



# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

# ARTICLE 1: RIGHT OF SELF-DETERMINATION

## The Right

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

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

### Related rights:

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

ICCPR Article 27 (Rights of minorities), page 81

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

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

## Case studies

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

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

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

## Energy and mining sector, Land rights issues Australia

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

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

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

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

### Web-based sources:

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

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

### Specific actions:

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

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

# ARTICLES 2 TO 5: OVERARCHING PRINCIPLES

## The Rights

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

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

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

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

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

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

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



# ARTICLE 6: RIGHT TO LIFE

## The Right

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

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

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

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

### Related rights:

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

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

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

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

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

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

## Case studies

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

#### Colombia

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

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

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

#### Web-based sources:

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

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

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



## Construction materials industry, Asbestos-related health issues

### Australia

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

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

#### Web-based sources:

<http://www.actu.asn.au/Campaigns/PastACTUCampaigns/default.aspx> [click on James Hardie]  
<http://www.ir.jameshardie.com.au/default.jsp?xcid=34>  
<http://www.asic.gov.au/asic/asic.nsf>

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

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

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

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to life. Apply the policy globally.
- Adopt and enforce rigorous occupational environment, health and safety standards. Companies should apply the same standards globally, even where local regulation may be weak or non-existent.
- Require all business partners (e.g. sub-contractors and suppliers) to adhere to the company policies and urge them to develop similar standards of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, franchisees and security providers, the importance the company places on respecting the right to life and encourage them to develop a similar standard and take responsible action.
- *For defence industry companies or those that produce equipment used in weapons systems, do not produce or sell illegal weapons.*
- For companies that use public or private security guards to safeguard their facilities and personnel, comply with international standards governing the use of law enforcement officials, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Be guided by the Voluntary Principles on Security and Human Rights.
- Do not enter into or condone protection arrangements with any illegitimate armed actors, particularly in conflict areas or regions with poor human rights records.
- *For natural resource companies, adhere to the Voluntary Principles on Security and Human Rights.*
- *For defence industry companies or those that produce equipment used in weapons systems, conduct risk assessments to avoid sales of weapons systems and dual-use products/technologies (that can be used or misused with fatal consequences) to governments known to perpetrate gross human rights violations against their own people or those in neighbouring countries. Do not deal in illegal weapons, and comply with international arms embargoes.*

### Policy implementation processes / Compliance:

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

### Specific actions:

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

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

## The Right

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

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

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

### Related rights:

ICCPR Article 6 (Right to life), page 9

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

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

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

## Case studies

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

### Pharmaceutical sector, Clinical trial issues Worldwide

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

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

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

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

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

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

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

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

#### Web-based sources:

<http://www.australasianbioethics.org/Newsletters/199-2006-04-11.html#consent>  
<http://www.leighday.co.uk/doc.asp?doc=1070&cat=852>  
<http://www.parexel.com/>  
[http://www.gsk.com/responsibility/cr\\_issues/clinical\\_trials.htm](http://www.gsk.com/responsibility/cr_issues/clinical_trials.htm)  
[http://www.pfizer.com/research/science\\_policy/global\\_clinical\\_trial\\_standards.jsp](http://www.pfizer.com/research/science_policy/global_clinical_trial_standards.jsp)  
<http://www.ft.com/cms/s/54f45618-13ca-11dc-9866-000b5df10621.html>  
<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/06/AR2006050601338.html>

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

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

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

## Private security sector, Prisoner treatment issues Iraq

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

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

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

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

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

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

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

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

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

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

**Web-based sources:**

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

## Suggested practical actions

**Policy:**

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

**Policy implementation processes / Compliance:**

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

violations. The findings should inform project decision-making.

