

10 PRACTICAL TIPPS on human rights due diligence in core business operations



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Dear readers,

These days, German companies, both large and small, are increasingly involved in complex business relationships and have to deal with various human rights challenges, particularly in high risk markets. This is why frameworks like the German Government's National Action Plan (NAP) for Business and Human Rights always stress how important it is for all companies to undertake due diligence in respect of human rights.

From our advisory work and intensive dialogue with German companies, we know that companies from various sectors and of all sizes are busy checking their due diligence processes and making additional efforts to implement human rights requirements in practice.

It is clear, however, that companies are sometimes confronted with major challenges in the course of this process. There is a real need for guidance. This brochure contains **ten practical tips for integrating human rights due diligence** and shows you how to establish processes for human rights due diligence at your company and what you need to take into account.

You will learn, for example:

- How companies can integrate human rights due diligence into business processes
- How even small and medium-sized enterprises (SMEs) can suitably implement due diligence processes with the resources at their disposal
- How companies can perform a risk analysis in several stages

The German Government's Helpdesk on Business & Human Rights provides free and confidential advice on the requirements associated with human rights due diligence for German companies and business associations. Experienced advisors can help your company integrate the requirements into business processes. The Helpdesk on Business & Human Rights is located at the Agency for Business and Economic Development (AWE).

The offer is financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

We are happy to provide you with in-depth free and confidential advice on any questions you may have relating to human rights and how you can set up a robust environmental and social management system.

We look forward to hearing from you.

We also hope you enjoy reading this document
Your team at the Helpdesk on Business & Human Rights

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How companies can integrate human rights due diligence within their business

Human rights due diligence applies to a company's core activities. It is therefore a question of developing processes for recording and managing risks, i.e. adverse impacts, on human rights. Specifically, the idea is to analyse the kinds of situations where a company's core activities may prevent employees and any external parties affected from exercising their rights and what activities might be implemented to remedy, avoid or mitigate any adverse impacts. The main focus here is on establishing processes and clarifying areas of competence, individual responsibilities and reporting lines. The aim is to integrate human rights due diligence both horizontally and vertically within a company.

Horizontal integration: involvement of all relevant units

In large companies, the sustainability unit often serves as the central point of contact and coordination for the purposes of implementing human rights due diligence. The parts of a company whose decisions and actions may potentially or actually be associated with (adverse) human rights impacts would mainly, however, include other units such as human resources, procurement and sales, production, logistics, etc.

In order to ensure effective implementation of human rights due diligence, these divisions need to be involved in the implementation process, particularly in respect of risk analysis and risk management. Implementation of these measures should be transferred to the relevant units. In any case, it is advisable to coordinate the processes concerned, with the help, for example, of a committee consisting of representatives from all the relevant units.

Vertical integration: supervision and coordination

Supervision of the implementation of human rights due diligence should be a matter for company management, and members of the supervisory board should have supervisory duties accordingly. There should also be a clear hierarchy of accountability and specific obligations relating to accountability need to be defined.

Other important aspects of integrating human rights due diligence include institutionalising communication channels between the units concerned and company management, setting up information and data storage systems as well as training relevant employees.

Further information:

- *OECD Due Diligence Guidance for Responsible Business Conduct (pages 23–24 and 58–61)*
- *UN Guiding Principles on Business and Human Rights (Guiding Principle 19)*

How companies can set priorities for the implementation of human rights due diligence in their business operations

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Good prioritisation plays a decisive role in the implementation of human rights due diligence as companies often have to deal with various human rights risks across their different business areas and complex supply chain networks. However, companies often find it impossible in practice to address all the issues in one go.

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Following the initial risk analysis of the most important corporate activities and the value chains as well as the business relationships on which these depend, companies should concentrate accordingly on those areas associated with a high risk of particularly adverse impacts. Especially high risks are defined in terms of an adverse impact on human rights that is particularly severe on account of the extent of the impact on human rights, the actual or potential number of people affected or the limited opportunities for rectifying the situation.

Prioritisation may also be necessary when implementing preventive and remedial measures. In doing so, companies should concentrate initially on preventing and mitigating those impacts that could not be rectified if countermeasures were to be delayed.

According to UN Guiding Principles, severity can be established using the criteria of (1) *Severity* (how serious are the implications?), (2) *Scope* (how many people are affected?) and (3) *Irremediability* (can the damage be completely remedied?).

