



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

# ARTICLE 1: RIGHT OF SELF-DETERMINATION

## The Right

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



# ARTICLES 2 TO 5: OVERARCHING PRINCIPLES

## The Rights

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

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

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

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

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

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

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

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

# ARTICLE 6: RIGHT TO WORK

## The Right

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

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

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

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

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

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

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

### Related rights:

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

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

## Case studies

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

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

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

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

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

#### Web-based sources:

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

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

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

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

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

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

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

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

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

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

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

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

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

### Web-based sources:

<http://www.peuples-solidaires.org/article138.html>  
<http://www.ilo.org/public/english/dialogue/actrav/new/wg/cfa338.htm>  
<http://www.ilo.org/public/english/standards/relm/gb/docs/gb296/pdf/gb-4.pdf>  
<http://www.imfmetal.org/main/files/06051509405779/TPtimeline2.pdf>  
<http://www.toyota.com/about/community/>  
[http://www.supremecourt.gov.ph/jurisprudence/2007/october2007/158786\\_158789.htm](http://www.supremecourt.gov.ph/jurisprudence/2007/october2007/158786_158789.htm)  
<http://www.oecd.org/dataoecd/42/11/38297552.pdf>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of labour and working conditions and is based on standards established by the International Labour Organization and, where relevant, the Organisation for Economic Cooperation and Development, and the International Finance Corporation Performance Standards. Apply the policy globally.
  - Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on protecting the right to work, and encourage them to develop a similar standard and take responsible action.
- Where possible, recruit staff locally in order to generate jobs and community goodwill.
  - Establish procedures to consult with trade union representatives.
  - Establish work/life balance employment procedures that take account of the different needs of male and female employees and of family responsibilities.
  - Institute vocational/skills training opportunities for direct employees, their dependants, and/or members of local communities.
  - Explore a policy of procuring supplies from local enterprises, where possible, to bolster the local market.
  - Where patterns of discrimination in employment are discernible, for example with respect to a dominance of women in low-paying manufacturing positions or of men in decision-making positions, investigate what can be done to identify and overcome such discriminatory barriers.

### Policy implementation processes / Compliance:

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

### Specific actions:

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

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

## The Right

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

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

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

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

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

With regard to all working conditions, States should require employers to co-operate with independent inspection services to ensure compliance with legal requirements.<sup>123</sup>

Companies can have a significant impact on the enjoyment of the various rights in Article 7 in their capacity as employers.

118 See ILO Convention 1 on Hours of Work (Industry) (1919), and ILO Convention 30 on Hours of Work (Commerce and Offices) (1930). See also ILO Convention 47 on the Forty Hour Week (1935).

119 See ILO Convention 132 on Holidays with Pay (1970). See also, on rest and leisure, ILO Convention 14 on Weekly Rest (Industry) (1921) and ILO Convention 106 on Weekly Rest (Commerce and Offices) Convention (1957). See, generally, Report of the Committee of Experts on the Application of Conventions and Recommendations, *Hours of Work: From Fixed to Flexible?* (International Labour Office, Geneva, 2005).

120 ILO Convention 131 on Minimum Wage Fixing (1970). See also ILO Convention 94 on Labour Clauses (Public Contracts) (1949).

121 See ILO Convention 95 on Protection of Wages (1949).

122 See ILO Convention 155 Concerning Occupational Health and Safety and the Working Environment (1981), Articles 4, 5 and 13. See also ILO Convention 161 on Occupational Health Services (1985).

123 See ILO Convention on 81 on Labour Inspection (1947), and Protocol of 1995.

### Related rights:

ICESCR Article 6 (Right to work), page 91

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



## Case studies

### Footwear industry, Working conditions issues

#### Vietnam

In 1997 it was widely reported that a range of violations of the right to enjoy just and favourable working conditions had been found at the Tae Kwang Vina (VT) factory in Vietnam. The shoe factory was run by a Vietnamese sub-contractor of Nike. The media reports were based on Vietnamese Labor Watch findings, and research by an independent analyst, Dara O'Rourke, and data contained in a leaked Ernst & Young audit conducted for Nike.

The reports alleged that factory managers encouraged excessive working hours and exposed workers to hazardous chemicals, noise, heat and dust. Employees were also reported to lack adequate drinking water supplies and adequate safety equipment. Ernst & Young noted that 77% of a sample of 165 employees suffered from respiratory disease. Some workers reported working a basic week that exceeded the Vietnamese legal annual limit of 200 hours overtime.

Nike responded to the findings, which coincided with intense media and activist scrutiny, by entering into a six-month process involving Nike personnel, VT factory managers and independent analysts (including Mr O'Rourke), to identify and evaluate the full extent of the workplace health and safety problems inside the factory. By 1999, independent auditors found that, despite some continuing health and safety problems, significant improvements had occurred in the factory. Exposure to harmful chemicals was reduced, better occupational health and safety training had been implemented, and the incidence of nose and throat diseases among VT workers fell by 68% over one year.

Nike introduced a Code of Conduct in Vietnam in 1999 based on ILO conventions, and subsequently developed tools and systems to monitor its delivery. Since fiscal year 2004, Nike has shifted its global

approach to take "a more holistic look at [its] supply chain, to focus on root cause identification, and solutions that will drive systematic change" by building the capacity of local management, publicly disclosing factory locations, and setting targets to, among other things, eliminate all "excessive overtime" from its supplier factories by 2011.

In the context of Vietnam, Nike, Adidas-Salomon and Pentland helped set up the Vietnam Business Links Initiative (VBLI) in 1999 to achieve systemic improvement in the working conditions in footwear factories. The VBLI is managed by the Vietnam Chamber of Commerce and Industry, with facilitation and advice from the International Business Leaders Forum (IBLF) and support from a coalition of government departments, industry representatives, and domestic and international NGOs (including the National Institute for Labour Protection and ActionAid).

By 2004 the VBLI had put in place a Code of Conduct for the footwear industry. It has developed and piloted a Management Support System approved by the Vietnamese Ministry of Industry as a standard, which was rolled out to 60% of Vietnam's footwear factories. It has also devised and delivered training courses for factory managers and workers responsible for health and safety. The initiative had also benefited from a study by the participating NGOs to identify the key health problems facing footwear industry workers.

The VBLI has been recognised by the World Bank, Harvard University and the German Development Agency (GTZ) as an effective example of corporate-led cross-sector partnership in action. Its methodologies are now being applied to the wider garment sector in Vietnam.

#### Web-based sources:

<http://nature.berkeley.edu/orourke/PDF/pwc.pdf>  
<http://www.globalexchange.org/campaigns/sweatshops/nike/vt.html>  
<http://nikeresponsibility.com/#crreport/main>  
<http://poverty2.forumone.com/library/view/14826>  
<http://www.iblf.org/regions/asia/vietnam.jsp>

## Financial services sector, Working conditions and wage issues

### UK

In 2000 and 2001 concerns started to be raised over the just and favourable working conditions of outsourced cleaners, catering and security personnel at the offices of major firms in the Canary Wharf area of London's Docklands. Often drawn from poor inner-city areas and migrant communities, the workers were typically found to receive low wages, no sick pay, and few other entitlements. Their plight prompted The East London Community Organisation (TELCO), an alliance of churches, mosques, unions and community groups, to launch a living wage<sup>124</sup> campaign. TELCO argued that the high cost of living in London meant that the national minimum wage was inadequate and called upon major financial and legal firms with Canary Wharf offices to exceed it.

Barclays Bank responded by accepting responsibility for the minimum pay and conditions of both direct employees and contracted staff when it moved to its new Canary Wharf Headquarters. Barclays agreed to

<sup>124</sup> The term 'living wage' is said to reflect the costs associated with a basket of goods required to provide an adequate standard of living, and is often higher than the minimum wage prescribed in certain countries.

#### Web-based sources:

[http://bbc.net.uk/radio4/news/nicework/transcripts/20050322\\_nice\\_work.pdf](http://bbc.net.uk/radio4/news/nicework/transcripts/20050322_nice_work.pdf)  
<http://www.telcocitizens.org.uk>  
[http://www.ethicalcorp.com/content\\_print.asp?ContentID=5039](http://www.ethicalcorp.com/content_print.asp?ContentID=5039)  
<http://www.tgwu.org.uk/Templates/Internal.asp?NodeID=93540&int1stParentNodeID=92090>  
<http://www.newsroom.barclays.com/Content/Detail.asp?ReleaseID=1102&NewsAreaID=2>

offer a salary above the minimum wage, a pension with 4.5% employer contribution, 15 days' sick pay, 8 paid public holidays, and 20 days' leave per year, as well as training and bonuses. In July 2007, Barclays announced that it would also meet renewed demands by London Citizens/TELCO and the T&G union to exceed the London living wage, established by the Mayor of London and Greater London Authority, for all support staff across its buildings in London.

Barclays' facilities management director, Jon Couret, said:

*The increase ensures that all of our staff in Greater London will earn more than the recommended London Living Wage. Although these employees are not directly employed by Barclays, we have a responsibility to ensure they receive a fair, well-rounded remuneration package and this delivers that.*

Reverend Paul Regan of London Citizens/TELCO, said, "London Citizens and T&G applaud Barclays' groundbreaking move that will lift 1000 families out of working poverty."

## Pharmaceutical sector, Living wage commitments

### Worldwide

Swiss pharmaceutical company, Novartis, has committed to go beyond legal compliance to ensure high standards of corporate citizenship across its global operations. Novartis' Policy on Corporate Citizenship includes a pledge to "pay competitive and fair wages, which clearly exceed what is needed to cover basic living needs". In addition, the company has said that "annualised full-time wages must be set at or above a level that covers the market price of a basket of goods and services representing the subsistence level for an average worker in the town or region in question". To deliver on these commitments, the company initiated a living wage project to ensure just and favourable working conditions for its workers.

At the start of the initiative, Novartis recognised the importance of determining the extent to which living wage standards were met for its employees across the world. In the absence of a generally accepted methodology for determining a living wage, the company partnered with not-for-profit business association, Business for Social Responsibility (BSR), to develop a methodology and strategy to calculate and implement a living wage in every country in which it operates and to review current best practices or leadership models from other industries.

The company has since implemented an approach that targets employees earning the lowest wages, whereby a Novartis Human Resources team first

proposes a living wage for each country based on the agreed Novartis/BSR methodology. Thereafter local management is consulted and has the opportunity to propose an alternative based on local conditions.

For both OECD and developing countries, the living wage figure tends to lie between the average and minimum wage for that location. Novartis reports that the involvement of local management in the decision-making process has been critical in creating awareness and commitment, with the additional benefit of better understanding differences between regions and rural and urban areas. Following the 2005 round of consultations, Novartis reported “that 93 employees, out of a workforce of more than 90,000 people, were being paid less than the living wage level in the country”. By 2006, it had aligned the pay of all employees with living wage levels. Annual monitoring of living wage compliance subsequently showed that

in 2006, 21 associates were being paid below living wage levels and were later adjusted, and in 2007 a total of 11 associates (0.001% of total associates) experienced below living wage levels and needed to be adjusted.

Novartis continues to work on the living wage with BSR each year to make adjustments that take into account inflation or newly available data. The company has pledged to begin extending the living wage concept to third parties and has asked major suppliers and service providers to pay employees who work on Novartis sites a living wage in line with Novartis’ standard. Novartis also gives preference to suppliers that meet the living wage commitment or other Novartis standards aligned to the UN Global Compact. The company has expressed a willingness to discuss and share its methodology and results relating to the living wage initiative with other companies.

**Web-based sources:**

<http://www.corporatecitizenship.novartis.com/people-communities/human-rights/living-wage.shtml>  
<http://www.bsr.org/research/issue-brief-details.cfm?DocumentID=50678#leadership>  
[http://www.corporatecitizenship.novartis.com/downloads/cc-in-action/Living\\_Wage.pdf](http://www.corporatecitizenship.novartis.com/downloads/cc-in-action/Living_Wage.pdf)

**Energy and mining sector, Health and safety issues  
Worldwide**

BHP Billiton has established an occupational health and safety programme in an effort to reduce the number of work-related accidents, with the aim of ensuring zero fatalities.<sup>125</sup> The company began by conducting a safety review to identify the causes of fatal accidents and opportunities for improvement. Once the safety review was completed, recommendations were presented to mine management for all identified hazards. In April 2003, BHP Billiton’s Fatal Risk Control Protocols (FRCPs) were established and a review process was developed to monitor and drive the implementation of the protocols.

In 2005, on the basis of feedback from workshops held in South Africa, South America and Australia, the protocols were refined. The re-released FRCPs cover the ten most dangerous areas of work identified by the company, including Underground Mobile Equipment, Hazardous Materials Management, and Working at Heights. The company has also made a tool-box of communications materials available

to assist with communication and implementation of the FRCPs across the organisation. In addition, global facilitators for each of the key risk areas were appointed to assist and support sites to ensure effective implementation.

In 2006, the company placed greater emphasis on learning from significant incidents and contractor safety by sharing learning from significant and near-miss accidents, ensuring the standards and procedures adopted by contractors were consistent with BHP Billiton’s own protocols, and by implementing the protocols and reporting on them more fully.

