



Webinar

Labor Relations and Occupational Safety

27 October 2022 | 2:00 PM - 4:00 PM (EAT)



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Human Rights, Good Labor Practices & Relations

October 27, 2022



Efficient Appliances for People & the Planet

EARF Requirements – IFC PS 2

- Terms and conditions of employment
- Employees/ worker's rights related to hours of work, wages, overtime, compensation, benefits, etc.
- Employee code of conduct
- Recruitment, Progression, Whistle Blower policy
- Employee grievance mechanism
- Anti-harassment policies, including a Sexual Harassment Policy and Gender Based Violence Policy?

EARF Requirements - IFC PS 2

- Policy on Non-discrimination and Equal Discrimination
- Policy prohibiting child labor and forced labor
- Right to organize
- Retrenchment

Introduction to Human Rights

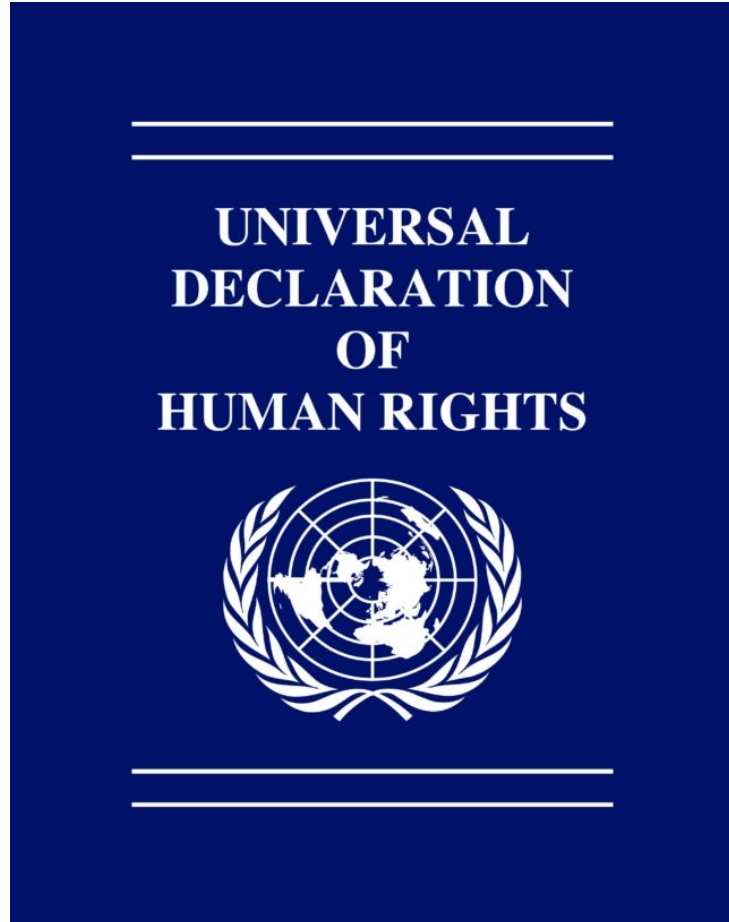
- Definition
- Examples
- Current state
- Expectations on business
- How to integrate human rights issues in your business
- Business case for human rights

Defining Human Rights

“Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.”

The Office of the United Nations High Commissioner
for Human Rights (OHCHR)

Sample Human Rights



- Right to equality (Article 1)
- Freedom from discrimination (Article 2)
- Right to life (Article 3)
- Freedom from slavery (Article 4)
- Freedom from torture (Article 5)
- Right to fair and public trial (Article 7)
- Right to seek legal help if your rights are violated (Article 8)
- Right to privacy (Article 12)
- Freedom of movement (Article 13)
- Right to a nationality (Article 15)
- Right to own property (Article 17)
- Right to belong to a religion and free thought (Article 18)
- Freedom of expression (Article 19)
- Right to work, fair wage, and to join a trade union (Article 23)
- Right to adequate standard of living (Article 25)
- Right to education (Article 26)

