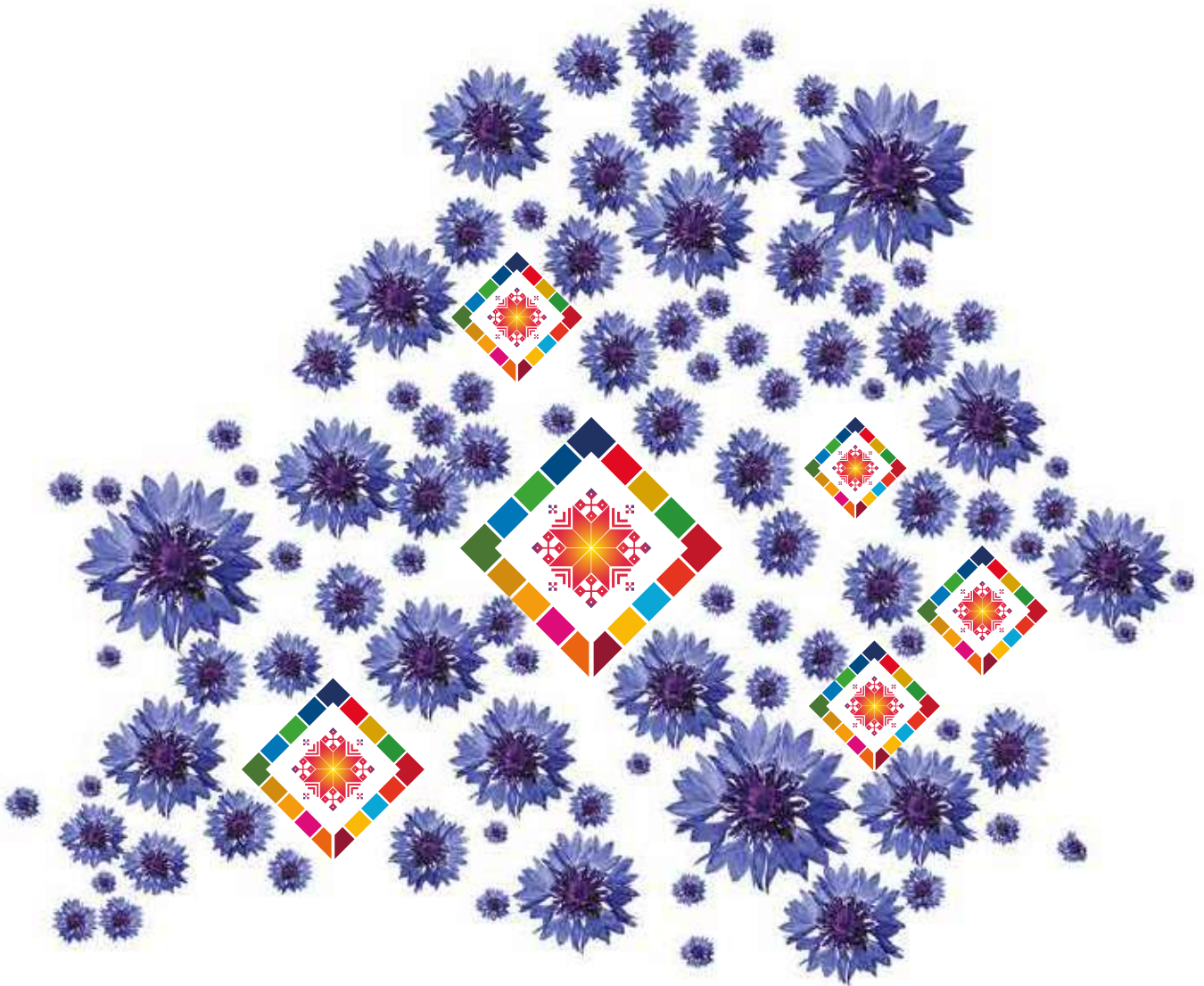


BELARUS:

HUMAN RIGHTS AND BUSINESS

GUIDE FOR BUSINESS,
GOVERNMENT AND CIVIL SOCIETY



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HUMAN RIGHTS AND BUSINESS

**GUIDE FOR BUSINESS, GOVERNMENT
AND CIVIL SOCIETY**

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We can do good business while being a good business. This is a precondition to our future growth...»

IKEA supplier code of conduct

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ACRONYMS AND LIST OF ABBREVIATIONS

UDHR	Universal Declaration of Human Rights 1948
HRDD	Human rights due diligence
CERD	Committee on the Elimination of Racial Discrimination
CRPD	Committee on the Rights of Persons with Disabilities
CRC	Committee on the Rights of the Child
HRC	Human Rights Committee
CSR	Corporate Social Responsibility
CESCR	Committee on Economic, Social and Cultural Rights
ILO	International Labour Organization
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
OECD NCP	OECD National Contact Point
NGO	Non-governmental organizations
EIA	Environmental Impact Assessment
HRIA	Human rights impact assessment of business activities
Aarhus Convention	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998.
OECD	Organisation for Economic Co-operation and Development

Covenants of 1966	International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966
Agenda 2030	United Nations General Assembly Resolution A/RES/70/1 «Transforming our world: the 2030 Agenda for Sustainable Development»
Interpretive Guide 2012	«The Corporate Responsibility to Respect Human Rights: An Interpretive Guide» developed by UNSG Special Representative J. Ruggie in 2012 to clarify the provisions of the 2011 UN Guiding Principles
Principles for Responsible Contracts	«Principles for Responsible Contracts: Integrating the Management of Human Rights Risks Into State-Investor Contract Negotiations: Guidance for Negotiators», developed by UNSG Special Representative J. Ruggie in 2015 to complement the 2011 UN Guiding Principles
UN Working Group on Business and Human Rights	Working Group on the issue of human rights and transnational corporations and other business enterprises thematic mandate of the UN Human Rights Council
UN Guiding Principles 2011, UNGP 2011, GP 2011.	2011 Guiding Principles on Business and Human Rights, developed under the auspices of the UN Human Rights Council
UNHRC	UN Human Rights Council
TNC	Transnational corporation
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDGs	Sustainable Development Goals
UNCTAD	UN Conference on Trade and Development
UNCITRAL	UN Commission on International Trade Law

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Initiative to develop the Guide, co-developing of the Guide's structure, expert review of the text, and selection of experts for interviews:

Aleh Hulak, expert in the field of human rights, equality and non-discrimination, human rights based approach¹, Chairman of the Belarusian Helsinki Committee.

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We express our sincere appreciation and deep gratitude to the experts³ representing international financial institutions, international and Belarusian companies with whom we discussed the topic in the context of Belarus, the content of the Guide, its structure, layout, and case studies in implementing human rights policies in international companies and Belarusian companies which are part of global business.

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¹ A human rights based approach a methodology for integrating human rights into governance and planning processes in all areas of State and societal functioning.

² The Danish Institute for Human Rights, Denmark's national human rights institution, is internationally recognized for its expertise on business and human rights issues: <https://www.humanrights.dk/>.

³ See below in Section 1 of this Guide.

I 1. ABOUT THE GUIDE

The context of the Guide's development

The topic of business and human rights is new and, at the same time, one of the most rapidly developing in the world context.

The external and internal business environment is changing, the percentage of employees and consumers belonging to Generations Y and Z is growing, new expectations about employers are emerging, and the «balance of power» in the «state-investor» relations is shifting. All players on the social field have to react to these changes.

Around the world, there is a growing number of companies that voluntarily adopt internal human rights policies and publicly declare their commitments. Human rights have also become a cross-cutting theme in international reporting standards (e.g. GRI¹ standards).

In 2016 the Belarusian Helsinki Committee in cooperation with the Danish Institute for Human Rights prepared and published the first country guide for business «Belarus: Human Rights and Business».²

Since 2016, there has been significant progress in the work on this topic within the UN framework. New approaches to the promotion of the topic have appeared. The number of states that have adopted National Action Plans on Business and Human Rights has expanded. New recommendations for Belarus have been issued by international human rights monitoring bodies. New sociological research in the field of human rights in Belarus and some innovations in Belarusian legislation have appeared. The topic also came to be studied on the theoretical and methodological level in Belarusian academia³. However, there is still little systematic material that could form a complete and correct picture of the sphere of «business and human rights» in Belarusian business, government, and civil society organizations.

This Guide is already the second one. It has been prepared based on the feedback received from business and government experts, as well as on the development of the topic in the world context and recent social and legislative changes.

¹ Global Reporting Initiative: <https://www.globalreporting.org/Information/about-gri/Pages/default.aspx>.

² Belarus: human rights and business: guide for business: <https://www.belhelcom.org/ru/document/biznes-iprava-cheloveka-v-belarusi-gaydlayn-dlya-biznesa> (Original in Rus: Беларусь: права человека и бизнес: гайдлайн для бизнеса: <https://www.belhelcom.org/ru/document/biznes-i-prava-cheloveka-v-belarusi-gaydlayn-dlya-biznesa>).

³ Deikalo E., Tomashevsky K., Vorobyova E. Business and Human Rights: posing a problem // Interdisciplinary research in Human Rights sphere (collective monograph) – Minsk: Ecoperspektiva, 2019, p. 158-219 (Original in Rus: Дейкало, Е.А. Бизнес и права человека: постановка проблемы / Е.А. Дейкало, Е.М. Воробьева, К.Л. Томашевский // Междисциплинарные исследования в области прав человека / Т.П.Афонченко [и др.]. – Минск: Экоперспектива, 2019. – С. 158-219.)

This Guide does not only provide an overview of the situation of business human rights compliance in Belarus, but also provides a substantial theoretical basis for the topic (defining commonly used concepts and categories), and a detailed description of basic tools for introducing human rights lens into the process of company management.

Target audience, purpose and objectives of the Guide

This Guide is intended to be used by:

- **Belarusian businesses** (both business owners and management of any level responsible for organizing business processes);
- **government agencies** responsible for setting up the framework conditions for the operation of businesses;
- **foreign investors** (including international financial institutions providing financial support to Belarusian business);
- **civil society organizations**.

The Guide will also be useful for business organizations in the sphere of consulting (including legal consulting), associations of entrepreneurs, diplomatic missions, mass media, and academic community.

The purpose of this Guide is to inform the target audience and help motivated companies conduct business while respecting human rights, so as to enhance companies' sustainability and help the state implement appropriate and effective policies in this area.

Respect for human rights in the course of conducting business activities has **tangible effects for both businesses and the state**.

The businesses **get**:

- minimizing risks (financial, reputational, etc.);
- expanding development opportunities and strengthening the company's potential;
- strengthening brand image and reputation of the company.

The state **gets**:

- increasing and diversifying exports;
- improving the investment climate and attracting «civilized» investors;
- shrinking the shadow economy sector;
- forming the culture of responsible attitude and partnership between business, state, and society;
- strengthening trust in the state in Belarusian society;
- creating conditions for individual self-actualization and minimizing the «brain drain» and labour outflow;
- developing human potential and innovation;
- strengthening a favourable image of Belarus on the international arena.

The tasks, which this Guide is designed to address:

- Presenting the topic of «business and human rights» to the state, Belarusian businesses, and Belarusian civil society organizations and providing basic tools for introducing appropriate approaches to business processes and government regulation.
- In order to better understand the social responsibility of businesses, properly outlining the correlation of categories of CSR, «business and human rights», sustainable development, sustainable development goals.
- Outlining the main areas of business activities' negative impact on human rights in Belarus, in order to focus attention of stakeholders (government, business, investors, international organizations, and civil society) and take measures to minimize negative consequences.
- Stimulating interaction and partnership between the state and business in the promotion of human rights in Belarus.
- Showcasing additional tools of enhancing the investment attractiveness of Belarus, the sustainability and competitiveness of Belarusian business.

How Belarusian businesses can use the Guide

- To develop company policies and procedures in the area of human rights (including non-discrimination).

- To develop non-financial reporting components.
- To provide background information for auditors.
- To conduct a risk assessment of the company's human rights impact.
- To increase awareness and loyalty among employees, suppliers and other business partners; to select business partners.
- To engage with persons whose rights may be affected (or have been affected) by the company's operations: employees, consumers, people living in the location where the company operates.
- To engage with state authorities, international organizations, and civil society organizations on issues related to the protection of human rights from the negative impact of business activities.
- To establish and use mechanisms for access to remedies for employees and other persons whose rights may be affected by the activities of companies.
- To contribute to sustainable development initiatives focused on human development needs and priorities relevant in the Belarusian context.

How the state can use the Guide

- To analyse and reform state policies and legislation relevant to the impact of business on human rights, including in the areas of occupational safety, environment, land resources, equal working conditions for all employees, anti-corruption, taxation, consumer protection or corporate reporting, protection against discrimination.
- To create a framework to deter unscrupulous investors, to foster the development of trade and investment agreements.
- To ensure that state-owned business enterprises respect human rights.
- To increase the awareness and capacity of state bodies and officials about the human rights impact of business activities.
- To provide targeted advice to Belarusian companies.
- To improve effective access to legal remedies for victims of business-related human rights abuses.
- To enhance the contribution of the private sector to national and regional development programmes.

- To implement recommendations and prepare reports under international monitoring mechanisms for the protection of human rights.
- To accomplish the tasks under the implementation of the SDGs.

How civil society can use the Guide

- As a source of information for human rights research and monitoring.
- To identify problems associated with business human rights abuses.
- To protect and represent individuals whose rights are affected by business activities.
- To help build the capacity of government agencies, business, and civil society on human rights and business issues.
- To work with stakeholders to formulate recommendations for business and government authorities.
- To facilitate dialogue and engagement with government authorities and business.

Expert interviews

Consultations and expert interviews with representatives of international organizations investing in Belarusian business, representatives of international and Belarusian businesses, experts in the field of economics and business processes were held¹ during the preparation of this Guide, in particular with:

Alexandra Antsugai, Principal Environmental Advisor, Environment and Sustainability Department of the European Bank for Reconstruction and Development (United Kingdom).

Pavel Daneyko, Director, BEROCC (Belarusian Economic Research and Outreach Centre).

Andrey Karpunin, Chairman of the Financial Directors Club, Vice-chairman of the Minsk Capital Union of Entrepreneurs and Employers, Member of the Public Advisory Council under the Ministry of Tax Collection of the Republic of Belarus and the Public Advisory Council under the Ministry of Labour and Social Protection of the Republic of Belarus.

¹ The expert interviews and consultations were conducted by A. Hulak and E. Deikalo in 2019 (Minsk). All positions of experts are mentioned as of the time of interviews (2019)

Natalia Pavlova, Head of the Department on Corporate Communications and Public Relations in Europe, the Middle East, and Africa at the Head European Office of Johnson&Johnson (Switzerland).

Alexander Pivovarsky, Head of the Representative Office of the European Bank for Reconstruction and Development in Belarus.

Alexei Pikulik, Director for Corporate Relations at Danone Belarus.

Andrei Roschupkin, First Deputy General Director of Coca-Cola HBC Belarus.

Olga Shcherbina, Head of the International Finance Corporation Office in Belarus.

The content of the material on the motivation for involvement of various stakeholders, effects and benefits for business and the state (and, in part, the structure of the Guide) is based on the information and opinions received from the experts during these consultations.

Statistical and other information used in the Guide

All statistical and factual information contained in this Guide is drawn from publicly available sources: reports of the Special Representative of the United Nations Secretary-General for Business and Human Rights; reports of the Working Group on the issue of human rights and transnational corporations and other business enterprises; other documents of the United Nations Human Rights Council; concluding observations of treaty bodies; reports and other documents of international organizations; decisions of international control bodies and mechanisms for settling disputes in the sphere of business and human rights; data of the National Statistical Committee of the Republic of Belarus; websites of state bodies of the Republic of Belarus, reports of Belarusian and international human rights NGOs; Belarusian and foreign mass media; reports on activities and various policies of international and Belarusian companies.

The Guide (Section 7) provides some statistics relating to the promotion of human rights by businesses and alleged human rights abuses by businesses. Data are drawn from a study commissioned by the UN Secretary General's Special Representative for Business and Human Rights, J. Ruggie, in preparing the 2011 Guiding Principles on Business and Human Rights.

Regarding the alleged violations, 320 cases of human rights abuses committed by 250 companies operating in different regions of the world, representing both small and medium-sized businesses and large Fortune Global 500 corporations as well as state-owned enterprises, were analysed. The violations recorded took place between 2005 and 2007 and were committed by companies operating in different re-

gions of the world, representing both small and medium-sized businesses and large corporations on the Fortune Global 500 list, as well as state-owned enterprises. The information was taken from various sources (including NGO reports, media reports, individual reports, information provided by trade unions, states, and company owners).

Regarding human rights promotion, the practices of 314 companies were analysed. The companies were selected partly from the Fortune Global 500 list, partly from the list of companies listed on the website of the Business and Human Rights Resource Centre and positioned as having implemented in their management policy a «human rights» component (i.e., having human rights policy), and partly from companies participating in the UN Global Compact and submitting their «progress reports».

Despite the relatively small number of companies surveyed, this sample is quite representative. To date, these studies are the only ones at this level of coverage, and they provide a fairly comprehensive overview of the cross-section of business human rights abuse and promotion in a universal and regional context.

Special mention should be made of the website of the Business & Human Rights Resource Centre (<https://www.business-humanrights.org/>), which was actively used by the author in preparing the Handbook. Today, it is also the only resource that provides regularly updated information on business human rights abuses, measures taken by states in this regard, etc. All information is disaggregated by specific rights violated, company names, areas of business activity and other indicators. This resource is recognized as credible by the UN Human Rights Council and is actively used in the work under the Council's mandates.

The structure of the Guide

The Guide consists of 11 sections:

Section 1 describes the purpose and target audience of the Guide, as well as the context in which the Guide was developed.

Section 2 explains the inadequacy of prevailing stereotypes about politicized perceptions of human rights and elucidates the content of human rights principles.

Sections 3 and 4 highlight factors and processes that influence the emergence of this topic on the global agenda, demonstrate the importance of the topic for business, its relationship to sustainable development goals, and the extent to which it is recognised by key stakeholders (international organisations, governments, and business itself).

Section 5 outlines the substantive and regulatory framework, i.e. the scope of the topic.

Section 6 outlines the role of the state and its positive obligations with regard to business and human rights, as well as the measures it must take to minimize the negative impact of business activities on human rights.

Section 7 describes the status and content of the business responsibility to respect human rights and highlights forms of business engagement that violate human rights. The section provides some statistics on the rights most frequently violated by businesses, as well as data on non-compliant companies by business sector.

Sections 8 and 9 describe the main areas of concern in the context of the negative impact of business activities on human rights in the Republic of Belarus, which require a response from both business and the state. The sections contain recommendations of international supervisory bodies issued in relation to the Republic of Belarus on these aspects and the review of practical case studies to illustrate the problem. Of course, the Guide does not provide an exhaustive list of such cases. All information given in sections 8 and 9 is relevant as of August 2019.

The information on Belarus presented in sections 8 and 9 will be updated periodically in the electronic version of the Guide.

Sections 8 and 9 do not address the impact of corruption on human rights abuses by businesses; and human rights issues related to the acquisition, use, and management of land in the Republic of Belarus. This information will be added when the electronic version is first updated.

Section 10 contains basic tools for introducing human rights into company management. The section describes stepwise the elements and mechanism for implementing company due diligence in the area of human rights (due diligence to prevent human rights abuses).

Section 11 outlines the role of the state, business, and civil society in providing effective remedies for human rights abuses by businesses, identifies the main challenges for Belarus in this context, provides an overview of existing international mechanisms to access such remedies, and some statistics on their functioning.

2. WHAT ARE HUMAN RIGHTS: DON'T GET FOOLED BY STEREOTYPES

Stereotype No. 1: «Human rights are politics»

The word combination «human rights» in Belarusian society is often perceived with a political twist as an element of political confrontation. Human rights are often seen as something undesirable; something one does not want to get involved with in order to avoid problems. Actually, human rights are not about political confrontation or struggle for power. It is about making human life better and more qualitative. From the viewpoint of human rights, it does not matter who is in power, it is important whether the rights are respected or not. When we fight for human rights, we do not fight to oppose the state, but to have the necessary conditions for the proper exercise of our rights. Politicization of this topic only prevents us from looking at human rights problems in an adequate and constructive way, as well as from finding effective solutions.

Stereotype No. 2: «Civil and political rights are primary, socio-economic rights are secondary»

Human rights in our society are often associated only with civil and political rights. The impression is that in Belarus civil and political rights are violated most often and people suffer the most from such violations. It is, therefore, a priority to ensure that these rights are respected. In fact, the effective enforcement of civil and political rights is directly dependent on the effective implementation of social, economic, and cultural rights. Conversely, the enjoyment of social, economic, and cultural rights is directly linked to the realization of civil and political rights. There can be no hierarchy between these rights. It is impossible to respect the former and disregard the latter.

Stereotype No. 3: «There are states where human rights are not violated»

Human rights are violated in any state. There is no state in the world where human rights are not violated. The main question is how the state reacts to these violations and what measures are taken to ensure that they do not occur.

Stereotype No. 4: «Business has nothing to do with human rights»

In fact, human rights concern every person and his/her entire life. Human rights in the relationship between business and human beings are present wherever and whenever there is a person who: goes shopping, gets a job, sees advertisements for goods or services, receives information from the media, breathes air, drinks and eats, fills out a bonus program questionnaire...

Human rights are the rights and freedoms that all people have, without exception, and which, as agreed by the international community, people need to live with dignity¹.

An almost exhaustive list of fundamental human rights is contained in the so-called Bill of Human Rights, which consists of 3 documents:

- Universal Declaration of Human Rights of 1948 (UDHR)
- International Covenant on Civil and Political Rights of 1966 (ICCPR)
- International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR)

The entire catalogue of fundamental² human rights (civil, political, social, cultural, economic) comprises 25 rights and freedoms (ANNEX 8).

They are detailed in both Covenants of 1966 and in the documents of the bodies monitoring compliance with the Covenants and interpreting their provisions. Some of these rights, as well as rights of certain vulnerable groups (women, children, refugees, migrants, etc.) are dealt with in separate international treaties.

All human rights «work» on the basis of five principles:

- **universality**: all human beings have all human rights. And all states have a legal obligation to ensure human rights regardless of a particular political, economic, and cultural system;

¹ Principles for Responsible Contracts Integrating the Management of Human Rights Risks into State–Investor Contract Negotiations, p. 4, https://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf.

² With the passage of time and scientific and technological progress, changing living conditions, new human rights are emerging on the basis of some of the existing ones: for example, the right to the protection of personal data has emerged from the right to privacy; the right to a healthy environment has emerged from a wide range of rights: the right to health, adequate food, housing, etc.

- **equality and non-discrimination**: no one may be disadvantaged in any of one's rights on the basis of specified characteristics (gender, age, race, colour, belief, religion, social status, sexual orientation, physical ability, or other status);
- **inalienability**: no person shall be deprived of human rights except in cases of restriction established by law and following the procedure established by law. Criteria for the legality of the restrictions are also established in international law. A person may not waive his or her rights;
- **interdependence and indivisibility**: all rights are interconnected. The violation of one right routinely leads to the violation of other rights. Human rights cannot be selectively enforced, nor can hierarchy or priority be established between them (except for legitimate restrictions);
- **the responsibility of stakeholders** to respect them: human rights are not just a «philosophy of the common good», they are a specific legal construct that implies clear legal obligations of states at three levels:
 - *respect* for human rights (the obligation of the state not to violate human rights through its actions),
 - *protection* of human rights (the obligation of the state to take measures to prevent human rights violations by individuals and entities within its territory and subject to its jurisdiction),
 - *fulfilling* human rights (obligation of the state to take measures to provide people with the necessary means to realize rights that people themselves cannot secure (infrastructure, resources, etc.)).

3. WHAT DOES IT HAVE TO DO WITH BUSINESS?

Business and human rights is about how businesses make money without violating human rights while strengthening their sustainability and success.

3.1. Factors affecting business involvement in the human rights agenda



Today, the actors involved in global economic processes are not just companies that are TNCs in the «traditional» sense (large corporations with a world-wide reputation and branches in most countries with billions of dollars in turnover).

The term «transnational corporation» today refers to any company incorporated and/or operating in more than one state.¹

Even if a company exists exclusively in a national domain (within the jurisdiction of one state), it is still, to some extent, a participant in transnational economic processes today, via buying/selling goods/services to/from other states and using the international information market.

Belarusian business is no exception. If the company wants to grow, it cannot stay within the same jurisdiction in its commercial relations.

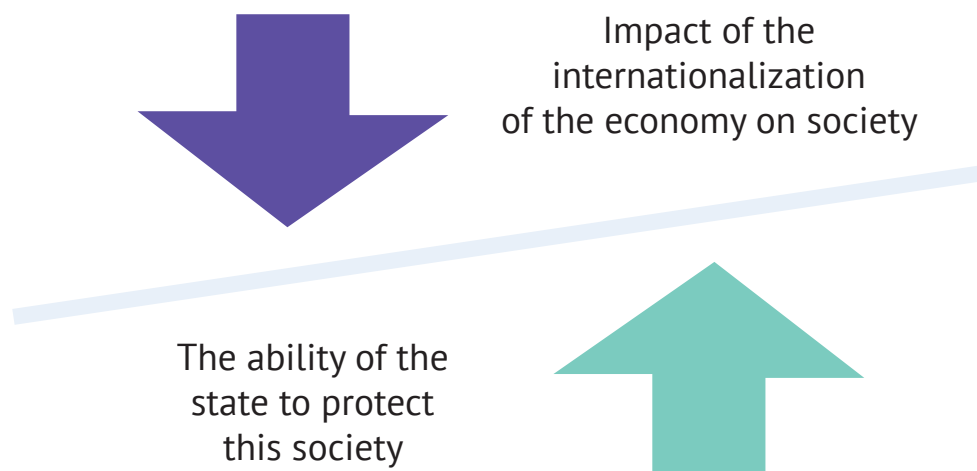
¹ On-line legal dictionary: <https://legal-dictionary.thefreedictionary.com/Transnational+Corporation>.



Source: <http://www.prismceramic.com/export.php#>

Changes in the economy lead to transformations in the political and social spheres. Business is becoming an actor that defines today's political and social agenda along with states. Big business often starts to perform some traditional state functions (social security, supply of medicine to the population, creation of conditions for education, etc.). Private military security agencies are beginning to replace the regular armed forces of the state in a number of situations.

However, in contrast to states, businesses do not have direct international human rights obligations. This creates a certain imbalance:



It manifests in the fact that:

First, due to the internationalization of the economy, there is a growing tendency to erase territorial boundaries of states in international economic relations. Therefore, in some cases, the state is unable to control, regulate and effectively curb the negative impact of business activities on the rights of individuals on its territory.

Even the activities of a company operating within one jurisdiction, first, due to international economic «communication», may affect the rights and interests of persons physically located in another jurisdiction (sales through an online store, advertising on the Internet, etc.), and second, even within its own state, business activities often have negative consequences for human rights.

Second, while the internationalization of companies and, in general, the internationalization of the economy, create a lot of advantages for the development of individuals and society as a whole, states are becoming more and more «dependent» on business in the context of investments, job creation for the population, etc., which sometimes prevents them from protecting citizens.

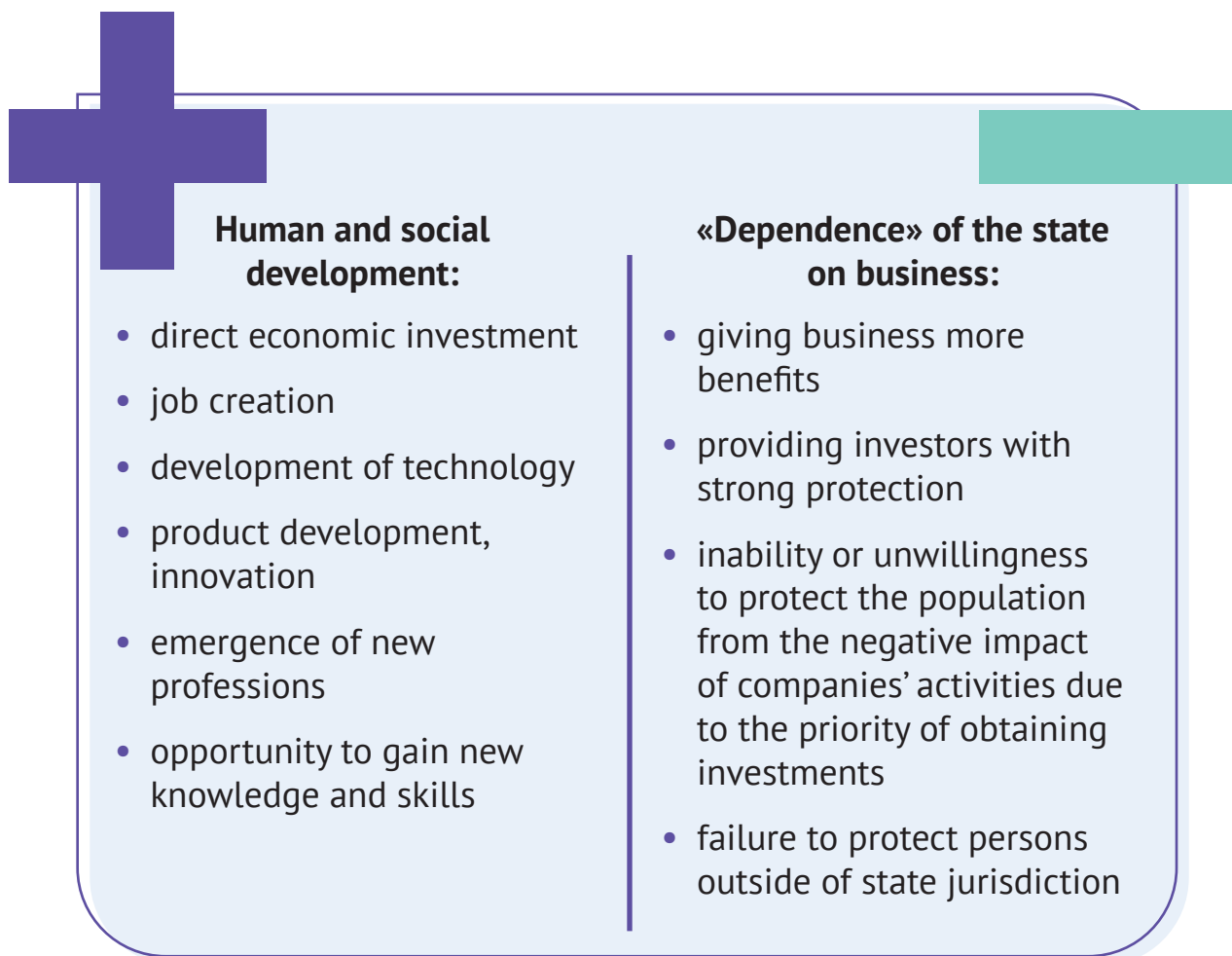


Fig. 1 Economic internationalization & human rights

In 2010 the International Centre for Settlement of Investment Disputes (ICSID) heard the case of Piero Foresti, Laura de Carli and others v. Republic of South Africa, in which investors sought to challenge the legitimacy of South Africa's new Mineral and Petroleum Development Act, which was enacted in response to the State's commitment to eradicate past policies of racial discrimination against black Africans in the context of distribution and access to natural resources that belong to the entire people of South Africa.

Source: Piero Foresti, Laura de Carli and others v. Republic of South Africa: award of 4 August 2010: [https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB\(AF\)/07/1](https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB(AF)/07/1)

Belarus is characterized by a situation where investment projects are implemented to the detriment of human rights (including security) (see subsection 6.1 of this Guide for more details).

The topic of business and human rights has emerged in order to establish and maintain the balance.

Businesses, having the state-like power to determine political and social agenda of the society, cannot but share the responsibility for this society.

Traditional state mechanisms and direct state obligations in the field of international human rights are becoming insufficient. There is an emerging a need for a larger degree of self-regulation, certain «assistance» to the state from businesses in protecting and promoting human rights.

The emergence and development of business and human rights agenda is part of the global process of «focusing» attention on a specific individual, his/her needs and problems, and increasing the role of the individual in the functioning of various spheres of society. Within the same global process lies the formation of an innovative economy, instrumentalization of the concept of sustainable development, manifested in the emergence of sustainable development goals with specific tasks and indicators of their achievement, the emergence of the human rights based approach as a «philosophy» and a specific toolkit (methodology) for the inclusion of human rights in planning and management processes in all spheres of state and society functioning.

3.2. Business and human rights: a community development trend

The topic of business and human rights has been discussed by the world community and the global business community since the mid-1970s. It is new for Belarus and Belarusian business, but not at all new in the world context.

The turning point in bringing this topic to a qualitatively new level was the adoption of by the [UN Human Rights Council](#) in 2011 of the [UN Guiding Principles on Business and Human Rights](#)¹ (hereinafter the UN Guiding Principles 2011, UN GPs 2011, GPs 2011).

The framework proposed by these principles has been widely recognized by relevant international organizations, many international multilateral initiatives, standardization initiatives, industry associations, individual companies. Key documents

¹ UN Guiding Principles on Business and Human Rights of 2011: <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.

from many organizations have been revised to include provisions of, or references to, the UN Guiding Principles 2011.

However, the topic is a «trendy» one, not only because of the wide recognition of the 2011 UN GPs. Prior to their adoption, the topic of business and human rights was already incorporated into the work of many stakeholders.

Global standards and initiatives relating to business and human rights have started to converge around the Guiding Principles.¹

The need to integrate the human rights agenda into business operations and management, as well as the importance of the 2011 UN Guiding Principles, is now recognized by all key stakeholders in this area:

- **international organisations:** UN, ILO, World Bank, IFC, OECD, Council of Europe, EU;
- **business itself:**
 - **international multilateral initiatives, standardization initiatives, industry associations:** UN Global Compact, International Organization for Standardization (ISO), Global Network Initiative, International Chamber of Commerce (ICC), Voluntary Principles on Security and Human Rights in Mining and Energy 2000 (VPs), Kimberley Process Certification Scheme (or Kimberley Process), Responsible Business Alliance (formerly Electronic Industry Citizenship Coalition (EICC)) and others (for more details, see Map of Recognition of the 2011 UN Guiding Principles and Human Rights Agenda by Key Stakeholders in ANNEX 2);
 - **individual companies:** see section 10.1 of this Guide.
- **States:**

UN Human Rights Council Resolution 17/4, which endorsed the **2011 Guiding Principles on Business and Human Rights**, was adopted without a vote. That is, it was unanimously adopted by all 47 member-states of the Human Rights Council.²

¹ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises 2015 (A/HRC/29/28) para. 7 : https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/28.

² The membership of the Council at the time of the adoption of the 2011 GP can be found here: <https://www.ohchr.org/RU/HRBodies/HRC/Pages/Group20112012.aspx>. From Eastern Europe, the following states were members: Czech Republic, Hungary, Moldova, Romania, and Poland. From post-Soviet countries, Moldova, as well as Kyrgyzstan and Russia were members of the Council at that time.

Between 2011¹ and 2019 **51 states** included business and human rights in their priority policy issues²:

24 states adopted the National Action Plan on Business and Human Rights. Of these, 4 were Eastern European states (Czech Republic, Lithuania, Poland, Slovenia), 2 were post-Soviet states (Lithuania and Georgia), 14 were Western European states, 2 were Latin American states, as well as the USA and South Korea.

14 states are in the process of developing the National Action Plan on Business and Human Rights. Of these, 1 is in Eastern Europe and the post-Soviet space (Ukraine).

13 states declared their intention and/or took the first steps to prepare a National Action Plan on Business and Human Rights (for details, see Map of National Action Plans and list of these states in ANNEX 5).

For more information on the role of the state in business and human rights, and National Action Plans, see Section 6 of this Guide.

3.3. Business and human rights & Sustainable development goals

In Belarusian context, despite understanding the connection between business activities and the implementation of the SDGs, almost none of stakeholders (including the state) see a connection between the implementation of the SDGs and human rights.

At the same time, in the preamble to **UN General Assembly Resolution A/RES/70/1 of 2015 «Transforming our world: the 2030 Agenda for Sustainable Development»³** (hereinafter, Agenda 2030), describing the main purposes (characteristics) of the SDGs, it is stated that «... they include the realization of human rights for all ...».

The essence of the very concept of sustainable development and the process of implementing sustainable development goals is the inclusion of new actors in the processes that were previously managed exclusively by the state. This includes the processes related to human rights protection. **Agenda 2030** emphasizes the new concept of partnership in achieving the SDGs. Not only states and international organizations, but also all other members of society, including businesses, are mentioned among the declared main stakeholders in the implementation of the SDG (para. 52).

¹ As of December 2019.

² National Action Plans on Business and Human Rights: <https://globalnaps.org/country>.

³ Transforming our world: the 2030 Agenda for Sustainable Development: UN General Assembly Resolution A/RES/70/1 of 2015 : <https://undocs.org/ru/A/RES/70/1>.

Agenda 2030 makes direct reference to the 2011 Guidelines. It emphasizes that business activity (performed by companies of all levels), investment, and innovation are the main «drivers» of productivity, including economic growth and employment promotion. It also notes the need to develop a business sector that understands the need to respect labour rights and environmental and health standards in line with the core international human rights treaties and the 2011 UN Guiding Principles on Business and Human Rights (para. 67).

It is important to note that this provision is contained in the section of Agenda 2030 «Means of Implementation and Global Partnership», which once again underlines the impossibility of effective implementation of the SDGs without involving business in the human rights agenda.

More than 90% of the 169 targets of the 17 Sustainable Development Goals relate to human rights, which means that the effectiveness of the implementation of the SDGs is directly linked to the effectiveness of the implementation of international human rights treaties. Therefore, human rights monitoring mechanisms may, in part, also be mechanisms for monitoring the implementation of the SDGs.

The Danish Institute for Human Rights has developed a special database that identifies a nexus between the provisions of international human rights instruments and the 169 targets of the SDGs. This database can be searched both «from the SDGs to the provisions establishing a specific human right» and «from the provisions establishing a specific human right to the SDGs».

4. WHY DOES BUSINESSES NEED HUMAN RIGHTS AND NEED TO INCORPORATE THEM INTO COMPANY POLICIES?

Mainstreaming human rights into the company's agenda is an issue of the long-term perspective of a sustainable company and sustainable business development.

Where business poses a risk to human rights, it increasingly also poses a risk to its own long-term interests.¹

The main goals of any company:

- increasing profits;
- market expansion (retention).

Whatever the company does or does not do, it does or does not do in order to achieve these goals.

The tools that are used to achieve these goals:

1. Expansion of development opportunities and strengthening of the company's potential (financial, human resources, scientific and technical, etc.).
2. Minimization of risks.
3. Positive reputation.

Figure 2 shows the main factors that affect the functioning of these instruments. The introduction of a human rights agenda into a company's management system greatly contributes to the emergence and sustainable presence of these factors.

For more information on how and why these factors are linked to human rights, see «Why Business Need Human Rights? Benefits for the Company», prepared by the Belarusian Helsinki Committee in addition to this handbook.

¹ The Corporate Responsibility to Respect Human Rights, 2012, p. 14: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

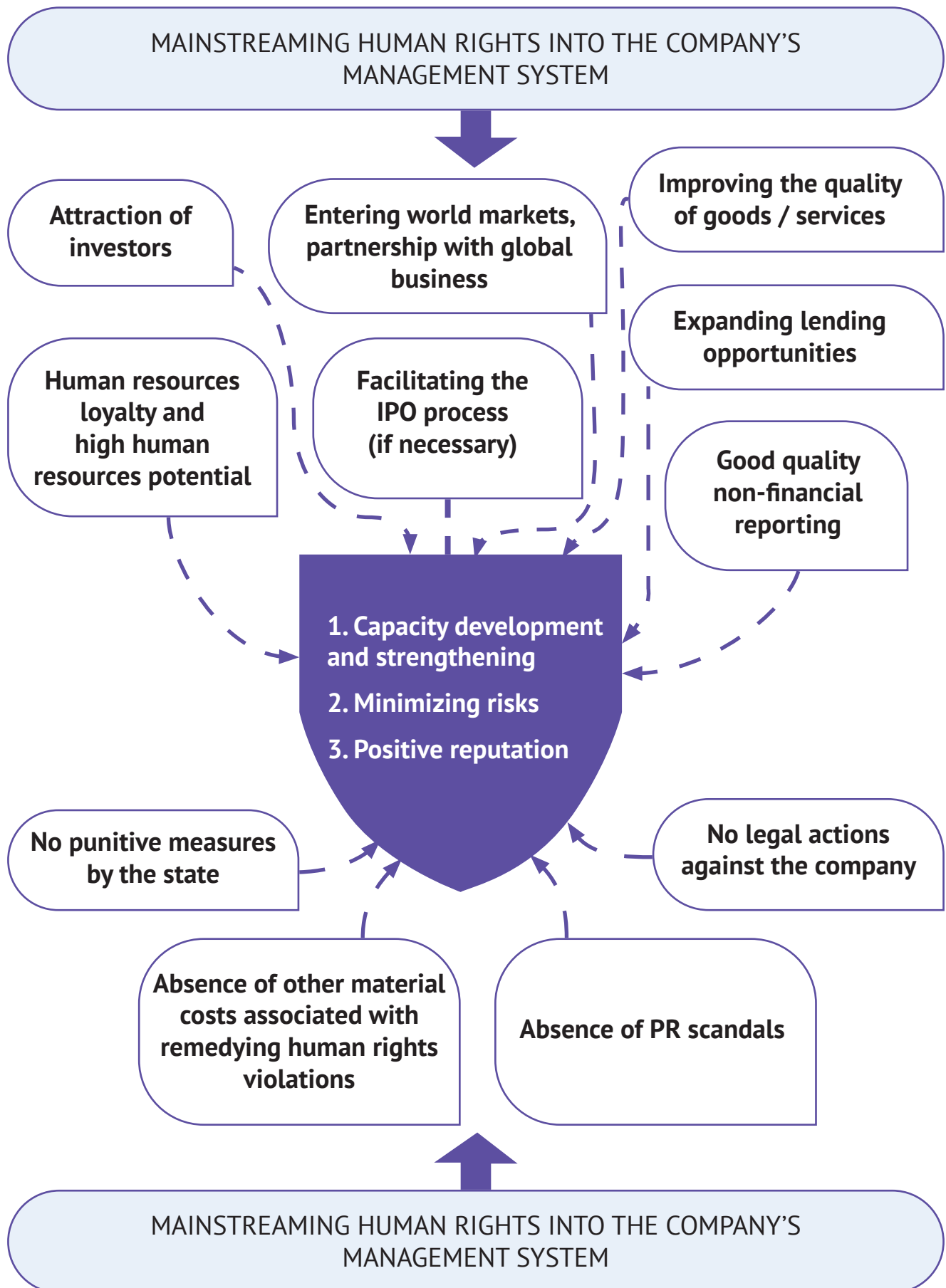


Fig. 2. Advantages of including a human rights agenda in the company's management system

5. BUSINESS AND HUMAN RIGHTS: FRAMEWORK OF THE TOPIC

5.1. Approach framework

The conceptual framework for the approach to «business and human rights» was developed within the mandate of the Special Representative of the UN Secretary-General on «business and human rights»¹ and endorsed by the UN Human Rights Council in 2008.

It is known as the UN «Protect, Respect and Remedy» Framework² (hereafter «the UN Framework»).

In 2011, the UN Human Rights Council (Resolution 17/43) adopted the [Guiding Principles on Business and Human Rights](#)⁴ based on the UN Framework. This document is instrumental. Its provisions (31 principles with commentaries) provide a substantive, normative, and operational framework for the implementation of the UN Framework's approach to business and human rights.

In 2012 the UN Human Rights Council issued a document interpreting the part of the 2011 UN GPs on the responsibility of business to respect human rights: [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) (hereafter, the 2012 Interpretive Guide)⁵. This document further clarifies the provisions contained in Principles 11-23 of the 2011 UN GPs. The introduction to the 2012 Interpretive Guide highlights that this document is intended for business as well as governments, investors, civil society and legal practitioners.⁶

These three documents form the basis for work on the topic of business and human rights. Their provisions and approaches have been widely recognized by states and international organizations, as well as by business and civil society, and are now the main substantive, methodological and instrumental reference point for promoting and encouraging the theme of «business and human rights».

¹ Harvard University Professor John Ruggie, one of the developers of the United Nations Global Compact.

² See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, J. Ruggie, «Protect, Respect and Remedy: A Framework for Business and Human Rights», 2008 (UN Doc. A/HRC/8/5): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/128/63/PDF/G0812863.pdf?OpenElement>.

³ Human rights and transnational corporations and other business enterprises: resolution of Human Rights Council 17/4: <https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session17/pages/resdecstat.aspx>.

⁴ 2011 Guiding Principles on Business and Human Rights: <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.

⁵ The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

⁶ Ibid., p.3.

After the expiry of the mandate of the Special Representative of the UN Secretary-General, the [Working Group on the issue of human rights and transnational corporations and other business enterprises](#)¹ was established to continue its work on this topic. The Working Group has the status of a special procedure of the UN Human Rights Council (thematic mandate).

The Working Group's main task is to monitor the implementation of the 2011 Guiding Principles by key stakeholders (states and businesses) and to help address the challenges associated with this process.

Also in 2011 the Human Rights Council established the [annual United Nations Forum on Business and Human Rights](#), the largest annual meeting on business and human rights for over 2,000 participants from governments, business, community groups and civil society, law firms, investment companies, United Nations bodies, national human rights institutions, trade unions, academia and the media.²

5.2. The three «pillars» of «business and human rights»

The 2011 UN Guiding Principles lays out the three pillars (three elements) of protecting human rights from the negative impact of business activities:

the first pillar the «protect» element refers to the [state](#) in which a business is registered or operates. It includes positive obligations of the state under whose jurisdiction business activities are conducted to prevent human rights violations by businesses;

the second pillar the «respect» element refers to [business](#) and implies the duty of business itself to comply with existing universally accepted human rights standards;

the third pillar the «remedy» element refers to both the [state and business](#) and means the need for both the state and business to ensure that people whose rights are affected by business activities have an effective remedy.