According to the company, fatalities at work have decreased following the initiation of this programme. Although BHP Billiton has yet to achieve its target of zero work fatalities, the company reports that for activities where BHP Billiton directly supervises and enforces health and safety standards, the figure had fallen from 17 fatalities in 2003–4 to 3 fatalities for 2005–6. However, 8 fatalities were reported for 2006–7.

<sup>125</sup> This case study is also relevant to ICCPR Article 6 (right to life).

**Web-based sources:**

<http://sustainability.bhpbilliton.com/2006/sustainability/challenges/>  
<http://www.bhp.com/bbContentRepository/bhpbsustainreport07web.pdf>  
<http://hsecreport.bhpbilliton.com/2005/repository/safety/caseStudies/caseStudies13.asp>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it provides for a healthy and safe working environment and decent working conditions. Apply the policy globally.
- Ensure that remuneration policies throughout the company are based on the principle of equal pay for equal work and incorporate equal opportunities for promotion based on merit.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on the provision of decent working conditions, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks relating to working conditions. Act on the findings.
- Comply with the more demanding of national and international regulation governing occupational health and safety. Ensure that managers and staff receive appropriate health and safety training, and conduct regular health and safety audits (the findings should be discussed at senior management level).
- Ensure that health and safety information is readily available to workers in local languages, put in place adequate first-aid arrangements, and liaise with workers' representatives on the subject.

- Be transparent in reporting health and safety accidents and set targets to encourage continuous improvement.
- Put systems in place to limit the working hours of direct employees and those of key suppliers and sub-contractors, and make provision for reasonable time off. Be guided by ILO standards that dictate that employees should not be required to work more than 48 hours per week or more than 10 hours in one day. Voluntary overtime should also be limited in hours and should not be expected on a regular basis. Employees should be given at least one day off in every seven-day period.
- Comply with minimum wage regulations and develop systems to ensure that the company and its sub-contractors pay a living wage.
- Develop mechanisms for fixing, monitoring and enforcing fair wage levels, tailored to take account of increases in the cost of living in a locally appropriate way. Any deductions from wages should accord with national laws.
- Consider instituting transparency in wage scales for employees, in the interests of openness around gender wage issues.

### Specific actions:

- Follow, and attempt to exceed as appropriate, industry and local good practice with respect to working hours, sick pay and leave allowances, in the interests of being an employer of choice, good staff morale and increased productivity.
- Engage in stakeholder dialogue on the issue of paying a living wage and good practice.

- Ensure that, wherever the company does business, women are guaranteed conditions of work that are not inferior to those enjoyed by men. Where this is effectively impossible under local laws (for example if the State prohibits the employment of women in certain sectors), companies should consider engaging with civil-society groups to assess how they may best live up to the spirit of Article 7 and principles of non-discrimination.

# ARTICLE 8: RIGHT TO FORM TRADE UNIONS AND JOIN THE TRADE UNION, AND THE RIGHT TO STRIKE

## The Right

This Article concerns the right of everyone to form trade unions and to join the trade union of his or her choice, subject to the union's own membership rules. This right may only be restricted by States in circumstances that are set down in law and are necessary to protect national security, public order, or the rights and freedoms of others. Trade unions themselves have rights to establish national federations or confederations, and for the latter to form or join international trade union groupings. Trade unions are permitted to function freely, subject only to limitations that are lawful and necessary to protect national security, public order or the rights of others.<sup>126</sup> Finally, the Article recognises a right to strike, which must be exercised in conformity with the reasonable requirements of a particular country's laws.

The core ILO Conventions governing freedom of association, the right to organise and collective bargain-

<sup>126</sup> Similar restrictions apply to ICCPR Article 19 (freedom of opinion and expression), and are discussed more extensively in relation to that right.

### Related rights:

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

ICESCR Article 6 (Right to work), page 91

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

ing<sup>127</sup> complement the interpretation of this right. These Conventions dictate that workers should not be discriminated against because of trade union membership. Governments should implement measures and develop appropriate mechanisms to promote voluntary good faith negotiations between employers and employees' organisations, with a view to enabling them to work out collective agreements regarding the regulation of employment.

Company actions may impact on these rights if they prevent union membership and activity amongst employees or are in any way complicit in actions that restrict employees' rights to participate in union activity. This case highlights some of the complexities involved in supply chain management, including the challenge of respecting both worker representation rights and protecting jobs.<sup>128</sup>

<sup>127</sup> ILO Convention 87 on Freedom of Association and Protection of Right to Organise (1948) and ILO Convention 98 on the Right to Organise and Collective Bargaining (1949).

<sup>128</sup> In the latter respect, this case study is also relevant to ICESCR Article 6 (right to work).

## Case studies

### Optical frames suppliers, Worker representation issues

#### China

Mod-Style is a wholly owned commercial company that was acquired in 2000 by the Australian-based charity, the Brotherhood of St Laurence (BSL). Mod-Style is in the business of sourcing optical frames from Asia. The majority of Mod-Style's factories are located in China where only one federation of trade unions, the All-China Federation of Trade Unions, is recognised.

The Brotherhood of St Laurence and Mod-Style "actively embrace corporate social responsibility" and have established business standards based on the conventions of the International Labour Organization (ILO) and the OECD Guidelines for Multinational Enterprises. To live up to their commitments, an Ethical Business Project was set up to investigate the business's supply chain and handle any ethical considerations associated with manufacturing in China, including any pertaining to union rights.

#### Web-based sources:

<http://www.bsl.org.au/main.asp?PagelD=3568>

To enhance workers' rights in the absence of independent trade unions, BSL and Mod-Style have attempted to offer worker empowerment training and capacity building within supplier factories to ensure that, in the absence of adequate national trade union rights, workers' voices may still be heard and respected. However, no factory to date has agreed to this training. In response, the supply chain in China has been consolidated to assist in developing long-term, direct, stable relationships with factory owners and managers in an effort to create a business relationship that allows consideration of not only products, quality, price and delivery, but also fair and decent working and living conditions in compliance with China's Labour Law.

### Sporting goods industry, Union representation issues

#### Indonesia

In January 2004, the German sporting goods company Adidas-Salomon and Oxfam Australia jointly agreed to invite an independent third party, the Workers Rights Consortium (WRC), to investigate allegations of labour violations at the PT Panarub factory, Tangerang, Indonesia. PT Panarub supplied Adidas-Salomon with athletic footwear. The WRC report found, among other things, that in an infringement of the workers' rights to join a union of their own choice, PT Panarub management "actively and systematically discriminates against one union in the plant, Perbupas, in favour of the other union present, SPN".<sup>129</sup> Among its recommendations, WRC called for a union membership verification process.

Oxfam Australia and the Clean Clothes Campaign have acknowledged that "Adidas responded positively and worked with factory management and local organisations, including both unions in the factory, to improve conditions and to end discrimination against

the Perbupas union." The company worked with PT Panarub to identify a qualified and independent third party to facilitate the union membership verification process. Adidas-Salomon also encouraged PT Panarub to conduct training for all supervisors and administrative staff on the union rights of its workers and the obligation of management and other employees to respect workers' choices about union membership. The training was conducted with ILO assistance in August 2004. In 2006, Adidas-Salomon revealed that "agreement could not be reached on the principles or mechanisms for conducting a factory wide ballot on union membership".

Despite efforts to resolve the tensions between the factory and the Perbupas union, matters escalated in October 2005 when PT Panarub dismissed 33 workers and placed the entire leadership of Perbupas on suspension for allegedly organising an illegal strike. Adidas-Salomon says it repeatedly urged the factory to review the dismissals and sought assurances that the affected workers would continue to be paid until a resolution was reached. Adidas-Salomon did not

<sup>129</sup> According to Adidas Group, of the roughly 11,000 employees at PT Panarub approximately half (5,600) are members of the majority SNP union, with a minority (2,380) belonging to the Perbupas union. See also the case study on Toyota at page 93.

intervene in the dismissal procedure directly, preferring that local dispute resolution mechanisms be exhausted. The company's policy of respecting due legal process in all circumstances drew criticism from some NGOs, who questioned the reliability of the Indonesian Manpower Department.

Although the Manpower Department initially supported 30 of the 33 dismissals, in May 2006 the Indonesian Human Rights Commission (*Komnas HAM*) found that there was no legal basis for the dismissals and recommended that the workers be reinstated. In June 2006, William Anderson of Adidas-Salomon said that the company had asked the factory to reinstate the workers, but had had its requests refused and was not prepared to issue a formal warning to the factory because "If we do and the company refuses to comply, we would have no choice but to terminate relations with them. We don't want to play high stakes because eleven thousand people could then lose their jobs."<sup>130</sup> Adidas did, however, write to the management again, requesting reinstatement of the workers, or

<sup>130</sup> William Anderson, Adidas-Salomon's regional head of social and environmental affairs, is quoted in John Aglionby, "Adidas 'fails to act' over sacked workers", *The Guardian*, 6 July 2006.

#### Web-based sources:

[http://www.workersrights.org/PT\\_Panarub\\_Updated\\_Summary\\_of\\_Findings\\_and\\_Recommendations.pdf](http://www.workersrights.org/PT_Panarub_Updated_Summary_of_Findings_and_Recommendations.pdf)  
[http://www.adidas-group.com/en/sustainability/statements/2006/correspondence\\_adidas\\_Panarub\\_July\\_2006.asp](http://www.adidas-group.com/en/sustainability/statements/2006/correspondence_adidas_Panarub_July_2006.asp)  
[http://www.adidas-group.com/en/sustainability/statements/2007/Panarub\\_May\\_2007.asp](http://www.adidas-group.com/en/sustainability/statements/2007/Panarub_May_2007.asp)  
<http://www.guardian.co.uk/business/2006/jul/06/indonesia.worldcup2006>  
[http://www.oxfam.org/en/files/offside\\_labor\\_report/download](http://www.oxfam.org/en/files/offside_labor_report/download)  
<http://www.oxfam.org.au/campaigns/labour/06report/docs/adidasstatement1.pdf>  
<http://www.oxfam.org.au/campaigns/labour/reports/dialogue.html>  
<http://www.cleanclothes.org/urgent/08-01-29.htm>

alternatively the setting up of a satisfactory arbitration process. In a letter of August 2006, Adidas stated that it would cap the growth in its orders from Panarub "until a satisfactory conclusion [was] reached in the case". In April 2007 PT Panarub and the Perbupas union reached an agreement whereby the dismissed workers received a severance package, but were not reinstated.

Adidas has since said that it is unable to guarantee employment for the dismissed workers, but would ask other suppliers to consider employing those affected and pledged to "monitor this to ensure that their applications are treated in a transparent and non-discriminatory manner". Oxfam Australia and the Clean Clothes Campaign continue to press the company to find jobs for the affected workers. The NGOs also continue to call for delivery of the union membership verification process.



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of union rights. Apply the policy globally.
- Ensure that the company's policy is based on the International Covenant on Economic, Social and Cultural Rights and ILO Conventions 87 and 98, which together establish the right of all workers and employers to form and join trade unions, and to allow unions to function freely without restrictions or discrimination.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on the rights of workers to join trade unions and exercise union rights, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any potentially negative impacts on union rights. Act on the findings.
- Do not hinder the ability of workers to exercise their right of association and their involvement in

workplace issues and conditions of employment. In countries where union activity is illegal, or where there is no trade union movement in practice, consult with international and local NGOs and labour organisations on ways in which the company may be able to facilitate alternative worker representative frameworks.

- Ensure that workers are aware of their rights by making company policies available in local languages, clearly accessible, and available orally where illiteracy is prevalent.
- Adopt a worker communication mechanism that allows for the safe and confidential reporting of worker grievances, including any allegations of interference with union activity. Establish guarantees to prevent, or punish where violations are found, reprisals against complainants or their representatives.

### Specific actions:

- Consider entering into union recognition agreements with local unions that represent the interests of workers in the given industry sector. A growing number of companies are pursuing this course of action with some success.
- Be prepared to raise concerns with the relevant authorities publicly or in private – individually or in concert with other companies – over restrictions to union rights that may affect company stakeholders.

# ARTICLE 9: RIGHT TO SOCIAL SECURITY, INCLUDING SOCIAL INSURANCE

## The Right

The right to social security encompasses the right to access and maintain benefits without discrimination. Governments are obliged to make available a system of social security. Such systems may involve contributory or insurance-based schemes, which normally entail compulsory contributions from the beneficiary and the beneficiary's employer (and sometimes the State), as well as universal or targeted schemes funded out of the public purpose. Social security benefits should be available to cover the following areas: health care and sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.<sup>131</sup> Social security systems should be affordable and sustainable, so as to provide for present and future generations, and should also provide for adequate benefits. The right is essential in combating poverty, given its redistributive character;<sup>132</sup> its realisation can, for example, have a significant impact on the enjoyment of other related rights, such as the right to an adequate standard of living and the right to health. According to some estimates, only about 20% of the

world's population currently has access to appropriate and adequate social protection.<sup>133</sup>

The role of companies in relation to the right to social security will vary depending on the national context. Generally, companies have a basic duty to ensure that legally mandated contributions to the system, in addition to those deducted from employee salaries and wages, are paid promptly to ensure that the government's ability to deliver social security payments or services is not undermined. Increasingly, employment laws also create obligations on companies to provide income and benefits on maternity, injury and the like. If companies operate private social security schemes, they have the responsibility to do so in a non-discriminatory manner and they should not impose unreasonable eligibility conditions. Finally, if a company denied its workers their contractually agreed employment injury benefits, its actions would impact negatively on the workers' rights under Article 9.

