and Operational Guidelines for the company, Yahoo! said, "We're committed to the international foundation of freedom of expression<sup>75</sup> and privacy, and we'll continue translating those principles into practical steps to be followed by our employees."

73 The company was formerly know as Yahoo! Holdings (Hong Kong) Ltd.

74 Yahoo! Inc. acquired a 40% stake in the Chinese e-commerce firm Alibaba in August 2005. Alibaba now owns and has day-to-day operational management over China Yahoo!.

### Web-based sources:

[http://www.rsf.org/article.php3?id\\_article=14884](http://www.rsf.org/article.php3?id_article=14884)

<http://www.ft.com/cms/s/8b5726d0-3f6a-11da-932f-00000e2511c8.html>

<http://www.nytimes.com/2007/04/19/technology/19yahoo.html?ex=1334635200&en=ab9e05d7726fe430&ei=5124&partner=permalink&exprod=permalink>

<http://www.ihf.com/articles/ap/2007/03/14/asia/AS-GEN-Hong-Kong-Yahoo-Jailed-Reporter.php>

<http://bits.blogs.nytimes.com/2007/08/27/yahoo-to-court-dismiss-torture-case/>

[http://www.atimes.com/atimes/China\\_Business/IB13Cb01.html](http://www.atimes.com/atimes/China_Business/IB13Cb01.html)

<http://www.cdt.org/press/20070118press-humanrights.php>

<http://ycorpblog.com/2008/05/07/business-and-human-rights/#comments>

75 See also case study on freedom of expression at page 54.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to privacy. Apply the policy globally.
- Assess the continuing appropriateness of existing policies regarding the monitoring of employees, such as surveillance of emails at work, in light of the right to privacy, and revise policies as appropriate.
- *For genetic testing and related companies*, make a clear policy commitment not to take, test or store any genetic material without the informed consent of the individuals concerned.
- *For media companies*, adopt and apply a strict code of practice on issues of privacy, stipulating where a line must be drawn between the rights of a free press to report in the national interest and the risks of invading privacy.
- Require all business partners to adhere to the company's privacy policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, sub-contractors, suppliers, franchisees and agents, the importance the company places on respecting the right to privacy, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any situations where governments have a record of violating the right to privacy. The findings should inform later project decision-making.
- Disclose the details of the company's privacy policy, in particular by alerting employees, consumers and other stakeholders in advance of any likely recording, storage, transfer or resale of correspondence (e.g. electronic communication and telephone conversations) or other private personal data or genetic material.
- Take steps to avoid the arbitrary disclosure of personal information held by the company to third parties without the consent of the individual(s) affected.
- Consult with human rights experts and key stakeholders on acceptable solutions to situations where the company is at risk of violating its stakeholders' right to privacy, including in circumstances where the company is required to comply with lawful government requests to hand over data to aid criminal investigations.
- In contexts where local authorities are known to improperly limit freedom of expression and to prosecute dissidents, develop management criteria for deciding the precise circumstances under which the company may be prepared to comply with government requests for the transfer of private data.<sup>76</sup>

<sup>76</sup> See also Human Rights Watch, *Race to the Bottom: Corporate Complicity in Chinese Internet Censorship* (2006) and Amnesty International UK, *Undermining Freedom of Expression in China* (2006). See also ICCPR Article 19 (freedom of opinion and expression).

- Put in place clear policies and procedures for the receipt, processing and retention of personal data, including material involved in genetic tests, with due regard to the right to privacy.
- *For information technology, electronics and other high-tech businesses*, conduct an assessment of the risks that may arise from selling high-tech surveillance/ screening technologies to governments known to have a record of violating people's right to privacy and weigh up any long-term benefits that may derive from prohibiting the sale to such governments.

**Specific actions:**

- In countries where the State may be in violation of the right to privacy, consider registering a public or private protest with the relevant authorities, particularly where the invasion of privacy affects a company stakeholder or involves the improper use of a company product or service, such as surveillance technology.
- Do not inquire about a person's private life when considering job applications (e.g. inquiries about the sexual orientation of the candidate).
- Do not request pregnancy tests when considering job applications.

# ARTICLE 18: RIGHTS TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

## The Right

The right to freedom of thought, conscience, and religion encompasses a person's freedom to choose, practise and observe his or her chosen religion or belief. The freedom also protects atheists and the right not to profess any religion or belief. Article 18 prohibits coercion that would impair the right to have or adopt a religion or belief, including the use of threats of physical force, or penal or civil sanctions to compel adherence to or recanting from particular beliefs. The right to manifest a religion or belief includes the right to worship, as well as to teach and observe rituals such as the wearing of particular clothes or headwear. The right to manifest religious or other beliefs may be limited by law where it is necessary to protect public safety, order, health, morals, or the rights of other people.<sup>77</sup> Imposition of such restrictions might occur if, for example, a religion advocated the use of dangerous drugs and was therefore considered to be a threat to public order and public health.

Breaches of this right often occur in the context of discrimination on religious grounds. However, the right

can be breached in the absence of discrimination, such as in the hypothetical situation of a secular State that suppresses all manifestations of any religion.

Companies' activities are most likely to impact on this right with regard to their workforces. For example, companies may need to accommodate the religious practices of workers who are required to pray during work hours or who request time off in order to observe certain holy days. Issues may arise regarding religious clothing, headwear or jewellery that affects commercial activities. Companies need to balance the freedom to manifest one's religion with competing legitimate interests such as health and safety, the rights of other workers, and the legitimate needs of the business. Companies may also encounter these issues if they operate in contexts where the rights to freedom of thought, conscience and religion are commonly violated and employees or other stakeholders are among the victimised. Companies can facilitate enjoyment of the right by promoting a culture of religious tolerance and understanding within their workplaces.

<sup>77</sup> Similar restrictions are discussed with regard to ICCPR Article 19 (freedom of opinion and expression).

## Case studies

### Internet and network service providers, Freedom of worship issues

#### Australia

An Islamic employee of Australian IT company, TPG, who wished to practise his religion during work hours, alleged that his right to freedom of worship was infringed when the company disciplined him for taking time out of his working day to pray.

After a campaign backed by the union movement and Australia's major religious denominations, and

a vote by TPG staff to change the lunch time to facilitate his Friday prayers, the company responded by agreeing that the worker would be allowed to take five minutes for an afternoon prayer break, and that the Friday lunch break time would be changed to accommodate his midday prayer.

#### Web-based sources:

<http://www.actu.asn.au/Archive/MediaandCommunication/ACTUNews/MuslimWorkerWinsRightToPray.aspx>  
<http://www.tpg.com.au>

### Information technology industry, Religious expression issues

#### United States

This case, involving the computer manufacturer HP, typifies the occasional conflict that can exist between manifestations of religious practice and the consideration companies need to give to the rights of other stakeholders, including fellow employees.

A fundamentalist Christian, Richard Peterson, who worked for HP, actively opposed the company's efforts to promote diversity and tolerance towards homosexuals in the workplace because of his religious view that homosexuality was sinful. As part of efforts to promote workplace diversity, HP displayed "diversity posters" in its Boise, Idaho, office that were specifically designed to combat the negative stereotyping of certain groups, including gays and lesbians. In response, Peterson posted quotes from biblical scriptures (critical of homosexuality) in the office for other workers to see. The company management requested that he remove the quotes as they breached the company's anti-harassment policy.

During negotiations aimed at resolving the situation, Peterson reportedly informed management that the

passages were "intended to be hurtful" in order to encourage homosexual co-workers to "repent and be saved", adding that "as long as [HP] is condoning [homosexuality] I'm going to oppose it". Eventually Peterson was dismissed after he refused to stop posting the scriptural passages.

Peterson sued HP, claiming that he had been discriminated against when his employment was terminated, and that the company had failed to accommodate his religious beliefs. It was not in dispute that Peterson's job performance had been satisfactory.

The court found that the company was not required to accommodate Peterson's religious beliefs in this case, as to do so would result in discrimination against, and harassment of, his co-workers. The court observed that "HP managers acknowledged the sincerity of his beliefs" and accommodated other expressions of his religious views where they did not violate the company's harassment policy.

#### Web-based sources:

<http://www.hp.com/go/report>  
[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/C1027D97C4AA46F388256E1200823D1F/\\$file/0135795.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/C1027D97C4AA46F388256E1200823D1F/$file/0135795.pdf?openelement)

**Airline industry, Religious expression issues<sup>78</sup>****UK**

In September 2006, British Airways (BA) faced allegations of infringing religious freedom when a check-in worker, Nadia Eweida, said she had been suspended<sup>79</sup> for contravening the company's dress code by wearing a visible Christian cross on a necklace. Although BA permitted Muslim and Sikh employees to wear visible religious symbols such as headscarves and Sikh bangles while in uniform, it was alleged that the company would not make an exception to the general company policy of banning all visible jewellery for uniformed employees to allow for the wearing of a crucifix. Ms Eweida pursued her case through an industrial tribunal where it was eventually dismissed.

Ms Eweida, who had worked for BA for seven years prior to the incident, began legal proceedings against the company after she was suspended for failing to comply with a management request to remove her crucifix or conceal it. The case received considerable media attention. Pressure on the company culminated in a threat by the Church of England to sell its GBP 6.6 million worth of BA shares. A letter sent to the *Daily Mail* newspaper from the British Airways Christian Fellowship on 25 October 2006, however, suggested that the case was less clear-cut. "As Christians who work for BA ... we would like to express our appreciation of the equality of treatment we experience in BA and feel the recent press coverage to have been unfair and imbalanced."

<sup>78</sup> The Tribunal's decision in this case was about discrimination on the basis of religion, rather than freedom of religion itself.

<sup>79</sup> British Airways maintained she had not been suspended but took "voluntary unpaid leave".

**Web-based sources:**

<http://www.lifesite.net/ldn/2006/nov/06112701.html>

<http://www.foxnews.com/story/0,2933,224378,00.html>

[http://www.britishairways.com/travel/crdivstrategy/public/en\\_gb](http://www.britishairways.com/travel/crdivstrategy/public/en_gb)

<http://www.guardian.co.uk/uk/2008/jan/09/religion.world>

[http://commentisfree.guardian.co.uk/terry\\_sanderson/2008/01/a\\_cross\\_to\\_bear.html.printer.friendly](http://commentisfree.guardian.co.uk/terry_sanderson/2008/01/a_cross_to_bear.html.printer.friendly)

<http://www.personneltoday.com/articles/2008/05/15/44221/dress-code-eweida-v-british-airways-plc-tribunal.html>

British Airways retracted its ban on wearing crosses and reinstated Ms Eweida. From February 2007, all of BA's 34,000 uniformed employees became entitled to openly wear a symbol of faith, including on a chain. According to BA chief executive, Willie Walsh, the policy change followed extensive consultation with the company's own staff and religious leaders. British Airways' diversity strategy states that its "Uniform Committee has adapted the new uniform to ensure that it upholds the corporate image whilst allowing flexibility to meet key religious needs". According to the company, BA also reflects the range of religions followed by its employees by providing prayer facilities, catering to specific religious dietary needs, and by publishing an awareness-raising monthly religious festivals newsletter.

In January 2008 an industrial tribunal ruled that Ms Eweida had not been discriminated against on the basis of her religion. The tribunal chairman stated that the "complaint of direct discrimination fails because we find that the claimant did not, on grounds of religion or belief, suffer less favourable treatment than a comparator in identical circumstances". The tribunal found that the original uniform policy, which applied to visible jewellery, was reasonable. The exemption for people wearing mandatory religious items that could not be concealed, such as Muslim headscarves, was also found to be reasonable. Eweida's crucifix did not fall into the exempted category; its prohibition had not posed a barrier for Christians to work at BA. Responding to the ruling, BA said it was pleased with the tribunal's decision.



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the need to respect and accommodate religious diversity. Apply the policy globally.
- Prohibit discrimination on the grounds of thought, conscience or religion.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees, suppliers, agents and security providers, the importance the company places on respecting religious freedoms and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Put in place clear and reasonable policies and practices on the wearing of religious symbols or dress, having regard to health and safety requirements and the potential impact on co-workers.
- Make efforts to accommodate reasonable prayer requirements.
- Conduct a human rights impact assessment, ensuring that any country analysis identifies routine violations of religious freedom that could have an impact in the workplace or on employees, or other stakeholders in the community. The findings should inform later project decision-making.
- Consult with employees and immediate stakeholders to determine any areas where the company could improve its practices with regard to issues of freedom of thought and religion.

### Specific actions:

- Companies can facilitate enjoyment of the right by promoting a culture of religious tolerance and understanding within their workplaces.
- On a case-by-case basis, or as part of a wider human rights policy, speak out publicly or in private to the relevant authorities where governments may be guilty of restricting the rights to worship and freedom of thought, conscience and religion, particularly where it affects company employees or stakeholders.
- In contexts where one religious group is routinely discriminated against, for example in the labour market, explore the possibility of recruiting from those disadvantaged groups or working in partnership with civil-society organisations to support projects that bridge community differences.

# ARTICLE 19: RIGHTS TO FREEDOM OF OPINION AND EXPRESSION

## The Right

Article 19 protects the right of each person to hold opinions free from outside interference. This right cannot be restricted in any circumstances. Article 19 also protects the right to freedom of expression, which is the right to seek, receive and impart ideas in whatever media or form. This right can be restricted by measures provided by law and necessary to protect the rights or reputations of others, or to protect national security, public order, public health or morals.

‘Public order’ refers to the rules of a country that ensure the peaceful and effective functioning of society. An example of the protection of public order is a prohibition on speeches that are likely to provoke riots. ‘National security’ refers to a situation where the political independence of a country or the country’s territory is threatened. For example, it will normally be permissible for a State to render it illegal for its active intelligence agents to be identified. An example of the protection of ‘public health’ is a ban or restriction of the advertising of tobacco products. An example of protection of ‘public morals’ is the television watershed imposed in certain countries that prevents sexually explicit programmes from being aired until late in the evening. Undue exercise of free expression can also occasionally prejudice the rights of others, such as a person’s right to privacy (e.g. in the case of the revelation of personal

confidential information) or, in the case of contempt of court, another’s right to a fair trial.<sup>80</sup>

This right has particular significance for the media industry, including filmmakers and distributors, publishers, the television and music industries, and internet companies. Companies can help promote the right by lobbying against censorship. On the other hand, excessive concentration of the mass media in a small number of hands may negatively affect people’s enjoyment of the right to freedom of expression and information. Issues regarding freedom of expression also arise when governments put pressure on media or technology companies to censor their output or limit customers’ access to information.

Other industries may also face these issues if they operate in countries that routinely violate the right to freedom of expression and information, such as where an employee or stakeholder is unfairly persecuted for exercising his or her right to freedom of opinion or expression.

<sup>80</sup> See Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (OUP, 2004, 2nd ed), pages 524–44.

### Related rights:

ICCPR Article 20 (Rights to freedom from war propaganda, and freedom from incitement to racial, religious or national hatred), page 57

ICCPR Article 21 (Right to freedom of assembly), page 61

ICCPR Article 22 (Right to freedom of association), page 63

ICCPR Article 25 (Right to participate in public life), page 73

## Case studies

### Internet search engine providers, Freedom of expression issues

#### China

In January 2006, internet search engine Google faced accusations of complicity in alleged infringements of the right to freedom of expression, when it launched a Chinese domain version (Google.cn) of its internet search engine. Google launched the new domain after access from users inside China to Google.com, in both English and Chinese, was restricted.

Google.cn filters search results to comply with Chinese law and cannot be used to access information about certain subjects, such as 'Falun Gong', 'Tiananmen Square protests (1989)', and 'Tibet independence', although it informs the user whenever search results are blocked. Human Rights Watch reports that: "Google.cn displays a message at the bottom of the screen which says: 'These search results are not complete, in accordance with Chinese laws and regulations.'"<sup>81</sup> Other search engines, such as those provided by China Yahoo!,<sup>82</sup> Microsoft, and Chinese company Baidu, also filter search results to comply with government demands. MSN's search removes content access only in the country issuing the order and notifies users "where access has been limited due to a government restriction". At the bottom of every China Yahoo! search-results page, a message also appears saying that: "In accordance with relevant laws and regulations, a portion of search results may not appear."

Representatives of Google, Microsoft, Yahoo! and Cisco Systems were asked to appear before a Congressional hearing in February 2006 to give evidence on the issue of censorship in China. Since the hearings, Google co-founder Sergey Brin suggested that if

the company was unable to strike a balance between its objective of providing the Chinese people with unprecedented levels of information and accommodating the demands of the Chinese government, it would consider withdrawing the Google.cn version.

According to the Associated Press, Google began to lobby Congress and the US Trade Representative (USTR) during 2007 to treat internet restrictions as international trade barriers, which are illegal under international trade laws. In testimony to Congress,<sup>83</sup> Google's representative said that:

*The United States government has a role to play in contributing to the global expansion of free expression. For example, the U.S. Departments of State and Commerce and the office of the U.S. Trade Representatives should continue to make censorship a central element of our bilateral and multilateral agendas ... the U.S. should treat censorship as a barrier to trade, and raise that issue in appropriate fora.*

Andrew McLaughlin, Google's director of public policy and government affairs, said, "it's fair to say that censorship is the No. 1 barrier to trade that we face."

Since January 2007, Google, Microsoft Corp., and Yahoo! Inc., as well as a number of telecommunications companies, have participated in an initiative with the Center for Democracy and Technology (CDT), Business for Social Responsibility (BSR), human rights experts, academics, investors and others in an effort to produce guiding principles on protecting free expression and privacy<sup>84</sup> in contexts where these rights are not well safeguarded, and to create a forum for collective action and shared learning.

<sup>81</sup> Details of company policies on filtering and disclosure are elaborated in the Human Rights Watch publication *Race to the Bottom* (2006), Chapter IV, "How multinational internet companies assist government censorship in China".

<sup>82</sup> Yahoo! Inc. has a 40% stake in the Chinese e-commerce firm Alibaba, which in turn owns and manages the day-to-day operations of China Yahoo!.

<sup>83</sup> The US House of Representatives Committee, Joint Hearing: "The Internet in China: A Tool for Freedom or Suppression?" 15 February 2006.

<sup>84</sup> See also case study on ICCPR Article 17 (the right to privacy) at page 46.

#### Web-based sources:

[http://www.rsf.org/article.php3?id\\_article=16262](http://www.rsf.org/article.php3?id_article=16262)

<http://www.guardian.co.uk/china/story/0,,1710616,00.html>

[http://www.washingtonpost.com/wp-dyn/content/article/2007/06/25/AR2007062500364\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/06/25/AR2007062500364_pf.html)

<http://www.cdt.org/press/20070118press-humanrights.php>

<http://www.hrw.org/reports/2006/china0806/5.htm>

<http://www.iht.com/articles/2008/04/02/business/cybercrime.php>

[http://www.coe.int/t/dc/files/themes/cybercrime/default\\_EN.asp](http://www.coe.int/t/dc/files/themes/cybercrime/default_EN.asp)

<http://www.google.com/corporate>

<http://yahoo.client.shareholder.com/press/human-rights-free-expression.cfm>

<http://www.microsoft.com>

<http://www.ciscosystems.com>

**Retail sector, Freedom of expression issues****United States**

Major global retailer, Wal-Mart, is one of the world's largest vendors of compact discs (CDs). The company prides itself on being a 'family' store and has a policy of not stocking merchandise that it believes its customers may find objectionable. Wal-Mart has reservations about any ratings body that might "interfere unduly with consumer choice and discretion in the purchase of constitutionally protected free speech". However, owing to the company's substantial market share, its exclusion policy has the potential to impact on freedom of expression.

To determine what movies and computer games to sell, Wal-Mart typically uses entertainment industry rating systems, with individual store buyers employing their discretion on which R-rated movies or M-rated titles to stock based on knowledge of their customers' tastes. In the case of music, where there is no ratings system to follow, the company reportedly declines to sell CDs with cover art or lyrics deemed overtly sexual or that deal with the issues of abortion, homosexuality and Satanism. The company also has a policy of not stocking CDs that carry parental guidance stickers, on the basis that this "helps eliminate the most objectionable material from Wal-Mart's shelves".

PBS television in the United States asserts that in 2003 Wal-Mart sold 20% of the US's music products. In the context of such a substantial market share, PBS's Online Newshour claims that to safeguard their music sales and accommodate Wal-Mart's 'no paren-

tal guidance sticker' policy, many big-name artists often issue two versions of the same album, producing a sanitised version of their products for Wal-Mart and other mega-stores. Many record labels now reportedly consider this practice "another stage of editing". The band Nirvana, for example, is said to have changed the lyrics of one song from 'Rape Me' to 'Waif Me' for the CD sold in Wal-Mart. Some magazines are also reported to "send advance copies to large retailers like Wal-Mart for their approval" and "alter cover artwork to avoid losing sales".

Wal-Mart representatives have insisted that the company "does not restrict the sale of any music products". Wal-Mart's policies do, however, have the potential to affect the types of CDs that record labels are prepared to release. The potential implications on freedom of expression are more pronounced for lesser-known bands who, due to financial constraints, may feel obliged to offer 'sanitised' albums from the outset.

Doug McMillon of Wal-Mart said that the company "attempts to sell entertainment products in a way that allows our customers to make informed decisions, and to exclude from our shelves merchandise that our customers find objectionable due to its sexually explicit or extremely violent nature". A Wal-Mart spokesperson has also pointed out that "the 'store of the community' is a policy we have, and we feel our customers are comfortable with it".

**Web-based sources:**

<http://www.walmartstores.com>

[http://www.pbs.org/itvs/storewars/stores3\\_2.html](http://www.pbs.org/itvs/storewars/stores3_2.html)

<http://www.pbs.org/newshour/bb/business/wal-mart/impact.html>

[http://www.senate.gov/~govt-aff/072501\\_mcmillon.htm](http://www.senate.gov/~govt-aff/072501_mcmillon.htm)

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring it takes account of the rights to freedom of opinion and expression. Apply the policy globally.
- Establish a framework of policies and procedures within which decisions not to release a film, publication or music recording on political or moral grounds can be reached and explained. When reaching such decisions, companies may wish to consult the views of a range of stakeholders, to avoid responding only to those that lobby most vocally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees and agents, the importance the company places on expression and opinion rights, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that any country analysis alerts the company to routine violations of the freedom of expression. The findings should inform later project decision-making.
- *For internet service providers and other media outlets*, consider the right to freedom of expression before censoring or self-censoring the information provided via company channels or networks, particularly when facing demands to do so by local

authorities.<sup>85</sup> In any event, companies should strive to be as transparent as possible about any acts of self-censorship.

- Consider and weigh up issues regarding freedom of expression before withdrawing sponsorship or advertising from, or curtailing the sale of, products, programming or services due to their ‘controversial’ nature – for example, material that may be regarded by some as blasphemous, sexually unacceptable or politically contentious.

### Specific actions:

- Bear in mind the right to freedom of expression before engaging in litigation against people who have spoken out or demonstrated against a company’s activities, including employees. Such litigation may raise free speech issues if there is an extreme imbalance in the parties’ capacities to fund litigation.
- Do not retaliate against employees who exercise their freedom of expression.
- On a case-by-case basis, or as part of a wider human rights policy, speak out publicly or in private to the relevant authorities against government bodies that restrict the rights to freedom of information and expression, particularly where it affects company employees or other stakeholders.

<sup>85</sup> See also Human Rights Watch, *Race to the Bottom: Corporate Complicity in Chinese Internet Censorship* (2006), and Amnesty International UK, *Undermining Freedom of Expression in China* (2006). See also Article 17 ICCPR (right to privacy), at page 43. See also the recommendations of the NGO, Reporters without Borders at [http://www.rsf.org/article.php3?id\\_article=16110](http://www.rsf.org/article.php3?id_article=16110).

# ARTICLE 20: RIGHTS TO FREEDOM FROM WAR PROPAGANDA, AND FREEDOM FROM INCITEMENT TO RACIAL, RELIGIOUS OR NATIONAL HATRED

## The Right

This Article requires the prohibition of war propaganda and the prohibition of any advocacy of national, racial or religious hatred that amounts to incitement to discrimination, hostility or violence. In that sense the Article carves out an area of speech that is not protected by the right to freedom of expression in Article 19. The prohibition on war propaganda extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace that is illegal under the Charter of the United Nations. It is not prohibited to advocate for a war in self-defence, or for the exercise of a people's right of self-determination.

The second part of the Article is directed against 'hate speech', which is speech that vilifies people and incites hatred against them on the basis of their race, religion or nationality. This aspect of the right is of particular significance to media companies and also telecommunications companies that host chat-lines, websites, or other means of public communication through which hate speech might be aired. Companies that support or participate in campaigns to tackle racism and promote diversity help to facilitate enjoyment of this right.

**Related right:**

ICCPR Article 19 (Rights to freedom of opinion and expression), page 53

## Case studies

### Internet search engine providers, Third-party race-hate issues

#### France

This case highlights the complex dilemmas that companies may encounter when needing to balance compliance with the anti-race-hate laws in one country's jurisdiction with freedom of expression expectations elsewhere.

French law strictly prohibits the sale or display of objects that incite racial hatred, including items of Nazi memorabilia. In the case of *LICRA and UEJF<sup>86</sup> v Yahoo!*, a French High Court found in 2000 that Yahoo! had violated France's *Code Penal* by allowing French internet users to buy Nazi memorabilia offered on its US-based auction site. Nazi-related items are not available on Yahoo!'s French site (yahoo.fr), but French users were able to access such items via the company's US-based site (yahoo.com). The court ordered that Yahoo! Inc. prevent French users from accessing internet sites auctioning race-hate memorabilia, or face heavy fines. The French judge heard evidence from court experts who concluded that system checks could block up to 90% of French users from buying Nazi memorabilia, but concurred with

Yahoo!'s own assessment that it would be technically impossible to block every French user from accessing every racist site.

Yahoo! sought a judgement from a federal court in the United States that the French order was invalid against its US arm under the provisions of the US constitutional guarantee of freedom of speech. Yahoo! Inc. eventually lost its case in the Californian federal appeals court in January 2006.

In 2001, prior to the US court proceedings, Yahoo! Inc. amended its user policies to no longer "allow items that are associated with groups which promote or glorify hatred and violence, to be listed on any of Yahoo's commerce properties". In a public statement, Nazi and Ku Klux Klan items were singled out. Yahoo! said trained representatives would monitor the site regularly and that it would use software to identify potentially objectionable items. The company cited ethical rather than legal reasons for the change. Internet auction company eBay has also instituted a global ban on the sale of hate-related items.

<sup>86</sup> The suit was filed by two French groups, the League Against Racism and Anti-Semitism (LICRA) and the Union of Jewish Students (UEJF), against Yahoo! Inc. and Société Yahoo! France.

#### Web-based sources:

<http://www.pcworld.com/resource/article/0,aid,124367,pg,1,RSS,RSS,00.asp>

<http://docs.yahoo.com/info/>

<http://news.bbc.co.uk/2/hi/europe/1032605.stm>

<http://www.news.com/2100-1017-250452.html>

<http://www.out-law.com/page-6536>

[http://www.digitalworldtokyo.com/index.php/digital\\_tokyo/articles/supreme\\_court\\_passes\\_on\\_yahoo\\_nazi\\_case/](http://www.digitalworldtokyo.com/index.php/digital_tokyo/articles/supreme_court_passes_on_yahoo_nazi_case/)



## Sports and leisure industry, Anti-racism campaigns United Kingdom

During the 1970s and 1980s racist chanting and incitements to racial hatred were endemic in English football and played an important factor in the spread of football hooliganism. Racism remains a problem for football across Europe. In England, the Professional Footballers Association (PFA), the FA Premier League, the Football Foundation and The Football Association (FA) have been instrumental in campaigning for the elimination of incitement of racial hatred and the fostering of racial equality both on and off the football field.

