doing business with respect for human rights

a guidance tool for companies

2nd edition, 2016 • Now including practical lessons from companies and their stakeholders in Indonesia, Mexico, South Africa and Turkey

Shift

Global Compact Network Netherlands

OXFAM

This publication may be cited as:
Shift, Oxfam and Global Compact Network Netherlands,
"Doing Business with Respect for Human Rights:
A Guidance Tool for Companies", 2016.

This publication is the updated second edition of the 2010 publication "How to do business with respect for human rights". The primary authors of this publication are David Vermijs and Rachel Davis of Shift with support from Julie Schindall of Shift, Eppy Boschma of the Global Compact Network Netherlands, and Sarah Zoen and Gine Zwart of Oxfam. Further information about the individuals who contributed to the development of this publication can be found in the back inside cover.

This publication as well as case stories from the four focus countries are available on the project's dedicated website,

www.businessrespecthumanrights.org

This guide, as well as the real-world practices featured in it, are the result of a multi-year collaboration called the Global Perspectives Project. This project, led by the Global Compact Network Netherlands, Oxfam and Shift, brought together companies and civil society in four focus countries – Indonesia, Mexico, South Africa and Turkey – to explore perspectives on effective implementation of the corporate responsibility to respect human rights.

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p. 7: Community members at a consultation in Oaxaca, Mexico. Photo courtesy of Stephanie Friede.

p. 10: Workers at an Asia Pulp and Paper mill in Indonesia. Photo courtesy of Dini Widiastuti, Oxfam.

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p. 31: Nedbank employees at a training in South Africa. Photo courtesy of Nedbank.

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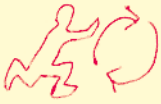

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Acronyms and abbreviations

ASEAN	Association of Southeast Asian Nations
CSO	civil society organisation
CSR	corporate social responsibility
EU	European Union
FIDH	International Federation for Human Rights
FPIC	free, prior and informed consent
FWF	Fair Wear Foundation
GRI	Global Reporting Initiative
HRIA	human rights impact assessment
ICT	information and communications technology
IGCN	Indonesia Global Compact Network
ILO	International Labour Organization
ISO	International Organization for Standardization
KPI	key performance indicator
MSI	Multi-stakeholder initiative
NAP	National Action Plan on business and human rights
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the UN High Commissioner for Human Rights
RSPO	Roundtable on Sustainable Palm Oil
SDGs	Sustainable Development Goals
SME	small- and medium-sized enterprises
SOMO	Centre for Research on Multinational Corporations
SOP	standard operating procedure
UN	United Nations
UN Guiding Principles	UN Guiding Principles on Business and Human Rights

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Foreword

Five years after the unanimous endorsement of the UN Guiding Principles on Business and Human Rights by the UN Human Rights Council, companies and their stakeholders have a clear global standard on the expectation that business will respect human rights. Since that time, companies around the world have been pressing ahead, implementing the Guiding Principles in their policies and practices. The most common thing we hear from companies is that this is an ongoing process that brings real challenges, as well as constant opportunities for learning and improvement.

Successfully undertaking this process requires field-tested and tangible guidance. With this publication – the product of a unique, multi-year collaboration between companies, civil society and issue experts – we hope to offer companies a 'must-read' foundational guide on how to implement respect for human rights in line with the Guiding Principles.

Maarten De Vuyst,
Private Sector Lead, Oxfam

"This guidance document for companies is a tangible tool that will be beneficial for years to come. As a rights-based anti-poverty organisation that works on the intersection of business and development, we always look for practical and tested guidance that can promote solutions and lessons for companies. Not only is this useful for the corporate sector but also for those of us in civil society to better understand the risks and opportunities that companies face when implementing a rights agenda."

This guidance is more than a theoretical explanation of what the Guiding Principles say; it is based on real experiences of companies, and their stakeholders, in diverse and complex situations. Those situations range from pulp milling in Indonesia to alternative energy projects in Mexico, and from banking in South Africa to clothing manufacturing in Turkey. From 2014–16, in close collaboration with Oxfam affiliates and Global Compact local networks in each of these four countries, we explored what respecting human rights means on the ground in highly different contexts. Case stories from those countries are featured on the project's website at www.businessrespecthumanrights.org.

This guidance builds on a 2008–10 project by the Global Compact (GC) Network Netherlands, together with several Dutch multinational companies, which produced the widely used guide 'How to Do Business with Respect for Human Rights'. Most of those companies also participated in the development of this document.

André R. van Heemstra,
Chairman, Global Compact
Network Netherlands

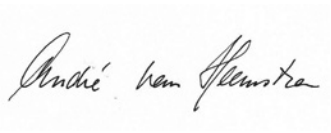
"The project behind this guidance facilitated outreach, interaction and learning on key human rights issues and management approaches amongst companies, local stakeholders and Global Compact Networks in Indonesia, Mexico, South Africa and Turkey. Any company that is looking for ways to integrate consideration for human rights into its business operations will hopefully find that this guidance and its companion website provide a practical starting point, showcase best practices and help companies refine already existing human rights approaches where they have them."

The development of this guidance was supported by the Dutch government as part of its National Action Plan on implementing the Guiding Principles.

Rachel Davis, Managing
Director and Co-Founder, Shift

"We have a long road ahead in ensuring real respect for human rights by all businesses globally, and governments have an essential role to play in speeding up the process. However, we are seeing real progress by some companies; encouraging similar progress by others hinges on access to a robust and field-proven understanding of what it means to do business with respect for human rights, day in and day out, and all across the business. As a mission-driven organisation committed to putting the Guiding Principles into practice, we want others to benefit from the experiences of companies and their stakeholders that inform this guidance document. Nobody needs to reinvent the wheel on getting this right."

We hope you find as much value in this guidance as we have found in the collaborative process of developing it.



André R. van Heemstra
Chairman, Global Compact
Network Netherlands

Maarten De Vuyst
Private Sector Lead,
Oxfam

Rachel Davis
Managing Director and
Co-Founder, Shift

chapter 1

Who is this guidance for and why is it important?

1.1 Who is this guidance for?

This guidance is for company staff who want to understand what "doing business with respect for human rights" means. It is for anyone who faces – or could face – scenarios in which their function, department or company could be connected to harm to people, or what this guidance calls "negative impacts on human rights". This includes staff well beyond the sustainability or corporate social responsibility (CSR) function; it could include staff in corporate functions like procurement, sales, legal, public affairs or risk, and in different areas of operations, including business units and country subsidiaries.

Your company may have experienced a major human rights incident or allegation, be facing a campaign from a non-governmental organisation (NGO) or trade union, or have received questions from an important customer or investor. Your company may recently have committed to the United Nations (UN) Global Compact's Ten Principles, or may want to develop a stand-alone human rights statement, or understand what a human rights 'lens' could add to the company's existing code of conduct. Or you may be considering a comprehensive review of your company's policies and processes to better align with the authoritative global standard in this space: the UN Guiding Principles on Business and Human Rights.

As an individual, you care about people's dignity and their human rights. You want to know more about how human rights are relevant to business, what your company can reasonably be expected to do about them, and how to do it.

This guidance, and its accompanying website www.businessrespecthumanrights.org, are for you.

1.2 What is the aim of this guidance?

This guidance is intended to equip you with practical advice, experiences and insights to get started or build on existing efforts by your company to respect human rights throughout its operations. It can't answer every question you might have, but it should set some parameters that can help guide you on what constitutes a credible approach to preventing and addressing human rights impacts.

This guidance aims to help companies understand the key expectations of the UN Guiding Principles on Business and Human Rights: what to do – and what to avoid – in trying to ensure respect for human rights. It also aims to provide inspiration through examples from a variety of companies, from a range of industries and country contexts, on how to go about it. We hope you will read this guidance and feel informed and equipped to tackle human rights challenges. At the same

You are the sourcing manager for a clothing company in Turkey. You are worried about the traceability of your supply chain and keen to build better relationships with your suppliers to help ensure they meet human rights standards. What can you do?

LEARN MORE IN THE TURKEY CASE STORY AT BUSINESSRESPECTHUMANRIGHTS.ORG

time, you are not expected to do this alone. Most probably, you will need help from colleagues in other functions and departments in your company. You will probably also need help from credible partners and expert organisations outside the company, including NGOs, trade unions, international organisations or multi-stakeholder initiatives. As part of the process, you will need to engage with those stakeholders who may be directly affected by your company's operations, listen to them, and take their perspective into account in your company's decision-making processes.

1.3 Why is it important for business to respect human rights?

Business is the major engine of economic growth and job creation. But business can also pose risks to human rights, harming people and also business itself. Today there is increasing awareness of and scrutiny on how companies impact people and communities around the world. This includes large and small companies in all industries – from a mining company resettling a community, to a retailer sourcing from a supplier that uses child labour, a manufacturer polluting a water supply, or a company relying on security forces that use excessive force.

You are the head of sustainability for a major Indonesian pulp and paper company. The company has a history of conflict with local communities related to the use of forest lands by its own operations and those of its suppliers. You know that this is bad for local communities, and bad for the company. What can you do?

LEARN MORE IN THE INDONESIA CASE STORY AT BUSINESSRESPECTHUMANRIGHTS.ORG

As the UN Guiding Principles make clear, respecting human rights is a responsibility that all companies share. It is also rapidly becoming the norm in practice. For example, various governments are taking action, including:

- A growing number are developing National Action Plans on business and human rights. As of 2016, a diverse group of over 35 countries had developed or were in the process of developing National Action Plans on the implementation of the UN Guiding Principles;[1]
- Developments in national laws in countries such as the United Kingdom (UK) and the United States (US) now require disclosure of human rights due diligence efforts around the risks of slavery and human trafficking in global supply chains, or in relation to other high-risk activities such as the use of 'conflict minerals' in various consumer products. The European Union non-financial disclosure Directive, which EU member states are required to transpose into national law, will significantly strengthen corporate disclosure requirements on human rights across the EU;
- Stock exchanges and regulators in a growing number of jurisdictions, including India, Malaysia and South Africa, are requiring or encouraging greater disclosure on social – including human rights – issues;

1. Information on National Action Plans can be found on the website of the Office of the High Commissioner for Human Rights: www.goo.gl/itpqGj and on the Business & Human Rights Resource Centre's website: www.goo.gl/LKm7iH. ICAR and DIHR have produced a toolkit on National Action Plans, available at www.goo.gl/7auV8J.

- The Dutch government initiated a process of negotiated 'covenants' in a dozen different sectors involving industry associations, their members, NGOs, trade unions and the government itself to reach new agreements on how to better tackle human rights and other risks in those sectors' global value chains;
- National export credit agencies and development finance institutions in a growing number of OECD countries are seeking to integrate human rights into their existing environmental and social due diligence;
- Regional organisations like the European Union, the Organization of American States and the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights have affirmed the UN Guiding Principles as the authoritative global reference point when it comes to expectations of business regarding human rights;
- The International Labour Organization has begun debating the need for new initiatives and standards on supply chain responsibility, referencing the UN Guiding Principles.

Action by companies and other stakeholders include:

- A rapidly growing number of companies are making an explicit commitment to respect human rights, like the more than 9,000 companies that have signed on to the UN Global Compact's Ten Principles[2] (see Chapter 4 for an explanation of the relationship between the UN Global Compact and the UN Guiding Principles), the more than 340 companies that have published a human rights policy, or the growing number of companies that are comprehensively reporting on their human rights performance;[3]
- Leading international sustainability standards are now broadly aligned with the UN Guiding Principles, including the:
  - OECD Guidelines for Multinational Enterprises,
  - ISO 26000 Standard on Social Responsibility,
  - International Finance Corporation's Sustainability Framework and Performance Standards;
- Socially responsible investors representing 4.8 trillion US dollars in assets under management are backing more robust human rights reporting frameworks as well as benchmarking efforts to assess companies against the UN Guiding Principles;[4]
- NGOs active at the global and local levels are increasingly holding companies to account using the Guiding Principles through campaigns;
- The International Bar Association has issued guidance for national bar associations and for all business lawyers on implementing the Guiding Principles in legal practice.[5]

You are the head of ethics for a South African bank. Your company already has some good systems in place but you know you need to do more to meet the company's responsibility to respect human rights. How do you bring your colleagues along with you and strengthen existing systems?

LEARN MORE IN THE SOUTH AFRICA CASE STORY AT BUSINESSRESPECTHUMANRIGHTS.ORG

2. As of June 2016: www.goo.gl/xIx2Nh.
3. See www.goo.gl/GXK10R.
4. See www.goo.gl/jfRb6b.
5. See www.goo.gl/HD4j0F.

A level playing field is slowly emerging for companies on human rights. This is good news, because the risks for companies are real:

- **Business projects are delayed, suspended or cancelled** because of strong opposition by local communities that are concerned about impacts on their human rights – like the case of the proposed wind farm in described in the Mexico case story on the project's website.
- The **costs of conflict with workers and local communities include 'hidden costs'** such as staff time, including that of senior leaders, spent managing such conflicts. In one study of extractive sector projects this was found to be the most frequently overlooked cost of company–community conflicts (see box on this page).

LEARNING FROM PRACTICE

COSTS OF COMPANY-COMMUNITY CONFLICT IN THE EXTRACTIVE SECTOR[6]

An in-depth study by Harvard Kennedy School's Corporate Responsibility Initiative, Shift and the University of Queensland showed that the costs to extractive companies of conflict with local communities are substantial when aggregated from across the budget lines in which they typically occur. The most frequent costs are those arising from lost productivity due to temporary shutdowns or delays. For a world-class mining operation in which a company has invested around 2 to 3 billion US dollars, this can mean a loss of 27 million dollars per week of delay in net present value terms. The greatest costs are the opportunity costs in terms of the lost value linked to future projects, expansion plans, or sales that did not go ahead. The most often overlooked costs are those resulting from staff time being diverted to managing conflict, particularly senior management time.

The study also produced a typology of costs that companies in other sectors beyond extractives have found helpful. They have used it to identify where they may be lacking information about costs they are actually experiencing but not capturing or aggregating across different budget lines.

- **Land tenure-related risks are becoming a recognised challenge for companies in a wide range of sectors.** A 2013 study of land concessions in emerging market economies suggests a three in ten chance that a given concession incurs risk for the company related to community disputes over their legal or customary title to land.[7] Oxfam's 'Behind the Brands' campaign has highlighted the relationship between land-grabbing and large brands,[8] and companies like Coca-Cola, PepsiCo, Unilever and others are now starting to commit to 'zero tolerance' policies on land-grabbing, including in their supply chains.

6. Rachel Davis and Daniel M. Franks, 'Costs of Company-Community Conflict in the Extractive Sector', Corporate Responsibility Initiative Report No. 66, Harvard Kennedy School, 2014, available at www.goo.gl/9WGrs5.
7. The Munden Project, 'Global Capital, Local Concessions: A Data-Driven Examination of Land Tenure Risk and Industrial Concessions in Emerging Market Economies', September 2013, p.2, available at www.goo.gl/CRsucI.
8. See www.goo.gl/TSdedc.

- The use of **creative legal claims against companies** for alleged involvement with human rights abuses range from allegations of parent company liability on the part of a Canadian mining company for actions of its Guatemalan subsidiary, to the case against Tate & Lyle, an international sugar conglomerate, being sued in the UK High Court by Cambodian farmers over their alleged forced eviction from lands used by two of its sugar cane suppliers.[9] Also of note are high-profile settlements in cases in the UK involving Shell, BP and Trafigura among others,[10] and the filing of about 180 lawsuits in the US under the Alien Tort Statute and settlements estimated to be worth roughly 80 million US dollars.[11]

COUNTRY INSIGHTS: TURKEY

Worker trust, motivation and productivity

The work of the Fair Wear Foundation in Turkish factories demonstrates the importance of establishing a complaint system that workers trust. Experience shows that where such a mechanism is based on dialogue with workers to solve problems, greater respect for workers' rights often follows, including through measures such as creating prayer rooms, ensuring full payment of benefits, installing better lighting at production sites to prevent eye strain, and providing sufficient clean drinking water.

In Turkey, companies have found that respecting workers' rights has also helped to boost their motivation and productivity. As a manager at one of the companies involved commented: "The speed and quality of production increased when workers felt they were being listened to," bringing benefits to the business as well as to the workers.

- Beyond litigation, **human rights complaints against companies under the OECD Guidelines for Multinational Enterprises** made to official state-based 'National Contact Points' in the 46 countries that adhere to the OECD Guidelines have been growing. Recent Harvard research shows that the large majority of complaints now relate to human rights issues.[12] The nature of the complaints has also diversified, extending beyond labour rights to include issues related to community consultations, impeding or destroying sources of livelihood, health and housing, and privacy rights, and to include cases in the agriculture, infrastructure and financial sectors.

Conversely, respecting human rights is **closely linked to business opportunities such as**:

- **Improved employee retention and recruitment rates**, including in recruiting the next generation of leaders who are increasingly focused on companies' performance in this area, as well as in retaining talented female staff;[13]

9. The company was also suspended from Bonsucro, a multi-stakeholder initiative to promote sustainable sugar cane.
10. For case profiles, see the Business & Human Rights Resource Centre's corporate legal accountability portal: www.goo.gl/w5ORfl.
11. Michael Goldhaber, 'Corporate Human Rights Litigation in Non-U.S. Courts: A Comparative Scorecard', 3 UC Irvine Law Review, 127, 2013.
12. John Ruggie and Tamaryn Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges', Harvard Kennedy School Corporate Responsibility Initiative Working Paper No. 66, May 2015, available at www.goo.gl/ZGyvVl.

COUNTRY INSIGHTS: INDONESIA

The business case for APP

Jakarta-based Asia Pulp and Paper (APP) has begun to move towards better relationships with the communities around its own operations and those of its suppliers, including by integrating requirements for community consent into its policies. This was sparked by ongoing allegations of forest clearing, which affected local communities' livelihoods, and conflict that affected the company's business.

According to Aida Greenbury, Managing Director and Chief of Sustainability at APP: "If you talk about business then we talk about the long term. It's not about products for a year or 10 years; it's thinking about maybe 100 years. So if we compare the cost of preventing things from happening versus waiting for future conflict that may be even bigger scale and impact to your business – then we can understand that preventing conflict by respecting local people's rights to their lands will be lower cost in the near or long-term." Read more in the Indonesia case story on the project's website.

- **Greater access to business opportunities with governments, financiers and business customers** and buyers, who increasingly recognise the reduced risks when working with a company that effectively manages risks to human rights;
- **Greater access to capital** through growing recognition from socially responsible investors and lenders of the connection between good management of non-financial risks and good management of a company overall;
- **Improved relationships** with workers, communities and other stakeholders, resulting in greater trust and a stronger 'social licence to operate';
- **The creation of innovative new products and services by companies,** such as those developing ethically made phones or chocolate, or savings products that invest in specific sustainability themes (such as ensuring access to water).

1.4 Who else can benefit from this guidance?

This guidance is primarily aimed at companies, but we hope that others can benefit from it too. For example:

- For civil society organisations, the guidance provides in-depth information about the expectations set by the Guiding Principles in terms of what can reasonably be expected of companies in preventing and addressing human rights impacts, including in their supply chains, and what they can be held to account for. [14]
- For industry or multi-stakeholder initiatives that are increasingly interested in aligning with the Guiding Principles, the guidance can provide a helpful reference in reviewing the extent to which their own codes and expectations of their members align with the corporate responsibility to respect human rights.

13. Lauren McCarthy, Liz Kirk and Kate Grosser, 'Gender equality: it's your business', 2012, available at www.goo.gl/f8JmpJ.
14. For one NGO perspective on the Guiding Principles, see Oxfam International, 'Business and Human Rights: An Oxfam perspective on the UN Guiding Principles', 2013, available at www.goo.gl/olc25C.

- For investors, this guidance can help illustrate what a robust human rights risk management system would entail in practice and may help to inform their engagements with investees.
- For organisations of various kinds that are working directly with companies to help them meet their responsibility to respect human rights, this guidance provides information on how different companies organise responsibility for these issues and pinpoints where external input can be critical to the company's decision-making processes.

LEARNING FROM PRACTICE

THE BENEFITS AND CHALLENGES OF OBTAINING CONSENT

For companies, obtaining a licence to use land often involves a public consultation or consent process led by the government. All too often, initial consultation with a community reveals deep concern about a proposed project or use of certain land; yet the government moves ahead with the process, sometimes even speeding it up, and issues a permit to a company anyway. The company then tries to start operations but discovers that community resistance is so strong that it cannot do so.

This is a classic situation in which the company learns the hard way that it cannot simply rely on a state-led process to 'produce' community support or consent for a project.

Under the Guiding Principles, companies are expected to respect specific standards applying to potentially vulnerable or marginalised groups – this includes indigenous peoples' right to free, prior and informed consent (FPIC). As set out in the Declaration on the Rights of Indigenous Peoples, which has been endorsed by a large majority of states, FPIC is required if activities will affect indigenous peoples' lands, territories or other resources that they traditionally own, use or occupy.[15]

Some advocate that the right to consent – or consultation and negotiation consistent with the underlying principles of FPIC – should apply to any community that legally or traditionally uses or occupies land.[16] An FPIC process can help reduce social conflict, as well as increase the legitimacy of a project in the eyes of all stakeholders, and can thus provide a critical foundation for sustainable development. A growing number of companies are making broader commitments to FPIC. For examples, see APP's approach in the Indonesia case story on the project's website, and Oxfam's analysis of extractive companies' commitments in its Community Consent Index.[17]

For advocacy organisations, you may find the guidance developed by the Centre for Research on Multinational Corporations (SOMO) particularly helpful: see SOMO, 'How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy' (2012).[18] It was developed specifically for civil society organisations and is available in multiple languages.

15. The former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, has set out what effective consent and consultation processes should involve: UN Doc No A/HRC/21/47 (6 July 2012), pp.16–18, available at www.goo.gl/s4lYCA.
16. See, for example, Oxfam Australia, 'Guide to Free, Prior and Informed Consent', 2014, available in multiple languages at www.goo.gl/IlUQYI.
17. See www.goo.gl/vyfCs6. The results suggest increasing commitments to FPIC in the mining sector compared to the oil and gas sector, but also highlight some disappointing trends, for example, in relation to women's participation in decision-making.
18. www.goo.gl/IqdC4l

1.5 How was this guidance produced and what is special about it?

This guidance was produced in close collaboration with companies and their stakeholders. A first version of this guidance was produced by the Global Compact Network Netherlands in a project that ran from 2008 to 2010. In that project, 10 Dutch multinational companies piloted elements of what would later become the UN Guiding Principles, in particular, human rights due diligence. The results were shared publicly and launched at the UN Global Compact Leaders Summit in 2010 by Paul Polman, CEO of Unilever (one of the participating companies) and André van Heemstra, Chairman of the Global Compact Network Netherlands. That initial publication directly informed the development of the UN Guiding Principles. [19] The publication was also picked up widely by companies and their stakeholders around the world. Several Global Compact local networks translated the document and asked the Global Compact Network Netherlands to collaborate in a follow-up project. Shift, Oxfam and GC Netherlands then conceived a new project in 2014: the Global Perspectives Project. The project was supported by the Dutch government as part of the follow-up to its National Action Plan on Business and Human Rights.

Country workshops in *Indonesia*, *Mexico*, *South Africa* and *Turkey* provided insights into the perspectives of over 250 participants from companies and civil society organisations on business and human rights topics.

Together with country partners from Global Compact local networks and Oxfam affiliates in four countries, the project team organised business and human rights discussion and capacity-building workshops in Indonesia, Mexico, South Africa and Turkey. In these workshops, business and civil society representatives shared their experiences with – and perspectives on – the implementation of respect for human rights by businesses, including through local case stories. A number of these are included in this guidance and described in more depth on the accompanying project website: www.businessrespecthumanrights.org.

Across the four workshops, over 250 participants explored how to do business with respect for human rights in relation to key themes such as the rights to water and sanitation, land-related human rights impacts, minorities and indigenous peoples' rights, women's rights, innovative approaches to supply chain management, remedy and grievance mechanisms, and the cross-cutting theme of stakeholder engagement. Short summaries of each country workshop and context are included in Appendix A of this guidance.

The country workshops provided insights into the perspectives of companies operating in emerging economies and the Global South, and from civil society organisations that help protect workers and communities' rights in those contexts.

19. In the final report by the former UN Special Representative containing the UN Guiding Principles, Ruggie referred to the project in paragraph 11: "Some of the Guiding Principles have been road-tested as well... The workability of the Guiding Principles' human rights due diligence provisions was tested internally by 10 companies."

They revealed a wide variety of stakeholder relationships, ranging from close cooperation in addressing specific issues in the supply chain, to highly adversarial relationships around extractive, infrastructure and other large-footprint projects.

All of this knowledge, together with the project partners' own experience, was brought together in The Hague in mid-2016 in a review workshop with representatives from the local networks and Oxfam affiliates, and eight GC Netherlands member companies (ABN AMRO, AkzoNobel, KPMG, Philips, Rabobank, Randstad, Shell and Unilever) who participated in the Global Perspectives Project. That workshop helped to distil the lessons that form the basis for this updated version of the guidance. The project website offers a more interactive way to access this learning, including through four case stories reflecting company and stakeholder perspectives on how to implement respect for human rights in company operations in diverse contexts.

Examples from *real company practice* are provided throughout this guide.

