About the Author
Ana Dangova Hug works as a lawyer at the Law firm INTER PARTES Skopje and is leading the Business and Human Rights section. She has previously worked with the Geneva Centre for Security Sector Governance (DCAF) and as an intern for the OHCHR and for the UNECE. Over her career she has designed and delivered various trainings on human rights for lawyers, prosecutors, judges and human rights practitioners. She holds a Master in International Studies with specialization in International Law from the Graduate Institute of International Development Studies in Geneva.

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Disclaimer
This publication is intended strictly as a learning document. The inclusion of examples of company experiences does not in any way constitute an endorsement or denunciation of the individual companies or of their human rights policies or practices by the law firm INTER PARTES Skopje.

The Law firm INTER PARTES Skopje
INTER PARTES Skopje is the first law firm in North Macedonia which offers a package of legal services with the aim that companies fulfill their responsibility to respect human rights in line with the UN Guiding Principles on Business and Children’s Rights and Business Principles. As a leading law firm in this field, we managed to help our Clients adopt a human rights policy, revise their contracts and establish grievances mechanisms in line with the international standards.


Our commitment was recognized by KONEKT, who delivered in 2019 to the law firm INTER PARTES the Award for Commitment to Promoting Human Rights in Business.

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# Tool on (Children’s) Right to Health and Businesses

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WHY THIS TOOL?
Beyond the small group of early adopters there is a general lack of knowledge and understanding of the corporate responsibility to respect human rights, especially among smaller companies. According to human rights benchmarking and rating assessments, the majority of companies covered by the assessments do not demonstrate practices that meet the requirements set by the UN Guiding Principles on Business and Human Rights.\(^1\) Often human rights due diligence is not understood properly, resulting in:

- **Misconstruction of risk** - companies operate with a mindset of risk to the business and not risk to rights holders, such as workers, communities and consumers. There is a reluctance or even pushback from traditionally oriented legal counsel, fearing disclosure is a key obstacle to uptake by companies;
- **Failure to address the most significant risks to human rights first** - companies are focusing on risks that may be relatively easy to address, such as modern slavery, rather than doing an objective assessment of the most significant risks to people affected by the activities and business relationships of the enterprise;
- **Ticking the box** - too many human rights impact assessments are done without meaningful engagement with stakeholders, including engagement with vulnerable or at-risk groups and critical voices such as human rights defenders;
- **Gender insensitivity** – there is an inadequate use of a gender lens.

Against this background, the *Tool on (Children’s) Right to Health and Businesses-Unpacking the Due Diligence Human Rights Standard* provides guidance to help companies better understand what does it entail to work in line with the UN Guiding Principles on Business and Human Rights and the Children’s Rights and Business Principles. To go more deeply in this issue, we have chosen the right of adults and children to health as a cornerstone of the analysis, as it is a salient human rights issue for most of the companies, especially now in the context of the COVID-19 outbreak. This Tool was produced through a systematic survey carried out by Ana Dangova Hug, lawyer at the law firm INTER PARTES Skopje.

HOW TO USE THE TOOL ON (CHILDREN’S) RIGHT TO HEALTH AND BUSINESSES?
Even though it is prepared by a local law firm, this Tool is intended to be used by all companies, regardless where they operate, by the civil society, and if necessary, by governments. Also, the Tool contains two short sections on the national legislation related to the right of adult and children to health as a background information on the topic for international companies.

The *Tool on (Children’s) Right to Health and Businesses* can be used by companies when:

- Developing company policies and procedures related to human rights issues, with a special focus on the right to health.
- Assessing and tracking the potential human rights impacts of the company’s own operations or of suppliers, business partners and investments.
- Raising awareness among staff, suppliers and other business partners, about the right to health of adults and children.
- Engaging with workers, children, potentially affected communities, consumers, users and other stakeholders whose human rights might be affected by the company’s operations.
- Engaging with relevant stakeholders (civil society organizations, government bodies, international organizations) on human rights-related issues.
- Carrying out human rights due diligence in time of health crisis, such as the COVID-19 pandemic.

The Tool can be used by governments when:

- Reviewing and reforming public policy and legislation relevant to the human rights impacts of business, including in the areas of health.
- Ensuring respect for human rights, including the right to health, in the state’s own business affairs.
- Building awareness and capacity on children’s right to health and business issues.
- Providing targeted advice to domestic companies.
- Informing the development of trade policy, trade and investment agreements and promotion.
- Improving effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.

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This Tool can be used by civil society organizations when:

- Conducting human rights research and monitoring related to business operations.
- Providing capacity-building to government, business and civil society stakeholders on human rights and business.
- Working with local stakeholders to provide recommendations to business and government.
- Facilitating dialogue and engagement with state agencies and businesses.

The targeted audience may decide to use the whole Tool, or focus on certain sections of the Tool depending on their needs. The Tool will be updated, so we invite interested parties to consult regularly the website of the law firm. The analysis in the Tool is not comprehensive, and companies are advised to seek for expertise when implementing the UN Guidelines on Business and Human Right and the Children’s Rights and Business Principles.

I. WHAT ARE HUMAN RIGHTS?

The concept of human rights means different things to different people. Still, there is an underling common note - that people have a right to be treated with dignity. Human rights are inherent in all human beings, whatever their nationality, place of residence, sex, or other status. Every individual is entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations on states to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups.

In 1948 the Universal Declaration of Human Rights was proclaimed by the UN General Assembly, giving an international meaning to the expression of human rights. In 1966 the Universal Declaration was codified in international law through the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). All three documents are known as the International Bill of Human Rights.

Regarding the particular human rights of workers, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work commits all its member States to four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These are covered by the eight core conventions of the International Labour Organization (“ILO”).

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

It is worth noting here that beside the concept “Business and Human Rights”, there are two similar notions but with somewhat different meaning and scope:

Corporate Social Responsibility (CSR) refers to holding companies responsible for their impact on society, “whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.” A CSR approach tends to be top-down as the company decides what issues it wishes to address. Perhaps contributing to community education, healthcare or the arts; or donating to disaster relief abroad. On the other hand, a human rights approach is a bottom-up - with the individual at the center, not the corporation.

Responsible Business Conduct (RBC) is an alternative standard set by the OECD though its Guidelines for Multinational Enterprises. It is defined as “making a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and avoiding and addressing adverse impacts related to an enterprise’s direct and indirect operations, products or services”. RBC means above all complying with laws, such as those on respecting human rights, environmental protection, labour relations and financial accountability. Till today the OECD has developed Guideline for enterprises in four sectors: agriculture, extractives, financial sector, mineral supply chains and garment and footwear sector.

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II. RIGHT TO HEALTH

“The right to health is not the right to be healthy or the right to health care, but a more complex and nuanced understanding of the right to health.”

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. This definition is given by the World Health Organization (“WHO”) in 1946 still valid today. The right to health is short-form for the right to the highest attainable standard of physical and mental health. It contains both freedoms and entitlements.

The freedoms refer, for example, to:
- the right to control one’s health and body, including sexual and reproductive freedom, or
- the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.

By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the right to health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health, such as:
- Safe drinking water and adequate sanitation;
- Safe food;
- Adequate nutrition and housing;
- Healthy working and environmental conditions;
- Health-related education and information;
- Gender equality.

The health facilities, goods, and services should satisfy the “5 A” criteria, meaning they should be:
- available in sufficient quantity;
- accessible to everyone without discrimination, and affordable for all, even marginalized groups;
- acceptable, meaning respectful of medical ethics and culturally appropriate; and
- scientifically and medically appropriate and of good quality.

Like all human rights, the right to health, imposes three levels of obligations on States:

Respect: States must refrain from interfering with the enjoyment of the right to health.

Protect: States must take measures to prevent third parties from interfering with the enjoyment of the right to health.

Fulfil: States must adopt legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.

However, while States are obliged to progressively realize the right to health based on their available resources, they shall begin by at least providing and realizing the 6 minimum core obligations and 5 priority obligations, as shown in following Table.

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9 See UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000).
III. BUSINESSES AND THE RIGHT TO HEALTH

Every company has a public health footprint. What this means is that every company’s products and policies have the potential to help - or hurt - health and well-being of the public by their effects on consumers, the company’s own employees, communities, and the environment. This linkages between health and the business operations, engages the responsibility of the business sector to respect this human right. In doing so, the company may be able to prevent negative impacts on the right to health or may fail to do so and be obliged to remedy for the wrong done. In order to assist companies to be able to respect human rights, including the right to health, according international human rights standards, the UN Guiding Principles on Business and Human rights have been developed.

IV. THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UN Guiding Principles on Business and Human Rights (“UN Guiding Principles”) are broadly recognized as a globally agreed framework on business and human rights. This framework is divided into III Pillars.

Pilar I focuses on state duties to protect human rights, reiterating the principle in international law, that states are required to take appropriate steps to prevent, investigate, punish and redress business-related human rights abuse through effective policies, legislation, regulation and adjudication. This could be done, for example, by ensuring that bodies of law adequately protect individuals from any adverse impacts of business activities and ensure the accountability of business.

In addition, the UN Guiding Principles expect states to take steps to protect against human rights abuses by business enterprises that are owned or controlled by the state, or receive substantial support from state agencies. The reasoning for this is that as states are the primary duty bearers of human rights, an abuse of human rights by a business enterprise acting “as the state” or in close conjunction with the state may constitute a violation of the state’s own international law obligations. Export credit agencies, development agencies and development finance institutions are examples of state-owned enterprises and agencies linked to the state.

States are obliged to discourage conduct by business entities that leads, or may lead, to violations of the rights under international law. In this line the State may employ different methods such as denying the awarding of public contracts to companies that have not provided information on the social or environmental impacts of their activities or that have not put in place measures to ensure that they act with due diligence to avoid or mitigate any negative impacts on the rights under the Covenant on Economic, Social and Cultural Rights.

The framework not only clarifies state duties to protect human rights, but also sets out the independent responsibility of all businesses to ensure respect for human rights in their activities and business relationships through ongoing human rights due diligence processes (Pilar II). The Guiding Principles have also advanced the need for strengthened

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6 MINIMUM CORE OBLIGATIONS
a) Non-discriminatory access to health facilities, goods and services.
b) Access to the minimum, nutritionally adequate and safe food.
c) Access to basic shelter, housing and sanitation, and safe and potable water.
d) Provision of essential drugs (as defined by the WHO).
e) Equitable distribution of all health facilities, goods and services.
f) Adoption and implementation of a national public health strategy and plan of action.

5 PRIORITY OBLIGATIONS
a) Ensure reproductive, maternal and child health care.
b) Provide immunization against major infectious diseases in the community.
c) Take measures to prevent, treat and control epidemic and endemic diseases.
d) Provide education and access to information on the main health problems.
e) Provide appropriate training for health personnel, including education on health and human rights.

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12 See General Comment 24 of the Committee on Economic, Social and Cultural Rights.
actions to ensure access to effective remedies for those adversely impacted by business activities (Pilar III). Pillar II and III will be the main focus of this Tool, further on.

Since the endorsement by the UN Human rights Council in June 2011, the UN Guiding Principles have driven a convergence in standards on business and human rights across the international arena, reinforcing their position as the authoritative global standard on the issue.

V. BUSINESS CASE

Even though respecting human rights is a responsibility for all companies according international law, there several reasons that shape the business case for any company to work in line with the UN Guiding Principles, such as:

1. **Strengthening employees’ capacities.** Analysis demonstrate that including employees in the process that will improve their human rights is one of the most effective ways of retaining employees at work.

2. **Fulfilling worldwide expectations.** By working in line with the UN Guiding Principles, companies are showing that they work in line with the globally accepted standard on business and human rights.

3. **“Knowing and showing”**. The identification of the negative impacts on human rights will help companies to avoid negative surprises and will enable them to know and show that their company respect human rights in real.

4. **Answers to stakeholders.** By showing that your company implements the UN Guiding Principles your company will have legitimate answers to the expectations of relevant stakeholders (employees, investors, banks, communities, partners) and will protect the company from possible criticism about the business conduct.

5. **Comparative advantage.** More and more public and private institutions monitor the nonfinancial work of the companies, requiring from them to submit reports about the way companies respect human rights.

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UN Guiding Principles and convergence of international standards

- OECD Guidelines for Multinational Enterprises and OECD Due Diligence Guidance for Responsible Business Conduct apply the due diligence concept.
- IFC Performance Standards on Environmental and Social Sustainability— recognize the responsibility of business to respect human rights, the need for due diligence, and for grievance mechanisms to deliver remediation for harms.
- The International Bar Association has outlined the relevance of the UN Guiding Principles for business lawyers.
- FIFA has aligned World Cup bidding requirements with the UN Guiding Principles and has incorporated elements of them in its current practice.
- ILO Tripartite Declaration of Principles concerning MNEs and Social Policy – declares that “Enterprises, including multinational enterprises, should carry out due diligence”.
- EU Non-financial Reporting Directive refer to the UN Guiding Principles.
- UNEP FI Principles for Responsible Banking call upon the UN Guiding Principles.

Examples of national laws which establish mandatory due diligence

- **California Supply Chain Transparency Act** (2010) – requires retail and manufacturing firms that do business in California with gross receipts over USD 100 million to disclose the steps taken to eradicate slavery and human trafficking from their supply chain and to verify these efforts or hold suppliers to account.
- **UK Modern Slavery Act** (2015) - requires UK companies with annual turnover above £36 million to publish an annual statement disclosing the steps taken to ensure no slavery or human trafficking exist in their supply chain. An Independent Anti-Slavery Commissioner provides advice, encourages good practice and drives prevention strategies.
- **France Duty of Vigilance Law** (2017) - requires French companies with at least 5,000 employees worldwide and foreign companies with French subsidiaries with over 10,000 employees worldwide to publish and implement a vigilance plan and account for how they identify and prevent human rights impacts in their global operations (including via established business relationships with suppliers and sub-contractors).
- **Australia Modern Slavery Act** (2018) – requires entities based, or operating, in Australia with an annual consolidated revenue of over AUS 100 million to report annually on the risks of modern slavery in their operations and supply chains, and on its actions to assess and address those risks. A central, freely-accessible register of statements is in place. The Australian government is itself bound by the law, thereby extending the law to public procurement activities.
VI. RIGHT TO HEALTH AS A SALIENT HUMAN RIGHTS ISSUE FOR ALL BUSINESS

Identifying the company’s salient human rights issues is, as we will see in section XI, the first step of human rights due diligence under the UN Guiding Principles. Companies’ processes to identify their salient human rights issues should focus on the most severe potential negative impacts on human rights.13

- **Most severe**: meaning those impacts that would be greatest in terms of:
  - **their scale**: the gravity of the impact on the human right(s); and/or
  - **their scope**: the number of individuals that are or could be affected; and/or
  - **their remediability**: the ease with which those impacted could be restored to their prior enjoyment of the right(s).

- **Potential**: meaning those impacts that have some likelihood of occurring in the future, recognizing that these are often, though not limited to, those impacts that have occurred in the past.

- **Negative**: placing the focus on the avoidance of harm to human rights rather than unrelated initiatives to support or promote human rights.

- **Impacts on human rights**: placing the focus on risk to people, rather than on risk to the business.

Companies’ processes to identify their salient human rights issues should encompass:

- **Not only their activities but also their business relationships**. This would include their business partners, businesses in their value chains and any other business, government or other entity that is directly linked to their operations, products or services.

- **The full range of individuals or groups that may be impacted** as a result of these activities and relationships, including:
  - the company’s own employees and contract workers;
  - employees and contract workers of companies that contribute to its operations, products or services through its value chain;
  - communities affected by the company’s operations;
  - end users or consumers of its products or services; and
  - any stakeholder group that may be impacted through its activities or business relationships.

VI.1 Right to health and certain businesses

It is evident that for some business sectors, the right of health is of a paramount importance because health issues are their major area of work. This is illustrated with the following examples:

**Health-care providers.**14 They have a crucial role in the provision of health care services from primary to tertiary level. Therefore private health care institutions are subject to strict regulations that prohibit them from denying access to affordable and adequate services, treatments, or information.15

**Pharmaceutical companies.** The pharmaceutical sector has a central position to develop high-quality medicines that are accessible to those in need,16 for example, through tiered pricing or via flexible approaches to intellectual property

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14 For a list of health care providers see, OECD, A System of Health Accounts, 2001: https://www.oecd-ilibrary.org/docserver/9789264270985-8-en.pdf?expires=1587738917&id=id&accname=guest&checksum=742DF94622CF3A5C1BE8891B60EF685
15 See General Comment 24 of the Committee on Economic, Social and Cultural Rights.
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protection. These companies in particular have a responsibility to respect the right to health that goes beyond the right to health of their own workers. Pharmaceutical companies also face demands to increase their investment in the research and development of medicines and treatments for rare diseases and viruses.