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

**Specific actions:**

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



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

## The Right

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

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

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

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

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

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

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

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

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

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

33 See ILO Convention 29, Forced Labour Convention (1930), Article 2(c).

## Case studies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Web-based sources:**

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

**Energy sector, Forced labour issues  
Myanmar**

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

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

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

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

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

**Web-based sources:**

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

### Specific actions:

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

# ARTICLE 9: RIGHTS TO LIBERTY AND SECURITY OF PERSON

## The Rights

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

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

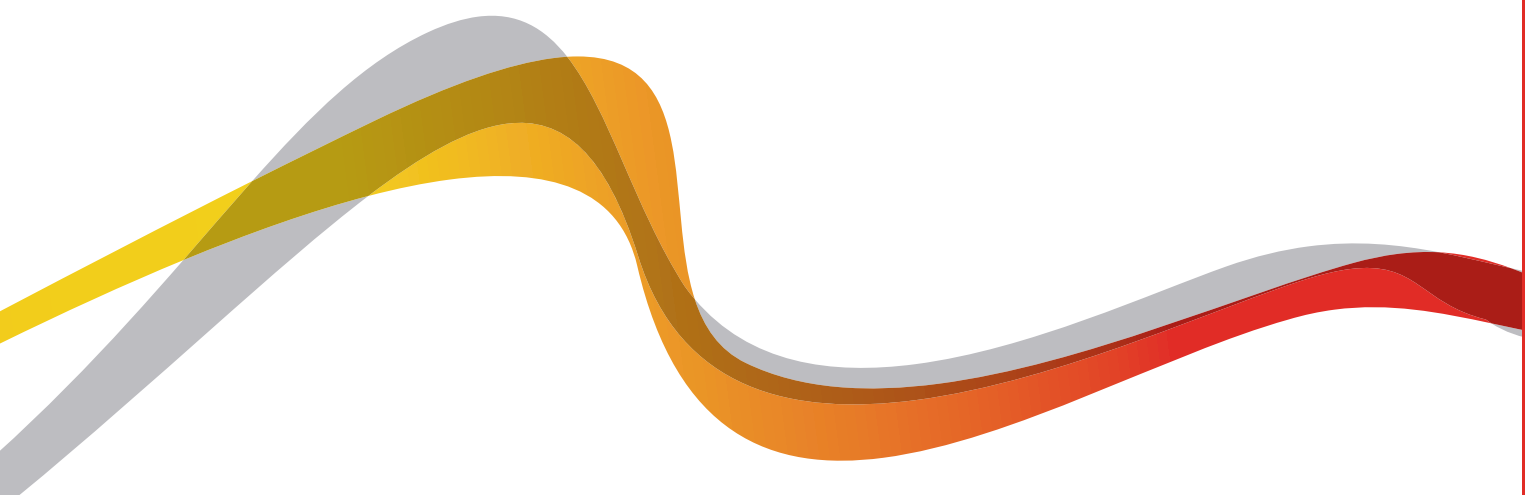
Article has the greatest potential relevance for companies. Security of the person encompasses protection from physical attacks, threats of physical attack, or other severe instances of harassment. In this respect the right to security of person covers less severe forms of ill-treatment than those prohibited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

