Trends in

Emerging Human Rights and Business

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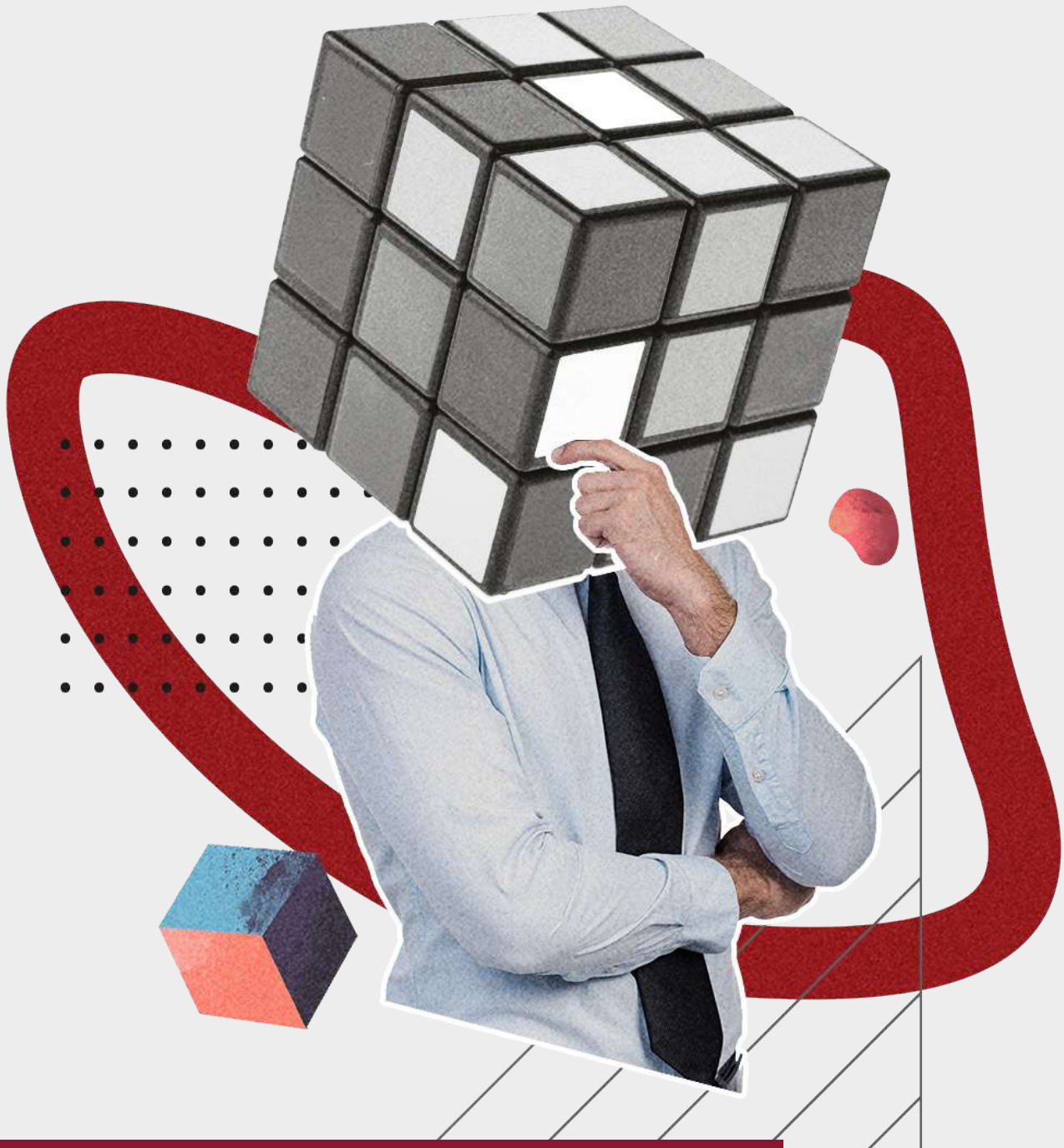


A changing *and uncertain*

context with new challenges
for human rights

In a context of polycrisis[1] and economic and social uncertainty such as the present one, it is foreseeable that populations will be negatively affected and, therefore, the risks to human rights will increase.

In the current scenario, ***new risks to human rights arise.***

The conflict in Ukraine, hyperinflation, especially in Europe, the increase in socio-economic inequalities, job insecurity in the face of the development of the gig economy, the effects of climate change together with the loss of biodiversity, and the migratory flows that we are witnessing, reflect the complex, changing and uncertain times we are living in.

As a result of this scenario, new risks to human rights are arising as the vulnerability of certain groups increases, leading to **negative impacts on people and planet.** To address the complexity of the issue, we must consider that human rights are not only a problem from a moral or ethical point of view, but also have important consequences for social and economic development and are closely related to environmental impacts.

1 The World Economic Forum defined polycrisis at the 2023 Davos Forum as a cluster of related global risks with compounding effects, such that the overall impact exceeds the sum of each individual part. The Global Risk Report 2023. World Economic Forum

For all these reasons, it is necessary to think about human rights from a new perspective that allows us to respond to these scenarios by including new topics, redefining approaches or extending rights to new groups that historically have not been taken into account. The world has changed profoundly since the adoption of the Universal Declaration of Human Rights[2] in 1948. Although it continues to be the international milestone document that embodies basic human rights, it is increasingly necessary to address the matter from the angle of **emerging human rights** so as to take into account new concerns.

What are emerging ***HUMAN RIGHTS?***

- **New rights** resulting from social and economic transformations and current challenges
- **Rights updated or expanded** based on new approaches
- **Rights extended** to new groups not previously covered

2 *Universal Declaration of Human Rights. United Nations.*

The need for this reassessment also extends to the business world, especially at a time when the power of private actors is increasingly greater than that of public actors, hence they must play a more significant role in safeguarding human rights. As a result, the **management of human rights risks and impacts** management of human rights risks and impacts by organizations is increasingly being integrated into internal management procedures and is also becoming a central part of sustainability strategies, mainly through **due diligence processes.**

Digital transformation, the emergence of more diverse societies where certain minority groups may potentially find themselves unrepresented, or the risks of sector concentration for consumers, customers and users are trends with implications for companies and how they address human rights impacts. Additionally, the management of these issues has a bearing on the relationship with their stakeholders, as it may have a positive or a negative effect, and it is therefore essential to take their needs and expectations into account when articulating business strategies. This is an increasingly important element from the point of view of corporate sustainability management.

As a result, more and more companies are integrating these topics into the **design and implementation of due diligence processes** to anticipate potential risks and establish appropriate measures to prevent or mitigate them, thus minimizing any negative impact on their value chains and their own operations.

