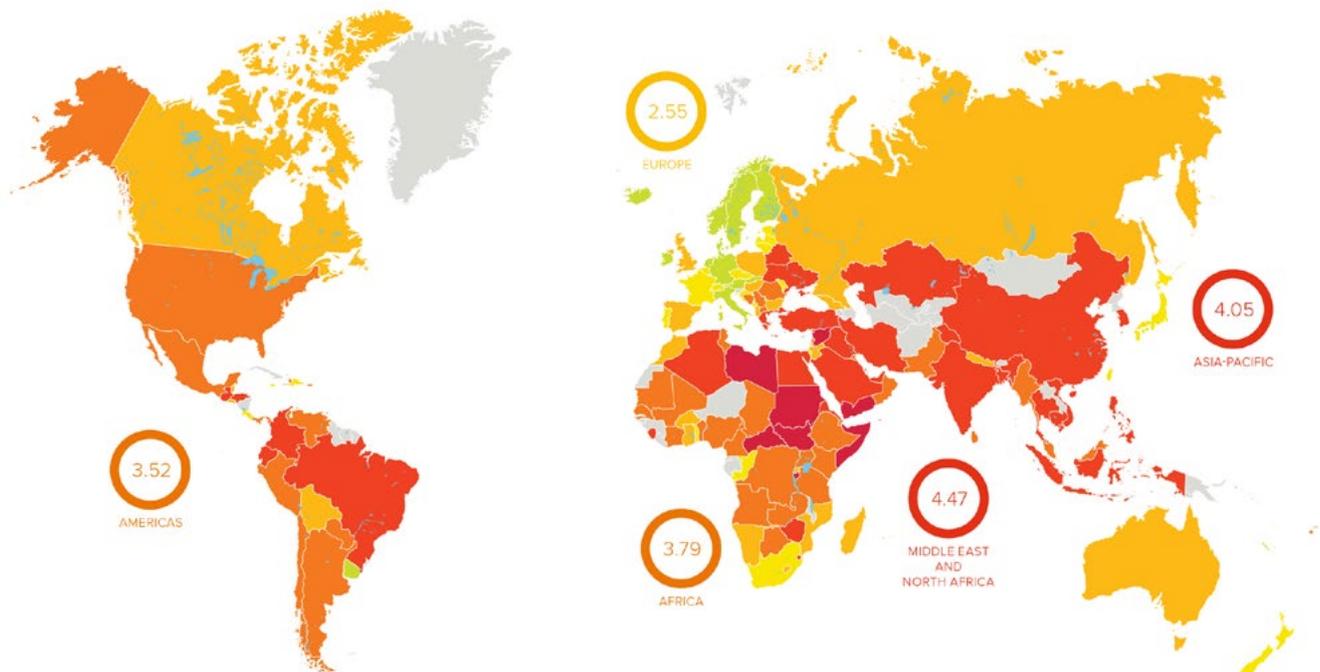




# Business and human rights



The 2019 ITUC Global Rights Index depicts the world's worst countries for workers by rating 145 countries on a scale from 1-5+ based on the degree of respect for workers' rights with 1 being the best rating and 5+ the worst rating. Source: <https://www.ituc-csi.org>

## Key points

- On a global scale, violations of human rights, labour rights and environmental rights in a business context take place every day.
- Human rights due diligence (HRDD) is a way for enterprises to manage potential adverse human rights impacts of their activities.
- Under the UN Guiding Principles on Business and Human Rights companies have to undertake HRDD. However, many of the biggest companies in the world fail to do so.
- Soft law and voluntary corporate social responsibility (CSR) have proven not to be sufficient. Mandatory HRDD should be introduced. A legislative proposal at the European level is overdue.
- Victims of human rights violations need stronger rights. Corporations operate on a global level. Complex corporate structures and supply chains make it hard to attribute liability to parent companies. The cross-border nature of lawsuits makes it hard to claim compensation successfully.
- Globalisation should be about promoting sustainable economic and social development. Violating human rights gives a competitive advantage to some companies. This must stop.
- A binding UN Treaty on Business and Human rights is currently being elaborated in the UN Human Rights Council. The EU should engage constructively in this process.