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

### Related rights:

ICCPR Article 6 (Right to life), page 9

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



## Case studies

### Textile industry, Personal security issues

#### Haiti

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

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

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

#### Web-based sources:

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

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

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

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

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

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

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

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



## Security industry, Arbitrary detention issues

### Australia

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

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

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

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

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

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

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

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

48 See also Introduction, page xi.

#### Web-based sources:

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

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

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

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

# ARTICLE 10: RIGHT OF DETAINED PERSONS TO HUMANE TREATMENT

## The Right

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

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

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

### Related right:

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

## Case studies

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

#### Cuba

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

### Security sector, Immigration detention issues

#### Australia

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

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

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

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

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

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

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

**Web-based sources:**

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

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

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

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

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

**Web-based sources:**

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

### Specific actions:

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

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

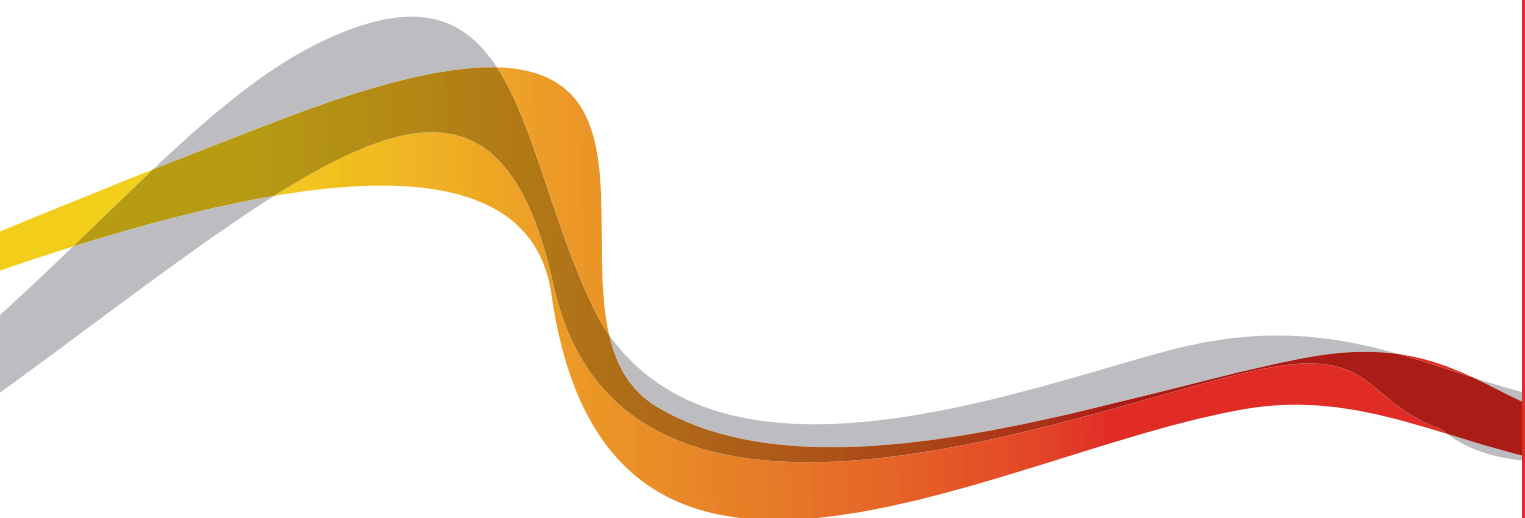


# ARTICLE 11: RIGHT NOT TO BE SUBJECTED TO IMPRISONMENT FOR INABILITY TO FULFIL A CONTRACT

## The Right

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

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



## Suggested practical actions

### Specific actions:

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

# ARTICLE 12: RIGHT TO FREEDOM OF MOVEMENT

## The Right

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

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

### Related rights:

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

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

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

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

### Mining sector, Resettlement issues

#### Ghana

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

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

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

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

### Specific actions:

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

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

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

## The Right

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

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

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



## Suggested practical actions

### Specific actions:

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

# ARTICLE 14: RIGHT TO A FAIR TRIAL

## The Right

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

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



## Case studies

### Tobacco sector, Fair trial issues

#### Australia

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

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

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

## Suggested practical actions

### Policy implementation processes / Compliance:

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

### Specific actions:

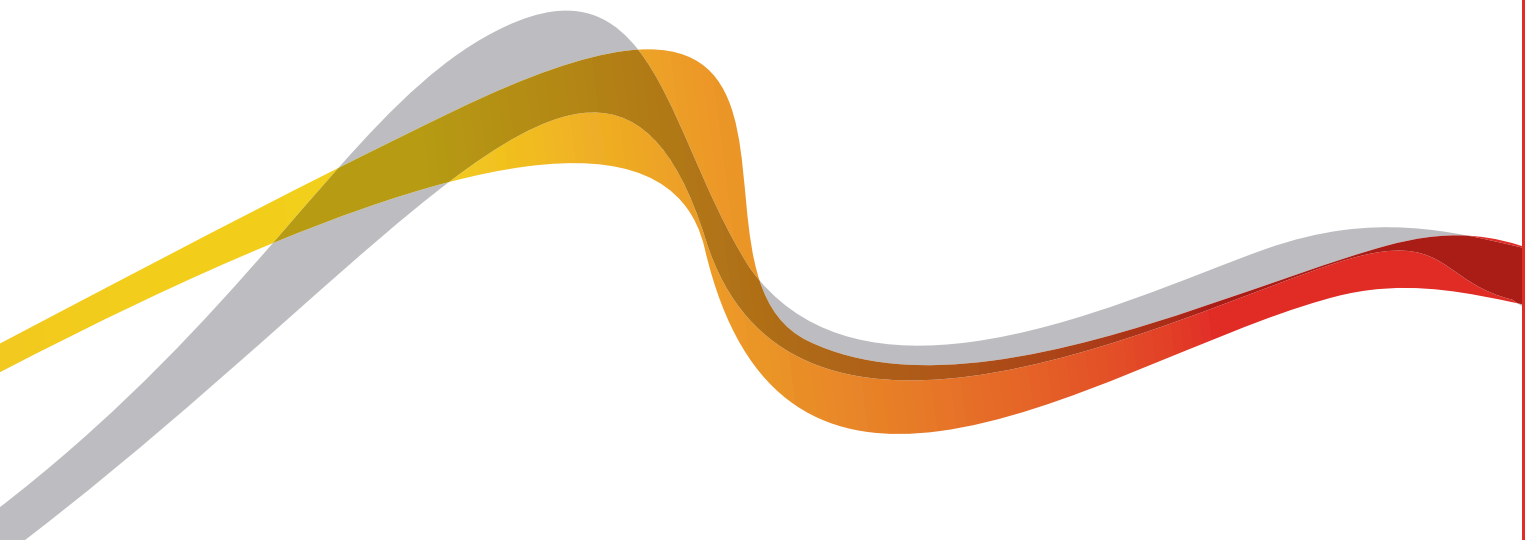
- On a case-by-case basis, consider a public or private approach to the relevant authorities where the company has concerns about access to a fair trial, particularly where a company employee or other stakeholder is affected.
- On a case-by-case basis, offer legal or financial support to any employee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

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

## The Right

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

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



## Suggested practical actions

### Specific actions:

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

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

## The Right

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

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



## Case studies

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

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

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

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

64 Note that the ICCPR postdates the Holocaust.

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

#### Web-based sources:

<http://www.swissbankclaims.com>

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

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

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

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

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

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

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

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

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

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