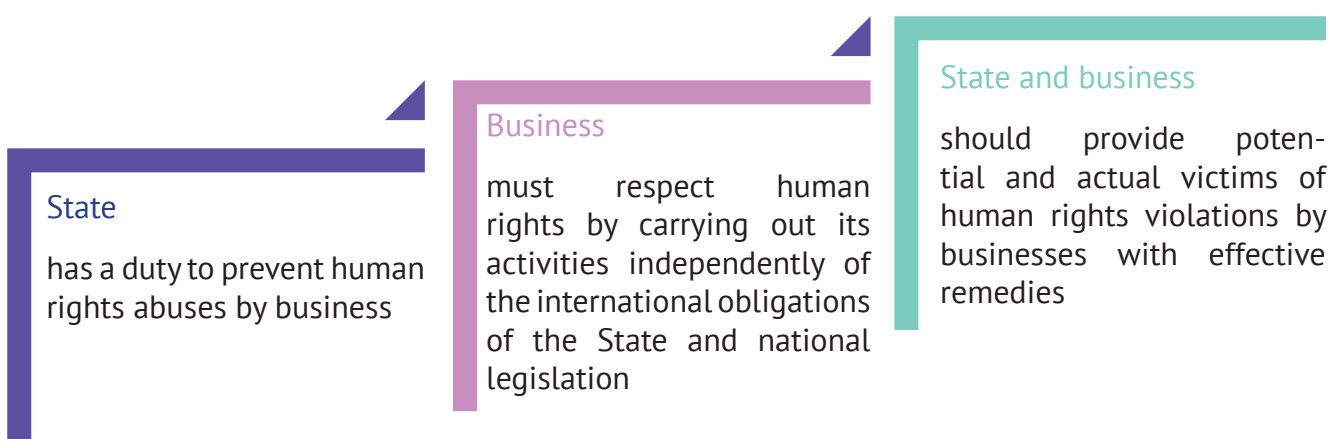


Fig. 3. Three «pillars» of the theme «business and human rights»

¹ Official page of the Working Group: <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.

² UN Forum on business and human rights: <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>.

Traditionally, when we talk about human rights, we talk about two subjects: the individual (the bearer of rights) and the state (the bearer of obligations to respect, protect and ensure the realization of these rights). In the sphere of «business and human rights», a third subject is «introduced» into this two-element construction business (an economic entity).

It is particularly important to stress that in this case business does not replace the state in terms of protecting and ensuring respect for human rights. It is the three-element construction in which a second «stakeholder» business is added to the traditional bearer of human rights obligations the state.

These three «pillars» form an integrated whole and should work as a single mechanism to achieve the goal of ensuring that business respects human rights. Taking action within just one of them will not lead to the necessary result.

5.3. Legal regulation framework

○ International treaties that have a dual function:

- are (together with interpretive documents) a **guide for business** in terms of the content of human rights standards that should guide business.

According to FP 2011 Principle 12, the obligation to respect human rights extends to all universally recognized human rights, which imply at least the human rights contained in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, and the provisions of the 2010 ILO Declaration on Fundamental Principles and Rights at Work, which are enshrined in the eight ILO fundamental conventions;

- contain **state obligations** to prevent human rights violations by third parties (including business).

This refers not only to international human rights treaties, but also to any treaty that may indirectly concern human rights (treaties on environmental protection, anti-corruption, bioethics, personal data protection, etc.).

For a list of the main international treaties relevant to the topic «Business and human rights», indicating their status for Belarus see ANNEX 4.

An **International treaty to regulate the activities of transnational corporations and other business enterprises in international human rights law**¹ is currently being

¹ Draft treaty and documents related to the process of developing it can be found at: <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>.

developed within the framework of the UN Human Rights Council. It relates to ensuring access to effective remedies in a foreign country for persons affected by the activities of TNCs and other business enterprises engaged in transnational activities.

- Instruments adopted in the framework of international intergovernmental organizations.

see ANNEX 2

- International normative and institutional initiatives of states and business multi-stakeholder initiatives (MSI).

see ANNEX 2

- International standards (guidelines, codes of conduct, etc.) developed by the business community itself to regulate commercial relations.

see ANNEX 2

- National legislation.

A wide range of national legislation is relevant in the context of business and human rights. Basically, all national legislation within this topic can be divided into 3 blocks:

- legislation governing the employer-employee relationship;
- legislation directly or indirectly related to the protection of human rights (other than labour rights): for example, general legislation on non-discrimination, personal data protection, environmental human rights, etc.;
- legislation related to certain aspects of business conduct: e.g. advertising legislation, media legislation, regulations on food products for sale, corporate law, etc.

In the context of Belarus, the main international treaties, documents officially interpreting their provisions and regulations of the national legislation related to the topic are listed in sections 8 and 9 dedicated to the practice of human rights violations by Belarusian business.

- Domestic policies and standards of specific companies.

See Section 10.1 of this Guide for more details.

5.4. Business and human rights & corporate social responsibility (CSR)

There are many different approaches to the concept of CSR and its content, both in theory and in practice. The practical understanding of CSR by business largely depends on the level of economic, legal and cultural context of the specific society in which the business operates.

To sum up the main approaches, CSR includes economic, legal, philanthropic and ethical components. Therefore, in a broad sense, the general social agenda (including the SDGs, activities under the UN Global Compact) implies that business does not violate human rights. In other words, a socially responsible business in the global sense is a business that, among other things, respects human rights.

The sphere of business and human rights correlates with the CSR sphere, helps to increase the company's social responsibility in general, **but places other accents and is not identical to the CSR theme.**

A company's CSR policy is one of the tools to involve business in the human rights agenda. However, CSR has a very broad scope and is not equal at the operational level with business and human rights. The subject of human rights in CSR is mainly related to the employees' rights. At the same time, in the Belarusian context, CSR has shifted significantly towards the philanthropic component. In this section, the distinction between CSR and «business and human rights» takes this point into account.

The distinction between these areas is expressly acknowledged in the 2011 Guidelines¹. This is also reflected in the Council of Europe Guidelines on Business and Human Rights for Practitioners 2018².

The objective of the topic «Business and human rights» and the framework provided by the 2011 Guiding Principles is to minimize existing and prevent new human rights abuses in the conduct of business activities, as well as to provide effective legal protection to victims. This is the bare minimum that business should do.

¹ Commentary to Principle 11 of the UNGP 2011.

² Council of Europe. Business and Human Rights : a handbook for legal practitioners 2018 / Claire Methven O'Brien, para. 2.2.5: <https://edoc.coe.int/en/fundamental-freedoms/7785-business-and-human-rights-ahandbook-for-legal-practitioners.html>.

Business can also do more if it wants and if it has the necessary resources: promote human rights, «invest» in the development of society, engage in charity, participate in socially important projects, etc. This is what is certainly important for responsible modern business, this is what can support and promote sustainable development of society, and in particular, this is what is expected from business in the implementation of the SDG, and this is what business does in the framework of CSR (in particular, in the framework of the global CSR initiative UN Global Compact). BUT: this is what business can do beyond the fact that, at least, it does not violate human rights.

The Interpretive Guide for the 2011 UN Guiding Principles explicitly indicates that any voluntary and philanthropic initiatives to promote human rights by business do not fall within the scope of the duty to respect human rights as set out in the 2011 Guiding Principles¹.

At the operational level, at the level of specific activities and projects, companies' CSR initiatives **cannot and should not** replace their policies to prevent human rights abuses in the course of their business operations.

The company may buy computers for an orphan home (CSR), but at a woman's job interview to ask whether she is planning to have children in the near future (Business & Human Rights).

The company may participate in district urban greening (CSR), but at the same time buy products from a supplier who exploits child labour (Business & Human Rights).

The company can organize a marathon to support the solution of any social problem (CSR), but at the same time produce discriminatory advertising of its products (Business & human rights).

Table 1.

Differences between «business & human rights» and CSR spheres

BUSINESS AND HUMAN RIGHTS	CSR
The existence of human rights and freedoms is legally established. A person has them in any situation, including in relations with business. These rights must be ensured in any case. The obligation of business to respect these rights is recognized at the international level.	The need to implement CSR initiatives is not a legal standard. Business is not obliged to implement such initiatives. Business may or may not implement CSR initiatives.
Relates to the commercial activities of the company.	Extends beyond the company's commercial activities.

¹ The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012, p. 14-15, https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

Human rights standards and content are clearly defined and enshrined in international treaties and interpretive documents, and business is obliged to implement them regardless of willingness or financial capacity .	CSR standards, although they exist, are very diverse and not legally stipulated. The number and content of CSR initiatives always depend on the desire and financial possibilities of business.
Business cannot choose which human rights to respect (and which not) and the manner of doing so.	Business decides for itself which CSR initiatives to implement and in what manner.
Business failure to respect human rights has legal consequences .	Failure to implement CSR initiatives does not entail any legal consequences.
Non-compliance with human rights by businesses is associated with various financial and reputational risks (fines, amounts of compensation under court decisions, other costs of eliminating the consequences of human rights violations, PR scandals, etc.).	Failure to implement CSR initiatives does not entail the above-mentioned risks.
Implies state involvement in ensuring that business does not violate human rights.	Does not imply mandatory state participation.
The «state-business-person» frame of reference.	The «business person» frame of reference.

5.5. Business and human rights & compliance with national legislation

A socially responsible business is a business that adheres to the law. Of course, a business, as an entity under the jurisdiction of a state, is obliged to comply with its legislation. But in the human rights context this may not be enough.

The 2012 Interpretive Guide to the 2011 UN Guiding Principles interprets the business responsibility to respect human rights as going beyond and overriding national legislation in terms of the scope of obligations.¹

What does it mean?

National legislation can vary a state may or may not fully take steps to realize human rights.

If the state in which business operates does not align its legislation with international human rights obligations, it does not mean that people living in that state have fewer rights and some of the universally accepted standards may not apply to those people. It simply means that the state is not fulfilling its legal human rights obligations. But this does not exempt business from the responsibility to act within the standards of the full range of fundamental human rights.

¹ The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012, p. 13, https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

Human rights (at least those set out in the Bill of Rights) are a universal standard and must be respected by businesses regardless of the attitude of the state in which such businesses operate and the extent to which human rights obligations are implemented in national legislation. This is, in part, the rationale behind the whole «business and human rights» agenda.

The 2011 UN Guiding Principles themselves also point out that the business responsibility to respect human rights (commentary on Principle 11):

- is independent of, and does not abrogate, the capacity and willingness of the state to meet its international human rights obligations (i.e., business cannot and should not replace the state in this context);
- exists alongside the duty to comply with national legislation.

General Comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights on States' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business also refers to Principle 11 of UNGP 2011.¹

¹ General comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights «On State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities»: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQcl-MOuuG4TpS9jwlhCJcXiuZ1yrkMD%2FSj8YF%2BSXo4mYx7Y%2F3L3zvM2zSUbw6ujlnCawQrJx3hIK8Odk6DUwG3Y>.

6. THE ROLE OF THE STATE IN THE SPHERE OF «BUSINESS AND HUMAN RIGHTS»

6.1. State duty to prevent human rights violations by businesses

The state duty to prevent human rights abuses by businesses operating in its territory is the first «pillar» of the 2011 Guiding Principles and the framework for this topic.

The state is also present in this theme in the third pillar providing effective remedies for individuals whose rights have been infringed by business (see section 11 of this Guide).

The state duty to take positive steps to prevent business abuse and provide effective remedy is not an innovation proposed by the 2011 Guiding Principles. It is part of the traditional three-tier system of state legal obligations in the area of human rights¹:

- **respect** for human rights (obligation of the state not to violate human rights through its own actions);
- **protection** of human rights (obligation of the state to take measures to prevent human rights violations by individuals and entities subject to its jurisdiction);
- **fulfilling** human rights (the duty of the state to take measures to provide individuals with the necessary means to realize human rights that individuals themselves cannot secure (infrastructure, resources, etc.)).

The inclusion of the responsibility of States to protect human rights in the framework of the theme «business and human rights» reaffirms the importance of partnership between the state and business in ensuring the proper realization of human rights. At the same time, the state remains a major stakeholder due to its resources, governance levers, and direct legal obligations in the field of human rights. Therefore, it has a special role to play in creating all necessary conditions to minimize opportunities for business to violate human rights and providing maximum legal protection to those whose rights have been violated by business activities.

¹ General Comment No. 31 (2004) of the Human Rights Committee «The Nature of the General Legal Obligation Imposed on States Parties to the Covenant» : <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG-1d%2FPPrICAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWoq%2FhW%2FTp-Ki2tPhZsbElw%2FGeZRASjdFuulQRnbJEaUhby31WiQPl2mLFDe6ZSwMMvmQGVHA%3D%3D>.

State and business partnership in the framework of «business and human rights» corresponds to Goal 17.



What measures should the government take to minimize human rights abuses by business?¹

General regulatory measures



- Ensure the existence of, and compliance with, general legal instruments (or individual norms) directly or indirectly related to human rights. Address any gaps in legal regulation in this area.

The normative acts in question may range from labour law regulations, special anti-discrimination legislation to environmental legislation, anti-corruption legislation. They may regulate any sphere that directly or indirectly relates to human rights.

With respect to regulatory measures, it is important that governments review the extent to which existing legislation in these areas takes into account business compliance with human rights.

Examples of general regulatory measures taken by Belarus to minimize and prevent negative impact of business on human rights:

July 2019

The Parliament approved the Law of the Republic of Belarus of 18.07.2019 No. 219-3 «On Amendments to the Laws», which came into force on January 28, 2020. It introduces a number of significant changes to the norms regulating labour relations. The changes relate to the specific features of regulating the work of remote employees, the obligation of the employer to conclude a contract for the maximum period of time with an employee who does not violate labour and performance discipline, gender neutrality of labour legislation, etc.

Source: <http://pravo.by/novosti/novosti-pravo-by/2019/june/36725/>.

¹ In accordance with Principles 1 to 6, 8 to 10 of the 2011 United Nations Guiding Principles, with commentary.

July 2019

In accordance with the instruction of the Council of Ministers of the Republic of Belarus of 04.07.2019 No. 02/102-243/7608r On the necessity to study the issue of preventing the use of disposable plastic tableware in public catering facilities». The Ministry of Antimonopoly Regulation and Trade (MART) requested the Ministry of Health, the Ministry of Housing, State Committee on Standardization, the Ministry of Natural Resources and business community to indicate their position on this issue by July 25, 2019.

Source: <https://news.tut.by/economics/645244.html>.

March 2019

The Directive of the President of the Republic of Belarus No. 7 of 04.03.2019 «On improvement and development of the housing and communal services of the country» has been adopted. It among other things provides for the improvement of drinking water quality and improvement of the solid municipal waste management. The latter, in particular, means phasing-out polyethylene packaging with its replacement by ecologically safe packaging made of glass and paper, as well as attracting investments in the field of municipal solid waste management (including the creation of a deposit system for consumer packaging management).

Source: <http://president.gov.by/uploads/documents/2019/7dir.pdf>.

April 2019

The state recognizes the problem of high rates of work-related injuries (see Section 9 of this Guide for more details).

In connection with the increasing number of work-related injuries in recent years, a meeting of the Presidium of the Council of Ministers was held to study the state of work-related injuries with severe consequences as well as fire and industrial safety in organizations. The Ministry of Labour and Social Protection prepared additional measures on provision of safe working conditions and presented them at the meeting. The proposed measures include: reduction of manual labour; mechanisms of the employer's economic motivation (improvement of the compulsory insurance system covering industrial accidents). Among other measures is strengthening differentiation of insurance tariffs depending on the degree of occupational risks.

The analysis of prepared materials shows that the main reason for injuries, fires, and other accidents is the lack of discipline and order at the workplace.

Prime Minister of Belarus S. Rumas articulates one of the main problems with Belarusian business: «In solving economic problems, individual managers and responsible officials of enterprises overlook much more important issue protection of life and health of workers».

Source: <http://www.government.by/ru/content/8759>.

April 2018

Resolution of the Council of Ministers of the Republic of Belarus of 13.04.2018 No. 286 «On the amendments to the rules of investigation and record of industrial accidents and professional diseases, approved by the Decision of the Council of Ministers of the Republic of Belarus No. 30 «On the Investigation and Record of Industrial Accidents and Professional Diseases» of January 15, 2004 is adopted. Some of the important changes, for example:

- *expanded list of those who can take part in the investigation of an accident or work-related injury if the injured employee has died. The spouse of the deceased employee can now also take part in it. He/she is able to review the documents of the investigation of the accident or occupational illness and receive copies of these documents;*
- *detailed regulation of the requirements to the client organization regarding the investigation of the accident if the accident occurred in the territory of this organization, and not in the territory of the employer organization.*

Source: <http://www.pravo.by/document/?guid=12551&p0=C21800286&p1=1&p5=0>.

- Ensure that normative acts directly relevant to the management of business enterprises, and corporate law generally, also contribute to business respect for human rights.

France, February 2017.

The French Parliament approved the Law on due diligence. The law applies to enterprises with more than 5,000 employees engaged in transnational activities and imposes a duty on such enterprises to adopt action plans and measures to prevent human rights abuses and environmental harm in their supply chain.

Source: https://www.csreurope.org/france-adopts-law-imposing-due-diligence-.multinationals#.XW_Pd_Azapo

- Provide specific guidance to businesses on how to minimize the risks of human rights violations through business operations.

Such guidelines should contain expected results and such guidance should encourage sharing best practices in this area. Such guidance can take the form of various normative instruments, including national business and human rights action plans (see section 6.2 for more details).

- Encourage and, where necessary, require businesses to provide information on how they address the adverse human rights impacts of their activities.

This can be done either through informal meetings between the state and the business community, or through public reporting by business.

Public non-financial reporting in this area is an element of business due diligence as a tool for putting human rights compliance policies on the company's agenda (see further section 11 of this Guide). And the state, for its part, should encourage and require businesses to do so. Ideally, such requirements should be established at the normative level.

Legislatively, businesses should only provide financial reporting to the public (and only public companies). But the government can also provide certain incentives at the regulatory level to encourage any business to publish non-financial reports as well (e.g., giving effect) to such reporting in administrative proceedings or litigation.

August 2016

Joint Resolution of the Council of Ministers and the Board of the National Bank of the Republic of Belarus No. 657/20 of August 19, 2016 was adopted.

«On enactment in the Republic of Belarus of International Financial Reporting Standards and their Clarifications adopted by the Fund of International Financial Reporting Standards». Among other things, IFRS imply the need to disclose non-financial indicators in the financial report.¹

Measures concerning enterprises with special ties to the state



- The state must take additional measures in respect of enterprises that are in any way connected with the state, since the state has more influence over such enterprises than over the rest of the business.

This is the case of:

- state enterprises or enterprises with state-owned shares;
- enterprises without state ownership but otherwise controlled by the state (e.g. when management receives direct orders from state authorities in relation to their business operations);
- enterprises that enjoy substantial government support and services (e.g. credit, investment guarantee, government insurance, etc.);

¹ Article 17 of Law of the Republic of Belarus No. 57-Z of 12.07.2013 «On Accounting and Reporting (as amended), Joint Resolution of the Council of Ministers of the Republic of Belarus and the Board of the National Bank of the Republic of Belarus No. 657/ 20 of 19.08.2016 «On enactment in the Republic of Belarus of the International Financial Reporting Standards and their Clarifications adopted by the Fund of International Financial Reporting Standards».

- enterprises that provide any services to the state under commercial contracts (public procurement, provision of other services, etc.).

In all these cases, the state has additional leverage over the enterprises (e.g., managers of state-owned enterprises report to state bodies, state bodies are better placed to carry out monitoring activities for this group of enterprises, when entering into a contract with a business enterprise, the state may require to include provisions preventing human rights abuses at least when carrying out activities under the contract, etc.). The state should therefore use these additional opportunities to require business enterprises to integrate a human rights agenda into company policies.

It should be noted, however, that state-owned enterprises (or enterprises with state-owned shares) are not equated with the state due to the very fact of ownership. Like other businesses, all provisions of the second «pillar» of the 2011 UN Guiding Principles apply to them. While in some cases¹, corporate conduct may be considered state conduct, and in the case of human rights abuse by such enterprises, it would be considered state abuse.

For Belarus, this category of measures is particularly relevant due to the large share of state-owned (or state-controlled) enterprises.

*As of January 01, 2019, there were 17,649 state economic entities in the Republic of Belarus (including 1,624 state-owned enterprises).*²

*For comparison: Lithuania 160, Slovenia 642, Croatia 735, Sweden 49, Portugal 44, the Netherlands 33.*³

*While this is only 12.4% of the total number of economic entities, they account for 59.3% of employees (of the total number of the employed population).*⁴

There are also cases of serious state support to private enterprises:

For example, the Decree of the President of the Republic of Belarus from 07.08.2019 No. 298 «On the import of tobacco raw materials» gives the company «Inter Tobacco» the exclusive right to import tobacco raw materials in order to create additional conditions for the production of tobacco products.

¹ Such cases are defined by public international law.

² Data from the Statistical Yearbook of the Republic of Belarus 2019 as of 1 January 2019: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_14636/. The statistics is presented taking into account commercial and non-profit organizations (excluding non-governmental organizations). There are no statistics allowing to see exactly the number of state commercial organizations. Nevertheless, the figures are relevant and allow to see the general picture (since out of the total number of economic entities commercial enterprises are the overwhelming majority).

³ Data as of 2013-2015. State-Owned Enterprises in the EU: Lessons Learnt and Ways Forward in a Post-Crisis Context: https://ec.europa.eu/info/publications/economy-finance/state-owned-enterpriseseu-lessons-learnt-and-ways-forward-post-crisis-context_en.

⁴ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of 01.01.2019: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297/.

Measures aimed at integrating business and human rights into the general economic policy of the state at the national and international levels



- Ensure that the state's human rights obligations are known and taken into account by the state authorities responsible for economic policy and business development.
- Ensure that their international human rights obligations are fully implemented when entering into economic agreements with other states or legal entities (e.g. investment agreements, free trade agreements).

International investment and human rights is a special block of issues under the theme of «business and human rights». This Guide is not intended to elaborate on this issue due to its limited scope and the need for a more general focus.

However, over the past decade, the issue of the linkages between human rights and international investment has evolved from a narrow issue within the human rights community to an issue on the agenda of negotiations for all major international investment projects.

Such agreements are highly beneficial to the state, as they offer new opportunities. Often, however, the state is forced to accept the conditions for investment protection offered by the investor at the expense of its human rights obligations. The main challenge facing the international community today is to ensure that the ability of a state concluding a treaty with a foreign investor to meet its international human rights obligations is not restricted.¹

In 2012 UNCTAD published the World Investment Report Towards a New Generation of Investment Policies,² which highlights the **balance between adequate human rights protection** and investor protection as one of the four areas in which treaty-based investment practices have evolved.

UNCTAD's World Investment Report 2018 provides a comparative analysis of investment agreements concluded in 2000 and 2017 (13 agreements of each year) for certain provisions³ including:

- mention of health and safety, human rights, the environment or sustainable development in the preamble of the agreement (**present in 1 of the 13 agreements concluded in 2000 and 11 of the 13 in 2017**);

¹ Principles for Responsible Contracts Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations, p. 1: https://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf.

² World Investment Report 2012 : https://unctad.org/en/PublicationsLibrary/wir2012_embargoed_en.pdf.

³ World Investment Report 2018 : https://unctad.org/en/PublicationsLibrary/wir2018_overview_ru.pdf.

- general exemptions, for example, for the protection of human, animal and plant life or health or the conservation of exhaustible natural resources (present in 1 of the 13 agreements concluded in 2000 and in 12 of the 13 in 2017);
- explicit recognition that parties must not lower standards of health, safety or environmental protection in order to attract investment (not present in any of the 13 agreements concluded in 2000 and 12 of the 13 in 2017);
- promote corporate and social responsibility standards through the inclusion of a clause in the investment agreement or a general reference in the preamble of the agreement (not present in any of the 13 agreements concluded in 2000 and present in 3 of the 13 in 2017);

The EU Plan on Human Rights and Democracy 2015-2019 states that Member States should:

- develop and improve the methodology for assessing the human rights impact of investment projects (including post-project evaluation);
- include provisions on respect for and protection of human rights in their bilateral investment agreements with third countries;
- include in their investment agreements references to recognized human rights standards (including the 2011 UN Guiding Principles).¹

When entering into such agreements, states should assess the real and potential human rights impacts of the project. In 2015, J. Ruggie developed, in addition to the 2011 UN Guidelines «Principles for Responsible Contracts Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations».² The Principles for Responsible Contracts should be read in conjunction with the 2011 UN Guidelines and applied with due regard to the obligations of states as set out in international human rights law.

The UN OHCHR has developed training modules for the Principles for Responsible Contracts.³

¹ Joint Communication of the European Parliament and the Council: Action Plan on Human Rights and Democracy (2015-2019) « Keeping human rights at the heart of the EU agenda»: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015JC0016&from=EN>.

² Principles for Responsible Contracts Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations, p. 1: https://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf.

³ OHCHR training modules for the Principles for Responsible Contracts: <https://www.ohchr.org/RU/Issues/Business/Pages/trainingmodules.aspx>.

In March 2019, the UN Working Group on Business and Human Rights, within the framework of its mandate, sent a formal appeal to the Republic of Belarus as a member of Working Group III on Settlement of Investment Disputes, working under the framework of UNCITRAL. The appeal identifies the main problems related to the settlement of investment disputes and human rights (e.g. the possibility of access to legal remedies and participation in the procedure of dispute resolution by third parties (whose rights have been violated by the investor's activity)), and calls to take them into account in the work on the issue of settlement of investment disputes.

Belarus is characterized by a situation where investment projects are implemented at the expense of human rights (including security):

2012-2019

Construction of a sulphate bleached pulp plant is an investment project implemented since 2012 by Svetlogorskiy celulozno-kartony kombinat (customer) and China CAMC Engineering Co., Ltd. (CAMCE) (general contractor). The project is being implemented on the basis of Decree of the President of the Republic of Belarus No. 391 of 30.08.2012 «On the construction of a plant for the production of sulphate bleached pulp». At the same time, the major part of the project assets is a buyer's loan provided in accordance with the Credit Agreement between the Government of the Republic of Belarus, the Export-Import Bank of China and the Industrial and Commercial Bank of China.

Although the Decree stipulates (para. 3.2) that the general contractor shall adapt design documentation for the construction of the plant facilities to the norms of Belarusian law and ensure state regulatory compliance review in accordance with the established procedure, the construction of the plant was accompanied by environmental and safety problems. They became evident in the course of construction work performed by the Chinese contractor (defective cable, violation of the fire safety legislation, unpleasant smell spreading in Svetlagorsk, etc.). A complaint was filed with the State Control Committee by the Gomel regional department of the Ministry of Emergency Situations claiming a violation of Belarusian law in the field of fire safety and construction activities. The document shows that the Chinese contractor was building the plant without taking into account the requirements of technological regulations. Gomel regional department of the Ministry of Emergency Situations concluded that «the above-mentioned violations will lead to the impossibility of putting into operation not only the warehouse of finished products, but the facility as a whole ..». In May 2019 the roof of the plant collapsed in one of the workshops.

As of August 2019, the plant has not been officially put into operation and is operating in a pilot mode, while already selling its products. When asked how this was possible, the deputy director of the plant answered: «We have a document which takes all issues off the table».

In late May 2019, Bellesbumprom consortium sent a letter to the Council of Ministers, which reported that in the building of the central administration of the plant under the raised floor an electronic device was found, which is not provided by the project. According to the preliminary assessment of the plant's specialists, the device is intended for remote damage to the equipment through an artificial short circuit. The management of the plant wanted the law enforcement bodies to check the general contractor and initiate a criminal case, but their request was denied.

On August 15, 2019 the plant shareholders' meeting was held to consider the issue of termination of the contract with China CAMC Engineering Co. The works will be completed by the Finnish company Andritz Oy, a subsidiary of the Austrian concern Andritz.

Sources: https://udf.by/news/main_news/192527-bezuprechnoe-kitajskoekachestvo-v-svetlogorske-ruhnula-krysha-celljuloznogo-kombinata.html; <http://www.sckk.by/ru/node/10006>; <https://news.tut.by/economics/647988.html>.

In this situation the loyalty of the state to the contractor despite numerous violations of the Belarusian legislation (including the Decree of the President of the Republic of Belarus No. 391 of 30.08.2012 «On construction of a plant for production of sulphate bleached pulp») is evident. At the same time, it is not clear why this very company was chosen, how the tender was held and whether it was held at all, and on what basis people (employees of the plant and residents of the area where the plant is being built) were exposed to danger for such a long time.

- Through membership in international economic and financial organizations, encourage cooperation in this area and encourage initiatives by such organizations to address the human rights impact of business activities. This includes promoting common understanding and policy coherence.

While there are some measures in place at the state level in Belarus (mainly general regulatory measures), there are several areas of concern with regard to human rights abuse by business that require much greater state engagement and attention than is currently demonstrated by the state (see sections 8 and 9 of this Guide for more details).

6.2. National action plans on business and human rights

National action plans for business and human rights make it possible to outline and plan the full range of measures that the state should take to prevent the negative impact of business activities on human rights. This tool was proposed by the UN Human Rights Council Working Group on Business and Human Rights as the most effective and basic step in implementing all other measures.

National plans contribute qualitatively to the promotion and advancement in the country of the 2011 UN Guiding Principles on Business and Human Rights.

Benefits of having a National Action Plan on Business and Human Rights in the State

- Better coordination and policy coherence between government agencies in areas relevant to business and human rights.
- Ability to identify national priorities and specific actions to be taken in this area clearly and in an inclusive manner.
- Transparency and predictability of processes for Belarusian stakeholders (business, civil society) and international stakeholders (foreign investors, international organizations: IFC, IMF, EBRD, UN, ILO, etc.).
- Ensuring continuous monitoring and evaluation of the achievement of planned measures, which leads to their more effective implementation.
- Platform for continuous multilateral dialogue: «state - business - civil society - people».
- Significant contribution to the state's achievement of the SDGs (see Section 3.3 of this Guide).¹

Organization of the process of developing a National Action Plan

- The process should be based on the coordinated participation of all relevant stakeholders – representatives of governmental agencies and be led by a dedicated structure within the Government with the necessary institutional capacity, authority, and resources.
- The process should be evidence-based, and thus include an analysis of existing practices and remaining gaps in the regulation of business and human rights issues.
- Civil society must be able to participate effectively in this process.
- The process should be transparent and predictable for all stakeholders.²

¹ Guidance on National Action Plans on Business and Human Rights developed by the UN Working Group on Business and Human Rights: <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>; National Action Plans on Business and Human Rights Toolkit developed by Danish Institute for Human Rights, 2017 : <https://globalnaps.org/resources/>.

² Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: «National action plans on business and human rights» (UN Doc. A/69/263), para. 8: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/69/263&Lang=R>.

Effectiveness criteria of a National Action Plan



The National Action Plan should:

- reflect the complementary and interrelated nature of government and business responsibilities, in line with the 2011 UN Guiding Principles;
- propose a set of reasonable measures, tailored to national circumstances;
- strengthen vertical and horizontal coherence of actions within the state (both between government and business, between business and people, etc.);
- promote the unification of practices to protect human rights from the adverse impact of business at the international level (i.e. take into account best practices in this area);
- be based on human rights principles and incorporate a gender dimension, as well as effectively address issues of vulnerability and/or marginalization.¹

Table 2.

Some resources for developing a National Action Plan on Business and Human Rights

Methodological guidelines for the development cycle of a National Action Plan on Business and Human Rights, its structure and content, monitoring, implementation	Guidelines for National Plans for Business and Human Rights prepared by the UN Working Group on Business and Human Rights (2016) https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx National Action Plans on Business and Human Rights Toolkit developed by the Danish Institute for Human Rights (2017) https://globalnaps.org/resources/
Analysis of the effectiveness of some existing National Action Plans on Business and Human Rights	National Action Plans on Business and Human Rights: An Initial Analysis of Plans from 2013-2018 prepared by the Danish Institute for Human Rights (2018) https://globalnaps.org/resources/

¹ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: «National action plans on business and human rights» (UN Doc. A/69/263), para. 32: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/69/263&Lang=R>.

Information on the specific features of a National Plans on Business and Human Rights as they relate to specific groups of individuals, stakeholders, and spheres of business activity	Children's rights in the National Action Plan on Business and Human Rights: A guide developed by the Danish Institute for Human Rights in collaboration with the International Corporate Accountability Roundtable (ICAR) and UNICEF (2016) The Extractive Industries and National Business and Human Rights Plans: Guidance Developed by the International Corporate Accountability Roundtable (ICAR) and the Due Process of Law Foundation (DPLF) (2017) Human rights defenders and National Action Plans for Business and Human Rights: A guide prepared by the International Corporate Accountability Roundtable (ICAR) and the International Service for Human Rights (ISHR) (2016) https://globalnaps.org/resources/
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To date, the need to develop National Action Plans has been recognized as an effective way to implement the 2011 UN Guiding Principles and to advance the theme of human rights in the context of business by:

- [51 states](#), representing all regions of the world (see ANNEX 5);
- [key international organizations and initiatives](#) at the universal and regional levels: UN, UNICEF, OECD, European Union, Council of Europe, Organization of American States, African Union, ASEAN, G7, and G20¹;
- [business unions and associations](#): International Organization of Employers, International Chamber of Commerce, International Council on Mining and Metallurgy, World Business Council on Sustainable Development, etc.²

The level of representation, both by subjects and by geographical coverage (practically every region of the world), testifies to the emerging universal practice and the common approach to solving problems in the sphere of business and human rights, adherence to which is required by the development of international business processes and the framework of sustainable development as a whole.

Of the 24 countries that already have National Action Plans for Business and Human Rights (see ANNEX 5), about [60%](#) are Western European countries, i.e. countries with developed and functioning market economies, a high legal culture in general, and a culture of human rights in particular.

¹ National Action Plans on Business and Human Rights Toolkit developed by Danish Institute for Human Rights, 2017, p. 13-15 : <https://globalnaps.org/resources/>.

² Ibid. p. 15

If these data is compared with the differentiation of human rights violations and promotion by business by regions of the company's operation (see diagrams below), there is a clear correlation between the two:

- the level of economic and legal development of the country and integration of the issue of business and human rights into the government policy;
- the level of economic and legal development of the country and business attitude to human rights.

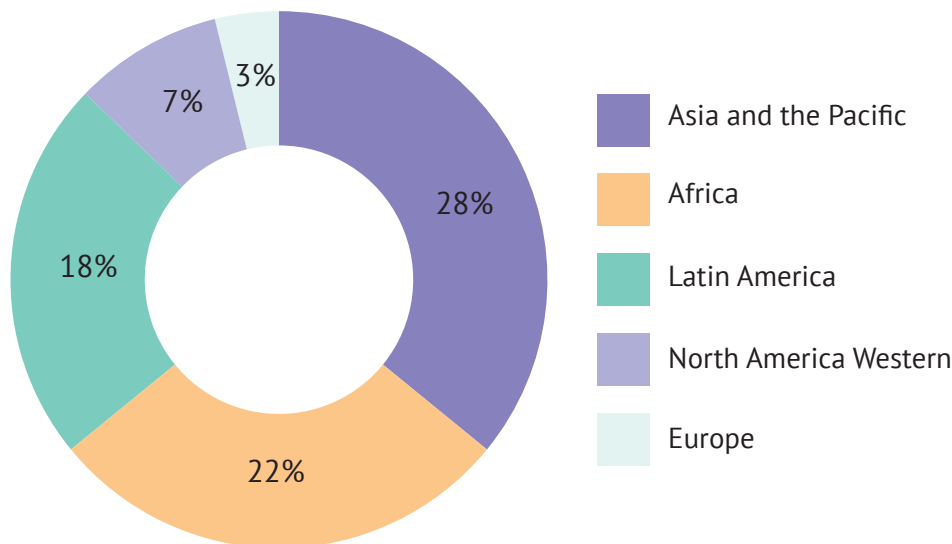


Fig. 4. Human rights violations and the region in which the company operates (universal perspective).¹

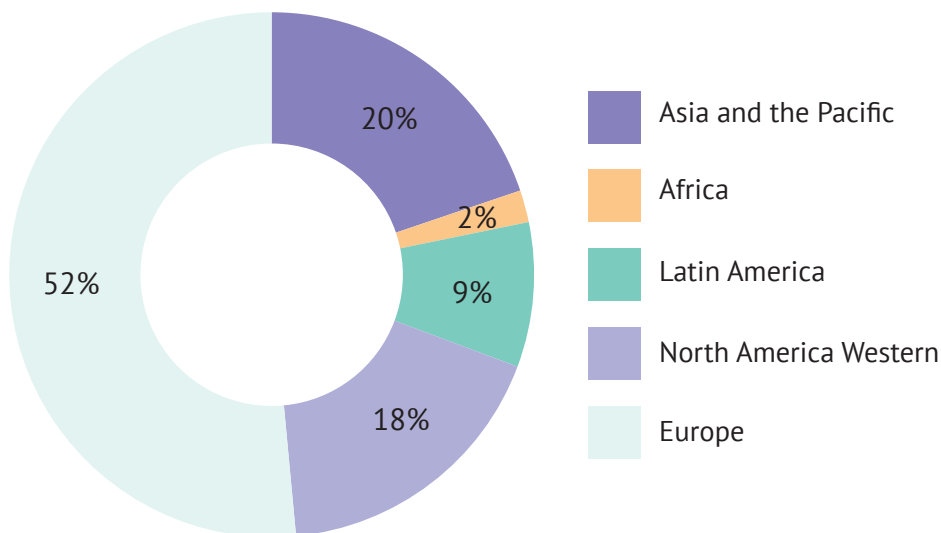


Fig. 5. Promotion of human rights and the region in which the company operates (universal perspective).²

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), para. 6. UN Doc: A/HRC/8/5/Add.2), para. 8: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

² Business recognition of human rights: Global patterns, regional and sectoral variations: Addendum 4 to the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 2007 (UN Doc.: A/HRC/4/35/Add.4), para. 11: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/111/66/PDF/G0711166.pdf?OpenElement>.

7. THE DUTY OF BUSINESSES TO RESPECT HUMAN RIGHTS: WHAT BUSINESSES SHOULD NOT DO

7.1. Status and legal framework of a business obligation to respect human rights

The nature of the business obligation to respect human rights has a social basis. From the way in which the topic «business and human rights» itself has emerged (see section 2 of this Guide), and from the recognition of the UN Guiding Principles 2011 (see ANNEX 2), it is clear that the existence of such a duty is a requirement of today and is recognized by all key stakeholders: international organizations, states, and business itself.

The drafter of the 2011 UN Guiding Principles, J. Ruggie points out that the obligation of business to respect human rights is a «transnational social norm» because it has been recognised as such by relevant stakeholders (including business). This norm has emerged as a result of the advent of a «global society», the result of globalization and the internationalization of the economy, characterized by the active participation and role of both public and private actors.¹

The 2011 United Nations Guiding Principles define the nature and status of this duty as «a universal standard of expected conduct for all businesses» (commentary on Principle 11).

As a general rule, international human rights law imposes direct obligations only on states. Business is not a party to international human rights legal agreements and is not formally bound by them. BUT!

- First, when we talk about the obligation of any stakeholder to respect human rights, the primary question is not the formal binding character of a norm, but the creation of conditions for a decent existence for a person. If such conditions can be created more effectively, based on the provisions of documents that have no formal legal force, there is no sense in talking about formal non-binding character of these documents.

¹ The Social Nature of the UN Guiding Principles on Business and Human Rights 2011 / J. Ruggie, 2017, p. 13-15: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/workingpaper_67_0.pdf.

- Second, the obligation of a business to respect human rights today is indeed a «universal norm of expected behaviour». A number of universal and regional documents (including industry-specific documents aimed at regulating business activities and adopted by business itself) proclaim either directly or indirectly the obligation of business to respect human rights (see ANNEX 3).

Today, the international community at all levels has an understanding and expectation that, in addition to complying with the laws of the State under whose jurisdiction it operates, business must observe universally recognized human rights and freedoms.

France, April 2019, Samsung France case

The Tribunal de Grande Instance de Paris acknowledged that a company's ethical slogans declared publicly (e.g. «We are the most ethical company», etc.) are equated with commercial practice, trade custom (lex mercatoria) and the company is obliged to act in accordance with them.

Plaintiffs call the decision «historic», as it is the first time in France that a court has recognized that statements of corporate ethics of a company can be considered marketing practice.

Sources: <https://www.business-humanrights.org/en/france-samsung-electronics-indicted-for-misleading-advertising-re-alleged-labour-abuses-child-labour-in-china-s-korea-vietnam>; <https://www.asso-sherpa.org/samsung-sherpa-and-actionaid-france-file-a-second-lawsuit-following-the-closing-of-the-case-by-the-public-prosecutor>.

For more information on the case, see section 11.1 of this Guide.

At the same time, such an obligation:

- does not depend on the ability and willingness of the state to fulfil its international legal obligations in the field of human rights and does not obliterate these obligations (i.e. business cannot and should not replace the state in this context);
- is independent of the existing duty of business to comply with national law (see Section 5.5 of this Guide for more details);
- should not be equated with charity activities that business can engage in within CSR (see section 5.4 of this Guide for more details).

7.2. The sphere of business influence on human rights

- the range of persons who may be affected by business activities;
- the range of rights that may be violated by certain actions of the company;
- the entire network of business relationships of the company-entities (including the state) in whose activities the company may be involved in one way or another and whose actions may have some impact.

What kind of business may be at risk of human rights abuses?

The topic «business and human rights» refers to any business regardless of its size (large/middle/small), area of business, form of ownership (public/private), place of business (specificities of country/countries).

The theme of «business and human rights» is not only about international business, but also about business operating within the same jurisdiction (UN Guiding Principles 2011, paragraphs 14 and 11).

Figure 6 provides a universal cross-section of statistics on human rights violations depending on the sphere of business activity. It is possible to observe a certain conditionality of human rights violations by the sphere of business activity.

The leading positions in this sample are occupied by extractive industries and retailers.

The extractive industry is associated with harsh and dangerous working conditions and the main violations here concern the labour rights of workers.

Retail is a field of business activity carried out in completely different conditions than the extractive industry, but it also holds a leading position in the context of the negative impact of business activities on human rights. This is because almost half of [indirect business involvement in human rights abuses \(18% of 41%\)¹](#) occurs in [the supply chain](#) (see Section 7.8 of this Guide).

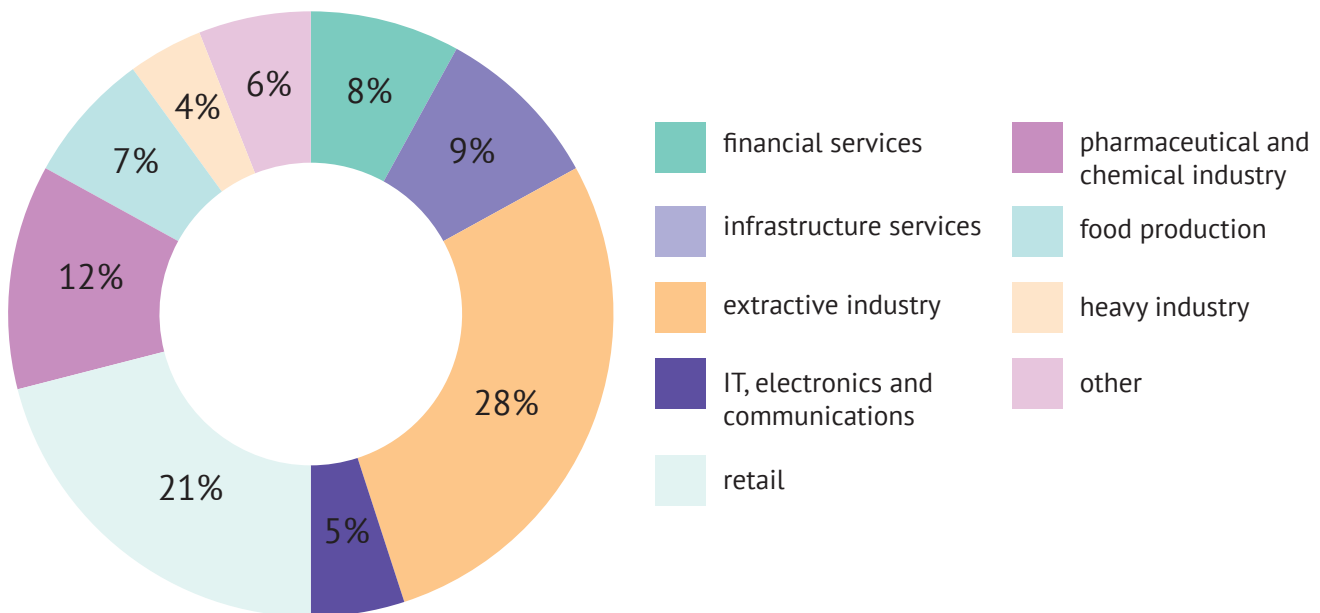


Fig. 6. Human rights violations and the business sector²
(universal perspective)

¹ Ibid. para.36

² Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), para. 8: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

7.3. Whose rights may be affected by business activity?

In the context of subjects that may be affected by business activities, 3 ranges of such impact can be identified:

- internal circle, which concerns the impact of business activities on its employees (i.e. people who are «inside» the business);
- external circle, which refers to the impact of any business activity on real or potential consumers of the company's products / goods / services (i.e. people who are «outside» the business);
- the external circle that refers to the impact of any business activities on the environment¹ in general (i.e. people who are «outside» the business which are not its potential or real consumers).

Thus, there are 3 main systems of coordinates within the framework of the topic in terms of subjectivity: «employer - employee», «producer - consumer», «business - environment».

These three «circles», although indicated in the figure 7, in the scheme «from smaller to larger» refer not to geographical, territorial coverage, but to coverage by number of people.

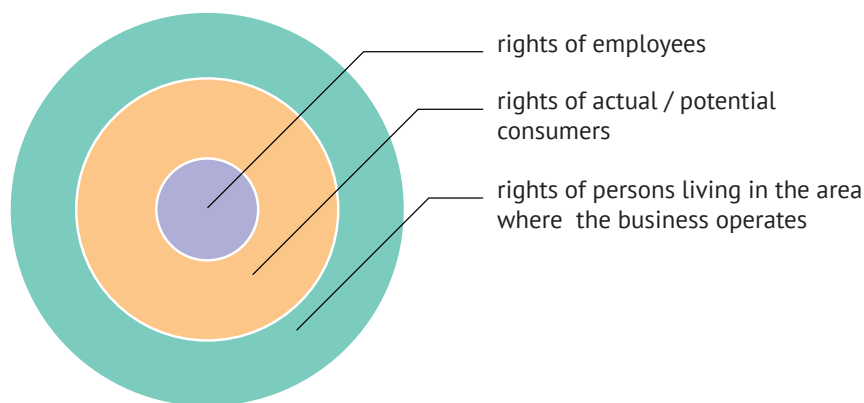


Fig. 7. Sphere («circles») of business impact on human rights

A business activity may violate human rights in all three «circles of influence», in two, or in one. The circle of those whose rights may be negatively affected by business activities largely depends on the size of the business, its sphere of activity.

The statistics shown in Figure 8 demonstrates the correlation between the negative impact of business activities on human rights «inside» and «outside» the business.

