

# 'DON'T LOOK AWAY'

BE AWARE AND REPORT THE SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM

## Protecting children in the tourism sector

### Human rights in businesses



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# 1. Introduction

Sexual exploitation of children is a global problem. However, developing countries are among those countries which are most affected by this severe violation of children's rights. Often a high influx of international tourists and travellers increases the problem. Globalisation, the cross-border movement of people, increasing consumerism, persistent poverty, new communication technologies and increasing mobility have enabled the problem to evolve and manifest itself in new forms. Around the world, sexual exploitation of children is transforming and intensifying.

ECPAT (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) has a longstanding history of work in promoting the rights of children and supporting action for their concrete realisation, particularly focusing on children's rights to protection from sexual exploitation. ECPAT International and many of its network members in 82 countries actively support the tourism sector to combat commercial sexual exploitation.

Issues about commercial sexual exploitation have prompted responses in the tourism sector over a long period, notably because of concerns expressed since the 1980s about sex tourism, especially the sexual exploitation of children by tourists visiting countries other than their own. There has been international consensus that children under 18 should never be recruited into prostitution (for any such recruitment is considered to constitute trafficking in children for the purpose of sexual exploitation.<sup>1</sup>

Increasing attention is being paid to the involvement of the private sector in both contributing to and protecting human rights. While States are required to perform due diligence to prevent and respond to the violations committed by private individuals including corporations, the private sector also has legal and ethical responsibilities to address human right violations. It is now widely accepted that private sector actors, including corporations, are under an ethical and legal duty to take all necessary actions to limit the adverse impacts of their operations on human rights. Under the laws of many countries, businesses can be held criminally liable for acts of negligence that lead to harm; for failing to prevent further harm; and for any direct involvement in human trafficking or other unlawful forms of exploitation.<sup>2</sup>

The Tourism Child protection Code (The Code) is a multi-stakeholder initiative with the mission to provide awareness, tools and support to the tourism industry to prevent the sexual exploitation of children. The right of children to be protected against sexual exploitation is established according to the Convention on the Rights of the Child, and as such this right is part of the United Nations system of Human Rights. The human rights system consists of many legally binding international human rights treaties and agreements. This establishes legal and other mechanisms to hold governments accountable in the event they violate human rights. In the processes of liberalisation, deregulation and globalisation, governments have transferred rights and responsibilities to the private sector. The Tourism Child Protection Code is a means for the tourism industry to take its corporate responsibility to defend this human right. As such it is a Corporate Social Responsibility (CSR) instrument working in the value chain. CSR defines how a company deals with the social, economic and ecological effects of its actions (often labelled as Triple-P: People, Planet, Profit), how it relates to its stakeholders, the government, customers and owners and how it deals with regulations. CSR is a self-regulatory and voluntary activity of business corporations.

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<sup>1</sup> [Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector](#) – OCSE, 2014

<sup>2</sup> [Human Rights and Trafficking in Person. 15th Informal ASEM Seminar on Human Rights. Background Paper](#) – Asia-Europe Meeting, 2015

Since the inception of The Code in 1998 the scene in which the stakeholders of The Code operate has changed. There is an enormous growth of the tourism sector, new destinations are evolving rapidly, business structures and financing structures are changing, and corporate responsibility for human rights is growing. This paper looks at human rights initiatives for businesses.

The research is part of the EU funded project 'Don't Look Away – Be Aware and Report the Sexual Exploitation of Children in Travel and Tourism!' The EU-project involves 16 European ECPAT groups and associated partner-organisations from 6 Southern countries. The project's duration was from 23 October 2012 until 22 October 2015. The global aim of this project is to improve the protection of vulnerable children in the tourist destinations of developing countries against sexual exploitation and abuse by persons travelling.

## **1.1 Objectives**

This paper has the following objectives:

- Describe initiatives and frameworks for human rights in businesses;
- Describe case examples of assessing human rights impacts in tourism;
- Describe possibilities to corporate liability and remedies for victims.

## **1.2. Sources**

For this paper several literature sources and websites were consulted. Important sources were:

- Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector from The Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OCSE), 2014;
- Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights – Asia-Europe Meeting, 2014;
- The UN Guiding Principles on Business and Human Rights;
- Good Practices to Prevent and Combat Human Trafficking in Businesses by UN.GIFT, 2010;
- OECD Guidelines for Multinational Enterprises, 2011 Edition;
- Children Rights and Business Principles from UNICEF, The Global Compact and Safe the Children;
- Websites of Codes and Certification labels;
- Impact Assessments from the Danish Institute for Human Rights, Travel Foundation and Kuoni;
- Assessment of The Tourism Child Protection Code by UNICEF Innocenti Research Centre in 2012.

## 2. Human Rights and Business

### Different codes and guidelines:

1. Initiatives from international organizations, such as the ILO, UN and OECD;
2. Initiatives from quality standard organizations, which require independent verification;
3. Initiatives from trade unions, business associations, groups or individual businesses;
4. Initiatives from faith-based groups or NGOs with the private sector.

### 2.1 Initiatives from International Organizations

#### ILO Conventions

Eight ILO “core” conventions have been a point of reference for many business codes. The conventions concern the issues of freedom of association (the right to form trade unions), child labour, forced labour and discrimination. They were given the status of “core” labour rights by the ILO Declaration on Fundamental Principles and Rights at Work in 1998, which requires all States to respect the standards in these conventions, whether or not a particular State had ratified them.

The ILO adopted a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977. In June 2014, the ILO adopted the Protocol of 2014 to the Forced Labour Convention, 1930 and an accompanying Forced Labour (Supplementary Measures). The Recommendation notes that, “in giving effect to their obligations under the Convention [ILO Convention No. 29 on Forced Labour, 1930] to suppress forced or compulsory labour, Members should provide guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked” (article 3.j).

#### Committee on the Rights of the Child

The UN Committee on the Rights of the Child states in its General Comment No. 16 (2013) the following provisions addressed at businesses:

- To meet their obligation to adopt measures to ensure that business enterprises respect children’s rights, States should require businesses to undertake child-rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their impact on children’s rights including across their business relationships and within global operations (paragraph 62);
- States should lead by example, requiring all State-owned enterprises to undertake child-rights due diligence and to publicly communicate their reports on their impact on children’s rights, including regular reporting (paragraph 64);
- The General Comment notes that guidance provided by governments to businesses should include the implementation of zero-tolerance policies for violence in all business activities and operations (paragraph 73);
- Finally, the Committee underlines that businesses should report publicly, recommending that they should be required to publish the actions taken to ensure that the goods and services they produce or commercialize do not involve serious violations of children’s rights, such as slavery or forced labour. Where reporting is mandatory, States should put in place verification and enforcement mechanisms to ensure compliance (paragraph 65).<sup>3</sup>

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<sup>3</sup> [Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector](#) – OCSE, 2014

### **The UN Guiding Principles on Business and Human Rights**

On the basis of the Universal Declaration on Human Rights the UN has taken the initiative to define the responsibilities of the industry in the United Nations Guiding Principles on Business and Human Rights (UNGPs) from 2011. The UNGPs encompass three pillars outlining how States and businesses should implement the framework:

- The State duty to protect human rights;
- The Corporate responsibility to respect human rights;
- Access to remedy for victims of business-related abuses.

Each part consists of some “foundational principles”, followed by a set of “operational principles” (31 principles in total). Each principle is accompanied by a commentary, which spells out its purpose or what action is expected to be taken to implement the principle.

The corporate responsibility to respect human rights indicates that businesses must act with due diligence to avoid infringing on the rights of others and to address negative impacts with which they are involved. The second pillar offers a process for companies to both "know and show" that they are meeting this responsibility, by which they become aware of, prevent, and address their adverse human rights impacts. The UNGPs hold that companies have the power to affect virtually all of the internationally recognized rights. Therefore, there is a responsibility of both the state and the private sector to acknowledge their role in upholding and protecting human rights.

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- A policy commitment to meet their responsibility to respect human rights;
- A human rights due diligence process [emphasis added] to identify, prevent, mitigate and account for how they address their impacts on human rights;
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

The term “due diligence” is a critical one. In conducting due diligence, the UN Guiding Principles encourage companies to formally assess actual and potential human rights impacts and to integrate human rights across relevant internal functions and processes. The company should ensure that human rights are respected throughout the value chain and human rights violations can be effectively prevented.

Relevant elements of due diligence methodology of the UN Guiding Principles are:

- It is about impact on and risks for people as well as risks for the company;
- It is a rights-based approach (based on human rights);
- It involves the responsibility of international tour operators, as well as responsibilities of local business in the value chain;
- It involves consultation of and working with different stakeholders (employees, communities, management, NGOs, governments);
- It requires a cooperative approach both in the value chain and within the sector.