1.6 How is this guidance structured?

This guidance is structured so that different readers can dive into it at different places:

- For readers who are relatively new to the topic of business and human rights and are keen to learn more, Chapter 2 explains what human rights are, how they connect to business, what the **key concepts in the UN Guiding Principles are and what they mean for companies in practice**.
- For readers who are focused on implementation and would like to learn about **specific steps** to take, Chapter 3 offers a wide range of guidance points as well as 'pitfalls to avoid' **for each of the core elements that companies should have in place to meet their responsibility to respect human rights** (in short: a policy commitment that is embedded throughout the organisation; human rights due diligence processes; and processes for stakeholder engagement and remedy). Each section also contains 'suggestions for SMEs'[20] and sources of further information.
- Chapter 4 provides brief **background information on two cross-cutting topics**: the complementary nature of the UN Guiding Principles and the UN Global Compact's Ten Principles, and how the UN Guiding Principles relate to the Sustainable Development Goals.
- **Throughout this guidance,** company **examples** are provided to illustrate the points made. There are four in-depth case stories from the four focus countries, supported by additional materials on the accompanying website: www.businessrespecthumanrights.org.

We hope this guidance helps you take action in support of respect for human rights by business. ◀

20. The European Commission has produced useful guidance for SMEs entitled 'My business and human rights': www.goo.gl/XGoKyq

chapter 2

An introduction to the core concepts in the UN Guiding Principles

2.1 How can business be connected to human rights impacts?

Talking to companies about the topic of human rights often raises the following kinds of questions: *What am I **really** responsible for as a business?... Isn't human rights the responsibility of the government?... But what if we want to do more than 'just' respect human rights?*

Because different stakeholders have had very different answers to these questions, the UN Guiding Principles on Business and Human Rights were developed to provide clarity. The Guiding Principles are an authoritative framework for what can reasonably be expected of companies when it comes to preventing and addressing harm to people. Companies' actions and decisions can affect people's enjoyment of their human rights either positively or negatively. Companies can affect the human rights of their employees and contract workers, workers in their supply chains, communities around their operations and customers and end-users of their products or services. They can have an impact – directly or through their business relationships – on virtually the entire spectrum of human rights. The table below provides some examples of how a business may be involved in different human rights impacts.

Table: Examples of the connection between a business and human rights

Company function	Examples of relevant issues	Examples of human rights affected
Human resources	‣ Are our female and male staff hired, paid and promoted based solely on their relevant competences for the job? ‣ Are women and men paid the same wage for the same work? ‣ How is sexual harassment in the workplace dealt with?	‣ Freedom from discrimination ‣ Women's rights
Health and safety	‣ Are our workplaces safe when it comes to the mental and physical health of our staff?	‣ Right to just and favourable conditions of work ‣ Right to health
Procurement	‣ Do our suppliers adhere to core labour standards including on child labour, forced labour, freedom of association and collective bargaining?	‣ Right to form and join a trade union ‣ Right to bargain collectively ‣ Freedom from slavery ‣ Children's rights
Product safety	‣ Are any of our products potentially detrimental to our customers or end-users (for example, because they could harm their health or could involve the dissemination of sensitive personal information)?	‣ Right to health ‣ Right to privacy
Community relations	‣ Are local communities around our operations or facilities affected by what we do (for example, as a result of pollution, excess dust or noise)? ‣ Do any of our operations involve resettling people in a new location?	‣ Right to an adequate standard of living ‣ Rights to water and sanitation ‣ Right to health ‣ Indigenous peoples' rights including the right to free, prior and informed consent

In practice, some rights are more at risk of negative impacts than others in particular industries and circumstances, and companies will need to pay more attention to them. But, in principle, any company could potentially be involved with a negative impact on any internationally recognized human right. This raises two initial questions: what are 'internationally recognized human rights' and what is a negative impact on human rights?

2.2 What are 'internationally recognized human rights'?[21]

The idea of human rights is as *simple* as it is *powerful*: that people have a right to be treated with *dignity*.

The idea of human rights is as simple as it is powerful: that people have a right to be treated with dignity. Human rights are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, race, religion, language or other status. Every individual is entitled to enjoy human rights without discrimination. These rights are all interrelated, interdependent and indivisible. International human rights law lays down obligations on states to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights of individuals or groups. The 1948 Universal Declaration of Human Rights was drawn up by representatives from many nations to prevent a recurrence of the atrocities of the Second World War and is the cornerstone of modern human rights law. At the World Conference on Human Rights in Vienna in 1993, all 171 participating countries reaffirmed their commitment to the aspirations expressed in that document.

The Universal Declaration is codified in international law through the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966. Each of the covenants has been ratified by over 150 states. Collectively, all three documents are known as the 'International Bill of Human Rights'. Regarding workers' human rights, the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work commits all its member states to four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These are covered in more depth in the eight 'core conventions' of the ILO.

For a helpful summary of the rights contained in these core instruments and how business can impact them, see Annex A of the UN Guiding Principles Reporting Framework, available at http://www.ungpreporting.org/resources/how-businesses-impact-human-rights/.

21. The following text draws substantially from Shift and Mazars, UN Guiding Principles Reporting Framework, Chapter 4, available at www.UNGPreporting.org.

The Guiding Principles make clear that:

- The **International Bill of Human Rights** and the **ILO Declaration** provide the basic reference points for businesses in understanding what human rights are, how their own activities and business relationships may affect them, and how to ensure that they prevent or mitigate the risk of negative impacts on people.
- Depending on the circumstances of their operations, companies may need to consider **additional human rights standards** in order to ensure that they respect the human rights of people who may be disadvantaged, marginalised or excluded from society and, therefore, particularly vulnerable to impacts on their human rights, such as children, women,[22] indigenous peoples, people belonging to national, ethnic, religious or linguistic minorities, or persons with disabilities. The table below lists these additional standards.

UN human rights instruments elaborating the rights of persons belonging to particular groups or populations[23]

- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of Persons with Disabilities
- Declaration on the Rights of Indigenous Peoples
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

2.3 What are negative human rights impacts?

A negative human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights. Several elements are important in this definition:

- **Negative:** removing or reducing the ability to enjoy human rights;
- **Action**: the activity (or inactivity) of the company itself or one of its business relationships that leads to or contributes to an impact;
- **An individual**: somebody affected or harmed (which the Guiding Principles refer to as "potentially affected stakeholders");
- **Human rights:** the impact is on an internationally recognized human right or rights.

22. On impacts on women workers in supply chains, see Oxfam International, 'Trading Away our Rights: Women Working in Global Supply Chains', 2004, www.goo.gl/L1b4SC.
23. Reproduced from OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide', 2012, p.12, available at www.goo.gl/6Zjln7.

Table: Examples of negative human rights impacts on different stakeholders

On workers	On communities	On consumers or end-users
‣ Workers who are prevented from, or fired as a result of, joining a trade union are impacted in their right to *freedom of association*	‣ Companies polluting water or air quality may impact the surrounding community members' *right to health*	‣ A company's unsafe products may impact individual consumers' *right to health*
‣ Workers provided with inadequate protective equipment may be impacted in their *right to health;* women workers may be particularly vulnerable	‣ Companies causing water scarcity may impact farmers' *right to water*	‣ A company's loss of private information may impact end-users' *right to privacy*
‣ Workers provided with unhealthy dormitory housing may be impacted in their *right to an adequate standard of living*	‣ Increased company traffic that leads to noise, dust or safety concerns may affect the community's *rights to life and health*	‣ Inadequate safety in company stores may impact shoppers' *right to personal security*
‣ Excessive hours, unpaid overtime, or discrimination in pay or promotion may impact workers' *right to just and favourable conditions of work*	‣ Resettlement to make way for a new facility with inadequate consultation would violate the *right to free, prior and informed consent* of indigenous peoples that live on or use that land	‣ Companies promoting the irresponsible consumption of alcohol or high-sugar drinks (especially by young people) may impact their *right to health*
‣ Workers in forced or bonded labour conditions (for example, some migrant workers) are impacted in their *right not to be subjected to slavery, servitude or forced labour*	‣ Local community members' inability to find an alternative livelihood after resettlement may impact their *right to an adequate standard of living*	

2.4 Where do the UN Guiding Principles come from?[24]

In 2005, the UN Secretary-General tasked Harvard Kennedy School Professor John Ruggie with moving beyond what had become a polarised debate over the human rights responsibilities of companies, and identifying practical ways to address business-related risks to human rights. Ruggie's goal was to build consensus among stakeholders on the ways to achieve this objective, by holding consultations around the world and conducting extensive research. Out of that process came the 'Protect, Respect and Remedy' Framework, which was unanimously welcomed by the UN Human Rights Council in 2008.

24. This section draws from a Shift briefing note on the UN Guiding Principles.

The UN Protect, Respect and Remedy Framework

The Framework rests on three complementary pillars:

1. States have a **duty to protect** people from human rights abuses by third parties, including business.
2. Business has a **responsibility to respect** human rights, which means to avoid infringing on the rights of others and to address negative impacts with which a business is involved.
3. There is a need for **greater access to effective remedy** for victims of business-related human rights abuse, both judicial and non-judicial.

The UN Human Rights Council extended Ruggie's mandate as Special Representative until 2011 with the task of operationalising and promoting the UN Framework.

The UN Guiding Principles

In June 2011, the UN Guiding Principles on Business and Human Rights were presented by Ruggie and unanimously endorsed by the Council. In brief, what do the Guiding Principles say?

1. The state duty to protect

The Guiding Principles for the first pillar provide recommendations on how states can create an environment that is conducive to business respect for human rights, including by:

- Striving for greater legal and policy coherence between the state's human rights obligations and actions with respect to business, including by enforcing existing laws, identifying any policy or regulatory gaps, and providing effective guidance to business;
- Fostering business respect for human rights both at home and abroad, including where there is a 'state-business nexus', such as through ownership or when a state conducts commercial transactions with business (for example, providing export credit support or procuring goods or services from business);
- Helping ensure that businesses operating in conflict-affected areas do not commit or contribute to human rights abuses; and
- Fulfilling their duty to protect when they participate in multilateral institutions.

2. The corporate responsibility to respect

The responsibility to respect is a global standard of expected conduct, affirmed by the UN Human Rights Council and reflected in a growing number of other international standards on responsible business conduct. It is the baseline expectation of all businesses in all situations.

The UN Guiding Principles are a *baseline expectation* of all businesses in all situations.

The Guiding Principles for the second pillar provide a blueprint for business on how to:

- Prevent and address adverse impacts on human rights throughout their operations – meaning in their own activities and through their business relationships – including where they cause or contribute to human rights impacts or where an impact is directly linked to their operations, products or services through a business relationship;
- 'Know and show' that they respect human rights, including through effective human rights due diligence processes; and
- Understand how the contexts where they operate may affect the risk of being involved in severe human rights harms.

The scope, boundaries and content of the responsibility to respect are discussed in detail later in this chapter.

3. Access to effective remedy

Even where states and business operate optimally, negative human rights impacts can still occur, and affected individuals and communities must be able to seek redress. Effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect. The Guiding Principles for the third pillar set out how such grievance mechanisms can be strengthened by states and businesses:

- As part of their duty to protect, states must take appropriate steps to ensure that when abuses occur, those affected have access to effective judicial and non-judicial remedy;
- Non-state-based mechanisms, including mechanisms at the operational level (such as companies' own grievance mechanisms), industry level (such as complaints mechanisms established as part of multi-stakeholder initiatives), and international level (such as the grievance mechanisms of international financial institutions), should provide an effective complement to state-based mechanisms; and
- Non-judicial grievance mechanisms should meet key effectiveness criteria

These concepts are further described in Chapter 3.8.

Since the UN Guiding Principles were endorsed, there has also been discussion within the UN Human Rights Council about the merits of a binding international treaty on business and human rights, and an intergovernmental working group has been created to explore the topic further.[25]

25. See www.goo.gl/Bk1vE4.

2.5 Understanding the scope of the responsibility to respect

For many companies, understanding the implications of the UN Guiding Principles involves asking the following questions:

Which companies have to respect human rights?
The Guiding Principles provide the baseline expectations for all companies, everywhere—meaning they apply to companies of every size, industry, country of operation or domicile, ownership structure, and equally to production and services companies.

How far throughout the supply and value chain does the responsibility to respect apply?
The responsibility to respect extends beyond impacts a company causes or contributes to itself to wherever an impact may be linked to the company's operations, products or services through a business relationship. This can involve business relationships at any stage or tier of the supply or value chain.

However, while the UN Guiding Principles expand the scope of where companies need to look for impacts, they also put some boundaries on the kind of actions that are expected in response, depending on how a company is involved with an impact.

What action is required in which situation?
The Guiding Principles describe three ways in which a company can be involved with human rights impacts:

a) It may **cause** an impact through its own activities;
b) It may **contribute** to an impact either directly or through some outside entity (government, business or other);
c) It may not do anything to cause or contribute to an impact, but an impact may be **linked** to its operations, products or services through a business relationship (or series of relationships).

Each scenario has different implications for the nature of a company's responsibility to take certain action – in particular, whether it has a role to play in remedy. These different scenarios are elaborated in Chapter 3.4 through a range of practical examples.

What is the company's responsibility if a government does not protect human rights?
It is the duty of states to translate their international human rights law obligations into domestic law and provide for their enforcement. The laws of all states include various protections against human rights abuse by business, including in labour, non-discrimination, health and safety, environmental and consumer protection laws. In some states, human rights are explicitly protected in the constitution.

What is the *company's responsibility* if a government does not protect human rights?

At the same time, national laws may not address all internationally recognized human rights, they may be weak, they may not apply to all people, or they may not be enforced by governments and the courts. For example, labour inspectors may be corrupt or ineffective, or police may be underequipped or poorly trained. It is clear that, in such situations, respecting human rights is much more difficult for companies.

The UN Guiding Principles do not expect companies to step in for every government failure. But they make clear that where national laws fall below the standard of internationally recognized human rights, companies should respect the higher standard; and where national laws conflict with those standards, companies should seek ways to still honour the principles of those standards within the bounds of national law.

Why don't the UN Guiding Principles talk about 'promoting' human rights?

The Guiding Principles were developed to provide a baseline expectation for all companies everywhere. However, this doesn't mean that companies cannot go 'beyond' respect, and many choose to do so for a range of reasons. For example, companies that have signed up to the Ten Principles of the UN Global Compact (see Chapter 4) have committed to also 'promote' or advance human rights. Other companies are making the Sustainable Development Goals the focus of their promotional efforts on human rights (for more on this, and on how positive actions to respect human rights connect to the promotion of human rights, see also Chapter 4).

However, companies need to pay close attention to ensure that human rights are equally respected in any such promotional activities. Moreover, as the Guiding Principles make clear, efforts to promote or support human rights cannot be used to 'offset' negative human rights impacts elsewhere in the company's

COUNTRY INSIGHTS: SOUTH AFRICA

The legacy of apartheid and expectations on business

In South Africa, society's expectations of business to help address the shared legacy of apartheid mean that talking about the baseline standard of respect for human rights in the UN Guiding Principles cannot be done in isolation from a discussion of business's role in contributing to the promotion of human rights through broader social development and delivery of services. This is particularly important in communities where the government is still largely absent, such as around many mining operations and in agricultural contexts. What is needed to obtain or maintain a social licence to operate varies in different contexts; in South Africa, where society is still tackling the effects of gross historical injustices, the promotion of human rights needs to be part of the picture.

operations. For example, building a school for a local community cannot compensate for polluting their water source and negatively impacting people's health and livelihoods.

2.6 What elements are needed to put the responsibility to respect into practice?

The UN Guiding Principles make clear that companies should have the following elements in place:

- A statement of their **policy commitment** to respect human rights (discussed in Chapter 3.1) that is **embedded** throughout the organisation (3.2);
- **Human rights due diligence** processes to:
  - assess their actual and potential negative impacts on people (3.3);
  - integrate the findings and take action to prevent or mitigate potential impacts (3.4);
  - track their performance (3.5); and
  - communicate about their performance (3.6);
  - conduct **stakeholder engagement** as a cross-cutting theme throughout (3.7); and
- Processes to provide or enable **remedy** to those harmed, in the event that the company causes or contributes to a negative impact (3.8).

These elements are further elaborated through guidance points and practical examples in Chapter 3.

2.7 What is different about the responsibility to respect human rights?

Some of the main features that distinguish the responsibility to respect from prior understandings of corporate social responsibility, or CSR, include the following:

Risks to people, not just risks to the company

Human rights due diligence differs from traditional commercial, technical and financial risk management in that it focuses on risks to people, not just risks to the business. While there is increasing evidence that business risks converge with risks to people, especially in the medium to long term (see Chapter 1), this may not always be the case.

Human rights due diligence *differs* from traditional risk management in that it *focuses* on risks to *people*, not just risks to the *business*.

The UN Guiding Principles make clear that negative human rights impacts are to be evaluated and prioritised according to the severity of the risk to people. This means companies need to engage with 'potentially affected stakeholders' (sometimes also called 'rights holders'). These are individuals or groups who may be impacted by a company's operations and can include workers (the company's own staff as well as those working for suppliers), customers and end-users of the company's products or services, and communities located around the company's own facilities or its suppliers' facilities, among others.

All business relationships, not just first tier

Many companies are used to managing social and environmental risks in the first tier of their supply chain or in their immediate sales relationships. But going beyond this to consider risks to people at all stages of the value chain is a new concept – and a challenge – for many. For the first time, the UN Guiding Principles establish that all these business relationships are within the scope of a company's responsibility to respect human rights, although what companies can reasonably be expected to do about them will of course differ (discussed in Chapter 3.4).

Using leverage to address human rights risks

If companies can be connected to human rights impacts at any point in their value chain, then there needs to be greater attention to how they can work with business partners to improve their capacity to respect human rights. Leading companies are realising that engaging in a process of continuous improvement through capacity building, rather than immediately terminating a relationship when problems are found, can lead to better human rights outcomes overall. For example, if a supplier is found to be using child labour and is immediately terminated, the children that were working in the supplier's factory may be forced to make up for lost income through other even more harmful activities. In cases where systemic human rights impacts are concerned, where there is no easy solution, using leverage together with other actors – whether peers, industry associations, international organisations, or local trade unions or NGOs – may be the only way to achieve sustainable improvements. This is further discussed in Chapter 3.4.

Knowing and showing

Human rights due diligence can help companies move from being 'named and shamed' by third parties for abusing human rights to 'knowing and showing' that they respect human rights in practice. Human rights due diligence helps companies understand how they can be connected to human rights impacts, develop strategies to mitigate this risk, and track and account for their efforts to do so. This can also put companies in a better position to engage with external stakeholders about their approach.

Human rights harms cannot be offset

A company cannot compensate for human rights harms on the one hand by performing good deeds on the other, for example, by building schools or providing free healthcare. This is a fundamental difference from traditional understandings of voluntary CSR or corporate philanthropy and is an important point to bear in mind as companies go about making commitments to implement the Sustainable Development Goals (discussed in Chapter 4.2). ◀

chapter 3

Implementing respect for human rights: Practical steps

chapter 3.1

Policy commitment

‘Setting the tone’

A company’s commitment to respect human rights generally starts with a statement of policy. The process of developing such a statement should involve planning and consultation; it is an opportunity to build internal understanding of the company’s responsibility and is about more than merely writing a document.

A policy statement should typically: 1) explain how the company understands its responsibility to respect; and 2) set clear expectations and guidance for those who are expected to adhere to or implement the policy, such as the company’s own workforce, suppliers and other business partners.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 Involving senior management

Guidance point 2 Evaluating existing commitments and policies

Guidance point 3 Identifying the company's salient human rights issues

Guidance point 4 Involving internal and external stakeholders in the process

Guidance point 5 Developing the language of the statement

Guidance point 6 Obtaining top-level approval

Guidance point 7 Communicating the policy

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **CSR/sustainability:** Can bring expertise on human rights and on the company's broader sustainability commitments
- **Business operations:** Help ensure relevance as well as acceptance and implementation of the policy
- **Legal, internal audit, compliance:** Review of policy in light of company's legal obligations and verification of compliance once adopted
- **Senior management:** Support and formal approval of policies
- **Government and investor relations:** Consultation with specific stakeholders that they have responsibility for engaging with and communication of policy
- **Human resources:** Consider the relationship to existing policies on own workforce
- **Communications:** To help ensure effective translation into business language within the company as well as supporting external communication once adopted

Guidance point 1
Involving senior management

The 'tone at the top' set by senior management is critical to ensuring the business takes respect for human rights seriously. A statement of policy can be an important tool in this regard. So the process of developing the policy statement needs to be supported by senior management from the start. Having a senior management champion can help kick-start internal conversations and signal the importance of the process.

Guidance point 2
Evaluating existing commitments and policies

It is useful to identify what human rights-related policies are already in place. Many companies already have a reference to human rights in their core business principles or have signed the Ten Principles of the UN Global Compact. Even companies that make no explicit references to human rights are likely to already be addressing human rights in practice in existing policies on health and safety, diversity and inclusion, product safety, responsible marketing or community relations. Such commitments can be referenced in an overarching human rights policy to show that the issue is not new to the company.

LEARNING FROM PRACTICE

While a policy statement is a critical component of implementing the responsibility to respect, immediately sitting down to write a formal policy may not always be the best starting point. Sometimes, beginning by considering a particular human rights issue that has arisen in connection with the business (for example, the right to water, forced labour), or mapping a company's salient human rights issues, can help senior management and other colleagues see how the company's activities are connected to human rights.

Guidance point 3
Identifying the company's salient human rights issues

While the Guiding Principles do not prescribe any particular form for a policy commitment, the more tailored it is to the company's reality, the more likely it is to be effective in practice. An important way to tailor a commitment is by ensuring that it addresses the leading human rights risks that the company might be involved with across its operations. For example, an ICT company would probably want to include a specific focus on the rights to privacy and freedom of expression, while a factory that dyes cloth would consider a range of impacts on its own workforce but also human rights impacts on local communities arising from environmental aspects of its operations, such as excessive water use or discharge of pollutants.

This requires at least a preliminary assessment of the company's salient human rights issues. See Chapter 3.3 for guidance on how to assess human rights impacts, including identifying a company's salient human rights issues.

LEARNING FROM PRACTICE

ADOPTING A STAND-ALONE POLICY?

Whether or not to adopt a separate human rights policy is a question many companies grapple with. Some companies integrate human rights into other policies. Others have adopted a separate statement, either because they have found that human rights risks are so pervasive that a stand-alone policy is most effective, or because senior leadership wants to convey a strong signal about the seriousness of the issue. A stand-alone policy can provide stakeholders with a starting point for engaging in a discussion on human rights with the company. This external attention and pressure may give the department concerned with human rights more traction within the organisation.

Guidance point 4

Involving internal and external stakeholders in the process

Internal engagement is a critical opportunity to translate the potentially abstract concept of human rights into 'business speak' so that everyone inside the company can understand its relevance to their work. It is particularly important to engage those staff who will be expected to implement the policy. This can include managers, specialised or functional staff and those who own key business relationships or activities that can be connected to human rights risks. Engaging them can improve not only the content of the policy, but can also help generate greater buy-in once it is formally adopted.

LEARNING FROM PRACTICE

Often, the process of developing a policy primarily involves managers; only a few companies have held 'town hall' meetings or other forms of engagement with a broader range of employees. Where they have done so, they have found value both in terms of the inputs received as well as in broader uptake of the policy commitment once adopted.

In thinking about external stakeholders to engage in the process, it helps to consider who has insight into the company's overall activities and impacts, as well as what is likely to be effective in addressing the company's salient human rights issues. If a policy is being developed for a particular site or facility and its implementation will directly concern local communities, it will be important to consult directly with local stakeholders and their representatives. Stakeholder engagement is discussed in depth in Chapter 3.7.

Guidance point 5
Developing the language of the statement

Policy commitments can take many forms. It can be helpful to think about the following tiers:

HIGH-LEVEL REFERENCE	A short reference to human rights in the company's mission, values statement, or other overarching document
POLICY STATEMENT	A more elaborate statement outlining the company's expectations and accountability structures with respect to human rights, either in a stand-alone policy or integrated into a broader sustainability policy or code of conduct
OPERATIONAL GUIDANCE	Detailed guidance in functional or geographical areas, instructing managers and others what they specifically need to do in their daily work; often integrated into existing operational policies

High-level reference to human rights
A company may include a reference to human rights in its high-level values or mission statement, often focused on an expression of respect for all internationally recognized human rights, sometimes in the form of a quote from the company's CEO or senior leadership.

Policy statement on human rights
A policy statement should provide clarity to staff and external stakeholders about what the company expects in regard to human rights. This means it should be tailored to the company's particular circumstances, industry and human rights risks. The policy will need to be updated over time to include lessons learnt and reflect new insights into the company's human rights challenges.

Getting started: Guidance on what to include in a policy statement
Appendix B contains building blocks and examples of company policy commitments to help provide some ideas about what can be included. Some of these examples are drawn from the helpful guide by the Office of the UN High Commissioner for Human Rights and the UN Global Compact, 'How to Develop a Human Rights Policy' (2nd edition, 2015), available at www.unglobalcompact.org/library/22.

Operational guidance in specific functional/geographical areas
Some business operations or functions may be more at risk of being involved with particular human rights impacts. For example, human resources may engage in discriminatory hiring practices in countries where women are not allowed to work in certain jobs, or by stating a particular preference in a job ad that is discriminatory. The company's security

function that is required to collaborate with public security forces may run a higher risk of contributing to harm to the rights to personal security or health of local community members where public forces are poorly trained or use excessive force.

