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Policy Brief

Navigating the Pushback against Diversity, Equity and Inclusion:

A Business and Human Rights Analysis

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Executive Summary

In this brief, UN Human Rights examines recent trends and debates relating to Diversity, Equity and Inclusion (DEI) in the corporate world, through a business and human rights perspective. The brief recalls that, when conducted consistently with international human rights standards, DEI measures can contribute meaningfully to the fight against systemic, historical and structural discrimination and inequality, and broader societal goals. They can also help companies improve their business performance, rebuild brand integrity and cultivate long-term public confidence.

Drawing on international human rights law and standards, and in particular the UN Guiding Principles on Business and Human Rights, as well as on theoretical and empirical evidence from academic, legal and business sources, the brief reaffirms both the human rights rationale and the business case for DEI. The brief illustrates the real-life consequences of DEI reversals for companies. At the same time, it also showcases good practices by companies that have remained committed to, and even expanded, their DEI policies against a backdrop of shifting and complex political and regulatory environments.

The brief zooms in on the rationale for affirmative action as one particularly important measure in the DEI arsenal and an essential instrument to effectively address discrimination and inequality across societies. The brief demonstrates that inclusive and diverse workplaces are strongly associated with improved innovation, productivity, talent attraction and retention, financial performance, sustainability and resilience. Concluding with practical recommendations, the brief outlines how companies can navigate contemporary challenges to DEI while upholding their human rights responsibilities and commitments.

Introduction

What is DEI: There is no single universally accepted definition of the concept "Diversity, Equity and Inclusion". Commonly, DEI represents a set of policies and measures aiming to address systemic, long-standing discrimination based on race or ethnic origin, religion, sex, sexual orientation, gender identity, migrant status, caste, and other characteristics.

DEI policies and programmes to tackle such discrimination have had important successes in all regions of the world.[1] DEI policies encapsulate different but complementary concepts[2] that started to become widespread in private – and in particular Western – companies in the 1980s, evolving from being instruments of legal compliance to business strategy tools. Subsequently, DEI measures expanded beyond the above-mentioned grounds and have been increasingly adopted by companies in other geographical regions. From the 1980s to the 2010s, DEI measures were considered an effective means for enhancing equality and non-discrimination in the workplace. The #MeToo and Black Lives Matter movements in the late 2010s triggered the largest expansion of DEI in corporate history. Over 60% of Fortune 1000 companies issued DEI commitments or increased DEI budgets.[3] Racial equity audits and large-scale inclusion initiatives became common. Many companies hired Chief Diversity Officers to oversee the implementation of DEI policies in their workplaces.

In the mid-2020s, however, DEI programmes started facing serious challenges, including radical changes in positioning and approaches by certain countries. Reversals of long-standing and commonly accepted DEI policies have been accompanied by outfront attacks in some jurisdictions. Since then, many major companies have eliminated DEI roles or reduced DEI departments. This has drastically changed the operational context in which DEI policies/programmes/actions are situated and poses concrete challenges for companies having adopted DEI policies in the first place.

Understanding corporate DEI

DEI has become a common expression to refer to a range of policies, measures and initiatives, which aim to ensure fair treatment and participation of all groups in the economic, social, cultural and political life of our societies. While DEI practices extend beyond narrow legal definitions of non-discrimination, they are firmly rooted in universal principles of equality and

[1] OHCHR, HC Türk updates Human Rights Council: "We need the strongest possible defence of international law and human rights", 16 June 2025.
[2] UN Global Compact, Diversity, Equity and Inclusion.
[3] See Diversity.com, From Civil Rights to Controversy: The Rise, Purpose, and Pushback of DEI in America, 12 June 2025.

human dignity and provide a modern framework for those foundational global values. Depending on the jurisdiction, measures to promote substantive equality may include "affirmative action", "positive action", or "temporary special measures". Such measures aim at redressing injustices suffered by historically disadvantaged or underrepresented groups, such as women, people of African descent and certain other racial or ethnic groups, minorities, LGBTIQ+ persons, migrants, refugees, older persons and persons with disabilities.

In the business context, the expression "corporate DEI" refers to a wide set of strategies, policies and practices oriented towards the workforce, covering recruitment, promotion, pay, anti-discrimination, anti-harassment, accessibility and reasonable accommodation, among other areas. Quota systems in employment or board representation are only few of the many existing DEI tools.

While some corporate DEI measures are legally required or encouraged in certain jurisdictions,[4] many are voluntary and freely adopted by the corporate sector itself, reflecting the sensitivity of the private sector to demands by mass social movements to address structural and systemic discrimination by promoting more diverse and inclusive corporate spaces.

