Human rights responsibilities of multinational enterprises and States in the Cuban tourism sector

Rosana Garciandia | Jean-Pierre Gauci | Lise Smit | Irene Pietropaoli
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# Table of Contents

Acronyms ................................................................................................................. 4  
Introduction ............................................................................................................... 5  
  Research methodology .......................................................................................... 6  
The State duty to protect the human rights of workers ........................................... 7  
  Cuba’s duties and potential international responsibility ........................................ 8  
  Working conditions of workers and ‘cuentapropistas’ in a State-controlled sector .... 9  
  Trade union rights and strike ............................................................................... 16  
The duties of home States of multinational companies operating in Cuba and their potential international responsibility ............................................................... 19  
  Human Rights Due Diligence legislation ............................................................. 20  
  Other existing frameworks .................................................................................. 24  
  States’ duties as members of multilateral institutions .......................................... 26  
The corporate responsibility to respect the human rights of workers ....................... 28  
  Human rights due diligence: challenges and promising practices ....................... 29  
    The UN Guiding Principles .............................................................................. 29  
    Companies’ efforts ........................................................................................... 30  
    Challenges ....................................................................................................... 32  
    Promising practices and initiatives .................................................................. 33  
    Other relevant frameworks ............................................................................ 35  
  Connection with Cuban authorities: potential for leverage? .............................. 36  
Access of workers to remedies for corporate-related human rights abuses ............ 38  
The impact of COVID 19 in labour exploitation in the tourism and hospitality sector in Cuba ............................................................. 42  
Recommendations .................................................................................................... 44  
  Recommendations to States .............................................................................. 44  
    What Cuba should do: ..................................................................................... 44  
    What home States of foreign companies operating in Cuba should do: ............ 45  
  Recommendations for business .......................................................................... 45  
  Recommendations for civil society organisations .............................................. 47  
Annexes ..................................................................................................................... 49  
  Table of relevant legal instruments and ratifications by Cuba and other States ...... 49
## Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARSIWA</td>
<td>ILC Articles on the Responsibility of States for Internationally Wrongful Acts</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination Against Women</td>
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<td>CERD</td>
<td>Convention on the Elimination of Racial Discrimination</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<tr>
<td>ECHR</td>
<td>European Convention of Human Rights</td>
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<tr>
<td>IACIHR</td>
<td>Inter-American Court of Human Rights</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<tr>
<td>OECD</td>
<td>Organization of Economic Cooperation and Development</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner of Human Rights of the United Nations</td>
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<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<td>UNWTO</td>
<td>UN World Tourism Organisation</td>
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Introduction

The tourism and hospitality sector has been key to the development of the Cuban economy for decades.¹ It is one of the essential economic pillars in the Cuban system, and one where foreign multinational corporations operate in partnership with State-owned companies to provide their services. As in many other geographical contexts, the Cuban tourism and hospitality sector has been associated with risks of labour exploitation, discrimination, and other human rights concerns.

In the Cuban context, these concerns include low wages, long hours of work, discrimination in the recruitment and employment on grounds of gender and ethnic origin, as well as graver forms of exploitation such as situations amounting to forced labour.² Limited access of workers to training on labour or human rights and to remedies for corporate-related human rights abuses are also common in the Cuban tourism sector.³ Yet, joining the tourism industry is seen by those employed in hotels or connected industries as an opportunity to access certain benefits and a higher status, working in an international environment, and requires a set of skills that only a selected number of Cubans have access to, including language skills. Foreign companies operating in Cuba do so in partnership with national, State-owned⁴ enterprises.⁵ That raises questions on the way in which foreign companies engage and how human rights responsibilities are upheld. It also raises the question of the responsibility of the Cuban State for failing to protect workers (omission), and of whether States where those foreign companies have their headquarters (their ‘home States’) have any responsibility for any aspect of the exploitation of workers in the Cuban tourism and hospitality sector. This report analyses the international standards relevant to these questions.⁶

The international legal framework, as well as regional and domestic legislation, create obligations for States to tackle labour exploitation and connected human rights abuses, and responsibilities for businesses to act in accordance with international labour and human rights standards. This analysis presents those international standards that are relevant to the protection against labour exploitation and connected human rights abuses in the Cuban tourism and hospitality sector. The analysis is structured in accordance with the three pillars of the UN Guiding Principles of Business and Human Rights (UN Guiding Principles):⁷ i) States’ duty to protect human rights; ii) corporate responsibility to respect them; and iii) access of workers to remedies for corporate-related human rights abuses. The structure of the

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2. In-island survey, unpublished, copy with the authors.
3. In-island survey, unpublished, copy with the authors.
4. For the purposes of this report, State-owned companies are defined following the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE). The OECD Guidelines define State-owned companies as ‘any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature’ (OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015, p. 14, https://www.oecd-ilibrary.org/docserver/9789264244160-en.pdf?expires=1639431703&id=id&accname=oid0088585&checksum=E06129B9B26617624F8709F8FBDB74A6). Gaviota or Cubanacan are examples of State-owned enterprises under this definition.
5. Cuban Foreign Investment Law. Training by the foreign companies is normally limited to procedures that the company follows or quality standards that the brand wants to ensure (Consultation with Derek Blackadder).
6. The report presents an analysis of the legal framework, not contemplating political considerations such as the impact of the US embargo in the Cuban economy and in the decisions of multinational corporations to operate in Cuba. Such considerations go beyond the scope of the report.
Human rights responsibilities of multinational enterprises and States in the Cuban tourism sector

UN Guiding Principles is followed as they are the framework setting the rules for the action of companies and of the States in which those companies operate or have their headquarters. While these are guiding principles, they contain binding rules that have been regulated in other international law instruments, and they are seen as the most influential and authoritative global standard shaping the efforts of companies and States in this area.

The analysis relies on the relevant international and regional human rights treaties, ILO Conventions, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, as well as domestic legislation. In view of this, the report refers to ‘standards’ and ‘responsibilities’ of companies, and to ‘duties’ of States, following the terminology of the UN Guiding Principles on Business and Human Rights. It also refers to ‘obligations’ of States under international human rights law, and to the ‘responsibility’ of States under the international State responsibility framework (ILC Articles on the Responsibility of States for Internationally Wrongful Acts, ARSIWA).

Research methodology

The methodology includes desk research and consultation with stakeholders via interviews. The sectors covered in the study include those where there is stronger presence of foreign companies: transportation (airlines and cruises), accommodation (hotels, shared accommodation, and cruises) and connected industries (travel agents, tour operators, online travel agencies, tourism organisations).

The study focuses on a selection of multinational companies with strong presence in the area, and analyses the duties of States where those companies have their headquarters. The States included in the study are France, Germany, Mexico, Netherlands, Spain, United Kingdom, and the United States.

In the first section, the analysis identifies the obligations of States under the international legal framework, including relevant treaties and guidelines at the international, regional and domestic level. It explores the potential international responsibility of States for breaches of those obligations in accordance with the International Law Commission (ILC) Articles on State Responsibility (ARSIWA) and with the responsibility regimes established in human rights treaties and International Labour Organisation (ILO) Conventions. In the second section, the analysis explores the corporate responsibility to respect the human rights of workers. In the third section, the analysis looks at access to remedy. An additional section looks at the impact of the COVID-19 pandemic on the Cuban tourism sector. The report concludes with a set of recommendations for States, companies and civil society organisations.

9. The companies included in the study have their headquarters in France (Accor S.A.), Germany (Lufthansa, TUI Group), Mexico (Fiesta Americana), Netherlands (Booking Holdings, NH Hotel Group), Spain (Melia Hotels, Iberostar Group), United Kingdom (Fred Olsen Cruise Lines) and United States (Airbnb, Delta Air Lines, Expedia Group, Holland America Line [part of Carnival Corporation & plc], Norwegian Cruise Line, Royal Caribbean, TripAdvisor, Virgin Voyages). Their inclusion in the study was based on their relevance in the Cuban tourism sector (M. A. Figueras, ‘Foreign Participation in the Development of Tourism in Cuba’ Columbia Law School, Cuba Capacity Building Project, 27 February 2020).
10. ILO Conventions and UN human rights treaties, as well as UN Guiding Principles, OECD guidelines and relevant domestic and regional legislation.
The State duty to protect the human rights of workers

The international legal framework set out in the core ILO Conventions and UN and regional human rights treaties creates obligations for States to prevent and punish labour exploitation within their jurisdiction, to protect victims, and not to exploit workers in the public sector or in State-owned companies. The gravest forms of labour exploitation may amount to forced labour and slavery, which are prohibited in various international instruments, and States have the obligation to criminalize in domestic legislation. The prohibition of slavery and the prohibition to subject persons to degrading treatment are also widely recognized as customary international law, which makes them binding for all States, including those not having ratified specific treaties. Exploitation in the working environment represents a ‘continuum’ where ‘increasing degrees of coercion’ limit ‘free labour’. To protect workers from all degrees of exploitation, international law establishes standards through ILO Conventions and human rights treaties.

This section looks at the obligations and duties of Cuba for the protection of the human rights of workers in their tourism and hospitality sector, including setting up and enforcing the Cuban legal framework for multinational corporations operating in the country (‘host State’). It also looks at the obligations and duties of States where those multinational corporations have their main domicile or headquarters (‘home States’).

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11. ILO Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol); ILO Abolition of Forced Labour Convention, 1957 (No. 105); UN Slavery Convention (1926); UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); Article 8 ICCPR; Art. 8 ICSER (child labour); Art. 32 UNCRC (economic exploitation of children); Art. 11 UN Convention on the protection of the rights of all migrant workers and their families (1990); Article 6 ACHR; Article 4 ECHR; Palermo Protocol (2000); Council of Europe Convention on Action against Trafficking in Human Beings (2005); EU Anti-Trafficking Directive (2011/36/EU), Article 5 African Charter on Human and Peoples Rights.


16. Art. 22 (freedom of association) and Art. 26 (equal treatment) ICCPR; Art. 6 (right to work), Art. 7 (right to the enjoyment of just and favourable conditions of work), 8 (right to form and join trade unions) and 9 (right to social security) ICSER; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Art. 11 CEDAW; Art. 32 UNCRC; Art. 5 CERD; Art. 27 CRPD Art. 11 ECHR; European Social Charter; Art. 16 ACHR; Art. 11 and 15 African Charter on human and Peoples Rights (1986).

17. See Annex 1 containing a table of relevant legal instruments, and ratifications by Cuba and other States.
Cuba’s duties and potential international responsibility

Cuba is a member of the UN Human Rights Council and was one of the States which endorsed the UN Guiding Principles in 2011. It has also committed to ‘promote (…) full and productive employment and decent work for all’ under Sustainable Development Goal 8. It is a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (the Palermo Protocol). It is also a party to other relevant international treaties, including all 8 core ILO Conventions. In addition, in line with the ILO Declaration on Fundamental Principles and Rights at Work (1988), as an ILO member, it has the obligation to respect, promote and realize the principles concerning the fundamental rights which are subject of certain ILO Conventions, even if not ratified. These include freedom of association, recognition of the right to collective bargaining, the elimination of forced and child labour, and the elimination of discrimination in respect of employment and occupation. The ILO guidelines on decent work and socially responsible tourism provide guidance for States on how to implement international labour standards such as freedom of association, the right to collective bargaining, non-discrimination and decent working conditions.

Cuba has signed, but not ratified, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the rights of migrant workers and their families. Having signed but not ratified those treaties, it has the obligation to refrain in good faith from acts that would defeat the object and purpose of those treaties, although only ratification would make Cuba legally bound by the treaty provisions.

In examining Cuban legislation and its enforcement in light of those international commitments, it is evident that there are various fronts where Cuba’s responsibility could arise.

20. A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development. Cuba is also part of the voluntary national review of the high-level political forum on sustainable development (https://sdg5.un.org/topics/sustainable-tourism).
21. ICERD; CEDAW; CEDAW Protocol; CRC; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
23. ILO Declaration on Fundamental Principles and Rights at Work (1988), para 2. Cuba has also ratified the ILO Labour Inspection Convention (1947), but it has not ratified the 2014 Protocol to the Forced Labour Convention, the ILO Convention C172 on Working Conditions in Hotels and Restaurants, and other ILO conventions or protocols that would protect workers in the sector [PO81 - Protocol of 1995 to the Labour Inspection Convention, 1947; C175 - Part-Time Work Convention, 1994 (No. 175); C175 - Part-Time Work Convention, 1994 (No. 175)].
24. ILO guidelines on decent work and socially responsible tourism, 2017, https://www.humanrights-intourism.net/publication/ilo-guidelines-decent-work-and-socially-responsible-tourism, designed to support States and all other actors working to promote full and productive employment and decent work in the tourism sector.
26. The main legal instruments setting out the protection of the rights of workers in Cuba are the 2019 Constitution, the 2013 Labour Code and the 2014 Foreign Investment Law (118).
Working conditions of workers and ‘cuentapropistas’ in a State-controlled sector

When in 2008 Cuba signed the ICESCR, an action that is considered in treaty practice as ‘a preparatory step on the way to ratification’, it declared that the rights protected under the Covenant, which include the right to work (art. 6), the right to the enjoyment of just and favourable conditions of work (art. 7), the right to form and join trade unions (art. 8) and the right to social security (art. 9), ‘are enshrined in the Constitution of the Republic and in national legislation’ and that the ‘States’ policies and programmes guarantee the effective exercise and protection of these rights for all Cubans’. 28

Article 64 of the Cuban Constitution enshrines the right to work as the right to access dignified employment (‘empleo digno’), and article 65 recognises the ‘right to a remuneration according to the quality and quantity of work, as an expression of the socialist principle of distribution’. In addition, the 2013 Labour Code regulates the conditions of working relationships, including working hours and holidays. 29 Cuba has the obligation to ensure that its domestic definition of those rights is in accordance with the labour standards established in ILO Conventions Cuba has ratified. 30

The working conditions of workers in the tourism and hospitality sector present some special characteristics. Under the 2014 Foreign Investment Act, foreign investment in the Cuban tourism and hospitality sector is subject to government authorisation, and hotel management and service agreements must take the form of international joint venture agreements. 31 Under this law, Cuban workers and permanent residents working for joint ventures are hired and paid through an employment agency proposed by the Ministry of Foreign Trade and Investment and authorized by the Ministry of Employment and Social Security, 32 not directly by the foreign investor. The working conditions of workers are set out in accordance with domestic labour law and payments to Cuban workers and permanent residents are made in Cuban pesos. 33

Limited evidence on the details of labour exploitation

Although evidence is limited on the conditions under which many employees work in the Cuba tourism sector and the exact functioning of the interaction between foreign companies and the State under those joint venture arrangements, the table below identifies scenarios that have been reported in the Cuban tourism sector and which conflict with international standards ratified by Cuba. It also identifies the fora where these issues could be discussed with Cuba, or its responsibility could be invoked.