More and more companies integrate due diligence ***processes in human rights***

Companies are addressing human rights out of conviction or in response to pressure from the regulator, the capital market and customers or employees. In order to integrate human rights management into the sustainability strategy (and in the business strategy) it will be essential to understand it as a living and constantly evolving process. This will make it possible to **anticipate due diligence regulation,** especially at the European level (Corporate Sustainability Reporting Directive, the Corporate Sustainability Due Diligence Directive on Human Rights and the Environment or the Proposal for a ban on goods made using forced labor) and at the national level (Draft Bill on the Protection of Human Rights), to regulate the framework for corporate reporting on environmental, social and governance aspects.

This report aims to provide a **new perspective on human rights** that every company should consider in its due diligence processes which will enable them to adapt to current trends and anticipate future regulatory requirements.

> In order to integrate the ***management of human rights,*** it will be essential to understand it as a living process and in constant construction.

THE 4 EMERGING

human rights and business trends

- **Technological transformation and digital rights**
- **Diversity, Equity and Inclusion 360º**
- **Stakeholder Health**
- **Inequality and the living wage**

KEY IDEAS

01

As a result of the accelerated **technological transformation and digitalization processes,** digital rights such as the right to digital disconnection or the right to data protection are emerging as a new generation of rights that guarantee access to the Internet and a correct use of digital media.

02

Inclusive design of products and services is a key aspect to build fairer and more accessible societies for everyone. Companies that adopt this strategy and assess their human rights impacts in their downstream value chain will be contributing to the well-being of society and to the improvement of their own business performance.

03

Genetic testing raises ethical dilemmas concerning **data privacy and discrimination risks.** Companies can promote the protection of genetic information through policies and practices that raise awareness and provide guidance for employees and customers.

04

Mental health is a fundamental human right that companies should address from an internal point of view, by dealing with the needs of their professionals; and externally, by assessing the impacts that products and services may have on consumers, customers and users. This second aspect is especially relevant in the case of technology companies and digital platforms.

05

The United Nations has recognized **the right to a healthy environment** as a human right since July 2022. Impacts on people must be taken into account when tackling the challenges of the climate crisis, the loss of biodiversity and the deterioration of ecosystems.

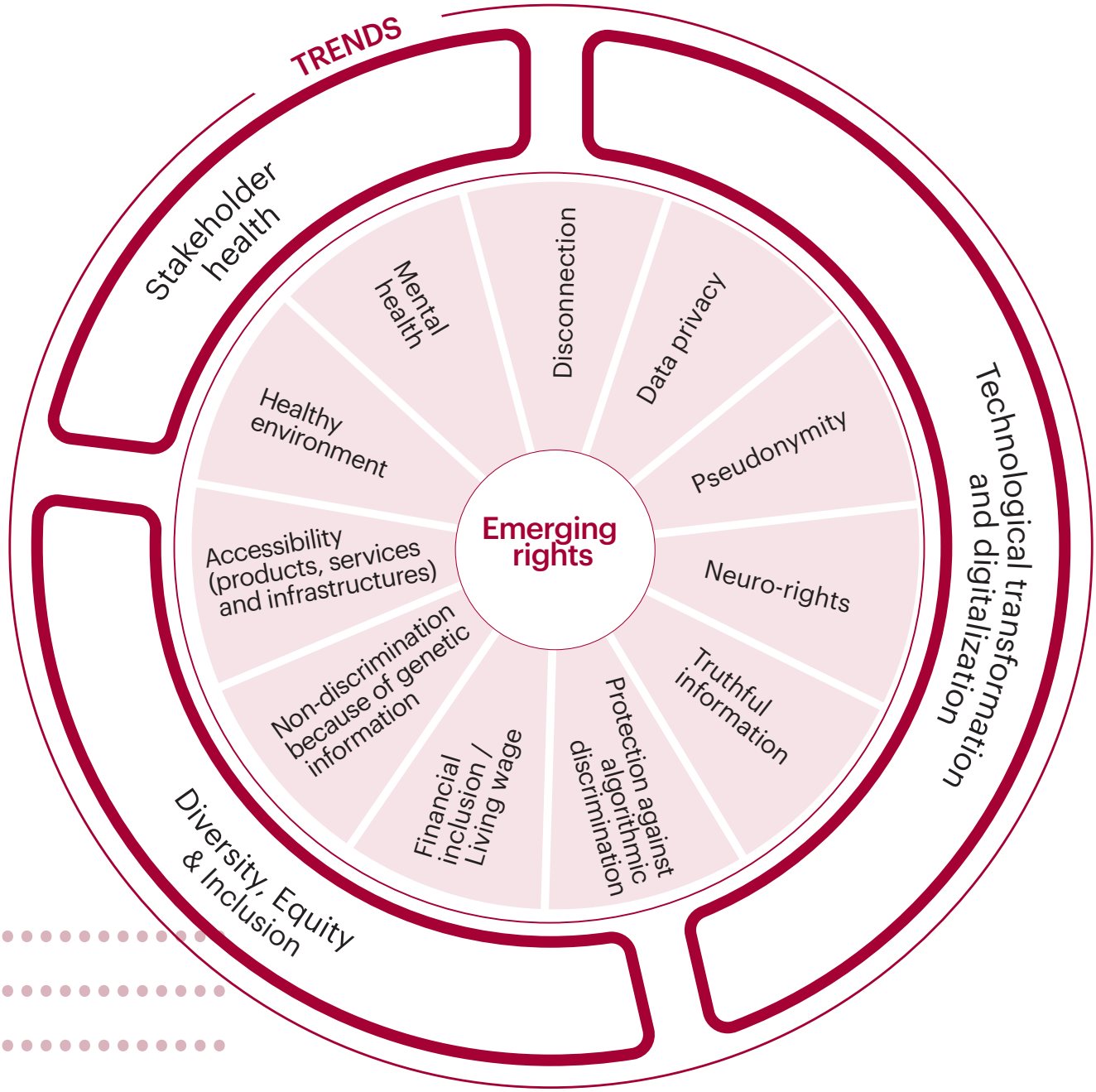
06

Companies have addressed **wage inequality** mainly from a gender perspective. However, ensuring a living wage for its own employees, those employed by its subcontractors and business partners and the wage gap between top managers and middle managers, are also human rights issues that contribute to economic inequality.

07

The implementation of **due diligence procedures** is a necessary step for companies to succeed in effectively managing their human rights and environmental risks and impacts.

What are the most relevant **emerging human rights** issues for companies?



Technological
transformation
and digital rights

The enormous technological advances in recent times have improved people's quality of life and countries' economic performance. However, the rapid evolution of digital technologies also sets the scene for possible infringements of rights for which there are still no specific regulatory mechanisms.

The so-called information and communication technologies (ICTs) have facilitated access to and communication of data. But even more importantly, technologies have enabled the storage, processing and even manipulation of information. Thus, in this last instance, posing a risk to the **right to reliable information** and jeopardizing access to it.

At the beginning of 2023, approximately 64% of the world's population was using the Internet, compared to 35% just 10 years ago[3]. However, the world no longer goes online just to search for information. These digital tools have changed the way human beings interact, therefore leading to a profound transformation of society. The environment in which human rights are now exercised is a **digital and informed society**. And where boundaries were once clear, they are now certainly blurred. The close relationship with personal data makes digital media a risk factor for the privacy, freedom and integrity of individuals.

