



Business and human rights dilemmas in the midst of COVID-19

A guide for senior
executives

May 2020

The COVID-19 crisis is emerging as a test of business' commitment to upholding human rights.

The COVID-19 pandemic has catapulted the world into an unprecedented crisis. At its heart, the pandemic is a human tragedy, sadly with loss of life. Many people have been living under a state of emergency. To protect human life, we are being asked to change the way we live, withdrawing many of our personal freedoms. The economic impact will be far-reaching, with the repercussions expected to last for years. During these uncertain times, governments and business leaders have had to make quick decisions for which there is no playbook. Leaders now need to navigate a 'new normal' with human rights implications.

Leaders are being tested in their commitment to respect human rights. This paper will help businesses respect human rights and consider the dilemmas many leaders are facing while responding to the COVID-19 pandemic. This paper focuses on the short-term human rights dilemmas around how to respond to the crisis and discusses the implications for businesses recovering post-crisis over the medium-term. Finally, it considers the integration of human rights into businesses as they adapt to a 'new normal' and to heightened expectations from stakeholders of responsible and resilient human rights management.

1 Human rights at risk in a crisis

Businesses have a responsibility to respect human rights. Especially in times of crisis.

COVID-19 is challenging businesses to keep people healthy and safe while maintaining continuity of operations globally. Synchronised lockdowns across the world have restricted freedom of movement which has affected how businesses operate, including their continuity plans and corporate relationships. Businesses have tried to keep pace with the rapid developments of this emergency, applying existing laws to uncertain information. The continuously evolving situation has created new dilemmas for businesses around how to handle human rights.

The United Nations Guiding Principles (UNGPs) on Business and Human Rightsⁱ state that businesses should 'avoid causing or contributing to human rights impacts' but also 'seek to prevent or mitigate [those impacts that are] directly linked to their operations, products or services by their business relationships, *even if they have not contributed to those impacts*' (emphasis added). This responsibility applies to all businesses.

A human rights-based approach is about turning principles into effective policies and processes for prevention and effective action. The international Bill of Human Rights and the core International Labour Organisation (ILO) Conventions are the key international legal instruments and provide guidance on responsible business practices. While the human rights-based approach will depend on the individual business, the PANEL principles – Participation, Accountability, Non-discrimination and equality, Empowerment, Legality - are good places to start.ⁱⁱ While, business responsibility to human rights applies to all companies, the means through which businesses can meet this expectation may differ by operational context.

Efforts to combat the spread of COVID-19 have resulted in severe restrictions of many human rights. This creates a new and very different operating context for businesses. Understanding this context is critical for leaders to determine which human rights may be infringed, thereby requiring more 'systematised and regular attention'ⁱⁱⁱ.

Human rights most impacted by business during COVID-19

Below we have provided a (non-exhaustive) list of human rights that are at risk of being adversely impacted by the COVID-19 crisis, in fact in most public health emergencies:

-  Right to life ^{iv}
-  Right to information ^{xxiv}
-  Right to education ^{vi}
-  Right to equality and non-discrimination ^{viii}
-  Right not to be subjected to slavery, servitude or forced labour ^x
-  Right to health ^v
-  Right to freedom of movement and liberty ^{xxv}
-  Right to work and enjoy just and favourable conditions of work ^{vii}
-  Right to privacy and confidentiality ^{ix}
-  Right to freedom of expression and association ^{xi}

Protecting the **right to life** and **right to health** has become a central priority, and new restrictions have been introduced by governments to ensure this. The dilemma for businesses is how to strike the right balance between keeping people healthy and safe while maintaining operations. Another dilemma arises in continuing or reopening economic activity that potentially exposes people to COVID-19. To mitigate risk, governments and businesses have had to extend remote working arrangements and reorganise warehouses, factories and places of service to allow physical distancing with enhanced health and safety protocols. Besides physical health, experts fear that mental health and well-being are also at risk from the multifaceted uncertainties surrounding people's lives and livelihoods^{xii}.

A further dilemma facing business leaders is how to abide by the lockdown regulations while ensuring employees are not left behind, particularly those for whom the workplace is a safe haven. There is a **'crisis within a crisis'** for vulnerable adults and children isolated in coercive or violent households, unable or afraid to access services due to scaled down service delivery or fear of infection. For vulnerable people, restrictions on the **right to freedom of movement** can have grave consequences for their personal safety, mental health and well-being.