## Suggested practical actions

### Policy implementation processes / Compliance:

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

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

### Specific actions:

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

# ARTICLE 17: RIGHT TO PRIVACY

## The Right

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

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

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

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

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

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

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

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

## Case studies

### Internet search engines, Internet user privacy issues

#### United States

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

### Newspaper and publishing industry, Media intrusion issues

#### United Kingdom

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

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

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

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

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

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

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

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

### Web-based sources:

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

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

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

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

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

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

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

### Web-based sources:

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

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

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

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

## Internet search engine providers, Internet user privacy issues

### China

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

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

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

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

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

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

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

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

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

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

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

### Web-based sources:

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

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

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

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

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

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

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

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



## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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



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

**Specific actions:**

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

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

## The Right

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

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

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

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

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

## Case studies

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

#### Australia

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

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

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

#### Web-based sources:

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

### Information technology industry, Religious expression issues

#### United States

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

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

### Web-based sources:

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

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

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

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

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

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

### Specific actions:

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

# ARTICLE 19: RIGHTS TO FREEDOM OF OPINION AND EXPRESSION

## The Right

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

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

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

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

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

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

### Related rights:

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

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

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

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



## Case studies

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

#### China

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

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

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

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

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

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

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

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

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

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

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

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

#### Web-based sources:

[http://www.rsf.org/article.php3?id\\_article=16262](http://www.rsf.org/article.php3?id_article=16262)  
<http://www.guardian.co.uk/china/story/0,,1710616,00.html>  
[http://www.washingtonpost.com/wp-dyn/content/article/2007/06/25/AR2007062500364\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/06/25/AR2007062500364_pf.html)  
<http://www.cdt.org/press/20070118press-humanrights.php>  
<http://www.hrw.org/reports/2006/china0806/5.htm>  
<http://www.iht.com/articles/2008/04/02/business/cybercrime.php>  
[http://www.coe.int/t/dc/files/themes/cybercrime/default\\_EN.asp](http://www.coe.int/t/dc/files/themes/cybercrime/default_EN.asp)  
<http://www.google.com/corporate>  
<http://yahoo.client.shareholder.com/press/human-rights-free-expression.cfm>  
<http://www.microsoft.com>  
<http://www.ciscosystems.com>