The backlash against DEI

In recent years, and since 2023 in particular, DEI has faced criticism and attacks as part of the wider backlash against gender equality and racial justice. Critics have pointed at the supposed lack of evidence on the beneficial impacts generated by DEI policies and raised concerns relating to "reverse" discrimination against some constituencies. Anti-DEI movements have generated social media pressure, boycotts and shareholder activism, and ultimately government measures against DEI policies and tools.[5]

The anti-DEI backlash has been particularly acute in the United States of America (USA), where, starting in 2023, several states passed laws and regulations limiting or discouraging DEI policies in educational institutions and government agencies. In January 2025, Executive Order No. 14173 was adopted, directing all executive agencies to eliminate what the order

[4] The EU Gender Balance on Corporate Boards Directive 2022/2381 requires listed companies to have at least 40% of each gender amongst the members of non-executive boards, or 33% amongst all directors. See e.g., Spain, Organic Law 2/2024 of 1 August 2024 on Parity Representation and Balanced Presence of Women and Men; Ecuador, Organic Law to Promote the Violet Economy of January 2023 which requires development of corporate equality plans and mandates appointment of female board members; South Africa, Broad-based Black Economic Empowerment (B-BBEE) Act: Codes of Good Practice does not contain direct legal obligations for private companies, but does incentivise private sector B-BBEE policies through public procurement practice and the issuing of licenses or concessions; the Hong Kong Stock Exchange Listing Rules requires listed companies to have at least one director of a different gender on the board, and to adopt and report on diversity policies.

[5] To contextualise the recent anti-DEI efforts as part of a wider rhetoric and backlash against historically marginalised groups in the US and elsewhere, see also Maya Henson & R.G. Cravens, Anti-DEI efforts and the attempted whitewashing of America, Southern Poverty Law Center, 22 May 2025.

characterises as "*Illegal Discrimination*" in federal programmes, employment and contracting and revoking affirmative action regulations.[6]

This Executive Order extended to private companies – including but not limited to government contractors.[7] Other government measures have involved federal or state-instituted lawsuits alleging violations of anti-discrimination laws, as well as investigations by federal authorities. There have also been shareholder lawsuits, class actions, and litigation brought by individual employees against DEI measures.[8] In March 2025, US embassies sent letters to European companies doing business with the US Government, requesting to certify that they do not operate DEI-related programmes, threatening with potential loss of contracts or legal action.[9]

The US Government's anti-DEI measures have had a chilling effect on business policies and practices, leading to regulatory uncertainty and compliance-related challenges[10].

Reportedly, several companies, including Uber, Salesforce, Pepsi, Goldman Sachs, Google, Amazon, Walmart, McDonald's, John Deere, Target and Meta,[11] have significantly rolled back or terminated their DEI programmes.[12] Others have publicly stood in support of their diversity commitments despite the challenges – examples include American Airlines, Apple, Costco, Delta Air Lines, JPMorgan Chase, Microsoft, Ben & Jerry's, Francesca's, Lush, and Patagonia.[13]

[6] See United States of America (USA) Executive Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 21 January 2025; USA Executive Order No. 14151, Ending Radical And Wasteful Government DEI Programs And Preferencing, 20 January 2025. The new Executive Orders prompted a number of lawsuits, particularly driven by educational institutions: Marina Dunbar, Higher education groups sue Trump over anti-diversity executive orders, The Guardian, 5 February 2025; Hans Michael Heinig, Harvard Under Attack: What We Can Learn from Recently Filed Lawsuits Against the U.S. Government About Threats to Academic Freedom in the United States, Verfassungsblog, 30 April 2025. For a review on the impact of these executive orders on corporate DEI policies, see also NYU School of Law, Groundbreaking report from Meltzer Center offers new insight on DEI efforts, 29 July 2025; Littler, Littler's Inclusion, Equity and Diversity C-Suite Survey Report 2025, 26 February 2025.

[7] In section 2 of Executive Order no. 14173, it is ordered that "all agencies… enforce our longstanding civil-rights laws and… combat illegal private-sector DEI preferences, mandates, policies, programs, and activities". Further, in section 4 of the same, the President encouraged "the Private Sector to End Illegal DEI Discrimination and Preferences". In section 7 on the scope of the same Executive Order, it is clarified that "[t]his order does not apply to lawful Federal or private-sector employment and contracting preferences for veterans of the U.S. armed forces or persons protected by the Randolph-Sheppard Act, 20 U.S.C. 107 et seq.". For more details, see USA Executive Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 21 January 2025.

[8] See U.S. Equal Employment Opportunity Commission, EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices, 17 March 2025; The Guardian, FCC to investigate Disney and ABC over potential violation in diversity practices, 28 March 2025; U.S. Department of Justice, Justice Department Releases Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination, 30 July 2025.

