

Human rights, corporate wrongs & investment impacts



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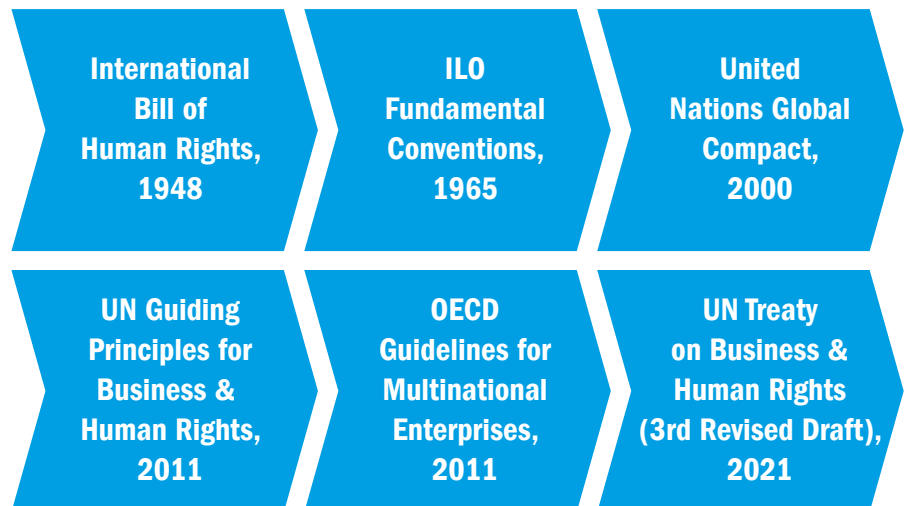
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Respect of human rights can help drive the long-term sustainability and success of any corporation. For certain strategies that target sustainable outcomes, we seek to invest in companies whose output is beneficial to society and achieved sustainably, respecting the rights of all stakeholders.

In considering human rights we need to understand how they have evolved, and continue to do so (Figure 1). The conventions by which we live were shaped after the second world war and directed at nation states to ensure basic economic, social, cultural and political rights. Life since then

Figure 1: A history of human rights



Source: United Nations/OHCHR/ILO.

has increasingly been influenced by multinational enterprises so scrutiny has shifted to the boardroom, though not yet through legally binding instruments.

In 2000, the UN Global Compact introduced non-binding principles for businesses to support and respect human rights, ensuring they are not complicit in abuse. The UN Guiding Principles on Business and Human Rights built on this foundation. The three pillars of the principles – protect, respect and remedy – reflect the responsibilities of nation states and corporations and the right of victims to redress if abuses take place. We may see the principles develop into a legally binding convention, with the UN Human Rights Council due to discuss the third draft of a Treaty on Business and Human Rights (BHR) in October 2021.

A ratified treaty could see businesses obliged to implement Human Rights Due Diligence (HRDD) and ensure access to effective remedy for victims of abuse. The obligations may extend to communities impacted – even indirectly – by business operations. The OECD Guidelines for Multinational Enterprises give us a taste of things to come: though not legally binding, the investigations it prompts can lead to legal and financial liabilities, and reputational damage.

A key weakness of the UNGP and OECD Guidelines concerns the lack of access to effective remedy for victims in developing countries. This issue

is being addressed in the proposed BHR. The treaty introduces a state obligation to regulate corporates under their jurisdiction or control, including transnational activities. This means multinational enterprises may be liable for human rights abuse in their global supply chains. To date, it has been challenging for victims to seek redress in such circumstances. Attempts are usually made through the 1789 US Alien Tort Statute (ATS) or via tortuous mediation using the OECD Guidelines. A ratified BHR could make redress simpler, increasing the prospect of legal liabilities for companies without HRDD or those complicit in abuse.

Vigilant active management

As investors, we need to be vigilant for digressions and engage where we have concerns. While third-party data providers are useful in flagging potential concerns, changes in company scores and ratings are a starting point for us to research, engage and act. Where there is tangible evidence of mitigating action, we can justify ownership and promote dialogue to ensure concerns are addressed. In this way we build relationships with our companies and realise long-term value.

