

Position paper

Corporate social responsibility and human rights

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Overview of positions

- I. For imperative moral and economic reasons, German business stands by its duty to promote respect for human rights and to contribute to their recognition by applying them.
- II. In their international activities, German companies assume responsibility for the economic and political environment in which they operate. In the framework of their direct investments, German companies create jobs abroad and enable higher social standards, more environmental protection, better education and hence a general improvement in the standard of living and greater well-being in the countries in question. This simultaneously increases the potential for more democracy and human rights.
- III. Human rights pacts are international conventions and therefore agreements between states. The obligations they create lie with states in the first instance. Once given concrete form in national legislation, international norms become binding on private legal entities, i.e. on citizens and companies.
- IV. BDA and BDI welcome the current debate on corporate social responsibility and human rights because it can result in the respective responsibilities of politicians and business being discussed in clear language and also becoming more transparent for all participants in this debate. We also welcome the fact that the UN High Commissioner for Human Rights has taken up this theme herself and will produce a report on the human rights responsibilities of multinational companies.
- V. However, what we reject are initiatives whereby private legal entities are supposed to become agents for enforcement of international law, as for instance in the draft norms drawn up by the UN Human Rights Committee's Subcommittee. With the position set out in this paper, we wish to demonstrate that it is not right to shift the state's tasks with respect to ensuring human rights on to companies. Rather, the situation for human rights is the same as all other areas where responsibility is required: each party must assume the tasks it is fitted to perform. For companies, this means that responsibilities which go beyond the existing laws must be taken on only on a voluntary basis. Otherwise, duties become a burden, which serves no-one – neither companies nor the people suffering from infringement of their rights.

Background

1. Safeguarding human rights is an important matter for German business. Alongside the self-evident obligation on every single company to behave in a humane and ethical manner, there are also economic reasons in favour of respecting human rights. A strengthening of political freedoms encourages economic development, for instance by improving investment possibilities, free movement or training opportunities for workers. Conversely, **infringement of human rights** and the **absence of the rule of law** are hugely detrimental to economic activities and therefore also hamper companies with multinational operations. Hence, for moral and economic reasons, German industry is committed to promoting respect for human rights and to contributing to their recognition by applying them.

2. The United Nations Human Rights Committee is currently also addressing the issue of the responsibility of multinational companies for ensuring human rights. Accordingly, at its 60th meeting in April 2004, it asked the Office of the UN High Commissioner for Human Rights to draw up a report. This is intended to analyse existing initiatives, standards and instruments linked to the human rights responsibilities of multinational companies with reference to their legal status and scope, taking account of the views of all stakeholders, and to identify issues that have not yet been tackled. BDI and BDA have been invited to explain their position in this context.

Differentiate responsibility of policy-makers by player

3. In the 1948 Universal Declaration of Human Rights, UN Member States committed themselves to working for respect and introduction of human rights. As fundamental ethical precepts, respecting the dignity of each human being and creating a constitutional situation in which human rights can develop are at the same time conditions for sustainable political stability as well as for economic and social development in the world. In line with the two international conventions dating from 1966, the concept of human rights encompasses not only civic and political rights but also economic, social and cultural rights. On this basis, comprehensive protection of human rights has been developed to give us the situation today.

4. Human rights pacts are international agreements and therefore agreements between states. The obligations they create lie with states in the first instance, and not individual persons. For their part, states are obliged to implement human rights agreements domestically. This is because, with their sovereignty, states have the highest authority over all natural and legal persons within their territory.

5. As a rule, human rights pacts are principles formulated in abstract terms which need to be given concrete form through national legislation. For that reason, the various international agreements cannot be used directly by the citizen. Rather, they give rise to the central responsibility of states to work for respect of human rights. Accordingly, individual states must implement the obligations arising from international human rights treaties through their national legislation. Only then do international norms for private legal entities, i.e. citizens and companies, assume a binding character.

