

Human Rights

The Policy of the Church of England National Investing Bodies and
The Advice of the Church of England Ethical Investment Advisory Group





THE CHURCH
OF ENGLAND

ETHICAL INVESTMENT
ADVISORY GROUP

The Church of England Ethical Advisory Group provides independent ethical investment advice to the Church of England's three National Investing Bodies detailed below:



The Church Commissioners for England, who support the work and mission of the Church of England across the country.



The CBF Church of England Funds, collective investment schemes managed by CCLA Investment Management Ltd in which Church of England parishes, dioceses, schools and church charitable trusts invest. CCLA is predominantly owned by its church and not-for-profit clients.



The Church of England Pensions Board provides retirement services (pensions and housing) for those who have served or worked for the Church of England.

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The Human Rights policy of the Church of England National Investing Bodies

A

POLICY AMBITION

The National Investing Bodies of the Church of England (NIBs) recognise that we have a responsibility to ensure that international human rights norms are respected by the companies in which we invest, and across their business relationships. We discharge this responsibility through our stewardship activities. We expect businesses to demonstrate consciousness with regards to human rights through an active commitment to ensure that they prevent or mitigate the risk of adverse impacts on human rights in all their activities.

We are committed to ensuring that our stewardship and engagement activities focus on salient human rights considerations, both for ethical and fiduciary reasons, given the impact that egregious human rights abuses have on victims, and on the companies implicated.

We seek to build and use leverage to ensure portfolio companies fulfil our human rights expectations. We will use leverage through our investment decision making, stewardship activities, collaborations with other investors and policy dialogue.

We expect and encourage companies in which we invest to have a human rights policy, due diligence process, meaningful disclosures, a grievance mechanism for human rights related concerns to be raised and to provide remedy where they cause or contribute to harm. This ought to apply throughout its operations and supply chains.

POLICY RATIONALE

Having considered the EIAG's theological reflections, and their Advice that international human rights norms are an appropriate framework by which to hold companies accountable, the NIBs have agreed to integrate the UN Guiding Principles on Business and Human Rights (UNGPs),¹ and other

1. As set out in the UN Guiding Principles document at page 14, an authoritative list of the core internationally recognised human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the

relevant international human rights norms,² into our stewardship approaches.

POLICY APPROACH

Our implementation of this policy will include: gathering data, undertaking research and due diligence, exercising prioritisation based on saliency, engagement (and other stewardship activities), reviewing outcomes and reporting to trustees (including training), and, where appropriate, referring cases to trustees. Our public Stewardship reporting will include relevant information regarding the implementation of this policy.

We note that the National Church Institutions (NCIs) of the Church of England and CCLA Investment Management (the investment manager for the CBF Church of England Funds) have human rights based policies, including Modern Slavery Policies, which set out their respective approaches towards managing and minimising the risk of modern slavery and human trafficking from occurring in our organisations and our supply chain.

International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. See United Nations Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", New York and Geneva, 2011, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

2. For example, these include the following:

- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of the Child;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- Convention on the Rights of Persons with Disabilities;
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- International Convention for the Protection of All Persons from Enforced Disappearances.

Other soft law instruments complement these. For example:

- The United Nations Declaration on the Rights of Indigenous Peoples;
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

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The Advice of the Church of England Ethical Investment Advisory Group

B1

EXECUTIVE SUMMARY

- 1 Human rights are the fundamental rights and freedoms of all human beings and are based on the values of dignity, fairness, respect and justice for all, regardless of nationality, gender, ethnicity, colour, religion, language or other status.
- 2 All companies, in any industry, in any country can have an impact—either positively or negatively—on human rights through how they treat their customers, employees, contract workers, their supply chains and the local communities in which they operate. As such, investors can be connected to a wide range of human rights risks which are caused by, contributed to, or linked to the companies they invest in.
- 3 In the increasingly complex global economy in which the Church of England invests via its National Investing Bodies (“NIBs”), the Ethical Investment Advisory Group (the “EIAG”) recognises that companies face a myriad of actual and potential human rights risks in their own business operations and throughout their supply chains. The EIAG does not expect investors or companies to completely eradicate all the human rights risks that they may be exposed to. The Church aims to invest in a way that reflects the Church’s vocation to live the Gospel as a redeemed community. As such, the EIAG does not expect perfection but it does expect investors and companies to embrace their responsibility to respect as well as protect and remedy international human rights norms and to demonstrate three core principles of transparency, accountability and justice in their approach to human rights risks.
- 4 In practice, this means the EIAG advises the NIBs and the portfolio companies in which they invest to endorse the human rights expressed in the UN Guiding Principles on Business and Human Rights (“Guiding Principles”) (which, for the avoidance of doubt, include as a minimum the human rights expressed in the International Bill of Human Rights and the ILO Core labour standards) and to integrate the Guiding Principles and other relevant international human rights norms throughout their investment stewardship activities.
- 5 The “Find It, Fix It, Prevent It” Modern Slavery Investor Initiative, developed by CCLA and supported by the NIBs, took the approach that if a business had not identified modern slavery in its supply chain, it simply had not found it yet. It urged and encouraged investors to investigate their business activities and their supply chains to identify and assess incidences of modern slavery, and it is within this context of transparency, accountability and justice that the EIAG advises the NIBs to be a “force for good” in their engagement with portfolio companies to help them to recognise the risks with their businesses and supply chains and to respond fruitfully.
- 6 The EIAG recognises there will be differences regarding the discourse and reality of human rights. However, as detailed in the theological reflection below, the EIAG believes there is a good Christian case for human rights and affirms that the norms embodied in the Guiding Principles and other international human rights instruments provide an appropriate framework by which Christian, and more specifically Anglican, investors may hold companies accountable with regard to their human rights responsibilities.