The above statistics shows how much business activity can affect the so-called 'local communities' - as well as the rights of its employees and much more than real or potential consumers. Thus, the harm caused to people whom, at first glance, the business 'does not concern' may be no less (and sometimes even more) than the harm caused to people in direct daily contact with the business.

¹ In this context, «environment» is understood in a broad sense - not only as a natural environment, but also, in general, as the entire area where business operates: people living in that area (district, region, village, city area, etc.), the natural resources of that area, the infrastructure of that area, etc. - that is, the so-called «local community».

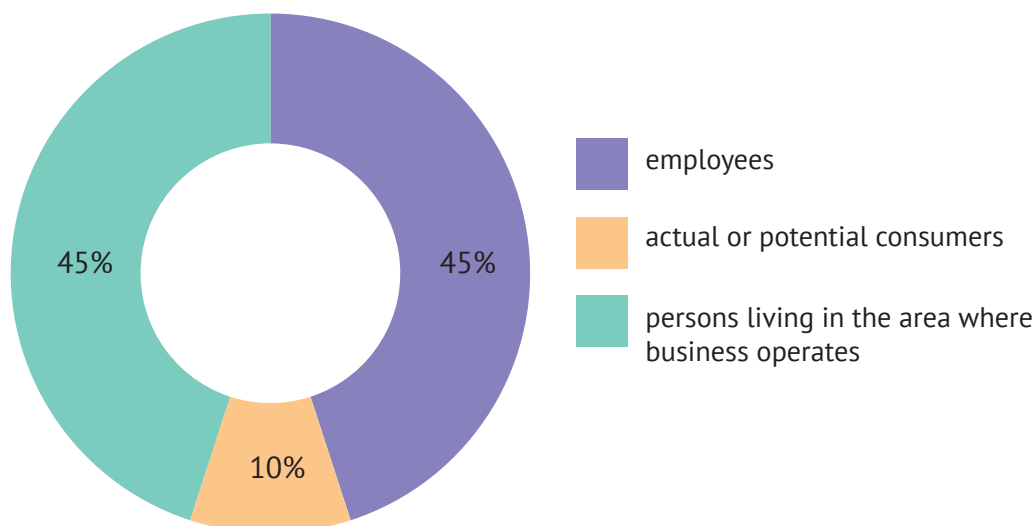


Fig. 8. Circle of persons affected: internal and external dimension of business activities (universal perspective)¹.

The damage caused to so-called «local communities» is mainly related to environmental damage caused by business activities, which in turn can adversely affect and violate a number of human rights, including the right to health. This needs to be taken into account by businesses when assessing the impact of their activities on the local communities in which they operate (for more information on impact assessments, see Section 11 of this Guide), as well as by the state when taking legislative and other measures to prevent such negative impacts, and when entering into investment agreements.

It should be borne in mind that the activities of a particular business may have a **negative impact on the rights of people belonging to a particular social group**. For example, business activities may have a negative impact on the rights of people with disabilities, LGBT persons, women, children, etc. In this case, it will not matter if the person is «inside» the business or «outside». The determining factor in assessing the negative impact of business activities on his or her rights will be his or her belonging to a particular social group.

Understanding the circle of business impacts is necessary to enable a clearer identification of potential or actual victims of human rights abuse by business, and to better assess the human rights impact of business activities (see section 11 of this Guide for more details on impact assessment).

7.4. What human rights may be affected by business activity?

First and foremost, it must be emphasized that business activities can have a negative impact on the full range of existing human rights - civil and political, as well as social, economic, and cultural.

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), para. 32: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

According to Principle 12 of the 2011 UN Guiding Principles, the business obligation to respect human rights applies to all universally recognized rights, which include, at a minimum, the human rights contained in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 2010 ILO Declaration on Fundamental Principles and Rights at Work, which is enshrined in 8 fundamental conventions.

Based on three «circles» of the negative impact of business activities on human rights, it is more convenient to analyse and take into account the spectrum of specific rights being violated in the same way:

- rights that may be affected by business activities in the internal aspect of their activities (i.e. the rights of their employees). This is the case primarily with respect to labour rights. At the same time, the company may also violate the non-labour rights of its employees;
- rights that may be affected by the business activities in the external aspect (i.e., the rights of potential and actual consumers, as well as the rights of people living in the area where the business operates).

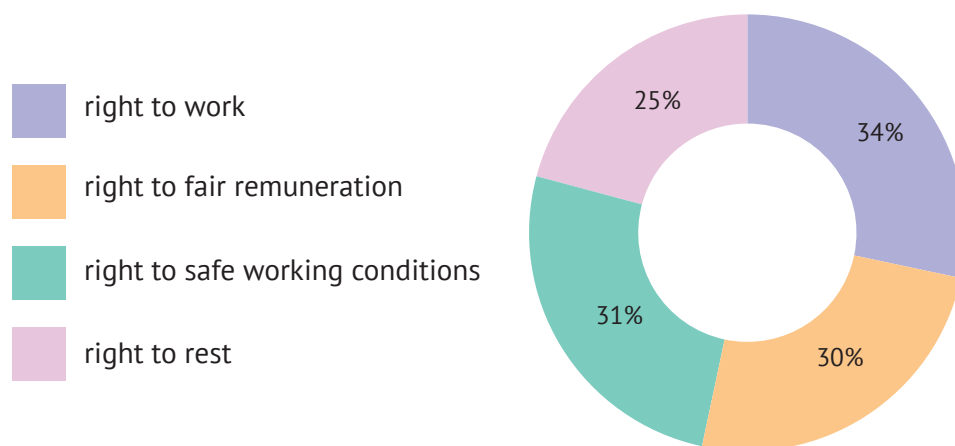


Fig. 9. The main violated rights of employees (universal perspective)¹

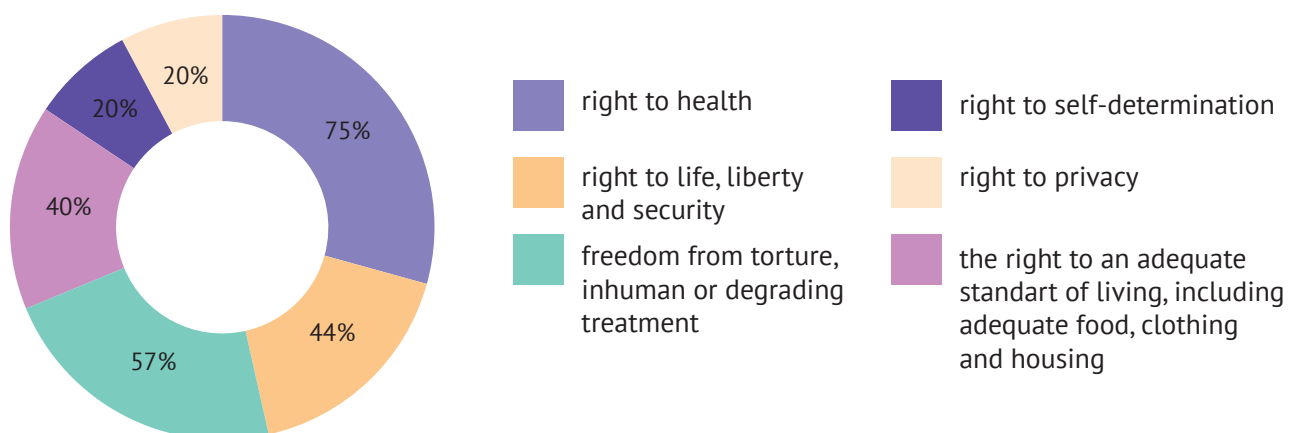


Fig. 10. The main violated rights of the actual/potential consumers and people living in the area where the business operates (universal perspective)

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), pp. 17-21: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

Comparing the figure of 45% of cases of business impact on the so called «local communities» (fig. 8), which mainly concern environmental damage, and the figure of 75% of all violations, which concern the violation of the right to health (fig. 10), one can see how business attitude towards the environment in the area where it operates is directly related to the realization of people's rights and freedoms. At the same time, it is crucial to understand that environmental damage does not only violate the right to health.

This is confirmed by J. Ruggie's report to the UN Human Rights Council, which analyses the data presented above. He notes that about 1/3 of all cases of environmental damage caused by business corresponded to violations of various human rights. At the same time, the issue of environmental damage was raised in relation to all areas of business activity (indicated in fig. 6). Various forms of pollution and other damage resulting in environmental degradation have affected not only the right to health, but also the right to life, the right to food, the right to housing, the cultural rights of minorities, and the right to enjoy the benefits of scientific progress. It is also notable that a number of environmental damage cases corresponded to a situation where a company obstructed access to clean water or contaminated sources of clean drinking water (20% of all environmental violations).¹

In the Belarusian context, the negative impact of business on the environment is currently one of the central themes and challenges in the framework of the negative impact of business on human rights (see Section 9 of this Guide).

7.5. What does it mean «to comply»?

The 2011 UN Guiding Principles establish two sets of principles on the business responsibility to respect human rights:

- A) basic principles (Principles 11-15, 22, 23) which answer the question of WHAT business should (and should not) do, and
- B) instrumental principles (Principles 16-21, 24) which answer the question of HOW to minimize the risks of violations.

The obligation to respect human rights includes 4 elements for business (Principles 11, 13, 22):

- the responsibility not to violate human rights through their activities (i.e., to avoid direct adverse human rights impact).² Business activities are understood in this context as both actions and omissions;

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), pp. 27: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

² The corporate responsibility to respect human rights: an interpretive guide, 2012, p. 5: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_Ru.pdf.

- the duty not to contribute to the violation of human rights by another actor (i.e., avoid indirect impact);
- seek to prevent or mitigate adverse human rights impacts that are directly linked to the business' activities, products or services by its business relationships, even if it has not directly contributed to those impacts (i.e., «enable» leverage);
- the obligation to address the abuse, where it occurred.

An **adverse human rights impact** occurs when a business entity's business activities deprive an individual of the opportunity or prevent the individual from fully exercising his or her rights.¹

It is necessary to distinguish between situations of **actual (real) adverse human rights impact** of business activities and **potential adverse human rights impact**.

The **actual adverse human rights impact** of business activities is the adverse human rights impact that has already occurred or is currently occurring.

Actual adverse business impact on human rights that result in the abuse of those rights may occur **directly or indirectly**.

The **potential impact** of business activities on human rights is the adverse impact that may occur but has not yet occurred.

7.6. The obligation of businesses not to violate human rights in their activities

Direct human rights abuse occurs when a company itself (through its employees or representatives) creates adverse human rights impact through its actions. In case of such direct violation, the cause of the violation is the company's own actions.

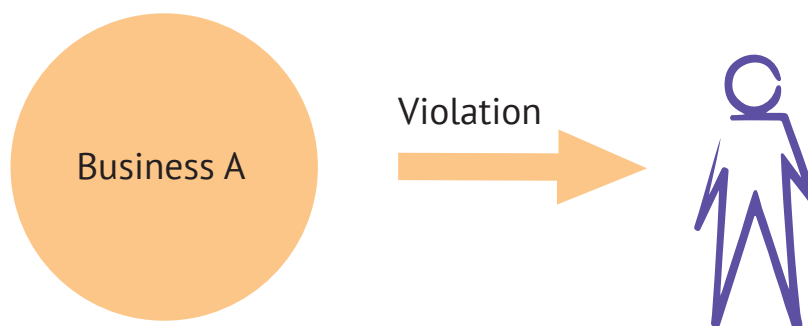


Fig. 11. Direct impact of business on human rights

Direct violations concern all groups of possible victims, i.e. they are typical for «employer - employee», «producer - consumer», and «business - environment» relations.

¹ Ibid. p. 15.

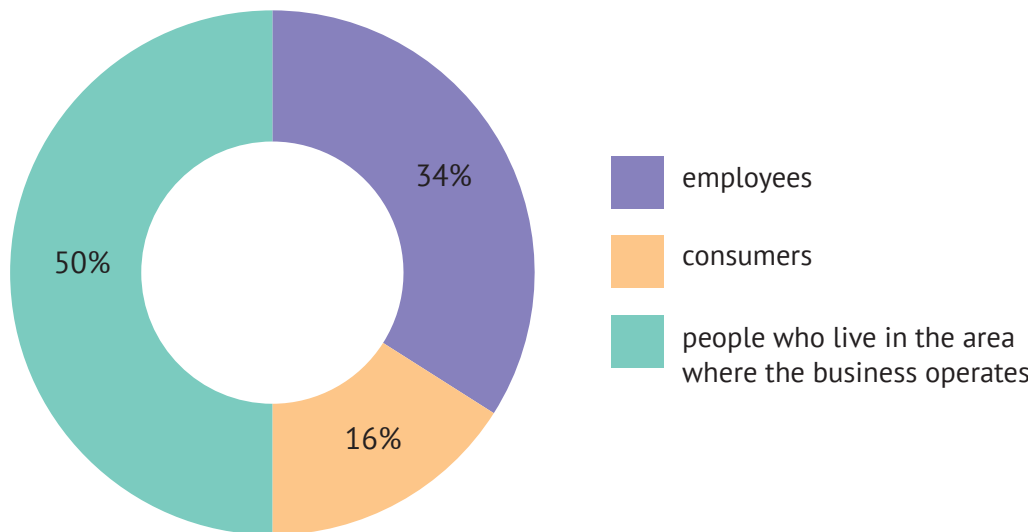


Fig. 12. Direct violations by the circle of persons affected (universal perspective)¹

Examples²

Direct impact on employees' rights:

- any type of discrimination in employment relationships: discrimination in hiring, career advancement, salary determination, etc.;
- sexual harassment at work; sending employees to perform dangerous work without adequate equipment and safety instructions; use of child labour; overtime work without compensation; inappropriate living conditions in service housing; prohibition to live in service housing with family, use of prison labour, etc.

The direct impact on consumer rights generally refers to the company's acts in relation to its own goods or services and, for the most part, to discrimination, sexism, and harm to health:

- discrimination of the customers on any grounds by the restaurant staff;
- refusal to serve a bank customer on discriminatory grounds³;
- discriminatory remarks, use of «hate speech» by any media, etc.;
- poor quality goods, etc.

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), paras. 44, 65, 89: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

² All examples (of both direct and indirect impacts) referred to in Section 7.6 are real and partly taken from: Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), pp. 35, 38-39: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012, pp. 2. 15–16: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_Ru.pdf.

³ The report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations (UN Doc.: A/HRC/8/5/Add.2) refers to one specific case where a bank closed a client's account because the client was a transgender.

The direct impact on the rights of people living in the place where the business operates mainly concerns environmental damage affecting the right to health, an adequate standard of living, including water, food, clothing and housing:

- toxic industrial waste that pollutes the air and drinking water sources;
- inadequate company's environmental impact assessments (including the use of inappropriate equipment to conduct such assessments, failure to publish the findings of such assessments);
- violations of the rights of indigenous peoples living in the area in which the business operates.

7.7. The obligation of businesses not to assist in the violation of human rights by another entity (other company or state)

An indirect violation of human rights occurs when the acts of the company itself do not directly cause the violation but contribute to the violation (either directly or through a third party).¹

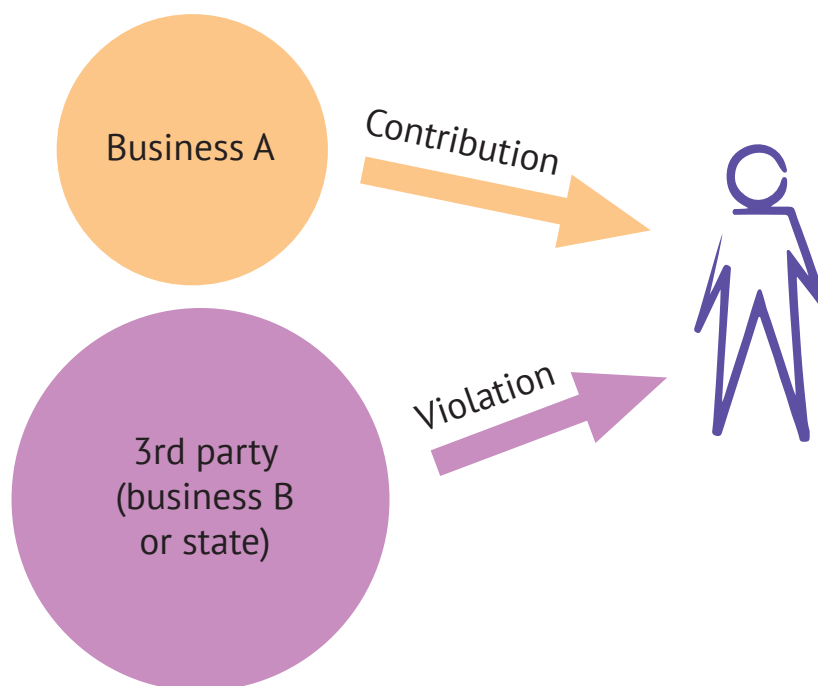


Fig. 13. Indirect impact on human rights (direct «contribution» to human rights violation by a third party)

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), paras. 40-42: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012. 15-16: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_Ru.pdf.

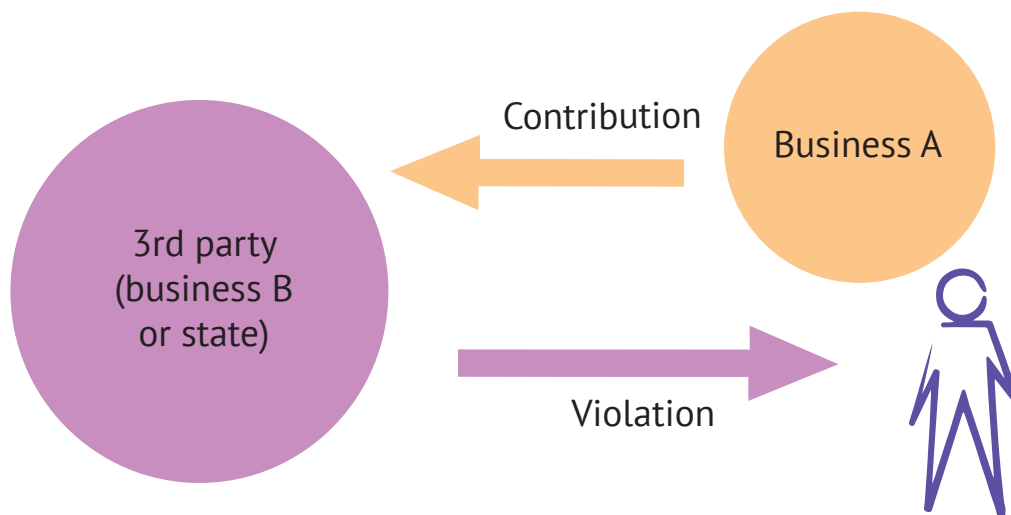


Fig. 14. Indirect impact on human rights («Contribution» to human rights violation through a third party)

In the context of the UN study described in this section, indirect impacts affect employees and local communities and do not affect consumers, although in practice there are instances of a company «participating» in a consumer abuse by another company.

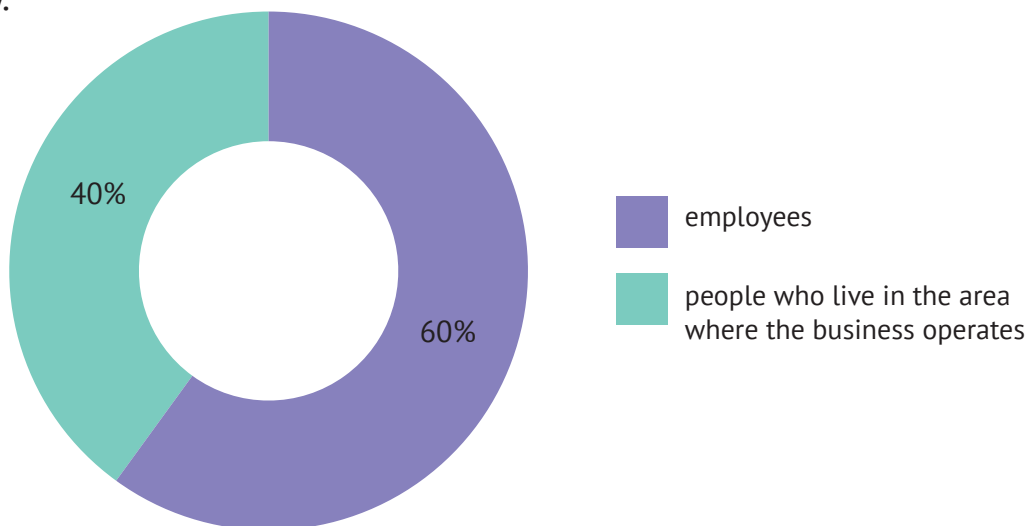


Fig. 15. Indirect violations by circles of affected persons (universal perspective)

Examples

Indirect impacts on human rights (employees and consumers) in the context of the «contribution» to such impacts mainly concern cases:

- where the acts of company A contribute to, facilitate, and enable the violation of human rights by another company (B) (fig. 13).

2016-2019

Since 2016, American human rights organizations have filed five lawsuits against Facebook on charges of facilitating discriminatory advertising. The essence of the charge was that the targeting technology that existed on Facebook allowed advertisers to set up various filters to restrict the viewing of their ads on housing, job offers, loans to various

vulnerable groups (members of national minorities, women, the elderly). In March 2019, an agreement was reached between the company and the applicants, in which Facebook agreed to pay \$5 million in compensation and committed to develop a separate portal specifically for housing, work and credit ads, where advertisers would not be able to set filters on age, gender, zip code (i.e. place of residence) and other criteria on the basis of which discrimination is prohibited under US anti-discrimination laws.

Sources: <https://www.wired.com/story/facebook-advertising-discrimination-settlement/>; <https://www.usatoday.com/story/news/2019/03/19/facebook-pledges-block-ad-discrimination-targeting-older-workers-blacks/3208282002/>

- investment, financial support by Company A to Company B, which violates human rights (using forced, child labour, practicing discrimination, violating labour and rest standards, environmental standards, etc.) (fig. 14).

July 2019.

NGOs from the Netherlands, Indonesia, and Liberia filed a complaint against Dutch bank ING Group with the OECD National Contact Point in the Netherlands. The complaint concerns funding from Dutch bank ING Group for a number of companies involved in violations of human rights and environmental standards in the palm oil industry, namely Noble Group, Bollore Group/Socfin and Wilmar International.

Source: <https://www.business-humanrights.org/en/ngos-file-oecd-complaint-against-dutch-bank-ing-for-financing-alleged-palm-oil-abuses-incl-company-comments>

Indirect impact on the rights of people living in the place where the business operates. It is important to note that about 90% of all indirect impacts on the rights of people living in the area where business operates **were related to human rights violations by the state**. This means situations in which the company contributed to its operations and thus participated in human rights abuses by the state.¹

For example:

- providing the state with equipment and services for an energy project for which a dam needs to be built. To implement this project, the state relocated 50,000 people without providing adequate compensation, thus violating their rights to an adequate standard of living, food, water, and housing. The state also prevented demonstrations and protests by local residents protesting against such construction. All this was accompanied by the use of force against protesters and arbitrary arrests of protesters;

¹ Corporations and human rights: overview of the scope and forms of alleged corporate-related human rights abuses: annex 2 to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations, 2008 (UN Doc.: A/HRC/8/5/Add.2), para. 80: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/63/PDF/G0813663.pdf?OpenElement>.

- financing a construction project that requires the liquidation or modification of a cultural property object of historical or cultural value to the population of a particular locality or the state as a whole. In this case, it does not matter whether the state or the private entity is carrying out the construction. The task of the state in this case is to prevent construction from taking place in a particular location and, at a minimum, to hold a public debate on the possibility of such construction. If the state allows the construction to proceed, then business, financing such construction also «invests» in the violation of the cultural rights of members of the local community;
- giving the state access to personal data that is used in violation of the right to privacy;
- constructing a prison building where torture and inhumane treatment are practiced.

In cases where the third party is not the state but another economic entity, an example is the creation of advertising for a manufacturer of children's toys that are unsafe for health or promote violence, cruelty, discrimination, etc.

7.8. The obligation of businesses to take action to prevent or mitigate the adverse human rights impact of companies' value chain

This is a situation where the actions of the company itself are not the direct cause of the violation and do not contribute to the violation, but the company may be linked to the violation because the adverse human rights impact is caused by the actions of a third party in a business relationship with the company and directly related to its business operations, products or services.

Business relations in the context of business and human rights refer to both direct and indirect relationships with business partners, companies involved in the value chain and any other state (including the state itself) and non-state companies that are directly related to the company's business operations, products or services. Thus, it includes indirect business relationships in the value chain¹ (i.e., not only the first parts of the chain), as well as holders of both minority and majority shares in public companies.²

¹ In this context, a value chain is defined as any transaction that contributes to the price of a good or service. It includes transactions of a company's direct and indirect business partners that either: a) supply products or services that contribute to the creation of a company product or service, or b) receive such products or services from the company (the definition can be found in the Interpretive Guide 2012, page 8).

² In the English language version of the 2011 Guiding Principles - «Business relations» (Definition can be found in the Interpretive Guide 2012, page 5).

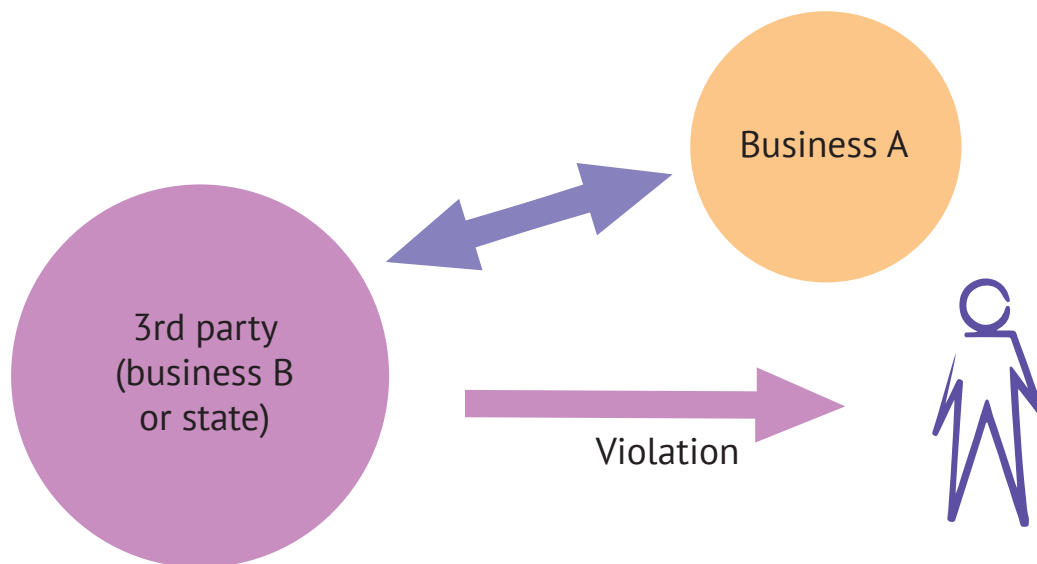


Fig. 16. « The link » to human rights violations through business relationships

Examples

Impact on employee rights. 40% of all cases of employee rights impact through the company's business relationships are related to the company's suppliers, i.e. they occur within the supply chain.¹

This category includes any cases when a retailer's supplier violates the rights of its employees. In this case, the retailer will be «involved» in the violation of the labour rights of its suppliers' employees because it will derive commercial benefits from the sale of products manufactured in a manner that violates human rights. It is also possible for the retailer itself contributing to the violation of the rights of the supplier's employees – through unjustified change of the conditions related to the products supplied without providing a reasonable transitional period, which forces the supplier to violate the labour and rest standards of its employees, who are ordered to perform the work «before tomorrow».

Impact on the rights of people living in the area of business operation:

- the sale at a retail chain of garments made using child labour arranged by the supplier of the garment;²
- the supply of ultrasound equipment to a medical facility which makes ultrasound examinations of pregnant women to ascertain the sex of the foetus in order to preserve the pregnancy only in the case of the male foetus.

¹ Ibid. para. 56.

² This example is illustrative in the context of the circle of business impact (Section 7.3 of this Guide). In the light of the increasing internationalization of business, supply chains are not limited to one state. In this example, the activities of a retailer located in one State may indirectly affect local communities and the rights of employees in another State (where the supplier operates).

All elements of the business obligation to respect human rights as described in Sections 7.7, 7.8 are forms of «involvement» by the company in violation of human rights.

The business' «contribution» to human rights abuses will vary in each of these cases, but it is important to note that the term «contribution» implies that the business benefits from a situation of human rights abuse. By acting directly, «investing» in the violation of another entity by its actions, or by not attempting to stop human rights abuses occurring within its value chain, business obtains commercial gains by violating or participating in human rights abuses in any case, which is unacceptable.

In addition, a situation of human rights abuse can bring additional benefits to business - for example, a retailer may be able to reduce the purchase price of a supplied product by reducing production costs through the use of child labour or forced labour by the supplier. In this case, knowing and not preventing such practices will also be considered a business «contribution» to human rights abuses.

The indirect impact of business on human rights and failure to address abuses in the company's supply chain is linked to **complicity**. In the context of business and human rights, complicity is understood in two senses: traditional, legal (existing in national legislation and confirmed by the practice of international criminal tribunals), and non-legal.

In the first sense, complicity will cover all cases within a qualifying offence where a company, knowing that a business partner (including the state) has committed a violation, has continued to provide real assistance in a wrongful act that significantly affected the violation. For example, if criminal proceedings are initiated for the human rights violations described above, the company with indirect impact may be found by a court to be an accomplice.¹

In the second sense, complicity refers to situations in which a company indirectly encourages human rights abuses by its business partners, with knowledge of such abuses, does not stop them, or does not terminate a business relationship with that partner, generating a commercial benefit.

The concepts of business involvement and complicity are important in the context of understanding human rights due diligence as one of the tools for placing human rights on the company's agenda (see Section 11.2 of this Guide for more details).

In relation to the potential for business to engage in adverse human rights impacts caused by another actor (including through business relationships), the concept of «the sphere of business influence on human rights» includes both the possibility

¹ Clarification of the concepts of «sphere of influence» and «complicity»: 2008 report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, J. Ruggie (UN Doc. doc. A/HRC/8/16), paras. 1 and 2. 45-63: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/134/80/PDF/G0813480.pdf?OpenElement>.

and extent of business influencing its partners or «leverage» (a concept that is addressed by the 2011 UN Guiding Principles).

Leverage in this context refers to a particular advantage a company has of enabling it to influence its business partner's behaviour in order to address or minimize the adverse human rights impact, directly or indirectly¹. For more details, see Section 11.2 of this Guide.

¹ The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012, p. 4. 7: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_Ru.pdf.

8. «EMPLOYER-EMPLOYEE»: BELARUS CONTEXT

8.1. Labour rights of employees

8.1.1. Prohibition of discrimination

International legal obligations of the Republic of Belarus:¹

- Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (1961)
- International Covenant on Economic, Social and Cultural Rights, 1966 (1973)
- International Covenant on Civil and Political Rights, 1966 (1973)
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (1981)
- Convention on the Rights of Persons with Disabilities 2006 (2016)
- International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (1969)

Documents that officially interpret the international legal obligations of the Republic of Belarus:

- General comment No. 16 (2005) «The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3 of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)²
- General comment No. 20 (2009) «Non-discrimination in economic, social and cultural rights (Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)
- General comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) (CESCR)
- General comment No. 24 (2017) on states' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (CESCR)
- General comment No. 18 (1989) on Non-discrimination (HRC)

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is listed in parentheses.

- General comment No. 28 (2000) - Article 3 (the equality of rights between men and women) (HRC)
- General comment No. 2 (2014) - Article 9 (Convention on the Rights of Persons with Disabilities) (CRPD)
- General Recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- General Recommendation XIV (1966) on Article 1, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- General Recommendation XV (1966) on Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Basic national legislation:

- Constitution of the Republic of Belarus, Article 22 «Everyone is equal before the law and has the right, without any discrimination, to equal protection of rights and legitimate interests»
- Labour Code, Article 14 «Prohibition of discrimination in labour relations»

Key responsible government authorities:

- Ministry of Labour and Social Security
- Prosecutor General's Office

Civil society organizations:

- Belarusian Helsinki Committee
- Gender Perspectives
- Center for Promotion of Women's Rights – Her Rights
- Office for the Rights of Persons with Disabilities

Recommendations of international human rights monitoring bodies:

Human Rights Committee ¹	• Take all necessary measures, including enacting comprehensive anti-discrimination legislation, to ensure that adequate and effective substantive and procedural protection is provided against all forms of direct, indirect and multiple discrimination, including in the private sphere, on all the prohibited grounds under the Covenant, as well as access to effective and appropriate remedies against all forms thereof.
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¹ Concluding observations on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, paras. 15-16: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2XoWDFf3o3yu.p4a9Dz-vz10xbGVSSosDngAQLWR6oKQf1N7L4fdkYRq4zLTpPkOQGYgf%2b7gOlBkfwy34Senmuv37X1AnXOEtnV7>.

Committee on Economic, Social and Cultural Rights ¹	• ensure that legislation effectively prohibits and sanctions discrimination in all areas of economic, social and cultural rights, in accordance with the provisions of the Covenant; • enact a comprehensive anti-discrimination law that addresses discrimination, including in the private sphere, prohibits direct and indirect discrimination on all the grounds specified in the Covenant and provides for effective remedies for discrimination in judicial and administrative proceedings; • provide in its next periodic report information on cases of discrimination that have been decided by the courts; • conduct a study on the nature and extent of indirect and systemic discrimination in the country and measures taken to combat such discrimination, and include information thereon in its next periodic report; • take effective measures to significantly reduce unemployment and improve access to work for persons with disabilities, including by amending domestic labour laws to include the obligation of employers to provide reasonable accommodation in the workplace, where required; ensure that measures taken in this regard are effectively directed towards the realization of the right to earn a living by work freely chosen or accepted by the person with disabilities; • strengthen efforts to change the perception of the roles of men and women in society, including through awareness-raising campaigns; • review the current regime of fixed-term/short-term contracts to limit their use and provide adequate safeguards against arbitrary non-renewal of fixed-term contracts.
Committee on the Elimination of Discrimination against Women ²	• adopt comprehensive anti-discrimination legislation, specifically all forms of discrimination against women in all spheres of life, targeting public and private actors in accordance with Articles 1 and 2 of the Convention, including direct and indirect discrimination on all grounds, as set out in general recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the Convention.
Committee on the Elimination of Racial Discrimination ³	• take all necessary measures to monitor, prevent and investigate acts of discrimination against Roma in employment and to punish those responsible.

¹ Concluding observations on the combined fourth to sixth periodic reports of Belarus (E/C.12/BLR/4-6), 2013, paras. 8-11: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzF.EovLCuWzoufcs4rD6HOGEOguDH73ebwytTlqXJLJOJz4PD6B5LABS7ch8L%2fOb5RSFbdLA%2f%2b7eTzvXGOVdv9WXXUo1MSgAthbXzMgZc-8fynsak8eYmt>.

² Concluding observations on the eighth periodic report of Belarus (CEDAW/C/BLR/8), 2016, para. 9: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/64/PDF/N1640264.pdf?OpenElement>.

³ Concluding observations on the combined twentieth to twenty-third periodic reports of Belarus (CERD/C/BLR/20-23), 2017, para. 24: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2f.PPRiCAqhKb7y-hsjw6QT861uQaWWPVKFdkVLGvmoUhZouEgBRW%2bkqLipRKwr9p7oy7oID4pF8%2bZUtdGPgWD8kUhhkw99rTuRE-HaGzUGtEns0mZKS5cXvLBkXKLXog2VnD8hsnxP56OuvGw%3d%3d>.

Country context

Discrimination in labour relations is present in almost all areas of commercial activity. The main vulnerable group is women of childbearing age (see the results of a sociological study below). Discrimination on the basis of belonging to a certain trade union organization is also common (the problem is highlighted separately - see para. 9.1.5.)

Belarus lacks comprehensive anti-discrimination legislation. It is believed that it is not necessary due to the existence of Article 22 of the Constitution and Article 14 of the Labour Code. The National Human Rights Plan for 2016-2019 contains a separate paragraph (para. 22) stating that it is necessary to **determine whether it is reasonable** to prepare a comprehensive act on the prohibition of discrimination.¹ The National Action Plan on Gender Equality in the Republic of Belarus for 2017-2020 contains the same provision.²

In the context of labour relations, the greatest attention is paid to discrimination against persons with disabilities. The National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities for 2017-2025 in the Republic of Belarus envisages, among other things, establishing the notion of «discrimination on the basis of disability», introducing the responsibility of the employer for discrimination on the basis of disability, expanding employment opportunities for persons with intellectual disabilities, and legally formalizing the status of a social enterprise.³ It is expected that these innovations will be reflected in the new Law «On the Rights of Persons with Disabilities and their Social Integration» which is currently considered by the Parliament.

In the area of employment, multiple positive measures are taken to assist these persons. However, no more than one third of those able to work in the lightest categories of disability are employed. The measures taken are mainly of an institutional, group, rather than personal, inclusive nature.⁴

We can also note some changes in labour legislation introduced by the Law of the Republic of Belarus adopted on 18.07.2019 «On Amendments to the Laws» and coming into force on 28.01.2020. In particular, the introduction of the category «single parent» instead of «single mother», which will allow men raising a minor child alone to receive social guarantees.

¹ National Plan on Human Rights of the Republic of Belarus for 2016-2019: http://mfa.gov.by/upload/doc/plan_all_ru.pdf.

² National Action Plan on Gender Equality in Belarus for 2017-2020: <http://www.mintrud.gov.by/system/extensions/spaw/uploads/files/Nats-plan.pdf>.

³ The National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities for 2017-2025 in the Republic of Belarus: <http://www.government.by/upload/docs/file6550643e5a4dcc7d.PDF>.

⁴ Alternative Report of the National Human Rights Coalition on the Implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights, 1966 (submitted to the 124th session of the UN Committee on Human Rights, May 2018), paras. 25-31: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf.

At the same time, the main problem is that at the legislative level there is no detailed terminology in the field of discrimination that can be applied to discrimination on any ground; there are no definitions of direct and indirect discrimination, multiple (intersecting) discrimination, while in practice there are many cases of indirect discrimination.

In the absence of comprehensive anti-discrimination legislation, there are no effective legal remedies for discrimination. In particular, the legislation lacks specific rules and regulations regarding the handling of discrimination cases in courts, which have been developed in recent years in other European jurisdictions (e.g. shifting the burden of proof to the defendant). Under Belarusian law, as a general rule, which also applies to discrimination cases, the burden of proof rests equally on all parties to the proceedings. Under Article 179 of the Code of Civil Procedure, each party proves the facts referred to as the basis for its claims or objections. In practice, this results in the victim of discrimination having to substantiate and provide evidence of a violation of his/her right to equality. In one of the court decisions, the judge explicitly stated that the plaintiff had not proved discrimination on the part of the defendant in the hiring process. The defendant in such cases, however, did not have to prove that there was no unequal treatment or discrimination against the victim in his actions.¹

The presence of Article 21 of the Constitution and Article 14 of the Labour Code is obviously insufficient for the law enforcer, as these norms, when applied, require interpretation, skills of application and work with documents interpreting the international legal obligations of the Republic of Belarus, which is not typical and not practiced by Belarusian courts, as well as the direct application of norms of international human rights treaties (Article 36 of the Law of the Republic of Belarus of 23.07.2008 «On International Treaties of the Republic of Belarus»), which could fill in the gaps in the national legislation.

In Belarus, there is no established comprehensive judicial practice on anti-discrimination cases. Employees often do not go to court, preferring just to quit.

Applying to court with lawsuits concerning discrimination is ineffective, since courts in practice avoid dealing with cases of discrimination on the merits (e.g. by preventing the collection and presentation of evidence of discrimination, arbitrarily assessing evidence, and determining that such cases are not admissible).² Moreover, the definition of discrimination given in the Labour Code does not correspond to the definition of discrimination under the international legal obligations of Belarus. Therefore, it is impossible to make a substantive and fair decision regarding the existence or absence of discrimination based on Article 14 of the Labour Code.

¹ Alternative Report of the National Human Rights Coalition on the Implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights, 1966 (submitted to the 124th session of the UN Committee on Human Rights, May 2018), para. 16: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf.

² *Id.* para.17.

Victims of discrimination do not have the opportunity to appeal to state bodies specializing in the protection of human rights or protection against discrimination; there is no access to special simplified procedures for resolving conflicts related to discrimination; and the country has not established a national human rights institution that could verify allegations of discrimination and purposefully collect information on the implementation of the principles of equality and non-discrimination in Belarus.¹

In 2016, experts from the Belarusian Network for Equality and Non-Discrimination² prepared a draft Concept of National Anti-Discrimination Legislation. The amended version of the Concept has been published in the report of the Belarusian Helsinki Committee «Discrimination of Certain Vulnerable Groups in Belarus» after a series of consultations and public discussions.³

Such a position of the state, «non-cultivation» of the prohibition of discrimination, generates weak awareness of this concept among both employers and employees. People often simply do not understand that they discriminate against someone through their actions, or that someone discriminates against them. Many employers do not consider such actions unacceptable.

Table 3.

Selected results of the Sociological survey on discrimination on the labour market in the Republic of Belarus, conducted in 2018⁴

Have faced discrimination in the labour market	85% (89.6% women and 80.4% men)
The most frequent reasons to face discrimination:	Women - in connection with the roles of wife and mother.
	Men - due to age.
The most vulnerable groups:	Married and unmarried women under 35 without children.
	Women with children under 10 years old.
	Women on parental leave.
The most common situation of discrimination:	Discrimination in hiring.

¹ Id. para.18.

² The Network includes, in particular, the Belarusian Helsinki Committee, Office for the Rights of People with Disabilities, Initiative Forb and others.

³ Discrimination of certain vulnerable groups in Belarus: report / D. Chernykh, O. Gulak, 2018: <https://belhelcom.org/ru/document/diskriminaciya-otdelnyh-uyazvimyh-grupp-v-belarusi>.

⁴ The research was conducted in the framework of the information campaign «Gender is not a ceiling», which is conducted in Belarus by the NGO «Gender Perspectives». The research was carried out by SATIO & CIVITTA using the Internet panel survey method. The data collection was carried out in August 2018. The object of the study was economically active population (employed and unemployed men and women of working age) aged 16-63 years. A total of 1298 respondents living in different regions of Belarus were interviewed: main results in English (<http://genderperspectives.by/en/programs/gender-discrimination-on-labor-market/>), the full text in Russian (<https://www.genderperspectives.by/events/news/rezultaty-sotsiologicheskogo-issledovaniya-situatsii-v-sfere-gendernoj-diskriminatsii/>).

Have been in situations of discrimination, but have not considered them as such.	26.6% - at hiring.
	17.6% - at work.
Ready to defend their rights in the hiring process	12.7% do something, 40.1% want to, but don't.
Ready to defend their rights in the workplace	22.7% do something, 40.5% want to, but don't.
Choose dismissal as a means to address discrimination in the workplace	30%

Case study

November 2015

The Polotsk city court considered a lawsuit filed by the former worker of the plant «Polotsk-Steklovolokno», the head of the trade union organization of the Free Trade Union of the plant, in which the claimant claimed illegal dismissal in 2013 from the plant «Polotsk-Steklovolokno» without the consent of the trade union, as stipulated in the collective agreement. The plaintiff believes that he was discriminated against on the basis of his membership in the non-official trade union. The court refused to consider the case, arguing that «collective labour disputes are considered by the bodies and persons specified in Article 379 of the Labour Code».

The plaintiff appealed this decision in the regional court, but the regional court upheld the decision of the lower court.

Sources: <https://vitebskspring.org/news/sud/item/232-sudy-bayatstva-razglyadatsspravy-ab-dyskryminatsyi>; <https://vitebskspring.org/news/sud/item/228-byly-rabochyaat-polatsak-shklovalakno-ne-perakanau-sudzdzyau-ablasnoga-sudu-videa>;

This case is very notable from the point of view of the courts' work. It can be stated that the court has misinterpreted the norms of the code (or, at least, it has manipulated these norms). Article 378 of the Labour Code expressly states that the parties to a collective labour dispute are the employer (employers, employers' associations) and employees, **represented by their representative bodies**. In a collective labour dispute with an employer, the collective, not one person, is in dispute. In this case, the plaintiff spoke about his illegal dismissal and referred to the failure to fulfil the provisions of the collective agreement, but this does not mean that there is a collective labour dispute. He filed a lawsuit on his own behalf in accordance with Article 14 of the Labour Code, which expressly states that persons who believe that they have been discriminated against in the area of labour relations have the right to apply to the court for the elimination of discrimination.

Even if there is a collective labour dispute to be resolved through the mechanisms specified in Article 379 of the Labour Code, in parallel, any employee may individually file a claim in court under Article 14 of the Labour Code, which deals specifically with the fact of discrimination. In this case, the court will not have to resolve the collective labour dispute but will have to decide whether or not there was discrim-

ination. Article 14 of the Labour Code does not impose any restrictions on recourse to the court or on the use of pre-trial settlement. It is not clear whether the court intentionally applied such interpretation, but it is clear that in this case the refusal to consider the case is illegitimate, so is the subsequent decision of the regional court.

8.1.2. Occupational health and safety

International legal obligations of the Republic of Belarus:¹

- International Covenant on Economic, Social and Cultural Rights 1966 (1973)
- Convention on Occupational Safety and Health and the Working Environment 1981 (2000)

Documents officially interpreting the international legal obligations of the Republic of Belarus:

- General Comment No.18 (2006) «The right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)²
- General Comment No. 24 (2017) on states' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (CESCR)
- General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) (CESCR)

Basic national legislation:

- Constitution of the Republic of Belarus, Article 41, part 1, «Citizens of the Republic of Belarus shall be guaranteed the right to work as the worthiest means of an individual's self-assertion, that is, the right to choose profession, type of occupation and work in accordance with his vocation, capabilities, education and professional training, and with regard to social needs, and the right to healthy and safe working conditions»
- Labour Code of the Republic of Belarus
- Law of the Republic of Belarus of 23.06.2008 «On Occupational Safety»
- Rules for Investigation and Recording of Industrial Accidents and Professional Diseases Approved by the Resolution of the Council of Ministers of the Republic of Belarus of 15.01.2004 No. 30 «On Investigation and Recording of Industrial Accidents and Professional Diseases»

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

Key responsible government authorities:

- Ministry of Labour and Social Protection
- Prosecutor General's Office

Civil society organizations:

- Trade-unions

Recommendations of international human rights monitoring bodies:

Committee on Economic, Social and Cultural Rights ¹	The Committee requests the State Party to ensure that decent work opportunities are created with adequate protection of workers in order to respect their labour rights as set out in Articles 6 to 8 of the Covenant.
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Country context

Despite the fact that national legislation sets sufficiently stringent requirements and regulations concerning occupational safety, practice shows that safety at work is one of the main problems concerning non-compliance with workers' labour rights.