**Food and beverage industry.** The food and beverage industry play a key role in the global food and beverage environment. Therefore, the private business sector is charged with the responsibility to respect the right to health. The expectations of this particular sector are well summarized by a UN expert body, which explicitly highlighted that the responsibility to respect the right to health requires from the food and beverage industry to refrain from engaging in activities that negatively impact the right to health; to comply with laws enacted to discourage consumption of unhealthy foods and promote healthier options and desist from undertaking activities that would undermine these policies and ensure the transparency of nutritional information and composition.

**Extractive and manufacturing industries.** Extractive and manufacturing companies may indirectly infringe upon the right to health by polluting water, air and soil. As the risk of pollution from their activities is particularly great, these 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.

VI.2. “Demystifying” the right to health for all companies

The right to health is closer to home than many businesses assume. Maybe not always phrased in legal term as a “right to health” all companies tackle health issues from different angles, as shown in the diagram.

**Businesses impacts:**
1. Consumer health
2. Employee’s health
3. Community health
4. Environment health

1. **Consumer health**

Businesses impact the health of consumers through the healthfulness and safety of the products and services they sell. Corporate actions to advance consumer health are of various nature, all of which create conditions for the enjoyment of the right to health. In this line, companies engage in:

- **Enhancing product or service quality,** through innovative design strategies, healthier ingredients and raw materials, improved supply chain management, and redesigned packaging.
- **Re-evaluating sales and distribution decisions,** such as pricing schemes, directed advertising, and narrow distribution channels—to ensure that the right consumers used products for their intended purposes.
- **Improving consumer use** via detailed instructions, ongoing customer support, and guidance for usage.
- **Advocating for improved disposal** through more sustainable and healthful means of product disposal.
- **Advancing broader industry standards** in order to promote consumer health.

2. **Employee health**

Employers invest in employee health, either in order to mitigate productivity costs or to generate revenue generally by making changes in:

- **Workplace health and safety.**
- **Employee benefit programs.** Health insurance, workplace wellness programs, mental health programs or other company-specific benefits.

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18 UN, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health-Anand Grover, Unhealthy foods, non-communicable diseases and the right to health, A/HRC/26/31, 01.04.2014: https://www.who.int/nmh/events/2014/rapporteur.pdf
19 See OHCHR and UN Global Compact, Human Rights Translated 2.0 - A Business Reference Guide.
20 See Quelch, John A., Boudreau, Emily C., Building a Culture of Health: A New Imperative for Business.
21 Examples of companies providing wellness programs are Neartopia (offering genetic testing followed by personalized coaching for disease prevention) or Johnson & Johnson (offering “Culture of Health” framework which included a tobacco-free workplace, free health profiles, an employee assistance program, physical activity, health promotion, stress and energy management, cancer awareness, healthy eating, modified duty/return to work). For more information see Quelch, John A., Boudreau, Emily C., Building a Culture of Health: A New Imperative for Business.
22 Examples of multinational companies using employees benefit programs to attract and retain employees are Silicon Valley startup companies (provided subsidized or free healthy food options for lunch), Pinterest (free snacks, yoga class, bottomless drinks, and a back massage), Google Inc.’s (Google’s Search Inside Yourself program focussing on mindfulness to develop resilience).
× **Wage standards.**
× **Company structure and culture.**

3. **Community health**

Companies make contributions to the broader communities in which they operate, driven by a sense of corporate duty and obligation or motivated by the desire for cost reduction. There is a wide range of corporate activities in community health, such as:

× **Avoiding unintended consequences:** corporations are considering the unintended community health consequences that could result from worldwide supply chains.
× **Creating or funding community health programs:** among other things, via programs aimed at improving education, care for specific diseases, or increasing public health awareness.
× **Mitigating community health crises:** due to natural or health disasters businesses engage in activities on a broader community level, or undertake activities for continuous business operations or employee safety.
× **Investing for community health:** impact investing provides social entrepreneurs the capital they need to scale successful social innovations that can transform entire sectors, while simultaneously delivering investors with attractive and uncorrelated returns.

4. **Environmental health**

Environmental health, addresses all the physical, chemical, and biological factors external to a person, and all the related factors impacting behaviors. It is targeted towards preventing disease and creating health-supportive environments.

× **Potential to reduce costs.** Pursuing environmental objectives often results in efficiency gains that could reduce costs.
× **Regulations.** Many corporations are required to meet certain environmental standards put forth by regulatory bodies.
× **Threat to business.** Environmental challenges—and climate change in particular—poses considerable threats to business (e.g., scarcity of natural resources, challenges to agriculture, destruction of operational infrastructure and supply chains).
× **Social responsibility.** Corporate support of environmental safety and health is often part of broader efforts to become more socially responsible. Corporations pursue social responsibility for a number of reasons, including out of moral obligation, for brand differentiation, and for consumer engagement.

Corporate actions to advance environmental health can be divided in several categories:

× **Product and service innovation.** Companies enhance product and service quality to advance environmental health.
× **Operations management.** Businesses utilize innovative sourcing, manufacturing, and distribution strategies to reduce their carbon footprints and improve their use of raw materials. They also take actions to reduce chemical risks and effluents for employees and communities.
× **Consumer use and disposal.** Businesses change how consumers used their products and services and provided environmentally-friendly means of disposal.
× **Philanthropic giving:** Corporations engage in philanthropic activities to address environmental causes.
× **Investment strategies:** Businesses utilize investment strategies to promote better environmental practices and seek financial return.
× **Policy engagement.** Companies seek ways to advance sustainable environmental policy.

The abundance of corporate actions directed to consumers, employees, the communities or the environmental demonstrate that the right to health is not a new issue for business. Because all these actions can have severe potential negative impacts on the right to health of individuals or group, **the right to health shall be considered as a salient human rights issue for ALL businesses.**

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23 See Quelch, John A., Boudreau, Emily C., Building a Culture of Health: A New Imperative for Business.
24 Ibid.
25 World Health Organization, Environmental health, last visited 01.05.2020: https://origin.searo.who.int/topics/environmental_health/en/
In order to “know and show” that they respect the right to health according the international accepted standard of conduct with a duty of care, companies shall use the UN Guiding Principles. Based on the various tools and guidelines that have been developed on this topic and identified good practice, in the following sections we are explaining in more detail every stage of Pillar I and II of the UN Guiding Principles. We are enlist certain steps that the companies can take as part of the responsibility to respect the right to health. The proposed actions shall be tailored by each company depending on their size, sector, businesses relationships, etc.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

The corporate responsibility to respect human rights is a baseline standard of expected business conduct. Companies do not have direct obligations under international human rights law. However, the corporate responsibility to respect is based on international human rights treaties. Therefore, where a country has ratified an international treaty, businesses will be required to comply with these provisions. Where domestic legislation regulating companies is weak, incomplete or is not fully enforced, under this responsibility businesses will still be expected to ensure that their conduct does not contribute to human rights abuses.

All rights. Because businesses can have an impact on virtually the entire spectrum of human rights, the responsibility to respect human rights applies to all internationally recognized human rights. In addition, business entities are expected to respect international human rights standards regardless of whether domestic laws exist or are fully enforced in practice.

All businesses. This responsibility applies fully and equally to all enterprises, regardless of their size, sector, operational context, and structure. However, the means of meeting the responsibility will depend on those factors – i.e. there is no one-size-fits-all.

Adverse impacts. The corporate responsibility to respect human rights is concerned with the adverse impacts of business activities on human rights. An ‘adverse’ human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

Positive impacts. There are also a range of ways in which businesses can impact positively on human rights, for example by providing essential goods, services and employment, or though social investment. However, the UN Guiding Principles state that positive contributions by business towards the realization of human rights may not be off-set against any adverse human rights impacts, nor can they act as a substitute for ongoing human rights due diligence. For example, if a business funds a healthcare clinic or school, this does not relieve or reduce the business's responsibility in regard to any negative impacts on human rights, including the right to health (for example as a result of poor health and safety standards or environmental pollution).

To meet the responsibility to respect human rights, business enterprises should have in place Policies and Processes that demonstrate that they “know and show” they respect for human rights in practice, via:

- Human rights policy commitment
- Human Rights Due-Diligence Process
- Process for Remediation

Bellow we will explain these three phases.

VIII. HUMAN RIGHT POLICY

The statement of policy expressing a commitment to meet the responsibility to respect human rights should:

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27 See Guiding Principles on Business and Human rights, Principle 12.
30 See Guiding Principles on Business and Human rights, Principle 11.
In drafting or revising a human rights policy companies can take the following steps:

A. Defining the content of human rights policy.
B. Developing the human rights policy.
C. Communicating the policy commitment.
D. Embedding the human rights policy.
E. Applying the human rights policy to business relationships.

A. DEFINING THE CONTENT OF HUMAN RIGHTS POLICY

The company should adopt a human rights policy statement which expressly recognizes the importance of human rights generally, and the right to the highest attainable standard of health in particular, in relation to the strategies, policies, programmes, projects and activities of the company. Formal, express recognition of the importance of human rights, and the right to health, helps to establish a firm foundation for the company’s policies and activities. In this line companies can alter their corporate mission, vision, and values statement to prioritize health.

The human rights policy needs at a minimum to reflect the company’s commitment to meet the responsibility to respect all internationally recognized human rights, such as the International Bill of human rights and the ILO Declaration on Fundamental Principles and Rights at Work. It is advisable that the company makes reference to the international instruments related to the right to health enlisted in Section XVII of this Tool, depending on the sector where the company works:

Human rights policy can be integrated in already existing policies or a stand-alone policy.

**Stand-alone policy**

- **Advantages**: an advantage in external communication easier for interested stakeholders to access information they require
- **For**: Employed by companies that are developing a human rights policy for the first time.

**Integrated policy**

- **Advantages**: Integrated policy can suggest that human rights considerations are more deeply engrained within the company’s overall thinking, which can appeal to external stakeholders.
- **For**: Companies with well-established codes of conduct on employment or ethical sourcing guidelines.

**Compromise option, which draws on both models:**

- **Produce a readily accessible public human rights statement that cross-references established codes and policies.**
**Tool on (Children’s) Right to Health and Businesses**

**Time allocation.** The development of human rights policy is a dynamic, on-going and sometimes unpredictable process. Many companies update their policies as they gain experience. There is an abundance of good practice which shows that the human rights policy has been developed over many years and the process was subject to revision. But for a start, it is expected that companies dedicate several months to develop the policy.

**Team.** Many companies create a team, committee or working group which will lead the process. The department of corporate social responsibility; human resources, project managers; legal sector; high management; public relations department etc. are mostly commonly engaged for the development of human rights policy. Very often external expertise is involved in the process.

**B. DEVELOPING THE HUMAN RIGHTS POLICY**

1. **Involving different parts of the company.**
   The top management of a company is responsible for leading the process. The CEO leadership and commitment to a culture of health that motivate others within the company to model his/her behavior. However, a good practice is to involve people from various areas of responsibility as it will help build understanding of the reasons for the policy and ownership in implementation.

2. **Involving external expertise.**
   Companies that do not have in-house expertise on human rights shall use external resources and experts on human rights as they develop their human rights policy.

3. **Engaging stakeholders.**
   It is advisable to test a draft policy commitment with representatives of key stakeholders’ groups. Approaches can include:
   - Seeking the views of trade unions that represent employees, whatever that is possible.
   - Identifying the groups whose right to health is disproportionately affected by the adverse impact of business activities (e.g. women, children and adolescents, persons with disabilities, migrants, persons living with HIV/AIDS etc.).
   - Consulting with individuals who represent such groups to understand how the policy is likely to apply to members of those groups in practice.
   - Testing the draft human rights policy with socially responsible investors that have expertise on the issues.
   - For larger companies, establishing a formal advisory/steering group to seek feedback, possibly including NGOs, trade unions, socially responsible investors and relevant experts. This kind of group may play a long-term role in providing feedback on the companies’ efforts to meet the responsibility to respect.

**C. COMMUNICATING THE POLICY COMMITMENT**

1. **Top-level commitment.**
   Setting the tone at the top of the company can help draw attention to the human rights policy and embed it into the business culture. Approaches can include:
   - **Top management speeches.** Regular references to the right to health and due diligence in high level management talks inside and outside the company;
   - **Human Rights champions:** Publicizing internally examples where there has been accountability for human rights performance, whether rewards or sanctions;
   - **CEO’s letter:** Including a letter from the CEO on the company’s website about the company’s commitments to set health as a corporate priority.

2. **Appropriate modes of communication**
   The right to health can be communicated to stakeholders via internet, in induction training, in other training, in meetings, in presentations by senior management, in written guidance. Also, the company should choose suitable modes of communications of the human rights policy to the company’s business partners or others in the company’s value chain (e.g., though pre-business conversations, contract negotiations, contractual terms, in training).

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**Group-wide Human Rights Charter**

Based on the results of a human rights assessment, Merck adopted a Group-wide Human Rights Charter at the end of 2013, which underscored the commitment to respect and protect human rights. Access to Health, Research Ethics and Supply Chain were identified as areas with greatest responsibilities The Charter was developed with input from key business functions and from external stakeholders and approved by Merck’s Executive Board. In the course of drafting the Human Rights Charter, external stakeholders were asked for their opinion on Merck’s approach to human rights and then considered the situation from this external perspective. Among the stakeholders were business and human rights experts from various countries, trade unions, associations, and specialists in individual topics addressed in the charter.

3. **Choosing appropriate language.**

It will be important that those who lead on this issue and others who routinely engage with stakeholders, have an understanding of what does the right to health entails. In time, it may be possible to reintroduce the language of human rights, including the right to health to strengthen understating of their relevance in the company’s daily activities.

### D. EMBEDDING THE HUMAN RIGHTS POLICY

1. **Alignment with existing policies.**

Larger companies are likely to have existing internal policies and management systems that incorporate the right to health. Examples of polices are in the area of procurement, research and development/design, communications, marketing and sales or compliance etc. They can be helpful in showing that the right to health is not a new issue for the company. The company should check that the existing policies are consistent with the human rights policy - that they reinforce it rather than contradict.

2. **Establishing accountability.**

Internal accountability for implementation of the human rights policy is important in making sure that human rights, including the right to health, is seen as part of “everyone job”. Approaches include:

- Regular reporting to the Board on the risks to the right to health, and annual reviews of such risks by the Board.
- Develop a network of line managers to champion the culture of health throughout the organization.
- Assign responsibility to a chief health officer or committee to oversee the company’s health footprint.
- Give employees permission and monetary incentives to develop new culture of health programs—the best of which can then be scaled throughout the organization.

3. **Training and awareness raising.**

Companies should prioritize awareness-raising and trainings in contexts where the impacts on the right to health are greatest. There are various ways that companies can “demystify” the right to health including:

- Providing trainings for staff within key functions.
- Using “e-learning” modules, combined with in-person training components, to build knowledge and skills, including though the sharing of dilemmas experienced by colleagues and how they deal with them.
- Preparing material to clearly explain *why the right to health matters* to the business.
- Engaging with trade unions to raise awareness among workers of the right to health.
- Organizing in-country workshops to test the application of the human rights policy in challenging situations.

### E. APPLYING THE COMMITMENT TO BUSINESS RELATIONSHIPS

1. **Getting it right from the start.**

Staff with responsibility for negotiating and concluding agreements with business partners (e.g., first-tier suppliers, suppliers beyond the first tier, contractors, entities in the downstream value chain, joint venture partners, governments or government agencies) need a clear guidance on:

- The importance of specifying in the agreement which party has responsibility for addressing human rights risks, including on the right to health, in the relationship.
- What resources will be required to ensure respect for human rights and where those resources will come from?
- How implementation of respect for human rights will be monitored and discussed with business partners?

The business partners have their own responsibility to respect human rights in their operations. Still, the company needs to know to what extent its business partner is meeting their responsibility in order to be assured- and co be able to show- that the company is meeting its own responsibility. Therefore, the company shall consider:

- Looking for evidence up-front that the business partner has the capacity and willingness to comply with human rights standards;
- Enabling the third party to act with respect for human rights (e.g., capacity-building, peer sharing, technical support);
- Giving incentives though which, the company will motivate business partners to act with respect for human rights (e.g., price premiums, increased orders or longer contracts with suppliers, repeat business, and public recognition)?
IX. HUMAN RIGHTS DUE DILIGENCE

The *due-diligence* process to **identify, prevent, mitigate and account** for how adverse human rights impacts are addressed should: cover **own activities** and **business relationships**, vary according to size, severity of impacts, and nature and context of operations; be on an on-going basis.

According to the UN Guiding Principles, human rights *due diligence* should include consideration of both **actual impacts** (i.e. impacts associated with existing operations or legacy issues) and **potential impacts** (i.e. human rights impacts which may occur in the future due to the establishment of a business operation or due to changes to existing business operations).