There are various sources of help: guidance can be found in sector- and issue-specific initiatives, such as the Voluntary Principles on Security and Human Rights, the Fair Labor Association (for human rights impacts in the supply chain, especially on workers) and the Global Network Initiative (addressing freedom of expression and the right to privacy for a growing number of ICT companies). When developing guidance for specific company functions, there are a number of points to keep in mind:

- Ensure there is a clear connection to the company's high-level commitments;
- Use simple and straightforward language; this may involve using language that specific business functions understand even if it is not the language of human rights, as long as what is unique about human rights is preserved (meaning the focus on risk to people, not just risk to the business);
- Involve those who will eventually have to use it to help ensure that the guidance is as practical as possible.

The process of developing the policy statement needs to be *supported* by senior management *from the start*.

Examples of operational guidance for specific company functions

- Privacy and data protection (information technology and human resources)
- Use of force in security operations (security)
- Guidance on stakeholder engagement with a human rights lens (community relations)
- Non-discrimination in recruitment (human resources)
- Responsible sourcing (procurement)
- Prevention of HIV/AIDS (logistics/staff responsible for drivers of company vehicles in countries with a high prevalence of HIV/AIDS and known visits by drivers to sex workers)

Guidance point 6
Obtaining top-level approval

The Guiding Principles state that the policy should be approved at the most senior level of the company. It can be important to be able to show buy-in, or at least engagement, by those on the operational side of the business to give senior leadership the confidence that the policy will be well received internally. Similarly, external stakeholder engagement can provide reassurance that it will be accepted as a credible commitment.

COUNTRY INSIGHTS: INDONESIA

Standard operating procedure on community consent

In 2013, Asia Pulp and Paper (APP) adopted a high-level commitment to engage communities around its operations based on the principle of free, prior and informed consent. It then developed guidance in the form of a standard operating procedure (SOP) so that the policy could be understood by managers and other staff on the ground. The SOP is implemented through training for all of those who need to implement the policy. Read more about this in the Indonesia case story on the project website.

Guidance point 7
Communicating the policy

After approval, the policy should be clearly communicated to relevant staff and external business partners and stakeholders – both those who are expected to implement it (for example, the company's contractors and suppliers) and those who have a direct interest in its implementation (for example, potentially affected communities, investors, consumers and civil society organisations). The company will need to consider what is most effective in terms of dissemination given the audiences it is intended for. Chapters 3.6 and 3.7 provide further guidance on communication and stakeholder engagement.

WRAPPING UP - COMMON PITFALLS TO AVOID

BASING STATEMENTS OF RESPONSIBILITY ON INFLUENCE RATHER THAN IMPACT

The Guiding Principles define a company's responsibility based on how a company can be involved with negative human rights impacts, including through its business relationships. A company's responsibility does not depend on its influence (or leverage). Therefore, a policy statement should be clear that a company does not have less responsibility where it has less influence; it may indeed be harder to address the situation, but the scope of the company's responsibility does not change.

IGNORING CERTAIN RIGHTS WITHOUT ANALYSIS

Sometimes, companies may reject certain rights as irrelevant to their business without conducting a human rights risk mapping, or consulting with appropriate experts. Wherever a company focuses on particular rights in a policy statement, it should be able to explain why it has chosen this focus and what process led to it, in line with the process of identifying 'salient human rights issues' described in Chapter 3.3.

NOT ADDRESSING CONFLICTING STANDARDS

Company staff will look to the policy or operational guidance when they find themselves confronted with dilemmas. Such dilemmas often involve conflicts between local standards and international or company standards. It is, therefore, important that the policy acknowledge that such situations may arise and give general guidance on what to do in order for staff to feel that the policy speaks to the real challenges they face.

Some suggestions for SMEs

Draw on codes from industry or multi-stakeholder initiatives

Instead of developing their own policy from scratch, SMEs can look to industry or multi-stakeholder initiatives that have a code of conduct with human rights provisions. For example, organisations like the Ethical Trading Initiative or the Fair Labor Association have their own codes of conduct regarding respect for the labour rights of supply chain workers that companies subscribe to upon becoming members. An SME does not have to become a member; the codes are typically available online and can be adapted to the company's unique circumstances.

Integrate human rights into existing policies

Smaller companies often have a document that covers core company rules or a code of conduct; human rights could be included in such a document rather than in a stand-alone policy. For some SMEs, this need be no more than a paragraph, provided the commitment is communicated to those who need to know about it.

Start by doing before developing a policy

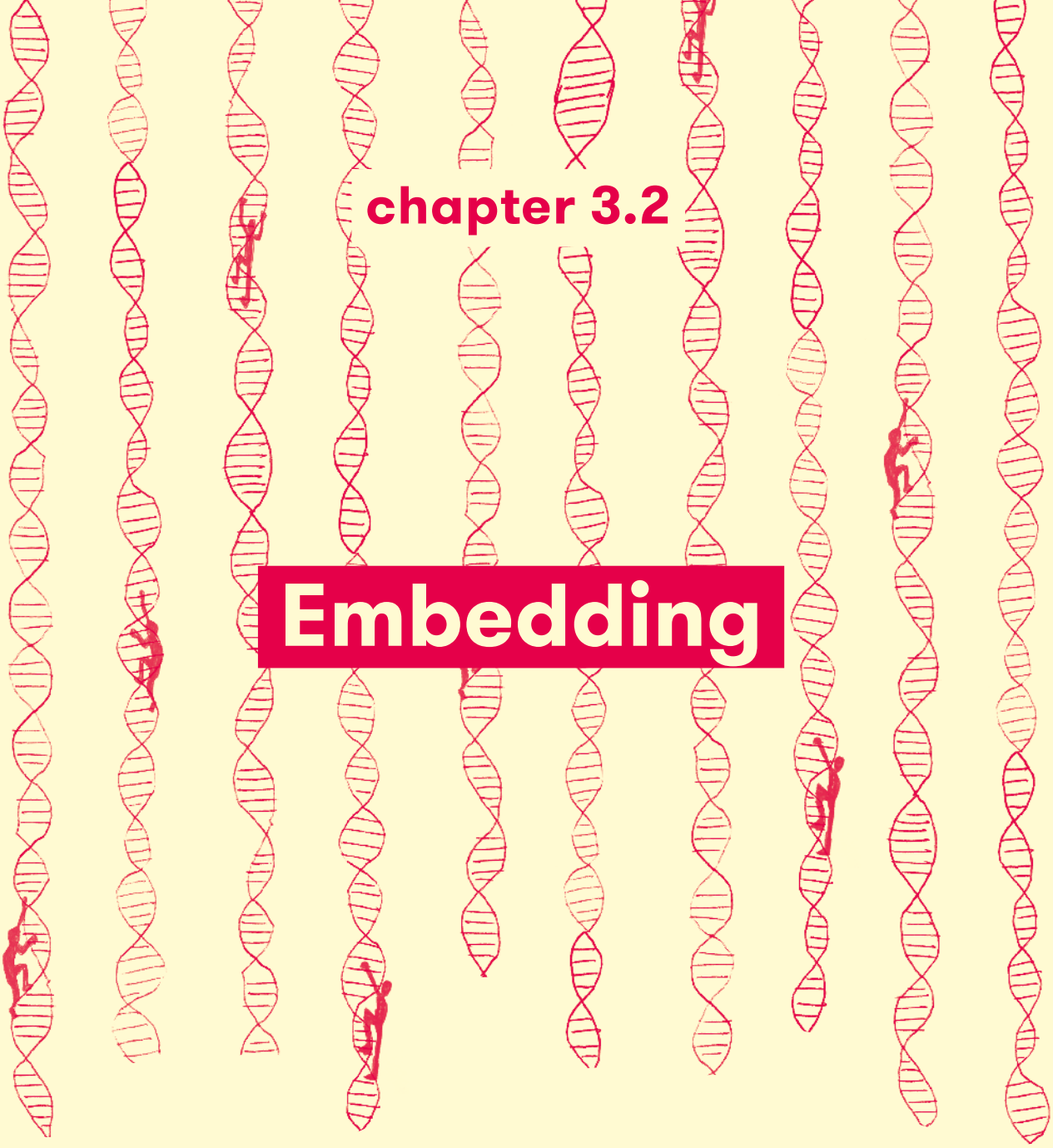
For any company, it is important to make a formal commitment. But, for some SMEs in particular, it may make more sense to start by implementing human rights due diligence, while considering the development of a formal policy.

Organise stakeholder engagement through sector organisations

Many SMEs interact with stakeholders within sector initiatives for particular commodities or industries, rather than setting up their own initiatives. ◀

Key sources and websites

- OHCHR and UN Global Compact, 'How to Develop a Human Rights Policy' (2nd edition, 2015) *www.goo.gl/TFWWkk*
- Business & Human Rights Resource Centre, list of company human rights policies *www.goo.gl/xIx2Nh*



chapter 3.2

Embedding

‘Getting it into the company’s DNA’

A policy is just words on paper without action to put it into practice. In order for a company to implement its commitment, respect for human rights needs to become part of the company’s culture or ‘DNA’ – it needs to be an integral part of how it operates. Embedding is about creating the right ‘macro-level’ environment for a policy to be effective in practice. It includes training, performance and accountability structures, tone at the top from senior management and the board, and a sense of shared responsibility for meeting the company’s human rights commitments.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 Assigning responsibility for human rights
Guidance point 2 Leadership from the top is essential
Guidance point 3 Considering the company's commitment in recruitment
Guidance point 4 Talking honestly about human rights
Guidance point 5 Training key staff
Guidance point 6 Developing incentives and disincentives
Guidance point 7 Developing capacity to solve dilemmas and respond to unforeseen circumstances

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **Senior management:** Involved in setting targets, incentives and disincentives; fostering a human rights-respecting company culture through the tone from the top; leading necessary change management (with a particular focus on middle management)
- **Human resources:** Helps embed human rights in typical human resources processes, such as recruitment, hiring, training, performance appraisal and dismissal
- **CSR/sustainability:** May provide substantive expertise for the embedding phase; helps design and conduct training
- **Middle management:** Implementing and executing the policy; coaching, supporting and overseeing employees; taking appropriate disciplinary measures when necessary
- **Communications:** May help senior management in setting the tone, informing staff of important developments and disseminating key policies and commitments

Guidance point 1
Assigning responsibility for human rights

Embedding respect for human rights requires assigning appropriate responsibility for human rights within the company. Initially, a single function or department may need to take the lead in kick-starting the process. Corporate functions like procurement, human resources and sales will also need to be involved to ensure that there is cross-functional support for the embedding process. Ultimately, business operations should take ownership of managing human rights risks with respect to the core activities of the company that they control.

Examples of different companies' experiences in organising responsibility for human rights can be found in the resources at the end of this section.

Guidance point 2
Leadership from the top is essential

For many companies, meeting their responsibility to respect human rights as outlined in the Guiding Principles often involves a process of change management in which leadership from the top – including the board – is essential.

Senior management has a unique role to play in signalling the importance of human rights to the business. In their speeches, senior managers' messages, corporate communications and in their personal conversations, top management can urge and demonstrate leadership in addressing human rights as part of the company's values.

Helpful guidance for board directors can be found in the UK Equality and Human Rights Commission's 2016 publication 'Business and human rights: A five-step guide for company boards'.[26]

LEARNING FROM PRACTICE

HUMAN RIGHTS FOCAL POINT

Some companies have appointed a unique person for human rights, often called a "human rights focal point" or "human rights champion". The focal point may be operating at headquarters or within a business unit. The focal point can be an internal adviser, coordinator and spokesperson for the company's human rights approach. The focal point can also help keep the company up to date with relevant developments on business and human rights.

EXAMPLE FROM PRACTICE

At The Coca-Cola Company, on Human Rights Day (10 December) each year, a special message is shared with all employees on human rights via email and/or the company's intranet. The message re-emphasises the importance of the company's commitment to respect human rights and highlights the company's actions on the implementation of the UN Guiding Principles in the past year. This has helped demonstrate that human rights is a topic that the company is committed to, and highlights new challenges, as well as yearly progress, for those employees who are not involved in the company's human rights efforts on a day-to-day basis.

For more on The Coca-Cola Company's human rights embedding journey and its aim to have every employee think about how their everyday actions relate to human rights, including a short video with employee perspectives, see: www.goo.gl/fIZ8ie

26. Prepared with the support of Shift, the guidance is available at www.goo.gl/4LvQrB.

Guidance point 3

Considering the company's commitment in recruitment

Companies are often keen to ensure that the individuals they hire embrace the company's values – including respect for human rights. Applicants could be asked how they intend to balance respect for company values with other business pressures, and how they have grappled with such dilemmas in the past. For example, a prospective bank employee could be asked what they would do if they became aware that one of the bank's sales agents was acting in a discriminatory manner towards clients.

Of course, companies also need to recruit people with the right skills: for example, a common misconception by companies is that anyone can 'do' community engagement because 'it's just talking to people'. Yet experience demonstrates that planning, conducting and managing successful engagement with local communities requires a particular skill set and expertise. This is discussed further in Chapter 3.7.

COUNTRY INSIGHTS: INDONESIA & SOUTH AFRICA

People can make the difference

"What helps Asia Pulp and Paper [APP] in this process [of consultation with communities] is the people running it. The implementation leader who set up the operations there on the ground has a lot of experience with managing land conflicts within and outside of APP. Also, the people working for him on his team were recruited from the local communities. This is, I think, a key point that helped APP in bridging communications with the locals. Identifying the right people in the communities with whom they engaged and continue to engage regularly up to now."

Dini Widiastuti, Economic Programme Justice Director, Oxfam in Indonesia. For further details, see the Indonesia case story on the project website.

"I did a presentation to our retail cluster [about the costs to the company of employee misconduct, including on human rights]. The head of the retail cluster looked at the costs and said, 'you know what, we don't have to develop any products; the only thing we have to do is manage our people well.' If you manage your people well, they will cause less costs to the company. It was quite a profound thing to realise that your people, although they are your biggest asset, they can also be your biggest liability. [Human rights] problems don't happen from systems. They happen from people."

Driekie Havenga, Group Ethics Officer, Nedbank. For further details, see the South Africa case story on the project website.

Guidance point 4
Talking honestly about human rights

Embedding respect for human rights means avoiding excessive 'happy talk' about how well the company is doing in meeting its commitments, and speaking honestly about the challenges and how it can improve. Companies have found various ways to encourage more in-depth discussion, including:

- Developing an internal human rights guide that describes how the company approaches human rights, and actual cases where staff have faced human rights challenges (see examples in the box on this page);
- Making such internal guidance available externally so that other stakeholders can understand how the company handles tough situations, beyond the high-level statements contained in its public policy;
- Developing human rights dilemmas based on real experiences that staff can work through in an interactive setting, discussing how they would handle such cases;
- Sharing challenges and good practice in addressing them across the company via the intranet and presentations;
- Exposing staff to settings where they can see human rights impacts first-hand, for example, when visiting subsidiaries, clients or suppliers, or through photos or video presentations when such in-person exposure is not feasible.

EXAMPLES: HUMAN RIGHTS GUIDES

Many companies develop internal guides to support their staff on the implementation of the company's human rights commitment. Typically, these guides translate the company's high-level commitments into 'business speak' that everyone in the company will understand, complemented by guidance on specific risks the company faces and discussion of case examples and/or dilemmas that staff may encounter.

Consulting external stakeholders in its development may take more time. However, companies have found that this makes the content stronger and that they can then make the guide publicly available. Examples of guides published externally include:

- ABN AMRO's 'Our path towards respecting human rights' [26]
- Total's 'Human Rights Guide' [27]
- Rio Tinto's 'Why human rights matter' [28]

Guidance point 5
Training key staff

Many companies train their staff in the company's business principles or code of conduct. Such training can include discussion of human rights dilemmas. Tailored training should be provided for staff who encounter particular human rights dilemmas (for example, procurement personnel who are often dealing with business pressures related to price and

26. www.goo.gl/VHO24X
27. www.goo.gl/PJRjwQ
28. www.goo.gl/L29QBO

delivery time, as well as social performance) or who operate in challenging human rights situations (for example, contexts where there is systematic abuse of the human rights of certain groups). Training should be reviewed regularly to assess if it is effective in helping them achieve their goal.

Guidance point 6

Developing incentives and disincentives

Reward and recognition systems should be expanded to include respect for human rights. They should be reviewed to ensure that they do not incentivise the wrong behaviour – for example, if procurement staff are paid a bonus when suppliers meet tight deadlines to deliver products faster to meet a business goal, but are only able to do so by requiring their workers to take on excessive or unpaid overtime. It is also important that failures to respect human rights have appropriate internal consequences. Some examples of incentive systems include:

- Requiring at least one goal related to human rights to be included in the goals of all managers;
- Tying bonuses for human rights performance to a group or team's joint efforts;
- Making respect for human rights part of the competences framework against which employees are evaluated.

Company *reward and recognition systems* should be expanded to include respect for human rights.

EXAMPLES: COMMITTEES SUPPORTING HUMAN RIGHTS DECISION-MAKING

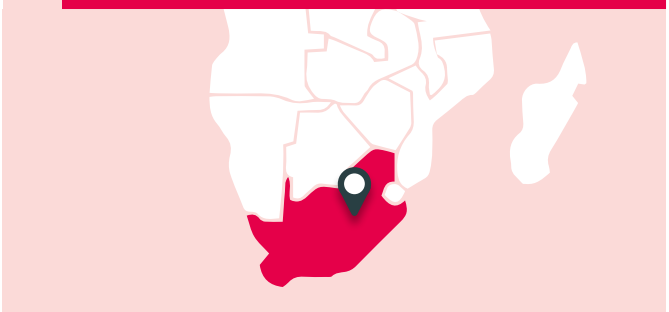
Rabobank's Ethics Office [29]
provides a channel for employees to ask for advice on issues related to the company's code of conduct, which explicitly refers to human rights. It can escalate an issue or case to the Ethics Committee, chaired by the CEO, which also "commissions reviews of existing policy and guidelines," while its "recommendations [serve] as a guiding principle for people's actions within the organisation".

Nedbank's Ethics Office [30]
plays a central role in the company's governance and embedding of respect for human rights. It drives awareness, supports a network of ethics officers throughout the company and has an Ethics Panel that "deals with all material tipoffs regarding unethical conduct and now reports to [a board committee] in its continued efforts to ensure that independent, objective and fair courses of action are taken in instances of unethical behaviour or actions".

Ericsson's Sales Compliance Board [31]
oversees a process that "regularly reviews human rights impacts in the sales process and examines specific sales requests". It is "represented by various departments and functions, has ultimate responsibility for the process, and may approve sales with conditions or reject them outright. In some cases, it may recommend human rights impacts assessment for specific countries. When necessary, the Sales Compliance Process determines whether mitigation actions should be undertaken."

29. www.goo.gl/NKdc8w
30. www.goo.gl/X1VA2c
31. www.goo.gl/cEY2Oj

COUNTRY INSIGHTS: SOUTH AFRICA



Nedbank's efforts at embedding in practice

The South Africa case story on the project website looks at Nedbank's efforts to respect human rights. The company's experience illustrates several guidance points in this chapter, including:

- Constantly making the business case internally (namely, the costs of failing to respect human rights, and the attraction to employees, customers and investors of a sustainable and ethical company);
- Connecting human rights to existing topics that have traction within the company, such as environmental conservation and ethics;
- Making human rights an integral part of business decisions, such as awarding contracts to suppliers;
- Integrating human rights into governance structures, like the risk and audit committees;
- Integrating human rights into a variety of human resources mechanisms, such as recruitment, performance scorecards, training and misconduct reporting.

Guidance point 7

Developing capacity to solve dilemmas and respond to unforeseen circumstances

Company decisions that involve human rights often present difficult dilemmas, and capacity is needed to deal with them. A growing number of companies have created a committee that addresses human rights-related dilemmas such as an ethics, integrity or corporate responsibility committee.

The committee's functions can include:

- Providing interpretation and application of business principles or the code of conduct, including any human rights commitments;
- Discussing dilemmas arising within the company (for example, whether company values can be upheld in a major new contract, or whether a new country should be entered);
- Reviewing company-wide complaints procedures and making recommendations on how to strengthen them.

WRAPPING UP - COMMON PITFALLS TO AVOID

ISOLATION OF HUMAN RIGHTS INTO A SINGLE DEPARTMENT

When building internal capacity on human rights, companies have found that the rest of the business may feel less responsibility for human rights if human rights are seen to be 'taken care of' by a particular individual or function. A company needs to balance the development of internal expertise with the need for shared ownership of the management of human rights impacts.

STAFF WITH RESPONSIBILITY FOR HUMAN RIGHTS LACK ACCESS

Those with responsibility for human rights need access to all relevant parts of the company, and an awareness of events relevant to human rights within the company, so that they can effectively translate human rights for the business.

SETTING COUNTERPRODUCTIVE INCENTIVES

If performance targets are linked solely to reducing the number of human rights-related incidents, instead of stimulating openness and a willingness to improve, this may result in reduced reporting of incidents rather than an actual reduction of incidents. It is important that incentives stimulate the right behaviour rather than superficially good metrics.

Some suggestions for SMEs

Easier cross-functional coordination

In smaller companies, it is often impossible to have a full-time person working on one particular topic. At the same time, there may be a simpler hierarchy and communication structure, making it easier for different staff with different human rights responsibilities to coordinate their efforts.

Participate in organised training

Instead of developing their own training, companies can take part in programmes offered by organisations that provide training. The Business & Human Rights Resource Centre has a running list of events, including open courses.

Ensuring tone at the top

Like larger companies, this is critically important. For SMEs that are run by their founder, it may be relatively easier to ensure values-based messaging.

Benefit from more informal communication with workers

Management within SMEs can often engage directly with workers more easily than management in larger companies can. This can help in communicating about the importance of human rights, as well as enabling management to hear directly what challenges staff are experiencing in practice in meeting the commitment. ◀

Key sources and websites

- Shift, 'Embedding Respect for Human Rights Within a Company's Operations', 2012 *www.goo.gl/uOgcIP*
- UN Global Compact, 'Good Practice Note on Organizing the Human Rights Function within a Company', 2014 *www.goo.gl/XjiHnc*

chapter 3.3

Assessing impacts

‘From reactive to proactive’

The first step of human rights due diligence is assessing how the company’s activities and business relationships may pose risks to human rights. This involves considering the possible negative impacts of current and planned activities and business relationships on individuals and communities, and sets priorities for action to mitigate any such risks.

Assessing impacts can be a challenging process. Identifying the most severe human rights impacts with which the company could be involved can help build internal understanding of human rights, set a strategic direction for the business on how to manage risks associated with its operations, and provide a focus for the company’s mitigation efforts based on where the risk of harm to people is most acute.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 Identifying human rights impacts

Guidance point 2 Prioritising severe human rights impacts

Guidance point 3 Involving the existing risk management function

Guidance point 4 Deepening assessment of impacts throughout the business

Guidance point 5 An ongoing process rather than a one-off evaluation

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **CSR/sustainability:** Provide human rights expertise; collaborate with operations; help coordinate human rights impact assessment processes
- **Risk management:** Provide expert input into impact assessment processes; integrate human rights into existing risk management process
- **Community relations:** Interact with external stakeholders when impact assessment involves consultations with neighbours and communities
- **Legal/compliance:** Awareness of a range of risks in light of company's legal obligations that can feed into the impact assessment process
- **Specific functions/operations that may be connected to human rights risks** (for example, security, procurement, human resources, sales)**:** Involvement in evaluating and prioritising impacts for attention
- **Government/public affairs:** Insight into how human rights risks could be heightened by state or regulatory action

Guidance point 1
Identifying human rights impacts

The identification of human rights impacts can take shape in multiple ways. It is natural to start with some desk research, focused on identifying the risk of human rights impacts in particular countries and/or sectors relevant to the company's operations. Besides publicly available sources, internal company reports may also provide useful insights, such as reports on the use of whistle-blower policies and grievance mechanisms, self-assessments by suppliers or business units, management reports by relevant functions (for example, human resources, compliance, CSR/sustainability), as well as reports of workers' councils and other worker representative bodies.

Some ways to initially identify broad human rights issues for more in-depth exploration can include:

- **Particular countries**: identifying the operating countries that have the greatest human rights risks;
- **Particular rights**: identifying certain human rights that are recognised as being most at risk in a particular industry or sector or country context;
- **Particular functions**: engaging with particular company functions where certain staff regularly encounter or have responsibility for human rights impacts and risks (for example, security or sales).

LEARNING FROM PRACTICE

TEAM-BASED IMPACT ASSESSMENT WORKSHOPS

One approach to human rights impact assessment uses facilitated brainstorming modelled on traditional team-based risk assessment processes. Groups of managers and staff from relevant parts of the business are brought together, often in a cross-functional setting, and are supported by an expert facilitator to think through ways that the company could now, or in the future, be involved in human rights impacts. The process typically highlights potential issues that would otherwise remain unidentified, and encourages discussion on the relative severity of impacts, although it almost always requires further information and verification.

A growing number of companies have found this to be an important step in building internal understanding of human rights and of their importance to the business. It can help engage colleagues within the business who may be sceptical of the relevance of human rights, but whose support will be essential to effective mitigation measures.

However, because an evaluation of human rights risks is focused on risk to people, assessment processes need to take adequate account of the perspectives of individuals or groups who could be impacted – what the Guiding Principles call "potentially affected stakeholders" – or their legitimate representatives. Trade unions are obviously a primary source of information about impacts on their members' human rights. Consulting with the leaders of a local community may be an appropriate way to understand impacts on a wider group of members, although companies need to pay attention to when local leaders may not reflect the diversity of views in the community. (What to pay attention to in conducting meaningful stakeholder engagement is discussed in more detail in Chapter 3.7.)

