

HOW TO DO BUSINESS WITH RESPECT FOR HUMAN RIGHTS



**A GUIDANCE TOOL
FOR COMPANIES**



Business & Human Rights Initiative
Global Compact Network
Netherlands

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Further information

The website of Global Compact Network Netherlands, where a PDF version of this document is available, can be found at: www.gcnetherlands.nl. Its secretariat can be reached through: klamer@vno-ncw.nl.

All materials related to the mandate of the Special Representative can be found at: www.business-humanrights.org/SpecialRepPortal/Home and suggestions can be submitted to his online forum: www.srsgconsultation.org.

Disclaimer

The information in this publication builds on the aggregate learning that has been acquired during the Business & Human Rights Initiative of the Global Compact Network Netherlands and cannot be attributed to any of the participating companies individually nor can be construed as legally binding best practices. In addition, the guidance contained in this publication reflects the result of this collective learning process and intend to provide a generic guidance framework for use by businesses in a wide range of industries. As such, this publication cannot be construed as a representation or warranty by any of the participating companies or by the Global Compact Network Netherlands regarding accuracy, completeness or suitability for use by any individual company. Any company, including any of the participating companies, intending to make use of this guidance framework is herewith advised to carefully assess whether the guidance points are applicable and suitable for its own purposes also taking into account its corporate structure. The participating companies and the Global Compact Network Netherlands cannot accept any liability therefore.

EXECUTIVE SUMMARY

Society is increasingly concerned about how business activities have impacts on human rights. Company stakeholders, ranging from employees and customers to investors and governments, expect and demand that companies integrate human rights in their business practices. In an effort to respond to these calls, companies have committed themselves to voluntary initiatives such as the United Nations Global Compact and by referring to human rights in their codes of business principles.

Yet for many companies it remains a challenge to embed human rights in their day-to-day operations. In some of the places they do business, the rule of law is non-existent, not enforced or in conflict with international human rights. As a result, merely respecting local law may not always be a sustainable approach. Until recently, no common understanding or standard existed by which companies could understand their responsibilities in such contexts.

However, in June 2008, the United Nations made an important contribution to the business and human rights debate. It unanimously endorsed the framework Protect, Respect and Remedy, proposed by the Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie. It consists of three pillars:

1. **The state duty to protect** against human rights abuses, including those by business;
2. **The corporate responsibility to respect** human rights; and
3. **The need for better access to remedy** when corporate-related abuses have occurred.

The framework has received wide uptake by governments, business, civil society and others. It represents the first formal affirmation of the responsibilities of business with respect to human rights by the United Nations. Companies are well advised to pay close attention to the framework and its evolution leading up to Ruggie's final report in 2011 and the years following.

Companies have a responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others

Ten companies of the Global Compact Network Netherlands have joined together in a Business & Human Rights Initiative to consider the implications of the framework.¹ They received an individual assessment; organized and participated in workshops and seminars; and now share the lessons learned through this publication. Overall, the main finding of the Initiative is that in many ways business is already implicitly and explicitly addressing human rights (see table below).

Human Rights is Closer to Home than Many Companies Think

Company Function	Examples of Business Relevant Question	Human Right(s) Affected*
Human Resources	Are our employees always promoted solely based on their competences so that we select the best people for the job?	<ul style="list-style-type: none"> • Right to equality (1) • Freedom from discrimination (2)
Health and Safety	Do all of our workplaces have an environment that is not detrimental to the health of our employees?	<ul style="list-style-type: none"> • Right to just and favourable work (23)
Suppliers and contractors	Do our suppliers subscribe and adhere to internationally proclaimed labor standards (eg. child labor, forced labor, working hours)?	<ul style="list-style-type: none"> • Right to join a trade union (23) • Freedom from slavery (4)
Product Safety	Are any of our products potentially detrimental to the health of our customers?	<ul style="list-style-type: none"> • Right to Health (25)
Employee Benefits	Do our pension funds refrain from investing in companies involved in human rights abuses, such as weapons manufacturers (eg. cluster bombs)?	<ul style="list-style-type: none"> • Right to social security (22) • Rights to an adequate standard of living (25)

* The numbers in brackets refer to the relevant articles in the Universal Declaration of Human Rights (See pages 16-17).

According to Ruggie, the appropriate corporate response to manage human rights risks is to do human rights due diligence. This is an ongoing process, whereby “companies become aware of, prevent, and mitigate adverse human rights impacts.”² The four core elements of human rights due diligence, as outlined in the 2008 report, are:

1. having a human rights policy,
2. assessing human rights impacts of company activities,
3. integrating those values and findings into corporate cultures and management systems, and
4. tracking as well as reporting performance.

Together with grievance mechanisms, these elements form the framework for the Business & Human Rights Initiative and this report. The following guidance points to implement each of these elements have been developed in the course of the Initiative.

¹ The ten companies are: AkzoNobel, Essent, Fortis Bank Nederland, KLM, Philips, Rabobank, Randstad, Shell, TNT, and Unilever

² Ruggie (2008), para. 56.

HUMAN RIGHTS DUE DILIGENCE: CORE ELEMENTS AND GUIDANCE POINTS

3.1 Human Rights Policy *“Setting the Tone”*

- 1: Involve senior management and seek approval
- 2: Identify and evaluate existing commitments and policies
- 3: Consider carrying out a human rights risk mapping
- 4: Involve internal and external stakeholders in the process
- 5: Develop statements of policy on human rights



3.2 Assessing Impacts *“From Reactive to Proactive”*

- 6: Understand impacts on human rights
- 7: Distinguish various processes of “assessing impacts”
- 8: Conduct a human rights risk mapping
- 9: Involve the existing risk management function
- 10: Identify the risks to human rights
- 11: Prioritize actions to mitigate the risks
- 12: Feed the assessment results into business operations



3.3 Integration *“Walking the Talk”*

- 13: Assign responsibility for human rights
- 14: Organize leadership from the top
- 15: Include human rights in recruitment and hiring
- 16: Make human rights an integral part of company culture
- 17: Train key managers and employees
- 18: Develop incentives and disincentives
- 19: Develop capacity to respond to dilemmas and unforeseen circumstances



3.4 Tracking Performance *“Knowing and Showing”*

- 20: Get started with tracking and reporting performance
- 21: Develop company-specific key performance indicators
- 22: Consider different types of indicators
- 23: Track performance of suppliers and other relationships
- 24: Verify performance using various instruments
- 25: Consider how to report on performance
- 26: Consider updating performance and due diligence



3.5 Grievance Mechanism *“Early Warning, Effective Solutions”*

- 27: Take full advantage of grievance mechanisms
- 28: Make a gap analysis of existing grievance mechanisms
- 29: Bring internal mechanisms in line with the Ruggie principles
- 30: Consider how to contribute to mechanisms for external stakeholders
- 31: Integrate grievance mechanism in stakeholder management
- 32: Improve effectiveness of grievance mechanisms



FIVE KEY QUESTIONS ON HUMAN RIGHTS AND BUSINESS

Besides sharing guidance points and learnings, the publication aims to be a background document for companies by elaborating some of the main topics in the discussion on business and human rights. This executive summary concludes with summarized answers to five of the main questions.

1. What are human rights?

Human rights are basic standards aimed at securing dignity and equality for all. They are universal, indivisible and inalienable. Human rights are written down in international agreements. The most well-known is the *Universal Declaration of Human Rights* (see page 16 for an overview of all 30 rights in the UDHR). While human rights treaties do not directly address businesses, the UDHR states that “every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms.”

2. How are human rights relevant for business?

Companies can have impacts—both positive and negative—on a wide range of human rights. For that reason, human rights are increasingly of concern for investors, NGOs, consumers, governments, and companies themselves. In the daily reality of doing business, companies encounter human rights challenges in many different ways. However, they may not always recognize them explicitly as human rights issues. Ruggie has challenged companies to demonstrate that they in fact respect human rights.

3. What is the business case for human rights?

Respecting human rights is the right thing to do—it is in line with core business values such as integrity, respect for people, and equal opportunity. In addition, human rights due diligence is good risk management: it helps protect business value by maintaining reputation, avoiding strikes, boycotts and protest, and prevents disputes from becoming costly law suits or damaging public campaigns. Finally, human rights increasingly helps raising the bottom line as it assists companies in understanding different individuals’ needs and makes a company more attractive to investors and prospective employees.

4. What are business' responsibilities?

By adopting the *Protect, Respect and Remedy* framework, the UN Human Rights Council has affirmed that a company's minimum responsibility is to respect all human rights. This entails that companies should take into account the potential negative effects on people and prevent and mitigate them through human rights due diligence, including where it concerns impacts through a company's relationships (eg. suppliers, contractors, governments). In short, "respect" is the intended result, and human rights due diligence is the process by which to achieve and demonstrate the result.

5. How is human rights due diligence different from other business processes?

Since many policies already address human rights issues (see table on previous page), human rights due diligence is not all that different from existing processes such as health and safety, and diversity and inclusion. For most companies, human rights due diligence does not mean a complete overhaul of systems. Nevertheless, some core characteristics include: human rights cannot be discounted or off-set, they are a minimum standard that companies should respect. Also, because human rights concern affected individuals and communities, managing human rights risks needs to involve meaningful engagement and dialogue with them. Finally, a measure of transparency and accessibility to stakeholders will be required, because one main purpose of human rights due diligence is enabling companies to demonstrate that they respect rights. In sum:

"Naming and shaming is a response by external stakeholders to the failure of companies to respect human rights. Knowing and showing is the internalization of that respect by companies themselves through human rights due diligence."—Special Representative Ruggie³

At what levels in our policy is action needed?

³ Ruggie (2010b), para. 80.

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Abbreviation	Description
ADR	Alternative Dispute Resolution
ATS	Alien Tort Statute
B&HRI	Business & Human Rights Initiative
CSR	Corporate Social Responsibility
EDR	Early Dispute Resolution
GC	Global Compact
GCNL	Global Compact Network Netherlands
GRI	Global Reporting Initiative
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
JV	Joint Venture
KPI	Key Performance Indicator
NCP	National Contact Point (of the OECD)
OECD	Organisation for Economic Co-operation and Development
SME	Small and Medium Enterprise
Sol	Spheres of Influence
SRSG	Special Representative of the UN Secretary-General for Business and Human Rights (Professor John Ruggie)
UDHR	Universal Declaration of Human Rights
UN	United Nations
VNO-NCW	Confederation of Netherlands Industry and Employers

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In addition, B&HRI would like to acknowledge the contributions of the following individuals and their affiliated organizations: Lucy Amis (Independent), Kathryn Dovey (Global Business Initiative on Human Rights), Amy Lehr (Foley Hoag), Olga Lenzen (Aim for Human Rights), Herman Mulder (Worldconnectors), Emily Sims (International Labour Organisation), Lene Wendland (Office of the High Commissioner for Human Rights), Ursula Wynhoven (UN Global Compact Office), and Luc Zandvliet (Triple R Alliance).

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The B&HRI thanks all individuals and organizations that contributed directly or indirectly to the development of this publication. Notwithstanding their generous contributions, this does not imply endorsement of this document or its contents.

⁴ For a timeline of events, see Appendix E

INTRODUCTION

HUMAN RIGHTS: AN EMERGING THEME FOR BUSINESS

By André van Heemstra

Chairman of the Global Compact Network Netherlands

Dear Reader,

In the current wave of globalization we observe that companies have a big impact on the well-being of people around the world. Human rights play a key role in understanding these impacts and provide guidance on how to build sustainable markets and societies. The *United Nations Special Representative of the Secretary-General for Business and Human Rights*, Professor John Ruggie, has provided important impetus to the debate with his framework *Protect, Respect and Remedy*. His concept of human rights due diligence is a practical and attainable approach to guide companies in respecting human rights in their business. This publication intends to assist companies in learning more about the framework and to provide guidance points for its implementation. I also hope the suggestions will serve as a contribution to the operationalisation of the framework in the remainder of the mandate of Professor Ruggie.

Over the past years, human rights have entered the discourse on Corporate Social Responsibility and Sustainability. It is a relatively new field, but one that is now increasingly accepted as a mainstream topic. With the unanimous endorsement of the report “Protect, Respect and Remedy: A Framework for Business and Human Rights” in June 2008, the Human Rights Council of the United Nations (UN) made a strong contribution to this development. For the first time in its history, the world body made a formal statement on the responsibilities of both states and companies with respect to the human rights impacts of business.

BUSINESS & HUMAN RIGHTS INITIATIVE

Earlier in the decade (in 2000), the United Nations had launched the Global Compact (GC) because of the growing recognition that the increasing scope of markets provides an ever greater opportunity for business to contribute to sustainable development. It is currently the largest global corporate citizenship initiative,⁵ and it is guided by ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.⁶ From the beginning, Dutch companies

⁵ According to the Global Compact website, there are over 7700 corporate and stakeholders participants from over 130 countries, and around 80 local networks. Particularly encouraging is that nearly half of the participants are from the global South. See: www.unglobalcompact.org/AboutTheGC/index.html (last viewed: 14 May 2010).

⁶ See Appendix A for the text of the Ten Principles of the Global Compact.

have been closely involved in the Global Compact and in 2007 Global Compact Network Netherlands (GCNL) was established.

The adoption of the *Protect, Respect and Remedy* framework moved ten companies of the Dutch network (AkzoNobel, Essent, Fortis Bank Nederland, KLM, Philips, Rabobank, Randstad, Shell, TNT, and Unilever) to work together in a “Business & Human Rights Initiative.” This decision was an expression of the Network’s strategy to encourage joint projects between signatories. It consisted of working on the human rights agendas of the ten participating companies against the Ruggie recommendations, as well as a series of workshops and brainstorming sessions on various parts of the framework.⁷

THIS GUIDANCE TOOL AND ITS INTENDED AUDIENCE

For the duration of the Business & Human Rights Initiative, we have had the privilege of working with David Vermijs. Following his studies at Harvard University, David worked with professor Ruggie for two years. He returned to the Netherlands and over the past one-and-a-half years has led this unique study on human rights. Whilst his feedback to each individual company remains proprietary, David has synthesized the findings into general guidance points for companies on how to build human rights into the business agenda.

This publication will prove useful to companies that have signed the Global Compact or subscribed to similar initiatives. Any company that is looking for ways to integrate consideration for human rights into its business operations may find that this document provides both a practical starting point and will help refine already existing human rights approaches.

Human rights due diligence is a dynamic process that should be tailored to a company and the context in which it operates. This clearly emerged during the Initiative, and it is also stressed by Ruggie. Therefore, companies are advised – and that includes those that have participated in the Initiative – to use these guidance points to explore what works best for them as they apply the *Protect, Respect and Remedy* framework to their operations.

SPECIAL WORDS OF GRATITUDE

I take this opportunity to commend David Vermijs for what I consider an outstanding job done. I thank him for the extraordinary effort he put in to turn this Initiative into both a useful consultation to participating companies and a very practical manual for any corporation that wishes to engage seriously with its human rights agenda.

Next, I wish to thank the ten companies for participating in this project,

⁷ See timeline of the Business & Human Rights Initiative in Appendix E.

for their continued support of GCNL and the leadership they showed by engaging in this Initiative. I am also grateful to VNO-NCW for hosting David Vermijs and for financing this publication. Special thanks to Huib Klamer, secretary to GCNL, for being an engaged and invaluable advisor to the project, and to Gemma Crijns for leading a number of very successful workshops and being a strong supporter. Particular appreciation also for Thurid Bahr for providing excellent research assistance for the better part of the Initiative and Andra Lopes Almeida for her valuable input in its final stages. Finally, I thank all those individuals and organizations named (page 9) and unnamed for their time, expertise and commitment to make the guidance points as robust and practical as possible.

GETTING STARTED WITH HUMAN RIGHTS

I wish to conclude this introduction with a word of encouragement to the reader. It is universally recognized that human rights is an important, but complex topic—not just for companies, but for anyone. Yet, we have found during the Business & Human Rights Initiative that human rights are closer to our business than we think, and that in the long term there are few, if any, inherent conflicts between business goals and human rights principles.

After reading this introduction, I suggest you go to page 16, where the 30 rights of the *Universal Declaration on Human Rights* are presented. Pick any five of the rights listed and brainstorm how your company's activities, including through its relationships with others, may affect—or be affected by—these rights. Think both of ways your company is contributing to the realization of these rights and how it may run some risk of having an adverse impact. Most likely you will come up with substantive answers for a number of rights and I hope you will feel inspired to continue the journey.

André van Heemstra

The Hague, June 2010

André van Heemstra is a former member of the Board of Unilever, as part of which he was responsible for Human Resources. He worked for the food, home care and personal products company for 36 years in various parts of the world – beyond his home country the Netherlands this included Kenya, Turkey, Germany and East Asia Pacific. In addition to his chairmanship of GCNL he sits on various boards, including the European Academy of Business in Society (EABIS) and the Netherlands Senior Experts Programme (PUM).

CHAPTER 1

HUMAN RIGHTS, BUSINESS, AND THE PROTECT, RESPECT AND REMEDY FRAMEWORK

1.1 WHAT ARE HUMAN RIGHTS?

Human rights are basic standards aimed at securing dignity and equality for all. They are universal standards that express the "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world."⁸

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Human rights are written down in international agreements. The most well-known is the *Universal Declaration of Human Rights* (UDHR), formally adopted in 1948. It forms the basis for many treaties and programs within the United Nations (UN), as well as national laws and regulations. The UDHR consist of 30 articles, the human rights contained therein are said to be:

- **Universal:** applicable to all human beings, everywhere;
- **Indivisible:** all rights are equally important; and
- **Inalienable:** the human rights of an individual can generally not be taken away.

Office of the High Commissioner for Human Rights of the United Nations: "Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination."⁹

OBLIGATIONS BY AND FOR STATES

While the notion or concept of human rights has for a long time existed in ethical theory, it formally entered the international arena with the adoption of the UDHR by all UN Member States in 1948. They were subsequently codified in international law through a number of formal treaties, most directly in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR), which were both adopted in 1966. Three types of obligations arise from the UDHR, the Covenants, and other human rights treaties for States:

- The obligation to **respect**, meaning "not to interfere with the exercise of a right;"
- The obligation to **protect** is "to ensure others do not interfere" with the rights of individuals; and
- The obligation to **fulfill** encompasses a duty "to promote rights, facilitate access to rights, and provide for those unable to provide for themselves."¹⁰

8 Preamble of the Universal Declaration of Human Rights.

9 www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

10 Amnesty International USA, "Demand Dignity," Chapter 3. Available at: www.amnestyusa.org (last viewed: 14 May 2010).

Through signing and ratifying the human rights treaties, states have agreed to be the primary duty bearers for human rights. States hold each other to account on these agreements through periodic reviews of their human rights performance. Where deemed necessary, states sometimes also criticize each other publicly.¹¹ The ultimate measure is sanctioning countries for their disregard for human rights. The body where most frequent discussions of human rights takes place is the UN Human Rights Council in Geneva, which meets at least three times a year. The Council is supported in its work by the High Commissioner for Human Rights and her secretariat.¹² In addition there are National Human Rights Institutions at country-level, and independent organizations such as *Amnesty International* and *Human Rights Watch* that have defined their purpose to safeguard and promote human rights.

Which of our policies already deal with human rights?

¹¹ For example, several countries issue public country reports critical of other countries. See, for example, the country reports by the United States (Appendix C).

¹² www.ohchr.org.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (ABBREVIATED)

"Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms:"

ARTICLE 1 **RIGHT TO EQUALITY**

ARTICLE 2 **FREEDOM FROM DISCRIMINATION**

ARTICLE 3 **RIGHT TO LIFE, LIBERTY AND PERSONAL SECURITY**

ARTICLE 4 **FREEDOM FROM SLAVERY**

ARTICLE 5 **FREEDOM FROM TORTURE AND DEGRADING TREATMENT**

ARTICLE 6 **RIGHT TO RECOGNITION AS A PERSON BEFORE
THE LAW**

ARTICLE 7 **RIGHT TO EQUALITY BEFORE THE LAW**

ARTICLE 8 **RIGHT TO REMEDY BY COMPETENT TRIBUNAL**

ARTICLE 9 **FREEDOM FROM ARBITRARY ARREST AND EXILE**

ARTICLE 10 **RIGHT TO A FAIR PUBLIC HEARING**

ARTICLE 11 **RIGHT TO BE CONSIDERED INNOCENT UNTIL
PROVEN GUILTY**

ARTICLE 12 **FREEDOM FROM INTERFERENCE WITH PRIVACY,
FAMILY, HOME AND CORRESPONDENCE**

ARTICLE 13 **RIGHT TO FREE MOVEMENT IN AND OUT OF THE
COUNTRY**

ARTICLE 14 **RIGHT TO ASYLUM FROM PERSECUTION IN
OTHER COUNTRIES**

-
- ARTICLE 15** RIGHT TO A NATIONALITY AND FREEDOM TO CHANGE IT
- ARTICLE 16** RIGHT TO MARRIAGE AND FAMILY
- ARTICLE 17** RIGHT TO OWN PROPERTY
- ARTICLE 18** FREEDOM OF BELIEF AND RELIGION
- ARTICLE 19** FREEDOM OF OPINION AND INFORMATION
- ARTICLE 20** RIGHT TO PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION
- ARTICLE 21** RIGHT TO PARTICIPATE IN GOVERNMENT AND IN FREE ELECTIONS
- ARTICLE 22** RIGHT TO SOCIAL SECURITY
- ARTICLE 23** RIGHT TO FAVORABLE WORK AND TO JOIN TRADE UNIONS
- ARTICLE 24** RIGHT TO REST AND LEISURE
- ARTICLE 25** RIGHT TO AN ADEQUATE STANDARD OF LIVING
- ARTICLE 26** RIGHT TO EDUCATION
- ARTICLE 27** RIGHT TO PARTICIPATE IN THE CULTURAL LIFE OF THE COMMUNITY
- ARTICLE 28** RIGHT TO A SOCIAL AND INTERNATIONAL ORDER IN WHICH HUMAN RIGHTS CAN BE REALIZED
- ARTICLE 29** COMMUNITY DUTIES ESSENTIAL TO FREE AND FULL DEVELOPMENT
- ARTICLE 30** FREEDOM FROM STATE AND PERSONAL INTERFERENCE IN THE ABOVE RIGHTS

HUMAN RIGHTS IN THE CONTEXT OF BUSINESS

While human rights treaties directly address governments and not businesses, the UDHR states in its Preamble that “every individual and every *organ of society* shall strive by teaching and education to promote respect for these rights and freedoms.”¹³ In recent years, many have stressed that companies are important “organs of society,” and have sought to clarify the role of business in relation to these human rights.

Human rights have entered the business agenda mainly through concepts and frameworks such as Sustainability, Corporate Social Responsibility (CSR) and Triple P (People, Planet, Profit). For the social component of these concepts and frameworks, the commonly used standards include: labor rights, employee engagement, and charitable contributions. For companies operating globally, human rights is increasingly a standard that companies are also expected to explicitly address, and against which they are measured in various investors indices and civil society reports. Human rights are increasingly used by companies and their stakeholders as the normative framework for social aspects of sustainability.

Human Rights Are Implicitly Embedded in Many Existing Business Practices

Company Function	Examples of Business Relevant Question	Human Right(s) Affected*
Human Resources	Are our employees always promoted solely based on their competencies so that we select the best people for the job?	<ul style="list-style-type: none"> • Right to equality (1) • Freedom from discrimination (2)
Health and Safety	Do all of our workplaces have an environment that is not detrimental to the health of our employees?	<ul style="list-style-type: none"> • Right to just and favourable work (23)
Suppliers and contractors	Do our suppliers subscribe and adhere to internationally proclaimed labor standards (eg. child labor, forced labor, working hours)?	<ul style="list-style-type: none"> • Right to join a trade union (23) • Freedom from slavery (4)
Product Safety	Are any of our products potentially detrimental to the health of our customers?	<ul style="list-style-type: none"> • Right to Health (25)
Employee Benefits	Do our pension funds refrain from investing in companies involved in human rights abuses, such as weapons' manufacturers (eg. cluster bombs)?	<ul style="list-style-type: none"> • Right to social security (22) • Rights to an adequate standard of living (25)

* The numbers in brackets refer to the relevant articles in the UDHR.

¹³ Emphasis added.

1.2 HISTORY OF THE BUSINESS AND HUMAN RIGHTS DEBATE

Throughout the history of the United Nations, the role of business has received various levels of attention. Under influence of a few high profile cases of alleged corporate misconduct in the 1980's and 1990's, renewed attention was found at the end of the 1990's and early 2000s.

THE DRAFT NORMS

In 1998, a subsidiary body of the then Human Rights Commission¹⁴ set out to draft norms for human rights and business. The proposals of the sub-commission were published in 2003 under the formal title of "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights."¹⁵ They soon became known as the "Draft Norms."

The Draft Norms led to intense debate among all sides. Human Rights advocacy groups were strongly in favor, while business was vehemently opposed. Academics and lawyers were critical as many of the proposals seemed to contrast with well-established principles of international law. In the end, the Human Rights Commission did not adopt the Draft Norms, though it did say that they had "useful elements."

SPECIAL REPRESENTATIVE RUGGIE APPOINTED BY KOFI ANNAN

After the heated debate that preceded the discussion on the Draft Norms, the Human Rights Commission felt there was a clear need to continue the discussion. It proposed to ask the UN Secretary-General to appoint a Special Representative to try to bring the parties back together and look into new approaches.¹⁶

Why Ruggie Has Chosen Not to Build His Mandate on the Draft Norms:¹⁷

While the adoption or rejection of any proposal in the UN is always the result of a political process, some of the reasons for their rejection included:

- They imposed **state-like obligations** directly on business without an adequate basis in international law, possibly impeaching on the sovereignty of countries;
- The Draft Norms **did not clearly differentiate** company obligations from state duties, which would invite strategic gaming between both;
- There were no specific **enforcement** provisions in the Draft Norms.

¹⁴ What is now called the Human Rights Council was until 2006 the Human Rights Commission.

¹⁵ UN Document: E/CN.4/Sub.2/2003/12 (2003). The text of the Draft Norms can be found at: www1.umn.edu/humanrts/links/NormsApril2003.html.

¹⁶ The 2005-2008 mandate is available from: www.business-humanrights.org/SpecialRepPortal/Home/Mandate.

¹⁷ Ruggie (2006), paras. 56-69.

In July 2005, then Secretary-General Kofi Annan appointed Harvard Professor John Ruggie as his “Special Representative of the UN Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises” for an initial two-year period. His Mandate was extended twice (in 2007 for one year and in 2008 for another three years) and is due to be concluded in June 2011. A Special Representative is appointed to investigate a particular issue, which in this case was business and human rights. He reports to the Human Rights Council annually.



United Nations Special Representative for Business and Human Rights,
Professor John Ruggie (UN Photo)

1.3 PROTECT, RESPECT AND REMEDY: A FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS

In his own words Ruggie conducted his mandate “evidence-based” and with “principled pragmatism.” Over the 2005–2008 period, he conducted at least fourteen stakeholder consultations, produced over a thousand pages of unique research, and requested and received many submissions by experts and interested parties.¹⁸ Building on this extensive work, Ruggie presented the final report of the first half of his mandate in June 2008 before the Human Rights Council.¹⁹

THREE-PILLAR FRAMEWORK

In his report, Ruggie made a singular recommendation to the Human Rights Council: to adopt a policy framework, as laid out in his report, consisting of three pillars:

1. the **state duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
2. the **corporate responsibility to respect** human rights, which means to act with due diligence to avoid infringing on the rights of others; and
3. Greater **access to effective remedy**, judicial and non-judicial, for victims.

The Human Rights Council unanimously adopted Ruggie’s report. This marked the first time in history that the United Nations had made a definitive statement about the role of business with respect to human rights. During 2008 nearly all parties involved in the debate (companies, business organizations, civil society, investors, and experts) also endorsed, supported, or welcomed the report and the progress that Ruggie had made. For example, the world’s largest business organizations, the International Chamber of Commerce (ICC), International Organization of Employers (IOE), and Business and Industry Advisory Committee to the OECD (BIAC), issued several statements in support of Ruggie’s work. VNO-NCW and ICC Netherlands (Dutch business associations) also adopted and published a largely favorable and supportive statement on the 2008 Report. Many non-profit organizations, have also issued favorable and constructive statements. Nearly all these organizations explicitly offered to engage positively in the second half of his mandate.²⁰

¹⁸ All the documents are available from the website of the Business & Human Rights Resource Center: www.business-humanrights.org/SpecialRepPortal/Home.

¹⁹ Ruggie (2008a).

²⁰ See for an overview of responses to the 2008 report: www.business-humanrights.org/SpecialRepPortal/Home/ReportstoUNHumanRightsCouncil/2008.

Spin-offs of the 2008 Ruggie report:

- New three-year mandate (2008-2011)²¹
- Revision of OECD Guidelines to include a human rights chapter based on the Framework in 2010²²
- Extensive reference to human rights due diligence in (draft) ISO 26000 standard on social responsibility²³
- Study in the Netherlands on parent-foreign subsidiary liability (Castermans report)²⁴
- EU study on liability of European companies for human rights abuse committed abroad (due summer 2010)
- White paper on CSR by Government of Norway²⁵
- Institute for Human Rights and Business' human rights due diligence state of play review²⁶
- Business & Human Rights Initiative of the Global Compact Network Netherlands²⁷

THE CHALLENGE DEFINED

It is important to understand what problem the framework is aiming to address. Over the past decades, the influence and reach of multinational companies have dramatically increased. At the same time, the capacities of some states to properly regulate and prevent possible adverse consequences that business activity may bring, has not kept up at equal pace. This means that in many societies individuals do not enjoy adequate protection if corporate activity leads to negative impacts, because the law and/or its enforcement are not adequate. This is particular prevalent in so-called weak governance zones (e.g. countries in conflict) where the government is unable or unwilling to properly perform its human rights duties, including to incentivize and regulate business in line with human rights principles. This unfilled space is what Ruggie calls “governance gaps.”

21 UN Human Rights Council resolution A/HRC/8/L.8 of June 2008 renewed the Special Representative's mandate until 2011. UN Human Rights Council (2008), “Resolution A/HRC/8/L.8.” Available from: ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf.

22 The upcoming revision will address the application of the Guidelines to human rights in the light of the *Protect, Respect and Remedy* framework. OECD (2010), “Terms of Reference for an Update of the OECD Guidelines for Multinational Enterprises.” Available from: www.oecd.org/dataoecd/61/41/45124171.pdf.

23 Human rights are recognized as a “social responsibility core subject.” ISO (2009), “Draft International Standard ISO/DIS 26000 Guidance on social responsibility,” Chapter 6.3. Available from: www.iso.org/sr.

24 Ministry of Economic Affairs of the Netherlands (2010), “Summary of study into the legal liability of Dutch parent companies for subsidiaries’ involvement in violations of fundamental, internationally recognised rights, by Professor A.G. Castermans and Dr. J.A. van der Weide.” (in English) Available from: 198.170.85.29/Castermans-van-der-Weide-liability-Dutch-parent-cos-28-Jan-2010.pdf.