<sup>131</sup> See ILO Convention 102 on Social Security (Minimum Standards) (1952).

<sup>132</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 19, 4 February 2008, available via <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

<sup>133</sup> See Michael Cochon and Krzysztof Hagemeyer, "Social Security for All: Investing in Global and Economic Development. A Consultation", *Issues in Social Security Series, Discussion Paper 16*, ILO Social Security Department, 2006.

## Case studies

### Energy sector, Pension scheme and other social security issues

#### USA

In the United States, provision of social security benefits (e.g. health care, pensions) is a common component of employee remuneration packages at many corporations. In such situations, an employee's enjoyment of those social security rights is, in part, directly dependent upon his or her employer.

When Enron filed for one of largest bankruptcies in history in December 2001, 4,500 workers immediately lost their jobs (almost one quarter of the company's workforce), which in practical terms affected their right to social security.

Prior to the financial collapse, Enron workers who were laid off had been entitled to one week's pay for each year of work and one week's pay for each USD 10,000 a year in salary. In the event, workers laid off in December 2001 received a severance payment worth only USD 4,500, irrespective of how many years they had served with the company. Health insurance that had been provided by the company was also reportedly cancelled immediately, in violation of federal law. Money for retirement plans was lost, as much of the employer and employee contributions

had taken the form of Enron stock, which was rendered worthless by the bankruptcy.

In September 2003, a federal judge in Texas ruled that former Enron Chairman Kenneth Lay and Northern Trust Corp., trustee of Enron's retirement plan, could be sued under federal pension law for allegedly failing to protect Enron employees. The judge found that they had a responsibility to ensure that the retirement plans' investments were prudent and that this obligation extended to decisions about the percentage of Enron stock employees held in their retirement accounts.

By 2005 a final partial settlement had been reached, whereby the claimants would share in distributions under Enron's bankruptcy plan. While the claimants were to receive only a small amount of the lost investments, the deal ensured they would get some compensation without the uncertainty of litigation. Further partial settlements were reached in 2006 with Enron's former accountants, as well as former Director Jeff Skilling and the estate of former Chairman Kenneth Lay.

#### Web-based sources:

<http://news.bbc.co.uk/2/hi/business/1822042.stm>

<http://www.afcio.org/mediacenter/prspmt/pr02262002.cfm>

[http://www.hagens-berman.com/enron\\_lawsuit](http://www.hagens-berman.com/enron_lawsuit)

<http://www.kellersettlements.com/enron.html>

<http://www.erisafraud.com/Default.aspx?tabid=1046>

<http://www.employeecommittee.org/sr-401klitigation.asp>

[http://www.bloomberg.com/apps/news?pid=20670001&refer=news\\_index&sid=aNsg3JDAyRw](http://www.bloomberg.com/apps/news?pid=20670001&refer=news_index&sid=aNsg3JDAyRw)

## Apparel, lodging and entertainment industries, Employee social security benefits USA

In 1992, apparel company Levi Strauss & Co. became the first Fortune 500 company to offer health insurance benefits to unmarried couples and in 1996 entertainment giant the Walt Disney Corporation was among the first firms in the US to extend employee health coverage to the partners of gay and lesbian employees.

According to findings by the Washington-based advocacy group Human Rights Campaign, by 2006 more than half the companies in the Fortune 500 offered the same health benefits to employees who live with domestic partners as they did for married employees. In its 2008 Corporate Equality Index, Human Rights Campaign also found that of those employers that offered domestic partner health coverage, 66% provide it to both same and opposite-sex partners of employees.

During the late 1990s, Brendan Keegan, the executive vice president of human resources at hotel chain Marriott International Inc., recognised that a lack of

health benefits for domestic partners was a growing concern among employees. Keegan reports that the company realised “this was the right thing to do, but also was a growing competitive thing to do”, and in 1999 responded by becoming the first firm in its industry to implement the benefit.

By 2006, the *Washington Post* was reporting that 253 out of the Fortune 500 companies offered such benefits.

Companies that provide domestic partner benefits in the United States are faced with the dilemma that because a domestic partner is not currently recognised as a spouse under federal law, any portion of an employer-paid insurance premium that covers a domestic partner is treated as taxable income. To combat this, Helga Ying of Levi Strauss’s worldwide government affairs department has explained that the company raised the wages of employees to compensate for the federal tax they had to pay to cover their partners.

### Web-based sources:

- [http://www.hrc.org/documents/HRC\\_Corporate\\_Equality\\_Index\\_2008.pdf](http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2008.pdf)
- <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/29/AR2006062902049.html>
- [http://corporate.disney.go.com/corporate/corporate\\_responsibility.html](http://corporate.disney.go.com/corporate/corporate_responsibility.html)
- <http://www.levistrauss.com/Citizenship/>
- <http://www.marriott.com/corporateinfo/default.mi>

## Suggested practical actions

### Policy:

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

- Honour all legal and contractual benefit commitments to workers and to State social security schemes and mechanisms.
- Commit to offering workers benefit entitlements that conform to industry and local good practice.

### Specific actions:

- In contexts where government social security provision is inadequate, or where the State is unwilling or unable to enact and enforce social security laws, consider any extraordinary support and safeguards the company might wish to offer its employees and direct stakeholders. Engage with relevant experts, industry peers and stakeholders for guidance on what form that support might take.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any risks related to social security rights. Act on the findings.
- Ensure that internal governance and management policies comply with national regulations and stock market listing requirements to safeguard workers' rights to legal and contractual benefit entitlements.

# ARTICLE 10: RIGHT TO A FAMILY LIFE

## The Right

According to this Article the widest possible protection and assistance should be given to the family, particularly during its establishment, and while it is responsible for the care and education of dependent children. Special protection is given to mothers during a reasonable period before and after childbirth. Of particular relevance to companies, the right requires that during this period working mothers should be given paid leave or leave with adequate social security benefits.

Enhanced measures of protection and assistance should also be taken on behalf of all children and young people. Human rights standards do not impose an absolute prohibition of work by children, defined under the Convention on the Rights of the Child as persons less than 18 years of age. In some cases, work may be an important element of vocational training, such as in apprenticeships, or a way of earning supplementary income. Children should, however, be protected from economic and social exploitation and in particular they should not be exposed to work that is harmful to

their morals or health, or dangerous to life, or likely to hamper their normal development. The 'worst forms of child labour' are absolutely prohibited, as is work that is incompatible with the right of children to free and compulsory education. Work by children must not interfere with their ability to attend school. States are required to set age limits below which the paid employment of child labour should be prohibited and punishable by law.

This Article is relevant to companies insofar as certain work practices (including working hours and eligibility for leave) may hinder or enhance the ability of people to adopt a healthy work/life balance and spend quality time with their families. Companies also impact on the right if child labourers are found to be working directly for the company or within their supply chains.

### Related rights:

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

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

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

## Case studies

### Airline industry, Family-life issues

#### Malaysia

This case highlights the challenges companies can face when stakeholder expectations on what constitutes good practice in relation to the right to a family life differ from national legal requirements.

In 1991, airline company Malaysia Airlines (MAS) was a party to a case that concerned the right to family life of a flight stewardess, Beatrice Fernandez. Under the terms of a 1988 collective agreement, female stewardesses were compelled to resign if they became pregnant, or face dismissal. Ms Fernandez, who had worked for Malaysian Airlines for 11 years before becoming pregnant, refused to resign and as a result had her services terminated by the company.

Ms Fernandez brought her case before the Malaysian courts. The Malaysian High Court, the Court of Appeal and the Federal Court all held that no discrimination had been practised by MAS (the decisions of the latter two courts were unanimous). Though Ms Fernandez lost the legal battle,<sup>134</sup> Malaysian Airlines subsequently reviewed

<sup>134</sup> In 2004 the Court of Appeal ruled that constitutional law could offer Ms Fernandez no protection as it applied only to public authorities and not private companies. The Court also found that gender discrimination laws of 2001 could not be applied retroactively.

#### Web-based sources:

<http://www.wao.org.my/news/20050103mas.htm>  
<http://www.wao.org.my/newslinks/MASimproves.pdf>  
<http://www.wao.org.my/news/20050106masmemo.htm>  
<http://www.itfglobal.org/solidarity/itflettertomas.cfm>  
<http://www.malaysiaairlines.com/uk/en/corp/corp/relations/info/reports/annual-reports.aspx>  
<http://malaysiaairlines.listedcompany.com/misc/AR2006.pdf>

its policies. Under the terms of a 2002 collective agreement with the Malaysian Airline System Employees Union (MASEU), married female cabin crew who had served for five or more years became entitled to maternity leave of 60 days. In 2005, new provisions in the MAS terms of service for its cabin crew, agreed in negotiations with MASEU, increased the limit on the number of children a stewardess could have from two to three before being expected to resign or risk having her contract terminated.

Critics, including the Joint Action Group against Violence Against Women, point out that despite the improvements, unmarried stewardesses and those with less than five years' experience still have no protection and the company has retained the right to terminate contracts where stewardesses become pregnant for a fourth time. In 2005, the International Transport Workers' Federation wrote to the company expressing concern over the limits placed on stewardesses, and that "pregnant women are not redeployed to other duties, but instead are forced to take seven months unpaid leave".

## Technology, accounting, finance and pharmaceutical sectors, Family-friendly workplace issues USA

Technology company IBM has appeared regularly in *Working Mother* magazine's 100 Best Companies, which lists companies that lead the way in providing family-friendly work conditions. In 2007, the company was ranked in the top ten alongside Ernst & Young, KPMG, PricewaterhouseCoopers and UBS. IBM also featured in the magazine's 2007 Best Companies Hall of Fame for firms that had been listed in the top 100 consistently for more than 15 years, along with other companies such as GlaxoSmithKline, Hewlett Packard and Johnson & Johnson.

IBM's flexible working options allow for one third of its 140,000 employees worldwide to work either off-site or remotely on any given day. The company provides 100 day-care centres across its operations

### Web-based sources:

<http://www.workingmother.com>

[http://www.ibm.com/ibm/responsibility/s4\\_4.shtml](http://www.ibm.com/ibm/responsibility/s4_4.shtml)

[http://www.ubs.com/1/e/about/ouremployees/diversity/program\\_initiatives/worklife\\_balance.html](http://www.ubs.com/1/e/about/ouremployees/diversity/program_initiatives/worklife_balance.html)

for those working mothers who are unable to work from home. All new parents are granted full health benefits for an unpaid leave period of up to 156 weeks, during which their jobs are guaranteed.

Ronald C. Glover, IBM's vice president for global workforce diversity, further explains that:

*Women have been asking for greater flexibility [and] they're also asking for tools that enable them to network with colleagues, develop their skills, and grow their career. To help them, we offer a range of programmes, from flexible work schedules and meeting-free Fridays to online resources that identify job and learning opportunities.*



## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to a family life. Apply the policy globally.
- Ensure that the company's policy includes clear commitments and procedures to prevent child exploitation. Be guided by ILO Convention 138 on Minimum Age (1970) and ILO Convention 182 on the Worst Forms of Child Labour (1999).
- Ensure that any work/life balance policies encourage the development of family life.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting the right to a family life, and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks related to the right to family life. Act on the findings.
  - Comply with national regulations concerning paid parental leave. Where government social security provision for expectant parents/recent parents is limited or non-existent, consider applying at least minimum international standards.
- For companies that house employees, or sub-contracted employees, in dormitory facilities or on sites that are not within easy travelling distance from the worker's home, ensure that the management and operation of these facilities is conducive to and supportive of family life. Where employees work for extended periods of time on facilities away from home, ensure that procedures are established to safeguard the employee's right to a family life in line with local good practice; this may include the provision of extended periods of leave between assignments to spend with family members.

### Specific actions:

- In contexts where work/life balance benefits are rare, examine and attempt to exceed local good practice and encourage business partners to do likewise.
- In contexts where home-working is commonplace and child care facilities are rare or non-existent, strive to accommodate home-working. Consult with human rights experts and industry peers for guidance on how to act appropriately.
- Sponsor or lend in-kind support to education schemes to provide schooling for formerly exploited children. Consult with human rights experts and industry peers for guidance on how to achieve sustainable results.

# ARTICLE 11: RIGHT TO AN ADEQUATE STANDARD OF LIVING

## The Right

Article 11 guarantees the right to an adequate standard of living including adequate food, clothing, housing and continuous improvement of living conditions. It has also been interpreted as including access to sufficient water and sanitation. These elements are discussed below (and continued at page 118).

### a) Right to adequate housing

The right to adequate housing encompasses more than the provision of basic shelter; it is the right to live somewhere in security, dignity and peace. This means that housing or shelter must fulfil certain basic criteria, such as security of tenure, availability of utilities and other services (e.g. sewage facilities and access to safe drinking water), affordability, habitability, accessibility, location and cultural adequacy of housing. Governments should take progressive steps towards the achievement of all aspects of the right.