It is also expected that the range of impacts considered in human rights due diligence includes impacts *caused* by the business (e.g. discrimination in hiring and promotion), impacts to which the business *contributes* (e.g. cumulative impacts, such as where several different companies in the same area contribute to pollution) and impacts that are **directly linked to business.**

Human rights *due diligence* should include **FOUR STAGES**:

- Assessment of actual and potential human rights impacts.
- Integration and acting upon the findings.
- Tracking responses.
- Communicating how impacts are addressed

In the following four chapters we will explain in more detail the four components of the human rights due diligence.

X. ASSESSMENT OF ACTUAL AND POTENTIAL HUMAN RIGHTS IMPACTS (STEP 1)

**Team.** The team should have the necessary skills. In order to assure independence and legitimacy in the process, the impacts assessment of the projects and activities shall be made independently from the company. Ideally, the team should be diverse with members from different cultural and educational backgrounds with sensitivity to the local context, such as lawyers, sociologists, anthropologists and other relevant experts.

**Time allocation.** Human rights assessment is an ongoing process. For a particular activity or products or services, the practice shows different duration of the conduct of human rights impact assessment depending of the country and scope of business activities and it can last from several weeks to 1-2 years.

In assessing the actual and potential human rights impacts companies can take the following steps:

A. Building a systematic approach to assessment.
B. Understanding the operating context.
C. Reviewing business relationships.
D. Drawing on expertise.
E. Directly consulting affected stakeholders.

**A. BUILDING A SYSTEMATIC APPROACH TO ASSESSMENT**

1. On-going assessment.

Since human rights *due diligence* is an on-going process, companies shall assess their potential impacts on human rights, including the right to health, at key moments, such as:

- The start of a new activity (like the development of a new product/service/technology).
- The start of a new business relationship.
2. Stand-alone versus integrated processes.
Companies may choose to have a stand-alone process for assessing impacts on the right to health or to integrate in human rights into existing processes. It is recommendable that the company clearly specify what the company standard processes for assessing human rights impacts consist of, who is consulted, who is responsible for the process and when such assessment typically occur.

3. What makes assessing impacts on the right to health unique?
Whenever methods the company useless to assess impacts, the following factors will make sure they reflect the demands of human rights including the right to health:

- **Who?** Potentially affected stakeholders. It is important to focus on the rights of those stakeholders who may be affected in order to understand fully the company’s impacts on the right to health (e.g., different group of patients—children, elderly people, disabled persons; or consumers, relevant NGOs et)

- **What?** All internationally-recognized human rights, though as we are discussing the company may give priority to the right to health as a salient issue for the company. This suggests that the assessment should be:
  - broad in scope;
  - identify where national laws provide less protection to the right to health to members of some groups then others;
  - look beyond the most obvious stakeholders’ group that may be affected.

- **How?** Meaningful consultation with potentially affected stakeholders that the assessment process can take account of their perspectives. This means not focusing on just getting it done but really understand the stakeholder’s views. This can be particularly challenges for companies with dispersed clients or customers.

- **Where?** Across business relationships as well as company activities.

B. UNDERSTANDING THE OPERATING CONTEXT
A range of factors can affect the risks of operating in a certain country: political instability, corruption, systematic disregard for the right to health of members of certain groups; socio-economic factors; lack of access to effective remedy via the judicial system. Companies shall also distinguish between national law that provides less protection to the right to health then internationally recognized human rights law, the national law conflicts with international human rights law or national law that reflects international law but it is not enforced. Each of these three situations has different implications for the company.

C. REVIEWING BUSINESS RELATIONSHIPS
Company that sells or distribute products/services/technologies directly, or via resellers or distributors, will need to assess the risks of negative impacts on the right to health arising trough those relationships. This includes pharmaceutical companies or companies who research, develop and further transfer health related IT rights.

In all cases, companies should not sell or transfer products/services/technologies to governments or other end-users if they know, or have reason to know, that they are likely to be used in abusing the right to health. Steps that companies shall take in order to assess risks arising from misuse of their products/services/technologies include:

- **Pre-sale/transfer due diligence:** It is important that companies understand as much as possible about all potential uses and misuses of their products/services/technologies via consultation with engineering colleagues, and with civil society/other experts externally.

- **The identity of the end-user,** as part of the company’s “know your customer approach” to sales and service agreement is a critical area for investigation. In order to do so, the company shall:
  - find information on the final customers (including whether they are any relevant sanctions or other blacklist), supported by documentation;
  - ask for information by the customer about the intended use of the product/service/technology;
  - find about previous order requests (especially refused orders) to determine whether the customer is seeking to submit the same request using different legal identity.

- **Integrating respect for human rights in contracts.** In contracts with customers and users, companies shall seek to specify:
  - approved uses of the product/service/technology.
  - commitments by the customer or user that the products/services/technologies will be used only in those ways.
  - restrictions on re-sale or transfer without notice or approval by the company.
in agreements with resellers and distributors, it will be important to include provisions for the reseller/distributor to conduct their own know your customer due diligence, and to consider specifying that any warranties are voided if re-sale/distribution occurs without such due diligence having occurred. Companies may need to consider selling directly if such risks cannot be effectively managed with contractual language and monitoring.

D. DRAWING ON EXPERTISE
1. Engaging internal functions and departments.
The process of assessing impacts is an opportunity to engage across individuals from different teams in a conversation about possible impacts. This can build understanding how certain functions can lead to negative impacts. Doing so will help create buy-in to need the preventive measures. There are different ways to generate the internal conversation:
   × to begin with the right to health, the focus can be on where/how this right may be impacted; or
   × where the human rights language us unfamiliar, it may be more helpful to start by discussing how each of the company’s main activities could impact potentially affected stakeholders.

2. Engaging workers.
Trade unions or worker representatives can be an additional, valuable source of internal company expertise on potential impacts on the right to health. They may have insights not only on the potential impacts of the company operations on the workers themselves, but also on the communities here the workers come from.

3. Drawing on external expertise.
Companies can draw on external expertise in assessing their potential human rights impacts. Possible sources include:
   × Expert advice from lawyers or academic institution with in-depth knowledge of the international human rights standards and norms as well as the local context where the company operates;
   × Expert written sources, including reports from credible organizations that can provide insights into current and emerging issues on the right to health in the particular operating context;
   × Local civil society actors, such as human rights defenders, journalists, trade unions, NGOs etc. Seeking constructively and in good faith input can also increase transparency and may help dispel any concerns they have.

F. DIRECTLY CONSULTING AFFECTED STAKEHOLDERS
Consulting directly with affected workers and communities provides the best way to identify concerns and bring forward adequate actions and can help to strengthen preventive, mitigation and remediation efforts.\textsuperscript{33} It requires two-way dialogue which takes into account the specific risks affecting different groups, including integrating gender-sensitive approaches in the consultation.

1. Mapping stakeholders.
The IFC’s Good Practice Handbook on Stakeholder Engagement highlights a range of considerations that can be important in mapping affected stakeholders. These include:
   × Considering all potentially affected stakeholders, including those who may be affected by the actions of others in the company’s value chain.
   × Assessing the significance of the company’s product, service, technology to each stakeholder group from their perspective as some groups may be impacted much more severely than others.
   × Considering from the earliest stages who are the most vulnerable and marginalized individuals and whether special engagement efforts will be needed to involve them.
   × Identifying representatives of stakeholder groups that are the true advocates of the views of the constituencies, and can be relied upon to communicate the results of engagement with the company back to their constituents.

2. Designing appropriate consultation process with affected stakeholders.
Consultation can be done:
   × during design, testing products, services and technologies prior to their release with users who are at the heighten risk of negative impacts;


\textbf{Human Right Defenders}

Human rights defenders are individuals, groups and associations contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals. Therefore, human rights defenders can be any person or group of persons working to promote human rights, including intergovernmental organizations, government officials, civil servants or members of the private sector.

Source: UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 08.03.1999.
Effective integration. Integration of impact assessments across relevant internal functions and processes requires:

- with trade unions/worker representatives as important partners;
- while being gender-sensitive as women and men have different views and needs;

In manufacturing context, if a company decides to do interviews, then they should be conducted in ways and locations that enable workers to speak freely, and with due attention to those who are in vulnerable or marginalized situation.

3. Including vulnerable and marginalized groups.

In conducting due diligence, the company should give particular attention to the needs of disadvantaged individuals, communities and populations, such as children, the elderly and those living in poverty, as well as gender related issues. This stems from the principles of equality and non-discrimination. Below we would outline briefly why it is important to include the perspectives of women and persons with disabilities, while the second part of this paper will focus entirely on business and children’s right to health.

Women

Women experience the same health conditions differently than men. Poverty and economic dependence among women, their experience of violence, gender bias in the health system and society at large, are some of the social realities which have an adverse impact on their health. So, women face particular health issues and particular forms of discrimination, with some groups facing multiple forms of discrimination, such as refugees, rural women, women with disabilities or women living with HIV/AIDS. Therefore, in identifying and assessing any actual or potential adverse human rights impacts, companies are required to adopt a gender-responsive approach, by conducting meaningful consultations with potentially affected women, women’s organizations and women human rights defenders. For example, company uses sex-disaggregated data and outcome indicators to assess the true impact of their activities on women and consider that different women may be affected differently because of the intersectional nature of discrimination.

Persons with Disabilities

Persons with disabilities face various challenges to the enjoyment of their right to health. For example, they often have difficulties accessing health care, persons with psychosocial disabilities may not have access to affordable treatment through the public health system; women with disabilities may not receive gender-sensitive health services. The Convention on the Rights of Persons with Disabilities requires States to promote, protect and ensure the full and equal enjoyment of all human rights freedoms by persons with disabilities, including their right to health. To this end health professionals are required to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities; through trainings for public and private health care etc. In this line in conducting due diligence, companies shall engage with NGOs of persons with disabilities which will enable the company to better understand how the company’s actions and policies may have an adverse impact on the right to health of persons with disabilities.

4. Formal partnerships with NGOs and unions to identify and address potential and actual impacts.

Entering into partnerships with independent and critical organizations can help to strengthen processes to identify and address human rights impact on the right to health. Good practices include:

- collaboration between food and beverage companies and NGOs;
- global framework agreements between international trade unions and business enterprises.

Consultation with affected stakeholders requires sensitivity to potential barriers (linguistic, gender, cultural) and to perceives imbalances-between the company and the stakeholders. Therefore, the company should make sure that the staff who lead such consultation have the experience and skills necessary.

XI. INTEGRATING AND ACTING (STEP 2)

Effective integration. Integration of impact assessments across relevant internal functions and processes requires:

39 Examples include Fair Food Programme at https://www.fairfoodprogram.org/ or Food for all at https://foodforall.com/
40 For example, IndustriALL Global Union has concluded global framework agreements with chemical pharmaceutical & bioscience sectors, which tackle issues such as labour standards and health & safety issues. See at http://www.industriall-union.org/chemical-pharmaceutical-bio-science
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- **Assignment of responsibility** to appropriate level/function within the business enterprise;
- **Internal decision-making, budget allocations and oversight processes** that enable effective responses to such impacts.

**Effective responses.** Depending on the findings from the impact assessment, effective responses are determined in the company and externally in order to integrate the impact assessments. The appropriate action will vary according to whether the business enterprise:

- Causes, or
- Contributes to an adverse impact, or
- Is involved in because the impact is directly linked by a business relationship, and
- The extent of the company’s leverage in addressing the adverse impact.

**Time allocations.** This is a **continuous process** which is done in parallel with the conduct of business activities.

In integrating and acting upon the findings, companies can take the following steps:

A. Building a systematic approach to integrating and acting.
B. Prioritizing impacts for action.
C. Identifying options to prevent or mitigate potential impacts.
D. Creating and using leverage in business relationships.

**A. BUILDING A SYSTEMATIC APPROACH**

This may include:

- Developing structural cross-functional decision-making groups.
- Including staff from different functions in discussions with external experts on specific challenges.
- Having clear internal reporting requirements on the implementation of decisions.

**B. PRIORITIZING IMPACTS FOR ACTION**

Relevant factor for prioritizing action is the likelihood of an impact, which is increased by:

- the local operating context(s) where the impact may occur and
- the specific business relationships that may be involved.

In a human rights risks, a high severity low likelihood impact takes clear priority.

While it may simplest to prioritize action on those impacts where the company has the greatest leverage, in the context of human rights, it is the severity of impacts that should set priorities; leverage becomes relevant only in considering what can be done to address them. Once the most severe potential impacts have been prevented/mitigated, the next most severe impacts need to be dealt with and so on. Different individuals or functions within the company may be able to address different risks in parallel.

**C. IDENTIFYING OPTIONS TO PREVENT OR MITIGATE POTENTIAL IMPACTS**

1. **Addressing impacts, the company may cause or contribute to.**

Companies may find themselves facing difficult decisions on how to address some human rights risks. For example, an action to reduce risk to one right to health may increase the perceived risk to another. For example, identifying workers with serious diseases and helping them access treatment can impact on their right to privacy.

Addressing such risks requires a full understanding of the issues and ability to work with the complexity. In some cases, there will be examples within the sector of how to manage the tensions successfully. Where examples are lacking, it can be beneficial to involve experts in discussions on how to respond, or depending on the issue involve relevant stakeholders to find a collaborative solution.

2. **Addressing impacts that are linked to the company’s operations, but without any contribution on its part.**

Negative impacts can be directly linked to the company operation even when it has not caused or contributed to them. This situation can arise for example when a reseller contracts with a customer who uses its products, services or technologies to abuse the right to health. In this case the UN Guiding Principles are clear that the company should...
take reasonable steps to prevent or reduce the risk of these impacts recurring. The means of doing so is via the company’s leverage over those who caused the abuse.

D. CREATING AND USING LEVERAGE IN BUSINESS RELATIONSHIPS

“Leverage” is defined under the UN Guiding Principles as the ability of the company “to effect change in the wrongful practices of an entity that causes harm”. In short it is the ability to influence behavior of others.41

1. How is leverage generated?42

“Leverage” over an entity (business, governmental or non-governmental) in this context may reflect one or more factors, such as:

- Whether there is a degree of direct control by the enterprise over the entity;
- The terms of contract between the enterprise and the entity;
- The proportion of business the enterprise represents for the entity;
- The ability of the enterprise to incentivize the entity to improve human rights performance in terms of future business, reputational advantage, capacity-building assistance, etc.;
- The benefits of working with the enterprise to the entity’s reputation and the harm to its reputation if that relationship is withdrawn;
- The ability of the enterprise to incentivize other enterprises to improve their own human rights performance, including through business associations and multi-stakeholder initiatives;

2. Leverage with business partners

Businesses should convey an expectation that impacts will be prevented and addressed through human rights due diligence wherever relevant across business relationships. This can include requiring or setting incentives for immediate or tier-one business partners to carry out human rights due diligence and to cascade it through their own supply chains.

The UN Guiding Principles clarify that a business relationship may have to be terminated if efforts to exercise leverage aimed at addressing an adverse human rights impact prove unsuccessful. A good practice is to be clear about the possibility of disengagement upfront when entering into new business relationships should adverse impacts on rights, including the right to health, be identified and unaddressed.

**Exercising leverage in downstream supply chain**

Lundbeck, a Danish pharmaceutical company, manufactured pentobarbital under the name of Nembutal, which is licensed for refractory forms of epilepsy and for usage as an anesthetic. The company was the only licensed supplier in the US in 2011. Early that year it was discovered that the US’ authorities had begun to use Lundbeck’s pentobarbital for the purposes of lethal injections. Reprieve and Amnesty International denounced the situation and appealed to Lundbeck to put an end to the use of the drug in executions.

In this context, if the company withdrew its drug from the market it could affect the right to access to medicine, including for some which use the drug against life-threatening epilepsy. On the other hand, if its product continued to be used for lethal injections, the company risked being accomplice to violating the right to life.

Lundbeck decided to publish a letter stating its opposition of the use of Nembutal for execution purposes and urged this use to be discontinued. Still, it argued that the way in which its product was used by licensed health care professionals was beyond the company’s control. In June 2011, a group of clinicians published an open letter in a respected medical journal criticizing the company and claimed that it should restrict the distribution of pentobarbital to legitimate users.

On 1 July 2011, Lundbeck changed its policy by guaranteeing the supplies of the product only to hospitals and therapeutic centers for its indicated use, and it obliged purchasers to: “[S]ign a form stating that the purchase of Nembutal is for its own use and that it will not redistribute any purchased product without express written authorization from Lundbeck. By signing the form, the purchaser agree[d] that the product will not be made available for use in capital punishment”. At that time, this was a novel practice amongst pharmaceutical companies.


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XII. MONITORING PERFORMANCE (STEP 3)

According to UN Guiding Principle 20, monitoring needs to be based on information from appropriate sources inside and outside the business and rely on appropriate qualitative and quantitative indicators to measure effectiveness consistently (e.g. over a period of time).

Effective monitoring. Even verifying whether adverse human rights impacts are being addressed, the monitoring should be:

- based on qualitative and quantitative indicators;
- drawn on feedback from both internal/external sources, including stakeholders.