The EU had made a number of policy commitments in support of the UNGPs, such as the European Union’s 2012 Strategic Framework on Human Rights and Democracy. Before 2011, the European Commission’s policy on CSR described corporate responsibility as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”. With its 2011 Communication on CSR, the Commission, however, adopted a new definition of CSR as “the responsibility of enterprises for their impacts on

society”, removing the suggestion of voluntariness.<sup>4</sup> At the national level, some governments have already taken specific steps to promote awareness of the Guiding Principles in their country’s business community (Denmark, Italy, the Netherlands and the United Kingdom) and developed national action plans (NAPs).<sup>5</sup>

### **OECD Guidelines for Multinational Enterprises**

The Organisation for Economic Co-operation and Development (OECD) adopted a set of Guidelines for Multinational Enterprises in 1986, which were revised in 2011<sup>6</sup>. The OECD Guidelines for Multinational Enterprises are comprehensive and internationally agreed and 34 governments of EU Member States and eight other States have committed to it. The guidelines contain recommendations jointly addressed by governments to multinational enterprises for their activities, particularly abroad. The OECD Guidelines are not legally binding, but form an important basis for the OECD countries to adopt national recommendations and/or regulations for CSR in the corporate sector. The Guidelines require Member States to set up an appeal mechanism in so-called "national contact points" (NCPs).

OECD offers intergovernmental grievance mechanisms to deal with complaints about alleged corporate misconduct. Every nation should create a National Contact Point, which deals with complaints about a corporation that may have violated one or more of the OECD Guidelines, either overseas or at home. The Guidelines complaint process is intended to resolve issues through mediation, concluded with a public final statement. If mediation fails, the statement should outline the issues, process and recommendations to the parties and may include an assessment of alleged violations.

### **Global Compact**

The Global Compact is a CSR initiative started in 1999 by Kofi Annan, former Secretary-General of the United Nations. As a global alliance between the United Nations and the private sector the Compact is “a framework for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption. National Global Compact networks have been organized in some regions, for example in the Balkan. The UN Global Compact listed particular sectors of the economy where human rights abuses were reported, including tourism and transport (air, land and sea).

The initiative is based on the voluntary commitment of companies, according to the ten principles of the Global Compact to act on human rights of which six principles are relevant for The Code:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;
- Principle 2: Make sure that they are not complicit in human rights abuses;
- Principle 4: The elimination of all forms of forced and compulsory labour;
- Principle 5: The effective abolition of child labour, including the use, procuring or offering of a child for prostitution or production of pornography;
- Principle 6: The elimination of discrimination in respect of employment and occupation.

Principles 4 and 5 mention the abolition of compulsory labour and child labour. One of the worst forms of child labour, includes the use, procuring or offering of a child for prostitution or production

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<sup>4</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>5</sup> [Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector](#) – OCSE, 2014

<sup>6</sup> [OECD Guidelines for Multinational Enterprises, 2011 Edition](#)

of pornography.<sup>7</sup> In its report on Children's Rights and Business Principles – Good Practices per Principle (2015) The Code is mentioned as good practice.<sup>8</sup>

The Global Compact does not involve independent monitoring of the performance of the businesses that sign up. Each business is expected to publish its own annual "Communication on Progress" (COP), on the actions it has taken to implement the Global Compact and its ten principles and to submit this to the Global Compact secretariat in New York. This is intended to encourage good practice by participants. Those who do not comply or who fail to report on their progress are "delisted", i.e., struck of the list of businesses supporting the Compact. By the beginning of 2011, some 6,066 companies from 132 countries were reported to be actively committed to supporting the Global Compact. In mid-2013 the Global Compact reported that 99 companies had been expelled in the first half of 2013 for failing to submit communications on progress for at least two consecutive years.<sup>9</sup>

### **Global Code of Ethics for Tourism**

The United Nations World Tourism Organisation (UNWTO) has developed a fundamental frame of reference for responsible and sustainable tourism, the Global Code of Ethics for Tourism (GCET). It is a comprehensive set of principles designed to guide key-players in tourism development aiming to help maximise the sector's benefits while minimising its potentially negative impact on the environment, cultural heritage and societies across the globe. UNWTO is working on turning the Global Code of Ethics into an international convention. In 1999 the UNWTO adopted the Global Code of Ethics for Tourism, which condemned "The exploitation of human beings in any form, particularly sexual, especially when applied to children [...]". It urged "public and private stakeholders in tourism development" to co-operate in implementing its principles and monitoring their application (article 10). On the UNWTO website where information on how to protect children from sexual exploitation in tourism is listed, The Code is described as: "Throughout the last decade, the Code has developed into one of the most recommended practices for the implementation of CSR related to child protection in the tourism industry."<sup>10</sup>

### **Children Rights and Business Principles**

In 2012 UNICEF issued a set of Children's Rights and Business Principles that had been developed by UNICEF, the UN Global Compact and Save the Children. The ten principles outline a set of actions for businesses to take with respect to children:

1. Meet their responsibility to respect children's rights and commit to supporting the human rights of children;
2. Contribute to the elimination of child labour, including in all business activities and business relationships;
3. Provide decent work for young workers, parents and caregivers;
4. Ensure the protection and safety of children in all business activities and facilities;
5. Ensure that products and services are safe, and seek to support children's rights through them;
6. Use marketing and advertising that respect and support children's rights;
7. Respect and support children's rights in relation to the environment and to land acquisition and use;
8. Respect and support children's rights in security arrangements;
9. Help protect children affected by emergencies;
10. Reinforce community and government efforts to protect and fulfil children's rights.<sup>11</sup>

<sup>7</sup> <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-5>

<sup>8</sup> [Children's Rights and Business Principles – Good Practices per Principle](#) – UN Global Compact, 2015

<sup>9</sup> [Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector](#) – OCSE, 2014

<sup>10</sup> <http://ethics.unwto.org/content/protection-children-tourism>

<sup>11</sup> [Children Rights and Business Principles](#), UNICEF, The Global Compact and Save the Children



For principle 4: “Ensure the protection and safety of children in all business activities and facilities”, The Code is presented as a good practice example.<sup>12</sup> The principle includes:

- a. Addressing safety and protection risks to children’s rights posed by business facilities and staff in the course of business activities:
  - i. Ensure that company facilities are not used to abuse, exploit or harm children.
  - ii. Ensure that potentially dangerous areas of company facilities do not pose a safety threat to children, during or outside business hours.
  - iii. Make clear to staff that the business’s zero tolerance policy for violence, exploitation and abuse applies in all business activities, even when conducted away from business facilities;
  - iv. Take appropriate action when concerns of possible violence, exploitation or abuse arise.
  - v. Ensure that *young workers* above the minimum age for work are protected from hazardous work.
- b. Developing and implementing a child protection code of conduct. Ensure awareness of and on-going training on the code of conduct.

The Children’s Rights and Business Principles distinguish between:

- Corporate Responsibility to Respect: avoiding any infringement of the human rights of others, including children, and addressing any adverse human rights impacts with which the business is involved. The corporate responsibility to respect applies to the business’ own activities and to its business relationships, linked to its operations, products or services;
- Corporate Commitment to Support: in addition to respecting human rights, helping to advance human rights, including children’s rights, through core business activities, strategic social investments and philanthropy, advocacy and public policy engagement, and/or working in partnership and other collective action.

UNICEF and others have published several manuals summarizing the steps businesses should take to respect these principles, such as a Tool for Companies<sup>13</sup> and a Guide for integrating children’s rights into impact assessments and taking action for children.<sup>14</sup>

### **Global Sustainable Tourism Council Criteria**

The Global Sustainability Tourism Criteria have been published in 2007 by a partnership of 27 organizations under the lead of the United Nations Environment Programme (UNEP), the UN World Tourism Organization (UNWTO), the Rainforest Alliance and the United Nation Foundation. The Global Sustainable Tourism Council now further develops the criteria. There are two sets of GSTC Criteria: Destination Criteria (GSTC-D) and Hotel & Tour Operator Criteria (GSTC-H&TO). These are the guiding principles and minimum requirements that any tourism business or destination should aspire to reach in order to protect and sustain the world’s natural and cultural resources, while ensuring tourism meets its potential as a tool for conservation and poverty alleviation.

