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Key Business and Human Rights Issues for 2021

Business and human rights will continue to receive significant attention and development in 2021. Take a look at what is on the horizon . . .

COVID-19: Vaccines are being administered in some countries but COVID-19 will continue to feature on the business and human rights agenda of 2021. Businesses will need to continue their due diligence into the human rights of all those impacted by their activities, including workers throughout their supply chains. They will also need to monitor premises; redesign the workplace; protect workers who cannot work remotely; engage with unions on key issues such as sick leave, furloughs, and downsizing.

The question on everyone's minds: when will I get vaccinated? The Office of the High Commissioner for Human Rights ("OHCHR") has [promulgated](#) that access to medicines is intrinsically linked with the principles of equality and non-discrimination, transparency, participation, and accountability. The UN Economic and Social Council's [position](#) is that COVID-19 vaccines are a "global public good." Expect much debate about distribution and pricing of vaccines globally.

Surveillance and Tracking: Human rights law permits countries to impose restrictions during public emergencies, such as COVID-19. Businesses increasingly are tracking their employees' whereabouts and their activities as their employees work from home. However, protecting health may run up against the rights to privacy, political participation, and freedom of expression.

In September 2020, the U.S. State Department [published](#) guidance on implementing the UN Guiding Principles on Business and Human Rights in connection with transactions linked to foreign government end-users



involving products and services with surveillance capabilities. The guidance focuses on human rights due diligence and risk mitigation for a wide range of products and services, including sensors, biometric identification, data analytics, internet surveillance tools, non-cooperative location tracking, and recording devices. The OECD issued the [OECD AI Principles](#) in 2019 to guide the use of Artificial Intelligence that is innovative and trustworthy and also respects human rights and democratic values. The use of AI in the fight against COVID-19 has heightened the need to focus on [privacy rights](#).

Companies will need to ensure that their products are necessary, proportionate, applied in a non-discriminatory manner, and legal. Governments likewise will need to justify their tracking systems, including safekeeping of the data gathered.

Fake News: Increasingly, governments are seeking to prohibit the public dissemination of false information (“fake news”). Technology has made telling “untruths” easier, and those untruths spread like wildfire online. In 2019, Singapore enacted [The Protection from Online Falsehoods and Manipulation Act](#), which requires online platforms (including social networking, search engines, and news aggregation services) to issue corrections or remove content that the government deems false. Meanwhile, Brazil has been working in 2020 on a “[fake news](#)” bill aimed at tackling misinformation, but which may also stifle freedom of speech. The UN Special Rapporteur has issued [recommendations](#) that countries should repeal laws that criminalize or unduly restrict expression (both online or offline), but also that companies must re-evaluate their content standards to accord with human rights law, and act transparently and open themselves up to public accountability. Expect more legislation on this subject in 2021.

Climate Change: More litigation related to climate change will be initiated in courts all over the world in 2021. In its first ruling on a complaint by an individual seeking asylum from the effects of climate change, the UN Human Rights Committee [held](#) that countries may not deport individuals who face climate change-induced conditions that violate the right to life. The Human Rights Committee’s decision came on the heels of the Dutch Supreme Court’s judgment in [Urgenda](#) that the Dutch state must reduce GHG-emissions by 25% compared with 1990 at the end of 2020. Expect to see more climate change litigation in 2021, especially linking climate change with full enjoyment of human rights.

More Human Rights Due Diligence on the Horizon: Human rights due diligence will become mandatory for more and more companies. The EU Commissioner for Justice, Didier Reynders, [officially committed](#) to an EU initiative on sustainable corporate governance in April 2020. The European Commission [launched](#) a public consultation phase in October 2020, which is open until February 8, 2021. The European Parliament Committee on Legal Affairs published a [draft report](#) and directive containing recommendations to the European Commission on corporate due diligence and corporate accountability. The draft Directive applies to all business enterprises incorporated, domiciled, or established in the EU, as well as non-EU enterprises doing business in the EU. The draft Directive requires EU Member States to introduce rules to compel companies to “carry out due diligence with respect to human rights, environmental and governance risks in their operations and business relationships.”

The EU initiative reflects a growing trend by countries to require companies to undertake human rights due diligence. Governments have passed issue-specific legislation, such as the [US](#) and the [EU](#), which have enacted legislation focused on conflict minerals; the [UK](#) and [Australia](#) with regard to modern slavery and human trafficking; and [The Netherlands](#) regarding child labor. Going forward, expect to see more comprehensive human rights diligence, along the lines of what has been enacted in [France](#) and has been proposed in [Germany](#).



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