

# Towards Human Rights Due Diligence: A Review of the Legal Framework and Compliance Mechanisms for Corporate Human Rights Responsibilities in the Maldives

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## Abstract

The Constitution of the Maldives devotes a separate chapter setting out the fundamental human rights and freedoms. The Maldives is also a signatory to six of the eight core international human rights treaties that recognises fundamental human rights and outlines the responsibility of the state to respect, protect and fulfill those rights. The Constitution also mandates the state to take measures to prevent human rights violations perpetrated by non-state actors. Despite these safeguards, human rights abuses committed by business corporations remains a common occurrence in the country, and the institutional structures to address such abuses continue to be weak. The purpose of this research is to analyse the current legal framework of the Maldives to identify human rights obligations, such as the human rights due diligence (HRDD) mechanisms placed on business corporations. Using a doctrinal approach, we reviewed legal texts including applicable legislations and judicial decisions, and critically analysed them by comparing to international human rights standards. The analysis concludes that the current legal framework of the Maldives addressing human rights dimensions of corporate action comply with the global minimum standards, albeit with some significant gaps. Some of these laws contain provisions for HRDD mechanisms that need further strengthening through additional legal reforms and strong policy directions. This paper brings to light several weaknesses of the current legal framework in terms of having an HRDD mechanism to address, prevent, and remedy human rights violations caused by business conduct. Based on the findings of the legal framework analysis, this paper recommends that a state-initiated business and human rights national framework, such as a National Action Plan for Business and Human Rights (NAP-BHR), would strengthen the existing protection mechanisms for human rights and help address corporate abuses of human rights in the Maldives.

**Keywords:** human rights due diligence, human rights, business corporations

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## Introduction and background

The United Nations Global Compact was launched in 1999 by the United Nations' Secretary General Kofi Annan, and he emphasised the role, business corporations can play in upholding human rights, decent labour practices, and environmental standards (United Nations, 1999). The Global Compact remains as the world's largest corporate sustainability initiative, with over 12,000 businesses participating (United Nations Global Compact, 2021). Since then, there has been several developments in the area of corporate responsibility to respect human rights – with the United Nations Guiding Principles on Business and Human Rights (UNGPs) as the most comprehensive global standard in this regard (Office of the High Commissioner for Human Rights, 2011). Despite the normative power of the Global Compact and the UNGPs, their voluntary nature is a major limiting factor in reining in the actions of business corporations. Given the nature of international human rights law and regime, regardless of its size, financial resources, or political influence, no business corporation is legally bound to comply with the state's human rights obligations unless the legal and regulatory framework of the state mandates it upon them. Hence, the state has the primary responsibility to put into place domestic measures and legislation to respect, to protect and to fulfil human rights to ensure that the people, communities, and environment are afforded the rights envisioned by the international human rights instruments.

The Constitution of the Maldives provides that the treaties entered with foreign states and international organisations shall be approved by the parliament and come into force only after the approval of the parliament (Constitution of the Republic of Maldives, 2008). Under the Constitution, the judiciary can also play a critical role in defending the recognised fundamental rights by international treaties. Human rights protection is evident in several domestic laws. For example, the Employment Act of the Maldives (Employment Act No. 2/2008, 2008) prohibits discrimination based on race, colour, social standing, religion, political beliefs or affiliation with any political party, sex, marital status, family obligations, and age or disability.

Notwithstanding the constitutional guarantees and legal protections of fundamental rights and freedoms, there are significant gaps in their effective protection and realisation. This is particularly the case for various forms of labour exploitation and discrimination often linked with business corporations. The situation of migrant workers in the country often reflects multiple facets of such exploitation and abuse perpetrated by businesses, without adequate recourse to justice and restitution. The range of abuse by employers include

non-payment of wages (Mohamed, 2020), passport confiscation, unsafe and unhygienic living conditions, and excessive work demands (Bentz & Carsignol, 2021). U.S Department of State reports that recruitment agents in source countries collude with employers and agents in the Maldives to facilitate fraudulent recruitment and forced labour of migrant workers (U.S. Department of State, 2021). Such harsh treatment of foreign workers by business corporations of the Maldives violates both domestic and international standards.