[9] Reuters, US embassies tell suppliers to comply with Trump ban on diversity policies, 31 March 2025.

[10] See Frank C. Morris, JR et al., Anti-DEI Executive Orders Enjoined: Implications for Federal Funding Recipients and Private Employers, The National Law Review, 25 February 2025.

[11] See The Associated Press, Which US companies are pulling back on diversity initiatives?, 7 March 2025.

[12] See Eddy S. Ng et al., The anti-DEI agenda: navigating the impact of Trump's second term on diversity, equity and inclusion, Equality, Diversity and Inclusion: An International Journal, March 2025.

[13] In their public statements, many of these companies stressed that in their view, maintaining strong DEI policies makes good business sense. See Miranda Jeyaretnam, These U.S. Companies Are Not Ditching DEI Amid Trump's Crackdown, Time, 26 February 2025.

It is important to note that, while the anti-DEI backlash is not uniform across regions and countries, the impact of the afore-cited US Government measures is wide-ranging, due to the global reach of US companies and the influence of the US economy. In Europe, some companies have reportedly rebranded or played down some of their DEI policies.[14] Yet, European Union (EU) countries have largely retained mandatory measures for companies in DEI-related or adjacent areas, such as equal gender representation in corporate boards.[15] EU legislation and policies incorporate corporate DEI objectives. This is the case, for example, for the recently adopted EU LGBTIQ+ Equality Strategy, which commits to promote diversity through employment and social inclusion.[16]

Other States have continued to reinforce their commitments to diversity and equality in the workplace. Ghana's first National Action Plan on Business and Human Rights (NAP), which came into force in 2025, expressly incorporates measures to promote gender equality and inclusivity, as well as to combat workplace discrimination against socially vulnerable groups.[17] Malaysia's recent NAP also includes similar DEI policy objectives, such as gender-responsive budget allocation and promoting women's participation in the boardroom and the workforce.[18] The Government of South Africa reaffirmed in October 2025 that its Broad-Based Black Economic Empowerment (B-BBEE) remains a key policy to address past inequalities and ensure meaningful economic participation by Black persons and other previously disadvantaged and discriminated groups such as women, youth, and persons with disabilities.[19] Canada extended its "Black Entrepreneurship Program", a government initiative developed with the Black business community to help address systemic barriers faced by Black business owners and entrepreneurs.[20]

Navigating this evolving operational landscape is undoubtedly complex for companies, particularly for those actively committed to respecting human rights and present in multiple jurisdictions. This is why it becomes important to clarify the basic underpinnings of DEI and justify its importance, from both a normative and a business perspective.

[14] See David Liddle, The DEI Crossroads: How European Organisations Can Navigate Change, The European Business Review, 17 May 2025.
[15] The EU Gender Balance on Corporate Boards Directive 2022/2381 requires listed companies to have at least 40% of each gender amongst the members of non-executive boards, or 33% amongst all directors. See e.g., France, Ordinance No. 2024-934 of 15 October 2024.
[16] See EU LGBTIQ+ Equality Strategy for 2026-2030, pp. 10-15.
[17] See Ghana National Action Plan on Business and Human Rights: 2025 - 2029, pp. 22-25.
[18] See Malaysia, National Action Plan on Business + Human Rights: 2025 - 2030, pp. 40-41.
[19] See South Africa government communication and Information System, B-BBEE policy is a critical policy of Government, 21 October 2025.
[20] See Canadian Northern Economic Development Agency, Black Entrepreneurship Program (BEP) Ecosystem Fund, 20 October 2025.

The human rights rationale for DEI

As pointed out above, DEI policies are generally underpinned by objectives related to the right to equality and freedom from discrimination, as affirmed in international and domestic human rights standards. However, current debates on corporate DEI have tended to sideline DEI's intrinsic connection with such standards. This section explores how certain DEI measures fall within the scope of the corporate responsibility to respect human rights as indicated in the UN Guiding Principles on Business and Human Rights (UNGPs).[21]

The right to equality and non-discrimination based on *"race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"* is enshrined in the International Bill of Rights.[22]

The right has been codified in various other international instruments relating to specific groups such as women; children; persons with disabilities; migrant workers; national, ethnic, religious and linguistic minorities; and Indigenous Peoples.[23] Importantly, international norms extend the recognition of equality and non-discrimination to the workplace,[24] as elaborated in two of ILO's fundamental rights conventions.[25] These instruments require governments to ensure that existing systems do not *de jure* or *de facto* discriminate against certain individuals and groups, and to prevent discrimination by private entities.