## Retail sector, Freedom of expression issues

### United States

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

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

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

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

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

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

#### Web-based sources:

<http://www.walmartstores.com>

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

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

### Specific actions:

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

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

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

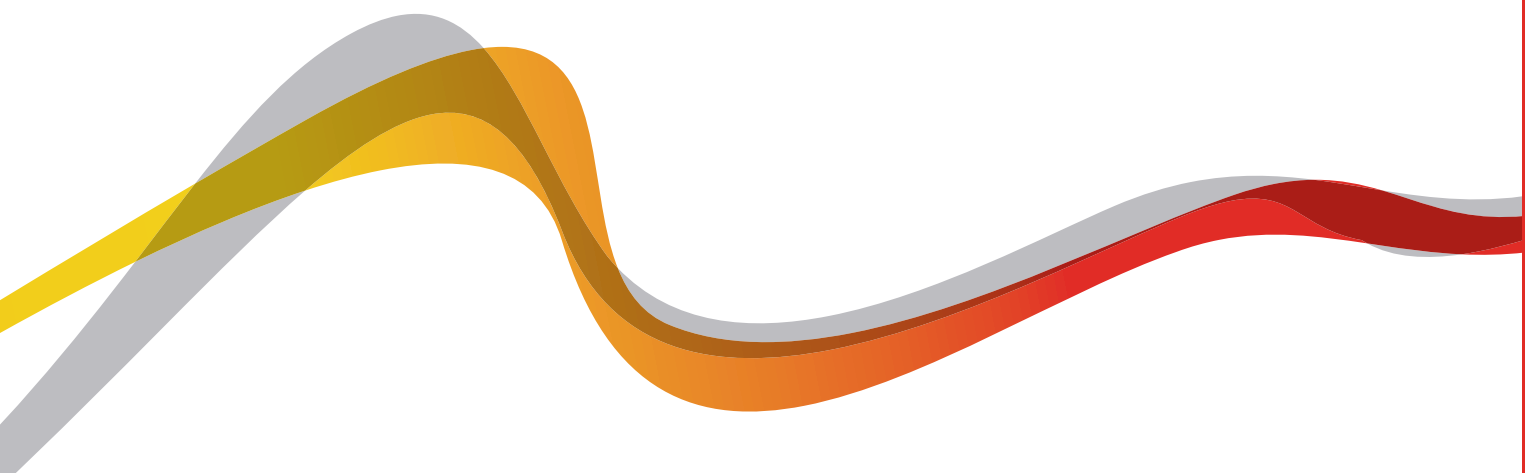
## The Right

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

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

### Related right:

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



## Case studies

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

#### France

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

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

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

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

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

### Web-based sources:

<http://www.kickitout.org>

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

### Specific actions:

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



# ARTICLE 21: RIGHT TO FREEDOM OF ASSEMBLY

## The Right

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

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

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

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

### Related rights:

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

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

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

## Case studies

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

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

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

#### Web-based sources:

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

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

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

### Specific actions:

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

# ARTICLE 22: RIGHT TO FREEDOM OF ASSOCIATION

## The Right

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

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

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

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

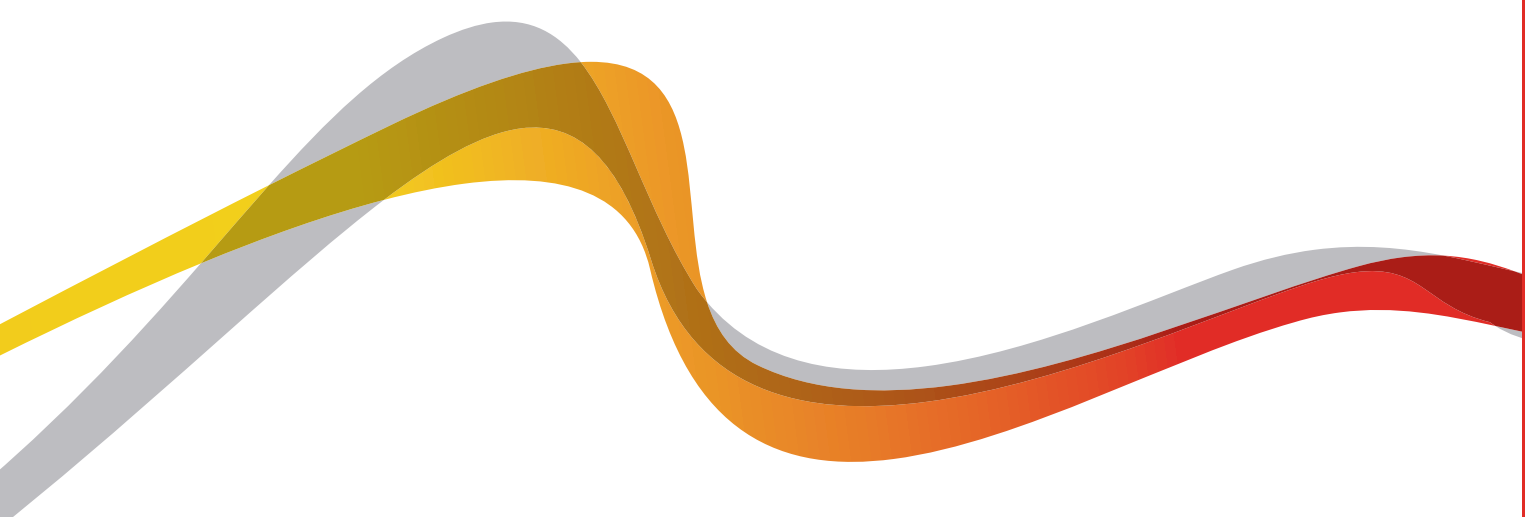
### Related rights:

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

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

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

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



## Case studies

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

#### Nigeria

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

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

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

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