In 2017, 115 people died at work. In 2018, the number of deaths at work was 144.

In January-February 2019 38 people died at work.²

In 2018, as compared to 2017, the number of workers who died at work increased by 29 people, the number of seriously injured workers - by 107 people, and the number of people with other injuries - by 195 people).³

The main traumatic factor of people who died at work (as of the first half of 2018) is the impact of moving, flying, rotating objects and parts. This factor is responsible for every fourth fatally injured person. At the same time, there has been an increase in the number of fatalities at work as a result of falls, collapsing buildings and structures (collapse of objects, materials, soil, etc.), traffic accidents, falling of the victim from a height, fire, exposure to harmful substances, and drowning.⁴

¹ Concluding observations on the combined fourth to sixth periodic reports of Belarus (E/C.12/BLR/4-6), 2013, para. 14: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWzoufcs4rD6HOGEEQguD-H73ebwytTlqXJLJOJz4PD6B5IABS7ch8L%2fOb5RSFbdLA%2f%2b7eTzvXGOVdv9WXXUo1MSgAthbXzMgZc8fymsak8eYmt>.

² «Waved my hand». How do Belarusians (not) get compensation for their relatives who died at work: <https://finance.tut.by/news630632.html>.

³ Council of Ministers of the Republic of Belarus: <http://www.government.by/ru/content/8759>.

⁴ «Belarusians are more often injured and killed in the workplace»: <https://finance.tut.by/news605880.html>.

In addition to the very fact of non-compliance with occupational health and safety standards, the problem is a practically non-operational mechanism of access to effective remedies for families of those who died at work. Enterprises are trying to avoid legal entitlements. Even in the presence of a court decision, it is very difficult to collect the amounts due from enterprises. As a result, the relatives of the deceased receive payment either in a much smaller amount than they should, or do not receive any payment at all, or the enterprise offers to make payment in minuscule parts for a very long period of time.

The state sees the problem, acknowledges it and takes certain measures.

The resolution of the Council of Ministers of the Republic of Belarus of 13.04.2018 has been adopted. No. 286, which introduced amendments to the Rules of Investigation and Recording of Industrial Accidents and Professional Diseases, approved by the Decision of the Council of Ministers of the Republic of Belarus No. 30 of 15.01.2004 «On investigation and recording of industrial accidents and occupational diseases»,¹ the most important of which are as follows:

- the list of those who may take part in the investigation of an industrial accident or occupational disease if the injured worker is dead has been extended, namely, the spouse of the deceased worker may also take part in the investigation. They may familiarize themselves with the documents of the investigation of the accident or occupational disease and receive copies of these documents;
- the requirements to the customer organization regarding the investigation of the accident are regulated in detail, if an accident has occurred in the territory of this organization and not in the territory of the employer organization.

In April 2019, a meeting of the Presidium of the Council of Ministers on the state of industrial injuries with severe consequences and ensuring fire and industrial safety in organizations was held. The Ministry of Labour prepared additional measures to ensure safe working conditions and presented them at the meeting. Among the proposed measures: reduction of manual labour; mechanisms of economic incentives for the employer (improvement of the compulsory insurance system against industrial accidents). Among other measures, strengthening differentiation of insurance tariffs depending on the degree of occupational risks. Based on the materials prepared, it follows that the state identifies as the primary cause of injuries, fires and other accidents the lack of discipline and order at work.²

¹ Resolution of the Council of Ministers of the Republic of Belarus of 13.04.2018 No. 286 on the amendment of the Rules for Investigation and Record of Industrial Accidents and Professional Diseases approved by the Resolution of the Council of Ministers of the Republic of Belarus of 15 January 2004 No. 30 «On the Investigation and Record of Industrial Accidents and Professional Diseases»: <http://www.pravo.by/document/?guid=12551&p0=C21800286&p1=1&p5=0>.

² Council of Ministers of the Republic of Belarus: <http://www.government.by/ru/content/8759>.

Case studies

June 2018

The 43-year-old operator of the Brest oil and gas complex of «Lukoil-Belorussia» received serious burns while filling the tank with diesel fuel, and two months later died in intensive care. Officially, the cause of the incident was the wrong grounding of the car body during refuelling. The gas tanker belonged to the Grodno firm «Danko». As it follows from the commission's conclusion, the driver of the car did not comply with elementary safety requirements, and the management of the oil and gas complex did not provide control over compliance with them. A criminal case was not initiated from the very beginning. Then, after the appeal of «Lukoil-Belorussia» to the Investigative Committee, the criminal process was launched. However, in May this year (2019) it was again suspended until the results of the car examination were studied. Characteristically, the examination was scheduled already after the car was repaired. Danko's driver and Lukoil officials were found guilty. However, as of now none of them has been brought to justice, either criminal or administrative.

«Lukoil-Belorussia» LLP paid the family 10 monthly salaries of the deceased, referring to the collective agreement, existing within the enterprise, although according to the General Agreement between the Government, Federation of Trade Unions and the association of employers, as well as the branch tariff agreement, concluded between the concern «Belneftekhim», Republican Association of Industrial Enterprises BelAPP and trade unions, such payment should amount to 10 annual salaries.

Source: <https://auto.tut.by/news/accidents/641810.html>.

July 2017

The operator of a grain drying complex died. On the day of his death he was transporting spare parts in his colleague's private car. The man ran over a towbar (trailer) of a moving car and was unable to hold back from turning - fell down, suffered a head injury and three days later died in a local hospital.

The company conducted an investigation and ruled that it was a non-industrial accident, as the man was not doing his job at that time and was not doing any work on behalf of the management. In December 2017, the widow of the deceased applied to the court, which found the guilt of the enterprise to be 50%, the deceased himself to be 50%. The court ruled that at the time of the accident, the man was performing work for the employer. It was also found out that the deceased had been injured during working hours and at his workplace, the company's official car was not on the premises of the company at that moment, and the chief power engineer had given the task of transporting spare parts in a private car.

The enterprise promised to pay the money within 12 months from the moment the court decision was made (till May 2019). As of March 2019, the widow did not receive the money.

Source: <https://finance.tut.by/news630632.html>.

May 2017

Alexei Strelsky, a former employee of Minsk Gear Plant and a member of the REP trade union, was injured at work: during the repair of the press, a motor slab broke down and crushed the right hand. Alexei Strelsky lost 60% of his ability to work. The Gear Plant paid the worker 30 roubles in compensation.

The victim filed a lawsuit in Partisansky district court in Minsk for recovery of material assistance from the employer, but he was denied. He filed a second lawsuit in the same court, but with the demand to compensate the moral damage in the amount of 200 thousand roubles for the physical and moral suffering. The court decided to recover 2 thousand roubles from the employer.

Source: <https://kurjer.info/2018/09/27/work-injury-2/>.

March 2016

An employee of the Vitebsk woodworking enterprise «DeliOst» lost her hand while working behind a finger jointer. The woman was not instructed on safety and officially worked as a sorter.

The management of «DeliOst», where the accident occurred, ignored the fact that their employee became disabled at the workplace. The labour inspectorate concluded that the woman was injured due to the fault of the company administration. In the criminal case against the director of the enterprise, the investigation found that, in order to avoid liability, the director of the enterprise «through the use of other unidentified persons» made deliberately false entries in the documents stating that Tovpenets (Vitkovskaya) had undergone safety instructions and training. Moreover, he forged signatures in the documents, allegedly signed by the worker herself. However, due to the fact that the case went to court three years after the beginning of the investigation, the charges of forgery against the director of the company were dropped - the statute of limitations had expired. In May 2019 the court passed a sentence - the director of the enterprise Oleg Radevich was sentenced to 3 years of restriction of liberty, prohibited to hold managerial positions for 5 years and the victim was awarded compensation in the amount of 70 thousand roubles.

Sources: <https://news.tut.by/society/489653.html>; <http://praca-by.info/interesno-znat/item/6942-direktora-firmy-v-vitebske-gde-devushke-otrezalo-stankomruku-budut-sudit-odno-iz-obvinenij-snyali>; https://news.tut.by/society/631859.html?fbclid=IwAR-29HVFROn-1jVfW2NE4QuoVu4soPGB5CJRgX_fRrK-PdsKXY_z1glDjJGA; <https://news.tut.by/society/639059.html>.

January 2015

A tractor driver died at the agricultural enterprise «Zabashevichi» in Borisov district - a man was jammed with a tractor. Later it turned out that the tractor did not pass a state

inspection, and the worker was not instructed on occupational safety. The wife of the deceased applied to the company for compensation, but the company refused, arguing that it had no money. After the widow applied to the local authorities and to the deputy of the House of Representatives, the enterprise offered to draw up a payment schedule for 6 months, but only one payment (2000 roubles) was made under this schedule. After the appeal to the court, the enterprise was ordered to pay a lump sum of just over 59900 roubles to the deceased's family and compensation for moral damage - 3000 roubles to his wife and two children. However, the woman never received the money in full. As of March 2019, the family was to be paid more than 52 thousand roubles. The debtor enterprise was declared bankrupt a year after the court decision.

Source: <https://finance.tut.by/news630632.html>.

July 2013

Electric and gas welder of «Ognevskoye» agricultural complex died as a result of poisoning with poison gas during cleaning of sewage collector. The widow still (2019) has not received all the compensation awarded by the court 6 years ago. The company was also declared bankrupt, the debt to the woman on the basis of a contract of assignment of rights of claim was taken by another company - agricultural complex «Svetly», which said that it was not able to pay such an amount (about 18 thousand roubles) at a time and offered to pay the debt of 100 roubles per month or compensate the debt with meat products.

Sources: <https://finance.tut.by/news630632.html>; <https://finance.tut.by/news633312.html>

February 2019

The drivers of the trolleybus park No. 3 in Minsk collectively complained about working conditions to the Ministry of Labour and Social Protection and the Prosecutor's Office. More than 60 people signed up for the collective complaint. The workers of the trolleybus park complained about the non-working air conditioners, too much heat in the cabins in summer and cold in frost, as well as the impossibility to take long breaks, as they get to the rush hour. The workers also complained that the equipment is rarely repaired. In many cars, the driver's seats are not on pneumatic cushions, but are propped with bricks, handrail scraps, and chocks. Windscreen wipers do not work on many cars. Salaries have also decreased due to the fact that some grounds for bonuses have been removed (for example, for work at rush hour). Sanitary and hygiene standards are not observed.

Source: <https://news.tut.by/society/626148.html>.

8.1.3. Prohibition of forced labour

International legal obligations of the Republic of Belarus:¹

- ILO Convention (No. 29) concerning Forced or Compulsory Labour, 1930 (1956)
- ILO Convention (No. 105) concerning the Abolition of Forced Labour, 1957 (1995)
- International Covenant on Civil and Political Rights 1966 (1973)
- International Covenant on Economic, Social and Cultural Rights, 1966 (1973)
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956 (1957)

Documents officially interpreting the international legal obligations of the Republic of Belarus:

- General Comment No.18 (2006) «The right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)²
- General comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) (CESCR)
- General comment No. 24 (2017) on States' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business (CESCR)

Basic national legislation:

- Constitution of the Republic of Belarus, Article 41, part 4: «Forced labour shall be prohibited, other than work or service specified by a court sentence or in accordance with the law on the state of emergency or martial law»
- Labour Code of the Republic of Belarus
- Education Code of the Republic of Belarus
- The Law of the Republic of Belarus «On Combating Trafficking in Human Beings» of 07.01.2012

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

Key responsible government authorities:

- Ministry of Labour and Social Protection
- Ministry of Education
- Local executive authorities
- Prosecutor General's Office

Civil society organizations:

- Trade unions
- Belarusian Helsinki Committee
- NGO «Viasna»

Recommendations of international human rights monitoring bodies:

Human Rights Committee ¹	• Conduct a comprehensive review of practices related to involuntary work in order to bring their provisions into full conformity with the Covenant, in particular Articles 8 and 9.
Committee on Economic, Social and Cultural Rights ²	• Abolish forced labour for these categories of persons (persons deprived of their liberty, persons suffering from alcoholism and drug addicts who are isolated in so-called «treatment and labour prevention centres» - E.D.) and ensure that their rights to freely chosen or freely consented work and to just and favourable conditions of work are fully respected in practice, including by repealing or amending all regulations that are contrary to the State Party's obligations under Articles 6 and 7 of the Covenant.

Country context

The practice of mobilizing and using free labour for economic development needs, which remained as a «legacy» of the Soviet era, is quite common in the country. As a rule, persons in a position of dependence to a certain extent are used as such labour - schoolchildren (the use of child forced labour is specifically mentioned as a problem - see below), pupils of secondary special education institutions, students of higher education institutions, prisoners, military personnel, persons under compulsory treatment in treatment and labour prevention centres, and persons whose children are under state care.

¹ Concluding Observations on the Fifth Periodic Report of Belarus (CCPR/C/BLR/5), 2018, paras. 37-38: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2XoWDFf3o3yu-p4a9Dzvz10xbGVSSosDngAQLWR6oKQf1N7L4fdkYRq4zLTpPkOQGYgf%2b7gOlBkfwy34Senmuv37X1AnXOEtnV7>.

² Concluding observations on the combined fourth to sixth periodic reports of Belarus (E/C.12/BLR/4-6), 2013, para. 15: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuWzoufcs4rD6HOGEQguD-H73ebwytTlqXJLJOJz4PD6B5LABS7ch8L%2fOb5RSFbdLA%2f%2b7eTzvXGOVdv9WXXUo1MSgAthbXzMgZc8fymsak8eYmt>.

In the context of business and human rights, the issue of forced labour is most often raised in connection with the use of university students during school hours for gratuitous work in agricultural and other jobs performed for both state and private enterprises under the threat of certain sanctions associated with the educational process (e.g., issuing absences, etc.) and by direct order of the administration of the university.

A higher education institution may have a cooperation agreement with an agricultural enterprise under which free labour is provided. Or it can take place under the direct order of local authorities. Sometimes classes are cancelled at this time. The administration of higher education institutions does not identify the problem of forced labour in such cases, considering it to be an «educational process» and «participation in socially useful labour».¹

Elements of forced labour are also used at enterprises for the economic interests of the enterprise.

In accordance with the international legal obligations of the Republic of Belarus (Article 1 of ILO Convention No. 105, Article 8 of ICCPR) and national legislation (Article 41 of the Constitution and Article 13 of the Labour Code), it is prohibited to use forced labour required from an employee under the threat of any coercive measures, including as a method of mobilization and use of labour for the needs of economic development and for the purpose of strengthening labour discipline.

The obligation under Article 6 of the ICESCR (right to work), inter alia, imposes on States Parties the responsibility to prohibit the use of forced or compulsory labour by non-state actors.² Forced labour is recognized as a modern form of slavery.³

Any economic entity that agrees to and does not prevent the use of forced labour violates human rights. The state, through the administration of higher education institutions and local authorities that encourage and does not prevent such practices, also violates its international legal obligations.

The adoption by the state of normative legal acts that enshrine elements of forced labour contradicts international legal obligations of Belarus, the Constitution, branch legislation, and the UN Guiding Principles of 2011 (Principle 1, 3, 9).

¹ For example, see the opinion of the administration of some regional higher education institutions - «Students of regional higher education institutions are carrying the can for the capital ones working on potato»: https://naviny.by/rubrics/society/2014/09/12/ic_articles_116_186697.

² General comment No. 18 (2006) The right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights, social and cultural rights), para. 25: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfUKxXVIsd7Dae%2fCu%2b13I25CWIUzBcf4%2fT6qGUQEN-5PMmSndDzYOBghjXPY871yPKt8zA8noUnUP4X6hWlxR%2fvy>.

³ Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences 2013: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-43_ru.pdf&action=default&DefaultItemOpen=1.

Case studies

January 2019

The director of the subsidiary unitary enterprise «Trade House «Laguna» in Baranovichi issued an order (from 20.12.2018 No. 325), which prohibits the dismissal of employees until the end of the contract «without valid reasons. The violators face financial liability in the amount of 50 to 100 roubles. This prohibition was justified (directly in the text of the order) by «staff shortages and reduction of sales and revenue» due to high staff turnover.

Source: <https://finance.tut.by/news621362.html?vb&crnd=69644>.

September 2014

Students of the Mogilev State University were obliged to go to the agricultural enterprises of the Mogilev district to harvest root crops and vegetables for two weeks. About 500 students of Vitebsk Veterinary Academy were also involved in agricultural work during the school hours.

Source: https://naviny.by/rubrics/society/2014/09/12/ic_articles_116_186697.

September 2013

Polotsk University students were sent to work at six farms of agricultural enterprises of Glubokoe district during the study period.

Source: <http://spring96.org/ru/news/66099>.

October 2013

BSUIR students were taken off lessons and sent to the construction site of the complex «Chizhovka Arena» to clean up construction waste. No personal protective equipment was provided. The safety instruction was not actually carried out, but the students were asked to sign the instruction. The work was not paid for.

Source: <https://realt.onliner.by/2013/10/08/student-11>.

October 2012

Students of the medical faculty of Gomel State Medical University were sent to agricultural works. Those who did not show up were considered absent from the classes. Such an announcement was published on the website of the university.

Source: <https://belaruspartisan.by/life/221488/>.

8.1.4. Prohibition of child labour, economic exploitation of children

International legal obligations of the Republic of Belarus:¹

- Convention on Night Work of Young Persons (Industry) 1948 (1956)
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (2000)
- Convention on the Rights of the Child, 1989 (1990)
- Convention concerning Minimum Age for Admission to Employment, 1973 (1979)
- International Covenant on Economic, Social and Cultural Rights, 1966 (1973)
- International Covenant on Civil and Political Rights, 1966 (1973)

Documents officially interpreting the international legal obligations of the Republic of Belarus:

- General Comment No. 17 (1989) «The right of everyone to benefit from the protection of moral and material interests resulting from scientific, literary or artistic works of which he is the author. Article 24 (Rights of the child)» (HRC)²
- General comment No. 16 (2013) on the obligations of States regarding the impact of business activities on children's rights (CRC)
- General comment No. 20 (2016) on the implementation of the rights of the child in adolescence (CRC)

Basic national legislation:

- Constitution of the Republic of Belarus, part Article 32, part 3: «...No child shall be subjected to cruel treatment or humiliation or engaged in work that may be harmful to its physical, mental or moral development»
- Labour Code of the Republic of Belarus
- Education Code of the Republic of Belarus
- Law of the Republic of Belarus of 19.11.1993 «On the Rights of the Child»
- Law of the Republic of Belarus «On Combating Trafficking in Human Beings» of 07.01.2012

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

- Resolution No. 144 of the Ministry of Labour and Social Protection of the Republic of Belarus of 15 October 2010 entitled «On Establishing a List of Light Types of Work that can be Performed by Persons Aged Between 14 and 16 Years»

Minimum age for employment:

- 14 years of age (on the basis of an employment contract concluded with the written consent of one of the parents for light work or professional sport, which are not harmful to health and development and do not interfere with general secondary, vocational and specialized secondary education)
- 16 years old - without parental consent

Key responsible government authorities:

- Ministry of Labour and Social Protection
- Ministry of Education
- local executive authorities
- Prosecutor General's Office

Main civil society organizations:

- Belarusian Helsinki Committee
- REP Trade-union
- NGO «Viasna»

Recommendations of international human rights monitoring bodies:

Committee on the Rights of the Child ¹	• to urgently adopt a law on corporate legal liability; • develop and adopt provisions to ensure that the business sector complies with international and domestic norms on corporate social responsibility, particularly with regard to children's rights, in line with the United Nations Business and Human Rights Framework, adopted unanimously by the Human Rights Council in 2008², which emphasizes the duty of States to protect all human rights against abuses by corporations and other business enterprises, and the corporate responsibility to respect them as well as ensuring access to effective remedies in cases of violations.
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¹ Concluding observations on the third and fourth combined periodic report of Belarus (CRC/C/BLR/3-4), 2011, paras. 25-26: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsng3QhcRVOo-18YEahXg1g0FTTkU3TqQldFPV9nJWtR43QagjmwDvvhzKXDJAUKTs7VtGl4R_gml%2b5UYdUEWhASPxRNcpDvGznF%2f-0B2qjVBi8FQ.

² Reference is made to the 2008 UN Framework for Business and Human Rights, which formed the basis of the UN Guiding Principles on Business and Human Rights 2011.

Country context

The practice of engaging learners in gratuitous agricultural work (discussed in the previous section) is also widely applied to children. Although these works are included in the list of works in which children from 14 to 16 years of age can be employed, there are often instances of abuse of power by the administration of an educational institution and violations of labour and educational legislation, namely:

- such employment takes place during the educational process;
- such employment is carried out free of charge;
- there are cases of children under 14 years of age being recruited to work;
- in some cases, the safety rules are not observed;
- there is no element of voluntariness: children are sent «at the disposal» of the agricultural enterprise by the educational institution as «forcibly volunteered». Within the educational process children are dependent on the educational institution and its administration. For children who have reached the age of 14, parents' consent is often obtained nominally. However, as a rule, parents are unwilling/afraid to come into conflict with the administration of the educational institution, as they believe that this may then affect the attitude towards the child. The criterion of voluntariness (which is a determining factor in the context of the qualification of exploitation) therefore remains in question.

Often, however, such «job sheets» are set in motion by local authorities, which «send them down» to educational institutions.

Such recruitment is often justified by the «need for an educational process».

The Convention on the Rights of the Child, 1989 (Article 19) and the Law of the Republic of Belarus of 19 November 1993 «On the rights of the child» (Article 9) prohibit any kind of exploitation of a child. Articles 10 of the ICESCR and 32 of the Convention on the Rights of the Child impose on Belarus the obligation to take all measures to prevent cases of economic exploitation of children. Work without pay (or for negligible pay) is economic exploitation and is recognized as a modern form of slavery.¹

Transfer of children by an educational institution to agricultural enterprises for work on a gratuitous basis for the purpose of exploitation also falls under the definition of the crime of trafficking in human beings (namely, the use of slave labour) within the meaning of the Law of the Republic of Belarus of 07.01.2012 «On Combating Trafficking in Human Beings».

¹ Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences 2013: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/_layouts/15/Wopi.Frame.aspx?sourcdoc=/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-43_ru.pdf&action=default&DefaultItemOpen=1.

The employment of children during the educational process violates the 1989 Convention on the Rights of the Child and Article 89 of the Education Code.

Failure to take appropriate measures to prevent cases of exploitation of child labour, as well as its exploitation by private and public economic entities, violates the rights of children by businesses. The state, represented by the administration of educational institutions, which agrees to send children to such work and on such terms and conditions, and the local authorities initiating such acts, is in breach of its international legal obligations.

Case studies

September 2016

A 13-year-old girl died under the wheels of a truck while picking potatoes at Voskhod Agro near Molodechno. The children were sent to work by the school. There were about 70-80 pupils working in the field in total. The parents of the victim tried to bring to justice the agricultural enterprise «Voskhod Agro», for which the potatoes were collected. But the court refused to admit that the schoolgirl and the collective farm had an employment relationship. The court ruled that the harvest was part of the educational process. The truck driver was sentenced to 3 years' imprisonment. Two teachers of the school were sentenced to 2 years of restriction of liberty without being sent to a correctional institution for negligence.

In April 2018, a complaint was filed with the Human Rights Committee on behalf of the girl's father. The complaint was accepted for consideration. The complainant claims a violation by Belarus of Article 14 (1), Article 2 (2,3), Article 24 (1) and Article 6 (1) of the International Covenant on Civil and Political Rights of 1966.

Sources: <https://news.tut.by/society/514111.html>; <https://news.tut.by/society/616162.html>; <https://www.ohchr.org/RU/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

November 2013

Teenagers from Borisov schools have been ordered to clean up an industrial enterprise «Borisovdrev» without paying any compensation.

Source: <https://belarusdigest.com/story/will-child-labour-and-tax-on-the-unemployed-help-lukashenka-avoid-economic-reforms/>.

September 2013

Pupils of Glubokoe professional lyceum picked potatoes and carrots at agricultural enterprises of Glubokoe and Sharkovshchyna districts during their studies.

Source: <http://spring96.org/ru/news/66099>.

May 2013

Pupils of the secondary school in the village of Derevnaya, Slonim district, were sent to agricultural work during the school hours. 40% of their earnings were given to children, 60% were transferred to the school account.

Source: <https://spring96.org/ru/news/63279>.

8.1.5. Trade union rights, freedom of association

International legal obligations of the Republic of Belarus:¹

- International Covenant on Civil and Political Rights, 1966 (1973)
- International Covenant on Economic, Social and Cultural Rights, 1966 (1973)
- ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise, 1948 (1956)
- ILO Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (1956)

Documents officially interpreting the international legal obligations of the Republic of Belarus:

- General Comment No.18 (2006) «The right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)²
- General comment No. 20 (2009) «Non-discrimination in economic, social and cultural rights (Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)
- General comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) (CESCR)
- General comment No. 24 (2017) on States' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business (CESCR)

Basic national legislation:

- Constitution of the Republic of Belarus, Article 36, part 1: «Everyone shall have the right to freedom of association».; Article 41, part 3, «Citizens shall have the right to protection of their economic and social interests, including

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

the right to form trade unions and conclude collective contracts (agreements), and the right to strike»

- Labour Code of the Republic of Belarus
- Law of the Republic of Belarus of 22.04.1992 «On Trade Unions»
- Decree of the President of the Republic of Belarus of 15.07.1995 No 278 «On Development of Social Partnership in the Republic of Belarus»

Key responsible government authorities:

- Ministry of Labour and Social Protection
- Ministry of Justice
- Prosecutor General's Office

Major trade unions and trade union confederations:

- Federation of Trade Unions of Belarus (FTUB) (unites 15 branch trade unions, 6 regional and Minsk city and 137 district and city unions). It has over 4 million members (96.5% of the country's economically active population)¹
- The Belarusian Congress of Democratic Trade Unions (BCDTU) (unites four trade unions: the Belarusian Independent Trade Union, the Free Trade Union of Belarus, the Free Trade Union of Metal Workers, and the Belarusian Union of Radioelectronics Workers)²

Main civil society organizations:

- Independent trade unions
- Belarusian Helsinki Committee
- NGO «Viasna»

Recommendations of international human rights monitoring bodies:

ILO Committee on Freedom of Association³ and ILO Committee of Experts on the Application of Conventions and Recommendations⁴

• to cancel the resolution of the Council of Ministers of the Republic of Belarus No. 49 of 24.01.2019 «On Approval of the Regulation on the Procedure of Payment for Public Order Protection Services Provided by the Bodies of Internal Affairs, Expenses Related to Medical Services and Cleaning of the Territory after a Mass Event» as a barrier to realization of trade unions' rights in practice, together with other provisions of legislation;

¹ Website of the Federation of Trade Unions of Belarus: <https://1prof.by/about/off/>.

² Website of the Belarusian Congress of Democratic Trade Unions: <http://www.bkdp.org>.

³ 390th report of the ILO Committee on Freedom of Association, 2019, para. 29: https://www.ilo.org/wcmsp5/groups/public/-/-ed_norm/-/-relconf/documents/meetingdocument/wcms_711395.pdf

⁴ Review by the Committee of Experts on the Application of ILO Conventions and Recommendations concerning the implementation by Belarus of ILO Convention No. 87, 2016. : https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297155.

	• to abolish the requirement of having a legal address for the registration of a trade union, since in practice this requirement infringes on the exercise of the right to form trade unions; • to take measures to strengthen the effectiveness of the State's extra-judicial mechanisms for the settlement of individual, collective and trade union disputes; • to introduce a number of amendments to the Decree of the President of the Republic of Belarus of 31.08.2015 No. 5 «On Foreign Gratuitous Assistance» and the Law of the Republic of Belarus of 30.12.1997 «On Mass Events in the Republic of Belarus», in particular: to abolish sanctions for a one-time violation of these acts, to establish more precise grounds for refusal to hold mass events of trade unions, to expand the list of activities for which foreign financial assistance may be used (especially in the light of the introduction of norms on financial costs of providing services for mass events organizers).
Human Rights Committee ¹	• to review the laws, regulations and practice of the Republic of Belarus, including the Law of the Republic of Belarus of 30.12.1997 «On Mass Events in the Republic of Belarus», in order to guarantee the full enjoyment of the right to freedom of assembly, both in law and in practice, and to ensure that any restrictions on freedom of assembly, including through administrative and criminal sanctions against persons exercising this right, comply with the strict requirements of Article 21 of the Covenant; • to simplify registration rules so that public associations and political parties can effectively exercise their right to association; • to remove obstacles to the registration and operation of trade unions, undue restrictions on the right to strike, investigation of all reports of interference with trade union activities and reprisals against trade unionists, and review of the procedures governing collective bargaining to ensure compliance with the provisions of the Covenant.
Committee on Economic, Social and Cultural Rights ²	• to ensure, in accordance with its obligations under Article 8 of the Covenant, the right to form and join a trade union of one's choice, and the free exercise by trade unions of their rights; • to ensure that employees enjoy their trade union rights without undue restrictions or interference, including by local authorities.

¹ Concluding remarks on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, para. 55 : http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2XoWDFf3o3yu_p4a9Dzvz10xbG-VS0sDngAQLWR6oKQf1N7L4fdkYRq4zLTpPkOQGYgf%2b7gOlBkfwy34Senmuv37X1AnXOEtnV7.

² Concluding observations on the combined fourth to sixth periodic reports of Belarus (E/C.12/BLR/4-6), 2013, para. 17: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWzoufcs4rD6HOGEGguD-H73ebwyTlqXJLJOJz4PD6B5IABS7ch8L%2fOb5RSFbdLA%2f%2b7eTzvXGOVdv9WXXUo1MSgAthbXzMgZc8fjnsak8eY-mtMgZc8>.

Country context

In Belarus, there is still an understanding of the role and purpose of trade union organizations common in the USSR: public work, health improvement of employees, organization of cultural and mass events. The main trade union organization in Belarus, the Federation of Trade Unions of Belarus (FTUB), is loyal to the state and controlled by it. There is no understanding in the organization of the priority of the trade union's human rights function.¹ The distorted understanding of the trade union's role as an «official» trade union organization is evidenced both by the practice of its activities and by the rhetoric of the former leader of the FTUB, L. Kozik, according to whom the main indicators of the union's performance are participation in subbotniks², speeches at meetings of labour collectives, concerns about improving productivity, and health improvement of children. He also noted that independent trade unions, without dealing with these things, cannot compare with the FTUB.³

At the same time, the FTUB is used by the authorities as an instrument of political guidance and control: for example, the FTUB always actively participates in election campaigns, advocating and supporting the incumbent President, pro-state political parties, etc., which in principle contradicts the nature and essence of a trade union, which is not a political party and should remain impartial and independent in order to better protect workers' rights regardless of their political views and beliefs.

Discrimination against employees on the basis of their membership in independent trade unions is a significant problem, although such discrimination is prohibited by the Constitution (Articles 22, 36 and 41), the Labour Code (Article 14) and the Law of 22 April 1992 on trade unions (Article 4). The direct support of the state for the FTUB and its initiatives is in itself a sign of discrimination against other trade unions. For example, at the legislative level, FTUB children's and youth sports schools and the trade unions that are part of the FTUB have been granted the right by the President to use the premises owned by the state free of charge.⁴ The former head of the FTUB, L. Kozik, explicitly stated that «it would be wrong to grant independent trade unions the same rights as FTUB trade unions».⁵

Members of independent trade unions are often discriminated against and sanctioned by their employers (up to dismissal). There is a clear bias on the part of the courts in resolving disputes involving independent trade union members. Discrimination is also evident in the employer's violation of the provisions of the General

¹ In this regard, for example, it is indicative that the «Legal Aid» section is available on the FTUB website under the heading «Latest»: <https://1prof.by>.

² Subbotnik – (from «subбота» - Saturday) a day of unpaid work during weekend, initially voluntary but during Soviet times it becomes de facto obligatory.

³ «The number of members of independent trade unions is declining thanks to the work of the FTUB»: <https://www.kp.by/online/news/484553/>.

⁴ Annex to Presidential Decree No. 150 of 29 March 2012 «On Some Issues of Lease and Free Use of Property»: [http://pravo.by/document/?guid=2012&oldDoc=2012-39/2012-39\(007-022\).pdf&oldDocPage=1](http://pravo.by/document/?guid=2012&oldDoc=2012-39/2012-39(007-022).pdf&oldDocPage=1)

⁵ «The number of members of independent trade unions is declining thanks to the work of the FTUB»: <https://www.kp.by/online/news/484553/>.

Tripartite Agreement between the Government, the Republican Employers' Associations and Trade Unions concerning collective bargaining, in which representatives of all trade union organizations must participate.

Experts note that the Decree of the President of the Republic of Belarus of 26.07.1999 No. 29, «On additional measures to improve labour relations and strengthen labour and performing discipline» (last revision of 2019), which introduced the contract system, was one of the tools to combat the establishment of independent trade unions, as it allows employers simply not to extend contracts.¹

The problem is the legislative obstacles to association into trade unions. Presidential Decree No. 2 of 26.01.1999 «On some measures to regulate the activities of political parties, trade unions, and other public associations» required that at least 10% of employees (students) of the total number of employees at an enterprise, in the establishment, organization and the legal address for the establishment and operation of a trade union there. These provisions have been recognized as interfering with the establishment and operation of trade unions by the ILO Commission of Inquiry and the Committee of Experts on the Application of ILO Conventions and Recommendations.² In 2015, the Decree was amended and the requirement of 10% of employees to form a trade union in an enterprise was abolished.³ However, the requirement of a trade union organization to have a legal address remains, which is still considered by the ILO to be an obstacle to the realization of the right to form trade unions.⁴

Provisions of the Resolution of the Council of Ministers of the Republic of Belarus of 24.01.2019 No. 49 «On the approval of the Regulation on the procedure for payment for public order protection services provided by the internal affairs agencies, expenses related to medical care and cleaning of the territory after a mass event» hinder the right of trade unions to strike and, in general, the exercise of freedom of association. This is particularly emphasized by the ILO Committee on Freedom of Association in its latest report on Belarus and it emphasizes that, given the size of the minimum base value on the one hand and the prohibition on the use of foreign financial assistance for such events on the other, this fact makes it practically impossible for a trade union to hold a mass event. At the same time, the possibility of holding such events is an important element of trade union rights.⁵

¹ Belarus: human rights and business: a guide for business, 2016: <https://www.belhelcom.org/sites/default/files/biz-belhelcom.pdf>.

² Review by the Committee of Experts on the Application of ILO Conventions and Recommendations concerning the implementation by Belarus of ILO Convention No. 87, 2015. : https://www.ilo.org/dyn/normlex/en/f?p=NORML-EXPUB:13100:0::NO::P13100_COMMENT_ID:3186994.

³ Commentary to Decree No. 4 of June 2, 2015 on the introduction of amendments and addenda to Decree No. 2 of the President of the Republic of Belarus of January 26, 1999 «On some measures to regulate the activity of political parties, trade unions and other public associations»: http://president.gov.by/ru/news_ru/view/kommentarij-k-dekretu-4-ot-2-ijunia-2015-g-11468/.

⁴ 390th report of the ILO Committee on Freedom of Association, 2019, para. 29: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711395.pdf.

⁵ Id. paras. 24-25

The ILO Committee on Freedom of Association has considered three complaints against Belarus by trade unions: in 1994, 1996 and 2000. The complaints concerned government interference in the activities of several trade unions, discrimination on the basis of membership in a certain trade union, violations of freedom of assembly and association, and violations of the right to strike.¹

Case studies

Winter-spring 2019

The members of the Belarusian Independent Trade Union of Miners, Chemists, Oil Refiners, Power Engineers, Transport Workers, Builders and Other Workers (BNP) are under strong pressure from the employer. In February-April 2019, about 800 people were forced to leave the BNP: 600 employees of «Belaruskali», 180 employees of the «Remmontazhstroï» trust and 40 employees of the KaliiSpetstrans enterprise (all enterprises are located in Soligorsk). The fact that employees (forcefully) left the trade union was used to justify the decision to terminate labour contracts or halt further career development of employees.

The wave of pressure on the Independent Miners' Trade Union (NPG) started with the situation with registration of construction trust «Remmontazhstroï» by the primary organization of NPG. In 2018, the trust was separated from «Belaruskali» and turned into a unitary enterprise, «Belaruskali» being the founder of the new enterprise. The independent trade union had its organization at «Remmontazhstroï» earlier, but now it had to undergo the registration procedure again. The organization was registered only from the third attempt. There was an attempt to create a trade union organization at «KaliiSpetstrans» as well. This company, similarly to «Remmontazhstroï», was separated from «Belaruskali» due to its reorganization. In January 2019 a general meeting was held to create the primary trade union organization, which was attended by 11 employees of «KaliiSpetstrans». A day after the meeting, due to the pressure exerted on them by the administration, the workers wrote a mass application to leave the independent trade union.

Sources: <https://naviny.by/new/20190420/1555766506-bolee-800-chlenovb-np-vyshli-iz-organizacii-posle-davleniya-vlastey>; <https://belsat.eu/ru/news/oko-lo-600-chelovek-zastavili-vyjti-iz-nezavisimogo-profsoyuza-gornyakov/>.

August 2018

August 24, 2018 Gennady Fedynich and Igor Komlik, respectively chairman and chief accountant of the Belarusian Independent Trade Union of Workers of the Radioelectronic Industry (REP), were found guilty of tax evasion by the Sovetsky District Court of Minsk. The prosecution claimed that both leaders of the independent trade union were guilty of failing to declare EUR 140,000 allegedly received into a corporate bank account in Lithuania in 2011-2012. The charges were brought against them one year after the un-

¹ For more details, see the ILO Committee on Freedom of Association Appeal Database: <https://www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:NO::>

ion helped to mobilise protests against the Presidential Decree. No. 3, which imposed a levy on the unemployed. The defendants were found guilty on all charges, sentenced to 4 years' restriction of liberty without imprisonment, 5 years' ban on holding managerial positions and a fine of 47.560 roubles.

A representative of the International Federation for Human Rights observed the trial. The Assistant Secretary General of IndustriALL Global Union¹ also attended the court session. During the trial, serious procedural violations were found. First, six witnesses stated in court that their testimony was obtained through threats and pressure. Second, as main evidence, the prosecution presented unconfirmed bank records (the Lithuanian bank never confirmed the existence of such an account) obtained through an e-mail account, the ownership of which was not established during the trial. Third, the court accepted as evidence transcripts of telephone conversations recorded prior to the authorization to monitor telephone conversations between Gennady Fedynich and Igor Komlik.

Source: https://www.fidh.org/IMG/pdf/belarus_29082108_note_ru.pdf.

April 2016

The management of the Slonim worsted textile factory refused to extend the collective agreement to the activist of the independent trade union of REP in violation of the law. As a result, he was dismissed 3 years before his retirement. In his explanations about the incident, the factory manager said that he did not make this decision, but simply extended the decision taken by the previous manager, because he did not see the need not to trust the previous head in anything. Further, the manager explained that «a lawyer was dealing with this issue, before signing the refusal to distribute the collective agreement, he told me that it was legal. I have no legal education to make such decisions».

Source: <http://praca-by.info/all-news/item/3097-%20rukovodstvo-slonimskoj-kamvol-noj-fabriki-poshlo-na-vopiyushchee-narushenie-zakona> .

January 2016

The director of «Polotsk-Steklovolokno» refused to include Free Trade Union of Belarus in the commission for collective bargaining in violation of paragraph 45 of the General Agreement.

Source: <http://praca-by.info/all-news/item/2855-direktor-polotskogosteklovolok-na-poshel-protiv-pravitelstva>

November 2015

The Court of Polotsk examined a lawsuit filed by a former worker of the «Polotsk-Steklovolokno», head of the trade union organisation of the Free Trade Union of the Plant, in which the plaintiff claimed illegal dismissal from the «Polotsk-Steklovolokno» in 2013 without the consent of the trade union as stipulated in the collective agreement.

¹ Represents 50 million workers in 140 countries working in the mining, energy and processing industries.

The plaintiff believed that he was discriminated against on the basis of his membership in the informal trade union. The court refused to consider the case, arguing that «collective labour disputes are considered by the bodies and persons specified in Article 379 of the Labour Code», although there was no collective labour dispute in the present case.

The plaintiff appealed this decision in the regional court, but the regional court upheld the position of the lower court.

Sources: <https://vitebskspring.org/news/sud/item/232-sudy-bayatstva-razglyadatsspravy-ab-dyskryminatsyi>; <https://vitebskspring.org/news/sud/item/228-byly-rabochyaat-polatsak-shklovalakno-ne-perakanau-sudzdzyau-ablasnoga-sudu-videa>;

2015

According to the UN Special Rapporteur on the situation of human rights in Belarus, the authorities have repeatedly pressured and threatened the leaders of the Free Trade Union of Metal Workers.

Source: Report of the Special Rapporteur on the situation of human rights in Belarus (2015): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/085/62/PDF/G1508562.pdf?OpenElement>.

2015

According to the Committee of Experts on the Application of ILO Conventions and Recommendations:

- trade union structures belonging to the Belarusian Congress of Democratic Trade Unions were denied registration in five cases;

- enterprise «Granit» refused to provide the legal address to Free Trade Union Belarus for registration.

Source: Review of the Committee on the situation in Belarus (2015:) http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3186994:NO.

June 2015

Workers of Bobruisk factory of tractor parts and aggregates were prosecuted and fined for participation in an unauthorized public event (hunger strike). The workers were members of the Free Trade Union of Belarus and protested against unfair dismissals due to their membership in the trade union. The Company abused the scheme of short-term contracts to fire employees and then hire new ones with similar qualifications and skills.

Source: Investigation of the situation with violation of trade union rights in Belarus by the International Trade Union Confederation: <https://survey.ituc-csi.org/Belarus.html?lang=en#tabs-3>

June 2012

For 8 months the administration of Bobruisk plant of tractor parts and aggregates blocked access to the territory of the plant by the chairman of the primary organization of the Free Trade Union of Belarus Mikhail Kovalkov.

Source: <http://www.bkdp.org/index.php?area=1&p=news&newsid=1447>.

November 2012

According to the ILO Committee on Freedom of Association, three members of Belarusian Independent Trade Union, including the chairman of the primary organization, were dismissed shortly after the establishment of the primary organization at Granit.

Source: 366th report of the ILO Committee on Freedom of Association for Belarus, 2012: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_193261.pdf.

8.2. Non-labour (other) rights of employees

8.2.1. Freedom of expression

International legal obligations of the Republic of Belarus:¹

- International Covenant on Civil and Political Rights 1966 (1973)

Documents officially interpreting the international legal obligations of the Republic of Belarus:

- General Comment No.10 (1983)-Article 19 (freedom of opinion and expression) (HRC)²
- General Comment No.34 (2011)-Article 19 (Freedom of opinion and expression) (HRC)

Basic national legislation:

- Constitution of the Republic of Belarus, part Article 33, parts 1, 2: « Everyone is guaranteed freedom of thoughts and beliefs and their free expression. No one may be forced to express his beliefs or to deny them»
- Law of the Republic of Belarus of 18.07.2011 «On Petitions of Citizens and Legal Entities»
- Law of the Republic of Belarus «On Mass Media» of 17.07.2008
- Criminal Code of the Republic of Belarus, Article 197

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

Key responsible government authorities:

- Ministry of Labour and Social Protection
- Ministry of Information
- Prosecutor General's Office
- Main civil society organizations:
- Trade unions
- Belarusian Association of Journalists

Recommendations of international human rights monitoring bodies:

Human Rights Committee ¹	Take all necessary measures to guarantee everyone the full enjoyment of the right to freedom of expression, including: • to consider decriminalizing libel and, in any case, to apply criminal law only in the most serious cases; • to remove all other unjustifiable restrictions on the exercise of freedom of expression and to ensure that the need to impose any restrictions and the proportionality of the measures taken are determined in accordance with the strict requirements of paragraph 3 of the Article 19 of the Covenant.
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Country context

In cases where employees report unsatisfactory working conditions, publicly voice problems, file complaints with the competent authorities or civil society organizations, the employer often attempts to limit such actions in order to avoid «airing dirty laundry in public». Employees may be asked to withdraw their formal complaints, being effectively forbidden from obtaining evidence of what is happening (prohibition to shoot videos, etc.).

There are also cases of suppressing a certain opinion.

In addition to violating labour rights and preventing employees from fighting for their labour rights, such actions violate freedom of expression.

Case studies

July 2019

Minsk Regional Organization of the Belarusian Trade Union of Local Industry and Public Utility Enterprises (FTUB member) has sent an official letter to the chairmen of the

¹ Concluding observations on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, para. 50: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2XoWDFf3o3yup4a9Dzvz10xbGVSSosDngAQLWR6oKQf1N7L4fdkYRq4zLTpPkOQGfYg%2b7gOIBkfwy34Senmuv37X1AnXOEtnV7>.

primary trade union organizations with a clear request to subscribe to the official page of the trade union on Facebook. Moreover, the letter pointed out that when visiting this page, it is necessary (!) to «like» and repost. The necessity of these actions was explained by «preparation of a question to the Presidium of the Council of the Federation of Trade Unions of Belarus».

Source: <https://www.the-village.me/village/city/news-city/276083-profsouz>.

May 2019

After the situation with violations of several safety and construction standards identified during the construction of the sulphate bleached pulp plant (an investment project implemented since 2012). Svetlogorskiy celulozno-kartony kombinat (customer) and China CAMC Engineering Co. (general contractor), became public; at the Svetlogorskiy celulozno-kartony kombinat they issued an internal order «On strengthening information security in the Company» signed by the Director General of the plant Yuri Kruk. The document prohibits employees from photographing and videotaping objects and technological processes at the enterprise. It is also prohibited to bring mobile phones into all premises of technological installations where equipment and technological process is controlled. An exception will apply only to employees authorized by the Director General. For failure to comply with the requirements, it is warned by the administration, employees will be disciplined or deprived of bonus payments.

Source: <https://news.tut.by/society/637760.htm>.

March 2019

After the drivers of the trolleybus park No. 3 of city of Minsk at the end of January 2019 collectively complained about working conditions to the Ministry of Labour and Social Protection and the Prosecutor's Office, colleagues from other parks, not only trolleybus ones, joined their outrage. The petition on the problems of the city transport collected 1330 signatures.

After that, employees of the capital's car parks began to be harassed for criticism by the employers (threat of non-renewal of contracts, eviction from the dormitory). A separate collective complaint on these facts was sent to the Prosecutor General's Office of the Republic of Belarus.