Modern international law does not only enshrine formal equality but also addresses the need for this recognition to become reality through substantive equality. This notion is undergirded by the recognition that identical treatment of people in different circumstances can and does perpetuate inequality; and that positive action from the State – and other actors – is needed to level the playing field for underrepresented groups that continue to face the adverse effects of deeply rooted historical injustices. Therefore, States, as the primary subjects of international human rights obligations, must protect the right to equality and non-discrimination, including by adopting appropriate measures to prevent abuses from private actors[26] and fulfil it, by taking positive actions so that people can enjoy the right in practice.

[21] See UN Guiding Principles on Business and Human Rights (UNGPs).
[22] Universal Declaration of Human Rights (UDHR), art. 2; International Covenant on Civil and Political Rights (ICCPR), art. 2.1; International Covenant on Economic, Social and Cultural Rights, art. 2.2.
[23] United Nations Declaration on the Rights of Indigenous Peoples, art. 2; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 2; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 3.1; Convention on the Rights of the Child, art. 2.1; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 1.1.
[24] UDHR, art. 23; Declaration concerning the aims and purposes of the International Labour Organisation (DECLARATION OF PHILADELPHIA), art. II(a).
[25] ILO, Discrimination (Employment and Occupation) Convention, 1958 (No. 111); ILO, Equal Remuneration Convention, 1951 (No. 100).
[26] CERD General recommendation No. 32, para. 23 (noting positive action by States should provide "protection from violations of human rights emanating from any source, including discriminatory activities of private persons" (emphasis added)).

The business case for DEI

In addition to international law and standards, there is a strong business case for DEI, which has been extensively researched and is based on good practice and evidence. Various studies and research on corporate practices by leading global management and consulting firms illustrate this point in practice. A study by Boston Consulting Group (BCG), for instance, found that companies with above-average leadership diversity report a 19% higher revenue from innovation, and that diverse backgrounds bring fresh perspectives and accelerate innovative product uptake.[27] Another BCG study demonstrated that, among 171 firms in Germany, Switzerland, and Austria, greater managerial diversity correlated strongly with increased innovation revenue.[28]

> A 2023 McKinsey research paper found that top-quartile gender-diverse executive teams are now 39% more likely to outperform on profitability than bottom-quartile peers - up from 15% in 2015. Ethnic diversity shows a similar 39% outperformance in 2023.[29]

A 2013 Harvard Business Review study claimed that companies with "2-D diversity" (inherent + acquired) outperform peers, and teams were 45% more likely to report market share growth, and 70% more likely to report capturing new markets due to inclusive perspectives.[30] In their longitudinal analysis of a large and growing database of countries and companies, McKinsey also revealed a strong association of companies featuring diverse leadership teams with higher financial returns and inclusive growth.[31] In addition, McKinsey observed, "*Across all industries surveyed, more diversity in both boards and executive teams, in both gender and ethnicity, is robustly correlated with higher social and environmental impact scores*".[32]

Goldman Sachs provides a clear example of DEI evidence put in practice. In 2020, the investment bank announced it would no longer take companies public without gender-diverse board representation, citing data that links diverse leadership to superior financial performance.[33] Delta Air Lines used a similar business rationale for sustaining its DEI policies, stressing that they "*are steadfast in our commitments because we think that they are actually critical to our business*", emphasising that "*DEI is about talent […] and is integral to […] long-term sustainability*".[34]

[27] See Rocío Lorenzo et al., How Diverse Leadership Teams Boost Innovation, BCG, 23 January 2018.
[28] See Rocío Lorenzo et al., The Mix That Matters, BCG, 26 April 2017.
[29] See Sundiatu Dixon-Fyle et al., Diversity matters even more: The case for holistic impact, McKinsey and Company, 5 December 2023.
[30] See Sylvia Ann Hewlett et al., How Diversity Can Drive Innovation, Harvard Business Review, December 2013.
[31] See Sundiatu Dixon-Fyle et al., Diversity matters even more: The case for holistic impact, McKinsey and Company, 5 December 2023.
[32] Id.
[33] See Living Institute, The Impact of *DEI on Business Performance and Profitability, 2024.
[34] See CorEy Townsend, Delta Airlines doubles down on commitment to DEI initiatives, HuffPost, 6 February 2025.