Companies that provide housing for their workforce or the local community will find that they can impact

directly, positively or negatively, on the enjoyment of the right. Companies may find their activities impact on the right to adequate housing if they are involved in land transactions that require population relocation or forced evictions, be this as landlords or to accommodate development projects or natural resource exploration. Those companies that engage in relocation or forced evictions will want to ensure that they act in accordance with human rights standards, and that those affected and their belongings are protected and secured during the relocation process. Forced evictions should be a last resort and feasible alternatives should be explored in consultation with the affected communities. Forced evictions are not inconsistent with the right to adequate housing if procedural safeguards – such as comprehensive impact assessments, prior consultation and notification, provision of legal remedies, fair and just compensation, and adequate relocation – are deployed to minimise the adverse impacts, including on specific groups such as women and indigenous peoples.

#### Related rights:

ICCPR Article 12 (Right to freedom of movement), page 31

ICCPR Article 27 (Rights of minorities), page 81



## Case studies

### Toy sector, Housing issues

#### Mexico

This case raises questions as to how far company responsibilities should extend in economically deprived areas.

Toy company Mattel operates a *maquiladora* factory, Mabamex, within the export processing zone (EPZ) around Tijuana, Mexico. Neighbouring the factory, many of the workers' homes are made of scrap metal and lack running water. According to Alfredo Hualde, director of *El Colegio de la Frontera Norte* (a research institute), although Mattel's factory is one of the best *maquiladoras* in Tijuana with respect to working conditions, the company would need to double the workers' wages for them to be able to afford the basic amenities, including sanitary drinking water.

Audits of the Mabamex plant conducted in 2004 and 2007, by the US-based not-for-profit International Center for Corporate Accountability (ICCA), found that Mattel's workers were paid well above the minimum wage and the prevailing area wages and that this applied to both temporary and permanent

workers. The audits also found that employees benefited from subsidised meals in the factory cafeteria and enjoyed satisfactory access to drinking water and well-maintained on-site bathroom facilities. In 2007, ICCA specifically noted that: "The plant regularly tests and documents all sources of drinking water." Whilst a variety of minor problems were identified concerning consecutive days worked and general housekeeping, ICCA concluded that, "overall, Mabamex is a well maintained facility and operates in an efficient manner while ensuring that the plant provides a clean, safe and healthy work environment for its employees".

Although working conditions in the plant itself are generally considered to be above average, comments by Mattel's CEO, Robert Eckert, highlight the dilemma faced by employers in this area, "Do we want to make people's lives better? Absolutely! Do we want to unilaterally do things that make us uncompetitive and therefore our products don't sell and therefore nobody gets employed. No."

#### Web-based sources:

<http://www.timesizing.com/gts0411e.htm>

[http://www.icca-corporateaccountability.org/04\\_reports.php?sp\\_rep=2](http://www.icca-corporateaccountability.org/04_reports.php?sp_rep=2)

[http://www.mattel.com/about\\_us/Corp\\_Responsibility/default.asp](http://www.mattel.com/about_us/Corp_Responsibility/default.asp)

## Mining sector, Housing and community displacement issues

### Guatemala

This case study highlights the long-term repercussions, including allegations of wrongful eviction, that can arise when the legal title to land is disputed and transferred for private commercial use contrary to the wishes of the land's traditional owners, even if the original transfer took place years ago and was sanctioned by local authorities. It also illustrates the long-standing suspicions that often need to be overcome in contexts where mistrust has characterised relations between community members and companies.

Guatemala Nickel Company (CGN), a majority owned subsidiary of Canadian firm Skye Resources Inc, holds an exploratory mining licence for 300 square kilometres of land in the municipality of El Estor, Izabal, Guatemala. It acquired the rights from another Canadian mining company, INCO, in 2004. CGN has faced allegations that it forcibly evicted a group of Mayan Q'eqchi peoples who had been occupying the land.

The mining concession for the land in El Estor was originally purchased by INCO from the Guatemalan military government in the 1960s. A number of Mayan Q'eqchi peasant farmers claim that the land historically belonged to them, that their family members were evicted in the 1960s and that their views on the use of the land have never been properly taken into account.

In September 2006, 350 Mayan families moved onto land at three separate sites prior to the planned commencement of nickel mining by CGN. The families claimed that they were reoccupying ancestral lands and needed to do so in order to have viable livelihoods. A community elder asserted at the time, "We are recuperating our lands, not invading them. Some of us were born on these lands before any mining company arrived in the area." According to Father Dan Vogt, co-ordinator of a community development group, Aepidi, many of them had been campaigning for the company to provide them with land to farm. The company

maintains that prior to September 2006 the land had been unoccupied for decades.

NGOs such as the Centre on Housing Rights and Evictions (COHRE) claim that between 8 and 9 January 2007, over 475 indigenous Mayan families were forcibly evicted from several sites in El Estor. The evictions were reportedly carried out by 650 police and soldiers after CGN had obtained a court order. Although some evictions were said to have been handled with sensitivity, with inhabitants given time to vacate safely, COHRE alleges that the eviction was "accompanied by a private grey, white and blue helicopter, which flew low over the communities, intimidating the inhabitants". It is also alleged by COHRE that "the evicted families lost 18 homes which were burned and destroyed" by company contractors.

Responding to correspondence from critics, Ian Austin, CEO of parent company Skye Resources, said in a letter of 17 January 2007 that "CGN management met with the squatters' leaders in December 2006" to reach a peaceful settlement and that the evictions were a last resort. Austin acknowledged the fires took place, but denied company involvement and did not condone them. Skye Resources maintains that the eviction process was carried out by "a special unit of the national police that [was] specially trained to handle such situations", that it gave advance warning of the evictions to those affected, and compensated families for loss of personal property.

Ian Austin said, "We are thankful that the Guatemalan government has upheld the company's rights to the land and we remain committed to working with community leaders to find solutions to this important issue." Nonetheless, a number of local community leaders remain angry about how the evictions were handled and continue to press their claim over the disputed land.

#### Web-based sources:

[http://www.cohre.org/view\\_page.php?page\\_id=251](http://www.cohre.org/view_page.php?page_id=251)

<http://www.globalvoicesonline.org/2007/03/04/forced-evictions-in-guatemala-whose-land-is-it-anyway/>

[http://www.miningwatch.ca/index.php?/Guatemala/Evictions\\_in\\_El\\_Estor](http://www.miningwatch.ca/index.php?/Guatemala/Evictions_in_El_Estor)

<http://www.newswire.ca/en/releases/archive/January2007/08/c4106.html>

<http://www.independent.co.uk/news/world/americas/mayans-occupy-canadianowned-mine-in-campaign-for-farming-land-417045.html>

[http://www.skyeresources.com/community/in\\_the\\_news](http://www.skyeresources.com/community/in_the_news)

## Energy sector, Environmental disaster issues Indonesia

On 28 May 2006, PT Lapindo Brantas, an Indonesian energy company, commenced drilling a borehole in East Java in search of gas. During the second stage of drilling, a mud volcano eruption began. The mudflows have continued to the present day; experts see no end in sight and predict that the area affected is likely to grow. Tonnes of mud are reported to have inundated nearby villages and sites of commercial activity, including rice paddies and shrimping grounds. Impacting on enjoyment of the right to housing, thousands of people have been forced from their homes as a result of the eruptions and flows. More resettlements are thought to be inevitable. PT Lapindo Brantas faces allegations that its activities triggered the eruption.

PT Lapindo Brantas argues that an earthquake in central Java that occurred two days before they commenced the drilling caused the eruption. However, an expert geologist team from the UK assigned the blame to PT Lapindo Brantas's drilling activities.<sup>135</sup> No other mud eruptions are reported to have arisen as a result of the earthquake, the epicentre of which was 300 km away.

A lawsuit was brought by an NGO, WALHI, the Indonesian branch of Friends of the Earth, against Lapindo Brantas for allegedly causing the disaster. In December 2007 the District Court of South Jakarta dismissed the case and found that the mudslide was a natural disaster. WALHI is reportedly appealing that decision.

<sup>135</sup> See Richard Davies et al, "Birth of a mud volcano: East Java, 29 May 2006", <http://www.gsjournals.org/perlserv/?request=get-document&doi=10.1130%2FSGSAT01702A.1&ct=1>

### Web-based sources:

[http://www.foeeurope.org/publications/2007/LB\\_mud\\_volcano\\_Indonesia.pdf](http://www.foeeurope.org/publications/2007/LB_mud_volcano_Indonesia.pdf)  
[http://www.foeeurope.org/publications/2007/exec\\_summ\\_banks\\_Indonesian\\_mud\\_flow.pdf](http://www.foeeurope.org/publications/2007/exec_summ_banks_Indonesian_mud_flow.pdf)  
<http://www.antara.co.id/en/arc/2007/1/8/all-efforts-to-overcome-lapindo-mud-flow-be-monitored-speaker/>  
<http://www.antara.co.id/en/arc/2008/2/29/lapindo-mudflow-victims-still-complain-about-promised-compensation/>  
[http://www.corfina.com/finacial\\_news/2007/20070113.html](http://www.corfina.com/finacial_news/2007/20070113.html)  
<http://afp.google.com/article/ALeqM5hP707SR7ekOSCFmE8Tu3s8Mk6e8Q>  
<http://www.tempointeraktif.com/hg/nasional/2008/06/13/brk,20080613-125309,uk.html>  
<http://www.thejakartapost.com/news/2008/05/29/mudflow-a-039gross-rights-violation039.html>

The Indonesian president has decreed that the company pay IDR 2.5 trillion (about USD 268 million) in compensation to local residents. By January 2008, 20% of this amount had been paid, though many victims reportedly had not yet received compensation. The President has also asked the company to fund mitigation efforts worth IDR 1.3 trillion (about USD 140 million). The Indonesian government has agreed to provide IDR 700 billion (about USD 75 million) in compensation for the many affected persons outside that immediate area.

In May 2008, *Komnas HAM*, the Indonesian Human Rights Commission, labelled the government's response to the mudflow a "gross rights violation". *Komnas HAM* found that the government had failed to ensure protection for the human rights of victims, and that efforts to stop the flow were inadequate. It also found that the compensation schemes were flawed, and had deprived victims of their rights to proper compensation. In June 2008, *Komnas HAM* suggested that the existing compensation schemes be revised, and that PT Lapindo Brantas be required to fund all of the required compensation and mitigation efforts. As the mudflow continues, adjustments and increases in available compensation, from whatever source, may be necessary if more people are seriously affected.

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies risks related to the right to housing. Act on the findings.
- Where financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Indigenous Peoples, and IFC Performance Standards on Land Acquisition and Involuntary Resettlement. Other companies may also wish to consider these standards.
- Consult in good faith with the relevant communities through their own representative institutions prior to launching any activity that affects people's right to housing with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation and providing full information on the impact and benefits, and any compensation on offer, including in the local language concerned.

- Population relocations should be guided by The Basic Principles and Guidelines on Development-based Evictions and Displacement, developed by the UN Special Rapporteur on the Right to Adequate Housing, which stress, for example, the importance of comprehensive impact assessments, the rights of evicted persons to return, resettlement, fair and just compensation, and prior notification to all affected persons, in writing and sufficiently in advance to minimise the adverse impacts of evictions.
- In contexts where the company, either independently or as part of a wider group of businesses, provides housing to employees, this should be both affordable, decent and culturally appropriate, conforming to or exceeding local good practice. Companies may be guided by provisions and standards including the ILO Recommendation 115 on Workers' Housing.

### Specific actions:

- In developing-country contexts where housing facilities for employees or other stakeholders are particularly poor, consider what role, if any, the company can play in helping to raise standards, either through financial support or by utilising the company's core competencies. Explore collective action possibilities with industry peers or other businesses operating in the same area to encourage and support government intervention to increase community access to adequate standards of housing.

**b) Right to food** (continued from page 113)

Food is vital for human survival and also essential as a means to fully enjoy all other rights. The human right to adequate food implies that food should be available and accessible to people in a quantity and of a quality sufficient to satisfy their nutritional needs, free from harmful substances, and acceptable to their culture. The right to food includes the possibilities for individuals to feed themselves and their family directly by productive land and other natural resources (e.g. farming, animal husbandry, fishing, hunting and food gathering), as well as to purchase foods at markets and stores. Various steps should be taken by States to improve methods of production, conservation and distribution of food through, for example, the development of better farming systems, as well as ensuring an equitable distribution of world food supplies in relation to need.

Protective measures are required to prevent contamination of food and water supplies arising from, for example, poor environmental hygiene or inappropriate handling at various stages of the food chain.

The right to food is particularly relevant to those companies that provide for the basic needs of their workforce and the surrounding community, and those whose core business is the supply of food. Respect for the right to food requires that company activities do not pollute, harm or otherwise interfere with local supplies of food, or people's ability to access them.

**c) Access to water and sanitation**

Access to water is necessary for life and thus the fulfilment of all other rights. Although not explicitly mentioned in the text of Article 11, it is considered a fundamental aspect of the right to an adequate standard of living.<sup>136</sup> Human rights entitles everyone to safe, sufficient, acceptable, affordable and physically accessible water for personal and domestic uses. These uses include water for drinking, personal sanitation, prepara-

tion of food, washing of clothes, as well as for personal and household hygiene. The water provided has to be of good quality, free from elements that might harm a person's health, and a minimum quantity of approximately 50–100 litres per person per day.