6. In the debate on human rights, a clear distinction must be made between civic and political rights on the one hand and economic, social and cultural rights on the other. Civic and political rights include rights which are universal in the true sense of the word, e.g. the ban on forced labour and slavery and the ban on torture. These rights are inalienable. Alongside these rights, economic, social and cultural rights include the right to work and appropriate pay in line with the principle of equal treatment, freedom of association, right to social protection, a reasonable standard of living and health protection, as well as education and involvement in cultural life. However, these fundamental rights are often restricted because of the fundamental rights of others or because of rights enjoying a higher level of protection. In such cases, there are **conflicting objectives** which have to be settled through the way human rights are implemented in national legislation. There are a range of legal claims, legal categories, moral obligations and cultural and social situations which a government must take into account. For instance, a government must weigh up whether the right to education (building schools and universities) or the right to security (creating a functional police force) is more important. Or it has to weigh up whether the right to a reasonable standard of living and health protection can be best achieved through environmental policy measures or through extension of the social protection system. Depending on the starting situation, different measures will be needed in a country to achieve the highest possible standard of work and health protection. This balance between political and societal interests can only be decided in the first instance by sovereign states and their governments. Insofar as states are unable to agree in the case of conflicting national and international obligations, companies are not in a position to find a compromise between interests.

7. **Respecting** human rights is also dependent on the extent to which there is an overwhelming consensus within society in an individual state that assigns legitimacy to human rights. For instance, there are many international conventions which have been ratified by fewer than twenty states. Even the two important human rights conventions dating from 1966 have so far only been accepted by around forty states. **Application** of human rights depends in turn on the extent to which the internationally agreed norms are implemented in national legislation. Moreover, the ultimate **enforceability** of human rights is also dependent on the extent to which each individual can prosecute a legal claim. This requires a functional separation of powers with an independent judiciary which guarantees effective legal protection. Only if these conditions are met in full can human rights be valid for all members of a society.

8. **Infringements of human rights** can be traced primarily to the lack of political will in individual states to recognise and implement human rights. Hence, they must be addressed at the political level, and that is where initiatives must be taken. An active human rights policy should therefore choose the route of international cooperation, dialogue and – insofar as necessary – public criticism and pressure. It must also create the conditions for political, economic and social stability in the long term. Application and implementation of human rights can ultimately only be ensured by extending the capacity of the national legal system. It should also be remembered that the risk of infringements of human rights today come increasingly from **failing or failed states** in which all state authority is lacking. It is therefore also the task of the international community to prevent countries from developing into failing or failed states.

9. The increasing economic **globalisation** is not without influence on realisation of human rights. Economic development in emerging and developing countries often creates better conditions for political stability and the development of democracy. Thanks to the integration of many countries in the modern international communication system, the individual has a greater chance to enjoy **transparency** and thus at the same time greater **participation**. The improved involvement of developing and emerging countries in the global economy takes place in particular on the basis of increased trade and opening for investments. Therefore, policy-makers are responsible for supporting an improvement in the political situation and thereby compliance with human rights by extending liberal international framework conditions for trade and investment.

Responsibility of non-state players

10. The Universal Declaration of Human Rights also calls on each individual as well as the organs of society, including business players, to help realise human rights.

11. In their international activities, German companies assume responsibility for the economic and political environment in which they operate. In the framework of their direct investments, German companies create jobs abroad and enable higher social standards, more environmental protection, better education and hence a general improvement in the standard of living and greater well-being in the countries in question. This simultaneously increases the potential for more democracy and human rights. Nevertheless, businesses on the ground are **bound by the legal framework put in place by policy-makers** which they encounter abroad.

12. German companies feel a calling actively to **promote realisation** of human rights within the scope of their possibilities, and to **contribute to their recognition** by applying them. In the framework of their **corporate social responsibility (CSR)**, they assume responsibility for realisation of human rights. With their own **voluntary initiatives**, multinational companies - sometimes also in the framework of public-private partnerships or jointly with non-governmental organisations – seek to make a contribution to better implementation of human rights. In this way, companies can strengthen human rights by complementing, not substituting for, the actions taken by policy-makers.

