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# Human rights impacts of own operations: Insights for due diligence



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## Human rights impacts of own operations: Insights for due diligence

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<p><b>Abstract</b></p> <p>The United Nations Guiding Principles on Business and Human Rights (2011) clarify the state duty and corporate responsibility for preventing and addressing human rights risks related to business activities. <i>Human rights impacts of own operations: insights for due diligence</i> aims to support Finnish companies in taking appropriate steps to carry out due diligence to prevent, mitigate, or remedy adverse human rights impacts of their own operations, as outlined in the UN Guiding Principles, especially in countries where protection of human rights may be insufficient or the enforcement of existing legislation weak.</p> <p>The document discusses the key concepts of the UN Guiding Principles, especially the corporate responsibility to respect human rights and human rights due diligence, but also internationally recognised human rights, potential adverse human rights impacts linked to business activity, and the key elements of human rights risks assessments. The following human rights issues and ways for businesses to address them are examined closer in the document: occupational health and safety, discrimination at work, forced labour, adequate wage, excessive working hours, land rights, and freedom of association. The document can function as an illustrative material for businesses, but also for the wider public interested in the practical implications of the UN Guiding Principles and key concepts in the intersection of business and human rights.</p> <p>This document has been elaborated through stakeholder dialogue together with representatives of business, non-governmental organisations, and labour and employers' organisations with a view to further enhance understanding of the UN Guiding Principles and their practical implications for the corporate responsibility to respect human rights. The Ministry of Economic Affairs and Employment and the Ministry for Foreign Affairs have facilitated the dialogue and acted as the secretariat for producing the document on the basis of the participating organisations' dialogue. The document and the process leading to it is a part of the Finland's National Action Plan for the implementation the UN Guiding Principles.</p> <p>MEAE contacts: Employment and Well-Functioning Markets/Linda Piirto, tel. +358 29 504 7028</p>			
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<b>Tiivistelmä</b> <p>YK:n yrityksiä ja ihmisoikeuksia koskevat ohjaavat periaatteet (2011) selventävät valtion velvollisuutta ja yritysten vastuuta yritystoimintaan liittyvien ihmisoikeusriskien ehkäisyn ja hallinnan suhteen. <i>Human rights impacts of own operations: insights for due diligence</i> pyrkii tukemaan suomalaisia yrityksiä siinä, että ne ottavat asiaankuuluvia YK:n periaatteiden kuvaaman huolellisuusperiaatteen mukaisia askelia ehkäistäkseen, lieventääkseen tai korjatakseen niiden omien toimintojen haitallisia ihmisoikeusvaikutuksia erityisesti maissa, joissa ihmisoikeuksien suojeleminen on puutteellista tai olemassa olevan lainsäädännön toimeenpano on heikkoa.</p> <p>Asiakirjassa avataan YK:n periaatteiden keskeisiä käsitteitä, erityisesti yritysten vastuuta kunnioittaa ihmisoikeuksia ja ihmisoikeuksiin liittyvää huolellisuusperiaatetta sekä myös kansainvälisesti tunnustettuja ihmisoikeuksia, yritystoiminnan mahdollisia haitallisia ihmisoikeusvaikutuksia ja ihmisoikeusriskiä arvioinnin keskeisiä elementtejä. Asiakirjassa tarkastellaan tarkemmin seuraavia ihmisoikeuskysymyksiä sekä tapoja, joilla yritykset voivat käsitellä niitä: työterveys ja -turvallisuus, työperäinen syrjintä, pakkotyö, riittävä palkka, yliopitkat työajat, maa- ja metsätalouden vapaus. Asiakirja voi toimia havainnollistavana materiaalina sekä yrityksille että YK:n periaatteiden käytännön merkityksestä ja yritysten ja ihmisoikeuksien keskeisistä käsitteistä kiinnostuneelle laajemmalle yleisölle.</p> <p>Asiakirja on toteutettu sidosryhmäyhteistyöllä yhdessä yritysten, kansalaisjärjestöjen ja työmarkkinajärjestöjen edustajien kanssa tavoitteena tehostaa entisestään YK:n periaatteiden ymmärrystä sekä periaatteiden käytännön merkitystä yritysten vastuulle kunnioittaa ihmisoikeuksia. Työ- ja elinkeinoministeriö ja ulkoministeriö ovat fasilitoineet vuoropuhelua ja tuottaneet asiakirjan prosessiin osallistuneiden organisaatioiden vuoropuhelun pohjalta. Asiakirja ja siihen johtanut prosessi ovat osa Suomen kansallista suunnitelmaa YK:n periaatteiden toimeenpanemiseksi.</p> <p>Työ- ja elinkeinoministeriön yhdyshenkilö: Työllisyys ja toimivat markkinat/Linda Piirto, p. 029 504 7028</p>		
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Referat	<p>FN:s vägledande principer för företag och mänskliga rättigheter (2011) klargör statens skyldighet och företagens ansvar när det gäller förebyggande och hantering av människorättsrisker i samband med företagsverksamhet. <i>Human rights impacts of own operations: insights for due diligence</i> syftar till att stödja finländska företag med att ta lämpliga steg i enlighet med FN:s omsorgsplikt som beskrivs i FN:s principer i syfte att förebygga, lindra eller åtgärda skadliga effekter på de mänskliga rättigheterna av deras verksamhet, särskilt i länder där skyddet för de mänskliga rättigheterna är bristfälligt eller där den befintliga lagstiftningen inte verkställs i någon större utsträckning.</p> <p>I dokumentet går man igenom de centrala begreppen i FN:s principer, särskilt företagens ansvar för att respektera de mänskliga rättigheterna samt omsorgsplikten som hänför sig till de mänskliga rättigheterna. Dessutom behandlas de internationellt erkända mänskliga rättigheterna, eventuella skadliga effekter på de mänskliga rättigheterna av företagsverksamhet och de centrala elementen i bedömningen av människorättsrisker. I dokumentet granskar man närmare följande människorättsfrågor samt olika sätt för företag att behandla frågorna: arbetshälsa och arbets säkerhet, arbetsrelaterad diskriminering, tvångsarbete, tillräcklig lön, alltför långa arbetstider, markrättigheter och organisationsfrihet. Dokumentet kan fungera som åskådliggörande material för både företag och en bredare publik som är intresserad av den praktiska betydelsen av FN:s principer och av de centrala begreppen för företag och mänskliga rättigheter.</p> <p>Dokumentet har tagits fram i samarbete med intressenter tillsammans med företag, frivilligorganisationer och företrädare för arbetsmarknadsorganisationer med målet att ytterligare effektivisera förståelsen för FN:s principer samt principernas praktiska betydelse med tanke på företagens ansvar för att respektera de mänskliga rättigheterna. Arbets- och näringsministeriet och utrikesministeriet har faciliterat en dialog och tagit fram ett dokument utifrån dialogen mellan de organisationer som deltagit i processen. Dokumentet och den process som ledde till dokumentet är en del av Finlands nationella plan för att genomföra FN:s principer.</p> <p>Kontaktperson vid arbets- och näringsministeriet: Sysselsättning och fungerande marknader/Linda Piirto, tfn 029 504 7028</p>		
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# 1 Introduction

## What are the UN Guiding Principles and what is the purpose of this paper?

The United Nations (UN) Guiding Principles on Business and Human Rights<sup>1</sup> (henceforth referred to as the UN Guiding Principles) were endorsed unanimously by the UN Human Rights Council in 2011 and are built on three pillars: obligations of states to protect human rights, the responsibility of business enterprises to respect human rights, and the obligation of states and the responsibility of business to provide appropriate and effective remedies for the victims of human rights abuses. The UN Guiding Principles clarify the duties of states and responsibilities of business enterprises for tackling human rights risks related to business activities. The UN Guiding Principles apply to all business enterprises irrespective of size, sector, operational context, ownership or structure.

