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THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND HOW THEY APPLY TO THE FISHERIES AND AQUACULTURE SECTORS

INTRODUCTION

Companies can profoundly impact the human rights of workers, communities and consumers wherever they operate. These impacts can be positive, such as creating employment opportunities or providing or improving public services, but too often they are also negative, such as not paying workers an adequate salary, polluting the environment, or not consulting communities before a large-scale project is started.

To clarify what the responsibilities of companies are with regard to human rights, in 2011, the UN Human Rights Council unanimously endorsed the **United Nations Guiding Principles on Business and Human Rights** (UNGPs)¹. The UNGPs consist of 31 principles and set out expectations of states and companies about how to prevent and address negative impacts on human rights by business.

The UNGPs apply to all states and businesses worldwide, no matter their size and/or sector. The UNGPs do not create new international obligations for businesses but outline that business enterprises should respect internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

The UN Working Group on Business and Human Rights

The [UN Working Group on human rights and transnational corporations and other business enterprises](https://www.unhcr.org/refugees/working-group-on-human-rights-and-transnational-corporations-and-other-business-enterprises) (UN Working Group) was established in 2011 and is mandated by the Human Rights Council to promote the effective and comprehensive implementation of the UNGPs. The UN Working Group consists of five members representing all continents.

¹ OHCHR, United Nations Guiding Principles on Business and Human Rights, https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

The International Bill of Human Rights

The Universal Declaration of Human Rights (UDHR) spells out basic civil, political, economic, social and cultural rights that all human beings should enjoy. Over time, its content has been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, along with the International Covenant on Civil and Political Rights, its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights, form the [International Bill of Human Rights](#).

The ILO Declaration on Fundamental Principles and Rights at Work

Adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.

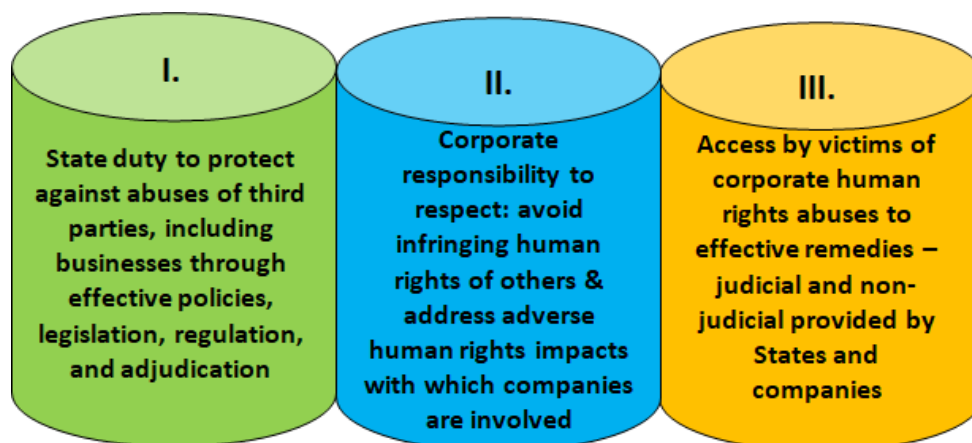
These categories are:

- Freedom of association the right to collective bargaining;
- Elimination of forced or compulsory labour;
- Abolition of child labour; and
- Elimination of discrimination in respect of employment and occupation.

Today, the UNGPs are being implemented by numerous companies, states and other stakeholders globally. Moreover, they have been integrated into key business and human rights frameworks and standards, such as the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (RBC), the Performance Standards of the International Finance Corporation (IFC) and, most recently, in the EU's forthcoming Corporate Sustainability Due Diligence Directive (see more below).

THE THREE PILLARS OF THE UNGPS

The UNGPs rest on three inter-related pillars, also jointly called the 'Protect, Respect and Remedy' framework. The three pillars are:



Pillar 1: The State Duty to Protect

The UNGPs clarify that States have the duty to protect individuals and groups within their territory or jurisdiction against human rights abuses committed by non-state actors, including businesses.