Further information

- *National Action Plan on Business and Human Rights (pages 8–10)*
- *UN Guiding Principles on Business and Human Rights (Guiding Principle 24)*
- *Glossary on NAP monitoring 2020*

TIPP 03

How even small and medium-sized enterprises (SMEs) can suitably implement due diligence processes with the resources at their disposal

The German Government expects all companies to integrate processes on human rights due diligence into their business activities. It also

recognises, however, that SMEs in particular often have fewer resources for such processes. So implementation can take a form appropriate to the size of a company, with SMEs able to adopt measures that are less comprehensive compared to those activities implemented by large companies. The suitability of measures is also determined, however, by the business activities and associated risks along both supply and value chains.

In practice, it may be advisable for SMEs to prioritise more when it comes to implementing human rights due diligence and concentrate initially on those areas associated with a particularly high risk of human rights violations (see → *tipp 2* and → *tipp 7*).

Another strategy for SMEs may be to place more emphasis on joint measures as part of sector-based initiatives or ones involving business associations. This can save costs, promote the sharing of knowledge and bring greater influence to bear on business partners in the supply chain.

SMEs may also find it makes sense to place greater reliance on robust pre-qualification processes for procurement purposes, in respect of human rights due diligence, including certifications. If suppliers comply with high standards from the outset, this can often save on costs associated with risk management, such as for individual qualification measures.

To help SMEs in particular to implement processes on human rights due diligence, the German Government has set up various support offers. The German Government's → *Helpdesk on Business & Human Rights* was established in 2017, mainly to support SMEs with little time or capacity. Advice is free, confidential and tailored to the needs of the individual company. The → *Global Compact Network Germany (DGCN)*, for example, offers training courses, information and opportunities for dialogue.

Further information:

- *National Action Plan on Business and Human Rights (pages 7 and 9)*
- *OECD Due Diligence Guidance for Responsible Business Conduct (pages 20 and 48)*
- *DGCN 'Fit for the NAP' training programme*

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How companies can involve all relevant stakeholders in the implementation of due diligence processes

According to the NAP, companies should factor in the different perspectives of the relevant stakeholders when implementing human rights due diligence (stakeholder engagement). Special attention should be paid to the rights of the respective employees as well as any external parties affected by corporate activities.

This kind of engagement serves various purposes:

- It allows a company to assess whether its estimation of human rights impacts coincides with that of those affected. So it makes sense to encourage involvement at an early stage, even during the risk analysis on site, as these impacts often only come to light through dialogue with those affected.
- The involvement of stakeholders can also play an important role in developing effective preventive and remedial measures, checking their effectiveness and building trust.

If adequate resources are not available for direct consultation with those (potentially) affected, it may be worth consulting credible, independent third parties with the relevant expertise, including human rights advocates and non-governmental organisations.

Further information:

- *Stakeholder Engagement in Human Rights Due Diligence. A Business Guide from German Institute for Human Rights and the Global Compact Network Germany twentyfifty Ltd.*
- *National Action Plan for Business and Human Rights (page 7)*
- *OHCHR, The Corporate Responsibility to Respect Human Rights. An Interpretative Guide (pages 43–44).*

How companies can identify adverse impacts on human rights

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When performing a risk analysis, companies should consider the human rights impacts that they (1) *cause*, to which they (2) *contribute* and with which they are (3) *indirectly linked*. It is not always easy to make a distinction between these different casual relationships. This is important, however, as it influences how companies should react to the impacts in question.

Causing human rights impacts:

Generally speaking, a company *causes* an adverse human rights impact if its own activities alone are sufficient to undo the impact. This applies, for example, if the company's own HR policy discriminates against women. In such cases, the company should cease the activities that are causing the adverse impact.

Contributing to adverse human rights impacts:

A company *contributes* to an adverse human rights impact if its own activities produce such an impact in conjunction with the activities of third parties or if its activities cause, encourage or enable third parties to cause the impact. As regards breaches of employment law along the supply chain, this would

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be the case, for example, if a purchaser sets tight deadlines for the delivery of a product and limits the scope for subcontracting in the knowledge that the deadline is not really achievable. In such cases, companies should cease contributing to the adverse human rights impact and also use their influence on the third parties involved with a view to mitigating any residual impacts. For example, companies should avoid changing orders at short notice. It may also make sense to foster longer-term supplier relationships in order to help suppliers plan with more confidence.

Indirect linkage with adverse human rights impacts:

A company is *indirectly* linked with an adverse impact on human rights if – while not actually contributing to this impact by its own actions – it is in a relationship with the culprit through its activities, products or services. This applies, for example, if a company processes cobalt from a foundry that sources this from a mine associated with child labour. Here too, the company should use any opportunity to bring its influence to bear on the culprit with a view to avoiding or mitigating the adverse impact on human rights. For example, the company could seek, in conjunction with the supplier, to improve the human rights situation on the ground and give the mine workers or farmers better working conditions on site. The company should also assume responsibility by remedying those situations where cases of human rights violations are discovered along its own supply chains.