25 Norwegian Ministry of Foreign Affairs (2009), Report No. 10 (2008–2009) to the Storting. “Corporate social responsibility in a global economy.” Available from: www.regjeringen.no/pages/2203320/PDFS/STM200820090010000EN_PDFS.pdf.

26 This report will be published on the website of the Institute for Human Rights and Business. Available from: www.institutehrb.org.

27 Global Compact Network Netherlands (2009), “The Business & Human Rights Initiative.” Available from: www.gcnetherlands.nl.

Ruggie on Governance Gaps: “The gaps between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences provide the permissive environment for wrongful acts by companies without adequate sanctioning or reparation. How to narrow and ultimately bridge such governance gaps in relation to human rights is the focus of my work.”²⁸

PILLAR 1: THE STATE DUTY TO PROTECT

In order to fill the gaps between the reach of economic activity and the potential negative consequences that may come with it, governments are generally best equipped to make the difficult balancing decisions required to reconcile different societal needs. Therefore, Ruggie addresses in his first pillar the role that the state has to play. Under international law, governments have committed themselves to protect their citizens against harm that may be imposed by others within their territory or jurisdiction, including by companies. The United Nations recommends states to fulfill this duty by prevention, investigation and punishment of abuse through regulation and adjudication.

Ruggie has questioned, “whether governments have got the balance right.”²⁹ He believes governments do not adequately account for human rights compared to other considerations such as commercial interests. For example, human rights are often kept apart in a narrowly confined and weak “institutional box” far away from other policy domains that shape business practices, including commercial and investment policy, securities regulation and corporate governance.

Ruggie has stated that this policy incoherence is neither in the interest of human rights, nor in the interest of business. The lesser human rights protection by governments, the more companies are exposed to reputational and other risks. Companies are nearly always better off when they can operate under a strong rule of law which creates a level-playing field and provides adequate protection of both commercial interests and the human rights of workers and other stakeholders of the company.

STATE DUTIES AND CORPORATE RESPONSIBILITIES

Ruggie has emphasized that the state duty to protect and the corporate responsibility to respect are differentiated yet complementary obligations. They are *differentiated* because even where one party does not adequately discharge its duty or responsibility, the other is still obliged to fulfill or

²⁸ Testimony of Ruggie before the Third Committee of the UN General Assembly (2008), “Promotion and protection of human rights: Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms” www.hks.harvard.edu/news-events/news/testimonies/john-ruggie-testimony-oct.

²⁹ Ruggie (2008a), para. 22.

meet its own. They are *complementary* because for full protection of human rights both states and companies need to fulfill their obligations under the Framework. In other words, even where governments do not provide adequate protection for human rights, companies still have to meet the corporate responsibility to respect human rights, and vice versa.

What States Can Do to Fulfill Their Duty to Protect Human Rights:³⁰

- Foster **corporate cultures** respectful of human rights, for example by encouraging or requiring reporting on human rights, redefining fiduciary duties to include consideration for human rights, and inclusion in corporate criminal accountability
- More **policy alignment** through better enforcement of human rights policies, and by fostering coherence between commercial departments and those entities responsible for human rights
- Guidance and support at the **international level** through sharing of best practices, inclusion of business in the periodic review and mutual assistance in capacity building
- Particular attention is warranted for **conflict zones** where some of the most egregious human rights abuses takes place; governments can provide information and advice to companies operating in such zones, and ultimately withdraw support altogether, if deemed necessary and effective.

PILLAR 2: THE CORPORATE RESPONSIBILITY TO RESPECT

The second principle of Ruggie's framework addresses the responsibilities of companies. The Human Rights Council endorsed Ruggie's observation that companies have a responsibility to respect human rights. "Respect" means not to infringe on rights of others. In simple terms, this standard implies that the activities undertaken by companies take into account the potential negative effects on people, including through a company's relationships, and take adequate measures to avoid them.

A GLOBAL SOCIAL NORM

During his three years of research, including visits to company operations in challenging areas, Ruggie observed that mere compliance with the law does not always guarantee smooth operations for companies. Moreover, in some places governments are altogether unable or unwilling to enforce the law that is in place.

While there is an ongoing debate of what exactly can be expected of companies in such situations, there is one standard that, according to Ruggie, has found near-universal acceptance: the responsibility to

³⁰ Ruggie (2008a).

respect human rights. It is recognized in soft law standard initiatives such as the “Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy” of the ILO and the “OECD Guidelines for Multinational Enterprises.” It is also affirmed by the world’s largest business associations³¹ and VNO-NCW, the Dutch Business Association.³² Companies themselves increasingly commit to respect for human rights both through the Global Compact, similar multi-stakeholder initiatives, and in their company policies.

HUMAN RIGHTS DUE DILIGENCE

With so many companies recognizing the responsibility to respect human rights, Ruggie has asked companies what systems they have in place to demonstrate their claim with any degree of certainty. He found that relatively few do. Therefore, he has proposed a process of human rights due diligence, “whereby companies become aware of and address the human rights harm they cause.”³³ The process will differ across sectors and sizes of companies, but according to Ruggie, it contains at least four elements:

- Statement of Policy,
- Assessing Impacts,
- Integration, and
- Tracking Performance.

Chapter 2 will elaborate on the corporate responsibility to respect and Chapter 3 will provide concrete guidance points for companies to do human rights due diligence.

PILLAR 3: ACCESS TO REMEDIES

Ruggie has noted that in today’s world there are still many corporate related human rights abuse that remain without remedy. Moreover, even where both states and companies fully discharge their corresponding obligations, events may not always go as planned and abuse may occur. Therefore, it is important that victims whose rights have been infringed upon, have access to mechanisms that adequately and effectively remedy the situation and provide compensations where appropriate.

JUDICIAL AND NON-JUDICIAL REMEDIES

Access to remedies includes both legal and non-legal remedies. The legal remedies, which are obviously the domain of the state, are often an appropriate avenue. However, some of the worst human rights abuse occur in places where the rule of law is absent or not enforced. Moreover, even

³¹ See page 21 and: www.reports-and-materials.org/Letter-IOE-ICC-BIAC-re-Ruggie-report-May-2008.pdf.

³² For the position by VNO-NCW, see: 98.170.85.29/Dutch-business-groups-comments-on-2008-Ruggie-report-9-Apr-2009.pdf.

³³ Ruggie (2010b), para. 87.

where court systems are fully functioning, legal procedures are often slow and resource intensive. Ruggie has therefore made non-judicial remedies an important component of his mandate and developed effectiveness criteria for non-judicial grievance mechanisms. Mechanisms can be provided by governments and by companies directly. There can also be jointly administrated mechanisms, such as between companies and unions (e.g. international framework agreements) and multi-stakeholder initiatives.

BENEFITS OF GRIEVANCE MECHANISMS FOR COMPANIES

From a business perspective, having an effective grievance mechanism serves multiple purposes. First, it sets things right when abuse has occurred. This is part of the responsibility to respect; additionally it is usually an important commitment arising from a company's business principles and whistleblower policies.

Second, grievance mechanisms should serve as an early warning system. By giving employees (and others, where appropriate) an option to raise concerns at an early stage, a grievance mechanism helps avoid conflicts from escalating possibly up until—very costly—court cases or other unexpected social or legal costs. As such, a grievance mechanism also helps companies with their immediate stakeholder engagement by providing an avenue to bring grievances to the attention of the company before the community feels compelled to take more drastic action.

A mechanism also helps to gather valuable information about what may be going on in a certain business unit or project. For example, when suddenly an unusual number of complaints are brought to the company's attention from a particular part of the business, it may be a strong indication that something is not right and that the business entity needs some particular attention. Without the grievance mechanism, such an issue would only be picked up later when nothing can be done about it anymore—or perhaps not at all.

Who is going to be affected?

Finally, an effective grievance mechanism—when designed along the Principles developed by Ruggie³⁴—signals to employees and other stakeholders that the company is serious about their interests. Thereby, it creates goodwill and a positive attitude with company stakeholders. This, in turn, may give the company the benefit of the doubt when an accident or other disaster strikes out of the company's control.

³⁴ See Chapter 3.5 on Grievance Mechanisms.

1.4 THE BUSINESS CASE FOR HUMAN RIGHTS

“Before concluding, let me address a question that may be on the minds of some of you: why bother? Doesn’t all this just add burdens on business?”³⁵

These are the words of John Ruggie, who raised the important question of why a business should pay attention to human rights beyond mere compliance with the law in its countries of operation. Three reasons:

1 PROTECTING COMPANY VALUES: RESPECTING HUMAN RIGHTS IS THE RIGHT THING TO DO

Companies increasingly recognize that they have a moral responsibility to respect human rights. Respecting the individuals and communities with which the company interacts is simply the right thing to do. Recognition of the responsibility to respect human rights can often be found in company value statements (e.g. business principles, code of conduct). These statements may state explicit respect for human rights and/or endorse values such as “integrity,” “honesty,” “decency,” “respect for people,” which are strikingly similar to the values embedded in the human rights framework, including “dignity,” “equality” and “respect.” Similarly, respect for human rights may be expressed by a company’s membership of a multi-stakeholder initiative with explicit reference to human rights standards. Thus, even companies that have no explicit mention of human rights in their policies, recognize indirectly that acting with respect for human rights is the right thing to do. While obviously much more is needed than a mere statement of intent, the recognition that business has a responsibility to respect human rights is an important component of the *Protect, Respect and Remedy* framework.³⁶

While developing their international activities, companies may increasingly find that their decisions have cross-boundary implications or may be too complex to be guided by local law only. Therefore, companies increasingly adopt company-wide standards, and they are often advised to commit to internationally recognized standards.³⁷ Many in the CSR/Sustainability debate point out that human rights are thus far the only standard of conduct that is near-universally accepted.³⁸ Moreover, all other ongoing attempts to formulate more precise standards for CSR (e.g. ISO 26000, OECD guidelines) reference human rights and are building explicitly on the *Protect, Respect and Remedy* framework. Hence, a company looking for a widely accepted framework that has proved its worth over several decades can find widely accepted and robust guidance in human rights standards.

³⁵ Ruggie (2010a).

³⁶ Having a statement of policy is the first element of the human rights due diligence process.

³⁷ Heineman, Ben (2008), “High Performance with High Integrity,” Boston: Harvard Business School Press, p. 49-58.

³⁸ For more, see: Bader, Christine (2008), “Business & Human Rights: Corporate Recognition and Responsibility,” China Rights Fourm, 1, p. 7-12. Available from: hrchina.org/public/PDFs/CRF.1.2008/CRF-2008-1_Corporate.pdf

2 PROTECTING THE BOTTOM LINE: HUMAN RIGHTS DUE DILIGENCE IS GOOD RISK MANAGEMENT

Besides the moral case, there are financial, legal and other considerations affecting the company's bottom line that provide incentives to take human rights seriously. From a cost perspective, abusing human rights can lead to real expenses for companies (see table below). Human rights due diligence is aimed at mitigating such risks and lowering associated costs.

Ruggie finds that shareholders and corporate regulators are becoming more and more concerned with such business risks, especially when they are unaccounted for. Institutional investors, in particular, scrutinize companies on their risks related to Environmental, Social, and Governance (ESG) performance. They demand that companies disclose information related to non-financial performance. As a consequence, companies may face motions for further disclosure at Annual Shareholders Meetings. Moreover, a growing list of companies that cannot demonstrate that they take adequate measures to prevent human rights abuse, are excluded from the investment portfolio of important institutional investors.³⁹

What are our risk areas for human rights?

As Ruggie has pointed out, adequately addressing human rights is not only the right thing to do, but it should also shield companies against value erosion stemming from operational, legal, reputational, personnel and other costs. Moreover, it should protect directors and company management from mismanagement claims stemming from losses incurred through real and perceived corporate related human rights abuse.^{40 41}

³⁹ For example, the Norwegian pension fund, one of the largest in the world, excludes (or has excluded) companies. Other large investors such as APG, PGGM and UBS exclude prominent companies that make cluster bombs or other weapons that may pose a serious threat to civilians during warfare. See: AP, "Swiss bank UBS divests from cluster bomb makers", 10 May 2010. Available at: www.forbes.com/feeds/ap/2010/05/10/business-financials-eu-switzerland-ubs-cluster-bombs_7591688.html and exclusion list of PGGM: www.pggm.nl/About_PGGM/Investments/Publications/Exclusions_lists/Exclusions_list_Companies.asp (last viewed: 14 May 2010).

⁴⁰ Ruggie (2010a).

⁴¹ See discussion of the legal context of the *Protect, Respect, and Remedy* framework in Chapter 4.4.

How Not Respecting Human Rights Can Reduce the Bottom Line

- Costs of strikes when workers feel their rights are not respected
- Litigation costs from lawsuits related to human rights abuses (eg. discrimination)
- Lowered employee morale due to implication of their company in human rights abuses
- Public relations and brand image cost arising from human rights abuses
- Financing costs, e.g. increased project financing costs or withdrawal of financing
- Force majeure claims by contractors forcing renegotiation of price upwards or cancellation
- Inability to get products on the market at the planned time
- Restricted opportunities for growth because of the reluctance of governments to grant new licenses and permits
- Possibility of write-offs and restatement of earnings in the event of project cancellation or delay
- Restricted access to equity capital markets as a result of concerns of Socially Responsible Investors

3 RAISING THE BOTTOM LINE: HUMAN RIGHTS CREATES BUSINESS OPPORTUNITY

CSR and Sustainability can help companies create value. Environmentally responsible business opportunities have demonstrated how this can be done. For example, energy-saving light bulbs, hybrid cars and carbon off set markets. Socially responsible business has not quite entered the mainstream, but innovative ideas have been applied successfully in developing countries. For example, empowerment of women through selling products in small quantities through informal networks, developing investment opportunities for individuals without access to capital markets through microfinance, and supporting rural farmers in obtaining the highest possible prices for their goods through cell phone communication. According to top business advisers, real corporate citizenship and sustainable business models appear where societal and business goals coincide.⁴²

⁴² Porter, Michael and Mark Kramer (2006), "Strategy & Society: The Link Between Competitive Advantage and Corporate Social Responsibility." Harvard Business Review. Available from: www.efbayarea.org/documents/events/ccc2008/Mark-Kramer-Keynote/Strategy-Society.PDF.

How Human Rights Can Raise the Bottom Line

- Employees are more motivated, leading to increased productivity and higher retention rates
- Maintaining a diverse workforce makes the company better equipped to compete in the global economy
- A company that respects human rights is an attractive employer on the job market
- Proper human rights due diligence leads to positive news and attention (even when things have gone wrong)
- Less external restrictions related to financing of a project may be imposed because the company has a positive rating on incorporating human rights concerns
- The company may become more attractive as a client for contractors, suppliers and other business partners
- Increased knowledge and capacity to tailor products to the needs and preferences of consumers
- Management time that currently goes to dispute resolution can be dedicated to entrepreneurship and strategy
- Increased access to government contracts (eg. Dutch Government requires 100% sustainability for public contractors, including ensuring respect for human rights)
- Increased likelihood that projects will finish in time or ahead of schedule

Human rights help companies make the connection between societal and business goals. For instance, the human right to health helps pharmaceutical and health technology companies understand the needs of people (including in developing countries), and install a fair and reasonable policy with regards to access to medicine. Discussion around the right to water helps companies in the utilities and beverages sectors balance competing demands and interact with stakeholders about how to make most of the available water supplies. And the right to freedom of expression helps technology companies define their role in society and decide where they can make a positive and sustainable impact.

In order to seize these opportunities, companies will need to get a good grasp of human rights. They can learn from other fields (e.g. green business) and other companies to take full advantage of the prospects. Business opportunities often arise when new thinking and innovation is at the forefront of the business model. As human rights are a relatively new field for business, companies can benefit from the early stages of development and help shape the new business environment, including respect for human rights.

CHAPTER 2

UNPACKING THE CORPORATE RESPONSIBILITY TO RESPECT

2.1 INTRODUCTION: THE BASIS OF THE RESPONSIBILITY TO RESPECT

The second pillar of the *Protect, Respect and Remedy* framework is the corporate responsibility to respect. As was described in 1.3, the responsibility to respect means that a company should not infringe on the rights of others in the course of doing business, as outlined by the universal standards embedded in human rights instruments. In simple terms: companies should do business with decency and respect for people.

The responsibility to respect is not a legal duty imposed directly on companies by international law.⁴³ However, even where a State does not fulfil its duty to protect its citizens from corporate-related human rights abuse, companies are expected to ensure that their activities do not infringe (“respect”) on human rights as part of what Ruggie calls the “social license to operate.”

When a *Legal License to Operate* May Not Be Enough:

- A public consultation process (as part of the licensing process) shows deep local dissatisfaction with a company’s proposed project and leads the government to withhold or delay, final issuing of a permit.
- Dissatisfied with a company’s treatment of them in initial conversations, local landowners refuse to sell their land to the company leading to a delay – or even cancellation – of an intended infrastructure project.
- Frustrated by a pattern of perceived arrogance and lack of local stakeholder involvement in decisions that affect people’s lives, a relatively small incident sets off a disproportionately negative local response (such as a demonstration).
- Local workers feel that the company does not care about them or local stakeholders and provide information to criminal elements.

A GLOBAL SOCIAL NORM

The responsibility to respect is what Ruggie has called a standard of expected conduct—acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, as well as by companies themselves and their stakeholders.⁴⁴ It was affirmed by the Human Rights Council in June 2008 when it unanimously welcomed the *Protect, Respect and Remedy* framework in a formal resolution.

⁴³ However, neither is it a law-free zone, as elements of it may be imposed on companies by national law (see Chapter 4.4)

⁴⁴ The ubiquity of this norm is documented in A/HRC/11/13/Add.1, addendum to the 2009 Ruggie report.

During his three years of research, including visits to company operations in challenging areas, Ruggie observed that mere compliance with the law does not always guarantee smooth operations for companies, while in some places governments are altogether unable or unwilling to enforce the law that is in place. Therefore, in addition to a concession or permit by the government (ie. the legal license) companies are also expected to respect human rights. Failure to do so can lead to all sorts of costs to companies.⁴⁵

2.2 CONTENT: WHICH HUMAN RIGHTS A COMPANY NEEDS TO CONSIDER

On page 16, the thirty rights of the *Universal Declaration of Human Rights* were presented. As these were adopted by and for states, it is a valid question to ask: *Which human rights does the corporate responsibility to respect apply to?*

The short answer is: all recognized human rights. According to Ruggie, “there are few if any internationally recognized rights business cannot impact - or be perceived to impact - in some manner. Therefore, companies should consider all such rights.”⁴⁶ It would hence be a disservice to companies and their stakeholders to limit the number of rights covered by the corporate responsibility to respect, as they might later find that human rights not on “the list” could also be material— potentially leading to real infringements and real costs for companies.

Therefore, companies cannot *ex ante* exclude any rights from consideration, even though in practice they are likely to focus on specific rights that are prevalent in their particular industry or country of operation. (see Chapter 2.3, “Scope: What a Company Is Responsible For”). At the same time, companies are expected to periodically revisit the full spectrum of rights to maintain general awareness.

Evidence-Based Research by Ruggie⁴⁷

Ruggie conducted a study of over 400 cases of alleged human rights abuse by companies. He found that companies were accused of violating all internationally recognized human rights. While accusations are not always based on real impacts, it demonstrates that companies need to be prepared to address concerns of stakeholders in relation to all human rights.

⁴⁵ See also the adjacent table “When a legal license may not be enough,” and Chapter 1.4 on the business case.

⁴⁶ Ruggie (2008), para. 52.

⁴⁷ For the report, see Ruggie, John (2008a), “Corporations and human rights: a survey of the cope and patterns of alleged corporate-related human rights abuse,” *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, Un Document: A/HRC/8/5/Add.2, 23 May. Available from: www.reports-and-materials.org/Ruggie-2-addendum-23-May-2008.pdf.

THE SOURCES OF HUMAN RIGHTS ARTICLES

There are several documents which contain international human rights standards. Together, they form a list of human rights that companies need, at a minimum, to observe, according to Ruggie.

International Bill of Rights

The International Bill of Rights is a common term used for three legal international human rights instruments, namely:⁴⁸

- the *Universal Declaration of Human Rights* (UDHR);⁴⁹
- the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- the *International Covenant on Civil and Political Rights* (ICCPR).

Where can we learn about human rights risks?

The UDHR provides the foundation for the ICESCR and ICCPR, which are legally binding instruments. Their articles reflect and further articulate the articles in the UDHR. When seeking to clarify the application of particular articles to business, the publication *Human Rights Translated: A Business Reference Guide*, by the Office of the High Commissioner for Human Rights and partner organisations, is cited by Ruggie as providing helpful guidance.⁵⁰

How Labor Norms And Human Rights Standards Relate

Labor norms are human rights applied to the work place. For example:

- The right to collective bargaining is derived from the right to form trade unions, join trade unions, and the right to strike (ICESCR, article 8), which in turn builds on the right to desirable work and to join trade unions (UDHR, article 23).
- The effective abolition of child labor stems from the rights of protection for the child (ICCPR, article 24) and the right to education (ICESCR, articles 13-14), which in turn build on the right to an adequate standard of living (UDHR, article, 25) and the right to education (UDHR, article 26).

⁴⁸ More precise elaboration of these rights can be found at the websites of the Office of the High Commissioner for Human Rights (www.ohchr.org) and the International Labour Organisation (www.ilo.org).

⁴⁹ Listed on page 16.

⁵⁰ Publication can be found at: www.law.monash.edu.au/castancentre/publications/human-rights-translated.pdf.

ILO CORE CONVENTIONS⁵¹

In addition to these human rights standards in the International Bill of Rights – which also contain some labour-related rights - companies are expected to look to the core conventions of the *International Labour Organisation*. There are eight core conventions, grouped under the four fundamental labour norms. Each norm encompasses two conventions (the numbers given are the numbers of the particular conventions):

- Freedom of association (87) and the effective recognition of the right to collective bargaining (98);
- Elimination of all forms of forced or compulsory labour(29 & 105);
- Effective abolition of child labour (138 & 182);
- Elimination of discrimination in respect of employment and occupation (100 & 111).

2.3 SCOPE: WHAT A COMPANY IS RESPONSIBLE FOR

The *Protect, Respect and Remedy* framework makes clear that companies have different responsibilities than States. But what *are* companies responsible for, and when have they met their responsibility?

Previous proposals to answer these questions have centred on factors such as the size of the company, degree of influence, or proximity to the human rights abuse. While these may provide useful during generic analysis, Ruggie has rejected them as a basis for attributing responsibilities (see Chapter 4.2 on “Spheres of Influence”). Instead he has suggested that companies have responsibility when their activities have a potential or actual impact on human rights. Therefore, whereas previously the focus was on influence, now it has shifted to impacts.

Potential and actual impacts can happen through the company's own activities and through relationships (e.g. suppliers, contractors, governments), and they can vary depending on the context in which the company operates. The challenging aspect is determining what a human rights impact is and how it is to be understood in business practice.

⁵¹ “As part of its a drive to increase respect for international labour standards, the ILO has designated these eight Conventions as fundamental to the achievement of basic human rights (...) The position of the ILO, endorsed by the International Labour Conference and the Governing Body, is that ratification of these Conventions forms the basis on which all other workers' rights - wages, safety and health at work, hours of work, etc. - can be built. Once there is freedom of association, and freedom from forced labour, child labour and discrimination at work, working people and the nations in which they live, can achieve the rest.” Source: www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_007909/index.htm

As of 16 April 2010, 130 out of 185 countries had ratified all eight core conventions. A further 21 had ratified seven. Information is available at: www.ilo.org/ilolex/english/docs/declworld.htm.

UNDERSTANDING HUMAN RIGHTS' IMPACT

Human rights impacts are the effects on the enjoyment of a human right resulting from a company activity. They can be both positive and negative. The question companies should ask themselves is whether its interventions—including its presence—can affect the rights of people and communities. The table provides some examples.

A Wide Variety of Company Functions Can Potentially Have Both Negative and Positive Impacts on Human Rights⁵²

Company Function	Positive impacts	Negative Impacts	Human Rights Possibly Affected
Sale Departments	Provide goods and services	Working on commission incentivizes sales representatives to give false information	<ul style="list-style-type: none"> • Right to adequate standard of living • Right to health
Human Resources	Ensuring staff are properly compensated	HIV/AIDS testing as a prerequisite for employment	<ul style="list-style-type: none"> • Right to work • Right to non-discrimination
Accounting	Ensuring proper payments to governments, suppliers, partners and employees	Delayed payments to contractor lead to laying off workers or bankruptcy	<ul style="list-style-type: none"> • Right to adequate standard of living • Right to work
Security	Presence of security forces increases safety for employees, assets, and local population	Security personnel guarding factory uses excessive force	<ul style="list-style-type: none"> • Right to life • Right to personal security
Health, Safety and Environment	Ensuring safe conditions for workers and local residents	Unprotected waste from the factory leads to health hazards for local population	<ul style="list-style-type: none"> • Right to health • Right to adequate standard of living
Procurement	Supporting local economic development through local procurement	Pressure on supplier leads to excessive overtime at production sites; low prices induces supplier to cut wages	<ul style="list-style-type: none"> • Right to save work environment • Children's rights
Technology	People can communicate and access information	The company sells technology for censorship and surveillance	<ul style="list-style-type: none"> • Right to freedom of expression • Right to privacy

52 Zandvliet and Anderson (2009) p.186..

BROADER, INDIRECT AND UNINTENDED IMPACTS

The examples above are related to a company's direct impacts. However, company activities often have broader, indirect and/or unintended human rights implications. Some examples of what might possibly happen in various scenarios:

- An extractive company finds oil in a particular region, requiring local people to be resettled and attracting large numbers of outsiders in search of employment;
- An international clothing company beginning to source from a local supplier catalyses a wide range of effects around the supplier's factory (eg. the supplier uses up all the water that is present locally; other factories may cut wages or employ children to remain competitive and the local government that wishes to profit from the presence of the "rich" new company starts demanding bribes);
- Ultrasound technology helps determine health risks to mothers, but is also used to determine the sex of an infant—resulting in disproportionate abortions of females;
- Credit cards allow people to take full advantage of purchasing opportunities on the internet, but are also used to buy child pornography;
- Mobile and internet technology provides means to express more freely, but also enables governments to spy on their citizens.

The corporate responsibility to respect does not necessarily imply that companies have a responsibility for all these effects. After all, "respect" means not to infringe on the rights of others and many of the effects cannot plausibly be seen as infringements by the company. However, a continuous and well functioning human rights risk management system would uncover such risks and take them into account when making business decisions.⁵³

Which human rights are most essential to our business?

⁵³ See Chapter 1.4 "Business Case."

HOW COMPANIES CAN ANALYZE THEIR IMPACT

Ruggie has stated that the scope of the responsibility to respect human rights is determined by three related factors:⁵⁴

- How the company's **own activities** may affect human rights;
- How the company may be contributing to human rights abuse through its **relationships** connected to its activities (eg. suppliers, contractors, customers, governments, etc.); and
- How the particular country and local **context** (social, political, and economic factors) might have an impact on human rights.

How does my company have an impact on human rights?

In analyzing their impact—and deciding where to take action—companies may find it helpful to make a distinction between the various ways they can have an impact on human rights or contribute to impacts. The table below provides some examples for each. However, the order of presentation does not imply a hierarchy of importance.

The difference between 2a (“direct contributions”) and 2b (“indirect contributions”) is subtle but significant. Direct contributions are here understood as those that actively induce a business partner to abuse human rights, for

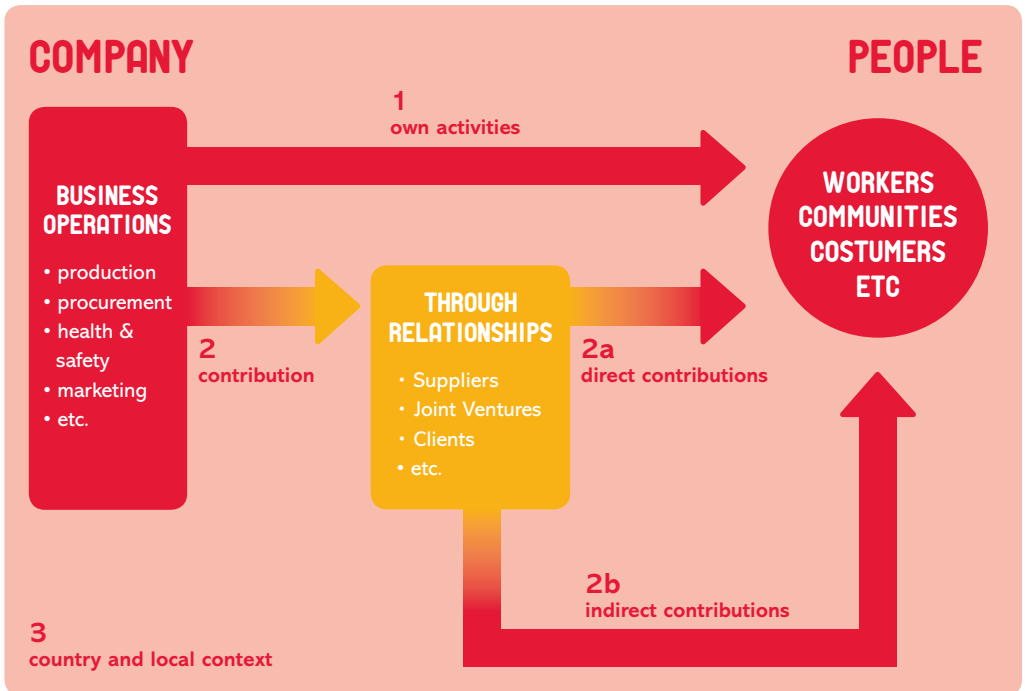
example, by putting such time demands on deliveries that the supplier has little other option than to have workers make excessive overtime or risk losing the contract. Indirect contributions refer to those where a company enters or stays in a relationship with a business partner that abuses human rights, even though the actions of the buyer company do not make the abuse worse per se. The difference is significant, because direct contributions can be countered (at least partially) by changing own behavior, while indirect contributions to abuse can only be stopped through change in the behavior of the business partner or by leaving the relationship altogether.

⁵⁴ See Ruggie (2008a) and Ruggie (2009).

Examples Of Different Types Of Impact Through Own Activities And Relationships

	Type of Impacts	Examples
1. Own activities	Companies' own activities lead to human rights abuse	<ul style="list-style-type: none"> • Inadequate systems to safeguard health and safety of workers • Discriminatory recruitment processes
2. Relationships	Company's own actions and decisions puts pressure on business partner leading to human rights abuse	<ul style="list-style-type: none"> • Putting extreme time demands on suppliers • Sudden changes in buying decisions • Asking government forces to stifle protests
a. Direct Contribution		
b. Indirect Contribution	Company is in a relationship with a partner that abuses human rights	<ul style="list-style-type: none"> • Sourcing products produced with forced labor • Participating in a joint venture with a government that abuses human rights

SCHEMATIC OVERVIEW OF THE WAYS IN WHICH A COMPANY CAN HAVE AN IMPACT ON PEOPLE THROUGH ITS OWN ACTIVITIES AND RELATIONSHIPS



2.4 HOW COMPANIES CAN DETERMINE THEIR RESPONSIBILITIES

Ruggie has not provided a silver bullet to solve the problem of determining corporate impacts. Both companies and human rights situations are so dynamic, context-dependent and diverse, that a single approach would never be able to cover all complex situations. However, Ruggie has provided some clear marks with regards to his proposed concepts:

THE LIMITS OF COMPANIES' HUMAN RIGHTS RESPONSIBILITIES

Although “respect” entails a pro-active approach, in the *Protect, Respect and Remedy* framework, companies are only responsible for avoiding infringements on human rights. There are no duties arising from the framework that require companies to “promote” or “fulfil” human rights (this is the duty of governments), though such additional duties may be undertaken voluntarily. They may also arise as a result of contractual obligations or when a company is performing functions that are intrinsically linked to the fulfilment of certain human rights (e.g. water service delivery, running a social security scheme).