The current state of human rights



Since 2000, 40 million hectares have been snapped up in large-scale land deals



Total number of people enslaved globally:
40.3 million



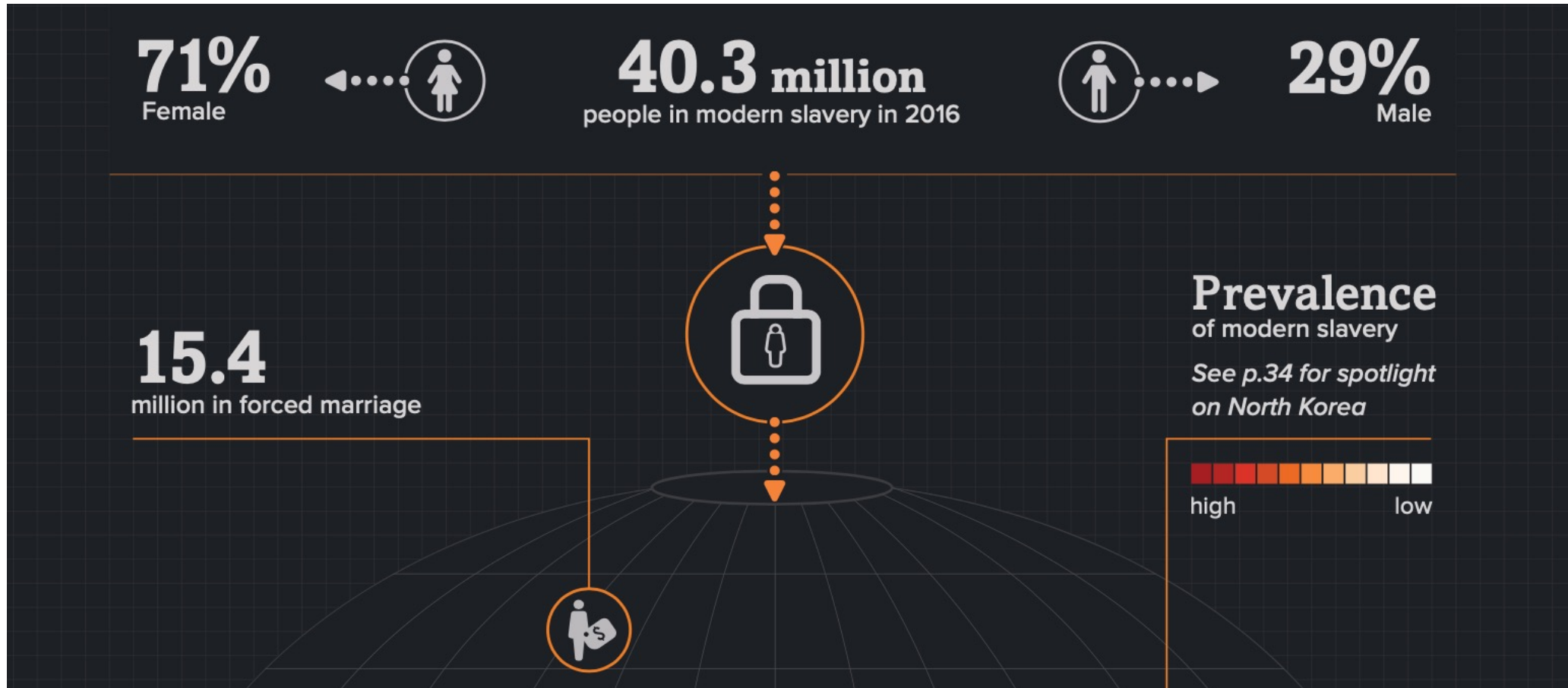
The global gender gap widened in 2016



150 million children worldwide are engaged in child labor

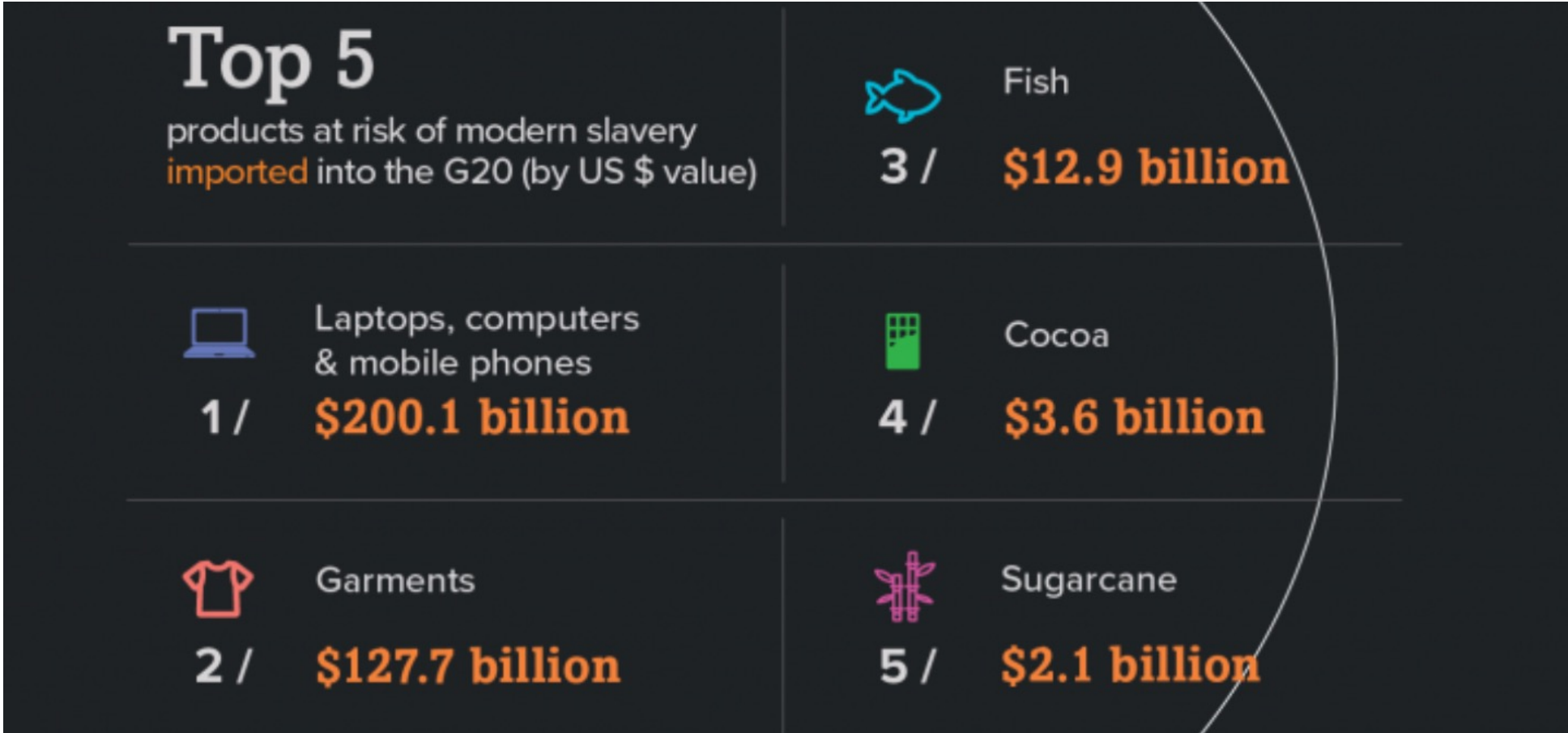