Maldives has not ratified the 1990 International Convention of the Rights of All Migrant Workers and there is no safeguard for migrant workers. However, the country has adopted the Prevention of Human Trafficking Act, which entered effect on 8 December 2013. Despite the progress in social, economic, and human development aspects, there are inadequate policies in place in the Maldives to proactively provide equal opportunities for women's employment despite provisions in the constitution and the law. Additionally, Gender Equality Act (Law Number 18/2016) prohibits discrimination based on gender. However, according to women's rights activists, there are no policies in place to provide equal opportunities for women's employment despite provisions in the constitution and the law (U.S Department of State, 2020).

### **Aims, Objectives and the Research Question**

The purpose of this research is to analyse the existing laws and mechanisms in the Maldives from the perspective of corporate human rights responsibilities and to establish whether the country's business structures can incorporate international normative standards for human rights due diligence (HRDD). To identify the HRDD mechanisms, we used the international normative standards such as the UNGPs and derivative soft law approaches as best practice models. The research, thus, specifically aims to identify the human rights provisions in the domestic legislation which are relevant to business corporations considering the Maldives Constitution and other international normative standards.

This research provides an insight into the existing legal frameworks and mechanism in the Maldives related to corporate human rights responsibilities, by addressing the following question.

*What human rights obligations are placed on business corporations within the legal framework of the Maldives and other normative standards and mechanisms?*

## Significance of the research

The Constitution mandates the state with a duty to promote, respect, protect, and fulfil human rights described in Chapter 2 (fundamental rights and freedoms of the people). As this is a business and human rights (BHR) research, it does not delve deeper into the state's general human rights obligations under international law or customary international law. It specifically addresses the state's Obligation to Protect, in the context of BHR in the form of establishing legal and policy environments where corporate business activities do not infringe upon the human rights of the people. Hence, the research focuses on the application of normative standards in the context of domestic law and regulatory environment that is expected to offer further clarity as to the direction of domestic norm setting, such as the development of National Action Plans (NAPs) on business and human rights. The findings of this study give an insight into corporate human rights responsibilities in the Maldivian context.

## Methodology

As the purpose of this research is to examine the laws, regulations, and mechanisms containing human rights responsibilities applicable to business corporations in the Maldives, we have adopted a doctrinal methodology to review, analyse and critique the existing laws, regulations, and policies in the Maldives, based on the contemporary BHR narratives and internationally established normative standards. This research is designed to provide an in-depth understanding of the connection between business and human rights in the Maldives.

We used a range of legal sources, constitutions, statutes, treaties, and secondary sources such as books, journal articles, and reports relevant to the subject, in the data collection and analysis process, while considering the duality of the Maldivian legal system- Islamic law (Shari'ah principles) and common law.

## Literature Review

The Maldives adopted a new Constitution in 2008, which included comprehensive rights in the form of a separate chapter on the "fundamental rights and freedoms" (Constitution of the Republic of Maldives, 2008). The state is accountable for ensuring that all necessary safeguards are in place to prevent human rights violations. The Constitution also established various independent monitoring and executive entities, including a national Human

Rights Commission. The Human Rights Commission Act which came into force in 2006 mandates the Commission to advise the government and make proposals on acceding to and ratifying regional and international treaties and conventions relating to human rights (Human Rights Commission Act (6/2006), 2006).

The Constitution recognises that everyone has the right to a fair wage, fair conditions of work, and equal remuneration for work of equal value. Since joining the International Labour Organization (ILO) in 2009, the Maldives has ratified all its core conventions. These include Freedom of Association and Protection of the Right to Organise Convention, Right to Organise and Collective Bargaining Convention, Forced Labour Convention, Abolition of Forced Labour Convention, Minimum Age Convention, Worst Forms of Child Labour Convention, Equal Remuneration Convention and Discrimination (Employment and Occupation) Convention. Maldives has also signed Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

National legislations exist to protect businesses and customers. The Business Registration Act requires registration before conducting business activities in the Maldives. A new Companies Bill has been proposed by the government, to reform the current Companies Act. The bill aims to address existing business challenges, such as allowing single shareholders to own companies and defining terms and conditions of employment for directors. The current Companies Act lacks key provisions such as requirements of disclosure, due diligence, and other good governance related aspects.