During the 1993–4 football season, the Professional Footballers Association and Commission of Racial Equality launched the “Let’s Kick Racism Out of Football” campaign. In 1997 this campaign gave rise to Kick It Out, an organisation that “works throughout the football, educational and community sectors to challenge racism and work for positive change”. Kick It Out is supported and funded by the FA, PFA and the Football Foundation.

### Web-based sources:

<http://www.kickitout.org>

<http://www.sirc.org/publik/fvracism.html>

Each year Kick It Out holds an annual week of action with a strong community focus. In launching its 2005 annual week of action the FA stressed that it was “very committed to tackling racism in all its forms”. In 2006 more than 800 events took place, including anti-racism matches at all 92 professional football clubs in England and Wales. Kick It Out was also behind the development of the Racial Equality Standard for professional football clubs, which is designed to combat race hatred and foster racial equality.

Kick It Out played a decisive role in the Football Against Racism in Europe network and FIFA anti-racism activities during the 2006 World Cup in Germany, and has also been cited as an example of good practice by, among others, UEFA (European Football’s governing body), FIFA (the world governing body), the Council of Europe and the European Commission.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring it encompasses Article 20 freedoms. Apply the policy globally.
- Make it clear that the company does not tolerate incitement to racial, religious or national hatred by its employees and is prepared to take strong and immediate action against anyone found to have engaged in such contact at work, whether verbally or by use of company communication systems, such as intranet and email.
- Be prepared to take a public position against hate speech.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees and agents, the importance the company places on prohibitions against incitement to race hatred and war propaganda, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any areas where the company may be at risk of aiding the dissemination of hate material (e.g. websites, music recordings, publications, films). The findings should inform later project decision-making.
- Take steps to avoid allowing or facilitating the public release of race-hate material.

### Specific actions:

- Explore innovative ways in which to combat racism within the workplace and communities, for example by sponsoring team-building sporting and leisure activities.
- Through core business activities and skills transfers, support civil-society organisations in campaigns that tackle racism and religious intolerance.
- Do not produce advertising that could contain messages that violate the right to freedom from incitement to race, religious or national hatred.

# ARTICLE 21: RIGHT TO FREEDOM OF ASSEMBLY

## The Right

The right to assemble and gather together peacefully is protected by Article 21, subject only to those restrictions that are imposed by law as necessary to protect the interests of national security, public safety, public order, public health or morals, or the protection of the rights and freedoms of others.<sup>87</sup> Assembly in this context may refer to a gathering that takes place for a specific purpose, where there is public discussion,

<sup>87</sup> See ICCPR Article 19 (freedom of opinion and expression) for discussion of similar restrictions.

### Related rights:

ICCPR Article 19 (Rights to freedom of opinion and expression), page 53

ICCPR Article 22 (Right to freedom of association), page 63

ICCPR Article 25 (Right to participate in public life), page 73

or where ideas are proclaimed. Freedom of assembly encompasses the right to demonstrate in groups, whether in stationary gatherings or marches.

Governments are in the most obvious position to violate the freedom of assembly. However, there have been cases where companies have been accused of complicity in government actions to quell demonstrations against company operations.

## Case studies

### Energy sector (oil and gas), Freedom of association issues Nigeria

The oil-rich Niger Delta in Nigeria has long been the site of confrontation between the local people and Nigerian State security forces used to protect oil installations. It is within this context that, over the years, several oil companies have faced allegations of complicity in alleged abuses of protestors' rights, including the right to freedom of assembly.

In May 1998, Chevron allegedly transported members of the State security forces to remove over 100 Ilaje tribesmen who claimed to have been unarmed peaceful protestors and who had closed down production on Chevron's Parabe platform. During altercations that followed, State security forces reportedly killed two unarmed youths.

#### Web-based sources:

[http://www.chevron.com/social\\_responsibility/](http://www.chevron.com/social_responsibility/)

<http://www.ccrjustice.org/corporate-human-rights-abuse>

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2007/06/07/BUGIHQAH2O1.DTL&type=business>

These events prompted legal proceedings in the United States in *Bowoto v Chevron-Texaco*, in which the company was accused of complicity in violations of the right to freedom of assembly, among other human rights abuses. The case is pending.

Chevron denies the charges saying that the invaders had threatened sea piracy and violence if Chevron's subsidiary did not give them jobs and money, and that they then stormed the platform, held workers hostage for three days, and demanded money for their release.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to freedom of assembly. Apply the policy globally.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and security providers, the importance the company places on the right to freedom of assembly, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that any country analysis identifies routine violations of the right to freedom of assembly. The findings should inform later project decision-making.

- In contexts where violations of the freedom of assembly are known to occur, take steps to ensure that company personnel and any security forces sub-contracted by the company are given human rights training and are not complicit in any violations of the rights of demonstrators to assemble freely. Be guided by Voluntary Principles on Security and Human Rights.

### Specific actions:

- Investigate any alleged curtailment of the right to free assembly caused by company staff, its sub-contractors, or authorised by company personnel.
- Be prepared to speak out publicly or in private against any violations of freedom of assembly by government forces or officials, particularly where an employee or stakeholder is unfairly treated.

# ARTICLE 22: RIGHT TO FREEDOM OF ASSOCIATION

## The Right

Article 22 protects the right to form or join all types of association such as political parties, religious societies, sporting and other recreational clubs, non-governmental organisations and trade unions. This right shall not be restricted, except by lawful regulation necessary to protect the interests of national security, public safety, public order, public health or morals, or the protection of the rights and freedoms of others.<sup>88</sup>

Companies' activities are most likely to impact on the right insofar as it relates to trade unions and other employee representative bodies. Article 8 of the International Covenant on Economic, Social and

Cultural Rights (ICESCR) focuses on trade unions alone. Companies respect the right when they respect the right of workers to form trade unions or, when operating in countries where trade union activity is unlawful, they recognise legitimate employee associations with whom the company can enter into dialogue about workplace issues. Companies should also ensure that their activities do not undermine other legitimate organisations, such as political parties. Companies may also promote enjoyment of the right by speaking out in appropriate circumstances, publicly or privately, about laws that curtail the right.

<sup>88</sup> The meaning of these limitations is discussed in relation to ICCPR Article 19 (freedom of opinion and expression), see page 53.

### Related rights:

ICCPR Article 19 (Rights to freedom of opinion and expression), page 53

ICCPR Article 21 (Right to freedom of assembly), page 61

ICCPR Article 25 (Right to participate in public life), page 73

ICESCR Article 8 (Right to form trade unions and join the trade union, and the right to strike), page 101

## Case studies

### Energy sector (oil and gas), Freedom of political association issues Nigeria

Royal Dutch Shell has faced accusations of complicity in serious human rights abuses, including breaches of an activist group's freedom of association, while conducting its operations in Ogoniland in Nigeria.

Many Ogoni people have long opposed oil operations (including those of Shell) in Ogoniland owing to the environmental impacts and the lack of community benefit from the region's oil revenues. In 1990, a group called MOSOP (Movement for the Survival of the Ogoni People) was formed to campaign for greater development, human rights and environmental protection for the Ogoni people. From 1990, MOSOP co-ordinated protests against the oil operations of the Shell-operated SPDC,<sup>89</sup> and by 1993 its membership had reportedly grown to over a quarter of a million. Faced with growing hostility, Shell withdrew from Ogoniland in early 1993 (though it continues to operate elsewhere in Nigeria).

In *Wiwa v Shell*, a case brought in the US under the Alien Tort Claims Act by Ken Saro-Wiwa's relatives, the company (together with Nigeria's then military regime) was accused of participating in a campaign "to discredit MOSOP leaders" and of using "force and intimidation to silence any opposition to their activities in Nigeria". Shell was also accused of complicity in the government's decision to execute MOSOP leaders, including the writer and co-founder Ken

<sup>89</sup> Shell Petroleum Development Company of Nigeria Ltd. (SPDC) is a Shell-operated joint venture.

Saro-Wiwa, on falsified charges.<sup>90</sup> The claimants also allege violations of "the right to peaceful assembly and association". Shell denies the allegations. The case is pending.

Since 1999, there have been attempts at reconciliation. Nigeria's federal government first initiated a process that saw the establishment of a Human Rights Violations Investigation Commission headed by retired Supreme Court Justice Oputa. In 2005, this was superseded by a second initiative, also instigated by the federal government, facilitated by Father Matthew Kukah, assisted by the International Centre for Reconciliation of Coventry Cathedral, and with the support of the Rivers State government, Shell and MOSOP. There is some dispute over the extent of actual progress made and the situation remains delicate. Amnesty International USA noted in May 2005 that "disagreement between different groups representing the Ogoni community has led to recent tensions as to how to deal with the reconciliation process".<sup>91</sup>

As part of ongoing human rights efforts, in 2005 Shell arranged for a Nigerian legal expert on human rights, Olisa Agbakoba, to run workshops for Shell personnel in Nigeria. The Danish Institute for Human Rights has since been invited to provide human rights and conflict-resolution training.

<sup>90</sup> In 1995 Ken Saro-Wiwa was hanged with eight other Ogoni activists on the orders of the then Nigerian dictator General Abacha, having been convicted of murdering four rival chiefs. The legal process was widely condemned as flawed and the executions generated an international outcry.

<sup>91</sup> Urgent Action Network Office of AIUSA notice concerning Barisara Kpalap of MOSOP, 25 May 2007.

#### Web-based sources:

<http://www.ccrjustice.org/ourcases/current-cases/wiwa-v.-royal-dutch-petroleum%2C-wiwa-v.-anderson-and-wiwa-v.-shell-petroleum-d>  
<http://www.shell.com/home/Framework?siteId=nigeria>  
<http://www.mosop.netwww.irinnews.org/report.aspx?reportid=54763>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the freedom of association. Apply the policy globally.
- Ensure company procedures, for example regarding recruitment, do not discriminate against members of organisations that are protected under Article 22.
- Require all business partners (e.g. sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees, agents, suppliers and security providers, the importance the company places on respecting the right to freedom of association and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that any country analysis identifies routine violations of the right to freedom of association. The findings should inform later project decision-making.
- Ensure workers are made aware of their right to freedom of association and consider setting up a safe mechanism for the reporting of grievances.
- Do not harass members of any group exercising its right to freedom of association, whether it takes the form of a trade union, a political grouping, or some other form of association.
- Consider entering into union recognition agreements with the principal unions representing workers in the respective industry and country context.

### Specific actions:

- Do not retaliate against employees who exercise their freedom of association.
- In countries where freedom of association is restricted, be prepared to speak out publicly or in private against violations by the authorities, particularly where company stakeholders may have been victimised.





# ARTICLE 23: RIGHTS OF PROTECTION OF THE FAMILY AND THE RIGHT TO MARRY

## The Right

The right to family life requires protection of the family by society and the State. The concept of a family varies throughout the world; each society's own definition of a family is generally applied. This includes the rights of men and women of marriageable age to marry and start a family, and for marriage to be entered into freely and with full consent. States must take appropriate steps to ensure that the rights and responsibilities of spouses during their marriage and after its dissolution are divided equally.

This Article is relevant to companies insofar as certain work practices may hinder or enhance the ability of people to adopt a healthy work/life balance and spend quality time with their families. Relevant case studies in this respect may be found at page 109 with regard to the similar right articulated in Article 10 (right to a family life) of the International Covenant on Economic Social and Cultural Rights (ICESCR).

### Related rights:

ICCPR Article 24 (Rights of protection for the child), page 69

ICESCR Article 7 (Right to enjoy just and favourable conditions of work), page 95

ICESCR Article 10 (Right to a family life), page 109

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to family life and to marry. Apply the policy globally.
- Ensure that company policies and procedures do not discriminate against women on the grounds of marital or reproductive status.
- Require all business partners (e.g. primary suppliers) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees, agents and suppliers, the importance the company places on protections of family and marital rights and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Comply with national laws governing parental leave.
- Do not mandate unreasonable working hours for employees. Be guided by relevant ILO Conventions that stipulate that employees should not generally be required to work more than 48 hours per week, or ten hours a day, and should have one day off per seven days (see ICESCR Article 7 at page 95).
- Consult with employee representatives regularly to determine the company's strengths and weaknesses with respect to work/life balance issues such as flexible hours and the provision of childcare facilities. Apply at least local best practice standards in all locations where the company has operations.

# ARTICLE 24: RIGHTS OF PROTECTION FOR THE CHILD

## The Right

Children are recognised by this Article as being in need of special protection as required by their status as minors. The duty to protect a child attaches to his or her family, community and the State. A child has the right to be registered and given a name immediately after being born, and the right to acquire a nationality. The age at which a child achieves majority and no longer requires the protections of Article 24 is determined by governments in light of the relevant social and cultural conditions, so long as the age of majority is not unreasonably low or high.<sup>92</sup>

Protection of the child includes protection from sexual and economic exploitation. A company's activities are more likely to impact on the latter, but a company (for example a hotel) may be considered complicit if it turns a blind eye to the sexual exploitation of minors within the vicinity of its business in countries where the child sex trade is known to be pervasive.<sup>93</sup> Children may not be engaged to do work that is hazardous, arduous, and for which they are underpaid, or to work for the same number of hours as adults. Child labourers are frequently denied the opportunity to undertake education as a result of going to work, and their mental and physical health can suffer due to poor working conditions, long hours of work, and ill-treatment by employers.

<sup>92</sup> The issue of children's rights is the subject of a specific treaty, the UN Convention on the Rights of the Child (1989). That Convention prescribes that the age of majority is 18 years, unless a State prescribes a lower age.

<sup>93</sup> The protection of children from sexual exploitation is addressed in more detail by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000).

### Related rights:

ICCPR Article 23 (Rights of protection of the family and the right to marry), page 67

ICESCR Article 10 (Right to a family life), page 109

ICESCR Articles 13 and 14 (Right to education), page 131

The restriction on child labour under Article 24 will likely be influenced by International Labour Organization (ILO) standards in this regard. ILO standards prohibit labour for those under the age of 15.<sup>94</sup> However, developing States may prescribe a minimum age of 14 and may even initially limit the scope of application of ILO standards if its economy and administrative facilities are insufficiently developed. It is acknowledged that the elimination of child labour is a difficult issue, as some families rely on the income from children to ensure their access to food and other necessities. Hazardous work, however, is prohibited by the ILO for all persons under 18.<sup>95</sup> There are some well-understood instances where children may work, such as when children assist families for short periods during farming harvests, or children over 15 working in non-hazardous conditions.

Companies respect the right when they observe the minimum ages for employment. However, the blanket dismissal of children can be problematic, as they may move into more hazardous employment, such as prostitution or drug trafficking. Therefore, companies also promote the right in a variety of ways beyond the simple removal of child labourers from their value chain, including through helping to create educational opportunities for any such children, participating in collective action approaches to tackle child labour, and paying adult employees a living wage so that their children do not need to work.

<sup>94</sup> See Minimum Age Convention 138 (1973), Article 2(3).

<sup>95</sup> See Worst Forms of Child Labour Convention 182 (1999).

## Case studies

### Cottonseed industry, Child labour issues<sup>96</sup>

#### India

Since 2001 several Indian and international NGOs have put the spotlight on child labour in the cottonseed industry in the state of Andhra Pradesh. India's National Census (2001) estimated that more than 12 million children under the age of 14 were engaged in child labour. Also in 2001, the India Committee of the Netherlands, an NGO, alleged that farms producing seed for multinational companies "accounted for about 19% of the total children working (53,500 out of 247,830) in cottonseed production in the state".<sup>97</sup>

In 2003, Indian and international members of the Association of Seed Industry (ASI) joined with Indian NGO, the MV Foundation, to form a Child Labour Eradication Group. Though initial progress did not reach everyone's satisfaction, in 2005 the ASI, Seedsmen Association (SA), CEASE (Consortium of Employers' Associations for the Elimination of Child Labour) and the International Labour Organization (ILO) launched a campaign to discourage child labour in seed collection. Known as the Child Labour Eradication Project (CLEP),<sup>98</sup> this initiative was joined in 2005 by Bayer CropScience<sup>99</sup> and Emergent Genetics (a Monsanto subsidiary).<sup>100</sup> CLEP activities for crop season 2005–6 entailed commitments regarding the inclusion of 'no child labour' clauses in contracts, the formation of joint monitoring committees, the development of incentives and disincentive schemes for the farmers, financing for educational programmes to rehabilitate child labourers, and measures for farmers on the safe use of pesticides and ways to improve crop productivity.

In June 2007, an NGO-commissioned study,<sup>101</sup> *Seeds of Change*, concluded that the two companies had "started to address the issue of child labour in their cottonseed supply chain", with statistics indicating an approximate

halving of the percentage of child workers (under 15) employed by Bayer and Monsanto's suppliers in Andhra Pradesh over the period of the study.<sup>102</sup> The study highlighted serious efforts during 2006–7 "to motivate farmers not to employ children", noting Bayer's "two training programmes on best agricultural practices" and Monsanto's implementation of "incentive schemes for its farmers".

The study, however, also urged the companies to tackle child labour systematically in other Indian states and to insist on 'no child labour' policies being extended to their business partners. The authors also questioned how effective the Creative Learning Centres (CLCs) were at reaching and rehabilitating children who had actually worked on the fields, and reiterated concerns over the allegedly low procurement prices being offered to farmers, which it saw as an obstacle to whole-hearted farmer support for the no child labour policy.

Monsanto's response to the study highlighted the phased roll-out of its human rights policy commitments on child labour and ongoing support for ASI's multi-stakeholder Child Care Programme (CCP), which involves representatives from the seed industry, NGOs, state and local government, and the ILO. Monsanto acknowledged that the CLCs had fallen short of expectations, but said lessons would be learnt and would be incorporated in future eradication initiatives. The company stressed its ongoing commitment to "a collaborative, systemic and sustainable resolution to the issue of child labour in cottonseed production".

Bayer has challenged the study's calculations. The company estimates a steeper decline in the percentage of child labourers in the total workforce and notes that its results "have been generated by independent teams including NGOs [and] scrutinized by the company and externally by Ernst & Young". Bayer says that the proportion of children admitted to its CLCs from outside its immediate sphere of influence has risen as the numbers of children working on the fields of its own suppliers has fallen. Bayer asserts that the Child Care Programme's success "demonstrate that zero child labour can be achieved effectively without raising the procurement price".

96 See also the case study regarding ICCPR Article 8 (right not to be subjected to slavery, servitude and forced labour), page 18, which explores issues of forced child labour in the cocoa industry.

97 The figures were based on a detailed field study conducted in 2001 and referenced in a 2004 report commissioned by the India Committee of the Netherlands (ICN), *Child Labour in Hybrid Cottonseed Production in Andhra Pradesh: Recent Developments*.

98 The initiative is now known as the Child Care Programme (CCP).

99 In 2002, Bayer CropScience bought Proagro, an Indian seed company now called Bayer BioScience Pvt. Ltd. This was part of the global acquisition of Aventis CropScience.

100 Monsanto completed the acquisition of Emergent Genetics in April 2005.

101 These NGOs were: OECD Watch, Deutsche Welthungerhilfe (DWHH), India Committee of the Netherlands (ICN), Eine Welt Netz NRW (EWN NRW) and International Labor Rights Fund (ILRF).

102 The *Seeds of Change* study identified a fall in the use of child labour by suppliers from 20% and 10% in 2005–6, to 11% and 5% in 2006–7 for Bayer and Monsanto respectively.

#### Web-based sources:

<http://www.indianet.nl/elimchl.pdf>

<http://www.thehindubusinessline.com/2006/06/17/stories/2006061703641900.htm>

<http://www.laborrights.org/publications/SeedsOfChangeCottonReport0607.pdf>

<http://www.business-humanrights.org/Documents/BayerresponseSeedsOfChange>

<http://www.reports-and-materials.org/Monsanto-response-Seeds-of-Change-18-Jun-2007.doc>

[http://www.monsanto.com/responsibility/our\\_pledge/human\\_rights.asp](http://www.monsanto.com/responsibility/our_pledge/human_rights.asp)

<http://www.bayer.com>

**Manufacturers of consumer electronics and home appliances (sewing machines), Child labour issues  
Bangladesh**

Singer has established over 70 sewing schools in Bangladesh to help combat child labour.

Singer has collaborated with the International Labour Organization (ILO) to provide vocational training for underage, unskilled workers who were displaced from the garment industry due to international pressure to eradicate child labour. On completion of the vocational training courses and reaching the qualifying age (14 years), the children have been reinstated in the

export-oriented garments industry. In most cases, as a result of the skills attained through the Singer sewing training, they have joined with a better position and salary.

This approach has an advantage over the simple termination of the jobs of child labourers advocated by some, as it avoids pushing children, who are sometimes the family breadwinner, into more hazardous employment.

**Web-based sources:**

<http://www.singerbd.com/socialcommitment.htm>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes into account the rights of the child and is guided by the ILO Minimum Age Convention (138) and the ILO Worst Forms of Child Labour Convention (182), and in particular prohibit the use of harmful child labour. Apply the policy globally.
- Require all business partners (e.g. primary suppliers) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees, agents, and other suppliers or sub-contractors, the importance the company places on international protections of the rights of the child and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, and ensure that any country analysis checks for the prevalence of child labour. The findings should inform later project decision-making.
- Comply with minimum age standards established by relevant national law reflecting international standards.
- Establish processes to ensure that if the company finds children below the minimum age in its workplace or in its supply chain, the children are removed

from the working environment. Take steps, however, to ensure that the affected children are not forced by economic necessity into even worse forms of labour, such as prostitution or drug trafficking. If the company finds harmful child labour within its value chain, take immediate steps to provide safe alternatives. Consult with human rights experts for guidance in this area.

- Establish guidelines committing the company to the progressive eradication of child labour within its sphere of influence on the basis of continuing improvement.

### Specific actions:

- Incentivise farmers and other suppliers or subcontractors with fair procurement pricing to deter them from resorting to cheap child labour.
- Contribute to the overall elimination of child labour, for example by supporting schooling and vocational training for any children found to be employed by the company or its suppliers, with the aim of progressively abolishing child labour.
- Explore the possibility of offering job opportunities and skills training to unemployed family members of child workers to reduce the economic burdens that often force parents to send their children to work.



# ARTICLE 25: RIGHT TO PARTICIPATE IN PUBLIC LIFE

## The Right

The right to participate in public life concerns the ability of citizens<sup>103</sup> to take part in the conduct of public affairs and to freely choose representatives to perform governmental functions on their behalf. This right also delineates specific aspects of the right to political participation such as the rights to vote and to be elected in free and fair elections, and a right of equal access to positions within the public service. Any conditions that restrict political rights must be established by law and be based on objective and reasonable criteria. An example of such a condition is the requirement of a reasonable minimum age for voters.

Positive measures should be taken by governments to overcome barriers to free and fair voting, such as illiteracy, inadequate transport and communication networks in remote regions, language barriers or poverty. It is

important that information and ideas about public and political issues are communicated freely.

Media companies have a role in ensuring balanced reporting and that they are not unduly influenced by the government or other political parties or persuasions. Media monopolies are a cause for concern in this regard as they may restrict the airing of diverse political opinions. The right of equal access to the public service is of relevance to private companies that take on public service contracts and therefore take over traditional functions of government, such as utilities companies and private prisons. Companies can also facilitate enjoyment of this right by allowing employees time off to vote, and participating in campaigns to promote greater civic participation.

<sup>103</sup> Some States may choose to permit certain non-citizens (e.g. long-term residents) to vote.

### Related rights:

ICCPR Article 1 (Right of self-determination), page 3

ICCPR Article 19 (Rights to freedom of opinion and expression), page 53

ICCPR Article 21 (Right to freedom of assembly), page 61

ICCPR Article 22 (Right to freedom of association), page 63

ICESCR Article 1 (Right of self-determination), page 87

## Case studies

### Consumer products sector, Voter participation issues United States

In the months prior to the 2004 US elections, businesses across America decided to play an active role in getting employees, customers, business peers and local community members registered to vote, through the “Voteworks: Businesses Promote the Vote” campaign.

The campaign was in part a response to the failure of 75 million eligible citizens to vote in the 2000 United States presidential election and that the rate of voting among Latinos was half the national average. The 2004 campaign also encouraged citizens to become educated on the issues and candidates.

#### Web-based sources:

<http://www.voteworks.org/servlet/vw/business/whatCompaniesAreDoing.htm>

<http://www.unileverusa.com/ourvalues/>

In 2004, Unilever Bestfoods (UBF) saw an opportunity in its participation in numerous Hispanic festivals that year to register Latinos to vote and aimed to reach a potential audience of 3.3 million people. “Democracy cannot work without participation by all sectors of society,” said James Fish, UBF customer marketing manager and Hispanic team leader.

Ben & Jerry’s ice-cream company and Starbucks were among other companies also supporting voter registration schemes in the build-up to the 2004 presidential election.

### Energy sector, Corruption and political influence issues France and Africa

The right to participate in public life can be impeded by improper use of influence or financial inducements. Political corruption such as vote-buying and the giving of bribes or kickbacks to politicians, political candidates and parties has a direct impact on the right of participation in public life as it impedes free and fair elections, distorts the political process, and may improperly influence government policies.

Following a seven-year investigation into a corruption scandal at the formerly State-owned oil company Elf-Aquitaine, the three men who ran the company during the late 1980s and early 1990s went on trial in France. Chief executive Loik Le Floch-Prigent and two senior colleagues, Alfred Sirven and Andre Tarallo, were convicted of siphoning off hundreds of millions of dollars of company money and sentenced to several years in jail. The company was found to have bribed numerous African leaders to ensure it gained

privileged access to oil reserves, and also to ensure the allegiance of certain African leaders to France. According to BBC reports, Mr Le Floch-Prigent and Mr Sirven stated that part of the money in Elf’s secret funds also ended up financing politicians and parties in France. Leading corruption magistrate, Eva Joly, also asserted that, frequently, “percentages of bribes end[ed] up enriching individual officials and in the coffers of political parties”.

In the context of Africa, campaign group, Global Witness, has alleged that “Elf treated Congo (Brazzaville) as its colony, buying off the ruling elite, and helping it to mortgage the country’s future oil income in exchange for expensive loans.” Reports featured by the Global Policy Forum also described Elf as acting as “a state within a state” in Gabon, where it was also alleged to have wielded a profound and undemocratic influence.