While it may not always be possible at first to consult directly with affected stakeholders, a company's impact assessment processes may need to evolve over time to enable more direct interaction with them. Where such consultation is not feasible (for example, because of the huge number of potentially affected individuals), or poses risks to affected stakeholders themselves, companies will need to find other ways of gaining

insight into their perspectives. 'Credible proxies', who work with affected stakeholders and have direct insights into their perspectives, can help – such as local NGOs or trade unions that do not represent the workers in question, but have good insight into local labour rights issues.

Guidance point 2
Prioritising severe human rights impacts

A key question in any impact assessment process is prioritisation: where should the company focus its attention? In reality, most companies can be involved with a large number of potential impacts and, due to legitimate resource constraints, will need to decide which ones to focus on first. The UN Guiding Principles recognise this reality in Principle 24. However, companies typically prioritise by focusing on those issues that present the greatest business risk, such as reputational risk or the risk of operational disruption. By contrast, the responsibility to respect is concerned with risk to people, and the Guiding Principles expect a company to put people at the centre of the process. In other words, if it is necessary to prioritise human rights impacts for attention and action, then companies need to do so on a principled basis by focusing on the severity of harm to people.

A key question in any impact assessment process is prioritisation: *where should the company focus its attention?*

What does this mean in practice? Typical risk management processes have two inputs: severity of impact on the business (for example, x amount of litigation costs, or x level of damage to reputation) and likelihood (that is, how likely is a particular event that will lead to a certain impact). Risk to people is distinct in two ways:

1. The relevant severity is the severity of the impact on people, rather than on the business;
2. Severity has a greater weighting than likelihood so that severe risks to people should always be prioritised for attention.

Companies should prioritise those impacts that are most severe, which the Guiding Principles define by their scale, scope and their remediability. The table below explains these concepts with some examples. The examples are merely illustrative and are not intended to suggest that a certain type of impact can never be severe.

Table: Understanding severity

Dimensions	Definition	Examples	
		Potentially less severe	More severe
Scale:	How grave or serious the impact would be	A 14-year-old helping out behind the counter in the family store	A 10-year-old child working in artisanal mining
Scope:	How widespread the impact would be (i.e., how many people would be affected)	One or two individuals	A whole community
Remediability:	How hard it would be to put right the resulting harm	A worker is fired on a discriminatory basis but can be promptly reinstated with appropriate compensation, apologies and guarantee of non-repetition	A worker contracts an incurable disease due to a lack of appropriate health and safety measures

Prioritisation is always a relative exercise: the most severe human rights risks for one company will look very different from those of another company, but each must take action on the most severe risks to people with which they could be involved. An impact can be severe even if it would only be so on *one* of the above dimensions of scale, scope and remediability – it does not need to be severe against all three.

Prioritising severe impacts for attention does not mean that low severity impacts should remain unaddressed. Some may be relatively easy to address, or require few additional resources, and there is no reason why companies should not proceed to deal with them.

In addition to severity, companies also need to consider likelihood: how likely is the impact to exist or to occur in the company's operations? This involves considering the company's own operating contexts and the ability of the company's various business relationships to effectively manage human rights risks. The following table provides some examples for both of these elements of likelihood.

Table: Understanding likelihood

Several factors can make negative impacts more likely in a particular country context, such as:	The following factors can increase or decrease the likelihood of negative human rights impacts arising through a company's business relationships:
Existence and enforcement of national laws and regulations	Whether their policies address respect for human rights
Conflicts between national laws and international human rights	Whether they have effective processes for meeting their responsibility to respect
Social customs and practices	Their record for upholding or breaching human rights
Presence of corruption	Their practices with regard to corruption
Presence of conflict	Whether they are in conflict with local stakeholders

Companies often ask how they can be confident in their prioritisation of human rights impacts. Following the above process is the best way to ensure that the decision-making is aligned with the Guiding Principles, but ultimately it is input from stakeholders that can help to make the prioritisation process more robust and a company's choices more credible. Finding the right stakeholders to test a proposed list with requires careful thought, and companies are likely to turn at this point to credible proxies or to expert stakeholders for their insights. As with the policy development process, providing input on an exercise like this requires a certain perspective on the company's operations as a whole, and where its greatest human rights risks are likely to lie.

The UN Guiding Principles Reporting Framework, discussed in Chapter 3.6, provides helpful guidance on how to identify and prioritise 'salient human rights issues'. The table below captures experience from some of the companies that have used the UNGP Reporting Framework. Their reports typically explain the process they used to arrive at their identification of salient issues, aggregated at the global level of these company's operations. More examples can be found at www.UNGPreporting.org.

Companies should *prioritise those impacts* that are most severe on people.

Table: Examples of salient issues identified by companies using the UNGP Reporting Framework

Company	Sector	Salient human rightsissues identified	Source
ABN AMRO	Finance	• Privacy • Discrimination • Labour rights • Land-related human rights	Annual (Integrated) Report 2015 [32]
Ericsson	ICT	• Right to privacy • Freedom of expression • Labour rights	Sustainability and Corporate Responsibility Report 2015 [33]
H&M	Apparel	• Fair living wage • Health and safety • Forced labour • Discrimination and harassment • Child labour • Freedom of association and collective bargaining • Social security • Land rights • Working hours • Access to water	Sustainability Report 2015 [34]
Total	Energy	• Forced labour • Child labour • Discrimination • Just and favourable conditions of work and safety • Access to land • Rights to health and an adequate standard of living • Risk of misuse of force	Human Rights Briefing Paper, July 2016 [35]
Unilever	Food and beverage	• Discrimination • Fair wages • Forced labour • Freedom of association • Harassment • Health and safety • Land rights • Working hours	'Enhancing Livelihoods, Advancing Human Rights'. Human Rights Report 2015 [36]

32. www.goo.gl/cRLSbO
33. www.goo.gl/Y6jlz2
34. www.goo.gl/GLJ72d
35. www.goo.gl/Kjnem6
36. www.goo.gl/Z08JME

Guidance point 3
Involving the existing risk management function

For companies with a risk management department, experience shows the value of involving them in the process of assessing human rights impacts. This can contribute to a stronger methodology (given the expertise they bring to the table) as well as help to ensure that the results are integrated into the company's broader or enterprise-wide risk management systems. It can also help build the risk function's own understanding of how human rights risk management differs from traditional business risk management.

Other crucial functions to involve are those that need to implement the mitigating actions, as they can provide input on the nature of risks and the practicality of mitigation proposals. Internal audit and compliance can help ensure alignment with any new procedures.

Guidance point 4
Deepening assessment of impacts throughout the business

The process of assessing human rights impacts outlined above can be a fairly high-level exercise at corporate or group level. But the same basic approach can be applied to specific business units, country subsidiaries or other parts of the business. For example:

A focus on particular countries
Initial research can produce a classification of countries according to different levels of human rights risk. For those countries with higher risk (for example, countries where women are denied equal treatment under the law), more intense analysis may be in order before specific mitigation measures are developed. A 'red flag' approach should highlight conflict-affected countries, as well as any countries that have had sanctions placed on them by the UN Security Council or by regional organisations such as the European Union.

Customer and client due diligence processes
Based on its salient human rights issues, a company may want to strengthen its due diligence questions for customers or clients. This typically involves asking certain questions before a client is accepted or a product sold to a customer, and escalating issues internally where doubts are raised about the human rights risks involved in any particular relationship or transaction.

Screening other business partners

Companies are increasingly screening other business partners (for example, suppliers, subcontractors, service providers) on their human rights record and ability to manage human rights risks. This includes asking business partners to fill out questionnaires, requiring them to sign a contract that includes a vendor or supplier code of conduct, and agree to audits, 'supplier support visits' (see the example in Chapter 3.4), or collaborative assessments to evaluate performance.

Identifying the company's salient human rights issues (see Guidance point 2 above) may help in identifying threshold levels for taking certain types of action. For example, a supplier of a component associated with moderate human rights risks may be asked to do a self-assessment, while a supplier of a high-risk input may be required to undergo a more formal evaluation.

Human rights risks in mergers and acquisitions and joint ventures

For companies acquiring other businesses or working together with them in joint ventures, it is important to identify human rights risks in these activities and relationships. For example, a company may discover that its joint venture partner does not believe that it has a responsibility to respect human rights, which may lead to difficult discussions and even strong disagreements over management of the joint venture.

Or a company may find out after a transaction has closed that the land on which the target facility sits was acquired by the government through a poorly conducted consultation process, and that the buyer's title to the land is, therefore, likely to be challenged by local communities. Up-front human rights due diligence can help identify any significant legacy costs and enable the company to assess the impact on the proposed price or on any requirement that the target should fund certain mitigation actions before the sale.[37]

37. Shift, 'What Do Human Rights Have to Do with Mergers and Acquisitions?', January 2016, available at www.goo.gl/vKWdm5.

COUNTRY INSIGHTS: INDONESIA

Company experience with 'participatory mapping'

Indonesia is home to large tracts of original forests that are cut down for their valuable wood or burned to make way for commercial plantations that grow agricultural crops in large quantities, such as palm oil and rubber. The land is often inhabited by indigenous peoples or other traditional communities who rely on the forest and its natural resources for their livelihoods and for the preservation of their cultural and ancestral heritage. Plantations require huge amounts of water, which can affect well levels for surrounding villages. Moreover, forest fires that are used to clear the land pose dangers for people living in or around the area, and can have serious impacts on the health of the general population, including of neighbouring countries.

Yet companies often face the challenge of not knowing who exactly owns the land and finding that multiple parties claim the same piece of land. This poses a challenge when assessing impacts: if you don't know who owns or uses the land that your operations may impact, then you don't know who your affected stakeholders are that you need to engage with. Stakeholders report that local or regional governments are often not present or not interested in managing the competing claims. This is exacerbated by an incomplete land registry, as well as by the lack of formal title documents. In practice, companies who want to engage stakeholders in relation to a piece of land they aim to use or buy face claims by multiple parties; one company reported that it had 26 different parties lay claim to the same piece of land.

While these types of disputes are complex to solve, several companies and their stakeholders have had positive experiences with a process of 'participatory mapping'. This often involves all interested parties walking around the disputed piece of land with a GPS system and marking important spots and boundaries. Based on engagement around the results, a map is then developed capturing everybody's claims, after which a process of consultation and negotiation between the interested parties follows to try to reach a resolution. Expert facilitation, taking enough time, and providing grievance mechanisms for parties dissatisfied with the process were identified as key factors in making participatory mapping more likely to succeed.

Guidance point 5

An ongoing process rather than a one-off evaluation

The Guiding Principles talk about 'assessing impacts' (rather than 'impact assessments') to emphasise the ongoing nature of this step of human rights due diligence. Not every situation requires a stand-alone 'human rights impact assessment' (HRIA). Companies should use approaches that are most suitable for their business and the type of human rights impacts they may be involved with.

Governments and financial institutions often require stand-alone impact assessments for projects that can have significant environmental and social impacts (including on human rights), such as infrastructure, extractive or large-scale agricultural projects. A growing number of companies are seeking to integrate human rights into existing environmental and social assessment processes.[38]

Assessing human rights impacts is an *ongoing process* for companies.

At the same time, there may be good reasons for a stand-alone HRIA in certain situations, such as entry into a challenging new country, launching a new product or service, addressing legacy issues or situations of systemic human rights abuses. There are a number of methodologies and tools available for conducting stand-alone HRIAs of business operations. Good resources include the International Business Leaders Forum and the International Finance Corporation's 'Guide to Human Rights Impact Assessment and Management' and the Danish Institute for Human Rights 'Human Rights Compliance Assessment'. There are a growing number of public examples of company-led HRIAs, including:

- A human rights assessment of the Marlin mine in Guatemala;[39]
- Nestlé's disclosure about the company's human rights due diligence efforts (with the Danish Institute for Human Rights),[40] impacts in its cocoa supply chain in Côte d'Ivoire (with the Fair Labor Association),[41] and impacts in its Thai shrimp supply chain (with Verité);[42]
- Assessments with UNICEF involving the tourism company Kuoni related to impacts on children's rights connected to their operations in Kenya[43] and India.[44]

There has also been growing attention on the need to better understand affected stakeholders' perceptions as a contrast to company-led HRIAs, building on the Canadian organisation Rights & Democracy's 'Getting it Right' tool for community-based impact assessment,[45] now being implemented by Oxfam and FIDH. The box on the next page summarises some of the findings from Oxfam's work in this space.

38. The International Association for Impact Assessment has published a guidance note on social impact assessment that provides helpful clarification on the integration of human rights into social impact assessments: Frank Vanclay, Anna Maria Esteves, Ilse Aucamp and Daniel Franks, 'Social Impact Assessment: Guidance for assessing and managing the social impacts of projects', 2015, available at www.goo.gl/gTIM23.
39. www.goo.gl/wnbTqs
40. www.goo.gl/a31U50

LEARNING FROM PRACTICE

RECENT LEARNING FROM OXFAM'S COMMUNITY-LED HUMAN RIGHTS IMPACT ASSESSMENTS WORK

While assessing impacts is only one step in the due diligence process, human rights impact assessments (HRIAs) can be an important tool. An HRIA of a private investment seeks to identify the impacts that corporate activities are having, have had, or might have, on human rights. HRIAs can take various shapes and be led by different stakeholders, but should share the ultimate goal of protecting human rights and improving accountability among stakeholders.

Oxfam, and other NGOs, are proponents of community-led HRIA approaches, so that those who are most directly affected – local communities – can intervene to enhance positive effects, avoid or mitigate negative impacts, and contribute to the fulfilment of human rights. Community-based HRIAs carry the potential to completely change the nature of the dialogue between companies and communities affected by their operations. If communities come with their own evidence-based analysis, companies will need to acknowledge communities' perspectives and engage with them. At the same time, it is clear that even community-based methodologies cannot achieve desired outcomes without company participation.

A community-based human rights impact assessment approach offers an alternative path, allowing affected communities to drive a process of information gathering and participation, framed by their own understanding of human rights. Communities can engage in solving human rights threats by working with NGOs, companies and governments on a more equal footing. By starting with the perspectives of affected people, the HRIA focuses on their concerns and their aspirations for human rights realisation.

Recommendations from Oxfam to companies based on this work include:

- Ensure that any HRIA process is thorough, and that meaningful community participation informs the company's human rights conclusions. This means reaching beyond traditional leadership to ensure that the voices of vulnerable groups, such as women, children, the elderly and minorities, have been afforded an opportunity to be heard.
- Be willing to take on board the findings of external HRIA processes towards the existing project, internalise lessons learnt from HRIAs, and apply this knowledge to future projects while keeping in mind contextual differences.
- Consider reaching out to an NGO that could fund a community-based HRIA while conducting their own company-led one, or consider collaborating in a co-owned process.
- Support a business and human rights fund that can be used by communities for HRIAs.
- Participate thoroughly in any community-based HRIA assessing the impacts of a company project and provide relevant materials and access to the site and staff.

See www.goo.gl/dNwQf8, p.33.
Read more about Oxfam's work on HRIAs at www.goo.gl/RF7tSe

41. www.goo.gl/zJr9p
42. www.goo.gl/yPUUvt
43. www.goo.gl/atvk2J
44. www.goo.gl/aNqD77
45. www.goo.gl/zBptS6

WRAPPING UP - COMMON PITFALLS TO AVOID

FORGETTING ABOUT STAKEHOLDER ENGAGEMENT

Impact assessment is an essential foundation for all of the other steps of the due diligence process. The relationships that a company starts to build with stakeholders by seeking their input as part of identifying impacts can help create a basis for further engagement about potential solutions at later stages of the process. At the same time, some companies may need to start by getting comfortable with the impact assessment process first – drawing on the results of existing stakeholder engagement processes and then gradually maturing this to include direct engagement with stakeholders about particular human rights issues or country contexts.

ONLY LOOKING 'INSIDE THE FENCE'

For many companies, their most significant human rights risks may be connected to their business relationships rather than their own activities. It is important that companies avoid exclusively focusing on their own activities, or where they have the most control, even if this initially feels like expanding the scope of the exercise beyond what is manageable.

TRYING TO DO IT ALL PERFECTLY

The processes outlined in this chapter will be new for most companies. For those with large or complex businesses, it is advisable to start in a targeted way, prioritising particular countries or parts of the business to build learning about how to assess and evaluate human rights risks. Over time, the effort will need to expand to cover the company's entire operations, but if a company tries to do it all at once, it can lead to 'paralysis by analysis' and prevent meaningful steps from being taken.

Some suggestions for SMEs

Start with a focus on a set of issues

Often, an SME provides a very particular or targeted product, so it will be dealing with a relatively specific set of human rights impacts related to the sector or type of business in which its products or services are involved (for example, water engineering company: right to water; Internet start-up company: right to privacy and freedom of expression; hardwood importer: rights of indigenous peoples and other forest communities where wood is sourced from). This can help make it very clear where the company should prioritise its attention.

Benefit from other sources

Industry and issue-specific multi-stakeholder initiatives, as well as government agencies, can help provide information to assist in evaluating risks and appropriate action in particular countries or on certain topics. ◀

Key sources and websites

- Shift, 'Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks', 2014 *www.goo.gl/HMk5Vl*
- International Business Leaders Forum, the International Finance Corporation, 'Guide to Human Rights Impact Assessment and Management', 2010 *www.goo.gl/AIFT8q*
- Oxfam America, 'Community Voice in Human Rights Impact Assessments', 2015 *www.goo.gl/n1PI16*

chapter 3.4

Integrating and acting

'Walking the talk'

The objective of human rights due diligence is to prevent and mitigate impacts on people's human rights. After identifying their salient human rights issues, companies need to take action to achieve that objective. Prevention and mitigation efforts are forward looking – they are focused on attempting to stop potential impacts from becoming actual impacts. Where this involves third parties, a company's leverage over those third parties to get them to change their behaviour – and its ability to increase leverage, where necessary – becomes crucial. Where actual impacts do occur, despite efforts to prevent them, then the need for remedy comes into the picture. Remedy is discussed in Chapter 3.8.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 The relationship between embedding and integrating

Guidance point 2 Understanding how the company is connected to human rights impacts

Guidance point 3 The role of leverage

Guidance point 4 Exploring different types of leverage

Guidance point 5 Identifying opportunities for leverage

Guidance point 6 Terminating relationships

Guidance point 1
The relationship between embedding and integrating

Chapter 3.2 explained the importance of embedding the company's commitment to respect human rights into its organisational DNA. Embedding is the macro-level process of establishing the necessary internal structures, including organising responsibility for human rights and raising awareness among staff of the importance of human rights to their work, so that the commitment translates into a difference in how business gets done.

Integration, by contrast, is the second step in the human rights due diligence process; it is about taking the necessary actions to prevent and mitigate specific human rights impacts at the micro level. This will often involve very different parts of the company. For example, preventing an impact on the right to privacy by end-users of an ICT company's products requires different action and involves different departments than efforts to mitigate child labour on family farms in a remote part of a food and beverage company's supply chain.

Guidance point 2
Understanding how the company is connected to human rights impacts

The Guiding Principles recognise that there are different ways in which companies can be involved with human rights impacts, and that the nature of the responsibility to address them is different in each of these scenarios. This is summarised in the table below, which uses OHCHR's guidance on this topic.[46]

46. Except for 'contribution in parallel', the examples are from the Office of the UN High Commissioner for Human Rights, "The Corporate Responsibility to Respect Human Rights: An Interpretative Guide', 2012, p.17.

Three ways in which companies can be involved with human rights impacts

	CAUSE	CONTRIBUTION (two variations)		LINKAGE
		Contribution through a business relationship	Contribution in parallel	(...to a company's operations, products or services through a business relationship)
MODE OF INVOLVEMENT	Company → Affected stakeholders	Company → 3rd party → Affected stakeholders	Company / One or more other actors → Affected stakeholders	Company ⇢ 3rd party → Affected stakeholders
EXAMPLES	▸ Routine racial discrimination by a restaurant in its treatment of customers; ▸ Exposure of factory workers to hazardous working conditions without adequate safety equipment; ▸ Being the sole or main source of pollution in a community's drinking water supply due to chemical effluents from production processes.	▸ Providing data about Internet service users to a government that uses the data to trace and prosecute political dissidents, contrary to human rights; ▸ Performing construction and maintenance on a detention camp where inmates were allegedly subject to inhumane treatment; ▸ Targeting high-sugar foods and drinks at children, with an impact on child obesity; ▸ Changing product requirements for suppliers repeatedly without adjusting production deadlines and prices, thus pushing suppliers to breach labour standards in order to deliver.	▸ Several companies in an area release harmful effluent into a river. Each release is under the legal limit but, together, they lead to the water becoming so polluted that people downstream can no longer use it, impacting their livelihoods.	▸ Providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities; ▸ Embroidery on a retail company's clothing products being subcontracted by the supplier to child labourers in homes, counter to contractual obligations; ▸ Use of a company's scanning machines by medical institutions to screen pregnant women for female fetuses in order to facilitate their abortion in favour of boys.

Expectations of how companies should respond to involvement with human rights impacts

	CAUSE	CONTRIBUTION (two variations)		LINKAGE
MODE OF INVOLVEMENT	Company → Affected stakeholders	Contribution through a business relationship: Company → 3rd party → Affected stakeholders	Expectations of how companies should respond to involvement with human rights impacts: Company, One or more other actors → Affected stakeholders	(...to a company's operations, products or services through a business relationship): Company → 3rd party → Affected stakeholders
RESPONSE	Where a company causes a negative human rights impact, it should take the necessary steps to cease or prevent the impact, and remediate it. While addressing such impacts will frequently be within a company's control, leverage may be relevant in certain instances, such as where a company is under pressure to take actions that would harm human rights (for example, by a government or by the purchasing decisions of a buyer).	Where a company contributes or may contribute to a negative human rights impact, it should take the necessary steps to cease or prevent its contribution, and use its leverage to mitigate any remaining impact to the greatest extent possible. It should also take steps to ensure the remediation of any actual impact that has occurred.		Where a negative impact is directly linked to a company's operations, products or services through a business relationship, the company has a forward-looking responsibility to seek to prevent the impact from continuing or recurring. (The business relationship may be a direct one or with an entity more remote in the company's value chain.) The company has no responsibility under the Guiding Principles to provide remedy for the harm (although it may choose to do so for other reasons).

The nature of a company's response in each of these three scenarios (cause, contribution, linkage) varies according to:

- Whether the action required is solely forward-looking (linkage), or also includes remedying (or contributing to remedy for) past impacts (cause or contribution);
- Whether the company primarily needs to change its own practices (cause and its own actions in a contribution scenario), or to use leverage to effect change in the practices of a third party (contribution and linkage).

The second table on the previous page illustrates the different expected responses. The rest of this section walks through some examples of each scenario in more detail.

Cause

A small restaurant company gets a complaint from customers that the staff in one of its restaurants routinely discriminate against people of a certain race. After some investigation, including hearing from the staff, it finds that the complaints are substantiated. The company should then:

- Take action to prevent further discriminatory practices, for example, by talking with the staff and providing appropriate training, ensuring that any staff who continue with the practice are warned and reprimanded and, if someone refuses to change their behaviour, consider terminating their employment contract (while also taking into account any negative human rights effects that could result from such termination); and
- Put things right with the customers who were discriminated against, for example, through a formal apology, sharing the actions the restaurant's management have taken to prevent such behaviour in the future, and potentially offering some form of compensation.

Contribution

An apparel company places an order for a large number of T-shirts with a supplier. The company then makes a last-minute change to the type of stitching that it wants the supplier to use. The supplier rushes to ensure that it has the right number of workers available to make the altered design in time to meet the company's shipping deadline. Because its capacity is stretched, the supplier pressures its workers to work overtime and not to take the days off to which they are entitled in order to meet the order on time.

This is a common scenario in the apparel and footwear sector. A growing number of brand and retail companies have started to review their own purchasing practices to evaluate how they might be contributing to worker abuses at the supplier level through their own last-minute decisions. For example, actions that the US clothing brand, Gap, has taken to try to mitigate this risk include: [47]

47. www.goo.gl/Qqxh3m

- Working with a smaller, consolidated supplier base and through longer-term relationships that help build a sense of partnership and allow for more honest conversations about the pressures suppliers are under due to the company's own purchasing practices;
- Collecting data about supplier performance to evaluate where the company can help suppliers build better capacity management systems in their own facilities;
- Developing training for purchasing staff about how their decisions can directly impact workers in supplier facilities to try to avoid such outcomes.

Where an actual situation like the one described above occurs, the UN Guiding Principles also expect the purchasing company to contribute to remedy for the affected workers to the extent of its own contribution to the situation, for example, ensuring that the supplier allows them to claim all the days off they were entitled to and compensating workers directly for the overtime they performed.

COUNTRY INSIGHTS: TURKEY

Going 'beyond audit' to improve human rights standards with suppliers

During the project workshop in Turkey, participants discussed the limits of traditional social compliance programmes and the need for innovative approaches to tackle abuses of workers' rights in supply chains.

Participants' suggestions included:

- Buying companies should not just "cut and run" when they find an issue, but, rather, commit to work with their suppliers to improve practices and investing in relationships with them for the long term;
- Companies should avoid sending conflicting messages to suppliers by pressuring them for fast delivery of high numbers of products on the one hand, while on the other hand setting high expectations for respect for human rights;
- There may be a cultural barrier for suppliers in admitting to mistakes: buying companies should encourage and incentivise suppliers to share their challenges so that they can be jointly addressed;
- Suppliers may need specific support to address certain systemic issues, such as child labour, freedom of association or women's rights.