Time allocations. Monitoring responses is a continuous process which is done in parallel with the business activities of the company.

In monitoring performance, companies can take the following steps:

A. Building systematic approach to monitoring.
B. Developing indicators.
C. Incorporating stakeholders’ perspectives.
D. Monitoring through business relationships.

A. BUILDING SYSTEMATIC APPROACH TO MONITORING

1. Designing monitoring systems to encourage company-wide engagement.

Monitoring systems can be a tool that encourage other departments to engage actively in responding to identified impact. For example, a monitoring system might automatically require that a department be given responsibility for investigating an impact, create automatic deadlines for a response or update, and evaluate these to senior management if deadlines are missed. This can help stimulate active engagement from those concerned.

Systematizing in this way can help drive home the relevance of human rights issues, especially those associated with health, for the whole company. It can encourage staff to think preventatively and not just in terms of responding when issues come.

2. Conducting root cause analysis.

Where a severe impact on the right to health has occurred, or lesser impacts occur repeatedly, companies should consider a deeper analysis of the "root causes" of the incident. Such analysis can also help identify where other actors are contributing to actual/potential impacts, who may then become potential partners to collaborate with addressing underlying causes.

B. DEVELOPING INDICATORS

Quantitative indicators offer precision and can often fit more easily with existing systems for monitoring company performance. However, because respect for human rights is about impacts on people, qualitative indicators will also be important. This includes feedback from potentially affected stakeholders wherever possible.

1. Sources of inspiration for indicators.

Indicators need to make sense in the local context where companies are operating. Useful sources include:

- Identifiable trends or pattern, such as repeat type of health-related incidents. These might be in one country context, or across a number of contexts, offering lessons for the company as a whole.
- Feedback from affected stakeholders that can help the company understand how it is perceived.
- The identification of different impacts on vulnerable individuals, such as women and girls, migrant workers, persons with disabilities.

For example, suggested list of indicators for businesses on grievance mechanisms to be discussed in section XV, relevant for the right to health, are:

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


The company is required to answer with: “Yes”, “No”, “F/A = further attention required”, “N/A = not applicable” and “Unknown”.
Local NGOs or other representatives are allowed to participate and represent community members in any hearing held with respect to a grievance.

Records show that the company systematically and objectively reviews any complaints filed and implements corrective action if necessary.

Community members and local NGOs confirm that they have access to a grievance mechanism which addresses any concerns raised in a fair and transparent manner.

2. **Indicators for training.**

Many companies place an emphasis on training staff in human rights compliance. It may be valuable to develop measures to test the effectiveness of training, beyond simply monitoring the number of staff trained. This might focus on assessing how well participants understand what they learned about the right to health and how far they put the learning into practice in their work. This could be assessed, for example, using baseline surveys and post-training, and at follow-up point some months later.

C. **INCORPORATING STAKEHOLDER PERSPECTIVES**

Involving stakeholders directly in monitoring processes can be an important means of testing the company’s assumptions on how well it is doing, as well as bringing credibility to the conclusions reached. Possible approaches include:

- Working with **trade unions** locally or at the global level and other civil society actors, to monitor worker’s human rights, especially in the area of occupational health and safety, and assess the effectiveness of exiting human rights auditing practices.

- Seeking **direct feedback from customers and users** on how the company could improve its management on its risk to the right to health.

- "Energizing" an **online community** to help the company address problems.

- Working with a **multi stakeholder initiative** in monitoring and verification processes.

- For larger companies, forming an **advisory panel** consisting of experts and civil society representatives to provide periodic, formal reviews of performance. These can also incorporate feedback from affected stakeholders.

D. **MONITORING THROUGH BUSINESS RELATIONSHIPS**

When company’s business partners see that it follows up on their human rights performance, they realize that the terms in their contracts or internal policies are not just "blank requirements", but an important part of how the company does business.

1. **The role of contracts.**

Inserting clauses on monitoring requirements in contracts is an effective way of tracing how business partners are managing the risks to human rights, including the right to health. Contracts with suppliers can provide for assessment of their compliance with human rights. Once the company has this information, it can ask for necessary improvements with the business partners.

2. **Securing meaningful audit data about suppliers.**

System for monitoring suppliers are common in many industries. Still, they may have limitations because:

- They often miss issues because of their brief nature.
- They may not manage to grasp the root causes of repeated impacts on the right to health.
- Suppliers can manipulate successfully records.
- Workers may exercise self-censorship in assessment interviews, due to fear.
- These processes have a poor record in generating long-term improvements across a range of human rights.

As a consequence, there has been a shift towards more partnership-based approaches to the suppliers of companies. They often include:

- **Sharing the company’s own experience** in managing human rights risks, including lessons for effective indicators and monitoring systems.
- Sharing data that helps companies see the **business case** for addressing risks to the right to health in their own operations.

- **Involving expert stakeholders** in monitoring and verification processes.

These efforts can be resource-intensive having in mind the huge number of suppliers that a large company may have. Therefore, it may be most productive to focus on suppliers that have the greatest impact on the right to health, due to the nature of their products, services or operating context.
XIII. COMMUNICATING AND REPORTING ON PERFORMANCE (STEP 4)

It is by “knowing and showing” that companies build trust in their performance, demonstrate reliability as partners, and gain sustainable "social license to operate". In short, it is part of being accountable for how the company does business, not least to those who may be impacted.

Stakeholders expect companies to provide information on their human rights performance. Other companies and governments pay attention to human rights issues when deciding who to do business with and sustainable investors and stock exchanges look for meaningful non-financial reporting.

Communication. External communication should:

- Be of form/frequency that reflects the impacts, and is accessible to intended audiences
- Provide sufficient information to evaluate adequacy of response to the particular impacts involved
- Not pose risks to affected stakeholders and personnel or to legitimate requirements of commercial confidentiality.

Choosing reporting framework. There are several platforms, frameworks and initiatives that companies can use in order to report, such as the UN Guiding Principles Reporting Framework and the United Nations Global Compact’s Communication on Progress.

Time allocations. Depending on the chosen reporting framework, the preparation of the report can last from 2 to 6 months.

In communicating and reporting on performance, companies can take the following steps:

A. Building systematic approach to communicating.
B. Deciding who communicates what, to whom and how.
C. Considering and improving formal reporting.

A. BUILDING A SYSTEMIC APPROACH TO COMMUNICATING

1. Adopting consistent approaches to communication.

Companies need to be prepared to respond to concerns of affected stakeholders. It may be useful for companies to define some general criteria for deciding what to communicate to whom, when and how. This can help establish a predictable and consistent approach and ensure that communication with key groups is not forgotten in the middle of handling a concrete case.

It can be also useful to have clear criteria for any decisions not to communicate a response to an allegation of an impact on the right to health. Still, the company should know that there remains the risk that the lack of communications will strengthen the stakeholder vie that the allegations are true;

2. Balancing transparency and confidentiality.

It will be generally easier for companies to build trust in their efforts to address impacts on the right to health if they can be open about problems and show that they take responsibility when things go wrong. If a company makes broad assumptions about the need for confidentiality, it may miss opportunity to disclose information that can further reinforce that trust. Therefore, it may be useful to set the default assumption in favor of disclosure, with a justification needed to withhold information rather than the reverse.

In this line the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines state that the company should be as transparent as possible. There is a presumption in favor of the disclosure of information held by the company, which relates to access to medicines, in a form that is accessible, manageable and useful.

Still, there may be legitimate reason for the non-disclosure, including:

- potential risks to affected stakeholders or staff (including arising from the disclosure of personal information);
- respect for the confidentiality of personal health data collected during clinical trials.
- information legally protected against disclosure to third parties;
- sensitive investigations and internal discussions regarding alleged involvement in human rights impacts;
- the confidentiality required by legitimate law enforcement operations.

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The commercial confidentiality exception should be interpreted narrowly and with due regard to how a lack of information disclosure could worsen the situation of disadvantaged, or vulnerable individuals and communities.\textsuperscript{45}

Also, it would be not legitimate from businesses to refuse to disclose health and safety information on the grounds that it is confidential, particularly on the grounds that it would adversely affect profits or competitiveness.\textsuperscript{46} In particular, employers and suppliers of chemical substances should clearly state in their policies that they will not keep health and safety information secret from the State, workers and their families, workers’ representatives, and affected communities.

B. DECIDING WHO COMMUNICATES, WHAT, TO WHOM AND HOW

1. Communicating general or specific information.

The focus of communicating is on explaining the company’s approaches to addressing human rights impacts. Different types of information are likely to be appropriate to different audiences, for example:

- Communicating with affected stakeholders about a particular incident or risk and how the company is dealing with it;
- Communicating with a broader stakeholder groups, e.g. NGO or trade unions about the company’s response to a significant health issue;
- Communicating with stakeholders and the wider public about the company’s general policies and processes to respect the right to health, illustrated by examples of relevant statistics and other indicators.

2. Deciding who communicates.

Communicating on human rights is about accountability and therefore it is different than traditional public relations. It is recommendable to empower those who engage daily with workers, customers, users or other affected stakeholders to take a role in communicating the company’s efforts to address impacts.

3. Fitting form to purpose.

The form of the communications should fit the purpose. For example, if the purpose:

- is to communicate with affected stakeholders, then an in-person meeting may be the most appropriate-or an individualized communication;
- is to explain to shareholders and others how the company is addressing a specific risk on the right to health, or human rights risks generally, then communication via an annual general meeting, website updates, electronic mailing lists may all be relevant.

C. CONSIDERING AND IMPROVING FORMAL REPORTING.

1. The case for formal reporting.

Formal reporting by companies can provide a valuable opportunity to:

- Engage other parts of the company in a review of its human rights performance;
- Raise awareness of the need for clear data and analysis;
- Present information in ways that gives both internal and external readers of the report a clear and meaningful picture.

In some countries, companies are required to report on the non-financial performance. Also, pharmaceutical companies are required to publish a comprehensive annual report, including qualitative and quantitative information, enabling an assessment of the company’s policies, programmes, projects and other activities that bear upon access to medicines. The numbers of countries where this is the case is growing.\textsuperscript{47}

Even where companies are required to report formally on their non-financial performance, reporting on human rights carry lots of benefits, such as enhancing investor confidence, strengthening relationships with stakeholders and enhancing trust in the company’s brand and its products, services or technologies.

2. The form of formal reporting.

Formal reporting on human rights can be part of a self-standing report or of an integrated report on financial and non-financial performance. The most important reporting networks at the moment, also endorsed by the UN, are the UN Guiding Principles Reporting Framework, Global Reporting Initiative or the Sustainability Reporting Guidelines of the Global Reporting Initiative.

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\textsuperscript{45} Ibid.


3. **Materiality in formal human rights reporting.**
Definitions of materiality in the context of human rights reporting incorporate the perspective of other stakeholders as well by requiring the disclosure of information that would substantively influence their decisions. The UN Guiding Principles do not define materiality. What matters is that it should be informed by both the severity of impacts (actual or potential) and the perspectives of stakeholders.

4. **Improving formal reporting.**
There has been a growing recognition of the need for better company reporting of non-financial risks. A report that tends to just tell “good news” is unlikely to be seen as credible. Stakeholders will welcome a more candid explanation that acknowledges the challenges involved and clearly explains the processes in place to address them. This might include reporting on issues of particular concern or discuss case studies demonstrating how the company is dealing with health-related issues. Useful information in this respect may include:

- A description of the company’s key policies and processes for addressing human rights impacts, including on the right to health;
- Information on the company’s different types of business relationships;
- A description of the grievance mechanisms and/or other remediation and statistics or anonymized examples of the outcomes they have achieved;
- Information on severe impacts with which the company has been involved, how they were addressed and lessons learnt; etc.

It may take time for a company to implement the UN Guiding Principles. Formal reporting should indicate both what has been achieved and any plans to improve or introduce new processes. An ability to compare the company’s reporting over time can also be useful. Reporting against targets can help demonstrate a commitment to continuous improvement in respecting rights, while recognizing that it can be a long-term process.

**XIV. REMEDIATION AND OPERATIONAL LEVEL GRIEVANCE MECHANISMS**

Pillar III of the UN Guiding Principles addresses the issue of access to remedy for business-related human rights abuses. Remediation is the process of providing a remedy for a harm. Remedy can take a variety of forms, including restitutions, rehabilitation, financial and non-financial compensation ad punitive sanctions as well as the prevention of harm through injunctions or guarantees of non-repetition. The Guidelines refer to state-based and non-state based remedial systems, as shown in the following two diagrams.

**Operational-level grievance mechanisms.** To make it possible for grievances to be addressed early and remediated directly, the UN Guiding Principles indicate that businesses should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. Operational-level grievance mechanisms have the potential to perform two key functions:

- to support the identification of adverse human rights impacts; and
- to make it possible for grievances to be addressed and for adverse impacts to be remediated early and directly by the businesses, thereby preventing harms from compounding and grievances from escalating.
Effectiveness criteria for non-judicial grievance mechanisms. Grievance mechanisms, set up by individual business enterprises or mechanisms in which they participate, in order to be considered as effective according the UN Guiding Principles should be:

1. **Legitimate**: engendering trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.
2. **Accessible**: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.
3. **Predictable**: indicating a clear and known procedure with an indicative timeframe for each stage, and providing clarity on the types of process, outcomes available and means of monitoring implementation.
4. **Equitable**: seeking to ensure that aggrieved parties have reasonable access to sources of information and advice.
5. **Transparent**: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake.
7. **A source of continuous learning**: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
8. **Based on engagement and dialogue**: consulting the stakeholder groups for whose use they are intended, and focusing on dialogue as a means to address and resolve grievances.

Time allocations. The reporting process is an on-going one and a source of continuous learning.

In the remediation process, companies can take the following steps:

A. Building a systematic approach to remediation.
B. Mapping and working with external remediation mechanism.
C. Designing effective operational-level grievance mechanisms.
D. Creating and using leverage in business relationships.

A. BUILDING A SYSTEMATIC APPROACH TO REMEDIATION

Much of a company’s efforts regarding the right to health, or in general about human rights, will focus on preventing negative impacts from happening. Still, even with the best policies in place, things can go wrong, for instance because:

- An individual makes a mistake;
- Unforeseen issues arise for which the company is not prepared;
- A business partner violates the right to health in connection with some aspect of the company’s products, services or technologies;
- Stakeholders expectation change.

Companies need to have clear processes in place to respond, often rapidly, to situations where impacts on the right to health occur or allegations have been raised.

1. **The role of operational-level grievance mechanisms.**

   This is a formalized means for affected stakeholders to raise concerns about any impact they believe a company had on them in order to seek remedy. An effective operational-level grievance mechanism can support the company’s due diligence process and help embed respect for the right to health across the company, by:

   - Promoting internal discussions about impacts and how to address them.
   - Helping identify impacts and understand them from the perspective of affected stakeholders, which can contribute to the company’s impact assessment processes.
   - Demonstrating that the company takes concerns of affected stakeholders, which can help build trust and reinforce relationships with stakeholders.
   - Providing accountability for human rights impacts, which is crucial to embedding the company’s commitment to respect all rights, including the right to health.
   - Demonstrate that compensation settlements, should never exclude access to judicial or non-judicial mechanisms and nondisclosure agreements should not be used unless requested by the affected, persons including women.⁴⁸

2. **The extent and limits of a company’s responsibility to remediate.**

   When a company has caused or contributed to a harm, it has a responsibility to cease its contribution and provide or contribute to a remedy. Companies do not have to remediate:

   - Impacts they have neither caused or contributed to. It is the responsibility of those who have contributed to the impacts to provide for or cooperate for remediation. Still, where the impacts are linked to the company’s operations, it has the responsibility to use its leverage to prevent or mitigate the risks of the impacts continuing or recurring.

   ⁴⁸ See Guiding Principles on Business and Human rights, Principle 29 and 31.
Impacts they are alluded to have accused or contributed to, where the company does not agree with that allegation. However, the company may need to investigate the issue to be sure of its position and should avoid obstructing legitimate processes to investigate the issue.

**B. MAPPING AND WORKING WITH EXTERNAL REMEDIATION PROCESSES**

Operational-level mechanisms are one channel for addressing complaints that a company has caused or contributed to negative impacts on people. Additional mechanisms are shown in the diagrams on page 26.

Mapping includes understanding how effective those mechanisms are seen to be in practice (e.g., if courts are generally viewed as corrupt). This helps the company to understand how an operational-level grievance mechanism might be positioned to add value to the existing state-based processes.

**C. DESIGNING EFFECTIVE OPERATIONAL-LEVEL MECHANISMS**

1. **Building on existing company mechanisms.**

A company may have separate grievance mechanisms for workers and for external stakeholders. Also, they may have a combined mechanism or access point that can receive complaints from employees and other workers, suppliers, customers, users, and potentially other partners as well. Complaints may then be allocated for handling through different processes. Also, companies can build on existing internal systems (e.g., whistle-blower mechanisms, customer complaints system) that may already be an effective avenue for individuals to raise human rights related complaints.