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31. Art. 13.2 and Art. 15.3 of the Law.
32. Art. 30.1 of the Foreign Investment Law.
33. Art. 30.4 of the Foreign Investment Law.
<table>
<thead>
<tr>
<th>Scenario</th>
<th>International Standard</th>
<th>Forum for action</th>
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<tr>
<td>Precarious working conditions, including low wages, lack of access to an independent judicial system to protect workers’ rights, inability to change jobs without government permission. This also includes the limited protection of the working conditions of self-employed workers or ‘cuentapropistas’.</td>
<td>Cuba has the obligation to create or maintain a minimum-wage fixing machinery, including consultation with representative organisations of employers and workers in the decision-making process, and to give publicity to minimum wage provisions. It is also required to establish a national framework or policy to ensure occupational health and safety.</td>
<td>ILO</td>
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<tr>
<td>Political dissent as a reason for dismissal in employment relationships with GAESA, a State-owned business group under the Ministry of the Revolutionary Armed Forces owning and managing companies in the tourism sector.</td>
<td>Although Cuba has not ratified the ICCPR (freedom of thought, art. 18) and ILO Convention 158 concerning termination of employment, dismissal for political reasons in a State-owned company would arguably go against the object and purpose of the ICCPR, which is incompatible with Cuba’s status of signatory to the treaty.</td>
<td>ILO</td>
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<tr>
<td>Racial discrimination as part of the recruitment and employment relationship.</td>
<td>The Cuban Labour Code introduced a ban on discrimination, including discrimination based on ‘colour, gender, religious beliefs, sexual orientation, place of origin, disability or any other differentiation detrimental to human dignity’ (art. 2d), a</td>
<td></td>
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35. Article 29 of the Foreign Investment Law allows mixed-capital companies to establish a fund of economic stimulation for Cuban workers and permanent residents working in foreign investment companies, with contributions to the fund made from the benefits of the activity, but hotel management and service agreements are excluded from this provision (Art. 29.2).
40. Art. 5 Convention 131, ratified by Cuba.
43. In-island survey, unpublished, copy with the authors.
Human rights responsibilities of multinational enterprises and States in the Cuban tourism sector

Forced labour and slavery: the gravest forms of exploitation

At the gravest end of the spectrum in the ‘continuum’ of exploitation, Cuba has the obligation to criminalize forced labour and to set up a domestic legal framework sanctioning the various degrees of labour exploitation. It also has the obligation to establish a system of labour inspectors to identify victims of labour exploitation, and to adopt measures to ensure the effective enforcement of sanctions against labour exploitation and forced labour (administrative sanctions or criminal prosecution), as well as the protection of victims (legal assistance) and redress. In addition, it has the obligation to prevent forced labour and labour exploitation by providing training and capacity building, addressing demand, and adopting measures to reduce vulnerability.

Cuba’s responsibility could arise under the ILO Labour Inspections Convention, the ILO Forced Labour Convention and the Palermo Protocol, for failing to put in place an effective system of labour inspections, able to identify and protect victims, and to ensure prosecution of offenders and redress to victims. Although Cuban domestic legislation does not contain an express prohibition of slavery, Cuba has the international obligation to criminalize slavery, forced labour and human trafficking as a party to the 1926 Slavery Convention and to the 1956 Supplementary Convention, as well as to the ILO Forced Labour Convention and the Palermo Protocol respectively. This obligation derives also from the customary nature of the prohibition of slavery. Fulfilling these obligations entails adopting the necessary measures for individuals to be protected from situations of slavery, forced labour and human trafficking. The Cuban

46. Ibid. Para 18.
49. Art. 5 Palermo Protocol.
Penal Code contains provisions related to trafficking in persons,\textsuperscript{52} and the international legislation Cuba has ratified could be the legal basis for the State’s responsibility for failing to protect victims of labour exploitation in the tourism sector.

This would be in line with existing jurisprudence on States’ responsibility for failing to comply with their positive obligations to protect victims of contemporary forms of slavery in various regional human rights courts. The Inter-American Court of Human Rights (IACtHR) delivered a key judgment on ‘slave labour’ practices in an agricultural complex in Brazil, where it found Brazil had breached its ‘duty to guarantee’ protection against contemporary forms of slavery, as ‘it had not demonstrated that it had adopted specific measures or acted with due diligence to prevent’ and ‘put an end to the situation’.\textsuperscript{52} The duty to guarantee protection against forced labour and child labour was also emphasized, more recently, in Fábrica de Fuegos v. Brasil, a case concerning the explosion of a fireworks company where 64 people died and 6 were severely injured. The factory operated without permission, did not comply with the minimum standards of health and safety, and was deploying child labour. The Court found, among other considerations, that Brazil had failed to comply with its international obligations regarding labour inspections (ILO Conventions No. 81 and 155) and was found responsible for violations to the right to life and personal integrity of the victims (Art. 19 and 1.1 of the American Convention on Human Rights).\textsuperscript{54} The jurisprudence of the European and African Courts of Human Rights has adopted decisions in similar terms.\textsuperscript{55}

Cuba’s duties vis à vis the operations of companies

Cuba also has the obligation to set up a clear framework for businesses operating in the tourism and hospitality sector, in line with UN Guiding Principles 2 and 3, ensuring that legal framework enables and requires companies to respect human rights. In this regard, it is noteworthy that Cuba was one of the States co-sponsoring the initiative led by Ecuador and South Africa at the UN level to advance efforts for a treaty on business and human rights.\textsuperscript{56} The initiative was voted in June 2014 at the UN Human Rights Council, which decided to establish an Intergovernmental Working Group to ‘elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises’.\textsuperscript{57} Yet, the Cuban legal framework falls short of legal

\textsuperscript{52} Articles 316, 347 and 302 of the Cuban Penal Code.  
\textsuperscript{54} According to the Court, the State’s omission to perform the necessary inspections contributed to facilitate the explosion and that led to the violation of the right to life and the right to personal integrity of the victims (IACtHR, Caso Empleados de la Fabrica de Fuegos en Santo Antonio de Jesus y sus Familiares v. Brasil, Judgment of 15 July 2020, para 138, https://www.corteidh.or.cr/docs/casos/articulos/serie_c_407_esp.pdf).  
\textsuperscript{55} Relevant jurisprudence from the European Court of Human Rights (ECHR) includes Siliadin v France (Judgment of 26 July 2005), Rantsev v Cyprus and Russia (Judgment of 7 January 2010), Chowdury and Others v. Greece (Judgment of 30 March 2017), and the very recent cases of V.C.L and A.N. v. the United Kingdom (Judgment 16 February 2021), and Zoletic and others v. Azerbaijan (Judgment of 7 October 2021) (On ECHR case law, see V. Stoyanova, Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law CUP (2017)). 55 In Africa, the ECOWAS Court clarified obligations of domestic authorities in Niger to prosecute and punish slavery in the case of Hadijatu Mani Korau v The Republic of Niger (Judgment of the ECOWAS Court No ECW/CC/JUD/06/08 of 27 October 2008 (case on the obligations of domestic authorities in Niger to prosecute and punish slavery suffered by Hadijatu Mani)).  
\textsuperscript{57} Human Rights Council Resolution on elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, UN Doc A/HRC/26/9. The Working Group has held seven sessions so far at the UN and released the third version of the draft treaty, accessible here: https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx.
provisions explicitly enshrining corporate responsibility for human rights. Cuban legislation refers to health and safety related matters in the labour space,\(^58\) as well as to social protection in the working environment,\(^59\) and to the provision of salaries in accordance with labour law,\(^60\) but there are no specific provisions on human rights accountability for companies. Beyond that, the IACHR observed in 2020 that ‘the recent authorization for the creation of non-State micro-enterprises in the tourism sector may be contributing to increasingly severe risks of women being sexually exploited on the island’.\(^61\)

The obligation of the Cuban government to set up a clear legal framework for businesses operating in the tourism and hospitality sector includes the framework applying to State-owned companies. As UN Guiding Principle 4 establishes,

‘States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence’.

This is also an obligation under existing human rights and labour rights treaties,\(^62\) and is particularly relevant for this study, given the strong presence of State-owned companies in the Cuban tourism and hospitality sector. Decree Law 335/2017 regulates State-owned enterprises and, under article 15, establishes companies’ accountability for damages to other companies, to State entities, to individuals and to the environment.\(^63\)

But the international responsibility goes beyond compensation for damages.\(^64\) In addition to the consequences established in international human rights or labour instruments, the involvement of State-owned companies in labour exploitation could also raise the responsibility of the Cuban State. The ILC Commentary to the ARSIWA, some of which are considered customary international law,\(^65\) makes clear that State-owned companies are considered to be separate from the State and in that regard prima facie their conduct is not attributable to the State. But it also establishes that, to the extent that they may be exercising elements of governmental authority within the meaning of article 5 ARSIWA, their actions or omissions are attributable to the State.\(^66\) That will be the case if this company is empowered by the law of that State to exercise elements of governmental authority, and if it is acting in that capacity. In addition, even if the company has not been empowered by the law of that State to exercise elements of

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60. Decree Law 46/2021, regulating Micro, Small and Medium Enterprises establishes, under art. 5, that these enterprises have the obligation to fix the salaries taking into consideration the minimum salaries established in labour law (Available at: https://www.gacetaoficial.gob.cu/sites/default/files/goc-2021-o94.pdf).
61. IACHR, The Situation of Human Rights in Cuba, OEA/Ser.L/V/II; Doc. 2/20, October 3, 2020. para 322. The IACHR published this report based on its mandate under art. 106 Charter of the OAS, as part of its work monitoring the human rights situation in Cuba.
65. P. Webb, R. Garcia, ‘State responsibility for modern slavery: uncovering and bridging the gap’, International & Comparative Law Quarterly, Volume 68, Issue 3, July 2019, pp. 539 – 571, p. 558 and fn. 65 (p. 549) citing the ICJ (Genocide Convention (Bosnia v Serbia) case, ICJ (2007043, 209. See also references to the lack of consensus on the customary nature of arts. 8 and 16 ARSIWA (pp. 556-557).
66. ARSIWA Commentary to Art. 8, para 6, p. 48.
governmental authority, its acts or omissions could be attributable to the State under article 8 ARSIWA, if it can be proved that the company was acting ‘on the instructions of, or under the direction or control of, that State in carrying out the conduct’. 67

Given the State-controlled model followed in Cuba, where a high number of companies in the tourism sector are owned and managed by GAESA, 68 Gaviota Hoteles or Cubanacan Group, which are State-owned business groups, 69 the consequences of this businesses’ actions could be attributable to the Cuban State under article 5 or article 8 ARSIWA, depending on whether the specific function can be considered ‘governmental’. 70

Other avenues for Cuba’s responsibility in this regard are the ILO mechanisms and international guidelines. Cuba is a party to ILO Convention 94 concerning Labour Clauses (Public Contracts) (1949), which ensures respect for minimum labour standards in public contracts. The ILO Committee of Experts noted in 2017 that, despite some positive developments included in the 2013 Labour Code, ‘the Convention continues to be practically without effect’, and requested the government to provide information about how it is being applied, ‘including cases in which the conclusion of public contracts with private employers has been authorized, and the manner in which effect is given to Art. 2 of the Convention’, which refers to working conditions of workers in such contracts. The ILO machinery could be used to encourage Cuba’s compliance with the convention, with a positive effect on the working conditions of those workers.

The OECD 2015 Guidelines on Corporate Governance of State-Owned Enterprises, 71 which provide a set of good practices on the legal and regulatory framework for State-owned enterprises, could also be relevant. Although Cuba is not a member of the OECD, the recommendations are ‘internationally agreed standards of how governments should exercise the State ownership function’ 72 and those practices could be helpful for Cuba to align with other States’ practices on governance of State-owned enterprises. These guidelines are recommendations to governments on ‘how to ensure that State-owned enterprises operate efficiently, transparently and in an accountable manner’. 73 They include the disclosure of the objectivesjustifying State ownership, guidance on transparency and accountability in the management of State-owned enterprises, principles of fair competition and equitable treatment of shareholders, responsible business conduct by State-owned enterprises, standards of disclosure and transparency, and the responsibility of State-owned enterprises’ boards.

The Guidelines require the ‘ownership entity’ to be ‘held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies, including the State supreme audit institutions’, which presents an avenue for human rights abuses to be addressed. 74 Additionally, ‘ownership rights should be clearly identified within the State administration’ and ‘should be centralised in a single ownership entity’, which allows for labour exploitation to be attributed to a single legal body. 75

68. Grupo de Administración Empresarial, SA.
70. On the contemporary application of the ARSIWA rules of attribution to State-owned enterprises, see Kristen E. Boon (2021) ‘Attribution in International Law: Challenges & Evolution’, August 2021 Draft, where an increasing disconnect between the traditional ARSIWA rules and the contemporary practice is emphasized.
72. Foreword to the 2015 version of the OECD Guidelines, p. 3.
73. Ibid.
74. Section II of the OECD Guidelines, p. 18.
75. Ibid.
The Guidelines also recommend that State-owned enterprises involved in economic activities ‘should not be exempt from the application of general laws, tax codes and regulations’, which ensures workers enjoy the same legal protections regardless of the entity they are employed by. State-owned enterprises are urged to recognise and respect the rights of their stakeholders, including labour rights, and to ‘develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures’. These monitoring efforts can be based on ‘country norms’, but must conform with ‘international commitments’, ensuring a minimum standard of responsible business practice is adopted.

A 2016 Report of the UN Working Group on Business and Human Rights to the Human Rights Council, which examined the duty of States to protect against human rights abuses involving State-owned enterprises, explains that greater expectations are placed on States in relation to the enterprises they own due to the means States have at their disposal to respect human rights, for reasons of policy coherence, given States’ broader human rights obligations, and for legitimacy and credibility, increasing the likelihood that private enterprises will comply with regulations. Additionally, these enhanced obligations can be ascribed to existing State obligations under international law in general, as well as international human rights law in particular. Under those frameworks States have the duty to protect against abuse by third parties, including State-owned business enterprises, and could be responsible for failing to prevent, mitigate and remediate abuse. Treaty bodies also associate certain obligations of State-owned enterprises with the State duty to respect, considering them as quasi-State organs, or if the State-owned company performs public functions.

Labour exploitation within State-owned enterprises would be better addressed by adherence to the Working Group’s recommendations to States, including setting clear expectations to these enterprises regarding human rights compliance, mandating that boards monitor the implementation of human rights standards and account for any shortcomings, adopting explicit human rights targets and monitoring progress, requiring the implementation of human rights due diligence, requiring disclosure on environmental, social and human rights performance and ensuring that victims have access to an effective remedy.

76. Section III of the OECD Guidelines, p. 20.
77. Section V of the OECD Guidelines, p. 23.
78. Ibid.
81. Ibid, paras 29-34.
82. Ibid, para. 30. See also UN Doc A/HRC/4/Add 1 and Universal Human Rights Index (www.uhri.ohchr.org).
83. See CEDAW/C/MAR/CO/5, on the need to increase the number of women in decision-making positions in State-owned enterprises, to reach the level of other governmental bodies.
84. Ibid, paras 32-33, see also UN Doc. A/HRC/15/31.
85. Ibid, paras 46-54.
86. Ibid, paras 60-64.
88. Ibid, paras 74-77.
89. Ibid paras 78-82.
Trade union rights and strike

The Cuban Constitution recognizes the right to freedom of association, as long as it is for peaceful and lawful purposes.91 In addition, the Labour Code establishes that the State recognizes and encourages trade union organisations that group together workers of the different sectors and branches of the economy and represent their specific rights and interest, regardless of the nature or characteristics of their work relationships.92 Workers also have the right to voluntarily associate and form trade union organisations, in accordance with the founding unitary principles, their statutes and regulations.93

The Cuban Sindicato Nacional de Trabajo, Hostales y Turismo, which celebrated its 25th Anniversary in 2020, has been reportedly supporting workers in the sector.94 However, allegations of exploitation in the sector raise concerns about the effectiveness of this support, and more general trade union efforts seem to have been more restricted.