Similarly, MIT research found that ensuring equality and preventing discrimination in a company's business can improve employees' satisfaction, productivity, and sense of belonging; generating stronger business performance, financial resilience and competitiveness.[35] High levels of inclusiveness and diversity are consistently associated with greater productivity and performance, innovation, talent attraction, employee retention (especially among Gen Z and millennial age groups) and overall workforce wellbeing.[36]

On the other hand, companies that disregard equality and non-discrimination principles increasingly expose themselves to social, legal and reputational risks, particularly in light of increasing public scrutiny over business conduct at a global level. Moreover, where the specific situation of groups with higher risk of vulnerability due to intersecting factors is not adequately addressed, productivity can be negatively impacted. For example, gender-based violence and sexual harassment against women specifically impede their participation in the workplace.[37] Discrimination not only harms individuals but may demotivate the entire workforce, thereby harming business performance.[38] Discriminatory and biased practices in recruitment and hiring that are inconsistent with human rights standards can produce homogenous workplaces that are not representative of the wider society. A more representative workforce caters to an increasingly diverse and multi-ethnic global society and can thus satisfy the needs and preferences of a growing pool of customers.[39] In this vein, prominent business actors have come out with statements in support of DEI measures, including Apple and the BMW Group, to mention but a few.[40]

Companies that fail to uphold the principles of equality and non-discrimination have faced financial consequences, for instance as a result of boycott campaigns (see box 1). Many investors, including public pension funds and finance providers, apply environmental, social and governance (ESG) criteria to their decision-making, which may affect businesses' access to capital and shareholder value. While in the past ESG efforts were skewed towards the environment, there has been a strong push recently for "human capital disclosures" in ESG reporting.[41] Moreover, as it has been noted, DEI "*ties into environmental issues by addressing sustainability in its production processes, social issues by making sure employees are treated equally and fairly, and governance issues through board diversity as well as by making sure that the company is compliant with laws and regulations. All of these elements are integral to a*

[35] See Anselm A. Beach & Albert H. Segars, How a Values-Based Approach Advances DEI, MIT Sloan Management Review, 7 June 2022.
[36] See UN Global Compact, Business & Human Rights Navigator: Discrimination; Joanne Stephane et al., Taking bold action for equitable outcomes, Deloitte Insights, 8 January 2023.
[37] See e.g., Commission on the Status of Women, Report on the sixty-seventh session (25 March 2022 and 6-17 March 2023), E/2023/27-E/CN.6/2023/14, para 51.
[38] See The Ten Principles of the UN Global Compact, Principle 6.
[39] See e.g., Chris Baumann & Shu Setogawa, Asian ethnicity in the West: preference for Chinese, Indian and Korean service staff, Asian Ethnicity, 2015.
[40] See e.g., Auzinea Bacon, Apple backs its diversity policies, calling anti-DEI proposal 'restricting', CNN, 14 January 2025; BMW Group, The BMW Group stands for diversity, open-mindedness and tolerance, 18 March 2024.
[41] See Dale Nirvani Pfeifer, How ESG drives diversity, equity, inclusion & growth, Inclusive ESG, 11 December 2022.

successful ESG program."[42] Companies that invest in and prioritise workplace belonging and DEI policies and measures have also been rewarded with higher ESG ratings.[43] As Rights CoLab recently underlined, *"[t]he literature supports a conditional business case where diversity alone—without equity, inclusion, or skillful management of power and conflict—is insufficient to enable the benefits of diversity and collective creativity to be fully realized. In contrast, carefully designed and truly inclusive DEI systems tend, on balance, to correlate with stronger innovation, improved productivity, and improved financial performance over the long run"*.[44]

Box 1: Negative impact of DEI reversals

Investors' actions, legal repercussions and consumers' responses can be costly. Campaigns by civil society, trade unions or consumers can severely impact a company's position in the market. When major US retailer Target announced its decision to scale back DEI programmes in early 2025, consumers started a 40-day boycott, and the company lost a major partnership with Twin Cities Pride, the organisation holding annual LGBTIQ+ celebrations in Minnesota, United States. Reportedly as a result, the company's share price fell by 12% and saw a 7.9% decline in store traffic.[45] Target, its CEO and board members were also hit by a class-action lawsuit from a pension fund, which alleged that the company "*defrauded investors*" by downplaying the risks of consumer backlash from changing its DEI policies.[46] At the same time, Costco, another US retailer whose shareholders overwhelmingly rejected a proposal to tone down its DEI commitments, saw an increase in foot traffic for 16 consecutive weeks.[47]

Zooming in: Affirmative action as a key DEI enabler

DEI encompasses a broad range of strategies, with affirmative action, or temporary special measures, being one of the most impactful in this toolbox. While they are often used interchangeably, affirmative action is a distinct, outcome-oriented subset of DEI designed to translate abstract equality into institutional reality. As the most direct mechanism in the fight