For more on this, see the Turkey case story on the project website. See also Shift, 'From Audit to Innovation: Advancing Human Rights in Global Supply Chains', 2013.[48]

48. www.goo.gl/2Y5BGy

Linkage

A healthcare company makes compact, portable ultrasound machines, which enable access to life-saving medical treatment in remote regions. In one country where the company sells the machines, there is endemic discrimination against women, leading to strong social preferences for male children. As a result, the company's machines are used not only to identify and treat actual illnesses and injuries, but also to determine the sex of fetuses to enable early abortion of those that are female. This practice contravenes national law, which also requires manufacturers of such machines to ensure that the practitioners they sell to have government certification to use such machines. However, the law is weakly enforced and the number of female live births has declined.

This was a real situation that GE Healthcare faced in its Indian business. Some of the steps the company took to address the situation, and to ensure the company was not contributing to human rights harms through a failure to take sufficient precautions, included: [49]

- Stepping up the training provided to all sales agents who sold ultrasound machines, encouraging them to escalate the issue to a manager if they had doubts about a potential practitioner, and making clear that, ultimately, they should not sell the equipment if those doubts could not be addressed;
- Adding explicit warnings about national legal requirements in all sales contracts and in all contracts with dealerships in the country (through which many of their products were sold);
- Posting warnings on the ultrasound machines themselves about the law;
- Engaging with NGOs and other local stakeholders about what actions to take;
- Pushing for industry-wide action on the issue through the Confederation of Indian Industry;
- Collaborating in a public education campaign to raise awareness of women's and girls' rights.

49. www.goo.gl/FOAxQU

Guidance point 3

The role of leverage [50]

Companies are expected to use leverage where they contribute to an impact together with one or more third parties, or where an impact is linked to their operations, products or services through a business relationship. Leverage is defined as the ability to effect change in the wrongful practices of a third party that causes harm. In other words, leverage is a company's ability to influence the behaviour of others.

Leverage is at the heart of what companies can realistically be expected to do when faced with complex human rights challenges. A dominant or influential commercial position in a business relationship is likely to help a company's ability to use leverage. However, many companies are likely to face situations in which they lack such a position and need to think creatively about how to build sufficient leverage. Companies need to distinguish how they are involved in a human rights impact from their ability to use leverage to address the impact.

Leverage is a company's ability to *influence the behaviour* of others.

Company experience shows that when these two discussions get confused, a company's perception of its responsibility to take action can become tied to whether or not it has obvious leverage. For example, in one case, a company had identified that it had limited leverage over one of its business relationships and concluded that it, therefore, had no responsibility for human rights harms caused by the business concerned. A more rigorous analysis would have shown that responsibility did exist: there was a linkage between the impacts caused by the third party and the company's own services. This would have created space for a more constructive discussion within the company of the realities of its limited leverage, as well as encouraging creative thinking about how the company could increase its leverage. Instead, by confusing the issues, the company found itself in a significant dispute with stakeholders over the question of its responsibility and its reputation was harmed as a result.

Companies are very familiar with using leverage in other contexts – for example, in their lobbying efforts with governments. Companies also need to think about these other ways in which they use leverage and consider whether their actions are consistent with their responsibility to respect human rights.

50. The following guidance points draw on Shift, 'Using Leverage in Business Relationships to Reduce Human Rights Risks', 2013, available at www.goo.gl/vVtUoN.

Guidance point 4

Exploring different types of leverage

Ultimately, leverage is about creating the opportunity to change how people think and behave. In the context of the Guiding Principles, it is about changing the thinking and behaviour of key people within a supplier, contractor, business partner, customer, client or government, where that organisation's actions are increasing risk to human rights. There are many steps a company can take to use leverage that could be as simple as picking up the phone and calling an individual to try to persuade or reason with them to change their approach.

One way to think about the different ways in which a company could exercise leverage is to work through the following types of leverage and think about whether and how each could be relevant in a given situation:

A. **Traditional commercial leverage**: leverage that sits within the activities a company routinely undertakes in commercial relationships, such as contracting.
B. **Broader business leverage**: leverage that a company can exercise on its own but through activities that are not routine or typical in commercial relationships, such as capacity building.
C. **Leverage together with business partners:** leverage created through collective action with other companies in or beyond the same industry.
D. **Leverage through bilateral engagement:** leverage generated through engaging bilaterally and separately with one or more other actors, such as government, business peers, an international organisation or a civil society organisation.
E. **Leverage through multi-stakeholder collaboration:** leverage generated through action collectively with business peers, governments, international organisations and/or civil society organisations.

The following table provides some examples of efforts to use these different categories of leverage; it is not intended to be an evaluation of their effectiveness in practice.

55. See Voluntary Principles on Security and Human Rights, 'Model Clauses For Agreements Between Government Security Forces And Companies With Respect To Security And Human Rights', available at www.goo.gl/3jYpz7.
56. www.goo.gl/lE1meB
57. www.goo.gl/iVMFYF
58. BP, 'Voluntary Principles on Security and Human Rights: Implementation Guideline', (pp.8–11): www.goo.gl/fyqvjt
59. http://bettercoal.org/
60. www.goo.gl/cYgM3I

Table: Examples of types of leverage

Form of leverage	Example	How is leverage built and used?
A. Traditional commercial leverage	‣ DeFacto (see Turkey case story online)	The company includes a supplier's sustainability (including human rights) performance in its broader supplier evaluation system, which informs how orders are placed. Better performance leads to longer relationships and higher volumes.
	‣ Extractive companies' agreements with public security forces[55]	By including human rights provisions in their contracts with government security forces, companies create a mechanism for insisting that their business partners respect human rights.
B. Broader business leverage	‣ AkzoNobel's 'supplier support visits'[56]	Through management support, feedback reports and follow-up visits, the company helps suppliers meet its standards and improve over time. Read more on this in the box later in this section.
	‣ Boyner Group's Supplier Academy for Women Entrepreneurs[57]	In addition to auditing working conditions, this academy supports women entrepreneurs, including through training, and works to decrease the risk of discrimination against women as small business owners in the supply chain. Read more on this in the box in Chapter 4.
	‣ BP training on human rights for public and private security forces[58]	By providing human rights training to security forces that guard its operations, BP aims to reduce the likelihood that security-related human rights impacts will occur around its operations.
C. Leverage together with business partners	‣ Bettercoal Code, assessment programme and reporting requirements[59]	Energy utility companies participating in the Bettercoal initiative aim to increase their leverage with their coal suppliers by jointly pushing them towards improving standards and increasing transparency on mining-related human rights impacts.
D. Leverage through bilateral engagement	‣ Unilever: Oxfam report on labour rights in Vietnam[60]	By giving Oxfam access to its operations and suppliers in Vietnam and agreeing to a public report, Unilever benefited from the organisation's expertise in addressing labour rights impacts in global supply chains.
	‣ H&M: CEO meeting with the prime minister of Bangladesh[61]	Through high-level engagement, H&M sought to secure an increase in the (deeply inadequate) minimum wage for all garment and textile workers in Bangladesh, including in its own supply chain.
E. Leverage through multi-stakeholder collaboration	‣ Accord on Fire and Building Safety in Bangladesh[62]	The Accord aims to address a systemic problem in the textile industry in Bangladesh by combining access to multiple brands' supply chains with the expertise of key stakeholders, particularly trade unions
	‣ Roundtable on Sustainable Palm Oil (RSPO)[63]	By increasing the number of companies adhering to the RSPO standard, NGOs and other stakeholders hope to raise standards in the palm oil industry, leverage food companies' buying power, and increase the overall volume of certified palm oil.

61. www.goo.gl/DoYNVW
62. http://bangladeshaccord.org/
63. http://www.rspo.org/

Guidance point 5
Identifying opportunities for leverage

It can be helpful to identify specific moments in a business relationship when there may be a particular opportunity to exercise leverage. For example, although a lender may have limited leverage after a loan with a client is agreed, by building a requirement that the client reports on the implementation of an action plan to address human rights impacts, or on the key issues raised through its grievance mechanism, into the covenants attached to the loan, the lender creates an opportunity for follow-up on human rights issues. Other potential 'moments of traction' may include:

- Contract negotiation
- Licensing agreements/renewal
- Setting qualification criteria for bidding processes
- Periodic reports on the implementation of a service or plan of action
- Renewal of service agreements
- Points when services or products require maintenance
- Disbursement of funds
- Monitoring or auditing requirements
- Provision of technical or advisory assistance
- Processes for investigating complaints.

Guidance point 6
Terminating relationships

The Guiding Principles make clear that companies need to think carefully before terminating a business relationship, not least because of the risk of unforeseen negative human rights impacts. For example, if child labour is found in a supplier's factory and the company simply terminates the relationship, the factory may dismiss the children who may then enter into even riskier forms of work in order to help provide income for their families. This is why leading approaches to child labour do not result in immediate termination of relationships, but, rather, in responses that are informed by the best interests of the child and that seek to protect them – for example, by requiring that the factory continue to pay the equivalent of the child's wage to their family while the child returns to school until they are of working age.

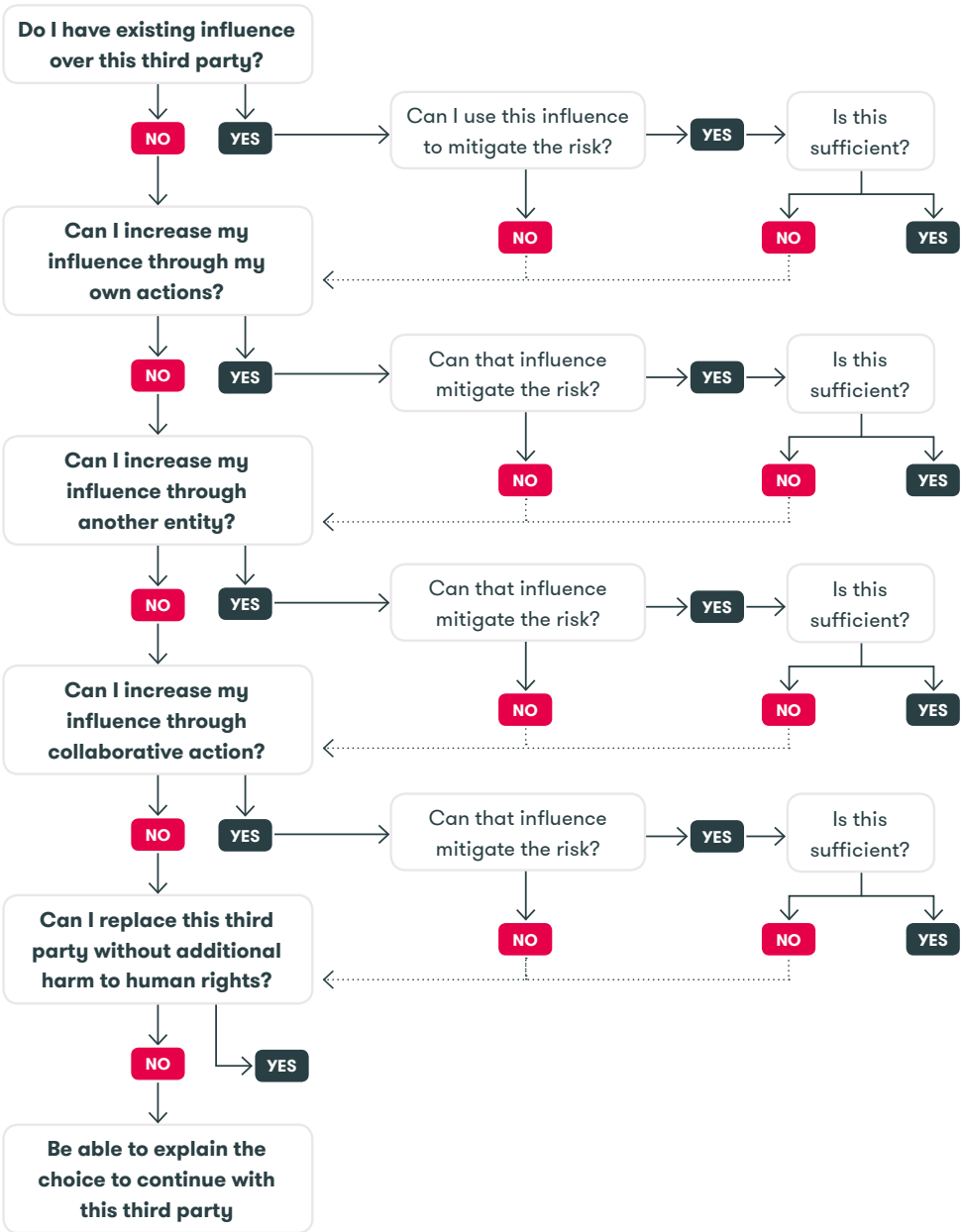
A company needs to consider the following factors when thinking about ending a relationship on human rights grounds:

- The severity of the negative impacts involved;
- The extent to which the company has tried to use leverage and/or has run out of options for building further leverage;
- Whether or not the relationship is a crucial one for the company (meaning, does it provide an essential product or service for which no reasonable alternative exists); and
- Whether there would be other negative human rights impacts as a result of ending the relationship.

Building the option for termination on human rights grounds into a relationship right from the start is an important source of leverage in itself, and the threat of termination can, in some cases, be a powerful incentive for improved performance.

The decision tree below sets out how companies might usefully think about these factors in seeking to build and use leverage – and, ultimately, in considering whether to end a relationship.

Figure: Decision tree for using and building leverage[64]



64. Reproduced with permission of Shift.

LEARNING FROM PRACTICE

AKZONOBEL SUPPLIER SUPPORT VISITS

AkzoNobel, the Dutch-headquartered chemicals company, uses the supplier support visits (SSV)[65] programme to provide guidance to suppliers and help them adjust over time to the company's requirements. The SSV programme is designed to develop long-term local suppliers in emerging markets by raising their capability and performance. According to AkzoNobel, the SSV programme is an important supplier management tool and not an auditing programme. The supportive visits focus on critical suppliers, are announced in advance and are carried out by teams from procurement and health, safety and environment (HSE). The integrated teams request full cooperation from management and ask to see into every corner of the supplier's factory that they visit.

Formal follow-up visits by these teams are conducted to verify implementation of agreed plans and overall progress. Awareness of, and compliance with, corporate social responsibility is measured with continued support from local, cross-functional AkzoNobel teams. Through the SSV programme AkzoNobel believes that it is able to develop long-term relationships that focus on addressing systemic issues, and suppliers tell the company that being part of the programme brings them recognition in the market and further business opportunities.

WRAPPING UP - COMMON PITFALLS TO AVOID

TAKING AN INCONSISTENT AND REACTIVE APPROACH

Often, human rights crises arise and a company struggles to respond. The purpose of human rights due diligence is to develop proactive systems for addressing human rights. When a situation does arise, a company can be prepared with a decision tree or other similar tool for evaluating its involvement with an impact and the corresponding action it is expected to take. Companies can find themselves in trouble when they adopt inconsistent approaches to situations where they are linked to an impact, because they are driven by the priority the business attaches to the relationship, or the particular country context, and not by the severity of the harm and the company's responsibility to take forward-looking action.

ASSUMING THAT YOU CAN ONLY BE LINKED TO AN IMPACT

Human rights due diligence can help a company ensure that it is not contributing to an impact: it can help a company move from a situation of potential contribution to one of linkage. By identifying impacts and seeking to use leverage to mitigate the risk that third parties will continue to cause those impacts, a company can demonstrate that it is meeting its responsibility to respect and is not contributing through its own activities. But this requires ongoing efforts; otherwise, over time, stakeholders will start to question how a company could not have known that an impact was continuing and that its efforts were not proving effective, as has happened, for example, with conflict minerals or child labour in cotton production in Uzbekistan. So companies should not simply assume that just because their initial evaluation is one of linkage, that this will always remain so.

65. www.goo.gl/lE1meB

Some suggestions for SMEs

Informal, internal steps can be important

For smaller companies, taking action can often involve informal steps aimed at changing attitudes among staff and making clear that certain behaviour is not an accepted part of the organisation's culture.

Team up with others

Where a smaller company is linked to a human rights impact through a business relationship, it may be possible to exercise leverage to get that party to change its behaviour where it is also a small enterprise. Where the third party is larger, or much larger, in size, it will be important to team up with others to try to exert leverage. This could involve collaborating with suppliers, customers, business associations, trade unions or public authorities, depending on the situation. ◀

Key sources and websites

- UN Guiding Principles Reporting Framework, particularly Part C4
  www.UNGPReporting.org
- ILO-IOE Child Labour Guidance Tool for Business: How to Do Business with Respect for Children's Right to be Free from Child Labour, 2015, provides suggestions for due diligence on the specific issue of child labour
  www.goo.gl/KqTU6I
- UN Global Compact and Verisk Maplecroft, Human Rights and Business Dilemmas Forum
  http://hrbdf.org
- Oxfam Novib, 'Multi-stakeholder Engagement in Agribusiness Sectors', 2015
  www.goo.gl/AO3BFs

chapter 3.5

Tracking performance

‘Knowing ...’

The third step of human rights due diligence is tracking the company’s performance on preventing and mitigating negative human rights impacts and drawing lessons from this for the business. Tracking enables a company to know whether its human rights due diligence has ‘worked’ and is central to any continuous improvement and change process. For many companies, in addition to their own operations, tracking performance is likely to include monitoring the performance of suppliers, customers and other business partners, since many of their human rights risks will arise through their business relationships.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 Getting started with tracking

Guidance point 2 Developing company-specific indicators

Guidance point 3 Tracking performance of suppliers and other business relationships

Guidance point 4 Verifying performance

Guidance point 5 Making improvements

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **CSR/sustainability:** May have a key role in reviewing implementation of the human rights policy
- **Internal audit/assurance:** Monitors compliance with company policies, including human rights commitments, and evaluates effectiveness of internal procedures
- **Procurement:** While various specific functions are likely to have a role in tracking, monitoring supply chain performance on human rights is relevant for most companies
- **Human resources:** Responsible for monitoring effectiveness of measures involving the company's own workforce

Guidance point 1
Getting started with tracking

Most companies will already have relevant data on human rights-related topics, although they may not be labelled that way. So it is not necessary to start from scratch in developing human rights tracking systems. However, some human rights impacts can be challenging to monitor and report on. In part, this may be because measuring human rights performance often has strong qualitative elements, while many companies tend to be more comfortable with quantitative targets and measures.

Over two years of consultations led by Shift and Mazars under the Human Rights Reporting and Assurance Frameworks Initiative (discussed in Chapter 3.6) resulted in the development of the UN Guiding Principles Reporting Framework

(publicly available at www.UNGPreporting.org). While it is a framework for disclosure, many companies are using the Reporting Framework as an internal guide to translate the expectations of the Guiding Principles into the company's management systems, including tracking mechanisms.

While many companies tend to be more comfortable with *quantitative targets* and *measures*, measuring *human rights performance* often has *strong qualitative elements*.

The Reporting Framework asks a company to describe what it has in place by way of policy commitment and overall governance of human rights, and then to identify its salient human rights issues and explain how it manages them. While the questions typically evoke descriptive and qualitative answers, the Reporting Framework encourages companies to use appropriate indicators, as well as other metrics, to support their answers. The Reporting Framework will also include supporting guidance for internal auditors and external assurance providers (as of early 2017), which should be particularly helpful in developing tracking systems.

When a company wants to begin or refine its human rights tracking efforts, there may be some simple ways to find information using existing tracking processes:

- **Information from existing grievance mechanisms** such as reports from whistle-blower hotlines or complaints boxes, or feedback from trade union representatives, will contain relevant information (for example, reports of allegations of worker harassment or excessive overtime);
- **Employee surveys** often contain valuable human rights-related information, such as experiences of discrimination, perceptions of employee engagement or the listening capacity of management;
- **Internal audit processes** will already include relevant indicators in many companies;
- **Country reports** prepared by country directors or regional offices may contain relevant information on the national human rights situation and its connection to the business.

Guidance point 2
Developing company-specific indicators

Early experience shows that companies should not rush to develop metrics before understanding their salient human rights issues. Once a company is ready to develop key performance indicators on human rights, it should consider what is publicly available in the areas it is concerned with (such as the Danish Institute for Human Rights 'Human Rights Compliance Assessment Quick Check'). The UN Guiding Principles Reporting Framework provides cross-references to many leading industry and issue-specific frameworks so that companies can easily see which of their provisions may be relevant.

When developing company-specific indicators, there are broadly three types of information that companies can use to track and report on their human rights performance: processes/inputs, incidents, and outcomes/impacts.

Table: Types of information that can be monitored and reported

	Description	Examples	Reportable?
1. Processes/ inputs	Processes the company has in place to carry out human rights due diligence and provide remedy	‣ Description of supplier audit/assessment programme ‣ Description of grievance mechanisms ‣ Description of training in human rights that employees receive	Generally, companies feel more comfortable focusing on processes. However, descriptions of processes alone often don't convey information about their effectiveness.
2. Incidents	Results of monitoring of instances of negative impacts	‣ Reported instances of discrimination ‣ Safety violations	Companies increasingly report on these metrics with regard to their own workforce, at least in their annual/sustainability reports
3. Outcomes/ impacts	Broader and more systematic effects of company activities	‣ Wage levels ‣ Health of surrounding communities	Often, reporting involves the outcomes of impact assessments and long-term indicators; reporting depends on the availability and sensitivity of data

Most existing human rights indicators focus mainly on human rights *incidents*. Recently, there has also been more attention on developing more meaningful *process* or *input* indicators – for example, not just how many staff trained, but also an evaluation of the effectiveness of that training in practice. So in these two areas, at least a company can develop its own indicators without having to reinvent the wheel.

Companies wishing to systematically monitor outcomes (for example, what is the long-term impact of the company's presence on the local community) currently do so mostly by means of case studies for internal, and sometimes external, audiences.

LEARNING FROM PRACTICE

EXAMPLES OF INDICATORS RELATED TO TREATMENT OF WORKERS

Process/input indicators:

- Percentage of workers trained on the code of conduct (where it includes human rights)
- Percentage of workers who have access to grievance procedures (including trade unions)
- Number of human rights impact assessments conducted
- Frequency of company's dialogues with trade unions representing its own workers, or those in its supply chain

Incidents indicators

- Number and breakdown of complaints, and official findings, regarding violations of company policy (for example, employee's right to privacy, right to form and join a trade union, working hours)
- Percentage of staff who experience harassment or discrimination as expressed in employee surveys or through trade unions

Guidance point 3

Tracking performance of suppliers and other business relationships

Tracking performance is important for impacts in the supply and value chain of companies, even though the nature of that tracking may look different. Over the last decades, many companies have set up 'supply chain monitoring programmes' with the aim of preventing abuses in the production process. These programmes usually involve a supplier code of conduct, and follow-up is done by self-assessment and/or auditing by the buying company or its chosen intermediary. If abuses are found, the supplier is required to develop a time-bound improvement plan. The speed with which changes have to be made may depend on the seriousness of the issue, or on the specific requirements of the buyer.

LEARNING FROM PRACTICE

RECOGNISING THE LIMITATIONS OF AUDIT ALONE

Most audit-based approaches use a 'policing' model, which assumes that suppliers are unable or unwilling to respect human rights, and so buying companies need to impose top-down codes of conduct supplemented by audits to prevent cheating. But such assumptions are increasingly being challenged by research and companies' own experience, which shows that suppliers are often willing but either lack the capacity to meet such standards in practice, do not have any incentives to do so, or may be put under pressure by companies' own purchasing practices.[66]

Leading companies are moving to adopt capacity building and other approaches to explore how to change the dynamics generated through policing-based models. A range of examples can be found in Shift, 'From Audit to Innovation: Advancing Human Rights in Global Supply Chains', 2013.[67] While these approaches can present challenges of scalability for companies with large numbers of suppliers, it is clear that innovative approaches are needed.

However, experience has shown that top-down auditing programmes are typically inadequate on their own to lead to systemic change in respect for human rights by business partners. Research and company experience in the supplier context have demonstrated that conditions only really improve when the supplier recognises the importance of respecting human rights and the connection to their business, for example, because the buying company is willing to establish a long-term relationship or to make the investments needed for structural improvements (see box on this page).

Tracking the performance of other relationships in the value chain, such as customers, joint venture partners and others, is gaining greater attention. While there are relatively few examples in the public domain, notable exceptions are the financial sector (where the misuse of funds by clients is one of the primary risk areas from an anti-money laundering perspective) and the ICT sector (where companies have been tracking and reporting on the requests they receive from governments to hand over certain user data or give access to user accounts).

COUNTRY INSIGHTS: TURKEY

From policeman to partner

"The suppliers, if they trust you, if they feel your approach to them as a positive improvement too, then they start being cooperative. They start approaching you, taking a step with you, instead of making it a forced action."

Göktuğ Ünder, Social Compliance Director, DeFacto. For more on this, see the Turkey case story on the project website.

66. See, for example, EY, 'Human rights and professional wrongs', 2016, available at www.goo.gl/TusF6F.
67. www.goo.gl/2Y5BGy

Guidance point 4
Verifying performance

Many companies have established systems for verifying the information that they receive through tracking processes, and can build on expertise in the internal audit or compliance department in this regard. Approaches that some companies have found useful for verifying performance on human rights and other non-financial risks include the following:

Non-financial letter of representation
In order to obtain assurance from business units or country operations, some companies use a process that involves the signing of a so-called 'non-financial letter of representation' (LOR). Usually, a business unit or country director signs an LOR to provide assurance that business is being done in line with company principles. Such letters can include human rights components (for example, questions on discrimination, child labour or freedom of association).