The effective protection of the right to form and participate in trade unions has been questioned in the UN Universal Periodic Review (UPR) and in ILO monitoring processes. It is significant that the Cuban Constitution only recognizes explicitly the ‘Central de Trabajadores de Cuba’ as a union.95 In the 2018 UPR process for Cuba, some civil society organisations (CSOs) submitted that no other trade unions were legally recognised,96 and that independent trade union activists were systematically repressed.97 The IACHR has also expressed concerns about the obstacles faced by independent trade unions, such as the Independent Trade Union Association of Cuba.98 Research has found that ‘a wide range of highly restrictive, vague and broadly defined laws, create a web of control over many aspects of the lives of ordinary Cubans’99 including people associated with trade unions. The Cuban Penal Code criminalises behaviour termed as “dangerousness”100 which essentially provides the means for the Cuban authorities to put someone under surveillance or arrest and imprison them101 for engaging in their rights, including freedom of association.

The ILO has also been paying close attention to this issue. In March 2021, the ILO Committee on Freedom of Association issued its interim report on a complaint presented by the Independent Trade Union Association of Cuba (ASIC) against the State.102 This complaint was initially filed in 2016,103 and

91. Art. 56 Constitution. It is however noteworthy that, until 2019, article 62 of the Constitution stated that ‘none of the freedoms which are recognised for citizens can be exercised contrary to what is established in the Constitution and law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law’.
94. Consultation with Derek Blackadder.
96. Submission by Civil rights defenders (Sweden), see Human Rights Council, Summary of Stakeholders’ submissions on Cuba, 9 March 2018, para. 58.
97. Joint submission by Centro para la Apertura y el Desarrollo de América Latina — CADAL (Argentina), Fundación para los Derechos Humanos en Cuba (United States of America), see Human Rights Council, Summary of Stakeholders’ submissions on Cuba, 9 March 2018, para. 58.
100. Article 72 of the Cuban Penal Code defines dangerousness as the special inclination which an individual has to commit crimes depicted by his behaviour in manifest contradictions to the rules of socialist morality”100 and includes, under Article 72(c) “antisocial behaviour.” Cuban Penal Code Art 72 (translated resource Lawyers Without Borders UK Limited).
101. Many human rights defenders, including trade unionists have been arrested, charged and sentenced under Article 91 of the Penal Code. Article 91 states “[w]hosoever, in the interest of a foreign State, carries out an act with the aim of harming the independence of the Cuban State or the integrity of its territory shall be subject to a punishment of deprivation of freedom for a period of from ten to twenty years or death’.
102. Case No. 3271.
the complainant organization submitted further allegations in 2019 and 2020. It alleges harassment and persecution of independent trade unionists, involving assaults, acts of aggression and dismissals, other acts of anti-union discrimination and interference by the public authorities; official recognition of only one trade union federation, controlled by the State; and the absence of collective bargaining and recognition of the right to strike.\textsuperscript{104} In its interim report, the Committee emphasized the right to official recognition through legal registration as ‘an essential facet of the right to organize’ and that ‘all workers, regardless of their status, should be guaranteed their freedom of association rights so as to avoid the possibility of having their precarious situation taken advantage of’.\textsuperscript{105} It urged the government to ‘ensure that ASIC is given recognition and that it can freely operate and carry out its trade union activities’.\textsuperscript{106}

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly requested information and copies of court rulings connected with cases of convictions of workers belonging to independent trade unions, and threats of imprisonment against delegates of those organizations. The Committee has regretted that the Government continues to avoid sharing this information under the justification that those convictions were based on offences duly defined in law, as outlined above, and has requested the Government to provide copies of the rulings in question.\textsuperscript{107}

Moreover, Cuba’s migration laws place limitations on the length of time a person can leave the country dependent on their type of employment, and it is difficult for certain professions to obtain a visa to leave the country.\textsuperscript{108} With freedom of movement as a fundamental freedom not only for enjoying labour rights but also freedom of association, attempts to exit the State are perceived by the authorities as an expression of discontent with the political or economic system and people attempting to leave can be detainted and excluded from access to State-employment,\textsuperscript{109} or given low-level jobs which, if refused, can lead to a charge of “dangerousness”.\textsuperscript{110} People who attempt to flee the country via “illegal” means are (wrongfully) dismissed from their employment in the public sector.\textsuperscript{111} The State uses this as a form of control over people to silence criticism, and deny human rights defenders permission to leave.\textsuperscript{112} If they do successfully leave, a continued form of control to silence people exists, as authorities will take reprisal on family members remaining in Cuba, including dismissing them from their employment,\textsuperscript{113} and discriminating against them for future employment. However, it is very difficult for this situation to reach the threshold for granting these persons refugee status, and the inability to gain employment upon return to Cuba and the potential of government surveillance is most likely insufficient to result in a successful asylum claim.\textsuperscript{114}

\begin{itemize}
\item \textsuperscript{105}Ibid, para 342. The Committee has examined allegations of non-recognition and interference by the Government in the free operation of trade union organizations not affiliated to the CTC in various occasions (Cases Nos 1198, 1628, 1805, 1961 and 2258 of the Committee on Freedom of Association).
\item \textsuperscript{106}Ibid.
\item \textsuperscript{109}Ibid, p. 25.
\item \textsuperscript{110}Ibid, p. 26.
\item \textsuperscript{111}Ibid, p. 20.
\item \textsuperscript{113}Amnesty International, ‘Your mind is in prison’, p. 26
\item \textsuperscript{114}See OM (Cuba returning dissident) Cuba CG [2004] UKIAT 00120. In deciding this appeal, Judge N Ainley stated the following: ‘We do not wish to underestimate the difficulties that the claimant would have if he were to return to Cuba, because plainly life would be difficult and perhaps unpleasant for a while. He might be under government surveillance. He might very well find it difficult, if not almost impossible to obtain a job, but we have had no material placed before us that indicates that he would be likely to be arrested or persecuted. Mr Allen is of the view that the Cuban authorities would dismiss him from his employment as
\end{itemize}
The right to strike has also been a concern for the ILO Committee of Experts. For many years, it had called the government to include an explicit recognition of the right to strike in domestic legislation. In 2016, after the adoption of the 2013 Labour Code, the Committee of Experts regretted that the code does not contain an explicit recognition of the right to strike and referred to the Government’s reiteration that there is no provision in law which prohibits the right to strike and no criminal penalty associated to the exercise of such rights. It recalled that:

‘the Convention does not require the adoption of legal provisions to regulate the right to strike provided that this right, which is an expression of trade unions’ rights to freely organize their activities for the legitimate defence of the interests of their members, may be exercised in practice without organisation and participants being at risk of the imposition of penalties’. 115

It requested the Government to ‘provide information on measures taken or envisaged to ensure that no one suffers discrimination or prejudice in their employment for having peacefully exercised the right to strike, and requested it to provide information on the exercise of this right in practice’, including the number and nature of strikes called and any administrative or judicial investigations or procedures initiated or conducted in relation to the strikes.116 In 2017, it noted that there is no guarantee for the exercise of the right to strike in labour legislation, that it is prohibited in practice and that the State should ensure that workers can exercise it without risk of punishment.117 The 2019 Constitution could have included an explicit reference to the right to strike, as repeatedly recommended by the ILO Committee of Experts, but that was finally not the case.118

As mentioned above, Cuba has the obligation to provide, facilitate and promote union rights,119 and to take measures to promote collective bargaining.120 Furthermore, Article 1 of ILO Convention 98 requires Member States to protect workers against anti-union discrimination in respect of their employment. Under article 19 of the ILO Constitution, member States undertake that they will, ‘within a period of one year at most from the closing of the session of the Conference (or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference), bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action’. Members shall also inform the Director General of the International Labour Office of the measures taken to bring the recommendation before the competent authority and of the action taken by them.121 In addition to the regular reporting on compliance with ILO standards,122 the ILO Constitution also provides special procedures for representation or complaints. The special procedure for

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120. Art. 5-8. See also ILO Recommendation No. 163 on Collective Bargaining 1981.
121. Art. 19, paras. 6 b and 6 c of the ILO Constitution.
representation entitles an industrial association of employers or of workers to present to the ILO Governing Body a representation against any member State which, in its view, ‘has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party’. The special procedure for complaints entitles a member State, a delegate to the International Labour Conference or the Governing Body on its own motion to file a complaint against another member State for not complying with a ratified Convention. In addition, a special complaint procedure is available regarding freedom of association through the Freedom of Association Committee. The spirit of the ILO framework is based on tripartite cooperation (governments, workers, and employer representatives) as well as on cooperation between States, which makes the State responsibility approach less likely as an outcome in this process. The notion of State responsibility is, however, at the core of the ILO machinery as the basis for the cooperation mechanisms in place under the ILO Constitution.

The duties of home States of multinational companies operating in Cuba and their potential international responsibility

Home States - of foreign companies that operate in Cuba - also have obligations based on their international commitments. The States included in this study are France, Germany, Mexico, Netherlands, Spain, United Kingdom, and the United States. As parties to the ICESCR, all of them are required to adopt measures ‘to ensure effective protection against Covenant rights violations linked to business activities’ and to ‘provide victims of such corporate abuse with access to effective remedies’. They have the ‘positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights’. States have to set out clearly the expectations that companies domiciled in their territory respect human rights.

States must take those steps not only to prevent human rights violations in their territory but also violations linked to the operations of those companies abroad. As the Committee on Economic, Social and Cultural Rights (CESCR) clarifies in its General Comment 24, those obligations do ‘not stop at their territorial borders’. States shall protect the rights enshrined in the Covenant, taking ‘steps to prevent and redress infringements (...) that occur outside their territories due to the activities of business entities over which...

123. Art. 24 and 25 ILO Constitution. 6 procedures were initiated so far in 2021, regarding Peru, Guinea, Poland, Uruguay, Ecuador and Chile (https://www.ilo.org/dyn/normlex/en/f?p=1000:50010:16313235895342:::P50010_DISPLAY_BY:1).
126. The ILO Centenary Declaration for the Future of Work, adopted by the International Labour Conference at its 108th Session, on 21 June 2019, states that ‘Social dialogue, including collective bargaining and tripartite cooperation, provides an essential foundation of all ILO action and contributes to successful policy and decision-making in its member States’ (para. B, p. 5).
129. UN Guiding Principle 2.
they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective’. 131 As the commentary to the UN Guiding Principles emphasizes, the extraterritorial approach ensures ‘predictability for business enterprises by providing coherent and consistent messages, and preserving the State’s own reputation’. 132 National Action Plans on business and human rights increasingly refer to extraterritorial jurisdiction. 133 The European Commission’s proposed EU Directive on Corporate Sustainability Due Diligence also has an extraterritorial scope. 134 Domestic jurisprudence is also consolidating this notion, as discussed in section 3.3. 135

Home States may seek to comply with those obligations by requiring ‘parent’ companies to report on their operations globally, requiring them to comply with specific guidelines, such as the OECD Guidelines for Multinational Enterprises, 136 imposing tax or export restricting requirements, or incorporating reporting obligations for companies in domestic legislation, as the UK Modern Slavery Act did in 2015. 137 Recent legal developments at the national and regional level are consolidating the trend towards mandatory human rights due diligence, inspired by the UN Guiding Principles and strengthened by recent case law. 138

**Human Rights Due Diligence legislation**

Under UN Guiding Principle 3, States should ‘enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps’. They also should ‘provide effective guidance to business enterprises on how to respect human rights through their operations, and to encourage, and where appropriate require, business enterprises to communicate how they address their human rights impact’. They should also ‘ensure that any laws and policies governing the creation and operation of business enterprises do not constraint but enable business respect for human rights’. 139

While the UN Guiding Principles do not create new binding obligations but rather restate existing international law obligations on States and set out the responsibilities of business actors, 140 they are more than a mere compilation of existing obligations contained in international binding legal instruments. Since their adoption in 2011, various States have adopted or are in the process of adopting legislation

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132. Commentary to UN Guiding Principle 2.
138. French Duty of Vigilance Law, Norway and German Law, Dutch child labour due diligence law, EU proposed directive on corporate due diligence and corporate accountability.
139. UN Guiding Principle 3.
creating binding duties based on the concepts of the UN Guiding Principles, including making human rights due diligence mandatory for businesses, both with respect of their operations within their jurisdiction and extraterritorially. In addition, the UN Guiding Principles are the basis for ongoing negotiations on the adoption of a treaty on business and human rights.\textsuperscript{141}

Many States have taken this approach, with thematic focused legislation creating duties for companies to report on their efforts to tackle specific human rights issues such as human trafficking, forced labour or modern slavery. The California Transparency in Supply Chains Act, which became effective in 2012, requires businesses to report what measures they are adopting to combat slavery and human trafficking in their supply chains. The law establishes a minimum required content for companies to disclose,\textsuperscript{142} and specifies that this information must be posted online and be conspicuous and easily understood.\textsuperscript{143} Non-compliance with these obligations may trigger actions under the Act itself, as well as under competition or consumer law.\textsuperscript{144}

The UK Modern Slavery Act creates the obligation for certain large companies (and the public sector as of 2021) to publish a statement on their actions to mitigate modern slavery risks in their supply chains.\textsuperscript{145} The same approach was introduced in the Australian Modern Slavery Act, which, unlike the UK Act, included public procurement from the outset.\textsuperscript{146} The Dutch Child Labour Due Diligence Law aims to prevent goods and services produced with child labour from being delivered to consumers in the Netherlands. To reach that goal, companies have to submit a statement to regulatory authorities declaring that they have carried out due diligence related to child labour in their full supply chains. Non-compliance results in a fine, although the amount is meant to be symbolic.\textsuperscript{147}

The French Duty of Vigilance Law\textsuperscript{148} is the first overarching human rights due diligence legislation, going beyond that thematic focus on modern slavery. It is also the first legislation to go beyond reporting requirements and establishing the obligation of businesses to set up and implement a human rights ‘vigilance’ process. It also establishes an associated civil liability regime in case failure to comply with those obligations gives rise to damage.\textsuperscript{149} This has been defined as the ‘most far reaching’ domestic legislation on mandatory human rights due diligence.\textsuperscript{150} The implementation of the reporting and risk management obligations has been assessed as good progress, although civil society organisations


\textsuperscript{142} California Code, Civil Code, §1714.43(c).

\textsuperscript{143} California Code, Civil Code, § 1714.43.


\textsuperscript{145} UK Modern Slavery Act, s. 54. See also Independent Review of the Modern Slavery Act 2015: Final Report Presented to Parliament by the Secretary of State for the Home Department, May 2019, including recommendations on the content of companies’ reporting obligations and on enforcement of the Act, which the Government committed to implementing.