The lockdown has prompted many business leaders to consider the personal situation of their employees. In education, children and adults moving to digital platforms presupposes digital literacy and access to hardware and internet. This exacerbates the 'digital divide' and may threaten children and adults' **right to education**. For businesses, some employees may have had to pause learning that could stall their professional development, while employees with children may have to take on the role of full-time carer and educator.

Businesses have a responsibility to respect the **right to work** including **just and favourable conditions of work**. COVID-19 has forced many leaders to face dilemmas of maintaining employment security while also managing cash flow, adapting to remote working while also ensuring productivity, asking people to adapt to increased business pressures while also respecting wellbeing.

Approaching these rights in a **non-discriminatory** manner is critical to ensure that inequalities are not magnified by the crisis. Business decisions to support employment, protect workers' health and ensure business continuity may have different and disproportionate impacts on certain vulnerable groups, thus resulting in unintended discrimination. Vulnerable workers - including women, workers with disability, migrant workers, unskilled workers, gig workers^{xiii} and workers in the informal economy - are more likely to be employed in situations where home working is not possible.

Looking beyond direct employees, business leaders are facing dilemmas surrounding the impact of decisions on workers throughout the supply chain.^{xiv} Contractual ruptures for *'force majeure'*, delays in order payments and new demand can have enormous repercussions for suppliers and livelihoods of workers. Supply chains producing personal protective equipment are being challenged to uphold international labour standards due to increased demand. Conversely, others are experiencing a stop to production and sales. The supply chain in demand will likely require forced overtime, whereas those with stoppages will likely face unpaid wages. The disruption and economic uncertainty facing workers may lead to an increase in labour exploitation and **conditions of slavery, servitude or forced labour**.^{xv}

The crisis is also accelerating questions around the **right to privacy and confidentiality** with the increase of personal surveillance and the collection of personal and biometric data. Most people who have COVID-19 are asked to share information with the government, their employer and personal network. It is important that these mechanisms are not extended in time and beyond necessity.^{xvi} Furthermore, with businesses being forced to rapidly increase their use of digital capabilities, this brings another set of challenges in relation to online privacy and cyberattacks.

Workers have the **right to seek information** that is relevant and necessary to protect their health, income and privacy, as well as the **right to express freely and publicly their opinions** on business decisions. In such exceptional circumstances trade unions may be bypassed and workers may feel discouraged to engage for fear of retaliation, workers retain the **right to peaceful assembly and association**.

2 Prioritising human rights in a crisis

For most businesses, a typical crisis plays out over three timeframes: **Respond**, where a business deals with the present situation and manages to continue; **Recover**, in which a business learns and emerges stronger; and **Thrive**, during which a business prepares for and shapes a 'new normal'. Each phase presents different types of human rights dilemmas for businesses.

Phase 1: Respond

Faced with the rapid changes and uncertainties caused by the COVID-19 pandemic, businesses have been faced with competing priorities in their response. This phase is about the choices businesses have made in response to the crisis.

Leadership is needed to navigate a crisis. During times of uncertainty, corporate culture and leadership are often the key differentiators between organisations that cope and those that thrive through the crisis. There is a need for resilient and empathetic leaders in the response to COVID-19 to guide a business and its employees through the crisis and protect business reputation by delivering on promises and expectations of behaviour.^{vii} We have seen businesses act empathetically to employees personal situations, introducing flexible work arrangements to cater for childcare commitments, and in some cases offering counselling support to staff for their mental well-being.

The crisis presents business leaders with the opportunity to respond by living out their human rights commitments in their response. For better or for worse, all organisations are learning how to navigate this. It has been and will remain a 'test' of their culture, resilience and societal commitments. Businesses can expect to be held to account on their human rights commitments.