They must do so by clearly

setting out expectations that businesses domiciled in their territory respect human rights. Moreover, while according to the UNGPs, States are not responsible for human rights abuses by private actors, they must take the necessary steps to **prevent, punish and redress** such abuses by private actors through **effective policies, legislation, regulations and adjudication**. Moreover, they should ensure that all governmental departments, agencies, and institutions that shape business practices observe human rights obligations, including through relevant **information, training and support**.

Thailand's regulatory efforts to address human rights and transparency issues in the fisheries sector

Under the EU illegal, unreported and unregulated (IUU) fishing regulation, countries that export fish to the EU have to meet international standards for oversight and governance. Those countries that have inadequate measures in place to prevent and deter IUU fishing receive a yellow card. In 2015, the EU issued a called [yellow card to Thailand](#). The US State Department also [took action against Thai vessel operators](#) for its lack of transparency and documented human rights abuses.

In response, Thailand revised its fisheries laws in order to align them with international regulations and strengthen control systems for domestic and foreign fishing vessels at sea and in port.

However, following the 2023 elections, the Thai government is planning to reduce regulations and transparency around the activities of vessels. This includes rolling back the regulations in fisheries which were put in place to address human rights and transparency issues following decades of labor and human rights violations and environmental degradation.

Source: Pew Charitable Trust: See: <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/08/09/thailands-fisheries-management-transformation-is-a-model-for-fighting-illegal-fishing> and *Mongabay*. 90 NGOs question Thailand Prime Minister on fisheries deregulation plan (commentary), 23 November 2023. See: <https://news.mongabay.com/2023/11/90-ngos-question-thailand-prime-minister-on-fisheries-deregulation-plan-commentary/>

What does the State duty to protect concretely mean for the fisheries and aquaculture sectors?

This means that governments, in particular those that have large fisheries and/or aquaculture industries, should ratify international conventions that regulate these sectors, such as the ILO Work in Fishing Convention (Convention No. 188), the Port State Management Agreement targeting illegal, unreported and unregulated fishing², the UN High Seas Treaty and other relevant instruments. Governments should also accept the Protocol of the WTO Agreement on Fisheries Subsidies, an agreement adopted in June 2022 by WTO members to stop harmful fisheries subsidies. As of February 2024, 56 countries have accepted the Agreement³. Furthermore, governments should put in place national laws and policies to regulate business practices in the fisheries and aquaculture sectors, including allocating adequate resources for inspections in these sectors.

² FAO, Agreement on Port State Measures. See: <https://www.fao.org/port-state-measures/en/>.

³ [WTO | 2024 News items - Cabo Verde formally accepts Agreement on Fisheries Subsidies](#).

EU Corporate Sustainability Due Diligence Directive

On 14 December 2023, the EU reached a provisional deal on the Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD will set obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners. The fisheries sector has been identified as a high-risk sector, and therefore companies with a global generated net turnover more than 40 million euros of which 20 million or more is generated the high-risk sector and with more than 250 employees will fall within the scope of the directive¹. This directive will have implications for many companies in the fisheries sector.

Ratification of ILO Work in Fishing Convention, 2007 (ILO Convention No. 188)

Having entered into force in 2017, this Convention sets out binding requirements relating to work on board fishing vessels, including occupational safety and health, medical care at sea and ashore, rest periods, written work agreements, and social security protection. It also aims to ensure that fishing vessels provide decent living conditions for fishers on board. So far, 21 countries globally have ratified ILO Convention No. 188.

See: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188 and https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::no:11300:p11300_instrument_id:312333

National Action Plans on Business and Human Rights

National Action Plans (NAPs) on business and human rights can be an important means to promote the implementation of the UNGPs⁴. They are policy documents in which a government articulates priorities and actions that it will adopt to support the implementation of international, regional, or national obligations and commitments with regard to a given policy area or topic.