\textsuperscript{146} Australian Slavery Act.


consider there is room for improvement. The law creates those obligations for French companies employing at least 5,000 employees in France, or at least 10,000 employees worldwide. This has been identified as a limitation, not only because it is leaving out medium and small enterprises, but also because there is no official list of the enterprises falling within the scope of this legislation. The civil liability regime, which has been tested in a few cases before French courts, is expected to contribute to clarifying when enterprises fail to comply with their obligations and therefore result in civil liability.

Subsequent to France, Norway and Germany have also adopted domestic legislation creating human rights due diligence obligations for companies, both in June 2021, illustrating the momentum for mandatory human rights due diligence in Europe. In Norway, the Act on business transparency concerning human rights and decent work creates obligations for big companies to disclose the measures they adopt to ensure respect for human rights in their value chains. In Germany, the Act on Corporate Due Diligence in Supply Chains, which covers companies with 3,000 employees or more (from 2023 when it enters into force) and companies with 1,000 employees or more from 2024, establishes enterprises’ duty to identify risks of human rights violations, to take steps to manage those risks, and to disclose that information to the Federal Office for Economic Affairs and Export Control. Non-compliance may result in fines by this authority. There are significant differences in the three approaches, the Norwegian model being based on transparency, the German model not providing for remedies, and the French model being centred around civil remedies.

Various other European countries are currently considering domestic legislation making human rights’ due diligence mandatory for companies, including Austria (Parliamentary Supply chain Bill), Belgium (Parliamentary Duty of Vigilance Bill), Finland (Corporate Social Responsibility Act), and the Netherlands (Responsible and Sustainable International Business Bill). In the UK, there are calls from civil society organisations and businesses for the UK government to introduce a new legal duty to prevent human rights and environmental harms.

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This wave of adopted and proposed domestic legislation on mandatory human rights due diligence (especially within Europe) could be impacted significantly by the eventual adoption of the proposed EU Directive on corporate due diligence and corporate accountability, which would bring important legislative changes to all EU Member States. In February 2022, the European Commission presented a proposal for a directive on supply chain due diligence, building on the UN Guiding Principles on Business and Human Rights and on the OECD Guidelines for Multinational Enterprises. The proposed directive would apply to certain large European and non-European companies that operate in the single market, and within two years it would expand to mid-cap companies that operate in certain ‘high impact’ sectors, including sectors connected to tourism such as food and beverages. The proposed approach lays down rules to ensure that companies carry out effective due diligence with respect to potential or actual adverse impacts on human rights, make that strategy public; monitor the effectiveness of those measures; set up complaint mechanisms; and improve access to remedies. An important dimension of the Directive would be the monitoring component, coordinated by national competent authorities, which would be in charge of monitoring the application of the directive. Engagement with stakeholders is encouraged ‘where relevant’ in the design of the Directive, although it is not mandatory, and the proposal does not contain a dedicated provision on stakeholder engagement unlike in the text proposed by the European Parliament in March 2021.

Model legislation or proposals for mandatory human rights and environmental due diligence is also being discussed in other countries. In Canada, where Bill S-216 (‘An Act to enact the Modern Slavery Act and to amend the Customs Tariff’) is currently ongoing the legislative process, the Canadian Network on Corporate Accountability has presented a model law on Corporate Respect for Human Rights and the Environment Abroad, which proposes the appointment of a Commissioner for Human Rights Protection in Business, who would be responsible for the administration and enforcement of the act. The model law establishes companies’ duty to avoid, prevent and address adverse human rights impacts outside Canada through its own activities and through activities of its affiliates. Civil society organisations in the global


165. Art. 17.


south are also advocating for mandatory human rights due diligence legislation in countries like Brazil, Mexico and Colombia.

Other existing frameworks

A key aspect in States’ obligations with regards to businesses is ensuring that existing laws directly or indirectly regulating business respect for human rights are correctly designed and enforced, including non-discrimination laws, labour laws or anti-bribery laws. An example of this is the UK adaptation of the ‘failure to prevent’ model of the UK Bribery Act 2010, as recommended by the UK Joint Committee on Human Rights, with influential companies supporting this approach. The duty to prevent human rights harm would be accompanied by a human rights’ due diligence defence, ‘which would allow the entity to avoid liability if it could show that it had put in place processes which are reasonable in all the circumstances’. Tort laws and financial regulations are being used to seek accountability for businesses’ human rights abuses.

In the European context, the EU Non-financial Reporting Directive requires large companies to publish information on their policies in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards. This Directive does not make human rights due diligence mandatory, but it creates an obligation for those enterprises to disclose information on their due diligence processes. In April 2021, the European Commission adopted a proposal for a Corporate Sustainability Reporting Directive, which would amend the existing reporting requirements, simplifying the reporting process for companies and extending reporting requirements to a broader range of companies. The proposal has been referred to the European Parliament’s Committee on Legal Affairs, with MEP Pascal Durand acting as rapporteur, as well as to the European Council’s working party on company law. It is anticipated that a first set of draft sustainability reporting standards will be agreed upon by mid-2022, with the standards to first be applied by companies to reports published in 2024, covering the previous financial year.

171. Commentary to UN Guiding Principle 3.
174. See for example, France’s Duty of Vigilance Law, Law 2017-399 of 27 March 2017.
175. Directive 2014/95/EU.
Another area where some States are taking legislative steps is public procurement, where the introduction of requirements about human rights can be significant for the protection of rights. An example of this is the requirement established in the ILO Convention concerning Labour Clauses in Public Contracts (No. 94), which requires States parties to include in public contracts clauses guaranteeing workers’ protection and working conditions. Public procurement activities are ‘unique opportunities to promote awareness of and respect for human rights’ by companies States conduct commercial transactions with. Beyond the opportunity to lead by example, State may face legal consequences for human rights abuses linked to their procurement activity. As an example, the UK government is facing legal action over links between Personal Protective Equipment used by NHS workers and alleged modern slavery in their production in countries like Malaysia.

Of increasing relevance is the ESG (Environmental, Social and Governance) framework. It integrates environmental, social and governance policies and activities into the information huge corporations make available to target potential investors, who are increasingly looking beyond financial metrics as the sole indicators of value. While ESG is largely associated with reporting which is carried out on a voluntary basis, domestic legislation in some States also mandates these types of disclosures. In many cases, the voluntary incorporation of an ESG framework into a corporation’s investor relations strategy may amount to a ‘box-ticking exercise’, whereby vague commitments to sustainable business practice do not reflect or reveal the reality on the ground, including how human rights due diligence obligations are operationalised and how employees are treated. This can even be the case for disclosures that are required by law. But the ESG framework also represents an opportunity for much greater transparency in the communication of human rights commitments. The voluntary adoption of independent reporting guidelines and recourse to third-party verification services is indicative of the framework’s mainstreaming within corporate culture. The proliferation of different standards, may however undermine efforts to harmonise the business and human rights field.

180. ILO Convention concerning Labour Clauses in Public Contracts No. 94 (1949), See also C. Barnard, ‘Using procurement law to enforce labour standards’ in G. Davidov, B. Langille (eds), The Idea of Labour Law (OUP, 2013) 256.
186. Airbnb’s Modern Slavery Statement, which tells stakeholders nothing about the measures taken to address modern slavery.
187. See the example of Lufthansa.
188. In the past five years, the number of ESG regulations and standards has doubled, and there are over 600 different ESG reporting standards, both mandatory and voluntary. See EY (2021) ‘The future of sustainability reporting standards’, EY, June 2021, pp.3-4. Available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/sustainability/ey-the-future-of-sustainability-reporting-standards-june-2021.pdf (accessed 30 August 2021).
Guiding Principles or the UN Sustainable Development Goals, should direct different sectors’ approach to implementing an ESG framework in corporate disclosures. There is an unfortunate tendency to reduce the ESG framework to the adoption of policies on sustainability, which in effect sees the environmental pillar subsume and obscure the social pillar. This is of particular concern in the Cuban tourism sector, and the tourism sector more broadly, as the focus on threats to the environment conceals the reality of labour exploitation in regions where there are few employment options and labour rights are poorly enforced.

States’ duties as members of multilateral institutions

Under UN Guiding Principle 10, when acting as members of multilateral institutions that deal with business-related issues, States should ‘encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising’. They also should draw on the UN Guiding Principles ‘to promote shared understanding and advance international cooperation in the management of business and human rights challenges’. States have the opportunity and the responsibility to contribute to ‘help States level the playing field with regard to business respect for human rights (…) by raising the performance of laggards’.

The States where foreign companies operating in the Cuban tourism sector have their headquarters (Spain, Canada and France are home States to the biggest companies operating in Cuba) are part of multilateral institutions where they can use their leverage in line with UN Guiding Principle 10. The European Union, the World Tourism Organization and the International Labour Organisation could channel States’ efforts to promote a shared understanding of the relevance of corporate respect for human rights in the tourism and hospitality sector, as well as to strengthen training and capacity-building efforts.

States’ participation in human rights and labour multinational discussions at international and regional fora have the capacity to push towards enhanced protection against exploitation in the tourism sector, using peer pressure, negotiation of enhanced standards, and all the international mechanisms at their disposal. The UN Sustainable Development Goals, some of which refer explicitly to tourism (Goals 8, 12 and 14), and the work of UN Special Rapporteurs, may serve as the supportive framework for some of those claims. As an example, UN experts have recently called for States and companies to protect children from exploitation as tourism resumes after the pandemic, with particular emphasis in the role that sustainable tourism can play in the protection of children.

The World Tourism Organization, a United Nations specialized agency of which Spain, France and Cuba are member States, adopted in 1999 a Global Code of Ethics for Tourism, which refers to the rights...
of workers in the tourism industry,\textsuperscript{198} and establishes a voluntary implementation mechanism through its recognition of the role of the World Committee on Tourism Ethics.\textsuperscript{199} The General Assembly of the UNWTO adopted in 2019 the Framework Convention on Tourism Ethics,\textsuperscript{200} which is now open to ratifications and also refers to the rights of employees and professionals in the tourism sector.\textsuperscript{201} An Optional Protocol to the Convention establishes an independent and voluntary conciliation mechanism before the World Committee on Tourism Ethics for disputes that may arise among States parties and/or stakeholders in tourism development.\textsuperscript{202} The Code of Ethics, the Framework Convention and the Optional Protocol, which have been welcomed by UN human rights experts as an important step forward to ensure that ‘workers’ rights will be fully respected in line with international standards, and that businesses in the tourism sector will be held accountable for rights violations including for labour exploitation in their supply chains’,\textsuperscript{203} could be valuable instruments to channel States’ efforts toward a better protection of the rights of workers in the tourism and hospitality sector in Cuba. States parties to the UNWTO could influence that process.\textsuperscript{204}

\textsuperscript{199} Established in 2003, it is an independent and impartial body under the UNWTO, and a specialized Agency of the UN, subsidiary to the UNWTO General Assembly.
\textsuperscript{200} 12 September 2019, through resolution A/RES/72/2111.
\textsuperscript{201} Art. 12 of the Framework Convention.
\textsuperscript{202} Art. 1 Optional Protocol.
\textsuperscript{203} OHCHR, Convention on tourism ethics is major step towards tackling child exploitation, say UN human rights experts, 19 November 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25317&LangID=E&fbclid=IwAR2J_5PGQ5S1hUe4_yJZOsU1CwWuKw1Hg3QJoB-UD8U3uy8b19qs.
\textsuperscript{204} On the Convention and its critics, see https://www.tandfonline.com/doi/abs/10.1080/09669582.2020.1730862.
The corporate responsibility to respect the human rights of workers

Foreign companies are present in the tourism and hospitality sector in Cuba as part of international joint venture agreements with the Cuban government or with State-owned companies, employing local workers and operating with local actors to provide their services. In line with the international legal framework, those companies should adopt human rights policies and should respect international human rights standards when operating in Cuba, even if local legislation may fall short of protecting them. The UN Guiding Principles, together with the OECD Guidelines for Multinational Enterprises, have developed and consolidated the notion of responsibility of businesses to respect the international human rights standards contained in the core ILO conventions and UN Human Rights Treaties.

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Business enterprises have the responsibility to respect human rights, which means not only avoiding infringing on the human rights of others but also addressing adverse human rights impacts with which they are involved and seeking to prevent or mitigate adverse human rights impacts directly linked to their operations. This principle, established in UN Guiding Principle 11, is a ‘global standard of expected conduct for all business enterprises wherever they operate’, ‘over and above compliance with national laws and regulations protecting human rights’, and requires taking measures for the prevention, mitigation and remediation of adverse human rights impacts.

The responsibility of companies to respect human rights refers to ‘internationally recognized human rights’, including the Universal Declaration of Human Rights, the ICCPR, the ICESCR, the ILO Declaration on Fundamental Principles and Rights at Work, and the eight ILO core conventions.

In accordance with UN Guiding Principle 15, those companies should have in place the following three components of a human rights strategy:

1. A policy commitment to meet their responsibility to respect human rights;

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211. UN Guiding Principle 13.
212. Commentary to UN Guiding Principle 11.
213. Ibid.
214. UN Guiding Principle 12.
2. A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.\textsuperscript{216}

The first component, a human rights policy commitment, consists of an express commitment of companies to meet their responsibility to respect human rights through a statement of policy approved at the most senior level of the company, publicly available and reflected in internal processes.\textsuperscript{217} While the UN Guiding Principles are a soft law instrument,\textsuperscript{218} the second component, human rights due diligence, has experienced an evolution towards mandatory provisions, as domestic legislation in various countries has created mandatory regimes for businesses to adopt due diligence processes to manage and mitigate human rights risks associated with the companies’ operations and with their supply chains (UN Guiding Principles 17-22). The third component, enabling remediation, is covered under section 3.3 of this report.

The specific obligations of companies will vary depending on the legislative framework the State where it is domiciled has adopted. As explained in section 3.1.b, since the adoption of the UN Guiding Principles, many States have adopted legislation creating duties for companies of a certain size to disclose their due diligence processes, or to ensure that measures are in place to ensure access to remedy in case of adverse human rights impact. Some of the multinational corporations operating in the tourism sector in Cuba are European and therefore their obligations will be directly affected by the proposed Directive on corporate due diligence and corporate accountability and on the proposal for a Corporate Sustainability Reporting Directive, both moving towards mandatory human rights due diligence.