There are domestic legal provisions related to business corporations which have relevant safeguards to prevent business related human rights abuses, such as the Employment Act, Gender Equality Act, The Disability Act, Anti-Human Trafficking Act, and Prevention of Sexual Abuse and Harassment Act. However, Maldives has not ratified the international convention on the rights of all migrant workers and their families, nor ratified the international convention on enforced disappearance.

Maldives is heavily dependent on unskilled migrant labour. The number of undocumented workers in the Maldives is estimated to be over 63,000, and most are of South Asian origin (Mission for Migrant Workers Maldives, 2022). Migrant workers pay \$2,500 to \$4,000 in recruitment fees to work in the country, contributing to their risk of debt-based coercion upon arrival (U.S. Department of State, 2022).

The Maldives has a UNDP Gender Inequality Index of 0.348, which sees it

ranked 90 out of 162 countries (United Nations Development Programme, 2022). In 2020, the World Economic Forum's Global Gender Gap Report ranked the Maldives 123rd out of 153 countries (World Economic Forum, 2022).

## Development of the International Norms and Standards

In 2008, the UN Secretary-General's Representative, John Ruggie, developed and submitted a conceptual and policy framework to the Human Rights Council. This framework is founded on three pillars: the state's duty to protect; corporate responsibility to respect; and access to remedy. The UNGP's Article 17 highlights three areas in which businesses can have an impact on human rights through their activities (Newton, 2019):

1. a business causes, or may cause, an adverse human rights impact through its own activities.
2. a business contributes to, or may contribute to, an adverse human rights impact through its own activities; and
3. a business has not contributed to an adverse human rights impact, but that impact is linked to its operations, products, or services because of a business relationship with another business.

According to the Principle 22 of UNGP, 'where a business enterprise identifies that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes' (Office of the High Commissioner for Human Rights, 2011).

The way a business fulfils its obligation to protect human rights will be proportional to its size, among other factors. Certain small and medium-sized businesses may have significant human rights implications, requiring appropriate safeguards. Nonetheless, under the UNGPs, all businesses have a full and equal responsibility to respect the rights of people (Office of the High Commissioner for Human Rights, 2011).

## Human Rights Due Diligence

The concept of due diligence is shared by the majority of legal systems across the world, and it is incorporated into basic laws in several disciplines of international law, including international environmental law, human rights

law, humanitarian law, and investment law (Shavin, 2019). John Ruggie defined HRDD as ‘a comprehensive proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, with the aim of avoiding and mitigating those risks’ (Quijano & Lopez, 2021, 246).

It is worth noting that HRDD is distinct from ordinary corporate due diligence. Prior to entering a transaction, a business may conduct financial diligence on the other party to audit their financial standing. Legal due diligence examines obligations, potential legal disputes, and the extent to which a business complies with the law. In contrast to this, HRDD examines the risk posed by the business to individuals and community groups (Newton, 2019). Based on the foregoing, the question that arises is how far businesses should go with their HRDD efforts. Newton offers an approach in this regard, such as prioritising areas where the risk of human rights abuses is higher, considering both the direct and indirect implications of business relationships on human rights violations (Newton, 2019).

HRDD is a continuous process that occurs prior to, during, and after business projects, transactions, contracts, and a variety of other business operations. It encompasses three major areas of activity: identifying actual or possible consequences, taking efforts to prevent, minimize, or remediate adverse impacts, and accounting for activities performed through reporting and other forms of disclosure (Deva & Birchall, 2020). The level of human rights commitments particularly HRDD mechanisms could be identified by (1) the level of responsibility for policy implementation; (2) Procedures for completing due diligence; and (3) Protections for whistle-blowers and that the company’s grievance or complaint procedures are well-known and easily available to stakeholders (Deva & Birchall, 2020).