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- 1 The **Universal Declaration of Human Rights (UDHR)**, which was adopted by the UN General Assembly in 1948, is widely accepted as the first internationally agreed legal document to set out the fundamental rights and freedoms of all human beings. The central theme connecting its thirty articles is universality—that all human rights are inalienable, and that we are all equally entitled to our human rights without discrimination. The UDHR remains today the definitive cornerstone for human rights discourse and its thirty articles provide the principles and building blocks for all subsequent human rights legal instruments and global norms.
- 2 Nurtured by the United Nations, which had brought fifty nations together in 1945 “to save succeeding generations from the scourge of war, which...brought untold sorrow to mankind”,³ the UDHR was drafted by representatives from diverse legal, ideological and cultural backgrounds. It was shaped by a shared commitment to prevent any repetition of the horrors of the recent wars and the concepts of human rights it expressed reflected the moral experiences of the time and also owe a legacy to natural law and the political philosophy of the Enlightenment.
- 3 As set out in the theological reflection of this Advice, Christian tradition and teaching was influential (and some have argued essential) in the formation of the UDHR, and churches throughout the world have continued to be among the most forthright advocates of universal human rights.
- 4 **A conceptual framework of human rights**
- 5 First-generation human rights (*liberté*) are essentially concerned with securing civil or political liberty for a person and include, among other things, the right to life, equality before the law, freedom of opinion or expression, freedom of thought, conscience and religion, freedom from harassment and discrimination, the right to a fair trial and the right to vote. These rights are targeted towards individuals, rather than society as a whole and rely upon a state not to interfere with an individual in order to achieve them. They are not all fully codified into law throughout the world. The right of being allowed to practise your own religion, for example, is one reason why a country might not agree with and/or codify first-generation rights.
- 6 Second-generation human rights (*égalité*) concern the condition of a person’s life (i.e. those rights that allow him or her to enjoy and exercise the liberty gained through the first-generation rights). These rights address more universal needs and are more collective in nature, concerning economic, social and cultural needs. They include a right to be employed in just and favourable condition, rights to food, housing and health, as well as social security and unemployment benefits. These rights are also not applied equally without discrimination throughout the world. They have been resisted by countries and subject to criticism as “socialist notions”. Countries which commit to uphold human rights may resist some second-generation rights. The right to the enjoyment of the highest attainable standard of physical and mental health, for example, may be interpreted differently in one country from another.

- 4 The classification suggested by Karel Vasak,⁴ which groups universal human rights into three “generations” loosely corresponding to the three principles of the French Revolution: *liberté*, *égalité* and *fraternité*, offers a practical framework for understanding human rights.

3. United Nations, “The United Nations Charter”, available at: <https://www.un.org/en/about-us/un-charter/full-text>
4. Secretary-General, International Institute of Human Rights, 1969–1980

as the 1992 Rio Declaration on Environment and Development, they are largely expressed as aspirational “soft law”, and are frequently more contested than first or second-generation human rights.

- 8 The categorisation of human rights into three generations should not be viewed as competing or hierarchical. The EIAG regards all rights as interdependent and indivisible, and notes no single generation can be prioritised to the exclusion of others without jeopardising other rights.

A legal framework of human rights

- 9 The human rights as set out in the UDHR have been codified into international law through the [International Covenant on Civil and Political Rights \(ICCPR\)](#), which broadly covers the first-generation rights, and the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#), which broadly encompasses second-generation rights. The three documents together form the [International Bill of Rights](#).
- 10 Alongside the ICCPR and the ICESCR, the Office of the High Commissioner for Human Rights lists seven other core international human rights instruments:⁵ The International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination against Women, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The Convention on the Rights of the Child, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, The International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.
- 11 In addition to the International Bill of Rights and the core human rights instruments listed above, there are many other universal

5. OHCHR, “The Core International Human Rights Instruments and their monitoring bodies”, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

instruments relating to human rights,⁶ many of which encompass third-generation rights such as the right to health, the rights of indigenous peoples and minorities, and the right to self-determination.

- 12 With regard to fundamental rights at work, the International Labour Organisation identifies eight fundamental Conventions,⁷ covering four categories of human rights set out in the [ILO Declaration on Fundamental Principles and Rights at Work](#):⁸
 - a. freedom of association and right to collective bargaining;
 - b. freedom from forced or obligatory labour;
 - c. freedom from child labour;
 - d. freedom from discrimination in employment and occupation.

Human rights in the context of increasing global economic integration

- 13 Under international law, it is the legal responsibility of states rather than businesses to protect human rights. However, it has become increasingly recognised by supranational bodies, businesses, investors and civic organisations alike that businesses have a significant role to play in ensuring the respect and protection of human rights throughout the world.
- 14 The global economic integration of employment, goods, markets and supply chains has brought considerable benefits to people and communities throughout the world. However, it has also exposed individuals and societies to new and previously unforeseen risks that, if not properly envisaged and managed, can lead to significant human rights violations.