To date, the inclusion and specific mentioning of the fisheries and aquaculture sectors in NAPs has been limited. An [analysis](#) of all NAPs by DIHR shows that only few NAPs refer to this sector, even if it is an important industry in the country. When countries commit to the development of NAPs, it is recommended that they assess which industries in the country are most important and could potentially or actually have negative impacts on rights holders. During the development of a NAP, relevant fisheries and aquaculture stakeholders, including fishing communities, Indigenous Peoples, businesses, workers and other stakeholders, such as the NHRI and local NGOs related to the fisheries and aquaculture sectors, should be consulted and involved in national dialogues so that these sectors can be adequately addressed and included in NAPs.

The **global website on NAPs** is an online “one stop shop” for information regarding the development of NAPs. You can visit it here: <https://globalnaps.org/> and for more information on how the fisheries and aquaculture sectors are reflected in NAPs, see: <https://globalnaps.org/issue/fisheries-and-aquaculture-sectors/>

⁴ UN Working Group on Business and Human Rights, Guidance on business and human rights NAPs, 2016.

Pillar 2: The Corporate Responsibility to Respect

It is evident that business projects and activities can have a wide range of impacts on human rights. With the endorsement of the UNGPs, it has been firmly established that businesses have an **independent responsibility to respect human rights**, distinct from obligations from States.

The corporate responsibility to respect human rights means to avoid infringing the rights of others and addressing adverse impacts that may occur. It applies to all companies in all situations, no matter their size or where they operate. As part of this responsibility, companies should assess and address all rights infringements, including impacts they have caused, contributed to or are linked to through business relationships⁵.

The UNGPs describe that companies should 'know and show' their negative impacts and they should do this by practicing '**human rights due diligence**'. Throughout this process, companies should engage with stakeholders, in particular with rights-holders such as those workers, communities or consumers who are negatively affected by their operations. Furthermore, they should ensure access to remedy, which will be covered under 'Pillar 3: Access to Remedy'.

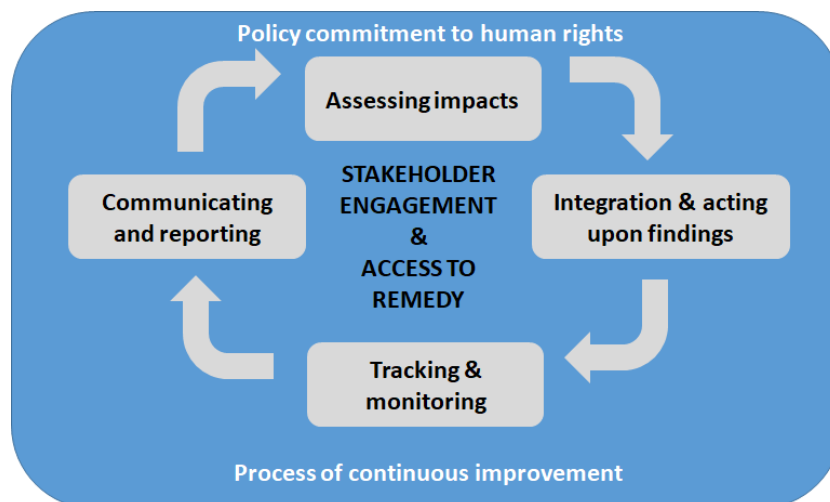


Figure 1: Human Rights Due Diligence Cycle according to the UNGPs

What does this concretely mean for the fisheries and aquaculture sectors?

Large or small, industrial fishing companies should respect the rights of their crew members. Aquaculture companies should ensure that they do not negatively affect their own workers, workers in their value chain and the communities where they operate. Generally speaking, aquaculture activities can have adverse environmental impacts and affect surrounding communities' (including Indigenous communities) and small-scale fishers' access to water and other resources. Companies should prevent such negative impacts from occurring, for example by conducting human rights impact assessments prior to starting their activities and putting in place preventative measures, such as wastewater treatment systems, and consulting with potentially affected communities.