[42] Id.
[43] Id.
[44] See Joanne Bauer et al., What's the Matter with DEI? A Reset, Rights CoLab, 2 April 2026.
[45] See Doug Melville, The Quiet Part Out Loud: Target Ditching DEI Cost The CEO His Job And Investors $12 Billion, Forbes, 21 August 2025; Lauren Aratani, Minnesota Pride group raises $50,000 after dropping Target as a sponsor, The Guardian, 29 January 2025; Diversity.com, Target's DEI Retreat: A Case Study in Corporate Backlash and Consumer Response, 3 May 2025.
[46] See Pamela N. Danziger, Target Hit With Shareholder Lawsuit, Claiming Investors Were Defrauded About DEI Risks, Forbes, 4 February 2025.
[47] See Juveria Tabassum & Ross Kerber, Costco shareholders reject call for review of diversity programs, Reuters, 24 January 2025; Andrew Adam Newman, Target foot traffic down for 11th straight week after caving on DEI, Retail Brew, 22 April 2025.

against structural exclusion and discrimination, it produces the highest empirical gains in representation. It is also a measure that has been at the centre of the backlash against DEI, hence deserving close attention. The rationale for affirmative action is rooted in international law and in international standards (such as the UNGPs), which are addressed below. Taking affirmative action also lies in businesses' own interests, as explained above.

Various international human rights instruments envisage the need for temporary "special measures" or "affirmative action" to achieve specific objectives or rectify long-standing and structural inequalities. For instance, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) calls upon States to adopt "*special and concrete measures to ensure the adequate development and protection*" of different racial or ethnic groups to guarantee them "*equal enjoyment of human rights*".[48] "Temporary special measures" are also considered legitimate means to accelerate or achieve de facto equality "*between men and women*"[49] and "*of persons with disabilities*".[50] Instruments concerning Indigenous Peoples' rights contain similar provisions.[51]

Under international human rights law, "temporary special measures" such as the above-mentioned ones are not considered to be forms of discrimination. However, international standards also stipulate that those measures should be crafted in a way that does not lead to the maintenance of "*unequal or separate*" rights for different groups.[52] These measures should therefore be gradually adjusted, phased out or terminated as substantive or *de facto* equality is achieved. On the other hand, as noted by the CEDAW Committee, general conditions that guarantee equal rights of women are not of temporary nature.[53]

International human rights bodies have confirmed and elaborated upon the need for and limits of special measures or affirmative action.

Box 2: Human Rights Treaty Bodies on "special measures"

The International Covenant on Civil and Political Rights (ICCPR) requires States Parties to "*respect and to ensure to all individuals*" within their territory all rights recognised in the Covenant, and calls upon them to adopt "*such laws or other measures as may be necessary to give effect to the rights recognized in the [...] Covenant*".[54] According to the Human Rights Committee, "*the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or*

[48] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), art. 2.2.
[49] CEDAW, art. 4.1.
[50] Convention on the Rights of Persons with Disabilities, art. 5(4).
[51] ILO, Indigenous and Tribal Populations Convention, 1957 (No. 107), art. 3; ILO, Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 2.
[52] ICERD, art. 2.2; CEDAW, art. 4.1.
[53] See e.g., CEDAW General Recommendation No. 25, para. 19.
[54] ICCPR, arts. 2.1 and 2.2.

help to perpetuate discrimination […]. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population".[55]

The CEDAW Committee stated that "*under certain circumstances, non-identical treatment of women and men will be required in order to address [differences between men and women]"*.[56]

The Committee on the Elimination of Racial Discrimination stated that special measures should be "*appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary"*.[57] It also observed that "*overcoming the structural discrimination that affects people of African descent calls for the urgent adoption of special measures"*.[58]

Similar obligations stem from international labour standards. One of ILO's fundamental conventions, Discrimination (Employment and Occupation) Convention (No. 111), expressly encourages States to adopt "*special measures*" in relation to societal groups requiring "*special protection or assistance*",[59] which should not be deemed discriminatory under the convention. In its authoritative interpretation of this instrument, the ILO Committee of Experts on the Application of Conventions and Recommendations explained that "*in many cases [special measures] are needed to remedy the effects of past and present discriminatory practices and to promote equal opportunities for all*".[60]

As asserted by international human rights treaty bodies, special measures should not be necessarily limited to government actors but should also be extended to private organisations or enterprises.[61] This is the international legal basis upon which States can mandate corporate DEI measures, alongside constitutional and domestic law.