13. In making this **voluntary commitment**, German companies can take their lead from various internationally agreed principles. Using such instruments, governments and international organisations formulate their expectations of multinational companies and thus define the framework for consciously responsible action. Examples include the **OECD guidelines for multinational enterprises**, the **three-pronged ILO declaration on multinational enterprises and social policy** and the **Global Compact**. Implementation of these guidelines must always remain **voluntary**, and even a tie-in with promotion instruments such as export-credit guarantees should be rejected. It must be ensured that implementation of guidelines is promoted with a sense of balance, and that problem cases are dealt with in accordance with the principles of proportionality and practicability. Otherwise guidelines for multinational companies will only generate more bureaucracy without any practical benefit.

14. In their sphere of operation, German companies must take care that they are not partially responsible for infringements of human rights. Strong long-term relationships with business partners help with development of the corresponding management practices. Nevertheless, direct **influence** by companies on the **supply chain** is limited by a series of practical problems. After all, a company's possibilities to promote the principles of corporate social responsibility beyond its own business depend on the industry in which it is active, the number of suppliers, the structure and complexity of the supply chain, and the market position of the company. Furthermore, account must be taken of the fact that suppliers are legally independent entities and that even large customers must respect the independence and autonomy of sub-businesses. It is often neither economic nor logistically feasible to control all suppliers and subcontractors. Hence, the routes chosen are as diverse as the challenges which individual companies face. As a result, cooperation in this regard can take place **only on a voluntary basis**.

CSR can complement, but not take the place of, political responsibility

15. Companies cannot be held responsible for the failure of states and their governments. For that reason, companies can support a strengthening of human rights **only on a complementary basis**, not as a substitute for the policy of the national government. Guidelines addressed to companies and which serve to give direction are different from agreements between states; they cannot function in a vacuum but only in conjunction with an effective regulatory policy.

16. Policy-makers around the world are encouraged to work to **develop a regulatory framework** which offers the basis for economic development and entrepreneurial action and hence opens a space for voluntary involvement by companies. This also includes effective implementation of human rights and basic social and environmental standards as well as appropriate framework conditions for investments and international trade.

17. The measures taken by individual companies and their options for action to support human rights are different and depend on the number of people they employ, the degree of international interaction, the economic sector to which they belong, and the production processes they use. **Flexibility in business practice** is essential for multinational companies which operate in a world with widely differing cultural, economic and legal conditions. A business which operates locally needs local conditions. Legally defined standards which dictate the individual elements of corporate responsibility or impose measures for implementation of a code of conduct on companies should be rejected. Policy-makers must not shift their responsibility for political objectives on to companies. Seen logically, the transfer of state obligations would also involve the transfer to companies of rights and privileges which hitherto have been assigned exclusively to states.

18. Neither new initiatives, norms and standards nor transfer of responsibility to other players can offer a solution to human rights issues. Rather, it is important to underline the primacy of state responsibility with regard to implementation of international human rights agreements in an appropriate national legal framework. This role of national states needs to be strengthened through **establishment of suitable capacities** in all organs of national power. International organisations,

business and non-governmental organisations can make an important contribution in this respect.

BDI and BDA activities

19. BDI and BDA promote realisation of human rights:

- Together with representatives of the federal government, trade unions and non-governmental organisations, in 2002 BDI and BDA signed the declaration on **international protection of human rights and economic activity**. This clearly underlines the importance attached to worldwide implementation of human rights and expresses the commitment of German companies.
- BDI and BDA have committed themselves vis-à-vis the federal government to promote the **OECD guidelines for multinational enterprises**. BDA and BDI commend German companies to take their lead from the OECD guidelines in their overseas activities in order to provide additional support to social development in their host countries. In the framework of the national contact point, BDA and BDI play an active role in promoting application of the guidelines.
- BDA and BDI support the basic principles of the ILO's three-pronged declaration on multinational enterprises and social policy.
- BDI and BDA support the principles of the **global compact**. The global compact is a good initiative for involving companies in implementation of international legal standards on a voluntary basis. BDI and BDA actively flank the work of the German global compact network.