Verification through multi-stakeholder initiatives
Companies may be part of multi-stakeholder initiatives (MSIs) that have verification processes (and often also grievance mechanisms). Examples include the Fair Wear Foundation,[68] Fair Labor Association,[69] Global Network Initiative[70] and the Electronic Industry Citizenship Coalition.[71] In these initiatives, companies commit to a set of standards against which their own operations, and often those of their suppliers or other business partners, are measured. The initiatives may also conduct (or commission) assessments of suppliers on behalf of their member companies.

Usually, such initiatives are industry or issue specific. Membership of an MSI can help support a company's human rights due diligence efforts, but this depends on how robust the MSI's processes are in practice (and are seen to be by other stakeholders).

Verification by external parties
A growing number of assurance providers are offering to verify companies' human rights performance. The guidance being developed for assurance providers using the UN Guiding Principles Reporting Framework will be a helpful reference point for companies that want to ensure that such third parties bring the necessary expertise to bear.

68. http://www.fairwear.org/
69. http://www.fairlabor.org/
70. https://www.globalnetworkinitiative.org/
71. http://www.eiccoalition.org/

Other independent third parties may work with companies on the condition that they share the findings publicly. Examples include:

- **NGOs:** Unilever has collaborated with Oxfam to study labour issues in its Vietnam operations and supply chain, focusing on those that are important to workers but often difficult for companies to assess and manage, such as freedom of association and living wage.[72]
- **Multi-stakeholder and industry organisations:** for example, the Fair Labor Association has monitored a part of Nestlé's cocoa supply chain for child labour and other labour rights issues in Cote d'Ivoire.[73]
- **International organisations:** for example, the International Labour Organization has engaged with JTI, a tobacco company, to monitor the effectiveness of child labour programmes in various countries including Brazil and Malawi.[74]

LEARNING FROM PRACTICE

COLLABORATIVE APPROACHES TO TRACKING

As with assessing impacts, tracking is a moment in time in the due diligence process when it is particularly important to integrate the perspectives of affected stakeholders, or those with credible insight, into companies' views. This is especially so where the company and its stakeholders are in dispute about a particular situation, and stakeholders are unlikely to accept the company's own evaluation of the effectiveness of its approach. Some extractive companies, in particular, have developed models involving both companies and local communities in the joint monitoring of the company's human rights efforts in order to build trust in the outcomes of the tracking process.

Guidance point 5
Making improvements

Tracking should support continuous improvement in a company's approach to respecting human rights. The learning can feed into the other elements of the responsibility to respect, such as:

Policy commitment and embedding

- Updating of the policy, for example, the specific rights it addresses, or who is accountable for implementation;
- More specific guidance for functions that are not performing well because it is unclear what is expected of them;
- Performance data can help inform adjustments to the content or focus of training;
- Staff with human rights expertise could be assigned to poorly performing parts of the company to support them;

72. www.goo.gl/N89ap8
73. www.goo.gl/34pWTj
74. www.goo.gl/GUDsDT

COUNTRY INSIGHTS: MEXICO

Start small and do it well

Toks is a chain of 132 restaurants in over 20 cities in Mexico. It has an extensive supply chain and one of the key ingredients is coffee, the production of which is known to involve child labour and other severe human rights impacts. Toks found that it was connected through a number of tiers of its supply chain to poor coffee-growing communities where child labour is prevalent. The company decided to focus on a small, remote community in the state of Chiapas, where such impacts were occurring. After initial hesitation on the part of the community, Toks found, through its engagement with the community, that a number of root causes of child labour were present, including poverty, inefficient production, discrimination against people with disabilities, and poor social services more generally.

Together with local NGOs, Toks set up an intensive and holistic programme that included agricultural training, capacity building, the provision of better equipment, and education to improve farming conditions and workers' rights. The company also worked with parents to improve education and day care for children, and paid for treatment and support for children with disabilities.

According to Gustavo Pérez Berlanga, CSR Director of Toks: "Our holistic approach and integral vision made this project a success. It's a very little drop in the ocean, but it's not only about scale, but also about quality: the existence of a good case practice can have a catalysing effect on similar initiatives elsewhere. We aim to have many of these projects in the future."

Assessing impacts

- Tracking performance may uncover certain risks that were not identified and that need to be addressed;
- Existing impact assessment processes can be refined;
- A specific country or business unit may be chosen for more in-depth assessment based on performance over the past year;

Integrating and acting

- Good performance could lead to targets being set higher (this is already commonplace in the area of health and safety); meeting those targets could be made part of a bonus system where this is not yet the case (connecting back to embedding);
- A larger or different part of the supply chain pool could be monitored based on the outcomes of the company's responsible sourcing programme;

Remediation and grievance mechanisms

- If reports from grievance mechanisms show a significant spike in a particular issue, focused attention may be needed at the specific business unit/site/factory.

WRAPPING UP - COMMON PITFALLS TO AVOID

TRACKING WHAT CAN BE MEASURED RATHER THAN WHAT IS IMPORTANT TO TRACK

Because tracking of human rights impacts beyond health and safety is still relatively underdeveloped, there has been little guidance to date for companies on how to do it well. Therefore, there may be a tendency to focus on what it is possible to track rather than what is important to track and report on. If quantitative data is not available, anecdotal evidence and case studies may be more important than tracking 'hard' data on an irrelevant issue or on processes (such as the number of audits or training sessions conducted) that do not provide any insight into the effectiveness of those approaches.

EXCLUSIVE FOCUS ON AUDITING

Research and anecdotal evidence has shown that policing-based auditing models lead to limited sustained improvements in relation to human rights (see discussion in the box above). Audits can provide important snapshots in time but are not enough, on their own, to address improvements in supplier performance. Companies can learn from a growing body of experience with engagement and capacity-building approaches, and reflect on what may make most sense for their business given their salient human rights risks.

Some suggestions for SMEs

Use smaller-scale methods to obtain feedback

Small companies are unlikely to need large-scale employee surveys, but there is almost always some way that workers are asked for feedback and this can include questions related to human rights. This could involve human rights topics such as discrimination, or workers' opinions on the company's efforts to respect human rights.

Benefit from shorter communication lines to make improvements

Improvements may be able to be made more speedily and informally, as smaller companies generally require simpler procedures for organisational change. For example, improvements can be discussed and agreed in regular team meetings. ◀

Key sources and websites

- Shift and Mazars, UN Guiding Principles Reporting Framework *www.UNGPreporting.org*
- GRI Sustainability Reporting Standards *www.globalreporting.org/standards*
- Danish Institute for Human Rights, 'Human Rights Compliance Assessment' *www.goo.gl/7hlERt*

chapter 3.6

Communicating performance

'... and showing'

The final step of human rights due diligence is communicating about a company's efforts to prevent and address human rights impacts. This essentially goes to the 'showing' element of the UN Guiding Principles' expectation that companies should able to 'know and show' that they respect human rights. This means that the company should be prepared to demonstrate the effectiveness of its efforts in practice, which requires proactive communication with affected stakeholders and others. Companies that may be involved with severe human rights impacts should report formally on their efforts to prevent and address them.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 Communicating with different stakeholders

Guidance point 2 Communicating with affected stakeholders

Guidance point 3 Formal reporting on human rights

Guidance point 4 How to report well

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **CSR/sustainability:** May help track information about human rights performance that provides content for the communications; may be responsible for helping to prepare the company's sustainability reporting
- **Communications:** Typically responsible for communication with the company's external stakeholders
- **Human resources:** Typically supports internal communication with employees through newsletters, email messages, intranet, and other means
- **Finance:** Often responsible for helping to prepare the company's financial reporting, which is relevant if the company has an integrated report that includes financial and non-financial information
- **Legal:** Typically reviews and often has to sign off on formal external communications

Guidance point 1
Communicating with different stakeholders

The UN Guiding Principles deliberately talk about 'communicating' to reflect that due diligence encompasses a much wider array of ways to convey information to stakeholders than formal reporting alone. Some stakeholders may not like to read lengthy reports, lack access to the Internet, or may struggle to interpret formal company documents. A company should, therefore, consider what is the best means of communication for each of its relevant stakeholder groups (discussed further in Chapter 3.7). For example:

- *Potentially affected stakeholders or their representatives*, which can include workers, end-users and communities, should be a primary target of the company's communication efforts as part of human rights due diligence, especially where they need to be notified about risks or dangers

COUNTRY INSIGHTS: INDONESIA

Inclusive communication

"Communication needs to go beyond just the elites in the community. This will help people be more confident about what APP is doing, and reassure them that the company has heard the community's concerns. Otherwise, there could be misunderstandings within the village between the elites and other residents."

Dini Widiastuti, Economic Justice Programme Director, Oxfam in Indonesia, discussing the case story about Asia Pulp and Paper (APP) in Indonesia. For more, see the Indonesia case story on the project website.

related to the company's operations that could directly affect them. In such contexts, the company will need to pay special attention to how to communicate with women and other groups at risk of marginalisation.

- *Credible proxies*, which can include development NGOs, human rights organisations, international trade union confederations, and other local civil society organisations. They may be able to function as intermediary organisations for companies to communicate with, and may be able to help the company understand how its disclosure of its efforts is likely to be perceived by affected stakeholders.
- *Human rights experts* can be important to help the company reflect on and improve its communications over time.

The Guiding Principles' basic guidance for companies is that communications should be accessible to the various intended audiences, and should appropriately reflect the severity of the company's human rights risks in terms of their content and frequency.

Guidance point 2
Communicating with affected stakeholders

Companies may need a variety of means to communicate with their affected stakeholders.

Employees and other workers may be best reached through internal newsletters and other means that the company normally uses to inform them of important developments. A trade union (where workers are unionised), works council or workers' committee are important mechanisms through which to communicate performance on specific issues concerning workers. The level of communication may be more informal, depending on the issue: team meetings may present a good opportunity to engage in dialogue.

When it comes to communicating with affected **end-users,** the best approach depends on whether they are consumers, where information in stores or attached to products may be appropriate, or users, for example, of online services, where information on a dedicated website may be most appropriate.

EXAMPLE: VODAFONE LAW ENFORCEMENT DISCLOSURE REPORT

In 2015, Vodafone published its second country-by-country overview of requests for (and the company's responses to) disclosure of user data to national authorities. The report includes information about the legal frameworks, as well as the number of requests in each country; where Vodafone is not permitted under law to disclose that information, the company tries to provide alternative aggregated information. Vodafone's reporting aims to provide insight into the way it seeks to manage respect for privacy and freedom of expression – a growing trend among ICT companies.[75]

Companies need to give careful thought to how best to communicate to **members of a local community** where there is low literacy or other barriers to communication. Cultural contexts, where women are not allowed to speak directly to men, can make potentially vulnerable individuals even harder to reach. A written brochure or a PowerPoint presentation in a public forum is unlikely to be effective in such instances. Companies may want to seek the advice of local organisations to help with communicating to stakeholders through more creative means, such as storyboards, cartoons or plays.

Guidance point 3

Formal reporting on human rights

The Guiding Principles expect companies whose operations pose risks of severe human rights impacts to report formally on how they address them. A growing number of companies are looking to strengthen their reporting using the UN Guiding Principles Reporting Framework, a joint initiative of Shift and Mazars, and the first comprehensive framework for companies to report on human rights in line with the Guiding Principles (see www.UNGPreporting.org).[76]

The Reporting Framework consists of three parts:

- Part A: Governance of Respect for Human Rights
- Part B: Defining a Focus of Reporting
- Part C: Management of Salient Human Rights Issues

The questions are divided into eight overarching questions – which, together with the identification of salient issues, is the minimum requirement to use the framework – and an additional 23 supporting questions. Companies should be able, over time, to address these supporting questions more fully and deeply, leading to more robust reporting overall.

75. www.goo.gl/j8C9kM
76. The Reporting Framework closely tracks the core elements of the responsibility to respect. See www.goo.gl/cfmUVC

EXAMPLE: UNILEVER'S HUMAN RIGHTS REPORT

In 2015, Unilever became the first company to adopt the UN Guiding Principles Reporting Framework, issuing a comprehensive report on its human rights performance.
In line with the framework, the report prioritised eight salient human rights issues. Unilever arrived at this list through internal analysis and a cross-functional workshop. This initial list was then tested with a variety of expert stakeholders in order to ensure the analysis was robust. The prioritised list of issues not only provides the starting point for reporting, but also for Unilever's management of its human rights risks.[77]

Deepening broader sustainability reporting on human rights

The UN Guiding Principles Reporting Framework dovetails closely with broader sustainability reporting initiatives. For example, many companies use the Global Reporting Initiative (GRI) reporting standards or the UN Global Compact's Communication on Progress framework. These provide helpful starting points for reporting on a broader array of sustainability topics. Companies can then use the Reporting Framework for more in-depth reporting on their salient human rights issues, in line with the UN Guiding Principles. Similarly, for companies issuing an integrated report using the International <IR> Framework, the Reporting Framework can help guide companies on critical human rights information to include in their report.

Resource tip: The UN Guiding Principles Reporting Framework website has a useful tool where companies can review and download cross-references to numerous related reporting initiatives, including GRI, UN Global Compact and the IR Framework, as well as industry-specific initiatives. See www.ungpreporting.org/resources/cross-references-to-other-initiatives/.

Guidance point 4
How to report well

Describing human rights impacts and how they are managed often requires contextual and qualitative information. This is why the UN Guiding Principles Reporting Framework consists of 'smart' questions, which are meant to invoke more than a 'yes' or 'no' answer or a series of metrics that do not necessarily tell the full story.

As part of the development of the Reporting Framework, the project team looked at indicators that go beyond quantitative information and consider the quality of information included in company disclosure, which may be helpful for companies wanting to improve their reporting and wondering what 'good' looks like. These are set out in the list on the following page.

77. www.goo.gl/qcUkn7

Quality indicators of good corporate human rights reporting[78]

1. **Governance:** Does the reporting explain how the company's governance structures support the management of human rights risks?
2. **Specific processes:** Does the reporting go beyond high-level statements of policy and commitment and discuss specific processes for implementing respect for human rights?
3. **Specific impacts:** Does the reporting refer to specific impacts that occurred within the reporting period and are associated with the company's operations or value chain?
4. **Clear examples:** Does the reporting provide clear, relevant examples of how the company's policies and processes have influenced practice and outcomes within the reporting period?
5. **Stakeholder perspectives:** Does the reporting explain how the company gains the perspective of stakeholders who could be negatively impacted?
6. **Challenges:** Does the reporting discuss complex or systemic human rights challenges and how the company grapples with them?
7. **Metrics:** Does the reporting include specific data, key performance indicators or other metrics that offer clear and relevant evidence to support the narrative?
8. **Forward focus:** Does the report include information about the company's plans for advancing its efforts to respect human rights?
9. **Strategic initiatives:** If the reporting references particular initiatives, for example, projects, third-party assessments or participation in industry or multi-stakeholder organisations, does it make clear how these initiatives help the company advance its own management of human rights risks?
10. **Improving disclosure:** Where this is not the first year of human rights reporting for the company, does the reporting show improvements in the quality of its disclosure in comparison with previous years, taking into account the indicators set out above?

The Reporting Framework website contains a range of examples of company disclosure that meets these indicators to a moderate or strong degree. The examples include reports that used the Reporting Framework explicitly, as well as ones that were issued before the framework was developed.

What is the relationship between salience and materiality?

Many companies apply a 'materiality analysis' to evaluate what topics to report on. When it comes to non-financial issues, especially human rights, materiality processes very often discount human rights issues due to flawed assumptions.

Materiality depends on the choice of a particular audience or goal for which things are then judged more or less important. The audience may be shareholders alone or other stakeholders as well. A goal may be profit-making alone, decisions of an investor more widely, or societal welfare generally. The choice of audience or goal then dictates the selection of material issues.

By contrast, salient human rights issues are not defined in reference to any one audience or goal. Salience puts the focus on those human rights at risk of the most severe negative impact. This provides a consistent, predictable and principled means of identifying the appropriate focus of human rights reporting. At the same time, it gives business an effective tool for understanding how human rights issues connect with risk to the business.

78. www. goo.gl/C741ed

Companies can apply the concept of salience within a broader materiality exercise, using salience to identify the necessary human rights content of its reporting. For instance, companies using the Global Reporting Initiative's materiality process for their broader sustainability reporting can use salience and the questions in the UN Guiding Principles Reporting Framework as they determine what to disclose specifically on human rights, supported by relevant GRI indicators.

For more on the topic of salience, see http://ungpreporting.org/key-concepts/salient-human-rights-issues/, including the short video explaining the concept.

WRAPPING UP - COMMON PITFALLS TO AVOID

NOT THINKING ABOUT THE APPROPRIATE FORM OF COMMUNICATION

Many companies tend to default to a formal, glossy report. But in practice, relatively few people read such reports. Companies should also think about how to best reach affected stakeholders. A report can be complemented with additional means of communication, such as dialogues, public forums and face-to-face meetings to help engage stakeholders beyond investors and other expert readers.

COMMUNICATING ON WHAT THE COMPANY THINKS STAKEHOLDERS WANT TO HEAR

Single-issue stakeholders may focus exclusively on a particular issue or 'hot topic' that has little relevance to the company's salient human rights issues. The Guiding Principles focus companies' attention on risk to people, and this should inform their human rights communication and reporting. Formal reporting should concentrate on a company's salient human rights issues, while other forms of communication will be appropriate for reaching out to stakeholders concerned about other topics.

Some suggestions for SMEs

Communicating, not necessarily reporting

For SMEs, communications other than reporting may be more appropriate. Lines of communication with workers, and with suppliers and their workers, may be shorter and more informal, making this easier than for larger companies.

Include information in other communications

An SME may issue an annual report, consumer communication or be subject to a visit by a buyer. Human rights issues can be included in such communications.

Respond to the overarching questions of the UN Guiding Principles Reporting Framework

For companies that do want to report formally, the minimum threshold for applying the Reporting Framework is responding to the eight overarching questions. An SME may limit itself to these questions, and focus on a couple of salient human rights issues. In subsequent years, it may report on additional salient issues and/or iteratively answer more of the supporting questions. ◀

Key sources and websites

- Shift and Mazars, UN Guiding Principles Reporting Framework *www.UNGPreporting.org*
- UN Global Compact, Communication on Progress *www.unglobalcompact.org/participation/report/cop*
- GRI Sustainability Reporting Standards *www.globalreporting.org/standards/*

chapter 3.7

Stakeholder engagement

‘Making it meaningful’

Meaningful stakeholder engagement is essential to a company’s efforts to meet its responsibility to respect human rights.[79] While there is now substantial guidance about how to conduct stakeholder engagement, many companies still face significant challenges in getting it right. Meaningful engagement includes listening to affected stakeholders and taking account of their perspectives in internal decision-making.

Ineffective engagement can lead directly to negative human rights impacts through a failure to address stakeholder concerns early and effectively before they escalate. On the other hand, meaningful engagement can bring benefits to company and stakeholders alike through better-informed decisions and a reduction in the severity of impacts.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 The benefits of stakeholder engagement

Guidance point 2 Understanding stakeholder engagement

Guidance point 3 Considering which stakeholders to engage with

Guidance point 4 Making stakeholder engagement meaningful

TWO CASE STORIES ON STAKEHOLDER ENGAGEMENT

Two of the four cases profiled through the project illustrate the critical importance of stakeholder engagement:

- A stalled wind farm project in Oaxaca state in Mexico (Mexico case story) and
- Asia Pulp and Paper's OKI paper mill in South Sumatra (Indonesia case story).

EXPLORE THE FULL STORIES AT WWW.BUSINESSRESPECTHUMANRIGHTS.ORG.

Guidance point 1
The benefits of stakeholder engagement

Stakeholder engagement is a cross-cutting theme in the responsibility to respect, in particular when assessing impacts and tracking performance. Stakeholder engagement can help companies:

1. *Understand the perspectives of those who may be affected*: people should be at the centre of the due diligence process, which means hearing their perspectives, experiences and ideas. This means directly engaging with them wherever feasible through workers' committees, community dialogues, round-tables, face-to-face meetings, and grievance mechanisms. Of course, companies need to be aware of the power imbalances that can make such engagement challenging in practice. This is discussed further in Guidance point 4 below.

79. This chapter draws substantially on Shift, 'Bringing a Human Rights Lens to Stakeholder Engagement', 2013, available at www.goo.gl/9R84xG.

2. *Improve the quality of analysis of human rights impacts*: stakeholders often have unique knowledge of the context in which companies operate; this can strengthen human rights impact assessment processes and processes for tracking and communicating.

3. *Be able to prioritise those impacts, without the company making those decisions alone*: most of the time, companies cannot address all identified human rights impacts at once and they need to prioritise. Engagement with stakeholders helps to ensure the robustness of the company's efforts. For guidance on how to identify and prioritise human rights impacts, see Chapter 3.3.

4. *Better understand how to manage identified impacts:* once issues have been identified and prioritised, companies need to prevent and mitigate any potential human rights impacts and address any actual impacts that have occurred. Effective action will often involve collaboration with stakeholders. Moreover, many human rights issues are systemic in nature (such as living wage, or impacts on migrant workers) and require a multiplicity of actors to contribute to the solution. By engaging stakeholders, and engaging them early, companies can help create co-ownership of necessary solutions. For guidance on how to address identified impacts, see Chapter 3.4.

Guidance point 2
Understanding stakeholder engagement

According to the Office of the UN High Commissioner for Human Rights, stakeholder engagement in the context of respect for human rights is "an ongoing process of interaction and dialogue between a company and its potentially affected stakeholders that enables the company to hear, understand and respond to their interests and concerns, including through collaborative approaches".[80]

This definition highlights several elements that are critical to stakeholder engagement with a human rights lens. It should be:

- Based on *dialogue*: stakeholder engagement is not just about conveying information; it should be a two-way exchange.
- *Ongoing*: it is not a one-off exercise to satisfy licensing requirements or to be able to say the company 'did' stakeholder engagement, but an ongoing process focused on building a mutually beneficial relationship.
- *Focused on potentially affected stakeholders*: engagement should be focused on people who are or may be affected by the company's operations, or their legitimate representatives, not just organisations the company has a friendly

80. OHCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide', 2012, p.8, available at www.goo.gl/6Zjln7.

relationship with. Companies also need to be aware that local communities are not one homogenous group, but a variety of different groups, and impacts on them may be quite distinct.

- *Focuses on stakeholders' interests and concerns*: stakeholder engagement is (primarily) about the impacts associated with the company's activities; more broadly, it is about what potentially affected stakeholders want to discuss with the company in relation to the company's impacts.

Guidance point 3

Considering which stakeholders to engage with

A 'stakeholder' is an individual who may affect, or be affected, by a company's activities. In the context of the UN Guiding Principles, there are three groups of relevant stakeholders:

- *Potentially affected stakeholders and their legitimate representatives*: individuals whose human rights have been or could be affected by a company's operations, products or services, for example, employees, contract workers, workers in the supply chain, smallholder farmers and their families, members of the community around a business facility or site, consumers or end-users.

- *Credible proxies for the views of affected stakeholders:* individuals with sufficiently deep experience in engaging with the people from a particular region or context (for example, women workers on farms, indigenous peoples or migrant workers) who they can help to effectively convey their likely concerns. In practice, this can include development and human rights NGOs, international trade unions and local civil society, including faith-based organisations.

- *Human rights experts*: individuals who can bring particular knowledge or expertise that the company needs to effectively manage human rights, for example, a labour rights expert, a land-related human rights expert or an expert on compensation standards. They are not a replacement for engaging with affected stakeholders.

COUNTRY INSIGHTS: INDONESIA

At Asia Pulp and Paper's OKI mill in South Sumatra, the company engaged with representatives of all three categories of stakeholder:

- Community members living around the concessions to discuss impacts and future employment opportunities
- Local and international NGOs to help facilitate the process and provide input at the policy level
- Subject matter experts on, for example, free, prior and informed consent, to ensure alignment with international standards.

Read more in the Indonesia case story on the project website.

LEARNING FROM PRACTICE

There is often a significant imbalance of power between large companies and people affected by their operations. Communities often lack the opportunity and capacity to meaningfully participate in decision-making processes that will affect their lives. Even businesses that provide information and seek to consult with the community often need to focus more on empowering the community to ensure that such engagement is meaningful and takes account of the reality of the power differential.

Guidance point 4
Making stakeholder engagement meaningful

In order for stakeholder engagement to be meaningful, companies need to consider the following elements:

- **Engaging the right stakeholders**
  Companies tend to engage with those stakeholders who have a high degree of influence over the company or who can pose a business risk. For the purposes of human rights due diligence, companies need to make sure they seek to engage with potentially affected stakeholders, especially those who may experience severe impacts but have relatively limited influence over the company, such as members of vulnerable groups that are marginalised in law or practice.

  Sometimes, a company's most influential stakeholders may be credible proxies for the views of affected individuals, but that will not always be the case. Companies need to consider carefully whether they are investing sufficient effort in trying to engage with the right stakeholders from a human rights perspective.

- **Engaging about the right issues**
  Stakeholder engagement should include discussions about how the company manages its impacts, not just about its positive contributions or philanthropic programmes. This means taking the time to explain the business to stakeholders in order for them to provide informed input and constructive feedback. This usually requires good internal alignment within the company before engagement begins, so that everyone is clear on what the objectives are and what the company hopes to learn from the engagement.