**Human rights due diligence: challenges and promising practices**

Human rights due diligence (HRDD) is a process set out in the UN Guiding Principles. It is defined as a process that business enterprises should carry out to assess actual and potential adverse human rights impacts, ‘integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed’.\textsuperscript{219}

**The UN Guiding Principles**

The design of due diligence processes, which should be in accordance with the size and complexity of the company, should draw on internal and/or independent external human rights expertise, and involve meaningful consultation with potentially affected groups and stakeholders.\textsuperscript{220} The mapping of the groups or individuals who could be affected by the company’s operations should pay particular attention to vulnerable groups and be regularly revised, as human rights situations are dynamic.\textsuperscript{221} The findings of the independent analysis of the human rights context and risks should be integrated ‘across relevant internal functions and processes’, assigning responsibility for addressing those impacts to the ‘appropriate level and function within the company’, and enabling effective responses to such impacts at internal decision-making level, as well as in budget allocations and oversight processes.\textsuperscript{222}

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\textsuperscript{216} UN Guiding Principle 15.
\textsuperscript{217} UN Guiding Principle 16.
\textsuperscript{218} See supra note 123 on ongoing discussions about a treaty on business and human rights.
\textsuperscript{219} UN Guiding Principle 17.
\textsuperscript{220} UN Guiding Principle 18.
\textsuperscript{221} Commentary to UN Guiding Principle 18.
\textsuperscript{222} UN Guiding Principle 19.
company contributes or may contribute to an adverse human rights impact, it should take steps to cease or prevent its contribution, and use its leverage to mitigate any impact.223

The process in place should be able to track effectiveness of its response, including through qualitative and quantitative indicators, and drawing on feedback from internal and external sources.224 Grievance mechanisms, surveys, audits or the collection of disaggregated data can be useful for that aim.225 Communication is another key element of the human rights due diligence process. Companies should communicate externally how they deal with human rights impact, making sure that this communication is sufficient to evaluate the adequacy of the company’s response and that it does not pose additional risks.226

If a company has actually contributed to adverse human rights impacts, ‘they should provide for or cooperate in their remediation through legitimate processes’,227 and ensure that grievances are ‘addressed early and remediated directly’.228 This will prevent ‘harms from compounding and grievances from escalating’.229 Those operational-level grievance mechanisms are normally administered by enterprises or by a mutually acceptable external expert or body.230 In order to be effective, those mechanisms should be based on engagement and dialogue, consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.231 It is important to emphasize that those mechanisms should not substitute or undermine access to other grievance mechanisms and the role of trade unions in addressing labour-related disputes.232

Companies’ efforts

Aware of their responsibility, and as the binding nature of those obligations gets reinforced by domestic legislation and case law, many companies are adopting measures to prevent and manage human rights risks in their supply chain.233 This includes multinational companies operating in the tourism sector in Cuba, even if the legal framework in their home countries may not yet include mandatory human rights due diligence legislation.234 Their efforts to ensure respect for human rights through their operations needs to take into consideration sector specific regulations and models.235

This study has analysed the public human rights commitments of a set of multinational companies operating in Cuba.236 Most of the analysed companies, particularly in the accommodation sector, have a human rights due diligence process in place and use strong human rights language in their public

223. Commentary to UN Guiding Principle 19.
224. UN Guiding Principle 20.
227. UN Guiding Principle 22. See section 3.3.
228. UN Guiding Principle 29.
229. Commentary to UN Guiding Principle 29.
230. Commentary to UN Guiding Principle 29.
231. UN Guiding Principle 31.h.
232. Commentary to UN Guiding Principle 29.
233. Consultation with Hemma Varma, Merryl Lawry-White and Michelle Groothedde.
236. The selection of companies has been based on three criteria: a) that the company is foreign; b) that it operates in one of the sectors covered in the study; c) that it has significant operations in Cuba or in connection to Cuba.
statements.237 Some companies add explicit references in their public human rights statements or codes to the human rights requirements that suppliers must comply with.238 Many of them are also members of sustainable tourism networks,239 although the main focus of those efforts continues to put more emphasis on the environmental sustainability of their business model than on social rights. Remedy is available in some of their human rights policies or human rights statements,240 although it is often not described as such and the extent to which it has been made accessible or it is effectively used cannot be accurately assessed via the mere analysis of those documents. Some of the companies analysed do not provide much information about their human rights due diligence processes, human rights policies, and grievance mechanisms for cases of labour exploitation or other human rights abuses. This is particularly the case for some travel platforms.241 This might be as a result of the sensitivities of the context, bearing in mind that in some specific instances disclosure of information might cause concerns for workers’ safety.

As HRDD processes become mandatory through developments in home State legislation, businesses must address some of the practical challenges associated with establishing processes. This further necessitates the exchange of promising practices. Focusing on the tourism and hospitality sector in Cuba, there are various challenges that companies face and need to address to ensure that they have effective processes in place.242 The main challenges those companies face are mentioned below. Based on consultation with

237. This is the case of NH Hotel Group (Code of Conduct, at page 19, available here, and Human Rights Policy, available here), Meliá, Iberostar or Accor. Lufthansa’s 2020 Modern Slavery Statement enumerates measures taken to combat human trafficking and uphold human rights. Its companies are obliged by the Group’s Code of Conduct to identify human rights risks and employees and third parties are encouraged to come forward with complaints (Lufthansa Modern Slavery and Human Trafficking Statement 2020, section 2, available here, and Code of Conduct is available here).

238. NH Hotel Group states that suppliers ‘must’ maintain compliance with international human rights in the conduct of their business. Its Code of Conduct and Human Rights Policy sets out that Suppliers are expected to treat employees with ‘dignity and respect’ and ‘must’ promote and respect principles such as the eradication of forced labour, maximum working hours and minimum wages, safe working environments, and freedom of association (page 19, available here). Royal Caribbean provide minimum standards for suppliers who do business with the company, although these are worded as suggestions (‘encouraged’) more than requirements (Supplier Guiding Principles, available here). TUI prohibits its accommodation suppliers from using forced labour and outlines international standards that must be complied with, such as ILO Core Conventions 138 and 182 and the Convention on the Rights of the Child. Very clear expectations for working conditions of these third-party employees are outlined (TUI Sustainability Agreement for Accommodation Suppliers, link no longer available online). Expedia’s Vendor Code of Conduct sets out encouragingly detailed expectations for the treatment of third-party employees, to ensure it is not complicit in labour exploitation. As well as requiring the use of only voluntary labour, Expedia does not allow vendors to require the surrender of identity documents (Fred Olsen Ethical Trading Policy, available here). Fred Olsen’s Ethical Trading Policy for suppliers includes a detailed Ethical Trading Code which must be abided by and prohibits forced labour and associated practices, such as the retention of identity documents (Fred Olsen Ethical Trading Policy, available here). Mélia’s Code of Ethics for Suppliers outlines a range of standards they need to abide by, with reference to international law frameworks including UDHR, ILO Conventions, the Convention on the Rights of the Child, and the UN SDGs.

239. Many of the companies analysed are members to the Global Code of Ethics and Tourism (UNWTO 2011), the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tourism, Tobacco and Allied Workers Association (IUF), the Sustainable Hospitality Alliance, The Code (focusing on child abuse only) and Travelife.

240. The NH Hotel Group Sustainable Business Report details a whistleblowing channel and an external communication channel to deal with breaches of corporate policy, including those relating to human rights. Such grievances are dealt with by NH’s internal audits department (Sustainable Business Report 2020, page 43, available here,) Royal Caribbean has a ‘Compliance and Ethics AWARE’ Hotline for anonymous reporting of violations, which is available to supplier and employees alike (Supplier Guiding Principles, available here, and the Human Rights Statement and Core Labour Principles, available here). Norwegian Cruise Line has a Reporting Hotline through which reports on breaches of human rights and instances of human trafficking may be made (Code of Ethical Business Conduct, page 10, available here and Vendor Code of Conduct, page 4, available here.) TUI released the number of reports received by its whistleblowing channel in 2018 and confirmed that none related to modern slavery (TUI 2019 Modern Slavery Statement, p.5, available here).

241. The names of those companies is not revealed in this report, as its aim is not to name and shame companies but to provide a clear analysis of the legal standards and to illustrate some promising practices they could consider adopting.

242. Identified through desk research and consultation with experts and sustainable tourism organisations. Despite continuous efforts to include in this study the views of the companies involved (invitations for interviews and anonymous survey), it has not
sustainable tourism actors, this report also identifies some promising practices in different parts of the world that companies operating in Cuba could adapt to that specific context to overcome some of those challenges.

Challenges

One of the most important challenges in the sector has to do with the enforcement of codes of conduct for suppliers. Many companies in the sector require their suppliers to accept a certain code or set of standards, but often there are no consequences if the supplier breaches the code. The outsourcing of services is quite common in the sector and, although human rights requirements may be in place, companies may not have a strong enforceability mechanism in place for suppliers not complying with those standards. Evidence has also shown the limitations of contractual mechanisms, which may have the effect of outsourcing responsibilities to suppliers, without being accompanied by any financial resources or an increase in price which would allow suppliers to adhere.

These dynamics are changing as companies understand the relevance of their responsibilities under the UN Guiding Principles and influenced by frameworks such as the ESG framework, which investors use to make their business decisions. Certain companies are advancing their efforts to set up concrete criteria in their code of conduct to be fulfilled by their suppliers and have adopted a more effective approach to their implementation. The American Bar Association has developed model contractual clauses which companies could use to ensure human rights due diligence in their value chains.

Another sector-specific challenge is the ‘complexity of hotels’ ownership, management, and franchise models’, which creates additional difficulties. It is increasingly common for hotel brands to lend their name and certain standards to third parties, but those standards do not usually include human rights standards, making it more difficult to monitor who is taking the responsibility for ensuring that human rights standards are respected. The franchising model is key to the accommodation business and could be used as an opportunity for leverage, to impose human rights conditions to franchisees. Yet, it is often used instead as an excuse: companies may claim that due to the franchise model structure they do not have control and responsibility over any human rights abuses or exploitation cases that may occur in the franchisee’s hotel.

The standards considered acceptable in ‘home States’ of foreign companies also have an influence in the way in which multinational corporations set their own human rights policy processes. Labour exploitation practices in the tourism sector are common in the home States of foreign companies operating in Cuba, and continue to be ingrained in the working culture of certain actors in the sector.

References:

245. Consultation with Fernando López del Prado.
246. That is the case of Hauser Exkursionen, a tour operator offering trekking tours which is a member of the Roundtable Human Rights for tourism (https://www.hauser-exkursionen.de/go-green/menschenrechte).
249. Consultation with Francis West and Fernando López del Prado.
(e.g. cleaners in Spain or France being outsourced and often underpaid or not paid for extra-hours). This makes it more difficult to set and justify standards to partners in other jurisdictions. Interestingly, the sector also presents some common patterns with the extraction sector, such as inability to relocate. As one of the interviewees for this project described it, ‘Tourism is a special sector. You bring the people to the product, not product to the people. The product is human- and service-based. And that is key for human rights’.  

Promising practices and initiatives

The tourism sector is also one that requires collaboration between different sectors. That raises the issue of a potential shared responsibility, as it may not be clear sometimes what the responsibility of each actor may be. Cooperation between sectors is therefore crucial to enhance protection against exploitation, as some sustainable tourism initiatives have been increasingly promoting. The following examples implemented in other countries could be an inspiration for Cuba. In Cartagena (Colombia), ‘La Muralla: Soy yo!’ is an initiative encouraging cross-sectoral action to protect children from sexual exploitation in tourism. It includes hotels, restaurants, and tour operators, working together to construct safe environments in tourism, under the UNWTO Ethics Code. In Sri Lanka, a tour operator has been leading a dialogue with businesses and civil society on the impact of tourism on the land. This initiative, called ‘forum of the hosts’ became a regular dialogue following the initiative. The Mekong Club encourages hotels to work collectively, following the same set of rules. The use of peer pressure can bring hotels together achieving higher levels of coordination as they meet in a confidential environment and that may allow them to address issues such as the challenges they face in a particular country or area.

Also related to the issue of shared responsibility is the role of travel platforms. These multinational companies should comply, as other companies in the tourism sector, with their corporate human rights responsibility to respect. This would require a different approach from them, strengthening their human rights due diligence processes and human rights policies. In addition, those companies could play a key role in transforming the whole sector and influencing the decisions of consumers. If travel platforms included on their information about the extent to which those hotels are ‘human rights responsible’, this could have the potential of influencing the decisions of tourists.

In addition to the sector-specific challenges, companies may face challenges related to the legal and policy context in which they are operating. They may find that in order to comply with their human rights responsibilities they would have to try to influence the domestic legal order of the State where they are operating. This may pose particular difficulties in countries like Cuba, where the government regulates strongly certain sectors, and where the public sector controls the economic activity in those sectors (see section 2.1 below on leverage). A promising practice in this regard is the value-chain focused Human Rights Impact Assessment conducted by the Roundtable of Human Rights in Tourism (‘the Roundtable’), a German based, non-

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250. The Guardian, ‘Spanish hotel booking app to show working conditions of staff’, 1 September 2021, https://www.theguardian.com/world/2021/sep/01/five-stars-for-staff-working-conditions-on-new-hotel-booking-app
252. Consultation with Jara Schreiber. See also Guidance on UNGO and HR impact assessment in Thailand and Myanmar.
253. Consultation with Jara Schreiber and with Cindy Berman.
255. Consultation with Jara Schreiber.
256. Consultation with Matt Friedman. Terre des Hommes Netherlands has also worked on this issue.
257. Also connected to this is the potential responsibility of tech companies, although this goes beyond the scope of this report.
profit association promoting ethical tourism, underpinned by the UN Guiding Principles, in Thailand and Myanmar from a European tour operators’ perspective. The assessment follows the requirements of the UN Guiding Principles, and ‘identifies and prioritizes actual and potential human rights impacts, reaches conclusions about those impacts, and makes recommendations to [tour operators] for their mitigation and management’.

The HRIA utilises the Roundtable’s parallel work, such as the ‘Get Started Tool’ which provides the methodology for the research and encompassed a combination of methods, including desk and online research, stakeholder engagement consultations and lastly, on-site assessments which includes a range of activities such as workshops, focus group discussions, semi-structured interviews, observations and surveys. Further, in light of the fragile political situation in Myanmar, additional Roundtable resources such as *Tourism in Fragile Contexts: Guidelines for Product and Communication Managers for the Implementation of Human Rights-Related Due Diligence* and the ‘Do No Harm Toolkit’ where identified as potential tools for tour operators to engage and utilise during the HRIA. Although the HRIA has not been applied to the tourism industry in Cuba given the regional scope and membership of the Roundtable, its methodology and principles could provide inspiration or a model for the Cuban context.

In 2020, the ILO issued, together with the Institute for Human Rights and Business and the Ministry of Administrative Development, Labour and Social Affairs of Qatar, a Guidance Tool ‘intended to help hotel companies in Qatar promote labour rights and fair recruitment in their business practices as part of wider efforts to strengthen a competitive and responsible hospitality industry’. While the recommendations included in the report focus on the Qatari particular context, there are many aspects of the Guidance Tool that could apply to Cuba as well as to other countries. These include due diligence guidance on how to engage with service providers and placement agencies, due diligence of recruitment practices and the design and effective implementation of grievance mechanisms.

Another promising initiative is the Guidance and Benchmarking Tool launched in December 2021 by Walk Free in partnership with the Stock Exchange of Thailand and Finance Against Slavery and Trafficking (FAST) to assist Thai-listed companies to identify, address and report on modern slavery risks throughout their value chains. Although not targeting the tourism industry specifically, this initiative could serve as inspiration for similar measures in that sector.

A relevant initiative, focusing on the exploitation of children in the tourism sector, is *The Code* - an ‘industry driven responsible tourism initiative which provides awareness, tools and support to tourism companies in order to prevent the sexual exploitation of children’. It recently launched a risk analysis framework highlighting the range of potential risk areas for companies. Another relevant initiative is the guidance for business developed by UNICEF and Save the Children, recommending ways for companies to incorporate children’s rights into their policies and codes of conduct.