States are obliged to ensure that water services are delivered in an equitable and non-discriminatory manner, prioritising the most vulnerable groups and those who have traditionally faced difficulties in accessing adequate quantities of water. Water does not have to be provided for free, but water and water facilities must be affordable for even the most disadvantaged members of society. Individuals, communities and groups should be able to participate in decision-making processes that may affect their access to water and should be given full access to information concerning water and sanitation matters. In a context of privatisation of water services, States must effectively regulate and control water services providers to maintain equal, affordable and physical access to sufficient, safe and acceptable water for personal and domestic uses.

Company activities can impact on access to water if pollution and over-use of local water supplies significantly interfere with people's enjoyment of access to water. This aspect of the right is also particularly relevant to companies that provide water services and companies that provide for the basic needs of their workforce and the surrounding community. Companies can have a positive impact on rights with respect to water through initiatives aimed at improving the accessibility and quality of water for local communities.

*As the rights regarding food and water are closely related, the case studies and suggested practical actions for these rights have been grouped together below.*

<sup>136</sup> See General Comment 15 on the Right to Water of the Committee on Economic, Social and Cultural Rights, E/C.12/2002/11, 20 January 2003. See also Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, A/HRC/6/3, and UN Human Rights Council, "Human rights and access to safe drinking water and sanitation", Resolution 7/22, 28 March 2008.

## Case studies

### Mining sector, Contamination and food rights issues

#### Philippines

Lafayette Philippines Incorporated (LPI) (a subsidiary of Australian mining company Lafayette Mining), majority owns and operates the Rapu-Rapu Polymetallic Project on the Philippine island of Rapu-Rapu in Albay. The project was approved by the Philippine government in 1998. LPI has faced allegations that its activities negatively impacted upon the right to food of the island's inhabitants, for whom fishing has traditionally been the primary means of livelihood.

In October 2005, an overflow after heavy rains resulted in two mine tailing spills from the LPI mine. Lafayette Mining says they resulted in "relatively minor volume discharges of low level contaminated liquid". However, others allege that the spills contained cyanide, polluted the sea, and killed fish and other marine life in the area. Catches and fish sales are said to have declined rapidly following the spill, as local consumers, who feared contamination, stopped buying fish caught in the vicinity. *The Manila Times* reported in 2007 that local fishermen claimed that the incident made their catch dwindle from 70 blue marlins a year in 2005 to 20 in 2006. According to FIAN international, an NGO that campaigns on the right to food, the spill threatened both the community's livelihood and food supply. Lafayette refutes these allegations and maintains that the disruption to local fishing did not stem from the October spills, but was the result of "a mercury hoax that was falsely attributed to the operation of the Project".

In November 2005, the Department of Environment and Natural Resources (DENR) ordered the temporary suspension of LPI's mining operation and imposed a PHP 10.7 million fine on the company. DENR's Mines and Geosciences Bureau said the penalty was for violating the Clean Water Act and an Environmental Compliance Certificate. DENR believed the accident was preventable and set stringent safety testing requirements for any resumption of mining activities.

#### Web-based sources:

[http://www.manilatimes.net/national/2007/june/24/yehey/top\\_stories/20070624top6.html](http://www.manilatimes.net/national/2007/june/24/yehey/top_stories/20070624top6.html)

<http://www.manilatimes.net/national/2007/oct/22/yehey/prov/20071022pro1.html>

<http://www.manilatimes.net/national/2007/nov/04/yehey/prov/20071104pro1.html>

[http://www.fian.org/cases/letter-campaigns/mining-operations-are-threatening-the-right-to-food-of-thousands-of-persons-philippines/?print\\_page=1](http://www.fian.org/cases/letter-campaigns/mining-operations-are-threatening-the-right-to-food-of-thousands-of-persons-philippines/?print_page=1)

<http://www.lafayettmining.com/about/default.asp?id=17>

<http://www.kalikasan.org/kalikasan-cms/?q=node/157>

<http://www.mgb.gov.ph/news/2007-0213rapu.htm>

In 2006 FIAN organised a letter-writing campaign calling on the Philippine government to close the project, rehabilitate the fishing grounds, and ensure affected communities were compensated. The letter stressed that:

*The Philippines is a State party to the International Covenant on Economic, Social and Cultural Rights, and therefore is duty-bound under international law to protect the right to food of all its population [including the fishing community on the island of Rapu-Rapu].*

During 2006, LPI is reported to have appointed a new management team and complied with the stipulations set by DENR to conduct test-runs of the facility and install monitoring and emergency control mechanisms. As a result, in February 2007 DENR's Pollution Adjudication Board issued a Final Lifting Order allowing resumption of production of concentrates from the plant. DENR stressed that its decision was based on sound science and transparency. DENR Acting Secretary, Francisco Brava, noted that the test runs were open to the public and subjected to third-party evaluation. DENR had previously gone on the record to acknowledge that the Rapu-Rapu experience had provided a wake-up call for more rigorous compliance by the entire mining industry to standards of responsible and sustainable mining in the Philippines.

In December 2007, several hundred environmentalists, Rapu-Rapu residents, NGOs, church and academic representatives convened in Albay to urge LPI's bank funders and investors to withdraw their support from the mining company, amidst allegations of a third fish-kill as a result of contamination issuing from the mine.



## Water utilities, Access to water and pricing issues Bolivia

This case illustrates the tensions that can arise when private companies take on essential public service functions. In 1999, the city of Cochabamba, Bolivia, awarded a newly privatised water service concession to Aguas del Tunari (a consortium of International Water,<sup>137</sup> Abengoa and five Bolivian firms). The consortium faced allegations that it limited the local community's access to water through overpricing.

Bechtel Enterprises (which had a 27.5% stake in Aguas del Tunari) notes that the consortium began operating the city's water and wastewater system in 1999, taking over from the municipal water company SEMAPA, under which "low-volume, poorer users paid more per unit than high-volume, wealthier users".<sup>138</sup> According to Bechtel, the consortium succeeded in improving quality and increasing the availability of water by 30%, while instituting a new rate structure by which most price increases would fall to larger, wealthier users.<sup>139</sup> To secure the concession, Aguas del Tunari agreed to repay SEMAPA's accumulated debts and finance maintenance and expansion of the water system in exchange for income generated from government-approved tariffs.

Bechtel holds that much of the perceived increases in costs to end users were the result of poorly managed consumption – residents unaccustomed to ready access to water were ill prepared for the consequences of over-consumption. Bechtel notes that the municipality failed properly to communicate the cost implications of increased water consumption that often accompany improvements to the availability of water.<sup>140</sup>

The Democracy Center, an NGO, has a different version of events in Cochabamba. It alleges that within weeks of taking control of the city's water system, Aguas del Tunari raised water rates by an average of over 50%. The NGO claims that by February 2000 the price of water had increased so significantly that many poorer families were priced out of the market and that this sparked civil unrest. Bechtel points out that rates were soon rolled back to pre-concession levels and argues that the civil unrest was not caused exclusively by the effects of the

price increases, but was precipitated by multiple factors, "including unrelated national groundwater legislation".

The Democracy Center has disputed Bechtel's statements. In particular it has placed electronic copies of customers' water bills and SEMAPA computer records on its website, records which it claims demonstrate that the price increases were far higher and more damaging than was claimed by Bechtel.<sup>141</sup>

In April 2001, the violence in Cochabamba and other parts of the country escalated, which led to the government dispatching the military and culminated in several deaths. Amidst the deteriorating security situation Aguas del Tunari personnel vacated their office and the government cancelled the water contract.

In November 2001, Aguas del Tunari filed a request for arbitration with the International Centre for Settlement of Investment Disputes (ICSID) (under the terms of a Netherlands–Bolivia bilateral investment treaty) for the recovery of lost assets, investments and future profits. In 2002, an international petition was filed by activists with the World Bank demanding that the ICSID case be open to public scrutiny and participation.

In 2006 the ICSID case was settled. A statement from Bechtel read:

*The Government of Bolivia and the international shareholders of Aguas del Tunari declare that the concession was terminated only because of the civil unrest and the state of emergency and not because of any act done or not done by the international shareholders of Aguas del Tunari (Bechtel, Befesa, Abengoa and Edison)" and that there would be "no compensation paid by the Government of Bolivia or Aguas del Tunari for the termination of the concession and the withdrawal of the claim [before the ICSID].*

Jim Schultz, director of the Democracy Center, conversely described the settlement as "a huge victory for activists worldwide".

<sup>137</sup> In November 1999, Bechtel Enterprises Holdings, Inc. and Edison S.P.A. finalised an agreement for Edison to acquire a 50% interest in International Water Limited (IWL), a major international water development services company owned by Bechtel Enterprises.

<sup>138</sup> This was reported on Bechtel's website under the heading, "Bechtel perspective on the Aguas del Tunari water concession in Cochabamba, Bolivia" on 16 March 2005.

<sup>139</sup> Bechtel says that the agreed tariff structure involved an average unit increase of 35%, "low-income residents were to pay 10% more, and the largest hikes (106%) were reserved for the highest-volume users".

<sup>140</sup> Bechtel states that, "The higher rates didn't last long. Responding to public criticism, the government rolled back rates in February [2000, and that] customers who had paid the higher rates were refunded the difference."

<sup>141</sup> For details, see [http://democracyctr.org/bolivia/investigations/water/waterbills\\_index.htm](http://democracyctr.org/bolivia/investigations/water/waterbills_index.htm).

### Web-based sources:

<http://www.democracycctr.org/bolivia/investigations/water/bechtel-vs-bolivia.htm>  
<http://www.bechtel.com/pdf/cochabambafacts.pdf>  
<http://www.bechtel.com/assets/files/PDF/Cochabambafacts0305.pdf>  
[http://www.bechtel.com/2005-03-16\\_38.html](http://www.bechtel.com/2005-03-16_38.html)  
[http://www.iisd.org/pdf/2006/itn\\_jan20\\_2006.pdf](http://www.iisd.org/pdf/2006/itn_jan20_2006.pdf)  
<http://www.befesa.es>  
<http://www.edison.it/edison/site/en/csr/>  
<http://www.abengoa.com/sites/abengoa/en/index.html>

## Chemicals sector, Long-term contamination and standard of living issues

### India

The Bhopal gas plant disaster occurred in Madhya Pradesh, India in 1984.<sup>142</sup> Legal claims relating to the actual disaster were settled in 1989;<sup>143</sup> however, in November 1999 several residents of Bhopal and non-governmental organisations filed a new lawsuit against Union Carbide in New York's Federal Court. In *Bano v Union Carbide*, the plaintiffs sought compensation for alleged ongoing pollution and contamination at the derelict Bhopal plant. Among other things, this case highlights competing interpretations of corporate liability.

In 1999 a Greenpeace study reported:

*"massive environmental contamination, including contamination of the drinking water of residents in the nearby communities, entirely unrelated to the Bhopal disaster had taken place" and that "large amounts of toxic chemicals and by-products from the factory's original manufacturing processes continue to pollute the land and water."*

In 2002 Greenpeace additionally alleged the presence of significant chemical stockpiles, which could affect residents via "contaminated soil or inhalation of contaminated dust".

The Bhopal Information Center (BIC), a dedicated Union Carbide-run website, acknowledges that in 1997 India's National Environmental Engineering Research Institute (NEERI) found soil contamination within the factory premises, but also noted that NEERI

found no evidence of groundwater contamination outside the plant and concluded that local water-wells were unaffected. The BIC website states that the company no longer has any first-hand knowledge of conditions at the site, but notes that the "*Hinduistan Times* reported in April 2006, that 'A study by the National Institute of Occupational Health (NIOH), Ahmedabad, has virtually debunked voluntary organisations' fear about contamination of water in and around Union Carbide plant...'. It also noted that "the state government has filed the NIOH report in the [Madhya Pradesh] High Court in support of its contention that hazardous wastes lying in the Union Carbide [site] were not contaminating the water".

Differing interpretations exist over liability and who is responsible for cleaning up the site. BIC says that Union Carbide Corporation (UCC) sold Union Carbide India Limited (the 1984 plant owner-operator) to MacLeod Russell in 1994, which renamed it Eveready Industries India, and in 1998 "the state government of Madhya Pradesh revoked Eveready Industries' lease and took possession of the facility and publicly assumed all accountability for the site, including the completion of any further remediation". In 2001, UCC became a wholly owned subsidiary of Dow Chemicals. Dow has since stated that it "never owned or operated the plant site involved with the Bhopal tragedy and, as such, has no responsibility or liability for the plant site". Amnesty International has disputed this interpretation, among other things noting that: "A senior US-based attorney representing the victims of the gas disaster suggests that in terms of US law, all of UCC's civil and criminal liabilities were acquired by Dow with its purchase of the former." In 2007 Amnesty International USA and fellow backers of a shareholder resolution<sup>144</sup> also observed that, whatever the precise

<sup>142</sup> According to the Madhya Pradesh state government, the "tragedy took an immediate toll of about 3000 lives" and thousands were left "physically impaired or affected in various degrees". Amnesty International and Greenpeace place the immediate death-toll substantially higher.

