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A GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENTS FOR ORGANIZATIONS INVOLVED IN THE AI LIFECYCLE

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A GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENTS FOR ORGANIZATIONS INVOLVED IN THE AI LIFECYCLE

EXECUTIVE SUMMARY

Artificial intelligence (AI) is exponentially impacting the rights of individuals and foundational principles such as democracy and the rule of law, as demonstrated by the latest developments in generative AI. Consequently, policymakers worldwide and standards organizations such as IEEE have identified *human rights*, *fundamental rights,* and *constitutional rights* as underlying principles for upcoming legislation and international approaches to AI governance. Similarly, the need to incorporate rights-based impact assessments in the AI operations of business enterprises and entities in the public sector is reflected in emerging AI regulation and falls under the scope of corporate human rights due diligence.

Public and private organizations involved in the lifecycle of AI systems are thus incentivized to proactively undertake measures to prevent and mitigate the adverse human rights impacts that originate in their AI operations. The assessment of these impacts is addressed in the context of human rights due diligence, encompassing, for instance, their scope and severity, as well as the business models and contractual relations of an organization. Methodologies and tools specifying human rights impact assessments (HRIA) at the level of an organization are thus needed to enable the detection of contentious AI operations in order to address and prioritize any corresponding human rights impacts and to subsequently derive effective mitigation and prevention measures.

In line with emerging AI regulation, a methodology for an HRIA adapted to organizations involved in the AI lifecycle needs to profile the organization, for instance, in terms of its legal status as an entity in the public or private sector (e.g., revealing the pertinence of constitutional principles for deployers in the public sector), and should identify an organization's involvement in one or multiple stages of the AI lifecycle. This methodology should address the potential and actual adverse impacts on human rights specific to an organization's AI operations, including the context and rationale for the use of AI as well as design and deployment choices.

Based on its findings, the HRIA should propose and prioritize different measures at an organizational level. This would allow them to strategically address the regulatory focus on AI and human rights and the increasing importance of AI in the ESG context, which strongly relates to human rights frameworks. Such a methodology can then form the basis of tools supporting organizations when conducting human rights impact assessments tailored to their portfolio of ongoing and planned AI operations.

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1. INTRODUCTION

In an era marked by rapid technological advancements in computing power, increasing data availability, and the advent of generative AI, the societal influence of artificial intelligence has been steadily on the rise. This tendency encompasses the widespread use of algorithms in social networks and search engines, as well as the introduction of AI into recruiting, mobility, education, finance, healthcare, and public administration, among other fields.[1] As reflected in existing AI ethics frameworks such as IEEE's Ethically Aligned Design approach, the cross-cutting nature of AI has major implications for the norms that are foundational to individual and societal flourishing, including human rights as well as constitutional rights and principles. Organizations, including business enterprises and public administration that are involved in different stages of the AI lifecycle, and those who make decisions regarding the data used by algorithms or the design of AI solutions, have strong leverage on the realization or protection of the rights of individuals. Nevertheless, precedents such as recruiting algorithms showing biases against women,[2] the pervasive algorithmic harvesting of data across social media platforms,[3] emotion detection systems failing to address vulnerable groups,[4] or business models that exploit individuals with mental disabilities, all underscore the profound consequences of neglecting human rights in the design, development, and deployment of AI.[5] Given the legitimacy and the global influence of human rights dating back to the Charter of the United Nations (1945) or the Universal Declaration of Human Rights (1948), international bodies including the UN General Assembly, the Council of Europe, and the OECD, alongside leading human rights organizations such as Amnesty International, Human Rights Watch and United Nations Global Compact, have reaffirmed the importance of respecting human rights principles in the AI lifecycle and have lobbied for the introduction of

[1] Hunkenschroer, A. L., & Luetge, C. (2022). Ethics of AI-enabled recruiting and selection: A review and research agenda. *Journal of Business Ethics*, *178*(4), 977-1007; Weber, P., Carl, K. V., & Hinz, O. (2023). Applications of Explainable Artificial Intelligence in Finance—a systematic review of Finance, Information Systems, and Computer Science literature. *Management Review Quarterly*, 1-41; Abduljabbar, R., Dia, H., Liyanage, S., & Bagloee, S. A. (2019). Applications of artificial intelligence in transport: An overview. *Sustainability*, *11*(1), 189; Rajpurkar, P., Chen, E., Banerjee, O., & Topol, E. J. (2022). AI in health and medicine. *Nature medicine*, *28*(1), 31-38.