As part of the national implementation of the UN Guiding Principles the Ministry of Economic Affairs and Employment and the Ministry for Foreign Affairs have organised various round table discussions over the past years with the aim of fostering dialogue and shared understanding on human rights due diligence between different stakeholder groups.<sup>2</sup> **Human rights due diligence** is a process, described in the UN Guiding Principles, through which appropriate diligence is executed so that companies can better carry out their responsibility to respect human rights. It is a continuous process through which companies identify, assess and address adverse human rights impacts in which they could become, or are, involved, directly or through their business relationships. Through this process companies implement their overarching policy commitment to respect human rights, in accordance with the UN

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<sup>1</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>2</sup> National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights (2014), <http://bit.ly/2fjz4rD>.



Guiding Principles. Due diligence comprises the following: impact assessment, integration into activities (i.e. implement actions that prevent or mitigate adverse human rights impacts in policy and management systems), monitoring, and communications.

**Human rights risks** refer to adverse human rights impacts that a company's operations, products, or services may lead to. An adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

The **purpose of this paper** is to support Finnish companies in recognising and fulfilling their roles and responsibilities regarding human rights impacts that they are involved with in their own operations – meaning human rights impacts that a company has caused, contributed to, or is directly linked to through its own actions or omissions, or those of its business relationships<sup>3</sup> – and taking appropriate steps to carry out due diligence to prevent, mitigate, or remedy those impacts in countries where human rights legislation, compared to international human rights standards, may be lacking or inadequate, or not effectively enforced<sup>4</sup>.

**The scope of this paper** refers to the operations of Finnish subsidiaries (wholly or majority owned and having operational control) and their sites in the aforementioned countries. The contractors used on site by the company are also included in the scope. The reason for this is that the risk of adverse human rights impacts is greatest in these countries, although the responsibility of companies to respect human rights applies in all countries.

Even though human rights due diligence applies both to a company's own operations and its supply chain as described in the UN Guiding Principles, this paper concentrates only on due diligence in a company's own operations and therefore on the human rights impacts it is directly to. This is not intended to minimise or deny the responsibility of companies for human rights impacts in their supply chains.

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<sup>3</sup> See further descriptions on pages 5–6.

<sup>4</sup> To get an idea of the countries that fall within this scope, it is advisable to use different risk country lists, such as the World Bank governance index, the OECD's list on developing countries, the UN list of the Least Developed Countries (LDC), and country profiles compiled by national human rights centers.

Practical ways to implement due diligence in supply chains are described in, for example, the Shared Vision for Respecting the UN Guiding Principles on Business and Human Rights in Grocery Trade Supply Chains<sup>5</sup>.

This paper has been elaborated through stakeholder dialogue with a view to further enhancing understanding of the content of the UN Guiding Principles and their practical implications regarding the responsibility of companies to respect human rights<sup>6</sup>. The Ministry of Economic Affairs and Employment and the Ministry for Foreign Affairs have facilitated the discussion and acted as the secretariat for the document. The participants have discussed the key concepts of the UN Guiding Principles, especially its Pillar II and human rights due diligence within the framework described above. First the participants identified certain topics as potentially highest priority human rights impacts<sup>7</sup> and then discussed facts and concerns related to different perspectives on these issues. On the basis of this discussion the participants formed key questions to be raised and then came up with some possible solutions.

The practices and guidelines described in this paper do not substitute for or limit the scope of application of the UN Guiding Principles, nor are they intended to supersede legislation or the role of the state in the protection of human rights.

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<sup>5</sup> Shared Vision for Respecting the UN Guiding Principles on Business and Human Rights in Grocery Trade Supply Chains (2015): [http://tem.fi/documents/1410877/3084000/UNGP+grocery+trade\\_en/54a9d248-7467-4903-8f2a-99a975445b27](http://tem.fi/documents/1410877/3084000/UNGP+grocery+trade_en/54a9d248-7467-4903-8f2a-99a975445b27).

<sup>6</sup> The Ministry of Economic Affairs and Employment and the Ministry for Foreign Affairs facilitated this multi-stakeholder dialogue through round table discussions for business, non-governmental organisations, labour organisation, and business organisation. The roundtable met 14 times between April 2016 and January 2018.

<sup>7</sup> The term “highest priority human rights impact” refers here to the human rights at risk of the most severe negative impact through the company’s activities and business relationships. This will typically vary according to a company’s sector and operating context.

## 2 Foundational principles

### THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

The corporate responsibility to respect human rights, as set out in the second pillar of the Guiding Principles, is a global standard of expected conduct for all business enterprises where ever they operate. In accordance with the UN Guiding Principles it is expected that:

“In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) **A policy commitment** to meet their responsibility to respect human rights;
- (b) **A human rights due diligence process** to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) **Processes to enable the remediation** of any adverse human rights impacts they cause or to which they contribute.”

*(UN Guiding Principles on Business and Human Rights, pages 15–16)*

### Internationally recognised human rights

Companies must respect human rights. This responsibility stems from the Universal Declaration of Human Rights, which calls on “every organ” of society to contribute to realising human rights for all. With the endorsement of the UN Guiding Principles, by the Human Rights Council, this responsibility has been affirmed by UN Member States.<sup>8</sup> In the UN Guiding Principles internationally recognised human rights are, at a minimum, understood to denote the level expressed and recognised in international

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<sup>8</sup> OHCHR (2014): Frequently asked questions about the Guiding Principles on Business and Human Rights, [http://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf), page 26.

human rights conventions and in the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (ILO)<sup>9</sup>.