<sup>143</sup> The settlement by Union Carbide India Limited and Union Carbide Corporation with the government of India for USD 470 million was upheld by India's Supreme Court in 1991. Under its terms the government of India agreed to provide for the welfare and ongoing needs of those affected by the tragedy, and in 1998 the state government of Madhya Pradesh took over the running of the site. A number of affected residents and campaigners have questioned the adequacy of the settlement.

<sup>144</sup> The April 2007 shareholder resolution called on Dow to report to shareholders "descriptions of any new initiatives instituted by management to address specific health, environmental, and social concerns of Bhopal, India survivors".

legal merits, “Bhopal presents a ‘moral’ liability for Dow that may continue to damage Dow’s reputation and may reasonably be expected to affect growth prospects in Asia and beyond.”

In 2003, presiding United States District Judge John Keenan dismissed the *Bano* case, ruling that:

*“the claims are untimely and directed at improper parties. Union Carbide has met its obligations to clean up the contamination in and near the Bhopal plant. Having sold their shares long ago and having no connection to or authority over the plant, they cannot be held responsible at this time.”*

**Web-based sources:**

- <http://www.mp.gov.in/bgtrrdmp/profile.htm>
- [http://news.bbc.co.uk/2/hi/south\\_asia/4064527.stm](http://news.bbc.co.uk/2/hi/south_asia/4064527.stm)
- [http://www.earthrights.org/site\\_blurbs/bano\\_v.\\_union\\_carbide\\_case\\_history.html](http://www.earthrights.org/site_blurbs/bano_v._union_carbide_case_history.html)
- <http://www.greenpeace.org/international/campaigns/toxics/toxic-hotspots>
- <http://www.ipsnews.net/news.asp?idnews=34547>
- <http://www.unioncarbide.com/bhopal>
- [http://www.business-humanrights.org/Search/SearchResults?SearchableText=dow+bhopal&x=0&y=0&batch\\_start=11](http://www.business-humanrights.org/Search/SearchResults?SearchableText=dow+bhopal&x=0&y=0&batch_start=11)
- <http://www.elaw.org/node/2560>
- <http://www.dow.com/commitments/goals/index.htm>
- [http://www.americanchemistry.com/s\\_responsiblecare/sec.asp?CID=1298&DID=4841](http://www.americanchemistry.com/s_responsiblecare/sec.asp?CID=1298&DID=4841)

Upon review, in August 2006, the New York Federal Appeals Court dismissed the *Bano* case, noting that any order to direct Union Carbide to clean up the land would run into technical difficulties “because of the impracticality of a court-supervised clean up on land owned by a foreign sovereign”. The court did not rule on whether the company ought to remediate the site and made no decision over whether it had improperly contaminated the area. Two cases making similar contamination-related claims remain pending in the US.

## Oil and gas sector, Water issues

### Colombia

This case illustrates the challenges that companies can encounter when operations have the potential to affect the neighbouring water table and impact on communities that live on, and make their living off, adjacent land.

In 2005, a group of Colombian farmers instigated a claim for GBP 15 million in the London High Court against BP as a member of the consortium responsible for the OCENSA oil pipeline in Colombia.<sup>145</sup> The case concerned a number of human rights-related issues, alleging impacts on the farmers' food and water supply.

According to media reports, the farmers alleged that as soon as construction began on the pipeline in the mid-1990s the local water table was affected.<sup>146</sup> It was claimed that natural springs upon which farmers had relied for decades began to dry up, while other areas were flooded, resulting in crop failure, unsustainable fishponds, and livestock deaths. Lawyers representing the farmers acknowledged that BP had compensated some farmers in the area for any potential negative impacts on their livelihoods arising from the pipeline, but maintained that the sums were insufficient and too few farmers had benefited.<sup>147</sup>

<sup>145</sup> The claim and figures were reported in Robert Verkaik, "BP pays out millions to Colombian farmers", *The Independent*, 22 July 2006.

<sup>146</sup> See Verkaik, above.

<sup>147</sup> See Leigh Day & Co (lawyers for the farmers), "Colombian farmers start claim against BP for pipeline that has ruined lives", which appeared at <http://www.leighday.co.uk>, 18 June 2005.

#### Web-based sources:

<http://www.bp.com/home.do?categoryId=1>

<http://news.independent.co.uk/world/americas/article1190528.ece>

<http://www.leighday.co.uk/doc.asp?doc=890&cat=850>

<http://www.leighday.co.uk/doc.asp?doc=639&cat=850>

<http://www.planetark.com/dailynewsstory.cfm/newsid/37295/newsDate/17-Jul-2006/story.htm>

Following a mediation process that took place in Bogotá in June 2006, a settlement was reached with no admission of liability.<sup>148</sup> A joint statement issued on behalf of both BP and the farmers' legal representatives said that:

*"the precise terms of the amicable settlement are based on the establishment of an environmental and social improvement trust by BP Colombia for the benefit of the farmers, in conjunction with a programme of workshops for the farmers dealing with issues such as environmental management, business development and other topics requested by the farmers."*

The statement added, "Colombian farmers are pleased with the outcome of the mediation and are of the view that BP Colombia has acted in a fair, committed and sympathetic manner."<sup>149</sup>

<sup>148</sup> See reports on the mediation and settlement made in a joint statement that was reported on BP's website under the heading: "Examples of community engagement", and on Leigh Day & Co's website on 24 July 2006 under the heading: "Successful mediation result for Colombian farmers".

<sup>149</sup> For details of the settlement, see "BP reaches agreement with Colombian farmers", *Reuters News Service*, 17 July 2006.

## Suggested practical actions

### Policy:

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

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any impacts on the right to food or water. Act on the findings.
- Ensure there are adequate sanitation facilities in the workplace, including separate sanitation facilities for men and women.
- Take steps to establish systems to monitor the impact of company activities on the water table and avoid over-use.
- Ensure the company does not restrict employees' or community stakeholders' access to potable water needed for personal and domestic uses, or water required for individual livelihoods, such as the irrigation needs of farmers. Similarly, ensure company activities do not restrict employees' or community stakeholders' access to adequate food.

Establish systems to ensure that company activities do not pollute or otherwise damage local water supplies or sources. Consider any eventual closure of company facilities and the need to plan for the safe removal of equipment, particularly toxic chemicals that could prove environmentally damaging if not disposed of safely. Establish processes to prevent long-term environmental contamination in the event of unexpected facility closure or evacuation, such as in the case of a political, natural or other emergency. Consider also the need for remediation programmes should an accident occur.

- *For utility companies*, take steps to ensure that water services reach outlying areas and vulnerable groups. Steps should also be taken to ensure the lowest possible charge for services to low-income areas and households.
- *For utility companies*, consult with and encourage the participation of local individuals, groups and communities in decision-making related to water and sanitation issues. Consultation with local communities should take place in the local language.

### Specific actions:

- In circumstances where the company and/or sub-contractors routinely provide for the basic needs of the workforce, including housing provision, provide food and safe drinking water at sufficient levels to avoid any physical hardship, and ensure access to sanitation facilities.

# ARTICLE 12: RIGHT TO HEALTH

## The Right

This Article recognises the right to the highest attainable standard of physical and mental health. States must take measures to prevent, treat and control diseases, reduce infant mortality and provide for the healthy development of children, improve all aspects of industrial and environmental hygiene, and to create conditions that will ensure universal access to appropriate medical services and medical attention in the event of sickness. The right includes the right to control over one's health and body, including reproductive and sexual rights, and freedom from interference, such as freedom from non-consensual medical treatment and experimentation. People must have access to the underlying building blocks of good health, such as adequate nutrition, housing, safe and potable water, adequate sanitation, medical supplies, healthy working conditions and a healthy environment.

Company activities and products can impact on the right to health of employees, and are expected to ensure that their operations and products do not impact on the right to health of people, such as workers, consumers and local communities. Special consideration should be made in relation to vulnerable sectors of society, such as children and adolescents, women, disabled people and indigenous communities. Companies are expected to ensure compliance with national legislation (including occupational health and safety regulations, and consumer and environmental legislation) and international standards where domestic laws are weak or poorly enforced. Even though informal workers are often not covered by domestic legislation, companies should take steps to ensure that any persons within their

supply chains are not exposed to occupational health and safety dangers. In countries where communicable diseases, such as HIV/AIDS and malaria, are prevalent, many companies now seek to assist local health care by offering treatment to employees and by bolstering the health infrastructure and delivery networks. Prior informed consent and the participation of workers in the definition of such programmes are essential aspects of the right to health. HIV testing should be confidential and no discrimination should follow from the results.

Pharmaceutical companies in particular have a responsibility to respect the right to health that goes beyond the right to health of their own workers. NGOs and others increasingly look to pharmaceutical firms to help provide access to high-quality, essential medicines for poorer communities, for example through tiered pricing or via flexible approaches to intellectual property protection. Pharmaceutical companies also face demands to increase their investment in the research and development of medicines and treatments for otherwise neglected diseases (such as river blindness, leprosy and sleeping sickness) that have typically ceased to be prevalent in developed countries, but are still common in developing countries.

Companies from sectors where the risk of pollution from their activities is particularly great, such as extractive firms and chemical companies, may face close scrutiny over the policies and systems they have in place to ensure that pollution does not negatively impact on the right to health of workers and members of surrounding communities.

## Case studies

### Pharmaceutical sector, Drug development issues for neglected diseases

#### Singapore

As part of Swiss pharmaceutical company Novartis's efforts to improve access to medicines in the developing world, the company established a public/private partnership in 2002 with the Singapore Economic Development Board Biomedical Sciences Group to set up the Novartis Institute for Tropical Diseases (NITD).

The World Health Organization (WHO) has shown that the incidence of dengue fever, tuberculosis (TB) and malaria is accelerating, especially in developing countries, and that there is an urgent need for new medicines to help combat these diseases. There were more than 48,000 new reported cases of dengue fever in Indonesia alone during 2005, resulting in 650 deaths, while some 2.5 billion people worldwide were estimated to be at risk from the disease. About 2 million people die every year from TB. Due in part to a lack of research into new treatments over many years, some estimates suggest that close to 80% of TB cases now involve antibiotic-resistant strains that medical science is struggling to tackle. Malaria meanwhile infects about 300 to 650 million people each year, and kills 1 to 3 million people a year worldwide.

#### Web-based sources:

<http://www.nitd.novartis.com>

[http://www.corporatecitizenship.novartis.com/news/2007-01-25\\_nitd.shtml](http://www.corporatecitizenship.novartis.com/news/2007-01-25_nitd.shtml)

<http://www.medicalnewstoday.com/articles/10314.php>

The NITD is an institute dedicated to the research and development of drugs to combat neglected diseases, such as dengue fever, malaria and TB. Chair of the Board of the NITD, Paul Herrling, believes that the company's investment in the field of tropical diseases is "an exception in an industry that has traditionally neglected illnesses seen as endemic in the developing world". NITD actively works on vaccines for dengue fever and new small-molecule drugs for TB to replace treatments that are often over 30 years old. In 2006 NITD also began to focus on new treatments for malaria.

In January 2007 NITD announced the opening of a new clinical research initiative in Indonesia to further expand the capabilities of the Singapore-based institute to conduct translational research for TB, dengue fever and malaria. The new collaboration involves the NITD, the Eijkman Institute in Jakarta, and the Hasanuddin University Clinical Research Institute in Makassar and is officially titled: NEHCRI (the NITD – Eijkman Institute – Hasanuddin University Clinical Research Initiative).

### Beverage sector, HIV/AIDS education and treatment issues

#### Africa

The Coca-Cola Company in Africa provides comprehensive medical coverage to its employees and their dependants, and has developed a workplace programme focused on prevention of HIV/AIDS. It provides information and education, training for managers, employee support, voluntary testing, counselling and care. Since 2002, the company has been working with its African bottling partners to provide a comprehensive HIV/AIDS prevention and treatment programme for the estimated 60,000 employees and their dependants that work for the firm's 40 independent African bottlers.

#### Web-based sources:

<http://www.un.org/unfip/YCompendiaGoal6.htm>

[http://www.thecoca-colacompany.com/citizenship/hiv\\_aids.html](http://www.thecoca-colacompany.com/citizenship/hiv_aids.html)

<http://businessfightsaids.org/documents/media/publications/Coke%20HIV%20Report%202006.pdf>

The Coca-Cola Africa Foundation (TCCAF) entered into a partnership in 2001 with UNAIDS. This partnership was specifically designed to leverage The Coca-Cola Company's business systems, including local resources and marketing expertise. In particular, TCCAF has used the firm's extensive distribution network to help educate people about HIV/AIDS and distribute information to raise awareness across the continent.

## Fast-food sector, Health and obesity issues

### Worldwide

According to 2005 World Health Organization statistics, 1.6 billion people worldwide are now classified as overweight, of which 400 million are said to be obese. The problem of obesity is now so severe that some argue it is one of the biggest health problems in the world, which increasingly affects both developed and developing countries. While consumer and parental responsibility play a part in the epidemic, the fast-food sector has come under scrutiny in the context of this 'right to health' challenge for its perceived role in contributing to obesity.

The International Association for the Study of Obesity (IASO) has argued that changes to diet and exercise are not enough to combat the obesity epidemic. IASO President Professor Claude Bouchard believes that junk food is at the core of the problem, and has said, "We should ban advertising of junk foods and non-nutritious foods aimed at children."