Appendix

Appendix

I. Principles for human rights enshrined in international law

In terms of international law, the following agreements in particular are relevant and the Federal Republic of Germany takes them as a reference or has acceded to them:

- Charter of the United Nations (1945);
- Universal Declaration of Human Rights (1948, UNO General Assembly);
- Geneva Red Cross Conventions (12 August 1949, in particular, Geneva Convention relative to the Protection of Civilian persons in Times of War);
- ILO Convention no. 100 concerning equal remuneration for men and women workers for work of equal value (29 June 1951);
- ILO Convention no. 111 concerning discrimination in respect of employment and occupation (25 June 1958);
- International pact on civic and political rights (19 December 1966 - Federal Republic since 1973): guarantee of peoples' right of self-determination and general political rights for nationals of contracting states (in particular right to life and freedom, free movement, freedom of conscience, opinion and religion, right of assembly and coalition, protection of marriage, family and child, equality of all before the law and equality between the sexes, supervision of detention by courts and constitutional principles as well as a ban on slavery and forced labour);
- International pact concerning economic, social and cultural rights (19 December 1966 - Federal Republic since 1973): supplement to the international principles for economic, social and cultural rights (including the right to work and appropriate pay based on the principle of equal treatment, right to rest periods, free time and holidays, freedom of coalition and the right to strike insofar as this is not limited by domestic legislation, right to social security - including social insurance - right to an appropriate standard of living and health protection as well as education and involvement in cultural life);
- International convention on elimination of all forms of racial discrimination (7 March 1966 - Federal Republic since 1969): ban on any discrimination based on race. Obligation to eliminate any remaining discrimination;
- International convention on elimination of all forms of discrimination against women (18 December 1979);
- International convention against torture and other cruel, inhuman or degrading treatment or punishment (10 December 1984);
- International convention on the rights of the child (20 November 1989);

- International convention on protection of the rights of all migrant workers and their family members (18 December 1990);
- OSCE Paris charter for a new Europe and OSCE Copenhagen document (1990): so-called “human dimension”, for minorities and protection of human rights in Europe.

II. Federal government’s human rights policy

Principles and objectives:

“We attach central importance to worldwide implementation of human rights. International peace can only be successfully secured with protection and implementation of human rights. The fundamental norms of human rights are inalienable and may not be denied under any circumstances.”

(Coalition agreement of 16 October 2002, section IX, 8)

Principles:

- *The core of human rights policy is a concern for people. In this regard, protection of human rights makes no distinction between Germans and non-Germans, between members of majorities and minorities.*
- *Human rights are indivisible and may not be played off against each other. The objective of German human rights policy is worldwide implementation and maintenance of the entire range of civic, political, economic, social and cultural rights. In this regard, the Federal Government also works for definition of a consensual concept of the right to development.*
- *The Federal Government works for the universal application of human rights and hence against a cultural dilution of the concept of human rights. At the same time, it firmly rejects any superiority vis-à-vis other cultures and expressions of enmity.*
- *Human rights policy begins at home. This is the only basis on which international human rights policy can be credible. Germany has therefore agreed in numerous international conventions to instruments of supervision which give the international community the right and the possibility to monitor and verify compliance with human rights in Germany.*
- *Large-scale infringements of human rights jeopardise and upset international stability and security; they harm the economic well-being of states and their economic and social development. Protection and promotion of human rights release human resources, creativity and energies. Protection and promotion of human rights is therefore in the political interest of states. They contribute to stability, peace and development.*
- *Where people cannot otherwise be protected against infringement of their rights and basic freedoms, international monitoring, international pressure and*

public criticism serve as a means for implementation. However, the core of preventive diplomacy remains a human rights policy and conflict prevention based on dialogue and cooperation. For that reason, dialogue and cooperation in human rights policy are a requirement under the UN Charter (article 56).

- *Human rights policy is a cross-disciplinary issue for all areas of policy-making. In addition, it is open to ongoing exchange of opinion and experience with interested sections of the public.*

III. Joint declaration on the international protection of human rights and economic activity

BDI and BDA also regard themselves as being committed to promoting human rights and, for that reason, in 2002, jointly with representatives of the Federal Government and the central German trade union, forum for human rights and VENRO, signed a joint declaration on the international protection of human rights and economic activity. This includes the following statement:

- *“We at national level regard it as our shared mission to work for maintenance of human rights. We declare our commitment to comply with and promote the principles set out in the Universal Declaration of Human Rights and in international pacts and conventions on human rights.”*