Global Slavery Index

Current state of human rights – Global Slavery Index 2018



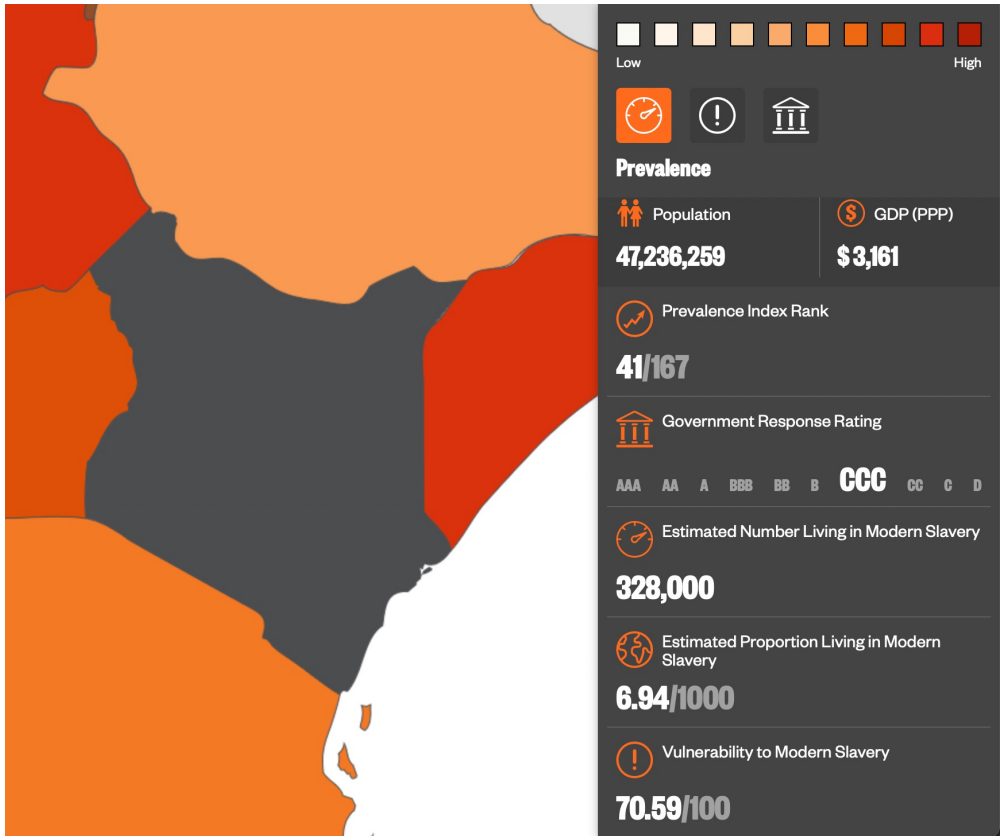
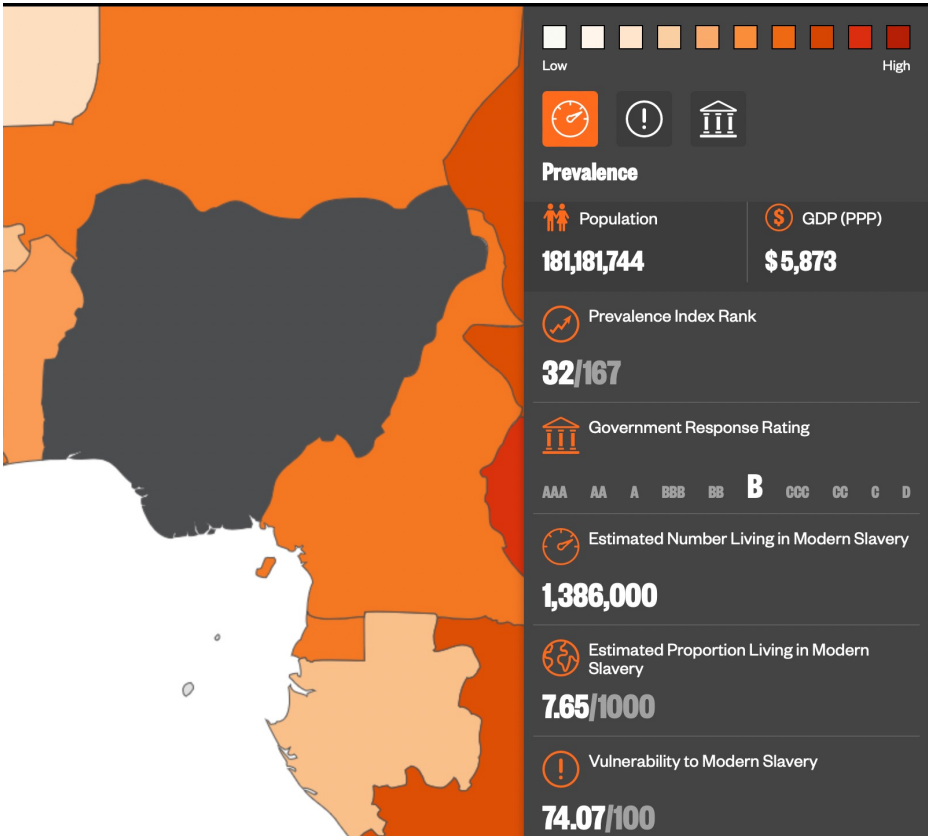
Global Slavery Index

G20 Export/Import risk – **\$354 billion????** – South Africa (Nominal GDP 2022)



Global Slavery Index

Current state of human rights – Kenya