#### Web-based sources:

[http://www.globalwitness.org/media\\_library\\_detail.php/115/en/time\\_for\\_transparency](http://www.globalwitness.org/media_library_detail.php/115/en/time_for_transparency)

<http://news.bbc.co.uk/2/hi/europe/2973267.stm>

<http://comment.independent.co.uk/commentators/article2087522.ece>

<http://www.guardian.co.uk/business/2003/nov/13/france.oilandpetrol>

<http://www.globalpolicy.org/nations/laundry/regions/2003/1118elf.htm>

**Energy sector (oil and gas), Political participation issues**  
**South Africa**

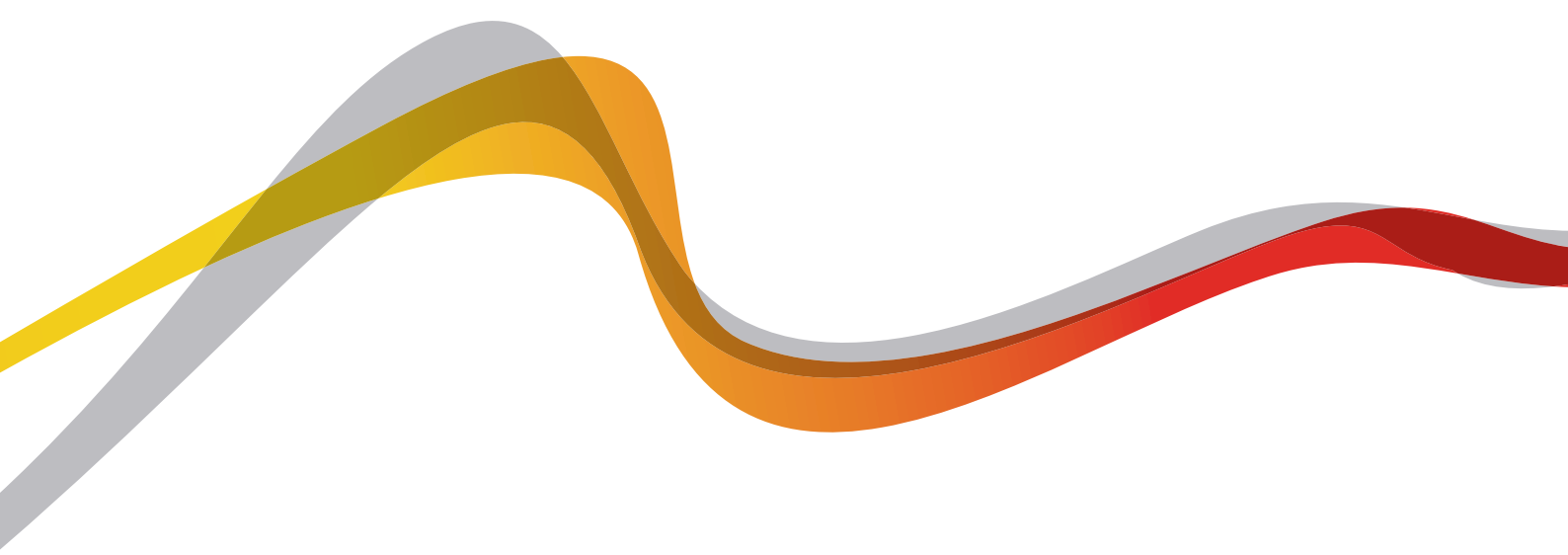
In 1994, Shell South Africa (a division of Royal Dutch Shell) assisted a South African NGO in publishing a 171-page handbook, *Ukuphamba Umthethosisekelo Wakho / Creating Your Constitution*, in both the English and Zulu languages, and could thus be said to have promoted the right to participate in public life.

The book was designed to facilitate input by rural South Africans into the creation of post-apartheid South Africa's new constitution. The publication was a guide to the main provisions of the interim constitution and highlighted issues that were likely to cause the greatest concern to readers.

**Web-based sources:**

<http://www.reports-and-materials.org/Creating-Your-Constitution-acknowledgements.htm>

<http://www.shell.com>



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to participate in political life. Apply the policy globally.
  - Ensure the company's policy prevents it from interfering in any way with normal political processes wherever it is located and that it prohibits the paying of bribes for political advantage in any country of operation.
  - Consider a policy against paying political donations to political parties – this is a growing trend in some countries.
  - Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including State-owned joint ventures, suppliers, franchisees and agents, the importance the company places on the right to participate in the political process, and encourage them to develop a similar standard and take responsible action.
- relevant) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Transparency International's Business Principles, and the World Economic Forum's Partnership Against Corruption Initiative.
- *For natural resource and energy companies*, explore the benefits of becoming a supporter of the Extractive Industries Transparency Initiative (EITI). Other sectors should also look to the possible application of the EITI Sourcebook.
  - *For media companies or those in a position to use communications leverage to affect election results*, do not aggressively favour one party in a political process. While editors may express a preference for one party, coverage should be balanced and fair, and comply with reasonable national regulations.
  - *For companies that take on public service contracts, such as utilities and private prisons*, ensure that practices in respect of hiring, promoting and retaining personnel are reasonable and not discriminatory.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, and ensure any country analysis identifies restrictions to the right to participate in public life. The findings should inform later project decision-making.
  - Do not restrict the political participation of employees and allow workers reasonable time off to participate in elections and the political process.
  - When developing policies and processes to combat bribery and corruption, be guided by the UN Convention Against Corruption, national regulation, and (where
- ### Specific actions:
- Consider using core business competencies and know-how to bolster the political process by, for example, providing technology to assist with voter registration systems.
  - Consider offering company communication and distribution networks to raise awareness about voting and other political processes; ensure impartiality.
  - Consider speaking out publicly or in private against State restrictions on the right to participate in public life, especially where company stakeholders are affected.

# ARTICLE 26: RIGHT TO EQUALITY BEFORE THE LAW, EQUAL PROTECTION OF THE LAW, AND RIGHTS OF NON-DISCRIMINATION

## The Right

This Article guarantees equality before the law, and the equal protection of the law without discrimination. Individuals should be protected from discrimination on different grounds including race, colour, sex,<sup>104</sup> language, religion, political or other opinion, national or social origin, property, and birth or other status. The latter ground is open-ended and has been interpreted to include statuses such as health status (e.g. HIV/AIDS), disability, marital status, age and sexual orientation.

Discrimination means any distinction, exclusion or preference made on one or more of the grounds listed above that has the effect of reducing or removing altogether equality of opportunity or treatment for the victim. Article 26 prohibits discrimination in relation to the enjoyment of all rights, including economic, social and cultural rights, as well as other legal rights that may be offered by a State. Prohibited discrimination may be direct (e.g. 'no Irish need apply' would constitute direct discrimination on the basis of nationality) or indirect (e.g. a voluntary management training programme that increases a candidate's chances of promotion that is only offered on Friday lunchtimes would constitute indirect discrimination on the grounds of religion or belief affecting those committed to Friday religious observance). Distinctions are permitted under this right if they are

based on reasonable and objective criteria. For example, it is legitimate for a film company to discriminate on the grounds of sex when casting for a female character.

Companies' activities can impact on the right of non-discrimination of their workforce, business partners and customers. Each of these stakeholders should be treated without discrimination, for example in recruitment, pay and training for workers and in the provision of services to customers. Workers are particularly vulnerable to discrimination by employers. They should not be discriminated against or harassed, nor should they be disciplined without fair procedures.

In certain circumstances, it is acceptable for companies to take 'affirmative action' – positive steps taken to help a particular group that has suffered serious long-term discrimination in order to reverse that trend. These measures may sometimes entail 'positive' or 'reverse' discrimination. For example, there may be a set quota for the number of women to receive management training by a company in order to increase the representation of women in senior positions, if women are seriously under-represented at that level. In many instances, rules governing affirmative action will be covered by national law and companies should look to such laws for guidance.

<sup>104</sup> This ground has been interpreted to include categories that are gender-specific, such as the capacity to bear children, and pregnancy.

### Related rights:

ICCPR Article 2 (Ensure rights without discrimination), page 7

ICCPR Article 3 (Ensure equal enjoyment of rights by men and women), page 7

ICESCR Article 2 (Ensure rights without discrimination), page 89

ICESCR Article 3 (Ensure equal enjoyment of rights by men and women), page 89

## Case studies<sup>105</sup>

### Restaurant and leisure industry, Racial discrimination issues United States

In 2004, a lawsuit was brought against Cracker Barrel Old Country Restaurants (owned by the CBRL Group, Inc.) for racial discrimination against customers. The US Justice Department alleged that the restaurant chain discriminated against African-American customers and prospective customers in some southern US states by sometimes segregating customers by race and giving superior service to white customers, and even occasionally refusing to serve African-Americans. An investigation by the US Justice Department identified evidence of discrimination in approximately 50 restaurants in seven southern states.

The case was resolved when Cracker Barrel agreed to adopt and enforce effective non-discrimination policies and procedures, including the implementation of training programmes for employees and systems to deal with discrimination complaints, and to

<sup>105</sup> See also the case studies regarding ICCPR Article 18 (freedom of thought, conscience and religion), as well as the case study regarding Malaysian Airlines at ICESCR Article 10 (right to family life) at page 110.

#### Web-based sources:

[http://www.usdoj.gov/opa/pr/2004/May/04\\_crt\\_288.htm](http://www.usdoj.gov/opa/pr/2004/May/04_crt_288.htm)

[http://www.usatoday.com/money/companies/2004-05-07-cracker-barrel\\_x.htm](http://www.usatoday.com/money/companies/2004-05-07-cracker-barrel_x.htm)

<http://www.foxnews.com/story/0,2933,131897,00.html>

<http://www.crackerbarrel.com>

[http://www.cbrlgroup.com/tempj.cfm?doc\\_id=93](http://www.cbrlgroup.com/tempj.cfm?doc_id=93)

permit external auditing of its practices for five years. The company did not, however, admit to any wrongdoing and maintains that it has long had policies in place banning discrimination.

In 2004, the company also settled a separate series of lawsuits brought or supported by the NAACP (National Association for the Advancement of Colored People). Donald Turner, the chain's president and chief operating officer, noted that: "This matter has been resolved to everyone's satisfaction and the parties are now ready to move forward." He added that "Cracker Barrel is very pleased with this settlement."

Cracker Barrel's Public Accommodation Policy Statement stipulates that: "No Cracker Barrel employee may discriminate against any Cracker Barrel guest or would-be guest on the basis of race, colour, age, national origin, gender, religion, disability, or sexual orientation." Employees are required to report violations of the policy to management. The company also pledged not to penalise any employee that in good faith reports violations of the policy to the authorities.

**IT industry, Gender discrimination issues****Worldwide**

Cisco Systems specialises in networking and communications technology and is based in the United States. Cisco has made an effort to boost the number of women within its networks, thereby helping to address the issue of gender discrimination. It has created a Gender Diversity Council, which seeks to identify barriers to the effective participation of women, such as the lack of mentors and role models. Cisco has also partnered with the NCWIT (National Center for Women & Information Technology), among others, to boost the number of women who pursue a career in science and technology, aiming to redress the under-representation of women in engineering and computer science courses in the United States. Cisco Systems states that it “intends to create a pool of females ready to enter the IT workforce”. Cisco Systems also runs a Networking Academy Programme, in conjunction with partners such as the UN and USAID, aimed at generating information and

communication technology skills in less-developed countries. It now aims for 30% female participation in these programmes through the provision of scholarships in countries such as Algeria, Morocco, Jordan, Tunisia, Bangladesh, Nepal, Mongolia and Sri Lanka.

In April 2008, Cisco Systems announced that its efforts had led to a 47% increase in the total number of students enrolled in its Networking Academy Programme in Morocco over 12 months and that 31% of the 7,500+ enrolled students were women. Cisco Systems’ focus on training women to enter the IT industry stemmed from its belief that “empowering women with the technical knowledge and demand-driven networking skills helps ensure a gender sensitive policy environment, thus giving women a competitive edge in the job market”.

**Web-based sources:**

[http://www.cisco.com/web/about/ac227/ac222/employees/employee\\_diversity/womens\\_initiatives.html](http://www.cisco.com/web/about/ac227/ac222/employees/employee_diversity/womens_initiatives.html)

[http://newsroom.cisco.com/dlls/2008/prod\\_042308.html](http://newsroom.cisco.com/dlls/2008/prod_042308.html)



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring it includes specific commitments against discrimination in recruitment and promotion on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Apply the policy globally.
- Make it clear that the company does not tolerate harassment of any employees on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Require all business partners (e.g. suppliers and sub-contractors) to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees and agents, the importance the company places on protections against discrimination, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any long-standing marginalisation of particular ethnic, religious or other groups in the local context of company operations, and consider appropriate affirmative action policies.
- In countries where HIV/AIDS, tuberculosis, leprosy and other medical conditions are prevalent that carry a social stigma, consider adopting educational awareness schemes to minimise the risk of discrimination on these grounds.

### Specific actions:

- Engage in employee mentoring, skills training, or sponsoring of programmes to combat discrimination and/or to bolster the career prospects of disadvantaged groups.

# ARTICLE 27: RIGHTS OF MINORITIES

## The Right

This Article recognises the rights of members of ethnic, religious or linguistic minorities to enjoy their own culture, to practise their religion, and to speak their language. Indigenous peoples<sup>106</sup> are included within the protection of Article 27. Their interests may also be protected under Article 1 (the right to self-determination) of both International Covenants (ICCPR and ICESCR).<sup>107</sup> The Article also applies to migrants, including recently arrived migrants.

Companies can facilitate enjoyment of this right by, for example, promoting diversity in their workplaces and places of business. This may take the form of permitting employees to observe religious holidays, wear traditional attire, or through the provision of employment opportunities for minorities.

Protection of the culture of minority groups may include protection of a way of life associated with use of the land through traditional activities such as hunting or fishing. With as many as 350 million indigenous people living worldwide, companies may find themselves dealing with an evolving set of claims and social pressures at the intersection of corporate activity and indigenous rights. Consultation is crucial and should take place with indigenous and minority communities whenever decisions are made that may impact on their lands, livelihoods and culture. The claims of minorities will sometimes come into conflict with economic development projects. Such projects are more likely to be compatible with Article 27 if the affected peoples have been consulted and their cultural needs taken into account in the design of the relevant projects.

<sup>106</sup> Examples include Native Americans in the United States, the Aboriginal peoples in Australia, and the Sami peoples of Scandinavia.

<sup>107</sup> While indigenous peoples often constitute a minority in the States in which they live, they are groups that have distinct identities and corresponding rights under international law distinct from those of ethnic, linguistic and religious minorities. ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples are considered more specific and helpful instruments in protecting indigenous peoples' rights.

### Related rights:

ICCPR Article 1 (Right of self-determination), page 3

ICESCR Article 1 (Right of self-determination), page 87

ICESCR Article 15 (Rights to take part in cultural life, to benefit from scientific progress, and of the material and moral rights of authors and inventors), page 135

## Case studies<sup>108</sup>

### Socially responsible investment industry, Indigenous peoples' rights issues United States

The natural resources located on the tribal lands of indigenous peoples are often sought for commercial use by, among others, extractive companies, loggers and entrepreneurs. There have been a number of instances where commercial exploitation has been carried out without appropriate consultation or compensation and has led to allegations by activists and community groups in many parts of the world of negative impacts on traditional lifestyles.

In an attempt to address the potentially harmful effects of commercial ventures upon the livelihoods and lifestyles of indigenous minorities, a number of investment

firms offering 'socially responsible investment' products have responded. Calvert Socially Responsible Mutual Funds, for example, states that it "was the first U.S. mutual fund investment company to develop an Indigenous Peoples' Rights criteria".

Calvert's criteria address both the concerns about the survival, security and dignity of indigenous peoples, as well as the inappropriate commercial "use of images and symbols" that promote racial, cultural or religious stereotyping of indigenous peoples, including Native Americans. The criteria also analyse companies' impacts on indigenous peoples' self-determination, land use, resource use, intellectual property, and company policies regarding interaction with indigenous people. The criteria are used to exclude companies from certain investment portfolios if they fail to meet particular criteria regarding respect for indigenous rights.

<sup>108</sup> See also the case study regarding TPG at page 50 regarding minority rights in the workplace. Also see the case studies regarding PT Freeport Indonesia at page 4, Hamersley Iron at page 5, Guatemala Nickel Company at page 115, Lafayette Mining at page 119, Starbucks at page 133, and RiceTec at page 136.

#### Web-based sources:

[http://www.calvertgroup.com/sri\\_IBIndigenousPeoplesRights.html](http://www.calvertgroup.com/sri_IBIndigenousPeoplesRights.html)

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring it commits the company to respecting the rights of minorities. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents, security providers and other sub-contractors, the importance the company places on the rights of minorities, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, in co-operation with affected communities, to identify any environment and health hazards associated with projects that could affect indigenous or other minority communities, and the impacts of any forced relocations that may occur. The findings should inform later decision-making on the project.
- Where financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Indigenous Peoples and IFC Performance Standards on Land Acquisition and Involuntary Resettlement. Other companies may also wish to consider these standards.
- Become familiar with the UN Declaration on the Rights of Indigenous Peoples and be guided by its provisions in interactions with indigenous peoples.<sup>109</sup>
- Population relocation should be guided by the Basic Principles and Guidelines on Development-based Evictions and Displacement developed by the UN Special Rapporteur on the Right to Adequate

Housing,<sup>110</sup> which stress the importance, for example, of comprehensive impact assessments, consultation with affected persons throughout the entire process, the rights of evicted persons to return, resettlement, and fair and just compensation, and that all affected persons be notified in writing and sufficiently in advance with a view to minimising the adverse impacts of evictions.<sup>111</sup>

- Consult in good faith with indigenous peoples through their own representative institutions prior to launching any activity that affects their lands and resources, with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation of the activity in accordance with their cultures and traditions, and providing full information on the impact and benefits of the activity including in the indigenous language concerned.

### Specific actions:

- Be aware of the wealth of knowledge that indigenous communities have that may be relevant to project decision-making, for example with respect to weather fluctuations or geological activity. Engage directly with such communities, and try to develop strong stakeholder relations with them.
- Consider proactive employment policies to include minorities in the workforce.
- Consider promotion of minority rights through financial or other support for community educational or cultural institutions for minorities where large numbers are employed.

<sup>110</sup> UN document E/CN.4/2006/41.

<sup>111</sup> See also ICCPR Article 12 (freedom of movement) and ICESCR Article 11 (right to an adequate standard of living (right to housing)), on the issue of resettlement.

<sup>109</sup> Mining companies may also wish to consult *Mining and Indigenous Peoples Issues Review* published by the International Council on Mining and Metals, see Further Resources, page 142.





# INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)



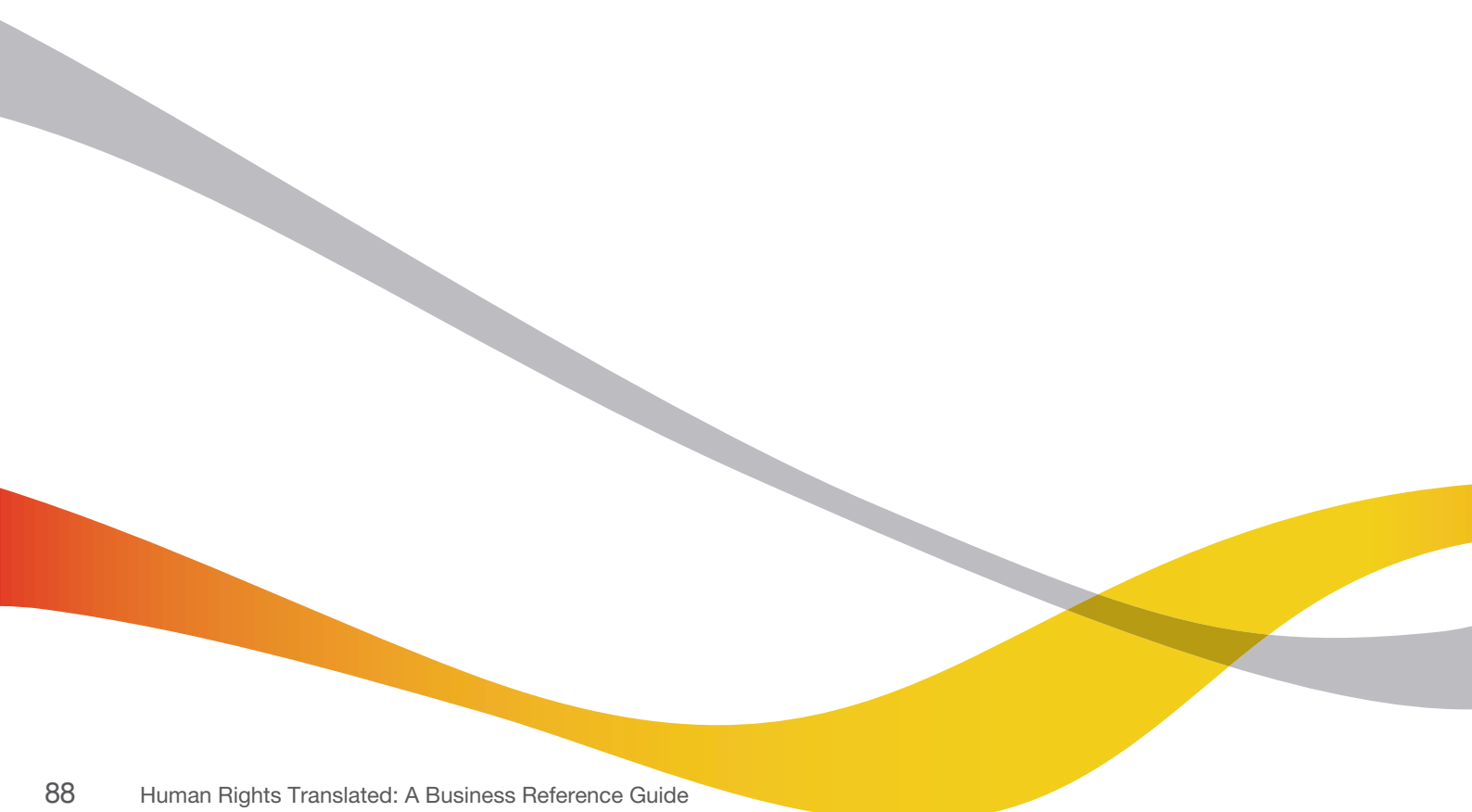


# ARTICLE 1: RIGHT OF SELF-DETERMINATION

## The Right

Please refer to the commentary regarding Article 1 of the International Covenant on Civil and Political Rights (ICCPR) at page 3, which is identical to Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).





# ARTICLES 2 TO 5: OVERARCHING PRINCIPLES

## The Rights

Whereas Articles 1 and 6 to 15 are substantive rights in the International Covenant on Economic, Social and Cultural Rights and are therefore explained in some detail, together with their relevance to companies, Articles 2 to 5 are overarching principles and are outlined below for the sake of completeness and to satisfy any curiosity on the part of the reader. As overarching principles, Articles 2 to 5 cannot be applied individually but only in conjunction with a specific right in the ICESCR.

**Article 2** contains the general obligations for a State in relation to the economic, social and cultural rights contained in Articles 1 and 6 to 15. Article 2(1) recognises that not all States have the resources to ensure full implementation of all the rights immediately and allows a State to implement the rights progressively to the maximum of its available resources.

Non-discrimination is a fundamental and overarching principle of international human rights. Everyone is entitled to enjoy human rights irrespective of his or her colour, gender, religion, ethnic, social or national origin, political or other opinion, property, birth or other status. The Committee on Economic, Social and Cultural Rights (CESCR) has further interpreted the principle of non-discrimination to include discrimination based on age, health status (such as HIV/AIDS) and disability. Article 2(2) obliges States to prohibit any distinctions, exclusions, restrictions and limitations by both public authorities and private bodies on those grounds in the enjoyment of the rights set out in the ICESCR. While economic, social and cultural rights may be implemented progressively, States have immediate obligations to guarantee their enjoyment without discrimination. This means that States have a responsibility to ensure that

businesses carry out their activities and provide services in a non-discriminatory way. Reasonable and objective distinctions are permitted. For more discussion of the issue of discrimination, please see the commentary on Article 26 of the ICCPR (page 77).

A limited exemption from the principle of non-discrimination is contained in Article 2(3), which gives developing States the right to decide the extent to which they will guarantee the economic, social and cultural rights of non-nationals, bearing in mind their human rights obligations and level of development.

**Article 3** requires States to ensure that all rights are enjoyed equally by men and women. States are allowed to adopt positive action to eliminate conditions that contribute to gender discrimination. States are not permitted to condition their actions to ensure non-discrimination and gender equality on the extent of available resources; these obligations must be respected fully and immediately.

**Article 4** specifies that the rights in the ICESCR can be limited by the State “only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.

**Article 5** is known as a ‘savings clause’. It specifies that the ICESCR will not be used by anybody (whether it be government or another entity, such as a corporation) as a justification for engaging in an act aimed at destroying the rights of others. Nor can it be used as an excuse to lower domestic standards.



# ARTICLE 6: RIGHT TO WORK

## The Right

The right to work recognises the right of everyone to the opportunity to make their living by work which they freely choose or accept.<sup>112</sup> This implies that one should not be forced to engage in employment and that States develop a system designed to guarantee all workers access to employment. Workers should not be unfairly deprived of employment. Work as specified in Article 6 must be ‘decent work’, that is work that respects a person’s human rights including workers’ rights regarding conditions of remuneration and work safety. The right to work includes the prohibition of arbitrary dismissal.<sup>113</sup> The right to work is closely linked to rights in Article 7 to just and favourable working conditions and trade union rights in Article 8. These rights are components of the overall right to work.

The right to work does not guarantee that everyone will have the job they want, or even a job, but it requires that full employment be an explicit aim of governments and outlines the progressive steps that should be taken by governments in order to help people find employment. These steps include the provision of technical and vocational guidance, training programmes, policies and programmes to promote full and productive employment, and other initiatives to give people the necessary skills to find decent work. Governments also have an obligation to ensure non-discrimination and equal protection of employment. This means that governments have an obligation to ensure the right of access to employment, especially for marginalised and disadvantaged individuals and groups, and to avoid measures that generate discrimination in the public and private sectors against such

<sup>112</sup> See ILO Declaration on Fundamental Principles and Rights at Work 1998, ILO Convention 122 concerning Employment Policy (1964), and ILO Recommendation 169 on Employment Policy (Supplementary Provisions) (1984).

<sup>113</sup> See also ILO Convention 158 concerning Termination of Employment (1982).

### Related rights:

ICESCR Article 7 (Right to enjoy just and favourable conditions of work), page 95

ICESCR Article 8 (Right to form trade unions and join the trade union, and the right to strike), page 101

individuals or groups.<sup>114</sup> For persons who are unable to find jobs, other provisions of the Covenant provide for relevant rights, such as a right to social security (ICESCR Article 9, page 105).

A company that has significant activities as one of the ‘main players’ regarding the provision of employment, in areas where a government lacks the capacity or willingness to fulfil its commitments, may be expected by stakeholders to play a part in helping to secure fulfilment of the right to work. Companies of all sizes and in all locations may impact on their workers’ right to work if they arbitrarily or unfairly dismiss workers. Even where such practice may be legally permissible under local law, many stakeholders now expect companies to exhibit a higher standard of behaviour in line with international standards and good practice.

<sup>114</sup> See also ILO Convention 111 on Discrimination in Respect of Employment and Occupation (1960). See also UN Committee on Economic, Social and Cultural Rights, General Comment 18, “The Right to Work”, 6 February 2006, E/C.12/GC/18.

## Case studies

### Aluminium production sector, Work skills training USA and worldwide

American aluminium producer, Alcoa, organises an annual week of employee volunteering designed to help improve education and workplace skills. In 2003, 5,000 Alcoa employees worldwide took part in the company's Worldwide Week of Community Service and, in 2004, volunteers in 25 countries participated in activities involving 170 communities worldwide.