The Global Sustainability Tourism Criteria B6 include criteria for implementation of a policy against commercial, sexual or any other form of exploitation and harassment, particularly of children, adolescents, women and minorities. The documented policy has to be known to all staff. In developing the code, the organization has to consult the local community. Small organizations with few staff may have a simple policy; larger organizations must have documented policy and associated

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<sup>12</sup> [Children Rights and Business Principles](#), UNICEF, The Global Compact and Save the Children

<sup>13</sup> [Children Rights in Policies and Codes of Conduct; A tool for companies](#) - UNICEF and Save the Children, 2013

<sup>14</sup> [Children’s Rights in Impact Assessments; A guide for integrating children’s rights into impact assessments and taking action for children](#) – UNICEF and The Danish Institute for Human Rights, 2013

staff awareness and reporting systems.<sup>15</sup>

### **Implementation of international human rights initiatives**

There are doubts about the regulatory effectiveness of the GPs' voluntary approach. A 2013 study for the European Commission, assessing 200 randomly selected, large European companies, found that only 33% referred to the UN Global Compact, OECD Guidelines or ISO 26000, only 3% to the GPs themselves, and 2% to the ILO Declaration.<sup>16</sup> The Business and Human Rights Resource Centre, which has recently begun to document published company policies on human rights, currently lists just over 350 worldwide. A survey of 153 companies of all sizes and from 39 countries undertaken by the UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises in 2013 found 58% with a public statement on human rights.<sup>17</sup>

The study for the European Commission (2013) also found that very large companies (those with over 10,000 employees) were more likely to refer to international standards in CSR policies than smaller companies. It also detected significant variation between surveyed countries in the likelihood that companies have a human rights policy — suggesting that national factors, including government encouragement or support, can influence outcomes in this area.

Doubts are voiced about the value of current reporting practice as an accountability mechanism in relation to human rights. It is often thought that the businesses that most need to report on human rights, i.e., those with negative impacts, may be reluctant to do so, given commercial sensitivities, potential legal liability, and the likelihood of reputational damage.<sup>18</sup>

## **2.2 Initiatives from Quality Standard Organizations**

There is a number of certificates and seals of approval specifically for sustainability in tourism. The tourism sector is complex and these labels can be awarded to companies, individual tourism products or services or even entire regions. Most of them are detailed when referring to environmental aspects but if they cover social issues they are less specific. Useful overviews of certificates and labels are offered by ECOTRANS<sup>19</sup> and Fairunterwegs<sup>20</sup>. In this paragraph the most relevant certifications for The Code are dealt with; some of which are voluntary codes or pledges, others are more binding and/or certified.

### **Green Globe**

Green Globe is an internationally recognized certification system that qualifies tourism companies for compliance with environmental, socio-economic-cultural and global standards. To be certified by Green Globe tourism companies are audited by external experts in the fulfilment of a large number of indicators. The label is awarded to tourist attractions, convention centres, cruise ships, golf courses, hotels and resorts, events, restaurants, wellness and health centres, transport companies and tour operators.

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<sup>15</sup> [www.gstcouncil.org/en/gstc-criteria/criteria-for-hotels-and-tour-operators/39-general/general-content/634-global-sustainable-tourism-criteria-for-hotels-and-tour-operators.html](http://www.gstcouncil.org/en/gstc-criteria/criteria-for-hotels-and-tour-operators/39-general/general-content/634-global-sustainable-tourism-criteria-for-hotels-and-tour-operators.html)

<sup>16</sup> [An Analysis of Policy References made by large EU Companies to Internationally Recognised CSR Guidelines and Principles](#) – Caroline Schimanski, 2013

<sup>17</sup> [Uptake of the Guiding Principles on Business and Human Rights: practices and results from pilot surveys of Governments and corporations; Addendum](#) – Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 2013

<sup>18</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>19</sup> [www.destinet.eu/who-who/market-solutions/certificates](http://www.destinet.eu/who-who/market-solutions/certificates)

<sup>20</sup> [www.fairunterwegs.org/vor-der-reise/labelfuehrer](http://www.fairunterwegs.org/vor-der-reise/labelfuehrer)

Criteria B6 state that the business should implement a policy against commercial exploitation, particularly of children and adolescents, including sexual exploitation. And mentions that “Tourism businesses can play a key role in ensuring the protection of local populations at destination by not buying products produced with child labour; not allowing use of tourism premises for sexual exploitation of minors and denouncing these practices to local authorities.”<sup>21</sup>

### **Travelife**

Travelife is an international sustainability certification program for hotels and accommodations. It helps its members around the world to improve their environmental, social and economic impacts cost-effectively and is used by a variety of tour operators to select their business partners. The certification for accommodations distinguishes between big and small hotels. Founded in 2007 by the Federation of Tour Operators, it’s now part of ABTA the British association of tourism businesses. For the Travelife Gold award, hotels are required to meet 163 criteria under 13 headings including environmental management, business policies, labour and human rights, and community integration. Audits are required every two years. They only take place when a hotel is open. Following an audit, a hotel must submit evidence requested within four to six weeks.

In the criteria for Travelife Gold Standard for Accommodations there are several questions regarding the protection of children against sexual exploitation:

- Do you have a written policy that shows a commitment to respecting children’s rights and a commitment to the protection of children from all forms of exploitation, including sexual exploitation? (C.138);
- Do you provide training or information for your employees on the protection of children? Does this training include telling employees how to identify and report any incidents to the local authority? (C.138);
- Do you have a policy to report all suspicious activities regarding children to the local authorities (such as organisations concerned with safeguarding children), whether by employees or guests? (C.140).<sup>22</sup>

### **SA8000**

To establish a global standard for social auditing, Social Accountability International (SAI), which describes itself as “a global, multi-stakeholder, standards setting organization”, developed an international standard for ethical sourcing, the Social Accountability 8000 (SA8000) factory certification system. The 2008 version of the SA8000 standard has been translated from English into 13 languages. The intent of SA8000 is to provide an auditable, voluntary standard, based on the UN Declaration of Human Rights, ILO and other international human rights and labour norms and national labour laws. It is meant to empower and protect all personnel within an organisation’s control and influence who provide products or services for that organisation, including personnel employed by the organisation itself and by its suppliers, sub-contractors, sub-suppliers and home workers. It is intended that an organisation shall comply with this standard through an appropriate and effective management system. It is universally applicable to every type of organisation, regardless of e.g., its size, geographic location or industry sector. SA8000:2014 is the latest version of the SA8000 Standard, the world’s leading voluntary social certification standard for workplaces. In order to help organisations build and maintain strong management systems to become SA8000 certified and continually improve, the SA8000:2014 certification process now includes Social Fingerprint®.<sup>23</sup>

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<sup>21</sup> <http://greenglobe.com/standard/>

<sup>22</sup> [Gold Checklist for Accommodations](#) – Travelife 2014

<sup>23</sup> <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=937>

Criteria 5.3 of the SA8000:2014 states that: “The organisation shall not allow any behaviour that is threatening, abusive, exploitative or sexually coercive, including gestures, language and physical contact, in the workplace and in all residences and property provided by the organisation, whether it owns, leases or contracts the residences or property from a service provider.”<sup>24</sup>

## ISO

In 2010 the International Standards Organization (ISO) issued the standard ISO26000 on Social Responsibility, which provides guidance to both business and public sector organizations on social responsibility. However, unlike SA8000, ISO26000 is not audited independently. ISO 26000:2010 provides guidance rather than requirements, so it cannot be certified unlike some other well-known ISO standards. Instead, it helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location. The advantage of a standard with a high level of international recognition is that training on its implementation is provided by specialists in different parts of the world.<sup>25</sup>

ISO26000 contains many points of guidance that can be used to raise the bar for companies working against sexual exploitation of children. For example, it states that organizations should not be complicit in human rights abuses, defining complicity both in legal and non-legal senses. It recommends organizations and companies to have policies to prevent sexual exploitation of children. It recommends organizations and companies to respect and always take into account, the four basic principles of the Convention on the Rights of the Child. The Code of Conduct is listed in the Annex of the standard, after decision of the Working Group. It is the only initiative mentioned in the standard dealing with children’s rights specifically and also the only one dealing with sexual exploitation.<sup>26</sup>

## 2.3 Initiatives from Trade Unions, Associations and Businesses

### Global Business Coalition against Human Trafficking

In 2012 nine multinational businesses launched the Global Business Coalition against Human Trafficking (gBCAT), a business-only coalition with several specialist advisors. Founding members were Carlson, Cision, Coca-Cola, Delta, Ford, LexisNexis, Microsoft, NXP and Travelport. The mission of the coalition is: “To mobilize the power, resources and thought leadership of the business community to end human trafficking, including all forms of forced labour and sex trafficking”, the Coalition reckons to identify and prevent forced labour in supply chains and operations and also to raise awareness of company policies to combat sex trafficking, notably in travel and tourism.<sup>27</sup> On the website The Code is mentioned in a case study of Carlson. There is no further promotion of The Code.<sup>28</sup>

### Tour Operators Initiative

With the support of the UNEP, UNESCO and UNWTO, tour operators from north and south have formed the "Tour Operators Initiative for Sustainable Development", a voluntary commitment to an environmentally, socially and economically sustainable tourism development. It includes the protection of the environment and culture, the preservation of natural resources and the involvement of local communities in the tourism planning. The Tour Operators Initiative involves a wide range of environmental and social criteria. Although it is voluntary and impacts are not

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<sup>24</sup> [Social Accountability 8000 International Standard](#) - Social Accountability International, 2014

<sup>25</sup> <http://www.iso.org/iso/home/standards/iso26000.htm>

<sup>26</sup> [ISO 26000 Guidance Standard on Social Responsibility - Briefing Paper](#) – ECPAT Sweden, 2011

<sup>27</sup> [Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector](#) – OCSE, 2014

<sup>28</sup> <http://www.gbcat.org/#programs>

transparently checked, businesses that fail to comply might be excluded. In the practical guide for good practices of managing environmental and social issues the accommodation sector of the Tour Operator Initiative, it is recommended to sign and implement The Code.<sup>29</sup> The Code is also mentioned in the list<sup>30</sup> of case studies of TUI Nordic<sup>31</sup> as a good practice.