Over the previous decade, the UNGPs and HRDD have been incorporated into a substantial number of declarations, policies, and initiatives by both states and businesses. (Quijano & Lopez, 2021) One such example is Facebook, Inc., where they commissioned Business for Social Responsibility (BSR) to undertake human rights review of its Oversight Board (BSR, 2019). According to the report “human rights assessment was based on the UNGPs with deeper consideration of the various human rights principles, standards, and methodologies upon which UNGPs were built” (BSR, 2019, 3).

The UNGPs’ due diligence is aimed at identifying and preventing risks to rightsholders, not only to the business. HRDD examines the risk posed by

a business to individuals and community groups. Both states and businesses have incorporated HRDD into declarations, policies, and initiatives. HRDD has become a foundation of corporate respect for human rights, but it is important to measure the success in terms of results and not procedural compliance. Connecting the procedure to domestic law and imposing extraterritorial fines and penalties for noncompliance, as French law does, is the wisest course of action (Gibson et al., 2019).

## **Analysis and Discussions**

While there were mandatory human rights requirements placed on businesses along with other non-state actors, the primary responsibility for respecting and promoting human rights still lies with the state. The Maldives has a National Human Rights Framework that states one of the objectives of promoting the culture of human rights is addressing human rights in relation to business and human rights (Attorney General's Office, 2016). The National Human Rights Framework was developed with the vision of developing an action plan in the year 2016. However, the State has not yet initiated any measures to address human rights and business under the National Framework.

The Maldives is a signatory to several core international human rights instruments, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). However, this does not mean that non-state actors, such as citizens and corporations have any direct responsibility for adhering to them, unless laws are enacted and implemented at state and local level.

There are different types of businesses that are prescribed by business incorporation laws, which will be discussed in detail below.

### ***Employment Act (Law Number 2/2008)***

The Maldives has ratified all core conventions of the International Labour Organization (ILO) relating to human rights at work. These include freedom of association and effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in employment and occupancy. The onus is on the employer to demonstrate that they acted properly and in accordance with the Act in the claims of unfair dismissal and discrimination.



### ***Anti-Human Trafficking Act (Law Number 12/2013)***

Migrant workers lack international protection regarding the human rights issues they face due to the acts of businesses or employers. The Maldives is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Their Families.

Despite providing minimal protection to migrant workers, Anti-Human Trafficking Act (AHTA) is inconsistent with the definition of international law since it requires the transportation of a victim in order to constitute a trafficking offence and whilst child sex trafficking was made a crime, the law did not make clear if forced prostitution of adults was considered a form of trafficking (U.S. Department of State, 2022). The hopeful prospect is the enactment of the AHTA and its effective implementation.

### ***Gender Equality Act (Law Number 18/2016)***

The Maldives Gender Equality Act is aimed at ensuring gender equality and eradicating gender-based discrimination in the country. In contrast to other laws applicable to business corporations, the Gender Equality Act made it mandatory in interpreting the law to uphold the principles of the CEDAW, the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, and the conventions and treaties to which the Maldives is a party, as well as to promote the values that underpin an open and democratic society. However, the Act stated that reservations by the Maldives to the conventions and treaties the State is a party to must be considered in the interpretation.

The Act requires public and private sector employers to provide equal opportunity, equal wages, equal value and weights of work, equal compensation, benefits, and allowances, and a job shall not be offered or advertised to restrict a gender, except in circumstances where strictly required, and requires employers to take all possible measures to eliminate barriers to women's employment and create a conducive work environment. The Act also mandates the establishment of complaint mechanisms for employees to report issues. This can be viewed as a constructive component of the law because it requires business corporations, or in this context, an employer, to remedy situations in which a right is violated.

### ***Protection of the Rights of Persons with Disabilities and Provision of Financial Assistance (Law Number 8/2010)***

The Disability Act mandates businesses providing transport services to accommodate simple access for persons with disabilities (PWDs) with no additional payment for establishing such mechanisms. Article 18 discusses the accessibility alternatives that must be provided to PWDs, including access to public places, residential areas, schools, hospitals, and to employment. This was further emphasised by the necessity to educate employees and to offer an accessible and conducive work environment.