⁵ For an in-depth elaboration of these impacts, please consult [DIHR's Human Rights Due Diligence Guide for Companies in the Fisheries Value Chain](#), particularly section 4.3 on integrating human rights risks and impacts into company operations.

Human Rights Due Diligence steps fisheries and/or aquaculture companies should undertake

1. Companies should assess their actual and potential adverse human rights risks and impacts throughout their global value chains, for example through conducting human rights risk assessments and human rights impact assessments by an independent third party. If companies are required to undertake environmental or social impact assessments by law, companies should consider integrating a human rights lens into such environmental or social impact processes. When assessing their adverse impacts, companies should meaningfully engage with affected rights-holders, in particular workers, communities and consumers.
2. Companies should integrate and act upon the findings of adverse impacts. In doing so, they might need to prioritise addressing severe impacts. Businesses should exercise leverage over their business relationships and may as a last resort terminate such relationships⁶.
3. Companies should track the effectiveness of their actions. This includes the development of company-specific indicators, tracking the performance of business partners, evaluating performance and committing to continuous improvement.
4. Companies should communicate on their risks and impacts, the actions they are taking, and progress made. Such communication should be ongoing and accessible to its intended audiences. An example of a company that has reported on human rights impacts in the seafood sector is the global food company Nestlé, which commissioned the organisation Verité to conduct an assessment of the labour conditions in the Thai shrimp supply chain⁷.

As a cross-cutting element companies should engage with stakeholders, including rights-holders including workers (fishers, crew, workers in processing plants, etc.), communities (including Indigenous communities) and consumers. Stakeholders could include fisheries associations, industry associations, labour rights organisations, NGOs, trade unions, National Human Rights Institutions (NHRIs), regional fisheries management organisations and multilateral agencies working on this topic such as the Food and Agriculture Organization, International Labor Organization, the International Maritime Organization, World Trade Organization.

In February 2024, DIHR published its [Human Rights Due Diligence Guide for Companies in the Fisheries Value Chain](#). This guide advises on how to apply the UN Guiding Principles on Business and Human Rights in the fisheries sector more in-depth and breaks down which human rights and environmental issues are salient in different parts of the value chain.

Not only fisheries and aquaculture companies, but also other industries, such as the oil and gas, mining and tourism sectors, have caused negative impacts on fishing communities across the globe. For example in Mozambique, fishers in the vicinity of islands that have been developed for tourism have been denied their fishing rights, as guards and patrols employed by tourism businesses do not allow fishermen to fish near the islands.⁸

Various private sector initiatives have been established to ensure that companies in the fisheries and aquaculture sectors respect human and labour rights in their own operations and value chains. An example of an industry-wide initiative can be found below.

⁶ Exercising 'leverage' means that a company can use its influence to bring change. For example, when a company is one of the main buyers of producer, the company can set as a condition that labour conditions need to be improved or otherwise, it will terminate the contract.

⁷ Verité (2015), A Verité Assessment of Recruitment Practices and Migrant Labor Conditions in Nestlé's Thai Shrimp Supply Chain. See: https://www.verite.org/wp-content/uploads/2016/11/NestleReport-ThaiShrimp_prepared-by-Verite.pdf.

⁸ International Collective in Support of Fishworkers (2006), Fishing Communities and Sustainable Development in Eastern and Southern Africa: The Role of Small-scale Fisheries. See: <http://aquaticcommons.org/17087/1/003%20ESA%20Fish%20Workshop.pdf>.

The SeaBoS Initiative

Eight of the world's largest seafood companies collectively operating in all segments of marine fisheries and aquaculture production worldwide have set up a global initiative called the Seafood Business for Ocean Stewardship in order to improve transparency and traceability in own operations and work together to share information and best practice. Thereby, the initiative builds on existing partnerships and collaborations and engages in concerted efforts to eliminate any form of modern slavery, including forced, bonded and child labour, in supply chains.