“Kenya is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking”

Group discussion

Identifying relevant human rights

*What human rights issues are especially relevant to your company?
In your country?*



Photo by [Markus Spiske](#) on [Unsplash](#)

Global perspective

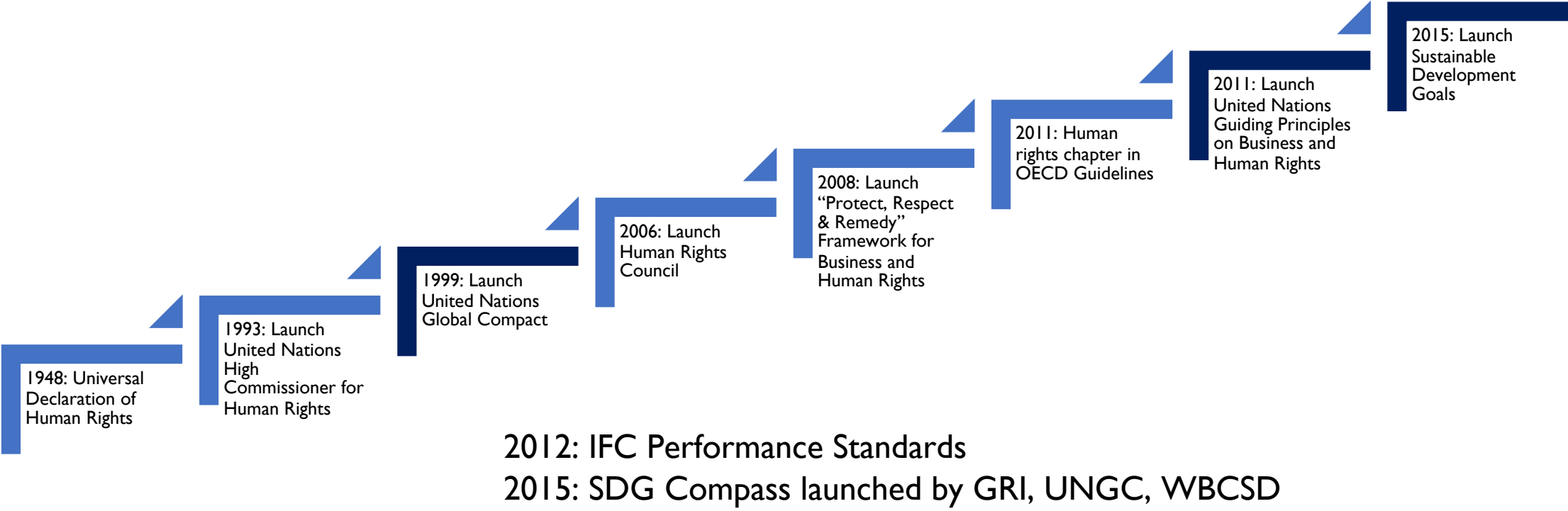
What human rights issues are especially relevant to business globally?