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Other relevant frameworks

Companies also rely on a variety of frameworks to certify their compliance with social standards. These include the UN Global Compact, ISO (International Organization for Standardization), Social Accountability certifications, the Global Reporting Initiative, and the UN Principles for Responsible Investment. The UN Global Compact is a voluntary initiative adopted in 2005 which encourages businesses to incorporate sustainability principles into their practice, creating a networked mode of governance. There is much greater uptake to the Compact within the tourism sector than for most other voluntary social commitments, with 332 participants in the ‘travel and leisure’ sector. Participants include international hotel companies and travel agencies operating in Cuba or in connection with Cuba, such as Accor Hotels, Fred Olsen S.A., Iberostar Group, Meliá Hotels International, the airline Lufthansa and the TUI Group.

Unlike other standards in the ESG space, ISO 26000 is not designed to be used for certification purposes and instead encourages organisations in any sector to voluntarily contribute to sustainable development by offering guidance on how to do so, in line with the UNSDGs and the OECD Guidelines. However, Travelife offers sustainability certification which integrates, among others, the ISO 26000 guidelines. Social Accountability 8000 is a social certification programme created in 1997, which incorporates labour standards from the UDHR and ILO Conventions and allows companies to be independently audited as part of a continual improvement process. SA8000 is more commonly utilised in manufacturing industries, with only a few tourism-related companies certified.

The Global Reporting Initiative is an independent organisation which has developed the Global Reporting Initiative Standards (GRI Standards) for businesses to report on their sustainability impacts in a transparent manner, customised according to each organisation’s material topics. The GRI Standards are flexible, consisting of universal standards and topic-specific standards for economic, environmental and social impact. GRI is also developing sector standards for high-impact sectors, with tourism part of the third group to be actioned. There are 346 organisations in the ‘tourism/leisure’ sector which utilise the GRI Standards, including multinational companies operating in Cuba, such as Accor, Booking Holdings, Meliá Hotels International and the TUI Group. The UN Principles for Responsible Investment consist of six principles for investors to incorporate ESG issues into their practice on a voluntary basis, in order to

265. See https://www.unglobalcompact.org/what-is-gc/participants.
266. Ibid.
267. Ibid.
270. Social Accountability International ‘About SA800’. Available at: https://sa-intl.org/programs/sa8000/.
271. GRI (n.d.) ‘The global standard for sustainability reporting’. Available at: https://www.globalreporting.org/standards/.
274. See https://database.globalreporting.org/search/.
help develop a more sustainable global financial system. Signatories are required to report on their activities annually and are provided with a confidential score and compared to their peers. Given the focus of the Principles, signatories are operators in the financial sector, predominantly investment managers.

### Connection with Cuban authorities: potential for leverage?

A particularly relevant aspect in the context in which these companies operate is the connection to Cuban authorities. Under the Cuban Foreign Investment Law, those companies do not recruit local workers directly. Instead, they operate as part of an international joint venture agreement with a State-owned company or with the government, and they employ locals through a Cuban recruitment agency. This connection raises important legal issues about what foreign companies can do given the Cuban domestic legislation and practices, that is, their potential for leverage, and their potential responsibility if they don’t abide by international human rights standards due to the connection with Cuban authorities.

According to UN Guiding Principle 23, those companies should comply with all applicable laws and respect internationally recognized human rights wherever they operate, and seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements. When national law falls short of the human rights protection envisaged in international standards, foreign companies should ‘operate to the higher standard’.

Identifying the conflict or contradiction between international human rights standards and standards that the company must follow at the domestic level is an essential part of the HRDD process, understood as a comprehensive and ongoing process through which businesses identify actual and potential human rights impacts of their operations, respond to those impacts and communicate the measures adopted.

In the Cuban tourism and hospitality sector, the conflicts arising are usually related to the foreign company having little or no control of the working conditions of the local employees working for them, as their contracts, wages and working conditions are controlled by the government or State-owned company. In those circumstances, corporations are usually seen as having very little potential for leverage, as they operate with a vertical relationship, ‘under a domestic legal regime, which they are not empowered to modify’. However, as the Commentary to UN Guiding Principle 19 clarified, companies should exercise their leverage if they have any, and if not, there may be ways to increase it through, inter alia, capacity building or collaboration with other actors.

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277. In-island survey, unpublished, copy with the authors.


There are various ways in which their HRDD processes could inform and influence the local context. Foreign companies should ensure that effective HRDD processes are in place for those areas of their operations they can influence. They should also consider the possibility of joining other businesses in sectoral associations, as collective engagement could have higher potential to influence the Cuban authorities and State-owned businesses for a better protection of human rights. Although those companies could eventually consider the last resort option of exiting the jurisdiction if they have no way to ensure that human rights are being protected within their value chain, the rest of the options provide opportunities for companies to influence the context in which they operate.

Consultation with experts for this project points at the limited potential for leverage with the Cuban government. Consulted experts still considered that some foreign companies have certain potential for leverage with the Cuban government and particularly with the Sindicato Nacional de Trabajo, Hostales y Turismo, which is an affiliate of the Central de Trabajadores de Cuba. A coalition of foreign companies could put pressure on the public system to encourage higher levels of compliance with Cuban labour rights, which on paper provide quite good levels of protection to workers in the sector. Some companies with longstanding presence in Cuba, such as Melia, could have higher potential for leverage, as they know the industry well, they know the context and they do have a relationship with the Cuban as well as the foreign management of their hotels.

Another avenue to explore are projects led by foreign trade unions. The Canadian Union of State Administrative Workers has worked with Cuban Unions to improve health and safety of mining workers in Cuba. Although given the sensitivities of the tourism sector this may seem unlikely, it is a possibility that could be explored, with support of other international actors such as the International Union of Food Workers (IUF), which counts within its membership many foreign companies operating in Cuba. Those companies could, together with the UTI mediate or put pressure for such initiatives to be explored.

283. Ibid, p. 32.
284. Consultation with Cindy Berman.
285. Consultation with Derek Blackadder.
286. Ibid.
Access of workers to remedies for corporate-related human rights abuses

Access to remedy constitutes the third pillar of the UN Guiding Principles, and the component of the principles on which States, companies and rights-holders continue facing some of the biggest challenges. The State’s duty to protect includes the responsibility to investigate, punish and redress those abuses. States must take steps to ensure that when business-related human rights abuse occurs within their territory and/or jurisdiction, those affected have access to effective remedy. Those steps, which can be procedural as well as substantive, may include legislative, judicial, administrative or other appropriate means. Companies having contributed to human rights abuses should ‘provide for or cooperate in their remediation through legitimate processes’, and ensure that grievances are ‘addressed early and remediated directly’.

Remedy includes apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, injunctions or guarantees of non-repetition. Procedures should be impartial, protected from corruption and free from political influence. States have a variety of possible grievance mechanisms to choose from, including those available in labour tribunals, national human rights institutions, National Contact Points under the OECD guidelines, or ombudspersons. It is their responsibility not only to ensure the independent and effective functioning of those mechanisms, but also to raise public awareness of them.

States should take steps to ensure that effective domestic judicial mechanisms are in place to address business-related human rights abuses, and to reduce barriers to access remedies. The Commentary to UN General Principle 26 describes judicial mechanisms as being ‘at the core of ensuring access to remedy’. Those mechanisms should be protected by due process standards, and not threatened by corruption or political pressure. Impartial judges and protection of human rights defenders are key to ensure the proper functioning of those mechanisms. State should also provide effective and appropriate non-judicial grievance mechanisms for those abuses, including administrative and legislative mechanisms and access to support from national human rights institutions. Such State-based non-judicial grievance mechanisms are described in the UN Guiding Principles as playing ‘an

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289. UN Guiding Principle 25.

290. UN Guiding Principle 25 and Commentary to UNGP 25.

291. UN Guiding Principle 22, see also section 3.2.a.

292. UN Guiding Principle 29.

293. Commentary to UN Guiding Principle 25.

294. Commentary to UN Guiding Principle 25.

295. Commentary to UN Guiding Principle 29.


298. Commentary to UN Guiding Principle 27.
essential role in complementing and supplementing judicial mechanisms’ and should not be understood as an alternative to judicial remedies.299

In addition, States should consider ways to facilitate access to effective non-State-based grievance mechanisms,300 such as regional human rights bodies, or operational-level dialogue or mediation processes, through awareness raising or other measures.301 National Human Rights Institutions can play a key role in enhancing access to remedy for business-related human rights abuses, as the Working Group on the issue of human rights and transnational corporations highlighted in its report to the Human Rights Council in July 2021.302

The UN Guiding Principles set a number of effectiveness criteria for non-judicial grievance mechanisms that States and companies should take into consideration. They should enable trust from stakeholder groups for whose use they are intended, accessible, predictable, equitable, transparent, aligned with internationally recognized human rights, and a source of continuous learning.303

On the basis of the UN Guiding Principles and on human rights treaties and ILO conventions, as described in section 3.1, Cuba has the responsibility to ensure access to remedy for victims of labour exploitation in its tourism and hospitality sector. Not doing so would raise questions about its failure to comply with its international obligations and could engage its international responsibility.

Foreign companies operating in the tourism and hospitality sector in Cuba have the duty to ‘provide for or cooperate in their remediation’ where they identify that they have caused or contributed to adverse impact.304 They should also ensure that grievances are ‘addressed early and remediated directly’,305 as stated above. The consequences of non-compliance will however depend on the room for leverage these companies may have.

There is also an extraterritorial dimension to the third pillar of the UN Guiding Principles. Given the difficulties for many victims to bring claims in the host States, the ability of courts in the home State of the company to consider these claims may be the only avenue to obtain a remedy.306 This avenue has been increasingly strengthened through case law. In 2019, in the Vedanta case, the UK Supreme Court ruled in favour of Zambian communities to sue a British company in UK courts.307 In 2020, the Canadian Supreme Court delivered its decision on the Nevsun case, opening the door to common law civil liability for extraterritorial corporate human rights abuses.308 In 2021, the Hague District Court in the Netherlands found that the UN Guiding Principles UNGPs form part of the “unwritten duty of care” of companies.309

Also in 2021, the French Supreme Court ordered for a case to be sent back to the Appeals Court on

299. Commentary to UN Guiding Principle 27.
300. UN Guiding Principle 28.
301. Commentary to UN Guiding Principle 28.
302. A/HRC/47/39/Add.3. Check situation of Cuba re NHRI.
303. UN Guiding Principle 31 and commentary.
304. UN Guiding Principle 22, see also section 3.2.a.
305. UN Guiding Principle 29.
charges of complicity in crimes against humanity against a multinational corporation.\footnote{310} In the EU, the Brussels I Regulation mandates the national courts of EU Member States to accept jurisdiction in civil liability cases against defendants domiciled in the forum State.\footnote{311}

States that are home to corporations which have exploited workers have a positive obligation under international human rights law to make remedies available to affected workers, with failure to provide access to a remedy also constituting a breach of the UN Guiding Principles. The obligations of those States to ensure access to justice includes not only guaranteeing access the courts and legal representation, but also effective engagement with law enforcement authorities and access to informal, non-State justice mechanisms.\footnote{312} Under the third pillar of the UN Guiding Principles, States must ensure domestic judicial mechanisms effectively address business-related human rights abuses, bearing in mind the legal, practical and procedural barriers that may be faced by victims seeking a remedy.\footnote{313} Such barriers include ‘[w]here claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits’, placing an obligation on host States to ensure that extra-territorial claims can be brought by victims, in an accessible and affordable manner.\footnote{314} The UN Guiding Principles also require State-based non-judicial grievance mechanisms to be made available, and States are also required to facilitate the provision of non-State based grievance mechanisms.\footnote{315} If host States’ domestic systems do not allow victims of the corporations they host access to justice, they are in breach of their positive human rights obligations and are subject to the obligations arising from an internationally wrongful act under ARSIWA.

Under ARSIWA, legal consequences include an obligation of cessation and non-repetition, and an obligation to make full reparation, including damages.\footnote{316} A State may not rely on provisions of its own legislation to avoid complying with the obligations that arise in consequence of committing an internationally wrongful act.\footnote{317} The ILC commentary to ARSIWA explains that the obligation to make full reparation is an extensive one, requiring all consequences of the illegal act to be wiped out and the situation re-established as though it had not occurred, as formulated in the Factory at Chorzów case.\footnote{318} Thus, extraterritorial cases such as those outlined above may not be sufficient if the domestic system does not offer a comprehensive suite of measures to make reparation to victims, including restitution, compensation and satisfaction.\footnote{319} Additionally, member States of the European Convention on Human Rights will likely be found to owe such obligations without invoking ARSIWA, as the European Court of Human Rights ‘has broadly interpreted many ECHR rights as giving rise to positive obligations’ to avoid

\footnotesize


313. UN Guiding Principle 26.

314. Ibid.


316. ARSIWA, articles 28,30-31. See also Chapter II.

317. ARSIWA, article 32.


319. ARSIWA. Chapter II.
the difficulties that arise when applying ARSIWA rules to certain situations, including challenges of attribution.\textsuperscript{320}

In addition, under UN Guiding Principle 30, multi-stakeholder initiatives should ensure that effective grievance mechanisms are in place. The role of the European Union in this regard is key for two reasons. First, many of the foreign companies operating in the tourism and hospitality sector in Cuba are European, and EU legislation has an impact on the duties of those companies and the EU member States in which they are domiciled. Second, the EU holds a human rights dialogue with Cuba which can be an effective channel for leverage at a very high level.\textsuperscript{321}

\begin{center}
\end{center}
The impact of COVID 19 in labour exploitation in the tourism and hospitality sector in Cuba

As a tropical island with an economy largely dependent on tourism, Cuba struggled during the Covid-19 pandemic. While the virus itself did not run rampant in Cuba thanks to strict public health measures, the depressed economy saw sky-rocketing prices on essential goods and the country suffered its worst food shortages since the 1990s, which led to widespread protests. Contributing to the shutdown brought on by the pandemic is Cuba’s inability to access emergency financing from institutions such as the IMF or World Bank and the recent tightening of US sanctions.

Prior to the pandemic, tourism made up an 11% share of the State’s GDP, but plummeted to 4% in 2020. In 2019, there were over four million international tourist arrivals in Cuba, while in 2020, fewer than one million arrivals were recorded, indicating that similar numbers would have been reached if not for the disruptions to international travel which began at the end of the first quarter. As of August 2021, international tourists for the year to date numbered just over 160,000. Compared to 2019, the last season unaffected by the pandemic, this represents an almost 95% reduction in tourist numbers.

Cuba stopped admitting foreign tourists on 24 March 2020, after confirmed Covid-19 cases reached 21 and suspected cases were over 700. When the measure was announced, the government claimed that Cubans out of work due to the closure, such as hotel workers, would be relocated to other State jobs as a priority and be paid a percentage of their salaries. By the end of the year, the Cuban government announced that the economy shrank by 11% in 2020, outpacing the predictions of the United Nations Economic Commission for Latin America and the Caribbean. Imports were down 30%, and with imports making up 50% of fuel, food and other basic goods, Cubans struggled.