When it comes to international standards, the UNGPs distinguish between the international legal obligations that pertain to States (the obligation to *protect* people from negative human rights impacts involving business activities) and the responsibility of companies to respect human rights. This responsibility exists independently of States' abilities and/or willingness to fulfil their own human rights obligations.[62] In order to meet that responsibility, companies

[55] CCPR General Comment No. 18, para. 10.
[56] CEDAW General Recommendation No. 25, para. 8.
[57] CERD General Recommendation No. 32, para. 16.
[58] CERD General Recommendation No. 34, para. 7.
[59] ILO, Discrimination (Employment and Occupation) Convention, 1958 (No. 111), art. 5.2.
[60] ILO Committee of Experts on the Application of Conventions and Recommendations, General Observation on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), p. 3, 2019.
[61] E.g. CEDAW General Recommendation No. 25, para. 31.
[62] UNGP 11, Commentary.

should proactively integrate human rights in their internal policies and practices. In particular, they are expected to conduct human rights due diligence (HRDD), an ongoing process through which companies identify, prevent, mitigate and account for how they address their adverse human rights impacts.[63] As part of their HRDD processes, companies may identify inequality and discrimination as serious human rights risks that ought to be addressed as a matter of priority.

Inequality and discrimination may take many forms. These can range from arbitrary distinctions in salary or remuneration to unequal working conditions and benefits for employees; from under (or no) representation of historically marginalised groups (e.g. women, LGBTIQ+ persons, people of African descent and other racial or ethnic groups, persons with disabilities) in management roles to discriminatory delivery of products or services to consumers.

When companies identify that they are or may be involved in such inequality and discriminatory impacts through their own activities or business relationships, they should **take *"appropriate action"*** to address them.[64]

Such appropriate action heavily depends on the context, and will vary depending on the connection of the company to the impacts, and the extent of its leverage to address them.[65] Although in many cases, inequality and discrimination affecting certain groups in society are historical and structural, this does not justify inaction by companies when confronted with such dynamics, particularly where their own conduct has contributed to perpetuating discrimination. On the contrary, if properly designed, corporate DEI measures represent an example of "*appropriate action*" that companies should take to prevent discrimination and promote substantive equality goals.

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) align with the UNGPs in setting out the expectations on companies to respect human rights.[66] In relation to equality in the workplace, Chapter V affirms that companies should be guided by the principle of equal opportunity and treatment and should not discriminate on grounds such as race, sex, disability, age, or other status.[67] Companies are expected to promote equal opportunities for all with special emphasis on equal criteria for selection, remuneration, training, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or of those

[63] UNGPs 17-21.
[64] UNGP 19.
[65] UNGP 19, Commentary.
[66] OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines), Chapter IV: Human Rights.
[67] OECD Guidelines, Chapter V: Employment and Industrial Relations, para. 1(e); OECD Guidelines, Commentary on Chapter V: Employment and Industrial Relations, para. 59 ("'other status' … refers to trade union activity and personal characteristics such as age, disability, gender, pregnancy, marital status, sexual orientation, or HIV status").

workers with family responsibilities.[68] The Guidelines further encourage companies to ensure equal access to training and lifelong learning, particularly for women and groups facing structural disadvantage, and recognise that intersecting forms of discrimination may be exacerbated by unethical business practices and should be explicitly considered in corporate compliance systems.[69]

The UNGPs and OECD Guidelines both encourage companies to identify their involvement in inequality and discrimination within their operations and business relationships. In March 2025, the UN Working Group on Business and Human Rights called on businesses "*to stand firmly behind their responsibility to respect the human rights of all, without discrimination, and to reaffirm their commitment to diversity, equity, and inclusion (DEI) in the workplace*".[70]

How can companies navigate the anti-DEI pushback?

Despite the strong rationale for DEI measures, **an increasingly pronounced pushback against DEI has developed**, at times reinforced by government regulation in some jurisdictions. This situation may put companies with DEI policies and programmes at risk, with potential legal and financial consequences.

The fact that companies may find themselves at compliance risk when trying to respect human rights is not new, and the UNGPs address this issue directly by stating that the corporate responsibility to respect human rights is guided by international standards, existing independently of States' capacity – or willingness – to fulfil their international human rights responsibilities. Businesses' responsibility to respect human rights "*exists over and above compliance with national laws and regulations*".[71] This may put companies in a difficult position regarding their compliance with national legislation, on the one hand, and their responsibility to respect international human rights, on the other. The UNGPs indicate that when companies are prevented from "*fully*" meeting their responsibility to respect human rights due to the domestic context, they "*are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard*".[72]

With this in mind, this brief provides **practical recommendations** on how companies can

[68] OECD Guidelines, Commentary on Chapter V: Employment and Industrial Relations, para. 59.
[69] OECD Guidelines, Commentary on Chapter V: Employment and Industrial Relations, para. 64; OECD Guidelines, Commentary on Chapter VII: Combating Bribery and Other Forms of Corruption, para. 87.
[70] On the implications of the above-mentioned USA executive orders reversing DEI policies, see also a statement by the Working Group on Business and Human Rights, "A time for businesses to reaffirm their commitment to diversity, equity, and inclusion amid attempts of the US Government to undermine international human rights law and standards", 10 March 2025.
[71] UNGP 11, Commentary.
[72] UNGP 23, Commentary; OHCHR, Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting, pp. 5-6.