In this context of growing challenges for human rights, **digital rights** are emerging as a new generation of rights relating to the digital transformation, that guarantee access to the Internet and a correct use of digital media. These do not imply the replacement but rather a redefinition of existing rights adapted to the emergence of new technologies.

In addition to the General Data Protection Regulation (GDPR)[4] and the Directive[5] , in relation to the processing of personal data by institutions and bodies, the European Union (EU) has several non-regulatory instruments that represent a first step in the recognition of digital rights. In December 2022, the EU adopted the European Declaration on Digital Rights and Principles for the Digital Decade with the aim of complementing existing rights and guiding politicians and businesses in the **digital transformation.**

Additionally, each country is developing its own **Charter of Digital Rights**, with common guidelines. In Spain[6] it was adopted in 2021 and is included in the 2026 Spain Digital Plan for the sustainable digital transformation of companies and society. One of the elements that stands out, connected with the right to identity in the digital environment, is the r**ight to pseudonymity**, understood as the right of users to use a pseudonym instead of their real name. Also, Spain has had the Organic Law on Protection of Personal Data and Guarantee of Digital Rights since 2018 in which digital rights are also recognized.

Beyond the Internet, the arrival of new technologies such as Big Data, Artificial Intelligence, Virtual Reality or Biotechnology have modified activities and behavior patterns emphasizing the need to adapt human rights regulations.

3 *Digital 2023 Global Overview Report. DataReportal*
4 *General Data Protection Regulation (EU) 2016/679. European Parliament and Council.*
5 *Directive (EU) 2016/680. European Parliament and Council*
6 *Charter of Digital Rights. Government of Spain*

WHAT NEW TECHNOLOGICAL DEVELOPMENTS

may impact on human rights?

NEUROTECHNOLOGY

Neurotechnology aims to understand, improve and even control the functions of the human brain[7]. There are an infinite number of applications, such as the development of prostheses, drugs or implants. However, despite the potential benefits in the field of health, the risks it poses to people's freedom and privacy is alarming.

Although there is still no specific regulation on the subject, there are already discussions about **neurorights** that aim to protect and preserve the integrity of the brain and mind. Five main neurorights have been identified: personal identity, free will, mental privacy, protection against bias and equal access to mental capacities. In this regard, Chile was the first country to pass a bill in 2021 to regulate neurotechnology and include "brain rights"[8] in its Constitution.

ALGORITHMIC DISCRIMINATION

Companies are increasingly turning to **Artificial Intelligence** (AI) as a recruitment tool in selection processes to optimize tasks that are slow and repetitive[9]. The challenge posed by these technologies is associated with the risks of algorithmic bias and over-reliance on them.

AI systems do not discriminate intentionally but learn to make decisions based on historical information that it is called **training data[10]**. If this data includes biased human decisions, historical and social inequalities, or a lack of representativeness of the data, the result will be biased, even if sensitive variables such as gender, race, or sexual orientation are removed.

In this respect, a law restricting the use of AI tools in the hiring process to avoid bias is going into effect in New York City[11] in 2023. And the EU is on its way with its proposed Artificial Intelligence Law[12] to define **high-risk uses and protect human rights**.

7 Neurotechnology, how to reveal the secrets of the human brain? Iberdrola
8 Chile, pioneer in the protection of "neuro-rights". United Nations Educational, Scientific and Cultural Organization (UNESCO).
9 World Economic Forum. These are the flaws of AI in hiring and how to tackle them. World Economic Forum
10 European Union Agency for Fundamental Rights. Bias in algorithms. European Union Agency for Fundamental Rights
11 New York Artificial Intelligence Act. The New York City Council
12 Proposed European Artificial Intelligence Law. European Commission

METAVERSE

The metaverse is drawing high hopes as the most recent and innovative technology to date. A McKinsey study shows that the metaverse has the potential to generate up to $5 trillion by 2030, which reflects the economic possibilities that lie ahead[13].

Still in the development stage, the metaverse is a space that connects the physical world with the virtual world by creating a fully immersive experience through characters or "avatars." While the metaverse can be used as a recreational activity, some sectors are starting to use this tool to test different tasks before performing them in real life.

The metaverse, defined as "beyond of reality", will make preserving human rights even more complex. Such AI-based technologies invade privacy through **data collection and excessive surveillance** of online behavior. Moreover, anonymity and virtualization encourage behaviors that may violate the human rights of others, such as bullying, harassment or violence[14].

On the other hand, this has led to several debates on diversity, equality and inclusion, since the socioeconomic characteristics of people in the physical world are easily transferable to the metaverse. Not only do more privileged groups have greater opportunities to access technologies[15] , but the metaverse already shows biases associated with gender, race, sexual orientation or disability. For example, a McKinsey report[16] concludes that investors tend to invest more in male-led companies in the metaverse.

Although it is still perceived as the technology of the future, it is important for regulators not to lose sight of the potential challenges it will pose to people's freedom and integrity, especially among the most vulnerable groups such as children, teenagers or people with disabilities.

IMPACT ON WORKERS AND INEQUALITY.

Technological progress and the automation of tasks in the business environment has led to the transformation (and disappearance) of many jobs. Beyond sectors such as the automotive industry, we already see many office jobs being replaced by AI. The use of chatbots for customer service are a good example of this.

ChatGPT, and its most powerful version, GPT-4, have become the most important revolution in the field of AI at the beginning of 2023. This chatbot is capable of performing various language-related tasks and many companies are already incorporating this technology into their businesses. Its creator, the company OpenAI, claims that 80% of jobs will be affected in the not-too-distant future[17].

According to McKinsey Global Institute estimates, up to 375 million people may have to change jobs and acquire new skills by 2030[18]. Companies require specific digital skills from their employees, and this specialization has in many cases led to **wage inequality[19]**. The most disadvantaged groups that do not have access to this training will be left out, and in more precarious and unstable jobs. In addition, recent studies warn of the **risks of AI** for people's health and well-being, thus making effective regulation an urgent matter[20].

13 Regulation (EU) 2016/680. European Parliament and Council.
14 Virtual Worlds, Real People: Human Rights in the metaverse. Electronic Frontier Foundation.
15 Protecting human rights in the metaverse. KPMG
16 Even in the metaverse, women remain locked out of leadership roles. McKinsey & Company
17 GPTs are GPTs: An Early Look at the Labor Market Impact Potential of Large Language Models. Open AI, OpenResearch and University of Pennsylvania
18 McKinsey Global Institute. Jobs lost, jobs gained: What the future of work will mean for jobs, skills, and wages. McKinsey & Company
19 Robot adoption, worker-firm sorting, and wage inequality: Evidence from administrative panel data. Centre for Economic Policy Research
20 Threats by artificial intelligence to human health and human existence. BMJ Global Health.

HOW CAN COMPANIES respond?