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## Introduction

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We live in a world in which multinational corporations have grown as powerful, in some ways, as nation states. Yet, in traditional international law, corporations only have rights, but no obligations. They are subject only to the domestic laws of the different states.

Human rights are meant to be universal. On a global scale, however, there is a North-South gradient. Human rights abuses in a business context tend to occur in the global South while multinational corporations based in the global North make the profits.

Prevention is better than cure. Human rights due diligence (HRDD) is a process by which companies identify, prevent, mitigate, and account for how they address their adverse human rights impacts.

If human rights abuses have already occurred, effective remedy and compensation for victims must be provided and sanctions on the company must be imposed.

In 2011, the UN Human Rights Council endorsed the "UN Guiding Principles on Business and Human Rights". This soft law instrument articulates the states' duty to protect human rights and ensure effective remedy for victims of violations, as well as the companies' duty to respect human rights ("protect-respect-remedy").

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## Main findings

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### Human rights due diligence

#### Background

Under the UN Guiding Principles, companies are required to undertake HRDD. It includes assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. HRDD should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities as well as through its value chain or subsidiaries ("activities that may be directly linked to the operations, products or services of an enterprise by its business relationships").

The debate on how to prevent corporate-related environmental and human rights abuses has gained momentum since 2013, when the Rana Plaza building, a garment factory in Dhaka, Bangladesh collapsed and killed more than 1.000 people. Soft law instruments

and voluntary corporate social responsibility (CSR) have proven to be insufficient. The debate has been taken up to the next level and is now about introducing mandatory HRDD.

Given the cross-border nature of economic activity and value chains in today's globalised world, HRDD covers "extraterritorial activities" of business enterprises. This means that, while states usually regulate business activities inside their own territory and/or jurisdiction, HRDD will typically have implications on business activities outside the jurisdiction of the home state of a business enterprise.

#### United Nations initiative

In 2014, the UN Human Rights Council has adopted resolution 26/9, by which it decided to establish an open-ended intergovernmental working group in order to elaborate a Binding Treaty on Business and Human Rights. States will be required, among other things, to introduce mandatory HRDD legislation under the Treaty. The negotiations are far from being completed. The EU has been taking part in the process, but as for now, has no negotiating mandate.

#### EU legislation

The EU has adopted HRDD sector-specific legislation. A legislative proposal on mandatory HRDD with a broader scope and a cross-sectoral approach on the European level is still overdue.

The EU Timber Regulation 995/2010 lays down the obligations of operators who place timber and timber products on the market. EU traders are required to exercise due diligence in order to counter the trade in illegally harvested timber. The regulation has been in force since 2013.

The EU Conflict Minerals Regulation 2017/821 requires importers of tin, tantalum, tungsten and gold to check what they are buying, to ensure it has not been produced in a way that funds conflict or other related illegal practices. Importers are required to exercise due diligence from 2021 onwards.

The EU Non-Financial-Reporting Directive 2014/95/EU requires large companies to disclose certain information on the way they operate and manage social and environmental challenges from 2018 onwards. The Directive does not, however include specific HRDD due diligence obligations.

#### EU Member States legislation and initiatives

Several EU Member states and Switzerland have started to adopt or consider legislation that