An example of the kind of activity undertaken involved a joint initiative with the Texas Workforce Centre to engage juvenile offenders in a programme

known as "Future Builders". This provided the juvenile offenders with IT training, mentoring and career options to help them find work in the future.

According to Alain Belda, chairman and chief executive officer of Alcoa, "investing in our communities means helping them to develop tomorrow's workforce, which must be literate, highly skilled, and culturally diverse, to succeed".

#### Web-based sources:

[http://www.alcoa.com/global/en/news/news\\_detail.asp?pageID=20041004005656&newsYear=2004](http://www.alcoa.com/global/en/news/news_detail.asp?pageID=20041004005656&newsYear=2004)

## Car manufacturing industry, Right to work issues The Philippines<sup>115</sup>

In a long-running dispute, Toyota Motor Philippines Corporation (TMPC) faced accusations of infringing one aspect of the right to work of one-time employees by allegedly unfairly dismissing union workers in 2001.

In February 2001, members of the Toyota Motors Philippines Corporation Workers Association (TMPCWA) participated in protests as they awaited a ruling by the Philippines labour department regarding the legitimacy of their union (which had been challenged by the car company). On 16 March 2001, the Philippine authorities confirmed the legitimacy of the TMPCWA as the “sole and exclusive collective bargaining agent”; however, on that same day it was alleged by the union’s supporters that the company unfairly dismissed 227 of its leaders and members, and suspended 64 others, for participating in the February protest.

The Toyota Motor Philippines Corporation claimed that the February protests did not constitute a legal strike and also breached Toyota’s Code of Conduct,<sup>116</sup> the penalty for which was dismissal, and that its actions were therefore justified. The company reported that due to the February protests it experienced an acute lack of manpower and was unable to meet production goals resulting in losses that exceeded PHP 50 million.

In August 2001, the National Labour Relations Commission ruled the February strike illegal under the country’s Labour Code and that the dismissals were justified, but ordered the company “to pay the 227 Union members who participated in the illegal strike severance compensation ... as an alternative relief to continued employment”. An appeal court upheld the decision in June 2003.

In February 2003, the union lodged a complaint with the International Labour Organization (ILO) Committee

on Freedom of Association over the alleged unfair dismissals and other workers rights infringements. In November 2003 and 2004, the ILO called on the Filipino government to “take measures so that TMPCWA and the Toyota Motor Philippines Corporation negotiate in good faith” and “initiate discussions to consider the reinstatement of the 227 workers dismissed or, if reinstatement is not possible, the payment of adequate compensation”. In March 2004, the TMPCWA union also filed a complaint with the OECD National Contact Point in Japan alleging infringement by the Toyota Motor Corporation’s Philippine subsidiary of the OECD Guidelines for Multinational Enterprises.<sup>117</sup>

By June 2006, pending a Supreme Court decision on the issue of severance pay, 105 of the 227 dismissed workers had availed themselves of a compensation package offered by the company. However, in October 2007 the Supreme Court ruled in favour of the company over the legality of the strikes and dismissals, and also found that, “based on existing jurisprudence, the award of separation pay to the Union officials and members in the instant petitions” could not be sustained. The Supreme Court remarked that “it is high time that employer and employees cease to view each other as adversaries and instead recognise that theirs is a symbiotic relationship”. The TMPCWA union strongly rejects the Supreme Court verdict and continues to protest the dismissals and to fight to be recognised as the workers’ sole and exclusive collective bargaining agent.

As of June 2007 the ILO Committee on Freedom of Association continued to monitor the case. In its June 2007 report, the ILO Committee noted that a bill was being considered by the Philippine legislature to address some of the long-standing union certification grievances also central to this case, including guarantees to eliminate “employer interference, which is an incessant cause of delay in certification proceedings”. The OECD case is ongoing.

<sup>115</sup> This case is also relevant to the union rights outlined in ICESCR Article 8.

<sup>116</sup> The Toyota Code of Conduct prohibits “inciting or participating in riots, disorders, alleged strikes or concerted actions detrimental to [Toyota’s] interest”.

<sup>117</sup> See also the case studies on Kværner Process Services Inc (KPSI) and GSL at pages 26-27 for other case studies concerning the OECD Guidelines and National Contact Points.

### Web-based sources:

<http://www.peuples-solidaires.org/article138.html>

<http://www.ilo.org/public/english/dialogue/actrav/new/wg/cfa338.htm>

<http://www.ilo.org/public/english/standards/relm/gb/docs/gb296/pdf/gb-4.pdf>

<http://www.imfmetal.org/main/files/06051509405779/TPtimeline2.pdf>

<http://www.toyota.com/about/community/>

[http://www.supremecourt.gov.ph/jurisprudence/2007/october2007/158786\\_158789.htm](http://www.supremecourt.gov.ph/jurisprudence/2007/october2007/158786_158789.htm)

<http://www.oecd.org/dataoecd/42/11/38297552.pdf>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of labour and working conditions and is based on standards established by the International Labour Organization and, where relevant, the Organisation for Economic Cooperation and Development, and the International Finance Corporation Performance Standards. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on protecting the right to work, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks related to the right to work. Act on the findings.
- Adopt grievance mechanisms and procedures of redress and mediation for workers in employment-related matters.
- Do not arbitrarily or unfairly dismiss workers, and institute disciplinary mechanisms to ensure the fair treatment of workers accused of misconduct.
- Establish processes to ensure that the company does not hinder the reasonable career advancement aspirations of employees.
- Monitor complaints about recruitment and promotions to discern possible patterns of discrimination.

- Where possible, recruit staff locally in order to generate jobs and community goodwill.
- Establish procedures to consult with trade union representatives.
- Establish work/life balance employment procedures that take account of the different needs of male and female employees and of family responsibilities.
- Institute vocational/skills training opportunities for direct employees, their dependants, and/or members of local communities.
- Explore a policy of procuring supplies from local enterprises, where possible, to bolster the local market.
- Where patterns of discrimination in employment are discernible, for example with respect to a dominance of women in low-paying manufacturing positions or of men in decision-making positions, investigate what can be done to identify and overcome such discriminatory barriers.

### Specific actions:

- Sponsor employee volunteering for skills transfers to local communities, e.g. computer and communication skills, management and book-keeping practices.
- Support employee business mentoring of members of local communities to help increase their employability.



# ARTICLE 7: RIGHT TO ENJOY JUST AND FAVOURABLE CONDITIONS OF WORK

## The Right

The right to enjoy just and favourable working conditions has various components, which are all highly relevant to the actions of companies as they concern the treatment of employees. This Article recognises that States must protect the right to remuneration that provides workers with fair wages and equal remuneration for work of equal value, and that women must be guaranteed conditions of work not inferior to those enjoyed by men. Remuneration must also be enough to provide workers with a decent living for themselves and their families. Article 7 furthermore comprises a right to healthy and safe conditions of work, a right to equality of opportunity for promotion, and a right to rest, leisure and holidays as part of conditions at work. The interpretation of Article 7 is influenced by the corresponding International Labour Organization (ILO) Conventions, which elaborate in greater detail the labour standards set out in the Covenant.

ILO standards generally prescribe that employees should not be required to work more than 48 hours per week, or ten hours a day, though these rules are subject to some exceptions.<sup>118</sup> ILO conventions relating to the issue of rest and leisure are also relevant to the issue of working hours. For example, it is specified that there should be at least one day off in every seven, and that a minimum of three weeks' paid holiday (not including public holidays) be available for every year of full-time service.<sup>119</sup>

A minimum wage should be 'fair' and enable families to enjoy the right to a standard of living that includes

adequate food, clothing and housing (Article 11 of the Covenant). This is reinforced by the corresponding ILO convention,<sup>120</sup> which dictates that the setting of minimum wages should, for example, take into account issues such as the cost of living and the needs of workers and their families. Companies should at least comply with minimum wages mandated by government minimum wage legislation. Wages should be paid regularly and in full, without unauthorised deductions or restrictions.<sup>121</sup>

ILO standards require governments to adopt, in consultation with appropriate employer and employee organisations, a national occupational health and safety (OHS) policy aimed at reducing accidents and injuries to health arising in the course of employment, and to minimise the causes of inherent workplace hazards. That policy should address, for example, the provision of adequate OHS training regarding the use and maintenance of the 'material elements of work', including workplace environment, tools, machinery and equipment. Workers must be able to remove themselves from work situations where imminent and serious health dangers are reasonably perceived, without undue consequences.<sup>122</sup>

With regard to all working conditions, States should require employers to co-operate with independent inspection services to ensure compliance with legal requirements.<sup>123</sup>

Companies can have a significant impact on the enjoyment of the various rights in Article 7 in their capacity as employers.

118 See ILO Convention 1 on Hours of Work (Industry) (1919), and ILO Convention 30 on Hours of Work (Commerce and Offices) (1930). See also ILO Convention 47 on the Forty Hour Week (1935).

119 See ILO Convention 132 on Holidays with Pay (1970). See also, on rest and leisure, ILO Convention 14 on Weekly Rest (Industry) (1921) and ILO Convention 106 on Weekly Rest (Commerce and Offices) Convention (1957). See, generally, Report of the Committee of Experts on the Application of Conventions and Recommendations, *Hours of Work: From Fixed to Flexible?* (International Labour Office, Geneva, 2005).

120 ILO Convention 131 on Minimum Wage Fixing (1970). See also ILO Convention 94 on Labour Clauses (Public Contracts) (1949).

121 See ILO Convention 95 on Protection of Wages (1949).

122 See ILO Convention 155 Concerning Occupational Health and Safety and the Working Environment (1981), Articles 4, 5 and 13. See also ILO Convention 161 on Occupational Health Services (1985).

123 See ILO Convention on 81 on Labour Inspection (1947), and Protocol of 1995.

### Related rights:

ICESCR Article 6 (Right to work), page 91

ICESCR Article 8 (Right to form trade unions and join the trade union, and the right to strike), page 101

## Case studies

### Footwear industry, Working conditions issues Vietnam

In 1997 it was widely reported that a range of violations of the right to enjoy just and favourable working conditions had been found at the Tae Kwang Vina (VT) factory in Vietnam. The shoe factory was run by a Vietnamese sub-contractor of Nike. The media reports were based on Vietnamese Labor Watch findings, and research by an independent analyst, Dara O'Rourke, and data contained in a leaked Ernst & Young audit conducted for Nike.

The reports alleged that factory managers encouraged excessive working hours and exposed workers to hazardous chemicals, noise, heat and dust. Employees were also reported to lack adequate drinking water supplies and adequate safety equipment. Ernst & Young noted that 77% of a sample of 165 employees suffered from respiratory disease. Some workers reported working a basic week that exceeded the Vietnamese legal annual limit of 200 hours overtime.

Nike responded to the findings, which coincided with intense media and activist scrutiny, by entering into a six-month process involving Nike personnel, VT factory managers and independent analysts (including Mr O'Rourke), to identify and evaluate the full extent of the workplace health and safety problems inside the factory. By 1999, independent auditors found that, despite some continuing health and safety problems, significant improvements had occurred in the factory. Exposure to harmful chemicals was reduced, better occupational health and safety training had been implemented, and the incidence of nose and throat diseases among VT workers fell by 68% over one year.

Nike introduced a Code of Conduct in Vietnam in 1999 based on ILO conventions, and subsequently developed tools and systems to monitor its delivery. Since fiscal year 2004, Nike has shifted its global

approach to take "a more holistic look at [its] supply chain, to focus on root cause identification, and solutions that will drive systematic change" by building the capacity of local management, publicly disclosing factory locations, and setting targets to, among other things, eliminate all "excessive overtime" from its supplier factories by 2011.

In the context of Vietnam, Nike, Adidas-Salomon and Pentland helped set up the Vietnam Business Links Initiative (VBLI) in 1999 to achieve systemic improvement in the working conditions in footwear factories. The VBLI is managed by the Vietnam Chamber of Commerce and Industry, with facilitation and advice from the International Business Leaders Forum (IBLF) and support from a coalition of government departments, industry representatives, and domestic and international NGOs (including the National Institute for Labour Protection and ActionAid).

By 2004 the VBLI had put in place a Code of Conduct for the footwear industry. It has developed and piloted a Management Support System approved by the Vietnamese Ministry of Industry as a standard, which was rolled out to 60% of Vietnam's footwear factories. It has also devised and delivered training courses for factory managers and workers responsible for health and safety. The initiative had also benefited from a study by the participating NGOs to identify the key health problems facing footwear industry workers.

The VBLI has been recognised by the World Bank, Harvard University and the German Development Agency (GTZ) as an effective example of corporate-led cross-sector partnership in action. Its methodologies are now being applied to the wider garment sector in Vietnam.

#### Web-based sources:

<http://nature.berkeley.edu/orourke/PDF/pwc.pdf>  
<http://www.globalexchange.org/campaigns/sweatshops/nike/vt.html>  
<http://nikeresponsibility.com/#crreport/main>  
<http://poverty2.forumone.com/library/view/14826>  
<http://www.iblf.org/regions/asia/vietnam.jsp>

## Financial services sector, Working conditions and wage issues

UK

In 2000 and 2001 concerns started to be raised over the just and favourable working conditions of outsourced cleaners, catering and security personnel at the offices of major firms in the Canary Wharf area of London's Docklands. Often drawn from poor inner-city areas and migrant communities, the workers were typically found to receive low wages, no sick pay, and few other entitlements. Their plight prompted The East London Community Organisation (TELCO), an alliance of churches, mosques, unions and community groups, to launch a living wage<sup>124</sup> campaign. TELCO argued that the high cost of living in London meant that the national minimum wage was inadequate and called upon major financial and legal firms with Canary Wharf offices to exceed it.

Barclays Bank responded by accepting responsibility for the minimum pay and conditions of both direct employees and contracted staff when it moved to its new Canary Wharf Headquarters. Barclays agreed to

offer a salary above the minimum wage, a pension with 4.5% employer contribution, 15 days' sick pay, 8 paid public holidays, and 20 days' leave per year, as well as training and bonuses. In July 2007, Barclays announced that it would also meet renewed demands by London Citizens/TELCO and the T&G union to exceed the London living wage, established by the Mayor of London and Greater London Authority, for all support staff across its buildings in London.

Barclays' facilities management director, Jon Couret, said:

*The increase ensures that all of our staff in Greater London will earn more than the recommended London Living Wage. Although these employees are not directly employed by Barclays, we have a responsibility to ensure they receive a fair, well-rounded remuneration package and this delivers that.*

Reverend Paul Regan of London Citizens/TELCO, said, "London Citizens and T&G applaud Barclays' groundbreaking move that will lift 1000 families out of working poverty."

<sup>124</sup> The term 'living wage' is said to reflect the costs associated with a basket of goods required to provide an adequate standard of living, and is often higher than the minimum wage prescribed in certain countries.

### Web-based sources:

[http://bbc.net.uk/radio4/news/nicework/transcripts/20050322\\_nice\\_work.pdf](http://bbc.net.uk/radio4/news/nicework/transcripts/20050322_nice_work.pdf)  
<http://www.telcocitizens.org.uk>  
[http://www.ethicalcorp.com/content\\_print.asp?ContentID=5039](http://www.ethicalcorp.com/content_print.asp?ContentID=5039)  
<http://www.tgwu.org.uk/Templates/Internal.asp?NodeID=93540&int1stParentNodeID=92090>  
<http://www.newsroom.barclays.com/Content/Detail.asp?ReleaseID=1102&NewsAreaID=2>

## Pharmaceutical sector, Living wage commitments

Worldwide

Swiss pharmaceutical company, Novartis, has committed to go beyond legal compliance to ensure high standards of corporate citizenship across its global operations. Novartis' Policy on Corporate Citizenship includes a pledge to "pay competitive and fair wages, which clearly exceed what is needed to cover basic living needs". In addition, the company has said that "annualised full-time wages must be set at or above a level that covers the market price of a basket of goods and services representing the subsistence level for an average worker in the town or region in question". To deliver on these commitments, the company initiated a living wage project to ensure just and favourable working conditions for its workers.

At the start of the initiative, Novartis recognised the importance of determining the extent to which living wage standards were met for its employees across the world. In the absence of a generally accepted methodology for determining a living wage, the company partnered with not-for-profit business association, Business for Social Responsibility (BSR), to develop a methodology and strategy to calculate and implement a living wage in every country in which it operates and to review current best practices or leadership models from other industries.

The company has since implemented an approach that targets employees earning the lowest wages, whereby a Novartis Human Resources team first

proposes a living wage for each country based on the agreed Novartis/BSR methodology. Thereafter local management is consulted and has the opportunity to propose an alternative based on local conditions.

For both OECD and developing countries, the living wage figure tends to lie between the average and minimum wage for that location. Novartis reports that the involvement of local management in the decision-making process has been critical in creating awareness and commitment, with the additional benefit of better understanding differences between regions and rural and urban areas. Following the 2005 round of consultations, Novartis reported “that 93 employees, out of a workforce of more than 90,000 people, were being paid less than the living wage level in the country”. By 2006, it had aligned the pay of all employees with living wage levels. Annual monitoring of living wage compliance subsequently showed that

in 2006, 21 associates were being paid below living wage levels and were later adjusted, and in 2007 a total of 11 associates (0.001% of total associates) experienced below living wage levels and needed to be adjusted.

Novartis continues to work on the living wage with BSR each year to make adjustments that take into account inflation or newly available data. The company has pledged to begin extending the living wage concept to third parties and has asked major suppliers and service providers to pay employees who work on Novartis sites a living wage in line with Novartis’ standard. Novartis also gives preference to suppliers that meet the living wage commitment or other Novartis standards aligned to the UN Global Compact. The company has expressed a willingness to discuss and share its methodology and results relating to the living wage initiative with other companies.

**Web-based sources:**

- <http://www.corporatecitizenship.novartis.com/people-communities/human-rights/living-wage.shtml>
- <http://www.bsr.org/research/issue-brief-details.cfm?DocumentID=50678#leadership>
- [http://www.corporatecitizenship.novartis.com/downloads/cc-in-action/Living\\_Wage.pdf](http://www.corporatecitizenship.novartis.com/downloads/cc-in-action/Living_Wage.pdf)

**Energy and mining sector, Health and safety issues  
Worldwide**

BHP Billiton has established an occupational health and safety programme in an effort to reduce the number of work-related accidents, with the aim of ensuring zero fatalities.<sup>125</sup> The company began by conducting a safety review to identify the causes of fatal accidents and opportunities for improvement. Once the safety review was completed, recommendations were presented to mine management for all identified hazards. In April 2003, BHP Billiton’s Fatal Risk Control Protocols (FRCPs) were established and a review process was developed to monitor and drive the implementation of the protocols.

In 2005, on the basis of feedback from workshops held in South Africa, South America and Australia, the protocols were refined. The re-released FRCPs cover the ten most dangerous areas of work identified by the company, including Underground Mobile Equipment, Hazardous Materials Management, and Working at Heights. The company has also made a tool-box of communications materials available

to assist with communication and implementation of the FRCPs across the organisation. In addition, global facilitators for each of the key risk areas were appointed to assist and support sites to ensure effective implementation.

In 2006, the company placed greater emphasis on learning from significant incidents and contractor safety by sharing learning from significant and near-miss accidents, ensuring the standards and procedures adopted by contractors were consistent with BHP Billiton’s own protocols, and by implementing the protocols and reporting on them more fully.

According to the company, fatalities at work have decreased following the initiation of this programme. Although BHP Billiton has yet to achieve its target of zero work fatalities, the company reports that for activities where BHP Billiton directly supervises and enforces health and safety standards, the figure had fallen from 17 fatalities in 2003–4 to 3 fatalities for 2005–6. However, 8 fatalities were reported for 2006–7.

<sup>125</sup> This case study is also relevant to ICCPR Article 6 (right to life).

**Web-based sources:**

- <http://sustainability.bhpbilliton.com/2006/sustainability/challenges/>
- <http://www.bhp.com/bbContentRepository/bhpbsustainreport07web.pdf>
- <http://hsecreport.bhpbilliton.com/2005/repository/safety/caseStudies/caseStudies13.asp>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it provides for a healthy and safe working environment and decent working conditions. Apply the policy globally.
- Ensure that remuneration policies throughout the company are based on the principle of equal pay for equal work and incorporate equal opportunities for promotion based on merit.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on the provision of decent working conditions, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks relating to working conditions. Act on the findings.
- Comply with the more demanding of national and international regulation governing occupational health and safety. Ensure that managers and staff receive appropriate health and safety training, and conduct regular health and safety audits (the findings should be discussed at senior management level).
- Ensure that health and safety information is readily available to workers in local languages, put in place adequate first-aid arrangements, and liaise with workers' representatives on the subject.

- Be transparent in reporting health and safety accidents and set targets to encourage continuous improvement.
- Put systems in place to limit the working hours of direct employees and those of key suppliers and sub-contractors, and make provision for reasonable time off. Be guided by ILO standards that dictate that employees should not be required to work more than 48 hours per week or more than 10 hours in one day. Voluntary overtime should also be limited in hours and should not be expected on a regular basis. Employees should be given at least one day off in every seven-day period.
- Comply with minimum wage regulations and develop systems to ensure that the company and its sub-contractors pay a living wage.
- Develop mechanisms for fixing, monitoring and enforcing fair wage levels, tailored to take account of increases in the cost of living in a locally appropriate way. Any deductions from wages should accord with national laws.
- Consider instituting transparency in wage scales for employees, in the interests of openness around gender wage issues.

### Specific actions:

- Follow, and attempt to exceed as appropriate, industry and local good practice with respect to working hours, sick pay and leave allowances, in the interests of being an employer of choice, good staff morale and increased productivity.
- Engage in stakeholder dialogue on the issue of paying a living wage and good practice.

- Ensure that, wherever the company does business, women are guaranteed conditions of work that are not inferior to those enjoyed by men. Where this is effectively impossible under local laws (for example if the State prohibits the employment of women in certain sectors), companies should consider engaging with civil-society groups to assess how they may best live up to the spirit of Article 7 and principles of non-discrimination.

# ARTICLE 8: RIGHT TO FORM TRADE UNIONS AND JOIN THE TRADE UNION, AND THE RIGHT TO STRIKE

## The Right

This Article concerns the right of everyone to form trade unions and to join the trade union of his or her choice, subject to the union's own membership rules. This right may only be restricted by States in circumstances that are set down in law and are necessary to protect national security, public order, or the rights and freedoms of others. Trade unions themselves have rights to establish national federations or confederations, and for the latter to form or join international trade union groupings. Trade unions are permitted to function freely, subject only to limitations that are lawful and necessary to protect national security, public order or the rights of others.<sup>126</sup> Finally, the Article recognises a right to strike, which must be exercised in conformity with the reasonable requirements of a particular country's laws.

The core ILO Conventions governing freedom of association, the right to organise and collective bargain-

<sup>126</sup> Similar restrictions apply to ICCPR Article 19 (freedom of opinion and expression), and are discussed more extensively in relation to that right.

### Related rights:

ICCPR Article 22 (Right to freedom of association), page 63

ICESCR Article 6 (Right to work), page 91

ICESCR Article 7 (Right to enjoy just and favourable conditions of work), page 95

ing<sup>127</sup> complement the interpretation of this right. These Conventions dictate that workers should not be discriminated against because of trade union membership. Governments should implement measures and develop appropriate mechanisms to promote voluntary good faith negotiations between employers and employees' organisations, with a view to enabling them to work out collective agreements regarding the regulation of employment.

Company actions may impact on these rights if they prevent union membership and activity amongst employees or are in any way complicit in actions that restrict employees' rights to participate in union activity. This case highlights some of the complexities involved in supply chain management, including the challenge of respecting both worker representation rights and protecting jobs.<sup>128</sup>

<sup>127</sup> ILO Convention 87 on Freedom of Association and Protection of Right to Organise (1948) and ILO Convention 98 on the Right to Organise and Collective Bargaining (1949).

<sup>128</sup> In the latter respect, this case study is also relevant to ICESCR Article 6 (right to work).



## Case studies

### Optical frames suppliers, Worker representation issues

#### China

Mod-Style is a wholly owned commercial company that was acquired in 2000 by the Australian-based charity, the Brotherhood of St Laurence (BSL). Mod-Style is in the business of sourcing optical frames from Asia. The majority of Mod-Style's factories are located in China where only one federation of trade unions, the All-China Federation of Trade Unions, is recognised.

The Brotherhood of St Laurence and Mod-Style "actively embrace corporate social responsibility" and have established business standards based on the conventions of the International Labour Organization (ILO) and the OECD Guidelines for Multinational Enterprises. To live up to their commitments, an Ethical Business Project was set up to investigate the business's supply chain and handle any ethical considerations associated with manufacturing in China, including any pertaining to union rights.

#### Web-based sources:

<http://www.bsl.org.au/main.asp?PageId=3568>

To enhance workers' rights in the absence of independent trade unions, BSL and Mod-Style have attempted to offer worker empowerment training and capacity building within supplier factories to ensure that, in the absence of adequate national trade union rights, workers' voices may still be heard and respected. However, no factory to date has agreed to this training. In response, the supply chain in China has been consolidated to assist in developing long-term, direct, stable relationships with factory owners and managers in an effort to create a business relationship that allows consideration of not only products, quality, price and delivery, but also fair and decent working and living conditions in compliance with China's Labour Law.

### Sporting goods industry, Union representation issues

#### Indonesia

In January 2004, the German sporting goods company Adidas-Salomon and Oxfam Australia jointly agreed to invite an independent third party, the Workers Rights Consortium (WRC), to investigate allegations of labour violations at the PT Panarub factory, Tangerang, Indonesia. PT Panarub supplied Adidas-Salomon with athletic footwear. The WRC report found, among other things, that in an infringement of the workers' rights to join a union of their own choice, PT Panarub management "actively and systematically discriminates against one union in the plant, Perbupas, in favour of the other union present, SPN".<sup>129</sup> Among its recommendations, WRC called for a union membership verification process.

Oxfam Australia and the Clean Clothes Campaign have acknowledged that "Adidas responded positively and worked with factory management and local organisations, including both unions in the factory, to improve conditions and to end discrimination against

the Perbupas union." The company worked with PT Panarub to identify a qualified and independent third party to facilitate the union membership verification process. Adidas-Salomon also encouraged PT Panarub to conduct training for all supervisors and administrative staff on the union rights of its workers and the obligation of management and other employees to respect workers' choices about union membership. The training was conducted with ILO assistance in August 2004. In 2006, Adidas-Salomon revealed that "agreement could not be reached on the principles or mechanisms for conducting a factory wide ballot on union membership".

Despite efforts to resolve the tensions between the factory and the Perbupas union, matters escalated in October 2005 when PT Panarub dismissed 33 workers and placed the entire leadership of Perbupas on suspension for allegedly organising an illegal strike. Adidas-Salomon says it repeatedly urged the factory to review the dismissals and sought assurances that the affected workers would continue to be paid until a resolution was reached. Adidas-Salomon did not

<sup>129</sup> According to Adidas Group, of the roughly 11,000 employees at PT Panarub approximately half (5,600) are members of the majority SNP union, with a minority (2,380) belonging to the Perbupas union. See also the case study on Toyota at page 93.



intervene in the dismissal procedure directly, preferring that local dispute resolution mechanisms be exhausted. The company's policy of respecting due legal process in all circumstances drew criticism from some NGOs, who questioned the reliability of the Indonesian Manpower Department.