- The following three human rights instruments are the core international human rights documents establishing the 'International Bill of Human Rights': 1) The Universal Declaration on Human Rights<sup>10</sup>, 2) The International Covenant on Civil and Political Rights<sup>11</sup>, and 3) The International Covenant on Economic, Social and Cultural Rights<sup>12</sup>. These core instruments have been subsequently supplemented by numerous binding conventions.
- The ILO's Declaration on Fundamental Principles and Rights at Work<sup>13</sup> embraces the following rights and principles: freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

**Issues of context:** Business enterprises should comply with all applicable domestic laws and respect internationally recognised human rights, wherever they operate. In cases where domestic laws or regulations are in conflict<sup>14</sup> with or do not fully comply with internationally recognised human rights standards, companies should always comply with domestic law, while seeking ways to honour the aforementioned principles of internationally recognised human rights<sup>15</sup>.

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<sup>9</sup> For more information on internationally recognised human rights and examples of how business might impact them, see <http://www.ungpreporting.org/resources/how-businesses-impact-human-rights/>.

<sup>10</sup> The Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>11</sup> International Covenant on Civil and Political Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>13</sup> ILO's Declaration on Fundamental Principles and Rights at Work, <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

<sup>14</sup> A company's due diligence process should indicate if a country's human rights legislation falls short of or conflicts with international human rights standards. When legislation falls short of international standards, companies should operate to the higher standard. When legislation conflicts with international standards, companies need to understand the exact nature, scope and implications of the conflicting legislation in order to decide on how to proceed. Whatever the blueprint for action in these situations is, it should honour the principles on internationally recognised human rights.

<sup>15</sup> See also OHCHR (2014): Frequently asked questions about the Guiding Principles on Business and Human Rights, [http://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf), page 30.

## How companies can find themselves involved in adverse human rights impacts

The UN Guiding Principles determine that the responsibility of business enterprises to respect human rights extends all the way through the value chain and it covers a range of different business relationships. The nature of an enterprise's responsibility depends on the level of involvement in adverse human rights impacts.

Companies can either cause, contribute to or be linked to adverse human rights impacts:

- a) **cause**: to cause an adverse human rights impact means that a company's own actions or inactions result in an adverse human rights impact.

An example of this is a situation, where a company doesn't take the appropriate steps to protect its workers from hazardous substances;

- b) **contribute**: to contribute to an adverse human rights impact means that a company contributes, i.e. facilitates, incentivises, enables, or encourages other actors to cause an adverse human rights impact.

A company can contribute to adverse human rights impact in two different ways. One example is a situation where a company significantly changes its order from a supplier at the last minute, which leads to the supplier's breach of labour standards in order to deliver. A company can also contribute to an adverse human rights impact through its own actions, coupled with actions by other companies contributing to the same impact, i.e. by creating collective impacts. An example of this form of contribution is a situation where several companies are each dumping a small and permissible amount of pollution into a community water supply, but collectively they are making the water undrinkable;

- c) **linked**: to be linked to an adverse human rights impact means that a company's operations, products or services are connected to an adverse human rights impact through its business relationships.

An example of linkage is a situation where a company in a joint venture with a state owned enterprise (SOE) enters a country, and despite the company's due diligence measures and in breach of their contract, the SOE employs a security service

that then suppresses community opposition with unnecessary force.

It is also important to note that adverse human rights impacts can be potential or actual. If the impact is potential – meaning it has not happened yet or may not even happen – a company should address it through prevention or mitigation. This means that a company takes all appropriate steps to avoid or reduce the adverse impact(s) to the greatest extent possible.

### Remediation depends on how the impact has occurred

Actual adverse human rights impacts – meaning negative human rights risks that have materialised – need to be remediated and steps should be taken to prevent recurrence. Remediation depends how the impact has occurred. In other words, the nature of the company's responsibility to address adverse human rights impacts depends *on the role the company has had* in the impact's occurrence:

- If the company has **caused** the impact, it should cease the actions or omissions that caused or are causing the adverse impact and remediate the impact;
- If the company has **contributed** to an adverse impact, the company should cease the actions or omissions that contributed to or are contributing to the adverse impact and prevent their recurrence, exercise its leverage to cease the contribution to the impact by others, and contribute to remediation of the harm; or
- If the company is **linked** to an adverse impact, the company should use its leverage with other responsible partners to mitigate or prevent the impact, and increase its leverage as necessary. There is no responsibility to remedy, but the company may choose to do so.

#### HOW ARE HUMAN RIGHTS RELEVANT TO STATES AND BUSINESS?

The legal obligation of States to respect, protect and fulfil the human rights originates from the international human rights conventions they ratify. International human rights treaties generally do not impose direct legal obligations on business enterprises, with the exception of State-owned enterprises under certain circumstances. However, national law provisions in force in different countries may result from or be influenced by these international human rights treaties. Legal liability and enforcement of international human rights standards are therefore defined largely by national law. In many cases the responsibility of enterprises to respect human rights is reflected at least in part in domestic law or regulations corresponding to international human rights standards. For example there are national laws that protect people against pollution or that mandate working standards in line with the ILO conventions. Infringement of human rights may therefore imply civil or criminal liability in national jurisdictions.

## 3 How to comply with human rights due diligence

### 3.1 How can human rights risks be identified?

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts which they may be involved in either through their own activities or as a result of their business relationships. This process should involve the company's relevant functions and units and be informed by the perspectives of those who may be negatively impacted.

This assessment of human rights impacts is carried out against the principles and standards outlined in the UN Guiding Principles. Impact assessments should be carried out without excluding some human rights impacts beforehand, since this approach might lead to the inadvertent omission of some adverse human rights impacts. In other words the assessment should be done with "eyes wide open" and not take the respecting of any human right for granted or exclude it from the assessment. Each company needs to do its own wide assessment, based on research and interviews, for example, seeking to answer the key question: What effects could our business operations have on people?

Companies should evaluate the results of the assessment of human rights impacts in order to prioritise human rights risks and identify appropriate actions. The most severe risks should be addressed first. Severity refers here to the scale, scope, and irremediability of adverse human rights impacts. In this context, scale refers to the gravity of the impact and scope to the number of individuals that are or will be affected. Irremediability refers to the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact or, in other words, the ease with which those impacted could be restored to their prior



enjoyment of the right(s).<sup>16</sup> A company's most severe human rights impacts are referred to as its "salient" human rights issues<sup>17</sup>. Identification of its salient human rights issues can assist a company in focusing and optimising its human rights due diligence efforts<sup>18</sup>.

It is important to recognise that human rights situations vary by country and region, and that human rights impact assessment is a continual process. The scope of the assessment depends on the company's operations and business relationships. Assessment of human rights impacts can be done at a macro (enterprise) level, micro (project or activity) level, or by assessing business relationships. The content or scope of the assessment depends on what kind of an event or process is to be assessed, for example whether it is a project, entry into a country, single or various supply-chains, on site assessment, or corporate level broad assessment.

It is important to emphasise that, in order to get a thorough understanding, assessment of human rights impacts cannot be successfully carried out through one single human rights impact assessment, unless the company's operations and operational context remain mostly unchanged. Assessment of human rights impacts can however be integrated into existing due diligence processes, i.e. broader enterprise risk management systems, if those systems include risks to rights holders as well.