The Economist Intelligence Unit (2015)

Global response to human rights issues

The long journey of business & human rights



UN Guiding Principles on Business & Human Rights

What is expected of business today?

The United Nations Guiding Principles on Business and Human Rights are a set of 31 principles for States and companies to clarify their duties and responsibilities to protect and respect human rights.

Protect

State duty to protect human rights

Respect

Corporate responsibility to respect human rights

Remedy

Access to remedy



UNITED NATIONS
GUIDING PRINCIPLES
ON BUSINESS
& HUMAN RIGHTS

Principle 11

What is expected of business today?

According to the UN Guiding Principles on Business and Human Rights, there is a corporate responsibility to respect human rights:

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

UNITED NATIONS
GUIDING PRINCIPLES
ON BUSINESS
& HUMAN RIGHTS

Business agree with the Guiding Principles

83%

Of business executives agree that human rights are an issue for businesses, not just governments

71%

say their company's responsibility to respect human rights goes beyond simple obedience to local laws.

63%

say that discussions on the role of business in respecting human rights have become more prevalent at their organizations over the last five years.

The Economist Intelligence Unit (2015)

Human rights and SDGs



Human rights and the SDGs

156 of the 169 targets (**more than 92%**) are linked to human rights instruments and labour standards.

Goal	Target	Instrument	Article / Description
 <p>Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.</p>	<p>8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.</p> <p>Indicators 8.7.1 Proportion and number of children aged 5-17 years engaged in child labour, by sex and age</p>	<p>UDHR Universal Declaration of Human Rights</p>	<p>4 No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</p>
		<p>ICCPR International Covenant on Civil and Political Rights</p>	<p>8.1 No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.</p>
			<p>8.2 No one shall be held in servitude.</p>
		<p>8.3.a No one shall be required to perform forced or compulsory labour;</p>	
		<p>ICESCR International Covenant on Economic, Social and Cultural Rights</p>	<p>6.1 The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.</p>

Recap of Section I

- Human rights are complex and encompass a wide variety of topics, from working conditions to land rights.
- The responsibility of business to respect and protect human rights was only formally recognized at the beginning of the 21st century.
- International initiatives like the IFC PSs, UN Guiding Principles (UNGPs) and Sustainable Development Goals (SDGs) have been key to defining the role of business in respecting human rights.