Further information:

- *National Action Plan for Business and Human Rights (page 8)*
- *OECD Due Diligence Guidance for Responsible Business Conduct (page 73)*
- *OHCHR, The Corporate Responsibility to Respect Human Rights. An Interpretative Guide (pages 46–50)*
- *OHCHR. Frequently Asked Questions about the United Nations Guiding Principles on Business and Human Rights (page 31)*

→ *UN Guiding Principles on Business and Human Rights*
(Guiding Principle 18 & 19)

The five core elements of human rights due diligence at companies

You will find information on the individual core elements and a number of practical tips below. Additional information is available, for example, on the → *German Government's official website*, from the → *German Global Compact Network* and also from the → *Helpdesk on Business & Human Rights*.

How companies can express a commitment to respecting human rights with a human rights policy statement (NAP Core element 1)

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A human rights policy statement in line with the NAP would represent, first and foremost, a commitment to respecting human rights – through which a company can express how it is meeting its human rights responsibilities.

It should be issued by company management and cover the human rights issues of particular relevance to the company, making due reference to international human rights standards. The statement of principles should also, however, describe the procedures the company uses to meet its responsibilities. Having said this, the statement is not the place for detailed descriptions of operational measures.

Apart from serving as a public commitment to respecting human rights, the policy statement is also an important tool for integrating human rights due diligence within the company. For the human rights policy statement to be effective, it needs to define clear responsibilities for the implementation of human rights due diligence at the company. Particularly for large companies, it may make sense (starting from policy statement) to define internal guidelines for the relevant subunits that set out – in operational and workable terms – what is required of them by way of company practice.

Further information:

- *National Action Plan on Business and Human Rights (page 8)*
- *OHCHR, The Corporate Responsibility to Respect Human Rights. An Interpretative Guide (pages 27 and 29)*

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How companies can perform a risk analysis in several stages (NAP Core element 2)

It makes sense to adopt a three-stage procedure for risk analysis purposes. The *first stage* involves the identification of potential and actual risks. The establishment of any potential risks is really just an initial approximation. The information thus obtained is combined with company-specific information to indicate the actual risks. The *second stage* involves the assessment of risks identified thus far. By way of guidance, the NAP provides details of international agreements and human rights standards for this. As there is no set blueprint for such a risk analysis, however, its results will depend on conditions specific to the company concerned. Finally, the *third stage* should involve an in-depth risk analysis for particularly high risks. The detailed information thus obtained is then available in turn for the next risk cycle, making it easier to establish the impacts on human rights.

To start with, it is essential to develop a basic understanding of risk. As all stages build upon the ones before, it is important in the first stage of risk identification to build a broad base of information. This part can often, therefore, be quite time-consuming.

Identifying potential risks:

- This stage is intended as a general approximation and aims to obtain information that ought to provide an overview of *potentially* adverse impacts on human rights.
- An initial analysis should be based on a company's business sectors, products and sites. A general overview of the company's most important activities, sectors and products can serve as the starting point, such as the value chain for a key product and the countries to which it extends. With the help of international agreements, these activities can be assigned to such risk areas as *occupational safety, freedom of association or working hours*.
- Other company-specific factors such as *political framework conditions* at the respective sites and impacts for *vulnerable groups* should also be considered. A stakeholder analysis – setting out all stakeholder groups associated with the company along with their interests and expectations – may be helpful here.
- For an initial overview of general potential risks associated with common products and for all countries around the world, we recommend the → *CSR risk check*. This short online tool allows you to set filters based on raw materials, products and services and/or country of origin and provides you with a thorough risk analysis.

Identifying actual risks:

- Once a rough approximation of potential risks has been performed, it is possible to take a closer look. This should involve a structured and systematic approach to contextualising the adverse impacts on human

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rights along the individual parts of the value chain. The NAP recommends establishing connections with your value chains in accordance with the following criteria: (1) *direct causation* (group, subsidiaries, core business) (2) *contribution made* (contractual business partners) (3) *indirect linkage* (no contracts involved).

- To make a clear distinction between actual and potential risks, you should check, where applicable, the extent to which any potential risks apply to your value chains, products and sites. You can do this, for example, by conducting a review of suppliers. Pointers contained in the strategies or codes of conduct of the suppliers themselves may also provide further information.
- You may also want to refer back to previous analyses by your company to help you identify actual human rights risks. Analyses already performed, in connection with things like ISO certification (e.g. in the ‘Context of the organization’ section for ISO 9001 and 14001), may contain important information.