[2] Pethig, F., & Kroenung, J. (2023). Biased humans, (un) biased algorithms? *Journal of Business Ethics*, *183*(3), 637-652. Dastin, J. (Oct. 10, 2018). Amazon scraps secret AI recruiting tool that showed bias against women. Reuters. https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scrapssecret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G

[3] Levinson-Waldman, R., Pandurnga, H., & Patel, F. (2022, January 7). Social Media Surveillance by the U.S. Government. Brennan Center for Justice. Retrieved from https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-us-government

[4] Venkit, P. N., & Wilson, S. (2021). Identification of bias against people with disabilities in sentiment analysis and toxicity detection models. *arXiv preprint arXiv:2111.13259*.

[5] Nagy, J. (2022). Autism and the making of emotion AI: Disability as a resource for surveillance capitalism. *New media & society*, 14614448221109550. Furthermore, the authors recognize the significant contribution made by IEEE's Ethically Aligned Design to the field of artificial intelligence and human rights. For further information, see IEEE Standards Association. (2019*). Ethically Aligned Design: A Vision for Prioritizing Human Well-Being with Autonomous and Intelligent Systems*. Retrieved from https://standards.ieee.org/wp-content/uploads/import/documents/other/ead1e-overview.pdf.

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human rights impact assessments for AI.[6, 7] Likewise, legislators at the national and European level are increasingly integrating human rights considerations within their legal response to AI.[8] However, apart from solution-focused approaches including the Human Rights, Democracy, and the Rule of Law Impact Assessment (HUDERIA) or the Fundamental Rights and Algorithm Impact Assessment of the Government of the Netherlands, ethics-centered perspectives, including frameworks such as the Assessment List for Trustworthy Artificial Intelligence (ALTAI), continue to dominate the landscape of algorithmic impact assessments.[9] While these approaches provide valuable insights into the societal impact of specific AI systems, they are likely insufficient to guide the organizational governance of the AI operations and value chains of larger organizations, not only due to trends in emerging international AI regulation, but also the *multitude*, *complexity,* and *diversity of an organization's AI operations*. Accordingly, a human rights focus—most especially at the organizational level—is also needed to help promote alignment with an emerging global standard of expected conduct when evaluating the societal impact of an organization's AI operations.[10] To this end, conformity with international human rights frameworks such as the UN Guiding Principles on Business and Human Rights (UNGPs) can aid in navigating the emerging legal landscape of AI regulation and can provide an avenue to integrate the disparate legal requirements that apply to international AI operations. These requirements extend beyond primary AI regulation, such as the EU AI Act, and encompass areas such as privacy, consumer protection, and anti-discrimination frameworks, which specify and contextualize the meaning of human rights or constitutional rights.[11] By considering these aspects, organizations can assess the risks associated with nascent technologies even before specific legislation is in

[6] See UNESCO. (2022). Recommendation on the Ethics of Artificial Intelligence. Retrieved from https://www.unesco.org/en/articles/recommendation-ethics-artificial-intelligence; Council of Europe. (2023, January). Revised Zero Draft [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. Retrieved from https://rm.coe.int/cai-2023-01-revised-zero-draft-framework-convention-public/1680aa193f. OECD. (2019). Recommendation of the Council on Artificial Intelligence. Retrieved from https://oecd.ai/assets/files/OECD-LEGAL-0449-en.pdf. OHCHR. (2023). Taxonomy of Human Rights Risks Connected to Generative AI. Retrieved from https://www.ohchr.org/en/business-and-human-rights/b-tech-project

[7] UN Global Compact. (2024). Artificial Intelligence and Human Rights. Recommendations for Companies. https://unglobalcompact.org/library/6206.

[8] White House. (2022, October). Blueprint for an AI Bill of Rights. Retrieved from https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf; Government of Canada. (2023, March). The Artificial Intelligence and Data Act (AIDA) – Companion document. Retrieved from https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document; EU Commission. (2024, January). A European approach to artificial intelligence. Retrieved from https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence. European Parliament. (2024, 13. March). Artificial Intelligence Act. Retrieved from: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.pdf.