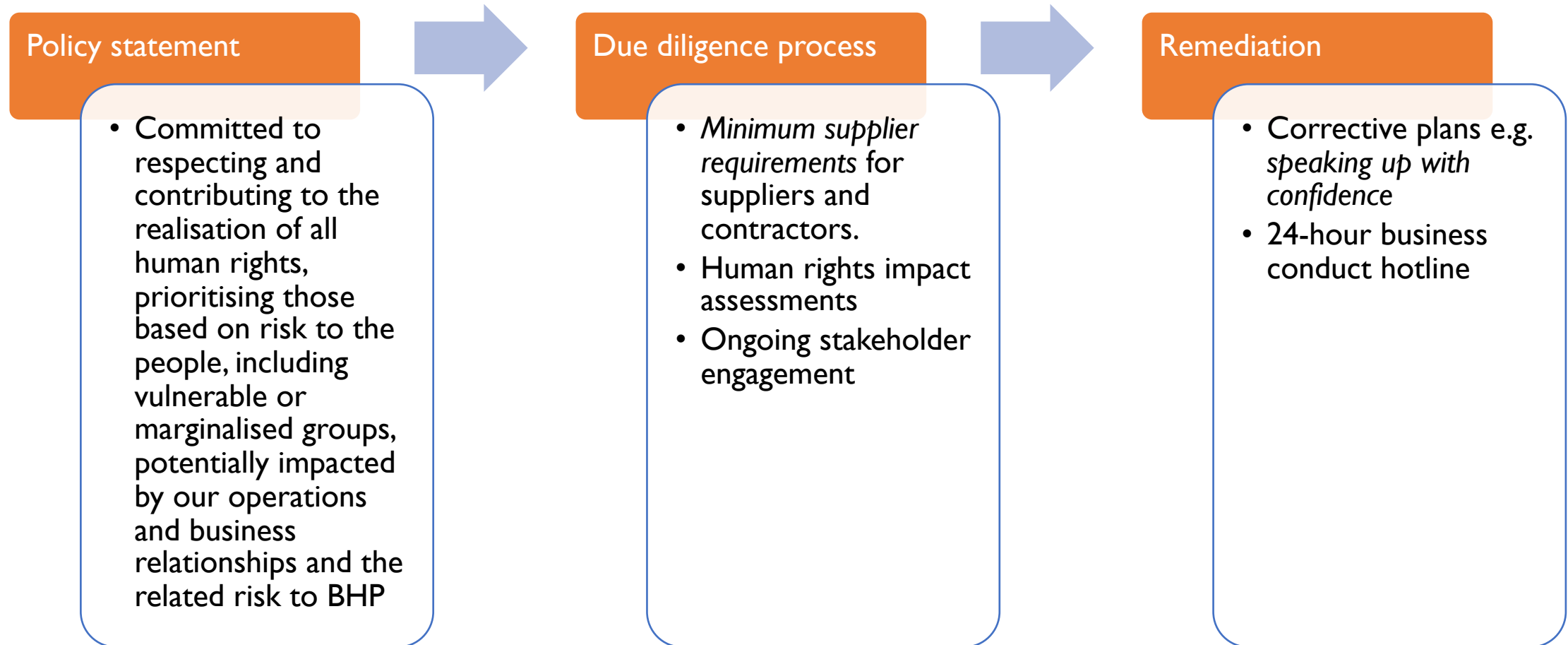
How can businesses meet their responsibility to respect human rights?

A **policy commitment** to meet their responsibility to respect human rights

A **due diligence process** to identify, prevent, mitigate and account for how they address their impacts on human rights

Processes to enable the **remediation** of any adverse human rights impacts they cause or to which they contribute.

How can businesses meet their responsibility to respect human rights? Example



Group discussion

Why do business address human rights?

Why do businesses address human rights, or why should they?



Businesses address human rights because of:

- Ethical convictions
- Regulatory pressure
- Risk management
- Enhanced performance
- Stakeholder expectations

Ethical conviction

“Child safety and team development is a passion of ours. We have never allowed any children on our sites, and have worked with our sub-contractors to ensure they also follow our standards.

[..]

“Every child deserves to have a childhood, to be able to grow and develop through play and education in a safe way. Construction sites are no place for children and never will be.”

CEO of construction company operating in Cambodia (via Phnom Penh Post, 2016)

Regulatory pressure

- **Government regulation**
 - UK Modern Slavery Act (2015)
 - California Transparency in Supply Chains Act (2010)
 - Uyghur Forced Labor Prevention Act (UFLPA) (2021)
- Human rights is an element of every major global standard
 - IFC PSs, GRI Sustainability Reporting Standards, UN Global Compact, ISO 26000, OECD Guidelines, ILO Declarations
- **Kenya constitution**
 - Health Act, the Water Act, the Basic Education Act, the Persons Deprived of Liberty Act and the Right to Information Act.

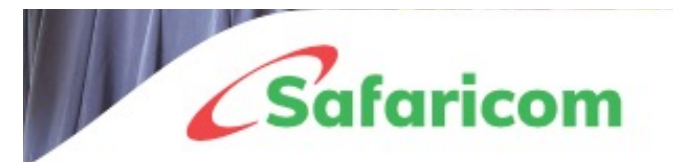
Risk management

PROMOTING AND PROTECTING CHILDREN'S RIGHTS



In the year under review, we conducted our first Children's Rights assessment using the UNICEF Mobile Operators' Child Rights Self-Assessment Tool (MO-CRIA). The tool provides guidance for mobile operators on assessing their policies and processes as they relate to children's rights.

MO-CRIA assesses the measures our business has deployed to safeguard against infringing the rights of the child under three risk assessment categories derived from the UNICEF and Save The Children framework:



Enhanced performance

“The company projections indicate a significant improvement in productivity (up to 20 percent approximately), and will train cutters so that they may become more efficient. The company expects to see improved understanding and enforcement of responsible labour and human rights at the cutting front encouraged by the code of conduct and corporate policies.”