Although the Manpower Department initially supported 30 of the 33 dismissals, in May 2006 the Indonesian Human Rights Commission (*Komnas HAM*) found that there was no legal basis for the dismissals and recommended that the workers be reinstated. In June 2006, William Anderson of Adidas-Salomon said that the company had asked the factory to reinstate the workers, but had had its requests refused and was not prepared to issue a formal warning to the factory because "If we do and the company refuses to comply, we would have no choice but to terminate relations with them. We don't want to play high stakes because eleven thousand people could then lose their jobs."<sup>130</sup> Adidas did, however, write to the management again, requesting reinstatement of the workers, or

alternatively the setting up of a satisfactory arbitration process. In a letter of August 2006, Adidas stated that it would cap the growth in its orders from Panarub "until a satisfactory conclusion [was] reached in the case". In April 2007 PT Panarub and the Perbupas union reached an agreement whereby the dismissed workers received a severance package, but were not reinstated.

Adidas has since said that it is unable to guarantee employment for the dismissed workers, but would ask other suppliers to consider employing those affected and pledged to "monitor this to ensure that their applications are treated in a transparent and non-discriminatory manner". Oxfam Australia and the Clean Clothes Campaign continue to press the company to find jobs for the affected workers. The NGOs also continue to call for delivery of the union membership verification process.

<sup>130</sup> William Anderson, Adidas-Salomon's regional head of social and environmental affairs, is quoted in John Aglionby, "Adidas 'fails to act' over sacked workers", *The Guardian*, 6 July 2006.

**Web-based sources:**

- [http://www.workersrights.org/PT\\_Panarub\\_Updated\\_Summary\\_of\\_Findings\\_and\\_Recommendations.pdf](http://www.workersrights.org/PT_Panarub_Updated_Summary_of_Findings_and_Recommendations.pdf)
- [http://www.adidas-group.com/en/sustainability/statements/2006/correspondence\\_adidas\\_Panarub\\_July\\_2006.asp](http://www.adidas-group.com/en/sustainability/statements/2006/correspondence_adidas_Panarub_July_2006.asp)
- [http://www.adidas-group.com/en/sustainability/statements/2007/Panarub\\_May\\_2007.asp](http://www.adidas-group.com/en/sustainability/statements/2007/Panarub_May_2007.asp)
- <http://www.guardian.co.uk/business/2006/jul/06/indonesia.worldcup2006>
- [http://www.oxfam.org/en/files/offside\\_labor\\_report/download](http://www.oxfam.org/en/files/offside_labor_report/download)
- <http://www.oxfam.org.au/campaigns/labour/06report/docs/adidasstatement1.pdf>
- <http://www.oxfam.org.au/campaigns/labour/reports/dialogue.html>
- <http://www.cleanclothes.org/urgent/08-01-29.htm>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of union rights. Apply the policy globally.
- Ensure that the company's policy is based on the International Covenant on Economic, Social and Cultural Rights and ILO Conventions 87 and 98, which together establish the right of all workers and employers to form and join trade unions, and to allow unions to function freely without restrictions or discrimination.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on the rights of workers to join trade unions and exercise union rights, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any potentially negative impacts on union rights. Act on the findings.
- Do not hinder the ability of workers to exercise their right of association and their involvement in

workplace issues and conditions of employment. In countries where union activity is illegal, or where there is no trade union movement in practice, consult with international and local NGOs and labour organisations on ways in which the company may be able to facilitate alternative worker representative frameworks.

- Ensure that workers are aware of their rights by making company policies available in local languages, clearly accessible, and available orally where illiteracy is prevalent.
- Adopt a worker communication mechanism that allows for the safe and confidential reporting of worker grievances, including any allegations of interference with union activity. Establish guarantees to prevent, or punish where violations are found, reprisals against complainants or their representatives.

### Specific actions:

- Consider entering into union recognition agreements with local unions that represent the interests of workers in the given industry sector. A growing number of companies are pursuing this course of action with some success.
- Be prepared to raise concerns with the relevant authorities publicly or in private – individually or in concert with other companies – over restrictions to union rights that may affect company stakeholders.

# ARTICLE 9: RIGHT TO SOCIAL SECURITY, INCLUDING SOCIAL INSURANCE

## The Right

The right to social security encompasses the right to access and maintain benefits without discrimination. Governments are obliged to make available a system of social security. Such systems may involve contributory or insurance-based schemes, which normally entail compulsory contributions from the beneficiary and the beneficiary's employer (and sometimes the State), as well as universal or targeted schemes funded out of the public purpose. Social security benefits should be available to cover the following areas: health care and sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.<sup>131</sup> Social security systems should be affordable and sustainable, so as to provide for present and future generations, and should also provide for adequate benefits. The right is essential in combating poverty, given its redistributive character;<sup>132</sup> its realisation can, for example, have a significant impact on the enjoyment of other related rights, such as the right to an adequate standard of living and the right to health. According to some estimates, only about 20% of the

world's population currently has access to appropriate and adequate social protection.<sup>133</sup>

The role of companies in relation to the right to social security will vary depending on the national context. Generally, companies have a basic duty to ensure that legally mandated contributions to the system, in addition to those deducted from employee salaries and wages, are paid promptly to ensure that the government's ability to deliver social security payments or services is not undermined. Increasingly, employment laws also create obligations on companies to provide income and benefits on maternity, injury and the like. If companies operate private social security schemes, they have the responsibility to do so in a non-discriminatory manner and they should not impose unreasonable eligibility conditions. Finally, if a company denied its workers their contractually agreed employment injury benefits, its actions would impact negatively on the workers' rights under Article 9.

<sup>131</sup> See ILO Convention 102 on Social Security (Minimum Standards) (1952).

<sup>132</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 19, 4 February 2008, available via <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

<sup>133</sup> See Michael Cochon and Krzysztof Hagemeyer, "Social Security for All: Investing in Global and Economic Development. A Consultation", *Issues in Social Security Series, Discussion Paper 16*, ILO Social Security Department, 2006.

## Case studies

### Energy sector, Pension scheme and other social security issues

#### USA

In the United States, provision of social security benefits (e.g. health care, pensions) is a common component of employee remuneration packages at many corporations. In such situations, an employee's enjoyment of those social security rights is, in part, directly dependent upon his or her employer.

When Enron filed for one of largest bankruptcies in history in December 2001, 4,500 workers immediately lost their jobs (almost one quarter of the company's workforce), which in practical terms affected their right to social security.

Prior to the financial collapse, Enron workers who were laid off had been entitled to one week's pay for each year of work and one week's pay for each USD 10,000 a year in salary. In the event, workers laid off in December 2001 received a severance payment worth only USD 4,500, irrespective of how many years they had served with the company. Health insurance that had been provided by the company was also reportedly cancelled immediately, in violation of federal law. Money for retirement plans was lost, as much of the employer and employee contributions

had taken the form of Enron stock, which was rendered worthless by the bankruptcy.

In September 2003, a federal judge in Texas ruled that former Enron Chairman Kenneth Lay and Northern Trust Corp., trustee of Enron's retirement plan, could be sued under federal pension law for allegedly failing to protect Enron employees. The judge found that they had a responsibility to ensure that the retirement plans' investments were prudent and that this obligation extended to decisions about the percentage of Enron stock employees held in their retirement accounts.

By 2005 a final partial settlement had been reached, whereby the claimants would share in distributions under Enron's bankruptcy plan. While the claimants were to receive only a small amount of the lost investments, the deal ensured they would get some compensation without the uncertainty of litigation. Further partial settlements were reached in 2006 with Enron's former accountants, as well as former Director Jeff Skilling and the estate of former Chairman Kenneth Lay.

#### Web-based sources:

<http://news.bbc.co.uk/2/hi/business/1822042.stm>

<http://www.afcio.org/mediacenter/prsptm/pr02262002.cfm>

[http://www.hagens-berman.com/enron\\_lawsuit](http://www.hagens-berman.com/enron_lawsuit)

<http://www.kellersettlements.com/enron.html>

<http://www.erisafraud.com/Default.aspx?tabid=1046>

<http://www.employeecommittee.org/sr-401klitigation.asp>

[http://www.bloomberg.com/apps/news?pid=20670001&refer=news\\_index&sid=aNsg3JDAyRw](http://www.bloomberg.com/apps/news?pid=20670001&refer=news_index&sid=aNsg3JDAyRw)

**Apparel, lodging and entertainment industries, Employee social security benefits**

**USA**

In 1992, apparel company Levi Strauss & Co. became the first Fortune 500 company to offer health insurance benefits to unmarried couples and in 1996 entertainment giant the Walt Disney Corporation was among the first firms in the US to extend employee health coverage to the partners of gay and lesbian employees.

According to findings by the Washington-based advocacy group Human Rights Campaign, by 2006 more than half the companies in the Fortune 500 offered the same health benefits to employees who live with domestic partners as they did for married employees. In its 2008 Corporate Equality Index, Human Rights Campaign also found that of those employers that offered domestic partner health coverage, 66% provide it to both same and opposite-sex partners of employees.

During the late 1990s, Brendan Keegan, the executive vice president of human resources at hotel chain Marriott International Inc., recognised that a lack of

health benefits for domestic partners was a growing concern among employees. Keegan reports that the company realised “this was the right thing to do, but also was a growing competitive thing to do”, and in 1999 responded by becoming the first firm in its industry to implement the benefit.

By 2006, the *Washington Post* was reporting that 253 out of the Fortune 500 companies offered such benefits.

Companies that provide domestic partner benefits in the United States are faced with the dilemma that because a domestic partner is not currently recognised as a spouse under federal law, any portion of an employer-paid insurance premium that covers a domestic partner is treated as taxable income. To combat this, Helga Ying of Levi Strauss’s worldwide government affairs department has explained that the company raised the wages of employees to compensate for the federal tax they had to pay to cover their partners.

**Web-based sources:**

[http://www.hrc.org/documents/HRC\\_Corporate\\_Equality\\_Index\\_2008.pdf](http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2008.pdf)

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/29/AR2006062902049.html>

[http://corporate.disney.go.com/corporate/corporate\\_responsibility.html](http://corporate.disney.go.com/corporate/corporate_responsibility.html)

<http://www.levistrauss.com/Citizenship/>

<http://www.marriott.com/corporateinfo/default.mi>



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring it takes account of the right to social security. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respect for social security rights, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any risks related to social security rights. Act on the findings.
- Ensure that internal governance and management policies comply with national regulations and stock market listing requirements to safeguard workers' rights to legal and contractual benefit entitlements.

- Honour all legal and contractual benefit commitments to workers and to State social security schemes and mechanisms.
- Commit to offering workers benefit entitlements that conform to industry and local good practice.

### Specific actions:

- In contexts where government social security provision is inadequate, or where the State is unwilling or unable to enact and enforce social security laws, consider any extraordinary support and safeguards the company might wish to offer its employees and direct stakeholders. Engage with relevant experts, industry peers and stakeholders for guidance on what form that support might take.

# ARTICLE 10: RIGHT TO A FAMILY LIFE

## The Right

According to this Article the widest possible protection and assistance should be given to the family, particularly during its establishment, and while it is responsible for the care and education of dependent children. Special protection is given to mothers during a reasonable period before and after childbirth. Of particular relevance to companies, the right requires that during this period working mothers should be given paid leave or leave with adequate social security benefits.

Enhanced measures of protection and assistance should also be taken on behalf of all children and young people. Human rights standards do not impose an absolute prohibition of work by children, defined under the Convention on the Rights of the Child as persons less than 18 years of age. In some cases, work may be an important element of vocational training, such as in apprenticeships, or a way of earning supplementary income. Children should, however, be protected from economic and social exploitation and in particular they should not be exposed to work that is harmful to

their morals or health, or dangerous to life, or likely to hamper their normal development. The 'worst forms of child labour' are absolutely prohibited, as is work that is incompatible with the right of children to free and compulsory education. Work by children must not interfere with their ability to attend school. States are required to set age limits below which the paid employment of child labour should be prohibited and punishable by law.

This Article is relevant to companies insofar as certain work practices (including working hours and eligibility for leave) may hinder or enhance the ability of people to adopt a healthy work/life balance and spend quality time with their families. Companies also impact on the right if child labourers are found to be working directly for the company or within their supply chains.

### Related rights:

ICCPR Article 23 (Rights of protection of the family and the right to marry), page 67

ICCPR Article 24 (Rights of protection for the child), page 69

ICESCR Article 7 (Right to enjoy just and favourable conditions of work), page 95

## Case studies

### Airline industry, Family-life issues

#### Malaysia

This case highlights the challenges companies can face when stakeholder expectations on what constitutes good practice in relation to the right to a family life differ from national legal requirements.

In 1991, airline company Malaysia Airlines (MAS) was a party to a case that concerned the right to family life of a flight stewardess, Beatrice Fernandez. Under the terms of a 1988 collective agreement, female stewardesses were compelled to resign if they became pregnant, or face dismissal. Ms Fernandez, who had worked for Malaysian Airlines for 11 years before becoming pregnant, refused to resign and as a result had her services terminated by the company.

Ms Fernandez brought her case before the Malaysian courts. The Malaysian High Court, the Court of Appeal and the Federal Court all held that no discrimination had been practised by MAS (the decisions of the latter two courts were unanimous). Though Ms Fernandez lost the legal battle,<sup>134</sup> Malaysian Airlines subsequently reviewed

<sup>134</sup> In 2004 the Court of Appeal ruled that constitutional law could offer Ms Fernandez no protection as it applied only to public authorities and not private companies. The Court also found that gender discrimination laws of 2001 could not be applied retroactively.

#### Web-based sources:

<http://www.wao.org.my/news/20050103mas.htm>

<http://www.wao.org.my/newslinks/MASimproves.pdf>

<http://www.wao.org.my/news/20050106masmemo.htm>

<http://www.itfglobal.org/solidarity/itflettertomas.cfm>

<http://www.malaysiaairlines.com/uk/en/corp/corp/relations/info/reports/annual-reports.aspx>

<http://malaysiaairlines.listedcompany.com/misc/AR2006.pdf>

its policies. Under the terms of a 2002 collective agreement with the Malaysian Airline System Employees Union (MASEU), married female cabin crew who had served for five or more years became entitled to maternity leave of 60 days. In 2005, new provisions in the MAS terms of service for its cabin crew, agreed in negotiations with MASEU, increased the limit on the number of children a stewardess could have from two to three before being expected to resign or risk having her contract terminated.

Critics, including the Joint Action Group against Violence Against Women, point out that despite the improvements, unmarried stewardesses and those with less than five years' experience still have no protection and the company has retained the right to terminate contracts where stewardesses become pregnant for a fourth time. In 2005, the International Transport Workers' Federation wrote to the company expressing concern over the limits placed on stewardesses, and that "pregnant women are not redeployed to other duties, but instead are forced to take seven months unpaid leave".



**Technology, accounting, finance and pharmaceutical sectors, Family-friendly workplace issues  
USA**

Technology company IBM has appeared regularly in *Working Mother* magazine's 100 Best Companies, which lists companies that lead the way in providing family-friendly work conditions. In 2007, the company was ranked in the top ten alongside Ernst & Young, KPMG, PricewaterhouseCoopers and UBS. IBM also featured in the magazine's 2007 Best Companies Hall of Fame for firms that had been listed in the top 100 consistently for more than 15 years, along with other companies such as GlaxoSmithKline, Hewlett Packard and Johnson & Johnson.

IBM's flexible working options allow for one third of its 140,000 employees worldwide to work either off-site or remotely on any given day. The company provides 100 day-care centres across its operations

**Web-based sources:**

<http://www.workingmother.com>

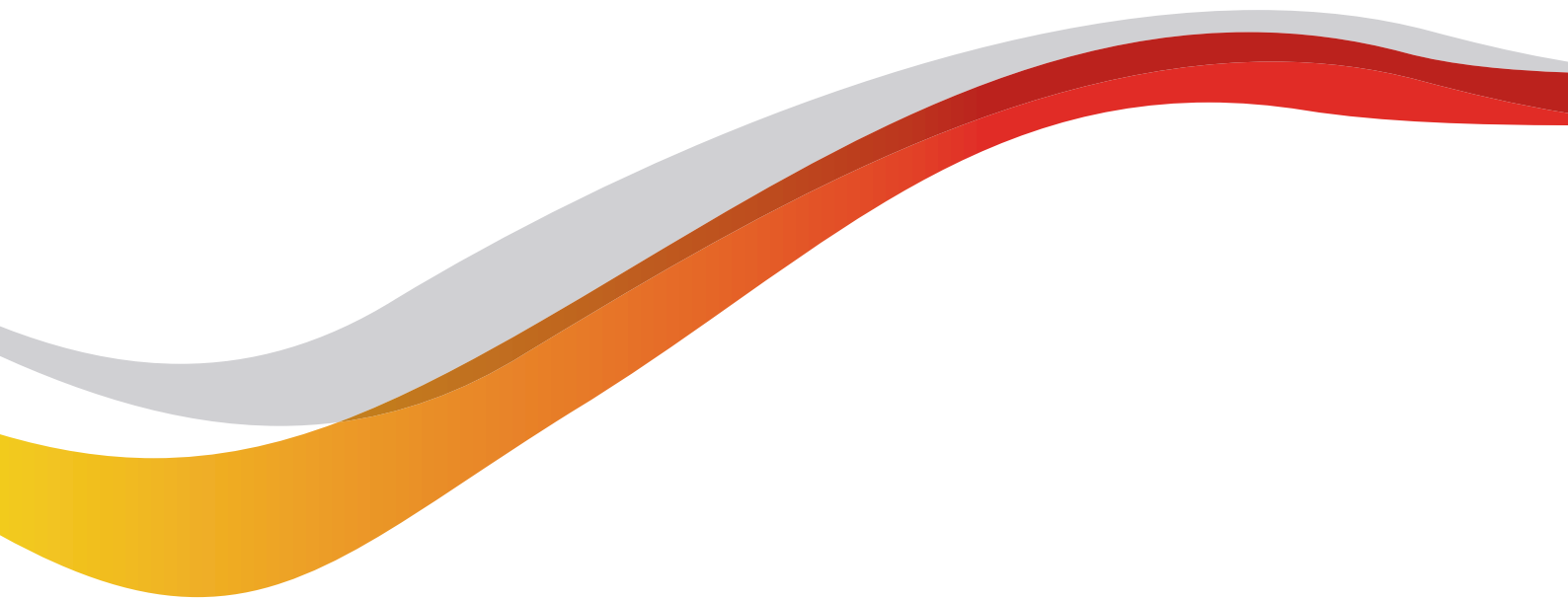
[http://www.ibm.com/ibm/responsibility/s4\\_4.shtml](http://www.ibm.com/ibm/responsibility/s4_4.shtml)

[http://www.ubs.com/1/e/about/ouremployees/diversity/program\\_initiatives/worklife\\_balance.html](http://www.ubs.com/1/e/about/ouremployees/diversity/program_initiatives/worklife_balance.html)

for those working mothers who are unable to work from home. All new parents are granted full health benefits for an unpaid leave period of up to 156 weeks, during which their jobs are guaranteed.

Ronald C. Glover, IBM's vice president for global workforce diversity, further explains that:

*Women have been asking for greater flexibility [and] they're also asking for tools that enable them to network with colleagues, develop their skills, and grow their career. To help them, we offer a range of programmes, from flexible work schedules and meeting-free Fridays to online resources that identify job and learning opportunities.*



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to a family life. Apply the policy globally.
- Ensure that the company's policy includes clear commitments and procedures to prevent child exploitation. Be guided by ILO Convention 138 on Minimum Age (1970) and ILO Convention 182 on the Worst Forms of Child Labour (1999).
- Ensure that any work/life balance policies encourage the development of family life.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting the right to a family life, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks related to the right to family life. Act on the findings.
  - Comply with national regulations concerning paid parental leave. Where government social security provision for expectant parents/recent parents is limited or non-existent, consider applying at least minimum international standards.
- For companies that house employees, or sub-contracted employees, in dormitory facilities or on sites that are not within easy travelling distance from the worker's home, ensure that the management and operation of these facilities is conducive to and supportive of family life. Where employees work for extended periods of time on facilities away from home, ensure that procedures are established to safeguard the employee's right to a family life in line with local good practice; this may include the provision of extended periods of leave between assignments to spend with family members.

### Specific actions:

- In contexts where work/life balance benefits are rare, examine and attempt to exceed local good practice and encourage business partners to do likewise.
- In contexts where home-working is commonplace and child care facilities are rare or non-existent, strive to accommodate home-working. Consult with human rights experts and industry peers for guidance on how to act appropriately.
- Sponsor or lend in-kind support to education schemes to provide schooling for formerly exploited children. Consult with human rights experts and industry peers for guidance on how to achieve sustainable results.

# ARTICLE 11: RIGHT TO AN ADEQUATE STANDARD OF LIVING

## The Right

Article 11 guarantees the right to an adequate standard of living including adequate food, clothing, housing and continuous improvement of living conditions. It has also been interpreted as including access to sufficient water and sanitation. These elements are discussed below (and continued at page 118).

### a) Right to adequate housing

The right to adequate housing encompasses more than the provision of basic shelter; it is the right to live somewhere in security, dignity and peace. This means that housing or shelter must fulfil certain basic criteria, such as security of tenure, availability of utilities and other services (e.g. sewage facilities and access to safe drinking water), affordability, habitability, accessibility, location and cultural adequacy of housing. Governments should take progressive steps towards the achievement of all aspects of the right.

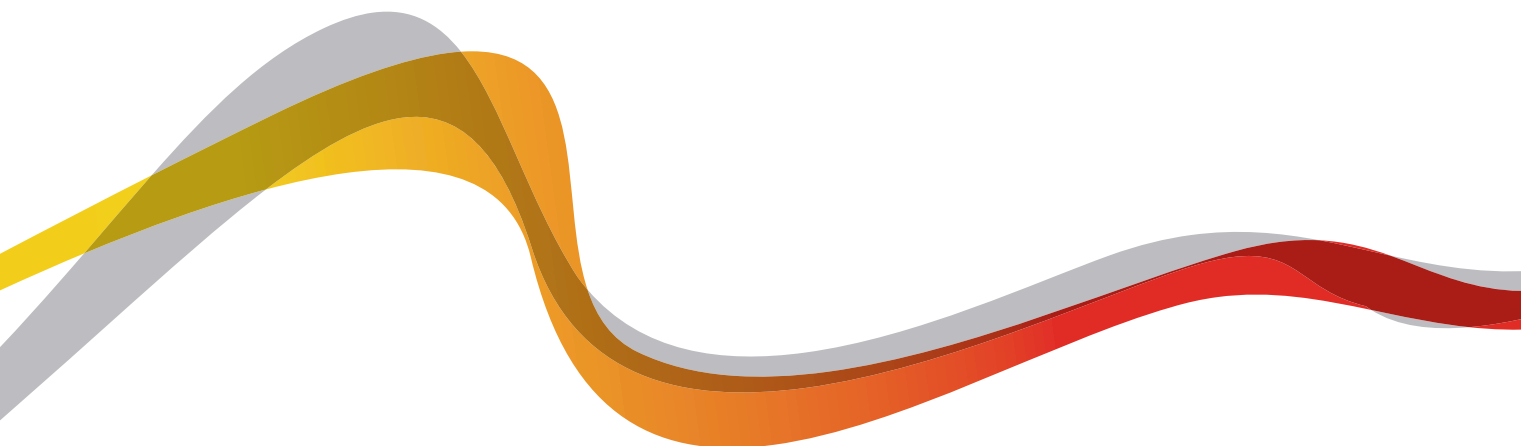
Companies that provide housing for their workforce or the local community will find that they can impact

directly, positively or negatively, on the enjoyment of the right. Companies may find their activities impact on the right to adequate housing if they are involved in land transactions that require population relocation or forced evictions, be this as landlords or to accommodate development projects or natural resource exploration. Those companies that engage in relocation or forced evictions will want to ensure that they act in accordance with human rights standards, and that those affected and their belongings are protected and secured during the relocation process. Forced evictions should be a last resort and feasible alternatives should be explored in consultation with the affected communities. Forced evictions are not inconsistent with the right to adequate housing if procedural safeguards – such as comprehensive impact assessments, prior consultation and notification, provision of legal remedies, fair and just compensation, and adequate relocation – are deployed to minimise the adverse impacts, including on specific groups such as women and indigenous peoples.

#### Related rights:

ICCPR Article 12 (Right to freedom of movement), page 31

ICCPR Article 27 (Rights of minorities), page 81



## Case studies

### Toy sector, Housing issues

#### Mexico

This case raises questions as to how far company responsibilities should extend in economically deprived areas.

Toy company Mattel operates a *maquiladora* factory, Mabamex, within the export processing zone (EPZ) around Tijuana, Mexico. Neighbouring the factory, many of the workers' homes are made of scrap metal and lack running water. According to Alfredo Hualde, director of *El Colegio de la Frontera Norte* (a research institute), although Mattel's factory is one of the best *maquiladoras* in Tijuana with respect to working conditions, the company would need to double the workers' wages for them to be able to afford the basic amenities, including sanitary drinking water.

Audits of the Mabamex plant conducted in 2004 and 2007, by the US-based not-for-profit International Center for Corporate Accountability (ICCA), found that Mattel's workers were paid well above the minimum wage and the prevailing area wages and that this applied to both temporary and permanent

workers. The audits also found that employees benefited from subsidised meals in the factory cafeteria and enjoyed satisfactory access to drinking water and well-maintained on-site bathroom facilities. In 2007, ICCA specifically noted that: "The plant regularly tests and documents all sources of drinking water." Whilst a variety of minor problems were identified concerning consecutive days worked and general housekeeping, ICCA concluded that, "overall, Mabamex is a well maintained facility and operates in an efficient manner while ensuring that the plant provides a clean, safe and healthy work environment for its employees".

Although working conditions in the plant itself are generally considered to be above average, comments by Mattel's CEO, Robert Eckert, highlight the dilemma faced by employers in this area, "Do we want to make people's lives better? Absolutely! Do we want to unilaterally do things that make us uncompetitive and therefore our products don't sell and therefore nobody gets employed. No."

#### Web-based sources:

<http://www.timesizing.com/gts0411e.htm>

[http://www.icca-corporateaccountability.org/04\\_reports.php?sp\\_rep=2](http://www.icca-corporateaccountability.org/04_reports.php?sp_rep=2)

[http://www.mattel.com/about\\_us/Corp\\_Responsibility/default.asp](http://www.mattel.com/about_us/Corp_Responsibility/default.asp)

## Mining sector, Housing and community displacement issues

### Guatemala

This case study highlights the long-term repercussions, including allegations of wrongful eviction, that can arise when the legal title to land is disputed and transferred for private commercial use contrary to the wishes of the land's traditional owners, even if the original transfer took place years ago and was sanctioned by local authorities. It also illustrates the long-standing suspicions that often need to be overcome in contexts where mistrust has characterised relations between community members and companies.

Guatemala Nickel Company (CGN), a majority owned subsidiary of Canadian firm Skye Resources Inc, holds an exploratory mining licence for 300 square kilometres of land in the municipality of El Estor, Izabal, Guatemala. It acquired the rights from another Canadian mining company, INCO, in 2004. CGN has faced allegations that it forcibly evicted a group of Mayan Q'eqchi peoples who had been occupying the land.