As the pandemic continues, many are seeking assurance that businesses leaders are navigating these dilemmas responsibly. By formalising a human rights-based approach to decision-making during this first 'Respond' stage, businesses can better understand different stakeholders' views – e.g., from a customer, employer, supplier, community or shareholder perspective – as well as the consequences of certain decisions. It may be beneficial to appoint a human-rights expert in businesses' COVID-19 response group to ensure critical decisions are considered through a human rights lens.^{xviii}

This approach can help built trust with multiple stakeholders, which can further help to catalyse the recovery.^{xix} In times of uncertainty, trust is built by demonstrating a steady commitment to the interests of all stakeholders in the best possible way. Therefore, during a crisis, communication with stakeholders is key. Surveys suggest that business leaders who recognise profit as a by-product of purpose are more trusted. Creating and shoring up this trust will help to cultivate engaged employees and suppliers, and attract loyal customers as they look to the horizon to recovery.

Ask yourself: Are we upholding the Right to Health?

How prepared is your business to respect employees' right to health in time of crisis?

Every industry and business face their own challenges related to health and safety. Some weigh the security of employees against the safety of society when they provide essential products or services. These workers put their own right to health at risk to provide essential products and services if the right safeguards are not in place. An assessment of the risks and impacts on health and safety can be conducted to inform the safeguards to put in place that are fit for purpose for each business. This can be aided with a clear communications strategy with the relevant stakeholders to ensure transparency and access to timely information. To determine the least worst course of action, businesses can address risks by strengthening controls and by monitoring performance and take actions on lessons learned. Dealing with these ethical dilemmas at a strategic level can help business be prepared when faced with similar choices in the future.

Are your health and safety measures sufficiently capable to provide your employees a safe working space from home?

By the nature of their industry, some businesses are more flexible and have been able to continue with most of their employees working from home. This is where economic factors may be a key determinant of the ability for employees to work from home. Businesses should ask themselves if they have the capabilities to provide the right support in case that stress caused by dealing with a crisis or combining private life and work influences the mental or physical health of your employees and their families. Businesses can start to understand the risks they and their employees face, ensure insights in the current state of people's physical and emotional wellbeing, provide governance reporting and promote wellbeing initiatives.

Through all of this, it is important to be conscious about the right to privacy and data protection. Employee information should only be retrieved proportional to its use, should be well protected and not be kept longer than necessary.

Ask yourself: How are we addressing shifts in our supply chain?

Businesses need to address the rapid shift in demand alongside supply disruption. Several industries, such as the garment and automotive industries, are facing a sharp decrease in demand. These industries have seen an increase in buyers suspending or terminating contracts for new products, which places a financial burden on their suppliers that, in turn, often affects the most vulnerable people in the supply chains.

For instance, Bangladesh is one of the largest suppliers of clothing to consumer markets, with the textile industry employing 4 million people, majority women. Up until the end of April 2020, clothing retailers have cancelled orders worth over US\$3.2 billion due to the Covid-19 lockdown, according to the Bangladeshi and Garment Manufacturers Exporters Association^{xx}. As result, more than a million Bangladeshi workers have been sent home without pay or have lost their job^{xxi}, exposing workers to the serious risk of poverty.

Some businesses have taken the initiative to communicate with groups throughout their supply chain and develop financial support and payments to shelter them and their employees from the early economic impacts of the pandemic. One business in the food and agri-business has utilised its private and government partnerships to raise awareness in the communities it operates in and use its business infrastructure and logistics to source and distribute essential medical equipment to communities in Africa^{xxii}.

Prior to amending contracts, procurement teams could consider potential adverse impacts on the workers at their suppliers and seek ways of supporting and safeguarding their rights like health and non-discrimination, where possible. Additionally, businesses that reopen could apply the same workers-centered lens when they re-activate their supply chains to mitigate the risk of putting too high demands too quickly on suppliers, which could increase the risk of malpractices and labour violations.

Ask yourself: What can we do if we are providing essential public goods?

Some businesses categorised as providing 'essential services' have been required to continue operations, with the introduction of enhanced health and safety measures for workers. Those who provide these services or hold critical infrastructures are placed with a high degree of responsibility. They are faced with the challenge of balancing business continuity with health protection, determining accessibility and affordability of these goods in relation to traditional pricing practices based on supply and demand. Some businesses that normally do not offer essential goods or services have set up corporate volunteering programs to redeploy workers to meet the basic needs of local communities. These dilemmas should be considered on a strategic level, considering wider stakeholder needs and taking a human rights lens.