In the bus park No. 4 of the city of Minsk authorities drew up a template refusal form with ready-made versions of the reasons why the employee signed the complaint. The employees were asked to fill in the form of the following content:

To V.A.Veselovskiy,
the director of the branch «Bus Depot No.4»
of the state enterprise «Minsktrans»
from ____.

«Statement.

I will not attend the meeting to be held at 3 p.m. on 19.03.2019 in the assembly hall of the branch, which I was informed about in advance, as I signed the complaint for the following reasons (specify the reason, for example: 1. because of sympathy / sense of solidarity, 2. because of accidentally chose the wrong option on personal computer, 3. because my son or another family member signed the complaint instead of me, 4. because I let another person use my e-mail, etc.).

I have no complaints to the employer. I hereby withdraw my signature from the collective complaint of the employees (drivers) of the branches of «Minsktrans».

date/signature»

Sources: <https://news.tut.by/society/629790.html> , <https://petitions.by/petitions/2300>

9. «BUSINESS — CONSUMER», «BUSINESS — LOCAL COMMUNITY»: BELARUS CONTEXT

9.1. Prohibition of discrimination

International legal obligations of the Republic of Belarus:¹

- International Covenant on Civil and Political Rights of 1966 (1973)
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (1981)
- Convention on the Rights of Persons with Disabilities, 2006 (2016)
- International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (1969)

Documents officially interpreting the international legal obligations of the Republic of Belarus:

- General Comment No. 24 (2017) «On the Obligations of States under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities» (CESCR)²
- General comment No. 18 (1989) on Non-discrimination (HRC)
- General comment No. 28 (2000) Article 3 (equality of men and women) (HRC)
- General comment No. 2 (2014) (Article 9 of the Convention on the Rights of Persons with Disabilities) (CRPD)
- General Recommendation XIV on Article 1, paragraph 1, of the 1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- General Recommendation XV on Article 4 of the 1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- General Recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

² Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

Basic national legislation:

- Constitution of the Republic of Belarus, Article 21, part 2: «The state shall guarantee the rights and freedoms of citizens of Belarus that are enshrined in the Constitution and laws, and specified by the state's international obligations;» Article 22: «All shall be equal before the law and have the right to equal protection of their rights and legitimate interests without any discrimination»
- The Law of the Republic of Belarus of 10.05.2007 «On Advertising»
- The Law of the Republic of Belarus of 17.07.2008 «On Mass Media»
- The Law of the Republic of Belarus of 11.11.1991 «On Social Protection of People with Disabilities in the Republic of Belarus».
- The Law of the Republic of Belarus of 25.11.1999 « On Tourism»

Main Responsible State Agencies:

- Ministry of Antimonopoly Regulation and Trade (MART)
- Ministry of Information
- Ministry of Sport and Tourism
- Ministry of Labour and Social Protection
- Prosecutor General's Office

Civil society organizations:

- Belarusian Helsinki Committee
- Gender Perspectives
- Center for Promotion of Women's Rights – Her Rights
- Office for the Rights of Persons with Disabilities
- Human rights initiative «Journalists for Tolerance»

Recommendations of international human rights monitoring bodies:

Human Rights Committee¹

- to take all necessary measures, including adopting comprehensive anti-discrimination legislation, to ensure that its legislation provides adequate and effective substantive and procedural protection against all forms of direct, indirect and multiple discrimination, including in the private sphere, on all the prohibited grounds under the Covenant, as well as access to effective and appropriate remedies against all forms of discrimination;

¹ Concluding remarks on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, paras. 16, 20, 22 : <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssL4aDidyTw2XoWDFf3o3yu-p4a9Dzvz10xbGVsDngAQLWR6oKQf1N7L4fdkYRq4zLTpPkOQGYgf%2b7gOlBkfwy34Senmuv37X1AnXOEtnV7>.

	• to include sexual orientation and gender identity as prohibited grounds of discrimination in comprehensive anti-discrimination legislation; • to impose appropriate penalties for such acts, including through prompt and effective investigation and prosecution of any allegations of violence or hatred based on sexual orientation and gender identity; • to increase accessibility to public transport, buildings and other facilities for persons with disabilities and make access to them non-discriminatory.
Committee on Economic, Social and Cultural Rights ¹	• to ensure that legislation effectively prohibits and sanctions discrimination in all areas of economic, social and cultural rights, in accordance with the provisions of the Covenant; • to adopt a comprehensive anti-discrimination law that addresses discrimination, including in the private sphere, prohibits direct and indirect discrimination on all the grounds specified in the Covenant and provides for effective remedies for discrimination in judicial and administrative proceedings; • to strengthen efforts to change the perception of the roles of men and women in society, including through awareness-raising campaigns.
Committee on the Elimination of Discrimination against Women ²	• to adopt comprehensive anti-discrimination legislation, specifically targeting all forms of discrimination against women in all spheres of life and targeting public and private actors, in accordance with Articles 1 and 2 of the Convention, including direct and indirect discrimination on all grounds, as set out in general recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the Convention; • to take measures directed at women, men, girls and boys to overcome discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and society, and to emphasize the importance of women's equal participation in public and private decision-making; • to ensure strict compliance with the prohibition of unethical advertising, as set out in Article 26 of the Law of the Republic of Belarus of 10 May 2007 «On Advertising», and to educate the mass media and the advertising industry to promote a positive image of women as active participants in political, economic and social life.

¹ Concluding observations on the combined fourth to sixth periodic reports of Belarus (E/C.12/BLR/4-6), 2013, paras. 8,11: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmlBEDzFEovLCuWzoufcs4rD6HOGEGQguDH73ebwytTlqXJLJOJz4PD6B5IABS7ch8L%2fOb5RSFbdLA%2f%2b7eTzvXGOVdv9WXXUo1MSgAthbXzMgZc-8fjysak8eYmt>.

² Concluding observations on the eighth periodic report of Belarus (CEDAW/C/BLR/8), 2016, paras. 9, 21: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/64/PDF/N1640264.pdf?OpenElement>.

Country context

The problem of the lack of comprehensive anti-discrimination legislation and the ineffectiveness of remedies in cases of discrimination in the context of labour law relations, described in Section 9.1, also manifests in the «external» aspect of the business - activities involving consumers of goods/services.

The existing legislation on the principles of equality and non-discrimination, which are not further elaborated in the text of relevant sectoral laws and lack effective enforcement measures, cannot be a substitute for special comprehensive anti-discrimination legislation. Without such legislation, the implementation of the principles of equality and non-discrimination in Belarus will remain very difficult.¹ While in the context of labour law relations there is at least one Article of the Labour Code (Article 14), in the context of consumer-oriented business activities, there are, in principle, no anti-discrimination provisions in the legislation other than the Constitution.

The big problem for Belarus is discriminatory marketing. When creating advertisements for its products/services, the business often uses objectification, focusing the attention of consumers and clients on certain sexual characteristics, sexism, and vulgarization in order to capture the audience's attention. At the same time, given the general, highly gender-stereotypical environment, which is typical for Belarusian society, low legal and gender awareness in the business environment, references to the unacceptability of such advertising from civil society organizations and individual activists are in most cases perceived by business as «feminist whims».

At the same time, the production and broadcasting of advertisements containing vulgar and stereotypical ideas about gender roles promotes and encourages the creation of the environment in the society which is conducive to discrimination, based on stereotypes that impede the realization of the right to equal treatment and non-discrimination, which is the violation of the norms contained in the above-mentioned international agreements, as well as the norms of Belarusian legislation.

Thus, economic entities that use sexual objectification and sexism for advertising actually participate in creating the conditions for discrimination in the society by promoting gender stereotypes. In this case, negative influence on the realization of human rights is exerted by three subjects - the subject who orders advertising (manufacturer of goods/services), the subject who produces advertising, and the subject who broadcasts it.

¹ Alternative report of the National Human Rights Coalition on the implementation by the Republic of Belarus of the 1966 International Covenant on Civil and Political Rights (submitted to the 124th session of the Committee). UN Human Rights Council, May 2018), para. 13: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf.

The Law of the Republic of Belarus of 10.05.2007 «On Advertising» does not contain any provisions on the prohibition of discriminatory advertising; such advertising can be qualified as inappropriate (namely - unethical) according to paragraph 3 of Article 26, as containing offensive images about a human being. It is prohibited to use unethical advertising.

The problem is also the manifestation of discrimination and so-called «hate speech» in the activities of the Belarusian media, including Internet resources. Besides the fact that they do not refuse to broadcast discriminatory advertising, the practice of discriminatory materials published in the print media, discriminatory and sexist statements in video content is widespread.

The Law of the Republic of Belarus of 17.07.2008 «On Mass Media» as well as the Law of the Republic of Belarus of 10.05.2007 «On Advertising» do not contain explicit provisions concerning the prohibition of discrimination. However, Article 38, paragraph 1.2 of the Law of the Republic of Belarus of 17.07.2008 «On Mass Media» prohibits the use of inappropriate advertising in mass media and on Internet resources; paragraph 4 of Article 34 of the Law obliges a media journalist to «respect rights, freedoms and legitimate interests of individuals»; Article 4 proclaims respect for human rights and freedoms as one of the basic principles of the mass media activity.

Despite the fact that it is possible to «derive» from the existing legislation the ban on discriminatory advertising and discriminatory statements of mass media journalists, it is obvious that there is a need for a comprehensive anti-discrimination legislation, which should «cover» among other things discrimination and the actions that contribute to it in marketing and activities of mass media.

As in the case of labour law, the awareness-raising function of such legislation is extremely important. In the professional community of Belarusian journalists an extremely low level of gender awareness is evident. In most cases there is no understanding of such phenomena as sexism and objectification. This is confirmed both by the practice of their activities and by experts¹. When the public is indignant about such statements in the mass media, journalists often justify it by the sense of humour and intention to make jokes.

Given the special social role and responsibility of the mass media and journalists, the problem described requires special attention from the state and civil society. There is an objective need for certain educational and awareness-raising activities

¹ Alternative report of the National Human Rights Coalition on the implementation by the Republic of Belarus of the 1966 International Covenant on Civil and Political Rights (submitted to the 124th session of the Committee). UN Human Rights Council, May 2018), para. 13: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf.

for mass media journalists on the prohibition of discrimination and gender equality and for systemic measures to introduce gender equality and non-discrimination issues into formal educational programmes for journalists.

The state pays attention to this problem to some extent, but there are no comprehensive legislative measures to address it. In addition, MART decisions to prohibit sexist advertising and discriminatory material in the mass media are fragmented and sporadic. In some cases, sexism and objectification in advertising are not recognized as such. Most importantly, however, decisions to ban such advertising are based primarily on ethics and morality rather than on the prohibition of discrimination, and are not linked to human rights violations, which, in part, negate the understanding of such phenomena as unacceptable.

With regard to discriminatory statements in the mass media, given the large number of such cases, we are not aware of any cases when the management of a TV channel or a periodical would impose any sanctions on a journalist for unacceptable behaviour that does not comply with either journalistic ethics or legal norms.

In addition to discrimination in marketing and media, it should be noted that despite the active policy of the state to protect the rights of persons with disabilities, there are cases of discrimination of such persons by business.

The main problem is that the social protection of persons with disabilities is not implemented in an inclusive and personalized way, but on an institutional basis. Special positive measures in different spheres of life are general, not personalized. A significant number of discriminatory norms remain in legislation and law-enforcement practice. They concern, for example, the right to a family, limitations by type of disability and others. Monitoring of the accessibility of social infrastructure facilities reveals no more than 10-15% of relatively accessible facilities. Only about 1% of the national TV airtime is supported by sign language interpretation. The country's transport infrastructure does not meet the principles of completeness and continuity of accessibility of transportation routes due to the lack of such facilities in the traffic management policy.¹

The National Action Plan on the implementation in the Republic of Belarus of the Convention on the Rights of Persons with Disabilities for 2017-2025 noted such measures, which, in the course of their implementation, will contribute to a more effective realization of the rights of persons with disabilities by business: adoption of the concept of «discrimination on the basis of disability», the introduction of administrative responsibility for evasion of requirements to create conditions for

¹ Alternative report of the National Human Rights Coalition on the implementation by the Republic of Belarus of the 1966 International Covenant on Civil and Political Rights (submitted to the 124th session of the Committee). UN Human Rights Council, May 2018), paras. 25-31: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf.

unimpeded access of persons with disabilities to social, engineering, and transport infrastructure, the elimination of discriminatory norms on the basis of disability in all modes of transport (including road, water, air, rail) and by all carriers, establishing norms to ensure unhindered access to information for persons with disabilities.¹

It is expected that these innovations will be reflected in the new Law on the Rights of Persons with Disabilities and their Social Integration, the draft of which has now been prepared.

In 2016, experts from the Belarusian Network for Equality and Non-Discrimination² prepared a draft Concept of the national anti-discrimination legislation. The amended version of the Concept has been published in the report of the Belarusian Helsinki Committee «Discrimination of Certain Vulnerable Groups in Belarus» after a series of consultations and public discussions.³

Case studies: sexism and objectification in advertising

February 2019

Laserta company, which deals with corporate bonds on the securities market, has released an advertising video, which is a video with a clear sexual connotation and the presence of objectified female image. A girl, saying that she is a «billionaire hunter» and that she «had a lot of rich men», argues throughout the video that «7 is normal and 7.5 is even better», etc., asking at the end of the video: «how much do you have?» Until the end of the video, it is completely unclear what is advertised.

The comment of the producer of Doberman Film, Alexander Maximov, who shot this commercial, says: «Advertising on financial topics is rarely bold and provocative, especially in our country. Everything always comes down to «happy families» and smiling people who get loans. We decided to go a little further. But do not take our work too seriously, it is entertainment. We would like to thank Laserta and its management for their trust».

Source: <http://marketing.by/novosti-rynka/nastya-rybka-snyalas-v-reklame-o-fondovom-rynke-belarusi/>

¹ The National Plan of Action for the implementation of the Convention on the Rights of Persons with Disabilities for 2017-2025 in the Republic of Belarus: <http://mintrud.gov.by/system/extensions/spaw/uploads/files/Post.-SM-RB-natsplandejstvij-po-invalidam.pdf>

² The Network includes, in particular, Belarusian Helsinki Committee, Office for the Rights of People with Disabilities, Initiative Forb and others.

³ Discrimination of certain vulnerable groups in Belarus: report / D. Chernykh, O. Gulak, 2018: <https://belhelcom.org/ru/document/diskriminaciya-otdelnyh-uyazvimyh-grupp-v-belarusi>.

May 2018

Borisov women's social association «Provincia» sent an application to the Ministry of Antimonopoly Regulation and Trade with a request to recognize the advertising of loans as sexist and ban it. The advertisement with the image of the girl read as follows: «They did not give it to you? I will». The Ministry of Antitrust Regulation and Trade did not find any signs of «unethical» advertisement because the girl who promised to «give» was not depicted naked, but dressed in a business suit.

Source: <https://ex-press.by/rubrics/novosti-borisova/2018/05/29/tam-ne-dali-a-yadam-mart-obnaruzhil-v-borisovskoj-reklame-narushenie-net-rekvizitov>.

September 2017

A whole range of inappropriate advertising posters can be found in the Instagram-account of «Slavnaya» - a brand of drinking water. The advertisement uses images of a woman as a sexual object that have nothing to do with water as a consumed food product and in no way demonstrates the quality of this product.

Comment of the founder of the company «Abronix» (trademark «Slavnaya») Alexander Usenok on the negative reaction in social networks about this advertising: «People, who say so, apparently think about some vulgarity. We do not think about such things. We think about water. All people are different, and the degree of immorality is different for everyone. Yes, there are a few controversial people, but on the whole everyone likes it. There's nothing more there than water».

Sources: <http://marketing.by/novosti-rynka/polzovateley-sotssetey-vozbudili-foto-pite-voy-vody-slavnaya/> ; <http://marketing.by/mnenie/uchreditel-kompanii-vladeltsa-brenda-slavnaya-dumayte-o-vode-a-ne-o-kakoy-to-poshlosti/>.

December 2016

Company Mark Formelle has released a series of advertising posters of one of the collections of women's and men's lingerie, conveying gender stereotypes, sexism, and objectification. The posters featured both women and men advertising underwear, but men were presented in the usual natural positions, typical of the context of the production story, women - in unnatural, sexual positions, unrelated to the domestic activities they do in the advertised underwear. Thus, the advertisement, along with the lingerie, «advertises» the woman herself as a sexual object, which is unacceptable. The NGO «Center for Promotion of Women's Rights – Her Rights» has written an official letter to the company.

The company never recognized the problem, but soon after the PR scandal released a commercial in which sexualized «macho» men are sewing women's lingerie.

Sources: <http://marketing.by/novosti-rynka/seksizm-v-reklame-mark-formelle-tsentr-po-prodvizheniyu-prav-zhenshchin-napravil-obrashchenie-k-proi>.

July 2011

The Ministry of Commerce banned television commercials, recognizing three horseradish commercials produced by Firma ABC as unethical and containing sexual connotations. The play on words with this product was reflected in more than one corporate calendar. Such expressions were used:

«Everyone should have the thing... on the table». «The thing will surprise any housewife». At the same time on the calendar near the horseradish jar there were images with a clear sexual connotation (a naked man and a woman's backside in lace underwear), which had nothing to do with horseradish as a food product.

From the official answer of the company: «A joking calendar with the image of a jar of horseradish as a spice of ABC trademark and a really beautiful part of a woman's figure is released for own needs. It is made with humour and promotes good mood among the employees of the company».

Sources: <https://telegraf.by/2011/07/v-belarusi-zapretili-reklamirovat-hrenfoto-video>, <https://probusiness.io/marketing/3887-seksizm-na-seksizme-podborkaskandalnoy-belorusskoy-reklamy.html>, <https://citydog.by/post/abc-kalendar/>.

August 2009

The Ministry of Trade of the Republic of Belarus recommended to remove from the air the advertising clip of youth beer «TEMA» produced by «Lidskoe Pivo» from the moment of determination by the special commission on compliance with the norms of morality and ethics. A request for expertise was sent to the Ministry of Culture, Institute of Linguistics at the Academy of Sciences of the Republic of Belarus, as well as to the Society for Consumer Rights Protection. The Ministry had questions about the possible ambiguous interpretation of the plot of the video. The conversation between the two girls about the size of the beer bottle, according to the representatives of the controlling bodies, caused other associations.

Source: <http://marketing.by/novosti-rynka/It's not like it's not the same, it's the same>.

The comment on the marketing.by portal under this news is indicative: «It should be noted that in this case we are not talking about violation of the legislation on advertising, because the legal services of TV channels have passed the clip on the air without any problems».

The fact that the legal services of the channel let this or that advertisement go on the air without any problems does not necessarily mean its compliance with the law. It may indicate the incompetence of legal services in matters of gender equality and non-discrimination.

Other examples of sexism and objectification in Belarusian advertisements with expert comments can be found here: <http://marketing.by/analitika/razbiraem-seksiz-v-belorusskoy-reklame/>.

Case studies: sexism and hate speech in the media

August 2019

During the broadcast of the football match with women referees on TV channel «Belarus 5», commentators Pavel Baranov and Petr Kachuro made a number of sexist and offensive remarks against women referees: «It's probably physiology, sorry. It is the second time she delays the decision», «It is hard for players of this level to argue with a woman. How can they prove something emotionally to her?», «The standard is played in the company of charming ladies. Well, the lady is right... And Milner understands that it is better not to argue with a woman», «For sure Frappard passed all the tests to match the pace of such a game», « This has never happened (that a woman has been a referee of a football game. - TUT.BY), and, as football players, we try to treat it calmly, especially since it is also funny in its own way», «Yes, a very interesting game. In which pepper is added by the fact that the women's team is serving it», «Scientists have finally understood what the woman is thinking, but she has already changed her mind».

Source: <https://sport.tut.by/news/football/649673.html>.

May-June 2019

Valiantin Tishko, activist of the initiative «Journalists for Tolerance», sent to the Ministry of Information 14 publications from the website of the newspaper «Vecherniy Mogilev», containing discriminatory, offensive and aggressive statements against the LGBT community, asking to check them for extremism. As a result, the experts concluded that there were signs of extremism in two of them: «Judgment Day. Lyric strings stretched» and «What is the result of intolerance towards perverts? A trial was initiated to bring the media to administrative responsibility under Article 17.11 of the Code of Administrative Procedure. The newspaper challenged the results of the Republican Commission on Information Products in the Economic Court. The lawyer of the newspaper, among other things, stated in the court that «the words «paedophile» and «pederast» are synonymous because they have one root». The consideration of the case for imposition of a fine for extremist publications was suspended until the economic court issued its decision.

After the case of extremism was brought to the court, the website of the newspaper published the statement of the support group with inadequate content (the phrase which was used: «Today in the Leninsky court of Mogilev they will crucify Christ again!», «If we lose this trial, they will do to us and our children what they have done to Norway, Finland, England, to all Europe, to America - to the whole world»). At the same time, the newspaper's website also published an appeal to the President, which states, among other things, that «high-ranking homosexuals who put pressure on militia officers and judges through this public process want to intimidate the media so that no one else dares to criticize perverts».

Source: <https://news.tut.by/society/645177.html>; <http://www.vecherniy-mogilev.by/?page=article&articleID=8053>

The newspaper «Vecherniy Mogilev» is the leader of the Belarusian mass media in using «hate speech».¹ The materials published by the newspaper and the public speeches of the editor-in-chief of the newspaper Nadezhda Levchenko contain unacceptable, offensive, and aggressive statements against the LGBT community. The words used by the newspaper are: perverts, freaks, pederasts, etc.² This position of the newspaper is explained by «saving Slavic values» and «traditional family». The newspaper's support group engages minors in its discriminatory aggressive illegal activities against the LGBT community.³

The Ministry of Information of the Republic of Belarus has never raised the question of the editor-in-chief's professional compliance. The newspaper has three times become a diploma winner in the nominations of the National Media Competition «Golden Liter». It has diplomas of mass media competitions granted by the Prosecutor General's Office of the Republic of Belarus, Ministry of Internal Affairs of the Republic of Belarus.⁴

The newspaper was supported by the Public Chamber of the Union State in the situation with the judicial process related to extremism.⁵

May 2019

During the live broadcast of the Eurovision Song Contest on the state TV channel Belarus-1, commentator Evgeny Perlin made a number of homophobic statements. When the «kiss camera», running around the audience, snatched kissing gay couples, Evgeny Perlin used the phrase: «Oh, my God! Maybe it is better not to watch», «Come on! I hope that now the cameramen will find really cool couples here in Tel Aviv Expo» (after the transition of the camera from a heterosexual couple to a homosexual couple), «Now Dana says that love has no religion, no restrictions, no race - there are no restrictions. But still, we want values to remain valuable. For love to be love» (during Dana International's song). The incident was noted by the BBC news service. Eurovision's press service noted that it respects diversity and integration, and, therefore, cannot agree with disrespect for these values from those associated with the contest. An explanatory talk was held with the Belarusian delegation on these comments and the standards expected from them.

Sources: <https://www.the-village.me/village/culture/reaction/275043-bbc-about-perlin>; <https://www.bbc.com/news/blogs-news-from-elsewhere-48283982>; <https://reform.by/rukovodstvo-evrovidenija-otreagirovalo-na-gomofobnye-kommentarii-vedushhego-bt/>

¹ «Vecherniy Mogilev», known for his homophobia, faces trial for extremism (site of the Human Rights Initiative «Journalists for Tolerance»): <https://j4t.by/2019/06/03/vechernemu-mogilevu-izvestnomu-svoeygomofobiey-grozit-sud-za-ekstremizm/>.

² See, for example, «LGBT activist complained to the KGB and the Ministry of Information about «Vecherniy Mogilev». The editor of the newspaper outraged»: <https://news.tut.by/society/567345.html>.

³ «They are suing for extremism in the newspaper Vecherniy Mogilev, which was complained about insulting the LGBT community»: <https://news.tut.by/society/645177.html>.

⁴ Website of the regional newspaper «Vecherniy Mogilev»: <http://www.vecherniy-mogilev.by/index.php?page=about-newspaper>.

⁵ «The president supports the institute of the family, the Ministry of Information does not, and what will the court say?»: <http://www.vecherniy-mogilev.by/?page=article&articleID=8181>.

April 2019

Internet resource TUT.BY published the material of columnist Anna Zlatkovskaya «I cannot imagine how you can want a man like that» about men who like to wear makeup. The material actively conveys gender stereotypes, sexism, and contains offensive language for these men. Phrases are used: «...I realized that for the first time I rejoice at my age and the fact that I was born in the Stone Age, when any adequate man had not seen the difference between powder and foundation», «If a man begins to worry that he has asymmetrical eyebrows or too convex cheeks, stocking up on an arsenal of make-up artist, you unwittingly think about whether he will piss out of fear if a pimple pops out on his nose? There is no need to even talk about fighting with hooligans, the make-up will be ruined...», «It's obvious: if the guy has brushes, sponges, and a puffy makeup bag in his arsenal, do not hope that your natural beauty will impress him».

However, it is important to note that after expressed concern about this publication, TUT.BY itself offered to publish material with the opposite point of view,¹ which positively characterizes the media outlet.

Source: <http://news.21.by/other-news/2019/04/30/1784037.html>.

Case studies: discrimination of persons with disabilities

August 2019

A wheelchair passenger from Russia was refused to be taken by bus of transport company «Tradimus» on the route Minsk - St.-Petersburg on the argument that it contradicts the internal instruction of the carrier. On behalf of the Ministry of Transport, the situation was dealt with by the Transport Inspectorate. Two drivers, who were operating the trip on July 3rd, were brought to administrative responsibility under part 5 of the Article 18.14 of the Administrative Code of Belarus for the violations committed. After the investigation «Tradimus» sent a letter to the Ministry of Transport, stating that the bus Volvo, on which they perform international trips, is a general-purpose bus, not a special one; it is not intended for transportation of disabled wheelchair users.

Source: <https://auto.tut.by/news/exclusive/649539.html>.

April 2019

On April 21st, at a stop in Gomel, a wheelchair user asked for help from the driver of trolleybus #8: he himself could not get into the interior of the vehicle. The driver refused, arguing that he did not have time. The man made a complaint to «Gorelektrotransport», where they conducted an investigation and brought the driver to disciplinary responsibility.

Source: <https://news.tut.by/society/636404.html>.

¹ «What if I like to put on makeup and I'm a man?» Opinion on men's right to makeup: <https://lady.tut.by/news/life/636930.html>.

January 2019

According to the current legislation, a blind citizen, concluding a loan agreement with a banking institution, has no right to sign it manually. Bank employees offer to draw up a power of attorney for a third party to put the signature on behalf of the blind person. The bank's request is motivated by the fact that the blind citizen cannot get acquainted with the content of documents, so his signature has no effect. In case of problems and court proceedings, the bank will find itself in a «delicate situation».

A group of visually impaired individuals applied in writing to one of the deputies, who asked the National Bank to consider the possibility to amend the existing forms of the contract at the legislative level so that the blind could make transactions independently. The Association of Belarusian Banks, in turn, has already asked banks to express their views on this issue.

Sergei Drozdovsky, the Coordinator of Office for the Rights of Persons with Disabilities, says the problem has been raised for several years. However, no specific decisions have been taken so far. He also notes that in order to introduce such restrictions due to increased risks there should be studies and concrete examples of such situations. In the meantime, these are all hypothetical assumptions.

Difficulties arise not only when applying for a loan or an instalment plan, but also when purchasing an insurance policy. In the field of insurance, disability is also used as a risk element, which increases the cost and worsens the conditions for the client.

Source: <https://finance.tut.by/news622292.html?vb>.

Discriminatory practices of tour operators

A number of tour operators of Belarus introduce the following provision into the agreements on tourist services provision (or into additional agreements to the agreements): «The customer is informed that the place of his temporary location (the country of stay, hotel, camping, resort, etc.) may be occupied by people with disabilities (disabled), including persons with mental disabilities» (see, for example, the website of the tour operator «Intercity»: <https://intercity.by/upload/pdf>).

While the Resolution of the Council of Ministers of the Republic of Belarus of 12.11.2014 No. 1064 «On approval of the Rules of rendering tourist services», which approves the form of the Model contract on rendering tourist services, states that the contract on rendering tourist services can be supplemented with conditions not contradicting the legislation (para. 24, part 4).

¹ The year of entry into force of the international treaty for Belarus is indicated in parentheses.

9.2. Environmental human rights

International legal obligations of the Republic of Belarus:¹

- International Covenant on Civil and Political Rights 1966 (1973)
- International Covenant on Economic, Social and Cultural Rights of 1966 (1973)
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998 (Aarhus Convention) (2000)

Documents officially interpreting international legal obligations of the Republic of Belarus:

- General Comment No. 14 (2000) «The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)» (CESCR)¹
- General Comment No. 24 (2017) (CESCR)
- General Comment No. 36 (2018) on the Right to Life (Article 6 of the International Covenant on Civil and Political Rights) (HRC)
- Guidelines for the implementation of the Aarhus Convention developed by the United Nations Economic Commission for Europe in 2000
- Maastricht Recommendations for Promoting Effective Public Participation in Environmental Decision-making, prepared by the United Nations Economic Commission for Europe under the auspices of the 2015 Aarhus Convention

Basic national legislation:

- Constitution of the Republic of Belarus, Article 46, part 1, Article 34, Article 35
- Law of the Republic of Belarus of 14.07.2008 «On Environmental Protection»
- Law of the Republic of Belarus of 18.07.2016 «On State Environmental Expertise, Strategic Environmental Assessment and Environmental Impact Assessment»
- Law of the Republic of Belarus of 20.07.2007 «On Waste Management»
- Law of the Republic of Belarus of 07.01.2012 «On Sanitary-Epidemiological Well-Being of the Population»

¹ Hereinafter, the treaty body that adopted the General Comment is indicated in parentheses.

- Law of the Republic of Belarus of 29.06.2003 «On Quality and Safety of Food Raw Materials and Food Products for Human Life and Health»
- Law of the Republic of Belarus of 18.06.1993 «On Public Health»
- Law of the Republic of Belarus of 18.07.2011 «On Appeals of Citizens and Legal Entities»
- Criminal Code of the Republic of Belarus

Main Responsible State Agencies:

- Ministry of Natural Resources and Environmental Protection
- Prosecutor General's Office

Civil society organizations:

- Ecodom
- Partnership «Green Network»
- Center for Environmental Solutions

Recommendations of international monitoring bodies:

Aarhus Convention Compliance Committee	• As part of the decisions on specific communications (see below).
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Country context

The main problem in the area of environmental human rights in Belarus is the inadequate implementation of the right to access to environmental information. Despite the fact that Belarus has ratified the Aarhus Convention, the state does not take sufficient measures to ensure compliance by business entities. In addition, there are cases of harassment and infringement of the rights of persons demanding access to environmental information and fighting against construction of environmentally harmful industries, which also contradicts the Aarhus Convention.

The problem of construction of the Belarusian NPP (nuclear power plant) should be highlighted separately. Construction began in 2011 under the Russian NPP-2006 project near the border with Lithuania. The customer for construction and operating organization is «Belarusian NPP». In 2010 the Lithuanian Ministry of Environment sent a document to the Minister of Natural Resources and Environmental Protection of Belarus concerning Lithuania's position on the environmental impact assessment. The 60-page document describes in detail the inadequate procedure of the environmental impact assessment of Belarus, as well as the inadequate provision by Be-

larus of the procedure for public hearings on the report on this assessment, which took place in Lithuania in March 2010 and where representatives of Belarus could not answer questions from the public.¹ In the case of the Belarusian NPP, there was also a violation of the right of access to information, which was recognized by the Aarhus Convention Compliance Committee in 2011² (see case studies below).

Communications against Belarus by the public have been submitted 3 times to the Aarhus Convention Compliance Committee:

- in 2009 in connection with the construction of the Neman HPP. The Committee acknowledged violations by Belarus of Article 4 (para. 1) «Access to environmental information» and Article 6 (paras. 2, 3, 7, 8, 9) «Public participation in decision-making on specific activities»;³
- in 2010 in connection with the construction of the Belarusian NPP. The Committee acknowledged violations by Belarus of Article 4 (para. 1) «Access to environmental information» and Article 6 (paras. 2, 4, 6) «Public participation in decision making on specific activities»;⁴
- in 2014 in connection with the persecution of the environmental activists (5 persons) who opposed the construction of the Belarusian NPP, including illegal detention, administrative arrest, ban on entry into the country, searches and seizure of information materials. The Committee acknowledged the violation by Belarus of the paragraph 8 Article 3 of the Convention «General Provisions», which prohibits prosecuting, punishing and harassing in any form persons who realize their rights under the Convention.⁵

The problem of waste management should also be highlighted. Over the last 5 years, the amount of industrial waste generated has been increasing every year (in 2016 - 49 448 thousand tons, in 2017 - 55 506 thousand tons, in 2018 - 60 723 thousand tons). The majority of waste is produced by the manufacturing industry. The number of solid municipal waste per capita is also growing (as of 2018 – 400,2 kg/person; in 2017 - 400,2, in 2016 - 399,3, in 2015 - 393,5).⁶

¹ Letter of the Ministry of Environment of the Republic of Lithuania to the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus dated 07.05.2010 No. (10-3)-D8-4486 concerning the Lithuanian position on documentation on environmental impact assessment carried out in connection with NPP construction in the Republic of Belarus : http://atomby.net/file/position_with_attachments_lt.pdf.

² Conclusions and recommendations of the Compliance Committee on communication ACCC/C/2009/44 concerning compliance by Belarus (adopted on 28 June 2011): <https://www.unece.org/env/pp/cc/com.html>.

³ Conclusions and recommendations on communication ACCC/C/2009/37 concerning compliance by Belarus with the Convention (adopted by the Compliance Committee on 24 September 2010): https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-37/Findings/ece_mp_pp_2011_11_rus_add2.pdf.

⁴ Conclusions and recommendations of the Compliance Committee on communication ACCC/C/2009/44 concerning compliance by Belarus with the Convention (Adopted 28 June 2011): <https://www.unece.org/env/pp/cc/com.html>.

⁵ Conclusions and recommendations on communication ACCC/C/ 2014/102 concerning compliance by Belarus with the Convention (Adopted by the Compliance Committee on 18 June 2017): <https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.r.pdf>.

⁶ National Statistical Committee of the Republic of Belarus: <http://www.belstat.gov.by/ofitsialnaya-statistika/makroekonomika-i-okruzhayushchaya-sreda/okruzhayushchaya-sreda/sovместnaya-sistema-ekologicheskoi-informatsii2/i-othody/i-1-obrazovanie-othodov/>.

As compared to 2017, the amount of hazardous waste also increased significantly (as of the beginning of 2018 - 7,958 tons, in 2017 - 5, 956, 2).¹

The Law of the Republic of Belarus of 20.07.2007 «On waste management» (Article 17) establishes obligations of legal entities, individual entrepreneurs and natural persons in the field of waste management. The system of separate waste collection is introduced and legally established in the country.

In March 2019 the Directive of the President of the Republic of Belarus of 04.03.2019 No. 7 «On improvement and development of housing and communal services of the country» was adopted, where among other things the improvement of drinking water quality and improvement of solid municipal waste management are specified as one of the fundamental directions. The latter, in particular, means phasing-out polyethylene packaging with its replacement by ecologically safe packaging made of glass and paper, as well as attracting investments into the sphere of municipal solid waste management (including creation of a deposit system for consumer packaging).

In July 2019, in accordance with the order of the Council of Ministers of the Republic of Belarus of 04.07.2019 No. 02/102-243/7608r on the necessity to study the issue of prohibition of the use of disposable plastic tableware in public catering facilities, the Ministry of Antimonopoly Regulation and Trade (MART) requested the Ministry of Health, the Ministry of Housing, the Ministry of Communal Services, the State Committee on Standardization, the Ministry of Natural Resources and Environmental Protection and business to indicate their position on this issue.

It may be noted that the state sees the problem of municipal solid waste in a rather comprehensive way, not only in connection with plastic tableware. For example, in April 2019, on the eve of Radunitsa (the day of commemoration of the deceased), the Ministry of Natural Resources urged citizens to abandon the environmentally harmful tradition of using plastic flowers to decorate the graves of the deceased and replace them with live plants (potted flowers, dwarf shrubs, lawn grass), as well as candles and ribbons made of fabric. Every year, after Radunitsa, about 1 million plastic flowers with a decomposition period of 100 to 500 years are taken to municipal solid waste landfills and are not subject to recycling. In addition, sometimes old flowers are incinerated, which can cause irreparable harm to human health and especially to children's health, as heavy metals and dioxins are released into the environment when plastics are burned.²

¹ National Statistical Committee of the Republic of Belarus: <http://www.belstat.gov.by/ofitsialnaya-statistika/makroekonomika-i-okruzhayushchaya-sreda/okruzhayushchaya-sreda/sovместnaya-sistema-ekologicheskoi-informatsii2/i-othody/i-2-upravlenie-opasnymi-othodami/>.

² «Ministry of Natural Resources: plastic flowers in cemeteries are harmful to the environment»: <https://minsknews.by/minprirodyplastikovyye-tsvetyi-na-kladbishhah-vrednyi-dlya-ekologii/>.

The problem of environmental pollution. According to official statistics, the main emissions to the atmosphere come from manufacturing, agriculture, forestry and fisheries.¹ However, according to the Third Environmental Performance Review of Belarus, conducted by the UNECE Commission in 2015, it is noted that air quality standards are closer to EU standards, and in some protected areas are stricter than these standards. However, the review highlights the problem with diffuse pollution of water bodies and groundwater with nitrogen and phosphorus. The main source of such pollution is polluted wastewater from cultivated land.²

The Law of the Republic of Belarus of 14.07.2008 «On Environmental Protection» provides several economic instruments to stimulate rational (sustainable) use of natural resources and compliance with environmental legislation by economic entities, including environmental insurance (Articles 82-85). The country recognizes the ISO 14001 environmental management standards. There is a certification system in place in accordance with these standards, which is carried out by accredited bodies within their field of accreditation. Obtaining such a certificate shall entitle the holder to tax benefits.

At the same time, the problems are posed by investment projects in Belarus aimed at constructing several plants that (although they should), fail to comply with the environmental standards set out in Belarusian legislation. In particular, the project on construction of a sulphate bleached pulp plant is an investment project implemented since 2012 by Svetlogorskiy celulozno-kartony kombinat and China CAMC Engineering Co., Ltd. (general contractor) (see Section 6 for more details).

Case studies

2018-2019

In Brest free economic zone at the industrial site «Airport» LLC «iPower» is building a battery factory. Residents of Brest and several villages in the Brest district believe that the plant threatens their health. Starting from February 25, 2018, activists and locals gather every Sunday at Lenin Square in Brest (main square) and discuss the construction of the battery factory.

The authorities have repeatedly declared full compliance with legislation and environmental standards of the construction of the plant. In December 2018, Minister of Natural Resources and Environmental Protection Andrei Khudyk met with opponents of the plant's construction and assured that if any breach of permissible standards is revealed, the plant will not open. In March 2019, the same was stated by Chairman of Brest Regional Executive Committee Anatolyi Lis during a briefing with journalists. At the same

¹ National Statistical Committee of the Republic of Belarus: <http://www.belstat.gov.by/ofitsialnaya-statistika/makroekonomika-i-okruzhayushchaya-sreda/okruzhayushchaya-sreda/sovместnaya-sistema-ekologicheskoi-informatsii2/a-zagryaznenie-atmosfernogo-vozdusha-i-razrushenie-ozonovogo-sloya/a-1-vybrosozagryaznyayuschiy-veschestv-v-atmosfernyi-vozdukh/>.

² Third Environmental Performance Review of Belarus conducted by the UNECE Commission in 2015: <http://www.minpriroda.gov.by/ru/docs-ru/>.

time, in Brest, a state and public group of environmental monitoring was formed in the affected area of the battery plant «iPower». According to the approved monitoring schedule, air, soil, drinking water and sewage will be studied monthly. The results will be published in electronic, print media and Internet resources. In April 2019, Chairman of the Brest Regional Executive Committee Anatoliy Lis reported that the battery plant near Brest would start operating in May 2019. However, as early as June 14, 2019, he signed an order to suspend the construction of the plant «until the identified violations are eliminated».1 On June 17, 2019, the Regional Committee of Natural Resources and Environmental Protection suspended the permission for the plant to release pollutants into the atmosphere.

Since January 2018 and as of the end of April 2019, activists had applied to hold 88 rallies, 12 pickets and 16 demonstrations in Brest and the Brest district. Only one of them was approved - a rally «Brest women against lead» took place on April 29, 2018. The total amount of fines received by the activists is about \$9000. 27 opponents of the battery factory were brought to administrative responsibility.

Source: <https://news.tut.by/society/635218.html>, <https://news.tut.by/society/643107.html>.

2017-2019

Since 2012, the construction of the sulphate bleached pulp plant has been underway - an investment project implemented by Svetlogorskiy celulozno-kartony kombinat (customer) and China CAMC Engineering Co., Ltd. (general contractor). The project is being implemented on the basis of Presidential Decree No. 391 of 30.08.2012 «On the construction of a sulphate bleached pulp plant». At the same time, the major part of the project cost is a buyer loan provided under the Credit Agreement between the Government of the Republic of Belarus, the Export-Import Bank of China and the Industrial and Commercial Bank of China.

Initially, 10 thousand signatures were collected in Svetlogorsk and Svetlogorsk District against the construction of the plant. As soon as commissioning began at the end of 2017, the air began to smell distinctively. Especially it can be felt in the village of Yakimova Sloboda, which literally borders the mill. It turned out that the mill emits into the atmosphere methylmercaptan - toxic gas, which is harmful for inhalation even in small doses. It turned out that neither the plant nor the city has a device capable of measuring concentration of methylmercaptan in the air. In the course of tests, the plant purchased such a device, but in order to use it, it is necessary to develop a methodology. Director of the plant assured that starting from April 2019 the information about methylmercaptan concentration in the air will be available on the board, on the passageway of Svetlogorsk plant and on the website of the plant. In addition, there will be data on other bad smelling emissions. In May 2019, the residents of Svetlogorsk counted only two days without stench in the air of the city and areas close to the plant for the production of sulphate white pulp. In response to citizens' complaints about the industrial facility, the Ministry of Nature instructed the management of the plant and the concern it belongs to «immediately to find the reasons for the unpleasant smell and take measures». In its response,

the Ministry threatens to punish those responsible for possible unsustainable use of natural resources.

It should also be noted that in May 2019, after Prime Minister's visit to the plant, it was decided to terminate the contract with the Chinese contractor, as the latter overextends the construction and violates the instructions.

Sources: <https://sputnik.by/live/20190329/1040632607/Svetlogorskiy-tselly-uloznyy-kombinat-narod-protiv-tukhloy-kapusty.html>; <https://belsat.eu/ru/in-focus/zhiteli-svetlogorska-zadyhayutsya-ot-vonitsellyuloznogo-zavoda/>; <https://belsat.eu/ru/news/kitajskij-zavod-v-svetlogorske-belorusy-dostroyat-samostoyatelno/>

May 2016

In the capital district «Zelenyi Lug» trees started to be cut down in the park zone. The construction site has neither fences nor a passport for the object. From the official response of the Committee of Architecture and Town Planning of Minsk City Executive Committee, it follows that a sports and fitness complex with tennis courts will be built on this site in accordance with the request of the President. The construction site was provided on March 3, 2016 to ERIA (controlled by Petr Sinkevich), co-owner of the Expo-bel shopping centre. No public discussions were held. According to the residents of the district, there is no need for a tennis court in this place because there are already some indoor tennis courts one stop away along Koltsova Street. There are also open tennis courts in the vicinity. While this park is the only place for residents of the neighbourhood to relax. Citizens have collected over 2000 signatures against the construction of the facility. In December 2016, construction was suspended to adjust the project documentation.

Source: <http://greenbelarus.info/articles/04-05-2016/v-zelyonom-luge-pytayutsya-ostanovit-stroyku-tennisnogo-centra-kotoryy-vozvodyat> .

March 2016

On March 9, the decision of Molodechno District Executive Committee No. 173 «On Permission to Construct the Object» was adopted, according to which the «Veles-Mit» is allowed to build a facility under the project «Construction of a pig breeding complex for 100 thousand heads per year and access roads to it in the village of Sovlovo, Molodechno district». Simultaneously, a meeting to discuss the EIA report of the same project is scheduled for April 1. The public discussion itself lasted from February 26 to March 26, and its results should have been taken into account when issuing a permit for this construction.

Among the arguments of the representatives of Molodechno District Executive Committee, sent in response to the lawyer of the Green Network Partnership, was the following: «What have you personally created in this life, girl? You are barging in being paid two kopecks and start to excite people! How many jobs have you created today, dear?»

Source: <http://greenbelarus.info/articles/12-04-2016/luchshe-vmesto-svinofermy-vyrashchivali-frukty-soglasovanie-svinokompleksa-pod>

2013

In June 2013 mass media published a notice on public discussion of the project «Detailed plan of the territory of priority development of the China-Belarus Industrial Park». Wishing to exercise its right to conduct a public environmental impact assessment, NGO «Ecodom» sent a statement of intent to conduct this expertise within the time frame and in the prescribed form asking to provide the necessary documentation. The request was denied. According to the answer, the owner of this environmental information was the customer - «Industrial Park Development Company», while the request was addressed to the state institution «Administration of the China-Belarus Industrial Park», as in the announcement published in mass media the data of the administration were specified. The NGO «Ecodom» filed a lawsuit in the court of Moskovsky District of Minsk to suspend the economic activity on implementation of the project «Detailed plan of the territory of the priority development of the Chinese-Belarusian Industrial Park» until the violated right of the public to take part in decision-making on environmentally significant issues is restored in the form of conducting a public ecological expertise of the project documentation. The court of first instance refused to initiate a civil case on the grounds that the dispute was beyond the jurisdiction of the court. The court of cassation left in force the ruling of the court of Moskovsky district of Minsk. On September, 10th, 2014 acting Chairman of the Minsk city court has refused to satisfy the appeal for supervisory review, having stated that the case is not in jurisdiction of court in view of qualitative structure of claimants - as any of the parties in dispute is not the citizen.

Source: «Judicial protection of environmental rights of citizens of Belarus» (S. Magonov, 2014): http://www.aarhusbel.com/data/downloads/19_.pdf.