The mining concession for the land in El Estor was originally purchased by INCO from the Guatemalan military government in the 1960s. A number of Mayan Q'eqchi peasant farmers claim that the land historically belonged to them, that their family members were evicted in the 1960s and that their views on the use of the land have never been properly taken into account.

In September 2006, 350 Mayan families moved onto land at three separate sites prior to the planned commencement of nickel mining by CGN. The families claimed that they were reoccupying ancestral lands and needed to do so in order to have viable livelihoods. A community elder asserted at the time, "We are recuperating our lands, not invading them. Some of us were born on these lands before any mining company arrived in the area." According to Father Dan Vogt, co-ordinator of a community development group, Aepidi, many of them had been campaigning for the company to provide them with land to farm. The company

maintains that prior to September 2006 the land had been unoccupied for decades.

NGOs such as the Centre on Housing Rights and Evictions (COHRE) claim that between 8 and 9 January 2007, over 475 indigenous Mayan families were forcibly evicted from several sites in El Estor. The evictions were reportedly carried out by 650 police and soldiers after CGN had obtained a court order. Although some evictions were said to have been handled with sensitivity, with inhabitants given time to vacate safely, COHRE alleges that the eviction was "accompanied by a private grey, white and blue helicopter, which flew low over the communities, intimidating the inhabitants". It is also alleged by COHRE that "the evicted families lost 18 homes which were burned and destroyed" by company contractors.

Responding to correspondence from critics, Ian Austin, CEO of parent company Skye Resources, said in a letter of 17 January 2007 that "CGN management met with the squatters' leaders in December 2006" to reach a peaceful settlement and that the evictions were a last resort. Austin acknowledged the fires took place, but denied company involvement and did not condone them. Skye Resources maintains that the eviction process was carried out by "a special unit of the national police that [was] specially trained to handle such situations", that it gave advance warning of the evictions to those affected, and compensated families for loss of personal property.

Ian Austin said, "We are thankful that the Guatemalan government has upheld the company's rights to the land and we remain committed to working with community leaders to find solutions to this important issue." Nonetheless, a number of local community leaders remain angry about how the evictions were handled and continue to press their claim over the disputed land.

#### Web-based sources:

[http://www.cohre.org/view\\_page.php?page\\_id=251](http://www.cohre.org/view_page.php?page_id=251)

<http://www.globalvoicesonline.org/2007/03/04/forced-evictions-in-guatemala-whose-land-is-it-anyway/>

[http://www.miningwatch.ca/index.php?/Guatemala/Evictions\\_in\\_El\\_Estor](http://www.miningwatch.ca/index.php?/Guatemala/Evictions_in_El_Estor)

<http://www.newswire.ca/en/releases/archive/January2007/08/c4106.html>

<http://www.independent.co.uk/news/world/americas/mayans-occupy-canadianowned-mine-in-campaign-for-farming-land-417045.html>

[http://www.skyeresources.com/community/in\\_the\\_news](http://www.skyeresources.com/community/in_the_news)

### Energy sector, Environmental disaster issues Indonesia

On 28 May 2006, PT Lapindo Brantas, an Indonesian energy company, commenced drilling a borehole in East Java in search of gas. During the second stage of drilling, a mud volcano eruption began. The mudflows have continued to the present day; experts see no end in sight and predict that the area affected is likely to grow. Tonnes of mud are reported to have inundated nearby villages and sites of commercial activity, including rice paddies and shrimping grounds. Impacting on enjoyment of the right to housing, thousands of people have been forced from their homes as a result of the eruptions and flows. More resettlements are thought to be inevitable. PT Lapindo Brantas faces allegations that its activities triggered the eruption.

PT Lapindo Brantas argues that an earthquake in central Java that occurred two days before they commenced the drilling caused the eruption. However, an expert geologist team from the UK assigned the blame to PT Lapindo Brantas's drilling activities.<sup>135</sup> No other mud eruptions are reported to have arisen as a result of the earthquake, the epicentre of which was 300 km away.

A lawsuit was brought by an NGO, WALHI, the Indonesian branch of Friends of the Earth, against Lapindo Brantas for allegedly causing the disaster. In December 2007 the District Court of South Jakarta dismissed the case and found that the mudslide was a natural disaster. WALHI is reportedly appealing that decision.

<sup>135</sup> See Richard Davies et al, "Birth of a mud volcano: East Java, 29 May 2006", <http://www.gsjournals.org/perlserv/?request=get-document&doi=10.1130%2FSGSAT01702A.1&ct=1>

#### Web-based sources:

[http://www.foeeurope.org/publications/2007/LB\\_mud\\_volcano\\_Indonesia.pdf](http://www.foeeurope.org/publications/2007/LB_mud_volcano_Indonesia.pdf)  
[http://www.foeeurope.org/publications/2007/exec\\_summ\\_banks\\_Indonesian\\_mud\\_flow.pdf](http://www.foeeurope.org/publications/2007/exec_summ_banks_Indonesian_mud_flow.pdf)  
<http://www.antara.co.id/en/arc/2007/1/8/all-efforts-to-overcome-lapindo-mud-flow-be-monitored-speaker/>  
<http://www.antara.co.id/en/arc/2008/2/29/lapindo-mudflow-victims-still-complain-about-promised-compensation/>  
[http://www.corfina.com/finacial\\_news/2007/20070113.html](http://www.corfina.com/finacial_news/2007/20070113.html)  
<http://afp.google.com/article/ALeqM5hP707SR7ekOSCFmE8Tu3s8Mk6e8Q>  
<http://www.tempointeraktif.com/hg/nasional/2008/06/13/brk,20080613-125309,uk.html>  
<http://www.thejakartapost.com/news/2008/05/29/mudflow-a-039gross-rights-violation039.html>

The Indonesian president has decreed that the company pay IDR 2.5 trillion (about USD 268 million) in compensation to local residents. By January 2008, 20% of this amount had been paid, though many victims reportedly had not yet received compensation. The President has also asked the company to fund mitigation efforts worth IDR 1.3 trillion (about USD 140 million). The Indonesian government has agreed to provide IDR 700 billion (about USD 75 million) in compensation for the many affected persons outside that immediate area.

In May 2008, *Komnas HAM*, the Indonesian Human Rights Commission, labelled the government's response to the mudflow a "gross rights violation". *Komnas HAM* found that the government had failed to ensure protection for the human rights of victims, and that efforts to stop the flow were inadequate. It also found that the compensation schemes were flawed, and had deprived victims of their rights to proper compensation. In June 2008, *Komnas HAM* suggested that the existing compensation schemes be revised, and that PT Lapindo Brantas be required to fund all of the required compensation and mitigation efforts. As the mudflow continues, adjustments and increases in available compensation, from whatever source, may be necessary if more people are seriously affected.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to housing. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting the right to housing, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks related to the right to housing. Act on the findings.
- Where financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Indigenous Peoples, and IFC Performance Standards on Land Acquisition and Involuntary Resettlement. Other companies may also wish to consider these standards.
- Consult in good faith with the relevant communities through their own representative institutions prior to launching any activity that affects people's right to housing with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation and providing full information on the impact and benefits, and any compensation on offer, including in the local language concerned.

- Population relocations should be guided by The Basic Principles and Guidelines on Development-based Evictions and Displacement, developed by the UN Special Rapporteur on the Right to Adequate Housing, which stress, for example, the importance of comprehensive impact assessments, the rights of evicted persons to return, resettlement, fair and just compensation, and prior notification to all affected persons, in writing and sufficiently in advance to minimise the adverse impacts of evictions.
- In contexts where the company, either independently or as part of a wider group of businesses, provides housing to employees, this should be both affordable, decent and culturally appropriate, conforming to or exceeding local good practice. Companies may be guided by provisions and standards including the ILO Recommendation 115 on Workers' Housing.

### Specific actions:

- In developing-country contexts where housing facilities for employees or other stakeholders are particularly poor, consider what role, if any, the company can play in helping to raise standards, either through financial support or by utilising the company's core competencies. Explore collective action possibilities with industry peers or other businesses operating in the same area to encourage and support government intervention to increase community access to adequate standards of housing.



**b) Right to food** (continued from page 113)

Food is vital for human survival and also essential as a means to fully enjoy all other rights. The human right to adequate food implies that food should be available and accessible to people in a quantity and of a quality sufficient to satisfy their nutritional needs, free from harmful substances, and acceptable to their culture. The right to food includes the possibilities for individuals to feed themselves and their family directly by productive land and other natural resources (e.g. farming, animal husbandry, fishing, hunting and food gathering), as well as to purchase foods at markets and stores. Various steps should be taken by States to improve methods of production, conservation and distribution of food through, for example, the development of better farming systems, as well as ensuring an equitable distribution of world food supplies in relation to need.

Protective measures are required to prevent contamination of food and water supplies arising from, for example, poor environmental hygiene or inappropriate handling at various stages of the food chain.

The right to food is particularly relevant to those companies that provide for the basic needs of their workforce and the surrounding community, and those whose core business is the supply of food. Respect for the right to food requires that company activities do not pollute, harm or otherwise interfere with local supplies of food, or people's ability to access them.

**c) Access to water and sanitation**

Access to water is necessary for life and thus the fulfilment of all other rights. Although not explicitly mentioned in the text of Article 11, it is considered a fundamental aspect of the right to an adequate standard of living.<sup>136</sup> Human rights entitles everyone to safe, sufficient, acceptable, affordable and physically accessible water for personal and domestic uses. These uses include water for drinking, personal sanitation, prepara-

tion of food, washing of clothes, as well as for personal and household hygiene. The water provided has to be of good quality, free from elements that might harm a person's health, and a minimum quantity of approximately 50–100 litres per person per day.

States are obliged to ensure that water services are delivered in an equitable and non-discriminatory manner, prioritising the most vulnerable groups and those who have traditionally faced difficulties in accessing adequate quantities of water. Water does not have to be provided for free, but water and water facilities must be affordable for even the most disadvantaged members of society. Individuals, communities and groups should be able to participate in decision-making processes that may affect their access to water and should be given full access to information concerning water and sanitation matters. In a context of privatisation of water services, States must effectively regulate and control water services providers to maintain equal, affordable and physical access to sufficient, safe and acceptable water for personal and domestic uses.

Company activities can impact on access to water if pollution and over-use of local water supplies significantly interfere with people's enjoyment of access to water. This aspect of the right is also particularly relevant to companies that provide water services and companies that provide for the basic needs of their workforce and the surrounding community. Companies can have a positive impact on rights with respect to water through initiatives aimed at improving the accessibility and quality of water for local communities.

*As the rights regarding food and water are closely related, the case studies and suggested practical actions for these rights have been grouped together below.*

<sup>136</sup> See General Comment 15 on the Right to Water of the Committee on Economic, Social and Cultural Rights, E/C.12/2002/11, 20 January 2003. See also Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, A/HRC/6/3, and UN Human Rights Council, "Human rights and access to safe drinking water and sanitation", Resolution 7/22, 28 March 2008.



## Case studies

### Mining sector, Contamination and food rights issues

#### Philippines

Lafayette Philippines Incorporated (LPI) (a subsidiary of Australian mining company Lafayette Mining), majority owns and operates the Rapu-Rapu Polymetallic Project on the Philippine island of Rapu-Rapu in Albay. The project was approved by the Philippine government in 1998. LPI has faced allegations that its activities negatively impacted upon the right to food of the island's inhabitants, for whom fishing has traditionally been the primary means of livelihood.

In October 2005, an overflow after heavy rains resulted in two mine tailing spills from the LPI mine. Lafayette Mining says they resulted in "relatively minor volume discharges of low level contaminated liquid". However, others allege that the spills contained cyanide, polluted the sea, and killed fish and other marine life in the area. Catches and fish sales are said to have declined rapidly following the spill, as local consumers, who feared contamination, stopped buying fish caught in the vicinity. *The Manila Times* reported in 2007 that local fishermen claimed that the incident made their catch dwindle from 70 blue marlins a year in 2005 to 20 in 2006. According to FIAN international, an NGO that campaigns on the right to food, the spill threatened both the community's livelihood and food supply. Lafayette refutes these allegations and maintains that the disruption to local fishing did not stem from the October spills, but was the result of "a mercury hoax that was falsely attributed to the operation of the Project".

In November 2005, the Department of Environment and Natural Resources (DENR) ordered the temporary suspension of LPI's mining operation and imposed a PHP 10.7 million fine on the company. DENR's Mines and Geosciences Bureau said the penalty was for violating the Clean Water Act and an Environmental Compliance Certificate. DENR believed the accident was preventable and set stringent safety testing requirements for any resumption of mining activities.

#### Web-based sources:

[http://www.manilatimes.net/national/2007/june/24/yehey/top\\_stories/20070624top6.html](http://www.manilatimes.net/national/2007/june/24/yehey/top_stories/20070624top6.html)

<http://www.manilatimes.net/national/2007/oct/22/yehey/prov/20071022pro1.html>

<http://www.manilatimes.net/national/2007/nov/04/yehey/prov/20071104pro1.html>

[http://www.fian.org/cases/letter-campaigns/mining-operations-are-threatening-the-right-to-food-of-thousands-of-persons-philippines/?print\\_page=1](http://www.fian.org/cases/letter-campaigns/mining-operations-are-threatening-the-right-to-food-of-thousands-of-persons-philippines/?print_page=1)

<http://www.lafayettmining.com/about/default.asp?id=17>

<http://www.kalikasan.org/kalikasan-cms/?q=node/157>

<http://www.mgb.gov.ph/news/2007-0213rapu.htm>

In 2006 FIAN organised a letter-writing campaign calling on the Philippine government to close the project, rehabilitate the fishing grounds, and ensure affected communities were compensated. The letter stressed that:

*The Philippines is a State party to the International Covenant on Economic, Social and Cultural Rights, and therefore is duty-bound under international law to protect the right to food of all its population [including the fishing community on the island of Rapu-Rapu].*

During 2006, LPI is reported to have appointed a new management team and complied with the stipulations set by DENR to conduct test-runs of the facility and install monitoring and emergency control mechanisms. As a result, in February 2007 DENR's Pollution Adjudication Board issued a Final Lifting Order allowing resumption of production of concentrates from the plant. DENR stressed that its decision was based on sound science and transparency. DENR Acting Secretary, Francisco Brava, noted that the test runs were open to the public and subjected to third-party evaluation. DENR had previously gone on the record to acknowledge that the Rapu-Rapu experience had provided a wake-up call for more rigorous compliance by the entire mining industry to standards of responsible and sustainable mining in the Philippines.

In December 2007, several hundred environmentalists, Rapu-Rapu residents, NGOs, church and academic representatives convened in Albay to urge LPI's bank funders and investors to withdraw their support from the mining company, amidst allegations of a third fish-kill as a result of contamination issuing from the mine.

**Water utilities, Access to water and pricing issues****Bolivia**

This case illustrates the tensions that can arise when private companies take on essential public service functions. In 1999, the city of Cochabamba, Bolivia, awarded a newly privatised water service concession to Aguas del Tunari (a consortium of International Water,<sup>137</sup> Abengoa and five Bolivian firms). The consortium faced allegations that it limited the local community's access to water through overpricing.

Bechtel Enterprises (which had a 27.5% stake in Aguas del Tunari) notes that the consortium began operating the city's water and wastewater system in 1999, taking over from the municipal water company SEMAPA, under which "low-volume, poorer users paid more per unit than high-volume, wealthier users".<sup>138</sup> According to Bechtel, the consortium succeeded in improving quality and increasing the availability of water by 30%, while instituting a new rate structure by which most price increases would fall to larger, wealthier users.<sup>139</sup> To secure the concession, Aguas del Tunari agreed to repay SEMAPA's accumulated debts and finance maintenance and expansion of the water system in exchange for income generated from government-approved tariffs.

Bechtel holds that much of the perceived increases in costs to end users were the result of poorly managed consumption – residents unaccustomed to ready access to water were ill prepared for the consequences of over-consumption. Bechtel notes that the municipality failed properly to communicate the cost implications of increased water consumption that often accompany improvements to the availability of water.<sup>140</sup>

The Democracy Center, an NGO, has a different version of events in Cochabamba. It alleges that within weeks of taking control of the city's water system, Aguas del Tunari raised water rates by an average of over 50%. The NGO claims that by February 2000 the price of water had increased so significantly that many poorer families were priced out of the market and that this sparked civil unrest. Bechtel points out that rates were soon rolled back to pre-concession levels and argues that the civil unrest was not caused exclusively by the effects of the

price increases, but was precipitated by multiple factors, "including unrelated national groundwater legislation".

The Democracy Center has disputed Bechtel's statements. In particular it has placed electronic copies of customers' water bills and SEMAPA computer records on its website, records which it claims demonstrate that the price increases were far higher and more damaging than was claimed by Bechtel.<sup>141</sup>

In April 2001, the violence in Cochabamba and other parts of the country escalated, which led to the government dispatching the military and culminated in several deaths. Amidst the deteriorating security situation Aguas del Tunari personnel vacated their office and the government cancelled the water contract.

In November 2001, Aguas del Tunari filed a request for arbitration with the International Centre for Settlement of Investment Disputes (ICSID) (under the terms of a Netherlands–Bolivia bilateral investment treaty) for the recovery of lost assets, investments and future profits. In 2002, an international petition was filed by activists with the World Bank demanding that the ICSID case be open to public scrutiny and participation.

In 2006 the ICSID case was settled. A statement from Bechtel read:

*The Government of Bolivia and the international shareholders of Aguas del Tunari declare that the concession was terminated only because of the civil unrest and the state of emergency and not because of any act done or not done by the international shareholders of Aguas del Tunari (Bechtel, Befesa, Abengoa and Edison)" and that there would be "no compensation paid by the Government of Bolivia or Aguas del Tunari for the termination of the concession and the withdrawal of the claim [before the ICSID].*

Jim Schultz, director of the Democracy Center, conversely described the settlement as "a huge victory for activists worldwide".

137 In November 1999, Bechtel Enterprises Holdings, Inc. and Edison S.P.A. finalised an agreement for Edison to acquire a 50% interest in International Water Limited (IWL), a major international water development services company owned by Bechtel Enterprises.

138 This was reported on Bechtel's website under the heading, "Bechtel perspective on the Aguas del Tunari water concession in Cochabamba, Bolivia" on 16 March 2005.

139 Bechtel says that the agreed tariff structure involved an average unit increase of 35%, "low-income residents were to pay 10% more, and the largest hikes (106%) were reserved for the highest-volume users".

140 Bechtel states that, "The higher rates didn't last long. Responding to public criticism, the government rolled back rates in February [2000, and that] customers who had paid the higher rates were refunded the difference."

141 For details, see [http://democracyctr.org/bolivia/investigations/water/waterbills\\_index.htm](http://democracyctr.org/bolivia/investigations/water/waterbills_index.htm).

**Web-based sources:**

- <http://www.democracyctr.org/bolivia/investigations/water/bechtel-vs-bolivia.htm>
- <http://www.bechtel.com/pdf/cochabambafacts.pdf>
- <http://www.bechtel.com/assets/files/PDF/Cochabambafacts0305.pdf>
- [http://www.bechtel.com/2005-03-16\\_38.html](http://www.bechtel.com/2005-03-16_38.html)
- [http://www.iisd.org/pdf/2006/itn\\_jan20\\_2006.pdf](http://www.iisd.org/pdf/2006/itn_jan20_2006.pdf)
- <http://www.befesa.es>
- <http://www.edison.it/edison/site/en/csr/>
- <http://www.abengoa.com/sites/abengoa/en/index.html>

**Chemicals sector, Long-term contamination and standard of living issues**

**India**

The Bhopal gas plant disaster occurred in Madhya Pradesh, India in 1984.<sup>142</sup> Legal claims relating to the actual disaster were settled in 1989;<sup>143</sup> however, in November 1999 several residents of Bhopal and non-governmental organisations filed a new lawsuit against Union Carbide in New York’s Federal Court. In *Bano v Union Carbide*, the plaintiffs sought compensation for alleged ongoing pollution and contamination at the derelict Bhopal plant. Among other things, this case highlights competing interpretations of corporate liability.

In 1999 a Greenpeace study reported:

*“massive environmental contamination, including contamination of the drinking water of residents in the nearby communities, entirely unrelated to the Bhopal disaster had taken place” and that “large amounts of toxic chemicals and by-products from the factory’s original manufacturing processes continue to pollute the land and water.”*

In 2002 Greenpeace additionally alleged the presence of significant chemical stockpiles, which could affect residents via “contaminated soil or inhalation of contaminated dust”.

The Bhopal Information Center (BIC), a dedicated Union Carbide-run website, acknowledges that in 1997 India’s National Environmental Engineering Research Institute (NEERI) found soil contamination within the factory premises, but also noted that NEERI

found no evidence of groundwater contamination outside the plant and concluded that local water-wells were unaffected. The BIC website states that the company no longer has any first-hand knowledge of conditions at the site, but notes that the “*Hindustan Times* reported in April 2006, that ‘A study by the National Institute of Occupational Health (NIOH), Ahmedabad, has virtually debunked voluntary organisations’ fear about contamination of water in and around Union Carbide plant...’”. It also noted that “the state government has filed the NIOH report in the [Madhya Pradesh] High Court in support of its contention that hazardous wastes lying in the Union Carbide [site] were not contaminating the water”.

Differing interpretations exist over liability and who is responsible for cleaning up the site. BIC says that Union Carbide Corporation (UCC) sold Union Carbide India Limited (the 1984 plant owner-operator) to MacLeod Russell in 1994, which renamed it Eveready Industries India, and in 1998 “the state government of Madhya Pradesh revoked Eveready Industries’ lease and took possession of the facility and publicly assumed all accountability for the site, including the completion of any further remediation”. In 2001, UCC became a wholly owned subsidiary of Dow Chemicals. Dow has since stated that it “never owned or operated the plant site involved with the Bhopal tragedy and, as such, has no responsibility or liability for the plant site”. Amnesty International has disputed this interpretation, among other things noting that: “A senior US-based attorney representing the victims of the gas disaster suggests that in terms of US law, all of UCC’s civil and criminal liabilities were acquired by Dow with its purchase of the former.” In 2007 Amnesty International USA and fellow backers of a shareholder resolution<sup>144</sup> also observed that, whatever the precise

<sup>142</sup> According to the Madhya Pradesh state government, the “tragedy took an immediate toll of about 3000 lives” and thousands were left “physically impaired or affected in various degrees”. Amnesty International and Greenpeace place the immediate death-toll substantially higher.

<sup>143</sup> The settlement by Union Carbide India Limited and Union Carbide Corporation with the government of India for USD 470 million was upheld by India’s Supreme Court in 1991. Under its terms the government of India agreed to provide for the welfare and ongoing needs of those affected by the tragedy, and in 1998 the state government of Madhya Pradesh took over the running of the site. A number of affected residents and campaigners have questioned the adequacy of the settlement.

<sup>144</sup> The April 2007 shareholder resolution called on Dow to report to shareholders “descriptions of any new initiatives instituted by management to address specific health, environmental, and social concerns of Bhopal, India survivors”.

legal merits, “Bhopal presents a ‘moral’ liability for Dow that may continue to damage Dow’s reputation and may reasonably be expected to affect growth prospects in Asia and beyond.”

In 2003, presiding United States District Judge John Keenan dismissed the *Bano* case, ruling that:

*“the claims are untimely and directed at improper parties. Union Carbide has met its obligations to clean up the contamination in and near the Bhopal plant. Having sold their shares long ago and having no connection to or authority over the plant, they cannot be held responsible at this time.”*

**Web-based sources:**

<http://www.mp.gov.in/bgtrrdmp/profile.htm>

[http://news.bbc.co.uk/2/hi/south\\_asia/4064527.stm](http://news.bbc.co.uk/2/hi/south_asia/4064527.stm)

[http://www.earthrights.org/site\\_blurbs/bano\\_v.\\_union\\_carbide\\_case\\_history.html](http://www.earthrights.org/site_blurbs/bano_v._union_carbide_case_history.html)

<http://www.greenpeace.org/international/campaigns/toxics/toxic-hotspots>

<http://www.ipsnews.net/news.asp?idnews=34547>

<http://www.unioncarbide.com/bhopal>

[http://www.business-humanrights.org/Search/SearchResults?SearchableText=dow+bhopal&x=0&y=0&batch\\_start=11](http://www.business-humanrights.org/Search/SearchResults?SearchableText=dow+bhopal&x=0&y=0&batch_start=11)

<http://www.elaw.org/node/2560>

<http://www.dow.com/commitments/goals/index.htm>

[http://www.americanchemistry.com/s\\_responsiblecare/sec.asp?CID=1298&DID=4841](http://www.americanchemistry.com/s_responsiblecare/sec.asp?CID=1298&DID=4841)

Upon review, in August 2006, the New York Federal Appeals Court dismissed the *Bano* case, noting that any order to direct Union Carbide to clean up the land would run into technical difficulties “because of the impracticality of a court-supervised clean up on land owned by a foreign sovereign”. The court did not rule on whether the company ought to remediate the site and made no decision over whether it had improperly contaminated the area. Two cases making similar contamination-related claims remain pending in the US.

**Oil and gas sector, Water issues****Colombia**

This case illustrates the challenges that companies can encounter when operations have the potential to affect the neighbouring water table and impact on communities that live on, and make their living off, adjacent land.

In 2005, a group of Colombian farmers instigated a claim for GBP 15 million in the London High Court against BP as a member of the consortium responsible for the OCENSA oil pipeline in Colombia.<sup>145</sup> The case concerned a number of human rights-related issues, alleging impacts on the farmers' food and water supply.

According to media reports, the farmers alleged that as soon as construction began on the pipeline in the mid-1990s the local water table was affected.<sup>146</sup> It was claimed that natural springs upon which farmers had relied for decades began to dry up, while other areas were flooded, resulting in crop failure, unsustainable fishponds, and livestock deaths. Lawyers representing the farmers acknowledged that BP had compensated some farmers in the area for any potential negative impacts on their livelihoods arising from the pipeline, but maintained that the sums were insufficient and too few farmers had benefited.<sup>147</sup>

<sup>145</sup> The claim and figures were reported in Robert Verkaik, "BP pays out millions to Colombian farmers", *The Independent*, 22 July 2006.

<sup>146</sup> See Verkaik, above.

<sup>147</sup> See Leigh Day & Co (lawyers for the farmers), "Colombian farmers start claim against BP for pipeline that has ruined lives", which appeared at <http://www.leighday.co.uk>, 18 June 2005.

**Web-based sources:**

<http://www.bp.com/home.do?categoryId=1>

<http://news.independent.co.uk/world/americas/article1190528.ece>

<http://www.leighday.co.uk/doc.asp?doc=890&cat=850>

<http://www.leighday.co.uk/doc.asp?doc=639&cat=850>

<http://www.planetark.com/dailynewsstory.cfm/newsid/37295/newsDate/17-Jul-2006/story.htm>

Following a mediation process that took place in Bogotá in June 2006, a settlement was reached with no admission of liability.<sup>148</sup> A joint statement issued on behalf of both BP and the farmers' legal representatives said that:

*"the precise terms of the amicable settlement are based on the establishment of an environmental and social improvement trust by BP Colombia for the benefit of the farmers, in conjunction with a programme of workshops for the farmers dealing with issues such as environmental management, business development and other topics requested by the farmers."*

The statement added, "Colombian farmers are pleased with the outcome of the mediation and are of the view that BP Colombia has acted in a fair, committed and sympathetic manner."<sup>149</sup>

<sup>148</sup> See reports on the mediation and settlement made in a joint statement that was reported on BP's website under the heading: "Examples of community engagement", and on Leigh Day & Co's website on 24 July 2006 under the heading: "Successful mediation result for Colombian farmers".