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

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

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

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

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

#### Web-based sources:

<http://www.ccrjustice.org/ourcases/current-cases/wiwa-v.-royal-dutch-petroleum%2C-wiwa-v.-anderson-and-wiwa-v.-shell-petroleum-d>

<http://www.shell.com/home/Framework?siteId=nigeria>

<http://www.mosop.netwww.irinnews.org/report.aspx?reportid=54763>

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

### Specific actions:

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

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

## The Right

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

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

### Related rights:

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

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

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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



# ARTICLE 24: RIGHTS OF PROTECTION FOR THE CHILD

## The Right

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

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

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

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

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

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

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

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

### Related rights:

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

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

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

## Case studies

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

#### India

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

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

<http://www.bayer.com>

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

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

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

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

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

#### **Web-based sources:**

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

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, and ensure that any country analysis checks for the prevalence of child labour. The findings should inform later project decision-making.
- Comply with minimum age standards established by relevant national law reflecting international standards.
- Establish processes to ensure that if the company finds children below the minimum age in its workplace or in its supply chain, the children are removed from the working environment. Take steps, however, to ensure that the affected children are not forced by economic necessity into even worse forms of labour, such as prostitution or drug trafficking. If the company finds harmful child labour within its value chain, take immediate steps to provide safe alternatives. Consult with human rights experts for guidance in this area.
- Establish guidelines committing the company to the progressive eradication of child labour within its sphere of influence on the basis of continuing improvement.