[9] These approaches include for instance the IEEE Global Initiative for Ethical Considerations in Artificial Intelligence and Autonomous Systems; the Asilomar AI Principles, The Montreal Declaration for Responsible AI. While some international frameworks tend to mention human rights or fundamental rights such as OECD, UNESCO, or HLEG AI, the focal point remains ethics.

[10] The need for such a global standard has been articulated in: United Nations General Assembly. (2024). Seizing the opportunities of safe, secure, and trustworthy artificial intelligence systems for sustainable development (Resolution A/78/L.49); White House. (2023, October). Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. Retrieved from https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.

[11] Examples are the Canadian Human Rights Act, RSC 1985, c H-6., *Directive (EU) 2019/2161* as well as Regulation (EU) 2016/679 (also known as the General Data Protection Regulation or GDPR).

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place, and can establish an AI governance framework based on international best practice and global frameworks accepted by key stakeholders such as governments, clients, and investors.

This paper offers organizations and institutions operating within the AI lifecycle a comprehensive overview of the intersection between AI and human rights, with a particular focus on addressing the necessity of and the methodologies for conducting human rights impact assessments at the organizational level. In detail, it unpacks the concept of human rights responsibility and its implications for private and public sector entities; addresses the distinction between human, fundamental, and constitutional rights; broaches those areas of AI operations that may pose inherent challenges to human rights; and lays out the essential conditions for human rights impact assessments given the larger processes of corporate human rights due diligence. It also provides insights into the difficult tasks of identifying, differentiating, and prioritizing adverse human rights impacts in the elaboration of effective and stakeholder-inclusive prevention and mitigation measures. In sum, the white paper aims to inform and galvanize organizations for the future of emerging international AI regulation and surrounding legal trends, pointing out the nascent but critical need to take human rights seriously.

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2. IMPACT ASSESSMENTS IN THE BUSINESS AND HUMAN RIGHTS CONTEXT

The concept of human rights responsibility—which sits at the heart of regulatory and academic discourse on corporate social responsibility (CSR), business ethics, responsible innovation, environmental, social, and governance (ESG) aspects, and international supply chain legislation—has traditionally been the main driver for business enterprises to conduct regular human rights impact assessments at an organizational level.[12] Historically, while public sector organizations had long been under the purview of constitutional law, the rise of globalization and the operations of *business enterprises across multiple jurisdiction*s began to garner attention from civil society; particularly as it pertained to unsafe working conditions, discrimination, and violations of the right to freedom of association throughout the own business activities of these enterprises, and those of their value chain.[13] As a result, international organizations such as the UN General Assembly, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the OECD, endeavored to lobby for and eventually define action-guiding principles for international business activities that aimed to, and indeed do serve as a human-rights based "global standard of expected conduct."[14]

This same global standard has since permeated much of the business governance sphere at the international level: from its incorporation into frameworks including the UN Global Compact, the UN Guiding Principles on Business and Human Rights (UNGPs), and the OECD Guidelines for Multinational Enterprises, to its influence on the positions of the UN General Assembly and the G7 with their endorsement of the UNGPs in the realm of AI. This same human-rights focus can also be seen underpinning legislation at the level of the European Union and is firmly embedded in the broader ESG landscape, for instance in the form of sustainability ratings.[15] Subsequently, the UNGPs themselves have contributed to the emergence of international supply chain legislation, and

[12] Wettstein, F. (2012). CSR and the debate on business and human rights: Bridging the great divide. *Business Ethics Quarterly*, *22*(4), 739-770; Wettstein, F. (2020). The history of 'business and human rights' and its relationship with corporate social responsibility. *Research handbook on human rights and business*, 23-46. Buhmann, K., Jonsson, J., & Fisker, M. (2019). Do no harm and do more good too: Connecting the SDGs with business and human rights and political CSR theory. *Corporate Governance: The International Journal of Business in Society*, *19*(3), 389-403. Brenkert, G. G. (2016). Business ethics and human rights: An overview. *Business and Human Rights Journal*, *1*(2), 277-306.