As stated in the UN Guiding Principles assessments of human rights impacts should be undertaken on a regular basis, because human rights situations vary. Potentially crucial points can be for example entry to a new market where national legislation or cultural or social practices place the fulfillment of rights at risk; embarking on a new business activity or relationship where the location or potential partner brings added risk; or prior to major decisions or changes in the operations of the company. Other such triggers could be significant changes in the operating environment itself, such as increases in conflict or significant changes in democratic freedoms, as well as expanding into new product areas or selling products to new customers that carry a greater risk of abusive use of the product.<sup>19</sup> If there are no such triggers, the

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<sup>16</sup> OHCHR (2012): The Corporate responsibility to respect human rights. An interpretive Guide; [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf); UN Guiding Principles Reporting Framework, <https://www.ungpreporting.org/reporting-framework/management-of-salient-human-rights-issues/assessing-impacts/>.

<sup>17</sup> For further explanation of salient human rights, see UN Guiding Principles Reporting Framework, <https://www.ungpreporting.org/key-concepts/salient-human-rights-issues/>.

<sup>18</sup> Ibid.

<sup>19</sup> UN Guiding Principles Reporting Framework, <https://www.ungpreporting.org/reporting-framework/management-of-salient-human-rights-issues/assessing-impacts/>.

frequency of human rights impacts assessments depends on the level of risk of human rights impacts given the nature of the sector, markets, specific operations and geographic context.

The human rights impact assessment processes should involve meaningful consultation with relevant stakeholders, such as potentially affected groups, the extent of which will depend on the size of the business enterprise and the nature and context of the operation. The assessment of human rights impacts, as well as action taken to prevent human rights risks and remediate adverse human rights impacts, should pay particular attention to vulnerable risk groups such as children, women, minorities, indigenous peoples, and migrant workers.

### 3.2 What can and should be done regarding the highest priority human rights risks?

This document recognises the following as some of the potentially highest priority human rights risks for operating in countries where human rights legislation or its implementation is lacking, inadequate or not effectively enforced: inadequate occupational health and safety, forced labour, discrimination, excessive working hours, inadequate wage level, land acquisition and land rights issues, and freedom of association. However, this does not mean that other human rights are less important or to be disregarded, but only that in this document we have identified the aforementioned human rights risks as being the highest priority based on the discussions of the participants and on the highest priority human rights issues recognised by the early adopters of the UN Guiding Principles Reporting Framework<sup>20</sup>.

It is important to note that many of the human rights risks discussed below are interconnected, and their realisation may often depend on the realisation of other rights.

**Readers can use ideas listed in the following sections as an inspiration for their own reflection.** Please note that the issues mentioned and the possible solutions are not exhaustive. The participants did not find solutions for all challenges identified, but these were nevertheless included in the document as possible areas for further discussion.

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<sup>20</sup> The UN Guiding Principles Reporting Framework, <http://www.ungpreporting.org/>.

### 3.2.1 Occupational health and safety

According to ILO statistics<sup>21</sup>, 6,300 people die every day as a result of occupational accidents or work-related diseases, which is more than 2.3 million deaths per year globally. About 317 million occupational accidents occur annually; many of these resulting in extended absences from work. The human cost of this daily adversity is vast and the economic burden of poor occupational safety and health practices is estimated at 4 per cent of global Gross Domestic Product each year.

Local legislation plays a big role in occupational health and safety (OHS) questions. However, the level of local OHS legislation or its implementation may often be lower than internationally recognised standards. In many countries the government lacks inspection capacity, which is a key factor in non-enforcement. In some countries there is inadequate access to health services. Some sectors are more hazardous than others when it comes to health and safety. Local weather conditions may also pose heightened OHS risks.

There may be deficiencies in OHS knowledge in some countries, due to lack of training. There can also be deficiencies in the level of basic education, which affects the general awareness of OHS. In addition to this there can be deficiencies in how well workers know their own personal health, recognise health issues, or seek medical care. Sometimes local culture does not support or recognise the importance of safety issues. People might have false confidence that OHS accidents will not occur and may not, therefore, wear personal protective equipment (PPE), even where PPE is available and/or mandatory. Some PPE might be uncomfortable to wear in certain climate conditions, which leads to workers' and/or contractors' refusal to wear it. And even though instructions may be clear, sometimes people do not follow them. Workers might perform specified tasks without proper licensing, for example electrical work. There can also be the lack of a long-term perspective, hampering the creation of a positive OHS culture. Unrealistic deadlines on employees or contractors may also pose OHS accident risks<sup>22</sup>.

Temporary workers might have less knowledge and training on OHS issues than regular workers. Migrant workers might not be covered by health services, which may be aimed only at local residents or workers. Different languages complicate OHS communication. Some OHS risks might disproportionately affect vulnerable groups,

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<sup>21</sup> ILO: Safety and health at work, <http://www.ilo.org/global/topics/safety-and-health-at-work/lang-en/index.htm>.

<sup>22</sup> See also part 3.2.4 on excessive working hours.

such as women, young workers, disabled persons and minority groups if their position has not been recognised in an OHS risk assessment.

Customer sites where contractors are required to work will generally have their own safety conditions and procedures and these might not follow the same OHS standards as the contracting company itself. At any site safety kits could be outdated, malfunctioning or lacking altogether, or people may not know where they located.

It is worth noting that safety audits cannot provide thorough information about all possible aspects. People may sometimes be reluctant to report negative information in order to avoid possible adverse consequences. Near misses may also go unreported, and the reporting system might not perhaps recognise all near misses. There may also be obstacles to reporting OHS issues due to lack of appropriate channels.

### *Challenges for addressing OHS issues*

- Making sure all workers and contractors are aware of health and safety rules and understand them
- Promoting good safety culture
- Improving the use of personal protective equipment
- Making sure workers can raise their concerns and issues
- Avoiding or managing unrealistic deadlines
- Connecting migrant or temporary workers to OHS processes
- Making sure contracted workers are safe on customer sites
- Managing the necessary work licences
- Making sure safety kits are available
- Taking into account various vulnerable groups and external conditions in OHS planning
- Getting reliable information about the OHS situation
- Building an incentive system that works

### *Possible solutions*

The key elements of effective OHS management can be identified as an established, visible and practical upper level commitment and policy; an organisation which puts that policy into practice; planning and implementation, including an initial assessment of the current situation; priorities established on the basis of identified risks;

establishment of goals, performance standards and a realistic timetable; and, most importantly, evaluation in which OHS performance is monitored on a regular basis<sup>23</sup>.