### Specific actions:

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

# ARTICLE 25: RIGHT TO PARTICIPATE IN PUBLIC LIFE

## The Right

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

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

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

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

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

### Related rights:

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

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

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

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

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

## Case studies

### Consumer products sector, Voter participation issues

#### United States

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

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

#### Web-based sources:

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

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

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

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

### Energy sector, Corruption and political influence issues

#### France and Africa

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

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

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

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

#### Web-based sources:

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

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

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

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

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

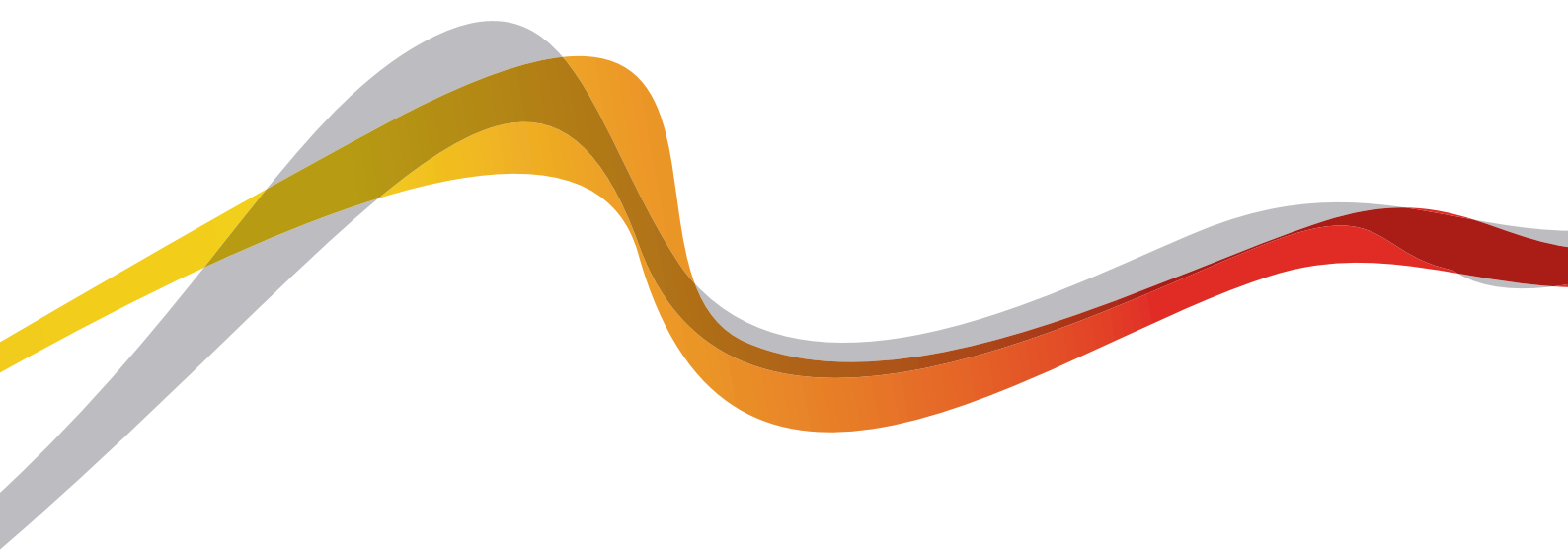
### Energy sector (oil and gas), Political participation issues South Africa

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

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

#### Web-based sources:

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





## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

## The Right

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

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

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

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

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

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

### Related rights:

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

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

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

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

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

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

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

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

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

#### Web-based sources:

[http://www.usdoj.gov/opa/pr/2004/May/04\\_crt\\_288.htm](http://www.usdoj.gov/opa/pr/2004/May/04_crt_288.htm)  
[http://www.usatoday.com/money/companies/2004-05-07-cracker-barrel\\_x.htm](http://www.usatoday.com/money/companies/2004-05-07-cracker-barrel_x.htm)  
<http://www.foxnews.com/story/0,2933,131897,00.html>  
<http://www.crackerbarrel.com>  
[http://www.cbrlgroup.com/tempj.cfm?doc\\_id=93](http://www.cbrlgroup.com/tempj.cfm?doc_id=93)

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

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

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

## IT industry, Gender discrimination issues Worldwide

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

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

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

### Web-based sources:

[http://www.cisco.com/web/about/ac227/ac222/employees/employee\\_diversity/womens\\_initiatives.html](http://www.cisco.com/web/about/ac227/ac222/employees/employee_diversity/womens_initiatives.html)  
[http://newsroom.cisco.com/dlls/2008/prod\\_042308.html](http://newsroom.cisco.com/dlls/2008/prod_042308.html)

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

### Specific actions:

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

# ARTICLE 27: RIGHTS OF MINORITIES

## The Right

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

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

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

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

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

### Related rights:

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

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

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

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

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

#### United States

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

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

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

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

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

#### Web-based sources:

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



## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

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

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

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

### Specific actions:

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

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

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

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