Naturally, in practice, companies may be promoting and fulfilling human rights continuously by virtue of their daily activities. For example, a food company contributes to the right to food and an internet company contributes to freedom of expression. However, this should not be seen as fulfilling an obligation under the *Protect, Respect and Remedy* framework. What companies are responsible for is taking measures to avoid negative impacts on human rights. Acting above and beyond that to support human rights may be laudable, encouraged and appreciated, but is not required under the corporate responsibility to respect.⁵⁵

RESPONSIBILITIES ARISING FROM ANALYSIS OF TYPES OF IMPACTS⁵⁶

When identifying what negative effects companies are responsible for, the most clear cut situation is companies' responsibility for their own activities (see 1. in the figure above). For instance, if a company is endangering workers by not having adequate safety measures in place, then it has a responsibility to correct such a situation. Equally so, companies should not discriminate in their hiring practices on aspects that are not relevant to the execution of the job.

Companies also have human rights responsibilities when putting pressure on and providing incentives for business partners that are leading directly to detrimental effects on human rights. Last minute product design changes and excessively low margins could lead to an increase in overtime as well as a greater likelihood that the supplier may hire children in order to meet

⁵⁵ See also Ruggie (2010b), paras. 62-64.

⁵⁶ The order in which these various types of impacts are presented says nothing about their relative importance. Some very gross human rights violations may happen through indirect contributions, which may require much more urgent attention than a minor rights violation through a company's own activities. See also the discussion on Spheres of Influence in Chapter 4.2.

the requirements of the contract. The buyer company should consider the consequences of such situations.

Indirect contributions to human rights abuse may involve situations such as engaging with a supplier that does not have the capacity, knowledge, or willingness to ensure respect for human rights. In other cases, a company may work with a government that violates human rights in areas not directly related to the company's business activities. These situations are the most difficult to assess. Therefore, it is important to distinguish the reasons why a business relation is not in compliance with human rights, because different reasons may lead to different responses.

- If lacking capacity is hindering the partner from respecting human rights, then the company may consider helping to build it. In other cases companies may turn to the host government to help it create an environment that encourages respect for human rights.
- If the company in violation lacks the knowledge, for instance on proper safety standards, then such knowledge could be shared between companies.
- However, when a business partner (e.g. a government) is categorically denying human rights and is unwilling to change, a company might want to reconsider the relationship.

Above and elsewhere in this publication it is addressed what companies *can* do in such situations. Ruggie has not (and he cannot) provide definitive answers to the level of responsibility because circumstances vary widely between countries, industries and types of activities. Nonetheless, there are a number of further elements that companies could consider when trying to answer the question of whether they have an impact and a resulting responsibility:

ACTUAL AND POTENTIAL IMPACTS

The question "*Do we have responsibility?*" can only be answered if it is known whether a company's activity has an actual or potential impact on human rights. Therefore, knowing the situation solves at least half of the puzzle of determining whether the company has a responsibility to do something about it. The fact that it may be hard to determine exact responsibility does not preclude a company from knowing its impact in the first place.⁵⁷

It is important to make this differentiation as the corporate responsibility does not only demand that actual impacts are mitigated, but also that potential impacts are identified and prevented. Because an *actual* impact is happening right now, the appropriate response is likely to include a change in behaviour. A *potential* impact will occur if plans for a particular

⁵⁷ See Chapter 4.4 on the Legal Context of the *Protect, Respect and Remedy* framework.

business activity will be executed in the way foreseen, and thus asks for a change in the plans or for different and more careful execution.

CONSIDERING HUMAN RIGHTS OF ALL THAT MAY BE AFFECTED BY THE COMPANY'S ACTIVITIES

When a company wants to make sure it is not infringing on human rights in the course of doing business, this includes considering all those that may be affected by its activities. This does not mean that companies will have to take far-reaching measures for all potential stakeholders. Instead they need to make sure they have considered them in order to ensure itself that they are in fact living up to their own commitment to respect human rights.

For many companies, employees will indeed fall within this scope. However, for others there will be additional important stakeholders to consider, such as customers (e.g. for internet and pharmaceutical companies) or communities (e.g. extractive companies). While the extent of the responsibility is clearly delineated by Ruggie (companies “only” have to ensure *respect* for human rights), the scope of the responsibility to respect—determined by the actual and potential impacts of the company—will for most companies include stakeholders other than employees.

INDUSTRY AND BRANCH-INITIATIVES MIGHT REFLECT PREVAILING STANDARDS FOR CORPORATE RESPONSIBILITIES RELATED TO IMPACTS

While the corporate responsibility to respect in itself is not a context-dependent standard (infringing human rights is always to be avoided), its particular manifestation may be different depending on the sector and country of operation. Therefore, it may be helpful for companies

to develop its application through their sector organizations (e.g. *Fair Wear Foundation* and *Fair Labor Association* (apparel), *International Council on Mining and Metals*, *International Petroleum Industry Environmental Conservation Association*). Initiatives on particular topics may also be helpful (e.g. *Voluntary Principles on Security and Human Rights*, *Equator Principles for Project Finance*). Companies may also want to consider general initiatives such as the *Global Compact Principles* and the *OECD Guidelines for Multinational Enterprises*.

What statement of policy would have the greatest effect?

2.5 GETTING STARTED WITH HUMAN RIGHTS DUE DILIGENCE

The appropriate corporate response to manage the risk of infringing the rights of others is to do human rights due diligence.⁵⁸ But how exactly do the corporate responsibility to respect and human rights and due diligence relate? In simple terms: respect is the intended result, and human rights due diligence is the process by which to achieve and demonstrate the result.

Practical suggestions for implementing human rights due diligence are presented in the next chapter. In planning a company's due diligence, several core features outlined by Ruggie may be kept in mind:

RISKS TO PEOPLE, NOT JUST RISKS TO THE COMPANY

The risk approach that is central to human rights due diligence process differs from commercial, technical, and financial risk management in that it concerns risks to others—not just risks to the company. While business risks may converge with risks to people, this is certainly not always the case.⁵⁹ Human rights risks are to be weighed according to the risks to humans and not just to the company.

HUMAN RIGHTS CANNOT BE OFF-SET

A particular feature of human rights is that they are universal and inalienable. This means that a company cannot compensate for human rights abuse by performing good deeds elsewhere. Respect for human rights is a company's baseline responsibility wherever it operates. Lacking respect for human rights cannot be compensated, for example, by building schools or providing free health care. Of course, companies might have good reasons to engage in such laudable activities, for example to improve their community relations.

DEMONSTRATING, NOT JUST DOING

Ruggie has said that human rights due diligence can help companies change from “naming and shaming” by third parties to “knowing and showing.”⁶⁰ In that light, *perceived* impact may be an important element too. Therefore, above and beyond mitigating their *actual* impacts and avoiding *potential* impacts, companies may want to demonstrate that they respect human rights in such a way that outsiders have an accurate picture of the company's impacts and efforts to address them. This includes “a measure of transparency and accessibility to stakeholders.”⁶¹

⁵⁸ Ruggie (2010b), para 79.

⁵⁹ Notorious in this regard is the Ford Pinto case where the automaker made a conscious decision to opt for a cheaper placement of the car's fuel tank knowing that this would lead to more deaths in accidents, but arguing this would be outweighed by the saved costs. Business considerations went above risks to human lives, Ford decided, but ultimately this backfired when Ford had to recall and fix the cars and pay compensation to victims.

⁶⁰ Ruggie (2010b), para 80

⁶¹ Ruggie (2010b), para. 84. See also Chapter 4.6 on Transparency.

ENGAGEMENT IS OF KEY IMPORTANCE

Companies are increasingly encouraged by institutional investors and others to engage in a process of continuous improvement when a business partner has been found to abuse human rights. Experience has shown that when buyers immediately terminate suppliers if human rights violations are found, this can lead to even worse situations. Examples are children that are fired from a factory being forced to make up for lost income through prostitution, or suppliers losing qualified workers because the factory restricted working hours. Therefore, some NGOs and other stakeholders increasingly suggest that companies actively work with partners to improve their capacity to respect human rights. (see Chapter 4.8 on “Supply Chains,” for an example).

CHAPTER 3

PRACTICAL SUGGESTIONS FOR HUMAN RIGHTS DUE DILIGENCE

THE ELEMENTS OF HUMAN RIGHTS DUE DILIGENCE

1 HUMAN RIGHTS POLICY



Adopting a statement of policy with regard to a company's responsibility to respect human rights



4 TRACKING PERFORMANCE



Keeping score and reporting on performance to make improvements for the future

2 ASSESSING IMPACTS



Taking proactive steps to understand how existing and proposed activities may affect human rights

3 INTEGRATION



Ensuring that human rights are integrated throughout the company—horizontally and vertically

GRIEVANCE MECHANISMS



Setting things right, and ensure early dispute resolution to avoid escalation of grievances into much bigger disputes

BACKGROUND

This chapter describes the Learnings and Guidance Points that have been developed over the course of the Business & Human Rights Initiative (B&HRI). They neither purport to be complete nor exhaustive, but intend to be suggestions for companies to implement their commitments to respect human rights.

HOW THE GUIDANCE POINTS AND LEARNINGS HAVE BEEN DEVELOPED

The Learnings and Guidance Points build on interviews with company representatives; workshops with companies, stakeholders and experts; and exchanges with various participants and supporters of the B&HRI. While the in-depth process with the ten participating companies forms the basis for the information, the experts consulted also shared their experiences with other companies. Therefore, where “companies” is used in the text, this is not necessarily limited to the ten companies forming the B&HRI, but may include the broader business community engaged in business and human rights.

RECURRING PIECES OF INFORMATION

Each element of human rights due diligence discussed contains recurring information in:

- **Catch phrase** (eg. “Walking the Talk”), to capture the essence of the element of due diligence in a more colloquial way; these have been made up in the course of the B&HRI, and are not part of the work of Ruggie or his team;
- **Company functions**, to give an indication of the types of specialist functions that may be included in particular elements of human rights due diligence; these are obviously not the only relevant ones.⁶²

Throughout the descriptions of each element, there are further pieces of information:

- **Guidance Points:** Suggestions on how the particular element can be implemented in practice;
- **Learnings:** specific lessons in relation to human rights and the *Protect, Respect and Remedy* framework that were captured in the course of the B&HRI.

WHAT TO KEEP IN MIND

Some of the suggestions may be fairly new for many companies, and companies considering them should recognize that actual practices may vary depending on the circumstances. For example, “human right risk mapping” (Chapter 3.2) is not an established process, but has been considered during the B&HRI as a potentially useful process. The following suggestions are therefore based on relatively new information and experimentation inside and outside the B&HRI, and companies are advised to keep this in mind when reviewing them.

⁶² For a description of company functions, see appendix B

3.1



HUMAN RIGHTS POLICY

"SETTING THE TONE"



HUMAN RIGHTS POLICY

INTRODUCTION

A key element of human rights due diligence is the development of a statement of policy. The process of coming to such a statement of policy is likely to involve some steps of planning and consultation; it is more than merely writing a document. When concluding this human rights due diligence step the human rights policy should provide: 1) Expression of a commitment to respect human rights while clearly communicating to internal and external stakeholders the company's commitment; and 2) Instruction and guidance for those who are expected to implement the policy.

SUMMARY OF GUIDANCE POINTS:

- GUIDANCE POINT 1:** Involve senior management and seek approval
- GUIDANCE POINT 2:** Identify and evaluate existing commitments and policies
- GUIDANCE POINT 3:** Consider carrying out a human rights risk mapping
- GUIDANCE POINT 4:** Involve internal and external stakeholders in the process
- GUIDANCE POINT 5:** Develop statements of policy on human rights

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS:⁶³

- ▶ **CSR/Sustainability:** Brings expertise on human rights and/or lead the process of policy development
- ▶ **Business Operations and Project Managers:** Ensure acceptance, applicability and implementation of policies
- ▶ **Legal, Audit, Compliance:** Verification of compliance with policies
- ▶ **Senior Management:** Support and approval of policies
- ▶ **Public Affairs, Investor Relations:** Consultation of stakeholders and communication of policy

⁶³ See appendix B for a description of company functions.

GUIDANCE POINT 1: INVOLVE SENIOR MANAGEMENT AND SEEK APPROVAL

The tone at the top set by executives is not to be underestimated in the context of a statement of policy. If executives signal to the company that the human rights commitment is taken seriously, this will give other staff an incentive to comply with the statement of policy. Formal approval by senior management of the human rights policy may be the strongest expression of that commitment.

Getting early buy-in from senior management is very important. Sometimes, senior management appreciates a new policy more if there has been broad key stakeholder consultation, and, where possible, approval by the business operations. This makes it easier for senior management to endorse the policy, and makes it more likely that the policy will be effectively implemented.

GUIDANCE POINT 2: IDENTIFY AND EVALUATE EXISTING COMMITMENTS AND POLICIES⁶⁴

Many companies already have a reference to human rights in their business principles or have signed the Global Compact. Therefore, it is important to identify which policies related to the human rights statement are already in place. Many companies will only have to develop additional guidance rather than do a complete overhaul. Even companies that make no explicit references to human rights will already be addressing human rights implicitly, such as in existing policies on health and safety, diversity and inclusion, product safety policies, and community relations. Such policies can then be brought together or referenced in a human rights statement of policy.

Once existing policies have been identified, it is important to evaluate how well the existing policies guide the company in respecting human rights. To do so, a company can do a human rights risk mapping (see Chapter 3.2), consult specific business and human rights resources,⁶⁵ or consult an expert.

B&HRI Learning

Starting small and in cooperation with business operations, is likely to increase the chance that a human rights policy will be approved by senior management.

⁶⁴ A useful overview of documents to look out for is given by Appendix A and C in Taylor, et al. (2009).

⁶⁵ See appendix C and the Business and Human Rights Resource Center: www.business-humanrights.org/ToolsGuidancePortal/Home.



HUMAN RIGHTS POLICY



GUIDANCE POINT 3: CONSIDER CARRYING OUT A HUMAN RIGHTS RISK MAPPING

While Ruggie has not prescribed any particular form, a policy is more likely to be substantive and effective if it outlines specific human rights areas that the company might affect. For example, an IT company would probably want to have a specific focus on the right to privacy, while a manufacturer of tools for aircraft would focus on product safety (right to health). This focus can only be expressed in the policy if the company has done a preliminary assessment of its main risk areas for human rights.⁶⁶

Dilemma: Integrating the Human Rights Commitment into Other Policies or Adopting a Stand-alone Policy?

Whether or not to adopt a separate human rights policy is a question many companies grapple with. Ruggie has said that as long as change happens, “I’m not doctrinal about the form it takes.”⁶⁷ Most companies tend to integrate human rights into other policies, for which good reasons exist (eg. more chance the policy will be integrated). Sometimes, however, companies have adopted a separate statement, because they have found that human rights risks are so pervasive in their company’s activities that a stand-alone policy is most effective. Another reason to adopt a stand-alone policy is to provide internal and external 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 organization as well. In that sense, adopting a separate policy might be a temporary approach, while ultimately working towards the full integration of human rights into existing policies.

⁶⁶ Guidance Points 8-12 (next section) provides further explanation of the process and implementation of a human rights risk mapping.

⁶⁷ Williamson (2009).



GUIDANCE POINT 4: INVOLVE INTERNAL AND EXTERNAL STAKEHOLDERS IN THE PROCESS⁶⁸

It is paramount that key stakeholders subject to the policy—both the “rights holders” and those who implement the policy—are engaged in the process of establishing the policy, or that their perspectives are taken into account in another significant and legitimate way. “Rights holders” include employees, customers, and communities affected by the business, among others, while those implementing include managers, specialized staff and ultimately all employees.⁶⁹ The policy may outline what process the company has in place to ensure rights will be respected and provide instructions to those who work on the company’s behalf. In order to express the commitments, expectations, and accountability systems in the most effective way, it is important that key stakeholders—including the rights holders and those who implement, but possible also their representatives and experts—are consulted when developing the policy so that the policy leads to the intended effect. Stakeholder mapping is a key part of the process as well as human risk mapping to ensure that you have involved the key stakeholders and informed others.

Engaging with key stakeholders has further benefits. It will aid the company in determining its human rights impacts and thus provide it with direction as to which company functions are particularly crucial in realizing the company’s human rights policy. For example, if key stakeholders have signaled that there are issues with respect to the company’s suppliers, this will help the company develop guidance for the procurement function. One way to organize this is by involving key stakeholders in the human rights risk mapping (Guidance point 8).

There are many ways in which stakeholder engagement can take place. Company-wide policy development is often done at a high level in the company hierarchy. Therefore, it may be most effective to engage with NGOs and experts, who have an idea of the company’s overall activities and

⁶⁸ For a useful overview of who to consult, see Appendix B in Taylor et. al. (2009).

⁶⁹ This can of course be part of other policies or guidance, such as code of conduct, business principles and manuals.

B&HRI Learning

Even before writing the human rights policy, it is useful to identify the greatest human rights risks through a human rights risk mapping.



HUMAN RIGHTS POLICY

impacts. Key stakeholder input can also be obtained by consulting outcomes of past key stakeholder interactions, complaint reports, public reports, informal consultation, etc. When developing a policy for a particular site that could affect local communities, it is paramount that some direct consultation with local representatives is held.

What may be particularly useful as part of the policy development process is to organize direct interaction between senior management, which can be management of a business unit or country office, and particular key stakeholder groups or thought leaders on human rights. Such a roundtable may provide new insights to all and can be a “mind-shifting” experience for management. It will also signal to internal and external key stakeholders that the company takes human rights very seriously.



GUIDANCE POINT 5: DEVELOP STATEMENTS OF POLICY ON HUMAN RIGHTS

The output of this due diligence step can be a written policy and/or statement on human rights. There are various levels at which human rights can be part of the company’s policies:

HIGH-LEVEL REFERENCE



A short reference to human rights in the company’s mission, values statement, or other document reflecting the generic business principles;

POLICY STATEMENT



A more elaborate statement outlining the most important expectations and responsibilities with respect to the human rights commitment, either in a standalone policy or integrated into the sustainability statement or code of conduct;

FUNCTIONAL INSTRUCTION



Detailed guidance in functional areas, instructing managers and others what they specifically need to do in their daily work; this is often integrated in existing and related policies.

5a High-level Reference to Human Rights

When a company wants to include a reference to human rights in its high-level values or mission statement, there are several sources to obtain inspiration from. Often companies look at peer companies or leaders in other industries. Industry organizations and the Global Compact can also provide suggestions. The specific wording is less important, as long as there is an expression of respect for human rights

Some examples include:

- *[Company] respects human rights. It does not want to be involved in matters that infringe upon human dignity.*
- *[Company] respects and supports internationally recognized human rights and ensures that it is not complicit in human rights abuses;⁷⁰*
- *[Company] respects and supports human rights and strives to ensure that its activities do not make it an accessory to infringements of human rights.*

5b Policy Statement on Human Rights

A policy statement will give a clear idea to internal and external stakeholders what they may expect of the company's human rights performance. The building blocks and sample statements that follow provide some ideas on what a human rights policy statement in line with Ruggie may look like. Companies can use the sample statement or particular passages as inspiration for developing their own statement, or refining an existing statement.

NB: Ruggie has not specifically prescribed any particular fashion for companies to express their human rights commitment. A statement of policy—like the entire human rights due diligence process—should always be tailor-made and companies may have good reasons for a different format or set up. Moreover, the policy should be updated over time to include lessons-learned and reflect new insights in the business and human rights field. Therefore, companies are not expected to have an exact statement such as the one presented, as long as they have a clear public commitment

⁷⁰ This is based on the Global Compact Principles (See Appendix A).

1. General Statements

Possible Building Block	Sample Text
<p>A Reference to <u>Other Statements</u> and How Policy Fits In the <u>Policy Hierarchy</u> → Can be reference to human rights in the company's Business Principles or other overarching value statement; Alternatively, use a quote from the CEO on human rights, or the Global Compact human rights principles.</p>	<p>[“<i>Company</i> respects human rights. It does not wish to be involved in matters that infringe upon human dignity.”] –<i>Quote Company Code of Conduct or Business Principles</i> This statement aims to set and communicate our responsibilities, expectations, and commitments with respect to human rights. It is an elaboration of the commitment as expressed in our [Business Principles or Code of Conduct].</p>
<p>A General Statement That Includes an Explicit Commitment to Respect Human Rights → Could also express support for human rights (eg. when signed Global Compact)*</p>	<p>General Commitment <i>Company</i> recognizes that governments have a duty to protect human rights, including where it relates to business activities, and that business has a responsibility to respect human rights, which means not infringing on the rights of others, and addressing adverse impacts that may occur.</p>
<p>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; may be in different, self-chosen wording</p>	<p>Content of Human Rights Our commitment is guided by human rights as formulated in the International Bill of Rights, consisting of the Universal Declaration of Human Rights and the two Covenants, as well as the ILO Core Conventions. <i>Company</i> is furthermore bound by the national law of the countries where it operates. Where national law conflicts with any of the other standards that <i>Company</i> is committed to [including the Global Compact principles and its own policies and procedures], it respects the national law, while aiming to honor the spirit of international human rights principles.**</p>
<p>An Explanation How The Company Respects <u>All Human</u> Rights, But Also Gives <u>Focus</u> To Its Human Rights Due Diligence → “While the corporate responsibility to respect requires respecting all rights, it is unlikely that all issues can be addressed simultaneously. Consequently, guidance may be needed on how to prioritize potential and actual impacts on human rights.” (Quote from SRSRG consultation website)</p>	<p>Priorities for Action <i>Company</i> recognizes that business can potentially affect a wide array of rights, and therefore does not in advance exclude from consideration particular rights outlined in the above international instruments. Nonetheless, <i>Company</i> periodically assesses—through analyzing its activities, relationships and portfolios, and by dialogue with stakeholders—which human rights it has a potential and actual impact on, with the aim to provide guidance to its managers and other employees.</p>

* See also Chapter 4.1 on the Global Compact.

** Ruggie has not extensively discussed the issue, but addresses it in his 2009 Report (para. 67). The issue of conflicting standards is further addressed in Chapter 4.7, including an example of what companies can do when facing such a dilemma.

2. Specific Statements

The remainder of the statement can be organized by addressing particular rights (labor rights and non-labor rights), or by focusing on rights holders, whatever is more suitable to the company's circumstances. Companies who may encounter a wide array of human rights risks (eg. financial institutions) may opt for addressing responsibilities to particular rights holders, while companies operating in a particular industry with known human rights issues could mention and address specific rights. In the example here, a hybrid is chosen with rights holders as the organizing principle.

Possible Building Block	Sample Text
<p>Describe Main <u>Rights Holder Groups</u> to Address in the Policy in Context of Due Diligence Process</p> <p>→ The various bullet points below outline some of the actions the company takes as part of its human rights due diligence to demonstrate its concern for certain rights (these are examples and only meant to be indicative)</p> <p>→ Categories other than employees vary per company; they should be chosen after the most important stakeholder groups have been identified.</p>	<p>Human Rights Due Diligence</p> <p>Special Representative Ruggie has presented human rights due diligence to consist of four components: i) having a human rights policy, ii) assessing potential and actual human rights impacts of company activities, ii) integrating those values and findings into company cultures and management systems, and iv) tracking as well as reporting performance. He has also stressed the importance of grievance mechanisms. While recognizing the importance of ongoing learning and improvement and that one-size-fits-all does not apply to human rights, <i>Company</i> aims to carry out human rights due diligence as follows:</p>
<p>How Company Ensures It Respects the <u>Rights of Its Employees</u></p> <p>→ Other labour rights that could be included in relation to employees:</p> <ul style="list-style-type: none"> • Right to favorable work • Rights to a safe work environment • Right to equality at work 	<p>Employees</p> <p><i>Company</i> is committed to respecting the human rights of its employees:</p> <ul style="list-style-type: none"> • Company respects the four fundamental principles and rights at work (<i>freedom of association and the right to collective bargaining, elimination of forced labor, abolition of child labor, and non-discrimination</i>), as well as other recognized labor rights; • It promotes a human rights aware and respecting culture, and sets appropriate incentives and disincentives to ensure the human rights of employees are not infringed upon; • Employees have access to grievance mechanisms which resolve complaints and disputes effectively and in line with human rights principles.

2. Specific Statements (Continued)

Possible Building Block	Sample Text
<p>How the Company Aims To Ensure Product Safety and Prevent Misuse of Its Products</p> <p>→ Here, non-labor rights related to product use could be addressed, such as:</p> <ul style="list-style-type: none"> • Right to health, • Children’s rights, • Women’s rights. 	<p>Clients and Customers</p> <p><i>Company</i> intends to undertake reasonable and appropriate due diligence on material human rights risks related to its commercial relationships:</p> <ul style="list-style-type: none"> • <i>Company</i> takes reasonable steps to ensure that its products and services do not infringe on human rights; • <i>Company</i> will develop policies and a database with country specific information and/or will stimulate initiatives in its sector to help identify the material human rights issues, including where it is related to customers and clients; • <i>Company</i> also trains and supports its client relationship managers to ensure they are aware of human rights risks.
<p>How the Company Integrates Human Rights into Its Interactions with Business Partners</p> <p>→ Address, if possible which rights are particularly prevalent in interaction with business partners:</p> <ul style="list-style-type: none"> • Health and safety may be an important issue with contractors. • Working hours may be an issue that comes up at supplies. 	<p>Business Partners</p> <p><i>Company</i> seeks to award business to suppliers and business partners who are committed to act fairly and with integrity towards their stakeholders:</p> <ul style="list-style-type: none"> • It will do so by screening and engaging with suppliers to ensure that they embed their business activities in human rights principles; training and monitoring may also be part of the process; • Human rights principles are included in the process of establishing joint ventures and making acquisitions.
<p>How Human Rights Is Addressed In Other Activities And Related Relationships Not Addressed So Far</p> <p>→ Here the company can express support (in addition to respect) for human rights in line with its commitment to the <i>Ten Principles</i> of the Global Compact.</p> <p>→ Other mentions can include rights of indigenous communities, right to water, right to health, etc.</p>	<p>Other Activities and Relationships</p> <p>The <i>Company</i> aims to make a positive contribution to the societies where it operates:</p> <ul style="list-style-type: none"> • It does increased due diligence in countries that are subject to United Nations or other sanctions; • Where appropriate, <i>Company</i> will support and speak out in favor of human rights; • <i>Company</i> believes engagement is an important part of its responsibility to respect human rights; however, where ongoing engagement has not led to improvements over time, <i>Company</i> may terminate a relationship (following pre-determined criteria).

3. Provisions for Implementation

Possible Building Block	Sample Text
Who Is <u>Responsible For Implementation</u> and Update of the Policy	<p>Responsibility for Due Diligence</p> <p>Management is responsible for the human rights policy of the company. To bring such policy in practice, it is supported in this effort by other company functions, including CSR, legal, human resources, procurement, etc.</p>
How the Various <u>Due Diligence Components</u> Are Integrated Into Company Systems and Processes	<p>Company monitors the process of human rights due diligence within the organization, and provides guidance on how human rights policies should be interpreted and implemented. It furthermore assesses the impacts of its activities and sets appropriate incentives and disincentives for its workers. Human rights issues are reviewed in annual reporting and in compliance procedures, and are publicly reported in the annual [CSR/ Sustainability] report. Human rights related complaints can also be channeled through the appropriate grievance mechanisms at various levels.</p>
How the Company Includes <u>Stakeholders</u> in Development and Update of the Policy	<p>Stakeholder Engagement</p> <p><i>Company</i> recognizes that human rights demands meaningful and ongoing engagement with internal and external stakeholders. Human rights principles can be part of the dialogue and decision making process in Works Councils, the Corporate Responsibility Committee/ equivalent, ongoing dialogues with local communities, NGOs and unions, and other partnerships. Stakeholder engagement is particularly important to identify, assess, and remedy grievances among <i>Company's</i> stakeholders.</p>
A Reference to <u>Related Policies</u> That Address Human Rights And Who Can Be <u>Contacted</u> For More Information	<p><i>More detailed guidance documents, outlining specific norms and responsibilities, have been prepared to guide the business in its decision making and organizing human rights due diligence. These commitments are further laid down in the following related company policies.</i></p> <ul style="list-style-type: none"> • <i>Policy A</i> • <i>Policy B [etc.]</i> <p><i>These documents can be obtained from [..]. Any queries with respect to this policy may be directed to [..].</i></p>



HUMAN RIGHTS POLICY

5c: Provide Detailed Guidance in Specific Functional/Geographical Areas

Some business operations or company functions may run a specific risk to be associated with adverse impacts on human rights. For example, *Company Recruitment* may inadvertently be discriminating in countries where women are not allowed to work in certain jobs, or indirectly by stating a particular preference in a job advertisement that is (perceived as) discriminatory. Security officers run more of a risk to infringe upon the right to privacy than a person operating a machine. For those who face these particular risks, it is important to develop specific functional guidance on human rights.

Fortunately, there are various guides that help companies with this process. Particular guidance can be found in sector and industry initiatives, such as the *Voluntary Principles on Security and Human Rights*, and the *Electronics Industry Citizenship Coalition*.⁷¹ When developing guidance for specific company functions, there are a number of points to keep in mind:

- It is important there is a clear connection with more high-level statements, as well as the business principles;
- The guidance needs to be as simple and straightforward as possible; this may involve translating the human rights instruments into different language for specific business functions and accountabilities; as long as the company does this consciously, and understands the human rights implications, this is in many cases acceptable;⁷²
- When developing guidance it is very important to involve those that will eventually have to use the guidance; not only to ensure that the guidance is helpful and practical, but also to obtain their buy-in to enhance the chance the policy is accepted.

⁷¹ See for concrete examples the "Guide on How to Develop a Human Rights Policy," by Global Compact (2010), and Appendix D for an overview of sector initiatives.

⁷² "As long as change happens, I am not doctrinal about the form it takes." John Ruggie as quoted in Williamson, Hugh (2009), "Time to redraw the battle lines," *Financial Times*, December 31.