<sup>149</sup> For details of the settlement, see "BP reaches agreement with Colombian farmers", *Reuters News Service*, 17 July 2006.

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to an adequate standard of living, including the right to food and water. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting the right to food and water, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any impacts on the right to food or water. Act on the findings.
- Ensure there are adequate sanitation facilities in the workplace, including separate sanitation facilities for men and women.
- Take steps to establish systems to monitor the impact of company activities on the water table and avoid over-use.
- Ensure the company does not restrict employees' or community stakeholders' access to potable water needed for personal and domestic uses, or water required for individual livelihoods, such as the irrigation needs of farmers. Similarly, ensure company activities do not restrict employees' or community stakeholders' access to adequate food.

Establish systems to ensure that company activities do not pollute or otherwise damage local water supplies or sources. Consider any eventual closure of company facilities and the need to plan for the safe removal of equipment, particularly toxic chemicals that could prove environmentally damaging if not disposed of safely. Establish processes to prevent long-term environmental contamination in the event of unexpected facility closure or evacuation, such as in the case of a political, natural or other emergency. Consider also the need for remediation programmes should an accident occur.

- *For utility companies*, take steps to ensure that water services reach outlying areas and vulnerable groups. Steps should also be taken to ensure the lowest possible charge for services to low-income areas and households.
- *For utility companies*, consult with and encourage the participation of local individuals, groups and communities in decision-making related to water and sanitation issues. Consultation with local communities should take place in the local language.

### Specific actions:

- In circumstances where the company and/or sub-contractors routinely provide for the basic needs of the workforce, including housing provision, provide food and safe drinking water at sufficient levels to avoid any physical hardship, and ensure access to sanitation facilities.



# ARTICLE 12: RIGHT TO HEALTH

## The Right

This Article recognises the right to the highest attainable standard of physical and mental health. States must take measures to prevent, treat and control diseases, reduce infant mortality and provide for the healthy development of children, improve all aspects of industrial and environmental hygiene, and to create conditions that will ensure universal access to appropriate medical services and medical attention in the event of sickness. The right includes the right to control over one's health and body, including reproductive and sexual rights, and freedom from interference, such as freedom from non-consensual medical treatment and experimentation. People must have access to the underlying building blocks of good health, such as adequate nutrition, housing, safe and potable water, adequate sanitation, medical supplies, healthy working conditions and a healthy environment.

Company activities and products can impact on the right to health of employees, and are expected to ensure that their operations and products do not impact on the right to health of people, such as workers, consumers and local communities. Special consideration should be made in relation to vulnerable sectors of society, such as children and adolescents, women, disabled people and indigenous communities. Companies are expected to ensure compliance with national legislation (including occupational health and safety regulations, and consumer and environmental legislation) and international standards where domestic laws are weak or poorly enforced. Even though informal workers are often not covered by domestic legislation, companies should take steps to ensure that any persons within their

supply chains are not exposed to occupational health and safety dangers. In countries where communicable diseases, such as HIV/AIDS and malaria, are prevalent, many companies now seek to assist local health care by offering treatment to employees and by bolstering the health infrastructure and delivery networks. Prior informed consent and the participation of workers in the definition of such programmes are essential aspects of the right to health. HIV testing should be confidential and no discrimination should follow from the results.

Pharmaceutical companies in particular have a responsibility to respect the right to health that goes beyond the right to health of their own workers. NGOs and others increasingly look to pharmaceutical firms to help provide access to high-quality, essential medicines for poorer communities, for example through tiered pricing or via flexible approaches to intellectual property protection. Pharmaceutical companies also face demands to increase their investment in the research and development of medicines and treatments for otherwise neglected diseases (such as river blindness, leprosy and sleeping sickness) that have typically ceased to be prevalent in developed countries, but are still common in developing countries.

Companies from sectors where the risk of pollution from their activities is particularly great, such as extractive firms and chemical companies, may face close scrutiny over the policies and systems they have in place to ensure that pollution does not negatively impact on the right to health of workers and members of surrounding communities.

## Case studies

### Pharmaceutical sector, Drug development issues for neglected diseases

#### Singapore

As part of Swiss pharmaceutical company Novartis's efforts to improve access to medicines in the developing world, the company established a public/private partnership in 2002 with the Singapore Economic Development Board Biomedical Sciences Group to set up the Novartis Institute for Tropical Diseases (NITD).

The World Health Organization (WHO) has shown that the incidence of dengue fever, tuberculosis (TB) and malaria is accelerating, especially in developing countries, and that there is an urgent need for new medicines to help combat these diseases. There were more than 48,000 new reported cases of dengue fever in Indonesia alone during 2005, resulting in 650 deaths, while some 2.5 billion people worldwide were estimated to be at risk from the disease. About 2 million people die every year from TB. Due in part to a lack of research into new treatments over many years, some estimates suggest that close to 80% of TB cases now involve antibiotic-resistant strains that medical science is struggling to tackle. Malaria meanwhile infects about 300 to 650 million people each year, and kills 1 to 3 million people a year worldwide.

#### Web-based sources:

<http://www.nitd.novartis.com>

[http://www.corporatecitizenship.novartis.com/news/2007-01-25\\_nitd.shtml](http://www.corporatecitizenship.novartis.com/news/2007-01-25_nitd.shtml)

<http://www.medicalnewstoday.com/articles/10314.php>

The NITD is an institute dedicated to the research and development of drugs to combat neglected diseases, such as dengue fever, malaria and TB. Chair of the Board of the NITD, Paul Herrling, believes that the company's investment in the field of tropical diseases is "an exception in an industry that has traditionally neglected illnesses seen as endemic in the developing world". NITD actively works on vaccines for dengue fever and new small-molecule drugs for TB to replace treatments that are often over 30 years old. In 2006 NITD also began to focus on new treatments for malaria.

In January 2007 NITD announced the opening of a new clinical research initiative in Indonesia to further expand the capabilities of the Singapore-based institute to conduct translational research for TB, dengue fever and malaria. The new collaboration involves the NITD, the Eijkman Institute in Jakarta, and the Hasanuddin University Clinical Research Institute in Makassar and is officially titled: NEHCRI (the NITD – Eijkman Institute – Hasanuddin University Clinical Research Initiative).

### Beverage sector, HIV/AIDS education and treatment issues

#### Africa

The Coca-Cola Company in Africa provides comprehensive medical coverage to its employees and their dependants, and has developed a workplace programme focused on prevention of HIV/AIDS. It provides information and education, training for managers, employee support, voluntary testing, counselling and care. Since 2002, the company has been working with its African bottling partners to provide a comprehensive HIV/AIDS prevention and treatment programme for the estimated 60,000 employees and their dependants that work for the firm's 40 independent African bottlers.

#### Web-based sources:

<http://www.un.org/unfip/YCompendiaGoal6.htm>

[http://www.thecoca-colacompany.com/citizenship/hiv\\_aids.html](http://www.thecoca-colacompany.com/citizenship/hiv_aids.html)

<http://businessfightsaids.org/documents/media/publications/Coke%20HIV%20Report%202006.pdf>

The Coca-Cola Africa Foundation (TCCAF) entered into a partnership in 2001 with UNAIDS. This partnership was specifically designed to leverage The Coca-Cola Company's business systems, including local resources and marketing expertise. In particular, TCCAF has used the firm's extensive distribution network to help educate people about HIV/AIDS and distribute information to raise awareness across the continent.



## Fast-food sector, Health and obesity issues

### Worldwide

According to 2005 World Health Organization statistics, 1.6 billion people worldwide are now classified as overweight, of which 400 million are said to be obese. The problem of obesity is now so severe that some argue it is one of the biggest health problems in the world, which increasingly affects both developed and developing countries. While consumer and parental responsibility play a part in the epidemic, the fast-food sector has come under scrutiny in the context of this 'right to health' challenge for its perceived role in contributing to obesity.

The International Association for the Study of Obesity (IASO) has argued that changes to diet and exercise are not enough to combat the obesity epidemic. IASO President Professor Claude Bouchard believes that junk food is at the core of the problem, and has said, "We should ban advertising of junk foods and non-nutritious foods aimed at children."

Concerns have also been raised about the use of trans-fat to enhance flavour in fast (and other) foods, which, it is argued, pose more severe health risks than ordinary saturated fat. For example, in 2003 McDonald's faced a legal challenge in San Francisco by NGO BanTransFat.org over the company's alleged failure to alert customers about operational challenges that had prevented it from implementing an earlier voluntary commitment to change its cooking oil to

one containing less trans-fat. McDonald's did not admit liability, but settled the suit in 2005, agreeing to pay USD 7 million to the American Heart Foundation for educational projects on trans-fat, and to pay USD 1.5 million to notify the public of "the status of its trans-fat initiative".<sup>150</sup> According to BanTransFat.org, "the settlement should focus media attention on the issue of partially hydrogenated cooking oils used in many restaurants, not just McDonald's".

A number of fast-food restaurants have responded to growing public interest in health, diet and obesity issues by establishing lines of healthy foods, including salads, fruit and fruit-based products and publishing nutritional information. McDonald's has taken steps to ensure that nutritional labelling is on all its foods and has changed the nutritional content of many longstanding recipes. For example, the sugar content of McDonald's hamburger buns has been halved. In early 2007, McDonald's Australia had nine meals approved by the Heart Foundation, which only 'ticks' meals if they satisfy strict criteria regarding fat content, salt and, where appropriate, fibre and kilojoules. In April 2007, Kentucky Fried Chicken also introduced a new chicken recipe free of trans-fat.

<sup>150</sup> A further USD 7,500 was reportedly paid both to BanTransFat.org and to the plaintiff, Kathrine Fettke.

#### Web-based sources:

- <http://abc.net.au/news/items/200609/1731948.htm?sydney>
- <http://www.who.int/mediacentre/factsheets/fs311/en/index.html>
- <http://www.iaso.org>
- <http://www.nhsdirect.nhs.uk/articles/article.aspx?articleId=265&sectionId=34>
- <http://www.bantransfat.org>
- <http://virtualcancercentre.com/news.asp?artid=5665>
- <http://www.kfc.com/nutrition/default.asp>
- <http://www.burgerking.co.uk/nutrition/updating.aspx>
- [http://www.mcdonalds.com/usa/eat/nutrition\\_info.html](http://www.mcdonalds.com/usa/eat/nutrition_info.html)
- <http://www.mcdonalds.com/corp/values/balance.html>
- [http://www.heartfoundation.org.au/document/NHF/Tick\\_MediaRelease\\_Foodservice\\_2007-02-05b.pdf](http://www.heartfoundation.org.au/document/NHF/Tick_MediaRelease_Foodservice_2007-02-05b.pdf)

**Pharmaceutical sector, Access to medicines and health care****Worldwide**

Pharmaceutical companies typically patent new medicines to recoup their research and development investments. New medicines are, however, often expensive for patients, particularly in circumstances where public pharmaceutical benefit schemes do not exist or where private health insurance is unavailable. This poses challenges in relation to people's access to medicines and raises questions over the appropriate allocation of responsibility for the health care of poor people in developed and developing countries.

At the start of the millennium, campaigns by NGOs, such as Oxfam and Médecins Sans Frontières (MSF), put pressure on pharmaceutical companies holding patents for antiretroviral drugs that combat HIV/AIDS. It was alleged that strict enforcement of patent laws led to pricing levels that limited the access to essential drugs for millions of people living with HIV/AIDS in developing countries. The underlying premise has since been disputed by some experts, who argue that only 1.4% of the WHO's essential-drug list is patented in the world's poorest 65 countries. Even so, in April 2001, a number of pharmaceutical companies dropped a high-profile constitutional case in South Africa that challenged legislation that was likely to constrain patent rights. These events highlight several unresolved questions, including whether the greater good would be served by eroding the present patent system (which could potentially adversely affect incentives to discover and develop new drugs in the medium to long term), in exchange for alleviation of people's suffering in the short term through lower prices for medicines currently available.

Several major pharmaceutical companies have responded to the access to medicines challenge by, among other things, easing access to drugs that help

fight HIV/AIDS and related infections. Pfizer, for example, launched the Diflucan Partnership Programme (2000) initially in South Africa and later in a further 59 countries. Under the partnership with governments and NGOs, Pfizer has donated Diflucan (which treats certain opportunistic infections associated with HIV/AIDS) and trained more than 20,000 health professionals in the diagnosis and treatment of fungal opportunistic infections.

Amidst ongoing debate over the effects of patents, research priorities, tiered pricing models and the extent to which lower prices would ensure health care for people living in the world's poorest or remotest regions, research-based pharmaceutical companies continue to face criticism over alleged efforts to stave off generic competition to their patented medicines. Some NGOs argue that generic competition helps to ensure long-term lower prices for essential medicines and is a more sustainable solution to drug availability than drug donations. In 2007, Novartis came under pressure from MSF and Oxfam to drop a case against India following the Indian government's decision to reject a patent on Novartis's cancer drug, Gleevec/Glivec.<sup>151</sup> The campaign arose even though, according to Novartis, 99% of Indian patients can receive Gleevec at no cost due to Novartis's donations of the drug.<sup>152</sup>

<sup>151</sup> The patent application was rejected after the Indian authorities determined that the drug was not sufficiently novel to warrant a patent under Indian law.

<sup>152</sup> In the case, Novartis challenged the legality of parts of India's patent law. Ultimately, Novartis's challenge was rejected by the High Court in Chennai on 6 August 2007, see Amelia Gentleman, "Setback for Novartis in India over drug patent", *The New York Times*, 7 August 2007. An appeal against the actual rejection of the patent to the Intellectual Property Appeal Board in Delhi remains pending.

**Web-based sources:**

<http://www.accessmed-msf.org/main/access-patents/>

[http://www.maketrade-fair.com/en/index.php?file=a2m\\_main.html&cat=2&subcat=4&select=1](http://www.maketrade-fair.com/en/index.php?file=a2m_main.html&cat=2&subcat=4&select=1)

<http://www.nationalreview.com/script/printpage.p?ref=/comment/bate200405171342.asp>

[http://www.pfizer.com/responsibility/global\\_health/diflucan\\_partnership\\_program.jsp](http://www.pfizer.com/responsibility/global_health/diflucan_partnership_program.jsp)

<http://www.novartis.com/newsroom/india-glivec-patent-case/faq.shtml#6>

<http://www.business-humanrights.org/Documents/Oxfamresponses>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes into account the right to health. Apply the policy globally.
- Ensure that the company's policy complies with national and international health and safety regulation (whichever provides the highest level of protection) to prevent accidents and exposure to toxins, communicable diseases and other health hazards. Be guided by the International Finance Corporation's Performance Standards on Community Health, Safety and Security.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents, security providers and other sub-contractors, the importance the company places on respecting the right to health and encourage them to develop a similar standard and take responsible action.
- *For pharmaceutical companies*, invest in and support research and development in diseases that are prevalent in developing countries.
- *For pharmaceutical companies*, explore sustainable ways, including partnerships with other stakeholders and other mechanisms, for supplying medicines at affordable rates in contexts of extreme poverty. Do not challenge or attempt to thwart the introduction of generic competition after the expiry of a patent, or challenge compulsory licences for essential medicines issued by States in accordance with the relevant international rules in cases of public health emergencies.

### Specific actions:

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring it identifies risks related to the right to health. Act on the findings.
- For products that pose a risk to human health, comply with national regulation or international best practice to provide them with appropriate health warnings. Ensure that such information is available in an appropriate language.
- Establish mechanisms to ensure the responsible advertising of products that have the potential to harm human health, paying particular attention to potential adverse impacts on minors and other vulnerable members of society.
- Partner with government and civil-society organisations to help combat the spread of disease. In some contexts companies can make their distribution and communication networks available to further community education and aid the distribution of medicines to remote areas.
- In contexts where there is no or little public health provision, consider working to build the capacity of local government, and include local government in efforts to provide access to HIV testing and medical treatment for employees and their dependants, such as vaccines, anti-malarials or anti-retroviral medicines. HIV testing should be confidential, conducted with the consent of participants and with no discrimination ensuing from the results.
- Provide or support health education programmes in the workplace or local communities for awareness raising and disease prevention. Consider contributing vital but inexpensive items such as condoms and mosquito nets.



# ARTICLES 13 AND 14: RIGHT TO EDUCATION

## The Right

The aim of the right to education is “the full development of the human personality and sense of dignity”. Articles 13 and 14 guarantee all children the right to free and compulsory primary education. The right also requires progressive steps from governments aimed at the provision of secondary and higher education, including the provision of ‘fundamental’ education for those who could not complete primary education. The right to education also includes the right of equal access to education and equal enjoyment of education facilities, the freedom of parents and children to choose the type of education the children receive, and the freedom to establish educational institutions (subject to minimum educational standards). Educational facilities should be available, accessible, culturally and ethically acceptable, and flexible so as to be able to adapt to society’s changing needs. For example, education should where possible adapt or at least acknowledge changing technologies, such as the modern importance of information technologies.

**Related right:**

ICCPR Article 24 (Rights of protection for the child), page 69

Companies have a vested interest in promoting the right to education for the development of skilled workforces. Companies may impact on the right to education where child labourers are directly employed or operate in their supply chains in a way that prevents those children from attending school. This right is also relevant in the context of any commitments made by a company to provide education to the children of workers or others in the local community. Companies that organise or provide such education should respect equality of access to education. Companies may also impact on the enjoyment of the right if, for example, their involvement with heavy construction or infrastructure projects limits access to nearby schools or results in damage to, or the destruction of, educational facilities.

## Case studies

### Home-furnishing sector, Child education issues and UN partnership

#### India

Swedish home furnishing company IKEA sources traditional carpets from India. In 1996, the International Labour Organization (ILO) reported that extensive numbers of children were involved as child labourers in the Indian carpet industry and were thus being denied their right to education. IKEA has been working with UNICEF to address this problem.

According to UNICEF, over 20% of India's working children are from the region of Uttar Pradesh, many of whom work within the carpet industry. Child labourers, who often support parents by helping to hand-knot carpets in the home, suffer educational setbacks when they work at times that they should be in school.

Since 2000, in partnership with UNICEF, IKEA has been helping to address the problem through funding education programmes to tackle the root causes of child labour. The joint initiative covers around 650 villages in Uttar Pradesh and has involved setting up over 200 Alternative Learning Centres. The centres are located in areas that do not have a nearby school and aim to help children complete primary education at an accelerated rate and prepare them for re-entry into the mainstream

#### Web-based sources:

<http://www.ilo.org/public/english/comp/child/papers/carpet/>  
[http://www.unicef.org/india/child\\_protection\\_274.htm](http://www.unicef.org/india/child_protection_274.htm)  
[http://www.unicef.org.uk/publications/clrg/pdf/execsummary\\_c.pdf](http://www.unicef.org.uk/publications/clrg/pdf/execsummary_c.pdf)  
<http://sca.savethechildren.se/en/sca/Publications/Childrens-rights/>  
<http://www.ikea-group.ikea.com/?ID=708>

education system. The project also works to address the high dropout rates at formal schools.

Though not an alternative to eradicating the risk of child labour in IKEA's supply chain, this project attempts to address some of the root causes of child labour, as well as the associated loss of educational opportunities. In setting up 429 thrift-credit self-help groups, the scheme has enabled nearly 6,000 women and their families to break out of a vicious circle of debt. This both liberates families from the exploitative interest rates of local money-lenders and reduces their dependence on child incomes and thus the need for children to be put to work.

In its 2007 publication *Corporate Social Responsibility and Child Rights in South Asia*, NGO Save the Children noted of IKEA that in addition to the UNICEF programme outlined above:

*"IKEA has a very well developed Code of Conduct on child labour and ... it not only subscribes to the UN Convention [on the Rights of the Child], but also ensures that its suppliers too subscribe to the same. It also very prominently mentions that all actions to avoid child labour shall be implemented taking into account the best interest of the child."*

**Coffee retail sector, Child education issues**

**Guatemala**

US-based coffee retailer Starbucks sources coffee from areas in Guatemala where 90% of the population in the surrounding area is indigenous Maya. The Maya have long experienced high rates of poverty and low levels of educational attainment, with many children dropping out of schooling early due to the unfamiliar education environment and language. This case highlights efforts by a company to promote the right to education of underprivileged Mayan children.

In 2005, Starbucks entered into a partnership with the NGO, Save the Children. Starbucks has pledged USD 1.5 million over four years to a programme designed to provide bilingual and bicultural education to children in coffee-growing communities in three Guatemalan highland provinces. The sites were chosen in co-ordination with the Guatemalan Ministry of

Education and were chosen according to criteria based on high levels of need (as defined by the World Bank); community commitment and interest in the programme; low pre-school, primary and secondary enrolment/attendance. The programmes are targeted at children whose family livelihoods depend primarily on coffee production.

The scheme extends to 20 pre-primary centres, 20 primary schools and over 3,000 secondary school students through a rural distance-learning programme. Particular emphasis is placed upon girls' education and on bilingual intercultural instruction. It is hoped that thousands of Mayan children will benefit from curricula that are culturally appropriate.

**Web-based sources:**

<http://www.savethechildren.org/corporate/partners/starbucks.html>

<http://www.starbucks.com/aboutus/csr.asp>



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to education, as well as provisions against the use of child labour (see also Article 10 ICESCR and Article 24 ICCPR). Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting the right to education and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any potential impacts on the right to education. Act on the findings.
- Ensure that working hours comply with national or international laws and that the hours worked by parents do not interfere with their children's education, for example, by preventing the children getting to and from school, or by creating situations where older children have to stay at home to care for younger siblings.

### Specific actions:

- If any children are found to work for the company or within its supply chain, play a role in facilitating their education while phasing out the child labour in a responsible manner.
- Ensure that company activities do not limit access to educational facilities. For example, heavy construction, infrastructure or other projects that cause significant physical disruption have the potential to limit community access to education facilities. In such cases, take steps to guarantee alternative means of accessing schools and education facilities.
- Where public education provision is limited, collaborate with the relevant authorities to explore ways in which the company may be able to support sustainable educational projects.



# ARTICLE 15: RIGHTS TO TAKE PART IN CULTURAL LIFE, TO BENEFIT FROM SCIENTIFIC PROGRESS, AND OF THE MATERIAL AND MORAL RIGHTS OF AUTHORS AND INVENTORS

## The Right

Article 15 guarantees the right to take part in the cultural life of society. It also guarantees the rights of all to enjoy the benefits of scientific progress; its application is designed to ensure that everyone in society can enjoy technological advances, in particular disadvantaged groups. That right includes the right of everyone to seek and receive information about new scientific advancements and to have access to any developments that could enhance their quality of life. Finally, Article 15 guarantees a person protection of the moral<sup>153</sup> and material interests resulting from any scientific, literary or artistic production of which he or she is the author. These rights belong to human authors and inventors, rather than corporations, and are not the same as “intellectual property rights” as embodied in international trade agreements.<sup>154</sup> The right can be fulfilled in a variety of ways, such as the conferral of a monopoly right of exploitation of the relevant product for a limited period of time, or the grant of a one-off payment. These rights must be balanced against legitimate public interests, and other human rights.

This right is of relevance to indigenous peoples as it extends to their rights to preserve, protect and develop indigenous and traditional knowledge systems and cultural expressions. Governments should take steps to secure the fulfilment of the right, including actions necessary for the conservation, development and dissemination of science

<sup>153</sup> Moral rights are infringed by the unauthorized distortion or destruction of relevant products in such a way as to harm the honour and reputation of the author or inventor.

<sup>154</sup> See Committee on Economic, Social and Cultural Rights, General Comment 17 on Article 15(1)(c), “The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author”, E/C.12/GC/17, 12 January 2006, paras 2–3.

### Related right:

ICCPR Article 27 (Rights of minorities), page 81

and culture. Governments should also ensure respect for the right to conduct scientific research and engage in creative activity. The benefits of international contacts and co-operation in the scientific and cultural fields should be recognised and encouraged.

Company activities may influence this right, positively or negatively, through all fields of scientific research and development. It is argued that respect for intellectual property rights is needed to create the incentive for corporations to conduct research and development, which itself generates innovations and inventions that benefit society. However, some argue that the acquisition and exercise of strong intellectual property rights restricts the enjoyment of some Article 15 rights, notably the right to enjoy the benefits of scientific progress. Companies can positively impact this right by sharing the benefits of scientific advances, including in the area of information technology and medicine.

‘Biopiracy’ describes a phenomenon whereby traditional indigenous knowledge concerning the nutritional or medicinal use of crops and plants, or natural genetic resources, is appropriated and commercialised by another party without acknowledgement or compensation. Where such knowledge or material is patented, there is a risk that the original ‘discoverers’ may not only have to pay for the product, but may also be denied profits from its sale or export, thereby affecting their right to cultural life and to benefit from scientific discovery. Companies can impact detrimentally on these rights if they are involved in biopiracy.

## Case studies

### Food industry, Patent issues and the rights to benefit from scientific discovery

#### India and Pakistan

In 1997, Texas-based company RiceTec faced allegations of 'biopiracy' when the US Patent Office granted the company a patent for 'Basmati Rice Lines and Grains'. The patent decision led to protests in South Asia and a campaign orchestrated by India's Research Foundation for Science, Technology and Ecology that was supported by a coalition of 90 civil-society organisations, including ActionAid and the Berne Declaration.

Basmati rice has been in the public domain for many generations and is a source of food and income for farmers in India and Pakistan, including through export as a regional speciality product. According to Dr Vandana Shiva, "Years of research and development by Indian and Pakistani farmers have resulted in a diverse range of Basmati with superior qualities that are the direct result of the farmers' innovation." Dr Shiva has also noted that Basmati rice is referred to in ancient texts, poetry and folklore. In 2000, the Indian government protested the issue at the World Trade Organisation. Indian export authorities also challenged the US Patent Office's 1997 RiceTec patent, fearing the impact on its specialty, climate-specific export.

#### Web-based sources:

<http://www.hindu.com/biz/2006/06/19/stories/2006061900601800.htm>  
<http://bulletin.sciencebusiness.net/ebulletins/showissue.php3?page=/548/art/7926/>  
<http://www.bernedeclaration.ch/en/p25000429.html>  
<http://www.patagonia.com/web/eu/patagonia.go?assetid=9108>  
<http://www.thehindubusinessline.com/businessline/2001/08/22/stories/142220s7.htm>  
[http://news.bbc.co.uk/2/hi/south\\_asia/1033723.stm](http://news.bbc.co.uk/2/hi/south_asia/1033723.stm)  
<http://www.ricetec.com>

RiceTec strongly denied all allegations that its patent threatened the Indian rice industry or its exports, stating that its product is "comparable to basmati but different". RiceTec nevertheless voluntarily withdrew most of its patent claims, and in 2001, the US Patent Office changed the title of the patent on the remaining patent claims to Rice Lines Bas867, RT 1117 and RT1121, strains of rice that do not impinge on India's exports. RiceTec has since re-branded its rice as 'Texmati', 'Jasmati', and 'Kasmati'.