6. OHCHR, “Universal Human Rights Instruments”, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

7. ILO, “Conventions and Recommendations”, available at: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>

8. See Appendix I.

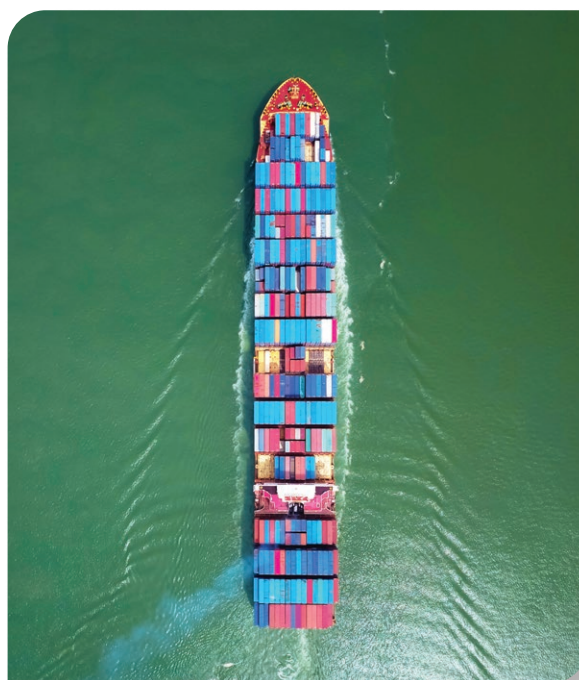
15 Businesses increasingly source goods and services from complex global supply chains which may encompass a variety of different legal and regulatory environments. These global supply chains may involve large numbers of suppliers, sub-contractors, or gig-workers—including some who may be victims of modern slavery.

16 The rise of corporate power, particularly in innovative or dynamic industries such as pharmaceuticals and technology, means that an increasing number of companies are richer and more influential than many states.⁹ Apple, Inc., for example, reached a market capitalisation of \$2 trillion in August 2020, which surpasses the GDP of countries including Italy, Brazil, Canada, Indonesia, Saudi Arabia and Russia. The growing mobility, size and influence of these businesses has led to a growing recognition of the responsibility of businesses in respecting and upholding universal human rights around the world.

17 In 2000, the **UN Global Compact** sought to extend the responsibility to uphold human rights to businesses and their sphere of influence by asking businesses to embrace, support and enact a set of ten principles which included, inter alia, the four fundamental human rights at work as defined by the ILO. Whilst not obligatory, these principles established a clear relationship between human rights and businesses.

18 The global standards of responsibility and accountability for businesses with regard to human rights were further developed and, in 2011, the **UN Guiding Principles on Business and Human Rights (Guiding Principles)**¹⁰ were unanimously approved by the UN Human Rights Council. These Guiding Principles confirmed at an international level the responsibility of businesses

to respect human rights and clarified the respective duties and responsibilities of businesses as well as states in tackling human rights risks related to business activities. In addition to outlining the obligation that all businesses and investors must respect human rights, they also set out certain actions that businesses must carry out in order to implement them.



9. International Monetary Fund, “The Rise of Corporate Market Power and Its Macroeconomic Effects”, in *World Economic Outlook: Growth Slowdown, Precarious Recovery*, April 2019, Chapter 2, available at: <https://www.elibrary.imf.org/view/IMFo81/25771-9781484397480/25771-9781484397480/cho2.xml>

10. United Nations Human Rights Council, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” 6/16/2011, available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

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- 1 This section provides a theological reflection on the broad body of human rights as contained in The Universal Declaration of Human Rights.
- 2 More than one commentator in recent years has argued that human rights have become the true religion of our age. This title is pushed both by secularists and Christians who envision human rights as the ultimate superseding of Christianity as the basis of the West's morality and law.
- 3 This theological reflection analyses that claim, and suggests that historically, legally and theologically the picture is more complicated than it is often presented by advocates on either side. It begins with a brief analysis of the role of churches in shaping the original 1948 Universal Declaration of Human Rights (UDHR). It then looks at contemporary criticisms of human rights from within Christianity, before arguing that there is still a good Christian case for human rights.

Architects and critics: the origins of human rights and the churches

- 4 There are two popular origin stories for the intellectual basis of human rights. In the first, human rights emerge near full-formed and without meaningful antecedent as the outworking of enlightenment philosophy and, in particular, through the thought of the Prussian philosopher Immanuel Kant. In this origin story, Kant creates the idea of the individual who is endowed on the basis of his or her rationality with a particular status and rights. In the other origin story, rights are a tool of the revolutionary and secular left (particularly as associated with the French Revolution) employed against the old models of state and Church.
- 5 Both stories have been challenged, particularly by the theologian Nicholas Wolterstorff and the historian Larry Siedentop. Wolterstorff traces the history of rights back to long before either the Enlightenment or the French Revolution, and argues that the intellectual backdrop to rights was established slowly as a development out of Christian thought through Medieval canon law, the Church Fathers and, ultimately, the Bible. Siedentop, meanwhile, credits the very notion

of the individual as coming out of Christian theology, and in particular the Christian demand of personal salvation and of equal dignity as sharing in the image of God. Neither work is beyond critique, not the least significant being that while we can certainly trace critical features of what would become human rights principles in earlier Christian thought, it is fair to say that Christians of the time did not always or even often recognise or act on those principles as we would understand them today. This critique need not be fatal, given that a Christian theology of sin offers a way of understanding how all schemes of thought—religious or otherwise—are compromised when they come to be enacted by fallible human beings and flawed social structures. But the gap between theory/theology and practice needs constantly to be held in mind.