Examples of Detailed Guidance for Specific Company Functions:⁷³

- Privacy and data protection policy (Information Technology staff)
- Instructions on respect for human rights in security operations (Security personnel)
- How to prevent AIDS/HIV (eg. for drivers of company vehicles in countries with high prevalence)
- Guidance on key stakeholder engagement and community relations (Community liaisons)
- Policy to avoid discrimination in recruitment (Human Resources staff)
- Supplier policy on labor and human rights (Procurement staff)

WRAPPING UP

Common Pitfalls to Avoid

Basing Responsibilities on Influence or Size Rather Than Impact

Ruggie has rejected the model of Spheres of Influence⁷⁴ as a basis for attributing responsibility, refuting the idea that by definition the company's responsibility increase with rising influence. However, it could still be useful for other purposes (eg. mapping opportunities for supporting human rights in line with the "support" commitment to the Global Compact).

Rejecting Certain Rights Out of Hand Without Analysis

A priori rejecting certain rights as irrelevant without conducting some process of risk mapping or expert consultation is not in line with the *Protect, Respect and Remedy* framework or human rights in general. Wherever a company focuses on particular rights, it should be able to explain why it has chosen this focus and what process led to it.

Not Addressing Conflicting Standards and Conflicting Stakeholders

Employees will look to the policy and/or guidance when they find themselves confronted with difficult dilemmas. Such dilemmas often involve conflicts between local standards and practices, and international or company standards, as well as between different stakeholder groups. It is therefore important to provide specific guidance for such situations.

Attempting to Off-set Human Rights

A particular feature of human rights is that they are universal and inalienable. This means that a company cannot compensate for human rights harm by performing good deeds elsewhere. For example, donating to charity or building schools for the community does not absolve the company from a responsibility to ensure that its operations do not infringe upon human rights.

⁷³ See Appendix D for an overview of selected sector-specific CSR initiatives

⁷⁴ In Chapter 4.2, it is explained what "Spheres of Influence" is and why it is rejected by Ruggie as a model to attribute responsibilities.



HUMAN RIGHTS POLICY

SOME SUGGESTIONS FOR SMES

▶ Code of Sector or Multi Stakeholder Initiatives

Instead of developing their own statement of policy, companies can sign up for sector or multi-stakeholder initiatives that have a code of conduct with human rights provisions. Organizations like the *Fear Wear Foundation* (clothing) have their own codes of conduct that companies subscribe to upon becoming members⁷⁵

▶ Available sample codes can be adapted fairly easily to the company's unique circumstances

Companies can also choose to integrate a clause or paragraph in a contract rather than a separate code. The *Danish Institute for Human Rights and Business* has developed a sample code of conduct for suppliers and an accompanying checklist^{76 77}

▶ Integrate Human Rights In Existing Policies

Even smaller companies often have some document on company rules or code of conduct; human rights, either as part of CSR or broken down in particular issues, could be included in such documents rather than to develop stand alone policies.

▶ Start By Doing Before Making A Formal Policy

For some companies it may make more sense to start with one of the other elements of human rights due diligence. In practice, many companies, particularly smaller ones, first start doing human rights due diligence before formally adopting a policy on it.

Key Sources and Websites

Global Compact: Guide on How to Develop a Human Rights Policy
www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html

Business & Human Rights Resource Centre: List of Company Human Rights Policies
www.business-humanrights.org/Documents/Policies

⁷⁵ See appendix D for an overview of more sector initiatives.

⁷⁶ The code and checklists can be found at: hrca.humanrightsbusiness.org.

⁷⁷ See also materials by the Fair Labor Association at: www.fairlabor.org.

3.2



ASSESSING IMPACTS

**"FROM REACTIVE
TO PROACTIVE"**



ASSESSING IMPACTS

INTRODUCTION

The second element of human rights due diligence is making an assessment of the risks to human rights. It considers the possible negative effects of proposed and planned activities on individuals and communities, and sets priorities for action to mitigate the risks. Assessing impacts can be a challenging process. At the same time it is critical for the success of human rights due diligence: if some issues are not identified or priority actions set wrongly, then this might lead to some key areas not being addressed, while resources are wasted that could better be used elsewhere.

SUMMARY OF GUIDANCE POINTS

- GUIDANCE POINT 6:** Understand impacts on human rights
- GUIDANCE POINT 7:** Distinguish various processes of “assessing impacts”
- GUIDANCE POINT 8:** Conduct a human rights risk mapping
- GUIDANCE POINT 9:** Involve the existing risk management function
- GUIDANCE POINT 10:** Identify the risks to human rights
- GUIDANCE POINT 11:** Prioritize actions to mitigate the risks
- GUIDANCE POINT 12:** Feed the assessment results into business operations

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS:⁷⁸

- ▶ **CSR/Sustainability Department:** Provide human rights expertise; collaborate with operations; spearhead human rights impact assessment activity
- ▶ **Risk Management:** Provide input to (and possibly lead) human rights risk mapping; integrate human rights into main risk management process
- ▶ **Stakeholder/ Community Relations:** Interact with external stakeholders when impact assessment involves consultations with neighbors, communities, etc.
- ▶ **Functions/ Operations Particularly Exposed to Human Rights:** Involve in evaluating risks and prioritize actions (eg. Security, Supply Chain Management, Human Resource Management, etc.)

⁷⁸ See appendix B for a description of company functions.



GUIDANCE POINT 6: UNDERSTAND IMPACTS ON HUMAN RIGHTS

Impact assessments are intended to pro-actively help a company identify what the potential consequences of business activities are on human rights. As was outlined in Chapter 2, these often include impacts beyond immediate operations. Some examples:

- A company that starts exploring oil in the middle of an indigenous community can lead to a multiplicity of impacts: nuisance, noise and increased traffic from a project, the effects of local people having to relocate for an industrial development, the influx of outside foreign workers, etc.
- A design process can have significant impact on how clothes are made in a factory: the more last minute changes to the product design, the more likely it is that factory management will put some pressure on workers to meet the deadlines, which may lead to certain forms of forced labor and excessive working hours, as well as other human rights abuses.
- The consequences of information stored on a company's servers: if the information is easily accessible to a government which does not respect the right to privacy, this can lead to implication of the company in violation of the right to privacy, but also other rights such as right to freedom of expression and right to a fair trial if someone is unjustifiably convicted based on the information obtained from the company's server.⁷⁹

B&HRI Learning

Human rights may be closer to home than many think: harassment in the office, unequal pay between men and women, and good community relations are all topics with human rights implications.

⁷⁹ As was discussed in Chapter 2, it is not immediately clear what the company's responsibility is in such situations, but this does not absolve the company from uncovering the risks through human rights due diligence in the first place.



ASSESSING IMPACTS

Because of these direct and indirect impacts, it is crucial to *understand* how existing and future business activities affect human rights. This holds not only for the CSR or Sustainability Managers, but also for senior management and business operations, and at a more general level for all employees. Such awareness can come through multiple ways. Obviously when an issue gets a lot of media attention—as happened in the Netherlands with the issue of cluster bombs—this helps raise awareness, but more internal drivers can also play an important role.



GUIDANCE POINT 7: DISTINGUISH VARIOUS PROCESSES OF "ASSESSING IMPACTS"

Human Rights impact assessments are often required by governments and financial institutions for large scale projects, such as:

- Infrastructure: building roads, dams, utilities, pipelines
- Extractives: sourcing oil, gas, coal
- Agriculture: forestry, palm oil plantations, large-scale farming

Internal drivers that can help raise awareness on human rights impacts:

- Employees encountering human rights dilemma situations when visiting subsidiaries, clients or suppliers*
- Managers who realize the positive impact their company has, but thereby also the potentially negative impact of some practices;
- Research and reports by universities, think tanks, and NGOs comes to the company's attention;
- Sector organizations and other partnerships provide analysis of the issues in a particular value chain.

* eg, caste system, underage workers in certain sectors, limited freedom of association in some countries.

Such activities can potentially result in high impacts for human rights, and thus often ask for an in-depth analysis of potential impacts before starting the project, as well as ongoing assessments once the project is underway. Companies can also choose themselves to carry out such assessments even if the law does not require them. It should be noted that relatively very few explicit human rights impact assessments are known to exist, though many other types of impact assessment contain implicit and explicit human rights elements.

There are helpful guides available that can help companies with human rights impact assessments.⁸⁰ From a Ruggie perspective, it is important to note that such impact assessment instruments do not necessarily have to be separate processes as long as what is unique to human rights is preserved.⁸¹

“Assessing Impacts”

Ruggie speaks purposely of “assessing impacts” to emphasize the *process* element of human rights impact assessments, because not every activity asks for a large scale human rights impact assessment. Companies should assess their impact for all activities, but should find the instrument that is most suitable for the particular activity and the context in which it takes place.

Choosing the Best Process and Associated Instrument

Depending on the company’s activities, relationships, and the context in which it operates, one instrument may be more suitable than another. The table on page 69 provides an overview of which processes serve which purpose as well as some examples of tools and guidance available. Companies can also consult the website specifically developed for human rights impact assessments: www.humanrightsimpact.org

⁸⁰ See key sources at the end of this section.

⁸¹ See Williamson (2009) and Ruggie (2010b), para. 85.



ASSESSING IMPACTS

KEY FEATURES OF EFFECTIVE HUMAN RIGHTS IMPACT ASSESSMENTS

The B&HRI organized a workshop on Impact Assessments with participants from government, civil society and business organizations. Marina d'Engelbronner-Kolff, senior advisor of Aidenvironment, and Liesbeth Unger, Programme Manager Human Rights & Business of Aim for Human Rights, shared their expertise on human rights impact assessments, after which participants exchanged views on three topics: the basis of impact assessments, stakeholder engagement and grievance mechanisms, and integration into management systems. The points below summarize the main outcomes of the workshop, which focused mainly on communities, but could also be applicable to other stakeholders:

- ▶ The goal of an impact assessment is to minimize negative effects and increase positive effects of a business project or activity.
- ▶ There are different types of research: desktop research, field research and community engagement, among others.
- ▶ Assessments can be conducted before, during and after the project; it is important there is some level of continuation in the process.
- ▶ Outcomes of indicators can be in terms of direct impacts (eg. working conditions of workers) and indirect impacts (eg. rising food prices).
- ▶ Consultation with stakeholders is an important standard; stakeholders should be identified carefully: individuals that are directly and indirectly affected by the activity or project, and those that have an interest in it (eg. job seekers).
- ▶ It is important to ensure that companies consult **all** stakeholders, especially when the community is composed of different groups with different interests.
- ▶ Special consideration should be given to female representation, because communities are usually represented by male members.
- ▶ Impact assessments should be done in a transparent manner to increase the level of accountability and improve the relationship with the community.

- ▶ In principle all human rights are worth considering; however it may be effective to weigh the nature of the rights at stake; different rights ask for different mitigation measures.
- ▶ Because human rights impact assessments can often be complex processes, it is important that companies are committed from the start, and demonstrate continuous engagement.
- ▶ NGOs can potentially serve as powerful and trusted intermediaries between the company and the community.
- ▶ Communication is of key importance, and should be done in an understandable manner in the language of the community.

Various Types of Impacts Assessment Instruments/Processes⁸²

Instrument/ Process	Purpose	Examples/Source ⁸⁶
Human Rights Impact Assessment	Measuring the effect of business activities on the human rights of the corporate stakeholders.	<ul style="list-style-type: none"> • Guide to Human Rights Impact Assessment and Management • Human Rights Impact Assessments for Foreign Investment Projects*
Human Rights Risk Assessment	Measuring the potential operational or reputation risks of becoming involved in human rights violations.	<ul style="list-style-type: none"> • Taylor et al. (2009) • The Arc of Human Rights Priorities • Conflict Sensitive Business Practice Tools**
Human Rights Compliance Assessment	The policies of the company measured against the legal framework of human rights	<ul style="list-style-type: none"> • <i>Danish Institute for Human Rights'</i> Human Rights Compliance Assessment
Social Impact Assessment (SIA)	Measuring effects of business activities on societies.	<ul style="list-style-type: none"> • <i>International Association for Impact Assessment</i>***
Environmental Impact Assessment (EIA)	Measuring the effects of business activities on the environment.	<ul style="list-style-type: none"> • <i>European Commission - EIA website</i>****

* Examples not referenced explicitly can be found at end of this section, Appendix C and D, or the Bibliography.

** See Rights and Democracy (2007), "Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru." Available from www.ichrdd.ca.

*** See tools for the Extractives sector and Finance & Engineering at www.international-alert.org.

**** Available from: www.iaia.org/iaia/wiki/sia.ashx.



ASSESSING IMPACTS

B&HRI Learning

Human rights risks are risks posed to the rights of people. In many instances risks to people constitute a risk to the company (e.g. discrimination may lead to an expensive law suit), but they are not always the same.



GUIDANCE POINT 8: CONDUCT A HUMAN RIGHTS RISK MAPPING

Ruggie has stated that companies in principle should consider all human rights in their impact assessments.⁸³ However, such a proposition is difficult in practice to work with, because business needs focus to work effectively. Moreover, in the course of the B&HRI, it was found that there are relatively few human rights risk assessments tools in the public domain to help companies find such focus. Therefore, the B&HRI has explored whether a human rights risk mapping can help companies cope with this part of the framework, where risks are seen as risks to people—not just operational or reputation risks to the company. Such an exercise starts with all human rights and moves efficiently towards a priority list for action. The lessons learned are shared in this and the following guidance points.

Human rights risk mapping identifies, assesses and prioritizes the risks to human rights. It is primarily intended to create an understanding among company staff of the actual and potential risk the company faces of infringing on human rights and to devise a mitigation plan for any risks to human rights that may be identified.

Company resources are always limited, and priorities need to be set. Hence the available means need to be devoted to the areas of highest priority. This is not to say that certain human rights need to be compromised, but rather that in planning to fulfill the corporate responsibility to respect, certain mitigating activities may be higher on the agenda than others.

Dilemma: Stand Alone Or Integrated Human Rights Risk Mapping?

Usually, it is better to integrate a new topic into existing processes. This will further its acceptance and may give access to part of the available resources. However, when starting with human rights risks mapping, it might be more effective at first to organize a stand-alone process. Risks to human rights are different than other risks to the company and identifying and weighing them is a specialized process that requires training and practice. If the process is immediately included in the mainstream, human rights may not make the list of main risks because Risk Managers are not as familiar with the topic or cannot immediately weigh its full consequences.

⁸³ See Chapter 2.2 on the content of Human Rights.



GUIDANCE POINT 9: INVOLVE THE EXISTING RISK MANAGEMENT FUNCTION

Companies have their established ways of risk mitigation, including risks related to non-financial issues. The existing risk management function should be involved to establish a close link between the existing risk management methodology and the process of human rights risk management. This will have several benefits: first, learning from experts to avoid common mistakes will make the process robust and rigorous. And second, the results of the risk mapping can be integrated into the main risk management process, and thereby possibly obtain a portion of the general resources available for risk management.

However, letting the risk management function run the entire process is likely to be ineffective, as staff will lack the human rights expertise for proper identification and assessment of risks to human rights. CSR/Sustainability staff can usually add this dimension. Other crucial functions to involve are those that need to implement the mitigating actions, as they can provide input concerning the practicality of proposals. The Audit and Compliance functions should also be included due to their important role in checking compliance with any new procedures.

B&HRI Learning

Collaboration between the risk management function and the human rights experts in the company can lead to a fruitful and mutually enriching risk identification and mitigation process—for human rights risks and business risks.



ASSESSING IMPACTS

B&HRI Learning

Conducting a human rights risk mapping (see pages 76-79) can be an important component of “knowing and showing” that the company is respecting human rights.



GUIDANCE POINT 10: IDENTIFY THE RISKS TO HUMAN RIGHTS

Risk identification can take shape in multiple ways. It is natural to start with some **desk research**.⁸⁴ This process should focus on identifying human rights risks in particular countries and sectors. Besides publicly available sources, a number of internal company reports may also provide useful insights into the type of risks the company may encounter: reports on the use of whistleblower policies and grievance mechanisms, self-assessments of business principles, management reports of relevant functions (eg. human resources, industrial relations, compliance, CSR, Sustainability), as well as reports of Workers’ Councils and other representative bodies.

Another common approach to risk management is through **brainstorming**: groups of managers are brought together and are encouraged to think of ways that the company could now or in the future be implicated with infringements of human rights. The free-floating of ideas with a group may bring up potential risks that would otherwise remain unidentified, and also encourages discussion on the relative severity of the risks. Such brainstorming may be held with general managers or with specific functions. It could also be interesting to bring different functions together to stimulate cross-functional learning and out-of-the-box-thinking.

For a successful risk mapping—especially when it is closer to the operational level—it is particularly important to obtain “**perspectives from the ground.**” This refers to the experiences, ideas, and perceptions of those that are closest to company operations, because this is where most human rights impacts occur. For example, health and safety risks (i.e. risks to the right to a safe work environment) are generally most at risk on the work floor, and polluted water (i.e. risk to the right to health) affects the neighbors of a plant. Putting in place effective grievance mechanisms (see Chapter 3.5) can also help obtain their perspective. If such mechanisms already exist, reports of past

⁸⁴ Appendix C contains a list of sources that can be consulted.

complaints and conflicts may provide useful input for the identification of human rights risks.

Another way to obtain grassroots perspectives is by meeting with **civil society organizations** that are familiar with a certain situation or with the dynamics in a particular business sector. They may be able and willing to share their local experiences and help the company identify the most important risks in its industry.

While it may not always be possible to consult every neighbor and worker of every factory (especially when just starting the risk identification process), it is important to keep in mind that ultimately the process is aimed at addressing risks to *their* human rights. The process should thus be as close as possible to rights holders, and, where needed, evolve over time to enable more direct interaction with them.

GUIDANCE POINT 11: PRIORITIZE ACTIONS TO MITIGATE THE RISKS

A common approach in risk management is to assign every risk a probability, as well as a value for its likely impact on the company (usually in monetary terms or loss of reputation). However, weighing risks to human rights is a difficult process and requires a different approach than most companies use. Firstly, the risks to be assessed are risks to human rights, not just risks to the company. Furthermore, established risk management processes often focus on the short term (i.e. 2-3 years), while human rights risks may become material company risks only after several years (sometimes even decades).⁸⁵

There is no agreed way of prioritizing actions on identified human rights risks. Currently some tools are being developed that are still in the road-testing phase. For example, the *Danish Institute for Human Rights* proposes “severity” (of the impact) and “connection to the business” (of the human rights violation) as the corresponding metrics.⁸⁶ Another is the introduction by the

⁸⁵ For example, the effects of asbestos or pollution.

⁸⁶ See Arc of Human Rights in “Key Sources” at end the end of the section.



ASSESSING IMPACTS

Business Leaders Initiative on Human Rights of “essential” and “beyond essential” steps on human rights.⁸⁷ These techniques remain in the early stages of development and are necessarily general because of their cross-industry approach. Therefore, in addition to these useful tools, companies can consult industry initiatives to improve their understanding of the particular risks in their sector and which actions are to be prioritized.⁸⁸

It may also be advisable to involve human rights experts at this stage of the process. This stage in particular is delicate and difficult and would benefit from such expertise. In addition, the prioritization of actions based on the risks assessment could be directly tested on the earlier mentioned civil society groups and/or affected stakeholders, which would make the process, if done effectively, more robust and the choices more legitimate.

In case hiring expertise or involving grassroots perspectives is not feasible at this stage, some ways to prioritize risks may involve:

- **Particular countries:** identifying the top five or top ten countries that have the largest human rights risks; the company can then gradually extend the number of countries considered in the process;
- **Particular rights:** identifying a set of rights that are deemed most seriously at risk in a particular industry or sector, and gradually extend the number of rights considered. *Note: companies should be cautious in doing so as there is no agreed set of rights that is more fundamental or more important than others;*

⁸⁷ See www.humanrights-matrix.net.

⁸⁸ See Appendix D for examples of sector and industry initiatives.

- **Rights relevant for the company:** another method of prioritizing is considering which rights the company is currently not sufficiently addressing based on a gap analysis.⁸⁹ Companies may choose to fill existing gaps before refining risk areas that are already covered;
- **Particular functions:** companies can also choose to engage with particular company functions first, because they may know that certain staff encounters particular human rights risks (e.g. Security may run a higher risk than Catering, and thus could be involved first).

⁸⁹ The Danish Institute for Human Rights provides a Human Rights Compliance Assessment that allows companies to uncover gaps. See reference under key sources at the end of the section.



ASSESSING IMPACTS

Example of a Human Rights Risk Mapping Matrix

	Right to freedom from discrimination	Right to freedom of association	
Production			
Logistics		Example: Workers in warehouses and drivers are well organized and relations with unions are good	
Marketing & Sales	Example: Company has very provocative advertising with high risk of being perceived as discriminatory		
Human Resources	Example: Some countries in which company operates do not allow women to work	Example: Company operates in countries that by law do not allow unions	
Research & Development			
Procurement		Example: Suppliers in particular countries are known to undermine unions	

Legend

Low risk to human rights	Moderate risk to human rights	High risk to human rights	Extreme risk to human rights
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	Right to favorable work (safe working conditions)	Right to life	Other Rights
	Example: Company's health and safety program is in line with industry standards, but needs continued attention	Example: Company works with severely hazardous materials in its plants	Example: Currently no other human rights risks have been identified for Production
	Example: In certain countries there is a high road accident rate involving company vehicles		
			Example: Right to privacy: company stores data of customers
		Example: Company does trials with human subjects (also right to health)	
	Example: Subcontractors are not diligently wearing helmets		

Note that only some of the boxes are explicitly included to maintain readability. In a complete version, all cells should have an explanation of why the particular right was deemed low, moderate, high or extreme risk. Moreover, the number of rights listed is also by example; in practice, most companies will come to the conclusion that more rights are at stake. As such, this example should be seen as reflecting work in progress.

Example of a Priority List for Action

Human Rights Risk	Function(s)	Right(s)
Company works with severely hazardous materials in its plants	Production	• Right to life
Company has very provocative advertising with high risk of being perceived as discriminatory	Marketing & Sales	• Right to non-discrimination
Subcontractors are not diligently wearing helmets	Procurement	• Right to a safe working environment
In certain countries there is a high road accident rate involving company vehicles	Logistics	• Right to life • Right to a safe working environment
Company stores data of customers	Marketing & Sales	• Right to privacy
Company does trials with human subjects	Research & Development	• Right to life • Right to health
Suppliers in particular countries are known to undermine unions	Procurement	• Right to freedom of association
Company's health and safety program is in line with industry standards, but needs continued attention	Production	• Right to a safe working environment
Some countries in which company operates do not allow women to work	Human Resource Management	• Right to non-discrimination
Company has policy that supports collective bargaining, but some countries do not allow unions	Management	• Right to freedom of association

Legend

Low risk to human rights	Moderate risk to human rights	High risk to human rights	Extreme risk to human rights
-----------------------------	----------------------------------	------------------------------	---------------------------------

Policies in place	Additional Actions
<ul style="list-style-type: none"> • Hazardous materials policy 	<ul style="list-style-type: none"> • Extra training for workers • Spot checks
<ul style="list-style-type: none"> • Advertising guidelines 	<ul style="list-style-type: none"> • Organize focus groups of diverse groups of employees to test proposed ads
<ul style="list-style-type: none"> • Currently, no separate policy in place 	<ul style="list-style-type: none"> • Include safety standards in future procurement contracts • Engage with contractor management to address issue
<ul style="list-style-type: none"> • Road safety policy • Training for drivers 	<ul style="list-style-type: none"> • Install speed limit devices in vehicles • Safety message from CEO • Give out awards for drivers with best safety record
<ul style="list-style-type: none"> • Data storage policy • Privacy policy 	<ul style="list-style-type: none"> • No additional action (policy deemed adequate at the moment)
<ul style="list-style-type: none"> • Human subject policy 	<ul style="list-style-type: none"> • No additional action (policy deemed adequate at the moment)
<ul style="list-style-type: none"> • Purchasing contract • Negative screening criteria 	<ul style="list-style-type: none"> • Engage with supplier on issue • Brainstorm supplier support program
<ul style="list-style-type: none"> • Health & safety policy • Health & safety training (incl. "safety walks") 	<ul style="list-style-type: none"> • No additional action (policy deemed adequate at the moment)
<ul style="list-style-type: none"> • Currently, no separate policy in place 	<ul style="list-style-type: none"> • Engage with peers and stakeholders groups to find creative solutions • Engage with government to discuss how to apply policy in practice
<ul style="list-style-type: none"> • Business Principles (general commitment, but no separate policy) 	<ul style="list-style-type: none"> • Consult various sources on issue • Engage with business how issues is currently dealt with • Develop creative solutions



ASSESSING IMPACTS

B&HRI Learning

In deciding where to do more intensive human rights due diligence, companies can look towards countries under sanctions by the United Nations, European Union, or other relevant bodies.



GUIDANCE POINT 12: FEED THE ASSESSMENT RESULTS INTO BUSINESS OPERATIONS

The risk mapping outlined above is by nature a fairly high-level exercise. Nonetheless, the process can be quite easily applied to specific business units or company functions: each could make its own overview and list of action priorities. Once the list is completed, tested, and, where necessary, approved, they should feed back into the business operations and other company functions. The precise application depends on the particular company (some may only be operating in one country, while others do not have direct interaction with clients), but some suggestions how this could take place are provided below.

Focus on Particular Countries

The human rights mapping can lead to a classification of countries according to different levels of human rights risk. For those countries with higher risk, wider and more intense due diligence may be in order. For example, it is well-known that child labor is an issue in India, and equality between men and women is limited by law in certain countries in the Middle East, so in those countries particular measures might be in order to deal with such challenges.

In this light, particular attention is warranted for countries in conflict. Ruggie has consistently flagged this as a particular attention area for home governments and companies to pay greater attention to. For these, a “red-flags” approach is advocated by NGOs and others, where an initial desk research on a particular country or context in conflict automatically rings alarm bells for the company and more intense and specialized human rights due diligence is devised.⁹⁰ Such intensified human rights due diligence can also be adopted for countries that are under sanctions by the United Nations and regional organizations such as the European Union.

⁹⁰ See Appendix C for sources.

Client Acceptance Process

A field that receives increasing attention is how companies assess their customers' human rights performance. Based on the outcome of the human rights risk mapping, companies may instruct their Client Relationship Managers to ask certain questions before a client is accepted or a product issued, and to flag issues and contact internal or external human rights experts in case doubts are raised.

This process is being developed particularly by financial institutions, where the acceptance process of a client or finance for a project is one of the primary moments to address the behavior of a (prospective) client with regards to human rights (e.g. the *Equator Principles* outline standards for project financing). The human rights risk mapping might identify which types of customers will be asked what types of additional questions. For example, when a company applies for credit to invest in Saudi Arabia, this client may receive some additional questions on how it expects to deal with discrimination against women.

Prioritizing Screening of Business Partners

Besides customers and clients, companies can screen their business partners (e.g. suppliers, subcontractors, service providers) on their human rights performance. This includes asking business partners to fill out questionnaires, requiring partners to sign a contract that includes a vendor or supplier code of conduct, and (usually for a subset of "risky" partners) an audit or "supplier support visit." The process of human rights risk mapping may help in identifying threshold levels for taking certain types of action. For example, a supplier with a moderate human rights risk may be asked to do a self-assessment, while one with a high risk on human rights may be audited or receive a supplier support visit.

B&HRI Learning

Though certainly not the only moment in the process, financial institutions often have the greatest opportunity to address the human rights impacts of their clients before they are accepted as a customer or before credit is issued or renewed.

B&HRI Learning

An impact assessment becomes a human rights impact assessment (as opposed to a social or other impact assessment) when it approaches stakeholders as rights holders. This entails that mere compensation for harm done is not enough. Rather, people should be consulted and provide reasonable consent in business activity that results in a significant impact on their lives.



ASSESSING IMPACTS

Human Rights in Mergers & Acquisitions and Joint Ventures

For companies that frequently take over other companies and work together in joint ventures, a human rights risk mapping may identify particular risks in these activities and relationships. For example, companies may find out after a transaction that a newly acquired factory is run by management that does not respect human rights. This will lead to increased costs to bring the factory in line with company standards. Similarly, companies may find that their JV partners have a different understanding of “doing business with decency,” which may lead to difficult discussions and even strong disagreements over management practice.

A human rights risk mapping may lead to closer scrutiny of the level of respect for human rights of acquisition targets and joint venture partners. This may include whether there is an understanding of human rights, appreciation of the importance of human rights to the business, and whether appropriate processes are in place to manage human rights risks. Besides ensuring that the company can uphold its commitment to human rights, such due diligence can rule out any significant legacy costs, assess whether the new venture or company can be held to the same standards, and to lower bidding prices and transition costs when observations are likely to result in higher costs following the signature.

The suggestions presented above are not meant to imply that companies at all times should be

Clarification to the Suggestions Made on Human Rights Risk Mapping

asking endless questions about human rights topics to their colleagues, business partners, and stakeholders. The risk mapping is precisely intended to determine who should be targeted for specific attention on human rights. A possible conclusion of the risk mapping may be that the company is already taking certain mitigating measures, and hence that there are limited or no risks to human rights. If such conclusions are drawn based on a thorough process and conducted in line with human rights principles, then all the better. Such findings do not indicate that time was wasted, but rather that the company knows and can demonstrate what its risks are and how it is currently mitigating them.

Common Pitfalls to Avoid

Premature Focus on Particular Rights, to the Detriment of Other Human Rights Risks

While the description in this chapter are aimed at helping companies find focus and list priority areas for action, such guidance should not be interpreted as dismissing certain rights out of hand. When a company decides to focus on one right over another, this should have preceded a thorough and rights-compatible process including taking into account the perspective of relevant stakeholders.

Trying to Do a Human Rights Risk Mapping for the Entire Company at Once

The human rights risk mapping process outlined in this chapter will be new for most companies. Therefore, it is advised to start small and not try to do the entire company at once. As was suggested, perhaps particular countries and functions may be prioritized as long as this is done after deliberate consideration.

Focusing on Business Risks Rather Than Risks to Human Rights

While it is legitimate that a company is concerned with its bottom line, this cannot be the exclusive focus when doing human rights risk management. Where in the short run human rights risks and business risk do not converge, a company should still take action where it uncovers significant risks to human rights. Therefore, companies may be cautious about copying one-on-one existing risk management procedures to human rights.

Not Screening Business Relations for Human Rights Risks

For many companies, the most significant human rights risks may be related to its relationships rather than its own activities. Therefore, companies should avoid exclusively focusing on its own activities.⁹¹

Failing to Gather Grassroots Perspectives in the Risk Mapping Process

While it is important to include the perspectives of rights holders at any stage, it is especially critical when assessing impacts. Because it is such a determinant for the rest of the due diligence process, getting it right as this stage will help many of the other elements. For example, if certain impacts are not accounted for this may put disproportionate pressure on the grievance mechanisms, while, conversely, assessing all important impacts enables the company full integration of human rights and is likely to improve relationships with workers, communities and other stakeholders.

⁹¹ See Spheres of Influence," and Chapter 4.8 on "Supply Chains.



