

## EXECUTIVE SUMMARY OF THE SOUTH AFRICA COUNTRY RISK ASSESSMENT

The CRA performed on South Africa has investigated each human right from the Universal Declaration of Human Rights at three levels. First, the rights were investigated for areas of conflict between the prevailing national laws and international human rights law. Second, the prevailing societal practices were analysed to identify any inherent human rights violations frequently perpetrated at the societal level. Third, each right was assigned an overall company risk rating, based on the ratings in the formal law and practice categories and the proximity to company operations. The results of the CRA produced the categorisation of seven human rights as high-risk areas, ten human rights as medium risk areas and three human rights as low-risk areas for companies operating in South Africa. The following presents the overall results of the CRA, including a short description of each right. The full CRA offers a detailed in-depth description of each right.

### COMPANY RISK

The following rights received a red rating in the Company Risk category in the CRA, which indicates that these human rights constitute high-risk areas for companies operating in South Africa. A short description of each right follows below.

- Right to Freedom from Discrimination (art. 2)
- Right to Own Property (art. 17)
- Right to Work and Just and Favourable Conditions of Work (art. 23, 24 and 25)
- Right to an Adequate Standard of Living (art. 22)
- Right to Health (art. 25)
- Right to Adequate Food (art.25)
- Right to Education (art. 26)

*Right to Freedom from Discrimination (art. 2)* constitutes a high-risk human rights area for South Africa. Women, Black people, Coloured people, migrant workers, indigenous peoples, people living with HIV/AIDs and homosexuals, constitute particularly vulnerable groups in South Africa and are highly susceptible to discriminatory treatment. In spite of some progress in racial, ethnic, and gender equality since apartheid, South Africa remains a society where the means of production, employment, property and the distribution of wealth remain concentrated in the hands of White men. Women are in practice discriminated against in employment, and experience a high rate of sexual and gender-based violence. Indigenous peoples are the poorest of poor, some are excluded from property restitution laws and some forms of governance, and are generally marginalized. Contract migrant workers are totally excluded from the reach of labour laws and some human rights protections, and migrants generally are subjected to many forms of xenophobia. People living with HIV/AIDs also experience discrimination.

*Right to Own Property (art. 17)* is a high-risk area for companies. All non-White groups experienced violations of their right to property during apartheid, and even before, and as a result many persons lack title to property, large sections of the country are subject to competing claims on the land. Indigenous peoples have claims on large areas of the country, which are not entirely accounted for in the current legislation. Customary law and cultural practices may also result in violations of women's right to own property. The South African government also has a policy of redistribution of land, with the as-yet unimplemented possibility of expropriation. Not least, large sections of the South Africa come under environmental protection laws. In such a complex situation, any kind of lease or purchase of land is high-risk. Extensive care must be taken to check the land for all possible claims by all parties, including indigenous peoples, and supplier's practices with respect to property must also be closely monitored.



*Right to Work and Just and Favourable Conditions of Work (art.23, 24 & 25)* is a high-risk human rights area for companies in South Africa. Although South Africa's labour laws are comprehensive and thorough, approximately a fifth of the work force lacks access to these labour rights because they are employed in the informal sector (UNISA 2006). Furthermore, contract migrant workers are excluded from these laws by virtue of Immigration law, bilateral treaty, and the policies of mining companies that do not respect the standard set forth in labour laws. The ability to obtain work is limited by a set of complex factors, but the existence of a mechanism for employing contract migrant workers under substandard labour conditions probably plays a role in the high unemployment levels and the terms and conditions of labour of some workers.

*Right to an Adequate Standard of Living (art. 22)* constitutes a high-risk human rights area for South Africa. Unemployment and poverty are extremely high in South Africa, and though there are minimum wages in some sectors, even those are not enforced. Enforcement of existing minimum wage standards is inadequate, and the informal sector and contract migrant workers are placed outside of the reach of human rights protections by bilateral treaty and immigration law. South Africa has a social security system but because the informal sector is so large, and protections in the formal sector are not well enforced, this system does not cover the whole population. The company risks violating the right to an adequate standard of living if it relies on national minimum wages without investigating the living costs and needs of its employees when setting wage policies. Indirect risks for supplier violations are clearly also a serious risk for companies operating in South Africa.