2. **Building internal support for an operational-level grievance mechanism.**

It can be challenging to build internal understanding that complaints raised through an operational-level grievance mechanism are not a threat to staff nor necessarily a sign that a company is failing at its relationships with stakeholders. Where a company is designing a new mechanism, it can be useful to make this a collaborative exercise by involving people from key functions and departments.

In addition, in order to be gender sensitive, the company should consult potentially affected women, women’s organizations and women human rights defenders. Building in time for this internal engagement as well as with stakeholders can be important to the long-term success of the mechanism.

3. **Escalations of complaints.**

Triggers that the complaints have escalated include:
- Deadlines for responding to a complainant have not been met;
- Complaints raise potentially grave impact on the right to health;
- Where a complaint implicates other complaints or representatives of the state;
- Where a complaint implicates possible criminal conduct.

In the latter two instances the company shall report the matter to the relevant authorities.

4. **International membership initiatives.**

A company may consider whether it wants to become a member of an international initiative in their particular sector, which offers to their members the use their grievances mechanisms. Examples include Fair Wear Foundation, BSCI or Ethical Trading Initiative.

**XV. NATIONAL LEGISLATION RELEVANT FOR THE RIGHT TO HEALTH**

**XV.1. A snapshot.**

The right to health is protected with a variety of articles in the Constitution of North Macedonia. As such the Constitution guarantees:
- to every citizen the right to health care (article 39);
- to everyone the right to a healthy environment to live in. (article 43);
- to every citizen the right to social security and social insurance (article 34).

Also, the right to health is protected in a broader sense with article 9 (stipulating that the right to life is irrevocable) and article 11 (stating that the physical and moral integrity of the individual are inviolable).

There are various laws which regulate different aspects of the right to health, such as the following.

**The Law on Prevention and Protection against Discrimination:** prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation,

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access to health care, and the provision of other state services. The law allows persons who have experienced discrimination to submit complaints to the Commission for Protection against Discrimination.

**The Law on Health Protection**: emphasizes that every citizen shall have the right to health protection that observes the highest possible standard of human rights and values; that he/she shall have the right to physical and psychological integrity and safety of his/her personality, as well as respect of his/her moral, cultural, religious and philosophical convictions.

**The Law on Health Insurance**: regulates the health insurance of the citizens, the rights and obligations deriving from the health insurance, as well as the manner of implementing the health insurance.

**The Law on Mental Health**: establishes that the treatment of persons suffering from mental disabilities shall be based on best practices, treatment, and rehabilitation in accordance with the latest developments in the field and within the framework of available resources that are adequate to the specific needs of the individual.

At the moment there is no national law which requires mandatory human rights due diligence from companies. Still, that does not absolve companies to respect human rights, including the right to health, as stipulated in Principle 14 of the UN Guiding Principles.

**XV.2. Access to remedy.**

Victims of corporate human rights abuses, including in regards to the right to health, may file human rights cases in the criminal, civil or administrative courts in North Macedonia. They also may appeal adverse decisions. The law provides the right to timely adjudication of cases and a legal basis for appealing excessive judicial delays to the Supreme Court.  

**Constitutional Court.** Any person can bring claims in relation to the prohibition of discrimination to the Constitutional Court.

**Criminal procedure.** The victim can issue a criminal charge to the public prosecutor, or private criminal charge to the court if that is prescribed by the law. The country does not use juries, but for certain criminal and civil cases, judicial panels of three to five individuals, led by a professional judge, are used.

Section 15 of the Penal Code criminalizes 25 acts as crimes against human rights and freedoms. In addition, there is a separate section in the Penal Code concerning crimes against people’s health. Victims can bring criminal charges against legal entities, who can be wrongdoer of most of the crimes, independently of the responsibility of the responsible person in the legal entity.

A responsible person in the legal entity is a person who, though formally is not registered as a manager, acts and undertakes legal actions in the relations with third parties, is signatory of the bank account, is submitter of the annual reports, is organizing the full business operations and is enforcing the decisions in the management, as a consequence of which he or she has an obligation to take care of the legality of the business operations of the company.

**Civil procedure.** The civil actions start with a claim by individual or legal entity to civil courts. In the area of social protection and health and pension insurance the Law on Extrajudicial Procedure is implemented.

Discrimination lawsuits can be filed with civil courts, with the request that the court determines violations of the right to equal treatment of the plaintiff; prohibits the undertaking of activities which violate or may violate the right of the plaintiff to equal treatment; compensates the material and non-material damage caused by violation of the rights and announces the verdict publicly.

**Ombudsman.** The Ombudsman, a national human rights institution, protects the constitutional and legal rights of citizens when violated by bodies of state administration and other bodies and organizations with public authorities. It undertakes actions and measures for protection of the principle of non-discrimination. The Ombudsman’s decisions are not legally binding, but the organs are obliged to act upon the directions and recommendations of the Ombudsman and to notify him/her of the action taken within 30 days as of the day of receipt of decision.

**Commission for the Protection against Discrimination.** Cases of discrimination are dealt with by the Commission for the Protection against Discrimination and the civil courts. The Commission has a mandate to review discrimination complaints, issue opinions regarding complaints, and promote the implementation of antidiscrimination law. The Commission does not have the power to punish offenders, but can initiate a procedure with a competent body for the purpose of determining liability.

Unlike the Ombudsman, the Commission reviews complaints from both the public and private sectors. Citizens not satisfied with the outcome of complaints may seek redress in court, which may accept the written opinion of the commission as evidence.

**Labour Dispute System.** The Law on Amicable Settlement of Labour Disputes regulates the manner and procedure for amicable settlement of collective and particular individual labour disputes. A conciliator, as neutral party, mediates between two opposing parties with the aim of reaching amicable settlement of collective labour dispute. If the parties in the dispute accept the recommendations of the Board of Conciliation, they shall conclude a Settlement Agreement. An arbitrator participates in the amicable settlement of individual labour dispute in order to reach a binding and enforceable solution for the dispute's subject matter. Remuneration of the conciliators and arbitrators is covered by the Ministry of Labour. It is prescribed that the procedure is discrete, informal (no need for written evidence) and voluntary.

**XVI. INTERNATIONAL JURISPRUDENCE**

This part includes cases from international jurisprudence where the right to health has been violated. As they are issued by international courts or regional bodies which adjudicate or give their opinions on bases of international human rights treaties, they crystallize not only obligations for the States signatory of the particular treaty, but also the content of the corporate obligation to respect the right to health. Therefore, the case law can be used as a valuable source of guidance for businesses when assessing whether their operations are in line with international accepted standards.

*Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania* 51
The Court in this case held that there had been a violation of Article 2 (right to life) of the European Convention on Human Rights (*ECtHR*), because Mr. Câmpeanu had been placed in medical institutions which were not equipped to provide adequate care for his condition; he had been transferred from one unit to another without proper diagnosis; and, the authorities had failed to ensure his appropriate treatment with antiretroviral medication. The authorities, although aware of the difficult situation in the psychiatric hospital where he had been placed, had unreasonably put his life in danger.

**Lessons learnt:** In order to align their operations with the ECHR, private or public health institutions are obliged to:

- Provide adequate care for the patient’s condition.
- The transfer from one unit to another should be done with proper diagnosis.
- Give appropriate treatment to patients with medication.
- Have sufficient number of personnel, sufficient food and heating.

**See also:**

*Paposhvili v. Belgium* 52
This case concerned an order for the applicant’s deportation to Georgia, issued together with a ban on re-entering Belgium. The applicant, who suffered from serious medical conditions, including chronic lymphocytic leukemia and tuberculosis, alleged in particular that substantial grounds had been shown for believing that if he had been expelled to Georgia he would have faced a real risk there of inhuman and degrading treatment and of a premature death. He died in Belgium, while his case was pending before the Grand Chamber. The Court did not strike his application out of the list. It found that “special circumstances relating to respect for human rights” required its continued examination.

The Court held that there would have been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention if the applicant had been removed to Georgia without the Belgian authorities having assessed the risk faced by him in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia. It found a similar violation of Article 8 if Belgium had expelled him without having assessed the impact of his return on his “right to respect for his family life in view of his state of health.”

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51 *ECtHR, Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania*, Grand Chamber Judgment, 17 July 2014: https://hudoc.echr.coe.int/eng-press#{%22itemid%22:%22001-145577%22}  
52 *ECtHR, Paposhvili v. Belgium*, Grand Chamber Judgement, 13 December 2016: https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-169662%22}
Lessons learnt: According this case law, the returning State must obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3.

In the case *Savran v. Denmark*, concerning a Turkish national’s complaint that owing to his mental health his rights would be violated if Denmark returns him Turkey, the Court added another criteria that if returned to Turkey, Denmark will be in obligation to closely monitor and follow-up the case in order to make patient’s treatment effective and allow for his reintegration into society.

*Brincat and Others v. Malta*54
This case concerned ship-yard repair workers who were exposed to asbestos for a five decades beginning in the 1950s to the early 2000s which led to them suffering from asbestos related conditions. The applicants complained about their or their deceased relative’s exposure to asbestos and the Maltese Government’s failure to protect them from its fatal consequences.

The Court held that there had been a violation of Article 2 (right to life) of the ECHR in respect of the applicants whose relative had died, and a violation of Article 8 (right to respect for private and family life) of the Convention in respect of the remainder of the applicants. It found in particular that, the Maltese Government had failed to satisfy their positive obligations under the Convention, to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives. Indeed, even though from the early 1970s, the Maltese Government had been aware or should have been aware that the ship-yard workers could suffer from consequences resulting from the exposure to asbestos, they had taken no positive steps to counter that risk until 2003.

Lessons learnt: In order to comply with the ECHR, States and businesses will need to adequately protect and inform the employees/population of the risk to health and lives resulting from the exposure to health or life-threatening substances.

See also:
- ILO Occupational Cancer Recommendation (R147) concerning the prevention and control of occupational hazards caused by carcinogenic substances and agents.
- ILO Recommendation (R172) concerning safety in the use of asbestos.
- ILO Convention concerning Safety in the Use of Asbestos (C 162).
- ILO Convention concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents (C 139).

*Dvořáček v. the Czech Republic*55
The applicant, who was admitted a psychiatric hospital to undergo a compulsory protective serological treatment alleged that the hospital had failed to provide him with appropriate psychotherapy and that he had been subjected to forcible medicinal treatment and psychological pressure, which amounted to a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held that there had been no violation of Article 3 of the Convention with regard to the applicant’s detention in a psychiatric hospital and the medical treatment administered. It noted that anti-androgen treatment had been a therapeutic necessity and that it had not been established that the applicant had been pressured into undergoing it. While there was further no reason to cast doubt on the hospital’s statements to the effect that the applicant had been apprised of the side-effects of the said treatment, the Court nonetheless considered that a specific form setting out his consent and informing him of the benefits and side-effects of the treatment and his right to withdraw his original consent at any stage would have clarified the situation. However, even though such a procedure would have reinforced legal certainty for all concerned, the failure to use such a form was insufficient for a breach of Article 3.

Lessons learnt: In order to be in line with the ECHR, both private and public health care institutions shall procure written consent from the patient, informing him of the benefits and side-effects of the particular treatment and his right to withdraw his original consent at any stage.

See also:
- Convention for the Protection of Human rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human rights and Biomedicine, Article 5, 6 and 7.

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53ECtHR, *Savran v. Denmark*, 01 October 2019, case referred to the Grand Chamber: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-196152%22]}
54 ECtHR, *Brincat and Others v. Malta*, 24 March 2014: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-145790%22]}
55 ECtHR, *Dvořáček v. the Czech Republic*, 6 November 2014: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-147688%22]}
Tool on (Children’s) Right to Health and Businesses

- Recommendation no. R (99) 4 of the Committee of Ministers to Member States on Principles concerning the legal protection of incapable adults, Principles 22, 25, 28.
- Recommendation 2004 (10) of the Committee of Ministers to the Member States concerning the protection of the human rights and dignity of persons with mental disorder, Principles 12, 16-20.

Šilih v. Slovenia56

The applicants’ 20-year-old son, who sought medical assistance for nausea and itching skin, died in hospital in 1993 after he was injected with drugs to which he was allergic. The applicants complained that their son died because of medical negligence and that there had been no effective investigation into his death. The Court held that there had been a violation of Article 2 (right to life) of the ECHR on account of the inefficiency of the Slovenian judicial system in establishing the cause of and liability for the death of the applicant’s son. It observed in particular that the criminal proceedings, and notably the investigation, had lasted too long, that six judges had been changed in a single set of first-instance civil court proceedings, which were still pending 13 years after they had been started.

Lessons learnt: Health care institutions need to adopt appropriate measures for the protection of their patients’ life. As prompt examination of cases concerning death in a hospital setting is needed, companies will need to cooperate with state institutions according to the UN Guidelines, Principle…. Knowledge of the facts and of possible errors committed in the course of medical care are essential to enable the institutions concerned and medical staff to remedy the potential deficiencies and prevent similar errors. The prompt examination of such cases is therefore important for the safety of users of all health services. Also States need to establish an effective independent judicial system, where victims can have effective remedy, so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable

XVII. HUMAN RIGHTS GUIDANCE FOR BUSINESSES

This section contains human rights due diligence recommendations, principles and guidelines issued by international organization.

UN Committee on Economic, Social and Cultural Rights: General comment 14 on the right to the highest attainable standard of health57

In its General Comment the Committee stressed that while only States are parties to the Covenant on Economic, Social and Cultural Rights and ultimately accountable for compliance with it, all members of society — individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector — have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities.

UN: The 2030 Sustainable Development Agenda58

Adopted by the UN in 2015, the Agenda applies to all countries and stakeholders, including business. The 2030 Agenda as a consensual policy document which aims to achieve 17 sustainable development goals (SDG). The SDGs see the private sector as an indispensable partner towards achieving its targets, but recognize that business needs to adhere to international standards to ensure labor, environmental and other protections, and therefore makes explicit reference to the UN Guiding Principles, ILO labor standards and UN Convention on the Rights of the Child. In order to achieve SDG 3: Ensure healthy lives and promote well-being for all at all ages, the business sector is expected to work towards, among others:

- strengthening the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol;
- achieving universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all; and
- strengthening the capacity of all countries for early warning, risk reduction and management of national and global health risks.

Council of Europe: Recommendation on Business and Human Rights CM/REC(2016)39

The Council of Europe recommends to Member States to apply such measures as may be necessary to encourage or, where appropriate, require:

56 ECHR, Šilih v. Slovenia, Grand Chamber Judgement, 9 April 2009: https://hudoc.echr.coe.int/fre#{%22itemid%22:%22001-92142%22}
57 See General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the ICESCR).
business enterprises domiciled or conducting substantial activities within their jurisdiction apply human rights due diligence throughout their operations;
require businesses to display greater transparency in order to enable them to better “know and show” their corporate responsibility to respect human rights.
require business enterprises to respect human rights, when the states:
- own or control business enterprises;
- grant substantial support and deliver services through agencies, such official investment insurance or guarantee agencies, to business enterprises;
- grant export licenses to business enterprises;
- conduct commercial transactions with business enterprises, including through the conclusion of public procurement contracts;
- privatize the delivery of services that may impact upon the enjoyment of human rights.

ILO: Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. ILO offers guidelines to multinational enterprises, among others, in areas such as employment, training, conditions of work and life, and industrial relations. According to the Declaration multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole. They should also make available to all relevant stakeholders’ information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make accessible information about any special hazards and related protective measures associated with new products and processes. workers and their organizations.

EU: Guidelines on non-financial reporting According to the Guidelines, certain large companies with more than 500 employees, are required to disclose non-financial information, that is necessary to understand their development, performance, position and the impact of their activity. On the topic of human rights, the companies are required to disclose material information on potential and actual impacts of their operations on right-holders. Material disclosures may reflect how a company approaches, among others, the UN Guiding Principles, the OECD Guidelines for multinational companies, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Examples of information and key performance indicators include:
occurrences of severe impacts on human rights relating to its activities or decisions; or
operations and suppliers at significant risk of human rights violations, including of the right to health.

Working Group on the issue of human rights and transnational corporations and other business enterprises, Gender dimensions of the Guiding Principles on Business and Human Rights As women are among the groups that are often disproportionately affected by the adverse impact of business activities, the UN Working group on transnational corporations created Guiding Principles. They stress that business enterprises have a responsibility to avoid infringing women’s human rights and to address adverse human rights impacts with which they are involved. To discharge this responsibility, business enterprises should:
contribute to achieving substantive gender equality and avoid exacerbating or reproducing existing discrimination against women throughout their operations;
not perpetuate gender stereotypes or objectify and sexualize women’s bodies in any process, including sales and marketing, related to their products or services;
take steps to respect the sexual and reproductive health and rights of women, for example, by providing paid parental leave, offering flexible work hours or work-from-home options for new parents, and providing breastfeeding rooms at work. Business enterprises should also cease the practice of mandatory pregnancy testing.