Second stage of risk analysis: assessment

This is where risks already identified should be assessed. The benchmark for assessment is the adverse impacts that a company may have on human rights, as opposed to any adverse impacts for the company. Essentially, the UN Guiding Principles set out three criteria to be used for assessing the *severity of impacts*:

- *What is the extent of the impact?* The extent relates to how serious the adverse impacts are for those affected.
- *What is the scope of the impact?* The scope relates to the number of persons (potentially) affected.
- *What opportunity is there to remedy the impact?* Remedy relates to whether measures can be taken to reverse the impact.

The choice of risk assessment methods is completely open. For example, this kind of risk assessment may rely on objective criteria such as the goals of an internal sustainability/CSR or risk strategy.

- Common examples of these methods include a heat map, damage probability matrix or materiality analysis.
- Suitable risk assessment methods may also include holding discussions at the company itself, at subsidiaries, at the group head office or with business partners, as well as involving external experts.
- The notion of proportionality, from the company's perspective, should always be considered too with regard to any risk mitigation measures.
- Attention should also be paid to findings from audit reports (corrective action plans, non-conformities).
- The severity of the impacts will largely determine whether a risk is assessed as low, medium or high. The results from the stakeholder analysis may also be considered here.

Third stage: in-depth risk analysis

The next stage, building on the first two stages of the risk analysis, is to check whether an in-depth risk analysis is required. This is particularly necessary if risks are deemed to be especially high.

So it is a case of looking at the established problem areas and prioritising them. The following measures should form part of an in-depth check:

- Dialogue on site with those (potentially) affected
- Involving experts on human rights from inside and outside the company
- Training for staff and suppliers

This third part of the risk analysis may already, in other words, be part of a catalogue of measures – as measures can also constitute elements (dialogue on site, involvement of external experts). So it is worth integrating the complete risk analysis into an existing PDCA (Plan, Do, Check, Act) cycle, in cases where there is one. This kind of cycle is used within most certified management systems (e.g. SA8000, ISO 9001, 14001). This way, measures can follow the risk analysis as the next logical stage.

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As the international market environment is constantly changing, e.g. in the form of statutory requirements, it is recommended to perform a regular risk analysis. The findings from previous cycles should always be taken into account for the purposes of the current cycle too. This will apply in different ways to different companies, e.g. in the case of new business sectors or product groups. As there is no defined standard for the due diligence process, it is recommended to integrate it into an existing cyclical process.

The in-depth risk analysis already features individual measures designed to procure additional information. The findings from the first risk cycle then feed into the second risk cycle. This way, the risk analysis works like a continuous improvement process or management system so that regular improvements can (ideally) be achieved.

Further information:

- *UN Guiding Principles on Business and Human Rights (Guiding Principle 14 and 24)*
- *Guide on Assessing Human Rights Risks and Impacts by the Global Compact Network Germany, German Institute for Human Rights and twentyfifty Ltd.*
- *OECD Due Diligence Guidance for Responsible Business Conduct (pages 25–28; 61–73)*
- *Information package on risk analysis and measures from the Helpdesk on Business & Human Rights*
- *CSR risk check*
- *Human Rights Impact Assessment*

What opportunities are there for companies to influence the implementation of measures (NAP Core element 3)

Based on the risk analysis, your company should develop measures and integrate them into its business activity with a view to avoiding and mitigating any potential and actual human rights impacts.

If your company is causing human rights impacts directly:

If your company is causing these impacts or contributing to them directly, the activities in question should be discontinued or modified. This may include, for example, making adjustments in terms of occupational safety, environmental management or recruitment procedures.

If your company is associated with adverse human rights impacts:

If your company is associated with adverse human rights impacts involving, for example, its supply chain, you should make use of the opportunities you have to influence the culprit with a view to avoiding and mitigating these impacts.

- This may include, for example, engaging in dialogue with the culprits, helping them implement due diligence measures, integrating related expectations into business contracts or also linking incentives to such measures in the form of, say, long-term contracts or a widening of the business relationship. Other examples include providing training or targeted support to suppliers by installing filter systems or introducing training measures. Find out about the assistance and funding opportunities offered by the German Government via the implementing organisations DEG and GIZ.
- Dialogue with the local authorities can also be effective here.

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- In addition, your business should try to increase the opportunities it has to bring its influence to bear on the culprit. You can do this, for example, by seeking to cooperate with other companies that have a business relationship with the culprit, making sure to abide by any provisions under competition law. Sector initiatives are another important instrument in this respect. Ending the business relationship may be appropriate as a last resort – for example, if all attempts at cooperation fail, there is no prospect of things changing or the human rights impacts in question are severe and the culprit fails to take any immediate countermeasures.
- When ending the business relationship, however, it is important to consider any potentially adverse impacts of this decision, such as on employees.