Cuba will gradually begin reopening to tourists in November 2021, when over 90% of Cubans will be vaccinated. The Minister of Tourism, Juan Carlos García, said that only fifty-five thousand tourism workers remained engaged in the sector, representing about half of the pre-pandemic workforce, while other workers had been relocated or furloughed. The accuracy of these figures are disputed, however, as they do not account for the large number of workers in Cuba’s tourism sector who are hired illegally and paid off-book. A professor from the University of Havana’s School of Tourism told a media outlet, on the condition of anonymity, that there are at least 10,000 unofficial workers and that many workers who lost

322. M. Stott, M. Frank, ‘There is no food, money or work’, Financial Times, 16 July 2021, https://www.ft.com/content/970911b6-c4bf-4fd0-a5da-ee3c7b22ab70.

Human rights responsibilities of multinational enterprises and States in the Cuban tourism sector
their jobs due to the pandemic cannot access financial assistance.331 Thus the scale of the impact on the Cuban tourism sector is likely to be underappreciated.

The experience of those who were officially employed was often no better, as mandated severance payments were not paid and alternative positions often paid little.332 A former hotel worker told a media outlet that relocation to a different sector would have resulted in a significant reduction in his pay, so he chose to work as a delivery rider. Other workers had their contracts terminated, and were told that they would be ‘at the disposal of the Ministry of Labour and Social Welfare’, to obscure the fact of their unemployment. Employees were not given payouts commensurate with their tenure as required by domestic law.333 Additionally, despite the huge job losses in the sector, employment agencies are still making the same amount in contract payments from hotels, for workers who no longer work there.334 COVID has also impacted exploitation in supply chains.335

333. Ibid.
334. Ibid.
Recommendations

This study concludes with a set of recommendations to States, companies and civil society organisations, based on the legal research presented in this report and on consultation with experts. They provide a roadmap for States, companies and civil society organisations to engage, and continue to engage, in initiatives and actions that will strengthen the protection of workers in the Cuban tourism and hospitality sector.

Recommendations to States

Cuba and home States of companies operating in Cuba should take the following actions in order to comply with their human rights duties (Pillars 1 and 3 of the UN Guiding Principles).

What Cuba should do:

1) Cuba should ensure that its laws, policies and practices align with the obligation to respect, protect and fulfil human rights set out in international human rights law, including the duty to protect against labour rights abuses by business enterprises set out in the UN Guiding Principles. This should be achieved through a combination of legislative, administrative, policy and judicial measures, including both in its own operations, its relationships with business enterprises and in its actions in international fora.

2) Cuba should effectively implement the prohibition (including criminalisation) of all forms of labour exploitation, forced labour and trafficking in persons, as set out in ILO Convention No. 29, the Palermo Protocol and other relevant international instruments. This may require allocating more funds to labour inspections in the tourism sector and to the enforcement of criminal law rules on those crimes.

3) Cuba should ensure that its legal framework and law enforcement system prevent labour exploitation and discrimination in the recruitment and employment of workers in the tourism sector. The legal system should also ensure protection of cuenta-propistas.

4) Cuba should ensure that State-owned companies do not engage in or facilitate labour exploitation or discrimination. ‘State-owned companies’ include recruitment agencies controlled or owned by the Cuban State, which should ensure that no exploitation or discrimination is promoted through them; as well as companies which are joint ventures with the private sector.

5) Cuba should protect workers’ trade union rights and their right to strike. It should recognize more than one trade union and facilitate the free choice of union membership and allow all Unions to operate freely of State pressure. It should also improve the situation of trade union activists, halting its pressure and harassment of the same, following recommendations from the ILO. The right to strike should be explicitly recognized in domestic legislation and upheld by the Courts.

6) Cuba should set up a clear framework for businesses operating in the tourism and hospitality sector. Such legal framework should be in line with the UN Guiding Principles and designed to enable and require companies to respect human rights through their operations. This should also include State-owned companies and companies involving public-private partnerships. Cuba should also respect human rights in its public procurement processes.

7) Cuba should address and discuss the issue of labour exploitation more openly and allocate funds to gather evidence of labour exploitation, discrimination, forced labour and trafficking in persons. It should engage with international institutions such as the ILO and the IACHR, as well as with civil society organisations and businesses, on issues concerning labour exploitation, discrimination, forced labour and access to remedies. It should also respond to ILO CEACR requests.
What home States of foreign companies operating in Cuba should do:

1) Home States should ensure that their laws, policies and practices align with the duty to protect human rights set out in the UN Guiding Principles. This includes the responsibility to ‘enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps’.  

   336. Home States should also ‘provide effective guidance to business enterprises on how to respect human rights through their operations, and to encourage, where appropriate require, business enterprises to communicate how they address human rights impact’. They should also ‘ensure that any laws and policies governing the creation and operation of business enterprises do not constraint but enable business respect for human rights’.  

2) Home States should ‘consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights’.  

   338. These may include trade policies, public procurement, stakeholder engagement, export credit, support to companies, and multi-stakeholder initiatives. In particular, home States should implement procurement policies that give consideration to the human rights due diligence practices of the tourism sector companies that the home State itself engages with, such as for official State travel and visitor delegates’ accommodation, not only in Cuba but globally.  

3) Home States should adopt mandatory human rights due diligence legislation, including for their companies operating outside the State, subsidiaries and franchises, with particular emphasis on prevention of human rights abuses and remedies for victims affected. Home States should also adapt their domestic legislation to international and regional instruments (and best practice) in this area, including the UN Guiding Principles and the proposed EU Directive on corporate accountability.  

4) Home States should engage in discussions with companies to help them overcome the challenges they are facing to comply with their responsibility to respect human rights.  

5) Home States should promote joint projects with other States and (international) stakeholders including the ILO, trade unions and broader civil society organisations.  

6) Home States should take steps to ensure that effective domestic judicial mechanisms are in place to address business-related human rights abuses, and to reduce barriers to access remedies, including for those affected in the host States where the State’s domestic companies operate.  

7) Home States should use multinational fora, including tourism related fora, as a platform to influence the adoption of measures against labour exploitation.

Recommendations for business

Foreign companies operating in the Cuban tourism and hospitality sector should take the following actions in order to comply with their responsibility to respect human rights (Pillar II of the UN Guiding Principles):

1) Companies operating in Cuba should develop and implement human rights policies and use human rights due diligence (HRDD) in accordance with the UNGPs. In their development and

336. UNGP 3.  
337. UNGP 3.  
338. Commentary to UNGP 3.  
design, which may occur at the companies’ headquarters, the particular features of the countries where they operate should be taken into consideration. They should also make sure that they are effectively implemented in those countries.

2) Companies operating in Cuba should design human rights policies and human rights due diligence which consider the Cuban specificities and should implement them.

3) Contractual clauses and codes of conduct are useful tools in the implementation of human rights due diligence in the value chain, but should not be used to outsource risks and obligations to suppliers, and should be accompanied by resources, remuneration and support that facilitate their implementation. The American Bar Association’s model clauses for implementing human rights due diligence in contracts are a handy reference.340

4) Companies should assess the implementation and effectiveness of their human rights due diligence system, including through surveys, human rights audits, worker voice tools or the collection of disaggregated data. – although the limitations of these tools should be understood and accounted for.

5) Companies should use an integrated approach with cross-functional teams, integrating human rights due diligence into all of the companies’ operations and budget allocation. They should also include considerations on price and remuneration within their human rights due diligence process.

6) Companies should use human rights impact assessment and use the human rights lens in their operations, including focusing on intersectional inequalities that affect their workers in Cuba. When operating in Cuba, those companies should pay especial attention to the situation of workers more vulnerable to discrimination, such as women, workers of African descent or LGBT+ workers.

7) Companies should ensure meaningful consultation with stakeholders and workers in Cuba. This consultation, which will contribute to the design of more effective human rights policies and due diligence, should be undertaken with guarantees of protection to workers, trade union representatives and suppliers, to guarantee that their contribution will not represent any risk for them. The consultation process should engage human rights experts and specifically local human rights experts with knowledge of the issues that workers face.

8) Companies should ensure ongoing effective communication to stakeholders about the efforts they are making to respect human rights. Companies should communicate how their impacts are addressed, bearing in mind the risks that rights-holders may face if sensitive information is disclosed.

9) Companies should develop and provide human rights training for workers, suppliers, contractors, business partners, as well as the company’s own home State operating teams, especially those that engage with management, procurement, legal, grievance mechanisms, public and private engagement.

10) Companies should set up effective and accessible operational-level grievance mechanisms in accordance with the criteria of UN Guiding Principle 31, that workers in their Cuban value chains can use without being put at any kind of risk. Companies should communicate to workers the existence of such mechanisms and facilitate their use, making them easy to use (and addressing issues of IT literacy).

11) Companies should use leverage with the government of Cuba, State-owned companies and the Sindicato Nacional de Trabajo, Hostales y Turismo to advance the prevention of labour exploitation and to improve the protection of workers’ rights. Foreign companies should ensure that effective HRDD processes are in place for those areas of their operations they can influence. They should also consider the possibility of joining other businesses in sectoral associations, as collective engagement could have higher potential to influence the Cuban authorities and State-owned businesses for a better protection of human rights. Ultimately, those companies could consider exiting the jurisdiction if they have no way to ensure that human rights are being protected within their value chain.

12) Companies should use leverage on their home State’s government to ensure a level playing field, including by supporting the introduction of mandatory human rights due diligence regulation.

13) Companies should use the relevant frameworks within their business model (e.g. ESG) to shift towards a new paradigm where social rights are paid more attention in all the countries where the company operates.

14) Companies should engage (continue engaging) in collective and coordinated action against labour exploitation. Continue to engage with, or become involved with, collaborative approaches based on existing models, pilots and good practices.

Recommendations for civil society organisations

International and local NGOs are encouraged to consider the following recommendations:

1) Foreign companies operating in the tourism sector are increasingly adopting measures to comply with their responsibility to respect human rights. However, the issue of labour exploitation does not yet receive the attention it has received in other sectors (e.g. garment or food industries). This is also the case in Cuba, where the joint venture model creates an additional challenge for companies. Advocacy work could raise awareness on the labour exploitation situation in the Cuban tourism sector and on the responsibility of companies to respect the rights of workers.

2) The situation of trade unions in Cuba is a concern, not only because of workers’ limited enjoyment of their trade union rights but also due to the difficulty this creates to protect workers from labour exploitation situations. The Sindicato Nacional de Trabajo, Hostales y Turismo is the national sector-specific trade union and has reportedly worked relatively effectively in the protection of workers in the sector. Advocacy initiatives could explore the extent to which there has been collaboration with foreign companies to advance the protection of workers’ rights, including training and awareness raising campaigns on labour rights and grievance mechanisms. This exploratory work could also be the basis for assessing the feasibility of other initiatives where international organisations or trade unions engage with Cuban trade unions. The Canadian Union of State Administrative Workers has worked with Cuban Unions to improve health and safety of mining workers in Cuba. Although given the sensitivities of the tourism sector this may seem unlikely, it is a possibility that could be explored, with support of other international actors such as the International Union of Food Workers (IUF), which counts within its membership many foreign companies operating in Cuba.

3) Workers’ awareness of their rights and of mechanisms for remedy remains low in the Cuban tourism sector. Many workers report not having had any human rights issue with their employers.

342. Ibid, p. 32.
but at the same time describe having suffered situations that amount to labour exploitation. Research also shows that workers perceive remedy mechanisms as a risk and lack trust in such systems. Advocacy work could engage with independent trade union activists in the island and with workers directly, to raise awareness on their rights and on available remedy mechanisms. Free legal advice to those workers may encourage them to use those mechanisms if the specific context ensures it is safe for them to do so.

4) Low wages and long working hours are two of the main characteristics of labour exploitation in the tourism sector in Cuba. Advocacy in partnership with the International Labour Organisation and the Inter-American Commission of Human Rights (REDESCA) could gather further information about how the joint ventures between State-owned companies and foreign companies work for the determination of wages, payment of salaries, establishment of working hours and monitoring of those conditions. It could also identify ways in which the process could be influenced to advance the protection of working conditions.

5) Discrimination on grounds including gender or ethnic origin is reported in the recruitment and employment of workers in the Cuban tourism sector. Civil society work could gather more evidence about how exactly the recruitment process works, what is the involvement of multinational corporations in recruitment and employment decisions, what is the incidence of discrimination in recruitment and employment, what remedies are available and to what extent they are used. This evidence would provide a solid basis for civil society action to tackle the issue, including as part of advocacy and campaigning for laws and policies that lead to improvement of working conditions and effective protection of workers.

6) In 2020, the Inter-American Commission on Human Rights observed that ‘the recent authorization for the creation of non-State micro-enterprises in the tourism sector may be contributing to increasingly severe risks of women being sexually exploited on the island’. Civil society initiatives could explore this dimension further and gather more evidence about the incidence of sexual violence in the Cuban tourism sector, in order to inform their campaign and advocacy efforts.

7) Companies are increasingly engaging in discussions on sustainable tourism and human rights under the leadership of the Sustainable Hospitality Alliance, The Code, or the UIF. Advocacy initiatives could engage with companies operating in Cuba to better understand the challenges they face in practice and to support them in their efforts to respect human rights.

8) There is very little evidence available about the impact of the various human rights due diligence efforts in the Cuban context. Civil society, including local and international rights groups, could gather further evidence on the impact of all those efforts (contractual clauses, aid requirements, home State reporting or due diligence regulation, ESG requirements, trade relationships between the US or EU and other home States and Cuba respectively). International and local NGOs, the ILO and others engaging with workers in the Cuban tourism sector could gather evidence on the impact of those measures on the ground, and what type of difference they are making. This evidence would fill an essential evidence gap as to which kind of laws and policies a) actually improve working conditions and protect workers, b) have very little real-life impact or c) lead to adverse consequences through creating contradictory practices or perverse incentives.

344. www.sustainablehospitalityalliance.org/.
Annexes

Table of relevant legal instruments and ratifications by Cuba and other States

The States included in the table below are the home States of key hotels and tourism operators in Cuba: France (Accor S.A.), Germany (Lufthansa, TUI Group), Mexico (Fiesta Americana), Netherlands (Booking Holdings), Spain (Melia Hotels, Iberostar Group, NH Hotel Group), United Kingdom (Fred Olsen Cruise Lines) and United States (Airbnb, Delta Air Lines, Expedia Group, Holland America Line [part of Carnival Corporation & plc], Norwegian Cruise Line, Royal Caribbean, TripAdvisor, Virgin Voyages).

Note that the United States is included in this table as the resumption of diplomatic relations between the two States, inaugurated by the Obama administration, has opened up legitimate commercial opportunities for US-based companies. US airlines and travel agents can offer air travel to Cuba for a number of authorised, non-tourism, purposes, including family visits, professional research and humanitarian projects. Additionally, the US government also announced that approved travellers would also be able to use Airbnb in Cuba. This required approval from the US Treasury Department.