### **The Global Business Initiative on Human Rights**

Led by a core group of eighteen major corporations headquartered in each of the world's major geographical regions, the Global Business Initiative (GBI) works through two tracks: Member Peer Learning, which enables participating companies to share practices, challenges and innovations with regard to the implementation of the UNGPs; and Global Business Outreach, where member companies engage with other businesses around the world to raise awareness and to support capacity building. GBI also seeks to support constructive business inputs into international policy agenda. For example, it recently issued its position on the UN Human Rights Council's adoption of the resolution regarding the binding treaty on business and human rights.<sup>32</sup> Hilton Worldwide is a member of the GBI. On the website there is no information on how children rights are integrated in the work of the GBI.

## **2.4 Initiatives from NGOs**

### **Global Reporting Initiative**

The Global Reporting Initiative (GRI) is a multi-stakeholder initiative that was launched in 1997 by the NGO Coalition for Environmentally Responsible Economies (CERE) and UNEP (United Nations Environment Program). It is an international independent organization that helps businesses, governments and other organizations to understand and communicate the impact of business on critical sustainability issues such as climate change, human rights, corruption and many others. They use the GRI Guidelines to report, access information in GRI-based reports, or contribute to developing the Reporting Framework in other ways – both formally and informally. It offers a global approach for transparent and comparable corporate sustainability reporting. Significant numbers of large businesses in the global North already published sustainability reports relying on the framework of the Global Reporting Initiative. GRI, in collaboration with the Tour Operators Initiative created a template for sustainability reporting by tour operators, which was updated in 2013 with the inclusion of human rights.<sup>33</sup> For children only the topic of child labour is included.

Companies are expected to report on: (i) material issues, namely, those relevant to the human rights impacts of the company or operation, considering its sector and location; (ii) human rights due diligence, that is, the company's human rights policy, assessment process; allocation of responsibilities for human rights within the organisation; (iii) measures to promote human rights awareness, such as training; (iv) monitoring of impacts of company activities; and (v) company measures to follow-up and remediate any human rights impacts detected.<sup>34</sup> UNICEF has issued guidance on how to integrate child rights into reporting under the GRI Framework.<sup>35</sup>

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<sup>29</sup> [A Practical Guide to Good Practice Managing Environmental and Social Issues in the Accommodation Sector](#) – Tour operator Initiative

<sup>30</sup> <http://www.toinitiative.org/index.php?id=144>

<sup>31</sup> [http://www.toinitiative.org/fileadmin/docs/case\\_studies/tui\\_nordic\\_im.pdf](http://www.toinitiative.org/fileadmin/docs/case_studies/tui_nordic_im.pdf)

<sup>32</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>33</sup> <https://www.globalreporting.org/standards/Pages/default.aspx>

<sup>34</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>35</sup> [Children's Rights in Sustainability Reporting: A Guide for Incorporating Children's Rights into GRI- Based Reporting](#) – UNICEF, 2014

## Tourism Child Protection Code

In 1998 ECPAT (End Child Prostitution, Child Pornography, and Trafficking in Children for Sexual Purposes) and businesses operating in the tourism sector (initially those based in Scandinavia) developed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (subsequently referred to as: Tourism Child Protection Code or shortly: The Code). The international standard to be followed was clear: no-one aged under 18 should be involved in prostitution in any circumstances. The Code was adopted in 2001, committing tourism businesses to the following actions:

- 1 TO ESTABLISH A POLICY AND PROCEDURES**  
against sexual exploitation of children
- 2 TRAIN EMPLOYEES**  
in children's rights, the prevention of sexual exploitation and how to report suspected cases
- 3 INCLUDE A CLAUSE IN CONTRACTS**  
throughout the value chain stating a common repudiation and zero tolerance policy of sexual exploitation of children
- 4 PROVIDE INFORMATION TO TRAVELERS**  
on children's rights, the prevention of sexual exploitation of children and how to report suspected cases
- 5 SUPPORT, COLLABORATE & ENGAGE STAKEHOLDERS**  
in the prevention of sexual exploitation of children
- 6 REPORT ANNUALLY**  
on your implementation of The Code

The Code is implemented by almost 1,300 companies in 66 countries. The Code has been signed by exceptionally high numbers of companies in certain countries where there has been a heightened perception that the commercial sexual exploitation of children is a threat that can be avoided, such as Costa Rica.

Tourism sector members of The Code, are being supported by Local Code Representatives (often ECPAT Groups) in policy development, face-to-face trainings, awareness materials in local languages and by its international network of NGOs and businesses in destination countries. Furthermore, members are supported through a member portal. The portal serves as a management tool and guides the implementation process. It contains good examples and an interactive online training in ten different languages. The management portal registers how many employees have followed the online training. Policies, contract examples, training and awareness materials can easily be uploaded for the annual report.

### 3. Assessing Business Impacts in Tourism

Companies are expected by international guidelines (OECD, ISO26000, UNGP), governments (National/EU<sup>36</sup>) or investors to know what their impact is, in order to address it and to communicate about it. The UN Guiding Principles state that in conducting human rights impacts assessments “companies should draw on internal or independent human rights expertise; undertake meaningful consultation with potentially affected rights-holders and other relevant stakeholders; consider human rights impacts on individuals from groups that may be at heightened risk of vulnerability or marginalisation, and gender issues; and repeat risk and impact identification at regular intervals, for instance, before entering into a new activity, prior to significant decisions about changes in activities, and periodically throughout the project lifecycle.” (GP18)<sup>37</sup>

Environmental impacts are much more easily standardized and quantified than social and socio-economic ones. Emissions can be readily measured and given numerical data. Measuring human rights impacts however is a challenge. A new approach to assess social and socio-economic consequences is the social and socio-economic life cycle assessment, which is explained in this chapter. Furthermore, case examples of impact assessments in the tourism industry from the Myanmar Centre, Kuoni Group and TUI Group are explained in this chapter.

#### 3.1 Tourism Life Cycle Assessments<sup>38</sup>

Life cycle thinking is accepted by the tourism industry as a basis to improve ecological performance and has led to the development of carbon footprints and eco-labels by amongst others the Eco Tourism Society, Travelife, Green Key, GreenTag, Carmatop and Earthcheck. There are over 170 different eco-labels or certificates in tourism. Social and socio-economic consequences are the primary concern of a social and socio-economic life cycle assessment (S-LCA).

What processes or activities are considered as part of the product life cycle is depended on:

- Where the processes are located in the world;
- The enterprise(s) and organization(s) involved in each of the processes;
- Other stakeholders (local community, workers, consumers, value chain actors) involved in each of the processes.

Many social and socio-economic life cycle assessments identify stakeholder categories as: workers, local community, society and consumers, but need to look more at children and focus on children at

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<sup>36</sup>- The EU Directive 2013/34 on Disclosure of Non-Financial and Diversity Information requires that businesses domiciled in the EU with 500 or more employees are required to annually report on non-financial performance of their business, including on social and employee matters and human rights. When the Directive comes into force, this provision will apply to some 6,000 companies and groups based in the European Union (Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector – OCSE, 2014)

- UK Modern Slavery Act 2014, Art. 54 Transparency in supply Chains: All commercial organisations carrying on business in the UK with a total turnover of £36m or more will be required to complete a slavery and trafficking statement for each financial year of the organisation. Applies to both goods and services (Human Rights and Trafficking in Person. 15th Informal ASEM Seminar on Human Rights. Background Paper – Asia-Europe Meeting, 2015)