Concerns have also been raised about the use of trans-fat to enhance flavour in fast (and other) foods, which, it is argued, pose more severe health risks than ordinary saturated fat. For example, in 2003 McDonald's faced a legal challenge in San Francisco by NGO BanTransFat.org over the company's alleged failure to alert customers about operational challenges that had prevented it from implementing an earlier voluntary commitment to change its cooking oil to

one containing less trans-fat. McDonald's did not admit liability, but settled the suit in 2005, agreeing to pay USD 7 million to the American Heart Foundation for educational projects on trans-fat, and to pay USD 1.5 million to notify the public of "the status of its trans-fat initiative".<sup>150</sup> According to BanTransFat.org, "the settlement should focus media attention on the issue of partially hydrogenated cooking oils used in many restaurants, not just McDonald's".

A number of fast-food restaurants have responded to growing public interest in health, diet and obesity issues by establishing lines of healthy foods, including salads, fruit and fruit-based products and publishing nutritional information. McDonald's has taken steps to ensure that nutritional labelling is on all its foods and has changed the nutritional content of many longstanding recipes. For example, the sugar content of McDonald's hamburger buns has been halved. In early 2007, McDonald's Australia had nine meals approved by the Heart Foundation, which only 'ticks' meals if they satisfy strict criteria regarding fat content, salt and, where appropriate, fibre and kilojoules. In April 2007, Kentucky Fried Chicken also introduced a new chicken recipe free of trans-fat.

<sup>150</sup> A further USD 7,500 was reportedly paid both to BanTransFat.org and to the plaintiff, Kathrine Fettke.

### Web-based sources:

<http://abc.net.au/news/items/200609/1731948.htm?sydney>  
<http://www.who.int/mediacentre/factsheets/fs311/en/index.html>  
<http://www.iaso.org>  
<http://www.nhsdirect.nhs.uk/articles/article.aspx?articleId=265&sectionId=34>  
<http://www.bantransfat.org>  
<http://virtualcancercentre.com/news.asp?artid=5665>  
<http://www.kfc.com/nutrition/default.asp>  
<http://www.burgerking.co.uk/nutrition/updating.aspx>  
[http://www.mcdonalds.com/usa/eat/nutrition\\_info.html](http://www.mcdonalds.com/usa/eat/nutrition_info.html)  
<http://www.mcdonalds.com/corp/values/balance.html>  
[http://www.heartfoundation.org.au/document/NHF/Tick\\_MediaRelease\\_Foodservice\\_2007-02-05b.pdf](http://www.heartfoundation.org.au/document/NHF/Tick_MediaRelease_Foodservice_2007-02-05b.pdf)



## Pharmaceutical sector, Access to medicines and health care

### Worldwide

Pharmaceutical companies typically patent new medicines to recoup their research and development investments. New medicines are, however, often expensive for patients, particularly in circumstances where public pharmaceutical benefit schemes do not exist or where private health insurance is unavailable. This poses challenges in relation to people's access to medicines and raises questions over the appropriate allocation of responsibility for the health care of poor people in developed and developing countries.

At the start of the millennium, campaigns by NGOs, such as Oxfam and Médecins Sans Frontières (MSF), put pressure on pharmaceutical companies holding patents for antiretroviral drugs that combat HIV/AIDS. It was alleged that strict enforcement of patent laws led to pricing levels that limited the access to essential drugs for millions of people living with HIV/AIDS in developing countries. The underlying premise has since been disputed by some experts, who argue that only 1.4% of the WHO's essential-drug list is patented in the world's poorest 65 countries. Even so, in April 2001, a number of pharmaceutical companies dropped a high-profile constitutional case in South Africa that challenged legislation that was likely to constrain patent rights. These events highlight several unresolved questions, including whether the greater good would be served by eroding the present patent system (which could potentially adversely affect incentives to discover and develop new drugs in the medium to long term), in exchange for alleviation of people's suffering in the short term through lower prices for medicines currently available.

Several major pharmaceutical companies have responded to the access to medicines challenge by, among other things, easing access to drugs that help

fight HIV/AIDS and related infections. Pfizer, for example, launched the Diflucan Partnership Programme (2000) initially in South Africa and later in a further 59 countries. Under the partnership with governments and NGOs, Pfizer has donated Diflucan (which treats certain opportunistic infections associated with HIV/AIDS) and trained more than 20,000 health professionals in the diagnosis and treatment of fungal opportunistic infections.

Amidst ongoing debate over the effects of patents, research priorities, tiered pricing models and the extent to which lower prices would ensure health care for people living in the world's poorest or remotest regions, research-based pharmaceutical companies continue to face criticism over alleged efforts to stave off generic competition to their patented medicines. Some NGOs argue that generic competition helps to ensure long-term lower prices for essential medicines and is a more sustainable solution to drug availability than drug donations. In 2007, Novartis came under pressure from MSF and Oxfam to drop a case against India following the Indian government's decision to reject a patent on Novartis's cancer drug, Gleevec/Glivec.<sup>151</sup> The campaign arose even though, according to Novartis, 99% of Indian patients can receive Gleevec at no cost due to Novartis's donations of the drug.<sup>152</sup>

<sup>151</sup> The patent application was rejected after the Indian authorities determined that the drug was not sufficiently novel to warrant a patent under Indian law.

<sup>152</sup> In the case, Novartis challenged the legality of parts of India's patent law. Ultimately, Novartis's challenge was rejected by the High Court in Chennai on 6 August 2007, see Amelia Gentleman, "Setback for Novartis in India over drug patent", *The New York Times*, 7 August 2007. An appeal against the actual rejection of the patent to the Intellectual Property Appeal Board in Delhi remains pending.

### Web-based sources:

<http://www.accessmed-msf.org/main/access-patents/>  
[http://www.maketrade-fair.com/en/index.php?file=a2m\\_main.html&cat=2&subcat=4&select=1](http://www.maketrade-fair.com/en/index.php?file=a2m_main.html&cat=2&subcat=4&select=1)  
<http://www.nationalreview.com/script/printpage.p?ref=/comment/bate200405171342.asp>  
[http://www.pfizer.com/responsibility/global\\_health/diflucan\\_partnership\\_program.jsp](http://www.pfizer.com/responsibility/global_health/diflucan_partnership_program.jsp)  
<http://www.novartis.com/newsroom/india-glivec-patent-case/faq.shtml#6>  
<http://www.business-humanrights.org/Documents/Oxfamresponses>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes into account the right to health. Apply the policy globally.
- Ensure that the company's policy complies with national and international health and safety regulation (whichever provides the highest level of protection) to prevent accidents and exposure to toxins, communicable diseases and other health hazards. Be guided by the International Finance Corporation's Performance Standards on Community Health, Safety and Security.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents, security providers and other sub-contractors, the importance the company places on respecting the right to health and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring it identifies risks related to the right to health. Act on the findings.
  - For products that pose a risk to human health, comply with national regulation or international best practice to provide them with appropriate health warnings. Ensure that such information is available in an appropriate language.
  - Establish mechanisms to ensure the responsible advertising of products that have the potential to harm human health, paying particular attention to potential adverse impacts on minors and other vulnerable members of society.
- *For pharmaceutical companies*, invest in and support research and development in diseases that are prevalent in developing countries.
  - *For pharmaceutical companies*, explore sustainable ways, including partnerships with other stakeholders and other mechanisms, for supplying medicines at affordable rates in contexts of extreme poverty. Do not challenge or attempt to thwart the introduction of generic competition after the expiry of a patent, or challenge compulsory licences for essential medicines issued by States in accordance with the relevant international rules in cases of public health emergencies.

### Specific actions:

- Partner with government and civil-society organisations to help combat the spread of disease. In some contexts companies can make their distribution and communication networks available to further community education and aid the distribution of medicines to remote areas.
- In contexts where there is no or little public health provision, consider working to build the capacity of local government, and include local government in efforts to provide access to HIV testing and medical treatment for employees and their dependants, such as vaccines, anti-malarials or anti-retroviral medicines. HIV testing should be confidential, conducted with the consent of participants and with no discrimination ensuing from the results.
- Provide or support health education programmes in the workplace or local communities for awareness raising and disease prevention. Consider contributing vital but inexpensive items such as condoms and mosquito nets.

# ARTICLES 13 AND 14: RIGHT TO EDUCATION

## The Right

The aim of the right to education is “the full development of the human personality and sense of dignity”. Articles 13 and 14 guarantee all children the right to free and compulsory primary education. The right also requires progressive steps from governments aimed at the provision of secondary and higher education, including the provision of ‘fundamental’ education for those who could not complete primary education. The right to education also includes the right of equal access to education and equal enjoyment of education facilities, the freedom of parents and children to choose the type of education the children receive, and the freedom to establish educational institutions (subject to minimum educational standards). Educational facilities should be available, accessible, culturally and ethically acceptable, and flexible so as to be able to adapt to society’s changing needs. For example, education should where possible adapt or at least acknowledge changing technologies, such as the modern importance of information technologies.

Companies have a vested interest in promoting the right to education for the development of skilled workforces. Companies may impact on the right to education where child labourers are directly employed or operate in their supply chains in a way that prevents those children from attending school. This right is also relevant in the context of any commitments made by a company to provide education to the children of workers or others in the local community. Companies that organise or provide such education should respect equality of access to education. Companies may also impact on the enjoyment of the right if, for example, their involvement with heavy construction or infrastructure projects limits access to nearby schools or results in damage to, or the destruction of, educational facilities.

### Related right:

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

## Case studies

### Home-furnishing sector, Child education issues and UN partnership

#### India

Swedish home furnishing company IKEA sources traditional carpets from India. In 1996, the International Labour Organization (ILO) reported that extensive numbers of children were involved as child labourers in the Indian carpet industry and were thus being denied their right to education. IKEA has been working with UNICEF to address this problem.

According to UNICEF, over 20% of India's working children are from the region of Uttar Pradesh, many of whom work within the carpet industry. Child labourers, who often support parents by helping to hand-knot carpets in the home, suffer educational setbacks when they work at times that they should be in school.

Since 2000, in partnership with UNICEF, IKEA has been helping to address the problem through funding education programmes to tackle the root causes of child labour. The joint initiative covers around 650 villages in Uttar Pradesh and has involved setting up over 200 Alternative Learning Centres. The centres are located in areas that do not have a nearby school and aim to help children complete primary education at an accelerated rate and prepare them for re-entry into the mainstream

#### Web-based sources:

<http://www.ilo.org/public/english/comp/child/papers/carpet/>  
[http://www.unicef.org/india/child\\_protection\\_274.htm](http://www.unicef.org/india/child_protection_274.htm)  
[http://www.unicef.org.uk/publications/clrg/pdf/execsummary\\_c.pdf](http://www.unicef.org.uk/publications/clrg/pdf/execsummary_c.pdf)  
<http://sca.savethechildren.se/en/sca/Publications/Childrens-rights/>  
<http://www.ikea-group.ikea.com/?ID=708>

education system. The project also works to address the high dropout rates at formal schools.

Though not an alternative to eradicating the risk of child labour in IKEA's supply chain, this project attempts to address some of the root causes of child labour, as well as the associated loss of educational opportunities. In setting up 429 thrift-credit self-help groups, the scheme has enabled nearly 6,000 women and their families to break out of a vicious circle of debt. This both liberates families from the exploitative interest rates of local money-lenders and reduces their dependence on child incomes and thus the need for children to be put to work.

In its 2007 publication *Corporate Social Responsibility and Child Rights in South Asia*, NGO Save the Children noted of IKEA that in addition to the UNICEF programme outlined above:

*"IKEA has a very well developed Code of Conduct on child labour and ... it not only subscribes to the UN Convention [on the Rights of the Child], but also ensures that its suppliers too subscribe to the same. It also very prominently mentions that all actions to avoid child labour shall be implemented taking into account the best interest of the child."*

### Coffee retail sector, Child education issues Guatemala

US-based coffee retailer Starbucks sources coffee from areas in Guatemala where 90% of the population in the surrounding area is indigenous Maya. The Maya have long experienced high rates of poverty and low levels of educational attainment, with many children dropping out of schooling early due to the unfamiliar education environment and language. This case highlights efforts by a company to promote the right to education of underprivileged Mayan children.

In 2005, Starbucks entered into a partnership with the NGO, Save the Children. Starbucks has pledged USD 1.5 million over four years to a programme designed to provide bilingual and bicultural education to children in coffee-growing communities in three Guatemalan highland provinces. The sites were chosen in co-ordination with the Guatemalan Ministry of

Education and were chosen according to criteria based on high levels of need (as defined by the World Bank); community commitment and interest in the programme; low pre-school, primary and secondary enrolment/attendance. The programmes are targeted at children whose family livelihoods depend primarily on coffee production.

The scheme extends to 20 pre-primary centres, 20 primary schools and over 3,000 secondary school students through a rural distance-learning programme. Particular emphasis is placed upon girls' education and on bilingual intercultural instruction. It is hoped that thousands of Mayan children will benefit from curricula that are culturally appropriate.