- 6 Certainly, the UDHR itself was drafted with the explicit concern and influence of Christian intellectuals from both Catholic and Protestant churches. On the Catholic side, the key figure was the French philosopher Jacques Maritain. Maritain explicitly saw the task of drafting the declaration as one of applying Christian theology to contemporary secular order.
- 7 In particular, he sought to introduce the doctrine of “personalism”. Personalism is grounded in the doctrine of the Trinity. The three persons of the Trinity are distinct from one another, but, critically, they cannot exist except in essential relationship to one another. A person is thus distinct from an individual, since an individual need not necessarily be reliant on relationships with any other for its existence. Human beings, as made in the image of God, share this sense of being a person which requires them to be in relationship with others. They reach their ultimate fulfilment only in relationships with one another and with God. Further, by virtue of being made in the image of God, they share an intrinsic, and equal, human dignity.
- 8 The Catholic contribution of Maritain is relatively well established as a key architect of the UDHR, but a similar reflection on the need to translate Christian notions of dignity into a new potentially universal format also underpinned

a historically significant Protestant lobbying effort driven by the World Council of Churches (WCC). This movement owed much to the theology and thinking of Dr Joseph Oldham and his conception of Christendom, particularly as summarised in his 1940 book *The Resurrection of Christendom*. Christendom was understood here not in the more traditional sense, but as an effort to embed the values of Christianity in the public structures of the West as part of an effort at “the healing of the nations” (Revelation 22:2). Oldham’s essential argument was that it was the duty of the Church in the modern age (in which its position of social dominance could not be guaranteed) to work with others to establish its values in a manner which would ultimately be necessary for its own health. In this he also echoed T. S. Eliot’s *The Idea of a Christian Society* which called for a midwifing of Christian values in collaboration with those do not call themselves Christian.

- 9 These concerns led to successful efforts on the part of the WCC, particularly via the theologians Otto Nolde and Charles Malik, to lobby and shape the drafting of the original declaration—not least Article 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”¹¹
- 10 What this historical episode demonstrates is that Christian thought was at the heart of the drafting of the UDHR. There have, however, been critiques of the idea of human rights, including by the philosopher Alasdair MacIntyre, who famously dismissed the belief in rights as being akin to unicorns and witches. Rights for MacIntyre are nothing more than illusory fantasies, which have no foundation in reality.
- 11 Theologians have also criticised the idea of rights. The following are five of the most prominent criticisms.

11. See Universal Declaration of Human Rights, available at: <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

i) Do rights simply empower secular states?

It could be argued that an irony of the development of human rights is that though they were conceived of as taking issues of fundamental and critical human nature and raising them above and away from states and the political process, in practice they have led to an empowering of state structures: rights that may be supposed to transcend the state are primarily enforced and demanded in Courts that work at a national level.

In a functioning democracy, however, the Courts are separate from the other branches of the state, and there are robust mechanisms to hold the state accountable—with a judicial review, for example. In the UK, the government is accountable under the Human Rights Act, and, as the Act is binding on all other acts of Parliament, it is one of the few ways the UK Government is held to account. There are many other significant regional human rights systems that implement human rights and sit over the top of the state: for example, the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights. Additionally, there are many UN Bodies that monitor and oversee human rights, such as the Human Rights Council.

Rowan Williams is among those who have explored this potential tension between individual freedoms guaranteed and an increasing state bureaucracy. The Catholic political scientist Patrick Deneen is among a number of thinkers who suggest that the excessive focus on individual rights does nothing other than create an ever more powerful state which is often in practice antipathetic towards religious sensibilities. This critique is often combined with point ii), below.

Allied to this concern is the question whether rights are sometimes adjudicated in ways that aid secularising trends. But, whatever one’s views on particular rulings, it is not clear that this is finally a problem with the notion of human rights as such, rather than a concern about the ways in which they may be applied in particular jurisdictions.

ii) Is the concept of human rights too expansionist?

For several critics, the challenge of human rights is that they are not a fixed canon, but constantly seem to expand beyond their original remit. The former supreme court judge Jonathan Sumption's 2019 Reith Lecture series lays out this critique in length, pointing to the way in which human rights legislation has been used to cover an ever-broader swathe of areas, often without any clear democratic controls, driven in the UK largely by European legislation from Strasbourg.

There is a tendency, unless courts are careful to hold the line, on the part of some to use rights to secure in law policies that struggle to pass through the political process. This is one of the criticisms of Oliver O'Donovan, who dismisses human rights as a moralising and expansionist model, used to secure legitimacy for—and put beyond legitimate critique—questions which should rightly be open for democratic political debate.

One example of this is the fear that particular moral issues, such as abortion and euthanasia, are increasingly becoming battlefields fought on in the courts as an issue of third-generation rights, rather than as societal questions that ought to be settled at a political level. Herein lies one of the essential challenges in this debate, which is that while we talk about human rights as a singular collective noun (as if they are all one thing), in fact there are a number of separate rights (and things which some would like defined as human rights) that may be individually contestable. It is also argued by some that the conception of human rights invariably attaches such rights to individuals without reference to their social context, thus ignoring the way in which individuals become formed as persons within social structures, communities and traditions.

Again, as Sumption identified, the challenge is being able to identify which human rights really are truly fundamental aspects of human identity, on which there is a genuine shared consensus that this should be beyond normal

political processes, and which are simply ideas which might be considered in Sumption's words "merely good ideas". The challenge is that it becomes harder to define what those limits are in an increasingly secularised culture in which identifying genuinely shared values is more difficult than in previous eras.