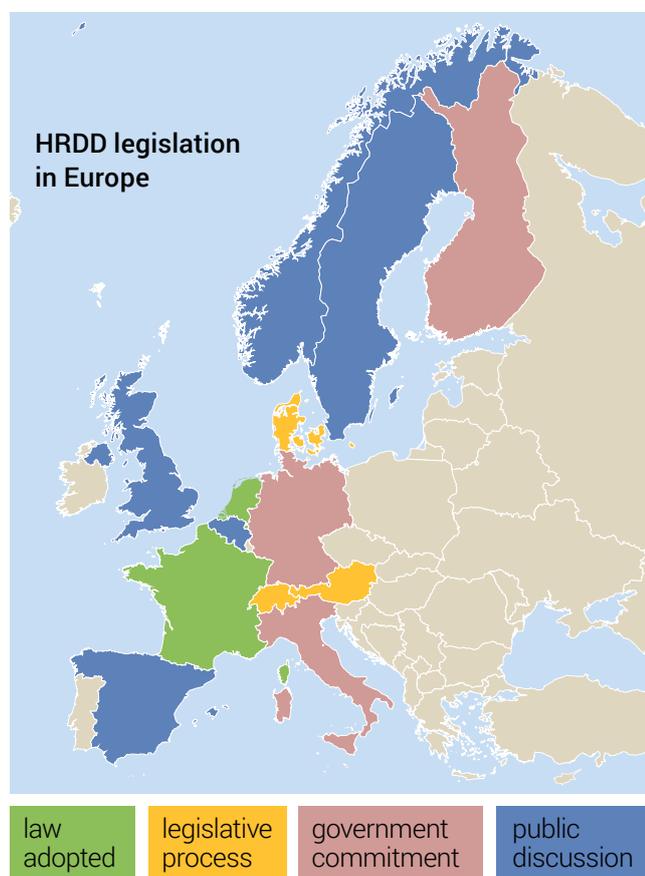
requires companies to address human rights and environmental impacts in their global operations and supply chains.

### The French Duty of Vigilance Act

France has adopted a Duty of Vigilance Law in 2017, which requires large companies to establish and effectively implement a vigilance plan. Vigilance measures include risk mapping, value chain assessment processes, mitigation and preventive actions, alert mechanisms and monitoring systems. In 2019, campaign groups accused Total, a major player in the energy sector, of breaching the Duty of Vigilance Law and filed a legal notification, claiming Total had failed to address the human and environmental impact of its operations in Uganda. The case is still pending.

### The Dutch Child Labour Due Diligence Act

The Netherlands have adopted a Child Labour Due Diligence Law in 2019, which has not entered into force yet. The law introduces a duty to exercise due diligence in order to prevent the supply of goods or services which have been produced using child labour. To exercise due diligence, a company has to determine whether there is a reasonable suspicion that a product or service involves child labour. If such a suspicion exists, it has to develop and implement an action plan.



Source: <http://corporatejustice.org/>

### Effective remedy

If human rights abuses have already occurred, effective remedy as well as compensation for victims must be provided and sanctions on the company must be imposed. Effective remedy includes both procedural and substantive aspects.

Under international law, the state where a business is incorporated is considered to determine the “nationality” of the business. It has long been asserted that a parent company is a separate legal entity that cannot be held liable for harms caused by a subsidiary.

### Piercing the corporate veil

Given the fact that in many cases parent companies are incorporated in the global North while subsidiaries are incorporated in countries of the global South, where human rights abuses tend to occur, being able to “pierce the corporate veil” (parent company liability for subsidiaries) is crucial in order to obtain effective remedy. (It should be pointed out, however, that according to the 2019 Fortune Global 500 ranking, there are as many American as Chinese corporations among the biggest corporations worldwide. This indicates that home states might no longer be predominantly states of the global North in the future.)

When the enterprise does not have a group structure, there are many obstacles to effective remedy as well. In cases of supply chain liability the question whether a company is responsible for a damage caused by a business partner is raised.

### Judicial mechanisms

In order to improve the rights of victims of human rights abuses, the UN Binding Treaty on Business and Human Rights aims not only at stipulating a state duty to introduce binding HRDD legislation but also at addressing issues like “the corporate veil” and judicial mechanisms (applicable law and adjudicative jurisdiction).

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## Demands

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- The EU and Member States must enshrine in their laws the obligation of corporations to respect human rights and the environment throughout their operations worldwide.
- The EU and Member States must support the elaboration of a UN Binding Treaty on Business and Human Rights.
- Human rights, environmental rights and core labour standards as defined by the International Labour Organisation must be included in all EU trade deals. They must have primacy in all trade and investment policies.

AK EUROPA supports the campaign “Rights for People, Rules for Corporations - Stop ISDS!”  
Sign it here: [www.rules4corporations.org](http://www.rules4corporations.org)

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## Author

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