navigate the current DEI pushback consistently with their business interests and human rights obligations, based on the foundations laid above:

- **Ensure policy commitments refer to the respect for all internationally recognised human rights standards,** including the right to equality and non-discrimination.[73] A sound human rights policy statement, as called for by the UNGPs, can encompass concrete measures that promote DEI regardless of how they are called. Companies that have integrated human rights into their values and built the capacities of their staff through human rights trainings (on e.g. equality principles, human rights due diligence processes, human rights monitoring etc.) will be best prepared to respond appropriately to any challenges made to company approaches, including in contexts in which regulations prohibit DEI. Companies should be able to account for their efforts to respect human rights in challenging situations, including through the publication of statements and policies detailing how they address potential and adverse human rights impacts, and report on the measures adopted to respond to ethical dilemmas vis-à-vis relevant stakeholders and affected communities.[74]

- **Identify, assess and take appropriate action to address impacts on the right to equality and non-discrimination.**[75] Non-discrimination is a universally recognized principle, firmly embedded both in international law and virtually all constitutions. While DEI has become the subject of political and societal debate, such discourse does not question the fundamental legal obligation to prohibit discrimination and to ensure equality before the law. Therefore, companies facing anti-DEI contexts should conduct human rights due diligence processes that prioritise risks to individuals and groups facing heightened risk or vulnerability, marginalisation, or confronting structural inequalities, including adverse impacts arising from the companies' own activities or business relationships. When companies contribute to discrimination or inequality, they are expected to take effective corrective action, including through temporary special measures or affirmative action. In cases in which companies rebrand or adjust DEI efforts to respond to political or regulatory pressures, it is essential that they continue substantive actions to address structural and intersectional discrimination, regardless of changes in terminology[76] or public messaging.[77] Some companies have already adapted in different ways to anti-DEI regulations and related public discourse, and others should take similar steps individually and as part of a community of practice.[78]

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[73] UNGP 16; OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Questions 21-25; OHCHR, A Guide for Business: How to Develop a Human Rights Policy.
[74] While it is not the focus of this brief, it is worth recalling the importance for companies to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely affected. For more details, see OHCHR, Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide, Question 42.
[75] Without labelling such action as affirmative action or DEI if such terminology raises challenges.
[76] See e.g., Ryan Adamczeski & Eva Berry, These 25 major companies still have DEI practices, The Advocate, 23 December 2025.
[77] See e.g., Jennifer Elias & Annie Palmer, In Trump era, companies are rebranding DEI efforts, not giving up, CNBC, 30 March 2025.
[78] For an example of a community of practice to advance DEI, see YW Boston, Community of Practice.

- **Use corporate influence to shape government policies.** Companies should advocate for a legal and policy environment that advances compatibility between domestic law and internationally recognised human rights and permits them to pursue the best policies for their bottom line. Such advocacy, undertaken individually and/or collectively by businesses, simultaneously supports States' implementation of their international human rights obligations and businesses' responsibility to respect those rights. In addition to lobbying for legislative and regulatory measures, companies can legally challenge government regulations when these restrict companies' ability to meet international human rights standards. For instance, in the case of the USA, various educational entities have brought lawsuits against the January 2025 anti-DEI Executive Orders.[79]

- Where domestic laws or regulations may require actions conflicting with the responsibility to respect the right to equality and non-discrimination, **find ways of honouring the principles of internationally recognised rights to the greatest extent possible,** including by:

    - **Identifying and clarifying the extent of conflict:** Understanding the exact nature, scope and implications of conflicting requirements is an important first step in identifying ways of addressing the dilemma and mitigating the conflict. It may be possible to seek clarification from the Government or local authorities about the scope of the conflicting requirement. This may both help reduce risks to people and to the company, as well as signal to stakeholders the commitment of the enterprise to respect human rights. It may also be possible that others within the industry or country have approaches that mitigate the harm to human rights which can be replicated. If an enterprise cannot find immediate or obvious solutions, it would be well advised to engage with relevant expert stakeholders, which could include organisations representing marginalised or underrepresented groups.

    - **Communicating efforts to maintain respect for human rights in these situations.** It is particularly likely that where companies face challenges of this type, their conduct will be under closer scrutiny from stakeholders. Companies should be able to account for their efforts to respect human rights in these situations and it will often be advisable to report on the measures adopted to respond to those challenges to shareholders and the general public.

[79] See Collin Binkley, Trump administration drops legal appeal over anti-DEI funding threat to schools and colleges, AP News, 21 January 2026.

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