With both this point and the point above, there is a danger of conflation of what we are actually talking about. That rights can be misused by the state, or over-extended beyond what is truly fundamental, are points that are of concern to Christians. They are, however, arguments primarily about the consequences and complications of enacting a system, rather than necessarily a Christian critique of human rights as a concept. It is, however, a fair concern for those involved in assessing the role of business and investment in addressing human rights that they do regularly evaluate the extent of the scope and expansion of what constitutes human rights.

iii) Are rights too individualistic, and do they avoid the demand for duties and responsibilities?

The first generation of human rights, as espoused in Articles 3 to 21, are primarily claims made by individuals, not groups. They are claims that particular treatment and status is due to an individual from the state. There are two potential Christian theological issues with this. The first is that, as articulated within the Catholic Social Teaching tradition and by associationist Anglican writers such as John Neville Figgis, the key to a healthy functioning society is one of intermediary institutions and groups between the state and individual, and in particular the claim of the family to be the key unit in society. Where Maritain had intended rights to be based on personalist recognition of relationships and dignity, contemporary critics argue that, in practice, rights have broken down all relationships and the power of intermediary institutions, making everything a matter of a contract between the individual and the state.

Related to this is a second issue, which is that framing morality in terms of rights due

to individuals may undermine the sense of duties and responsibilities. Both Old Testament notions of the covenant and Jesus' teaching have a much greater sense of reciprocity and mutuality in people's relations to each other, emphasising responsibilities to the neighbour.

This is reflected in the Catholic Social Teaching ideal of solidarity. In the words of John Paul II, solidarity "is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all."¹² It is also echoed in recent Christian theological emphases on charity, which see it not as a one-sided benefaction from the wealthy to the poor, but as a state of social friendship, in which giving and receiving takes places within a reciprocal web of social relationships. This makes for a more fundamental critique of human rights, since it makes clear that rights and responsibilities are always interwoven in a circle of giving and receiving. However, it is a critique that does not displace the notion of individual rights in favour of responsibilities but sets them in relation to each other.

Indeed, as Wolterstorff and others have argued, irreducible individual liberties have a strong and clear legacy at least as far back as Medieval Christian theology. Again, perhaps the issue is complicated by which rights are recognised. If the whole basis of citizenship is conceived only through a series of rights (i.e. to be a citizen simply meant being due certain things from the state, with no expectations upon them) that would lend strength to this critique. A more minimalist conception that only recognises a few fundamental aspects of human dignity as rights is arguably not so likely to define the whole scope of citizenship and the incumbent duties upon individuals.

Moreover, not all the human rights adopted in the UDHR are individualistic. As noted earlier, the second generation of rights which encompass the social and economic rights are far less focused on the individual, and form positive rights such as the right to health etc. These are more generally considered collective rights, so the critique of individualism is primarily towards the civil and political rights and as such might pose less of an issue for the EIAG in this context.

iv) Are rights a too minimalist conception of the good?

For Joan Lockwood O'Donovan, one of the most fundamental weaknesses of human rights discourse is their minimalism: "I have maintained unequivocally that Christian political thought is better off without the concept of human rights, which always deflects attention from God's right, God's law and God's justice."¹³

The root of this criticism is similar to the point above about the focus on what is due rather than responsibilities, and to the point on the empowerment of states, insofar as the focus is on the impact that rights may have had in perverting the functioning of a moral public square based on justice. A healthy public square, so the argument goes, would not require human rights because it would have intermediary institutions and a government founded on principles of justice, which ascribe to a much thicker conception of the good than human rights provide.

Human rights in that sense allow governments off the hook—permitting them to fulfil only a minimal set of contractual obligations, rather than seeking to establish a truly just society. There is a lot of merit to this critique, though the counter is twofold. First, that having a minimum is no restriction on having a far thicker conception of justice. Second, that the history of human rights did not appear from

12. John Paul II, *Sollicitudo Rei Socialis* 38, available at http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html

13. Oliver O'Donovan and Joan Lockwood O'Donovan, "Political Theology", on Fulcrum website (March 22, 2011), <https://www.fulcrum-anglican.org.uk/articles/political-theology-oliver-and-joan-o-donovan/>

nowhere, and it was precisely the failings of what had been thought of as civilised, modern European states in the two world wars and the horrors of the holocaust that made human rights a desirable model in the first place.

It is easy to be complacent (at least while sitting in free, liberal Western states), yet the reality for most of human history in most of the world to this date is that looking to nation states to promote the cause of justice and human dignity has not been a happy history. Having a mechanism to hold such states to account, for the sake of human dignity and Christian moral norms, was an aspiration which came in the 1950s with a sense of existential urgency that reflected a dramatic puncturing of Western self-confidence in the moral leadership of their political class.

v) Are rights imperialist?

A critique delivered by a number of theological voices, particularly in the developing world, is that the language of rights is only the latest example of Western imperialism imposed on an unwilling developing world. Writers such as Vinoth Ramachandra and Boaventura de Sousa Santos note that the language of rights is one of individual autonomy, and yet the language is compromised by the fact that in practice such rights have only ever tended to be applied absolutely to white, wealthy men. The unequal distribution and apparent concern for rights as applied to others, for these and other writers, only serves to make rights the latest neo-colonial project. This critique is as much as anything a criticism of the failure of rights to be properly implemented. It is not that rights themselves, any more than any moral framework or teaching, are flawed, so much as fallen human nature's ability to realise them. It is entirely fair to say that human rights have been often ignored by powerful western states when it has suited them, often at the expense of the developing world. The question is whether that truly renders rights inherently flawed, or whether it points to something broken in human nature which, nevertheless, demands a continued effort to set aspirations for the good.