Committee on the Rights of Persons with Disabilities: General comment No. 3 (2016) on women and girls with disabilities There is strong evidence to show that women and girls with disabilities face barriers in most areas of life, including in being able to participate in politics and to exercise control over their own lives with regard to health care, including

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sexual and reproductive health services. The UN Committee states that States must take all appropriate measures to eliminate discrimination against that women and girls with disabilities on the basis of sex and/or impairment by any person, organization or private enterprise. They will also need to exercise due diligence by preventing violence or violations of human rights, protecting victims and witnesses from violations, investigating, prosecuting and punishing those responsible, including private actors, and providing access to redress and reparations where human rights violations occur. For example, States parties could promote the training of professionals in the justice sector to make sure that there are effective remedies for women with disabilities who have been subjected to violence.

ILO: Chemicals Convention (ILO C.170)\textsuperscript{64}
This ILO Convention addresses safety in the use of chemicals in the workplace. Under this Convention, ratified till now by only 22 countries, workers and their representatives have a right to information on:
\begin{itemize}
\item The identity and hazardous properties of chemicals used at work.
\item Precautionary measures.
\item Education and training.
\item Information contained in labels and markings.
\item Chemical safety data sheets (CSDS) etc.
\end{itemize}

OECD, OECD Due Diligence Guidance for Responsible Business Conduct\textsuperscript{65}
According this Guidance there are certain information that companies are required to disclose as part of their corporate responsibility to respect human rights, such as:
\begin{itemize}
\item Information to workers about their exposure to hazardous substances.
\item Results of product or environmental testing necessary for the effective protection of the rights to life or health.
\item Information about hazardous substances necessary for the effective provision of medical treatment in the aftermath of an industrial disaster”.
\end{itemize}

UNDP, HUMAN RIGHTS Due Diligence and COVID-19: Rapid Self-Assessment for Business (C19 Rapid Self-Assessment)\textsuperscript{66}
The assessment, based on relevant provisions of UN human rights treaties, the ILO Fundamental Conventions, and the UN Guiding Principles, provides initial guidance about doing a self-assessment in the context of COVID 19. Companies should assess whether they have undertaken actions related to the right to health, including the following:
\begin{itemize}
\item Providing access to health care and medical supplies including protective material such as facemasks without any discrimination on the basis of sex, race, religion, language, nationality, disability, migrant status, sexual orientation, gender identity or membership in a social group facing marginalization/stigma/
\item Ensuring that all reasonable steps taken to remove or reduce risks to employees are conducted in consultation with employees, including recommendations made by workers and/or health and safety committees (or representatives) during the COVID-19 crisis. If possible, it is advisable that companies consult with trade unions, civil society and other stakeholders.
\item Taking precautionary measures to ensure that the health of consumers or the general public is not further endangered by business operations.
\item Disclosing private information of consumers or the general public to Governments, only when used for the purposes of responding to the COVID-19 pandemic and in accordance with relevant legal frameworks. Disclosed information should be limited in scope and time-bound in relation to COVID-19.
\end{itemize}

ILO: COVID-19: Guidance for employers and business to enhance migrant worker protection during the current health crisis\textsuperscript{67}
The Guidelines stresses that many businesses rely on migrant workers, such us nurses, doctors and other frontline care workers as well as the agricultural, transport and retail workers that supply with food and other essential items during the COVID-19 pandemic. In order to help companies, enhance protections for migrant workers in their operations and supply chains, the Guidelines stipulate among others that:
\begin{itemize}
\item The health, wellbeing and safety of all employees, including migrant workers, shall be a priority for employers during the COVID-19 health crisis. Businesses must exercise their duty of care to respect human rights and meet the basic needs of all employees, especially those related to health.
\end{itemize}

It is imperative that workers living in employer-owned or -operated accommodation continue to have access to potable water, food, electricity and other essential needs during conditions of quarantine, isolation or restricted mobility. Also, their access to emergency and health services should be guaranteed by the employer.

Additional measures should be taken by employers whose workplaces and operations are located in remote or isolated locations and where access to health facilities and infrastructure is limited. This includes industrial and small-scale mines, farms and agricultural plantations as well as fishing vessels and transport workers.

**XVIII. CHILDREN’S RIGHT TO HEALTH AND BUSINESSES**

“Do not take advantage of us, we ask you to be responsible. Do not support us because you feel pity for us; instead support us because we deserve it. We purchase your products and services, but we ask you to invest in our development. We do not want gifts; we want you to be responsible.”

*Young person in Peru*

Under international human rights law, children are entitled “to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” This right is articulated in Article 24 of the 1989 UN Convention on the Rights of the Child (“CRC”), which is the most widely ratified international human rights instrument. The Convention defines a child as “every human being below the age of eighteen years.”

Business shall be aware of the following characteristics of the children’s right to health that shape its content:

- **Inclusive right.** The right extends not only to prevention, health promotion and health services, but also to children’s right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health. Therefore, the right to health is also linked and dependent on other rights. Violence against children is a human rights violation relating to ill health.

- **Freedoms and entitlements.** Children’s right to health contains a set of freedoms (e.g., the right to control one’s health and body) and entitlements (e.g., access to facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health).

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**Dutch Child Labour Due Diligence Law**

On 1 January 2020 the Child Labour Due Diligence Law entered into force in the Netherlands. It requires both to companies registered in the Netherlands and to those from anywhere in the world that deliver their products or services to the Dutch market twice or more a year to submit a statement to the Dutch regulatory authorities. In the statement the companies should describe the steps taken to investigate whether there is a ‘reasonable suspicion’ that child labour occurs in their operations or in their supply chain; should there be reasonable suspicion, they are to put in place an action plan to address their findings in line with international guidelines (UN Guiding Principles or OECD Guidelines).

The aim of the legislation is to prevent goods and services produced with child labour from being delivered to consumers in the Netherlands. If concrete evidence can be found that goods or services have been produced with child labour, a third-party complaint could be filed with the Dutch regulatory authorities that will assess whether the company has conducted sufficient due diligence.

XIX. BUSINESSES AND CHILDREN
Children are both rights-holders and stakeholders in business as consumers, legally engaged employees, future employees and business leaders and members of communities and environments in which business operates. They are both directly and indirectly affected by company policies, products, operations, sourcing activities and business relationships.

For example, according an ILO report 73 million children were involved in hazardous work, endangering their health, safety and development. Children are also affected as consumers of products and services by marketing practices and by the impact that business activities have on local communities and the environment.

Because of the important role businesses play in the provision and management of services such as clean water, sanitation, education, and health, alternative care, that are critical to the enjoyment of children’s rights, now the international law requires from businesses to respect, and we will further see also support children’s rights.

This is well summarized by the UN Committee on the Rights of the Child, the monitoring body of the CRC:

“…duties and responsibilities to respect the rights of children extend in practice … and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children’s rights and States must ensure they do so. In addition, business enterprises should not undermine the States’ ability to meet their obligations towards children under the Convention and the Optional Protocols thereto.”

Now, there is strong support from governments, academia, civil society and business for the belief that business development should not come at the expense of children and that the corporate sector can be an important driver in promoting children’s rights.

XX. CHILDREN’S RIGHTS AND BUSINESS PRINCIPLES
In order to better understand their responsibilities towards children, on the basis of already established norms and standards, UNICEF, Safe the Children and UN Global Compact have developed the Children’s Rights and Business Principles. They do not create new human rights for children as it is shown in the tables bellow.

Business responsibilities are set in 10 Principles. Principle 1 is an umbrella principle as it requires from businesses to respect children’s rights and commit to supporting children’s rights.

Principles 2-9 lay down concrete responsibilities of the businesses in the workplace, the marketplace, the community and the environment.

In order to work in line with the Principles, this legal comprehensive framework proposes actions for businesses. With these actions’ businesses will respect and support all children’s rights, including children’s right to health. This is illustrated bellow in the following Table.

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72 See Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.
74 See Committee on the Rights of the Child, General Comment No. 16 (2013).
<table>
<thead>
<tr>
<th>Principle</th>
<th>In order to respect and support children’s right, businesses are required to:</th>
<th>Examples of actions directed to respect and support children’s right to health:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principle II</td>
<td>Contribute towards the elimination of child labor, including in all business activities and business relationships.</td>
<td>Protect children from hazardous work, which is likely to harm their <strong>health</strong>, safety and morals.</td>
</tr>
</tbody>
</table>
| **Principle III** | Provide decent work for young workers, parents and caregivers. | ✗ Promote decent work opportunities for young workers, including age-appropriate social protection and **health information and services**.  
• Pay particular attention to working conditions such as:  
  o Length and flexibility of working hours.  
  o Provisions for pregnant and breastfeeding women.  
  o Need for parental leave.  
  o Supporting migrant and seasonal workers with distance parenting.  
  o Access to good quality childcare, health care and education for dependents. |
| Principle IV | Ensure the protection and safety of children in all business activities and facilities. | Make clear to staff that the business's zero tolerance policy for violence, exploitation and abuse applies in all business activities, even when conducted away from business facilities. |
| **Principle V** | Ensure that products and services are safe, and seek to support children's right to health through them. | Take steps to improve the accessibility and availability of its products that are essential to the survival, development and better health of children. |
| **Principle VI** | Use marketing and advertising that respect and support children's right to health. | ✗ Comply with the standards of business conduct in World Health Assembly instruments related to marketing and health in all countries. Where national law prescribes a higher standard, business must follow that standard.  
 ✗ Use marketing that raises awareness of and promotes children’s rights, positive self-esteem, healthy lifestyles and non-violent values. |
| Principle VII | Respect and support children's right to health in relation to the environment and to land acquisition and use. | ✗ Ensure the rights of children, their families and communities are addressed in contingency plans and remediation for environmental and health damage from business operations, including accidents.  
 ✗ Respecting children's right to health, when planning and carrying out resettlement and providing for compensation.  
 ✗ Put in place remedial for any potential environmental and health damage that its operations may cause. |
| **Principle VIII** | Respect and support children's right to health in security arrangements | ✗ Ensure that respect for the rights of children to health is explicitly addressed in the business's security contracts.  
 ✗ Do not recruit or use children in security arrangements either directly or through private or public security service providers. |
| **Principle IX** | Help protect children affected by emergencies | ✗ Avoid causing or contributing to the infringement of the children's right to health in the context of emergencies  
 ✗ Raise awareness among workers and community members of the increased risks of violence, abuse and exploitation of children in such contexts. |
Besides providing an operational framework for businesses, the Principles enable the company to:

1. **Achieve better risk management** through an expanded definition of risk that includes human rights, and by ensuring that health, safety and product responsibilities safeguard children’s interests.
2. **Build reputation and help secure the ‘social license to operate’** by demonstrating that the beneficial impacts of companies’ products, responsible marketing and good relationships with local communities can meet the needs of parents and children.
3. **Recruit and retain a motivated workforce** through fair wages and decent working conditions, enabling employees who are parents or caregivers to combine their family responsibilities with a productive work life, thereby increasing production capacities and reducing absenteeism.
4. **Develop the next generation of talent** by supporting programmes and education initiatives that will equip young people with workplace skills such as decision making and leadership.
5. **Contribute to a stable and sustainable business environment** by working for the good of children and helping to build strong communities, robust businesses and healthy economies.

### XXI. DUE DILIGENCE WITH CONSIDERATION ON CHILDREN’S RIGHTS

As with the Guiding Principles, the Children’s Principle ask from companies to undertake human rights due diligence with consideration of children’s rights. As part of this process the companies are required to:

- **Make a policy commitment** to respect children’s rights in corporate policies and statements.
- **Assess potential and actual impacts** in order to understand how the company adversely impacts children, and identify opportunities to support positive impacts.
- **Engage stakeholders on children's rights** and ensure that the impact assessment process does not negatively impact children.
- **Integrate findings** by developing targeted mitigation and prevention strategies across the business.
- **Report** or disclose efforts undertaken to respect children’s rights.
- **Remediate** any adverse impacts on children’s rights discovered via grievance mechanisms and remediate.

In undertaking a due diligence process, businesses are required to take into consideration the following principles and rights, enshrined in the CRC:

#### The best interests of the child

**Why?**

Because this principle is directly applicable to business enterprises that function as private social welfare bodies by providing any form of direct services for children, including care, foster care, health, education and the administration of detention facilities.78

Individual children's best interests should be based on their physical, emotional, social and educational needs, age, sex, relationship with parents and caregivers, and their family and social background.79

#### The right to life, survival and development

**Why?**

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78 See Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.

79 See Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).
Because the activities and operations of business enterprises can impact on the realization of the right to life, survival and development of children. For example, when business employment practices require adults to work long hours, older children, particularly girls, may take on their parent’s domestic and childcare obligations, which can negatively impact their right to education and to play; additionally, leaving children alone or in the care of older siblings can have implications for the quality of care and the health of younger children.

The right of the child to be heard

Why?

Article 12 of the CRC establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child’s age and maturity. It is crucial for business to seek the views of children and consider them in decisions that affect them. Such processes must be accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times. Participation should be voluntary and occur in a child-friendly environment that challenges and does not reinforce patterns of discrimination against children. Where possible, civil society organizations that are competent in facilitating child participation should be involved.

Prohibition of discrimination

Why?

Businesses should ensure that children’s health is not undermined as a result of discrimination including on the basis of the child’s, parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Attention should be given to the differing needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls. Also, it should be recalled that every migrant child should has access to health care equal to that of nationals regardless of the reason for moving, whether the child is accompanied or unaccompanied, on the move or otherwise settled, documented or undocumented or with any other status.

Children’s rights and global operations of business

Why?

Because businesses operate on a global scale through complex networks of subsidiaries, contractors, suppliers and joint ventures. Their impact on children’s rights is rarely the result of the action or omission of a single business unit. For example, suppliers may be involved in the use of child labor, subsidiaries may be engaged in land dispossession and contractors or licensees may be involved in the marketing of goods and services that are harmful to children.

XXII. DUE DILIGENCE AND PRINCIPLE 9 OF THE CHILDREN’S PRINCIPLES

UNICEF has developed practical tools for all stages in the cycle for implementing the Children’s Principles. In the following sections we will demonstrate how the due diligence process for respecting and supporting the children’s right to health shall look like for Principle 9: Business are required to help protect children affected by emergencies, following the 6 stages:

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80 See Committee on the Rights of the Child, General Comment No. 16 (2013).
81 Ibid.
84 See Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.
We have chosen this Principle as it can be of particular importance for companies when operating in the COVID-19 global public health emergency situations. Emergencies can significantly increase the risk of adverse impact on children’s rights. Certain groups of children may be more vulnerable, including children with disabilities, displaced and migrant, and girls and boys may be affected differently. According Principle 9 business are required to do human rights due diligence, and therefore assess how the business activities can impact on the enjoyment of the children’s right to health in times of emergencies.

**XXIII. HUMAN RIGHT POLICY ON CHILDREN’S RIGHTS**

The following questions and issues shall guide the company when developing or revising a human right policy (a stand-alone policy for children’s rights or an integrated one) on children’s rights:

- Is an explicit commitment made to respect children’s rights with reference to the:
  - Children’s Rights and Business Principles;
  - CRC and its Protocols;
  - ILO Conventions No. 138 on the worst forms of child labor and No. 182 on the minimum age for admission to employment and work;
  - Any national regulations and industry-specific codes of conduct regarding emergencies?

- Has responsibility for addressing human rights, including those of children, been assigned to a concrete person(s) - for example in the corporate social responsibility department - and to what extent?

- Has the company integrated children’s rights considerations into corporate due diligence processes?

- Have the company’s biggest areas of risk and opportunity regarding child rights been added to the broader list of priority human rights impacts in relevant policy commitments?

- Is there a code of conduct or other mechanism that sets clear expectations for behaviors of personnel, suppliers, customers and other business partners in relation to children’s issues?

For companies that regularly assist (through financial, in-kind or other contributions) in emergency situations caused by natural disasters, describe how the company supports children affected by emergencies in coordination with local authorities and humanitarian agencies.87

**See also:** Section VIII of this Tool on Human Rights Policy.

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### XXIV. CHILD-RIGHTS IMPACT ASSESSMENT

For reviewing critical areas of potential or actual impacts on children’s rights, including in relation to the right to health in emergencies, UNICEF has identified primary and supplementary due diligence criteria that should be adapted and integrated into companies’ broader human rights impact assessment processes.