International OHS management systems such as ILO-OSH 2001<sup>24</sup> and OHSAS 18000<sup>25</sup> are useful tools. Carrying out an OHS risk assessment with a special focus on vulnerable groups can be beneficial. Another helpful tool can be close co-operation with workers' representatives and having a transparent and independent system of workers representatives on OHS issues. It can also be useful to make sure temporary/migrant workers can associate with other workers. The provision of awareness raising, training and capacity building in all languages used on site to those who need this can also be a useful approach. There is a need to identify key people and make sure they are trained.

Other concrete actions may include the following: start meetings with an OHS moment. Introducing mandatory safety walks is another option. Stop cards, which give the service person the mandate to stop working (if conditions are not acceptable) can also be used. Attention should be given to ensuring that employees know about the appropriate safety kits and that they are available at all times. Providing some kind of grievance system through which workers can raise OHS issues can also be valuable tool. It should also be possible for workers to shelter from the weather and from heat and cold. Contractors can be asked whether an unusual request, such as hastening an order or otherwise reacting to changed circumstances, would have any negative OHS impacts on workers.

The ILO has a global knowledge platform for sharing OHS information and good practices called Encyclopaedia of Occupational Health and Safety<sup>26</sup>. The ILO notes that this is the most comprehensive reference source available on OHS and widely respected, flagship ILO publication. The ILO also provides country profiles on the

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<sup>23</sup> ILO: Occupational Safety and Health. Policy and Implementation, [http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port\\_of\\_spain/documents/presentation/wcms\\_250197.pdf](http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/presentation/wcms_250197.pdf). This document also contains a practical checklist that helps to assess the level of preparedness of the OHS management system.

<sup>24</sup> Guidelines on occupational safety and health management systems (ILO-OSH 2001), [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_PUBL\\_9221116344\\_EN/lang--en/index.htm?ssSourceSiteId=safework](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221116344_EN/lang--en/index.htm?ssSourceSiteId=safework).

<sup>25</sup> BS OHSAS 18001 - Occupational Health and Safety Management (OHS), <https://www.bsigroup.com/en-GB/ohsas-18001-occupational-health-and-safety/>.

<sup>26</sup> ILO: Encyclopaedia of Occupational Health and Safety, <http://www.iloencyclopaedia.org/>.

subject of OHS<sup>27</sup>. In addition to these, the European Agency for Safety and Health at Work provides a wide range of tools and materials<sup>28</sup>.

### 3.2.2 Discrimination at work

Ensuring non-discrimination in the workplace is at the heart of respecting human rights. The Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms, without distinction of any kind, such as ethnic origin, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The key ILO Convention that covers equality at work is the Discrimination (Employment and Occupation) Convention No. 111. The ILO defines discrimination as acts which have the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation.

Discrimination can still be a common problem in many workplaces. Discrimination can take many forms and be based on different qualities. In addition to the causes referred to above, vulnerability (e.g. disabled people needing special attention), medical status and age can also be behind discrimination.

In assessing discrimination at work, special attention should be paid to the local customs and context, and to whether these factors have any adverse impact on workers. For example, gender roles in society can also affect the treatment of employees in the workplace. There is a need to be aware of “hidden” local discrimination, which is sometimes not easily identified. Often these deeper cultural factors can lead to unconscious bias in people's behaviour. It must be borne in mind at all times that under international human rights standards, local culture or customs does not justify discrimination.

Discrimination can occur in different forms and in connection with different situations at work: recruitment, tasks performed at the workplace, remuneration and dismissal. Sometimes there may be indirect discrimination through organisational structures of facilities offered. An example of the latter is the absence of toilets specifically for women or access for the disabled.

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<sup>27</sup> ILO: Country profiles on occupational safety and health, <http://www.ilo.org/safework/countries/lang--en/index.htm>.

<sup>28</sup> The European Agency for Safety and Health at Work: tools and publications, <https://osha.europa.eu/en/tools-and-publications>.

Wearing clothing and jewellery that have religious or cultural symbolism may be an issue that needs to be handled sensitively to avoid infringing freedoms of expression and religion. However, it should be remembered that restricting such practices in the workplace may be required and justifiable for OHS reasons under certain circumstances, for example when an employee's role involves working with machinery with which particular garments or jewellery could become entangled. If any prohibitions are set, the company needs to be clear why particular clothes or jewellery pose a risk to health and safety and ensure that the company is not discriminating against its employees.

### *Challenges for addressing discrimination at work*

- Ensuring the existence of a non-discrimination policy in the company
- Ensuring company policies are followed in practice
- Identifying discrimination
- Necessity of specified requirements for a job and identifying any bias in these
- Ensuring diversity in the workplace if people's background cannot be registered or inquiries cannot be easily made
- Ensuring the existence of a trustworthy and well-functioning grievance mechanism
- Provision of places or facilities for different groups with special needs (due to religion, disability, etc.)
- Ensuring migrant or contract workers are not treated with different rules that affect them adversely
- Ensuring migrant workers can get their voice heard on issues that concern them without fear of punishment or harm
- Determining when medical status is a legitimate employer issue, for example in situations where a worker's health might pose health risks to others
- Ensuring all employees are treated equally regardless of their personal background (i.e. political opinions, trade union affiliation, etc.)
- Facilitating jobs for younger generations while not discriminating against older workers (especially during restructuring or staff reductions)

### *Possible solutions*

A starting point for addressing discrimination could be a corporate-level anti-discrimination policy endorsed by the top management. A risk assessment process may be needed for identifying discrimination-related risks in the workplace. It is important to obtain information from various sources, and in this respect close co-operation with workers' representatives is essential, and dialogue with civil society organisations representing groups that are vulnerable to discrimination may also be

fruitful, offering important insights on discrimination issues that may otherwise remain hidden. These experts can provide valuable information for example on the situation of migrant workers in a specific country.

A policy level document may be complemented by operational plans or procedures, such as a gender equality plan to address issues in practice. In some countries these plans are mandatory. Company level guidance should be adapted to the local context in practical ways when necessary, providing that discrimination is not unintentionally facilitated.

Tackling discrimination at work requires that employees know what discrimination is and what their rights are. Awareness raising, training and capacity-building can be used to enhance knowledge and capabilities of workers and managers. Special training programmes or employment benefits can be directed at women to empower them as well as access to services, such as schooling or childcare in circumstances where these are not otherwise available.

There may also be more proportionate ways of ensuring that the company meets its health and safety requirements other than insisting employees remove garments or jewellery that have religious or cultural symbolism.

An operative grievance mechanism is needed for bringing possible discrimination issues to the management's attention in order for appropriate actions to be taken.

### 3.2.3 Forced labour

Almost 21 million people<sup>29</sup> work in conditions of forced labour. For various reasons, forced labour might sometimes be difficult to recognise or identify. Companies should be vigilant, since the use of forced labour can exist or occur almost anywhere and appear invisible in its modern forms. The concept of "modern slavery" also includes forced labour and human trafficking<sup>30</sup>.