How Christianity can underpin human rights today

- 12 In the 2019 Reith Lectures, the former British Supreme Court Judge Jonathan Sumption argued that the point of human rights can only be understood as those aspects of humanity which are so fundamental that they need to be beyond the normal political process.
- 13 However, crucially, as Sumption goes on to note, it is not clear what are the aspects of human existence that are so fundamental in shared consensus that they should be considered as human rights, and this consensus is harder to reach in a modern secular democracy than it has ever been previously, for the simple reason that there is less consensus on what actually constitutes our shared values. Unless there is some sort of shared belief structure then the question of what is truly fundamental comes down to little more than a subjective assessment shared by a sufficiently powerful proportion of the population.
- 14 The intellectual basis for why humans have a particular dignity in need of recognition and protection has always been a weakness of secular responses. Without a firm intellectual basis, rights are empty principles, based on nothing. This is the point explored at length in Wolterstorff's *Justice: Rights and Wrongs*. Wolterstorff argues that Christianity is the only (or at least the primary) intellectual lens through which rights can truly make sense.
- 15 The single most compelling alternative, and one of the most widely cited theories, refers back to the work of Kant (as in the rights origin myth discussed above). Kantian ethics assign a particular status to humans on the basis of their rationality. The challenge this poses, as many critics have pointed out, is that this renders the worth of human beings as tied directly to their capacity for moral reasoning. By this line of argument, however, it is hard to escape the conclusion that human beings with impaired or as yet underdeveloped rational capacity (the mentally ill, the comatose, babies, etc.) are less human and, therefore, less eligible to be protected by human rights.

16 By contrast, as Wolterstorff and others argue, the Christian notion of human dignity ascribes worth to all humans, regardless of health, age and rational capacity, simply on the basis of their humanity (their creation in the image of God). This line of argument has been expanded upon by Rowan Williams, who argues (with Maritain) that rights are essentially about the recognition of an embodied human. They cannot be conceived in a vacuum, but only in the recognition of the divine in other human beings. Accordingly, “[r]ights belong not to the person who can demonstrate capacity or rationality but to any organism that can be recognised as a human body, at any stage of its organic development”.¹⁴ So fundamental is the *imago Dei* as an element of humanity that it ought to be a supreme value above politics and economic criteria.

17 It is in this light that a strong Christian case can be made for an enduring support for human rights. When the UNGPs asks businesses to respect human rights and to ensure they are not complicit in abuses, a Christian parsing of that demand is to protect the concept of human dignity found in the *imago Dei*.

18 As a legal framework, rights (as argued above) are not entirely beyond criticism, and it is within the duties of Christians discerning how to live out their faith to debate and contest whether particular rights truly are essential to protect human dignity. However, that said, there are good reasons to conclude that, in principle, rights are an effective mechanism for embedding Christian notions of relationality and dignity into a shared, public framework which, while minimalist, does help to shape global norms and behaviours.

Conclusion

19 One of the critical challenges in assessing the relationship between Christianity and human rights is trying to nuance a picture which is often unhelpfully oversimplified. The history of

human rights is complicated. Certainly, there is an intellectual heritage within Christianity that, at least, arguably did much to inform what became human rights, though it is not a clear and easy path from the Bible to the UDHR and to contemporary human rights at the UN and European level. The UDHR was certainly greatly influenced by Christian theologians looking to create a new order of international politics that translated Christian values into national and international law, but it is an open question as to whether those rights can only be justified within theological terms, or whether they can also be given a rationale within secular terms.

20 Perhaps most important is the need to move from seeing human rights as a simple homogenous whole, to viewing them as a living collection which is capable of expansion and change. In that sense, some defined rights may be open to criticism, without dismissing the value of the language of human rights as a whole. There are practical as well as philosophical and theological challenges raised by the apparent expansion of rights legislation to cover areas on which there is no consensus as to whether such rights truly reflect what is uncontestedly fundamental to human existence (particularly as related to controversial moral questions such as abortion and euthanasia).

21 Everyone is in agreement that a truly Christian conception of a just society needs more than the minimal legal framework established by rights. However, this does not imply that such a minimum is unhelpful, particularly given the hard lessons of the twentieth century, which gave such abundant evidence of the evils human beings are capable of inflicting upon one another without robust minimum standards of laws and behaviours.

14. Rowan Williams, “Religious Faith and Human Rights”, lecture delivered on 1 May 2008, London School of Economics and Political Science, available online at: https://www.lse.ac.uk/assets/richmedia/channels/publicLecturesAndEvents/transcripts/20080501_RowanWilliams_tr.pdf

The responsibility of businesses to respect human rights

The Three Pillars of the UN Guiding Principles on Business and Human Rights		
PROTECT	RESPECT	REMEDY
State	Corporate	Victims
Duty to protect	Responsibility to respect	Access to effective remedy