2012

The public of the city. Berezovka, Lida district, has repeatedly addressed the management of the Neman Glass Factory and local authorities during three years with a request to hold a public discussion of the project on organization of glass wool production at the factory. After the appeal to the Aarhus Centre, it emerged that there was a need for expert assessment of the situation with regard to compliance with the provisions of the Aarhus Convention in the implementation of this project. For this purpose, a request was made to the plant to provide environmental information: section «Environmental Protection» of the project documentation, conclusion of the state environmental expertise and environmental conditions for the project design. Neman Glass Factory did not reply to the request. Since leaving the appeal unanswered is a violation of the legislation on appeals of citizens and legal entities, the applicant had to turn to the Prosecutor's Office. After that, the plant provided a letter with information on compliance with legislation during implementation of the investment project. At the same time the requested information in the form of copies of factual documents was not provided, that is why the applicant, expert M., who made the request on his own behalf as an individual, applied to the court of Lida district with a claim to compel the plant to provide this environmental information.

The required documents were handed over by the plant representatives to the plaintiff directly in the courtroom. In connection with the satisfaction of the claim for the provision of information before the judgment, the plaintiff withdrew the lawsuit in this part, and the court, by its ruling, recovered from the defendant in favour of the plaintiff the court costs incurred.

Source: «Judicial protection of environmental rights of citizens of Belarus» (S. Magonov, 2014): http://www.aarhusbel.com/data/downloads/19_.pdf.

2009-2011

NGO «Ecodom» appealed to the Directorate of Construction of the Belarusian NPP with a request to provide environmental information - the report on the environmental impact assessment of the future NPP for the public environmental expertise. The Directorate refused to provide copies of the documents in written and electronic form, as requested by the applicant, and invited the interested public to get acquainted with the materials in their office. NGO «Ecodom» started the legal proceedings. During the court hearing, the defendant posted an EIA report on its website (excluding only information the dissemination of which could pose a threat to national security), and at the end of the trial the information was removed from the website. The court's decision of January 12, 2011 dismissed the claims. According to the court, provision of information does not necessarily mean the transfer of information in the form in which it is requested, and the fact of public access to the materials of the EIA report in the office of the Directorate, as well as the posting of information on the website can be considered as appropriate provision of information.

NGO «Ecodom» appealed to the Aarhus Convention Compliance Committee with a communication about the violation of the right of access to information. The Committee found violations of Article 4 (para. 1) «Access to environmental information» and Article 6 (para. 2, 4, 6) «Public participation in decision-making on specific activities», namely:

- granting access to the full version of the EIA report only in the NPP Directorate building in Minsk and prohibition to make copies, violates the requirements of Article 6, paragraph 6 and Article 4, paragraph 1 (b) of the Convention;*
- failure to properly inform the public that in addition to the 100 page EIA report available to the public, there is a full version of the report (over 1,000 pages), violates the requirements of Article 6, paragraph 2 (d) (vi) of the Convention;*
- allowing public participation only during the environmental impact assessment phase of the NPP, organizing only one hearing for this purpose, actually reducing the public contribution to proposals on how to limit the environmental impact of NPP construction and not allowing the public to influence the decision on the choice of the NPP construction site (as this decision has already been made) violates the requirements of Article 6, paragraph 4 of the Convention;*

- *failure to inform the public about the possibility to see the full EIA report violates the requirements of Article 6, paragraph 6 of the Convention (paragraph 80);*
- *restricting the ability of members of the public to submit their comments violates the requirements of Article 6, paragraph 7 of the Convention.*

Sources: «Judicial protection of environmental rights of citizens of Belarus» (S. Magonov, 2014): http://www.aarhusbel.com/data/downloads/19_.pdf; Conclusions and recommendations of the Committee on compliance with the Aarhus Convention on communication ACCC/C/2009/44 regarding compliance of Belarus with the Convention (adopted 28 June 2011): <https://www.unece.org/env/pp/cc/com.html>.

10. HOW BUSINESSES SHOULD ENSURE RESPECT FOR HUMAN RIGHTS?

«KNOW AND SHOW»

Respect for human rights by business is not just a passive obligation. Any business can declare that it is willing to respect human rights and believe that it is complying with them. But in order to actually fulfil its duty to respect human rights, a company must not only know that it has to do so, but also demonstrate by its actions that it is doing so and working towards it.

The 2011 UN Guiding Principles speak not only about what businesses should and should not do, but also how they should do it.

This approach is enshrined in the **«KNOW AND SHOW»** formula, which has become an established term for a concise description of business respect for human rights.¹

In order to be able to «show» compliance with human rights in practice, a company must embed a human rights agenda throughout its management and reporting system.

How do you do that?²

For a company to «know and show» the effective fulfilment of its responsibility to respect human rights and put human rights on the company's agenda, 3 elements are necessary:

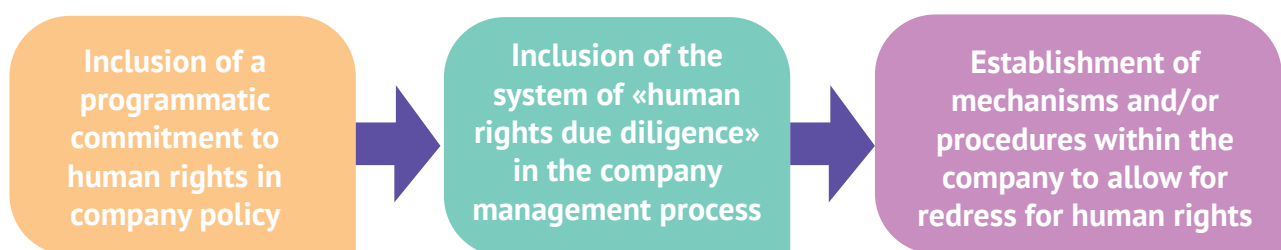


Fig. 17: Integrating human rights into the company's management system

All elements in terms of content, scope, of course, depend on the size and specifics (including the scope of activities) of the company. But they are interconnected and represent 3 consecutive steps.

¹ The formulas were suggested by the 2011 United Nations Guidelines developer J. Ruggie. It is being used in the 2012 Interpretive Guide.

² In accordance with Principles 15-22 of the 2011 Guiding Principles.

10.1. Element 1: A general statement of commitment to human rights

Such a statement has **substantive** and **procedural** requirements.¹ The **substance** of such a statement:

- should determine the company's expected attitude towards human rights on the part of:
 - all company personnel;
 - business partners;
 - other parties directly related to the company's operations, products or services;
- is prepared with the involvement of human rights experts (to ensure that it is properly formulated and justified).

The company may use both internal and external expertise. Relevant experts within the company, if available, may draw on expertise from a variety of sources. In particular, this Guide is also intended to be used for this purpose.

A statement may be contained in one place (this is generally the expectation of the 2011 Guiding Principles) but may also be traced back to several statements regarding different aspects (different human rights), including the company's values.

It may vary in the levels of detail, but it should not contain specific operational details (this is a function of the company's internal policies). It may contain a general statement that the company commits to respect human rights in all aspects of its operations, or in addition to listing specific rights that are at risk in the context of the company's business. But even if such a statement lists some rights, it does not mean that the company should only respect the rights listed.

Procedurally, such a statement:

- must be approved at the highest level of the company's management;
- must be public, distributed within the company (to all employees) and «outside» the company - to all company partners and other interested parties;
- should be reflected in all internal company policies and procedures, that is, a systematic approach to placing human rights on the company's agenda should be adopted.

¹ In accordance with Principle 16 of the 2011 Guiding Principles.

The logical continuation of such a statement is the incorporation of relevant human rights provisions into the company's HR policy, PR policy, risk management system, security policy, etc.

Ideally, a separate «Human Rights Policy» can be developed within the company.

Apple

On Apple's website, such statements are presented through some of the Company Values, namely: Inclusion and diversity, privacy and special emphasis on human rights within the value of Supplier Responsibility.

Source: <https://www.apple.com/>

Microsoft

A general statement on conducting transparent and respectful business is provided. Also presented through the company's values within the value «Social responsibility». At the same time, it is important to note that Social Responsibility is separated from Charity, which is represented in a distinct value, which once again shows various accents in the understanding of CSR in Western and post-Soviet companies.

Source: <https://www.microsoft.com/ru-ru/about/values>

Nike

General statement on respect for human rights in all operations and throughout the supply chain with reference to the 1948 Universal Declaration of Human Rights. Presented through the «Production» tab. In doing so, Nike further highlights the «Equality» dimension, where it focuses on non-discrimination policies, demonstrating, for example, its high ranking in the Annual Corporate Equality Index of LGBT Friendly Companies.

Source: <https://purpose.nike.com/human-rights>

Danone

The general obligation to respect human rights in all its operations and supply chain is stated in the context of Danone's contribution to the SDGs. It also makes reference to internal policies and documents adopted by Danone in this regard. Reference is made to the 2011 UN Guiding Principles. Particular emphasis is placed on compliance with these standards by Danone suppliers.

Source: <http://iar2017.danone.com/performance-in-2017/human-rights-and-responsible-procurement/?L=>

Sakhalin Energy

A general statement can be found in the separate «Human Rights» tab under the section «Society» and is designed directly according to the rules prescribed in the UN Guiding Principles 2011. The statement states that the company itself operates on the

basis of human rights and requires its contractors and subcontractors to do the same. Reference is made to a number of international human rights instruments: the 1948 Universal Declaration of Human Rights, the core conventions of the International Labour Organization, the 2011 UN Guiding Principles, the UN Global Compact Principles, the ISO 26000 Guidance on Social Responsibility, the Voluntary Principles on Security and Human Rights. The statement also states that this general obligation is detailed in the company's Human Rights Policy.

For reference: Sakhalin Energy is one of Gazprom's companies. The shareholders are Shell, Mitsui Group and Mitsubishi Group.

One of the most «advanced» companies in the post-Soviet region in terms of including human rights in the company's agenda.

Source: http://www.sakhalinenergy.ru/ru/social/human_rights/

A 2013 study conducted by the Business and Human Rights Working Group to monitor the implementation of the 2011 UN Guiding Principles by business and the challenges faced by business in this process found that 57.52% of companies surveyed had a public policy statement committing themselves to respect human rights. Of the remaining companies, 15% had such a commitment in non-public documents.¹

Among Belarusian companies the most «advanced» in terms of human rights policies can be considered Coca-Cola HBC Belarus.

Coca-Cola HBC Belarus

Of the 19 company policies presented on the website, 4 are directly related to human rights issues. Among them: Human Rights Protection Policy, Equal Opportunities Policy (non-discrimination), Personal Data Protection Policy, Occupational Health and Safety Policy. Other policies also address aspects of human rights protection - including the Policy on Responsible Marketing.

Source: <https://by.coca-colahellenic.com/ru/%D0%BE-%D0%B-D%D0%B0%D1%81/%D0%BF%D0%BE%D0%BB%D0%B8%D1%82%D0%B8%D0%BA%D0%B8/?page=1>

¹ In 2013, the UN Working Group on Business and Human Rights, established to continue work on the topic after the end of the mandate of the Special Representative of the UN Secretary General J. Ruggie, conducted monitoring of business perception of the UN Guiding Principles 2011. 153 large, medium and small business companies from 6 regions of the world (Europe, North America, Latin America, Oceania, Asia, Africa) were surveyed. The results are reflected in The application of the Guiding Principles on Business and Human Rights: Findings from responses to a questionnaire sent to corporations in 2013: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/WG.6/4/L.14) (UN Doc. A/HRC/26/25/Add.1), para. 37: <https://www.ohchr.org/RU/Issues/Business/Pages/Reports.aspx#srepresentative>.

10.2. Element 2: Incorporation of «human rights due diligence» into the company management system

In the Belarusian legal discourse (as well as in some other legal systems of post-Soviet states) the term «due diligence» is usually used only in a narrow, special sense: audit of the company before the sale or some procedure. However, the main meaning of the term «due diligence» is a certain standard of conduct of the subject, which consists in the necessity to take all possible reasonable measures in order to avoid a wrongdoing. In developing the 2011 UN Guiding Principles, this is the meaning of the term.¹

In the context of «business and human rights», «human rights due diligence» (HRDD) is understood as: an ongoing process in the company's management system aimed at taking all possible measures to identify any risks associated with direct or indirect human rights violations in relation to its operations and taking all possible actions to prevent and/or mitigate such risks.

- 1 human rights impact assessment
- 2 integration of the assessment results into all business processes of the company and taking appropriate measures
- 3 follow-up of actions taken
- 4 public reporting on actions taken

Fig. 18: Elements and process of company human rights due diligence

¹ The commonly accepted notion of «due diligence» can be found, for example, in Black's Law Dictionary: «a measure of discretion, activity or diligence to be expected from a reasonable and prudent person in particular circumstances, and which is commonly used by that person; not measured by any absolute standard, but subject to the relevant facts of a particular case» (<https://thelawdictionary.org/due-diligence/>). Also the Oxford Law Dictionary defines due diligence as «reasonable steps taken by a person to avoid committing an offence» (https://www.lexico.com/en/definition/due_diligence).

Scope of human rights due diligence

In implementing HRDD, it is necessary to identify all possible human rights risks associated with the company's operations, namely any actual or potential adverse human rights impacts that the company may have directly, indirectly, through the company's business relationships.¹

In other words, a company should assess not only situations where it may be acting to prevent the realization of human rights, but also situations where it may be «complicit» in abuses by other companies or condone and benefit from abuses committed by its supply chain partners. See sections 7.6, 7.7, 7.8 of this Guide for detailed explanations and examples of such cases.

In the context of 'complicity' in human rights abuses, it is important to understand that proper due diligence will enable a company to avoid both legal claims and reputational costs and risks, as the company will demonstrate that it has done everything in its power to prevent and/or discourage such abuses.

Systematic and ongoing human rights due diligence

HRDD should be introduced into the company's management system on a systematic basis. It should not be implemented once, for example, before the beginning of a major company project. It should be an integral part of the company's risk management system and should be continuously implemented taking into account all changes occurring with the company (expansion of the list of products or services provided, entry into new markets, changes in the company's business area, changes in the company's management structure, etc.).

In general, due diligence in the context of human rights is about identifying and minimizing the risks of the company's violation of human rights, but not for the sake of the goal in itself - to minimize risks, but in order not to violate human rights.



Risk assessment: identifying any actual or potential adverse human rights impact with which the company may be involved (human rights impact assessment – HRIA)²

The objective is to identify the specific nature of the impact on specific individuals, taking into account the specific conditions and scope of the company's operations.

Based on an ongoing and systematic approach to human rights due diligence, human rights impact assessments (HRIAs) should be conducted at regular intervals:

¹ For a definition of business relationships in the context of business and human rights, see ANNEX 1.

² Principle 18 of the 2011 UN Guiding Principles with commentary.

- BEFORE the start of a new activity;
- BEFORE the launch of a new partnership;
- BEFORE making serious decisions about changing the business (entering a new market, expanding the field of activity, buying another business, etc.);
- in RELATION with changes in the business environment (there may be some social, political or economic changes in the place of business operation);
- PERIODICALLY, during the cycle of an activity.

There are several approaches to the methods of conducting HRIA. Different Guides¹ distinguish between stages in terms of both substance and quantity. In principle, the HRIA process is similar to other impact assessments that may already be incorporated into a company's risk management system (e.g., environmental impact assessment).

In any case, two basic principles of HRIA should be followed when using any methodology:

- the HRIA should be based on human rights expertise (even if a company has internal resources, independent external experts should be involved);
- inclusiveness when conducting the HRIA (the HRIA should be conducted with the mandatory involvement of all stakeholders (people whose rights may be affected, civil society, etc.).

This Guide provides a basic methodology for conducting HRIA (see ANNEX 6) (all stages may be broken down into more fractional steps).



Integration of the assessment results into all business processes of the company and taking appropriate measures²

The objective is to identify specific structures (departments/persons) in the company whose competence may include specific measures to eliminate and/or minimize risks based on the identified risks, identify such measures and start implementing them.

Successful implementation of the second stage of due diligence is very much tied up and depends on the first step of incorporating human rights into company policies (section 10.1). If the company's general statement of its commitment to human rights is reflected in all internal company policies and procedures, then successful integration of the results of the HRIA into all company business processes is more likely.

¹ For example, the International Finance Corporation, in collaboration with the Global Compact and the International Business Leaders Forum, published in 2010. Guide to Human Rights Impact Assessment and Management (HRIAM): www.ifc.org/hriam.

² Principle 19 of the 2011 UN Guiding Principles with commentary.

Effective integration of the results of the HRIA requires:

- ensuring the correct understanding of these results: i.e. determining which business processes of the company are affected, which company departments/specialists are involved in these issues.

Identified risks may concern any business process of the company: marketing, HR, PR, risk management, legal support of the company, procurement, etc. At this stage it is important to determine **WHO** is responsible for **WHAT** in the process of elimination or minimization of risks for human rights;

- ensuring that the internal decision-making processes in the company (including decisions on the allocation of financial resources), control over the implementation of such measures really allow the implementation of necessary measures.

The HRIA should not remain «on paper» and should not be seen as a fashionable innovation that is «played» by a specialist who has «picked up» everything from somewhere. This is a process, key decisions on which should be made by the company's top managers. In particular, the company's budget should include expenses for the HRIA itself and for taking measures following the results of the HRIA. The process of implementing measures should be strictly controlled;

- developing a specific set of measures and a plan for its implementation.

The content of the specific measures will depend on:

- the nature of the company's human rights impact. That is, what forms of impacts (direct, indirect, through the company's business relationships) were identified at the risk assessment stage (Step 3 in ANNEX 6);
- whether there is an actual (i.e., rights already infringed) or potential (i.e., rights have not yet been infringed, but may be infringed if preventive measures are not taken) violation.

Both impacts may be detected simultaneously.

- from the extent to which the company has leverage over its business partners (where indirect human rights impacts or impacts through the company's business relationships are identified). In such a situation, the extent to which the business enterprise has the capacity to change its partner's wrongful practices that violate human rights will matter.

Two basic decision matrices are presented below, depending on how the business is involved in human rights abuses (see Table 4 on page 134; Table 5 on page 135).

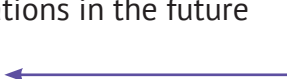
Horizontal integration must necessarily include measures that address how employees behave in a human rights context. The proper behaviour of employees should be the standard of their behaviour within the framework of performance of their functions: both in internal relations and when representing the company in the external environment.

For example, if an employee sexually harasses colleagues, makes discriminatory statements or practices, sanctions (including financial sanctions) should be imposed, up to and including dismissal (depending on the regularity and «gravity» of the violation).

Also, if an employee, when representing the company externally, speaks out or behaves in a way that could damage the company's reputation in the context of human rights policy, sanctions should be imposed.

Table 4.

Baseline matrix for decisions when the company finds negative human rights impacts, directly or indirectly¹

If it is found that the COMPANY itself has had negative impacts on human rights		
	Potential impacts (rights have not yet been violated, but may be violated if necessary measures are not taken)	Actual impact (rights already violated)
Direct violation by the company (the company violates by its own actions)	through horizontal integration into all business processes of the company to develop the necessary set of measures depending on the risk area (risk in the field of marketing, HR management, etc.)	- stop the violation - indemnify for damages (see section 11 of this Guide) - take steps to prevent such violations in the future 
Indirect violation (promotes violation through contribution to the actions of the 3rd person)	maximize leverage with the partner to prevent the negative impact of its activities on human rights	- take measures to end one's own impact and participation in such a violation - maximize the use of leverage on the partner to mitigate any continuing negative impact of its activities on human rights

Such provisions may be included in the company's internal rules, which the employee is obliged to comply with, or in his/her contract.

¹ Developed by the author on the basis of information provided in the Interpretive Guide 2012: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_Ru.pdf.

A mandatory measure is the establishment of an internal complaints mechanism (for both employees and «outside» persons - consumers, etc.), as well as (perhaps separately for large and medium-sized enterprises) a mechanism (person) through which employees can anonymously report wrongdoing by their colleagues (see further section 11 of this Guide).

The situation with respect to taking action is much more complex when a company does not itself violate or «contribute» to human rights abuses by a third party, but the abuses are linked to its operations, products or services through its business relationships. It is a supply chain issue. Curbing and minimizing adverse human rights impacts in such situations is also a business responsibility under the 2011 UN Guiding Principles.

However, in such situations, the ability to directly address the situation is far weaker than in situations of direct or indirect human rights abuse by the company itself. The key measure in this case would be to end the partnership.

However, in this situation, the importance of this partner to the company's business will also be important. Because in some cases termination of relations with a certain partner can have serious consequences for business. For this reason, the 2011 UN Guiding Principles and the Interpretive Guide use the term «vital business relationships for the company» (see ANNEX 1 for the definition).

Depending on the partner concerned, there may be different algorithms of action when a human rights violation is identified by that partner.

Table 5.

Baseline matrix for solutions when adverse human rights impacts in the company's supply chain are identified¹

If the company does not itself violate or contribute to human rights abuses, but the abuse is related to its operations, products or services by virtue of its BUSINESS RELATIONS.		
	There are levers of influence	There is no leverage
«Vital» business relationship	- reduce/mitigate the negative impact on human rights - if it did not work out	- try to find/increase leverage with your partner - if achieved: reduce/mitigate negative impact on human rights - if failed: to consider a decision to terminate the partnership OR (if no such decision has been taken) - While remaining in partnership with violators, to continuously make all possible efforts to mitigate adverse human rights impacts, taking into account possible risks for oneself

¹ Compiled by the author on the basis of the matrix presented in the Interpretive Guide 2012, p. 50: https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_Ru.pdf.

Other business relations	- try to reduce/mitigate the negative impact on human rights - if it did not work out: end the partnership	- evaluate reasonable options for finding / increasing leverage - if it is impossible or impractical: terminate the partnership
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As can be seen from the second matrix, if the relationship is not vital for the company, and the company has no leverage to influence the partner, then their termination is a priority measure. In other words, «to assess reasonable options for finding leverage» means that it is not always worth «fiddling» with the offending partner, spending money and resources to influence it, if it is only «one of..». in this market. Terminating the relationship in this case promotes competition and understanding among businesses of the need to engage in the human rights agenda as a competitive advantage.

In any case, for as long as the violation continues and the company maintains a business relationship with the violator, it must demonstrate its own efforts to minimize negative human rights impacts and be prepared for any consequences for itself - reputational, financial, legal.¹

All the above-mentioned concerns the existing business partners of the company. If, however, a potential partner is assessed during an HRIA and its activities are found to have a negative impact on human rights, the company needs to assess the extent to which its partnership can help mitigate that adverse impact (e.g. whether it can impose terms and conditions on a contract - termination of a wrongful practice, etc.). If this is clearly not possible, then such business relationships should not be entered into. And it will also promote competition, especially if the uncooperative company is a major player in the relevant market.

What factors are relevant to having/reinforcing leverage over a partner?

- ☐ Does the company have any direct control over the partner?
- ☐ What are the terms of the contract?
- ☐ Does the company have and, if so, to what extent, reputation and other benefits for cooperating with the partner?
- ☐ What losses and damages will the partner suffer if the company refuses to cooperate with him?

¹ Commentary on Principle 19 of the 2011 UN Guiding Principles.

- Possibility to «include» external factors to increase leverage: participation in industry business associations and other multilateral initiatives, possibility to involve the state and civil society.

3

Monitoring the effectiveness of measures taken

The purpose is to understand and assess how effectively the company's human rights policy is implemented, whether the company responds effectively to the identified adverse impact on human rights, and to continuously improve the situation with managing risks of human rights violations.

What gets measured - gets managed. Continuous monitoring of the measures taken allows to see both the current situation with the company's risk management and the need for systemic changes, which generally leads to more efficient management of the company.

Monitoring of the effectiveness of measures taken to eliminate and minimize human rights risks can be integrated into other monitoring systems within the company, if not carried out separately (for example, monitoring of employees' labour rights can be carried out as part of the corporate culture monitoring, carried out by the HR department, etc.).

The set of indicators and sources of information will depend on whether the monitoring is carried out «inside» the company (employer-employee relations), or «outside» the company (producer-consumer relationship).

In any case, monitoring the effectiveness of the measures taken should:

- Be based on quantitative and qualitative indicators

The set of specific indicators will depend on a number of factors:

- what kind of «human rights» issues the company is monitoring, what human rights are at stake;
- whether there are any generally accepted, developed indicators in these areas;¹
- what information the company can realistically collect/receive;
- the extent to which it is possible and, in principle, likely to receive feedback from stakeholders, including the rights holders themselves.

¹ Some of the Guidelines adopted by industry associations and multilateral initiatives (see ANNEX 2 of this Guide), as well as the International Non-Financial Reporting Standards (see the part on public reporting below in this section) may be useful in compiling one's own set of indicators for monitoring.

While quantitative indicators are important and effective in monitoring human rights, qualitative indicators play a major role: for example, if monitoring of employees' labour rights (or the corporate culture as a whole) reveals that there are fewer grievances about the management's attitudes, working conditions - it is important to understand whether they are fewer because the situation has changed for the better or because employees are not sincere in answering questions.

All indicators should be developed at the HRIA stage: when you identify an issue, you will immediately identify an indicator by which you will monitor the effectiveness of remedy.

To develop indicators, the **SMART** criteria can be used.¹ In other words, the indicators should be:

- Specific;
- Measurable;
- Achievable;
- Relevant;
- Time bound.

It is also necessary to make sure that the set of indicators:

- is balanced between quantitative and qualitative indicators;
- is balanced between indicators aimed at measuring the result and indicators aimed at measuring the effectiveness of the processes of achieving the result itself. For example, it is much more effective from the point of view of systematic monitoring to monitor in parallel not only the number of the employees who are satisfied/dissatisfied with their working conditions (measuring the result) but also the measures taken during this period to improve such conditions (measuring the process);
- is based on the principle of inclusiveness: the set of indicators and the monitoring system as a whole should make it possible to identify the needs and problems of certain groups of people in a situation of vulnerability - people with disabilities, LGBT people, etc.;
- specifically addresses gender dimension: i.e. the extent to which certain conditions, products, etc. are responsive to the needs of women and men. When it comes to monitoring the working conditions of employees - all results should be disaggregated by sex and analysed in accordance with the gender dimension. Staff questionnaires should include questions to determine whether women's rights are being respected as much as men's.

¹ Some of the Guidelines adopted by industry associations and multilateral initiatives (see ANNEX 2 of this Guide), as well as the International Non-Financial Reporting Standards (see the part on public reporting below in this section) may be useful in compiling one's own set of indicators for monitoring.

- Draw on information channels from internal and external sources, including affected stakeholders.

Depending on whether the human rights situation is being monitored «inside» or «outside» the company a set of sources of information will vary, and therefore the form in which such information is collected.

When it comes to monitoring human rights in relation to employees, the first source of information is employees themselves and the main form of information collection is a survey of employees in various ways (questionnaires, interviews, etc.).

In addition, the 2011 UN Guiding Principles indicate that internal grievances mechanisms play an important role in this context and can serve as an essential source of information for monitoring.¹ For more information on these mechanisms, the criteria they should meet, see Section 11 of this Guide on access to remedy.

When it comes to monitoring human rights in the context of a company's products or services, relationships with consumers, and impacts on the local community in which it operates, consumers themselves may also be channels of information, as well as NGOs and media reports. Independent experts may also be involved to assess the situation.

In all company monitoring situations, any information about how the company «looks from the outside» in terms of human rights will be useful, including information gathered from individuals in private conversations.

The most important thing in monitoring is a qualitatively compiled set of indicators and transparency of the monitoring process. The more clarity and transparency in the monitoring process, the easier it is for the company to cope with claims and criticism.

Monitoring is logically linked to the next, fourth element of the due diligence procedure/process - disclosure of information obtained during the monitoring to the public and/or stakeholders.

4

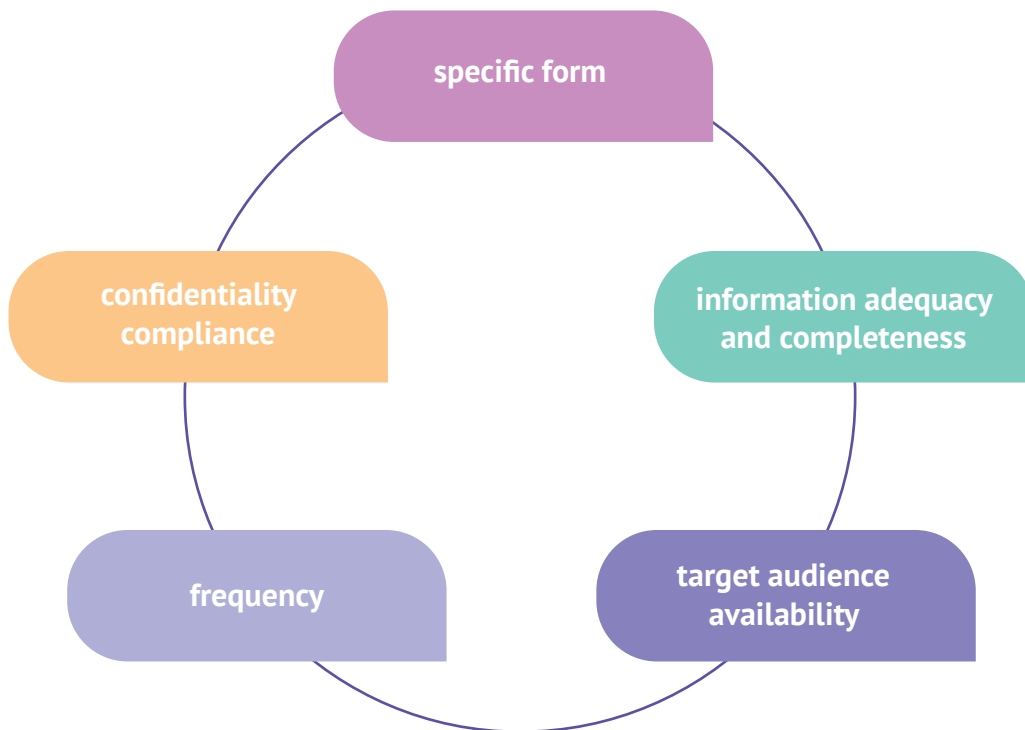
Public reporting on measures taken

The purpose is to demonstrate to all stakeholders that the company respects human rights, and to provide all stakeholders with information that they can assess to see how effective the company's performance is in this context.

¹ Commentary on Principle 20 of the 2011 United Nations Guiding Principles.

Public reporting on actions taken is the logical ending to the entire human rights due diligence process and, in general, is an integral part of the concept of the accountability of business as an institution of society to that society.

Criteria for public reporting on measures taken by the company to respect human rights



Specific reporting form

The form in which such reporting will be provided will depend on its purpose. The 2011 United Nations Guiding Principles refer to public reporting as both «within the company» - to its employees - and «outside» the company - to the public. Thus, the definition of «public reporting on actions taken» includes three situations covering the need to provide both formal and informal reporting:

- Where a company needs to report on action taken in relation to a particular violation, a particular negative human rights impact that has caused concern and complaints among a particular stakeholder group.

For example, a construction company may have experienced problems relocating people illegally, management may have had a problem with the workforce, the company may have released advertisements for a product or service that is offensive to a particular group of people, and the company may have been approached by specific members of that group, the company may have been approached by local communities about environmental damage, etc.

In such cases, the form of such «public reporting» may be a personal conversation with stakeholders and reporting by company representatives on what measures have been taken to minimize negative impacts on stakeholder rights.

- If a company wants to communicate the measures it has taken generally as part of its human rights policy or in the context of minimizing the risks of violating certain rights to the society as a whole and/or to its employees in the form of public official reporting.

In such cases, information may be presented in the form of a report at a general employees meeting (if it is a matter of the employees), in the form of a separate report on the implementation of the company's human rights policy on the company's website, in the form of updated information on the company's website, and even in the form of electronic messages to stakeholders. The information may be integrated into CSR and sustainability reports, other non-financial reports of the company.

Qualitative non-financial reporting, which includes human rights issues, is one of the factors that make a company attractive if it wants to enter the international market, cooperate with global business, receive support from investors, is going to proceed with the IPO procedure.

At the same time, it is important to understand that such a report cannot be replaced by a CSR report. A CSR report may include a part related to human rights measures (as well as a sustainability report, if any), but a CSR report itself (without a specific reference to human rights measures) does not substitute public reporting related to human rights;

- If a company is required to submit public official reporting.

In this case, information on human rights-related measures may also be incorporated into the company's sustainability reports, CSR reports, and other non-financial reports of the company.

The 2011 UN Guiding Principles indicate that company public reporting on human rights should necessarily take place when there are **risks of serious human rights impacts** associated with company operations. In fact, this applies mainly to large businesses (large industries, extractive industries, etc.).

According to international practices and the national legislation of most states, official public non-financial reporting should be provided by public companies - open joint-stock companies.

Today, in principle, the approach to official financial reporting (which any company is required to provide by law) is also changing - the need to include both environmental and social indicators (which cover human rights) and disclosure of information in this area (the so-called ESG indicators) is recognized.

Since 2017, Belarus has introduced the IFSO standards, which also imply the need to disclose non-financial indicators in the financial report¹. In accordance with

¹ Article 17 of the Law of the Republic of Belarus «On Accounting and Reporting» of 12.07.2013, Resolution of the Board of the National Bank of the Republic of Belarus No. 657/ 20 of 19.08.2016 «On Adoption of International Financial Reporting Standards and their Clarifications adopted by the Fund of International Financial Reporting Standards in the Republic of Belarus».

Article 17 of the Law of the Republic of Belarus of 12.07.2013 «On Accounting and Reporting», public reporting, in accordance with the IFSO, must be mandatory for publicly significant organizations.¹

In principle, the current concept of public reporting today is integrated reporting, which includes both financial and non-financial indicators.² Among the non-financial indicators of such reporting there are indicators related to the impact of company activities on human rights.

In general, the essence of due diligence and public reporting as its element is that any company, regardless of the size and scope of potential or actual human rights impacts and whether or not it is required to do so under national law, must somehow publicly report on its human rights measures and policies.

Table 6.

Some guidelines and sources of official non-financial reporting standards

Standards of the Global Reporting Initiative (GRI): https://www.globalreporting.org/standards	The main existing and most popular public non-financial reporting standard in the world. The Initiative has been in existence since 1997. It has developed both general standards for preparing public non-financial reporting in the area of sustainable development and special standards on 3 aspects of sustainable development (economic, environmental, and social). Human rights are covered mainly by social and environmental aspects.
ISO 26000 (International Organization for Standardization Social Responsibility Reporting Standard) https://www.iso.org/ru/iso-26000-social-responsibility.html	The standard for a comprehensive social responsibility report covering 7 interrelated areas affected by business activities. 4 of them relate to issues falling under the scope of «business and human rights»: sections 6.3 «Human rights», 6.4 «Practice of labour relations», 6.6 «Fair conduct of business operations», 6.7 «Consumer relations».

¹ Open joint stock companies, banks and non-bank credit and financial institutions, insurance institutions, joint stock investment funds, management organizations of investment funds.

² See International Standard for Integrated Reporting, adopted in 2013. International Council for Integrated Reporting (IIRC, WSIS): <http://integratedreporting.org/resource/international-ir-framework/>.

Basic Guidelines for Communication (Report) on Progress under the UN Global Compact (CoP) https://www.unglobalcompact.org/participation/report/cop/create-and-submit	The Communication of Progress is the UNGC monitoring mechanism. This report must be submitted annually by all participants in the GC - commercial companies. The report provides information on actions taken to implement the 10 GC principles. Six of these principles are relevant to human rights (Principles 1 to 6). If the company is not a member of the GC, it can use this guide as a model for its reporting.
OECD Guidance on Due diligence in the context of responsible supply chains for conflict minerals https://www.oecd.org/daf/inv/mne/mining.htm	This guidance addresses a narrow area of due diligence for companies in the supply chain of certain minerals (tantalum, tin, wolframium and gold) mined in conflict areas. Accordingly, it also discloses the procedure for reporting on measures taken to minimize the human rights risks associated with the extraction and movement of these minerals. Even if a company does not operate in this segment, it may borrow some of the logic or elements of a non-financial report from this Guide.

For more information on non-financial reporting in the context of «business and human rights», see the practical guide «Why business need human rights? benefits for the company» published by BHC in addition to these Guide.

Adequacy and completeness of information

The report (in whatever form it is presented) should contain information sufficient to assess the adequacy of the business enterprise's response to the specific human rights impacts.

In general, the report should contain relevant information on the implementation of due diligence: the risks identified by the company, the measures it has taken to respond to those risks, and the results of monitoring the implementation of those measures. It may also contain the company's overall approach to minimizing human rights-related risks.

One of the latest trends in the company's public non-financial reporting is the tendency to disclose certain information (of course, without prejudice to legitimate confidentiality requirements). For example, such reporting may disclose a list of suppliers/partners in the supply chain, indicating their response to actual or potential human rights abuses, the facts of a request for confidential information from the

¹ For reference: Out of 25 Belarusian participants of the UN GC (as of August 2019) 6 economic entities have the status of «non-communicating» on the GC's website, which means that they have not provided their COPs (Grodno Glass Factory, Asstra Belarus, TUT.BY Media, Minsk Transit Bank, MAR ZAO, Ermita).

government (relevant to companies in the ICT sector), etc. Such «disclosures» help demonstrate the «purity» of their business relationships.¹

In any case, the reporting should be clear, accurate and reliable, **should reflect both positive and negative aspects**, should not be full of «stamps» and «clichés» and should not be like advertising for the company.

Accessibility to the target audience

At a minimum, such reporting should be made publicly available on the company's website.

Frequency

If reporting is provided as part of the legal obligation, the frequency of submission is also established by the same legal act. Otherwise, the company itself determines the frequency of submission of such reports. As a rule, it should be submitted at least once a year.

Compliance with confidentiality requirements

An important point related to public reporting is that such reporting:

- should not create additional risks for affected stakeholders, including company personnel: it should not contain personal information, should not disclose the sources of information about violations, etc.;
- its content and drafting must not violate legal requirements for the confidentiality of commercial information.

10.3. Element 3: Remediation for human rights violations by the company

Even where good human rights policies and practices exist, the company may have caused or contributed to adverse human rights impacts that could not have been foreseen or prevented.²

The business responsibility to respect human rights requires that the company actively engage in the process of remediation for victims of human rights abuses, where the company has identified the situation.

Remediation does not solely include monetary compensation through a judicial process. First, remediation can take both tangible and intangible forms. «The company's active participation in the remediation process» means a wide range of measures,

¹ ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, prepared by the EU, 2014, p. 66: <https://publications.europa.eu/en/publication-detail/-/publication/ab151420-d60a-40a7-b264-adce304e138b>

² Commentary on Principle 22 of the 2011 UN Guiding Principles.

from a formal apology, restoration of the situation that existed before the violation to the payment of compensation. Second, it can take place through both judicial and non-judicial mechanisms, state remedial mechanisms and/or mechanisms established by the company itself. Third, such «active participation» may imply not immediate actions for compensation, but cooperation with the company responsible for the compensation.

The bottom line is that a company should not stand idle if human rights have been infringed by its acts or by its «contribution» to the acts of another company.

However, the obligation to make reparation or take other proactive measures to address the violation rests with the company depending on the form of its involvement in the violations.

Table 7.

Reparations and form of company involvement in human rights abuses

	Direct violation by company A	Company A contributes to the violation by Company B through its contribution to the unlawful acts of Company B.	The violation is related to the activities, products or services of company A, since the infringer - company B - is in the supply chain of company A
The subject who is obliged to actively participate in the reparation process	<i>Company A</i>	<i>Company B</i> <i>Company A</i>	<i>Company B</i>

For more information on possible remedies and the mechanisms that provide them, see Section 11 of the present Guide.

11. ACCESS TO EFFECTIVE REMEDIES

Access to effective remedies is the third «pillar» of the 2011 UN Guiding Principles, which addresses the obligation of both **government** and **business** to create and ensure access to remedy for those whose rights have been affected by business activities.

It is a human-business relationship that corresponds to the areas of human rights abuses by business:

- a dispute between an employee and an employer;
- a dispute between a producer and a consumer;
- a dispute between members of the local community and a company whose activities affect in any way the rights of those people.

Remedies

The 2011 United Nations Guiding Principles include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm (through, for example, injunctions or guarantees of non-repetition)¹ (see Table 7).

Access to these remedies is ensured through state and non-state mechanisms that are mandated to address a grievance about human rights abuses by businesses.

A **grievance** in this context refers to a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. to a subjectively perceived injustice in terms of an individual's or a group's perception of their right, which may be based on a law, contract, or agreement, an explicit or implicit promise, customary practice, or general notions of fairness.²

This broad interpretation of «a grievance» is necessary to minimize both the risks of human rights abuse, by identifying the problem at the outset, and the company's own judicial, financial and reputational risks.

¹ Commentary on Principle 25 of the 2011 UN Guiding Principles.

² Id.

Table 8.

Map of mechanisms through which access to remedies can be provided to those whose rights are affected by business operations

GOVERNMENTAL (created and controlled (fully or to some extent) by the state)		NON-GOVERNMENTAL (created and controlled without state participation: by business, civil society or international organizations)
Judicial	Non-judicial ¹	
The whole judicial system of the state	• any complaint mechanisms within the state authorities and institutions • inspectorates • mediation • specialized permanent arbitration • National institution for the protection of human rights (including specialized ombudsmen) • Bodies established by states to implement treaty obligations (e.g. OECD National Contact Points)	• internal mechanisms established by companies • mechanisms created by business associations, unions • human rights organizations • arbitration • the human rights mechanisms that exist within international organizations
SINGLE COMPLEMENTARY SYSTEM		

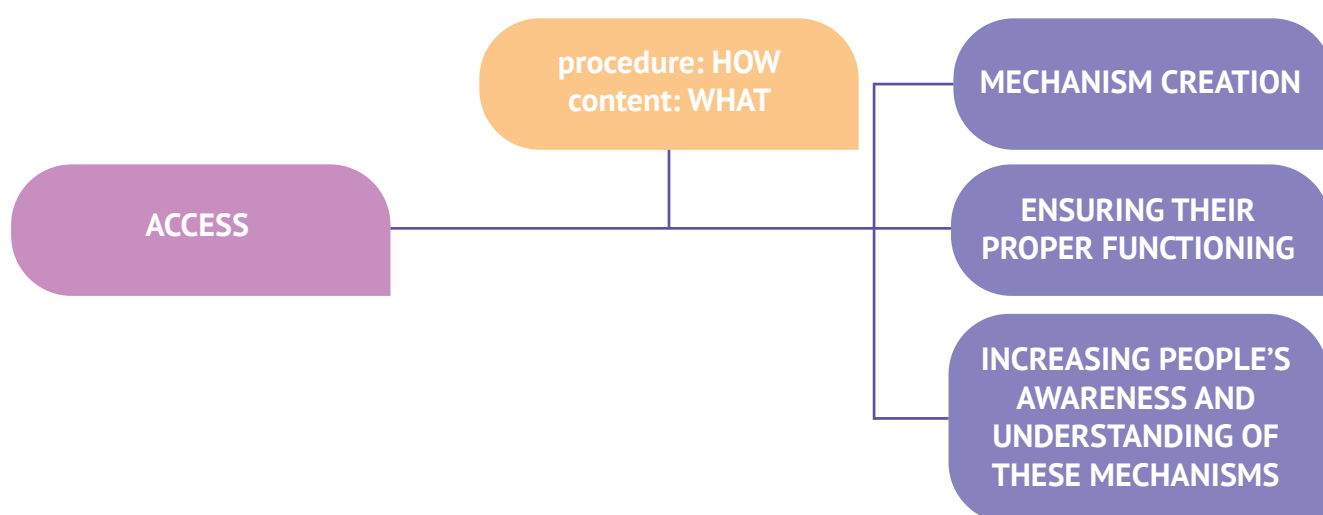


Fig. 19: Elements of access to remedies

¹ The table provides an indicative list of state non-judicial mechanisms, according to a study by the UN Working Group on Business and Human Rights of the practice of establishing such mechanisms in 27 states in six regions of the world. Most often these are targeted bodies established to regulate the observance of certain rights (labor, environmental, consumer rights, etc.) (Source: Access to remedies for violations of human rights by business: Framework Report on State Non-Judicial Mechanisms relevant to business and human rights, February 2017: https://www.businesshumanrights.org/sites/default/files/images/ARPII_FINAL%20Scoping%20Paper.pdf).

11.1. Role of state

The duty of the state to ensure access to effective remedies for business-related human rights abuses is part of its general human rights obligations to protect human rights - that is, part of the duty to prevent human rights abuses in its territory and under its jurisdiction by third parties.

Judicial mechanisms to ensure access to remedies



The obligation of the state to ensure effective judicial mechanisms is covered by its obligations to ensure the realization of the right of everyone to equality before the courts and to a fair trial (Article 14 of the 1966 International Covenant on Civil and Political Rights). This right is interpreted in General Comment No. 32 of the Human Rights Committee.¹

Comments made by the Human Rights Committee on the compliance of the judicial system with the obligations of the Republic of Belarus under Article 14 of the ICCPR:²

- the independence of the judiciary continues to be undermined by the President's role in the selection, appointment, reappointment, promotion and removal of judges and prosecutors and his control over these processes (including the fact that the salaries of judges are determined by presidential decree and not by law);
- lack of guarantees for the irremovability of judges, who are initially appointed for a five-year term with the possibility of reappointment for another term or indefinitely;
- Failure to adequately provide all fair trial guarantees to defendants in criminal proceedings, including the presumption of innocence.

The effective functioning of judicial mechanisms for resolving business and human rights disputes is inextricably linked to the effectiveness of regulatory measures taken by the state in this context (see section 6 of this Guide), as well as to the training of judges. Gaps in legislation, lack of systemic regulation of certain issues, incompetence of judges in some cases, and lack of skills of judges in interpreting the law and systemic understanding of the law in some cases prevent courts from effectively resolving relevant disputes.

¹ Human Rights Committee General Comment No. 32 (2007) «Article 14: Equality before courts and tribunals and everyone's right to a fair trial»: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=ru.

² Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, paras. 39, 40: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BLR/CO/5&Lang=Ru.

For example, given the large problem of discrimination on the Belarusian labour market, there is barely any court practice on this issue. A number of decisions and opinions have been issued by the Constitutional Court of the Republic of Belarus¹, but general courts practically do not consider cases of discrimination in labour law relations. The absence of systematic legislation on discrimination plays a major role in this (absence of a legally developed conceptual apparatus, norms on standards of proof of discrimination cases)².

The Human Rights Committee also highlights this relationship and the lack of effective remedies for discrimination in the country³.

Despite the fact that 85% of Belarusians are discriminated against on the labour market⁴ - almost no one goes to the courts, because people do not see the prospects of solving the case through the judicial mechanism. In the rare cases where people do bring such claims to court, the courts often fail to consider the merits of the case, citing the lack of jurisdiction over such disputes, or (in the case of the merits) fail to recognize discrimination, while preventing the proper collection of evidence⁵.

A similar systemic inefficiency in the use of the judicial mechanism can be observed with regard to environmental human rights litigation⁶.