[13] Enderle, G. (2021). Corporate Responsibility for Wealth Creation and Human Rights. Cambridge University Press.

[14] OHCHR. (2011). UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Retrieved from https://digitallibrary.un.org/record/720245, Commentary to UNGP 11.

[15] UN Global Compact. (2000). Ten Principles of the UN Global Compact. https://unglobalcompact.org/what-is-gc/mission/principles. OECD. (2011). Guidelines for Multinational Enterprises on Responsible Business Conduct. https://mneguidelines.oecd.org/mneguidelines/. See also Bartley, T. (2022). Corporate Social Responsibility: Codes, Compliance, and ESG Ratings. in: Handbook on Globalization and Labour Standards, 400–415.

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established impact assessments as part and parcel of human rights due diligence processes."[16, 17] Taken broadly, the underlying driver of this evolution appears to be growing stakeholder awareness of the societal implications of global business operations, reflected in the rising demand for sustainability or ESG-related investment products and related legislation on ESG in finance, where this trend is most acutely felt in the context of emerging technologies.[18]

2.1. THE INTERSECTION BETWEEN HUMAN, FUNDAMENTAL, AND CONSTITUTIONAL RIGHTS

At the most general level, human rights, fundamental rights, and constitutional rights constitute normative principles that constrain and direct the exercise of power in society. In this sense, all three frameworks converge in their commitment to protecting individuals from abuses and upholding essential liberties, such as freedom of speech and the right to a fair trial, as well as principles like the presumption of innocence.[19] Further still, these rights frameworks are all composed of both qualified or *derogable rights*, which can be restricted in certain situations, such as emergencies or military conflicts, and absolute or *non-derogable rights,* which are considered inviolable, such as the right to life or freedom from slavery and arbitrary detention.[20, 21]

In essence, human rights, fundamental rights, and constitutional rights differ less in terms of their normative content, and mainly in terms of the scope of their application. FIGURE 1 describes the scope and conceptual differences between human rights, fundamental rights, and constitutional rights.

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[16] The necessity to conduct human rights impact assessment is mentioned in Art. 1(1) of the French Duty of Vigilance Law (Loi de Vigilence), §5(1) of the German Supply Chain Due Diligence Law and the EU Commission. (2022, February) as well as in Art. 6 of the Proposal for a Directive on corporate sustainability due diligence. Retrieved from https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en.

[17] Compare Commentary to UNGP 18. (OHCHR, 2011).

[18] Suzor, N. et al. (2019). Human Rights By Design The Responsibilities of Social Media Platforms to Address Gender-Based Violence Online. Policy& Internet. 11(1). 84-103.

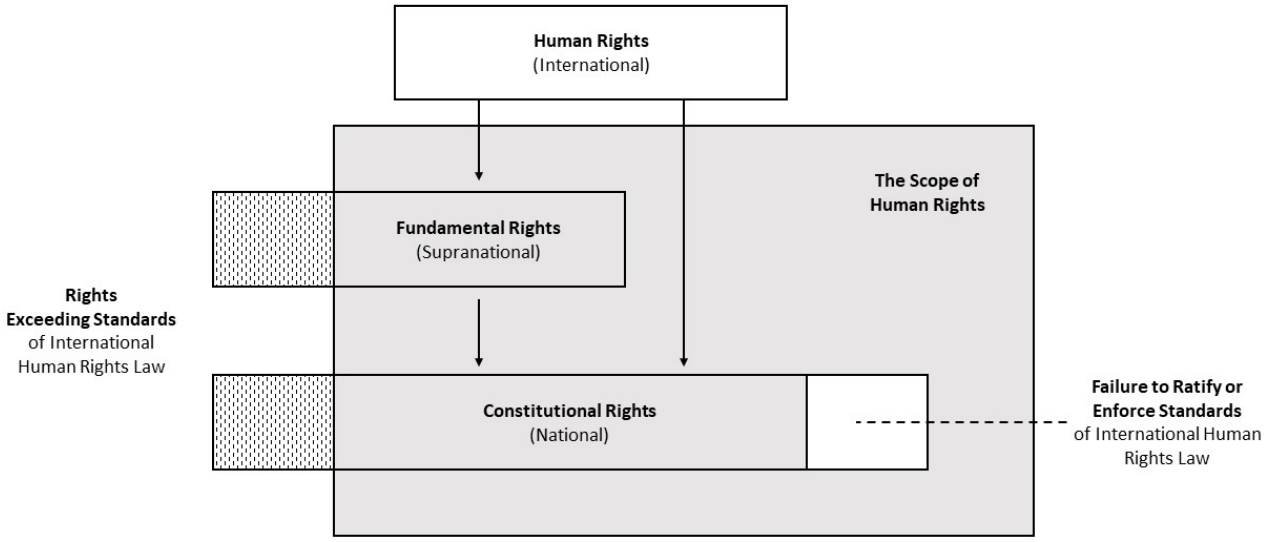
[19] Neuman, G. L. (2002). Human rights and constitutional rights: Harmony and dissonance. *Stan. L. Rev.*, *55*, 1863. Dunoff, J. L., & Trachtman, J. P. (Eds.). (2009). *Ruling the world?: Constitutionalism, International Law, and Global Governance*. Cambridge University Press. Benhabib, S. (2009). Claiming rights across borders: International human rights and democratic sovereignty. *American Political Science Review*, *103*(4), 691-704.