- 1 The EIAG affirms the responsibility of all businesses to respect human rights and endorses the Guiding Principles as the authoritative global framework for helping businesses assess their impacts on human rights. The Guiding Principles do not establish any new legal obligations on businesses or states, but they provide guidance on how businesses should address human rights based on the three pillars of **Protect, Respect and Remedy**:
 - a. The responsibility of states to **protect** universally recognised human rights by establishing policies, regulations and appropriate legal processes;
 - b. The role of businesses to **respect** human rights by complying with all applicable human rights laws; refraining from any violation and providing remedy for any negative impacts caused by their activity;
 - c. Access to appropriate and effective **remedies** for victims of human rights violations.
- 2 The Guiding Principles apply to all states and all businesses worldwide regardless of their size, sector, location, ownership and structure and encompass the human rights as expressed, *as a minimum*, in the **International Bill of Human Rights**, consisting of the **Universal Declaration of Human Rights** and the main instruments through which it has been codified: the **International Covenant on Civil and Political Rights** and the **International Covenant on Economic, Social and Cultural Rights**, together with the principles concerning fundamental rights in the eight ILO core conventions as set out in the **Declaration on Fundamental Principles and Rights at Work**.¹⁵
- 3 The Guiding Principles also highlight that businesses must respect the human rights of individuals belonging to specific groups that may be particularly relevant to their business’s activity or geographic location or where they may have adverse human rights impacts on them. United Nations instruments have elaborated on the rights of: indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families, and the Guiding Principles make clear that, depending on a business’s own circumstances, it may also need to consider the human rights expressed in these standards, including:
 - The International Convention on the Elimination of All Forms of Racial Discrimination
 - The Convention on the Elimination of All Forms of Discrimination Against Women
 - The Convention on the Rights of the Child
 - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
 - The Convention on the Rights of Persons with Disabilities
 - The United Nations Declaration on the Rights of Indigenous Peoples
 - The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- 4 In addition, some businesses, depending upon their circumstances, will need to consider regional human rights instruments, such as the African Charter on Human and Peoples’ Rights, the American Declaration of the Rights and Duties of Man, the ASEAN Human Rights Declaration, and the European Convention for the Protection of Human Rights and Fundamental Freedoms with

¹⁵. See Appendix I.

regard to their business's impact on human rights, as well as other national human rights laws that codify international and regional human rights instruments.

- 5 The EIAG recognises that the responsibilities with regard to human rights will be particularly relevant for businesses with activities or operations in conflict-affected or high-risk areas as well as those businesses operating in high-risk sectors, either globally or nationally. The Guiding Principles make it clear that the responsibility of businesses to uphold these rights exists independently of whether governments fulfill their human rights obligations. When faced with conflicting requirements, businesses should comply with national laws while at the same time seeking to honour the principles of internationally recognised human rights.
- 6 The Guiding Principles have also been integrated into other responsible but non-binding business standards including the OECD Guidelines for Multinational Enterprises, which has applied the framework to environmental, social, and governance (ESG) concerns and provide useful guidance for multinational portfolio companies. The OECD also operates a unique grievance mechanism via the establishment of National Contact Points (NCP) which provide an effective level of scrutiny for all stakeholders, including institutional investors.

1 As established in the Guiding Principles, the corporate responsibility to “respect” human rights goes beyond an “awareness of risks” to an “active commitment”, to ensure businesses prevent or mitigate the risk of human rights harms in all their activities. Specifically, businesses are expected to:

- a. Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- b. Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

2 This means the EIAG advises the NIBs that portfolio companies should have in place policies and processes appropriate to their size and circumstances, including:

- a. A formal and public human rights policy outlining their responsibility to respect human rights and implement the Guiding Principles—this should include their expectations of all business relationships including their supply chain and other relevant business relationships;
- b. A human rights due diligence process to identify, prevent and mitigate how they address their actual and potential impacts on human rights—this includes identifying their salient human rights issues, adopting the UNGPs approach to saliency;
- c. Processes including effective grievance mechanisms¹⁶ to enable the remediation of any adverse human rights impacts they cause or to which they contribute;
- d. Engaging transparently and responsibly on human rights, including providing meaningful human rights disclosure—portfolio companies should

be encouraged to disclose their human rights policies, actions, governance and procedures including a full value-chain perspective (including their own business operations as well as their supply chain). In addition, portfolio companies should be expected to contribute to human rights impact assessments and participate in initiatives that may include the Corporate Human Rights Benchmark (CHRB), the Workforce Disclosure Initiative (WDI), the UN Guiding Principles Reporting Database, Behind the Barcodes, Behind the Brands and BankTrack’s Human Rights Benchmark.

ASSESSING ADVERSE IMPACTS

1 An adverse human rights impact occurs when an action takes away or limits the ability of an individual to enjoy human rights. The Guiding Principles envisage three distinct ways in which a portfolio company may be involved with adverse human rights impacts:

- a. causing an adverse human rights impact through its own actions or omissions—for example, allowing sub-standard buildings to be used for factories and trade unions representatives affected by police brutality.
- b. contributing to an adverse human rights impact through its own activities, either alongside other entities or through external entities, such as clients or customers. The failure of the Córrego do Feijão tailings dam at a Vale mine in Brumadinho, Brazil that killed 270 people on 25 January 2019 is an example of where a portfolio company contributed to human rights violations including the rights to life, dignity and health.
- c. being directly linked to an adverse human rights impact through its operations, products, or services via a business relationship, such as a portfolio company—an example of this would be dispossessing indigenous populations of land.