At the same time, judges avoid referring to the norms of international human rights treaties of the Republic of Belarus, which are directly applicable in the territory of the country⁷, should be applied when a higher degree of protection of human rights and interests is established and (including) when there is a gap in national legislation.

The problem of extraterritorial jurisdiction.

One of the main challenges to access effective remedies for human rights abuses by businesses is access by the victim to the court of the country where the company is incorporated. According to the 2011 UN Guiding Principles (para. 2), the government is expected to regulate the extraterritorial activities of enterprises domiciled in

¹ On discrimination in labour relations based on age (1994), discrimination based on the criterion of residence (propiska) (1999), on guarantees of the principle of non-discrimination in employment, and the need for amendments to Article 14 of the Labour Code (2009).

² See Section 8 of this Guide for more details.

³ Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, para. 15: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BLR/CO/5&Lang=Ru.

⁴ The results of a sociological survey of the situation with regard to gender discrimination on the labour market, and on hiring (IPO «Gender Prospects», 2018): <https://www.genderperspectives.by/novosti/527-rezultaty-sotsiologicheskogo-issledovaniya-situatsii-v-sfere-gendernoj-diskriminatsii>.

⁵ See section 8 of this Guide for more details.

⁶ For more details: S. Magonov «Judicial protection of environmental rights of citizens of Belarus», 2014: http://www.aarhusbel.com/data/downloads/19_.pdf, as well as - Section 9 of the present Guide.

⁷ Article 36 of the Law of the Republic of Belarus of 23.07.2008 «On International Treaties of the Republic of Belarus».

their territory but operating in another jurisdiction. A logical step in such regulation is to ensure that victims of human rights abuses by such enterprises have access to their judicial mechanisms.

Since 2014, the UN Human Rights Council has been developing an [International treaty to regulate the activities of transnational corporations and other business enterprises under international human rights law](#). A zero draft of the future document was presented in July 2018¹. In October 2019, a revised version was presented, taking into account all comments.

The document contains *states' obligations to ensure the right of access to effective justice in their territory for foreign nationals who are victims of human rights abuses by transnational enterprises*. The draft treaty also contains provisions relating to mutual legal assistance in such cases (Article 11) and the obligation of states to bring all their future trade and investment treaties in conformity with their obligations under this treaty (Article 13).

France, April 2019, Samsung France case:

At the Supreme Court of Paris (Tribunal de Grande Instance de Paris) in June 2018, on the application of two French human rights organizations (Sherpa and ActionAid France), a pre-trial investigation (by a judge) was initiated against Samsung (Samsung Electronics France SAS) and its subsidiary in South Korea, Samsung Electronics Co., Ltd. The human rights defenders accused the company of not conforming to its ethical slogans and human rights obligations declared publicly and addressed to the French audience on the company's website. The fact is that since 2007 Samsung Corporation has been accused of violating the rights of employees at 11 factories in China, Vietnam, and South Korea (use of child labour, failure to comply with health standards when handling poisonous substances, which resulted in (according to NGO data) damage to the health of about 200 employees (including cancer) and the death of about 70 people). There are court rulings in South Korea (including a Supreme Court ruling in August 2017) that confirmed cases of child labour and established a causal link between the state of health and death of former and present factory employees and their working conditions. In January 2018, they contacted the Office of the Public Prosecutor of Paris, but in March 2018 he discontinued the preliminary investigation procedure. In June 2018, human rights defenders went directly to court. They argued that the French court had jurisdiction by saying that Samsung France's ethical statements and human rights obligations, slogans are available on the company's website in French to French consumers, are used to attract customers and are part of the advertising of Samsung France products. With conduct contrary to these statements, the company is deceiving French consumers, so the French justice system must impose certain sanctions for the inconsistency between what is claimed and what is real. A judge has been appointed to conduct a pre-trial investigation procedure. As a

¹ For a draft treaty and documents related to the development process, see: <https://www.ohchr.org/RU/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>.

result, in April 2019, following an audit and hearings, the company's human rights violations were confirmed (partly acknowledged by the companies themselves during the hearings) and the judge brought preliminary charges against the company for «misleading marketing practices».

The plaintiffs call the decision «historic» as it is the first time in France that a court has recognized that statements in the company's corporate ethics framework can be considered marketing practices.

Sources: <https://www.business-humanrights.org/en/france-samsung-electronics-indicted-for-misleading-advertising-re-alleged-labour-abuses-child-labour-in-china-s-korea-vietnam>; <https://www.asso-sherpa.org/opening-of-a-judicial-investigation-in-paris-in-the-samsung-case>; <https://www.asso-sherpa.org/samsung-sherpa-and-actionaid-france-file-a-second-lawsuit-following-the-closing-of-the-case-by-the-public-prosecutor>.

Non-judicial mechanisms to ensure access to legal remedies



Along with judicial mechanisms, it is the duty of the state to ensure effective non-judicial mechanisms to which victims of human rights abuses by business can refer. Courts cannot and should not bear the full burden of resolving disputes arising in the field of business and human rights. Some disputes may also be resolved without recourse to the courts, and sometimes parties are simply reluctant to go to court because they lack confidence in the judicial system or for other reasons.

The state must:

- establish state non-judicial mechanisms;
- create all conditions for the creation of non-state non-judicial mechanisms, including encouraging businesses to create their own mechanisms;
- encourage the development and execution of decisions of international mechanisms (existing in the framework of international organizations).

Table 9.

Non-judicial mechanisms providing access to legal remedies in the sphere of
business and human rights, established at the legislative level in the
Republic of Belarus

Disputes between an employee and employer	Manufacturer-consumer dispute	A dispute between members of the local community and a company whose activities affect in any way the rights of these people
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Consideration of complaints according to the procedure of appeals of citizens and legal entities (Law of the Republic of Belarus of 18.07.2011 «On Appeals of Citizens and Legal Entities»)

Mediation (Law of the Republic of Belarus of 12.07.2013 «On Mediation»)

Arbitration (Law of the Republic of Belarus of 18.07.2011 «On Arbitration Courts»)

<i>Individual labour disputes</i> Labour Dispute Commission Conciliation, mediation and arbitration bodies	Conducting commodity expertise of consumer goods by consumer protection societies Law of the Republic of Belarus of 09.01.2002 «On Protection of Consumer Rights», Regulation of the Council of Ministers of the Republic of Belarus of 14.01.2009 No. 26 «On Some Consumer Protection Issues»	
<i>Collective labour disputes</i> Conciliation commission Mediation Labour arbitration Strike Labour Code of the Republic of Belarus Presidential Decree No. 320 of 23.07.2013 «On Some Issues of Settlement of Collective Labour Disputes»		

One of the key problems in the sphere of business and human rights in Belarus is the realization of the right to freedom of association in the context of independent trade unions (see more details in Section 8 of this Guide).

In this regard, one of the recommendations of the [ILO Committee on Freedom of Association](#) made in March 2018 (following the findings of the Commission of Inquiry into the situation with the implementation by Belarus of ILO Convention No. 87 and ILO Convention No. 8) is the following No. 98) is the cooperation of the Government, social partners and other stakeholders (e.g. Ministry of Justice, Prosecutor General's Office, Republican Bar) in strengthening the effectiveness of state non-judicial mechanisms for resolving individual, collective and trade union disputes.

At the last session of the ILO Governing Body (June 2019), the issue of implementation of the recommendations of the ILO Committee on Freedom of Association by

Belarus was considered separately. The Committee concluded that there has been no progress in the implementation of this recommendation. It remains on the Committee's list of recommendations following the examination of measures taken by Belarus.¹

July 2018, Samsung case:

In July 2018, Samsung reached an agreement with SNARP (a Korean human rights organization that has been representing victims since 2007) in July 2018 to resolve issues related to compensation for Samsung factory workers. The company has been asked to pay €116,324 to each person whose health has been affected and each family member of the person who died as a result of illness caused by working conditions at the Samsung factories. Under the agreement, compensation can be claimed by all former and present employees (or their heirs if they are deceased) who have worked at Samsung Semiconductor and Display Plants since 1984 for more than a year. These are about 200 sick people and about 70 deceased victims. SNARP, in turn, agreed to stop the 24-hour pickets and demonstrations in front of the company headquarters, which lasted 3 years (after Samsung unilaterally stopped the first mediation process). Samsung unconditionally accepted the deal.

Sources: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23476&LangID=E>; <https://www.asso-sherpa.org/opening-of-a-judicial-investigation-in-paris-in-the-samsung-case>.

Table 10.

List of rights violated by business, for whose protection state non-judicial mechanisms are requested (universal perspective).¹

Labour rights	Environmental Rights	Property Rights	Rights of vulnerable groups	Violence and persecution	Contemporary practices of slavery	Right to health
58%	43%	38%	35%	27%	15%	9%

The special role of national human rights institutions (NHRIs).

NHRIs are recognized by the UN as one of the main non-judicial state mechanisms for access to effective remedies for human rights abuses by businesses.

The 2010 Edinburgh Declaration on the Role of National Human Rights Institutions in Business and Human Rights outlines the main functions of NHRIs in this area.²

¹ 390th report of the ILO Committee on Freedom of Association «Measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry», para. 29 (c): https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711395.pdf.

² The table is based on the results of a study of the practice of such mechanisms in 27 States from six regions of the world, conducted by the UN Working Group on Business and Human Rights (Source: Access to remedy for human rights abuses by business: framework Report on State Non-judicial Mechanisms Related to Business and Human Rights, February 2017 https://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/ARPII_%20DiscussionpaperonPhase2forUNForum_FINAL.pdf).

³ Edinburgh Declaration on the Role of National Human Rights Institutions in Business and Human Rights 2010.: https://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf.

- promoting the theme of «business and human rights» in government / education / research;
- monitoring violations/measures undertaken by the state;
- handling grievances in this area (including cooperation with the judicial system);
- implementation of mediation and conciliation procedures.

There is no National Human Rights Institution in the Republic of Belarus that complies with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles), which is [one of the conclusions addressed to the country by the Human Rights Committee](#) following the fifth periodic report of Belarus on the fulfilment of obligations under the International Covenant on Civil and Political Rights of 1966. The existence of governmental bodies with a human rights function cannot replace such an institution, as the Committee also points out.¹

Apart from the collective models of NHRIs (e.g. national human rights commissions) and ombudsmen with general competence, some examples of specialized ombudsmen in the field of business and human rights can be mentioned:

[Banking Ombudsman \(New Zealand\)](#): <https://www.bankomb.org.nz/>

[Insurance Ombudsman \(India\)](#): <https://www.irda.gov.in/ADMINCMS/cms/NormalData/Layout.aspx?page=PageNo233&mid=7.1>.

[Motor industry ombudsman \(South Africa\)](#): <http://www.miosa.co.za/>

[Equality Ombudsman \(Sweden\)](#): <http://www.government.se/government-agencies/equalityombudsman-do/>

National contact points of the Organization for Economic Cooperation and Development

This is one of the few specialized mechanisms in the world to address issues of human rights abuses by business. It is a non-judicial oversight mechanism to be established by each member state of the OECD in line with the [OECD Guidelines for Multinational Enterprises](#) and all «adhering»² states.

Among other things, such contact points address specific cases of non-compliance by companies with the OECD Guidelines. Such a grievance (request) can be made by another NCP, the business community, a trade union or any other organization not

¹ Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus (CCPR/C/BLR/5), 2018, para. 13: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BLR/CO/5&Lang=Ru.

² This term is used in the OECD Principles to cover non-OECD States, participating in the adoption of the latest version of the Declaration and on international investment, and multinational corporations, of which the latest edition (2011) of the OECD Principles is part. These are: Argentina, Morocco, Peru, Brazil and Romania. The OECD has 36 Member States. Six of them are Eastern European countries: Estonia, Latvia, Lithuania, Slovenia, Slovakia and Poland. In addition to Member States and «adhering» States, NCPs are established in States that have concluded a Memorandum of Understanding with the OECD: for example, in Ukraine

necessarily a trade union (since 2000), an individual as well as the government of a «non-adhering» state.

One of the main positive features of this mechanism is the ability of the NCP to handle «transnational complaints». A complaint can be made to the NCP against an enterprise domiciled in an OECD Member state.

Table 11.

Some statistics on the functioning of the OECD NCP¹

In total there are 48 OECD NCPs ²					
32 - within the Ministries of Economy, Trade and Investment	5 - within the National Investment Agencies	7 - within the Ministries of Foreign Affairs	4 - act as separate entities		
27 - include trade union representatives	29 - include representatives of the business community	22 - include civil society representatives			
Since the last review of the OECD Guidelines for Multinational Enterprises (2011) and the introduction of a separate section on the responsibility of business to respect human rights, with reference to the 2011 UN Guiding Principles - 50% of all complaints received by the NCPs are about issues related to human rights abuses by businesses.					
Subjects of all complaints in 2018.					
40% non-governmental organizations	23% trade unions	23% individuals	4% business unions, other collective initiatives	4% company (with complaint against the company)	2% local community

11.2. The role of business

Because the obligation to provide redress to victims is part of a business responsibility to respect human rights, business must also establish its own grievance mechanisms to address grievances promptly and directly.³

Why does a company need to establish grievance mechanisms?

- To minimize the costs associated with litigation and other legally mandated procedures.
- To prevent escalation and resolve conflict.

Such mechanisms not only address violations of a particular legal rule, but also address any concerns of individuals who feel that a company's operations affect their rights.

¹ The table is based on the Progress Report on National Contact Points for Responsible Business Conduct for 2018: <http://mneguidelines.oecd.org/Progress-Report-on-NCPs-for-Responsible-Business-Conduct-2019.htm>.

² As of January 2019.

³ Principles 29, 30 of the 2011 United Nations Guiding Principles.

They also enable more prompt compensation for damages than the procedures and mechanisms established by law. In order to access the company's internal mechanisms, the affected person need not go through the mandatory preliminary stages of settlement, or use other mechanisms, which inevitably lead to the «transformation» of the conflict with new details and its continuation.

- Such mechanisms can play the role of «early warning system» for problems within the company's activity. This is useful when conducting human rights impact assessments as part of due diligence.
- Such mechanisms help to build confidence in the company among all stakeholders (employees, consumers, partners, communities, and the state).¹

Designation and form of an internal grievance mechanism²

The form and procedures of such mechanisms depend on the size of the company and the level of human rights risks. Such a mechanism(s) should address grievances from both employees and consumers, as well as from members of the local community who feel that the company's activities affect or may affect their rights.

Importantly, such mechanisms do not necessarily require a specific human rights violation to occur. The purpose of the mechanism is not only to minimize the impact of an actual human rights violation, but also to identify any legitimate stakeholder concerns in order to prevent possible violations.

At the same time, a company's internal mechanisms should not be used to discourage recourse to legally established mechanisms, i.e., they should not be used as a means to avoid «washing dirty laundry in public», nor should they replace other existing mechanisms.

The purpose of internal grievance mechanisms is dialogue and mediation between the company and the affected person, not usurpation of the role of an «arbitrator».³

Sakhalin Energy

The mechanism established in Sakhalin Energy is a good example of the implementation of the 2011 UN Guiding Principles in terms of establishing a grievance mechanism. The procedure consists of six steps and a defined time frame for dealing with complaints. A grievance is any actual or potential problem that results in the expression of dissatisfaction or concern. General statistics and the results of grievance handling are included in the company's annual development report.

See <http://www.sakhalinenergy.ru/ru/social/grievancies/> for more information.

¹ Council of Europe Guide to Business and Human Rights for Practitioners 2018 / C. Methiwen-O'Brien, p. 3.7.2.1 (pp. 153-154): <https://edoc.coe.int/en/fundamental-freedoms/7785-business-andhuman-rights-a-handbook-for-legal-practitioners.html>.

² According to the commentary on Principle 29 of the 2011 United Nations Guiding Principles.

³ Business and human rights: towards the operationalization of the «protect, respect and remedy» framework: report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (UN Doc. A/HRC/11/13), 2009, para. 99: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/11/13&Lang=R>.

The 2011 UN Guiding Principles set out certain criteria for an effective internal grievance mechanism: legitimacy, accessibility, predictability, fairness, transparency, compliance with human rights standards, integration of performance into company management, inclusiveness. See ANNEX 7 for the content of these criteria and their compliance indicators.

11.3. The role of civil society

An active civil society, and especially human rights organizations, is a key factor in the successful development and promotion of the topic of business and human rights in the state.

Human rights NGOs have 2 main functions in ensuring access to effective remedies:

- Drawing attention to the negative impact of business activities on human rights (both in the context of business failure to act and in the context of government failure to act): the so-called «blaming & shaming».

An NGO is the main actor that draws public attention to these problems. This is confirmed by the practice and analysis of the reviews on the basic information resource that provides an overview of the practice of human rights violations by business and the measures taken by the state in this regard - www.business-humanrights.org (the website of the Resource Centre on Business and Human Rights).

- Advocacy, assisting victims to lodge grievances under existing mechanisms (especially international), or submitting such a complaint on their own behalf (if the mechanism's procedure permits).

NGOs - are the main actors bringing a complaint under the existing mechanisms.

Table 12.

Some statistics on NGOs as subject of business and human rights grievance

As of the last reporting year	Grievances filed by NGOs	Grievances filed by other subjects
OECD National Contact Points ¹	63% (of which 23% are trade unions)	33%
Ombudsman of the International Finance Corporation ²	60%	40%
Complaint mechanism related to European Bank for Reconstruction and Development projects ³	79%	21%

¹ Progress Report on National Contact Points for Responsible Business Conduct for 2018 : <http://mneguidelines.oecd.org/Progress-Report-on-NCPs-for-Responsible-Business-Conduct-2019.htm>.

² International Finance Corporation Grievance Mechanism Report 2018 : <https://www.cao-ar18.org/>.

³ Report of the complaints mechanism of the European Bank for Reconstruction and Development projects for 2017 <https://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html>.

In this regard, there is a reverse problem - persecution of human rights defenders who draw attention to human rights violations by business (especially in situations where there is a state share in the business or the state has a special interest («cherishes» relations with the investor, etc.).

The website of the Resource Centre for Business and Human Rights presents a database of cases of persecution of human rights defenders who draw attention to human rights violations by business, which contains 1775 cases, disaggregated by the country, type/status of persecution, names of companies that have a problem with their activities, gender, industry sector and some other indicators.¹ There are 18 cases of harassment of human rights defenders in this database for Belarus.²

The security of human rights defenders in the context of «business and human rights» is one of the main topics on the agenda of the Working Group on the issue of human rights and transnational corporations and other business enterprises of the UN Human Rights Council, as well as the annual UN Forum on Business and Human Rights.

As part of its human rights obligations (including the standards of the 1998 Declaration on Human Rights Defenders), the state is obliged to take all measures to ensure that NGOs fulfil their functions in the context of business and human rights. Some states include provisions on the protection and support of human rights defenders in the context of business and human rights in their National Plans for Business and Human Rights (e.g. UK).

Business, in turn, should also take measures to support and encourage human rights defenders. This is a key message for the 2016 Business and Human Rights Forum.³

Adidas is the first company in the world to adopt a separate public policy on human rights defenders (2016). The term 'human rights defender' is used in policy in the interpretation of the UN. It contains both a commitment by all companies within the Adidas Group itself and its business partners not to interfere with the activities of people advocating for human rights due to the negative impact of the companies' business activities. The policy also provides for the Adidas Group's internal complaints mechanism to complain about such interference. The company also commits to address the state that persecutes human rights defenders who have found human rights abuses by an Adidas affiliated company.

Source: https://www.adidas-group.com/media/filer_public/f0/c5/f0c582a9-506d-4b12-85cfbd4584f68574/adidas_group_and_human_rights_defenders_2016.pdf.

¹ Business, civil liberties and human rights defenders (website of the Resource Center for Business and Human Rights): <https://www.business-humanrights.org/search-human-rights-defenders>.

² As of September 2019.

³ Human rights defenders and civil society - the business and human rights context: Background note of the UN Working Group on Business and Human Rights (op. cit.): https://www.ohchr.org/Documents/Issues/Business/Forum-Session6/UNWG_ProjectHRDsBackgroundNote12052017.pdf.

11.4. International mechanisms

Treaty committees monitoring compliance with the core UN human rights conventions¹

8 out of 10 Committees may consider individual complaints about the acts of the state. In the context of business and human rights, this mechanism can be used when the state fails to meet its obligations to protect human rights (i.e., failure to take measures to prevent human rights abuses by business, inability or unwillingness to prevent or suppress business activities that lead to or may lead to human rights abuses).

Citizens of the Republic of Belarus can file an individual complaint with two committees - the Human Rights Committee (HRC) and the Committee on the Elimination of Discrimination against Women (CEDAW), i.e. the violations must relate to the rights set out in two relevant treaties.

Working Group on the issue of human rights and transnational corporations and other business enterprises of the UN Human Rights Council (active since 2011)²

The Working Group was established in 2011 immediately after the end of the mandate of the UN Secretary-General's Special Representative on Business and Human Rights, J. Ruggie, to continue work on this topic. The Working Group has the status of a special procedure of the UN Human Rights Council (thematic mandate).

Within its mandate, the Working Group on the issue of human rights and transnational corporations and other business enterprises may examine communications on alleged human rights abuses and violations and, where appropriate, addresses directly to states, business enterprises and other actors regarding communications received. Such communications may relate to an actual human rights abuse that has already occurred/is taking place or a violation that is likely to occur.

From 1 March 2019 to 31 May 2019, the Working Group³ sent communications on situations involving actual or potential human rights abuses by business enterprises: to 69 states (13 of them repeatedly) and to 9 private actors.⁴

ILO Committee on Freedom of Association⁵

Employer organizations or trade unions may complain to the Committee about violations by the state of the ILO Conventions concerning freedom of association and collective bargaining.

¹ Human rights treaty bodies: <https://www.ohchr.org/RU/HRBodies/Pages/TreatyBodies.aspx>.

² Submit information on alleged abuses or violations of human rights to the Working Group on the issue of human rights and transnational corporations and other business enterprises: <https://www.ohchr.org/RU/Issues/Business/Pages/Submittingcomplaints.aspx>.

³ The communications generally concern a number of violations, so they are sent on behalf of several of the relevant special procedures.

⁴ Report on communications under the special procedures at the 42nd session of the UN Human Rights Council: <https://spcommreports.ohchr.org/LatestReports/CommunicationSent?page=1>.

⁵ ILO Committee on Freedom of Association: <https://www.ilo.org/global/standards/applying-and-promoting-internationallabour-standards/committee-on-freedom-of-association/lang-en/index.htm>.

Table 13.

Some statistics on the processing of complaints by the ILO Committee on Freedom of Association¹

In 2018 the Committee considered 92 complaints		
100% - submitted by employees		0% - submitted by employers
50% - associated with violations in the private sector	29% - associated with violations in the state sector	21% - associated with violations in both sectors
Top 3 violations:		
62% - related to trade union rights and freedoms	59% - related to discrimination on the basis of belonging to a certain trade union	40% - related to collective bargaining.

The Committee has received complaints against Belarus three times: in 1994, 1996, and 2000. The complaints concerned government interference in the activities of several trade unions, discrimination on the basis of membership in a certain trade union, violations of freedom of assembly and association, and violations of the right to strike.²

The World Bank's Grievance Redress Service³

The Service is authorized to handle any complaints regarding ongoing projects supported/financed by the World Bank (including the International Bank for Reconstruction and Development and the International Development Association). A grievance may be filed by an individual or group of individuals (or their representatives) if they believe that activities supported/financed by the World Bank are (or may be) damaging to them and are not in line with World Bank policies. Within 30 days from the date of filing the grievance, a decision shall be proposed to the applicant.

Table 14.

Some statistics on the World Bank's Grievance Redress Service⁴

115 complaints were considered in 2017		
74 - concern environmental and social issues (cover human rights)	33 - concerns procurement	8 - other issues (including corruption)
Main activities, by projects - «violators»:		
Land acquisition, resettlement, and compensation		Construction

¹ The table is based on the report of the ILO Committee on Freedom of Association for 2018: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_706169.pdf

² For more details, see the ILO Committee on Freedom of Association Appeal Database: https://www.ilo.org/dyn/normlex/en/f?p=1000:20060:5785036175076:::P20060_REPORT_TYPE:A.

³ The World Bank's Grievance Redress Service: <http://pubdocs.worldbank.org/en/354851523028390136/GRS-Brochure-2018.pdf>.

⁴ The table is based on the World Bank's Grievance Redress Service report for 2017: <http://pubdocs.worldbank.org/en/143681536776465592/GRS-2017AnnualReport.pdf> (Report available only for 2017).

Complaints were filed from Eastern European and post-Soviet countries about projects being implemented in Ukraine, Uzbekistan (2), Romania (2) and Bulgaria.

Ombudsman of the International Finance Corporation (acting since 1999)¹

The Ombudsman is part of the CAO (Compliance Advisor Ombudsman) mechanism. The mechanism works for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). In addition to the Ombudsman service, CAO has two other functions: to oversee compliance with IFC and MIGA standards and policies in the assessment of supported projects (Compliance), and to advise the World Bank Group President and senior management of IFC and MIGA on more effective policy implementation (Advisor). Standards supervision and ombudsman review of a complaint often takes place in a single case (either concurrently or sequentially), as the review of a complaint often raises the issue of a client project's compliance with IFC standards and the appropriate assessment of such project's compliance with those standards. The Ombudsman is empowered to consider any complaint relating to social and environmental issues (only) arising from projects supported/financed by the IFC and MIGA and filed individually or collectively by those directly affected by the project (see Table 15).

Since the inception of the mechanism, complaints have been filed from post-Soviet countries about projects implemented in Armenia (2), Azerbaijan, Belarus (2016),² Georgia (27), Kazakhstan (3), Kyrgyzstan, Russia (3) and Ukraine (3).

Table 15.

Some statistics on handling of complaints by the Ombudsman of the International Finance Corporation³

Total for 2018		
Accepted for consideration – 14		The total under consideration (given past years'). – 55
87% - complaints about IFC projects	11% – complaints about joint IFC and MIGA projects	1% – complaints about MIGA projects
60 % – filed with the help of civil society organizations		40% – submitted by individuals themselves
Top 3 areas of violations		
56% – environmental impact of the project	50% – issues with an inclusive process (stakeholder engagement)	50% – health impact of the project
A total of 187 complaints have been handled by the Ombudsman's Office and under the IFC standards monitoring procedure since the mechanism was established (1999) ⁴		

¹ CAO IFC and MIGA mechanism: <http://www.cao-ombudsman.org/howwework/ombudsman/>.

² The housing construction project, implemented by Strominvest in Minsk.

³ The table is based on the report of the Complaint Mechanism of the International Finance Corporation for 2018: <https://www.cao-ar18.org/>.

⁴ International Finance Corporation Complaint Mechanism Cases Database: <http://www.cao-ombudsman.org/cases/>.

Out of 50 complaints about projects implemented in the Europe and Central Asia region, the following have been addressed		
34 – by the Ombudsman	8 – as part of the IFC Standards Compliance Review process	8 – with the use of both mechanisms

Project Complaint Mechanism of the European Bank for Reconstruction and Development (functioning since 2010)¹

As well as the World Bank and IFC mechanisms, this mechanism addresses complaints related to the negative human rights impacts of a EBRD-financed project. Mechanism has 2 functions: to assess the project's compliance with EBRD standards and policies and to resolve specific disputes. Once a complaint is assessed, the one or the other procedure (or both) is chosen. Resolution of disputes may include fact-finding procedures, mediation, conciliation, etc. A person or group of people living in the area where the project is implemented, or who have economic, cultural, social interests in that area (e.g. property) may be located there, some historical cultural heritage, etc.) may apply for dispute resolution. In addition to this the organisation may also lodge a complaint with the EBRD in order to verify that the project meets EBRD standards.

Table 16.

Some statistics on complaints under the Project Complaint Mechanism of the European Bank for Reconstruction and Development projects²

Total amount in 2017:		
27 complaints have been filed, of which 10 were admissible	The total under consideration (given past years) – 22	
A total of 146 complaints have been submitted since the mechanism’s inception (since 2010), of which 34 have been declared admissible:		
15 – submitted by local civil society organizations	12 – submitted by international civil society organizations	7 – submitted by individuals
The top three areas of violation from the complaints accepted for consideration:		
11 – environmental impact	9 – health and safety	8 – project due diligence procedure

Complaints have been filed from post-Soviet countries about projects being implemented in Georgia (3), Kazakhstan (2) and Azerbaijan.

Innovations introduced in 2019: working with applicants' security issues (if they are harassed as a result of their appeals to the EBRD); taking into account the fact that a complaint against a client has been considered in the past if the client applies for refinancing.

¹ Complaint mechanism related to EBRD projects: <https://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html>.

² The table is based on the Report of the Project Complaint Mechanism of the EBRD for 2017 <https://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html> (Available report for the year 2017 only).

International Arbitration

Since one of the problems of access to effective remedies is the problem of extra-territorial jurisdiction, international arbitration is considered by experts to be one of the promising means of dispute resolution in this area. Moreover, as an alternative means of dispute resolution, arbitration in principle has a number of advantages over other mechanisms in the context of business and human rights.

The existing mechanisms of international commercial arbitration are not quite relevant in this case - they can only consider disputes between two economic entities (although the «state-investor» dispute resolution mechanisms affect the sphere of business and human rights, as one of the functions and obligations of the state is to control the investor's observance of human rights when operating in the territory of this state).

As for the possibility of resolving disputes between an «individual-business» or a «civil society organization-business» through international arbitration, since 2017, under the auspices of the Centre for International Legal Cooperation (The Hague, The Netherlands) and with the support of the Municipality of The Hague, a project to develop [Arbitration rules on business and human rights](#) has been implemented.¹ The project is implemented by a working group consisting of legal practitioners and representatives of the academic community in the field of international law.

The draft text of The Hague Rules was published in June 2019. The final version of the Rules was published in late 2019.

The Rules are based on the UNCITRAL Arbitration Rules 2013, which have been amended to take into account the specificities of «business and human rights».

According to The Hague Rules, 3 groups of disputes may be considered in such arbitration:

- between an individual who is a victim of a human rights violation and a company that violates the rights of that individual;
- between a company and its business partner for failure to comply with contractual obligations related to human rights (e.g. in the supply chain);
- between an individual victim of a human rights violation and a company when partner companies in an arbitration clause give an individual the right to bring a direct action when one of their contractual human rights obligations is breached.

¹ Draft of The Hague Rules on Business and Human Rights Arbitration: <https://www.cilc.nl/project/the-hague-rules-on-business-and-human-rights-arbitration/>.

ANNEX 1.

Definitions of key terms¹

Actual human rights impact – an adverse impact that has already occurred or is occurring.

Business relationships – both direct and indirect links with business partners, companies involved in the value chain of a product or service, and any other state (including the state itself) and non-state companies directly related to the business operations of the company, its products or services. Thus, it includes indirect business relationships in the value chain (i.e., not only the first links in the chain), as well as holders of both minority and majority shares in public companies.

Human rights due diligence is an ongoing process in the company's management system aimed at:

- a) taking all possible measures necessary for the company to identify any risks associated with direct or indirect human rights abuse in connection with its operations (taking into account the specific nature of the company's business, the conditions in which it operates, the size of the business, etc.);
- b) taking all possible actions to prevent and/or minimize such risks.

Grievance – a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness.

Crucial business relationships - a relationship could be deemed crucial if it provides a product or service that is essential to the enterprise's business and for which no reasonable alternative source exist.

Contributing to adverse human rights impact occurs when the acts of the company itself do not directly cause the violation but contribute to the violation (either directly or through a third party).

Adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

¹ All definitions are in accordance with the 2011 United Nations Guiding Principles and the 2012 Interpretive Guide to the United Nations Guiding Principles. The use of these terms in these meanings is well-established and recognized in the field of «business and human rights» and in the context of the interpretation and application of the 2011 UN Guiding Principles. The English versions of these terms are taken from the official text of the 2011 UN Guiding Principles.

Potential human rights impact – an adverse impact that may occur but has not yet occurred.

Causing adverse human rights impact occurs when the company itself (through its employees or representatives) has adverse human rights impacts through its actions. That is, in case of direct violation, the cause of such violation is the company's own actions.

Human rights risks – any risks that its operations may lead to one or more adverse human rights impacts. However, the determining factor in identifying and assessing such risks is the severity of the impact, not the probability of the impact. The degree of probability of such impacts (which must also be identified) may in turn help to prioritize the actions that need to be taken to minimize or prevent such risks.

Leverage is an advantage that gives the power to influence; the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.

Complicity. The term «complicity» in the business and human rights context has two meanings: legal and non-legal.

In *legal meaning*, it is complicity within the meaning of criminal law, which is recognized as such by a court on the basis of the criminal code and for which criminal liability is incurred.¹

In a *non-legal meaning*, it is when a company encourages indirectly human rights abuses by its business partners, knowing about them, not stopping them, not ending a business relationship with that partner, and deriving commercial benefits from them.

Value chain – the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services, or (b) receive products or services from the enterprise.

¹ In Belarus, only an individual can be a subject of a criminal offence, but in several countries legal entities can also be held criminally liable (USA, Australia, Great Britain, Canada, Jordan, Syria, etc.).

ANNEX 2.

Map of recognition of the 2011 UN Guiding Principles on Business and Human Rights and the human rights agenda by major stakeholders

International organizations	
	UN In addition to the 2011 United Nations Guiding Principles themselves, the Committee on Economic, Social and Cultural Rights adopted in 2011 a Statement on States Parties' Commitments with regard to the Corporate Sector and Economic, Social and Cultural Rights¹, which refers to the work of the United Nations Human Rights Council on business and human rights and calls on States Parties to the Covenant to include in their initial and periodic reports information on the challenges they face and measures taken to address the role and impact of the corporate sector on the enjoyment of economic, social and cultural rights. In 2016, the Committee adopted General Comment² No. 24 on the State's obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business.³
	Organization for Economic Cooperation and Development (OECD) The most recent revision of its key document aimed at regulating the conduct of foreign investors, the OECD Guidelines for Multinational Enterprises (latest version of 2011)⁴ included a separate human rights part (IV) in the text. The foreword to the entire document emphasizes that this part has been introduced in order to align the document with the 2011 UNGPs.
	International Labour Organization (ILO) The revised version of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 2017 highlights that the latest updates have taken place in the light of developments in the regulation of these issues, including the 2011 United Nations GPs.

¹ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPM-KOgNxs%2fCpnVM8K6XpeNimFbmGBQhyrOLT0hyynE6sRYZmTg99KWTx1Ddh2alkNLGVfCmRnqpxKa4Hy4jDGfMF%2f>.

² A document formally interpreting the obligations of States under the Covenant.

³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=ru.

⁴ <http://www.oecd.org/corporate/mne/>.

 THE WORLD BANK IBRD • IDA WORLD BANK GROUP	World Bank Human rights requirements and the promotion of human rights as a goal of projects supported by the World Bank Group are outlined in the World Bank's Framework of Environmental and Social Standards, namely, the Standard on Environmental and Social Risk Management and the Standard on Labour Rights.¹
 International Finance Corporation WORLD BANK GROUP	International Finance Corporation (IFC) In 2012 IFC revised its Environmental and Social Sustainability Policy² and adopted a new version of the Performance Standards³ which are used to verify any project that IFC finances both before and during its lending process. Paragraph 12 of the Policy and paragraph 3 of Standard 1, «Environmental and Social Risk Assessment and Management», explicitly refer to the business responsibility to respect human rights and clarify what they mean. Also in 2012 the IFC released a paper analysing compliance with the framework of the IFC Performance Standards and the 2011 United Nations Guiding Principles.⁴
 European Bank for Reconstruction and Development	European Bank for Reconstruction and Development (EBRD) The EBRD's updated Environmental and Social Policy (updated 2019) explicitly states that the EBRD must ensure that human rights are respected in the implementation of EBRD-financed projects and will require its clients to ensure that their activities do not violate human rights (page 5, paragraph 2.4). In addition, in undertaking a mandatory environmental and social risk assessment of its clients' activities before financing a project, the EBRD assesses, among other things, the risks associated with human rights violations (p. 19, para. 12).⁵
COUNCIL OF EUROPE  CONSEIL DE L'EUROPE	Council of Europe In 2014 the Committee of Ministers of the Council of Europe adopted a special Declaration on the Guiding Principles on Business and Human Rights 2011, in which it recognized the duty of business to respect human rights and supported the adoption of the 2011 GPs.⁶ In 2016, the Committee of Ministers' Recommendation to member states on «Human Rights and Business» was adopted.⁷ Paragraph 4 of the Recommendation contains a provision on the need to share information on how implementation of the 2011 UNGPs takes place in member states.

¹ <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards#ess4>.

² https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability-policy/sustainability-policy.

³ https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards/.

⁴ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/un_guidingprinciplesbusinesshumanrights.

⁵ <https://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>.

⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c6ee3.

⁷ <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>.



European Union

Immediately after the adoption of the 2011 UNGPs the European Commission issued a [statement on the updated EU Strategy for Responsible Business](#), with a separate paragraph on the 2011 UN Guiding Principles. They were recognized as one of the documents setting out key standards in this area.

In 2015 by a Joint Statement the European Parliament and the European Council adopted the [Action Plan on Human Rights and Democracy for EU Member States for 2015-2019](#). Paragraphs 37-38 of the Plan are dedicated to business and human rights. Paragraph 38 refers to the need to develop and promote knowledge and opportunities for the implementation of the 2011 UN GPs, as well as to the need to raise business and human rights issues in the external relations of EU Member States. Paragraph 38 points to the need for all EU Member States to adopt National Action Plans on business and human rights by 2017.

International multilateral initiatives, standardization initiatives, industry associations¹



Global Compact (GC)

In 2011. The Global Compact and the Office of the United Nations High Commissioner for Human Rights issued a joint statement (updated in 2014) on the relationship between the 2011 United Nations Guiding Principles and the activities of the GC in implementing Principles 1 and 2 of the GC.²

For reference: the GC is a United Nations initiative that was established to promote corporate social responsibility of business in the context of one of the key tenets of the concept of sustainable development - the principle of inclusion in the process of achieving the SDGs. In other words, the GC is an institutionalized opportunity for business (and some other actors) to be involved in achieving the SDG. The GC is based on 10 principles, which are derived from the standards and norms of 4 documents: the UDHR, the ILO Declaration on Fundamental Principles and Rights at Work 1983, the Rio Declaration on Environment and Development 1992, and the UN Convention against Corruption 2003.

As of December 2019, 13904 participants had joined the initiative (of which more than 10,000 were enterprises and the rest were civil society organizations). There are 24 Belarusian participants in the GC (of which 19 are commercial companies and 5 are non-profit organizations).



International Organization for Standardization (ISO)

In 2010, the International Organization for Standardization adopted the ISO 26000 Social Responsibility Standard, which contains an entire chapter devoted to human rights.³

¹ Only a few of the many initiatives are presented, including those most representative in the context under consideration and those relevant to Belarus by virtue of participation therein.

² https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

³ <https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100258.pdf>.

	Global Network Initiative (GNI) The Preamble refers to the UDHR, both Covenants of 1966, the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles of 2011.¹ <i>For reference: A multi-stakeholder initiative that has existed since 2008 to protect and promote freedom of expression and privacy in the ICT business. It is based on the 10 Principles for the Protection of Freedom of Expression and Privacy, developed jointly by business, investors, civil society organizations and academia.</i>
	International Chamber of Commerce (ICC) The 2008 International Chamber of Commerce Handbook on Responsible Procurement provides standards for selecting a human rights compliant supplier (Step 1: Selecting a supplier, p.3). In addition, ICC states that it will contribute to the implementation of the 2011 United Nations Guiding Principles in every way possible.²
	Voluntary Principles on Security and Human Rights in Mining and Energy 2000 (VPSHR)³ In the introduction to the document, the constructive role of business in partnership with civil society in promoting and encouraging human rights is mentioned as a motivational argument. <i>For reference: Developed in 2000 by the United States and the United Kingdom with the participation of a number of relevant companies and NGOs, the document is a set of recommendations. It is a «mixed» initiative in terms of membership: states, companies and NGOs can join it. As of December 2019, 10 states (in addition to the United States and the United Kingdom, Argentina, Australia, Canada, Colombia, Ghana, the Netherlands, Norway and Switzerland), 28 companies (including world energy leaders Shell and Chevron) and 15 NGOs are members of the VPSHR.⁴ The purpose of the VPSHR is to help companies ensure the safety of their operations in a human rights context. The document provides guidance on identifying and addressing issues relating to a company's safety and interaction with the security services (both public and private) with which companies are working when operating in a given country.</i>
	Kimberley Process The Kimberley Certification Scheme states that the trade in conflict diamonds contributes to human rights violations.⁵ Belarus participates in the initiative. <i>For reference: In 2002, the Kimberley Process Certification Scheme (hereinafter KPCS) was developed following multilateral consultations (involving all stakeholders - relevant states, enterprises involved in the diamond industry and NGOs).</i>

¹ <https://globalnetworkinitiative.org/gni-principles/>.

² <https://iccwbo.org/global-issues-trends/responsible-business/corporate-responsibility/>.

³ <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>.

⁴ <https://www.voluntaryprinciples.org/members>.

⁵ <https://www.kimberleyprocess.com/en/kpcs-core-document-version-2016-0>.

It is a document that sets out the rules for diamond import/export and certification. The document began to «work» in 2003. The purpose of the document is to remove from trade so-called «blood» or conflict diamonds - diamonds that are used by rebel movements to finance military activities to overthrow legitimate governments.

KP participants should bring national legislation into line with KPCS requirements, establish an internal control system, meet transparency criteria in information exchange and only engage in trade with other KP participants, who in turn should also meet exactly the same requirements. All international diamond shipments should be accompanied by a KP certificate to ensure that they are « non-conflict».

The KP participants (as of December 2019) are 55 entities representing 54 states and the European Union (i.e. 82 states are represented in the initiative).¹ Belarus participates in the initiative.

Responsible Business Alliance (former Electronic Industry Citizenship Coalition (EICC))

The Code of Conduct for the Electronic Industry (version 6.0 in force since 2018),² makes direct reference to the UN Guiding Principles 2011.

¹ <https://www.kimberleyprocess.com/en/participants>.

² <http://www.responsiblebusiness.org/code-of-conduct>.

ANNEX 3.

Map of recognition of the business responsibility to respect human rights¹

Universal Declaration of Human Rights 1948 ²	The preamble proclaims that «the universal recognition and realization of human rights» should be ensured not only by states, but also by other «institutions of society».
Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998 ³	It is stated that no one should participate in the violation of human rights and freedoms by action or inaction (Article 10), and that everyone has responsibilities towards and within society (Article 18, para. 1).
UN Human Rights Council Resolution No. 17/4 2011. «Human Rights and Transnational Corporations and Other Business Enterprises» ⁴	The preamble specifies that «transnational corporations and other business enterprises have a responsibility to respect human rights».
UN General Assembly Resolution 70/1 2015. «Transforming our world: the 2030 agenda for sustainable development» ⁵	The need to develop «a business sector that understands the need to respect labour rights, environmental and health standards in line with the core international human rights treaties and the UN Guiding Principles on Business and Human Rights adopted in 2011» has been stressed (para.67).
Joint Statement of the Global Compact and the Office of the UN High Commissioner for Human Rights 2014 on the relationship between the 2011 Guiding Principles and the activities of the DG in implementing Principles 1 and 2 of the DG ⁶	It is stated that the 2011 UN Guiding Principles represent an «authoritative universal standard of conduct» for business.
Committee on Economic, Social and Cultural Rights General Comment No. 24 (2016) on States' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities ⁷	It is stated that under international standards, business enterprises are required to respect the human rights set out in the ICESCR, regardless of the existence of relevant national laws or their application in practice. It also notes that in this regard, this Comment No. 24 is also «designed to assist the corporate sector in meeting its human rights obligations» (para. 5).

¹ This is not an exhaustive list of documents, the most illustrative examples are given.

² https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

³ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.

⁴ <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/73/PDF/G1114473.pdf?OpenElement>.

⁵ <https://undocs.org/ru/A/RES/70/1>.

⁶ https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

⁷ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=ru.

OECD Guidelines for TNC 2011 ¹	Directly indicate that a company must respect the human rights that may be affected by its operations (section II, para. A2).
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 2017 ²	Directly refers to and borrows the provisions on the business responsibility to respect human rights from the 2011 UN Guiding Principles.
Recommendation of the Committee of Ministers of the Council of Europe to member states on business and human rights 2016 ³	The preamble explicitly recognizes the business responsibility to respect human rights.
IFC Environmental and Social Sustainability Policy and Performance Standards ⁴	Paragraph 12 of the Policy and paragraph 3 of Standard 1, Environmental and Social Risk Assessment and Management, explicitly cite the company's responsibility to respect human rights. It is also mentioned that IFC recognizes the business responsibility to respect human rights, regardless of the state duty to respect, protect and fulfil human rights.
International Chamber of Commerce Guide on Responsible Procurement 2008 ⁵	It is stated that when selecting a supplier, it is necessary to make sure and explicitly articulate to the prospective business partner that the supplier is expected to comply not only with national legislation, but also with the norms and principles enshrined in international human rights instruments (p. 4).

¹ <http://www.oecd.org/corporate/mne/>.

² https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.

³ <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>.

⁴ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability-policy/sustainability-policy.

⁵ <https://iccwbo.org/publication/icc-guide-to-responsible-sourcing/>.

ANNEX 4.