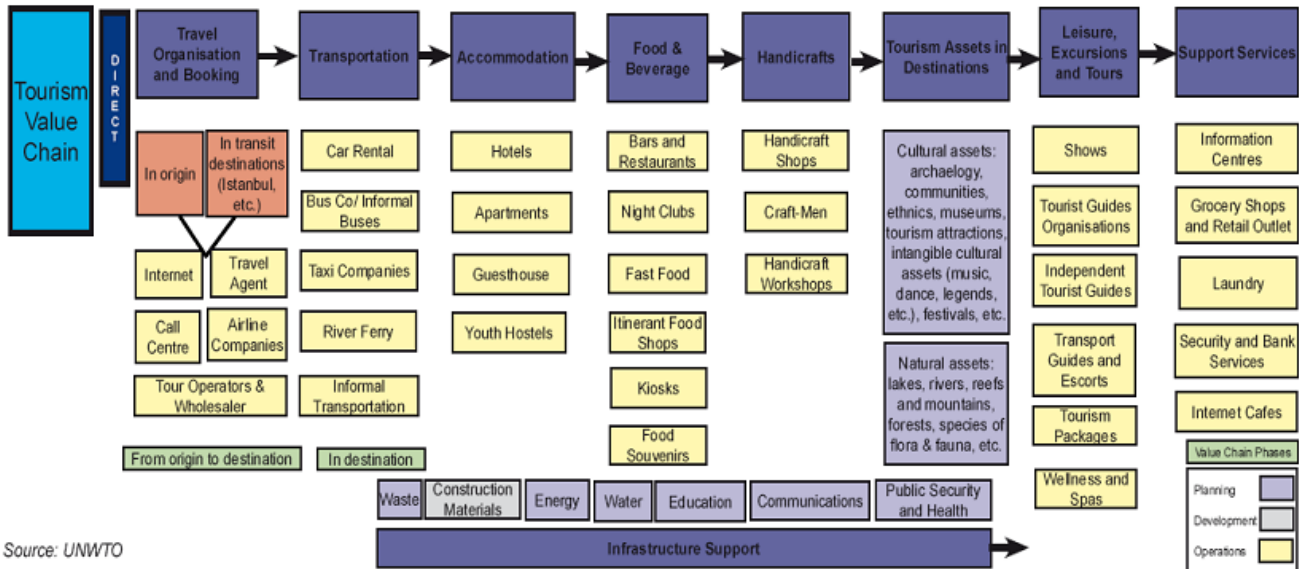
- California, United States, Transparency in Supply Chains Act of 2010: Every retail seller and manufacturer doing business in this State and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale (Human Rights and Trafficking in Person. 15th Informal ASEM Seminar on Human Rights. Background Paper – Asia-Europe Meeting, 2015)

<sup>37</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

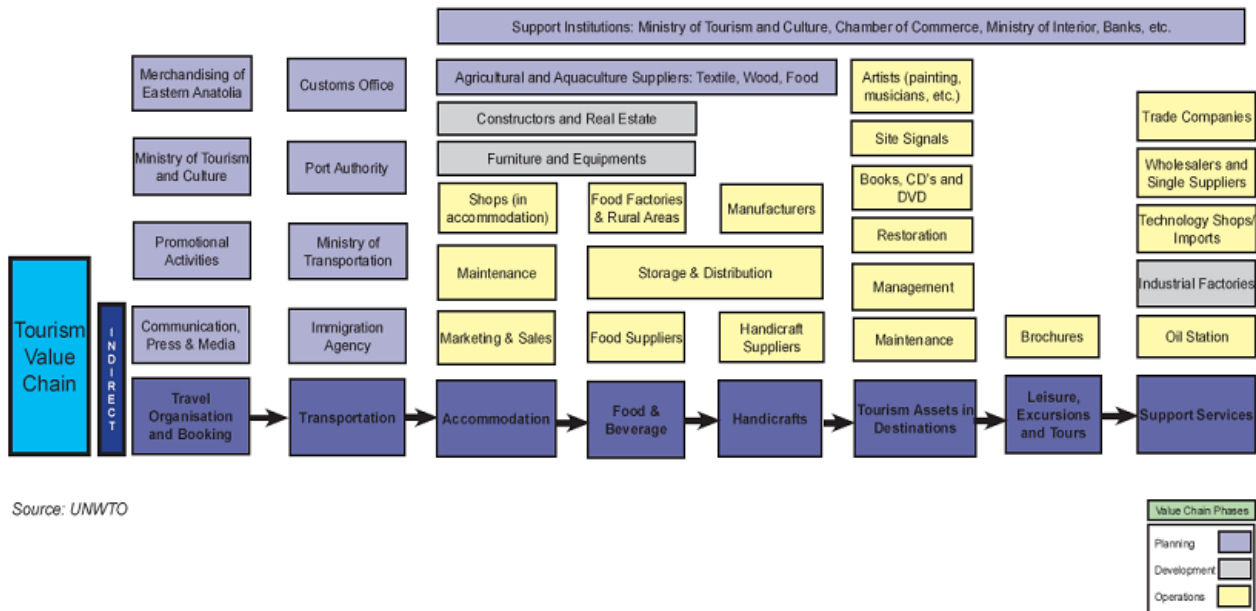
<sup>38</sup> [Guidelines for Social Life Cycle Assessment of Products](#) - United Nations Environment Programme, 2009

risk. The UNWTO offers a complete overview of the tourism value chain and all the parties involved, directly and indirectly. This offers guidance by identifying the units that should be included in an S-LCA, and whose influence on the vulnerability of children should be assessed.

## Tourism Value Chain - Parties directly involved



## Tourism Value Chain - Parties indirectly involved





Tourism Life Cycle Assessments normally take the tourist perspective, the holiday, as their system boundaries: the tourist experience from “door to door”, all “specific” tourist products that contribute to the tourist experience (figure 1).

Tourism is a complex phenomenon and it affects the rights of stakeholders through effects that extend from the direct tourism place/event both geographically and in time. To be more concrete, a tourist in a hotel can only abuse a child if state or community protection systems are not in place and the child is vulnerable. In a number of cases the development of tourism might have contributed to the conditions of for this vulnerability. The change of culture, changing morals, the influx of drugs, and the seduction of ‘easy’ dollars and smart phones play a role in this. But also the very process of tourism development can contribute to this vulnerability when it is not carefully planned and carried out with the interest of children in mind.

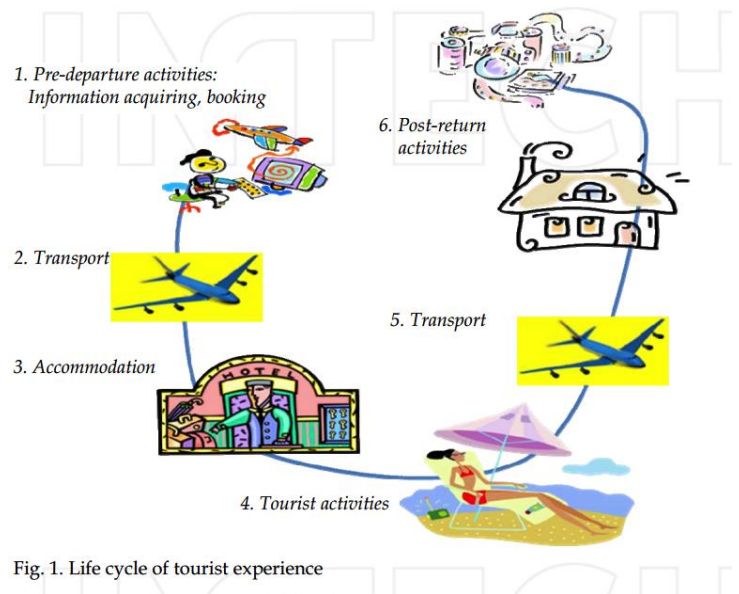


Fig. 1. Life cycle of tourist experience

In new approaches to value chain thinking and CSR, the tourism value chain does not only extend geographically from sending to receiving country, but also in time, where tour operators and hotels have to take responsibility for the whole life cycle of a tourism region, from the first arrival of tourism developers until the end, when the region is not trendy anymore and taken out of the brochures of the tour operators. An S-LCA should take into account the specific actors and actions working throughout the lifecycle phases: exploration, involvement, development and consolidation. And very important are the phases at the end of the cycle. Whether an area will rejuvenate, stagnate or decline is very relevant for the vulnerability of children and should be part of scenarios for an assessment.

When developing social and socio-economic assessments, it is important to keep in mind that there are two approaches for developing impact categories. The top-down approach consists of identifying broad social and socio-economic issues of interest. On the other hand, bottom-up approaches attempt to provide summaries of inventory information, which is provided at the organization and process level, asking the appropriate stakeholders what would be relevant summary indicators and aggregation/summary methods according to their perspective. The result is an assessment of local level issues of concern and their relative importance according to the appropriate stakeholders' understanding (workers, community etc.). The top-down and the bottom-up approaches are complementary.

## 3.2 Sector-Wide Impact Assessment<sup>39</sup>

In 2015 Myanmar Centre for Responsible Business published a sector-wide impact assessment (SWIA) on tourism which highlights some of the positive and negative impacts tourism can have on the country, and the choices to be made. The SWIA draws on established environmental and social impact assessment methodologies, but applies a human rights lens. The Tourism SWIA and its methodology were developed in collaboration with MCRB's founding organizations, the Danish Institute for Human Rights (DIHR) and Institute for Human Rights and Business (IHRB).

The SWIA is based on both desk-based and field-based research in six locations throughout the country which have already experienced tourism development. It includes an in-depth analysis of existing Myanmar legal frameworks and the legal and policy framework relevant to the tourism sector. The report also provides a background on the tourism sector in Myanmar, including the tourism value chain and sector-wide impacts tourism businesses and other actors have to manage.