IDENTIFYING SALIENT RISKS

- 1 Given the many and diverse human rights risks any business will face, the EIAG recognises that a business will not be able to address every risk

16. Institute for Human Rights and Business, “Remediation and Operational-Level Grievance Mechanisms”, in *ICT Human Rights Sector Guide* (10 June, 2014) Part 3, Section VI, available at: https://www.ihrb.org/uploads/reports/EC-Guide_OG-12_Part-3_Section-VI.pdf



PROVIDING REMEDY

- that it faces, but expects portfolio companies to adopt a “saliency approach” as defined in the Guiding Principles, which uses the lens of risk to people, not the business, as a means of identifying and prioritising its salient human rights risks.
- 2 The saliency approach assesses the severity of an impact (determined by scale, scope, remediability) and the likelihood of the impact occurring (determined by business context, relationships and activities, as well as the presence of vulnerable groups). Severity is weighted higher than likelihood, meaning that highly severe impacts with even a low likelihood should be prioritised by portfolio companies as salient.
 - 3 Given the impact that egregious human rights abuses have on people, and noting that where risks to people’s human rights are greatest there is a potential for material risk to the business, the EIAG advises the NIBs to prioritise salient risks with regard to its engagement and stewardship activities.
- 1 Businesses are expected to provide remedy to those harmed, where it causes or contributes to adverse impacts. Remedies may include “apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition”.¹⁷
 - 2 Where a business is “linked to” a human rights adverse impact, the scope of responsibility does not extend to the provision of remedy. However, a business may still wish to play a role in enabling remedy for reputational and/or other reasons. Professor John Ruggie has noted a continuum between contribution and linkage: “A variety of factors can determine where on that continuum a particular instance may sit [including] the extent to which a business enabled, encouraged, or motivated human rights harm by another; the extent to which it could or should have known about such harm; and the quality of any mitigating steps it has taken to address it.”¹⁸ This remedy gap is of particular relevance for investors who may suffer reputational harm from investing in projects or businesses that cause adverse impacts.
 - 3 Whilst the ability of the NIBs to seek change among portfolio companies will be affected by many factors, including corporate ownership structures and corporate governance rules, the EIAG encourages the NIBs to continue to use their influence and work with peer investors to bring remedy with regard to human rights.

17. “Remediation/Remedy” in The UN Guiding Principles Reporting Framework, “Glossary”, at <https://www.ungpreporting.org/glossary/remediationremedy>
 18. John G Ruggie, “Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 in a Corporate and Investment Banking Context”, 21 February 2017, at https://media.business-humanrights.org/media/documents/files/documents/Thun_Final.pdf

The responsibility of the NIBs as institutional investors

- 1 The OECD's *Responsible Business Conduct for Institutional Investors*¹⁹ makes it clear that investors may be connected to adverse impacts on human rights caused by, contributed to, or linked to portfolio companies as a result of their ownership, and the EIAG therefore advises the NIBs to set clear expectations of its portfolio companies with regard to human rights risks.
- 2 Under the *UN Guiding Principles Reporting Framework*, whilst investors are not responsible for directly addressing the adverse impacts that portfolio companies are involved with, they are, due to legal obligations and normative expectations, expected to consider risks throughout the investment lifecycle, including through their investment decision-making, and throughout their investment stewardship activities. The NIBs are therefore encouraged to integrate the Guiding Principles and other relevant international human rights norms, into their stewardship activities. They are also expected to use their leverage to facilitate and incentivise portfolio companies and other influential actors including other investors to prevent, mitigate, and where appropriate address harms.
- 3 The EIAG advises the NIBs to formalise their own public commitment to respect human rights which, at a minimum, states that the NIB formally supports the principles contained within the Universal Declaration for Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the eight fundamental ILO conventions.
- 4 The EIAG advises the NIBs to communicate its monitoring and assessing policies and processes which ensure that salient human rights risks in portfolio companies are identified and that portfolio companies are appropriately addressing

issues of concern in adherence to their human rights statement. In developing its own processes, the EIAG encourages the NIBs to make use of all relevant human rights expertise, tools, frameworks and guidelines, including the Investor Alliance for Human Rights Toolkit.²⁰

- 5 The EIAG affirms the importance, in terms of both financial materiality and the saliency of egregious human rights harms, of portfolio companies maintaining robust human rights risk management processes and governance.



19. OECD, "Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises" (2017), available at: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

20. Investor Alliance for Human Rights, "Investor Toolkit on Human Rights" (2020), available at: <https://investorsforhumanrights.org/investor-toolkit-human-rights>

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Appendix 1: International human rights outlined in the UN Guiding Principles

- The International Bill of Human Rights,²¹ which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)
- The 8 International Labour Organization (ILO) core conventions,²² which are:

Freedom of association and the right to collective bargaining	1 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
	2 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Freedom from forced labour	3 Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
	4 Abolition of Forced Labour Convention, 1957 (No. 105)
Freedom from child labour	5 Minimum Age Convention, 1973 (No. 138)
	6 Worst Forms of Child Labour Convention, 1999 (No. 182)
Freedom from discrimination at work	7 Equal Remuneration Convention, 1951 (No. 100)
	8 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

- Other international human rights instruments,²³ such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and
- Regional human rights treaties,²⁴ such as the African Charter on Human and Peoples' Rights, the American Declaration of the Rights and Duties of Man, the ASEAN Human Rights Declaration, and the European Convention for the Protection of Human Rights and Fundamental Freedoms; and
- National human rights laws that codify international and regional human rights instruments.

21. OHCHR, "Fact Sheet No.2 (Rev.1), The International Bill of Human Rights", available at: <https://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

22. OHCHR, "The text of the Declaration and its follow-up", available at: <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>

23. OHCHR, "The Core International Human Rights Instruments and their monitoring bodies", available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

24. OHCHR, "Regional Human Rights Treaties", available at: <https://www.ohchr.org/EN/Issues/ESCR/Pages/RegionalHRTreaties.aspx>

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