Participation of the Republic of Belarus in international treaties relevant to business & human rights

Title of the treaty	Status for Belarus
Fundamental human rights treaties concluded within the framework of the United Nations	
International Covenant on Economic, Social and Cultural Rights (1966)	IN FORCE
International Covenant on Civil and Political Rights (1966)	IN FORCE
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)	NOT IN FORCE (NOT SIGNED)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	IN FORCE
International Convention on the Elimination of All Forms of Racial Discrimination (1966)	IN FORCE
Amendment to Article 8 of the Convention on the Elimination of All Forms of Racial Discrimination (1992)	NOT IN FORCE (NOT SIGNED)
Convention on the Elimination of All Forms of Discrimination against Women (1979)	IN FORCE
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	IN FORCE
Amendment to Article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women (1995)	NOT IN FORCE (NOT SIGNED)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	NOT IN FORCE (NOT SIGNED)
International Convention for the Protection of All Persons from Enforced Disappearance (2006)	NOT IN FORCE (NOT SIGNED)
Convention on the Rights of the Child (1989)	IN FORCE
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	IN FORCE
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)	IN FORCE
Convention on the Rights of Persons with Disabilities (2006)	IN FORCE
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	NOT IN FORCE (NOT SIGNED)
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	IN FORCE

ILO fundamental conventions

Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-eight in the Week (No. 1, 1919)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Forced or Compulsory Labour (No. 29, 1930)	IN FORCE
Convention concerning the Regulation of Hours of Work in Commerce and Offices (No. 30, 1930)	NOT IN FORCE (NOT RATIFIED)
Convention concerning the Restriction of Night Work of Children and Young Persons in Non-Industrial Occupations (No. 79, 1946)	IN FORCE
Convention concerning Labour Inspection in Industry and Commerce (No. 81, 1947)	IN FORCE
Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87, 1948)	IN FORCE
Convention concerning the Night Work of Young Persons Employed in Industry (No. 90, 1948)	IN FORCE
Convention concerning the Protection of Wages (No. 95, 1949)	IN FORCE
Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98, 1949)	IN FORCE
Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100, 1951)	IN FORCE
Convention concerning Minimum Standards of Social Security (No. 102, 1952)	NOT IN FORCE (NOT RATIFIED)
Convention concerning the Abolition of Forced Labour (No. 105, 1957)	IN FORCE
Convention concerning Discrimination in Respect of Employment and Occupation (No. 111, 1958)	IN FORCE
Convention concerning Basic Aims and Standards of Social Policy (No. 117, 1962)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security (No. 118, 1962)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Employment Policy (No. 122 of 1964)	IN FORCE
Convention concerning the Minimum Age for Admission to Employment Underground in Mines (No. 123, 1965)	NOT IN FORCE (DENOUNCED)
Convention concerning Medical Care and Sickness Benefits (No. 130, 1969)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (No. 131, 1970)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Annual Holidays with Pay (Revised) (No. 132, 1970)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (No. 135, 1971)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Minimum Age for Admission to Employment (No. 138, 1973)	IN FORCE

Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143, 1975)	NOT IN FORCE (NOT RATIFIED)
Convention concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (No. 148, 1977)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Occupational Safety and Health and the Working Environment (No. 155, 1981)	IN FORCE
Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (No. 156, 1981)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Termination of Employment at the Initiative of the Employer (No. 158, 1982)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169, 1989)	NOT IN FORCE (NOT RATIFIED)
Convention concerning Night Work (No. 171 of 1990)	NOT IN FORCE (NOT RATIFIED)
Convention concerning the Prevention of Major Industrial Accidents (No. 174, 1993)	NOT IN FORCE (NOT RATIFIED)
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182, 1999)	IN FORCE
Convention concerning the revision of the Maternity Protection Convention (Revised) (No. 183, 2000)	IN FORCE
Convention concerning Safety and Health in Construction (No. 167, 1988)	IN FORCE

Human rights treaties concluded within the framework of the Council of Europe

Council of Europe Convention on Action against Trafficking in Human Beings (2005)	IN FORCE
European Cultural Convention (1954)	IN FORCE
European Convention on Information on Foreign Legislation (and its Additional Protocol) (1968)	IN FORCE
Convention on the Recognition of Qualifications concerning Higher Education in the European Region (1997)	IN FORCE
Criminal Law Convention on Corruption (1999)	IN FORCE
Civil Law Convention on Corruption (1999).	IN FORCE

Human rights treaties concluded within the framework of the CIS

CIS Convention on Human Rights and Fundamental Freedoms (1995)	IN FORCE
Convention on the Rights of Persons Belonging to National Minorities (1994)	IN FORCE
Agreement on Guarantees of the Rights of CIS Citizens in the Area of Pension Provision (1992)	IN FORCE

Agreement on Cooperation in the Field of Labour Protection (1994)	IN FORCE
Agreement on Cooperation in the Field of Labour Migration and Social Protection of Migrant Workers (1994)	IN FORCE

Treaties in the field of environmental protection

Stockholm Convention on Persistent Organic Pollutants (2001)	IN FORCE
Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997)	IN FORCE
United Nations Convention on Biological Diversity (1992)	IN FORCE
United Nations Framework Convention on Climate Change (1992)	IN FORCE
Montreal Protocol on Substances that Deplete the Ozone Layer (1987)	ACCEPTED
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)	IN FORCE
Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (1998)	IN FORCE

Treaties in the sphere of fight against organized crime and corruption

UN Convention against Corruption (2003)	IN FORCE
UN Convention against Transnational Organized Crime (2000)	IN FORCE
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)	IN FORCE

Treaties in the field of culture

UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	IN FORCE
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ANNEX 5.

Map for the development of National Action Plans on Business and Human Rights (NAPs)¹

States with an active NAP (countries in the order of priority of the NAP publication)	States that are in the process of developing a NAP	States that have officially announced their intention to develop a NAP	States that have taken various initiatives at the non-state level to prepare the ground for the development of a NAP and to encourage the state to do so
2013	Argentina	Guatemala	Australia
United Kingdom (September 2013 (updated May 2016))	Honduras	Zambia	Ghana
The Netherlands (December 2013)	India	Myanmar	Canada
	Indonesia	Nigeria	Mozambique
	Kenya	Tanzania	Serbia
2014	Liberia	Uganda	South Africa
Denmark (April 2014)	Malaysia	Philippines	
Finland (October 2014)	Morocco		
2015	Mexico		
Lithuania (February 2015)	Pakistan		
Sweden (August 2015)	Peru		
Norway (October 2015)	Ukraine		
Colombia (December 2015)	Scotland		
2016	Japan		
Switzerland (December 2016)			
Italy (December 2016)			
USA (December 2016)			
Germany (December 2016)			
2017			
France (April 2017)			
Poland (May 2017)			
Spain (July 2017)			

¹ As of December 2019. Information according to the resource on National Business and Human Rights Plans developed by the Danish Institute for Human Rights: <https://globalnaps.org/country/>.

Belgium (July 2017)			
Chile (July 2017)			
Czech Republic (October 2017)			
Ireland (November 2017)			
2018			
Georgia (March 2018)			
Luxembourg (June 2018)			
South Korea (August 2018) ¹			
Slovenia (November 2018)			
2019			
Thailand (October 2019)			

¹ In South Korea, a separate chapter on business and human rights is included in the overall National Human Rights Plan.

ANNEX 6.

Basic methodology for assessing the human rights impact of a company's business activities

Determining the amount of evaluation: what should be evaluated?	Identifying sources of information and collecting information	Analysis of the information received
STEP 1	STEP 2	STEP 3

Human rights impact assessment of the company's activities

At this stage, it must be determined: • which activity (business relationship/partner) should be evaluated? • which business partner is involved in this activity? • where are the human rights here? what aspects of your activity (partner's activity) may have a negative impact on the enjoyment of rights by people? • which people/groups of people are vulnerable to these activities (needed to identify risks of discrimination): this may be particularly true for children, people living in the area where the activities are planned, migrants, women etc.	At this stage, it is necessary: • to determine where to get the information needed for the analysis; • to identify which stakeholders can be involved as sources of information; • to collect the information itself. Information can be collected from available sources (media, public reports). Also, to implement the principle of inclusion, it is necessary to involve relevant NGOs working either in general advocacy or in protecting the rights of a particular group of people (persons with disabilities, women, LGBT persons etc.).	At this stage, based on the information received, it is necessary to determine the specific nature of the impact of the company's activities on the enjoyment of human rights: • can human rights be (and are) directly affected by the activities of your company? • can the company be complicit in human rights abuses because it has contributed to human rights abuses by a third party (partner)? • do the acts of the third party in a business relationship with the company that is directly related to its business operations, products or services in the context of the assessed activity adversely affect human rights?
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There is also a need for «incorporating» the gender dimension: are there any particularities in relation to women or men? • What rights may be affected by the company's activities? <i>For information on whose rights and what rights may be affected by business activities, see Sections 7.3-7.4 of this Guide.</i>	In addition, depending on the profile of the activity being evaluated, not only human rights NGOs can be helpful (e.g. environmental NGOs, etc.). If possible, it is necessary to involve potentially affected persons, i.e. the very people whose rights may be affected by this particular activity, in the processes of obtaining information. Such advice will be mainly needed in situations of high risk of human rights abuse - construction, extractive industries, agriculture, etc.	<i>For definitions and examples of all possible forms of company involvement in human rights abuses, see Sections 7.6-7.8 of this Guide.</i>
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Human rights expertise is needed

ANNEX 7. Criteria for the effectiveness of internal grievance mechanisms established in a company¹ and indicators of compliance with these criteria

Criterion ²	Content of the criterion	Model indicators of compliance with criterion ³
Legitimacy	Parties must trust the mechanism established and have no doubt about its impartiality and fairness	• Clear and transparent, publicly available mechanism for the grievance service (including availability of public information on the stages of grievance handling, decision-making mechanisms and procedure, possibility of appeal, all deadlines) • The staff of such a service should have the necessary competences (including in the field of human rights, dispute resolution, etc.) • Availability of public information about the staff of such a service and their qualifications • A transparent mechanism for assigning staff to such a service. Avoid conflicts of interest when assigning staff to such a service. Appointment of staff in the service based on the principles of inclusion and gender equality • Rotation of staff in this service • Publication of annual reports of the service (either separately or as part of the annual report of the company) • Use of external audit to ensure that the mechanism meets all requirements of the 2011 UN Guiding Principles

¹ Such mechanisms should be designed to address both the employee and the consumer, as well as any interested parties (people living in the area where business operates), employees of the company's business partners in the supply chain, civil society representatives, etc.).

² The criteria and their content are set out in principle 31 of the 2011 United Nations Guiding Principles and apply to any non-judicial mechanism (both non-State and State).

³ The above mentioned model indicators of compliance with these criteria for the mechanisms created within the company are given on the basis of the results of the study of the practice of functioning of such mechanisms created by business, conducted by the UN Working Group on Business and Human Rights: https://www.ohchr.org/RU/Issues/Business/Pages/ARP_III.aspx. Certainly, when checking the mechanism for compliance with these criteria it is necessary to take into account the conditions of functioning of a concrete business, its size, financial possibilities, etc. These criteria are a benchmark and an « ideal » to which the company should aspire, and can be used as a checklist when creating and monitoring such a mechanism.

Availability	The company should ensure that all stakeholders are adequately informed and provide additional assistance for access to this mechanism to those who need it	• Decentralization of such mechanisms (if a company has branches or regional offices, such mechanisms should also be available at their location, not only at the central office) • Diversification of «access points» to the mechanism («hotline», e-mail, post, personal contact) • Providing an opportunity to share concerns and to complain anonymously, if necessary • Implementation of a «zero tolerance» policy to the persecution of a person by management for the very fact of complaining or expressing grievances. • Ensuring accessibility of all methods of communication for all categories of persons (persons with disabilities, people with small children, persons who do not speak Russian or Belarusian, etc.): • ensuring physical accessibility in all «access points» to the mechanism for persons who may have difficulties with such access • ensuring accessibility of information: all information relating to the company's policies, as well as the procedure for filing and reviewing grievances against the company, should be accessible to persons with hearing and sight disabilities, and should be provided (in addition to Belarusian and Russian at least in English) • Clear, simple and flexible criteria for the admissibility of a grievance. • The opportunity to make a grievance not only by the person whose rights are affected, but also by his or her representative • Availability of examples, samples of filling in necessary documents • No fee should be charged for using the mechanism (if there is a fee, it should be symbolic) • Provision of possibility of parallel remedies (i.e. there should be no obstacles to use the internal mechanism of the company in case if another non-judicial or judicial mechanism is used by a person in parallel)
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Predictability	To ensure a clear and understandable procedure for handling a grievance, with indicative timelines for each stage, as well as clarity on how the implementation of decisions will be monitored	• Availability of information in paper and electronic form, explaining in clear language the whole procedure of the mechanism, including the possibility of appeal (all stages step by step) with an indication of deadlines for each stage. It should also indicate possible alternatives to the mechanism (what other state and non-state, judicial and non-judicial mechanisms an individual can use in addition and/or in case of dissatisfaction with the decision of this mechanism of the company) • Publication of rules of procedure • Publication of past decisions • It is possible to conclude so-called «preagreements», which will clarify how the general rules of the mechanism will apply in a particular case, if there is any specificity and the situation requires it
Fairness (ensuring maximum opportunity for a grievance to be submitted and its unbiased and qualified consideration)	Ensuring that victims have access to sources of information, advice and expertise required to file a grievance	• Provision of the necessary funding for expert assistance in dealing with a grievance if staff need it • Availability of a telephone helpline for advice on filing a grievance • Ensuring that staff are familiarized with the availability, principles and procedure of the mechanism (upon recruitment, as well as additional periodic reminders) • Ensuring that this mechanism is available to consumers, supply chain partners and all stakeholders. • Clear and transparent appeal process • Publication of rules of procedure, decision making mechanism • Regular training of staff of the grievance service on the procedure and policy regarding the functioning of the grievance service • Training of management personnel in procedures and policies relating to the functioning of the grievance service

Transparency	Informing the parties to the grievance process about its progress and providing sufficient information to the public on the effectiveness of the mechanism in order to build confidence in it	• Rules of procedure that ensure that all parties to a dispute are properly informed about the progress of the grievance process, the information provided by the other party, and that the arguments of the opposing party can be commented on in a timely manner • Publication of rules of procedure in the public domain • Publication of rules for ensuring enforcement of decisions in the public domain • Publication of previous decisions • Availability of information in paper and electronic form explaining in clear language the entire procedure of the mechanism, including the possibility of appeal (all stages, step by step) with an indication of deadlines for each stage • Publication of annual performance reports of the service
Compliance with international human rights law	Ensuring that remedies and decisions are consistent with international human rights standards	• Training on human rights (including non-discrimination issues) for staff of the grievance service • Taking into account the interests of certain groups when circumstances so require (children, people with disabilities, migrants, etc.) • Variability of remedies applied according to the circumstances of a particular case and the preferences of the victim (i.e. the mechanism should be flexible)
The work of the grievance service should serve as a source of continuous learning for the company and its managing staff	Continuous analysis of the mechanism to identify areas for improvement and reduction of future grievances, as well as to identify systemic human rights problems associated with the company's operations.	• Collection and analysis of quantitative and qualitative data on the functioning of the mechanism, the grievances lodged, the reasons for the grievances, the complainants themselves. The information should be disaggregated on various grounds • Continuous analysis and monitoring of the effects of decisions taken (including the effectiveness of all remedies used) • Regular (at least quarterly) discussions of problems and successes within the team responsible for the mechanism as well as with the management of the company • At least annual discussions with company employees, providing an opportunity to give feedback on the work of the mechanism to all other stakeholders (consumers, partners, etc.).

		• Possibility to amend the rules of procedure without approval at the highest level of the company to ensure flexibility of the mechanism
Inclusiveness	Consultations on the organization and effectiveness of the mechanism with all stakeholders for whom it is intended to serve	• Use of a «client-oriented» approach in the development of the concept and principles of the mechanism's operation (consultations with employees, consumers, business partners, civil society organizations) • Ensuring feedback on the functioning of the mechanism from all stakeholders (including the state) • Identification of the most vulnerable groups whose rights may be affected by the company's activities (based on the nature and context of its functioning), and taking into account the interests of these groups when developing the concept of the mechanism and analysing its effectiveness • Using dialogue among stakeholders as a method of resolving emerging conflicts

ANNEX 8.

Catalogue of fundamental universally recognized human rights and freedoms

- Right to life
- Freedom from torture or inhuman, or degrading treatment or punishment
- Freedom from slavery
- Right to liberty and security of the person
- Freedom of movement and freedom to choose one's place of residence
- The right to equal protection of the law.
- Right to a fair trial
- Right to protection from interference with private, family life, home and correspondence
- The right not to be subjected to arbitrary arrest or detention
- Freedom of thought, conscience and religion
- Freedom of expression
- Right to peaceful assembly
- Right to marry and found a family
- Right to vote and to take part in the government of the country
- Freedom of association
- Right to citizenship
- Right to work
- Right to form trade unions
- Right to Strikes
- Right to just and favourable conditions of work

- Right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions
- Right to the highest attainable standard of physical and mental health
- Right to social security, including social insurance
- Right to education
- Right to take part in cultural life and to enjoy the benefits of scientific progress and its applications

ANNEX 9.

Belarus in numbers

COUNTRY PROFILE¹

Official name	English: Republic of Belarus Бел.мова: Рэспубліка Беларусь Рус.яз: Республика Беларусь
Capital	Minsk (г. Минск), 1,992.7 thousand people
Square	207.6 thousand km ²
Population	9,475.2 thousand people
Density of population	46 people per 1 km ²
Form of State Structure	unitary state
Form of government	presidential republic
President	Alexander Lukashenko (fifth term)
Government	Council of Ministers of the Republic of Belarus, Prime Minister - Sergei Rumas
Parliament	The National Assembly of the Republic of Belarus is a representative and legislative body, consists of two chambers - the House of Representatives and the Council of the Republic.
Constitution	Constitution of the Republic of Belarus of 1994 (with amendments and additions adopted at the republican referendums on November 24, 1996 and October 17, 2004). • Following the results of the referendum of November 24, 1996, the powers were redistributed in favour of the executive power and the President, a bicameral parliament - the National Assembly - was established, the Russian language received the status of the state language along with the Belarusian language, and the state symbols were changed. • Following the referendum of 17 October 2004, the provision of the Constitution limiting the right of one person to be elected President for more than two terms was abolished.
Highest Judicial Authority	Supreme Court
National human rights institution	none
State languages	Belarusian, Russian

¹ Data on population number and density are given in the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of January 1, 2019: <http://www.belstat.gov.by/upload/iblock/cf4/cf4915a5e6ade269f20c0bf5a332a7a3.pdf>.

POPULATION / SOCIAL PROFILE

Ethnic groups: ¹	
Total:	9 503 807 (100 %)
Belarusians	7 957 252 (83,73 %)
Russians	785 084 (8,26%)
Poles	294 549 (3,10%)
Ukrainians	158 723 (1,67%)
Jews	12 926 (0,14%)

Religious groups (officially registered religious communities): ²	
Orthodox	1681
Protestant	1093
Catholic	496
Jewish	52
Lutheran	27
Muslim	24
Buddhist	1

Languages (designated as «mother tongue») ³					
	In total, % of the total population	Belarusian, % of Belarusians	Russian, % of Russians	Polish, % of Poles	Ukrainian, % of Ukrainians
The language of own nationality	5 688 429 (59,8)	4 841 319 (60,8)	756 111 (96)	15 854 (5)	46 403 (29)
Other languages		Belarusians	Russians	Poles	Ukrainians
Russian	3 191 963 (33,5)	2 943 817 (36,9%)	—	99 819 (33,8 %)	97 139 (61%)
Belarusian		—	21 956 (2,7%)	171 287 (58,1%)	12 497 (7,8%)

¹ At the time of publishing the Guide, the results of the 2019 census were not available, so this data is given according to the results of the 2009 census: http://www.belstat.gov.by/upload-belstat/upload-belstatpdf/perepis_2009/5.8-0.pdf.

² Official website of the President of the Republic of Belarus: http://president.gov.by/ru/society_ru/. There are no official statistics on the number of people professing this or that religion.

³ At the time of publishing the Guide, the results of the 2019 census were not available, so this data is given according to the results of the 2009 census: http://www.belstat.gov.by/upload-belstat/upload-belstatpdf/perepis_2009/5.8-0.pdf.

Gender ¹				
Women (including the employable/employed)		5,059.4 thousand people (50.8%)		
Men (including the employable / employed)		4,415.8 thousand people (64.7%)		
Age ²				
Median age of population		40,1 years		
Place of residence ³				
Urban population (thousand people)		7 429,2		
Rural population (thousand people)		2 046,0		
Literacy rate ⁴				
Adult literacy rate (15+), % (2018)		99,6		
Public Health ⁵				
Fertility (number of births, thousand people)	2015 119,0	2016 117,8	2017 102,6	2018 94,0
Mortality (number of deaths, thousand people)	2015 120,0	2016 119,4	2017 119,3	2018 120,0
Subjective assessment of population's own health (% of population 16 years and older, as of early 2019)	Good	Satisfactory		Bad
Total population	27,5	64,0		8,5
Men	33,6	59,2		7,2
Women	23,3	67,3		9,4

¹ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of the end of 2018: <http://www.belstat.gov.by/upload/iblock/cf4/cf4915a5e6ade269f20c0bf5a332a7a3.pdf>.

² According to the sex and age structure of the population as of 1 January 2019: <http://www.belstat.gov.by/upload/iblock/160/160cddb177cdb3dad3862488e420dbd8.pdf>.

³ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of the beginning of 2019: <http://www.belstat.gov.by/upload/iblock/cf4/cf4915a5e6ade269f20c0bf5a332a7a3.pdf>.

⁴ According to the 2009 population census. Data from the Statistical Collection «Education in the Republic of Belarus 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13888/.

⁵ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of the end of each specified year: <http://www.belstat.gov.by/upload/iblock/cf4/cf4915a5e6ade269f20c0bf5a332a7a3.pdf>.

Individuals in situations of vulnerability	
Children, people ¹	
0-4 years	580,54
10-14 years	461,49
Persons with disabilities (among them: children with disabilities under the age of 18 years), people ²	571 645 (33 054)
Persons with refugee status, people ³	323
Requests for protection, people ⁴	748
Individuals with subsidiary protection status, people ⁵	1838
Stateless persons, people ⁶	6007
Persons with HIV infection, people: ⁷	
Registered cases of HIV infection	28 570
Persons living with HIV	21 566
Human resources, employment ⁸	
Employable/employed population, thousand people	5 365,0
Persons older and younger than working age, employed in the economy, thousand people	365,1
Share of labour resources in population, %	60,4
Number of unemployed (ILO methodology), thousand persons	244,9
Share of women in the total number of unemployed, %	36,8
Actual unemployment rate (ILO methodology) (in % of the labour force)	4,8

¹ Data from the Demographic Yearbook of the Republic of Belarus for 2018: http://www.belstat.gov.by/ofitsialnaya-Statistika/publications/izdania/public_compilation/index_10769/.

² Number of persons with disabilities receiving pensions in labour, employment and social protection bodies as of 01.11.2019 (data from the Ministry of Labour and Social Protection of the Republic of Belarus): <http://mintrud.gov.by/ru/chislinv>.

³ Registered as of 01.01.2018 (data of UNHCR in Belarus): <https://www.unhcr.org/by/ru/цифры-и-факты>.

⁴ As of 2017 (data from UNHCR in Belarus): <https://www.unhcr.org/by/ru/цифры-и-факты>.

⁵ Registered as of 01.01.2018 (data of UNHCR in Belarus): <https://www.unhcr.org/by/ru/цифры-и-факты>.

⁶ Registered as of 01.01.2018 (data of UNHCR in Belarus): <https://www.unhcr.org/by/ru/цифры-и-факты>.

⁷ Data from the HIV/AIDS Prevention Department of the Republican Center for Hygiene, Epidemiology and Public Health as of 01.10.2019: <https://www.bel aids.net/epidsituaciya-po-vichspid-v-belarusi/>.

⁸ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of the end of 2018: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

Number of employed persons ¹	as a percentage of the total employed population
By type of economic activity	365,1
Industry	23,5
Wholesale and retail trade; repair of cars and motorcycles	14,4
Education	10,4
Agriculture, forestry, fisheries	9,3
Construction	6,3
Transportation, warehousing, postal and courier activities	6,9
Other activities	29,2
By form of ownership	as a percentage of the total employed population
State property	39,7
Private property with state share	19,6
Private property	56,1
Foreign property	4,2

BELARUSIAN BUSINESS STRUCTURE

Form of ownership ²	Number of organizations (% of total)	
	2016	2019
Total legal entities: ³	141 600	142 108
State property	16 558 (11,7)	16 025 (11,3)
Private property, including:	118 584 (83,7)	117 870 (82,9)
Private property with a share of the state	1682 (1,2)	1 624 (1,1)
Private property with foreign share	6 833 (4,8)	6138 (4,3)
Foreign property	6 458 (4,6)	8 213 (5,8)

¹ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019» as of the end of 2018: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

² Data from the Statistical Yearbook of the Republic of Belarus 2019 as of 1 January 2019: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_14636/; Statistical Yearbook of the Republic of Belarus 2016 as of 1 January 2016: https://www.belstat.gov.by/ofitsialnayastatistika/publications/izdania/public_compilation/index_8026/.

³ Including commercial and non-commercial organizations (not including public associations). Data, disaggregated by form of ownership, relating exclusively to commercial entities - not found, so the data is provided for all legal entities.

Quantity and legal form of commercial organizations ¹	2016	2017	2018	2019
Commercial organizations (total)	116 190	116 761	115 256	115 425
Types of commercial organizations:				
Open Joint-Stock Companies	2 262	2 301	2 175	2 118
Closed Joint-Stock Companies	1 739	1 715	1 607	1 521
Limited Liability Companies	50 371	54 217	57 462	61 497
Additional Liability Companies	6 029	5 685	5 234	4 878
Unitary Enterprises	52 314	49 468	45 334	41 946

Size of enterprises ²	Number of enterprises (% to total number)		
	2016	2017	2018
Total:	109 276	111 753	112 956
Large organizations (over 250 people)	1 894 (1,7)	1 782 (1,5)	1 742 (1,5)
Medium organizations (from 101 to 250 people)	2 315 (2,1)	2 245 (2,0)	2 237 (1,9)
Small organizations (from 16 to 100 people).	11 779 (10,7)	11 872 (10,6)	11 528 (10,2)
Micro organizations (up to 15 people)	93 288 (85,3)	95 854 (85,7)	97 449 (86,2)

Number of enterprises of the Republic of Belarus in 2018 by types of economic activity ³	Number of companies (descending)
Total enterprises:	112 956
Wholesale and retail trade, repair of cars and motorcycles	40,323
Manufacturing industry	15,440
Transportation, warehousing, postal and courier activities	11,372
Construction	8,762

¹ Data from the Statistical Yearbook of the Republic of Belarus 2019 as of 1 January of each year: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_14636/.

² Data from the Statistical Yearbook of the Republic of Belarus 2019 as of 1 January of each year: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_14636/; Statistical Yearbook of the Republic of Belarus 2016 as of 1 January 2016: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_8026/.

³ Data from the National Statistical Committee of the Republic of Belarus for 2018: https://www.belstat.gov.by/ofitsialnaya-statistika/realny-sector-ekonomiki/strukturnaja_statistika/biznes-statistika/godovye-dannye/. The statistical unit «enterprise» corresponds to the legal unit «legal person». The data are given for the main type of economic activity of commercial organizations of legal entities.

Professional, scientific, and technical activities	6,122
Agriculture, forestry, and fisheries	5,033
Real estate transactions	4,910
Provision of other services	4,834
Activities in the area of administrative and support services	4,009
Information and communication	3,942
Temporary accommodation and catering services	3,398
Creativity, sport, entertainment, and recreation	1,467
Education	1,099
Health care and social services	1,067
Financial and insurance activities	511
Water supply: collection, treatment and disposal of waste, pollution elimination activities	327
Supply of electricity, gas, steam, hot water, and air conditioning	290
Mining industry	50

BASIC ECONOMIC INDICATORS¹

General	2014	2015	2016	2017	2018	2019
GDP per capita (USD) ²	8 316	5 941	5 022	5 757	6 283	—
GDP growth (%) ³	1,7	–3,8	–2,5	2,5	3,0	1,8 ⁴
Gross external debt of Belarus (million USD) ⁵	39,621.1	40,023.8	38,258.5	37,516.5	39,833.8	39,288.8
Foreign trade balance (goods) (million USD) ⁶	—	–2 143	–2 511	–2 979	–2 652	—
Foreign trade balance (services) (million USD) ⁷	—	2 244	2 479	3 061	3 345	—

¹ When using the data, it is necessary to take into account the fact that the national currency denomination took place in 2016.

² Data from the Knoema World Data Atlas: <https://knoema.ru/atlas/%D0%91%D0%B5%D0%BB%D0%B0%D1%80%D1%83%D1%81%D1%8C/%D0%92%D0%92%D0%9F-%D0%BD%D0%B0-%D0%B4%D1%83%D1%88%D1%83-%D0%BD%D0%B0%D1%81%D0%B5%D0%BB%D0%B5%D0%BD%D0%B8%D1%8F>.

³ World Bank data: <https://www.worldbank.org/en/news/press-release/2019/11/28/belarus-economic-update-fall-2019>

⁴ World Bank Forecast: <https://data.worldbank.org/country/Belarus>.

⁵ Data from the National Bank of the Republic of Belarus as of January 1 of each year: <http://www.nbrb.by/statistics/ExternalDebt/QuarterlyDynamics>.

⁶ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297/.

⁷ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297/.

Subsistence minimum (BYR/USD) (as of December of each year) ¹	1 428 100 / 132,1	1 640 000 / 90,1	180,1 / 90,9	197,57 / 98,1	213,67 / 100,2	—
Subsistence minimum for the population of working age (BYR/USD) ²	1 549 790 / 143,3	1 751 560 / 96,78	193,14 / 97,5	219,42 / 109	237,21 / 111,282	—
Minimum salary (BYR/USD) ³	1 841 483 / 170,3	2 180 058 / 120,4	239,42 / 120,9	265 / 131,6	305 / 143	330 / 152
Average salary (BYR/USD) ⁴	6 805 978 / 629,6	7 424 092 / 410,2	801,6 / 404,9	995,3 / 494,6	1115,3 / 523,2	—
Unemployment allowance (minimum-maximum amount, BYR) ⁵	150000–300000	180000–360000	21–42	23–46	24,5–49	25,5–51
National Bank refinancing rate ⁶	20	25	18	11	10	9,5
Inflation rate (%) ⁷	16,2	12	10,6	4,6	5,6	—

Poverty rate ⁸	2014	2015	2016	2017	2018	2019
Poverty rate by national poverty threshold (% of population)	4,8	5,1	5,7	5,9	5,6	—
World poverty threshold level (\$1.9 per day)	0,0	0,0	0,0	0,0	—	—

Foreign rate ⁹	2014	2015	2016	2017	2018	2019
Exports of goods and services (million USD)	43 302	32 797	29 926	36 529	41 970	—
Exports of goods (million USD)	35 423	26 164	23 099	28 690	33 249	—

¹ Data from the analytical portal Myfin.by: <https://myfin.by/wiki/term/byudzhet-prozhitochnogo-minimuma>.

² Data from the analytical portal Myfin.by: <https://myfin.by/wiki/term/byudzhet-prozhitochnogo-minimuma>.

³ As of January of every year. Data from the Ministry of Labour and Social Protection of the Republic of Belarus: http://mintrud.gov.by/ru/minimalnaja_zp.

⁴ As of December of every year. Data from the National Statistical Committee of the Republic of Belarus: http://www.belstat.gov.by/ofitsialnaya-statistika/solialnaya-sfera/trud/operativnaya-informatsiya_8/zarabotnaya-plata.

⁵ As of January 1st of every year. Data from the analytical portal Myfin.by: <https://myfin.by/wiki/term/posobie-pobez-rabotice>.

⁶ Last available information for each month. Data from the National Bank of the Republic of Belarus: <http://www.nbrb.by/statistics/monetarypolicyinstruments/refinancingrate>.

⁷ Data from the analytical portal Myfin.by: <https://myfin.by/wiki/term/inflyaciya>.

⁸ World Bank data: <https://data.worldbank.org/indicator/SI.POV.NAHC?end=2017&locations=BY&start=2000>.

⁹ Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297/ and Knoema World Data Atlas: <https://knoema.ru/atlas/Беларусь#Внешняя-торговля>.

Exports of services (million USD)	7 879	6 633	6 827	7 839	8 720	—
Exports of food products (in % of goods exports)						
Exports of fuel and energy goods (in % of goods exports)	14,8	15,6	17,1	16,4	15,0	—
Exports of high-tech goods (in % of goods exports)	33,2	28,9	20,5	23,3	24,6	—
Imports of goods and services (million USD)	3,9	4,3	4,7	3,8	3,5	—
Imports of goods (million USD)	43 791	32 697	29 958	36 446	41 276	—
Imports of services (million USD)	38 058	28 306	25 611	31 669	35 900	—
Imports of food products (in % of goods imports)	5 733	4 390	4 347	4 777	5 375	—
Imports of fuel and energy goods (in % of goods imports)	11,5	14,1	13,9	12,2	10,1	—
Foreign trade	29,4	30,5	26,9	28,3	29,1	—

Commodity structure of exports and imports (% to total) ¹	Imports	Exports
Mineral products	29,6	25,9
Machinery, equipment and vehicles	24,2	16,5
Chemical Industry Products, Rubber	14,2	19,1
Food products and agricultural raw materials	11,3	15,3
Ferrous and non-ferrous metals and their products	9,9	7,2
Other goods	10,8	16,0

Structure of inflow of foreign investments by main types of economic activities, TOP-5 (in % to total) ²	
Trade	39,2
Industry	29,2

¹ As of 2018. Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

² As of 2018. Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

Transportation, warehousing, postal and courier activities	17,7
Information and communication	5,2
Real estate transactions	3,1

Structure of industrial production (in % to total) ¹			
Manufacturing industry	88,6	Manufacturing Industry Structure (TOP 3)	
		Production of food, beverages, and tobacco products	25,8
		Production of carbonite and petroleum refining products	17,6
		Chemicals production	10,8
Supply of electricity, gas, steam, hot water and air conditioning	8,5		
Water supply; waste collection, treatment and disposal, pollution elimination activities	1,6		
Mining industry	1,3		

Consolidated budget expenditures (in % of GDP) ²	2014	2015	2016	2017	2018	2019
Defence ³	1,28	1,26	1,26	1,16	1,27	—
Education	4,8	4,7	4,8	4,6	4,6	—
Healthcare	3,7	3,9	4,2	4,1	4,0	—
Physical culture, sports, culture and media	0,5 ⁴	0,9	0,9	0,9	1,0	—
R&D ⁵	0,5	0,5	0,5	0,6	—	

¹ As of 2018. Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

² Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

³ Knoema World Data Atlas data: <https://knoema.ru/atlas/Беларусь/Затраты-на-оборону-percent-к-ВВП>.

⁴ Knoema World Data Atlas data : <https://knoema.ru/atlas/Беларусь/topics/Исследования-и-разработки/Затраты-на-НИОКР/Расходы-на-НИОКР-в-percent-к-ВВП>.

⁵ Knoema World Data Atlas data : <https://knoema.ru/atlas/Беларусь/Затраты-на-НИОКР-percent-ВВП>.

TELECOMMUNICATIONS¹

	2014	2015	2016	2017	2018
Number of Internet subscribers per 100 people of population	59,0	67,3	71,1	74,4	—
Coverage of the territory of the Republic of Belarus by mobile telecommunications services, %	—	98,1	98,2	98,2	98,2
Number of cellular communication subscribers, thousands people	—	11 448,3	11 439,9	11 415,1	11 619,7
Number of cellular communication subscribers per 1000 people, units	—	1 205	1 204	1 203	1 226

Use of information and communication technologies by the population in 2018 (in % of the population aged 6-72 years)	Total	Urban	Rural
Internet	79,1	83,1	67,9
Personal computer	73,5	77,1	63,3
Cellular communication	97,2	97,9	95,1

NATURAL ENVIRONMENT

Environmental Pollution ²	2014	2015	2016	2017	2018
CO ₂ emissions (million tons)	63,8	59,0	60,5	—	—
CO ₂ emissions (t per person)	6,7	6,2	6,4	—	—
Industrial waste generation in organizations, thousands tons	52 529	49 865	49 448	55 506	—
Industrial waste generation in organizations per inhabitant, kg	5 444	5 255	5 204	5 844	—

Water Resources ³					
Renewable fresh water resources, million cubic meters	40 900	29 800	42 400	60 400	—
Domestic water consumption per capita, cubic meters	40,1	39,6	38,0	37,0	

¹ As of 2018. Data from the Statistical Reference Book of the National Statistical Committee of the Republic of Belarus «Belarus in Figures 2019»: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_13297.

² Data from the Statistical Collection «Environmental Protection in Belarus», 2018: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_9417/.

³ Data from the National Statistical Committee of the Republic of Belarus: <http://www.belstat.gov.by/ofitsialnaya-statistika/makroekonomika-i-okruzhayushchaya-sreda/sovместnaya-sistema-ekologicheskoi-informatsii2/c-vodnye-resursy/s-5-voda-postavlyaemaya-otraslyu-vodosnabzheniya-i-dostup-naseleniya-k-etoi-vode/>; Data from the Statistical Yearbook «Environmental Protection in the Republic of Belarus», 2018: https://www.belstat.gov.by/ofitsialnaya-statistika/publications/izdania/public_compilation/index_9417/.

The share of households living in apartments (houses) equipped
(in % of the total number of households):

Water supply	89,9	90,5	92,6	93,7	94,7
Hot water supply	82,7	83,6	85,1	86,1	88,6
Sewer	87,8	88,5	91,1	91,9	93,4

SCIENCE AND INNOVATION

	2014	2015	2016	2017	2018
Spending on R&D, % of GDP ¹	0,505	0,5	0,501	0,587	0,61 ²
Applications for patents ³ (residents)	652	534	455	434	—
Applications for patents (non-residents)	105	148	66	90	—

TIME-USE STATISTICS⁴

Type of activity (% of total daily time - 24 hours)	Men	Women
Working time and work-related time	19,3	13,3
Education	2,5	2,0
Household management, including childcare	9,5	19,2
Free time	21,2	17,7
Personal care	46,0	46,1
Help to other households	1,0	1,1
Other time use	0,5	0,6
Household management time		
Cooking, washing dishes	13,0	35,0
Housekeeping	15,3	13,4
Clothes, lingerie, shoes care	0,8	6,8
Gardening, horticulture, and domestic animal care	22,8	13,2
Construction and repair	6,7	0,5
Maintenance and repair of vehicles	7,4	0,1
Buying goods and receiving services	10,4	8,6
Childcare	7,6	11,4
Other household activities	1,3	0,7
Household-related mobility	14,7	10,3

¹ World Bank data: <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?end=2017&locations=BY&start=2014>.

² Data from the National Statistical Committee of the Republic of Belarus : <http://www.belstat.gov.by/en/ofitsialnaya-statistika/social-sector/science-and-innovation/graficheskii-material-grafiki-diagrammy/domestic-r-dexpenditure/>.

³ According to World Intellectual Property Organization statistics: : <https://www.wipo.int/publications/ru/details.jsp?id=4234> (residents and non-residents).

⁴ On average per one day of the week; per person aged 10 years and over. Data from the National Statistical Committee of the Republic of Belarus: <http://www.belstat.gov.by/ofitsialnaya-statistika/sotsialnaya-sfera/ispolzovanie-suchnoygo-vremeni/itogi-v-tsifrah>.

Free time of the population		
Communication	13,0	16,8
Visiting theatres, cinemas, concerts, museums, libraries, sports, and other entertainment events	0,7	0,9
Sports and recreation activities	9,7	7,6
Hobbies and games	11,1	5,5
Mass media	47,3	48,0
Public and religious activities	0,5	2,0
Other types of recreation	12,6	14,3
Free time related mobility	5,1	4,9

ANNEX 10.

Belarus in global rankings

Index Title	2014	2015	2016	2017	2018	2019
Human Development Index ¹	0,811 (50) ²	0,811 (54)	0,812 (54)	0,815 (53)	0,817 (53)	0,817 (50)
Global Innovation Index ³	37,10 (58)	38,23 (53)	30,39 (79)	29,98 (88)	29,35 (86)	46,02 (72)
EBRD Knowledge Economy Index ⁴	-	-	-	-	5,21 (11)	-
Ease of Doing Business Index ⁵	68,2 (57)	72,3 (44)	74,1 (37)	74,1 (38)	75,7 (37)	74,3 (49)
Gini Coefficient ⁶	0,272	0,256	0,253	0,254	-	-
Corruption Perceptions Index ⁷	31 (119)	32 (107)	40 (79)	44 (68)	44 (70)	45 (66)

¹ The Human Development Index is an integrated indicator calculated by measuring three components of human development: a long and healthy life, knowledge (learning), and a decent standard of living. It uses a scale from 0 to 1, where 1 is the highest level of development. It is prepared by the United Nations Development Programme. All United Nations Member States are assessed: <http://hdr.undp.org/en/content/human-development-index-hdi>.

² Hereinafter in the table the indicator of the Republic of Belarus (place of Belarus among other countries assessed in this rating) is presented.

³ Global Innovation Index – an indicator of innovation development. It is prepared by Cornell University (USA), INSEAD Business School and the World Intellectual Property Organization. The experts make the rating based on 80 criteria distributed in 7 areas: institutions, human capital and research, infrastructure, market «maturity», «maturity» of business, the results of technology development and knowledge application, «creative» results. The rating involves from 130 to 140 countries (varies from year to year). The rating is set from 0 to 100 points, where 100 - indicates the highest level of innovation development: <https://www.globalinnovationindex.org/Home>.

⁴ EBRD Knowledge Economy Index. Since 2019, the European Bank for Reconstruction and Development (EBRD) has calculated the EBRD Knowledge Economy Index among the countries in which the EBRD invests (38 countries) (therefore, the table shows 1 indicator - for 2018). The index is calculated based on 38 indicators grouped into 4 areas: institutional parameters of innovation development (governance, economic freedom, business environment), innovation competencies (skills), system conditions for innovation development (research costs, patents, venture capital, etc.), and ICT infrastructure. The ranking is calculated on a scale from 1 to 10, where 10 is the highest level. <https://www.ebrd.com/news/publications/brochures/ebrd-knowlge-economy-index.html>.

⁵ Ease of Doing Business Index - an indicator of «ease» of doing business, on the basis of which the World Bank annually makes a rating of 190 countries. The rating is made on the basis of 10 indicators of business regulation, taking into account the time and cost of the entrepreneur's compliance with the state requirements for the registration of a new enterprise, the activities of the enterprise, trade operations, contract enforcement, taxation and closure of the enterprise: <https://www.doingbusiness.org/en/rankings>.

⁶ Gini coefficient (income concentration index, Gini index, or Gini ratio) - an indicator that characterizes the degree of deviation of the actual distribution of total disposable resources (income of the population) from the line of their equal distribution. The Gini coefficient varies from 0 to 1; the closer the value of the Gini index is to 1, the more unevenly distributed are the disposable resources (incomes) in the society: <https://data.worldbank.org/indicator/SI.POV.NAHC?end=2017&locations=BY&start=2000>.

⁷ The Corruption Perceptions Index is an indicator of the prevalence of corruption in the public sector, which is used to rank 180 countries worldwide. Countries are rated on a scale from 0 (the highest level of corruption) to 100 (the «cleanest» country). Calculated using the methodology of the international non-governmental organization Transparency International: <https://www.transparency.org/research/cpi/overview>.

Index Title	2014	2015	2016	2017	2018	2019
Index of Economic Freedom ¹	50,1 (150)	49,8 (153)	48,8 (157)	58,6(104)	58,1 (108)	57,9 (104)
Press Freedom Index ²	47,82 (157)	47,98 (157)	54,32 (157)	52,43 (153)	52,59 (155)	51,66 (153)
International Freedom Rating: ³	6,5	6,5	6,5/17	6,5/20	6,0/21	6,5/19
International Political Rights Index	7	7	7	7	6	7
International Civil Liberties Index	6	6	6	6	6	6
Legatum Institute Prosperity Index ⁴	53	63	98	95	89	73
World Happiness Rankings ⁵	—	5,81 (59)	5,80 (61)	5,56 (67)	5,48 (73)	5,32 (81)

¹ The [Index of Economic Freedom](#) is a composite indicator that measures the level of economic freedom in 186 countries. It assesses the level of economic freedom based on 12 qualitative and quantitative indicators distributed in 4 groups: rule of law, government participation, regulatory efficiency, market freedom. All countries according to the rating are divided into 5 groups: free, mainly free, moderately free, mainly non-free, non-free (with «suppressed» economy). Belarus belongs to the next-to-last group - predominantly non-free (<https://www.heritage.org/index/country/belarus>). The index is calculated by the American research center The Heritage Foundation together with the newspaper The Wall Street Journal: <https://www.heritage.org/index/>.

² [World Press Freedom Index](#) - an indicator based on which 180 countries are ranked annually according to the expert assessment of press freedom in a country. It is compiled and published by Reporters Without Borders, an international non-governmental organization. A lower score indicates greater press freedom: <https://rsf.org/en/ranking>.

³ The [World Freedom Rating](#) is an aggregated indicator that is derived from an assessment of the situation of political rights (assessed against the following indicators: electoral process, political pluralism and participation, and functioning of government) and civil liberties (assessed against the following indicators: freedom of expression and opinion, association and organization rights, rule of law, personal autonomy, and individual rights). All countries in the world are assessed. A scale of 1 (highest) to 7 (lowest) is used, followed by a total aggregated country score of 0 (minimum freedom) to 100 (maximum freedom). The index is developed and calculated by Freedom House, an international non-governmental organization: <https://freedomhouse.org/report/freedom-world/freedom-world-2019>.

⁴ The [Legatum Prosperity Index](#) is a composite index of the British think tank The Legatum Institute, which measures the achievements of 167 countries in the world in terms of their well-being and prosperity. The Legatum Prosperity Index is based on a multitude of different indicators grouped into 12 categories that reflect different aspects of society and parameters of public welfare: security, personal freedoms, governance, social capital, investment climate, business environment, market and infrastructure freedom, quality of economy, living conditions, health, education, environment. Each of these indicators is assessed separately and then the overall rating of the country is calculated as it decreases (see table): <https://www.prosperity.com>. In 2019 the indicator «education» was rated the highest for Belarus (32nd place), «personal freedoms» was the lowest (145th place).

⁵ [World Happiness Index](#) - a ranking of 156 countries according to how happy their citizens consider themselves. The rating is made on the basis of several indicators, which are assessed by people on a scale from 1 (the lowest) to 10 (the highest), and the overall indicator is derived from them. The survey is created by a team of independent experts acting in their personal capacity: <https://countryeconomy.com/demography/world-happiness-index/belarus>.

Gender Gap Index (overall indicator): ¹	0,730 (32)	0,734 (34)	0,737 (30)	0,744(26)	0,747(28)	—
Education	0,999	1,000	1,000	0,999	0,998	—
Healthcare	0,939	0,979	0,979	0,939	0,979	—
Economic participation and opportunities	0,820	0,813	0,823	0,827	0,838	—
Political participation and opportunities	0,121	0,146	0,146	0,173	0,174	—

¹ The Gender Gap Index is an integrated indicator that measures the level of inequality between men and women (degree of gap in opportunities) by measuring 14 indicators grouped into four areas: health, education, economic participation and opportunities, and political participation and opportunities. It ranks some 150 countries of the world. The index is developed and calculated by the World Economic Forum. For the sake of maximum visibility and more detailed data analysis, the table presents not only the general indicator of Belarus, but also indicators for each of the 4 groups of indicators. The scale used is from 0 to 1, where 0 is the maximum gap level, 1 is the minimum gap level: <https://www.weforum.org/reports/the-global-gender-gap-report-2018>

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