*Right to Health (art. 25)* constitutes a high human rights risk for companies. South Africa has a national system of public health care, which minimises the company's health care obligations for its employees. However, in the cases of contract migrant workers, and often with migrant workers, the company will be responsible for the provision of health care. The company must also establish and implement workplace policies regarding HIV/AIDS in order to avoid violations of the right to health. Furthermore, though occupational health and safety regulations are extensive, provisions are not enforced in all sectors, which is a particular problem in agriculture and the informal sector and a likely issue with suppliers. Environmental contamination by the company also poses a risk of non-compliance with the right to health.

*Right to Adequate Food (art. 25)* constitutes a high risk human rights area for companies in South Africa. With such a high percentage of the population living under poverty level, violations of minimum wage law, and failure to set a living wage, could lead to a violation of a workers' right to adequate food. Contract migration workers are entirely dependent on their employers for food provision, as are many other migrant workers. The company must further take care to ensure that its use of land does not deprive local people of water sources or land they normally use for subsistence agriculture.

*Right to Education (art. 26)* is a high human rights risk for companies in South Africa. South Africa struggles with a high level of the population that has not achieved the level of education they are entitled to, which is the 9<sup>th</sup> grade education. Furthermore, there are problems of quality of primary and secondary education, as well as access to education in the rural areas in particular. The incidence of child labour, as well as difficulties in access to education in rural areas, causes a high percentage of children who are unable to enjoy the fulfilment of their right to education. Furthermore, adult workers who have not achieved a 9<sup>th</sup> grade education or the equivalent are also entitled to participate in further education programmes so as to achieve that level.

## COMPANY RISK

The following rights received a yellow rating in the Company Risk category in the South Africa CRA which indicates that these human rights constitute medium-risk areas for companies operating in South Africa. A short description of each right follows below.

- Right to Life, Liberty and Security of Person (art. 3)
- Right to Freedom from Forced Labour and Servitude (art. 4)
- Right to Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment (art. 5)



- Right to Privacy (art. 12)
- Right to Family Life (art. 16)
- Right to Take Part in Government (art. 21)
- Right to Peaceful Assembly and Freedom of Association (art. 20 and 23)
- Right to Adequate Housing (art. 25)
- Right to Participate in Cultural Life (art. 26)
- Right to Intellectual Property (art. 26)

*Right to Life, Liberty and Security of Person (art. 3)* constitutes a medium-risk human rights area for South Africa. Violent crime, including violence against women and children, human trafficking, use of excessive force by the police, and violence and killings on farms are some of the problems South Africa is grappling with. Human trafficking constitutes the greatest risk to companies, as many of the persons trafficked work in both legal and illegal industries. The company could risk direct violations if it does not establish and implement strict employment policies, and would risk indirect violations if suppliers use the labour provided by trafficked persons.

*Right to Freedom from Forced Labour and Servitude (art. 4)* is a medium-risk human rights area for companies. The high numbers of children, including many who were trafficked from other countries, who work in prostitution and industry, make this problem one of grave concern. It was estimated that between 28,000 and 38,000 children were working in prostitution in 2004 (iafrica 2004). Furthermore, it is unknown how many adults are trafficked or come voluntarily into South Africa, and who work under similar coercive conditions. The company could risk direct violations if it does not establish and implement strict employment policies, and would risk indirect violations if suppliers use the labour provided by trafficked or coerced persons.

*Right to Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment (art. 5)* constitutes a medium-risk human rights area for companies. Though most violations are carried out in the government realm or within families, the level of workplace sexual harassment of women is increasing at South African workplaces. The probability that this issue will arise in a company's operations is high. It is the responsibility of the company to establish measures to protect all employees against sexual harassment.

*Right to Privacy (art. 12)* constitutes a medium-risk human rights area for companies in South Africa. Companies should exercise caution when collecting data from employees and ensure that it does not unnecessarily collect sensitive data, particularly from groups that are often exposed to harassment and discrimination in South Africa. The company should be particularly careful to protect data related to HIV status of workers. Companies involved in information and communication technology must be cautious about direct violations related to interference with privacy.

