



Business and Human Rights - Challenges and Perspectives

**Conference: Rights and Accountability -
The way ahead for Business + Human
Rights**

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Overview

1. Human Rights Obligations related to Business.
 - National Obligations
 - Extraterritorial Obligations
 - Ruggie Framework
2. Challenges and Perspective at all levels
 - Host States obligation to protect
 - Home State obligation to protect and respect
 - Obligations in international agreements and when acting in International Organisations
 - Access to complaint mechanisms and remedies

1. Human Rights Obligations related to Business

1. HR-Obligations of states nationally

■ Trias of state obligations

- Respect
- Protect
- Fulfill
 - Fulfill facilitate
 - Fulfill provide

■ Qualifications (Art. 2)

- Take steps
- Start immediately
- Maximum of available resources
- Focus on particular vulnerable groups

1. State obligations

General Comment	respect	Protect	Fulfil	
	No. 12 food (1999)	Respect	Protect	Facilitate
No. 13 education (1999)	Respect	Protect	Facilitate	Provide
No. 14 health (2000)	Respect	Protect	Facilitate	Promote Provide
No. 15 water (2002)	Respect	Protect	Facilitate	Promote Provide
No. 16 Principle of gender equality (draft)	Respect	Protect	Facilitate	Promote Provide
No. 17 work (draft)				
No. 18 intell. property (draft)	Respect	Protect	Facilitate	Promote Provide

1. National Strategies for implementation

- National Strategies for implementation (Voluntary Guidelines (No. 3) Right to adequate Food)
 1. Identification of groups in particular vulnerable living conditions
 2. Check of national (or local) legislation (discrimination, exclusion etc.)
 3. Check if adequate policy measures for all particular vulnerable groups have been taken and are effective
 4. Monitoring, Impact Assessment
 5. Access to effective Recourse / form complaint mechanisms of courts.

1. Extraterritorial State Obligations

- Maastricht Principles on ETOs (September 2011)
 - International legal expert opinion (Limburg principles 1987, Maastricht Guidelines 1997)
 - „...in the area of Economic, Social and Cultural Rights
 - States acting in Intergovernmental Organisations
 - States negotiating and ratifying bilateral or multilateral agreements
 - Accountability for ETO (P 36)
 - Effective remedies and reparation (P38)

1. Extraterritorial Obligations (2)

- States having impact abroad
 - Policy-coherence (Agriculture, extractive industries etc.)
 - Obligation to avoid causing harm
 - Human Rights Impact Assessment
 - Complaint / remedy mechanisms
 - Effects of own development co-operation (incl. Export credit schemes)
 - Human Rights Impact Assessment
 - Complaint / remedy mechanisms
 - Obligation to protect
 - Obligation to regulate (P 24 + Basis for protection P 25)
 - Position to influence
 - Obligation to cooperate

1. Extraterritorial Obligations (3)

- **UN-CESCR / Special Rapporteurs: General Comments / Concluding Observations**
 - When developing and signing international agreements
 - When action in IGOs
 - Structural adjustment policies
 - Trade policies
 - Agricultural trade policies
 - In International Cooperation and Assistance
 - When regulating business

1. UN-CESCR – Concluding Observations Germany 2011

9. The Committee notes with deep concern the impact of the State party's agriculture and trade policies, which promote the export of subsidised agricultural products to developing countries, on the enjoyment of the right to an adequate standard of living and particularly on the right to food in the receiving countries. (art. 2.1, 11, 22 and 23)

The Committee urges the State party to fully apply a human rights-based approach to its international trade and agriculture policies, including by reviewing the impact of subsidies on the enjoyment of economic, social and cultural rights in importing countries. In this regard, the Committee draws the attention of the State party to the guidelines on international measures, actions and commitments as contained in the FAO Voluntary Guidelines on the Right to Food (2004).

1. UN-CESCR – Concluding Observations Germany 2011

10. The Committee expresses concern that the State party's policy-making process in, as well as its support to, investments by German companies abroad does not give due consideration to human rights. (art. 2.1, 11, 22 and 23)

The Committee calls on the State party to ensure that its policies on investments by German companies abroad serve the economic, social and cultural rights in the host countries.

11. The Committee is concerned that the State party's development cooperation programme has supported projects that have reportedly resulted in the violation of economic, social and cultural rights, such as in the case of the land-titling project in Cambodia. (art. 2.1, 11, 22 and 23)

The Committee recommends that the development cooperation policies to be adopted by the State party contribute to the implementation of the economic, social and cultural rights of the Covenant and do not result in their violation.

1. Ruggie – Framework (Protect)

■ Protect (State-Obligation)

- „ in fact, this duty requires taking steps to prevent, investigate, punish and redress corporate human rights abuses“ (P 1)
- Protect include:
 - Engage early
 - Adequate assistance
 - Deny access to public support and services for violators
 - Etc.

- Concern: GP do not provide for a strong mechanism in situation where states are unable or unwilling to protect people against human rights abuses

1. Ruggie – Framework (Respect)

■ Respect (Corporations)

- „In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon findings, tracking responses and communicating how impacts are addressed“
- Human rights due diligence include;
 - Human rights impact assessment
 - Human rights risk assessment
 - All business
 - Meaningful consultation with stakeholders, etc.
- Open issue: Methods how Corporations assess their HR impact?
- Open issue: What to do, when corporation intentionally violates Human Rights?

1. Ruggie – Framework (Remedy)

■ Remedy

- State based judicial mechanisms (reduce barriers)
- State based non-judicial grievance mechanisms (i.a. Role of National Human Rights Institutions)
- Non-State based grievance mechanisms (by business + stakeholder)
 - Effective operational-level grievance mechanisms to address impact at an early stage
- Effectiveness criteria for non-judicial grievance mechanisms (P 31)
 - Legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning
- Concern: Without effective legal mechanisms in place, it will be difficult for victims to access remedies

2. Challenges and Perspectives at all levels

2. In states where violations occur – host states

- Regulate companies + FDI properly
- Company regulations (for HR risk assessments)
- Develop national strategies including starting with the identification of particular vulnerable groups
- Adequate planning procedures
- Administrative procedures (good governance – no corruption etc.)
- Advocacy work with other countries to guarantee international minimum standards for FDI (see problems in the mining sectors, or currently with „land-grabbing“).

2. In states where business is domiciled – home countries

- Allowing for national complaint mechanism for harm done
- Liability regulations
- Allow for state based judicial mechanisms
- Share holder legislation (on transparency and information disclosure, risk information)
- Remedies / Recourse
- „Independent monitoring and accountability mechanisms in situations where states privatize the delivery of services that may have human rights impacts“ (P5)

2. States acting in multilateral agreements + investment rules

- Create an international enabling environment
- Obligation to avoid causing harm
- Impact assessment and prevention
- As members of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to (an IGO)... must take all reasonable steps to ensure that the relevant organisation acts consistently with the HR-obligations
- „States must elaborate, interpret and apply relevant international agreements and standards consistent with their human rights obligations“ (MP 17)

2. States in development cooperation

- Rules and regulation needed to institutionalize Human Rights Impact Assessment
 - For own projects
 - For own programmes (policy advice)
 - For export credit schemes (OECD Common Approaches)
 - Public procurement regulation
- Understanding of the positive roles development co-operation can play
 - Support to civil societies monitoring role
 - Protection of Human Rights Defender
- Coordination and allocation of responsibilities

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