Key Sources and Websites

Human Rights Impact
Resource Centre (Aim for
Human Rights)
www.humanrightsimpact.org

Guide to Corporate Human
Rights Impact Assessment
Tools
www.aimforhumanrights.org

Guide to Human Rights
Impact Assessment and
Management
www.guidetohria.org

The Arc of Human Rights
Priorities/ Human Rights
Compliance Assessment
[humanrightsbusiness.
org/?f=publications](http://humanrightsbusiness.org/?f=publications)

Fair Labor Self Assessment
tools
ap.fairlabor.org/en

SOME SUGGESTIONS FOR SMES

▶ Start With Focus On A Set Of Issues

Instead of starting with the entire spectrum of human rights, smaller companies could focus on particular issues that are known to exist in their sectors and connect them to human rights norms to understand more of the nature of the issues (ie. “use” human rights to learn more about issues and understand its wider impact); often an SME provides particular products, so it will often be dealing with very specific human rights (eg. water company: right to water; internet company: right to privacy; hardwood importer: rights of indigenous peoples). Operating as a small clothing manufacturer, particular issues may relate to working conditions such as treatment of workers by managers and working hours; human rights can help the company determine what acceptable conditions are.

▶ Benefit From Others Initiatives

Benefit from sector and industry initiatives, as well as government agencies in determining risks and appropriate action. Increasingly, governments and other business service agencies (eg. export facilitators) develop information sources where companies can look up risks and issues in particular countries and industries.⁹²

▶ Consider Joining Sector Certification Schemes

SMEs increasingly benefit from certification schemes, particularly for specific issues, sectors, or commodities. Examples include *Forest Stewardship Council* (forestry), and *Roundtable on Sustainable Palm Oil* (issues related to land and working conditions, among others).

⁹² A list can be found in Appendix C.

3.3



INTEGRATION

"WALKING THE TALK"



INTEGRATION

INTRODUCTION

When expectations are set (policy), and priority areas for the company's human rights due diligence identified (assessing impacts), the next element is to start putting the processes in place to effectively address and mitigate the risks. In essence this comes down to implementing human rights into management systems, including training, performance appraisal, bonus systems, the tone at the top, control and oversight systems, etc. To ensure respect for human rights, companies can include human rights into these systems or install additional processes, where necessary.⁹³

SUMMARY OF GUIDANCE POINTS

- GUIDANCE POINT 13:** Assign responsibility for human rights
- GUIDANCE POINT 14:** Organize leadership from the top
- GUIDANCE POINT 15:** Include human rights in recruitment and hiring
- GUIDANCE POINT 16:** Make human rights an integral part of company culture
- GUIDANCE POINT 17:** Train key managers and employees
- GUIDANCE POINT 18:** Develop incentives and disincentives
- GUIDANCE POINT 19:** Develop capacity to respond to dilemmas and unforeseen circumstances

⁹³ There are plenty of excellent tools and guides available with suggestions for integration (see references at the end of this section). This section shares some of the main ideas and puts them in the context of the *Protect, Respect and Remedy* framework, but does neither purport to be complete nor exhaustive in its suggestions since Integration encompasses such a vast array of elements.

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS:⁹⁴

- ▶ **Human Resources:**⁹⁵ Helps implement human rights into typical HR processes, such as recruitment, hiring, training, performance appraisal, bonus systems, etc.
- ▶ **CSR/Sustainability Department:** Provides expertise for the integration phase; designs and conducts training materials and sessions.
- ▶ **Senior Management:** Involved in setting targets, foster a human rights respecting company culture; discusses dilemmas and reviews grievance reports.
- ▶ **Regular Management:** Implementing and executing the policy; coaching, supporting and overseeing employees; take appropriate disciplinary measures when necessary.
- ▶ **Specific functions (eg. Procurement, Customer Relations, Logistics):** may carry out specific actions to ensure respect for human rights; depends on the nature of the organizations and the context.

⁹⁴ See appendix B for a description of company functions.

⁹⁵ Eventually, all relevant functions and staff should be involved in the integration efforts, but some functions (eg. HR) will likely be more involved than others in this stage.



INTEGRATION



GUIDANCE POINT 13: ASSIGN RESPONSIBILITY FOR HUMAN RIGHTS

A key component of integration is how to organize consideration for human rights within the organization. Ultimately, the business operations themselves should take full ownership for the implementation of human rights, but initially some particular attention probably needs to be devoted by a particular person or department in order to kick-start the process and make everyone familiar with human rights and drive it through the organization.

The level of risk, determined in the human rights risk mapping (see previous section), could be used to determine the level of resources (eg. people, time and/or training) allocated. For example, a high risk human rights environment would probably need more specific attention than one with low risks.

Practice Highlighted: Human Rights Focal Point

Some companies have appointed a unique person for human rights, often called a “human rights focal point.” The focal point may be operating at head quarters or within a business unit. The main reason for the establishment of such a focal point is to enhance the integration of respect for human rights throughout the company. The person embodying the focal point can be an internal consultant (for BUs and other staff functions), coordinator (for horizontal integration), and spokesperson (for external parties) for the company’s human rights approach. The function further serves to keep all relevant individuals within the company up to date with relevant international developments on business and human rights (eg. the mandate of Special Representative Ruggie), and national developments (eg. sustainable procurement criteria set by the government), as well as sector and other initiatives.



GUIDANCE POINT 14: ORGANIZE LEADERSHIP FROM THE TOP

The framework of Ruggie is a new requirement that has emerged for companies. Therefore, integrating respect for human rights due diligence is a new process of change management. Those that execute the company's policies and procedures will have to do certain things differently and perhaps even add a few activities to their portfolio of activities.

As in every other change management process, leadership by senior management is essential. This plays out in various ways: the remainder of this section provides guidance points in which senior management all play an important role. There are two aspects of these that require specific attention.

More than for any other subsection of integration, leadership from the top is essential for creating a company culture respectful of human rights. In their speeches, senior managers' messages, corporate communications, personal visits, and personal conversations, senior managers can demonstrate leadership in addressing human rights as part of a broader company-wide values agenda. This conveys a powerful signal to other managers and employees about the importance they should give to human rights.

These messages are important and may be supported by embedding relevant factors in the incentive systems of a company. Communication and training is not in itself enough. Bonus and other reward systems should equally include respect for human rights, and certainly not work against it (eg. procurement staff gets paid more when suppliers are able to meet unrealistic deadlines that result in human right abuse of the supplier's workers).

B&HRI Learning

Engagement by senior management (at all levels) is a critical success factor for human rights due diligence, in particular in fostering a company culture respectful of human rights, backed up by positively reinforcing incentives systems for middle managers and other critical employees.



INTEGRATION

B&HRI Learning

An exit interview, conducted when an employee leaves the company, can give the company a valuable, and hopefully candid, perspective on its human rights performance.



GUIDANCE POINT 15: INCLUDE HUMAN RIGHTS IN RECRUITMENT AND HIRING

Respect for human rights can be greatly enhanced by ensuring that the individuals hired by the company exhibit company values, including respect for human rights. As a general matter, companies are obviously not expected to include knowledge of human rights as a prerequisite in a job advertisement (unless, of course, knowledge of human rights is part of the job description). However, applicants could very well be asked in their letter how they intend to balance respect for company values with other business demands, and how they have grappled with those dilemmas in the past. Interviews can include discussion of “failures,” including ethical dilemmas, and how they were overcome. Examples of specific human rights questions that could be posed, include:

- Someone interviewing for an IT position, could be asked about his/her idea of privacy.
- A petroleum engineer can be asked how he/she thinks drilling oil in the midst of a community can be effectively conducted from a social perspective.
- A prospective bank employee can be asked what he/she would do when one of the clients acts in a discriminatory manner.



GUIDANCE POINT 16: MAKE HUMAN RIGHTS AN INTEGRAL PART OF COMPANY CULTURE

Professor Ruggie has identified company culture as an important driver of human rights integration in the business. The objective thereof is to make consideration for human rights impacts second nature for the relevant staff functions. In this way, respecting human rights in the company's operations will go beyond mere "ticking the box". Rather than being mainly compliance-driven, respect for human rights will be driven by an appreciation of employees for the relevance of human rights as such, and for the company's operations. This will result in better compliance, since even where there is no explicit policy prescribing certain behavior, employees will have a sense of which actions and operations are compatible with respect for human rights and which are not. Ways to integrate human rights into company culture include:

- Use memos and communication to highlight what the company considers to be important;
- Use performance reviews and training programs to define the company's expectations;
- Include human rights considerations (possibly as part of a broader values agenda) in management trainee programs and leadership courses;
- Develop a game or simulation with a focus on business ethics, including the discussion of dilemmas;
- Organize competitions stimulating good behavior, such as safe driving in company vehicles, or rewards for the factory with the lowest incident-rate
- Collect best practices and communicate them across the company via intranet and presentations;
- Appoint individual staff members of the CSR/Sustainability department as "human rights champions," specifically responsible for coordinating and spreading human rights best practices across business units.



INTEGRATION



GUIDANCE POINT 17: TRAIN KEY MANAGERS AND EMPLOYEES

Many companies train their employees on business principles and codes of conduct. Such training can include discussion of human rights dilemmas that commonly occur in the daily activities of the worker. Intensified training may be provided for workers who encounter particular human rights dilemmas (eg. security personnel) or operate in challenging human rights situations (eg. conflict zones).

Training as such contributes to respect for human rights since it will endow the target group with the necessary capacity to respect human rights in their operations. There can be many different kinds of training, not all of which have to be costly. Online courses may work better for certain purposes than face-to-face training. Online conferences can be arranged to connect operating companies in different parts of the world. The train-the-trainer model can be used to subsequently train large groups in the company. Trainings should be reviewed regularly to assess if they still adequately address those groups and topics which require training, and whether they are effective in achieving their goal.⁹⁶

⁹⁶ Certain human rights organizations (e.g. Aim for Human Rights, Amnesty International, and the Danish Institute for Human Rights) have developed training sessions for companies on specific aspects. Companies could draw on the expertise of these organizations to develop trainings tailor-made to their needs.



GUIDANCE POINT 18: DEVELOP INCENTIVES AND DISINCENTIVES

Effective use of non-financial targets entails that such targets provide long-term incentives for employees, and that they stimulate behavior that respects human rights. Non-financial targets should be reviewed for effectiveness on a regular basis and whether they stimulate appropriate behavior. Some ways in which this can be ensured is:

- Issue bonuses per group or team rather than on an individual basis (or combination of both);
- Encourage or demand that a least one goal related to CSR/human rights is included in the goals of an employee/manager/business unit;
- Make Integrity and CSR part of the competences framework of employees, according to which they are evaluated.

Besides bonuses for achieving agreed business and integrity or CSR targets, it is also important that human rights debilitating behavior receives appropriate retribution. The level of punishment should depend on the seriousness of the violation (to human rights—not just company reputation), but it would be detrimental to building a company culture respectful of human rights if abuse of human rights principles have no serious consequences.

Some companies may choose to develop anonymous case studies of bad behavior for training purposes (presentation on why fellow managers were fired for behavior unrespectful of human rights) and to demonstrate how they should not act. Such naming and shaming is rare, but may itself create a strong disincentive.

B&HRI Learning

Over the past years, many companies have announced significant moves in integrating triple P values (people, planet, profit) in their score cards, such as 50% of bonuses dependent on the company's position on the Dow Jones Sustainability Index, zero-accident rates, or a particular score on the employees' engagement survey.



INTEGRATION



GUIDANCE POINT 19: DEVELOP CAPACITY TO RESPOND TO DILEMMAS AND UNFORESEEN CIRCUMSTANCES

Company decisions that involve human rights often present difficult dilemmas that ask for a balancing of interests and a prognosis of consequences for human rights. The company should develop the capacity to deal with those dilemmas at all levels. It is important that those taking the decisions have both a thorough knowledge of the company and its operations and human rights. The two tasks do not have to be completed by the same person as long as decisions are taken jointly.

Many companies have installed a committee that addresses human rights related questions and dilemmas. Names of such committees include: Ethics Committee, Business Principles Committee, Risk and Responsibility Committee, Corporate Responsibility Committee, and Integrity Committee. Notwithstanding the diversity of their names, they generally have very similar functions:

- **Provide interpretation and application of generally formulated business principles;**
- **Identify key risks with relation to company values and business principles;**
- **Discuss and address dilemmas arising at business units (e.g. whether company values can be upheld in a new contract, or whether a new country should be entered);**
- **Review the company-wide complaints procedure and make recommendations how to strengthen it.**

Companies often encounter unforeseen dilemmas, challenges or even crises, especially when operating in diverse international environments. To deal with the issue, teams are established to find a solution and to manage the potential impacts on people and align with the company policies. Even though such situations do often not leave a lot of time for extensive deliberations, the decisions and actions taken can have serious consequences for human rights. Companies may therefore include human rights expertise on the team that deals with

the situation. Alternatively, it could ensure that whenever a situation erupts, such expertise can be obtained through other channels, and that the team members are trained to know when to involve such an expert.

WRAPPING UP

Common Pitfalls to Avoid

Isolation Of Human Rights Into A Single Department

While it is generally good to create some innate capacity on human rights by installing a dedicated person or department, this may lead the regular business to feel less responsibility for human rights, since human rights “are taken care of.” There should be awareness for such risks and the company may want to take specific measures to ensure all relevant parts feel ownership for human rights.

The Person Responsible For Human Rights Does Not Have Access To All Relevant Parts Of The Company

It is better that the human rights expert has access to all parts of the company and is aware of events relevant to human rights within the company so he or she can appropriately fulfill the function of translating human rights to the business context. The help of a dedicated human rights person to achieve integration is less effective when that person is confined to a specific unit or department.

Setting Counterproductive Incentives

Setting targets may also accelerate integration and implementation. However, they may stimulate behavior that is not compatible with human rights. For example, if performance targets are linked to reducing the number of human rights-related incidents, instead of stimulating openness and a willingness to improve, certain targets may result in less reporting of incidents, rather than a reduction of incidents. It is therefore important that incentives stimulate truthful and real improvements of performance.



INTEGRATION

SOME SUGGESTIONS FOR SMES

▶ More Integration In Regular Business And Functions

In smaller companies, it is often impossible to have a full time person working on a particular topic; hence the alignment with a current portfolio, such as procurement or human resources, is even more critical. Moreover, if everyone integrates it in their daily job, there is no need for a separate person. In order for employees to integrate human rights into their work, it is crucial they are motivated and inspired by those that work closely with them and have particular credibility, such as the CEO or workers' representatives.

▶ Participate In Organized Training Rather Than Set Up Own Training

Instead of developing their own training, companies can take part in programs of organizations that provide training; start with training key staff, then train others as needed. In the Netherlands, the human rights organization *Aim for Human Rights*, together with *Amnesty International*, offers one-day courses on human rights for business staff.⁹⁷

▶ Start With One Performance Goal And Extend Over Time

Instead of starting with a complete overhaul of bonus systems, include one goal related to human rights on employees' score cards. Some larger companies have decided to first require this of top managers, then to spread it across the rest of the company. In other companies, staff picks several of a variety of goals related to non-financial performance.

▶ Resolve Dilemmas With Key Staff, Not An Entire Committee

Instead of installing a complete committee that resolves dilemmas, make sure key staff (eg. management) know of human rights dilemmas and discuss them in regular management meetings instead of during separate meetings.

▶ Benefit From More Informal Communication

Because of short communication lines, SMEs often have good opportunities at directly engaging with their workers. While there should always be formal grievance procedures available, this enables, for example, more direct resolution of grievances.

⁹⁷ See www.aimforhumanrights.nl.

► **Organize stakeholder engagement through Sector Organizations:**

Instead of setting up a separate stakeholder panel, companies could stimulate their industry organization to set up such a panel or otherwise organize stakeholder engagement. Many SMEs interact with stakeholders within sector initiatives for particular commodities or industries. In the Netherlands, examples include MKB Nederland,⁹⁸ Modint (Apparel),⁹⁹ VNKT (Coffee and tea),¹⁰⁰ Product Board for Margarine, Fats and Oils (Palm Oil).¹⁰¹

► **Build relationships with external experts**

Instead of designating their own expert, companies can build relationships with external experts, so that they can be consulted when needed. They can also learn from sister and mother companies. Naturally, the company should still have the capacity to recognize when it needs to call in the expert, so training is of key importance.

Key Sources and Websites

The Guide for Integrating Human Rights into Business Management

www.integrating-humanrights.org

www.ohchr.org/Documents/Publications/GuideHRBusinessen.pdf

Global Compact Human Rights Dilemmas Forum

human-rights.unglobalcompact.org

98 www.mkb nederland.nl

99 www.modint.nl

100 www.knvt.nl

101 www.mvo.nl

3.4



TRACKING PERFORMANCE

**"KNOWING AND
SHOWING"**



TRACKING PERFORMANCE

INTRODUCTION

The fourth element of human rights due diligence is tracking how the company is keeping up with its own commitment to respect human rights. The company should report on its performance and draw lessons from this for the next business cycle or project. Similarly to impact assessments, this process is driven by the company's greatest actual and potential risks for human rights. This, in turn, will be guided by the company's human rights policy, the outcome of impact assessments, and lessons of the integration phase. For many companies, tracking performance may include monitoring and auditing suppliers, customers and other business partners.

SUMMARY OF GUIDANCE POINTS

GUIDANCE POINT 20: Getting started with tracking and reporting performance

GUIDANCE POINT 21: Develop company-specific key performance indicators

GUIDANCE POINT 22: Consider different types of indicators

GUIDANCE POINT 23: Track performance of suppliers and other relationships

GUIDANCE POINT 24: Verify performance using various instruments

GUIDANCE POINT 25: Consider how to report on performance

GUIDANCE POINT 26: Consider updating performance and due diligence

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS:¹⁰²

- ▶ **CSR/Sustainability Department:** Supports accountability of the human rights policy; develops and/or assists annual Sustainability/CSR report
- ▶ **Auditing and/or Compliance:** Monitors compliance with company policies, including human rights policies/commitments
- ▶ **Procurement:** While various specific functions can be included, supply chain monitoring is of increasing concern for companies
- ▶ **Public Affairs:** Monitors societal concerns and trends in reporting; supports development of annual sustainability/CSR report
- ▶ **Investor Relations:** Interact with SRIs¹⁰³ and other investors; involved in the sustainability/CSR report (ie. integrated reporting)

¹⁰² For a description of company functions, see appendix B.

¹⁰³ Socially responsible Investors.



GUIDANCE POINT 20: GETTING STARTED WITH TRACKING AND REPORTING PERFORMANCE

In the area of human rights, tracking performance enables a company to know whether its human rights due diligence has worked. It furthermore uncovers what it needs to do in the future to mitigate any negative impacts on human rights that may have occurred. It is central to any improvement and change process. It is also closely linked to grievance mechanisms, because those provide useful information (see Chapter 3.5).

Notwithstanding its importance, human rights are complex to monitor and report on, not in the least because they have strong qualitative elements which are hard to turn into targets and measures. An undue focus on the qualitative side may result in the inability to say much on the overall performance of the company, while overemphasis on quantitative indicators risks reporting on issues that are not the most relevant for human rights.

When a company wants to begin or refine its monitoring of human rights, here may be some good and easy ways to find information relevant to human rights performance in existing processes:

- **Grievance mechanisms** such as reports of whistleblower policies, hotlines or complaint boxes usually contain relevant human rights information (eg. reports of worker harassment, excessive over time);
- **Auditing processes** also increasingly cover non-financial performance, including relevant human rights indicators;
- **Employee surveys** often contain human rights indicators, such as experiences of discrimination or harassment; values such as employee engagement or perception of listening capacity of management may also provide an indication of human rights performance in a particular part of the company;
- **Country reports**, issued by country directors or regional offices, may contain relevant information on the national human rights situation and/or performance of a business unit.

B&HRI Learning

Most companies will already have significant amounts of data on human rights related topics (though usually these are not explicitly labeled “human rights”), so they do not need to start from scratch in developing a monitoring report on human rights (examples are given throughout this chapter).



TRACKING PERFORMANCE

Usually, these existing reports do not address human rights explicitly, apart from mentioning particular issues such as child labor, health and safety, and incidents of discrimination. Hence, some translation may be needed to convert such indicators to human rights language. Nonetheless, using data of grievance mechanisms, audits and similar processes allows companies to report on human rights without immediately having to add completely new processes and procedures.



GUIDANCE POINT 21: DEVELOP COMPANY-SPECIFIC KEY PERFORMANCE INDICATORS

A company may come to the conclusion that it wants to develop more explicit and specific key performance indicators on human rights beyond those that are publicly available. Rationales can be that the human rights risk mapping (see Chapter 3.2) has uncovered that there are significant risks for the company in certain human rights areas, company functions or countries. Tracking and reporting on human rights may also be part of certain external ratings or rankings, such as the “*Eerlijke bankwijzer*” (rating of banks in the Netherlands) or the *Global Reporting Initiative (GRI)*, which the company may want to take into account more explicitly.

Examples of Indicators Related to Employees/Treatment of Workers

Process/Input Indicators:

- Percentage of employees trained in the Code of Conduct (including human rights)
- Percentage of staff with access to staff forum, grievance procedure or other support
- Number of human rights policy assessments among workers

Outcome/Incidents Indicators:

- Number and breakdown of code violations (eg., unrespectful treatment, discrimination, collective bargaining, employee relations, employee privacy, right to organize, working hours)
- Percentage of staff that experiences harassment, discrimination, etc. as expressed in employee survey or channeled through external party (eg. unions)

Monitoring and reporting guidance on human rights is relatively underdeveloped compared to other CSR/Sustainability topics.

Companies will find that publicly available key performance indicators on human rights are relatively underdeveloped (as is the area of human rights reporting in general, see below). Comprehensive and logical guidance will not easily be found, and existing indicators are not as robust as some other sustainability reporting indicators. The GRI—the organization setting *de facto* standard for sustainability reporting—has recognized this and is developing an update of the human rights component of its reporting guidelines to more closely follow the *Protect, Respect and Remedy* framework, as well as include related developments in the area of human rights.¹⁰⁴

GUIDANCE POINT 22: CONSIDER DIFFERENT TYPES OF INDICATORS

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

Three Types of Information May Be Monitored and Reported

	Description	Examples	Reportable?
1. Processes/ Inputs	Describe which processes the company has in place to carry out human rights due diligence	<ul style="list-style-type: none"> • Description of supplier audit program • Description of grievance mechanism • Description of training employees receive 	Generally, companies feel more comfortable reporting on processes; this is in line with Ruggie’s approach, though reports of actual impacts may be relevant as well
2. Incidents	Monitor specific abuse of human rights commitments	<ul style="list-style-type: none"> • Reported instances of discrimination • Safety incidents 	Companies have been reluctant to report on accidents as it may expose them to liability, but nowadays they increasingly do so in their annual/sustainability reports
3. Outcomes/ Impacts	Look at the broader and more systematic effects of company activities	<ul style="list-style-type: none"> • Wage levels • Health impacts 	Often, reporting involves the outcomes of impact assessments and long-term indicators; reporting depends on the availability and sensitivity of data

¹⁰⁴ The updated guidelines are projected to be formally adopted and published by the end of 2010. For more information, see www.globalreporting.org/humanrights



TRACKING PERFORMANCE

CURRENT HUMAN RIGHTS PERFORMANCE INDICATORS OF THE GLOBAL REPORTING INITIATIVE (UNDER REVIEW)

Investment and Procurement Practices

1. Percentage and total number of significant investment agreements that include human rights clauses or that have undergone human rights screening.

2. Percentage of significant suppliers and contractors that have undergone screening on human rights and actions taken.

3. Total hours of employee training on policies and procedures concerning aspects of human rights that are relevant to operations, including the percentage of employees trained.

Non-discrimination

4. Total number of incidents of discrimination and actions taken.

Freedom of Association and Collective Bargaining

5. Operations identified in which the right to exercise freedom of association and collective bargaining may be at significant risk, and actions taken to support these rights.

Child Labor

6. Operations identified as having significant risk for incidents of child labor, and measures taken to contribute to the elimination of child labor.

Forced and Compulsory Labor

7. Operations identified as having significant risk for incidents of forced or compulsory labor, and measures taken to contribute to the elimination of forced or compulsory labor.

Security Practices

8. Percentage of security personnel trained in the organization's policies or procedures concerning aspects of human rights that are relevant to operations.

Indigenous Rights

9. Total number of incidents of violations involving rights of indigenous people and actions taken.

Most existing human rights key performance indicators focus mainly on human rights *incidents*. Recently, there has also been more attention to *process* or *input* indicators. Therefore, in these two areas a company can develop its own key performance indicators without having to re-invent the wheel. Reports on significant incidents, either of the company itself or at its suppliers can be found in nearly every CSR/Sustainability report.¹⁰⁵ For more process related reporting, GRI is likely to provide more guidance in its proposed update of the human rights indicators, such as the following proposed new indicators:

- “HR3: Percentage of employees by gender who participated in training and/or induction programs with content on human rights and the company’s human rights policy;”
- “HR11: Percentage of human rights impact assessments/reviews that have engaged external stakeholders including both women and men in the assessment process.”¹⁰⁶

Companies wishing to systematically monitor impacts and outcomes (eg. what is the impact of the company’s presence on the local community) currently do so by means of case studies. Such studies are intended for building support and developing best practices for internal use, as well as reporting externally what the company is doing concerning particular human rights.

Unfortunately, systematic monitoring of impacts and outcomes is relatively rare, and where it does exist companies do not share much of the results publicly. Therefore, few examples can be given here beyond those presented in the various boxes in this section. Companies may want to engage an expert agency, multi stakeholder initiatives on human rights, or develop their own capacity and expertise to track human rights impacts and outcomes, besides keeping close track of the Ruggie mandate and the GRI.

¹⁰⁵ Find an overview of CSR/Sustainability reports here: www.ethicalperformance.com/reports/viewreports.php.

¹⁰⁶ These are two draft indicators that are proposed as part of the updated GRI guidelines. See www.globalreporting.org/humanrights.



TRACKING PERFORMANCE



GUIDANCE POINT 23: TRACK PERFORMANCE OF SUPPLIERS AND OTHER RELATIONSHIPS

A rising area of attention for many companies is the performance of their relationships, in particular that of suppliers. Over the last decade, many companies have set up supplier monitoring programs with the aim of preventing human rights and other abuse in the production process. These programs usually contain a supplier code of conduct, and follow-up is done by self-assessment and/or auditing by the buyer company or its chosen intermediary. If abuse is 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 (eg. child labor generally needs to be remedied faster than improvements of workers' dorms), and the specific requirements of the buyer company.

Examples of Indicators Related to Suppliers

Process/Input Indicators:

- Description what is a zero-tolerance vs. limited tolerance issue
- Number of audits conducted
- Percentage of workers of subcontractors trained
- Criteria for screening suppliers

Outcome/Incidents Indicators:

- Number non-compliances or alleged violations
- Breakdown of alleged violations
- Number of contracts cancelled due to incompatibility with human rights standards
- Number of joint ventures divested due to incompatibility with human rights standards

Later in this publication, a short description is provided on the *Protect, Respect and Remedy* framework and supply chains. It explains what buyer companies can do to reduce the risk their practices pose to the human rights of suppliers' workers and communities. However, auditing programs—especially of suppliers—are increasingly seen as incomplete processes. Research and company experience have demonstrated that conditions at suppliers only really improve when they recognize the value of the monitoring initiative and get engaged themselves. Suppliers may go through the

same steps described throughout this publication as buyers. Only then will they be able to thrive on the assistance and help of the buying company. A buyer company can make a real contribution to suppliers' human rights performance by lending its expertise and experience.¹⁰⁷

At the same time, buyer companies themselves could evaluate and review the impacts of their practices on suppliers' human rights performance. For example, unrealistic deadlines and last minute changes to product design may increase pressure on suppliers, which will greatly affect the suppliers' workers. Therefore, buyer companies increasingly provide training and raise awareness with their procurement staff and develop their incentive systems for procurement staff beyond mere price and quality of the finished product.¹⁰⁸

Tracking performance of other relationships in the value chain, such as governments, customers, business partners (ie. Joint Ventures) is an area of rising attention. However, both practice and research thereof have been relatively limited in the public domain. A notable example may be the financial sector, where use of funds by clients is one of the primary risk areas. While specific indicators and methods are rare, companies may want to think about how they can be associated with human rights abuse through other relationships than suppliers.

¹⁰⁷ See the work of Rick Locke, in particular: Locke, Richard; Qin, Fei; and Brause, Alberto (2008), "Does Monitoring Improve Labor Standards? Lessons from Nike," *Industrial & Labor Relations Review*, Vol. 61, No. 1, article 1. Available from: rlocke.scripts.mit.edu

¹⁰⁸ See also Chapter 4.8 "Supply Chains."



TRACKING PERFORMANCE



GUIDANCE POINT 24: VERIFY PERFORMANCE USING VARIOUS INSTRUMENTS

Besides obtaining data, it is also important to verify the accuracy of the information. Companies have their own established processes and techniques for such processes, so building on expertise in the Audit or Compliance department is a logical approach. Below, three practices are highlighted that companies have found to be useful for verifying performance on human rights and other non-financial risks.

Non-Financial Letter of Representation

In order to obtain assurance from lower-level business units and 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 a LOR to provide assurance that business is done in line with company values and principles. Formats may vary dependent on the type of company and risks involved for a particular business unit. Such letters can include human rights components (e.g. questions on discrimination, child labor, freedom of association, etc).

Verification through Multi-Stakeholder Initiatives

Companies may be part of multi-stakeholder initiatives that have verification processes (and often also grievance mechanisms). Examples include the *Fair Wear Foundation*, *Fair Labor Association*, and the *Electronics Industry Code of Conduct*. In these initiatives, companies, along with other stakeholders, agree on a set of standards against which their own operations, and often those of their suppliers and subcontractors, are measured. The initiatives may also conduct audits or (unannounced) spot-checks on behalf of their member companies. Usually, such initiatives are industry- or sector specific. Another benefit is that such initiatives help companies focus on the most material issues in their sectors, while ensuring that no issues are overlooked.

Verification by External Parties

A critical component of human rights due diligence is “know and show” that the company respects

human rights. One way to achieve this is, is to involve external parties to verify performance. External parties (other than multi-stakeholder initiatives), can include:

- **Accountancy agencies:** Increasingly have the capacity to audit on CSR/Sustainability performance (though much less on human rights specifically);¹⁰⁹
- **External stakeholder panel:** Reviews performance before it is published and writes a commentary what it would like to see different next year;
- **GRI Application Level Check:** The *Global Reporting Initiative* offers a service to check the self-proclaimed level of reporting (the more elaborate reporting, the higher the grade ranging from C to A). This is not a verification of whether the data is accurate but whether the extent of reporting is in line with the particular level of the GRI guidelines.

¹⁰⁹ Verification by accountants is automatically required when the company has the CSR/Sustainability report integrated with the annual report.



TRACKING PERFORMANCE

B&HRI Learning

Investors and other stakeholders often find it difficult to obtain an accurate picture of the human rights performance and risks of a company. External verification may support obtaining more credibility, though should also not be seen as a panacea.



GUIDANCE POINT 25: CONSIDER HOW TO REPORT ON PERFORMANCE

Earlier in this section, it was outlined that companies can report on process/inputs, incidents and impacts/outcomes. While reporting on outcomes may lead to the most credible perceived report, companies may be reluctant to share such information in the beginning. Therefore, a good place to start may be to report on the types of processes the company has in place. Many companies now also report on the number and types of complaints they receive.