**Principle 9: All businesses are required to help protect children affected by emergencies**

<table>
<thead>
<tr>
<th>DUE DILIGENCE PRIMARY CRITERIA FOR ASSESSMENT</th>
<th>EXAMPLES OF ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the company consider children’s specific rights and needs in contingency planning for emergency situations caused by business operations?</td>
<td>✗ Assess or reassess the impact of the business on children, and address the company’s role during emergencies. Be sure to consider the special rights and needs of children and pregnant women during times of emergency. ✗ Identify the specific resources that would be required to protect children in different emergency scenarios related to company operations. ✗ Ensure proper communications and partnerships with emergency services.</td>
</tr>
<tr>
<td>2. If the company contributes to relief efforts during disasters, does it have a defined approach for how it will support children in coordination with local authorities and humanitarian agencies, and in accordance with best practices?</td>
<td>✗ Engage in durable partnerships with respected providers of humanitarian assistance. It is considered that financial contributions to experienced aid providers will generally be more effective than in-kind donations or volunteering. ✗ Companies in certain sectors – such as information technology, logistics, telecommunications and transport – can make direct contributions of service to relief operations, particularly if structured and integrated into broader international efforts.</td>
</tr>
</tbody>
</table>

**SUPPLEMENTARY CRITERIA**

| Does the company’s process for emergency assistance comprise consultations with communities, including children? | Business should call on children’s insights and skills. Because children are often perceived as victims, or a source of problems, or simply as an affected group, their ability to play a constructive role in community recovery, is frequently underestimated. On the contrary, young people are often active and constructive participants in creating solutions. |

**Expertise.** It is well accepted that those (an individual or team) carrying out assessments:

- ✗ demonstrate expertise in children’s human rights law and filed research,
- ✗ understand the methodology for identifying actual and potential adverse impacts within the local context.
- ✗ possess capability to conduct the assessment within the local context (e.g. language skills).

In taking actions to respect children’s right to health in times of emergencies, companies shall look upon good practices and advices from relevant organizations that work on children’s rights.

For example, in order to promote good hygiene and mental health in and out of the workplace **during the COVID-19 outbreak**, among others UNICEF recommended to companies to:

- ✗ **Provide handwashing stations** with running water and soap, or alcohol-based hand rubs where washing facilities are not readily available to parents who perform essential on-site duties;
- ✗ **Support working mothers to continue breastfeeding** in clean and comfortable breastfeeding facilities;
- ✗ **Share key messages to staff on prevention measures**, travel guidance and ways to talk to their children about the virus;

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- Give working parents the time and resources they need to **comfort and care for their children**, by providing helpful tools that encourage talk, play and other forms of stimulation that children need from caregivers.\(^89\)

During the Corona pandemic, ILO found that women health workers in particular are being confronted with the challenges of balancing an increased workload, the anxiety of spreading the virus to loved ones and the management of their care responsibilities at home.\(^90\) Free childcare for women health workers was identified as a good practice for companies including those in the private health sector to reduce the burden of women.

**See also:** Section X of this Tool on Assessment of actual and potential human rights impacts.

**XXV. STAKEHOLDER ENGAGEMENT**

Companies’ consideration of their impact on child rights is often relegated to the issue of child labor or community investment, yet the impacts of business on children extend to other aspects such as product design and advertising, and children’s rights in the supply chain. Many companies cause or contribute to potential or actual impacts on children’s rights and should therefore consider children as a priority stakeholder group.\(^91\)

Also, children are usually less well placed to advocate for their own interests and may be silenced within their households or communities. Unless dedicated efforts are made to reach out to them — children may be at risk of exclusion from companies’ stakeholder engagement processes.\(^92\)

In order to ensure meaningful participation of children, businesses should make efforts to include vulnerable children and their families, such as children of minority groups, poor children, migrant children, disabled children, and girls, generally.

These are some of the **key reasons for engaging stakeholders on children’s rights**:\(^93\)

- Hear, understand and respond to children’s unique opinions, views and information that can be useful to business in conducting human rights due diligence.
- Obtain information about child rights impacts that can also serve as an early indicator or ‘red flag’ to a company of its broader human rights impact assessment.
- Provide insight on how companies can mitigate risks or how to address opportunities to advance children’s rights.
- Build trust and long-lasting relationships among wider communities, and avoid unnecessary grievances and reduce potential for community conflict.

Companies may choose to carry out stand-alone engagement processes on children’s rights or integrate children’s rights issues into broader stakeholder engagement processes — whether carried out regularly or in relation to a specific issue, product launch or country/community of operation.

**XXVI. PROCESS FOR INTEGRATING CHILDREN’S RIGHTS**

The process for integrating children’s rights in business operations and strategies will be a different for every company depending on its size, operations, context etc. However, there is a recognition among relevant stakeholders that there are some general steps that business should undertake when integrating children’s rights in the business culture:

- Obtain senior-level commitment in the process.
- Involve internal and external stakeholders when integrating children’s rights considerations.

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\(^{92}\) Ibid.
Do awareness-raising and training for employees and business partners on the respect for human rights, including children in emergencies.

Prioritize material issues that present the greatest areas of risk and opportunity for affecting children’s rights. The company should also work with suppliers, customers and business partners to identify their potential risks to children’s rights that might differ from the company’s direct operations.

Map existing policies and codes of conduct (for example, policies and codes of conduct relating to human rights, health and safety, emergencies, privacy, marketing, supplier, procurement and ethics) to identify coverage of priority children’s rights issues for the company and identify the gaps.\(^55\)

Additional valuable information is to be found in UNICEF Tool,\(^4\) which identifies set of criteria and proposes concrete actions for companies when integrating children’s rights into companies’ policies, procedures, plans or partnerships, including those applicable in times of emergencies, as shown in the Table:

<table>
<thead>
<tr>
<th>Principle 9: All businesses are required to help protect children affected by emergencies(^55)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DUE DILIGENCE PRIMARY CRITERIA FOR INTEGRATION</strong></td>
</tr>
<tr>
<td>1. Based on findings from impact assessments, has the company identified specific actions to embed respect for children’s rights across relevant internal functions and processes?</td>
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<tr>
<td>2. Does the company have a procedure to screen, select, evaluate and prioritize supplier or other business relationships that integrates children’s rights into the assessment scope and analysis?</td>
</tr>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SUPPLEMENTARY CRITERIA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Has the company established clear lines of responsibility for individuals named as focal points to follow up on child rights actions?</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>4. Has the company allocated sufficient financing and other resources to ensure that its actions related to children’s rights are implemented effectively, including in times of emergencies?</td>
</tr>
</tbody>
</table>

\(^{51}\) UNICEF and Safe the Children, Children’s rights in policies and codes - A tool for companies.

\(^{54}\) See UNICEF and the Danish Institute for Human Rights, Children’s Rights in Impact Assessments.

\(^{55}\) Ibid.
5. Has the company communicated its child rights-related policies, procedures and actions through training and capacity building, internally and externally?

- Provide employees with training on children’s issues that relates to their specific responsibilities.
- Consider all relevant functions across the business, e.g., strategy and leadership, human resources, research, marketing, operations and manufacturing, and sourcing and procurement.

6. Does the company include a clause in contracts with all business partners, including suppliers, indicating that they are expected to respect human rights and children’s rights in all areas of activity in all times?

- Contractually require all suppliers, partners or others with whom the business is linked to:
  - inform the company of all relevant business relationships, including with other suppliers, subcontractors and associates;
  - promptly address issues of non-conformance related to children's rights as and when they arise;
  - participate in any child-focused human rights and social compliance monitoring organized by the company.

7. Does the company foster long-term relationships with business partners that consider and support children’s rights?

Where possible, foster long-term relationships with suppliers, contractors and subcontractors, and use the company’s influence to develop their respect and support for children’s rights.

Besides doing a due diligence, businesses are also called upon to support children’s right to health by supporting authorities and humanitarian agencies in emergency response.

In this line, businesses can engage with relevant international organizations. For example, beginning of April 2020 UNICEF launched global agenda for action in order to protect the most vulnerable children from harm. The agenda has six pillars, the first being to keep children healthy. In this line all private businesses working on health-related issues can join efforts with UNICEF to ensure vital supplies and protective equipment reach the most vulnerable communities and to ensure delivery of life-saving medicines, nutrition and vaccines.

See also: Section XI of this Tool on Integration and Action.

XXVII. MONITORING AND REPORTING

Monitoring and monitoring are important in order to verifying whether company’s measures are effectively and adequately addressing children’s rights impacts. The monitoring, which is an ongoing process, is based on incorporate qualitative and quantitative indicators relevant to children’s rights.

Companies should consider reporting annually or periodically to internal and external stakeholders on results achieved; challenges faced; and future commitments. In doing so the reporting can be a result of a report prepared by the company, or officially recognized reporting mechanisms can be used such as the UN Guiding Principles Reporting Framework, Global Reporting Initiative or the Sustainability Reporting Guidelines of the Global Reporting Initiative.

In line, with the tools developed by UNICEF and the Global Reporting Initiative, the reporting of the businesses can follow the criteria and proposed actions presented in following table.

<table>
<thead>
<tr>
<th>CRITERIA FOR MONITORING AND REPORTING</th>
<th>EXAMPLES OF ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ Use ongoing monitoring to collect data on all incidents and allegations involving children, including of those during emergencies.</td>
<td></td>
</tr>
</tbody>
</table>

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96 UNICEF, Protecting the most vulnerable children from the impact of coronavirus: An agenda for action, 03.04.2020: https://www.unicef.org/coronavirus/agenda-for-action
### Tool on (Children’s) Right to Health and Businesses

**1. Does the company have monitoring systems in place to track progress and performance in relation to impacts on children’s rights?**

- **✓** Consider setting targets on child rights performance and communicate progress against these targets, both internally and externally.
- **✓** Reporting should be transparent, yet always carried out with caution. Children’s safety, identity and privacy must be protected throughout reporting and monitoring procedures.

**2. Do the company’s due diligence process and contingency plan address the heightened risk of child rights violations during emergencies?**

Explicitly address children’s rights and include children as a distinct stakeholder group in formulating emergency plans.

**3. Does the company consult with other stakeholders on issues important for children’s rights as part of emergency related policies?**

- **✓** Provide a list of stakeholder groups engaged by the organization.
- **✓** Report the basis for identification and selection of stakeholders with whom to engage.
- **✓** Report key topics and concerns that have been raised through stakeholder engagement, and how the business has responded to those key topics and concerns, including through its reporting.

**4. Do the company has any specific programmes to enhance the protection of children’s rights in situations of emergency?**

Provide training to employees and community members on protecting children’s rights.

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**See also:** Section XIII of this Tool on Communicating and monitoring of performance.

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**XXVIII. REMEDIATION**

It is generally challenging for children to obtain remedy when their rights are infringed upon, even more so by business enterprises. Children often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation. Also, there are particular difficulties for children in obtaining remedy for abuses that occur in the context of businesses’ global operations.99

Therefore, if a company determines that it might have caused or contributed to adverse impacts on children’s rights in emergencies, it should provide for or cooperate in remediation through legitimate processes, including operational-level grievance mechanisms (United Nations Guiding Principle 22).

As there is no guidance on remediation for Principle 9 of the Children’s Principles, the remediation process developed for Principle 1 can be adapted to fit in the context of emergencies.

### Principle 9: All businesses are required to help protect children affected by emergencies100

<table>
<thead>
<tr>
<th>CRITERIA FOR REMEDIATION</th>
<th>EXAMPLES OF ACTIONS</th>
</tr>
</thead>
</table>
| 1. Does the company have effective and accessible grievance mechanisms in place to address alleged child rights violations, including in times of emergencies? | **✓** Establish grievance mechanisms to address child rights issues that are accessible to children and their families.  
**✓** Identify focal points for implementation of the grievance mechanisms within the company and establish measures relevant for children, such as anonymous information lines and whistle-blower protections for employees. |

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99 See Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.

100 See UNICEF and the Danish Institute for Human Rights, Children’s Rights in Impact Assessments.
### Tool on (Children’s) Right to Health and Businesses

<table>
<thead>
<tr>
<th>Question</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Are relevant company grievance mechanisms made publicly available and communicated in an understandable way for children and their families?</td>
<td>✗ Ensure that families and children are provided with appropriate and accessible information on how relevant grievance mechanisms work. ✗ Consider engaging with NGOs or local youth clubs who can explain the grievance mechanism process to children.</td>
</tr>
<tr>
<td>3. Are processes in place to assist children in reporting allegations of rights violations through grievance mechanisms?</td>
<td>✗ When children and young people report allegations of rights violations, they shall be assisted by a person who is trained to speak with them. Children’s safety, identity and privacy must be protected throughout the process to ensure that they do not experience reprisals from the alleged offender or others. ✗ Ensure that NGOs can access grievance mechanisms on behalf of children and young people. In addition, children should not be refused access or turned away in favor of a grievance filed by their parents.</td>
</tr>
<tr>
<td>4. Has the company taken steps to understand how obstacles to remediation can be addressed in countries of operation?</td>
<td>Make use of publicly available information from relevant sources to understand and address any limitations there might be for victims in accessing remedies.</td>
</tr>
<tr>
<td>5. Does the company cooperate with legitimate processes, including judicial mechanisms, that provide remedies for adverse impacts?</td>
<td>Respond appropriately and in a timely manner to formal allegations that the company has caused or contributed to a violation. When answering a claim from possible victims, it is advisable not to adopt legal strategies that deny children access to justice by (e.g. intentionally delaying the justice process). If a government investigation is initiated, cooperate with the authorities and provide complete information about the events in question.</td>
</tr>
</tbody>
</table>

The administration of justice including the overall remedial process for children’s rights violations due to business activities or omissions, functions differently in emergencies and states may derogate from certain obligations under international treaties.\(^\text{101}\) Even though it is not a topic of this paper, it is worth noting that even in times of emergencies, such as the COVID-19 crisis, states are obliged to ensure that trials meet the fundamental requirement of fairness (such as equality of arms) and respect the presumption of innocence, and the independence of judges or of courts.\(^\text{102}\)

**See also:** Section XIV of this Tool on Remediation.

### XXIX. NATIONAL LEGISLATION RELEVANT FOR CHILDREN’S RIGHT TO HEALTH

Children’s right to health is articulated in the general provision of the Constitution that guarantee the right to health care to every citizen. The Constitution also states that a person under 15 years of age cannot be employed and minors are forbidden from being employed at jobs which are detrimental to their health and morals.

There are number of laws relevant for the protection of children’s right to health:

**The Law on Family:** regulates the right to free and responsible parenthood, and it obligates parents to provide optimal conditions for the health, growth and development of their child in the family and society.

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The Law on Child Protection: regulates the system and the organization for protection of children. Child protection shall be achieved by providing conditions and standards of living that correspond to the physical, mental, emotional, moral and social development of children.

The Law on Health Protection: guarantees access to facilities for the treatment of illness and the rehabilitation of health. The disabled children have the right to the same level of health care in the same system as other children. Children’s access to basic health care is ensured through the health insurance of their parents. When their parents are unemployed, the State pays free health coupons for certain categories of citizens, such as the unemployed and social assistance beneficiaries.

The Law on Consumer Protection: defines that hazardous products shall also refer to products which are likely to cause consumers, particularly children, to mistake them for food and consume them, which can be dangerous and cause suffocation, poisoning, perforation or obstruction of the digestive system. The trader is obliged to put safe products on the market in accordance with the defined technical regulations for the respective product and in accordance with the requirements defined for the protection of the environment and the health of people.

In cases of corporate violations of their right to health, children are guaranteed access to remedy, as explained in section XVI.2 of this Tool, represented by their parent or guardian.

XXX. INTERNATIONAL JURISPRUDENCE

This part includes cases from international jurisprudence where the right to health has been violated. As they are issued by international courts or regional bodies which adjudicate or give their opinions on bases of international human rights treaties, they crystallize not only obligations for the States signatory of the particular treaty, but also the content of the corporate obligation to respect the right to health. Therefore, the case law can be used as a valuable source of guidance for businesses when assessing whether their operations are in line with international accepted standards.

Asiye Genç v. Turkey\textsuperscript{103}

This case concerned a prematurely born baby’s death in an ambulance, a few hours after birth, following the baby’s transfer between hospitals without being admitted for treatment. The applicant complained in particular about alleged deficiencies in the investigation into her son’s death.

The Court held that there had been a violation of Article 2 (right to life) of the Convention. It considered that Turkey had not sufficiently ensured the proper organization and functioning of the public hospital service, or its health protection system. The child died because it had not been offered any treatment, which constituted a denial of medical care such as to put a person’s life in danger. Also, the Court considered that the Turkish judicial system’s response to the tragedy had not been appropriate to reveal the exact circumstances of the child’s death.

Lessons learnt: Hospitals are required to properly organize their system so that every patient has effective access to medical care. See also Mehmet Şentürk and Bekir Şentürk v. Turkey\textsuperscript{104}

A.R. and L.R. v. Switzerland\textsuperscript{105}

This case concerned the refusal by a Basle primary school to grant the first applicant’s request that her daughter (the second applicant), then aged seven and about to move up to the second year of primary school, be exempted from sex education lessons. Both applicants were calling into question the usefulness of the sex education at the kindergarten and early primary school stages, alleged that there had been a violation of the first applicant’s right to respect for her private and family life. They also argued that the second applicant had been subjected to an unjustified interference with the exercise of her right to respect for her private life.