Teleperformance is a global digital integrated business services company listed in Paris. In early 2020, allegations of poor working conditions emerged as pandemic-induced lockdowns took hold. On engaging with management, it was clear they

faced a logistical challenge but had acted to ensure employees' safety and wellbeing. When we spoke to the CFO in April, the company had transitioned over 40% of its workforce, or 120,000 people, to working from home. Those who could not were being employed in a clean office environment, open to independent inspection. Actions were co-ordinated through an Executive Crisis Committee, which met daily, and a broader forum of 100 senior business leaders.

After our meeting, UNI Global Union, an international labour union, submitted a case to the National Contact Point (NCP) in France alleging contravention of the OECD Guidelines. An ESG data provider cut Teleperformance's rating. But we maintained a positive view as we had evidence of remediation. We followed managers' progress closely, meeting with the investor relations team in June and the Deputy CEO in August 2020.

The NCP mediation process between Teleperformance and UNI resulted in a Final Statement on 5 July 2021, summarised in the following excerpt:¹ "The NCP notes that, following an emergency management phase, Teleperformance has deployed and continues to implement a policy to prevent, manage and monitor the pandemic in all its subsidiaries in order to address health risks associated with the pandemic. This policy broadly corresponds to the expectations of corporate due diligence recommended by the OECD Guidelines."

While the NCP Final Statement confirms mitigating action, the deterioration in dialogue between UNI and Teleperformance highlights the challenges of mediation under a non-binding framework. The legal basis provided by a treaty could ensure more rigorous negotiation and settlement. We continue to monitor Teleperformance's progress; the Covid-19 pandemic may have permanently changed its operating model, return profile and growth prospects.

A second case concerns Nestlé, one of the world's largest food and beverage brands. Rather than pursuing OECD mediation, complainants alleged human rights abuses by Nestlé, as well as other firms, using the US ATS. The lawsuit was dismissed in June 2021 as the ATS could not be applied extraterritorially. However, it highlighted the problem of child labour and forced labour across global commodity supply chains. While already aware of Nestlé's progress in this area, the case prompted us to review its HRDD policies and practices. We held a call with the Head of its Cocoa Plan, the supply chain in which the abuses were alleged.

Nestlé launched its Cocoa Plan in 2009 to help farmers improve their livelihoods through education and community support. It was the first in the industry to develop a Child Labour Monitoring and Remediation System (CLMRS) in 2012, acknowledging problems highlighted by independent assessors. Impact assessments published by the Fair Labor Association and the Danish Institute for Human Rights are evidence of progress. In 2019, the CLMRS had grown to monitor 78,580 children and engaged with 15,740 of them to prevent underage employment. This is achieved through initiatives ranging from facilitating access to education by providing birth certificates, to offering bridging classes and vocational training.²

Nestlé sources 46% of its cocoa sustainably through the Cocoa Plan, and has an ambitious 100% target for 2025.³ Progress towards this goal was key when we decided to invest for the Pan European Sustainable Outcomes strategy. Nestlé's integration of human rights into its policies and practices is shown through a variety of ongoing initiatives aimed at systemic change. For example, it is helping children re-enter education, pooling labour

to avoid their employment, raising household earnings through income-generating activities for women and agricultural training to boost yields by up to 4x. While some, including ESG ratings agencies, penalise Nestlé for the presence of child labour, we praise its transparency and ongoing efforts to address it. Controversy still exists, but tangible mitigating action is evident.

These case studies illustrate the challenges involved in controversy analysis and anticipating regulatory change in the field of human rights. Controversy presents risks and opportunities, and as much depends on mitigating actions as the circumstances in which it was created. We anticipate further scrutiny in the wake of BHR discussions in October and are already holding companies to account as investor and regulatory expectations rise. This focus on human rights will remain a cornerstone of our approach in the Pan European Sustainable Outcomes strategy.

Source:

- 1 OECD, <https://mneguidelines.oecd.org/database/instances/fr0030.htm>, 2021.
- 2 <https://www.nestle.com/sites/default/files/2019-12/nestle-tackling-child-labor-report-2019-en.pdf>
- 3 As of 2020. <https://www.nestle.com/csv/raw-materials/nestle-cocoa-plan>

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