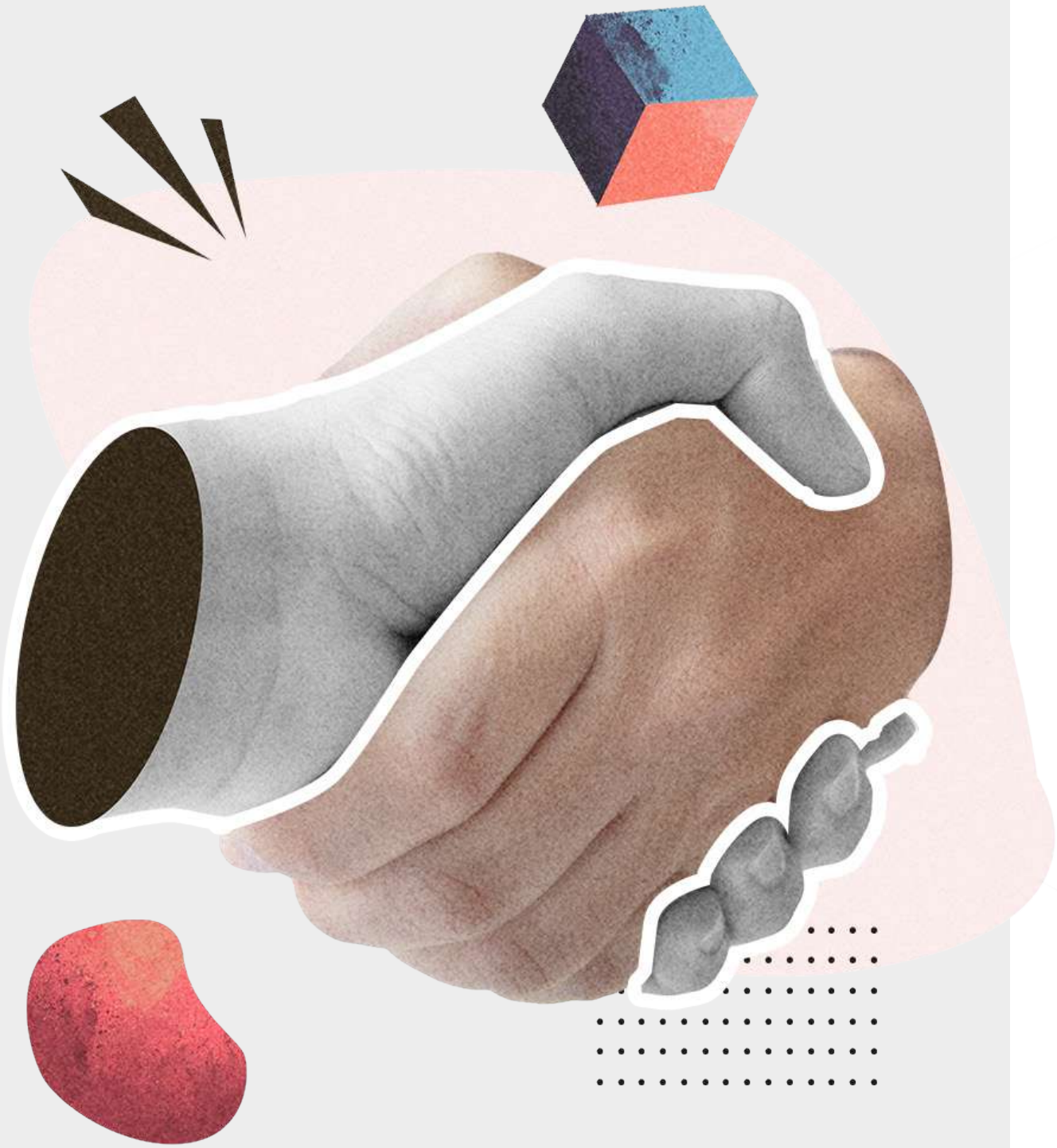
The regulator faces the challenge of keeping up with technological change, which is faster than ever before, thus increasing human rights risks. Nevertheless, companies can stay ahead of the curve by identifying the potential direction **and effects on the rights** of their stakeholders and the markets in which they operate.

Companies can get ahead by identifying the possible course and the ***repercussions on the rights*** of their stakeholders and the markets in which they operate.

Some of the **actions** that companies can implement to address the new digital challenges are:

- Define and implement corporate policies that include people's rights and security in the digital world (i.e., Human Rights Policy, Code of Ethics, etc.) [21].
- Design products and services responsibly, integrating ethical criteria.
- Create a safe and inclusive digital environment, helping particularly vulnerable groups to exercise their rights in the digital environment.
- Ensure fair and proportionate use of personal data, always with the consent of users, who will be informed of its purposes[22].
- Provide training for employees to meet new business needs arising from technology trends through upskilling (acquiring new skills to improve performance) and reskilling (acquiring skills for a new job) programs.
- Create the role of Chief AI Ethics Officer (CAIEO) to manage the ethical considerations involved in the development and deployment of AI-based technologies, instruct employees on the implications of biased AI and help the company to meet its ethical objectives[23].
- Develop a policy on digital disconnection to ensure employees' right to their rest time as well as their personal and family privacy.

21 Global Principles on Digital Safety: Translating International Human Rights for the Digital Context. World Economic Forum
22 Virtual Worlds, Real People: Human Rights in the metaverse. Electronic Frontier Foundation
23 A Holistic Guide to Approaching AI Fairness Education in Organizations. World Economic Forum



Diversity, Equity and Inclusion 360°

The **management of diversity, equity and inclusion (DE&I)** is not a new issue for Human Resources areas, but it is becoming increasingly so from a sustainability management point of view. ESG (Environmental, Social and Governance) strategies are integrating these aspects to reinforce the development of the **'S'** elements and show their commitment to creating a positive impact on the people around them, considering their own employees, but also consumers, clients and users.

DE&I is gaining relevance today because of increasingly diverse societies in which different interests and needs coexist and where there is a growing risk that certain minority groups may be underrepresented. As a result of this increased diversity, situations of **multiple discrimination** often arise, whereby a person is discriminated against because of more than one perceived characteristic. This can produce situations of **intersectional discrimination** if two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination leading to systemic inequalities.

From a business standpoint, promoting diversity can have important **benefits**, from improvements in economic performance and reputation to greater creativity and talent retention and attraction. In addition, there is greater sensitivity and social awareness of these issues, and it is becoming increasingly important to address DE&I values from a more holistic viewpoint that considers employee management, the supply of and access to products and services, and the design of infrastructures and facilities.

RESPONSIBLE DESIGN:

more inclusive products, services and spaces

The main objective of inclusive design is to ensure that all ***users, clients or consumers can use, access and participate on equal terms*** regardless of their gender, sexual orientation, race or any other factor.