An important input for determining what to report on may again be the human rights risk mapping (Chapter 3.2). This has uncovered the main risks on human rights, so it makes sense to report on how the company has “performed” on those risks. This may also lead to performance indicators that were not captured in the risk mapping, but may be included in the future. Companies can also look towards peer-companies and sector initiatives for inspiration. Although the human rights section of their guidelines remains underdeveloped, particular guidance can also be obtained from GRI.¹¹⁰ Companies aiming to report on human rights are advised to closely monitor the development of human rights reporting of GRI as well as initiatives within their own industry.¹¹¹

Examples of Indicators Related to Health and Safety

Process/input indicators:

- Percentage of workers trained on health and safety
- Number of safety walks held per business unit

Outcome/incidents indicators:

- Total reportable rate of injuries
- Number of fatalities
- Lost time injury rate

¹¹⁰ At the time of writing the human rights section of the G3 guidelines are being updated.

¹¹¹ The extractives sector, united in the International Petroleum Industry Environmental Conservation Association, has recently begun developing and reporting on key performance indicators. The apparel industry and other supply chain initiatives, for example the Fair Labor has already been working on this for a number of years.



GUIDANCE POINT 26: CONSIDER UPDATING PERFORMANCE AND DUE DILIGENCE

A critical goal of human rights due diligence is that over time a company's performance improves. The key performance indicators developed and data gathered should support this program of continuous improvement. This can feed back into the other elements of human rights due diligence that the company may look towards to make improvements, such as:

Human Rights Policy

- Update of the policy, for example the specific rights it addresses, or who is accountable for the policy;
- More specific instruction for functions that are not performing well, because it is unclear what is expected of them;
- When performance is consistently good, a company may feel it can raise the bar and be more inspirational in its human rights commitment;

Assessing Impacts

- Tracking performance may uncover that certain risks were not accounted for and thus that the human rights risk management process needs to be updated and/or made more robust;
- Existing impact assessment instruments can be updated based on the issues found;
- Annually, a specific country or business unit may be chosen for more intense impact assessments; performance of the past year may be input in deciding which country/BU is selected;

Integration

- Good performance could lead to targets being set higher (in the area of health and safety this is already commonplace) and meeting those targets could be made part of bonus systems where this not yet the case;
- More officers with expertise for human rights could be assigned to poorly performing parts of the company;

B&HRI Learning

Public reporting on human rights by companies has been relatively underdeveloped, due, among other reasons, to the lack of clarity of company responsibilities, absence of clear KPIs and lack of best reporting practices on human rights.



TRACKING PERFORMANCE

- A larger or different part of the suppliers pool could be monitored based on the outcomes of the supplier program; requirements could also be relaxed if performance is good;
- Performance data could help set direction for training efforts (eg. if significant incidents of child labor are found, staff might receive additional training on this issue);

Tracking Performance

- If performance indicators do not provide sufficient or adequate information, new ones could be developed or different types of indicators could be developed;
- If across the organization there are huge differences between the amount and depth of information available and this is deemed a gap in providing assurance on human rights, new monitoring procedures may be adopted;
- If the existing Audit function is not explicitly auditing on human rights, it can start build additional capacity;

Grievance Mechanisms

- If it appears that not all country offices have grievance mechanisms in place, the tracking performance process could lead to the installment of new grievance procedures where they are needed and could be useful;
- If reports of grievance procedures show a significant spike on a particular issue, some focused attention may be needed for the specific business unit/site/factory.

Examples of Company-wide, Indirect and/or Broad Indicators¹¹²

- Position on Dow Jones Sustainability Index/ FTSE4Good
- Company-wide fatalities or injuries rate (may include subcontractors)
- Score on employee engagement survey
- Laid off workers that have found new job with help from company

¹¹² These indicators are often tied to bonuses.

Common Pitfalls to Avoid

Reporting on What Can be Measured Rather Than What is Important to Measure

Because human rights reporting is relatively underdeveloped, there is little guidance available for companies on how to do it well. Therefore, there may be a tendency to focus on what is possible to measure rather than what is important to report on. If data is not available, reporting on a critical human rights through a case study may be more important than reporting hard data on an irrelevant matter.

Exclusive Focus on Monitoring and Auditing

Research and anecdotal evidence have shown that monitoring and auditing leads to limited improvement. Therefore, monitoring and auditing efforts should always be complemented by a process of engagement including training, lending of expertise and general support.

Equating Transparency with Publication

Transparency is an important element of human rights due diligence. However, this can be accomplished through other ways than publication to include stakeholder dialogues, open communication, neighbor councils, etc. (for more see Chapter 4.6 on Transparency)



TRACKING PERFORMANCE

SOME SUGGESTIONS FOR SMES

▶ Track And Improve Performance of the Sector.

Tracking performance can also be done at a sector level: What is the performance of the industry overall and what can companies do to jointly improve conditions? Specific questions that can be asked, include:

- How much has child labor diminished in a particular region/industry?
- How many incidences of discrimination have been reported to the industry organization?

▶ Use Smaller Scale Methods To Obtain Feedback

Small companies may not do large scale employee surveys, but there is always some way that workers are asked for feedback; this can include questions related to human rights. Existing methods of employee feedback could include questions on human rights topics such as discrimination; they could also include the workers' opinion on how effective the company's efforts to respect human rights are.

▶ Benefit From Shorter Communication Lines To Make Improvements

Improvements can be made informally, as smaller companies generally require less formal procedures and bureaucracy for organizational change (eg. open-door policy). For example, discuss improvements in team meetings rather than through overly formalized channels.

Key Sources and Websites

Global Reporting Initiative “A Resource Guide to Corporate Human Rights Reporting”

www.globalreporting.org/humanrights

Global Compact Communication on Progress

www.unglobalcompact.org/COP/index.html

Dow Jones Sustainability Index

www.sustainability-index.com

FTSE4Good Inclusion Criteria (including human rights)

www.ftse.com/Indices/FTSE4Good_Index_Series

3.5



GRIEVANCE MECHANISMS

**"EARLY WARNING,
EFFECTIVE SOLUTIONS"**



GRIEVANCE MECHANISMS

INTRODUCTION

When something has gone wrong and people are negatively affected through the company's doing, things need to be set right. Mechanisms to remedy such situations are not new to companies. They have company-wide whistleblower policies, complaint processes, person of trust systems, peer-support network, etc. However, these are mostly for internal stakeholders, while Ruggie has stated that all stakeholders that are affected by a company's activities should have access to grievance mechanisms. Because companies have an important role to play in providing this access, it may support a re-evaluation of their current use of grievance mechanisms.

SUMMARY OF GUIDANCE POINTS

GUIDANCE POINT 27: Take full advantage of grievance mechanisms

GUIDANCE POINT 28: Make a gap analysis of existing grievance mechanisms

GUIDANCE POINT 29: Bring internal grievance mechanisms in line with Ruggie principles

GUIDANCE POINT 30: Consider how to contribute to mechanisms for external stakeholders

GUIDANCE POINT 31: Integrate grievance mechanism in stakeholder management

GUIDANCE POINT 32: Improve effectiveness of grievance mechanisms

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS:¹¹³

- ▶ **Human Resources (incl. Persons of Trust):** Serves for intermediary between management and workers, including in grievances and disputes
- ▶ **External Relations/ Stakeholder Relations:** Serves as intermediary between the company and external stakeholders affected by the company
- ▶ **Legal and Compliance:** Often runs existing whistleblower procedures; understand legal elements pertaining to handling of grievances

¹¹³ For a description of company functions, see appendix B.

- ▶ **Works Council:**¹¹⁴ Possible function as trusted channel to receive (and handle) complaints; may support company in improving performance
- ▶ **Business Operations:**¹¹⁵ Interact with local communities and are needed to resolve many complaints; can also be a source of complaints
- ▶ **Senior Management:**¹¹⁶ Will receive complaints directly (even when not published as such); instill accountability throughout organization

Overview of Typical Grievance Mechanisms and Processes in Companies

Level	Accessible to	Typical Example	Types of Issues	Driver of Installation/Adoption
1. Company-wide	All employees*	Hotline or whistleblower procedure	Typically fraud and corruption**	<ul style="list-style-type: none"> • Sarbanes-Oxley • Own Business Principles
2. Country, Business Unit or Factory	Employees	Complaint procedure or Persons of Trust	Related to human resources (harassment, intimidation, etc.)	<ul style="list-style-type: none"> • National legislation • Common business practice
3. Third Party	Customers	Customer Support	Complaints related to warranty or service	<ul style="list-style-type: none"> • National legislation • Customer loyalty
	Neighbors	Phone number or neighbor council	Pollution, noise, smell	<ul style="list-style-type: none"> • Smooth neighbor relations • Social license to operate
	Community	Grievance procedure, community liaison	Road broken, water levels low	<ul style="list-style-type: none"> • Early dispute resolution • Investor requirement
4. Stakeholder Engagement	Stakeholders (communities, NGOs, etc.)	Informal meetings, stakeholder panel	Larger impact of company on community	<ul style="list-style-type: none"> • Exchange knowledge • Increase legitimacy

* If open to third parties, usually not published as such.

** But usually also open to human rights issues.

¹¹⁴ or other worker representative organization (eg. union).

¹¹⁵ Particularly for lower level and company-community grievance mechanisms.

¹¹⁶ Can be corporate responsibility or ethics committee.



GRIEVANCE MECHANISMS

B&HRI Learning

The Ruggie approach extends the application of grievance mechanisms beyond a company's own employees to external stakeholders. In many ways it resembles existing company programs aimed at reducing and addressing workplace conflicts, as well as business to business conflict resolution, including alternative dispute resolution (ADR).



GUIDANCE POINT 27: TAKE FULL ADVANTAGE OF GRIEVANCE MECHANISMS¹¹⁷

According to Ruggie, grievance mechanisms are a critical and crucial part of the corporate responsibility to respect in two ways:

"First, they serve as early warning systems, providing companies with ongoing information about their current or potential human rights impacts from those impacted. By analyzing trends and patterns in complaints, companies can identify systemic problems and adapt their practices accordingly. Second, these mechanisms make it possible for grievances to be addressed and remediated directly, thereby preventing harm from being compounded and grievances from escalating."¹¹⁸

Achieve both goals simultaneously entails that relatively minor disputes and complaints are identified, addressed and learned from at the earliest stage possible. Particularly in relation to external stakeholders, this may sometimes require the company to give up some of its immediate control over the dispute process, for instance by involving a more independent intermediary (eg. third party hotline, ombudsperson) in order to increase accessibility and resolution of issues. The sooner issues are resolved, the less likely they spin out of control.¹¹⁹

In order to determine how such an approach can be made part of company culture and infrastructure, current realities at the company need to be compared with the guidance provided by Ruggie. It is therefore advisable to give some thought to the recommendations of Ruggie and develop a company-specific approach to grievance mechanisms. The following guidance points may help to make such an analysis and to devise a plan of action to become aligned with the Protect, Respect and Remedy framework.

¹¹⁷ Ruggie defines a grievance "as a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, explicit or implicit promises, customary practice, or general notions of fairness that may differ from standard economic and bureaucratic rationales." Ruggie (2010b), para. 90. In this chapter "grievance," "complaints" and "dispute" are used more or less interchangeably.

¹¹⁸ Ruggie (2010b), para. 92.

¹¹⁹ Rees, Caroline (2010), "Relax the Grip: A role for mediation in business and human rights disputes", April 7. Available from: www.institutetehrb.org/blogs



GUIDANCE POINT 28: MAKE A GAP ANALYSIS OF EXISTING GRIEVANCE MECHANISMS

Many companies already have in place a web of grievance mechanisms for internal stakeholders, whether formal or informal. For instance, companies complying with Sarbanes-Oxley or the Dutch Corporate Governance Code must have a whistleblower policy in place, which are usually more of a reporting line, but is often also used for resolution of grievances. Also, some countries have implemented laws that require companies to install a grievance mechanism for workplace issues such as harassment and sexual intimidation, or companies have voluntarily decided to adopt employee conflict management programs. Health and Safety programs often also include a provision for reporting irregularities and incidents. Finally, nearly every organization, no matter how small, has some process in place to informally or formally lodge complaints with management through personal contact, complaint boxes, monthly feedback meetings, “breakfast with the CEO,” etc. The following table provides an overview of typical mechanisms for internal stakeholders one might find in a company.

Typology of Internal Grievance Mechanisms¹²⁰

Possible Channel	Types of Human Rights Complaints
‘Regular’ supporting functions (Legal, Human Resources)	Depending on function, but generally includes various human rights - related issues (harassment, discrimination, etc.)
Security	Security of person (eg. right to life and health)
Occupational social worker and company doctor	Support for well-being at work (complaints can provide input for management to analyze company processes and improve them)
Works Council	General complaints related to work place
Persons of Trust and Complaint Committees	Safe working environment, freedom from sexual intimidation, aggression, violence
Compliance Officer (including whistleblower policy and hotline)	Typically focus on legal compliance, but usually open to any issue related to business principles or code of conduct, including human rights issues

¹²⁰ Building on Kaptein, Muel and Fenke Buiters, “De Integere Organisatie 2: handreiking voor een sluitend vangnet voor ongewenst gedrag.” 2001. Den Haag: Stichting Beroepsmoraal en Misdaadpreventie.

The Ruggie approach to grievance mechanisms, including focus on alternative and early dispute resolution, is a useful and welcome contribution to the mix of existing company-level grievance mechanisms.



GRIEVANCE MECHANISMS

Gap Analysis for Internal and External Key Stakeholders

A necessary step in aligning the company with the *Protect, Respect and Remedy* framework is making a gap analysis of the grievance mechanisms already in place. The most important aspect in this phase is determining whether all the key stakeholders that could potentially be subject to adverse impacts of the company have access to a grievance mechanism, in particular those groups that are traditionally not included in existing mechanisms, such as external stakeholders. This does not only include theoretical but also actual access to a grievance mechanism, for example by validating whether the mechanism or mechanisms are published in all relevant languages and that those without an internet connection or telephone have free access as well.¹²¹

Three Questions for a Gap Analysis of Grievance Mechanisms

Note: the questions are not necessarily in chronological order

- ▶ Do all company key stakeholders potentially affected by the company's activities have access to a functioning grievance mechanism?
If not: Which additional mechanisms need to be put in place?
- ▶ Do the new and planned grievance mechanisms align with the Ruggie principles for effective grievance mechanisms?
If not: How do they need to be altered to function according to the Ruggie principles?
- ▶ Do current grievance mechanisms facilitate cumulative learning and improvement over time?
If not: What needs to be done in order to enable such a process?

¹²¹ More guidance points can be found in the very accessible publication referenced at the end of this chapter

If the gap analysis has revealed that some critical employees and other stakeholders do not have access to grievance mechanisms, the company may be running a serious risk by failing to uncover potential disputes at an early stage. Such a situation should be remedied as soon as possible.

Deciding Where to Prioritize

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 risks of being subject to human rights abuse, while currently having the least access to effective grievance mechanisms (either by the local government or through company-organized mechanisms). Such high risk operations could be identified through the human rights risk mapping process that was outlined in Chapter 3.2, which could include a focus on grievance mechanisms, or could be done specifically for identifying gaps in grievance mechanisms.

The gap analysis presented in Guidance Point 28 should have uncovered some of the places where there is least possibility to bring grievances to the attention of the company. Matching both—highest risk with largest gaps—will provide a list to prioritize a focus on grievance mechanisms, while not forgetting that it is important that ultimately all stakeholders have access to effective grievance mechanisms—whether provided by the State, the company, or through some other form.¹²²

B&HRI Learning

Most companies already have grievance mechanisms in place at various levels. For example, a company-wide hotline, coupled with a Person of Trust system at the operations level. Or a local semi-informal procedure complemented with a more formal industry-level mechanism.

¹²² Other forms can include: "collaborative arrangements with other companies or organizations, or by facilitating recourse to a mutually accepted external expert or body." Ruggie (2010b), para. 93.



GRIEVANCE MECHANISMS

Deciding on the Type of Grievance Mechanism

It is crucial for success to put in place a grievance mechanism appropriate for the context, purpose and target group of the mechanism. Some considerations:

- There is a big difference whether the mechanism is for employees or for other stakeholders such as communities or customers (eg. employees may accept that a senior manager adjudicates a dispute, while a community might only accept a party perceived as more neutral).
- In certain cultural contexts, particular approaches to dispute resolution work better than in others (eg. in some countries anonymous complaints are discouraged, while in others they are actively encouraged; see dilemma below);
- There are roughly six different types of grievance processes: direct negotiation, facilitation, conciliation, mediation, investigation, adjudication, arbitration;¹²³ different types of complaints ask 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.

Whatever mechanism or mix of various mechanisms are deemed most relevant, they should follow certain principles to be effective in reaching the stated goal of remedy and early dispute resolution. Building on the Ruggie principles for effective grievance mechanisms, the overview below provides some key points on how to do so effectively.

¹²³ Rees and Vermijs (2008), p. 3.

Ruggie Principles for Effective Grievance Mechanisms¹²⁴

A Legitimate	a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process;
B Accessible	a mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal;
C Predictable	a mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome;
D Equitable	a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms;
E Rights-compatible	a mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards;
F Transparent	a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.
G Dialogue and Engagement	company-level mechanisms should operate through dialogue and engagement, rather than the company itself acting as adjudicator.

¹²⁴ Ruggie (2008), paras. 92-95. During initial research Ruggie had found that there was a real knowledge gap in the area of non-judicial grievance mechanisms, in particular relating to company-community grievances. Caroline Rees, an advisor to Ruggie focusing on grievance and dispute management, organized two multi-stakeholder consultations and held hundreds of conversations with experts. This culminated in the publication "Rights –Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders." It provides the underlying explanation for the principles published in the 2008 Ruggie report (see below). The principles have already been implemented by several companies, and a series of pilot studies are testing their robustness and universality. When designing or refining a grievance mechanism, companies should look at these principles to ensure the mechanism is in line with the *Protect, Respect and Remedy* framework. They may also find useful guidance in the publication mentioned above and on the website: www.baseswiki.org.



BUILDING BLOCKS OF A COMPANY- LEVEL GRIEVANCE MECHANISM FOLLOWING THE RUGGIE PRINCIPLES

Access to the Mechanism

- An employee who thinks his or her human rights are negatively affected through the company's doing has the possibility to bring the complaint to the responsible site/plant manager or his delegate (eg. HR official), with at least two different management-level access points;
- Possible channels to lodge a complaint are: writing a letter, through a website, per email, or through an anonymous third party provider via a free hotline;
- Every employee receives a pocket card with the telephone number and the other roads of access; for others, alternative ways of publicizing the mechanisms are found (all in their native language);
- Employees exposed to particular vulnerabilities may receive a short training when and how to use the mechanism;
- In a publication it is made clear who has access to the mechanism and what can be reported.

Receipt and Handling of Complaints

- Complaint are handled at the lowest level possible; the more serious the human rights issues, the higher up in the corporate hierarchy it is addressed;
- Because different types of complaints are served by different processes, an initial assessment is made on the type of complaint that has been filed and what is the appropriate process to handle the complaint;
- The process has clear steps-including time frames, how anonymity (if desired) is maintained, and when a case is determined closed-which are communicated upon publication of the mechanisms or when filing a complaint;
- Complainants get the opportunity to explain their complaints; within a reasonably short time the complainant receives a response;
- Any individual in the company who is specifically accused of harm is granted access to self-chosen support and expertise (eg. Person of Trust);
- Where solutions are not evident and readily agreed, a dialogue will be established to resolve the dispute;
- The complainant is encouraged to use the mechanism, but he or she is not in any way inhibited from applying to legal remedies.

Note: These suggestions are primarily for internal grievance mechanisms, though many of the underlying principles are certainly also applicable to mechanisms for external stakeholders.

Oversight

- The mechanism is overseen locally by an assigned local complaint officer, and at company level by a senior manager or committee with a certain degree of independence from the board and other managers, but with their full trust and support; this may also be done by an outside expert in an ombudsman function;
- Local complaint officers have undergone training to make appropriate judgments about the merits of the complaint and what type of process to initiate as follow up;
- Where appropriate and effective, representatives of stakeholders likely to use the grievance mechanisms (eg. Community Liaisons, Works Council) are involved in oversight of the mechanism;
- Every site/plant reports about the receipt and handling of the complaints to a senior manager or high level body in the company.

Outcome

- If a resolution involves a management decision, there is a clear separation between those taking the decision and mandating its execution, and the accused and his/her immediate managers;
- Resolution of certain types of complaints (especially those where complainants are directly harmed such as in a harassment case) are usually closed when the complainant is satisfied with the resolution;
- After a certain time period, the complaint officer checks in with the complainant (and accused, if appropriate) whether the resolution has been satisfactorily implemented.

Follow-Up and Improvement

- Those who oversee the mechanism formulate key performance indicators and monitor improvements;
- The mechanism is reviewed periodically and feeds into management decisions, such as who is being targeted for training and audits;
- Representatives of stakeholders are consulted when the mechanism is updated.



GRIEVANCE MECHANISMS

B&HRI Learning

While the Ruggie principles for effective grievance mechanisms were developed primarily with external stakeholders in mind, they can also be very useful for internal stakeholder grievance mechanisms.



GUIDANCE POINT 29: BRING INTERNAL GRIEVANCE MECHANISMS IN LINE WITH RUGGIE PRINCIPLES

Besides identifying where additional grievance mechanisms are needed (previous guidance point), companies should assess whether existing and newly planned mechanisms align with the Ruggie principles for effective grievance mechanisms. This will help them achieve the goal of early dispute resolution and continuous learning.

While the Ruggie principles have been developed primarily with external stakeholders in mind,¹²⁵ the Business & Human Rights Initiative has found that the Ruggie principles can also be very useful for internal stakeholder mechanisms. The most important lessons learned (shared below) provide guidance for companies in aligning their existing mechanisms with the Ruggie principles.

¹²⁵ CSRI (2008), p. 7.

B&HRI LEARNING: GRIEVANCE MECHANISMS AND THE RUGGIE PRINCIPLES

As part of the Business & Human Rights Initiative, a workshop was organized on company-level grievance mechanism. Two companies presented their mechanisms, after which Caroline Rees, an advisor to Ruggie on grievance and dispute management, shared her views based on her research and experience. The discussion mainly addressed grievances of employees in company-wide mechanisms, but also touched on how to extend the mechanism to other parties.

- It is important to make explicit what issues can be reported beyond a generic reference to the business principles; this may also help avoiding improper complaints;
- Low frequency in use of a mechanisms may be due to a lack of awareness and trust in the mechanisms; it can be countered by better understanding the sources of distrust and by increasing human interaction, possibly via a third party to maintain anonymity;
- Trust that reporting of issues will in and of itself not lead to sanctions is important to ensure that all issues move up the management chain;
- To improve processes and performance of human rights due diligence (as Ruggie expects/recommends), it may be helpful to also report issues that were not presented as a formal complaint, but came to the fore in another way (eg. through internal report, media);
- Liability related to complaints can be mitigated by responding adequately when a complaint is brought to the attention of the company, not by ignoring it;¹²⁶
- Difficulties arising from anonymously reporting mala fide complaints can be resolved by engaging a trusted third party which remains confidentiality but enables a channel for communication with the complainant;
- There are roughly six different types of grievance processes: direct negotiation, facilitation, conciliation, mediation, investigation, adjudication, arbitration; different types of complaints ask 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 focus more on mutual gains.

¹²⁶ See Sherman and Lehr (2010).



GRIEVANCE MECHANISMS

Dilemma: When National Law or Practice Does Not allow Anonymous Complaints

It is often argued that the likelihood of an aggrieved party contacting a grievance mechanism is increased if trust in the mechanism is high. This may be enhanced when there is a possibility for anonymous complaints. Many corporate governance regulations now also require companies to have such a whistleblower or similar mechanism in place. But in certain parts of the world anonymous complaints mechanisms are forbidden by law or go against culturally established patterns of how disputes are resolved. How are companies to deal with this?

Naturally, companies are expected to uphold the law, but this does not preclude them to look for access points that can either provide anonymity in legally-acceptable ways, or provide confidence to a complainant so that they do not feel a need for full anonymity:

- Providing multiple avenues to bring a complaint so that the complainant may choose what feels safest;
- Engaging a neutral third party to act as intermediary;
- Appointing an independent company ombudsman with a direct line to the non-executive directors (ie. there is no “filtering” of complaints by the executive board);
- Aligning company mechanisms with local dispute resolution mechanisms external to the company (provided those are in line with the Ruggie principles);
- Engaging with government to find alternative (but legal) ways to provide anonymous avenues for complainants.



GUIDANCE POINT 30: CONSIDER HOW TO CONTRIBUTE TO MECHANISMS FOR EXTERNAL STAKEHOLDERS

The *Protect, Respect and Remedy* framework states that all stakeholders potentially affected by the company's activities have access to a functioning grievance mechanism at the operational level, whether organized by the State, the company or in some other form. Just like employee grievance mechanisms, these can function as early *and* alternative dispute resolution mechanisms. Which type of mechanism is most effective depends on the nature of the relationship with the external stakeholders. There are different types of methods that can be employed:

- **Open up existing mechanisms to non-employees:** While existing mechanisms often do not exclude outsiders, the mechanisms are usually not published as such and/or are hidden on company intranets. Nonetheless, some companies explicitly open up their grievance mechanisms to particular groups such as workers of contractors. 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;¹²⁷
- **Consider International Framework Agreements:** Some companies have chosen to enter into an agreement with international trade unions for company-wide implementation of labor and other standards. Many (but not all) of these agreements contain provisions for joint investigation and resolution of complaints and disputes related to the agreement, whether filed by the union or the company;
- **Engage multi-stakeholder initiatives:** Some companies also choose to organize grievance mechanisms in a multi-stakeholder setting. Often this is part of a larger initiative including a code of conduct and audits.

¹²⁷ See for more guidance points, CSRI (2008).



GRIEVANCE MECHANISMS

- Examples include procedures of the Voluntary Principles on Security and Human Rights, the Fair Labor Association, and the Fair Wear Foundation;¹²⁸
- **Mechanism for sector or industry:** Because some grievances go beyond the activities or capacity of a single company, a joint effort can be a useful addition. Other motivations for such mechanisms include pooling of resources and increased legitimacy of resolutions. These can be multi-stakeholder as well as between peers. Examples: *Hotline of International Council of Toy Industries*;¹²⁹
- **Installation of a grievance mechanism for community grievances:** Project funders may require the company to install a grievance mechanism around a particularly high-impact project.¹³⁰ Companies themselves also increasingly see the benefit of these and install such mechanisms.¹³¹

Dilemma: Suppliers and Grievances

Some companies have actually set up a grievance mechanism where employees of the supplier can directly lodge a complaint with the buyer company. However, setting up grievance mechanisms such as hotlines for suppliers' employees has the potential of placing responsibilities with the buyer company which should ordinarily be the suppliers'. It could also be interpreted as a sign of disrespect to a supplier and it may force the buyer company to accept complaints which will eventually have to be resolved by the supplier anyway. As a middle way, many companies now require as part of the supplier agreement that suppliers have their own grievance mechanism in place, and check this in the audits and verification process.

¹²⁸ References to these initiatives are listed in Appendix D.

¹²⁹ See: www.icti-care.org.

¹³⁰ This is for example the case for the International Finance Corporation's performance standards. See www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards.

¹³¹ Rees and Vermijs (2008).



GUIDANCE POINT 31: INTEGRATE GRIEVANCE MECHANISM IN STAKEHOLDER MANAGEMENT

Done effectively, grievance mechanisms for third parties can be a powerful tool to achieve the company's goal of maintaining good standing with the company's stakeholders, such as neighbours, local communities, civil society organizations, customers, etc.

In interaction with such partners, companies are often charged with not taking stakeholder engagement seriously, or that they are not really listening to stakeholders' concerns. A rights-compatible grievance mechanism can add a substantial level of accountability. Not only is a charge of disinterest of the company much harder to maintain for an outsider once it has a chance to formally interact with the company, it also allows for a much more structured process with stakeholders, and—perhaps most importantly—can pick up potential stakeholder grievances at an early stage, and thereby avoid larger issues later on. Several approaches to make grievance mechanisms part of stakeholder engagement involve:

- **Integration in the relationship with the community:** Local problems often ask for local solutions, especially where it concerns the rights of communities and workers. Companies can propose to local stakeholders and their legitimate representatives (eg. NGOs) to participate in its design and help build to maximize the chance it will be used. They may also be involved in oversight (but not in resolving individual disputes). This can take shape informally by asking such partners to channel grievance to the company first to see whether it can be resolved at that level before other measures are taken. An alternative is engaging a community liaison organisation or person that mediates between the company and the community.

B&HRI Learning

Companies often fear that when they open up their grievance procedures to non-employees, they will be flooded with complaints. In practice, this fear does not appear to be self-evident as such a move in itself does not necessarily lead to a significant spike in complaints.



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- **Setting up a key stakeholder panel:** Such a panel can consist of key stakeholders or their representatives, as well as experts on human rights (and other topics, if the panel has a broader mandate). Besides providing support, constructive critique and advising the company on improving performance, such a panel could also receive and discuss formal and informal complaints. Some companies even set up key stakeholder panels for the sole purpose of investigating grievances, though in most instances they have been established to deal with a specific instance—not with grievances on a standing basis.
- **Making grievance mechanisms part of interaction with NGOs:** Companies may consider engaging more formally with their critical voices, for example, by setting up a periodic dialogue or roundtable with NGOs, where human rights issues and dilemmas (among others) can be discussed in a more structured structure.¹³² These can also support companies in making improvements over time and seeking advice on commonly occurring dilemmas.

FOUR STEPS FOR MAKING GRIEVANCE MECHANISMS PART OF KEY STAKEHOLDER ENGAGEMENT¹³³

1. Identify key stakeholders Companies may be unused to seeing the impacts of their activities through the eyes of others or even be reluctant to do so;
2. Involve key stakeholders in the design process A legal framework for the dispute resolution process may not exist; therefore, an agreement with those that may use the mechanism is key for its effectiveness;
3. Integrate into existing company functions For successful mediation, it is important to involve the right function at the right time with sufficient resources and traction inside the company;
4. Build the capacity to determine the cause of relationship failures; Develop the skills to determine the cause of community relationship failures, which is a different process than evaluating workplace related incidents.

¹³² In both the UK and the Netherlands, the human rights organization Amnesty International led roundtables with companies on human rights for more than a decade. Global Compact Network Netherlands currently runs a similar “Roundtable Global Issues,” where companies can present and discuss their dilemmas in a confidential setting.

¹³³ Building on Sherman (2009), p. 14–20.