- **Engaging in the right way**
  The nature of the engagement is likely to depend on the number of people engaged: the fewer the people, the more intense the engagement. Sometimes, stakeholder groups need to be engaged with individually; sometimes, joint sessions will be more appropriate.

At the heart of engagement is building a relationship of trust between the company and affected stakeholders, including by frequently discussing how to better engage, which takes time. Some companies have asked neutral third parties, such as mediators, to help facilitate more constructive dialogues with affected stakeholders, especially where there are issues in dispute or a history of distrust.

Companies need to pay attention to whether consulting with potentially affected stakeholders could put those individuals at risk of reprisals or other threats to their, or their families', safety. These threats are real and, in some places, increasing [81] Companies will need to seek the guidance and support of NGOs, trade unions or others with direct experience of the risks that stakeholders can face in evaluating how best to pursue meaningful engagement in such situations.

COUNTRY INSIGHTS: MEXICO

Understanding the social context is challenging but not impossible

"The social context is always important to recognise. For companies and investors, it's important to understand that due diligence on your behalf – like somebody else attesting to the community's consent – cannot be accomplished through Google searches and talking to a handful of international human rights groups just because they're convenient. The local context is rich, interesting, and diverse – yes, complex – but not mysterious. It can be understood, dialogue can happen and it's worth investing in learning who communities and their local advocates are, how we operate, and about our connections to these issues locally. That kind of dialogue at the local level makes companies' and investors' investments on these big projects much more of a sure thing." Benjamin Cokelet, Executive Director, PODER

Read more in the Mexico case story on the project website.

- **Engaging at the right time**

  Companies tend to engage when they need something. Stakeholders are quick to sense this and may distrust the company because of past experiences. Relationship building from the very start of a project or investment, even when there are no formal decisions to be made, may be critical to develop the trust needed for meaningful engagement 'when it really matters'.

  It is always important for the company to provide feedback to stakeholders on how their inputs have been taken into account, as this can help show that the company took the input seriously.

81. See, for example, Global Witness, 'On Dangerous Ground', 2016, available at www.goo.gl/dMBDbL

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OVERESTIMATING LEVELS OF TRUST

Companies can be surprised by stakeholders' distrust, for example, because of legacy issues that stem from before the company tried to establish a relationship with stakeholders. It is important not to overestimate the trust that stakeholders are likely to have when entering into a new engagement or relationship, and to find ways to test this, for example, by whether stakeholders feel truly free to speak their mind, particularly where women or other groups may be vulnerable or marginalised in practice.

THINKING COMPANIES CAN MANAGE ENGAGEMENT WITHOUT SPECIALIST SKILLS

Research and anecdotal evidence has shown that policing-based auditing models lead to limited sustained improvements in relation to human rights (see discussion in the box above). Audits can provide important snapshots in time but are not enough, on their own, to address improvements in supplier performance. Companies can learn from a growing body of experience with engagement and capacity-building approaches, and reflect on what may make most sense for their business given their salient human rights risks.

NOT HAVING ANYTHING SUBSTANTIVE TO ENGAGE ABOUT

Stakeholders want to feel that they can influence how the company makes decisions, and that their input leads to real change. Engagement with stakeholders without a particular purpose suggests poor planning and risks being seen as a mere public relations exercise.

FAILING TO ENGAGE THE GOVERNMENT WHEN IT IS NEEDED

If the government is important in the context of a project that may affect surrounding communities – for instance, because the government is encouraging outside investment, has to provide a concession for using the land, or is an investor in the project itself – then it needs to be at the table as part of the stakeholder process. This doesn't mean that all engagements must be joint ones, but, rather, that a company risks running into problems if government agents are only included as an afterthought.

Key sources and websites

- IFC, 'Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets', 2007 *www.goo.gl/YJyF6w*

- Luc Zandvliet and Mary B. Anderson, 'Getting it Right: Making Corporate–Community Relations Work', Greenleaf, 2009

- Oxfam Australia, 'Guide to Free, Prior and Informed Consent', 2014, available in multiple languages at *www.goo.gl/tkETCO*

chapter 3.8

Remediation and grievance mechanisms

‘Early warning, effective solutions’

When something has gone wrong and people are negatively affected as a result of the company’s actions, things need to be put right. Grievance mechanisms,[82] and other processes to provide remedy in such situations, are not new to companies. However, the systems that exist are typically for people inside the company, primarily employees, while the responsibility to respect human rights applies to all stakeholders that are negatively affected by a company’s activities or business relationships. Grievance mechanisms can help provide remedy where a company has caused or contributed to a negative impact; they can also be important early warning systems for companies and can provide critical information for broader human rights due diligence processes.

SUMMARY OF GUIDANCE POINTS

Guidance point 1 Understanding remediation

Guidance point 2 Taking full advantage of grievance mechanisms

Guidance point 3 Mapping existing grievance mechanisms

Guidance point 4 Using the effectiveness criteria

Guidance point 5 Considering how to extend or create mechanisms for external stakeholders

Guidance point 6 Improving performance of grievance mechanisms

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **Human resources:** May sometimes act as an intermediary between management and workers, including in grievances and disputes
- **Trade union or works council:** Can function as trusted channel to receive and handle complaints; may support company in improving performance
- **Community relations:** May serve as intermediary between the company and different external stakeholders affected by the company, or their legitimate representatives
- **Business operations:** May interact with local communities and, therefore, are needed to resolve many complaints; can also be a source of complaints
- **Legal and compliance:** Often runs existing whistle-blower procedures; understands legal considerations related to the handling of grievances
- **Senior management:** May receive some complaints directly; role in instilling accountability throughout the organisation

Guidance point 1
Understanding remediation[83]

In the Guiding Principles, the term 'remediation' is used to refer to the process or act of providing remedy. At its core, the concept of remedy aims to restore individuals or groups that have been harmed by a business's activities to the situation they would have been in had the impact not occurred. Where this is not possible, it can involve compensation or other forms of remedy that try to make amends for the harm caused. This should not be confused with 'remediation' in the context of social audits, where the concept includes – and

82. In this chapter, 'grievance', 'complaints' and 'dispute' are used interchangeably.
83. This section is drawn from Shift, 'Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights', 2014. Available at www.goo.gl/PWTp6c.

typically focuses on – forward-looking actions to prevent a non-compliance from recurring.

As the Guiding Principles set out, judicial remedy includes: "apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well the prevention of harm through, for example, injunctions or guarantees of non-repetition". These forms of remedy are relevant – or have equivalents in the case of punitive actions – also in the context of non-judicial mechanisms, with the exception of criminal sanctions.

Guidance point 2
Taking full advantage of grievance mechanisms

Grievance mechanisms can play a critical role in meeting the responsibility to respect in two ways:

1. They can support the provision of remedy where a company causes or contributes to negative impacts;
2. They can enable problems to be addressed early before they escalate as well as helping to identify patterns over time, thus feeding directly into broader human rights due diligence.

Companies, and their stakeholders, often focus on the first role without due consideration of the second. This risks missing the useful function that grievance mechanisms can play, even where the company itself is not responsible for providing remedy. For example, they can alert companies to the need to apply pressure on a supplier to ensure that the supplier provides the appropriate remedy for harm it has caused. Of course, suppliers have their own responsibility to respect human rights and should have their own grievance mechanisms in place.

The following table provides some examples of typical grievance mechanisms that may have a role to play in addressing business-related human rights harms.

Table: Overview of typical grievance mechanisms

	Level	Accessible to	Examples	Types of issues	Driver of installation/ adoption
INTERNAL	**Company-wide**	All employees; may be open to external parties	Hotline or whistle-blower procedure	Typically fraud and corruption, broader ethics issues	‣ Corporate governance regulations ‣ Business principles
INTERNAL	**Country, business unit or factory**	Employees	Complaints procedure or 'persons of trust' network	Related to staff interaction (for example, harassment, intimidation)	‣ National legislation ‣ Common business practice
INTERNAL	**Third party**	Customers	Customer support and complaints	Complaints related to warranty or service	‣ National legislation ‣ Customer loyalty
INTERNAL		Neighbours	Phone number or neighbourhood council	Pollution, noise, smell	‣ Good relations/'social licence to operate'
INTERNAL		Local community	Operational-level grievance mechanism, community liaison officers	Impact on livelihoods, pollution, distribution of benefits	‣ Early dispute resolution ‣ Investor pressure ‣ Financing requirement
EXTERNAL	**Industry or initiative mechanism**	Varies, but typically includes member company's own workers, workers in the supply chain	Fair Labor Association's third-party complaints procedure	Working conditions, living wage, or any alleged breach of initiative's own standards	‣ Industry/ collaborative action ‣ Level playing field
EXTERNAL	**National Contact Points under the OECD Guidelines for Multinational Enterprises**	Any individual or organisation (affected or not affected)	All adhering countries required to establish one	All issues related to the OECD guidelines (including human and labour rights, environment, anti-corruption)	‣ OECD governments ‣ Trade relations ‣ Civil society
EXTERNAL	**State-based mediation and arbitration bodies**	Workers	UK: Advisory, Conciliation and Arbitration Service[84] South Africa: Commission for Conciliation, Mediation and Arbitration[85]	Usually workplace-related issues	‣ Government regulation ‣ Reducing pressure on the court system
EXTERNAL	**Courts**	Everyone subject to jurisdiction	Netherlands: judicial system[86]	Any issue subject to jurisdiction	‣ State obligation to provide access to remedy

84. www.acas.org.uk
85. www.ccma.org.za
86. www.rechtspraak.nl/English/Judicial-system/

Guidance point 3
Mapping existing grievance mechanisms

Many companies already have various grievance mechanisms for people within the company, whether formal or informal. These can include trade unions, whistle-blower policies, reporting mechanisms for issues such as sexual harassment, employee conflict management programmes, health and safety incident-reporting systems, and complaints to management.

A company should map the grievance mechanisms it already has in place to determine where gaps may exist. It should consider whether all the main stakeholder groups that could potentially be impacted by the company have access to a grievance mechanism – whether organised by the state, the company, an entity in its supply or value chain or otherwise – and in particular those groups that may fall between existing mechanisms, such as contract workers on company premises who cannot access the company's mechanism but lack representation by a trade union through their direct employer. A company may not know what mechanisms its business partners or others have in place, but such a mapping can help highlight where it lacks knowledge.

Three questions for a gap analysis of grievance mechanisms

1. Do the main stakeholder groups that could be affected by the company's activities, including through its business relationships, have access to an effective grievance mechanism?
   If not: Who is responsible for providing remedy? What additional channels might be needed?
2. Do current and planned grievance mechanisms align with the effectiveness criteria for grievance mechanisms (discussed in Guidance point 4 below)?
   How do you know? If not: How do they need to be improved?
3. Do current and planned grievance mechanisms facilitate cumulative learning and improvement over time?
   If not: What needs to be done in order to enable this?

The best place to start may be those company operations – whether particular countries, project sites or business functions – where individuals and groups run the highest risk of being subject to severe human rights impacts, while currently having the least access to effective grievance mechanisms.

Guidance point 4
Using the effectiveness criteria

The Guiding Principles include a set of effectiveness criteria for non-judicial grievance mechanisms that were piloted with companies as part of Ruggie's mandate. They are summarised in the figure on the next page.

Figure: Effectiveness criteria for non-judicial grievance mechanisms

(a) Legitimate	enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
(b) Accessible	being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access
(c) Predictable	providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation
(d) Equitable	seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms
(e) Transparent	keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake
(f) Rights-compatible	ensuring that outcomes and remedies accord with internationally recognized human rights
(g) Dialogue and engagement	consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

Learning from practice: Grievance mechanisms and the effectiveness criteria

- It is important to **be explicit about what issues can be reported**; this can also help avoid inadmissible complaints.
- Low frequency in the use of a mechanism may be due to a lack of awareness and trust in the mechanism; it can be countered by better **understanding the sources of distrust and by increasing interaction with potential users of the mechanism**, possibly via a third party to maintain anonymity.
- Confidence by users that the **reporting of issues will, in and of itself, not lead to sanctions** against the person lodging the report is important to ensure that people feel confident bringing issues to the mechanism.
- Difficulties arising from anonymous complaints can be resolved by engaging a **trusted third party**, which ensures confidentiality but enables a channel for communication with the complainant.
- Concerns about potential liability related to complaints can be best addressed by **responding adequately when a complaint is brought** to the attention of the company, not by ignoring it.
- Types of grievance processes include direct negotiation, facilitation, conciliation, mediation, investigation, adjudication and arbitration. **Different types of complaints call for a different response (or mix of responses)**. For example, whereas fraud requires investigation, a complaint that involves unfair treatment may need to include additional approaches such as mediation.
- **Mediation**, including through a third party, may be a particularly effective way of achieving the goal of early dispute resolution as it makes the process less adversarial and enables more of a focus on mutual gains.

Guidance point 5

Considering how to extend or create mechanisms for external stakeholders

Existing grievance mechanisms may be extended to external stakeholders, or new mechanisms may need to be created if the company identifies gaps in its current approach. Options include:

- **Opening up existing mechanisms to non-employees:** While existing mechanisms may not exclude external complainants, they are usually not published as such and/or are hidden on company intranets. Some companies explicitly open up their grievance mechanisms to particular groups, such as workers of contractors. Whistle-blower hotlines are also often made available to outside parties. When a company decides to take this step, it is important that it is published among the relevant groups in their own language, and where possible through trusted channels.

- **Considering international framework agreements**: Some companies have chosen to enter into an agreement with the relevant international trade union confederation for company-wide implementation of labour and other standards. Many of these agreements contain provisions for the joint investigation and resolution of complaints and disputes related to the agreement, and for regular dialogue.

- **Engaging in multi-stakeholder initiatives:** Some companies participate in multi-stakeholder initiatives that have their own grievance mechanisms, although these are not always open to third parties outside the initiative. Examples include the third-party complaints mechanisms of the Fair Labor Association and the Roundtable on Sustainable Palm Oil, and the internal procedures of the Voluntary Principles on Security and Human Rights (available only to members).

- **Participating in a mechanism for a specific sector:** Because some grievances go beyond the activities or capacity of a single company, a joint effort can be a useful addition and a helpful pooling of resources. Examples include the hotline of the International Council of Toy Industries, and the grievance mechanism set up by the electronics industry in Mexico involving a local NGO and the relevant industry body, as well as global brands sourcing from local suppliers there.

- **Creating a grievance mechanism for community complaints:** Project funders may require a company to develop a specific grievance mechanism for a high-impact project that can have potentially significant consequences for local

communities around the project. There is growing experience from the extractive sector, in particular, about how to develop and implement such mechanisms more effectively.[87]

LEARNING FROM PRACTICE

Companies often fear that when they open up their grievance procedures to non-employees, they will be flooded with complaints. In practice, such a move does not necessarily lead to a significant spike in complaints, though over time the number of complaints can be expected to rise. What matters is clear communication about the scope of the mechanism, and engagement with likely users in advance of making the mechanism available to them to try to identify possible problems with its implementation.

Guidance point 6

Improving performance of grievance mechanisms

There should be regular reporting on the functioning of the grievance mechanism, including up to senior management. A company can assess its mechanisms against the kind of key performance indicators (KPIs) set out in the table below.

Examples of key performance indicators on grievance mechanisms[88]

KPI	Interpretation
A significant number of complaints or grievances are brought to the mechanism in the period after its establishment.	Indicating both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.
A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	Indicating both awareness of the mechanism's existence and confidence that it can provide a credible and effective first avenue of recourse.
Over time, the number of grievances of the same or similar nature decreases.	Indicating that staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
Audits show a reduction in incidents of non-compliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of non-compliance incidents.
A reduction in absenteeism and staff turnover and/or an increase in productivity among suppliers'/contractors' workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
Standard operating procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Indicating that lessons for management systems are being learnt and integrated to reduce the likelihood of the same kind of grievances recurring.

87. See, for example, www.goo.gl/DbPw8V.
88. This builds on the Harvard Kennedy School Corporate Responsibility Initiative, 'Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders', 2008, p.39, available at www.goo.gl/x1Suuf.

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TAKING THE PERSPECTIVE OF THE COMPANY RATHER THAN THE COMPLAINANT

Company mechanisms are often designed solely from the perspective of the company and tend to focus more on stopping a violation of the business's rules rather than remedying a situation. Grievance mechanisms need to be designed with a focus on the potential users of the mechanism if they are to be truly effective – and, ideally, they should involve those users in the design phase.

IGNORING THE RELATIONSHIP WITH LEGAL REMEDIES

Operational-level grievance mechanisms are not a substitute for legal remedies; rather, they are meant to accelerate resolution of disputes and to avoid escalation by complementing legal remedies. Where judicial mechanisms are weak or corrupt, companies will need to think carefully about the implications of this for their grievance mechanism design.

GRIEVANCE MECHANISMS BASED ON ADJUDICATION

It is crucial for the effectiveness of operational-level mechanisms that they are based on dialogue and mediation, not adjudication by the company. This because of the inherent problem with a company being not only the subject of a grievance, but also the final judge of the outcome. This can undermine perceptions of the legitimacy of the process and the company's seriousness about handling stakeholder complaints.

Some suggestions for SMEs

Be open and talk to people

For smaller companies, simply talking to people who are or may be affected by your operations can be the simplest way to resolve problems. For individuals outside the company, a public email address or phone number to handle feedback and complaints can help ensure that you are creating a channel for any concerns.

Third-party service instead of own

Instead of their own hotlines, companies can use one provided by a third-party service that supports multiple companies. Clear Voice Hotline Service is one example of such a system.[89]

Build on sector grievance procedures

Sector organisations often have their own grievance procedures that smaller companies can use. The Fair Wear Foundation has a complaints procedure for its members, which functions as a fall-back if they lack their own mechanisms.[90] ◀

Key sources and websites

- ACCESS Facility – grievance mechanism database *www.accessfacility.org*
- Shift, 'Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights', 2014 *www.goo.gl/HdR2eh*
- Caroline Rees, 'Piloting Principles for Effective Company–Stakeholder Grievance Mechanisms: A Report of Lessons Learned', Harvard Kennedy School Corporate Responsibility Initiative, 2011 *www.goo.gl/ATXg7k*
- Caroline Rees and David Vermijs, 'Mapping Grievance Mechanisms in the Business and Human Rights Arena', Harvard Kennedy School Corporate Responsibility Initiative, 2008 *www.goo.gl/osPjLw*

89. www.clearvoicehotline.net
90. www.fairwear.org/page/verification

chapter 4

Highlighted topics

4.1 How do the UN Guiding Principles relate to the Ten Principles of the UN Global Compact?

The Guiding Principles and the UN Global Compact's Ten Principles are complementary frameworks developed within the UN system. They address the same set of human rights standards. They are both concerned with respecting human rights in the context of advancing socially sustainable globalisation.

Human rights principles of the UN Global Compact

The first two principles of the UN Global Compact's Ten Principles state that:

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. Make sure that they are not complicit in human rights abuses.

Principles 3–6 address core international labour standards, which are also part of the 'internationally recognized human rights' that the UN Guiding Principles refer to as the baseline for all companies.

The Guiding Principles and the Global Compact build on each other in two areas specifically, as explained below.

Baseline and beyond the minimum

The Guiding Principles provide the baseline for a company's human rights responsibilities and apply to all companies, everywhere, regardless of whether or not they have signed up to the UN Global Compact. By becoming a signatory to the Global Compact's Ten Principles, companies not only explicitly acknowledge their responsibility to respect human rights, they also commit to help promote ('support') human rights as part of their broader commitment to sustainable development.

Implementing respect for human rights

The Guiding Principles provide guidance on how to implement the 'respect' component of the Global Compact's first principle. The Guiding Principles also outline the responsibilities of companies in relation to business relationships with suppliers, joint venture partners, clients, government and others – what the Global Compact refers to as 'complicity' (second principle).

The Global Compact recommends that its signatory companies refer to the UN Guiding Principles for "further conceptual and operational clarity for the two human rights principles championed by the Global Compact... [The Guiding Principles] provide an authoritative framework for participants on the policies and processes they should implement in order to ensure that they meet their responsibility to respect human rights".[91]

91. See Office of the UN High Commissioner for Human Rights and the UN Global Compact, 'The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments', available at www.goo.gl/Cr5IVe.

The Global Compact also refers to and builds on the UN Guiding Principles in the various principles and guidance documents it has led or helped to develop, for example, the Children's Rights and Business Principles.

4.2 The Guiding Principles and the Sustainable Development Goals

For many companies, the Sustainable Development Goals (SDGs) will provide a critical framework for their human rights efforts over the next decade. It is, therefore, important for them to be aware of the relationship between the SDGs and their human rights responsibilities under the UN Guiding Principles as they go about developing strategies focused on SDGs implementation.

> "Too many companies today put resources into social development initiatives that are worthy on their face, while ignoring serious negative impacts on people in their own operations and value chains."
>
> - John Ruggie, author of the UN Guiding Principles

What are the Sustainable Development Goals?

The SDGs are a global framework for action agreed to by all states in 2015.[92] They last for 15 years, up until 2030. The SDGs include 17 goals and 169 targets, with numerous indicators. The SDGs are grounded in the belief that economic development should help to address poverty and other social and economic injustices. Businesses are increasingly seen by governments as an important engine for growth and as key to achieving specific goals (such as in the area of technological development and youth employment) as well as the overall promise of the SDGs. The SDGs also envision a role for other stakeholders, for example, through partnerships with civil society.

How do human rights relate to the SDGs?

The SDGs are grounded in international human rights standards, refer to specific human rights in some of the goals (for example, the right to water), and are intended to contribute to the fulfilment of human rights through the targets that they set. The SDGs explicitly reference the UN Guiding Principles and ILO standards in Paragraph 19. Some of the indicators may be helpful to businesses in their own tracking and reporting on human rights.

What is the connection for business between the SDGs and respecting human rights?

The SDGs are an important development in efforts to tackle the pressing world problems of poverty and inequality. There is a significant opportunity for business to mobilise around the SDGs and integrate them into their strategic approach to the promotion of human rights and sustainability more broadly.

However, there is a potential risk that positive action on the SDGs by business becomes disconnected from the recognition that business can also harm human rights. The UN Guiding Principles were developed precisely because there

92. https://sustainabledevelopment.un.org/sdgs

was a need to set a baseline of 'respect' for business everywhere when it comes to human rights – that is, to prevent and address negative human rights impacts connected to their operations.

Among the voices reminding business of the importance of this baseline expectation in the context of attention to the SDGs are the UN Working Group on Business and Human Rights, John Ruggie, the author of the UN Guiding Principles, as well as Oxfam and many other civil society organisations.

According to Ruggie:[93]

"Where people's human rights are not fully respected, their ability to enjoy the fruits of development are much reduced, and the disparities between the poor and most vulnerable and the rest of society only grow. By contrast, where companies focus resources on reducing the risks to people's human rights along their value chains, they not only reduce harm but also help advance development.

... Too many companies today put resources into social development initiatives that are worthy on their face, while ignoring serious negative impacts on people in their own operations and value chains. So they end up giving with one hand while taking away – or enabling others to do so – with the other.

This is not a pathway to sustainable development. Therefore, we need a discourse on the social aspect of the SDGs that mirrors the discourse on the environmental side. The starting point must be a reduction in negative human rights impacts associated with core business activities. The UN Guiding Principles provide the standard for achieving this and there is fast-growing experience of what it means to translate them into practice across different sectors and contexts."

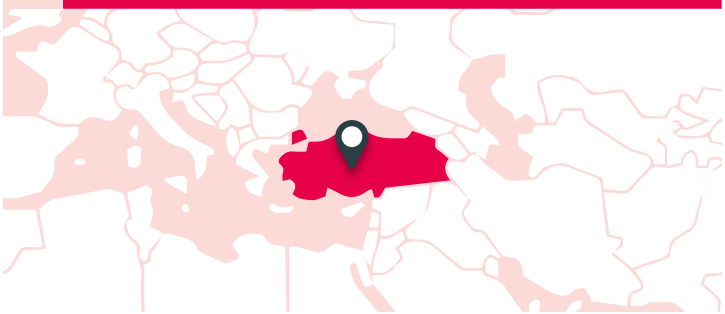
So companies need to ensure that they do not stop paying attention to negative impacts connected to their business where they decide to promote human rights through SDG commitments. Otherwise, they are at risk of sliding backwards towards the notion that doing good can offset doing harm to people's human rights. Conversely, aligning efforts to address negative human rights impacts with broader commitments to promote human rights can bring significant benefits, as the example from Turkey below demonstrates. The Global Commission on Business and Sustainable Development was created to encourage businesses to take a leading role in implementing the SDGs. Shift was invited to submit a report on this topic to feed into the commission's overarching report, due in early 2017, which may be a helpful resource for those wanting to understand the topic in more depth. ◀

Key sources and websites

- The Danish Institute for Human Rights, 'The Human Rights Guide to the SDGs' www.sdg.humanrights.dk/
- Shift, Viewpoint on SDGs and respect for human rights www.goo.gl/W5Fe5E
- Oxfam, 'Delivering sustainable development: A principled approach to public–private finance' www.goo.gl/SjwlPB
- UN Global Compact, 'The UN Global Compact Ten Principles and the Sustainable Development Goals: Connecting, Crucially' www.goo.gl/kagQXt

93. Letter from Professor John Ruggie to Mark Malloch-Brown and Paul Polman (Co-Chairs) and Peter Bakker (Commissioner) of the Global Commission on Business and Sustainable Development, available at www.goo.gl/2wq6pR.