If your company is indirectly linked with adverse human rights impacts:

If your company is indirectly linked with human rights impacts via upstream suppliers, you should check what opportunities there are to bring influence (leverage) to bear in order to improve the situation for those affected. For example, you can try to encourage your suppliers to use their influence further down the supply chain.

Further information:

- *National Action Plan on Business and Human Rights (page 8)*
- *OECD Due Diligence Guidance for Responsible Business Conduct (pages 77 ff and 82 ff)*
- *Funding programmes for foreign projects and investments*
- *DEG financing for projects in developing and emerging countries*
- *‘econchain – German business initiative for sustainable value chains’, Econsense/Systain supplier training supported by DEG*

How companies can report with transparency (NAP Core element 4)

The NAP does not expect all companies to report publicly on the implementation of human rights due diligence. Instead, all companies are merely expected to provide information to demonstrate that they recognise the actual and potential impacts of their actions on human rights and are countering these in a suitable manner. This information may be communicated externally where applicable.

Only companies whose business activity is associated with a particularly high risk of adverse impacts are to report publicly on a regular basis. Both existing reporting formats and separate human-rights-specific formats can be used for this purpose.

The form of reporting should be selected in line with its purpose.

- If the purpose, for example, is to inform those potentially affected of preventive measures taken by the company, reporting may be restricted to this group and should take account of possible social and linguistic barriers to communication. Face-to-face meetings with the group affected may be the most suitable form of communication in such cases.
- If the purpose, however, is to inform those interested among the general public of specific risk management measures or the company's general risk management system, a more suitable form of communication may be to provide information via the website or formal reporting formats.

Further information:

- *National Action Plan on Business and Human Rights (page 9)*
- *OHCHR, The Corporate Responsibility to Respect Human Rights. An Interpretative Guide (page 60)*
- *Brochure of the German Sustainability Code and the Helpdesk on Business & Human Rights 'National Action Plan on Business and Human Rights in the German Sustainability Code. Help for Companies'*

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How companies can establish a functioning grievance mechanism for those affected (Core element 5)

According to the NAP, companies should either set up grievance mechanisms themselves or look to become actively involved in external procedures. These include, for example, sector-wide grievance mechanisms at the level of associations or as part of multistakeholder partnerships.

The design of grievance mechanisms will depend on a company's risk profile in respect of human rights.

- As part of their risk analysis, companies should identify which groups of people are affected by what kind of human rights impacts and what the company's relationship to these impacts is.
- From this, it is possible to evaluate whether the company's existing internal and external grievance mechanisms cover these groups of people, whether they should be adapted or whether new procedures need to be developed.
- Generally speaking, grievance mechanisms should correspond to certain effectiveness criteria defined in the UN Guiding Principles, which were also picked up on in the NAP. These documents stipulate that grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent and legally compliant and serve as a starting point for

continuous learning. They should also build on exchange and dialogue with those affected:

Legitimacy: the parties to a procedure should not be able to intervene in its fair conduct.

Accessibility: the grievance mechanism should be known to those affected and offer support to help them overcome any barriers to access. These include, for example, language and literacy skills (reading and writing), possible costs, the location for the procedure or even fear of reprisals.

Predictability: the stages of a procedure and any results should be communicated publicly. The envisaged duration of the respective stages of a procedure should be respected.

Equitability: the parties should have fair access to information, advice and expert knowledge.

Transparency: the parties to a grievance procedure should be continuously informed about its progress.

Legal compliance: the results of a procedure should be consistent with internationally recognised human rights.

A source of continuous learning: the mechanism should undergo continuous improvement based on experiences from grievance procedures. The findings from procedures should be used to modify any harmful practices and prevent any further adverse human rights impacts.

Stakeholder engagement and dialogue: a company's own grievance mechanisms should be based on exchange and dialogue. Their potential users should be consulted regarding their design and effectiveness.

Further information:

- *National Action Plan on Business and Human Rights (page 9)*
- *OHCHR, The Corporate Responsibility to Respect Human Rights. An Interpretative Guide (page 60)*
- *Federal Ministry of Labour and Social Affairs, background paper on the 2nd cross-sector NAP special event on ‘Developing Corporate and Sector-wide Complaint Mechanisms’ (page 4)*
- *UN Guiding Principles on Business and Human Rights (Guiding Principle 31)*
- *Global Compact Network Germany guide Worth Listening*
- *Helpdesk on Business & Human Rights, information package on complaint mechanisms*



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