Inclusive design of products, services and spaces refers to providing solutions and services that are accessible and usable by as many users as possible[24]. This design is closely linked to accessibility and corporate responsibility, but rather than an outcome, it is a business strategy that integrates sustainability in a transversal way. Therefore, the main objective of inclusive design is to ensure that all users, customers or consumers can use, access and participate **on equal terms** regardless of gender, sexual orientation, race or any other factor.

The rise of digital products, the increasing number of people with some kind of disability or the population ageing are some of the factors that may pose a risk for certain groups, who may be excluded from access to several products and services. An example of this is the **digital divide**, which is particularly affecting the elderly, who are especially at risk of financial exclusion in the face of the digitalization changes that the financial sector has experienced in recent years.

The absence of a diversity focus can also affect drug design as, in most cases, clinical trials can be biased. Therefore, it is essential that clinical trials include people with a variety of life experiences and living conditions, as well as characteristics such as race and ethnicity, age, gender and sexual orientation, so that all communities can benefit from scientific advances and avoid potential cases of patient discrimination[25].

In addition, it is important to bear in mind that inclusion in design is not only a question of physical or functional accessibility. It also refers to social inclusion as it must consider which users will access a product or service. For example, design with a gender perspective is oriented towards this end, since it aims to make product proposals from a neutral position and, therefore, does not contribute to gender-based segmentation.

In the case of people with disabilities, the EU through Directive (EU) 2019/882[26] and its transposition in Spain through Royal Decree 193/2023[27] has established the **basic conditions of accessibility and non-discrimination** to ensure access to all types of facilities, so they can benefit from a wider range of mainstream products and participate more actively in society and the economy.

This regulation also establishes a series of action measures and other complementary support aimed at compensating for the initial disadvantages they experience. In parallel, the Directive contributes to the implementation of the European Pillar of Social Rights Action Plan, an initiative intended to provide citizens with new and more effective rights.

24 *Inclusive Design Toolkit. British Standards Institute*
25 *Diversity and Inclusion in Clinical Trials. National Institute on Minority Health and Health Disparities.*
26 *DIRECTIVE (EU) 2019/882 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on accessibility requirements for products and services. European Union*
27 *Royal Decree 193/2023, of March 21, regulating the basic conditions of accessibility and non-discrimination of persons with disabilities for access to and use of goods and services available to the public. Ministry of Social Rights and Agenda 2030*

Against this backdrop, companies are subject to **more stringent demands** from customers, consumers and investors for products, spaces and services that integrate social criteria into their design[28]. At present, inclusive and responsible design is acquiring greater relevance thus enabling companies, organizations and governments to use it to **prevent negative or undesired impacts** and generate a positive impact on the environment[29].

In addition, this approach has important **benefits for the organizations** that integrate it:

- **Sense of belonging:** by creating a workplace that is inclusive for different profiles, companies can access new talent markets. As the business world becomes more competitive, those with a solid DE&I strategy will be better positioned to succeed and attract and retain the best talent[30].
- **Competitive advantage[31]:** An inclusive and responsible design strategy can result in a competitive advantage for companies as they will perform better in the marketplace than their peers and this will favour the development of greater consumer loyalty. The incorporation of more diverse and inclusive design offers companies access to new customers whose specific needs were previously not covered by "generalist" products and services, thereby helping to expand their market share.
- **Innovation[32]:** Technology is helping manufacturers to maintain an ongoing dialogue with users to find out what their needs are and respond to them more effectively[33]. In addition, inclusive design can improve the quality of their products and services, as the needs and perspectives of a wider range of users are considered.

28 Sustainability as the main criterion for post-COVID-19 consumption. BBVA
29 How to adopt ethical and responsible design in a business environment. EY
30 8 Ways Your Business Can Create More Inclusive Spaces. Nika White Consulting
31 How Inclusive Product Design has Now Become Essential for Enterprises Products. ForgeAhead
32 Transforming enterprises through diversity and inclusion. International Labour Organization
33 Making product inclusion and equity a core part of tech. McKinsey & Company

HOW ARE COMPANIES responding?

To address these transformations, it will be very important to take into ***account the sectoral perspective*** in order to respond to the particularities of each case.

The key to ensuring that products and services cater to the needs of multiple and diverse customers and users is that those who design and develop them have diverse profiles. Organizations should reflect the communities they serve.

In order to meet the needs of different employee profiles, some companies have incorporated in their inclusion and diversity plans the creation of **gender-neutral facilities**, spaces for downtime, -such as recreation rooms, indoor sports, meditation, etc., [34]- lactation rooms or day care centers for their workers.

In addition, to facilitate the inclusion of **people with disabilities** the adaptation of physical spaces is taken into consideration. This is one of the new requirements of the European Accessibility Directive and it also applies to technological barriers. In this regard, the commitment to the omnichannel approach is an element increasingly incorporated by companies that offer their services online.

To address these transformations adequately, it will be very important to consider the **sectoral perspective** to respond to the particularities of each case. For example, the HORECA sector is making significant progress in integrating the needs and expectations of its customers when preparing its menus, which makes it possible to deal with different dietary requirements (i.e., intolerances, allergies or even religious or ethical issues).

As a business management tool, **human rights due diligence** can be very useful in ensuring inclusiveness and diversity in the design of products and services. The identification of human rights risks in downstream value chains can prevent situations of discrimination and guarantee user **accessibility, privacy and security** by integrating responsible design into products and services[35].

34 The Project for Public Spaces. Project for Public Spaces
35 Human Rights Due Diligence of Products and Services. BSR

GENETIC CONTROL
and discrimination

Medical tests for employees and health checks on customers are ***becoming more common***

Genetics is becoming an increasingly important area for healthcare. Genetic testing can provide valuable information about a person's predisposition to disease, which can aid in disease prevention and treatment. However, genetic screening of employees in the workplace can raise questions about **privacy and discrimination**[36].

According to the report "Ethics and Governance of Artificial Intelligence for Health" by the World Health Organization (WHO), artificial intelligence offers great potential for improving health care delivery and medicine worldwide, provided that **ethics and human rights** are at the center of its design, deployment and use[37].

In this regard, there are regulations in several countries and in the EU related to data protection and privacy in the fields of health and genetics. For example, the EU General Data Protection Regulation sets out specific requirements for the processing of sensitive personal data, including genetic data.

In the United States, there are specific laws to protect medical and genetic privacy such as the **Genetic Information Nondiscrimination Act** (GINA) [38]. And in the case of Spain, the comprehensive Law 15/2022, of July 12, on equal treatment and non-discrimination, prohibits employers from asking job applicants about their health status, establishing fines ranging from 300 to 500,000 euros[39].

At the corporate level, employee medical tests and customer health checks are becoming increasingly common, especially in the insurance sector[40]. For example, companies could deny insurance coverage to those with a genetic predisposition to certain diseases[41]. Another example of genetic discrimination would be if a company uses genetic testing to select employees it considers more suitable for a particular job.