*Right to Family Life (art. 16)* is categorised as a medium-risk human rights area for companies. South Africa's legislation offers sufficient protection on maternity leave and pregnant and breastfeeding women, but current violations of the right take place due to lack of enforcement and the large informal sector. The company also risks violating this right due to the high number of child-headed and women-headed families. Child and women head of households are very vulnerable in the workplace, and may require flexibility and accommodations by the employer. Since these groups also tend to be discriminated against in other areas, the company will have to ensure a tough non-discrimination policy to protect these workers. Indirect violations as a result of supplier violations also constitutes a risky area

*The Right to Take Part in Government (art. 21)* is a medium-risk human rights area for companies operating in South Africa because of the growing trend of bribery and corruption at both petty level and high level in government. Though substantial efforts have been made to strengthen the legal framework for preventing and combating corruption, and many corruption cases have been prosecuted at high and petty levels, the practice appears to be on the increase. The company must not bribe or use other coercive measures to unjustly influence government officials, local authorities or the political and judicial process itself, and must monitor its suppliers for practices of corruption.



*The Right to Peaceful Assembly and Freedom of Association (art. 20 & 23)* is a medium-risk human rights area for companies operating in South Africa. Although there are adequate legal protections for the rights generally, and the government generally respects these rights, it is classified as medium risk. Recent problems include firing of employees for going on strike, and incidence of workers being fired on with rubber bullets when striking. Due to the proximity of labour to company activities, and to the vulnerability of workers generally in South Africa, this is an area where the company must exercise a great deal of care. Since such a large percentage of the workforce is employed in the informal sector where they lack access to union representation, and children and migrant workers are also effectively excluded from the benefits of the labour movement, they lack the protection of trade unions. Furthermore, the ability of trade unions to maintain and improve working conditions for the unionized workforce is probably undermined by the availability of child labour, migrant labour, and the high unemployment in South Africa.

*Right to Adequate Housing (art. 25)* constitutes a medium human rights risk for companies. Housing shortages and inadequate housing facilities severely restrict the right to adequate housing in South Africa, which will affect the company when existing employees or new recruits search for suitable housing within reasonable proximity to the workplace. The company might consider building or purchasing dormitory units to house its employees, but must ensure that its operations do not impair housing options or enjoyment rights of surrounding communities, which are already overburdened by the lack of suitable housing.

*Right to Participate in Cultural Life (art.26)* is a medium risk human rights area in South Africa due to the diversity of the population and the vulnerability of the indigenous population, who are one of the most disadvantaged groups in South Africa. In the past, the indigenous peoples were prevented from living on their traditional lands and practicing their way of life. It is critical that companies enact workplace policies that enable all workers to enjoy a non-discriminatory and culturally sensitive workplace, and operate in such a manner as to respect the cultural life of the local people.

*Right to Intellectual Property (art.26)* constitutes a medium risk human rights area for companies in South Africa. South Africa has extensive protections of intellectual property, and intellectual property is often closely linked to company activities. Piracy of IT-related products is also a problem. Violations of the intellectual property rights of indigenous people have already taken place, and although negotiated settlements were arrived at, there is a clear risk that such situations could recur. Thus companies must observe both South African law and international law, since South Africa has not yet ratified conventions related to the rights of indigenous peoples.

## COMPANY RISK

The following rights received a green rating in the Company Risk category in the South Africa CRA which indicates that these human rights constitute low-risk risk areas for companies operating in South Africa. A short description of each right follows below.

- Right to Fair Trial and Recognition as a Person before the Law (art. 6,7,10 and 11)
- Right to Freedom of Movement (art. 13)
- Right to Freedom of Opinion, Expression, Thought, Conscience and Religion (art. 18 and 19)

*Right to Fair Trial and Recognition as a Person before the Law (art. 6,7,10 and 11)* constitutes a low-risk area. South Africa has good legal protections for this right. While violations of this right take place, most take place within the governmental realm, where the company can have little impact on the fulfilment of the right. The company must nonetheless be careful to ensure that if it pursues a legal proceeding against a defendant, he or she receives a fair trial according to international standards. This is particularly important in cases where the proceedings involve human rights abuse, or when the defendant cannot afford legal counsel.



*Right to Freedom of Movement (art. 13)* constitutes a low risk human rights area. While violations are likely to take place with respect to trafficked persons, the company will probably not face a substantial risk if it establishes policies that respect this right in the workplace, and ensures that security guards in particular implement the policy. The company must monitor suppliers for violations of this right.

*Right to Freedom of Opinion, Expression, Thought, Conscience and Religion (art. 18 & 19)* is a low-risk human right area for companies in South Africa. The Government generally respects these rights. An area where the company must take special care is in the area of whistleblowers, where South Africa is one of the few countries in the world to protect workers who report on their employers' illegal or irregular practices. The Company must also monitor suppliers for violations of this right.