Phase 2: Recover

As businesses move beyond the immediate response to the pandemic, they begin to prepare for recovery. The pandemic has exposed deep socio-economic fault lines within our societies, and particularly within our labour markets. No country has been spared from this situation. The pandemic has amplified economic, social, gender and racial inequalities. Taking inspiration from UN Secretary General Antonio Guterres, businesses have the opportunity to search for solutions to 'build back better'.^{xxiii} The actions that a business takes during the recovery period can help build a more inclusive and equitable future for their

workers and for society over the longer term and build a more resilient business to weather future crises.

It will be the moment for businesses to take a close look at their broader potentially adverse human rights impacts in their operations and supply chains and to implement appropriate responses aligning to the recommendations of the UNGPs on Business and Human Rights and to regulatory requirements. Businesses can integrate human rights into their recovery plans by for example:



Conducting human rights risk/impact assessment:

Performing a human rights assessment allows potential and actual human rights related risks in a business' operations and supply chain to be understood, measured, prioritised, and addressed.



Developing a roadmap:

Having a clear understanding of the key risks and opportunities around human rights in operations and supply chains is the basis of an effective human rights strategy and approach for the long-term.



Building capacity:

Developing and embedding key activities to mitigate main human rights risks appropriately through e.g. policies, governance structures and tools, engaging with suppliers, and conducting human rights trainings to inform employees about elevated human rights risks resulting from COVID-19 and educating staff on new or updated policies that enhance the protection of human rights.



Monitoring, compliance and performance:

Due to movement restrictions, many inspections or audits in factories or on farms are unlikely to go ahead in the immediate future. Many human rights risks and breaches are therefore likely to persist or even increase. Businesses can use data-driven assessments in the interim to help ensure supplier risks are being more closely monitored. Businesses can engage with factory owners to discuss enhanced protections for workers.



Reporting on performance:

It is important that governments and businesses continue engagement and compliance with their reporting obligations under regulations - such as the UK and Australian Modern Slavery Acts, the Dutch Child labour exploitation Act, the European Directive for non-financial reporting and others. Reporting, whether a compliance exercise or voluntary, allows businesses to tell a story about their journey, including on the COVID-19 crisis.

The COVID-19 pandemic challenges business leaders to prepare for a new, complex and uncertain future. The decisions businesses make during their crisis recovery phase will help determine how the business is sustained in the long-term. Business leaders have a unique opportunity to take actions that can help the business 'build back better'.

This could be seizing the opportunity to tackle **discrimination** in the workplace, to create a family-friendly workplace

culture, to support the integration of **mental health and wellbeing** into health and safety practices, or to guide the enhancement of **data protection** procedures to ensure the correct use and storage of employee personal data. The actions that a business takes during the recovery phase can help the business build a more inclusive and equitable future for their workers and suppliers and for society over the longer term.

Phase 3: Thrive

At a certain point in a profound crisis, most businesses that have managed to recover will find themselves preparing to settle into a 'new normal'. They will be absorbing the realisation that many aspects of 'life as we knew it' have changed. The crisis will have revealed fault lines in society, in the economy, and even in individual businesses that lay out the limits of traditional thinking, particularly when it comes to human rights.

For example, the COVID-19 crisis has made it more obvious how hyper-connected the world is and how deep inequalities are, and likely will continue unless we adapt to the new social contract that is emerging. Societal expectations of corporations are being reframed to include all stakeholders, echoing the Sustainable Development Goals (SDGs) commitment to 'leave no one behind'.^{xxiv}

At the same time, societies across the world have been confronted with the commitment by 'essential workers' who had risked their own right to health in order to protect the right to others and maintaining the continuity of essential services. There is a growing awareness and appreciation

that essential workers' level of pay should match their risk exposure.

COVID-19 has and will very likely continue to accelerate fundamental and structural changes to the global labour force. For example, the reshoring of manufacturing from production 'powerhouses' to the growth of smart factories that shift away from labour to automation; and an enhanced focus on data protection and privacy by consumers – they all present businesses with a new and potentially challenging operational context.

The COVID-19 crisis will not change the fundamentals of human rights, but it will underscore the urgency of promoting and safeguarding the essential rights of people across the value chain of any business. And it will drive a higher expectation for rights-based behaviour by businesses.