Labour Conditions and Human Rights in Dominican Sugar Production

Stakeholder expectations

- Futaleufú, Puelo, Chillan, Bardón and Huechún are five rivers in Chile.
- These rivers are the proposed locations of hydroelectric development projects.
- A coalition of NGOs and community groups have been lobbying for more than 20 years due to the potential environmental and social impacts of the projects.
- In 2016, Chilean energy company Endesa gave up its claims to all five rivers.

“Endesa Chile wants to only move forward on projects that are technically and economically viable and that are embraced by the local communities.”

*[Valter Moro, Chief Executive, Endesa](#)
(via [Business & Human Rights Resource Centre, 2016](#))*



Photo by [Gayatri Malhotra](#)
on [Unsplash](#)

Introduction to Good Labor Practises (GLP)

- Purpose and concept of GLP
- Kenya labour relations practice landscape
- Key labour issues in the industry
- Labour issues in the off-grid solar industry

Stakeholder doughnut

Are employees important?



Purpose and concept of GLP

- Respect for fundamental principles and rights – freedom of association and collective bargaining
- Signs of positive adjustment by workers and employers to the working environment and attitudes of mutual cooperation and help
- Establishment of effective measures to overcome conflict
- Open dialogue: existence of agreements, information and consultation between the enterprise and workers' representatives
- Economic development or negotiated measures aimed at improving economic performance
- Internal training policy generating an increase in workers' professional skills.

Good labour practice features

A good labour relations practice typically features a number of elements or characteristics:

- Co-operative
- Facilitative
- In accord with fundamental principles and rights at work
- Accessible
- Easy to use
- Transparent and free
- Development should be cost effective.

ILO Declaration on Fundamental Principles and Rights at Work – adopted in 1998 and amended in 2022



An expression of commitment by governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives. It affirms the obligations and commitments that are inherent in membership of the ILO, namely:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour;
- the elimination of discrimination in respect of employment and occupation; and
- a safe and healthy working environment.

Positive practices not good practices

- Positive practices acting in parallel with and even reinforcing the effect of a good practice, are not themselves good practices
- They lack certain basic elements, and most particularly the **accord element**—or conduciveness to it—that is a fundamental factor in labour relations.
- CSR (codes of conduct and ethic, monitoring systems or social standards) - unilateral, private actions adopted independently of any prior agreement.
- Do not require **adhesion** by one of the parties involved in a labour relationship, namely: the **workers**.

Group Exercise

- What are the main characteristics of labour relations practices?
- What is the difference between positive practices and good labour relations practices?
- Kindly give example of positive practices?
- Can an employee be dismissed for flouting positive practices?



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Kenya labour practice landscape

Constitution of Kenya

- Articles 25 (b) & 30 – prohibits slavery and servitude
- Article 27 – prohibits discrimination
- Article 36 – guarantees the freedom of association including the right to join and form trade unions and employer associations
- Article 37 – protects the right to industrial action
- Article 41 – guarantees the right to fair labour practices
- Article 43 (1) (e) – provides for social security
- Article 47 – provides the right to fair administrative action.
- Article 162 (2) (a) – creates Employment and Labour Relations Court

Kenya labour relations practice landscape

Legal frameworks

- Employment Act, 2007 – S5 non-discrimination, S6 Prohibition of Sexual Harassment, S10 Mandatory details in every contract, S26 Basic Minimum Conditions of Employment, S27 Hours of work, S28 Annual leave, S29 Maternity leave, S30 Maternity leave, S35 Termination notice, etc.
- The Labour Relations Act, 2007 – Part 2 Freedom of association, Part 3 Establishment of the registration of trade unions and employers' organizations, Part 7 Recognition of trade unions and collective agreements, Part 8- Dispute Resolution, etc.

Kenya labour relations practice landscape

Legal Frameworks

- Labour Institutions Act, 2007 – National Labour Board, Wages Council, etc.
- Occupational Safety and Health Act (OSHA), 2007 – workers welfare
- Work Injury and Benefits Act (WIBA), 2007 – employee insurance
- The Employment and Labour Relations Court Act, 2011

Kenya labour relations practice landscape

Ratified ILO Conventions

Kenya has ratified seven of the eight core (15) ILO conventions, including:

- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Forced Labour Convention, 1930 (No 29);
- Abolition of Forced Labour Convention, 1957 (Mo 105);
- Minimum Age Convention, 1973 (No 138);
- Worst Forms of Child Labour Convention, 1999 (No 182); and
- Equal Remuneration Convention, 1951 (No 100); and
- Discrimination (Employment and Occupation) Convention, 1958 (No 111).