[20] Koji, T. (2001). Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-derogable Rights. *European Journal of International Law*, *12*(5), 917-941; Thielbörger, P. (2019). The "Essence" of International Human Rights. *German Law Journal*, *20*(6), 924-939.

[21] Note that a corresponding principle of inviolability is largely missing in the AI ethics discourse, where there often exists no established method for prioritizing or weighing incommensurate ethical values. However, it is important to mention that absolute limits to AI use have been integrated in AI regulation, for instance, Art. 5 of the EU AI Act. The final version of the EU AI Act can be found here: Council of the European Union. (2024, May 15). *Artificial intelligence (AI) Act: Council gives final green light to the first worldwide rules on AI*. Retrieved from https://www.consilium.europa.eu/en/press/press-releases/2024/05/21/artificial-intelligence-ai-act-council-gives-final-green-light-to-the-first-worldwide-rules-on-ai/

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FIGURE 1 **The Conceptional Relationship Between Human Rights, Fundamental Rights, and Constitutional Rights**



In this sense, constitutional rights are delimited by the jurisdiction of a single country, and fundamental rights to the jurisdiction of the EU itself, and are thus embedded in different historical, political, and legal traditions.[22, 23] Accordingly, both constitutional and fundamental rights hold major implications for the design of legislation enforcing specific rights, for instance, the right to privacy in regulation such as the General Data Protection Regulation (GDPR) of the EU, the right to equality in anti-discrimination legislation, or the right to consumer protection in the context of EU product safety legislation. Likewise, public administration, but also enterprises in the public sector, should strictly adhere to constitutional or fundamental rights and principles, such as democracy, proportionality, or the rule of law.[24]

By contrast, human rights transcend national boundaries and are firmly rooted in *international* rather than *domestic* law. They originate in international conventions and have been shaped by collective experiences at the global level (such as famine or genocide), manifesting in codifications of the right to development or the 1948

[22] Many constitutional frameworks acknowledge the relevance of historical contexts for fundamental rights. The preamble of the EU Charter of Fundamental Rights, but also of the German Basic Law make strong references to this aspect.
[23] See Preamble. Charter of the Fundamental Rights of the European Union. (2000)
[24] The particular relevance of public business enterprises has been reaffirmed in different rulings of different constitutional courts for instance: Bundesverfassungsgericht. (2020). Judgment of 5 May 2020, 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15. Retrieved from https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-032.html as well as *Janus v. American Federation of State, County, and Municipal Employees, Council 31*. (2018). *585 U.S.* ___ (2018), 138 S. Ct. 2448; 201 L. Ed. 2d 924.