<table>
<thead>
<tr>
<th>Legal Instrument</th>
<th>Signature or ratification by Cuba</th>
<th>Ratification by other States relevant to this study</th>
<th>Overall ratification status</th>
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<tbody>
<tr>
<td>International Covenant on Social, Economic</td>
<td>Signed 28 February 2008.</td>
<td>Convention ratified by France, Germany, Mexico, Netherlands,</td>
<td>Convention: 71 signatories and 171 ratifications;</td>
</tr>
</tbody>
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351 Multilateral human rights treaties provide for signature subject to ratification. In those cases, signature is seen as ‘a preparatory step on the way to ratification. It creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty’. However, it is only through the ratification process that States become legally bound by the obligations included in the treaty (UNOHCHR, The United Nations Human Rights Treaty System, 2012, p. 59, https://www.ohchr.org/documents/publications/factsheet30rev1.pdf). 352 United Nations Treaty Collection, Chapter IV, 3. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en#EndDec

Note that Cuba also deposited the following declaration:

‘The Republic of Cuba hereby declares that it was the Revolution that enabled its people to enjoy the rights set out in the International Covenant on Economic, Social and Cultural Rights.
The economic, commercial and financial embargo imposed by the United States of America and its policy of hostility and aggression against Cuba constitute the most serious obstacle to the Cuban people’s enjoyment of the rights set out in the Covenant.
The rights protected under this Covenant are enshrined in the Constitution of the Republic and in national legislation. The State’s policies and programmes guarantee the effective exercise and protection of these rights for all Cubans. With respect to the scope and implementation of some of the provisions of this international instrument, Cuba will make such reservations or interpretative declarations as it may deem appropriate.’
<table>
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<td>International Covenant on Civil and Political Rights (1966)</td>
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<td>88 signatories and 182 ratifications</td>
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<td>Optional Protocol: 46 signatories and 26 ratifications.</td>
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<td></td>
<td>Optional Protocol: 35 signatories and 116 ratifications.</td>
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<td>International Covenant on Civil and Political Rights (1966)</td>
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353 UN Treaty Collection, Chapter IV, 3 and United Nations Treaty Collection, Chapter IV, 3a. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=_en


354 Ibid.


356 UN Treaty Collection, Chapter IV, 4 and UN Treaty Collection, Chapter IV, 5. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en


357 Ibid.


359 Ibid.

360 Ibid.
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<td></td>
<td>No action taken.</td>
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<td>Convention signed but not ratified by United States. Optional Protocol which allows for individual communications ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom.</td>
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<td>Optional Protocol: 80 signatories and 114 ratifications.</td>
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362 Ibid.


363 Ibid.


366 Ibid.


369 Ibid.
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<td>United Nations Slavery Convention (1926, as amended by the Protocol)</td>
<td>Signed 28 June 1954. 373</td>
<td>Signed by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. 374</td>
<td>99 parties. 375</td>
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<td>United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Forced Labour</td>
<td>Ratified 21 August 1963. 376</td>
<td>Ratified by France, Germany, Mexico, Netherlands, Spain, and United States.</td>
<td>35 signatories and 124 parties. 378</td>
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372 Ibid.
375 Ibid.
373 United Nations Treaty Collection, Chapter XVIII, 2. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX&chapter=18&clang=_en
374 Ibid.
376 United Nations Treaty Collection, Chapter XVIII, 4. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX&chapter=18&Temp=mtdsg3&clang=_en
378 Ibid.
| Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms ['ECHR'] (1950) | Not applicable. | Ratified by France, Germany, Netherlands, Spain and United Kingdom.382 | Not applicable to United States or Mexico. | 47 ratifications.383 |

377 Ibid.
379 United Nations Treaty Collection, Chapter XVIII, 12a. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en
380 Ibid.
381 Ibid.
382 Council of Europe, Chart of signatures and ratifications of Treaty 005. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005
383 Ibid.
385 Council of Europe, Chart of signatures and ratifications of Treaty 163. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=163
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<tr>
<td><strong>Council of Europe Convention on Action against Trafficking in Human Beings (2005)</strong></td>
<td>Not applicable.</td>
<td>Ratified by France, Germany, Netherlands, Spain and United Kingdom. Not applicable to United States or Mexico. 48 ratifications.</td>
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<tr>
<td><strong>African Convention on Human and Peoples’ Rights (1981)</strong></td>
<td>Not applicable.</td>
<td>Not applicable: the relevant accommodation providers and tourism operators are 54 ratifications.</td>
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384 Council of Europe, European Social Charter Collected Texts (7th edition). Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048b059

386 Council of Europe, Chart of signatures and ratifications of Treaty 197. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=197

387 Ibid.

388 Note that exclusion of Cuba from participating in the Inter-American system was only lifted in 2009. See http://www.oas.org/en/member_states/default.asp


390 Ibid.

391 ACHPR, State Parties to the African Charter. Available at: https://www.achpr.org/statepartiestotheafricancharter
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<tr>
<td>ILO Abolition of Forced Labour Convention, 1957 (No. 105)</td>
<td>Ratified 2 June 1958.</td>
<td>France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States.</td>
<td>176 ratifications and 2 denunciations (Malaysia and Singapore).</td>
</tr>
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394 Ibid.


397 Ibid.


400 Ibid.
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<th>Convention</th>
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<tr>
<td>ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</td>
<td>Ratified 29 April 1952</td>
<td>Ratified by France, Germany, Mexico, Spain and United Kingdom. No action taken by Netherlands or United States.</td>
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<td>ILO Minimum Age Convention, 1973 (No. 138)</td>
<td>Ratified 7 March 1975 and minimum age 15 years specified</td>
<td>Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. No action taken by United States.</td>
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<td>ILO Worst Forms of Child Labour Convention, 1999 (No. 182)</td>
<td>Ratified 28 September 2015</td>
<td>Ratified by France, Germany; Mexico, Netherlands, Spain, United Kingdom and United States.</td>
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<tr>
<td>ILO Equal Remuneration Convention, 1951 (No. 100)</td>
<td>Ratified 13 January 1954</td>
<td>Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. No action taken by United States.</td>
<td>173</td>
</tr>
</tbody>
</table>


402 Ibid.

403 Ibid.


405 Ibid.

406 Ibid.


408 Ibid.

409 Ibid.


411 Ibid.

412 Ibid.
<table>
<thead>
<tr>
<th>Convention</th>
<th>Ratification Date</th>
<th>Ratified by</th>
<th>No action taken by</th>
<th>Ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</strong></td>
<td>26 August 1965</td>
<td>France, Germany, Mexico, Netherlands, Spain and United Kingdom.</td>
<td>No action taken by United States.</td>
<td>175</td>
</tr>
<tr>
<td><strong>ILO Labour Inspection Convention, 1947 (No. 81) and its 1995 Protocol (P081)</strong></td>
<td>7 September 1954</td>
<td>Convention ratified by France, Germany, Netherlands, Spain and United Kingdom.</td>
<td>No action taken by these States on the Protocol. No action taken by Mexico or United States.</td>
<td>148</td>
</tr>
<tr>
<td><strong>ILO Termination of Employment Convention, 1982 (No. 158)</strong></td>
<td></td>
<td>Ratified by France and Spain.</td>
<td>No action taken by Germany, Mexico, Netherlands, United Kingdom or United States.</td>
<td>36 ratifications and 1 denunciation (Brazil).</td>
</tr>
<tr>
<td><strong>ILO Hours of Work (Industry) Convention, 1919 (No. 1)</strong></td>
<td>20 September 1934</td>
<td>Ratified by Spain.</td>
<td>Ratified by but not in force in France.</td>
<td>52 ratifications, 1 denunciation (New Zealand).</td>
</tr>
</tbody>
</table>

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414 Ibid.
415 Ibid.
417 Ibid.
418 Ibid.
420 Ibid.
421 Ibid.
423 Ibid.
Human rights responsibilities of multinational enterprises and States in the Cuban tourism sector

<table>
<thead>
<tr>
<th>ILO Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)</th>
<th>Ratified 24 February 1936.(^{425})</th>
<th>Ratified by Mexico and Spain. No action taken by France, Germany, Netherlands, United Kingdom or United States.(^{426})</th>
<th>30 ratifications, 2 denunciations (Finland and New Zealand).(^{427})</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILO Forty-Hour Work Week Convention, 1935 (No. 47)</td>
<td>No action taken.(^{428})</td>
<td>None of the relevant home States have ratified the Convention.(^{429})</td>
<td>15 ratifications.(^{430})</td>
</tr>
<tr>
<td>ILO Weekly Rest (Industry) Convention, 1921 (No. 14)</td>
<td>Ratified 20 July 1953.(^{431})</td>
<td>Ratified by France, Mexico, Netherlands and Spain. No action taken by Germany, United Kingdom or United States.(^{432})</td>
<td>120 ratifications.(^{433})</td>
</tr>
<tr>
<td>ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)</td>
<td>Ratified 2 June 1958.(^{434})</td>
<td>Ratified by France, Mexico, Netherlands and Spain. No action taken by Germany, United Kingdom or United States.(^{435})</td>
<td>63 ratifications.(^{436})</td>
</tr>
</tbody>
</table>

423 Ibid.
France: ratified 2 June 1927 but not in force; Spain: ratified 22 February 1929.
426 Ibid.
Mexico: ratified 12 May 1934; Spain: ratified 29 August 1932.
427 Ibid.
429 Ibid.
430 Ibid.
432 Ibid.
France: ratified 3 September 1926; Mexico: ratified 7 January 1938; Netherlands: ratified 14 July 1965; Spain: ratified 20 June 1924.
433 Ibid.
435 Ibid. Note that France and Mexico have both declared that the Convention also applies to persons employed in the establishments specified in Article 3, paragraph 1.
436 Ibid.
<table>
<thead>
<tr>
<th>Convention and Date</th>
<th>Status</th>
<th>Ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILO Holidays with Pay Convention (Revised), 1970 (No. 132)</td>
<td>No action taken.</td>
<td>38 ratifications.</td>
</tr>
<tr>
<td>ILO Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)</td>
<td>Ratified 24 February 1936.</td>
<td>105 ratifications and 1 denunciation (United Kingdom).</td>
</tr>
<tr>
<td>ILO Protection of Wages Convention, 1949 (No. 95)</td>
<td>Ratified 29 April 1952.</td>
<td>99 ratifications, 1 denunciation (United Kingdom).</td>
</tr>
</tbody>
</table>

438 Ibid.
439 Ibid.
441 Ibid.
442 Ibid.
444 Ibid.
445 Ibid.
448 Ibid.
<table>
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<th>Ratifying States</th>
<th>Ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILO Collective Bargaining Convention, 1981 (No. 154)</td>
<td>No action taken.</td>
<td>Germany and United States.⁴⁴⁷</td>
<td>49 ratifications.⁴⁵¹</td>
</tr>
<tr>
<td></td>
<td>Ratified by Netherlands and Spain.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No action taken by France, Germany, Mexico, United Kingdom or United States.⁴⁵⁰</td>
<td></td>
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</tr>
<tr>
<td>ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)</td>
<td>No action taken.</td>
<td>Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom.</td>
<td>60 ratifications.⁴⁵⁴</td>
</tr>
<tr>
<td></td>
<td>Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>No action taken by United States.⁴⁵³</td>
<td></td>
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<tr>
<td></td>
<td>Ratified by Spain. Automatically denounced Netherlands upon ratification of Convention No. 183 (below).</td>
<td></td>
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<tr>
<td></td>
<td>No action taken by France, Germany, Mexico, United Kingdom or United States.⁴⁵⁶</td>
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</tr>
</tbody>
</table>

⁴⁴⁷ Ibid. Note that Mexico and Spain excluded Article 11 by virtue of the ratification of Convention No. 173 (acceptance of Part II).
⁴⁵⁰ Ibid.
⁴⁵² Ibid.
⁴⁵³ Ibid.
France: ratified 14 June 1974 and accepted Parts II and IV to IX; Germany: ratified 21 February 1958 and accepted Parts II to X (some of which are no longer applicable as a result of further ratifications); Mexico: ratified 12 October 1961 and accepted Parts II, III, V, VI and VIII to X; Netherlands: ratified 11 October 1962 and accepted Parts II to X (some which no longer applicable as above); Spain: ratified 29 June 1988 and accepted Parts II to IV and VI; United Kingdom: ratified 27 April 1954 and accepted Parts II to V, VII and X.
⁴⁵⁴ Ibid.
⁴⁵⁶ Ibid.
Netherlands: automatic denunciation on 19 April 2013 by Convention No. 183; Spain: ratified 17 August 1965 with the exception of persons specified in Article 7, paragraph 1(d).
⁴⁵⁷ Ibid.
<table>
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<tr>
<th>Convention</th>
<th>Ratification Status</th>
<th>Ratifying Country(s)</th>
<th>Number of Ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILO Maternity Protection Convention, 2000 (No. 183)</td>
<td>Ratified 1 June 2004 and period of maternity leave 18 weeks.</td>
<td>Germany (not yet in force) and Netherlands. No action taken by France, Mexico, Spain, United Kingdom or United States.</td>
<td>40 ratifications.</td>
</tr>
<tr>
<td>ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)</td>
<td>No action.</td>
<td>Germany: ratified 30 September 2021 (will enter into force 30 September 2022) and period of maternity leave 14 weeks; Netherlands: ratified 15 January 2009 and period of maternity leave 16 weeks.</td>
<td>33 ratifications.</td>
</tr>
<tr>
<td>ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118)</td>
<td>No action.</td>
<td>France: ratified 13 May 1974 and accepted Branches (a) to (d), (f), (g) and (i); Germany: ratified 19 March 1971 and accepted Branches (a) to (c), (g) and (h); Mexico: ratified 6 January 1978 and accepted Branches (a) to (g); Netherlands: denounced on 20 December 2004.</td>
<td>38 ratifications and 1 denunciation (Netherlands).</td>
</tr>
<tr>
<td>ILO Prevention of Major Industrial Accidents Convention, 1993 (No. 174)</td>
<td>No action.</td>
<td>Netherlands. No action taken by France, Germany, Mexico, Spain, United Kingdom or United States.</td>
<td>18 ratifications.</td>
</tr>
</tbody>
</table>

459 Ibid.
Germany: ratified 30 September 2021 (will enter into force 30 September 2022) and period of maternity leave 14 weeks; Netherlands: ratified 15 January 2009 and period of maternity leave 16 weeks.
460 Ibid.
462 Ibid.
Spain: ratified 8 May 1973
463 Ibid.
465 Ibid.
France: ratified 13 May 1974 and accepted Branches (a) to (d), (f), (g) and (i); Germany: ratified 19 March 1971 and accepted Branches (a) to (c), (g) and (h); Mexico: ratified 6 January 1978 and accepted Branches (a) to (g); Netherlands: denounced on 20 December 2004.
466 Ibid.
468 Ibid.
469 Ibid.
Human rights responsibilities of multinational enterprises and States in the Cuban tourism sector

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<td>ILO Convention on Occupational Health Services, 1985 (No. 161)</td>
<td>No action taken.</td>
<td>Ratified by Germany and Mexico. No action taken by France, Netherlands, Spain, United Kingdom or United States.</td>
<td>35 ratifications.</td>
</tr>
</tbody>
</table>


471 Ibid.

472 Ibid.


474 Ibid.

475 Ibid.


477 Ibid.

478 Ibid.


471 Ibid.

472 Ibid.


474 Ibid.

475 Ibid.


477 Ibid.

478 Ibid.