According to the ILO forced labour can be understood as work that is performed involuntarily and under the threat of penalty. It also includes situations where people are coerced to work through the use of violence or intimidation or by other means

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<sup>29</sup> ILO: Forced labour, modern slavery and human trafficking, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

<sup>30</sup> For further information on terminology, see for example ILO: 2017 Global Estimates, Frequently Asked Questions: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_575605.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_575605.pdf).



such as manipulated debt, retention of identity papers or threats of denunciation to immigration authorities.

Forced labour can be perceived within a company's culture as an indictment of company practices and, as a result, managers may be resistant to trying to understand it or recognise its existence. The term or topic is not very well known and understood and there is still lack of awareness of forced labour.

It is important to be aware that there are companies in the world that hire or use forced labour and that there is therefore a risk of being linked to forced labour through business relationships, for example in the case of supplier companies. However, the risks of using forced labour can increase when companies use on-site contractors or where employees are hired through recruitment agencies.

Migrants often have a heightened risk of becoming victims of forced labour as well as other socially discriminated groups (such as minorities) and other vulnerable groups, such as women and children. Sometimes practices of forced labour are deeply ingrained in the local culture.

Forced labour can exist in any sector. There is a higher risk when a lot of informal labourers such as undocumented migrants are working in a particular sector.

It should also be remembered that in most countries involvement with forced labour implies criminal liability.

#### ILO INDICATORS OF FORCED LABOUR

ILO has published indicators of forced labour, which are intended to help to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance. These indicators represent the most common signs or clues that point to the possible existence of forced labour.

ILO indicators of forced labour are:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical & sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage

- Abusive working and living conditions
- Excessive overtime.

In some cases even the presence of a single indicator in a given situation is sufficient to indicate the existence of forced labour. However, in other cases the company may need to look for several indicators which, taken together, point to a forced labour case.

Source: ILO Indicators of Forced Labour (2012): [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf).

### *Challenges for addressing forced labour*

- Harmonisation of a company's human resource policies globally while taking into account local context
- Adequacy of due diligence, human resource and recruitment processes for abolishing forced labour
- Raising awareness about forced labour
- Adoption of due diligence processes in recruitment agencies in order to identify forced labour (what kind of rules, processes or follow-up does a company have for recruitment agencies that it uses)
- Ensuring employees are not paying recruitment fees to obtain a job (i.e. are not in debt to recruitment agencies or labour recruiters)
- Ensuring that any informal labour connected to a company's operations does not include forced labour

### *Possible solutions*

It is essential to be aware of potential forced labour risks. Therefore it is important that forced labour is included in a company's human rights due diligence processes. As part of this process, it is important to identify key players involved and to speak to and interview out-sourced workers and other rights-holders (workers potentially involved) about their working conditions. A company's practices should be aligned so that they are applied in a coherent and consistent way while also taking local risks into account. It is important to raise awareness of different forms of forced labour through internal capacity-building and training.

Another essential element in combating forced labour is to have clear rules for the use of recruitment agencies. One option in the case of high risk countries is to consider using company's own employees, or conducting an in-house recruitment process, instead of for example using the services of a recruitment agency and out-sourced labour. Companies should have a zero tolerance policy on charging recruitment fees. They should also systematically monitor recruitment agencies to

ensure that their practices do not constitute forced labour (e.g. confiscation of travel documents or offering inappropriate employee loans or salary advances, etc.).

### 3.2.4 Adequate wage

The basis for an adequate wage<sup>31</sup> derives from several international human rights conventions<sup>32</sup>. The Universal Declaration of Human Rights (Article 23)<sup>33</sup> states that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Furthermore Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>34</sup> requires that remuneration must be enough to provide workers with a decent living for themselves and their families. This is linked to Article 11 of the Covenant, which establishes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Article 7 is reinforced by ILO Convention No. 131 on Minimum Wage Fixing, which requires signatory member states to implement minimum wage mechanisms at a national level. In addition to these, Article 4 of the Council of Europe's European Social Charter recognises the right of workers to fair remuneration<sup>35</sup>. More specifically, this article obliges States parties to undertake to recognise the right of workers to remuneration sufficient to ensure for them and their families a decent standard of living.

In 2011 the ILO conducted research<sup>36</sup> on the subject of an adequate wage and the review concluded that generally accepted components of the concept of adequate wage include the following: (i) is a right according to the international community; (ii)

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<sup>31</sup> The components of an adequate wage are described in the second paragraph of this chapter. The term "living wage" can also be used to describe the same matter.

<sup>32</sup> The history of adequate wage can however be traced to the Article 427 of the Treaty of Versailles, which refers to "the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country" among the general principles guiding the policy of the future ILO. A more detailed history of adequate wage, including all international declarations and other instruments referring to it, is available in the General Survey of the reports on the Minimum Wage Fixing Conventions, 1970 (No. 131), and the Minimum Wage Fixing Recommendations, 1970 (No. 135) (International Labour Conference, 103<sup>rd</sup> Session, 2014), pages 2–16, [http://www.ilo.org/ilc/ILCSessions/103/reports/reports-to-the-conference/WCMS\\_235287/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/103/reports/reports-to-the-conference/WCMS_235287/lang--en/index.htm).

<sup>33</sup> Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

<sup>34</sup> International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>35</sup> European Social Charter (Revised, 1996): <https://rm.coe.int/168007cf93>.

<sup>36</sup> Richard Anker: Estimating Living Wage: A methodological review (ILO 2011), [http://www.ilo.org/travail/whatwedo/publications/WCMS\\_162117/lang--en/index.htm](http://www.ilo.org/travail/whatwedo/publications/WCMS_162117/lang--en/index.htm).

needs to be sufficient to support a basic but decent standard of living that is appropriate for a particular time and place and that improves with economic development; (iii) needs to be sufficient to support a family; (iv) needs to be increased to take into consideration payroll and income taxes to ensure sufficient take home pay and so sufficient disposable income; and (v) needs to be earned in normal working time and not require overtime.

Despite the international legal framework, in a large number of countries the national minimum wage standards do not provide an adequate standard of living. Furthermore, national minimum wages might not be up to date or enforced effectively. This can result in a situation where a company operates in accordance with the national legislation but not necessarily in accordance with the internationally recognised right to an adequate wage. In order to respect the right to an adequate wage, a company cannot rely solely on complying with national minimum wage legislation. The reason for this is again that the responsibility for respecting human rights extends beyond compliance with national laws and regulations, and this responsibility applies to all internationally recognised human rights, including the right to an adequate wage.<sup>37</sup>

### *Challenges for addressing adequate wage*

- Assessing and determining what constitutes an adequate wage in a particular context
- Definition of a family in different contexts, in terms of whom an adequate wage should support
- Operationalising<sup>38</sup> adequate wage in practice
- Identifying ways in which responsible companies can compete with companies that do not respect human rights

### *Possible solutions*

Creating policies or procedures that enable it to respect international human rights standards on adequate wage are recommended in order for a company to provide its employees with an adequate wage, in particular when operating in jurisdictions where there is no regulated minimum wage or the minimum wage fails to provide an

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<sup>37</sup> For more information, see for example The Corporate Responsibility to Respect Human Rights – an Interpretive Guide (OHCHR 2012), PAGE 77.