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Genocide Convention.[25, 26] Critically, however, through ratification, human rights treaties become part of national law and create normative obligations for state organizations from within.[27] As a result, the international human rights discourse strongly influences the domestic law of a nation-state and its interpretations of constitutional rights, as breaches of international human rights law can create negative repercussions for norm violators in the form of sanctions or political isolation.[28]

Thus, even if ratification often leads to tight convergence across the content of human, constitutional, and fundamental rights, states and supranational organizations may still define *additional* normative obligations for public authorities, but also on business entities indirectly through legislation in their respective jurisdictions, which *surpass or further contextualize* the relevant human rights standards, as exemplified for instance by the comprehensive protection of data privacy by the GDPR.[29] By contrast, the constitutional frameworks or political systems of individual UN member states may also *fail to meet* or guarantee the minimum standards identified in international human rights law due to a lack of enforcement or an unwillingness to comply.[30] Differences between states notwithstanding, the normative content of human rights and constitutional rights covers a wide scope, reinforced through frameworks such as the UNGPs and the UN Global Compact, as well as legislation with extraterritorial effects, such as the GDPR or international supply chain legislation.[31]

2.2. NORMATIVE SOURCES OF HUMAN RIGHTS IN INTERNATIONAL LAW

While the larger human rights framework can be seen as an international standard and a pillar of international law, different regional and international human rights treaties nevertheless exist. This begs the question of the *source* of human rights content that is appropriate to use as the basis of a human rights impact assessment as mandated by the UNGPs.[32] In this sense, the UNGPs themselves emphasize the International Bill of Human Rights

[25] United Nations. (1948). Universal Declaration of Human Rights. Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights; United Nations. (1966). International Covenant on Civil and Political Rights. Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. United Nations. (1966). International Covenant on Economic, Social and Cultural Rights. Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

[26] United Nations. (1948). Convention on the Prevention and Punishment of the Crime of Genocide.

[27] Constitutional Frameworks can explicitly allow this practice for instance with Art. 24 of the German Basic Law.

[28] Bradley, C. A. (2020). *International Law in the U.S. Legal System*. Oxford University Press.

[29] Compare: ALTAI, p.6.

[30] The commentary to UNGP 11 states here that corporate human rights responsibilities exist "independently of States' abilities and/or willingness to fulfil their own human rights obligations."

[31] See also Commentary UNGP 23 reference to country and local contexts and their implications for human rights risks in terms of their activities and business relationships.

[32] National legislation might refer to the concept of human rights. We see this tendency in the context of international supply chain legislation, but also the Canadian Human Rights Act.

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and the principles concerning fundamental rights set out in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work," but also make reference to "additional standards," which will be discussed in this section.

The International Bill of Human Rights consists of the following three key documents:[33]

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Bill of Rights is relevant because it is part of international customary law alongside other foundational documents, including the Charter of the United Nations, the Genocide Convention (1948), and the principles of International Humanitarian Law.[34]

In a similar vein, the International Labor Organization's Declaration on Fundamental Principles and Rights at Work plays a major role in the UNGPs, due to the pertinence of labor rights in international business operations. In particular, the document outlines rights related to freedom of association, collective bargaining, elimination of forced labor, abolition of child labor, and ensuring a safe and healthy working environment.[35]

Furthermore, UN instruments have addressed the rights of specific *groups or populations*, such as indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, individuals with disabilities, and migrant workers and their families.[36] These rights are enshrined in multiple conventions and treaties, including the International Treaty on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, as well as the Convention on the Rights of Persons with Disabilities. Finally, the UNGPs refer to codifications outside of traditional human rights discourse. This includes the standards of international humanitarian law and the Genocide Convention (1948).[37] Beyond international treaties and frameworks at the UN level, this emphasis on human rights extends to entities such as the Council of Europe, the African Charter of Human and People's Rights, and the Organization of American States. The relevance of such regional human rights interpretations—particularly the work of the Council of Europe, including but not limited to the European

[33] See ibid., Art. 1
[34] D'Amato, A. (1995). Human rights as part of customary international law: A plea for change of paradigms. *Ga. J. Int'l & Comp. L.*, *25*, 47. Bradley, C. A. (2020). *International Law in the U.S. Legal System*. Oxford University Press.
[35] International Labour Organization (ILO). (1998). The ILO Declaration on Fundamental Principles and Rights at Work.
[36] See commentary to UNGP 12 and its reference to instruments "protecting individuals belonging to specific groups or populations."
[37] UN. (1948). Genocide Convention. Retrieved from https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

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