COUNTRY INSIGHTS: TURKEY



Connecting efforts to respect and promote human rights

An example from Boyner Group in Turkey illustrates how respecting human rights can be closely linked to a company's efforts to promote or advance human rights. Boyner Group is Turkey's largest publicly traded non-food and non-electronics retail group. It has an extensive supply chain, which the company says it monitors closely. Gender equality is a high priority for Boyner Group, both within group companies and the supply chain. As such, Boyner Group signed the Women's Empowerment Principles, developed by the UN Global Compact and UN Women, and in 2015 the company launched the Boyner Group Women Suppliers Academy in partnership with the International Finance Corporation (part of the World Bank Group).

The aim of the programme, which includes education, training, mentoring and networking through the academy, is to reduce gender-based barriers, raise the productivity and performance of women-led businesses, and empower women entrepreneurs so that they have an equal chance in the market and eventually of becoming strategic suppliers to Boyner Group. Through this proactive approach, the company not only aims to meet its goals in relation to ensuring gender equality in its own supply chain, but also hopes to contribute to addressing gender issues in Turkish society more broadly.

For more information see IFC, 'Case Study: Boyner Group Strengthens Women in Supply Chain', available at www.goo.gl/zAjnNg and UN Global Compact at http://supply-chain.unglobalcompact.org/site/article/181.

Appendix A

Summaries of country workshops

INDONESIA

The project's first workshop was held in Indonesia and built on existing engagement by the local partners (the Indonesia Global Compact Network [IGCN] and Oxfam in Indonesia) on business and human rights over the last few years. At least some stakeholders were, therefore, already aware of some of the core content of the UN Guiding Principles.

The workshop was held in Jakarta on 24 and 25 February 2015, and attended by over 65 participants on the first day, and by over 40 on the second day, with companies (including various SMEs), civil society organisations and academic experts. The first day featured a 'senior leaders briefing', which included a panel discussion with speakers from Asia Pulp and Paper, Unilever and Oxfam in Indonesia, and which generated a high turnout. The majority of companies and civil society organisations (CSOs) attending on the first day also took part in the in-depth, topical sessions on the second day. The afternoon of the first day featured parallel sessions for business and civil society to discuss specific challenges and opportunities related to the implementation of the Guiding Principles in Indonesia. In the civil society session, participants discussed how the UN Guiding Principles could be made more tangible in Indonesia, for example, by 'translating' the UN Guiding Principles for the Indonesian context, considering ways in which the UN Guiding Principles could be a reference for national policies and regulation, and how they could support CSO advocacy tools. Meanwhile, businesses discussed how the UN Guiding Principles could be further implemented through training, supporting smallholder farmers in meeting human rights standards, and, more generally, supporting responsible business, including where companies are in conflict with communities, in order to enhance business' legitimacy as a social actor.

The second day involved in-depth sessions on two important topics in the Indonesian context: the rights to water and sanitation, and land-related human rights impacts, including in connection with large plantations (for example, palm oil), deforestation and mining. Particular attention was given to the implementation of free, prior and informed consent (FPIC) with regard to potential impacts on indigenous peoples and their lands.

During the workshop, the president of IGCN posed a challenge to participants: to transform the workshop's momentum into a more permanent working group on business and human rights. A working group was subsequently established, hosted by IGCN, and with the participation of Indonesian and international businesses, Oxfam and other civil society organisations. The working group has been meeting regularly since then to discuss ongoing initiatives and to share lessons learnt on the implementation of respect for human rights. Oxfam in Indonesia and IGCN are also collaborating with other partners in a multi-year EU-funded project to support the implementation of the UN Guiding Principles in Indonesia, including implementation of the UNGP Reporting Framework (discussed in Chapter 3.6).

Finally, for this project, Oxfam in Indonesia conducted a field visit to Asia Pulp and Paper's OKI mill in South Sumatra, to learn first-hand about the company's new stakeholder consultation and consent process, which resulted in the Indonesia case story, featured throughout the guidance and online at www.businessrespecthumanrights.org. ◀

MEXICO

The workshop in Mexico City took place on 7 and 8 October 2015. Over 60 participants from companies and civil society participated for nearly two full days. In addition to the local Global Network and Oxfam Mexico, the project partners worked closely with the leading CSO PODER in the design and delivery of the workshop. PODER is coordinating the CSO coalition involved in the development of a National Action Plan (NAP) on the UN Guiding Principles in Mexico, and was able to help ensure that the workshop took account of, and helped to support, the broader business and human rights discussion in Mexico.

As in Indonesia, the first day featured a senior leaders event, which included the Dutch Ambassador to Mexico. It also involved sessions exploring the relevance of the UN Guiding Principles in the Mexican context, examples of company implementation and civil society perspectives on company approaches, and sector-specific small group discussions. The second day began with parallel sessions for business and

civil society participants. All participants then returned to plenary for a discussion of key topics, particularly the right to water and land-related impacts. The discussion included a focus on impacts on indigenous peoples, which was greatly strengthened by the participation of leaders from the local Yaqui tribe. The importance of stakeholder engagement was highlighted throughout the discussions, including through reflections on a number of case studies where such engagement had been absent or was poorly implemented.

Feedback from local partners indicated that the workshop helped raise further awareness of the importance of business and human rights and the UN Guiding Principles in Mexico, particularly with business. Importantly, it also enabled the development of new or strengthened relationships between stakeholders that should help support future discussions, particularly in relation to the NAP. ◀

SOUTH AFRICA

Based on discussions with local project partners (the Global Compact Network South Africa and Oxfam in South Africa), the project team concluded that, in order to ensure a good atmosphere for productive discussion, the business and civil society workshops should largely be held separately.

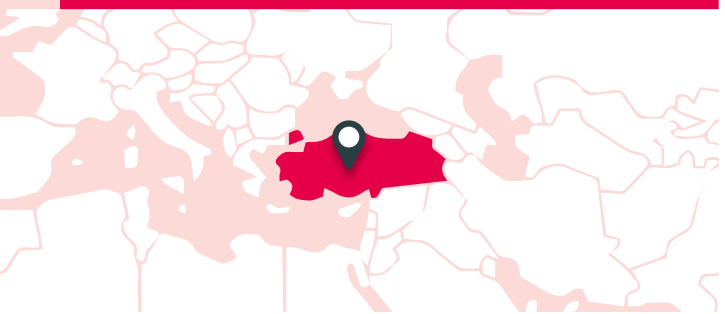
Owing to logistical demands, it was decided that the workshops would be conducted on two separate occasions. An initial 1.5-day workshop for business was led by Shift in Johannesburg in July 2015, hosted by the Global Compact Network South Africa. It was followed by an informal and productive half-day multi-stakeholder conversation involving a small number of civil society representatives (including Oxfam in South Africa). In October 2015, Oxfam built on the outcomes of this first workshop, and led a similar session with local civil society actors for 1.5 days. Again, there was an informal discussion of the outcomes with a small group of companies in a half-day round-table.

Approximately 40 participants from sectors including mining, finance, construction, energy, and food and beverage participated in the business workshop. Social expectations on companies to address inequalities stemming from the

apartheid era remain high in South Africa, and this was a key theme throughout the discussion. The second day focused on topics of particular relevance to the South African context: growing concern over the rights to water and sanitation; land-related impacts (including through the process of land reallocation following apartheid); and remediation and grievance mechanisms, which has special resonance given the ongoing litigation and other remedy processes over injustices involving companies dating back to the apartheid era. For the informal multi-stakeholder discussion, a smaller group of business participants was joined by a few CSO representatives for a facilitated exchange. Topics discussed included: the role of, and challenges for, business in the context of inadequate public services; how to conduct meaningful stakeholder engagement with workers and local communities; and how to engage the government in discussions on business and human rights. For a number of business participants, it was their first experience engaging in such a dialogue on business and human rights in South Africa. Participants agreed that it was important to continue the exchange, with the CSO-focused workshop in October providing the next opportunity.

The workshop with CSOs in October engaged over 15 participants from diverse organisations. The first day was spent in discussions and exercises to help build participants' understanding of core UN Guiding Principle concepts, and whether and how they can help support the objectives of CSOs. The second day was partly spent preparing for the afternoon discussion with business representatives so as to ensure that a meaningful dialogue would take place. Many CSOs in the room were active in and around mining areas where human rights impacts are of great concern. For some, it was also the first time they had been in a round-table setting with companies discussing these issues. ◀

TURKEY



The final project workshop took place in Istanbul on 26 and 27 January 2016, in partnership with Global Compact Network Turkey and Oxfam Turkey, and focused on the responsibility to respect human rights in supply chains. Over the course of two days, over 70 participants engaged in discussions on the

human rights impacts on workers in Turkish supply chains, how to address those challenges in line with the UN Guiding Principles, and how those in the room could work together to promote the UN Guiding Principles among companies and other relevant actors more widely.

The opening included a call for greater private sector and NGO collaboration and partnerships, which are seen as crucial to local civil society efforts to reduce poverty and inequality. For business, NGOs are seen as an important partner in meeting their human rights responsibilities. After an introduction to the UN Guiding Principles and discussion among participants, the workshop explored examples of company efforts to strengthen respect for human rights in supply chains and civil society perspectives on trends across industries in Turkey. The role of consumers, the need for effective government regulation and the need to focus on small and medium-sized enterprises (SMEs) were identified as important areas. Some participants also observed that some recent trends point in the direction of less respect for rights, such as an increase in the prevalence of child labour and the related trend of decreasing wages for workers. The second day of the workshop focused on innovative approaches to improve respect for human rights in the supply chain – those that go beyond social compliance auditing. DeFacto shared its experience as a relatively young company setting up such a programme, which is featured in the Turkey case story in this guidance and on the project website. The subsequent discussion broadened the experience to other industries, including food, cotton and other agricultural products.

The afternoon involved a closer look at the particular issue of women's rights. The Fair Wear Foundation (FWF) shared its experience in working with Turkish suppliers to improve their labour practices. One of the key challenges faced by women in apparel supply chains is that they are typically unregistered, meaning that they do not have access to social security and other social protection, and are more open to exploitation, such as being underpaid. While member companies are responsible for managing their suppliers, FWF offers them a variety of tools and support programmes to help them achieve the FWF minimum standards. In the concluding session of the workshop, participants discussed ways in which further work could promote respect for human rights in a cross-sectoral way. Participants felt it was timely to involve other organisations in the discussion, including various governmental bodies, in order to build on the examples already given and enhance progress on the ground. ◀

Appendix B

Examples of policy commitments

1. GENERAL STATEMENTS

POSSIBLE BUILDING BLOCK

Outline of the purpose of the policy and how it fits in the hierarchy

Can be a reference to human rights in the company's business principles or other overarching value statement; alternatively, a quote from the CEO on human rights

SAMPLE TEXT

Total [94]

" 'As stated in our Code of Conduct, respect for Human Rights standards is one of our three priority business principles', Patrick Pouyanne, Chief Executive Officer"

Nedbank [95]

"The Nedbank Group Human Rights Statement:

- provides guidance to business clusters and employees regarding their responsibilities relating to human rights;
- contributes to international best practice;
- is linked to the Nedbank vision to build Africa's most admired bank by our staff, clients, shareholders, regulators and communities; and
- demonstrates to our key stakeholders that we manage our human rights impact, risks and opportunities effectively."

Hitachi [96]

"Hitachi is aware that as a business enterprise it is a member of society and can contribute to creating an environment in which human rights are respected. Meeting the responsibility to respect human rights is key to operating as a responsible business, and is accepted to be a baseline expectation for all companies. It is an expression of Hitachi Group's Mission and Vision. This policy supplements the Hitachi Group Codes of Conduct and CSR policy."

POSSIBLE BUILDING BLOCK

A general statement that includes an explicit commitment to respect human rights.

Could also express support for human rights (for example, when the company signed on to the Global Compact)

SAMPLE TEXT

AngloGold Ashanti [97]

"Respect for human rights is an essential part of AngloGold Ashanti's vision and values. It is fundamental to our value of treating each other with dignity and respect.

"We support the vision of a world where everyone can enjoy their universal human rights, and where business plays its part by respecting all human rights.

"States are responsible for the protection, promotion and fulfilment of human rights and companies have a responsibility to respect human rights."

Microsoft [98]

"We recognize the important responsibility we have to respect human rights and we aim to bring the power of technology to bear to promote respect for human rights throughout the world."

POSSIBLE BUILDING BLOCK

A reference to international human rights standards, other applicable standards, and how they relate.

- Companies may want to reference additional relevant standards here as applicable to their particular industry
- Address in the policy how to deal with a conflict between national laws and the company's commitment to human rights

94. www.goo.gl/PJRjwQ
95. www.goo.gl/jR6N1j
96. www.goo.gl/Wx8Uxz
97. www.goo.gl/bRq7E7
98. www.goo.gl/1VAoI4

SAMPLE TEXT

Human rights standards

The Coca-Cola Company [99]

"The Coca-Cola Company's Human Rights Policy is guided by international human rights principles encompassed in the Universal Declaration of Human Rights, the International Labor Organization's Declaration on Fundamental Principles and Rights at Work, the United Nations Global Compact and the United Nations Guiding Principles on Business and Human Rights."

Conflicting standards

BASF [100]

"Compliance with the ILO's core labor standards is mandatory for us worldwide. This includes the prevention of child and forced labor, adherence to the principle of non-discrimination in the workplace, the right of freedom of association and assembly, and the right to collective bargaining. This applies provided national law does not explicitly prohibit adherence to the ILO core labor standards. In such cases, we develop innovative approaches to promote the adoption of the principles that form the foundation of these international standards."

Fujitsu [101]

"(…) We are committed to comply with local laws and regulations protecting human rights in our activities. Where local laws and regulations are not fully consistent with the principles of internationally recognized human rights, we will seek ways to advance those principles in a manner respectful of local requirements."

POSSIBLE BUILDING BLOCK

An explanation of how the company respects all human rights, but also gives focus to its human rights due diligence.

Prioritisation should focus on the most severe human rights impacts that a company may be involved with

SAMPLE TEXT

H&M [102]

"Due to the nature of our business we are focusing our efforts on human rights related to labour conditions. We also focus on women's rights and the right to water, as these are areas of specific importance to our industry. H&M does, however, recognise that other human rights may become greater priorities over time and we will regularly review our focus areas."

TOTAL [103]

"The [Total] Group is committed to respect internationally recognized Human Rights standards in the countries where we work. In doing so we focus on the following important issues:

- respect for Human Rights in the workplace for our employees and promotion of these principles in our supply chain, in particular by preventing child and forced labor, avoiding discrimination, observing workers rights and by respecting freedom of expression.
- addressing the potential impacts of our operations on local communities, in particular on the right to an adequate standard of living, such as the right to water and housing, and by providing access to remedy for unavoidable adverse impacts related to our operations.
- ensuring that the security of our people and facilities is managed in a responsible way and that the rights of neighboring communities are respected; the management of security risks, including the use of government security forces and private security providers, should be in line with applicable international standards related to the proportionate use of force."

99. www.goo.gl/8JyAr1
100. www.goo.gl/qYnaWm
101. www.goo.gl/5BaxCt
102. www.goo.gl/hPx2bs
103. www.goo.gl/PJRjwQ

2. SPECIFIC STATEMENTS

POSSIBLE BUILDING BLOCK

How the company ensures it respects the rights of its workforce.

In addition to the core labour standards, specific labour rights a company may want to highlight in relation to employees and contract workers based on the company's analysis of its salient issues include:

- Right to just and favourable conditions of work
- Right to a safe work environment
- Right to equality at work
- Rights to form and join trade unions and to collective bargaining

SAMPLE TEXT

H&M [104]

"H&M seeks to respect the human rights of all employees within the H&M Group as well as complying with all national laws. Our commitment is manifested in policies such as the Discrimination and Equality Policy and the Global Harassment Policy. To ensure remediation of potential abuses, we have a complaint procedure which is applicable to the whole organisation. Any employee with concerns regarding the human rights impacts of H&M's activities may raise these through the internal Complaint Procedure process."

Total [105]

"The Group pays special attention to employees' working conditions, respect for individuals and their privacy, a discrimination-free environment and health and safety, irrespective of the political and social context or any complexities encountered in the countries where we operate." [Followed by specific labour standards; see original source.]

POSSIBLE BUILDING BLOCK

How the company aims to ensure product safety, prevent misuse of its products, and respect customers' rights.

Here, non-labour rights related to product use could be addressed, such as:

- Right to health
- Children's rights
- Right to privacy

SAMPLE TEXT

H&M [106]

"H&M seeks to respect the human rights of our customers in all operating countries. Our main focus areas include: respecting the privacy of our customers e.g. by safe storing of any personal data, as described in our Privacy Policy; and aiming for that no customers are discriminated against, as outlined in our Discrimination and Equality Policy. In addition, we strive so that our marketing is done with respect for the views of our stakeholders by not aiming to communicate any specific ideal, but rather a range of styles, attitudes and ethnic backgrounds. This commitment is supported by our Advertising Policy. To make sure that communication, marketing and product design do not have a negative effect on children's rights, H&M has special guidelines for the advertising of children's concepts and pays particular attention to child safety throughout all stages of production."

POSSIBLE BUILDING BLOCK

How the company integrates human rights into its interactions with business partners.

Address, if possible, which rights are particularly prevalent in interaction with business partners:

- Health and safety may be an important issue with contractors
- Working hours may be an issue that comes up at suppliers

104. www.goo.gl/hPx2bs
105. www.goo.gl/H7RkKs
106. www.goo.gl/hPx2bs

SAMPLE TEXT

Walmart [107]

"The safety and wellbeing of workers across our supply chain is important to Walmart. Our Standards for Suppliers, along with our Standards for Suppliers Manual, make clear our fundamental expectations for suppliers and factories. All suppliers and their facilities – including subcontracting and packaging facilities – are expected to uphold these standards."

Unilever [108]

"In our business dealings we expect our partners to adhere to business principles consistent with our own. We prohibit discrimination, forced, trafficked and child labour and are committed to safe and healthy working conditions and the dignity of the individual. Also the right to freedom of association and collective bargaining and effective information and consultation procedures."

Rabobank [109]

"All clients are expected to respect and promote human rights as described in the United Nations Declaration of Human Rights in their business decisions, and are expected to use their influence with their suppliers to do the same. For unavoidable adverse impacts, they are expected to provide for and cooperate in remediation through legitimate processes."

POSSIBLE BUILDING BLOCK

How companies ensure respect for the human rights of other stakeholders whose human rights they may potentially impact.

Likely to be company and operations specific

SAMPLE TEXT

BHP Billiton[110]

"BHP Billiton commits to the International Council of Mining and Metals (ICMM) Position Statement on Indigenous Peoples and Mining for engaging with Indigenous peoples in relation to new operations or major capital projects that are located on lands traditionally owned by, or under customary use of Indigenous peoples, and are likely to have significant adverse impacts on Indigenous peoples(…)."

Asia Pulp and Paper (APP) [111]

"Where new plantations are proposed, APP will respect the rights of indigenous peoples and local communities, including recognition of customary land rights. APP has committed to independent [High Conservation Value] assessments as part of this commitment and will, in consultation with stakeholders, develop further measures to implement [free, prior and informed consent (FPIC)]. APP will consult with NGOs and other stakeholders to ensure that its protocols and procedures for FPIC and conflict resolution are in accordance with international best practice."

POSSIBLE BUILDING BLOCK

Other human rights commitments.

Here, the company can express support (in addition to respect) for human rights in line with its commitment to the Ten Principles of the UN Global Compact

SAMPLE TEXT

Unilever[112]

"We believe that our products bring many positive benefits, particularly in the areas of health and sanitation. As part of our ambition to Enhance Livelihoods, we state our commitment to Fairness in the Workplace, Opportunities for Women and Inclusive Business."

107. www.goo.gl/J92XJh
108. www.goo.gl/rhLshD
109. www.goo.gl/1Dx8lF
110. www.goo.gl/zwAbv4
111. www.goo.gl/FD2KuS
112. www.goo.gl/rhLshD

3. PROVISIONS FOR IMPLEMENTATION

POSSIBLE BUILDING BLOCK

Who is responsible for implementation and update of the policy

SAMPLE TEXT

Total [113]

"The Group created a Human Rights Coordination Committee managed by the Ethics Committee chair in cooperation with the Group's Human Rights lawyers. This information and decision-making forum meets three or four times a year. Corporate and Business segment representatives including security, communication, purchasing and sustainable development are part of this forum. This initiative also coordinates the activities undertaken internally and externally by the Group's Business units in this domain. External advisors such as the Danish Institute for Human Rights may attend some of these sessions in order to inform and advise the Committee on specific topics related to Human Rights."

Unilever [114]

"Our work in this area is overseen by the Unilever Chief Executive Officer, supported by the Unilever Leadership Executive including the Chief Supply Chain Officer, Chief Human Resources Officer, Chief Marketing and Communications Officer and the Chief Legal Officer and also the Chief Sustainability Officer and the Global Vice President for Social Impact. This ensures that every part of our business is clear about the responsibility to respect human rights. Board-level oversight is provided by the Corporate Responsibility Committee of Unilever PLC."

POSSIBLE BUILDING BLOCK

How the policy statement is embedded into company systems and processes

SAMPLE TEXT

Unilever [115]

"We recognise that we must take steps to identify and address any actual or potential adverse impacts with which we may be involved whether directly or indirectly through our own activities or our business relationships. We manage these risks by integrating the responses to our due diligence into our policies and internal systems, acting on the findings, tracking our actions, and communicating with our stakeholders about how we address impacts."

POSSIBLE BUILDING BLOCK

How the company engages in remediation where it has caused or contributed to an impact

SAMPLE TEXT

Hitachi [116]

"Where Hitachi identifies that it has caused or contributed to a negative human rights impact, the company will provide for or cooperate in legitimate processes to provide remediation."

113. www.goo.gl/PJRjwQ
114. www.goo.gl/rhLshD
115. www.goo.gl/rhLshD
116. www.goo.gl/Wx8Uxz

POSSIBLE BUILDING BLOCK

How the company conducts stakeholder engagement

SAMPLE TEXT

Unilever [117]

"We recognise the importance of dialogue with our employees, workers and external stakeholders who are or could potentially be affected by our actions. We pay particular attention to individuals or groups who may be at greater risk of negative human rights impacts due to their vulnerability or marginalisation and recognise that women and men may face different risks."

POSSIBLE BUILDING BLOCK

A reference to related policies that address human rights and who can be contacted for more information

SAMPLE TEXT

Nedbank [118]

"We will make available an external email reporting line called 'Talk to the ethics office' as a mechanism for any external parties to report any human rights concerns or comment on the statement. Emails can be sent to TalkToTheEthicsO@nedbank.co.za."

117. www.goo.gl/rhLshD
118. www.goo.gl/jR6N1j

NOTES

NOTES

Acknowledgments

The primary authors of this publication are David Vermijs and Rachel Davis of Shift with support from Julie Schindall of Shift, Eppy Boschma of the Global Compact Network Netherlands, and Sarah Zoen and Gine Zwart of Oxfam.

The project team would like to thank all of the individuals who participated in this collaborative initiative and whose experiences and ideas are reflected in this publication and on its website. In particular, they would like to thank: Satrio Anindito of the Indonesia Global Compact Network and Dini Widiastuti of Oxfam in Indonesia; Marco Pérez of the Global Compact Network Mexico and Roberto Stefani of Oxfam Mexico; Benjamin Cokelet and Fernanda Hopenhaym of PODER in Mexico; Ayabonga Cawe of Oxfam South Africa and Achieng Ojwang of the Global Compact Network South Africa; Meryem Aslan and Aysegul Ekmekci of Oxfam in Turkey and Derin Şenerdem of the Global Compact Network Turkey; and Willemijn Brouwer, former intern with the Global Compact Network Netherlands for this project.

The project partners would also like to thank the talented team that supported the production of this publication and its associated website:

Web and design: Driebit: Casper Glorius, Dorien Drees, Danny Evenwel, Carolien Stevens, Stephan van der Meer, Emine Tuzkapan, Krista Ramakers, Cheyenne Broerse

Publication design and layout: Studio WVDV: Willem van de Ven, Michiel van Heeswijk

Publication editing: Justine Kouppari, Nick Kouppari

Ministry of Foreign Affairs of the Netherlands

This work was supported by the Government of the Netherlands through the 2014 Human Rights Fund as part of its implementation of its National Action Plan on Business and Human Rights.

doing with for / **business respect human rights**

"Doing Business With Respect for Human Rights" is a comprehensive guide for companies of all sizes, industries and locations. It is aimed at company staff who want to know more about how human rights are relevant to business, what companies can reasonably be expected to do about them, and how to do it. Civil society organisations, industry- and multi-stakeholder initiatives, investors, and other organisations working directly with companies will also find the guide helpful to understand what is expected of companies when it comes to respecting people's human rights in their business's activities and relationships.

The guide equips readers with practical advice and real-life examples. It features guidance points, pitfalls to avoid and suggestions for small- and medium-sized enterprises. It also features leading examples of policies and practices from other companies, addresses current discussion topics like the Sustainable Development Goals, and speaks to questions like "What is the business case for respecting human rights? What can my company reasonably do about impacts deep in the value chain? How can my company conduct meaningful stakeholder engagement?"

This second edition includes the perspectives of both companies as well as civil society organisations, and draws on learning from country workshops in Indonesia, Mexico, South Africa and Turkey.

This publication, along with multimedia case stories from these countries, are also available at

www.businessrespecthumanrights.org

This publication is a joint publication of
Global Compact Network Netherlands, Oxfam and Shift.