<sup>38</sup> Issues related to operationalisation could for example include identifying and accounting for socio/economic/cultural differences across markets (family size, living standards, gender roles, etc.); staying competitive and avoiding distortion to labor markets with wide disparities in competitors' wage policies/practices; and maintaining remuneration equity and respecting the principle of equal pay for work of equal value across markets with different adequate standards of living.

adequate standard of living for a worker and his or her family. Calculating an adequate wage is a first step towards its implementation. Adequate wage calculations can be used as a tool to close the gap between prevailing wages and an adequate wage.

In efforts to provide an adequate wage use existing, widely adopted, and internationally recognised methodologies<sup>39</sup>. These methodologies provide for a systematic, standardised and verifiable approach to addressing such issues as how to determine the size of a typical family, including the number of wage earners and dependents, and how to take into account other crucial factors such as model diet/local food prices; local housing standard/cost of decent housing; and non-food costs, the cost of health care, education, statutory deductions and in-kind benefits.

The determination of an adequate wage level should be based on take-home pay (including benefits), not gross pay.

#### ALLOWABLE DEDUCTIONS FROM WAGES

Deductions from wages are generally only allowed for legally stipulated reasons, such as income tax and social security contributions. Deductions are not allowed for disciplinary purposes. Further, where applicable, services such as food, housing, electricity and transportation should be billed separately and not deducted from wages. In any case, all deductions must be clearly marked in pay slips and workers must fully understand and give their consent to deductions made. Where deductions are made from an employee's wage, "take-home pay" – that is, net of all deductions – must meet the adequate wage standard.

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<sup>39</sup> Examples of these methodologies are Richard Anker and Martha Anker: *Living Wages around the World – Manual for Measurement* (Edgar Elgar Publishing 2017), <https://www.elgaronline.com/view/9781786431455/9781786431455.xml>; the Asia Floor Wage Alliance, <https://asia.floorwage.org/>; and Social Accountability International's work through its SA8000 standard, <http://www.saintl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1851>. See also Social Accountability International's adequate wage reports, <http://www.saintl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1848>.

The ILO helpdesk provides further information on a wide range of issues, including wages<sup>40</sup>. The Ethical Trading Initiative has also published guidance on wages<sup>41</sup>. Adequate wage issues often go hand in hand with excessive working hours, which are discussed in the following section.

### 3.2.5 Excessive working hours

Working excessive hours without adequate periods of rest and recuperation can damage workers' health and increase the risk of occupational accidents. This is why international standards on maximum working hours have been established, and have been ratified and implemented in national legislation by a majority of countries. Various issues should be considered when ensuring that workers do not work excessive hours. In some sectors or countries, it is common practice for employees to be required to work excessive hours. In some cases low wages can lead to employees working excessive hours in order to earn an adequate standard of living for themselves and their dependents. Sometimes employees might want to work excessive hours. However, it should be taken into consideration that it is not only the worker's own health and safety at stake, but also his or her co-workers, for example when operating machinery or handling hazardous materials.

Migrant workers (domestic or international) often cannot bring their family along for various reasons, and these workers want to work longer hours in order to earn as much as possible so they can return to their families in the shortest time possible. This means that workers do not always want to be "protected" from excessive hours. It is also worth noting that not all countries have ratified the ILO Convention on working hours.

#### *Challenges for addressing excessive working hours*

- Establishing working hours arrangements in a way that meets human rights, legislative and safety requirements and workers' wishes and safety requirements
- Protecting workers in practice from excessive working hours
- Ensuring that the health and safety of a company's workers' is not jeopardised due to excessive working hours in countries which, for

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<sup>40</sup> ILO helpdesk: Q&As on Business, Wages and Benefits, [http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_WAG\\_FAQ\\_EN/lang--en/index.htm#Q4](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_WAG_FAQ_EN/lang--en/index.htm#Q4).

<sup>41</sup> Ethical Trading Initiative: Base Code Guidance: Living wages, [https://s3-eu-west-1.amazonaws.com/www.ethicaltrade.org/files/shared\\_resources/eti\\_living\\_wage\\_guidance\\_2.pdf?LWApFGqpZ2QxYBtHaV1hrQz67gUU0qM9](https://s3-eu-west-1.amazonaws.com/www.ethicaltrade.org/files/shared_resources/eti_living_wage_guidance_2.pdf?LWApFGqpZ2QxYBtHaV1hrQz67gUU0qM9).

example, have not ratified the ILO conventions on working hours or do not have laws restricting working hours

- Protecting young workers from excessive working hours

### *Possible solutions*

One way to approach the question of excessive working time is by planning and apportioning work appropriately. Companies should also ensure that remuneration is adequate enough not to necessitate excessive working hours to achieve an adequate standard of living. Companies should also strive for tracking working hours even in cases where wages or salaries are based on production levels, i.e. even though workers are being paid on a piece rate basis, they shouldn't be required to work excessive hours in order to earn an adequate income. Tight delivery schedules or unforeseen production changes often result in excessive working hours. Care should be taken to ensure that permissible norms are not exceeded and employees are given sufficient rest periods.

## 3.2.6 Land rights

Access to land and natural resources is a multifaceted issue that impacts directly on the enjoyment of a number of human rights. For many people, land is a source of livelihood, and is therefore central to economic rights. Land rights are related to other issues such as access to water, food, and housing. Land is also often linked to peoples' identities, and so is tied to social and cultural rights.

It is important to note that not all countries have the capacity or willingness to recognise land rights. For example, ILO Convention 169 on the rights of indigenous and tribal peoples has only been ratified by 22 countries. Similarly, historic land distribution processes by national authorities may have resulted in rightful owners losing their title resulting in uncertainty of tenure when that land is subsequently acquired. There can also be uncertainty in regarding the legal status of certain land rights claims. When seeking to acquire land or land rights, there is a need to consult all potential claimants, especially if there are intermediaries involved. In some countries there can be several middlemen involved in renting land, which can involve

corruption. Getting a free, prior, and informed consent<sup>42</sup> can be a challenge, especially if right-holders have difficulties in understanding what they are getting into.

Land rights can be more relevant in sectors related to natural resources. There is virtually no “unclaimed land” left in the world – someone has an interest or claim on all land. Land areas are typically inhabited and/or used for earning a livelihood, even if only on an informal or customary basis. Land rights or tenure should always be determined even when a business is renting or leasing land, or operating in business parks.

Obtaining a legal licence to operate from the state may not be enough, as having a so-called “social license to operate” from the community needs to be taken into consideration as well (e.g. multinational companies may be accused of “land grabbing” by local communities even when acquiring land or land rights in full compliance with national laws).