The SWIA considers actual and potential impacts on three levels:

- Sector level impacts that covers the aggregate impacts of the sector and paints interaction between the tourism sector and Myanmar society, as well as impacts in ethnic minority areas;
- Project level and cumulative impacts that cover eight impacts: stakeholder engagement and grievance mechanisms; communities; land; labour; groups at risk; culture; security; environment;
- The SWIA highlights relevant international standards of responsible business conduct, as well as tourism sector specific standards. The report makes recommendations on how these standards can be incorporated into policy-making and practice.

The SWIA is based on both desk-based and field-based research in six locations throughout Myanmar that have already experienced tourism-related investment. It includes in-depth analysis of existing Myanmar policy and legal frameworks as well as the challenging historical, political and economic context that is reflected throughout the SWIA.

The SWIA can assist companies – international and Myanmar – in the “human rights due diligence” which they are expected to conduct in accordance with the UN Guiding Principles on Business and Human Rights. It provides advice for the development of appropriate Environmental and Social Management Plans (ESMPs) to manage risks and impacts throughout operations.

The Myanmar Tourism Sector-Wide Impact Assessment Report also looked at negative impacts on children. Children are particularly vulnerable to impacts from tourism. Lessons from neighbouring countries, particularly Cambodia and Thailand, highlight the importance of awareness raising for both tour operators and tourists of the potential for negative impacts on children through the development of ‘orphanage tourism’ and some types of “voluntourism”. They also highlight the importance of discouraging behaviour by tourists that keeps children out of school. The Code is mentioned as a good example that can be applied in Myanmar to encourage collective action and avoid mistakes made elsewhere.

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<sup>39</sup> [Myanmar Tourism Sector-Wide Impact Assessment](#) - The Myanmar Centre for Responsible Business, Danish Institute for Human Rights and Institute for Human Rights and Business, 2015

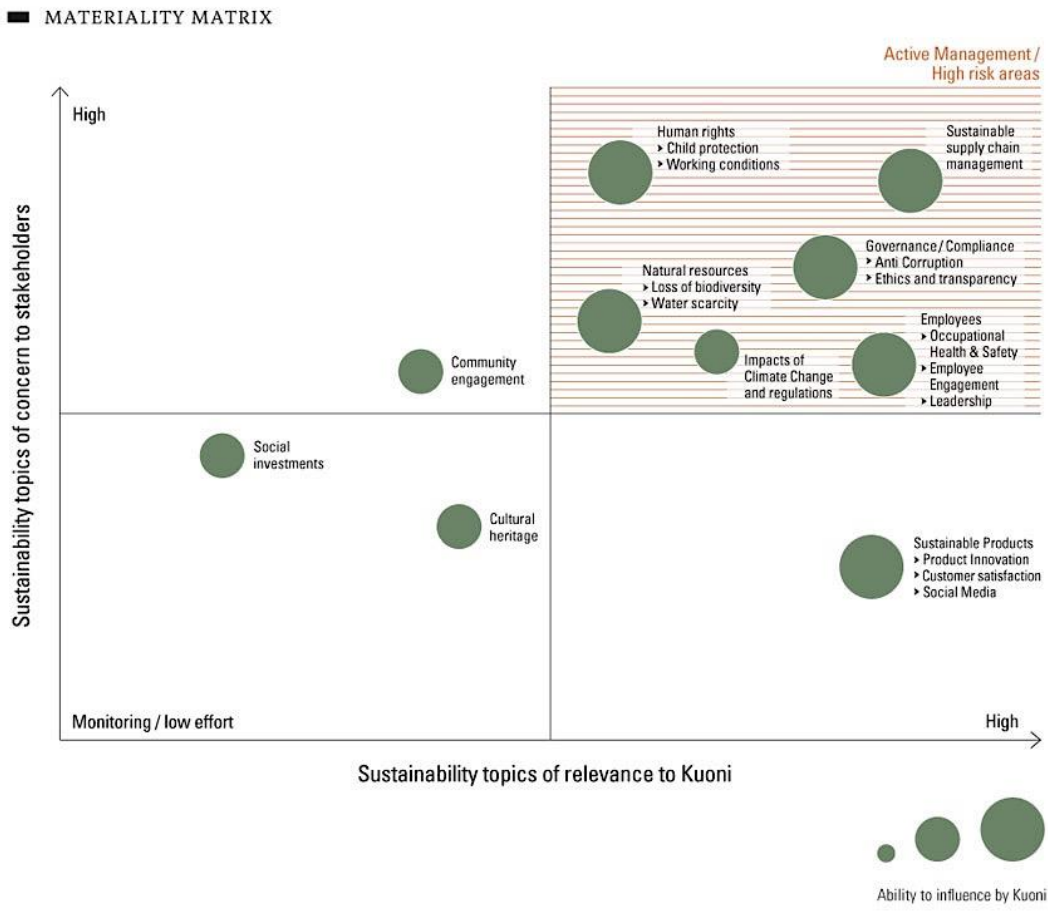
### 3.3 Human Rights Impact Assessment

Kuoni Group has performed a human rights impact assessment for tourism in Kenya<sup>40</sup> and India<sup>41</sup>.

The human rights impact assessments have provided Kuoni with many benefits:

- Reducing and managing business risks; legal and reputational risks, arising from perceived or actual complicity in rights violations; operational risk, including revenue loss due to delays and disruptions; higher costs of financing, insurance and security; project cancellations; board member liability, providing corporate boards with strong protection against mismanagement claims by shareholders; early adopter advantage; anticipate legislative developments at national, EU and international level;
- Competitive advantage and opportunities for growth; enhanced company reputation; demonstrate business leadership in sustainability and competitive advantage; shape regulatory developments; meeting investor expectations; inclusion in Socially Responsible Investment (SRI) Indices; ensure long-term attractiveness of tourism destinations;
- Promoting positive business ethics and social sustainability; fostering positive relations with local communities, leading to a 'social licence' to operate; attracting and retaining the best employees – become an employer 'of choice'.

Level of concern of different sustainable topics for both the Kuoni Group and its stakeholders were showed in a materiality matrix:



<sup>40</sup> [Assessing Human Rights impacts Kenya pilot project Report](#) - Kuoni, 2012  
<sup>41</sup> [Assessing Human Rights Impacts India project Report](#) - Kuoni, 2014

Kuoni collaborated with UNICEF in consultations with children and developed a methodology to conduct focus groups with children and assess the impact of tourism on their lives. These focus groups were conducted in collaboration with local NGOs.

Conclusions were:

- Sexual exploitation of children is considered one of the worst forms of child labour;
- Basic awareness of sexual exploitation of children in tourism was high at the hotels visited and among the stakeholders consulted due to the awareness-raising and training workshops conducted with the hotels by Kuoni. This has pushed the problem into smaller hotels, clubs, brothels and private homes;
- The Code needs to be localised and institutionalised in order to foster ownership and effective implementation. Up-market hotels are well-aware of the problem, but the approach needs to be broadened to include other stakeholders (e.g. small hotels, bars, taxi drivers);
- It was reported that employees in some up-market hotels are still involved in facilitating tourist introductions to children for sex;
- Need for greater awareness-raising and sensitisation of communities, local leaders, hotel workers, private sector operators, police, magistrates and tourists of the dangers and illegality of child sex tourism, and to counter social acceptability.

### **3.4 Total Impact Measurement & Management**

The Travel Foundation has worked with TUI Group and PwC to pilot an impact assessment, which quantifies and values the economic, tax, environmental and social impacts of tourism. The Travel Foundation commissioned PwC to apply its "Total Impact Measurement & Management" (TIMM) methodology to TUI Group's operations, focusing on eight hotels accommodating 60,000 TUI customers in Cyprus in 2013.<sup>42</sup> The study measured and valued a wide range of economic, fiscal, social and environmental impacts.

TIMM considers four key categories of impact:

- Economic impact: covers the effect of an activity on the economy in a given area by measuring the associated output or value added (and changes in employment);
- Tax impact: covers the associated tax contribution;
- Environmental impact measures the value of the impacts on society of the emissions to air, land and water and the use of natural resources; and
- Social impact: values the consequences of the activities on societal outcomes such as livelihoods, skills and cultural heritage.

TIMM aims to quantify and value impacts consistently at three levels:

- Direct: the impacts that result directly from the business' activities;
- Indirect: the impacts generated in the supply chain which support the business' and customers' activities;
- Induced: the impacts generated by the spending of the employees involved in the business' activity and those in the associated supply chain.

The social analysis involved a high level assessment of many social impacts rather than an in-depth valuation of only a few to ensure that the spectrum of social impacts was covered. The pilot covered human capital, livelihoods, migrant workers, public infrastructure and cultural heritage. There are no indicators especially for children in the TIMM in Cyprus.