36 Genetic discrimination is already a reality around the world. El País
37 Ethics and governance of artificial intelligence for health. World Health Organization
38 Law on non-discrimination based on genetic information. National Human Genome Research Institute
39 Comprehensive law for equal treatment and non-discrimination. Official State Gazette (BOE)
40 The undesirables of insurance. El País
41 Regulation of genetic testing information: economic and health insurance repercussions. Journal of Health Administration Siglo XXI

HOW CAN COMPANIES respond?

To promote the protection of genetic information in the corporate environment, although in many countries companies are prohibited from accessing employees' **medical and genetic information**, it is essential to establish transparent policies and practices for responsible management. This includes ensuring the privacy of employees' and customers' genetic information by establishing security and control measures for its collection, storage and sharing. In addition, it is important to implement awareness programs to make employees and customers conscious of the importance of non-discrimination based on genetic information, as well as to provide resources and protection measures in case of possible discrimination[42].

On the other hand, insurance companies are offering **financial incentives** to those customers who adopt healthy habits to reduce their risk of disease instead of penalizing bad habits or a clinical history with previous pathologies. These incentives should be voluntary and not condition the clients' insurance premium.

42 Ethics and governance of artificial intelligence for health. World Health Organization

Stakeholder health

MENTAL HEALTH
as a human right

Mental health care and protection have gained relevance on the agendas of governments and companies in recent years, especially after the impacts of the pandemic. Data show how **psychosocial risks** have a direct impact on business performance. Around 90% of workers are affected by mental health problems (directly or indirectly) and it is estimated that globally 12 billion workdays are lost annually due to depression and anxiety, costing the global economy $1 trillion per year due to reduced productivity[43].

In fact, the **relationship between mental health and work** can be understood as bidirectional. A safe and healthy work environment minimizes the likelihood of conflict, increases productivity and improves talent retention. Likewise, a good state of mental health favors innovation and creativity, reduces absenteeism and promotes employee well-being, an element that is increasingly valued as part of the so-called emotional salary.

43 Business for Social Responsibility. World Economic Forum

HOW ARE COMPANIES responding?

Companies have a key role to play regarding the **right to mental health** of their employees. To this end, they have different tools to promote their well-being, such as the creation of channels to enable an open dialogue on these issues (i.e., development of interpersonal skills such as active listening) or training and awareness-raising activities for managers and employees[44].

Companies are also implementing policies to address these challenges. The use of digital devices in all our activities makes it impossible for many employees to disconnect from work and they feel they have to be available at all times.

The **right to digital disconnection** implies that employees are not obliged to be connected to digital devices during their break or vacation periods, nor answer emails, calls or deal with any other work-related task outside their working hours. Even though the EU recognizes the right to disconnect[45] as a requirement for good working conditions, a directive in this area is still pending. However, countries such as Belgium, Portugal, France and Spain already include this matter in their legislation[46]. In the case of Spain, the Organic Law on Protection of Personal Data and Guarantee of Digital Rights includes digital disconnection in Article 88.

The commitment of companies to mental health extends to the **products and services** they offer, whose uses and applications can influence the wellbeing of users, clients and consumers. This approach is particularly relevant in the case of technology companies and large platforms. Recent research has shown the harmful impact on the mental and physical health of children and adolescents due to the abusive use of social media[47] , which can lead to disorders such as depression, anxiety or eating disorders. For all these reasons, some companies integrate responsible design criteria that takes into account these impacts, when designing new products and commercializing them, thereby implementing human rights due diligence in the downstream of their value chains.

> The use of digital devices in all our activities makes it ***impossible for many employees to disconnect*** from work and they feel that they have to be available at all times.

44 Mental Health Toolkit for Employers. BITC
45 Right to disconnect. European Foundation for the Improvement of Living and Working Conditions
46 Right to disconnect: The countries passing laws to stop employees working out of hours. World Economic Forum
47 A whistleblower's power: Key takeaways from the Facebook Papers

THE INEVITABLE LINK BETWEEN PEOPLE AND THE HEALTH OF OUR PLANET

Since July 2022, the United Nations General Assembly has recognized[48] access to a **clean, healthy and sustainable environment** as a universal human right. The international recognition of this right is intended to commit States to cooperate with each other to fight climate change and to promote sustainable development. This is particularly relevant due to the link between the health of the planet and human health. The WHO estimates that between 2030 and 2050, climate change could cause up to 250,000 additional deaths per year. In addition, it also has a direct bearing on mental health. This same organization states in the document "Mental health and Climate Change" that people with pre-existing mental health conditions are **disproportionately vulnerable** to the risks of climate change. Similarly, women face greater risks as there is evidence that the effects of climate change such as extreme weather events and natural disasters are associated with an increase in gender-based violence[49].

Data also shows the importance of guaranteeing the right to a healthy environment for **social and economic well-being**. The International Labor Organization (ILO) notes that 1.2 million jobs depend on a healthy and well-functioning ecosystem. Furthermore, it estimates that around 80 million full-time jobs could disappear by 2030 due to climate-related reasons, such as heat stress. However, complying with the Paris Agreement would result in the creation of 218 million new jobs worldwide by 2030. In addition, it is estimated that the EU could create 900,000 jobs related to renewable energies.

The right to a healthy environment is another case where regulation is lagging behind. The numerous lawsuits against companies on account of their negative impacts on the environment are evidence of how the population assumed that the environment was their fundamental right long before the UN recognized it. In this regard, there has been a significant increase in the cumulative number of **climate change related litigation** globally, which has more than doubled since 2015. Between 1986 and 2014, just over 800 cases were filed, whereas in the last eight years, more than 1,200 cases have been filed, bringing the total in the databases to more than 2,000. Approximately a quarter of these were filed between 2020 and 2022, according to the "Global trends in climate change litigation: 2022 snapshot" report.

> The right to a healthy environment is another case in which ***regulation comes later*** than what it regulates.

To date, the right to a healthy environment is enshrined in the constitutions of more than 100 countries, and at least 130 States have ratified regional treaties that specifically include this right[50]. Spain explicitly establishes in Article 45 of its Constitution that "Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it" [51]. Another interesting case is that of Chile, which, despite having rejected the proposal for a new Constitution, not only included the right to a healthy environment, but also indicated some guidelines to be followed by the State in terms of **prevention and mitigation of climate risks[52]**. This proposal may serve as a starting point for future constitutional reforms in other countries.

48 United Nations. The human right to a clean, healthy and sustainable environment
49 Climate Change and Gender-Based Violence: Outcomes, Challenges and Future Perspectives
50 Global Compact
51 Official State Gazette. Spanish Constitution
52 Institut de Drets Humans de Catalunya. Impacts of climate change on human rights

HOW ARE COMPANIES responding?

Companies are making significant efforts to ***reduce their impacts on the environment.***

The proposed Directive on sustainability due diligence will require companies to identify, prevent and mitigate the impacts of their activities on human rights and the environment and to have a climate change adaptation plan. Along the same lines, the new law to fight deforestation, approved by the European Parliament in April 2023, obliges companies to issue due diligence statements confirming that they are taking the necessary measures to verify the origin of their products. These reports will have to ensure compliance with local country regulations on human rights and verify that the rights of affected indigenous people have been respected, which reflects the link between social and environmental impacts.