The Interlaken Group has developed tools and mechanisms to accelerate private sector learning on responsible land rights practices<sup>43</sup>. The UN Food and Agriculture Organization (FAO) has also published voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security<sup>44</sup>.

### *Challenges for addressing land rights*

- Ensuring “certainty” on who is the rightful owner
- Being sure not to violate formal, informal or customary land rights
- Making sure the host government has done its job or fulfilled its role

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<sup>42</sup> Free, Prior and Informed Consent (FPIC) is a principle protected by international human rights standards that state “all peoples have the right to self-determination” and – linked to the right to self-determination – “all peoples have the right to freely pursue their economic, social and cultural development”. Backing FPIC are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention 169, which are the most powerful and comprehensive international instruments that recognise the plights of Indigenous Peoples and defend their rights. For more information on FPIC see for example UN Food and Agriculture Organization’s site and guidance: <http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/> and the UN-REDD Programme’s Guidelines on Free, Prior and Informed Consent: <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>.

<sup>43</sup> The Interlaken Group, <http://www.interlakengroup.org/>.

<sup>44</sup> FAO: Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (2012): <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.



- Finding out how much money goes to the actual owners, such as a local community, if there are any intermediaries involved (so that the actual owners get appropriate compensation)
- Defining appropriate compensation
- Finding out who can represent the local community

### *Possible solutions*

It is advisable to carry out due diligence and risk assessment before making the business decision on acquiring land. It is always worth looking beyond the concession (e.g. national land title registers may not give the complete picture of who has formal and/or informal ownership claims to land and natural resources). It is also advisable to check what the host government has done and the history of land use in the area. Reaching out to civil society can help.

One option is to use less land, for example by maximising productivity before acquiring more land. Options for owning, renting or leasing land could be considered: it can be possible to have farmers be part of the supply chain, instead of changing ownership or leases. Reducing dependency on raw materials can be one option, but is not of course possible for all.

In all cases, it is important to have a robust land rights acquisition process that is based on, at a minimum, “informed consultation and participation” of all potential claimants of land and/or natural resources.

## 3.2.7 Freedom of association

The right of workers and employers to form and join organisations of their own choosing is an integral part of the realisation of human rights. The right to organise and form employees’ and employers’ organisations is the prerequisite for sound collective bargaining and social dialogue. Nevertheless freedom of association does not exist in all countries: it may be prohibited; there may be poor legislation; or there may be a lack of practical implementation. Freedom of association is connected to basically all other human rights.

In some countries, trade unions are explicitly prohibited by national law, or certain groups are not allowed to join a union (for example public officials, white collar workers, migrant workers, or contract workers), in contravention of the requirement that the right be available to all workers without distinction. Freedom of association can be particularly challenging in special economic zones, where there are labour law

exemptions or laws are not enforced. Agency workers are not always accepted by local unions or local legislation does not recognise their union membership. In some countries there are anti-union sentiments, which can affect realisation of group-level policies to respect freedom of association.

If unions that have been set up by and/or are controlled by the employer or some other party besides the workers, this will hamper workers' own unionisation. Sometimes these types of unions can be hard to identify, for example when a ready built or working plant is purchased as opposed to starting from scratch. Identifying non-legitimate unions can be challenging for workers, too. Furthermore, there can be competition between legitimate unions. Companies should ensure that all workers can be appropriately represented.

### *Challenges for addressing freedom of association*

- Identifying whether freedom of association exists, not just on paper but in practice too
- Ensuring that a union is legitimate and represents workers
- Evaluating legal system and practical arrangements regarding freedom of association
- Deciding which information channels to use in this evaluation
- Determining what other possibilities are available for companies if freedom of association is restricted by law
- Making sure union leaders are not harassed within the company
- Determining what kind of separate negotiations could be had with specific groups that cannot organise themselves (because of legislation or other reasons) or cannot be represented as a group

### *Possible solutions*

There should be an open and real commitment to freedom of association at the company management level. The commitment to respect the right to freedom of association needs to permeate the entire company structure, which can sometimes mean awareness-raising at the managerial level too. It should be ensured that group-level policies on freedom of association are implemented in practice at the local level. An important element in this is knowledge of the local contexts, which would be based on stakeholder interaction. In countries where legislation prohibits or challenges freedom of association "co-operational committees" can be set up. This should be designed in co-operation with workers in a manner that would make it possible for workers to choose their own representation.

There should be zero tolerance against infringements of freedom of association. Harassment of union members should not be allowed.

Freedom of association can create a positive information flow for the company management (e.g. regarding potential risks) and facilitate company processes related to the enjoyment of other human rights as discussed elsewhere in this paper. In markets where workers are not able to adequately enjoy their right to freedom of association, companies should explore opportunities to facilitate that right.

Companies could for example explore the possibilities already in use by other companies, such as effective grievance mechanisms, which can be a useful tool to verify that worker's representation is realised, and social audits with strengthened emphasis on worker's representation. In addition to these, talking about freedom of association could be part of capacity-building on "work-life skills", which could also be of benefit in solving other issues at the workplace.

## 4 Participating organisations

The following businesses, organisations and ministries participating in the dialogue welcome other parties to join them and share the views expressed in this document:

<b>Businesses</b>	<b>Organisations</b>	<b>Ministries</b>
Fortum	Save the Children	Ministry of Economic Affairs and Employment
Neste	Technology Industries of Finland	Ministry for Foreign Affairs
Stora Enso	FIBS	
Fazer Group	Trade Union Pro	
Metso Corporation	Finnwatch	
Valmet	The Trade Union Solidarity Centre of Finland SASK	

There will be a follow-up session on this document in 2019 to continue the discussion.

## Further reading

OHCHR: The UN Guiding Principles (2011),

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

OHCHR (2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide,

[http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)

OHCHR (2014): Frequently asked questions about the Guiding Principles on Business and Human Rights,

[http://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf)

OHCHR Accountability and Remedy Project,

<http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>

UN Guiding Principles Reporting Framework, <https://www.ungpreporting.org/>

Monash University in collaboration with OHCHR and Global Compact (2017): Human Rights Translated 2.0: A Business Reference Guide,

[http://www.ohchr.org/Documents/Issues/Business/Monash\\_HRT.pdf](http://www.ohchr.org/Documents/Issues/Business/Monash_HRT.pdf)

### NOTE ON THE LANGUAGE USED IN THIS DOCUMENT

This document does not include contractual, legal or statutory requirements. This document does not replace national laws, with which readers are understood to comply and which take precedence.

This document follows definitions used by the ISO International Standards. In accordance with ISO, in this document:

- “shall” indicates a requirement
- “should” indicates a recommendation
- “may” is used to indicate that something is permitted
- “can” is used to indicate that something is possible, for example, that an organization or individual is able to do something.

(For more information, see <https://www.iso.org/foreword-supplementary-information.html>)

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