### ***Prevention of Sexual Abuse and Harassment Act (Law Number 16/2014)***

The Prevention of Sexual Abuse and Harassment Act provides measures for the prevention of sexual harassment and sexual abuse in the workplace. Employers are required to put in place anti-sexual harassment policies and to offer a system for review and redress of complaints. This Act also made it mandatory for employers to implement mechanisms to address complaints relating to sexual abuse and harassment. This shows that the Act had required the businesses to implement HRDD mechanisms to strengthen their human rights commitments.

## **Court Decisions**

The case reports of both the lower and appellate courts provide useful insights into how the courts apply the international human rights instruments in determining cases relating to fundamental rights and freedoms of the people. This section provides a discussion of the key points highlighted in the literature on the court decisions relevant to the businesses and instances where courts considered the application of the international instruments relevant.

**Tax Appeal Tribunal.** The Tax Appeal Tribunal referred to Articles 7, 8, and 10 of the Universal Declaration of Human Rights (UDHR), and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), in deciding the case against the Maldives Inland Revenue Authority (MIRA). The Tribunal decided to proceed with the case despite the procedural issue raised by the respondent stating that the plaintiff could not contest the matter (*Bunny Holdings (BVI) Limited v Maldives Inland Revenue Authority*, 2013).

**High Court.** In the case of Abdulla Jamiu, the High Court applied Article 23 (1) of the UDHR in determining whether the Civil Court gave a narrow interpretation of Article 37 of the Constitution (*Abdulla Jamiu v Attorney General's Office*, 2019).

In *Global Air Services (Maldives) Private Limited (Global Air Services (Maldives) Pvt Ltd, 2016)*, a case involving non-renewal of an employment contract based on an employee's health status, the High Court applied the principles of the ILO Code of Practice on HIV/AIDS and the World of Work (2001) and the Recommendation on HIV and AIDS and the World of Work (2010). The employer in this case raised the argument that Article 4 of the Employment does not include discrimination based on illness. High Court rejected this argument and applied the ILO principles to interpret Article 4 (non-discrimination) of the Employment Act.

**Supreme Court.** In deciding unfair dismissal case (*Sariya Hasan v Island Beverages Maldives Pvt Ltd., 2013*), the Supreme Court referred to Article 68 of the Constitution and applied Article 14 of the ICCPR that provides that everyone has the equal right to a fair hearing before a competent, independent, and impartial tribunal established by law.

The Supreme Court decided a case based on the interpretation and application of the UDHR and the core conventions ratified by the Maldives, by the High Court (*Naif Abdul Rahman & 22 Others V Maldivian Air Taxi Pvt Ltd., 2021*). In this case, Supreme Court found that discrimination might be proven in this case if the employer discriminated based on race, which the appellants failed to establish.

## International Norms and Standards

The UNGPs provide a framework for addressing human rights issues posed by businesses, resulting in its inclusion in international regulatory instruments addressing corporate human rights abuses. The literature on this subject demonstrates that the UNGP is discussed in every business and human rights debate, making it well-known for addressing those issues.

## UNGPs and OECD Guidelines

UN Global Compacts (UNGPs) are intended to establish a mix of voluntary, mandatory, national, and international measures that would gradually enhance business and human rights. Article 17-21 of the UNGPs describes how business corporations can exercise due diligence with respect to human rights issues. One reason is that businesses can find, stop, and lessen bad effects on human rights by putting in place “policies and processes” like human rights due diligence processes.

## Towards HRDD

HRDD is a comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity. Due diligence aims to identify and prevent risk to rightsholders and should be a continuous process that considers the perspective of potentially impacted people. It was discovered that in some states, particularly in Europe, there is a strong trend towards HRDD. In addition to the HRDD, there are voluntary commitments that businesses make in the form of governance codes. The codes include provisions for broader reporting and disclosures concerning the environment, social issues, human and labour rights, and economic factors. Both the corporate governance Code for state owned enterprises (SOEs) and the Capital Market Development Authority's Corporate Governance Code contain human-rights-related disclosures meant for voluntary adoption by the companies.