#### Web-based sources:

<http://www.savethechildren.org/corporate/partners/starbucks.html>  
<http://www.starbucks.com/aboutus/csr.asp>

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the right to education, as well as provisions against the use of child labour (see also Article 10 ICESCR and Article 24 ICCPR). Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting the right to education and encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring that it identifies any potential impacts on the right to education. Act on the findings.
- Ensure that working hours comply with national or international laws and that the hours worked by parents do not interfere with their children's education, for example, by preventing the children getting to and from school, or by creating situations where older children have to stay at home to care for younger siblings.

### Specific actions:

- If any children are found to work for the company or within its supply chain, play a role in facilitating their education while phasing out the child labour in a responsible manner.
- Ensure that company activities do not limit access to educational facilities. For example, heavy construction, infrastructure or other projects that cause significant physical disruption have the potential to limit community access to education facilities. In such cases, take steps to guarantee alternative means of accessing schools and education facilities.
- Where public education provision is limited, collaborate with the relevant authorities to explore ways in which the company may be able to support sustainable educational projects.

# ARTICLE 15: RIGHTS TO TAKE PART IN CULTURAL LIFE, TO BENEFIT FROM SCIENTIFIC PROGRESS, AND OF THE MATERIAL AND MORAL RIGHTS OF AUTHORS AND INVENTORS

## The Right

Article 15 guarantees the right to take part in the cultural life of society. It also guarantees the rights of all to enjoy the benefits of scientific progress; its application is designed to ensure that everyone in society can enjoy technological advances, in particular disadvantaged groups. That right includes the right of everyone to seek and receive information about new scientific advancements and to have access to any developments that could enhance their quality of life. Finally, Article 15 guarantees a person protection of the moral<sup>153</sup> and material interests resulting from any scientific, literary or artistic production of which he or she is the author. These rights belong to human authors and inventors, rather than corporations, and are not the same as “intellectual property rights” as embodied in international trade agreements.<sup>154</sup> The right can be fulfilled in a variety of ways, such as the conferral of a monopoly right of exploitation of the relevant product for a limited period of time, or the grant of a one-off payment. These rights must be balanced against legitimate public interests, and other human rights.

This right is of relevance to indigenous peoples as it extends to their rights to preserve, protect and develop indigenous and traditional knowledge systems and cultural expressions. Governments should take steps to secure the fulfilment of the right, including actions necessary for the conservation, development and dissemination of science

<sup>153</sup> Moral rights are infringed by the unauthorized distortion or destruction of relevant products in such a way as to harm the honour and reputation of the author or inventor.

<sup>154</sup> See Committee on Economic, Social and Cultural Rights, General Comment 17 on Article 15(1)(c), “The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author”, E/C.12/GC/17, 12 January 2006, paras 2–3.

### Related right:

ICCPR Article 27 (Rights of minorities), page 81

and culture. Governments should also ensure respect for the right to conduct scientific research and engage in creative activity. The benefits of international contacts and co-operation in the scientific and cultural fields should be recognised and encouraged.

Company activities may influence this right, positively or negatively, through all fields of scientific research and development. It is argued that respect for intellectual property rights is needed to create the incentive for corporations to conduct research and development, which itself generates innovations and inventions that benefit society. However, some argue that the acquisition and exercise of strong intellectual property rights restricts the enjoyment of some Article 15 rights, notably the right to enjoy the benefits of scientific progress. Companies can positively impact this right by sharing the benefits of scientific advances, including in the area of information technology and medicine.

‘Biopiracy’ describes a phenomenon whereby traditional indigenous knowledge concerning the nutritional or medicinal use of crops and plants, or natural genetic resources, is appropriated and commercialised by another party without acknowledgement or compensation. Where such knowledge or material is patented, there is a risk that the original ‘discoverers’ may not only have to pay for the product, but may also be denied profits from its sale or export, thereby affecting their right to cultural life and to benefit from scientific discovery. Companies can impact detrimentally on these rights if they are involved in biopiracy.

## Case studies

### Food industry, Patent issues and the rights to benefit from scientific discovery

#### India and Pakistan

In 1997, Texas-based company RiceTec faced allegations of 'biopiracy' when the US Patent Office granted the company a patent for 'Basmati Rice Lines and Grains'. The patent decision led to protests in South Asia and a campaign orchestrated by India's Research Foundation for Science, Technology and Ecology that was supported by a coalition of 90 civil-society organisations, including ActionAid and the Berne Declaration.

Basmati rice has been in the public domain for many generations and is a source of food and income for farmers in India and Pakistan, including through export as a regional speciality product. According to Dr Vandana Shiva, "Years of research and development by Indian and Pakistani farmers have resulted in a diverse range of Basmati with superior qualities that are the direct result of the farmers' innovation." Dr Shiva has also noted that Basmati rice is referred to in ancient texts, poetry and folklore. In 2000, the Indian government protested the issue at the World Trade Organisation. Indian export authorities also challenged the US Patent Office's 1997 RiceTec patent, fearing the impact on its specialty, climate-specific export.

#### Web-based sources:

<http://www.hindu.com/biz/2006/06/19/stories/2006061900601800.htm>  
<http://bulletin.sciencebusiness.net/ebulletins/showissue.php3?page=/548/art/7926/>  
<http://www.bernedeclaration.ch/en/p25000429.html>  
<http://www.patagonia.com/web/eu/patagonia.go?assetid=9108>  
<http://www.thehindubusinessline.com/businessline/2001/08/22/stories/142220s7.htm>  
[http://news.bbc.co.uk/2/hi/south\\_asia/1033723.stm](http://news.bbc.co.uk/2/hi/south_asia/1033723.stm)  
<http://www.ricetec.com>

RiceTec strongly denied all allegations that its patent threatened the Indian rice industry or its exports, stating that its product is "comparable to basmati but different". RiceTec nevertheless voluntarily withdrew most of its patent claims, and in 2001, the US Patent Office changed the title of the patent on the remaining patent claims to Rice Lines Bas867, RT 1117 and RT1121, strains of rice that do not impinge on India's exports. RiceTec has since re-branded its rice as 'Texmati', 'Jasmati', and 'Kasmati'.

In 2006, the governments of India and Pakistan, with the backing of both countries' exporter associations, formed a joint study group to explore a joint registration of Basmati rice as a geographical indication. Geographical indication identifies a good whose quality, reputation and other characteristics are attributable to its geographic origin and is used, for example, to protect the heritage of scotch whisky (Scotland) and champagne (France).

### Retail sector, Construction and protection of cultural rights issues

#### Mexico

This case study demonstrates the conflicting pressures companies may face between development objectives and respect for cultural rights.

A decision by Wal-Mart to locate a new store in San Juan Teotihuacán, Mexico, prompted local protests, due to the store's proximity to the culturally significant Teotihuacán pyramids and fears that it would erode the local way of life. The pyramids are a sacred site, as well as a national tourist attraction. Protesters argued that the store's presence would destroy the spirituality of the place, thereby, some would say, infringing local people's cultural rights.

Wal-Mart is Mexico's largest retailer, as well as the country's largest private sector employer, with over 100,000 people on its payroll. In this context many local people welcomed the arrival of a Wal-Mart superstore in San Juan Teotihuacán for the jobs and the convenient shopping it would bring. Wal-Mart is reported to have solicited Mexico's National Institute for Anthropology and History (INAH) for permission to begin construction of the store 2.5 kilometres from the Pyramid of the Sun itself, but within a so-called buffer or ceremonial zone. In May 2004, the INAH granted permission for the construction, so long as the project complied with the federal law covering monuments and historic, artistic and archaeological zones. It was also reported that the United Nations and the Paris-



based International Council on Monuments and Sites had accepted the project.

In constructing the store, Wal-Mart is said to have responded to local sensitivities by using subdued colours and culturally sensitive designs for the store's façade and reducing the height of its signage. The store, which opened in 2004, is located at the edge of the town in a commercial district, among many other businesses, and is not directly visible from the pyramids.

#### Web-based sources:

<http://www.latinamericanstudies.org/teotihuacan/retailer.htm>  
<http://www.organicconsumers.org/btc/pyramic082605.cfm>  
<http://news.bbc.co.uk/2/hi/business/3986729.stm>  
<http://humanitieslab.stanford.edu/teotihuacan/1362?view=print>  
<http://walmartstores.com/Sustainability/>

Nevertheless, it was reported in 2005 that Mexico's Human Rights Commission found that the local government's decision to allow construction of the store had violated various cultural protections in Mexico's constitution. Opponents, including a coalition of local residents and small shopkeepers, have also extended their protest to other indigenous sites in which Wal-Mart is said to be interested.

## Information technology sector, Scientific advancement benefit issues

### Worldwide

In 2005 at the World Economic Forum in Davos, Switzerland, Nicholas Negroponte, the founder and director of the Massachusetts Institute of Technology (MIT) Media Laboratory, launched the '\$100 laptop' initiative. The initiative aims to develop and market a low-cost, education-focused laptop and make new information technology advances available to the poorest children of the world

The so-called '\$100 laptop' is being developed by One Laptop per Child (OLPC), a US non-profit organisation created by Negroponte and faculty members from the MIT Media Lab. The project's corporate sponsors include Advanced Micro Devices (AMD), Brightstar (a distributor), Google, News Corporation, and the Taiwanese company Quanta Computer Inc., which builds the laptop. OLPC works according to five core principles: child ownership, low ages (it is geared primarily at children between 6 and 12 years), saturation, connection (via wireless networks), and free and open source.

The XO laptop, as it is now officially called, has been designed to be durable and simple to use. It is waterproof

#### Web-based sources:

<http://laptop.org>  
<http://laptop.media.mit.edu/faq.html>  
[http://wiki.laptop.org/go/Core\\_principles/lang-en](http://wiki.laptop.org/go/Core_principles/lang-en)  
<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/technology/6994957.stm>  
[http://money.cnn.com/2008/01/04/technology/kirkpatrick\\_negroponte.fortune/?postversion=2008010416](http://money.cnn.com/2008/01/04/technology/kirkpatrick_negroponte.fortune/?postversion=2008010416)

and also has a sunlight-readable display enabling it to be used outside. In particular the XO can be powered by solar power, mechanically via a foot-pump, or charged by using special 'gangs of chargers' making it usable in remote areas and places where the electricity infrastructure is limited. The XO uses open-source Linux software and a low-power chip.

According to Nicholas Negroponte, in January 2008 162,000 XOs were sold in the US in the preceding two months under an initiative called 'Give One Get One,' whereby US residents were able to buy two of the laptops, with one being donated to children in developing countries. The scheme is said to have raised USD 35 million, to be used to speed the deployment of the machines to developing countries. Demand is reported to be highest in Latin America, but the BBC reports that the first countries to receive donated laptops will be Cambodia, Afghanistan, Rwanda and Haiti. Negroponte says that OLPC hopes to manufacture 2-3 million units in 2008, currently available at USD 188 each (although USD 100 remains the target unit price).

## Suggested practical actions

### Policy:

- Adopt a human rights policy, ensuring that it takes account of the rights to culture, to benefit from scientific progress, and of authors and inventors to respect for their moral rights and material interests. Apply the policy globally.
- Require all business partners to adhere to the company policy and urge them to develop a similar standard of their own. Where the company is not able to exert that level of control, make it clear to business partners, including governments, State-owned joint ventures, suppliers, franchisees, agents and other sub-contractors, the importance the company places on respecting cultural rights, the right to benefit from scientific progress, and the rights of authors and inventors to respect for their moral rights and material interests; encourage them to develop a similar standard and take responsible action.

### Policy implementation processes / Compliance:

- Conduct a human rights impact assessment, ensuring it identifies areas of particular cultural or scientific significance that might be enhanced or put at risk by the company's operations. Act on the findings.
- Where a company is financed by the International Finance Corporation (IFC), comply with the IFC Performance Standards on Cultural Heritage and other national and international requirements with respect to construction on culturally or historically significant sites (other companies may also wish to consider these standards). Be responsive to cultural sensitivities when siting company installations, resource extraction activities, routing pipelines or infrastructure networks.

- Become familiar with the UN Declaration on the Rights of Indigenous Peoples and be guided by its provisions in interactions with indigenous peoples.<sup>155</sup>
- Consult in good faith with the relevant communities through their own representative institutions prior to launching any activity that affects people's cultural rights or the right to benefit from scientific progress, with a view to obtaining their agreement. This means allowing time for the community to make a considered evaluation and providing full information on the impact and benefits, and any compensation on offer, including in the local language concerned.
- Ensure that proceeds from any scientific discovery derived from the knowledge or property of indigenous peoples or distinct groups are fairly distributed and that any compensation/royalties that may be due are equitably divided and paid.
- Engage with local stakeholders to determine any cultural sensitivities in the ways the company does business, and attempt to adapt accordingly.

### Specific actions:

- Consider ways of making the fruits of technology, scientific endeavour and discovery available to as wide a market as possible, including inventive ways of allowing potential consumers and stakeholders in developing countries to share in the benefits, for example of the IT revolution and recent advances in medicines.
- Explore ways of promoting cultural and artistic expression, particularly in contexts where government support for the arts is not a priority.

<sup>155</sup> Mining companies may also wish to consult *Mining and Indigenous Peoples Issues Review*, published by the International Council on Mining and Metals, see Further Resources, page 142.