GUIDANCE POINT 32: IMPROVE PERFORMANCE OF GRIEVANCE MECHANISMS

Typically, outcomes of internal grievance mechanisms culminate into quarterly, semi-annual, and/or annual reports for review of senior management. The Works Council and other representative bodies may also receive and discuss such a report. The following three steps may facilitate learning from these reports in order to make grievance mechanisms more effective:¹³⁴

- **Assess the mechanism against key performance indicators (KPIs);** these can be both KPIs for the grievance mechanisms process specifically, and for the company's human rights performance in general (see next two points). A key feature that makes a grievance mechanism "rights-compatible," is that they are in line with fundamental human rights standards, including that the aggrieved parties feel they are treated with respect.
- **Improve mechanism based on lessons-learned and exchange of best practices;** in particular for companies in multiple locations and with multiple management layers, cross-functional learning can bring a lot of benefits; typically company entities in different countries and business units are at different stages of implementing grievance mechanisms, providing for opportunities to learn from those that are further down the learning curve and the establishment of best practices;
- **Identify more systemic changes needed to the company's operation or management system;** a well-functioning grievance mechanism can uncover pockets of conflict or a pattern of particular issues, which may indicate there are more systemic issues that need to be addressed; for example, the corporate responsibility agenda may be understood differently in particular parts of the company, meriting a different approach to communication and training. Alternatively, where systematic issues in relation to contractors or suppliers arise, companies may need to reconsider their procurement and buyer policies and practices.

¹³⁴ Building on CSRI (2008), p. 38-40.

Selected Examples of Key Performance Indicators on Grievance Mechanisms*

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 noncompliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of noncompliance 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 learned and integrated to reduce the likelihood of the same kind of grievances recurring.

* Building on CSRI (2008), p. 39. For the complete list, see the document itself.

COMMON PITFALLS TO AVOID

Taking the Perspective of the Company Rather than the Complainant

Company mechanisms are often framed from the perspective of the company and have a tendency to focus more on stopping a violation of the business' codes and rules rather than remedying a situation. While it is a legitimate goal from the company's perspective to want to avoid abuse, the company will often only know about it if someone files a report. A person wishing to report abuse may be more prone to do so if the mechanism takes his/her concern directly into account, which can be facilitated by organizing the mechanism so that it caters to the needs of the potential user of the mechanism rather than solely the company's.

Non-Judicial Remedies Are Used As a Substitute for Legal Remedies

Non-judicial grievance mechanisms (such as company-level) grievance mechanisms are not a substitution for legal remedies; rather, they are meant to accelerate resolution of disputes and to avoid escalation by complementing legal remedies; the goal is to avoid costly law suits, but not exclude anyone from reverting to them.

Company-Level Grievance Mechanisms Based on One-Sided Adjudication

Specifically for company-level grievance mechanisms it is crucial for success that the mechanism be based on dialogue and mediation. This because of the inherent risk of being not only the object of a grievance but also the final arbiter or judge of the outcome. This can undermine perceptions of legitimacy of the process and the company's seriousness about engaging with stakeholder concerns. Companies can find important guidance in the Ruggie principles for effective grievance mechanism.

Trying a One-Size-Fits All Approach

The Ruggie principles are purposely developed to be applicable to all grievance mechanisms in all non-judicial settings, but their specific application should be tailored to the unique circumstances of the company, where possible in consultation and collaboration with stakeholders.



Key Sources and Websites

Online grievance mechanism
forum

www.Baseswiki.org

Rights-compatible grievance
mechanisms*

[198.170.85.29/Grievance-
mechanisms-principles-Jan-
2008.pdf](http://198.170.85.29/Grievance-mechanisms-principles-Jan-2008.pdf)

Mapping Grievance Mecha-
nisms**

[198.170.85.29/Rees-
Vermijs-Mapping-grievance-
mechanisms-Jan-2008.pdf](http://198.170.85.29/Rees-Vermijs-Mapping-grievance-mechanisms-Jan-2008.pdf)

John Sherman,
“Embedding a Rights Compat-
ible Grievance Processes for
External Stakeholders with
Business Culture” ***

[www.hks.harvard.edu/m-rcbg/
CSRI/publications/report_36_
sherman_grievance.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_36_sherman_grievance.pdf)

SOME SUGGESTIONS FOR SMES

► Ruggie Principles Can Be Tailored

Ruggie says: “There are numerous ways for company-level mechanisms to put these principles [for effectiveness] into practice. Appropriate approaches will depend in part on the sector, political and cultural context, as well as the scale of a company’s operations and its potential impacts.”¹³⁵ The principles are essentially characteristics that can be met through a whole variety of mechanisms tailored to local circumstances and also to the size of a company and of its potential impacts. Mechanisms can be organized collaboratively with others in a region or industry, provided they still provide early access, early warning, effective solutions purpose.

► Third Party Service Instead Of Own

Instead of their own hotlines, companies can participate in a third party service provider hotline working for multiple companies. Among others, the Clear Voice Hotline¹³⁶ is an example of such a system.

► Build On Sector Grievance Procedures

Sector organizations often have their own grievance procedures on which the company can build. The Fair Wear Foundation has a complaints procedure for its members, which functions as a safety net (suppliers should also have their own).¹³⁷

► Start Small And Extend Over Time

The company may start by installing a grievance mechanism at one if its premises (or departments) and extend access over time instead of installing grievance mechanisms everywhere at once. While it may make most sense to install a grievance mechanism where it is needed most, this may also make it particularly challenging to get it immediately right.

* CSRI (2008).

** Rees and Vermijs (2008).

*** Sherman (2009).

¹³⁵ Ruggie (2010b), para. 95.

¹³⁶ www.clearvoicehotline.net.

¹³⁷ fairwear.org/page/verification.

CHAPTER 4

TEN TOPICS

HIGHLIGHTED:

THE PROTECT,

RESPECT AND REMEDY

FRAMEWORK AND...

4.1 THE GLOBAL COMPACT

Over the past years, many companies have signed up for the Global Compact (GC) and worked on integrating its Ten Principles into their policies and strategies. Not only do the principles of the *Protect, Respect and Remedy* framework add another obligation to the array of existing standards, companies also feel they are getting different messages from the UN about respecting human rights. This sense derived from some alleged conceptual differences between Ruggie and the GC. Confusion is increased by the fact that Ruggie was one of the “founding fathers” of the GC. *Therefore, companies ask how much do the Ruggie framework and the GC Principles differ? How can they act in line with both the GC and Ruggie?*

Ruggie and Global Compact: Complementary Frameworks

	Protect, Respect and Remedy Framework	Global Compact
Core Terminology	Respect human rights	Respect and support human rights (ie. Ruggie+)
Applies to	All companies, everywhere	GC signatories
Nature of Expectation	Baseline	Baseline + beyond minimum (aspirational)
Scope	1. Country context 2. Own activities 3. Relationships	Sphere of influence
Wording	Companies have a responsibility to respect human rights, which means to avoid infringing on the rights of others; Companies can avoid complicity by employing human rights due diligence.	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.
Expected Actions	Human rights due diligence, consisting off: a. Statement of policy; b. Assessing impacts; c. Integration; d. Tracking and reporting performance; Companies should also have in place an effective grievance mechanism.	Embrace, support and enact (within their sphere of influence) the GC Principles by: 1. Making them an integral part of business; 2. Incorporating them in decision-making; 3. Contributing through partnerships; 4. “Communication on Progress;” 5. Advocacy and active outreach.

The GC and Ruggie build on each other in two areas specifically:

1. **Minimum and beyond minimum:** Ruggie provides the baseline for a company's human rights responsibilities, irrespective of whether it is a member of the GC. By joining the GC, companies not only explicitly acknowledge this responsibility, they also commit to go beyond the minimum and help advance human rights as part of sustainable development more broadly (guided and inspired, for example, by the Millennium Development Goals);
2. **Operationalizing the “responsibility to respect:”** By introducing the concept of human rights due diligence, the *Protect, Respect and Remedy* framework provides further guidance on how to implement the “respect” component of the first GC principle in practice. Ruggie has also stated that human rights due diligence can help companies avoid complicity (second GC principle). The above table demonstrates that the components of human rights due diligence resemble to a large degree the steps the Global Compact recommends to companies for implementation of its principles.

It should be noted that neither the GC nor Ruggie purport to define the legal responsibilities of companies. Rather, those are defined by relevant national law and international standards.¹³⁸ The GC provides information on guidance materials that can help companies implement the Ten Principles. It also employs issue-focused working groups to help identify good practice responses to dilemmas business faces in striving to implement the principles. In addition, Ruggie is undertaking further work to elaborate the specific actions business should take to operationalize the responsibility to respect human rights.¹³⁹

Which Sources Should I Consult?

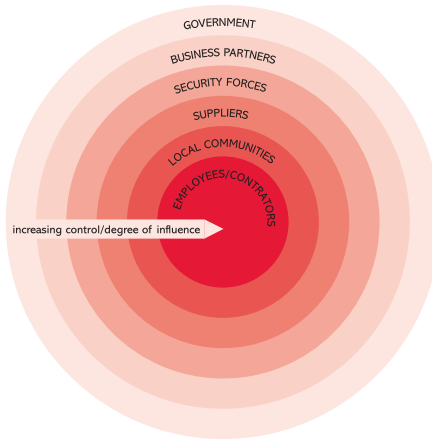
¹³⁸ See Chapter 4.4 for a discussion of the *Protect, Respect and Remedy* framework in a legal context.

¹³⁹ For further specific guidance on how Ruggie and Global Compact build on each other, go to: www.unglobalcompact.org/Issues/human_rights/The_UN_SRSR_and_the_UN_Global_Compact.html or read the interview with John Ruggie on: www.newsbuilder.net/globalcompact/e_article001076314.cfm?x=b11,0,w.

4.2 SPHERES OF INFLUENCE

For almost ten years, Global Compact and a number of its signatories have looked towards the “onion model,” based on the concept of spheres of influence (SoI), to determine their scope of responsibilities. The presumption is that the company’s “influence” - and thus presumably its responsibility - declines moving from employees at the core outwards to suppliers and communities.¹⁴⁰

SPHERES OF INFLUENCE: NOT FIT FOR DETERMINING RESPONSIBILITY



Though Ruggie has not rejected the model per se, he has strong reservations about its conceptual strength. After thorough consideration, he has come to the conclusion that it is not rigorous enough for attributing responsibilities under the corporate responsibility to respect.¹⁴¹ His conclusion rests on three reasons:

140 The model is derived from the preamble of the Global Compact, and is further elaborated on the GC website in the explanation of Principle 1: “The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption.”

141 Ruggie (2008a), para. 67: “Sphere of influence remains a useful metaphor for companies in thinking about their human rights impacts beyond the workplace and in identifying opportunities to support human rights (...) But a more rigorous approach is required to define the parameters of the responsibility to respect and its due diligence component.”

1. Influence Has Two Very Different Meanings

Influence can mean two things: impact and leverage. Human rights impacts are the effects on the enjoyment of a human right resulting from a company activity. This is very different from the leverage a company may have on the behaviour of another party: impact is about its own behavior, while leverage concerns others' behavior. Ruggie has made the case that a company's responsibility depends on how its own behavior contributes to the behavior of a business partner or another relationship:

"Companies cannot be held responsible for the human rights impacts of every entity over which they may have some influence, because this would include cases in which they were not a causal agent, direct or indirect, of the harm in question. Nor is it desirable to have companies act whenever they have influence, particularly over governments. Asking companies to support human rights voluntarily where they have influence is one thing; but attributing responsibility to them on that basis alone is quite another."¹⁴²

2. Influence Can Become a Strategic Game between Companies and Governments

Defining responsibility should not be dependent on another party: state duties and corporate responsibilities should be defined independently of each other. Either party might otherwise neglect its obligations in the hope that the other party will fill in the gaps. For example, even though a large multinational might have the capacity (ie. influence) to build schools in a particular region, it remains the state's duty to do so. While the company might see good reasons to do so nonetheless, it should not be an obligation, as it would provide a disincentive for the government to fulfill its own duty. In the case of the right to education, it would certainly be the best solution in the long term if the State assumed its duty. This is also in line with the role defined for the State and it is embedded in international agreements.

3. "Proximity" Can Be Misleading¹⁴³

The model of spheres of influence presumes the closer a particular stakeholder group is to the company the more responsibility the company has. However, this fails to meet the reality test: some significant impacts may happen very far from the "core." For example, an internet company might run much larger risks to contribute to abusing the human rights of its customers than its employees.¹⁴⁴

¹⁴² Ruggie (2008a), para. 69.

¹⁴³ It should be noted that proximity is a concept from Tort law; it was never intended to mean solely geographical proximity, but can imply other forms of proximity such as economic, contractual or political proximity.

¹⁴⁴ For example: a US-based IT company released to a foreign government the identity of one of its users, who subsequently got arrested and jailed. The CEO of the company was heard over this case in US Congress and a law suit was filed in American courts under the Alien Tort Statute. The company settled the case in 2007.

What is a “human rights impact”?

And for some companies, notably in the extractives industries, relationships with governments might pose a much higher risk than any other relationship. The notion of “functional proximity” or “economic proximity” that some have suggested as “solving” this problem, has not provided real clarity nor has it been demonstrated to work in practice.

Ruggie’s Alternative: Impacts

According to Ruggie, deciding whether a company has responsibility centers on the concept of impacts—both potential and actual. When a company starts a project or business activity it can be expected to consider what the effects of that activity might be on human rights and to address any adverse impacts. Similarly, where existing activities are contributing to human rights abuse, companies should address and mitigate them. Ruggie is still developing further details and guidance for his framework, including this topic.¹⁴⁵

Chapters 2 and 3 provide explanation and suggestions how companies can understand their impacts, determine when they are responsible, and how to do human rights due diligence to ensure and demonstrate respect for human rights.

¹⁴⁵ See SRSG Online Forum (“Supply Chains”), www.srsrgconsultation.org (last viewed: 14 May 2010).

4.3 MEANINGFUL ENGAGEMENT

Many companies ask what makes human rights different from other business topics. One of the primary answers Ruggie has given is, “(...) because human rights concern affected individuals and communities, managing human rights risks needs to involve meaningful engagement and dialogue with them.”¹⁴⁶

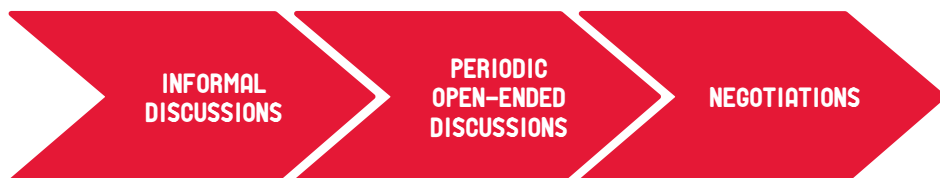
WHAT IS ENGAGEMENT?

In a general sense, engagement entails that those that are affected by the company’s activities are regularly consulted to ensure their rights and perspective is taken into account when making business decisions and/or designing company policies and procedures. While there are many stakeholder groups, including government, customers and investors, stakeholders most commonly affected by the company are employees and communities (including neighbors).

Engagement consists of three elements:¹⁴⁷

1. Relationship: a strong and respectful relationship is the basis
2. Procedure: clarity and agreement on the procedures of engagement, including who represents each party
3. Content: The shared agenda for the meetings based on 1) and 2).

Forms Of Engagement From Less To More Formal¹⁴⁸



¹⁴⁶ Ruggie (2010b), para. 84.

¹⁴⁷ Zandvliet and Anderson (2009), p.117.

¹⁴⁸ Partially building on Zandvliet and Anderson (2009), p.112.

EXAMPLES OF ENGAGEMENT

Engagement can take place at all levels within and outside the company. This can be done horizontally—between workers, business units, company functions—and vertically—between managers and employees, senior management and middle managers/employees—and as a combination of both, such as senior management with local/international stakeholders, or company representatives with their peers in other companies. Some particular examples include:

- Board of the company negotiates an agreement with the unions and Works Council about the conditions under which the company will be sold to another corporation;
- Companies working together to learn and build expertise (eg. *Business Leaders Initiative on Human Rights*,¹⁴⁹ *Business & Human Rights Initiative*);
- Stakeholder panel, which can be external internal or a combination of both;
- “Breakfast with the President:” country president visits a factory every Friday and listens to employees issues affecting their work;
- Community liaison visits all the villages around a particular mine to find out whether inhabitants have concerns related to the company’s activities;
- Discussions with youth in their hang-out place, with women, with religious leaders etc. Many of these feedback sessions can take place during festivals, after church, weddings and other informal occasions.

MEANINGFUL ENGAGEMENT

How can companies ascertain themselves that the engagement indeed has been meaningful? For example, summarizing the arguments of local stakeholders is an effective manner to demonstrate that a company has listened and understood local perceptions; making minutes of meetings public is another effort to demonstrate respect. But, a simple, yet often

overlooked manner to ensure that engagement is meaningful is to simply ask people what a company needs to do to ensure that local stakeholders feel involved in decisions and not taken for granted. In addition, grievance mechanisms can play an important role in gathering input from stakeholders.¹⁵⁰ Below are some more ways to avoid “getting it wrong” and to aim for “getting it right.”

Which stakeholders matter?

149 www.blihr.org

150 See Chapter 3.5 on Grievance Mechanisms.

Engagement with Stakeholders*

Getting It Wrong	Getting It Right
Meeting when there is an immediate crisis or demand (reactive), and only meeting for negotiations	Meeting on an ongoing basis, including informal meetings and consultations
Parties sit "on opposite sides of the table"	Parties look for shared goals
Focus on stakeholders' short-term demands (eg. jobs, contracts)	Focus on addressing long-term goals, achieved by strengthening the personal capacity of workers and communities
Company provides limited information (based on the assumption that it will be used against it)	Company shares information (based on the assumption that parties need to work together)
Focus on outcomes	Focus on process with the expectation that it leads to a good outcome
Budget-driven (what can we do with limited time and resources?)	Needs-driven (what is needed to reach our objectives?)
Meeting every time with different representatives	Representatives on both sides are the same individuals in every meeting

* Building on Zandvliet and Anderson (2009), p. 130.

MUTUAL DEPENDENCY FOR PROGRESS

Unfortunately, relations between stakeholders and their representative organizations, whether at a local or global level, often play out in an adversarial and antagonistic fashion. Ruggie's analysis and report demonstrate that true progress can only be achieved if all players coalesce around the *Protect, Respect and Remedy* framework, and engage in positive and meaningful engagement. Only then can a truly win-win approach be accomplished: respect for human rights and realization of business goals.

4.4 THE LEGAL CONTEXT¹⁵¹

The responsibility to respect is not a legal duty imposed directly on companies by international law. However, it is not a law free zone, because elements of the responsibility to respect may be imposed on companies by national law, in some cases arising through implementation of international human rights treaty obligations (eg. anti-discrimination laws) but in other cases through laws which more generally promote responsible business conduct. (eg. corporate and securities laws).

Human rights responsibilities can be based on a wide range of standards, starting from societal expectations, which in terms of reinforcement may then be addressed in sequence by self-regulation, soft law norms endorsed by multi stakeholder initiatives and, finally, hard law requirements imposed by statute and regulation. Violating these standards may - depending on the circumstances - lead to real consequences for companies ranging from scrutiny in the court of public opinion to misrepresentation claims by customers and mismanagement claims by shareholders, to tort suits by victims and, finally, even criminal prosecution. Which consequences the company faces depends, amongst others, on which rights are at stake and how they are embedded in both societal expectations and national law.¹⁵²

Ruggie has highlighted three particular scenarios where law does play a role:

1. RESPECTING NATIONAL LAWS EVEN WHERE THEY ARE NOT ENFORCED

It is widely accepted that companies have a responsibility to respect national law in weak governance zones (i.e. where the law is poorly enforced or absent). This norm is proclaimed by companies themselves and it is affirmed by the world's largest business organizations (ICC/IOE/BIAC) in the context of weak governance zones:

"All companies have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent."¹⁵³

¹⁵¹ This section builds on various sources (listed in footnotes) and interviews with legal experts. The Business & Human Rights Initiative is grateful to participants in the seminar "Corporate Governance and CSR in a Legal Context" (held on December 9, 2009 in The Hague), in particular chair Marga Edens and speakers Chip Pitts, John Sherman, Tom van Wijngaarden and Jan Eijbsbouts. The latter deserves particular mention for co-organizing the seminar and for numerous discussions and deliberations on human rights in a legal context. Dutch readers interested in more elaborate and detailed coverage of the legal aspects of CSR are particularly encouraged to read Eijbsbouts' "pre-advises" for the Dutch Association of Jurists (Nederlandse Juristen Vereniging, NJV). Summaries (in Dutch) can be found at the website of the NJV (www.njv.nl), where a link to order the full version (in Dutch) is provided. Special thanks also to Amy Lehr, John Sherman, and Vanessa Zimmerman for commenting on drafts of this section. Naturally, any error remains the sole responsibility of the authors.

¹⁵² For more on the dynamic relationship between soft and hard law, see Sherman and Pitts (2008), and Backer (2009).

¹⁵³ International Organization of Employers, International Chamber of Commerce, and Business and Industry Advisory Committee to the OECD (2006), "Business proposals for effective ways of addressing dilemma situations in weak governance zones." Available from: www.reports-and-materials.org/Role-of-Business-in-Weak-Governance-Zones-Dec-2006.pdf.

2. FAILURE TO REPORT ON MATERIAL RISKS AND LIABILITIES

Ruggie's evidence and assessment of certain sectors suggest that some companies currently may not be fully accounting for stakeholder-related risks (ie. "non-technical risks," or "political complexity"¹⁵⁴). Costs stemming from such risks could include delays in project execution, higher costs for financing, reduced output, loss of reputation, lowered staff retention, and possible project cancellation.¹⁵⁵ Ruggie has analyzed:

*"What appears to be happening is that such costs are atomized within companies, spread across different internal functions and budgets and not aggregated into a single category that would trigger the attention of senior management and boards. However, when added up, some of these risks could well count as being "material" even according to the narrowest definitions and, if unaddressed, could require disclosure under existing law."*¹⁵⁶

Ruggie says that making human rights a standard part of enterprise risk management should reduce the incidence of corporate related human rights harm. Conducting due diligence enables companies to identify and prevent adverse human right impacts. Doing so should provide corporate boards with protection against mismanagement claims by shareholders.¹⁵⁷

Two recent changes in corporate law highlight that CSR is of increasing concern in this regard. The UK companies Act (2006) mandates that companies must consider the long-term impact of their operations on the community and the environment.¹⁵⁸ In the Netherlands, listed companies are now required to take into account and report on CSR performance (or explain why they do not).¹⁵⁹ Non-binding guidance materials for such reporting have been developed ("Richtlijn 400").¹⁶⁰

154 Ruggie (2010b), paras.70 and 71.

155 For more examples of possible costs, see Chapter 1.4 of this publication.

156 Ruggie (2010b), para. 72.

157 Ruggie (2010b), para. 84 and 86.

158 "A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to— (...) the impact of the company's operations on the community and the environment (...)" UK Companies Act (2006), article 172 (emphasis added). Available from: www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060046_en.pdf

159 "The role of the management board is to manage the company, which means, among other things, that it is responsible for achieving the company's aims, the strategy and associated risk profile, the development of results and corporate social responsibility issues that are relevant to the enterprise." Principle II.1 of the Dutch Corporate Governance Code (emphasis added). Available from: www.commissiecorporategovernance.nl.

160 For more information see: www.rjnet.nl/RJ/Richtlijnen/Handreiking+MVO/default.aspx (Dutch).

3. IMPLICATION IN INTERNATIONAL CRIMES

There are few companies that allegedly committed international crimes directly. Allegations usually charge companies with complicity in such crimes committed by the company's relationships. Legally, complicity in this area refers to a substantial contribution a company has knowingly made to a human rights violation by a third party ("aiding and abetting"). While allegations may be made in relation to all human rights, to date actual cases before the courts have mostly concerned severe human rights violations such as torture, forced labor, or extrajudicial killing. For these violations, Ruggie has suggested that, "prudence suggests that companies should adopt a legal compliance approach even though precise legal standards may not yet be fully defined."¹⁶¹

Recently, two main avenues have been used to hold companies accountable for complicity in (severe) international crimes. First, there is the Alien Tort Statute (ATS) in the United States, which stipulates that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."¹⁶² The law provides for individuals to file suit against parties with connection to the United States with extraterritorial effect, while the "law of nations" has been interpreted to include human rights abuses.¹⁶³

Second, some countries that have incorporated the International Criminal Court Statute's provisions into domestic law provide for corporate criminal responsibility related to severe crimes such as genocide and war crimes, and therefore also provide for direct or indirect corporate criminal responsibility for such crimes. Those jurisdictions that recognize international criminal liability of legal persons may in the future prosecute companies for complicity in international crimes under these provisions, including through extraterritorial application.¹⁶⁴ In the past similar cases against individuals for business transactions have presented themselves.¹⁶⁵

¹⁶¹ Ruggie (2010b), para. 66.

¹⁶² The full text can be found here: law.justia.com/us/codes/title28/28usc1350.html.

¹⁶³ For a discussion of the Alien Tort Statute in the context of Ruggie, see Sherman and Lehr (2010).

¹⁶⁴ Ruggie (2010b), para. 74-77.

¹⁶⁵ A well-known example is the Van Anraat case. Van Anraat is a business man, who was convicted in national court for supplying chemicals used by the regime of Saddam Hussein to gas citizens. The case was filed against an individual, but it involved a clear business transaction. See Reuters (2007), "Dutchman jailed for 17 years over Iraq poison gas," 9 May. Available from: www.reuters.com/article/idUSL0970477820070509.

4.5 COMPLICITY

In the context of business and human rights, the complex concept of “complicity” is often invoked. In his 2008 report, Ruggie explicitly addressed the topic.

“The corporate responsibility to respect human rights includes avoiding complicity. The concept has legal and non-legal pedigrees, and the implications of both are important for companies. Complicity refers to indirect involvement by companies in human rights abuses - where the actual harm is committed by another party, including governments and non-State actors. Due diligence can help a company avoid complicity.”¹⁶⁶

While originally a concept from criminal law, Ruggie has observed that complicity claims or allegations often go beyond strictly legal interpretations of the concept.

ELEMENTS DETERMINING LEGAL COMPLICITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS¹⁶⁷

The legal meaning of complicity has been spelled out most clearly in the area of aiding and abetting international crimes, i.e. knowingly providing practical assistance or encouragement to crimes.¹⁶⁸ A contribution is not conclusively defined under international law, but merely being present in a particular country, paying taxes or benefiting from an abuse are unlikely to bring legal liability.¹⁶⁹ Complicity will generally be ruled upon under tort law through national courts (eg. ATS cases). With regards to very serious crimes such as war crimes or genocide, complicity could also be interpreted by criminal courts in countries that adhere to the Rome Statute.¹⁷⁰

NON-LEGAL COMPLICITY

In non-legal contexts, corporate complicity has become an important benchmark for social actors, including public and private investors. Claims of complicity can impose reputational costs and lead to divestment, even where legal liability is not established.¹⁷¹ For example, where a company is benefiting from the actions of an abusive government, continuing the relationship may have negative consequences for the reputation of the company. Brand damage and consumer boycotts may do more harm in the short and long term than court decisions.

¹⁶⁶ Ruggie (2008a), para. 73.

¹⁶⁷ Ruggie (2008a), paras. 77-81.

¹⁶⁸ Ruggie (2008a), para. 74.

¹⁶⁹ For an extensive elaboration on the concept of complicity, see Ruggie (2008b).

¹⁷⁰ Ruggie (2010b), paras. 74-76.

¹⁷¹ Ruggie (2008a), para 75.

RUGGIE'S RECOMMENDATION TO AVOID COMPLICITY

The scope of the corporate responsibility to respect includes the company's relationships. Human rights due diligence is as much meant to avoid infringements of human rights by a company's doing as through its relationships. For example, due diligence could uncover that certain buying practices lead to human rights abuse at a company's supplier. Such a practice can then be altered to avoid the contribution in the future. Thus, human rights due diligence can help avoid both legal and non-legal complicity. (For more elaboration see Chapter 2).

How do we make a human rights risk mapping?

4.6 TRANSPARENCY

Transparency is often seen as a thorny issue in the context of business and human rights. This is because transparency is equated with “publication,” which bears an inherent tension between the desire to share information about human rights performance, and the consequences (real or perceived) of the “revelation” that a company might be involved in human rights harm. However, transparency is about much more than just sharing “results” in the newspapers. It includes stakeholder dialogues, conversations with communities (even closed-door), providing opportunities to interact with the company (information and hotlines), and complaints mechanisms. Therefore, transparency is closely related to grievance mechanisms and stakeholder engagement.¹⁷²

RUGGIE ON TRANSPARENCY

In his latest report Ruggie notes:

“[B]ecause a main purpose of human rights due diligence is enabling companies to demonstrate that they respect rights, a measure of transparency and accessibility to stakeholders will be required.”¹⁷³

The “SRSG Consultation website” elaborates:

“Transparency of information is essential to meaningful dialogue about potential human rights impacts, as well as to preventing human rights abuses and addressing problems at their inception.”¹⁷⁴

THE BENEFITS OF TRANSPARENCY

The benefit of transparency is that it grows the perceived legitimacy of the company’s actions and therefore effectiveness of the efforts to address human rights. In simple terms, there is no trust without transparency. The more and earlier a company is open about plans that will affect staff and community, the more they feel informed and the more opportunities they have to provide input to the decision making process. Usually, not all desires or wishes of stakeholders can be met, as they may be competing and, at times, unrealistic. However, to stakeholders it is often at least as important how the process was run, as what its outcome is, though an adverse outcome for human rights cannot be compensated by good communication.

¹⁷² See Chapter 4.3 “Meaningful Engagement.”

¹⁷³ Ruggie (2010b), para. 84.

¹⁷⁴ SRSG Online Forum (“Transparency,”) www.srsgconsultation.org (last viewed: 14 May 2010).

THE PERCEIVED RISKS OF TRANSPARENCY

One possible complication of transparency is that it can sometimes create friction between members of a community.¹⁷⁵ Also, if some countries do not allow trade unions, but the company states publicly that it does allow unions, this may endanger the business relation with the country's government.

Some have also suggested that human rights due diligence increases liability as the company may uncover human rights abuse, the publication of which may lead to legal prosecution or reputation damage.¹⁷⁶ All of these risks demonstrate that companies need to carefully consider on which points to be publicly transparent, and when to find other means to share information. However, these arguments do not in and of themselves go against transparency when it is understood as being broader than "publication."

WHAT TO MAKE TRANSPARENT AND HOW TO SHARE INFORMATION

There are three "types" of information that can be shared:

- Sharing of what the company is **planning** to do on human rights;
- Sharing of what **processes** the company has in place
- Sharing of **impacts** (eg. results, incidents and outcomes)

The level of transparency and the type of sharing of information depends on the company-specific circumstances. In general, the more open a company is about what has not gone right, the more likely it is that in the long run, the goal of increased trust and legitimacy among stakeholders will be achieved. The rule of thumb is: the closer transparency is to impacts, the more trust will be built.

Over the past years it has been observed that more and more companies are transparent not only about planning and process, but also about impacts. The expected public outcry over human rights issues arising may happen in the short run—though even that fear is often unfounded—but in the long term companies report that their credibility with key stakeholders increases.¹⁷⁷ If a serious violation is found, such stakeholders may in fact come out in defense of the company as it is known that the company had the systems in place to prevent adverse human rights impacts, and that this was a singular incident.

¹⁷⁵ When the company engages in tailor-made solutions for each community, perceived differences may come across as unfair for some parties.

¹⁷⁶ See Chapter 4.4 on the the legal context, and Sherman and Lehr (2010) for a rebuttal of this argument.