As the saying goes: 'Never waste a good crisis'. In the Thrive phase, businesses should seek to normalise human rights within their corporate culture and build resilience for future disruptions with a human rights lens. Specifically, they can:

Ask yourself: Can we invest more responsibly?

The scale and severity of the unfolding COVID-19 pandemic has emphasised the need to put people centre stage. The current crisis is prompting a stronger investor focus on the social dimension of environmental, social and governance (ESG).

Investors could also use their financial power to oversee crisis and recovery management, encouraging and rewarding good practices, such as strong human rights programmes, in their portfolio. Furthermore, impact investors may consider reshaping their investment approach to be as receptive as possible to the needs of society and engaging in public-private partnerships to tackle critical supply shortages or improve essential infrastructures.

Finally, investors have the opportunity to refocus portfolio strategies and scale up investees' resilience to other global challenges, a central one being climate change.



Establish regular due diligence and stakeholder engagement to monitor and mitigate potential negative human rights risks and impacts, identify ways to collaborate with others to eliminate these risks and better support the human rights objectives.



Embed human rights into their business culture and risk management, keeping risk frameworks, governance, policies and procedures up-to-date on human rights and fostering a change management program to endorse the business' human rights strategy.



Identify business opportunities and innovations that help address human rights abuses and support the SDGs. Innovation will be a catalyst to more resilient ways of doing business. Businesses who innovate and think about the adverse and positive impacts on human rights that their



business might have on stakeholders will be more resilient and in a better position to weather future crises. This can take the form of new partnerships, new ways to engage with stakeholders and to listen to what communities need to thrive in the 'new normal'.

Further embed human rights into sustainability strategies for even more robust responsible business and investment approaches.



Apply a long-term lens to potential adverse human rights impacts, such as considering how increased use of technology and new ways of working will negatively or positively impact human rights.

Emerging from the tragic crisis brought on by COVID-19 is arguably a great opportunity for businesses to consider not only how they affect the rights of their employees and other stakeholders but also society at large during large difficult times. As businesses enter the final stage of a crisis, they should ensure they have the right measures in place to build a resilient human rights management approach.

3 Building trust through human rights

The March 2020 Trust Barometer from Edelman showed that stakeholders are paying increasing attention to how businesses act during the COVID-19 crisis. In fact, 90 percent of respondents stated that businesses “must do everything they can to protect the well-being and financial security of their employees and their suppliers, even if it means suffering big financial losses until the pandemic ends”. Seventy-one percent stated that “Brands and companies that I see placing their profits before people during this crisis will lose my trust **forever**”.^{xxv}

This challenges all business leaders to ask these three questions:

- What are we doing to **prevent** adverse human rights impacts during the COVID-19 crisis?
- What are we doing to **mitigate** and/or solve them?
- How can we proactively **respect and promote** human rights?

For all businesses, different types of human rights dilemmas are likely to arise across stages of any crisis. The UNGPs on Business and Human Rights provide a valuable framework for making the right decisions in the medium term, once the immediate crisis has passed, and in building out a long-term resilient approach to managing human rights risks.

Companies are faced with many and ongoing tough choices during the COVID-19 crisis. Often business leaders find themselves in a position in which they must choose the ‘least worst’ option. However, systemically protecting and respecting human rights should underpin their decisions across all three stages of this crisis.

The crisis should prompt business executives to consider how their decisions affect people throughout the value chain. Business leaders can make reference to, or develop, rights-based decision frameworks to ensure they have a clear understanding of how their choices will be implemented in communities and the impacts felt by their employees or suppliers or other stakeholders.

During the crisis, business leaders have a unique opportunity – and responsibility – to uphold their commitments to human rights. In doing so, they can build trust with customers, employees, suppliers, communities and shareholders. The decisions business leaders make in the coming months will represent and reinforce their ethics, leadership and commitment to positive social impact.

With a robust human rights framework behind them, leaders will have the confidence that they are doing business with the least adverse impacts on stakeholders’ human rights and could even enable human rights to be improved beyond the ‘old normal’, as we thrive within our ‘new normal’.

Trust is a catalyst for recovery.

“As resilient leaders embarking on recovery, we embrace trust as the essence of resilient leadership. Invest in it wisely and it will yield extraordinary returns.”

Punit Renjen,
CEO, Deloitte

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