Source: The Seafood Business for Ocean Stewardship,
<https://www.stockholmresilience.org/research/research-news/2016-12-14-international-seafood-business-commits-to-stronger-sustainability-efforts.html>

Pillar 3: Access to Remedy

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

Article 8 – Universal Declaration of Human Rights

The last pillar of the UNGPs describes that as part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure that when such abuses occur within their territory and/or jurisdiction, those that are affected have access to effective remedies. Such remedies could be provided through judicial, administrative, legislative or other appropriate means, and could comprise investigation, punishment and redress. Amongst others, state based non-judicial mechanisms can include labour tribunals, NHRIs, National Contact Points for RBC established in line with OECD Guidelines, and Ombudspersons.

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related abuse, including considering ways to address obstacles to effectiveness such as the denial of justice in host states, the exclusion of certain groups from equal legal protection, lack of legal representation, or the lack of resources, expertise and support of prosecutors.

In addition, companies should also establish operational-level grievance mechanisms to directly remediate and address any identified impacts before they escalate or worsen. Companies should also cooperate and collaborate in good faith with the judiciary and other mechanisms, such as OECD National Contact Points for RBC and NHRIs when they are conducting an investigation or handling a case. Companies can also take part in sectoral and multi-partite grievance mechanisms, such as [Issara Institute’s Inclusive Labour Monitoring](#).

Various cases have been brought to court involving companies who have adversely affected fishing communities through their business operations. Cases have also been brought to National Contact Points for RBC involving companies in the aquaculture sector. Below two case examples are provided.

Lawsuit against Shell by Bodo community in Nigeria

Members of the Bodo community in Nigeria filed a lawsuit against Shell in London High Court on 23 March 2012, seeking compensation for two oil spills which occurred in 2008 and 2009 in the Niger Delta. The 15,000 plaintiffs asked for compensation for losses suffered to their health, livelihoods and land, and they asked for clean-up of the oil pollution. According to testimonies of affected community members, the oil spills covered everything in oil, and they could not any longer catch fish. “We were fishermen until right before the spill, but now in the river there is no fish”. After 4 years, the case was settled, and 15,600 people received monetary compensations.

Source: Business and Human Rights Resource Centre, Shell lawsuit (re oil spills & Bodo community in Nigeria), <https://www.business-humanrights.org/en/shell-lawsuit-re-oil-spills-bodo-community-in-nigeria>; Ottawa Citizen, January 8, 2016, How a poor Nigerian town got Shell to pay for major oil spills, <https://ottawacitizen.com/news/world/beatng-big-oil-how-a-poor-nigerian-town-got-shell-to-shell-out-for-major-oil-spills>.

Complaint against Cermaq to the Norwegian OECD National Contact Point (NCP) for RBC

In 2009, the NGOs ForUM and Friends of the Earth Norway filed a complaint against Cermaq ASA for alleged multiple breaches of the OECD Guidelines arising from the fish farming and fish feed operations of the company’s subsidiary Mainstream. The complaint alleged that Cermaq had not adequately considered the rights of Indigenous peoples in Canada and Chile, whose access to resources was threatened by the company’s salmon farms.

The case involved the Norwegian, Chilean and Canadian NCPs. Mediation between the company and NGOs took place in 2011. During the same year, a joint statement was reached in which the company admitted having taken insufficient account to the precautionary principle in meeting social and environmental challenges. A year after the agreement, the NGOs involved conducted a study to assess the implementation of the agreement and concluded that Cermaq failed to change its operations in Chile accordingly.

Source: OECD Watch, ForUM and Friends of the Earth Norway vs Cermaq ASA, <https://www.oecdwatch.org/complaint/forum-and-friends-of-the-earth-norway-vs-cermaq-asa/#:~:text=The%20complaint%20alleges%20that%20Cermaq,by%20the%20company's%20salmon%20breeding>.