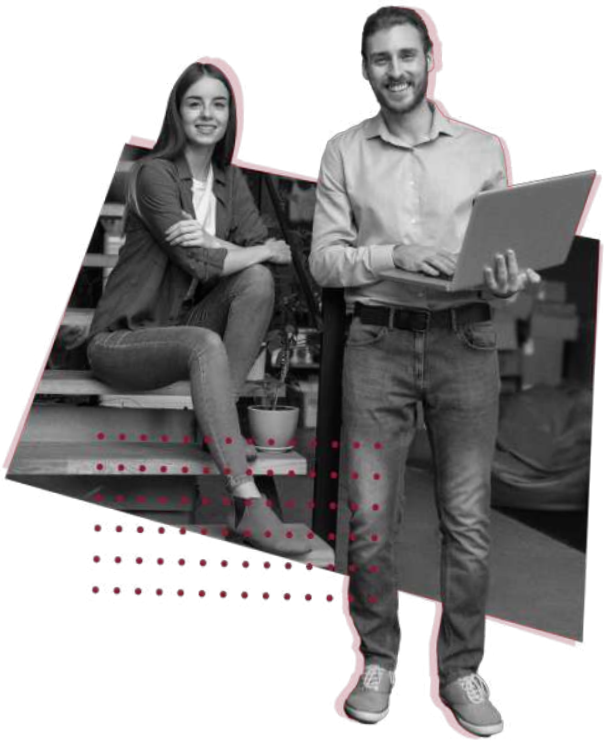
Companies are making significant efforts to reduce their **impact on the environment** through commitments to fight climate change, the adoption of circular economy criteria, actions to respect ecosystems and biodiversity, and the elimination of the use of pollutants and harmful substances. However, these efforts are not sufficient, as highlighted by the latest report published by the Intergovernmental Panel on Climate Change (IPCC), since the impacts on people and ecosystems resulting from rising temperatures are greater than expected, which in turn has implications for human health, both physical and mental.

This connection between **human health and the health of the planet** emphasizes the interrelationship between different emerging human rights and the growing need to address ESG issues by implementing more integrated strategies, that combine a focus on environmental challenges with a social approach.

Inequality and the living wage

The debate on pay inequality in companies has focused in recent years on the gender pay gap. Despite efforts and increasing regulation, data show the great challenges that remain. According to Eurostat[53] , in the EU the pay gap stands at 12.7% while in Spain it is 8.9%.

Despite the efforts of companies, ***there are still many challenges*** to overcome these gaps.



To address this situation and overcome the barriers that prevent pay parity between men and women, regulations are being implemented to promote greater transparency. In this line, Spain has the Royal Decree-Law on Equal Pay for men and women, published in October 2020, which requires companies to maintain a pay register, a pay audit, and a pay transparency policy. On the other hand, in March 2023, the European Parliament approved the new EU Pay Transparency Directive, whereby companies with more than 100 employees must inform their employees about salaries in the different professional categories, publish salary conditions in the job offer and implement corrective measures when the gap exceeds 5% without justification.

Despite these measures and the efforts made by companies through their equality plans, there are still many challenges ahead to overcome these gaps. But beyond gender inequalities, other factors that contribute to wage inequalities must also be considered.

Hyperinflation, the rising cost of living and the precariousness of labor markets have opened a debate on the **wage gap within organizations** within different professional categories, especially in view of the gap between the salary of top management and CEOs and the average employee. According to a study conducted among North American companies, CEO compensation increased by 1,460.2% between 1978 and 2021, and that same year, the CEO to average employee salary ratio was 399 to 1. Increases especially accentuated during the pandemic, a time when a good number of people were losing their jobs in the face of economic shutdowns. Although some companies and countries have tried to establish a **wage ceiling** to avoid this situation, proposals have not been implemented successfully or for long periods of time[54].

These disparities may entail a reputational risk but can also contribute to talent drain, generate disaffection and a reduced sense of belonging among employees.

53 Gender Pay Gap Statistics

54 Some examples of a wage ceiling. In 2013, Switzerland held a referendum to vote on a proposal to limit executives' salaries, which was rejected. In 2014, Egypt proposed to set a maximum wage ceiling for public employees without success. The Ben & Jerry's ice cream company established at its inception that the salary ratio between the highest paid executive and the lowest paid worker would be no more than 5 to 1

HOW ARE COMPANIES responding?

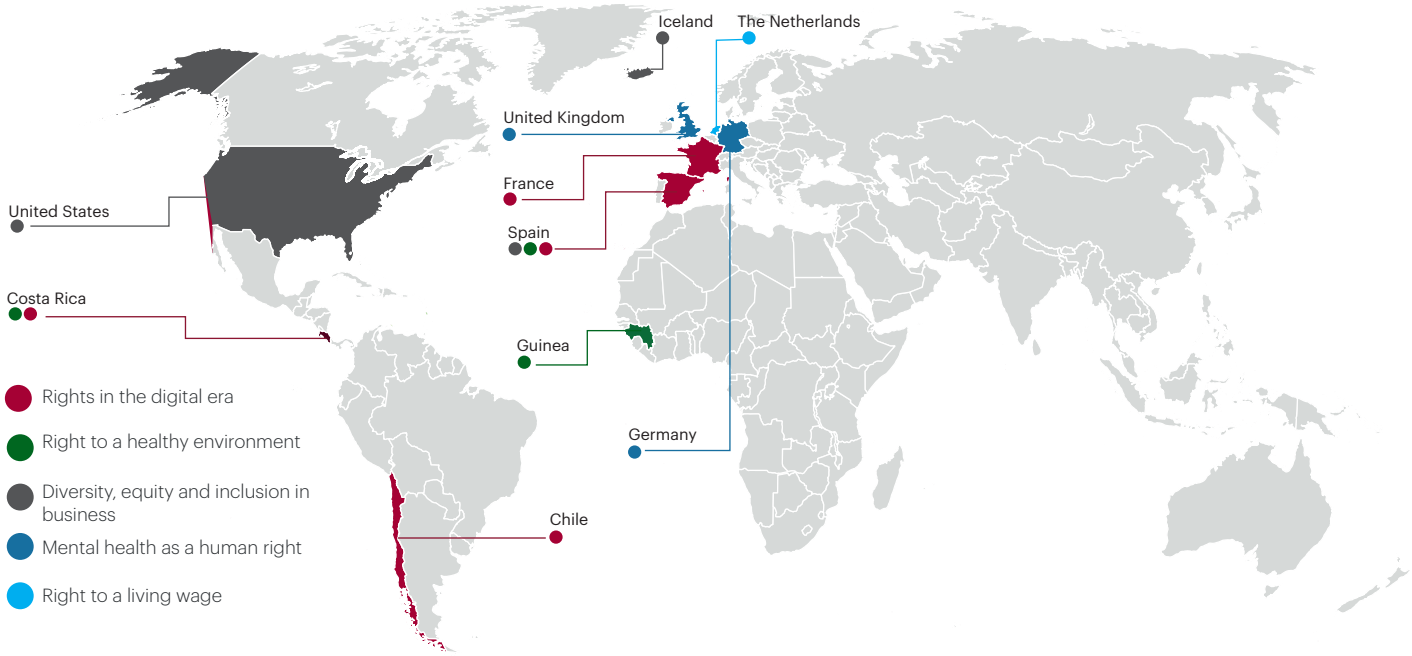
> It is necessary to provide ***living wages*** based on the cost of living.