Table 1: Legislative HRDD Mechanisms in the Maldives

Legislation	Article	HRDD Mechanism
Gender Equality Act (18/2016)	20	Establish a mechanism for complaints
	29 (a)	Any person who suffers damages due to an employer's non-compliance with one of the following or becomes a victim of any type of discrimination may file charges against the employer.
	30	Penalty for employers who fail to establish complaint mechanisms
Prevention of Sexual Abuse and Harassment Act (16/2014)	13	Publicly displaying the policy on sexual harassment and make available the forms, submission of complaints, procedures to be followed and measures that will be taken against such acts.
	17-24	Establishing a committee on prevention of sexual abuse and harassment and its functions.  Rights of the complainant and the respondent.
	25	Penalties for not establishing the committee

Protecting the Rights of Persons with Disabilities and Providing Finance Assistance Act (8/2010)	18	Accessibility options for Persons with Disabilities.  Ministry to make accessibility standards and regulations for service providers and public buildings and ensure that it is complied with by all concerned.
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This chapter has shown how businesses in the Maldives might incorporate best practises for human rights within their corporate structures. Findings of the literature on HRDD were presented, along with how the current legislative framework of the country incorporates HRDD processes into the laws. The outcomes of cases where the courts considered international human rights instruments in the application and interpretation of fundamental rights and freedoms were also discussed.

### Conclusions and Recommendations

Business corporations or companies do not have binding obligations for human rights responsibility unless it is made compulsory and enforceable by the state through domestic legislation. There is no legal enforceability mechanism for businesses to be held accountable even when their actions violate fundamental human rights in the absence of legislation requiring them to do so. This paper reviewed the legal framework of the Maldives and international normative standards to identify the human rights obligations placed on business corporations. Some measures to be taken to strengthen the current legislation have also been identified in the analysis.

The Maldives is a signatory to key human rights instruments and is required to enact laws requiring businesses to comply with human rights obligations. Yet, there are only three Acts of Parliament that specifically mandate HRDD mechanisms for business corporations in the Maldives. The Prevention of Sexual Abuse and Harassment Act made it mandatory to create systems to resolve sexual abuse and harassment allegations. Similarly, the Disability Act mandates businesses to provide access for people with disabilities, as well as educate other employees and provide an accessible work environment for them. Therefore, to some extent HRDD mechanism is included in the legal structure applicable for businesses. On the other hand, it is critical that the only law providing minimal protection to migrant workers (the Prevention of Human Trafficking Act) is inconsistent with international law’s definition as to what constitutes trafficking.

According to Article 68 of the Constitution, when applying and interpreting the fundamental rights and freedoms enshrined in Chapter 2 of the Constitution, the courts can consider international human rights instruments. Human rights norms and standards have been used as benchmark models that businesses can use to implement human rights-compliant practices and for states to alter the current laws that apply to corporations.

After examining the current legal framework that applies to business corporations, it is difficult to avoid the conclusion that corporate human rights issues in the Maldives are far from being thoroughly studied and implemented. This was realised from the lack of literature on business and human rights related to the Maldivian context. A more detailed case study of the businesses would give more insight into how HRDD applies to business corporations in the Maldives.

It is recommended that the legislative framework is more rigorously aligned with the international human rights norms, with specific provisions for corporate conduct, where applicable. In doing so, the size, ramifications, and nature of business activities can be taken into consideration since a one-size-fits-all strategy may not be practical and the perception of the businesses might be of relevance. It is also vital that all the legislations applicable to business corporations have an HRDD mechanism for minimising corporate human rights abuses and ensuring that remedies are available for affected parties in the event of a violation. The vulnerable sections of the society, including migrant workers, must be accorded more explicit and comprehensive protection against corporate abuses. Finally, the state can, through the governing bodies for state owned enterprises, recommend implementing HRDD policies as a starting point for corporate human rights responsibilities.

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