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<sup>42</sup> [Measuring Tourism's Impact; A Pilot Study in Cyprus](#) – PwC, The Travel Foundation, TUI Group, 2015

## 4. Grievance Mechanisms for Human Rights Abuses

A grievance mechanism is a formal, legal or non-legal (or 'judicial/non-judicial') complaint process that can be used by individuals, workers, communities and/or civil society organizations that are being negatively affected by certain business activities and operations.

Companies can be connected to adverse human rights impacts in a number of distinct ways. They are potentially responsible for:

- Causing a human rights impact through intended or unintended actions, for example, deliberate discrimination in hiring practices, or accidental pollution of a local waterway, interfering with the right to health;
- Contributing to a human rights impact, by being one of a number of entities whose conduct together curtails human rights, for instance, where a global brand changes its order specifications at short notice so that its suppliers breach labour standards in meeting them;
- Impacts directly linked to a business' operations, products or services: a company may be connected to human rights abuses through its business relationships, including those with suppliers, joint-venture partners, direct customers, franchisees and licensees.<sup>43</sup>

Where risks or impacts derive from a company's business relationships, rather than from its own activities, the UNGPs require it to consider what leverage it has over the entity in question; how crucial the relationship is; the severity of the abuse; and whether terminating the relationship would itself have adverse human rights consequences.

### 4.1 International Laws

Classically, public international law recognises only States as its actors and subjects. International law does not therefore impose direct liabilities upon corporate actors for human rights violations. With regard to international criminal liability, the statute of the International Criminal Court provides for jurisdiction over natural, not legal, persons. Individuals within or connected to corporations can however be held liable for acts of corporations leading to human rights abuses.

#### **International human rights law**

International human rights law is the body of international law designed to promote and protect human rights at the international, regional, and domestic levels. International human rights law is primarily made up of treaties, agreements between States intended to have binding legal effect between the parties that have agreed to them. It is based on the Universal Declaration of Human Rights (UDHR). Regarding the responsibility of States for acts committed by businesses, States must protect individuals not only against violations by their agents, but also against acts committed by private persons or entities – including therefore multinational corporations. Through the international Human Rights System, States can be forced to take action to protect individuals and groups against violations of their rights by others, including private actors.

The UN system for Human Rights only deals with businesses indirectly as "organs of society". Although there is currently no international convention directly dealing with the responsibility of non-State actors, the Guiding Principle 25 of the UNGP recognizes that: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within the territory and/or jurisdiction those affected have access to remedy. And the commentary of Guiding Principle 26 explains that effective judicial mechanisms are at the core of ensuring access

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<sup>43</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

to remedy. Therefore States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable.

The United Nations Human Rights Council has a mandate to investigate violations of human rights in a number of ways and offers a number of possibilities for grievances. Its Special Rapporteurs can receive individual complaints in corporate-related human rights abuses. It may refer cases to The Rome Statute of the International Criminal Court, the most important mechanism for violations against human rights and the first permanent court to exercise its jurisdiction over persons for the most serious crimes of international concern. The Human Rights Council established a Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, amongst others to enhance access to effective remedies for victims, especially those living in vulnerable situations. Although the Working Group will not be able to receive individual communications from victims of human rights violations it will be in a position to look at concrete cases, through site visits.

### **Regional human rights laws**

At the regional level there are regional human rights regimes nested within the larger framework of international human rights practise. The American Convention on Human Rights (the Americas) and the inter-American system for the protection of human rights is recognized for its audacity as one of the regional mechanisms that has gone farther in addressing States' responsibilities regarding violations committed by corporations. For the African system of human rights protection, the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child and the African Court on Human and Peoples' Rights are relevant. For Asian system of human rights protection there is the ASEAN Human Rights Declaration of November 2012 and the ASEAN Intergovernmental Commission on Human Rights (established in 2009).<sup>44</sup>

The European System of Human Rights is represented by the Council of Europe. The Council of Europe is the European region's principal human rights organisation. All 47 Member States are parties to the European Convention on Human Rights (ECHR). Individuals can bring complaints of human rights violations under the ECHR to the European Court of Human Rights in Strasbourg, once all possibilities of domestic remedy have been exhausted. The European Union is preparing to sign the ECHR, with the aim of creating a common legal space for Europe's 820 million citizens. Other relevant human rights treaties of the Council of Europe are the European Social Charter, guaranteeing social and economic human rights, besides the ECHR's protections for civil and political rights, and the Convention on Action against Trafficking in Human Beings.<sup>45</sup> The European Council and the European Parliament adopted in 2011 a Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, stepping up the fight against child sexual abuse. The Directive sets minimum levels for criminal penalties, and facilitates reporting, investigation and prosecution. It extends national jurisdiction to cover abuse by EU nationals abroad, gives child victims easier access to legal remedies and includes measures to prevent additional trauma from participating in criminal proceedings. The Directive prohibits advertising the possibility of abuse, or organising child sex tourism, and provides for education, awareness raising and training of officials. The EU Trafficking Directive and the Council of Europe Trafficking Convention clarify that criminal liability of legal persons applies not only in circumstances where a business is directly involved, but also in situations where the lack of supervision enabled trafficking to occur.<sup>46</sup>

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<sup>44</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>45</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>46</sup> [Human Rights and Trafficking in Person. 15th Informal ASEM Seminar on Human Rights. Background Paper](#) – Asia-Europe Meeting, 2015

## 4.2 National Laws

States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation and provides remedies for human rights abuses.

### **Criminal law**

Commercial sexual exploitation of children is a crime under national criminal laws, where facilitating or not acting against it, is a form of complicity, dealt with through criminal law and State prosecutors. Some States recognise the concept of corporate criminal liability but its scope and conditions vary considerably across jurisdictions. Some States provide a list of offences to which it applies; others identify when it does not. Seventeen EU Member States now provide for some form of corporate criminal liability, which usually turns on a company's failure to act with due diligence to prevent certain crimes. Sanctions may include confiscation of proceeds and fines.<sup>47</sup>

### **Civil law**

Civil or private law causes of action against businesses for harm or loss as well as failing to act with due care exist in most jurisdictions. Claimants relying on these in relation to alleged human rights abuses, however, must adapt their claims to private law concepts, substituting, for example, "assault", "false imprisonment", or "wrongful death", for "torture", "slavery" or "genocide". For claims brought in negligence, plaintiffs must show that a company owed them a "duty of care".<sup>48</sup>

### **Administrative law**

In some States, administrative law is used to penalise companies for breaching regulations, for example, environmental or health and safety regulations. Penalties can include fines, restricting company operations in specific economic areas, exclusion from public procurement, publicising convictions and penalties, and confiscation of property.<sup>49</sup>

### **Tort law**

Tort Law is a body of rights, obligations, and remedies that is applied by courts in civil proceedings to provide relief for persons who have suffered harm from the wrongful acts of others. In the U.S. Tort has a history and under general U.S. domestic law, businesses can be civilly liable for general torts because they are considered "legal persons". In the EU Tort Law is evolving but dealt with from very different national cultures.

### **National Human Rights Institutions**

The Office of the High Commissioner for Human Rights encourages the installation of National Human Rights Institutions, like human rights commissions and ombudsmen. One of the most important functions vested in many human rights commissions is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law.

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<sup>47</sup> Applicable to Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovenia, Spain, and the United Kingdom – Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union, Augenstein, 2010

<sup>48</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>49</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

### 4.3 Extraterritoriality

Jurisdiction over matters beyond the State's territorial boundaries requires an internationally recognised basis, such as nationality, where the actor in question, or the victim, is a national; where the acts concerned have significant adverse effects on State, or universality; and where specific international crimes are involved. The exercise of such jurisdiction may prove controversial if other States regard it as interference in their sovereign rights to regulate corporations within their own borders and to pursue their own economic, social and cultural interests. Currently, acceptance of jurisdiction and adjudication by home-State courts with regard to extraterritorial abuses by companies domiciled or resident in their jurisdiction is very limited.

In general the scope of application of Universal Declaration of Human Rights and the European Convention on Human Rights, like other treaties, is territorial. The word "jurisdiction", under Article 1 of the UDHR, refers to the national territory of contracting States. With the exception of State-owned enterprises, international treaties don't apply directly to private entities operating abroad.<sup>50</sup>

The national Universal Periodic Reviews can raise the extraterritorial responsibilities of States, regarding the activities of their companies abroad. Members of civil society can demand that States under review will be questioned on the measures they take to ensure the respect of human rights by their companies abroad.

### 4.4 Non-Judicial Mechanisms

The UN Guiding Principles promote non-State-based grievance mechanisms on the basis that they can offer a remedy to victims where grievances do not raise actionable matters of law. They can be faster and cheaper than legal action; they can provide an "early warning system" about potential abuses before situations escalate, and they provide a means of enabling companies to improve stakeholder relationships whilst empowering communities to engage effectively with companies. The UNGPs identify two categories of such mechanisms: (a) regional or international human rights bodies and (b) operational or project-level grievance mechanisms designed and administered either by the company alone or with its stakeholders, or by an industry association or a multi-stakeholder group.