Discussions on wage inequality are increasingly related to the **right to a living wage**, understood as the minimum pay necessary for a worker to meet his or her basic needs (food, water, housing, education, health care, transportation, clothing and other essential needs), which is a critical aspect to ensure **decent work**.

The living wage must be differentiated from the minimum wage. Although the legal minimum wage is a first approximation to guarantee coverage of basic needs, it is applied equally regardless of the specific characteristics of countries (geographical areas), companies (ability to pay) and workers. Moreover, it does not adapt with due frequency to inflation. It is therefore necessary to provide living wages that are determined by the cost of living. Companies that promote and offer decent wages contribute to **reducing inequalities** and promoting respect for human rights. There is still a long way to go. At present only 4% of companies report that they have succeeded in paying their workers a living wage or have targets or commitments to do so.

Where are *emerging human rights being discussed?*

PIONEER COUNTRIES
in emerging human rights



CHILE

- First country to include digital rights in its constitution in the face of the progress in the field of neurotechnology (2022).

FRANCE

- The right to disconnect outside working hours has been in force since 2017 through a provision in its labor reform.

COSTA RICA

- Following UNESCO's recommendations, Costa Rica will be the first Central American country to have an AI policy.
- The Constitution recognizes that everyone has the right to a healthy and ecologically balanced environment.

SPAIN

- The Law on Data Protection and Guarantee of Digital Rights (2018) includes the right to digital disconnection.
- The Barcelona City Council has created an Advisory Council on AI, Ethics and Digital Rights.
- The Government of the Balearic Islands has approved a Law for the Welfare of Present and Future Generations.
- The Comprehensive Law for Equal Treatment and Non-Discrimination (2022), including algorithmic regulation, aims to create inclusive, sustainable and human-centered AI.

UNITED STATES

- Algorithmic Accountability Act (2022) requires companies to conduct impact assessments for bias, effectiveness and other factors.

GUINEA

- First country to launch a pilot project on the implementation of the right to development, which includes the right to a healthy environment.

GERMANY

- The PsyGA (mental health in the workplace) project provides tools for companies to promote workers' psychological well-being in the workplace.

UNITED KINGDOM

- The Health and Safety at Work Act and various government initiatives promote tools for companies in the area of mental health.

THE NETHERLANDS

- The Sustainable Trade Initiative (IDH) is working to ensure living wages through the Roadmap on Living Wages.

ICELAND

- Companies and institutions with 25 or more employees must obtain a certification of their equal pay system and its application, on an annual basis.

GLOBAL INITIATIVES
in emerging human rights

- Rights in the digital era
- Mental health as a human right
- Right to a healthy environment
- Right to a living wage

EU

- The Artificial Intelligence Act aims to ensure that AI respects EU fundamental rights and values (2021).
- The Corporate Sustainability Due Diligence Directive aims to set standards for companies to respect human rights and the environment throughout their global supply chains.

UN

- WHO and ILO push for concrete measures to address mental health problems in the workplace.
- The UN Global Compact SDG Ambition Accelerator on living wage recommends steps to be taken to successfully implement a living wage program and ensure that 100% of employees throughout the organization receive a living wage.
- The United Nations has declared that the right to a healthy environment is a universal human right (UN Resolution 2022).
- In 2021, the Member States at UNESCO's General Conference adopted the first ever global agreement on the Ethics of Artificial Intelligence.

KREAB WORLDWIDE

Recommendations

for companies

Regulators, ESG analysts and social demands are increasingly forcing companies to **implement due diligence processes**, which means to identify, prevent and mitigate actual and potential negative impacts on human rights arising from their own activities and their value chain.

To ensure effective implementation, it is advisable to:

01

Consider the entire value chain in the process (upstream and downstream).

02

Understand the specific business risks and integrate these processes into existing internal mechanisms to avoid duplicating efforts.

03

Go beyond traditional human rights issues such as child labor or forced labor and consider emerging challenges.

04

Not be limited to legal compliance as this may not be sufficient to prevent human rights risks, especially in countries with lax regulations. The European Union establishes obligations regarding the impact on third countries.

PHASES OF THE HUMAN RIGHTS' DUE DILIGENCE PROCESS

POLICY AND GOVERNANCE

The company must have a commitment or a public policy that contemplates respect for internationally recognized human rights. This will serve as the basis for the design of the human rights management system and the allocation of responsibilities and resources for its proper implementation.

RISK IDENTIFICATION

Identify areas of the company's own operations and its value chain where significant risks to human rights are likely to occur. It should focus on actual risks (current and materialized) and potential risks (with a high probability of occurrence and impact that may occur).

CEASE, PREVENTION OR MITIGATION

When an adverse impact is identified, the activities or operations that cause or contribute to causing it (currently or in the future) will be suspended. In the case of an actual impact, mitigation or remediation measures will be implemented, and for potential impacts, mitigation or prevention measures will be taken.

STAKEHOLDER INVOLVEMENT

Participation and dialogue with stakeholders must be ensured **throughout all stages of the process** to integrate their expectations and needs. This implies a **two-way communication between the company and potentially affected groups.**

Stakeholder involvement can range from the establishment of informal relationships and the organization of consultations or dialogues, to the implementation of more formalized mechanisms such as the creation of multi-stakeholder initiatives (collaborative platform, cluster, working groups).

MEASURES MONITORING

Periodic monitoring of the measures implemented to identify adverse impacts enables an assessment of their effectiveness and the integration of a management approach, based on continuous improvement. This evaluation of the measures should be incorporated into the company's reporting process based on performance indicators.

COMMUNICATION

Reporting internally and externally on due diligence processes and their results is a transparency and credibility tool for companies as perceived by their stakeholders. This allows businesses to show the active work they are doing as part of their commitment to human rights.

GRIEVANCE, REMEDIATION AND REPARATION MECHANISMS*

They include standard processes for filing a complaint, and repairing human rights violations, as well as mitigation measures to address the adverse consequences produced. Reparation involves restoring the situation of those affected before the impact through apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions as well as measures to prevent further damage such as guarantees of non-repetition.

Source: Adapted from the OECD Due Diligence Guidance for Responsible Business Conduct and United Nations Guiding Principles on Business and Human Rights.

**According to the OECD Due Diligence Guidance for Responsible Business Conduct, reparation is not a component of due diligence, but rather a separate and fundamental process that due diligence should facilitate and support.*

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