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Key labour issues in Kenya

97% Growth in partner trade union members from year 2014 to 2018 (%)
(COTU)

Ranking 4/5 (5+ is the worst) Violations of trade union rights

30% Partner organisations with minimum 30% women representation in decision-making bodies

21% (NHIF) Workers from the informal economy have access to national social security schemes

5% Workers' coverage of Collective Bargaining Agreements to employees

Key labour issues in Kenya

Ranking 91/141 (1 is best) Cooperation in labour-employer relations

15% Trade union density of total employment (%)

30% Working poverty rate (percentage of employed living below US\$1.90 PPP)

26% Proportion and number of children aged 5-17 years engaged in child labour

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Labour issues in solar off-grid industry (Global)

- [Solar skilled labour shortage](#) inhibiting growth
- [Forced labour](#) – Xianjing (Uyghurs semi-autonomous region) – Uyghur Forced Labor Prevention Act (UFLPA)
- [Women's participation in the energy sector](#) < broader economy. Despite making up 48% of the global labour force, women only account for 32% in renewables.
- OSH issues in e-waste management

Core Labor Standards

- Child Labor
- Discrimination
- Forced Labor; and
- Freedom of Association and Collective Bargaining

Child Labor



Photo By: Gary Chapman on [ffgm.org](https://www.ffmpeg.org/)



Photo by [Gyan Shahane](#) on [Unsplash](#)

Child Labor

Definition

- ‘Child labor’ refers to an abuse, which is not to be confused with ‘children working’ or with ‘young persons working’, which may not be abuses as stipulated in ILO Convention 138.
- The minimum age for working differs by country. ILO Convention 138 specifies a minimum age of 15 years or the age of completion of compulsory schooling (whichever is higher).
- Exception for certain countries where economies and educational facilities are insufficiently developed and a minimum age of 14 years might apply.
- **Kenya** – Articles 25 (b) & 30 of the constitution – **child labour <18 years**

Core Labor Standards

- Child Labor
- **Discrimination**
- Forced Labor; and
- Freedom of Association and Collective Bargaining

Discrimination

Definition

- Act and result of treating persons unequally by imposing unequal burdens or denying benefits instead of treating each person fairly on the basis of individual merit
- Discrimination can also include harassment, defined as a course of comments or actions that are unwelcome, or should reasonably be known to be unwelcome, to the person towards whom they are addressed.
- Articles 27 & 41, Employment Act, 2007

Core Labor Standards

- Child Labor
- Discrimination
- **Forced Labor; and**
- Freedom of Association and Collective Bargaining

Forced Labour

Definition, examples & indicators

- all work and service that is exacted from any person under the menace of any penalty and for which the said person has not offered herself or himself voluntarily.

International Labour Organization (ILO) Convention 29

- Most extreme examples of forced or compulsory labor are slave labor and bonded labor, but debts can also be used as a means of maintaining workers in a state of forced labor.
- Indicators of forced labor include **withholding identity papers, requiring compulsory deposits, and compelling workers, under threat of firing, to work extra hours to which they have not previously agreed.** (In accord)
- Kenya – Articles 25 (b) & 30 – prohibits slavery

Core Labor Standards

- Child Labor
- Discrimination
- Forced Labor; and
- Freedom of Association and Collective Bargaining

Freedom of Association and Collective Bargaining

Definition, examples & indicators

- **Freedom of association** – right of employers and workers to form, to join and to run their own organizations without prior authorization or interference by the state or any other entity.
- **Collective bargaining** – all negotiations which take place between one or more employers or employers' organizations, on the one hand, and one or more workers' organizations (trade unions), on the other, for determining working conditions and terms of employment or for regulating relations between employers and workers.
- Kenya – Article 36– guarantees the freedom of association including the right to join and form trade unions and employer associations

The benefits of embedding GLPs

What results are companies seeing?

- Financial rewards through expanded markets
- Higher employee productivity
- Reduced costs of compliance
- Lower staff turnover

Common challenges to embedding GLPs

Group Exercise

What are the common challenges in embedding GLPs in organizations?

Occupational Safety & Health

- Occupational safety and health policy
- Safe and healthy working environment
- Training in occupational safety and health
- Report on occupational accidents, diseases, and incidents
- Monitor workplace noise and air quality



Courtesy of Azuri Solar

Conclusions and wrap-up

- Take a few moments to reflect on the following:



- Were your expectations met?



- What three things will you take back to your business?

Thank you!
Any questions?



■ **AMBUYA JOHN**
ESMS Specialist



Efficient Appliances for People & the Planet

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