

# HELP Online course on BUSINESS AND HUMAN RIGHTS

## Introduction

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This course will provide expert led education to increase awareness that all businesses, not just states, have an explicit role in the realisation of human rights through a worldwide responsibility to respect them and implement best practice. The course is aimed at legal professionals who wish to understand the relationship between business and human rights, the international frameworks that govern this interaction and the duties and responsibilities that are in turn imposed upon businesses.

## Course outline

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### 1. Induction session

- A distance learning methodology
- Introduction to the ECHR and to the functioning of the ECtHR: the materials have been selected to focus on what is relevant to Business and Human Rights, especially bearing in mind implementation at the national level.

### 2. Introduction

Examples of how business activities may impact on Human Rights.

### 3. The State Duty to Protect Human Rights

This Session covers the topic of the State's obligations to protect the human rights of persons and groups against abuses by business enterprises. The title of this Session, 'The State Duty to Protect Human Rights' mirrors that of the first pillar of the UNGPs.

Part I contains the following Sections:

- Overview of States' Obligations, which covers the legal and normative bases of States' obligations to take actions to protect individuals and groups against human rights abuses by businesses (Section 3.1);
- The State-Business Nexus, which covers links between States and businesses that can give rise to attribution of a business's violation of human rights to the State (Section 3.2);

Part II contains the following Sections:

- States' Positive Obligations, which covers substantive and procedural measures States are to take to ensure protection of human rights against abuses by businesses (Section 3.3); and

- Other measures, which covers policy, promotional and other actions States can take to protect human rights against abuses by businesses (Section 3.4).

The Session considers the following sources of standards relevant to the State's obligation to secure human rights:

- international human rights law;
- the ECHR;
- other Council of Europe instruments, including the ESC;
- relevant European Union ('EU') directives; and
- the UNGPs, with particular reference to States' obligations under the first Pillar.

#### 4. The Corporate Responsibility to Respect Human Rights

In addition to the traditional State responsibility, the corporate responsibility to respect human rights has been recognised internationally as a 'basic expectation society has of business' (Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31 (2011) para. 6). As discussed in Session 3, States and all their organs have the primary responsibility to respect, protect and fulfill human rights, including the obligation to protect individuals against human rights abuses by business enterprises. This general obligation places an unequivocal obligation upon the State and its organs to establish and enforce the required regulatory domestic legislation accompanied by the expectation that business enterprises abide by it.

This responsibility has also been recognised by key international organisations including the United Nations ('UN'), the Organisation for Economic Co-operation and Development ('OECD') and the International Labour Organization ('ILO'). As discussed in Session 3, even though international law does not establish direct human rights duties on non-State actors such as corporations, measures and behaviour required of businesses to fulfil their responsibility to respect human rights can, and should, be provided for by a State's national laws and policies, in all the various areas these touch on business activities, from labour, environmental, non-discrimination and product safety standards, to those in the areas of intellectual property, privacy, financial sector and essential service regulation.

The Session is divided into three Sections:

- **Introduction to the corporate responsibility to respect**, which examines the corporate responsibility to respect as defined in domestic legislation and international instruments (Section 4.1).
- **The UNGPs corporate responsibility to respect framework**, which pays special attention to the UNGPs that provide the overall international framework defining the corporate responsibility to respect human rights. It will also look at the type of practical measures being taken in the corporate world in an attempt to meet that responsibility (Section 4.2).
- **The ECHR and ESC corporate responsibility to respect framework**, to gain a comprehensive understanding of the corporate responsibility to respect human rights in Member States of the Council of Europe, the framework described in Sections 4.1 and 4.2 should be considered alongside a number of ECHR decisions that directly address the State obligations to protect human rights but clarify the scope of the corporate responsibility to respect, especially with regard to the human rights due diligence processes required (Section 4.3).

#### 5. Access to Remedy for Business-related Human Rights Violations or Abuses

This Session introduces the right to access an effective remedy for business-related human rights abuses. The Session outlines the legal basis of the right to a remedy for business-related human rights breaches, including by non-State and corporate actors. It considers avenues of recourse to a remedy for

victims of such abuses, via State-based judicial mechanisms, State-based non-judicial mechanisms, and non-State based grievance mechanisms.

The Session is divided into eight Sections:

- **The right to an effective remedy in international law and international human rights law** (Section 5.1)
- **The right to an effective remedy under the ECHR** (Section 5.2)
- **Access to remedy and the ESC** (Section 5.3)
- **Remedy under the UN Framework and UNGPs** (Section 5.4)
- **Judicial grievance mechanisms** (Section 5.5)
- **Obstacles to accessing an effective judicial remedy** (Section 5.6)
- **The issue of extraterritorial jurisdiction** (Section 5.7)
- **Non-judicial grievance mechanisms** (Section 5.8)

The Session is followed by a self-assessment that contains multiple-choice questions and case studies.

## **6. Extraterritoriality and the ECHR – Implications for Business and Human Rights**

Under international human rights law (including the ECHR), States are generally obliged to respect, protect and fulfil only the human rights of those individuals who find themselves within their boundaries (in legal terms, individuals who 'are subject to their jurisdiction'). Does this mean that States are not *obliged* to regulate and/or prosecute the companies to which they are linked (for instance, companies owned by the State, or companies domiciled in the State) when these companies cause or contribute to adverse human rights impacts within the territory of another State? Does this also mean that States are not obliged to adjudicate civil claims (and thus provide for an effective remedy) if the alleged abuses committed by these companies took place within the territory of other States?

Under public international law, the basic principle of sovereignty generally prohibits States from interfering with the way companies carry out their activities within the territory of other States. Does this mean that States are not *permitted* to regulate and/or prosecute the companies with which they have strong connections (for instance, companies owned by the State, or companies domiciled in the State) when these companies cause or contribute to adverse human rights impacts within the territory of other States? Does this also mean that they are not permitted to adjudicate civil claims (and thus provide for an effective remedy) if the alleged abuses committed by these companies took place within the territory of other States?

The questions above may be referred to as the prescriptive debate and the permissive debate respectively.

This Session aims to clarify the terms of these debates and offer the participants the tools to answer their core questions. Since the Session is part of a course on business and human rights issues within the context of the ECHR, the focus of the Section is dedicated to the jurisprudence of the ECtHR on extraterritorial human rights obligations, and on the meaning of this jurisprudence for business-related adverse human rights impacts that take place outside the territory of State Parties to the ECHR.

The Session is divided into five Sections:

- **Introduction** (Section 6.1)
- **Jurisdiction, extraterritoriality and human rights** (Section 6.2)
- **The permissive question** (Section 6.3)
- **Extraterritorial obligations under the ECHR** (Section 6.4)
- **Models of jurisdiction** (Section 6.5)

## **Development of the course**

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The course was developed under the European Programme for Human Rights Education for Legal Professionals (HELP; [www.coe.int/help](http://www.coe.int/help)) of the Council of Europe, by using the HELP methodology (<http://www.coe.int/en/web/help/help-training-methodology>).

## **Access the free online course**

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To access the course, you just need to enter the HELP e-learning platform at <http://help.elearning.ext.coe.int/>. First you need to open yourself an account at HELP if you have not yet done so (2 minutes).

Then you can follow this link to directly access the online course:

<http://help.elearning.ext.coe.int/course/view.php?id=1760>.

The course is available in English and Italian.