

State duty to protect human rights against business-related abuses (NBAs, NAPs, etc.)

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Main questions:

- Who is causing harm and what are its causes?
- Who is responsible for the commission of the violations?
- Who are duty-holders of human rights obligations? States? Corporations?
- Which are mechanisms available?



Challenges

- What happens when a corporation deprives individuals of their human rights?
- Or when a corporation aids and abets in state human rights violation?
- Corporate human rights obligations? State obligations? If so, what is the nature and scope of such obligations?
- State Corporate obligations to respect, protect, and fulfill human rights?



Case 1

A is a company manufacturing automotive parts and is experiencing a downturn due to Covid-19. Company A has therefore in March 2020 decided to furlough 40% of its workers. The company decides after four months due to decreased demand to lay off hundreds of workers. **Michael** is worried that he will be laid off in the next round and will not be able to provide for his family. The government of country X has not provided any social assistance to laid-off workers. He has, therefore, joined the company's trade union and has together with fellow workers organized protests against the company and government. The protests were crushed by the company private security and the government has turned a blind eye to workers' demands.

- 1. What rights are relevant here?*
- 2. What are state obligations?*
- 3. Where can Michael turn to?*

UNGPs on Business and Human Rights: State Duty to Protect

- Negative and positive obligations,
- Territorial obligations; Extraterritorial?
- Obligation to respect, protect, fulfil human rights?
- The role and responsibilities of State-owned Enterprises (“leading by example”),
- Obligations of executive, legislative and judicial branches of government,
- Supervision and measuring business and human rights.

UNGPs on Business and Human Rights

- Soft law with hard law contents?
- Formal source of international law?
- Material source of international law?



National Action Plans under UNGPs

- The objective and impact of National Action Plans in Europe?
- What are the strengths and weaknesses of NAP in Europe?
- How to move forward?



Potential impacts of NAPs under UNGPs on Business and Human Rights

- normative;
- clarification of state obligations;
- advancement of public policies;
- Remedial;
- Building capacity in state institutions and beyond;
- Awareness-raising;



Strengths of NAPs

- Clarification of state obligations in business and human rights? The obligation of the result of the obligation to conduct?
- Adoption of domestic due diligence legislation (France, Germany, Norway, UK)
- Due diligence guides (Slovenia, Czech Republic)
- Access to remedy (Belgium, France, Netherlands)
- Measurable indicators (Luxemburg, Slovenia, Switzerland)

Corporate human rights obligations

- Three levels of legal sources:
- national legal orders
- international level
- unilateral voluntary commitments by the corporations themselves.



International level

- The UN Global Compact
- OECD Guidelines for Multinational Enterprises
- ILO Tripartite Declaration



Weaknesses of NAPs

- Lack of commitment;
- Lack of supervision;
- Lack of measuring business and human rights through indicators;
- Limited awareness in the business sector;
- Lack of accountability?



Corporate commitments

- ‘PepsiCo agrees ... to ensure that our business engagement across the globe, first and foremost, respects the Human Right to Water’.



Corporate commitments

- Rio Tinto: **Human rights:** ‘We support and respect human rights consistent with the United Nations Universal Declaration of Human Rights and actively seek to ensure we are not complicit in human rights abuses committed by others.’



The nature of state and corporate obligations

- Corporate obligations to respect, protect, fulfill right to human rights?
- *Obligations to respect: corporations are to refrain from*
- *Obligations to protect: corporations are to adopt regulations and other measures*
- *Obligations to fulfil: corporations are to take active measures to ensure the availability of:*



Due diligence

- UNGP, principle 17: “In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”



Mandatory due diligence in BHR

- Mandatory disclosure
- Mandatory due diligence
- Mandatory due diligence, accountability, sanctions



Mandatory disclosure

- European Union Directive 2014/95 on Disclosure of Non-Financial Information
- Australian Modern Slavery Bill
- U.K. Modern Slavery Act
- California Transparency in Supply Chains Act 2010,
- Section 1502 of the Dodd-Frank Act



Mandatory Due Diligence Management Obligations

- European Regulation 2017/821 on supply chain management obligations of certain conflict mineral importers;
- Netherlands, “Child Labour Due Diligence Law”
- France, Loi relative au devoir de vigilance 2017 (French Corporate Duty of Vigilance Law)

French Corporate Duty of Vigilance Law

- Case against Total brought by 14 French local authorities and five French NGOs
- Case against EDF brought by communal representatives, indigenous human rights defenders, and two NGOs (Mexico-based ProDESC and Berlin-based ECCHR) in relation to a wind farm project in Mexico.



Lessons

- Engage different stakeholders to build capacity prior adoption and supervision thereafter;
- Ensure clear structure and content;
- Define actions and expected results;
- Ensure responsibility of different actors;
- Include measurable indicators in the implementation of NAP;
- National, regional and global peer-review.