The Court declared the first applicant’s complaints under Article 8 (right to respect for private and family life) of the Convention inadmissible, as being manifestly ill-founded, finding that the Swiss authorities had not overstepped the room for maneuver. The Court noted in particular that one of the aims of sex education was the prevention of sexual violence and exploitation, which posed a real threat to the physical and mental health of children and against which they had to be protected at all ages. It also stressed that one of the objectives of State education was to prepare children for social realities, and this tended to justify the sexual education of very young children attending kindergarten or

\textsuperscript{103}ECtHR, \textit{Asiye Genç v. Turkey}, 27 January 2015: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-151025%22]}

\textsuperscript{104}ECtHR, \textit{Mehmet Şentürk and Bekir Şentürk v. Turkey}, 9 April 2013: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-118722%22]}

\textsuperscript{105}ECtHR, \textit{A.R. and L.R. v. Switzerland}, Decision on the admissibility, 19 December 2017: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22003-5977739-7646199%22]}
primary school. The Court thus found that school sex education, as practiced in the canton, pursued legitimate aims and was proportionate.

**Dupin v. France**

The applicant, the mother of an autistic child, complained that the domestic authorities had refused to allow her child to attend a mainstream school. She also argued that the State had failed to fulfil its positive obligation to take the necessary measures for disabled children, and that the lack of education in itself constituted discrimination.

The Court held that the complaint that there had been a violation of the right to education of the applicant’s child was inadmissible as manifestly ill-founded, finding that the refusal to admit the child to a mainstream school did not constitute a failure by the State to fulfil its obligations under Article 2 (right to education) of Protocol No. 1 or a systematic negation of his right to education on account of his disability. It observed that the national authorities had regarded the child’s condition as an obstacle to his education in a mainstream setting. After weighing in the balance, the level of his disability and the benefit he could derive from access to inclusive education, they had opted for an education that was tailored to his needs, in a specialized setting.

The Court also noted that this strategy had been satisfactory for the child’s father, who had custody of the child. Moreover, since 2013, the child had received effective educational support within an institution for special health and educational needs, and this form of schooling was conducive to his personal development. The Court lastly observed that the complaint about the alleged insufficiency of the specific resources earmarked by the State for autistic children was inadmissible for nonexhaustion of domestic remedies.

**O’Keeffe v. Ireland**

The Court found that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) and of Article 13 (right to an effective remedy) of Convention concerning the Irish State’s failure to protect Ms O’Keeffe, aged nine, by a lay teacher in an Irish National School in 1973, from sexual abuse and her inability to obtain recognition at national level of that failure. The Court stressed that to find inhuman or degrading treatment regard must be had to all of the circumstances, including “where relevant “the sex, age and state of health of the victim” (see Kafkaris v. Cyprus [GG]). The Court found that it was an inherent obligation of a Government to protect children from ill-treatment, especially in a primary education context.

Referring to its case-law (see e.g., Grejda v. Poland), it stressed that school authorities are obliged to protect the health and well-being of pupils and, in particular, of young children who are especially vulnerable and are under the exclusive control of those authorities.

The Court found that this obligation had not been met when the Irish State, which had to have been aware of the sexual abuse of children by adults prior to the 1970s through, among other things, its prosecution of such crimes at a significant rate, nevertheless continued to entrust the management of the primary education of the vast majority of young Irish children to National Schools, without putting in place any mechanism of effective State control against the risks of such abuse occurring. On the contrary, potential complainants had been directed away from the State authorities and towards the managers (generally the local priest) of the National Schools. Indeed, any system of detection and reporting of abuse which allowed over 400 incidents of abuse to occur in Ms O’Keeffe’s school for such a long time had to be considered ineffective.

**Defense for Children International (DCI) v. Belgium**

The European Committee on Social Rights found a violation of Article 17 (right of children and young persons to social, legal and economic protection) of the European Social Charter (“ESC”) because of restrictions on medical assistance to undocumented migrant children. The Committee confirmed “the right of migrant minors unlawfully in a country to receive health care extending beyond urgent medical assistance and including primary and secondary care, as well as psychological assistance”. It also stated that the lack of reception facilities for foreign minors unlawfully in the country made access to health care difficult. Moreover, it found that causes of ill-health can only be removed to the extent that children are provided with housing and foster homes. Accordingly, it held that there was a violation of Article 11 (1) and (3) of the ESC due to the lack of housing and foster homes.

See also:

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**See also:***

106 ECHR, *Dupin v. France*, 18 December 2018 (decision on the admissibility): [https://hudoc.echr.coe.int/eng#{%22itemid%22:189671%22}]

107 ECHR, *O’Keeffe v. Ireland*, Grand Chamber Judgement, 28 January 2014: [https://hudoc.echr.coe.int/eng#{%22itemid%22:140235%22}]


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XXXI. GUIDANCE FOR BUSINESSES ON CHILDREN’S RIGHT TO HEALTH

This section contains human rights due diligence recommendations, principles and guidelines issued by international organizations. They will be divided in sections depending to “whom” they are addressed.

A. STATES

UN Committee on the rights of the Child: General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights

In a detailed general comment, the UN Committee clarified state obligations in relation to the business sector in accordance with international law. It stressed that:

- **States should include the issue of children’s rights and business in the overall context of the national policy framework** for implementation of the CRC. They should develop guidance that sets out government expectations for business enterprises to respect children’s rights in the context of its own business activities, as well as within business relationships linked to operations, products or services and activities abroad when they operate transnationally. A zero-tolerance policies for violence in all business activities and operations is required.
- **States shall take steps to ensure that public procurement contracts** are awarded to bidders that are committed to respecting children’s rights. They are encouraged to make access to all forms of public support, conditional on a business carrying out due diligence children’s rights in their overseas operations.
- **States should provide stable and predictable legal environment** which enable business enterprises to respect children’s rights, with clear and well-enforced laws on labor, employment, health and safety, environment, anti-corruption, land use and taxation that comply with the CRC and the Optional Protocols.
- **Reparation** should be timely to damage to the children affected; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.

Council of Europe: Recommendation on Business and human rights CM/REC(2016)31

The Council of Europe recommends to Member States:

- To require that all businesses respect the children’s rights when operating within their territorial jurisdiction and, as appropriate, throughout their operations abroad when domiciled in their jurisdiction.
- When implementing the CRC and its Optional Protocols, to give due consideration to General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights.
- To reinforce efforts to meet their obligations with regard to children under the ECHR, the European Social Charter (revised), ILO conventions concerning child labor, and other relevant international instruments.
- To give consideration to the Children’s Rights and Business Principles.
- To involve all relevant stakeholders in the elaboration and implementation of policies on matters which are particularly sensitive with regard to children’s rights, such as measures provided by the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
- Require that business enterprises specifically consider the children’s rights when carrying out human rights due diligence.
- To implement measures to remove social, economic and juridical barriers so that children can have access to effective judicial and State-based non-judicial mechanisms without discrimination of any kind, in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

B. ALL BUSINESS ENTERPRISES

UN Committee on the rights of the Child: General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) and General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights

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109 See UN Committee on the rights of the Child: General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights.
111 Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).
112 UN Committee on the rights of the Child: General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights.
In interpreting Article 24 of the CRC, the Committee states that among other responsibilities and in all contexts, private companies should:

- Refrain from engaging children in **hazardous labor** and comply with the minimum age for child labor;
- Comply with the **International Code of Marketing of Breast-milk Substitutes** and the relevant WHO resolutions;
- Limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; and
- Refrain from the advertisement, marketing and sale to children of **tobacco, alcohol and other toxic substances** or the use of child images.

In elaborating on the child-rights *due diligence* process, the UN Committee highlighted that when this process is subsumed within a more general process of human-rights *due diligence*, it is imperative that the provisions of the CRC and the Optional Protocols thereto influence decisions. Any plan of action and measures to prevent and/or remedy human rights abuses must have special consideration for the differentiated impact on children. The Committee stresses that child-rights impact assessments can be used to consider the impact on all children affected by the activities of a particular business or sector but can also include assessment of the differential impact of measures on certain categories of children. The assessment may be based upon input from children, civil society and experts, as well as from relevant government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be publicly available.

**European Union Agency for Fundamental Rights: Improving access to remedy in the area of business and human rights at the EU level**

In this document, the Agency of Fundamental Rights gave **21 specific opinions** on improving access to remedies in line with international standards. With Opinion 5 it recommended that particular attention should be given to ensuring effective access to remedy in cases of business-related human rights abuse for persons in situations of vulnerability and marginalization, such as children, migrants, minority ethnic groups such as Roma and persons with disabilities.

**UNICEF, ILO and UN Women: Family-friendly policies and other good workplace practices in the context of COVID-19**

In order to mitigate the negative consequences stemming from COVID-19, this guidance describes how employers can comply with the 7 interim specific recommendations, those being:

- Implementation of **flexible work arrangements**.
- **Supporting parents with childcare options** that are safe and appropriate in the context of COVID-19.
- Prevent and address workplace risks by **strengthening occupational safety and health measures**.
- Provide **guidance and training** on occupational safety and health measures and hygiene practices.
- Encourage workers to seek appropriate **medical care** in cases of fever, cough and difficulty breathing.
- Support workers coping with stress and personal safety during the COVID-19 outbreak.

**UNDP, Human Rights Due Diligence and COVID-19: Rapid Self-Assessment for Business (C19 Rapid Self-Assessment)**

This rapid self-assessment tool aims to help businesses consider and manage the human rights impacts of their operations in the context of COVID-19. In relation to children, companies are asked to assess whether they:

- Ensured flexibility for work from home arrangements for parents with children or for other employees to ensure safety and compliance with social distancing regulations; and
- Prevented child labor from being used to fill gaps resulting from the absence or reduction in the number of a healthy adult workers available due to COVID-19 circumstances.

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C. HEALTH SECTOR AND PHARMACEUTICAL INDUSTRY

UN Committee on the rights of the Child: General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)\textsuperscript{116}

The Committee acknowledged the profound impact of the pharmaceutical sector on the health of children and calls on them to adopt measures towards enhancing access to medicines for children, paying particular attention to the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines. The Committee recommended to States to ensure that pharmaceutical companies refrain from promoting excessive prescription and use of drugs and medicines on children. Intellectual property rights should not be applied in ways that cause necessary medicines or goods to be unaffordable for the poor.

Also, it recommended to private health insurance companies to ensure that they do not discriminate against pregnant women, children or mothers on any prohibited grounds and that they promote equality through partnerships with State health insurance schemes based on the principle of solidarity.

UN 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\textsuperscript{117}

The Guidelines explain to companies how to integrate the requirements of the right to health in their strategies, policies in projects on the access to medicine. In doing so the Guidelines ask the company to give particular attention to the needs of children, those living in poverty, as well as gender-related issues.

Council of Europe: Guidelines on child-friendly health care\textsuperscript{118}

The Guidelines on child-friendly health care explain to policy makers and service providers how interventions should not focus only on managing the child’s health condition, but also on their physical or social environment, thus avoiding the medicalization of social problems. Environmental issues, socio-economic problems, access to education, or parental issues (parenting skills, parents’ mental health, domestic violence or substance abuse) are all part of this integrated approach.

D. FOOD AND NUTRITION INDUSTRY

Children are affected in multiple ways by the food industry. They are dependents of workers, members of the community, and at times as workers themselves. This industry has a relatively high exposure to child labor in their supply chain. Children’s rights in the workplace may be impacted by inadequate employment protections for parents and caregivers and exposure to hazardous chemicals and toxins for young workers.\textsuperscript{119} Also, there is a growing evidence that shows the negative contribution of child-directed marketing and advertising of food on overweight and obesity rates in children. The WHO estimates that with the current rate of growth, 70 million infants and young children will be overweight or obese by 2025.

Organization for Economic Cooperation and Development and Food and Agriculture Organization of the UN: Guidelines for Responsible Agricultural Supply Chain\textsuperscript{120}

The Guidance contain a model enterprise policy outlining the standards that an agricultural enterprise should observe to build responsible agricultural supply chains. The policy can be adopted by the enterprises as it is, or relevant parts can be incorporated into and tailored to their existing policies. By adhering to this policy, the company engages to promote public health, including of children by:

- Adopting appropriate practices to prevent threats to human life, health, and welfare in the operations, as well as threats deriving from the consumption, use or disposal of the goods and services.
- Contributing to the protection of the health and safety of affected communities during the life-cycle of the operations.

For example, an identified risk mitigation measure in the area of health is to assist and collaborate with affected stakeholders, in their preparations to respond effectively to emergency situations. In addition, the enterprise will strive to ensure that its operations contribute to food security and nutrition, and will work to enhance the availability of safe, nutritious and diverse foods to all stakeholders, including children.

\textsuperscript{116} Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).

\textsuperscript{117} See Report of the 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.

\textsuperscript{118} Council of Europe: Guidelines of the Committee of Ministers of Council of Europe on child-friendly health care, 2011: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1527

\textsuperscript{119} See Global Child Forum and The Boston Consulting Group, Children’s rights and the corporate sector-setting a benchmark.

ILO: Maternity Protection Convention (No.183)\textsuperscript{121}

This convention, which \textit{aims to promote health and safety of the mother and child}, establishes an obligation to employers to provide to breastfeeding mothers the right to at least one daily break or a daily reduction of hours of work to breastfeed her child. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

UN Committee on the rights of the Child: General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)\textsuperscript{122}

As adequate nutrition and growth monitoring in early childhood are particularly important, the UN Committee stressed that special measures should be taken to promote community and workplace support for mothers in relation to pregnancy and breastfeeding and feasible and affordable childcare services. This should be in line with the ILO Maternity Protection Convention.

E. INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT) SECTOR

ITU and UNICEF: The Guidelines for Industry on Child Online Protection\textsuperscript{123}

The Guidelines offer general and sector-specific guidelines for industry on protecting children’s safety when using ICT, along with recommendations for promoting positive ICT use. It outlines five key areas where companies can take actions, one of which is Educating children, parents and teachers about children’s safety and their responsible use of ICT’s. In this area the Guidelines recommend to:

\begin{itemize}
  \item Content providers, online retailers and app developers to provide a contact link for a helpline or counselling service if there is a risk of children becoming obsessively engaged with technology, making it difficult for them to develop personal relationships or take part in healthy physical activities
  \item Hardware manufacturers, operating system developers and app stores to ensure moderate use of electronic devices by children as part of a healthy and balanced lifestyle
\end{itemize}

F. MEDIA INDUSTRY

UN Committee on the rights of the Child: General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights\textsuperscript{124}

The UN Committee stressed that advertising and marketing can have a powerful influence over children’s self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children’s rights by encouraging \textit{business enterprises to adhere to codes of conduct} and use clear and accurate \textit{product labelling and information} that allow parents and children to make informed consumer decisions.

It pointed to digital media as being of particular concern because as many children are users of the Internet, they can also become victims of cyber-bullying, cyber-grooming, trafficking or sexual abuse and exploitation through the Internet. Although companies may not be directly involved in such criminal acts, \textit{they can be complicit in these violations through their actions}; for example, child pornography can be indirectly facilitated by Internet businesses and credit-card providers. Therefore, the Committee asks from the States to provide children with age-appropriate information regarding web-related safety so they can manage the risks and know where to go for help.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{games.png}
\caption{Games}
\end{figure}

\textit{To prevent non-adult players from becoming addicted to game playing, Tencent specially designed an anti-addiction system into the games. The longer a game goes on, the more game scores will decrease. In this way, the company aims to protect the psychological and mental health of young people.}


\textit{International Chamber of Commerce, ICC Advertising and Marketing Communications Code}\textsuperscript{125}

The Code, which puts standards for marketing activities, contains measures to protect children, including their right to health. According this Code the marketing communications should not, without justification on educational or social grounds, contain any description of potentially dangerous practices, or situations which show a disregard for safety or health, as defined by local national standards. Information provided with the product should include proper \textit{codes of conduct} and use \textit{clear and accurate product labelling and information} that allow parents and children to make informed consumer decisions.

\begin{itemize}
  \item Games
  \item To prevent non-adult players from becoming addicted to game playing, Tencent specially designed an anti-addiction system into the games. The longer a game goes on, the more game scores will decrease. In this way, the company aims to protect the psychological and mental health of young people.
\end{itemize}


\textit{International Chamber of Commerce, ICC Advertising and Marketing Communications Code, 2018:}


\textsuperscript{122}See Committee on the Rights of the Child, General comment No. 15 (2013).

\textsuperscript{123} See Committee on the Rights of the Child, General comment No. 15 (2013).

\textsuperscript{124} See Committee on the Rights of the Child, General comment No. 15 (2013).

\textsuperscript{125} See Committee on the Rights of the Child, General comment No. 15 (2013).
For example, products which are illegal for children or teens to purchase or are unsuitable for them should not be advertised in media targeted to them.