How effective (or impartial) non-judicial mechanisms are, however, varies from country to country. One persistent problem is that State-based non-judicial mechanisms often do not have enforcement powers. There needs to be a strong rule of law on national level to achieving access to remedy via non-judicial mechanisms. Without the threat of successful legal action as a viable alternative, companies are not incentivised to engage or take the non-judicial process seriously.<sup>51</sup>

#### Mediation

Mediation, as a type of non-judicial mechanism, is increasingly utilised to address business-related human rights disputes. It can be appropriate particularly where resolution of the dispute is premised upon building relationships between the parties. Often, in cases of human rights abuses, there continues to be a relationship between the company and the victims after the conclusion of the dispute. Mediation, however, always involves compromise and, for this reason, it needs to be conducted in good faith and with a high degree of trust. Mediation is not suitable for all types of human rights violations.<sup>52</sup>

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<sup>50</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>51</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>52</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014



## Associations

When a company does not respond to direct requests or mediations relevant tourism business associations can be approached. Most associations have policies on CSR and human rights and grievance mechanisms that can lead to expulsion of the company involved in the violation. Associations exist at national, regional or international level.

## 4.5 Access to Remedy

There are many available laws as well as access to remedy mechanisms, but the political will to implement these effectively and to the benefit of rights-holders is generally weak. Victims of human rights abuse are being denied access to remedy due to a range of obstacles and barriers. Some States where governments may be closely connected with the business have developed laws to shield businesses from liability or to make it more difficult for victims to seek effective remedy.

Multinational corporations are often legal structures built on using differences in legislation to maximize profits and minimize risks, including legal risks. It is in their nature to use legal complexity to avoid responsibility and is therefore hard to address by claimants.

Access to effective remedy for any violation of human rights is established under international law.<sup>53</sup> States have the duty to afford remedies that are capable of leading to a prompt, thorough and impartial investigation; cessation of violations; and adequate reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. Where abusive activity is on-going, States should ensure interim measures to prevent irreparable harm. Victims have a right to a truthful account of the facts and circumstances surrounding human rights violations and unless it causes further harm to the victim, public access and transparency to this information should be guaranteed.

Victims therefore must be availed of the means of halting business activities that are harmful to their human rights and claiming effective remedy for damage done. Access to remedies is primarily addressed under UN Guiding Principles for Businesses 25 to 31, albeit its substance is signposted earlier on, i.e., UNGP1 establishes a State duty to take appropriate steps to prevent, investigate, punish and redress abuses, recognising that without such measures, "... the State duty to protect can be rendered weak or even meaningless." UNGP13 states the necessity for businesses to remediate adverse human rights impacts, and UNGP20 provides that where a company is responsible for adverse impacts, it should provide for or cooperate in their remediation through legitimate processes. UNGP25 reaffirms the State duty to take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related abuses occur within their territory and/or jurisdiction that those affected have access to effective remedy.

## 4.6 Obstacles in Accessing Grievance Mechanisms

It is uncommon for companies to be prosecuted for crimes connected to human rights abuses. And the follow-up on judgments, findings or agreements at the end of a grievance process — whether judicial or non-judicial, State or non-State based — can be poor. Judgments often go unenforced and mediation outcomes, unfulfilled. Victims of business-related human rights abuses face numerous

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<sup>53</sup> United Nations, Universal Declaration of Human Rights (1948), Article 8; United Nations, International Covenant on Civil and Political Rights (1966), Article 2; United Nations, International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 6; United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/39/46 (10 December 1984), Article 14; and United Nations, Convention on the Rights of the Child, (20 November 1989), Article 39. It is further provided for in a range of international humanitarian and international criminal law sources. See also United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005)

practical barriers that can significantly hamper their access to effective remedy. These include prohibitive costs, lengthy processes, and the inability to understand or engage with the legal system as well as the more insidious obstacles presented by social exclusion. Women and young adults often are excluded from participating in grievance mechanisms.<sup>54</sup>

### **Criminal liability**

Profiting from the sexual exploitation of a child (person < 18 years) by a third party (in tourism) is considered to be trafficking offence. Proving criminal liability of a company for human trafficking however, is very complicated. Law enforcement agencies often lack the knowledge, skills and resources to penetrate and document complex business structures and financial and other relationships. Such difficulties are particularly acute in cases of trafficking for labour exploitation where long chains of formal and informal recruiters and agents can be involved. Consequently, and perhaps also because of a lack of political will and adequate resources, there are only very few instances in which a company has been successfully prosecuted for involvement in human trafficking.<sup>55</sup>

In order to make legal cases against companies, they have to be accountable, liable and/or complicit. There continues to be confusion over the complicity, in particular when legal liability, both civil and criminal, could arise. What does it mean for a business to be “complicit”? What are the consequences of such complicity? How can businesses avoid becoming complicit? How should they be held to account for their complicity? This poses three areas of inquiry:

- Causation/Contribution: Did the company enable, exacerbate or facilitate the gross human rights abuses?
- Knowledge & Foreseeability: Did the company know, or should it have known, that its conduct would be likely to contribute to the gross human rights abuses?
- Proximity: Was the company close or proximate (geographically, or in terms of the duration, frequency and/or intensity of interactions or relationship) to the principal perpetrator of the human rights abuses or the victims?

In some instances, businesses have argued that they cannot be criminally liable for violations of international human rights law because they are not natural persons. In the US the question remains somewhat unresolved in relation to whether they can be liable for violations of Customary International Law (like human rights violations). All Members of the Council of Europe allow their courts to apply directly the European Convention on Human Rights, and in most European States that would extend to litigation between private parties. However, courts of European States are not always willing to acknowledge the applicability of international law to claims filed against businesses. The law of some European States allows businesses to be prosecuted for extraterritorial human rights violations, however, experience shows that public prosecutors are generally hesitant.

### **Legal standing**

Another complication is the question who can file a case or the “legal standing” of third parties to bring claims to court. It is increasingly recognized before the domestic courts of the EU Member States that associations or non-governmental organizations may file claims for damages based on the statutory interest that they represent.

### **Extraterritoriality**

A problem with complaints against tourism businesses is the fact that often one will be dealing with a violation carried out in a foreign country with a less effective judicial system by a multinational

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<sup>54</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>55</sup> [Human Rights and Trafficking in Person. 15th Informal ASEM Seminar on Human Rights. Background Paper](#) – Asia-Europe Meeting, 2015 – P.63: Case study Corporate liability for human trafficking for labour exploitation and remedies for victims

company operating in a number of countries. A complication stemming from that international character of the violation is extraterritoriality. Judicial systems and courts (even International Human Rights Courts) might have problems dealing with that. The doctrine of “forum non conveniens” allows courts to prevent a case from moving forward in the jurisdiction in which it is filed on the basis that another jurisdiction is the more appropriate venue for the case. In cases against businesses, this usually means that the case is dismissed under the theory that it can be filed in the host State. However, that is often not the case.

### **Knowledge and resources**

A particularly acute challenge is victims’ lack of information and knowledge with regard to what rights they hold, how to seek protection, and how to access remedial mechanisms when their rights have been abused.<sup>56</sup> When they do know where to file a complaint, non-State actors often do not have the same resources as the businesses they are confronting. The costs of legal battles covering different countries will be high, especially when confronting legal experts with unlimited budgets and based in multiple countries.

### **Corruption**

Corruption often poses a considerable barrier to achieving access to effective remedy. However, the links between corruption and human rights in businesses remain underexplored, hampering efforts to develop effective measures to address the problem.<sup>57</sup>

## **4.7 Improving Access to Grievance Mechanisms**

A recent UN Human Rights Court resolution requested the Office of the UN High Commissioner for Human Rights to continue to work on domestic law remedies for gross human rights abuses and asked the UN Working Group on the Issue of Human Rights and Transnational Corporations and other Enterprises to launch an inclusive and transparent consultative process to facilitate the sharing of legal and practical measures to improve access to remedy, both judicial and non-judicial, and to consider the benefits and limitations of a legally binding instrument.<sup>58</sup>

Since there are so little businesses held responsible for human rights violations, cases of human rights abuses should be assessed on possibilities to bring into grievance mechanisms. Therefore, the role businesses play in defending human rights in these cases should be studied carefully, as well as requirements, terms and conditions to enter a grievance with the different grievance mechanisms. A number of cases should be built on the basis of carefully systemized information with the help of lawyers. Momentarily the Retour foundation is exploring the possibilities the UNWTO offers through its Global Code of Ethics for grievance in child sexual exploitation cases.

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<sup>56</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>57</sup> [Human Rights and Businesses; 14th Informal ASEM Seminar on Human Rights](#) – Asia-Europe Meeting, 2014

<sup>58</sup> Human Rights Council, Human rights and transnational corporations and other business enterprises, A/HRC/26/L.1