In 2006, the governments of India and Pakistan, with the backing of both countries' exporter associations, formed a joint study group to explore a joint registration of Basmati rice as a geographical indication. Geographical indication identifies a good whose quality, reputation and other characteristics are attributable to its geographic origin and is used, for example, to protect the heritage of scotch whisky (Scotland) and champagne (France).

### Retail sector, Construction and protection of cultural rights issues

#### Mexico

This case study demonstrates the conflicting pressures companies may face between development objectives and respect for cultural rights.

A decision by Wal-Mart to locate a new store in San Juan Teotihuacán, Mexico, prompted local protests, due to the store's proximity to the culturally significant Teotihuacán pyramids and fears that it would erode the local way of life. The pyramids are a sacred site, as well as a national tourist attraction. Protesters argued that the store's presence would destroy the spirituality of the place, thereby, some would say, infringing local people's cultural rights.

Wal-Mart is Mexico's largest retailer, as well as the country's largest private sector employer, with over 100,000 people on its payroll. In this context many local people welcomed the arrival of a Wal-Mart superstore in San Juan Teotihuacán for the jobs and the convenient shopping it would bring. Wal-Mart is reported to have solicited Mexico's National Institute for Anthropology and History (INAH) for permission to begin construction of the store 2.5 kilometres from the Pyramid of the Sun itself, but within a so-called buffer or ceremonial zone. In May 2004, the INAH granted permission for the construction, so long as the project complied with the federal law covering monuments and historic, artistic and archaeological zones. It was also reported that the United Nations and the Paris-

based International Council on Monuments and Sites had accepted the project.

In constructing the store, Wal-Mart is said to have responded to local sensitivities by using subdued colours and culturally sensitive designs for the store's façade and reducing the height of its signage. The store, which opened in 2004, is located at the edge of the town in a commercial district, among many other businesses, and is not directly visible from the pyramids.

**Web-based sources:**

- <http://www.latinamericanstudies.org/teotihuacan/retailer.htm>
- <http://www.organicconsumers.org/btc/pyramic082605.cfm>
- <http://news.bbc.co.uk/2/hi/business/3986729.stm>
- <http://humanitieslab.stanford.edu/teotihuacan/1362?view=print>
- <http://walmartstores.com/Sustainability/>

Nevertheless, it was reported in 2005 that Mexico's Human Rights Commission found that the local government's decision to allow construction of the store had violated various cultural protections in Mexico's constitution. Opponents, including a coalition of local residents and small shopkeepers, have also extended their protest to other indigenous sites in which Wal-Mart is said to be interested.

**Information technology sector, Scientific advancement benefit issues**

**Worldwide**

In 2005 at the World Economic Forum in Davos, Switzerland, Nicholas Negroponte, the founder and director of the Massachusetts Institute of Technology (MIT) Media Laboratory, launched the '\$100 laptop' initiative. The initiative aims to develop and market a low-cost, education-focused laptop and make new information technology advances available to the poorest children of the world

The so-called '\$100 laptop' is being developed by One Laptop per Child (OLPC), a US non-profit organisation created by Negroponte and faculty members from the MIT Media Lab. The project's corporate sponsors include Advanced Micro Devices (AMD), Brightstar (a distributor), Google, News Corporation, and the Taiwanese company Quanta Computer Inc., which builds the laptop. OLPC works according to five core principles: child ownership, low ages (it is geared primarily at children between 6 and 12 years), saturation, connection (via wireless networks), and free and open source.

The XO laptop, as it is now officially called, has been designed to be durable and simple to use. It is waterproof

**Web-based sources:**

- <http://laptop.org>
- <http://laptop.media.mit.edu/faq.html>
- [http://wiki.laptop.org/go/Core\\_principles/lang-en](http://wiki.laptop.org/go/Core_principles/lang-en)
- <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/technology/6994957.stm>
- [http://money.cnn.com/2008/01/04/technology/kirkpatrick\\_negroponte.fortune/?postversion=2008010416](http://money.cnn.com/2008/01/04/technology/kirkpatrick_negroponte.fortune/?postversion=2008010416)

and also has a sunlight-readable display enabling it to be used outside. In particular the XO can be powered by solar power, mechanically via a foot-pump, or charged by using special 'gangs of chargers' making it usable in remote areas and places where the electricity infrastructure is limited. The XO uses open-source Linux software and a low-power chip.

According to Nicholas Negroponte, in January 2008 162,000 XOs were sold in the US in the preceding two months under an initiative called 'Give One Get One,' whereby US residents were able to buy two of the laptops, with one being donated to children in developing countries. The scheme is said to have raised USD 35 million, to be used to speed the deployment of the machines to developing countries. Demand is reported to be highest in Latin America, but the BBC reports that the first countries to receive donated laptops will be Cambodia, Afghanistan, Rwanda and Haiti. Negroponte says that OLPC hopes to manufacture 2-3 million units in 2008, currently available at USD 188 each (although USD 100 remains the target unit price).

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the rights to culture, to benefit from scientific progress, and of authors and inventors to respect for their moral rights and material interests. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting cultural rights, the right to benefit from scientific progress, and the rights of authors and inventors to respect for their moral rights and material interests; encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring it identifies areas of particular cultural or scientific significance that might be enhanced or put at risk by the company's operations. Act on the findings.
- Where a company is financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Cultural Heritage and other national and international requirements with respect to construction on culturally or historically significant sites (other companies may also wish to consider these standards). Be responsive to cultural sensitivities when siting company installations, resource extraction activities, routing pipelines or infrastructure networks.

- Become familiar with the UN Declaration on the Rights of Indigenous Peoples and be guided by its provisions in interactions with indigenous peoples.<sup>155</sup>
- Consult in good faith with the relevant communities through their own representative institutions prior to launching any activity that affects people's cultural rights or the right to benefit from scientific progress, with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation and providing full information on the impact and benefits, and any compensation on offer, including in the local language concerned.
- Ensure that proceeds from any scientific discovery derived from the knowledge or property of indigenous peoples or distinct groups are fairly distributed and that any compensation/royalties that may be due are equitably divided and paid.
- Engage with local stakeholders to determine any cultural sensitivities in the ways the company does business, and attempt to adapt accordingly.

### Specific actions:

- Consider ways of making the fruits of technology, scientific endeavour and discovery available to as wide a market as possible, including inventive ways of allowing potential consumers and stakeholders in developing countries to share in the benefits, for example of the IT revolution and recent advances in medicines.
- Explore ways of promoting cultural and artistic expression, particularly in contexts where government support for the arts is not a priority.

<sup>155</sup> Mining companies may also wish to consult *Mining and Indigenous Peoples Issues Review*, published by the International Council on Mining and Metals, see Further Resources, page 142.



## FURTHER RESOURCES



## General reading – business and human rights

- Amnesty International UK and International Business Leaders Forum**, *Human Rights – Is It Any of Your Business?*, 2000.  
<http://shop.iblf.org/DisplayDetail.aspx?which=18>
- British Petroleum (BP)**, *Human Rights: A Guidance Note*, 2006.  
[http://www.bp.com/liveassets/bp\\_internet/globalbp/STAGING/global\\_assets/downloads/H/Human\\_rights\\_guidance.pdf](http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/H/Human_rights_guidance.pdf)
- Business Leaders Initiative on Human Rights, UN Global Compact and the Office of the United Nations High Commissioner for Human Rights**, *A Guide for Integrating Human Rights into Business Management*, 2005. <http://www.blihr.org/Reports/GIHRBM.pdf>
- Business Leaders Initiative on Human Rights, International Business Leaders Forum, UN Global Compact and the Office of the United Nations High Commissioner for Human Rights**, *A Human Rights Management Framework*, 2007.  
[http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/A307HRF-E-PosterA2-130607.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/A307HRF-E-PosterA2-130607.pdf)
- Clapham, Andrew**, *Human Rights Obligations of Non-State Actors* (Oxford University Press), 2006
- Confederation of Norwegian Business and Industry (NHO)**, *Human Rights from the Perspective of Business and Industry – A Checklist*, 2001.  
[http://www.nho.no/files/5095checklist\\_human\\_rights.pdf](http://www.nho.no/files/5095checklist_human_rights.pdf)
- Danish Institute for Human Rights**, *Defining the Scope of Business Responsibility for Human Rights Abroad*, 2001.  
[http://www.humanrightsbusiness.org/pdf\\_files/Defining%20the%20Scope%20of%20Business%20Responsibility%20.pdf](http://www.humanrightsbusiness.org/pdf_files/Defining%20the%20Scope%20of%20Business%20Responsibility%20.pdf)
- De Schutter, Olivier (ed)**, *Transnational Corporations and Human Rights* (Hart), 2006
- Dine, Janet**, *Companies, International Trade and Human Rights* (Cambridge University Press), 2005
- Frynas, Jędrzej George and Scott Pegg (eds)**, *Transnational Corporations and Human Rights* (Palgrave Macmillan), 2004
- International Business Leaders Forum**, *Human Rights: It is Your Business – A Case for Corporate Engagement*, 2005.  
<http://www.iblf.org/docs/ItsYrBusiness.pdf>
- International Council on Human Rights Policy**, *Beyond Voluntarism: Human Rights and the Developing International Obligations of Legal Companies*, 2002. <http://www.ichrp.org/en/projects/107?theme=10>
- Joseph, Sarah**, *Corporations and Transnational Human Rights Litigation* (Hart), 2004
- Likosky, Michael**, *Law, Infrastructure, and Human Rights* (Cambridge University Press), 2006
- Muchlinski, Peter**, *Multinational Enterprises and the Law* (Oxford University Press), 2007
- Novartis Foundation for Sustainable Development and International Business Leaders Forum**, *Human Rights and the Private Sector: International Symposium Report (2003)*, 2004.  
<http://www.iblf.org/docs/HumanrightsNovartis.pdf> or <http://www.novartisfoundation.org/platform/apps/Publication/getfmfile.asp?id=615&el=1432&se=311924963&doc=127&dse=2>
- Ruggie, John G.**, Special Representative of the UN Secretary-General on Business & Human Rights – reports and other documents (2005–present).  
<http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>
- Royal Dutch Shell**, *Business and Human Rights. A Management Primer*, 1998.  
[http://www-static.shell.com/static/responsible\\_energy/downloads/management\\_primers/business\\_and\\_human\\_rights\\_primer.pdf](http://www-static.shell.com/static/responsible_energy/downloads/management_primers/business_and_human_rights_primer.pdf)
- UN Global Compact and Office of the United Nations High Commissioner for Human Rights**, *Embedding Human Rights in Business Practice*, 2004. [http://www.unglobalcompact.org/opencms/docs/issues\\_doc/human\\_rights/embedding.pdf](http://www.unglobalcompact.org/opencms/docs/issues_doc/human_rights/embedding.pdf)
- UN Global Compact and Office of the United Nations High Commissioner for Human Rights**, *Embedding Human Rights in Business Practice II*, 2008. [http://www.unglobalcompact.org/docs/news\\_events/8.1/EHRBPII\\_Final.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/EHRBPII_Final.pdf)
- Zerk, Jennifer A.**, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press), 2006



## Thematic reading

### Conflict contexts and security arrangements

**International Alert**, *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*, 2005.  
<http://www.international-alert.org/publications/234.php>

**International Business Leaders Forum, International Alert & Council on Economic Priorities**, *The Business of Peace. The Private Sector as a Partner in Conflict Prevention and Resolution*, 2000. <http://www.iblf.org/docs/BusinessofPeace.pdf>

**International Organisation of Employers, the International Chamber of Commerce, and the Business and Industry Advisory Committee to the OECD**, *The Role of Business in Weak Governance Zones*, December 2006.  
[http://www.ioe-emp.org/fileadmin/user\\_upload/documents\\_pdf/policy\\_area/csr/csr\\_eng\\_governancezones.pdf](http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/policy_area/csr/csr_eng_governancezones.pdf)

**UN Global Compact**, *Global Compact Business Guide for Conflict Impact Assessment and Resource Management*, 2002.  
[http://www.unglobalcompact.org/docs/issues\\_doc/7.2.3/BusinessGuide.pdf](http://www.unglobalcompact.org/docs/issues_doc/7.2.3/BusinessGuide.pdf)

### Corruption

**Business Anti-corruption Portal**, <http://www.business-anti-corruption.com>

**Extractive Industries Transparency Initiative**, *Source Book*, 2005. <http://eitransparency.org/document/sourcebook>

**International Business Leaders Forum, Transparency International and the UN Global Compact**, *Business against Corruption, A Framework for Action – Implementation of the 10th Principle*, 2005. <http://www.iblf.org/resources/general.jsp?id=123703>

**International Chamber of Commerce**, *Fighting Corruption – A Corporate Practice Manual*, 2003.  
<http://www.iccbooks.com/Product/ProductInfo.aspx?id=235&cid=82>

**UN Global Compact recommended tools**  
[http://www.unglobalcompact.org/Issues/transparency\\_anticorruption/recommended\\_tools.html](http://www.unglobalcompact.org/Issues/transparency_anticorruption/recommended_tools.html) including:

- Transparency International, *Business Principles for Countering Bribery – SME Edition*, 2008.  
[http://www.transparency.org/global\\_priorities/private\\_sector/business\\_principles](http://www.transparency.org/global_priorities/private_sector/business_principles)
- UN Global Compact, *Business against Corruption – Case Stories and Examples*, 2006.  
[http://www.unglobalcompact.org/docs/issues\\_doc/7.7/BACbookFINAL.pdf](http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbookFINAL.pdf)

### Health, medicines

**Hunt, Paul** (United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), *Human Rights Guidelines for Pharmaceutical Companies in Relation to Access to Medicines: Draft for Consultation*, 2007.  
<http://www2.ohchr.org/english/issues/health/right/docs/draftguid150508.doc>

**Leisinger, Klaus M.**, *Corporate Responsibilities for Access to Medicines*, 2008.  
[http://www.corporatecitizenship.novartis.com/downloads/patients/access-medicines/klaus\\_access.pdf](http://www.corporatecitizenship.novartis.com/downloads/patients/access-medicines/klaus_access.pdf)

**Save the Children, VSO and Oxfam**, *Beyond Philanthropy: The Pharmaceutical Industry, Corporate Responsibility and the Developing World*, 2002.  
[http://www.oxfam.org.uk/what\\_we\\_do/issues/health/downloads/beyondphilanthropy.pdf](http://www.oxfam.org.uk/what_we_do/issues/health/downloads/beyondphilanthropy.pdf)

**World Health Organization**, *25 Questions and Answers on Health and Human Rights* (Health and Human Rights Publication Series, Issue No. 1), 2002. [http://www.soros.org/initiatives/health/focus/lhrd/articles\\_publications/publications/questions\\_20020701/25\\_questions.pdf](http://www.soros.org/initiatives/health/focus/lhrd/articles_publications/publications/questions_20020701/25_questions.pdf)

### Indigenous people, land rights and resettlement

**International Council on Mining and Metals**, Render, Jo, *Mining and Indigenous Peoples Issues Review*, 2005.  
<http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review>

**International Finance Corporation**, *Handbook for Preparing a Resettlement Action Plan*, 2002.  
[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_resettle/\\$FILE/ResettlementHandbook.PDF](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_resettle/$FILE/ResettlementHandbook.PDF)

Human Rights Translated: A Business Reference Guide



### Internet freedom and privacy

**Amnesty International UK**, *Undermining Freedom of Expression in China: The Role of Yahoo!, Microsoft and Google*, 2006.  
<http://www.reports-and-materials.org/Amnesty-UK-report-Internet-cos-China-Jul-2006.pdf>

**Human Rights Watch**, *Race to the Bottom: Corporate Complicity in Chinese Internet Censorship*, 2006.  
<http://www.hrw.org/reports/2006/china0806/>

## Tools for managing human rights issues

### Country information

**Listings of the States that have ratified the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights** can be found at: <http://www2.ohchr.org/english/bodies/ratification/4.htm>, and <http://www2.ohchr.org/english/bodies/ratification/3.htm>

**Amnesty International UK and International Business Leaders Forum**, *Business & Human Rights: A Geography of Corporate Risk*, 2002.  
<http://www.iblf.org/resources/general.jsp?id=69>

**Danish Institute for Human Rights, Country Risk Assessment Reports**. [http://www.humanrightsbusiness.org/070\\_country\\_risk.htm](http://www.humanrightsbusiness.org/070_country_risk.htm)

**Jungk, Margaret**, *Deciding whether to do Business in States with Bad Governments*, 2001.  
[http://www.humanrightsbusiness.org/pdf\\_files/decidingwhether.pdf](http://www.humanrightsbusiness.org/pdf_files/decidingwhether.pdf)

**Key Indicators of the Labour Market (KILM)**. An ILO database providing country data on 20 key indicators of the labour market.  
<http://www.ilo.org/public/english/employment/strat/kilm/>

**Maplecroft**. *Maplecroft Human Rights Risk Indices 2008*. <http://www.maplecroft.net>

**Natlex**. An ILO database featuring national laws on labour, social security, and related human rights legislation.  
[http://www.ilo.org/dyn/natlex/natlex\\_browse.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en)

### See also annual country human rights analysis:

**Amnesty International**, *Amnesty International Report 2008*. <http://thereport.amnesty.org/eng/Homepage>

**Freedom House**, *Freedom in the World 2008*. <http://www.freedomhouse.org/template.cfm?page=15>

**Human Rights Watch**, *Human Rights Watch World Report 2008*. <http://www.hrw.org/wr2k8/>

**US State Department**, *Country Reports on Human Rights Practices 2007*. <http://www.state.gov/g/drl/rls/hrrpt/2007/>

### Impact assessment guides

**Danish Institute for Human Rights**, *Human Rights Compliance Assessment*. [http://www.humanrightsbusiness.org/040\\_hrca.htm](http://www.humanrightsbusiness.org/040_hrca.htm)

**International Business Leaders Forum, International Finance Corporation and UN Global Compact**, *Guide to Human Rights Impact Assessment and Management*, 2007. <http://www.iblf.org/resources/general.jsp?id=123946>

**IPIECA (International Petroleum Industry Environmental Conservation Association)**, *A Guide to Social Impact Assessment in the Oil and Gas Industry*, 2004. [http://www.ipieca.org/activities/social/downloads/publications/sia\\_guide.pdf](http://www.ipieca.org/activities/social/downloads/publications/sia_guide.pdf)

**Rights & Democracy**, *Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru*, 2007.  
[http://www.dd-rd.ca/site/\\_PDF/publications/globalization/hria/full%20report\\_may\\_2007.pdf](http://www.dd-rd.ca/site/_PDF/publications/globalization/hria/full%20report_may_2007.pdf)

**Ruggie, John R.**, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Human Rights Impact Assessments – Resolving Key Methodological Questions*, UN Doc. A/HRC/4/74, 2007.  
<http://www.business-humanrights.org/Documents/Ruggie-report-human-rts-impact-assessment-5-Feb-2007.doc>

## Industry sector-specific initiatives

- Electronic Industry Code of Conduct [electronics industry]**, <http://www.eicc.info/>
- Equator Principles [financial services]**, <http://www.equator-principles.com/>
- Ethical Trading Initiative [retail and apparel]**, <http://www.ethicaltrade.org/>
- Extractive Industries Transparency Initiative [extractives]**, <http://www.eitransparency.org/>
- Fair Labor Association [retail and apparel]**, <http://www.fairlabor.org/>
- Forest Stewardship Council [forestry]**, <http://www.fsc.org>
- Global e-Sustainability Initiative [ICT]**, <http://www.gesi.org/>
- International Cocoa Initiative [cocoa/food & beverage]**, <http://www.cocoainitiative.org/>
- Kimberley Process [diamond industry]**, <http://www.kimberleyprocess.com/>
- Voluntary Principles on Security and Human Rights [extractives and energy]**, <http://www.voluntaryprinciples.org>
- UNEP Finance Initiative [financial services]**, <http://www.unepfi.org/>
- World Economic Forum Partnering Against Corruption Initiative [engineering & construction, energy and metals & mining]**, <http://www.weforum.org/en/initiatives/paci/index.htm>

## Socially responsible investment

- Calvert Socially Responsible Mutual Funds**, <http://www.calvert.com/sri.html>
- Dow Jones Sustainability Index**, <http://www.sustainability-index.com/>
- F&C Asset Management**, <http://www.fandc.com/>
- FTSE4Good Index Series**, [http://www.ftse.com/Indices/FTSE4Good\\_Index\\_Series/index.jsp](http://www.ftse.com/Indices/FTSE4Good_Index_Series/index.jsp)
- Insight Investment**, <http://www.insightinvestment.com/>
- Interfaith Center on Corporate Responsibility**, <http://www.iccr.org>
- Principles for Responsible Investment**, <http://www.unpri.org/>
- Sustainable Asset Management (SAM)**, <http://www.sam-group.com>

## Key organisations

### Academic institutions, business associations, non-governmental organisations (NGOs) and trade unions

**Action Aid**, <http://www.actionaid.org>

**Amnesty International**, <http://www.amnesty.org> and <http://www.amnesty.org.uk/business>

**Business and Human Rights Resource Centre**, <http://www.business-humanrights.org>

**Business Leaders Initiative on Human Rights**, <http://www.blihr.org>

**Business for Social Responsibility**, <http://www.bsr.org>

**Castan Centre for Human Rights Law, Monash University**, <http://www.law.monash.edu.au/castancentre>

**Centre for Human Rights and Environment**, <http://www.cedha.org.ar/en/>

**Christian Aid**, <http://www.christian-aid.org.uk>

**Clean Clothes Campaign**, <http://www.cleanclothes.org>

**Danish Institute for Human Rights**, <http://www.humanrightsbusiness.org>

**Ethical Corporation**, <http://www.ethicalcorporation.com>

**Fund for Peace**, <http://www.fundforpeace.org>

**Futureye**, <http://www.futureye.com>

**Global Witness**, <http://www.globalwitness.org>

**Human Rights First**, <http://www.humanrightsfirst.org>

**Human Rights Watch**, <http://www.hrw.org>

**International Alert**, <http://www.international-alert.org>

**International Business Leaders Forum**, <http://www.iblf.org>

**International Commission of Jurists**, <http://www.icj.org>

**International Committee of the Red Cross**, <http://www.icrc.org>

**International Council on Mining and Minerals**, <http://www.icmm.com>

**International Textile, Garment and Leather Workers' Federation**, <http://www.itglwf.org>

**Oxfam**, <http://www.oxfam.org>

**Pax Christi**, <http://www.paxchristi.net>

**Realizing Rights: The Ethical Globalization Initiative**, <http://www.realizingrights.org>

**Respect Europe**, <http://www.respecteurope.com>

**Rugmark Foundation**, <http://www.rugmark.org>

**Save the Children**, <http://www.savethechildren.org>

**SustainAbility**, <http://www.sustainability.com>

**Transparency International**, <http://www.transparency.org>

## Further resources

### Intergovernmental bodies

- International Finance Corporation**, <http://www.ifc.org>
- International Labour Organization**, <http://www.ilo.org>
- Office of the United Nations High Commissioner for Human Rights**, <http://www.ohchr.org>
- Organization for Economic Co-operation and Development**, <http://www.oecd.org>
- UNAIDS**, <http://www.unaids.org/en/>
- United Nations Development Programme**, <http://www.undp.org/>
- UN Global Compact Office**, <http://www.unglobalcompact.org/>
- UN Millennium Development Goals**, <http://www.un.org/millenniumgoals/>
- UN Treaty Body database**, <http://www.unhchr.ch/tbs/doc.nsf> (also see [www.bayefsky.com](http://www.bayefsky.com))

## Standards, codes, principles and reporting guidelines

- AccountAbility AA1000 Assurance Standard and Framework**, <http://www.accountability21.net>
- Global Reporting Initiative (GRI) Sustainability Reporting Guidelines**, <http://www.globalreporting.org>
- Global Sullivan Principles**, <http://www.thesullivanfoundation.org/gsp/default.asp>
- ICH (International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use) Harmonised Tripartite Guideline For Good Clinical Practice**, <http://www.ich.org>.
- International Finance Corporation's Performance Standards on Social and Environmental Sustainability**, 2006, <http://www.ifc.org/ifcext/enviro.nsf/Content/PerformanceStandards>
- ILO Declaration on Fundamental Principles & Rights at Work**, 1998, <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>
- ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**, 1977 (revised 2000), [http://www.ilo.org/public/english/employment/skills/hrdr/instr/tri\\_dec.htm](http://www.ilo.org/public/english/employment/skills/hrdr/instr/tri_dec.htm)
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**, 1999, [http://www.oecd.org/document/21/0,3343,en\\_2649\\_201185\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,3343,en_2649_201185_2017813_1_1_1_1,00.html)
- OECD Guidelines for Multinational Enterprises**, 1976 (revised 2000), [http://www.oecd.org/departement/0,2688,en\\_2649\\_34889\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/departement/0,2688,en_2649_34889_1_1_1_1_1,00.html)
- OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones**, 2006, [http://www.oecd.org/document/26/0,3343,en\\_2649\\_34889\\_36899994\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/26/0,3343,en_2649_34889_36899994_1_1_1_1,00.html)
- Social Accountability 8000 (SA8000) Standard**, <http://www.sa-intl.org>
- UNEP Finance Initiative and UN Global Compact, Principles for Responsible Investment**, 2006, <http://www.unpri.org/files/pri.pdf>
- UN Sub-Commission on the Promotion and Protection of Human Rights, Working Group on the Working Methods and Activities of Transnational Corporations, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights**, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 2003. [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En)
- World Medical Association Declaration of Helsinki Ethical Principles for Medical Research Involving Human Subjects**, 1964 (revised 2000), <http://www.wma.net/e/policy/b3.htm>

# APPENDIX: UN GLOBAL COMPACT TEN PRINCIPLES

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

The UN 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:

## Human rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and  
Principle 2: make sure that they are not complicit in human rights abuses.

## Labour standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;  
Principle 4: the elimination of all forms of forced and compulsory labour;  
Principle 5: the effective abolition of child labour; and  
Principle 6: the elimination of discrimination in respect of employment and occupation.

## Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;  
Principle 8: undertake initiatives to promote greater environmental responsibility; and  
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

## Anti-corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

## HUMAN RIGHTS TRANSLATED A Business Reference Guide

The purpose of this publication is to explain universally recognised human rights in a way that makes sense to business. The publication also aims to illustrate, through the use of case studies and suggested practical actions, how human rights are relevant in a corporate context and how human rights issues can be managed.



## MONASH University Castan Centre for Human Rights Law

**Castan Centre for Human Rights Law**  
**Faculty of Law, Monash University, Clayton VIC 3800 Melbourne, Australia**  
<http://www.law.monash.edu.au/castancentre>



**International Business Leaders Forum**  
**15-16 Cornwall Terrace, London NW1 4QP, UK**  
<http://www.iblf.org>



## United Nations **Human Rights** Office of the High Commissioner for Human Rights

**Office of the United Nations High Commissioner for Human Rights**  
**OHCHR-UNOG, CH-1211 Geneva 10, Switzerland**  
<http://www.ohchr.org>



## United Nations Global Compact

**United Nations Global Compact Office**  
**2 UN Plaza, New York, NY 10017, USA**  
<http://www.unglobalcompact.org>