¹⁷⁷ Besides sharing results of audits, some companies now also publish the entire list of their suppliers, including which code of conduct violations were found. The feared scrutiny by company critics has not materialized for most of these companies.

Transparency may also be achieved through third parties, for example by joining a multi-stakeholder initiative. This can have two advantages: public information on the company's activities might be perceived as more credible, and information available on the company may not directly stem from it, which the company may perceive as lessening the risk of liability. On the other hand, by communicating through a third party, transparency may be diminished, which can lead to lowered trust with stakeholders.

4.7 NATIONAL LAWS VS. INTERNATIONAL STANDARDS: THE CASE OF WORKING HOURS¹⁷⁸

Serious dilemmas arise when national labor laws are not enforced or conflict with human rights. *How are companies to think about and act in such situations?*¹⁷⁹

WORKING HOURS AT SUPPLIERS: A CHALLENGING PROBLEM

The issue of working hours and suppliers is particularly difficult in countries where it is not uncommon for employees to work 7 days and up to over a hundred hours per week. Particularly in situations where there is a shortage of labor, this leads to a plethora of human rights abuses, including safety issues, low quality of dorms and food, restrictions on freedom of movement, limited rest hours, etc.

What makes the situation particularly complicated is the fact that workers themselves often want to work as many hours as possible: the more hours they can work, the more they can earn, and the earlier they can return home. If the buyer company then imposes a limitation on the number of hours, the risk is that workers will move to other factories not subject to such standards, and the supplier risks going out of business.

The conflict inherent in these and related complex problems is two-fold. The first conflict is between law and practice: excessive working hours often violate national law, but few suppliers stick to these laws and the authorities do not enforce them. Second, some national legal standards in and of themselves conflict with internationally recognized human rights standards: the law may allow many more hours than the international ILO conventions.

¹⁷⁸ This note is partially based on a workshop that was held with Dr. Mads Holst Jensen of The Danish Institute for Human Rights and several of the participating companies. The B&HRI thanks Mr. Jensen for sharing his knowledge and insights.

¹⁷⁹ Other examples include: in some countries in the Middle East women are not allowed to work or only in particular types of jobs. Some countries do not allow trade unions, or only the government – organized union. In relation to freedom of association it has been noted that companies "have encouraged workers to form their own representation within the company and facilitated elections of workers' representatives. Efforts have also been made to provide education on labour rights and train local management on how to respond constructively to worker grievances. (Ruggie (2009), p. 17.)

RUGGIE: HONOR THE SPIRIT OF INTERNATIONAL STANDARDS WITHOUT VIOLATING NATIONAL LAW

Supported by the largest business associations, Ruggie has noted throughout his mandate that companies are at all times expected to respect the law, even where it is not enforced such as in zones of conflict. Furthermore, in his 2009 report Ruggie has suggested that companies can “find ways to honour the spirit of international standards without violating national law.” For example, in countries where unions are forbidden by law, companies have found ways to give workers a voice *within* the company, and even hold internal elections for representation of employees. Companies operating in the Middle East have negotiated with governments to be able to place women in key positions, for example human resource management. Some have even managed to install a female country director.¹⁸⁰

WHAT COMPANIES CAN DO ABOUT EXCESSIVE WORKING HOURS

Ruggie’s suggestions address the second problem (conflict of norms between national laws and international standards) but not the first. When national laws are not enforced, but buyer companies feel that they want to take steps to ensure suppliers respect certain minimum standards nonetheless, they can resort to various measures and programs. One step could be adopting a “supplier code of conduct,” often through an industry or multi-stakeholder initiative, which states the maximum number of hours of regular and overtime work.¹⁸¹ The supplier code is provided in the local language to workers, and factory management can be trained in managing its implementation. Furthermore, periodic audits can be included in the process, followed by corrective action plans or serious consequences if certain zero-tolerance issues are found. It is equally important to provide support to suppliers and to focus on continuous improvement rather than seeking perfection (“help, check & challenge”). Companies also have held competitions among suppliers for a “supplier sustainability award.” Becoming a “dedicated supplier” following sustained performance on maintaining reasonable working hours may be the ultimate award and mutually beneficial for both parties as it increases the sustainability of the relationship.

¹⁸⁰ Ruggie has announced to organize further consultation and provide guidance to companies on this topic. Any recommendations can be submitted through his online forum (www.srsgconsultation.org).

¹⁸¹ Part of the agreement with the supplier is then to follow the national law or the standard in the supplier code of conduct—whichever is more stringent, thereby addressing the problem of conflicting standards. For example, the Electronics Industry Citizenship Coalition’s Code of Conduct states that, “a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. Workers shall be allowed at least one day off per seven-day week.”

TOWARDS SUSTAINABLE SOLUTIONS

Unfortunately, supplier programs as outlined above have proven to realize limited change. Ultimately, it is probably most effective if the buyer company can demonstrate the business case to suppliers. Turn-over rates are often extremely high in labor-intensive factories (eg. workers do not return from their holiday breaks). Adopting decent working hours, coupled with other good labor practices, builds a more long-term and sustainable labor relationship, increasing productivity and reducing hiring and training costs. In turn, workers, too, benefit from a more stable and healthy work environment, and their chance to rise up the ranks increases. Such an upward spiral may actually lead other factories in the vicinity to see that a different approach works and start adopting similar practices, leading once more to a level playing field.

In both of these ways—supporting and verifying compliance with applicable standards and making the business case for the supplier—buyer companies help bridge the gap between the letter of the law and its *de facto* implementation. What works and is appropriate in particular situations depends on the company activities and the context. But growing research and company experience provides the company with ever more tools to help suppliers bridge gaps between the theory and practice of law, and between national and international standards.

What are the known issues in the countries we do business?

4.8 SUPPLY CHAINS

Ruggie has stated that the scope of his framework addresses both a company's own activities as well as the contributions to human rights abuse it may have through its relationships. Relationships include all entities and individuals with which the company interacts in the course of doing business (see Chapter 2 for more details).

Customers and governments increasingly call upon companies to consider their impacts carefully (see also Chapter 4.5 on Complicity, and below). The focus is currently on so-called “chain responsibility” of companies, which concerns what companies are expected to do with respect to their suppliers, and how far (ie., how many steps in the chain) their responsibility reaches.

COMPANIES ARE RESPONSIBLE FOR THEIR IMPACTS

In the past the discussion on supply chains was often framed in terms of the concept of influence. However, Ruggie has stated it should centre instead on “impacts,” and human rights due diligence can help companies avoid adverse impacts on human rights. Impacts is a difficult concept to grasp, but in the context of the *Protect, Respect and Remedy* framework, it means basically that the activities of companies should not infringe on or harm human rights.

It should be noted that suppliers are in principle held to the very same “responsibility to respect” as any other company. Furthermore, the government in whose jurisdiction the supplier resides has a “duty to protect,” which should include installing adequate regulatory and other means and their enforcement in order to avoid any corporate infringements.

WHAT COMPANIES CAN DO

In situations where suppliers and their government fail to live up to their obligations, companies still have an independent responsibility to consider the effects of their own contributions to potential abuse on human rights. These contributions can be both active and passive. Active contributions include activities that put pressures on suppliers that are likely to result in human rights abuse. Consider, for example, a buyer company that submits a last minute change to a product design that can only be met through excessive overtime, and by putting a lot of other “pressures” on workers to meet the deadline. Companies should train, raise awareness with, and monitor conduct of their own procurement staff in order to avoid such unrealistic demands and negative detrimental pressures.

Passive contributions occur when the buyer engages or remains in a relationship with a supplier that is violating human rights. With regards to their passive contribution, companies have consider several options to consider. For countries and industries with high risk of corporate related human rights abuse, they can do reasonable screening of potential suppliers on their human rights performance before they engage in in a contract. For existing contracts, some process of assessment and continuous improvement could be put in place too.

One method that buyer companies have found works potentially well is to join together in an industry initiative. Such collaborations¹⁸² have a number of advantages:

- There is a level playing field: all buyers are held to the same standard;
- Suppliers are confronted with a uniform code of conduct (instead of one for each buyer company they supply);
- Suppliers who supply multiple buyer companies only need to be visited or verified once per business cycle;
- It saves costs and time for all involved;
- Supplier companies are more convinced of the business case if all their buyers operate together via an independent organization.¹⁸³

While these initiatives are still largely based on a code of conduct that is monitored and audited, most of them are seriously considering with “beyond monitoring” strategies. It is increasingly recognized that real change only happens when the supplier itself sees the value of respect for human rights and can appeal to the expertise and support of these initiatives.

Some Helpful Resources for Supply Chain Management

ICC Guide to Responsible Sourcing
www.iccwbo.org

Fair Labor Association Learning and Assessment tools
www.fairlabor.org

¹⁸² See Appendix D for an overview of initiatives.

¹⁸³ Companies obviously need to be cautious about being perceived as forming a cartel.

4.9 DIVERSITY¹⁸⁴

DIVERSITY PROGRAMS IN COMPANIES¹⁸⁵

With companies going ever more global, they recognize the value of a diverse workforce, for example, because it helps target a varied customer base and brings in different perspectives needed to tackle the complexity of doing business in a fast-changing and interconnected world.¹⁸⁶ Typically, Diversity programs are aimed at bringing more women and other minority groups into the company and supporting them in rising into senior management positions.

HOW HUMAN RIGHTS AND DIVERSITY ARE SIMILAR

Human rights are rights that everyone has, and which everyone should respect. One of those rights is the right to be free from discrimination, including discrimination in employment and at the workplace. Diversity is the recognition by the company and its managers of the importance of respecting this right.¹⁸⁷

One common goal of both agendas is to remove barriers for all staff to reach their full potential. Diversity programs create the right incentive systems, raise awareness of unconsciously discriminating behavior, address stereotypical prejudices and train and support managers in creating a positive working environment where all team members feel welcome and appreciated. The most successful programs also question common patterns, for example concerning the reintegration of women into the organization following childbirth. These efforts help achieve both diversity and realization of human rights.

HOW HUMAN RIGHTS AND DIVERSITY MAY BE DIFFERENT

A potential difference between diversity and human rights is that hiring some minorities may improve diversity of the workforce, but this does not necessarily mean that there is no discrimination in the company. It is therefore crucial that both diversity and non-discrimination (as a human right) are part of the conversation and that reinforcements as well as differences are thoroughly explored and understood.

¹⁸⁴ Because the two topics of Diversity and Human Rights are closely related, the Business & Human Rights Initiative has explored how both agendas relate and can be mutually reinforcing. This piece is based on research and a workshop with company participants carried out as part of the B&HRI. It was conducted with active help from Rhodora Palomar-Fresnedi, Founder and Managing Director of Except One Pte Ltd and former Global Head of Diversity, Unilever, and Emily Sims of the ILO MNE helpdesk ([www.ilo.org/global/Themes/Decentwork/lang--en/WCMS_120642/index.htm](http://www.ilo.org/global/Themes/Decentwork/lang-en/WCMS_120642/index.htm)). The B&HRI is grateful to both of them for their input and feedback on this topic highlight, as well as to the workshop's participants.

¹⁸⁵ Some companies call their programs "Diversity & Inclusion." For ease of reading "Inclusion" is left out in the text, but in developing this note it has been equally considered and all the suggestions are equally applicable.

¹⁸⁶ In a study on the "Global Leader of Tomorrow," it was found that CEOs and other senior executives believe three clusters of knowledge and skills will be required in the future: "context," "complexity" and "connectedness." Available from: www.unprme.org/resource-docs/DevelopingTheGlobalLeaderOfTomorrowReport.pdf

¹⁸⁷ Other rights violations based on discriminatory attitudes relate to harassment, bullying, etc.

Furthermore, commitment to diversity can extend beyond the workplace to include diversity of suppliers (for instance minority or female owned businesses) and diversity of customers to ensure that there is no discrimination in the offering of services to certain groups (for instance the banking sector and the provision of accounts to dalit communities in India).

MANDATORY VS. VOLUNTARY

A converging issue for both topics is whether they should be made part of mandatory compliance or not. Both clearly are “the right thing to do,” therefore diversity officers feel that human rights and diversity should be an inherent value of the company and its staff. Additionally, diversity officers often encounter internal reluctance to mandatory measures, so voluntary implementation might be the preferred route to accelerate implementation.

In a similar vein, the issue of quotas causes heated discussion inside and outside companies. Nonetheless several companies have announced they will instate hard quotas, in particular for women in board positions. The merits of such programs need to be weighed and it should be considered whether they would work in a particular company. However, they may help affect change in line with the oft-repeated phrase: “what gets measured gets done.” One option may be to temporarily adopt such a system, and scale it down later, once it has had the intended effect.”

What are our human rights challenges?

TEN SUGGESTIONS FOR EFFECTIVE IMPLEMENTATION OF DIVERSITY AND HUMAN RIGHTS¹⁸⁸

1. Make the business case: this is generally the most effective driver for integration.¹⁸⁹
2. Framing is key: Communication will generally be more effective if it is not presented as a “must.”
3. Share best practices inside and outside of the company, and with different groups of stakeholders.
4. Emphasize change management: It should not be presented as a program that is imposed.
5. Progress over perfection: Emphasize continuous improvement and learning by doing.
6. Set a minimum standard and encourage business units and peers to challenge each other to go above and beyond it.
7. Motivate: Managers should be enticed to comply through rewards rather than forced to comply by threats of punishment.
8. Make it practical: Present staff with concrete guidance instead of abstract ideas, and involve them in making action plans.
9. Connect people: Spread the message and share expertise by creating networks of professionals in similar fields.
10. Find a sponsor: Diversity and human rights should have a “sponsor” within the higher echelons of management.

¹⁸⁸ The suggestions were brainstormed and developed during the workshop. More practical suggestions how to implement change management programs such as diversity, can be found in Chapter 3.3 on integration of human rights due diligence.

¹⁸⁹ The business case includes increased retention rates and higher employee motivation.

HOW DIVERSITY AND HUMAN RIGHTS CAN REINFORCE EACH OTHER

Many object to treating a certain group in a company differently, including if that group is a minority. As such there is the risk of being accused of countering discrimination by discriminating (also referred to as ‘reverse discrimination’). To balance this, it may be wise to focus on the principle of equal opportunity. It is less controversial and it connects Diversity and human rights perfectly. The goal of both approaches is to remove any obstacles to realizing equal opportunity.

Seen as such, human rights lay the baseline or foundation for the company’s policies and conduct. Diversity programs aim to also take it a step further by empowering minorities and others. This may be best served by a more aspirational approach, such as encouraging a company to be “best in class.”¹⁹⁰

In practice this could mean the human rights policy stipulates that all employees receive anti-discrimination training, while the Diversity program would provide “affinity groups” for specific minorities to accelerate their advancement in the company.

TWO SIDES OF THE SAME COIN

In the end, human rights and diversity remain two sides of the same coin: less discrimination leads to more advancement; and, as everyone becomes accustomed to differences, having more women and minority groups in the company and its senior management may lead to less discrimination. As such, human rights and Diversity should be developed simultaneously. While both have unique features, ultimately they are about establishing an inclusive company.

Which colleagues do I need to get on board?

¹⁹⁰ For further information please refer to ILO Helpdesk Factsheet No. 5 “Eliminating Discrimination in the Workplace”. Available from: www.ilo.org/empent/Whatwedo/Publications/lang--en/docName--WCMS_116342/index.htm.

4.10 SMALL AND MEDIUM ENTERPRISES (SMES)

Note: for the purpose of this publication an SME is defined as an independent business below 250 employees and/or less than 50 million euro turnover.¹⁹¹ However, the suggestions presented below may be useful to all companies as they are particularly focused on helping companies getting started.

The responsibility to respect applies to all companies equally—of all sizes and wherever they operate.¹⁹² Because some small companies can potentially have large impacts, size in and of itself does not mean a company has less responsibility or is absolved from having to do human rights due diligence. The scope of the responsibility to respect and a corresponding level and intensity of human rights due diligence is determined by the potential and actual impact a company has.

SMALL COMPANIES WITH POTENTIALLY LARGE IMPACTS ON HUMAN RIGHTS

Private security firm operating in zones of conflict

- Right to life
- Right to freedom from torture and degrading treatment

Internet company offering email accounts or blogs

- Right to freedom of expression
- Right to freedom from arbitrary arrest, and exile¹⁹³
- Right to freedom from interference with privacy, family, home and correspondence

Small company with large share of the local market

- *Dependent on the nature of activities, relationships and context of operation*

Specialized firm making high-impact products¹⁹⁴

- Right to life
- Right to health

Even though many small companies may have large impacts, generally smaller companies have smaller or more specific impacts, and thus their human rights due diligence will look different than for a large company with large impacts. Below some ideas are set out for each of the elements of due diligence, which, in fact, might also help all companies in their early stages of integrating human rights due diligence in their systems.

¹⁹¹ This is based on the European Union's definition of SMEs, which is roughly in line with other countries', except for the United States', where the threshold is higher in certain sectors.

¹⁹² See Chapter 2 and 4.2 on "Spheres of Influence."

¹⁹³ Human rights activists have been detained after their identities were revealed to the government by internet companies.

¹⁹⁴ Eg. military equipment, baby-food, technical hospital equipment, clinical trials.

Integrate and Align with Daily Business

In smaller companies, it is often impossible to have a full time person working on a particular topic. Therefore, the alignment with a current portfolio, such as procurement or human resources, is even more critical. Moreover, if everyone integrates it into their daily job, there is no need for a separate person. Having a real “champion” inside the company can be a powerful driver for realizing such alignment, particularly if this person is the CEO or the Director. Works councils or similar employee representative bodies can also serve as a catalyst, and sister- and mother companies can also be source for inspiration and learning.

Build on Capacity or Expertise of Business Partners

SMEs are often suppliers to larger companies, who may be able and willing to assist the SME in carrying out human rights due diligence. For example, big companies often have supplier sustainability or supplier support programs, where they make available their expertise to smaller business partners. Sister- and mother companies can also provide information, learning and guidance.

Pool Resources to Lower Cost and Avoid Double Work

Several smaller companies can pool their resources to collaborate on human rights due diligence. The organization SEDEX¹⁹⁶ shares results of audits with its member companies so that two companies do not do the same audit. Companies may also learn from each other when they have operations in the same country or on the same industrial site.

How do we focus on human rights?

¹⁹⁵ Each section in Chapter 3 concludes with suggestions for SMEs for each particular human rights due diligence element.

¹⁹⁶ www.sedex.org.uk

Work through Business and Sector Initiatives

Typically, it is business associations' task to assist their members in creating an environment in which they can do their business best; with growing attention for CSR and human rights, companies will be increasingly able to build on those organizations.¹⁹⁷ Many similar topics such as health and safety programs, international trade initiatives, and workers' health are already addressed by business associations and sector initiatives.¹⁹⁸

Find Focus Quickly

Because smaller companies often operate in a particular sector, it is important to zoom in on the issues that are particularly prevalent in that sector.¹⁹⁹ Small companies can discover the main issues by focusing on particular countries of operation or sourcing chains they depend on.²⁰⁰ They can map their main issues and risks by developing a scaled down version of the human rights risk mapping presented in Chapter 3.2.

Flexible Approach to Business Partners

In general, smaller companies will have less influence on business partners. At the same time, they are more flexible to make changes in their own operations, because there is likely to be less bureaucracy. This makes it easier for them to adapt their own practices if they have a negative impact on human rights. For example, a relatively small company importing flowers from Kenya could possibly improve working conditions

for local workers very much by making small changes. For example, if the company decides to order in the morning instead of at night, workers can work during the day rather than over night. Large companies are generally less flexible to engage in such "quick-fixes."

At what levels in our policy is action needed?

¹⁹⁷ See for example the policy papers and guides by the International Chamber of Commerce: www.iccwbo.org/policy/society.

¹⁹⁸ Examples of organizations that can help companies in the Netherlands: MKB Nederland (in Dutch: www.mkb.nl), Dutch Sustainable Trade Initiative (www.dutchsustainabletrade.com), MVO Nederland (in Dutch: www.mvonerland.nl).

¹⁹⁹ For example, see table Small Companies with Potentially Large Impacts on Human Rights.

²⁰⁰ See Appendices C and D.

APPENDICES

APPENDIX A: THE TEN PRINCIPLES OF THE GLOBAL COMPACT*

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

The Universal Declaration of Human Rights

The International Labour Organization's Declaration on Fundamental Principles and Rights at Work

The Rio Declaration on Environment and Development

The United Nations Convention Against Corruption

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

* www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html

APPENDIX B: OVERVIEW OF COMPANY FUNCTIONS AND PROGRAMS MENTIONED IN THIS PUBLICATION

Company Function or Program	Description
Audit	Verifies, through self-assessments and visits, adherence of business entities and offices to company policies and standards; may take corrective action, as well as do coaching and consultation;
Business Operations/ Unit/Entity	Line operations where products are manufactured or services developed and delivered; part of core processes of the company;
Compliance	Pro-actively coaches and prepares the business for adherence with laws and internal regulations (often overlaps with Audit);
Corporate Governance	Outlines how oversight and lines of responsibility are organized within the company, including, in particular, directors-level committees, such as the Audit Committee or Corporate Responsibility Committee and the Supervisory Board;
CSR/Sustainability	Expert center and main driver of CSR/Sustainability agenda in the company; can be part of another department such as Public Policy, Human Resources, or Workplace Relations; generally has most knowledge of human rights;
Diversity & Inclusion	Promotes opportunities for minority groups to participate more fully in company (in particular in senior management) through training, peer-networks, awareness raising and, at times, quotas or other specific targets;
Health & Safety	Driver of accident prevention, fatalities and sickness within the company by means of policies, training, positive and negative incentives, etc.;
Human Resources (Management)	Facilitates staff-related activities, including recruitment, hiring, training, performance appraisal, bonuses, employee engagement (surveys), resolution of grievances;
Investor Relations	Provides information to and interacts with investors; usually first point of entry for investors that want to engage in a dialogue on human rights; often instrumental in developing annual report;
Legal Department	Has knowledge of the laws subject to which the company operates; often closely positioned to the Board of the company;
Persons of Trust	Network of human resource representatives that employees can consult on a confidential basis; may also have a supporting role in grievance processes;
Procurement/ Supply Chain Management	Leads centrally driven process of purchasing; can also have a more advising role when purchasing function is decentralized;
Public Affairs/External Relations	Links the internal to the external; engages with stakeholders of the company; represents company policies and commitment;
Risk Management	Facilitates periodic assessment of main company risks; may include engagement with internal and external stakeholders and creation of risk mitigation plan;
Security	Protects company property and staff from harm inflicted by fellow workers or outsiders (eg. security officers, bodyguards);
Stakeholder/ Community Relations	Interacts with local community or neighbors of company site; conducts dialogue and mediates where necessary;
Senior Management	Includes CEO, Board of Directors, Supervisory Board; may also include second tier board members, function heads, country and BU directors;
Works Council	Representative body of employees to engage with management.

APPENDIX C: SOURCES FOR MAPPING HUMAN RIGHTS RISKS

Amnesty International

Amnesty International Annual Report (the state of human rights in the world)

www.amnesty.org

Amnesty International Swiss Section

Doing Business in China:

The Human Rights Challenge

www.reports-and-materials.org/Amnesty-Switzerland-guidance-on-doing-business-in-China-2009.pdf

Business and Human Rights Resource Centre

Articles on business and human rights per region

www.business-humanrights.org/Categories/RegionsCountries

Control risks

Risk consultancy providing reports and analysis on many issues related to human rights

www.control-risks.com

Danish Institute for Human Rights

Country Risk Assessment (reports on human rights risks of 13 countries)

www.humanrightsbusiness.org/?f=country_risk

Country Risk Portal (in development)

www.humanrightsbusiness.org/?f=country_risk_portal

Dalit Check (Dalit discrimination check for operations in South Asia)

www.humanrightsbusiness.org/?f=compliance_assessment

Human Rights and Business in China (self-assessment tool)

www.humanrightsbusiness.org/?f=compliance_assessment

Freedom House

Freedom in the World 2010 (interactive map of levels of political freedom in the world)

www.freedomhouse.org

Human Rights Watch

Human Rights Watch World Report (the state of human rights in the world)

www.hrw.org

International Crisis Group

Information on conflicts per region/country

www.crisisgroup.org

International Alert

Interactive map of regional work (provides country information for selected regions)

www.international-alert.org

International Business Leaders Forum/Amnesty International

Business & Human Rights: A geography of corporate risk

shop.iblf.org/DisplayDetail.aspx?which=17

International Labour Organisation

Natlex ILO Database ("a database of national labor, social security and related human rights legislation")

http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en

Maplecroft

Human Rights Risk Atlas

www.maplecroft.com/portfolio/human_rights_atlas/

Office of the High Commissioner for Human Rights

Human Rights Translated: A Business Reference Guide (with others)

www.law.monash.edu.au/castancentre/publications/human-rights-translated.pdf

Overview of states that have ratified the International Covenant on Civil and Political Rights

<http://www2.ohchr.org/english/bodies/ratification/3.htm>

Overview of states that have ratified the International Covenant on Economic, Social and Cultural Rights

<http://www2.ohchr.org/english/bodies/ratification/4.htm>

Red Flags

Liability risks for companies operating in conflict zones

www.redflags.info

United States Department of Labor

List of goods produced by child or forced labor

www.dol.gov/ilab/programs/ocft/pdf/2009tvpra.pdf

United States Department of State

Country Reports on Human Rights Practices

www.state.gov/g/drl/rls/hrrpt/

APPENDIX D: OVERVIEW OF CSR/SUSTAINABILITY AND SECTOR INITIATIVES

Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism

An industry driven responsible tourism initiative.
www.thecode.org

Dutch Sustainable Trade Initiative (all sectors)
Acceleration and up-scaling of sustainability within mainstream commodity markets.
www.dutchsustainabletrade.com

Electronics Industry Code of Conduct

The Code encourages broad adoption of CSR best practices by all ICT companies and suppliers.
www.eicc.info

Ethical Trading Initiative (consumer goods)

An alliance of companies, trade unions and voluntary organizations working in partnership to improve the working lives of people across the globe who make or grow consumer goods.
www.ethicaltrade.org

Equator Principles (finance)

A voluntary set of standards for determining, assessing and managing social and environmental risk in project financing.
www.equator-principles.com

Extractives Industry Transparency Initiative

A standard for companies to publish what they pay and for governments to disclose what they receive.
www.eitransparency.org

Fair Labor Association (garment)

Protecting Workers' Rights and improving Working Conditions Worldwide.
www.fairlabor.org

Fair Wear Foundation (garment)

An international verification initiative dedicated to enhancing workers' lives.
www.fairwear.org

Global Network Initiative (IT)

Protecting and Advancing Freedom of Expression and Privacy in Information and Communications Technologies.
www.globalnetworkinitiative.org

International Council of Mining and Metals

A multi-stakeholder initiative for the improvement of environmental and social performance.
www.icmm.com

International Petroleum Industry Environmental Conservation Association

Global association representing oil and gas

industry on key global environmental and social issues.

www.ipieca.org

The Kimberley Process (extractives)

A joint governments, industry and civil society initiative to stem the flow of conflict diamonds.
www.kimberlyprocess.com

Round Table on Sustainable Palm Oil (agriculture)

A global, multi-stakeholder initiative to promote the growth and use of sustainable palm oil through co-operation within the supply chain and open dialogue between its stakeholders.
www.rspo.org

Social Accountability International (all sectors)

Helps measure performance on respect for human rights and labor rights in the workplace.
www.sa-intl.org

The Voluntary Principles on Security and Human Rights (extractives)

Provide guidance to extractives companies on maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.
www.voluntaryprinciples.org

APPENDIX E: TIMELINE BUSINESS & HUMAN RIGHTS INITIATIVE

Date	Activity/Event
1 November 2008	Formal start of the Business & Human Rights Initiative (B&HRI) with seven companies: AkzoNobel, Essent, Fortis Bank Nederland, KLM, Philips, Shell and Unilever
November	Developing the research protocol
1 December	Start Phase 1: Individual assessments of first two companies (Fortis Bank Nederland and Shell)
1-2 December	Special Representative John Ruggie attends conference organized by Dutch Government; informal Q & A with professor Ruggie and participating companies
December	Two more companies join the B&HRI: <i>Rabobank</i> and <i>Randstad</i>
2009	
January	TNT joins B&HRI as the tenth and last company
February	Start second round of company assessments (<i>AkzoNobel</i> , <i>Essent</i> and <i>Philips</i>)
April	Start third round of company assessments (<i>Rabobank</i> and <i>KLM</i>)
1 May	Thurid Bahr joins B&HRI as research intern
June	Start final round of company assessments (<i>Randstad</i> , <i>TNT</i> and <i>Unilever</i>)
1 October	Start Phase 2: Peer-learning workshops
5-6 October	B&HRI staff attends the Consultation on operationalizing the framework for business and human rights, presented by the Special Representative, at the United Nations in Geneva
9 October	Workshop "Grievance Mechanisms" with Caroline Rees (Advisor to the Special Representative) and case studies by <i>AkzoNobel</i> and <i>Randstad</i>
12 October	Workshop "Diversity and Inclusion" with Rhodora Palomar – Fresnedi (former <i>Unilever</i>), and participating companies**
9 November	Round table on Business and Human Rights, organized by <i>Niza</i> , <i>Cordaid</i> , <i>Fatal Transactions</i> and <i>MVO Platform</i> . The meeting assembled various Dutch stakeholders of the business and human rights debate. During the meeting David Vermijs presented an overview of the B&HRI's work***
19 November	Workshop "Impact and Risk Assessment" with John Morrison (<i>Institute for Human Rights and Business</i>), hosted by Aim for Human Rights. Case studies by <i>Essent</i> , <i>Fortis Bank Nederland</i> and <i>Philips</i>

1 December	Andra Ramos Lopes Almeida joins B&HRI as research intern Start Phase 3: Developing final publication with good practices
9 December	Workshop "Corporate Governance and CSR in the Legal Context," chaired by Marga Edens (<i>Essent</i>), and with interventions by Jan Eijsbouts (<i>Gaemo Group</i>), Chip Pitts (<i>Stanford Law School</i>), John Sherman (<i>IBA CSR Committee/Harvard Kennedy School</i>) and Tom van Wijngaarden (<i>Eversheds Faasen</i>)
15 December	"Stakeholder meeting" chaired by Gemma Crijns (<i>CSR Dialogue</i>), with NGOs, investors, government and company representatives to present general project and to obtain input from participants on the final publication
2010	
18 January	"Mini Seminar on Human Rights Due Diligence" with Christine Bader (Advisor to the Special Representative), organized by the <i>Global Compact Network Netherlands</i>
27 January	"Discussion on Human Rights Impact Assessments," chaired by Gemma Crijns (<i>CSR Dialogue</i>) and hosted by <i>Shell</i> . A wide group of stakeholders, including investors, government representatives, civil society and experts attended. Interventions by Liesbeth Unger (<i>Aim for Human Rights</i>) and Marina d'Engelbronner-Kolff (<i>Aidenvironment</i>)****
9 March	Expert meeting "Doing Business in China," with Mads Holst Jensen (<i>Danish Institute for Human Rights</i>) and case studies by <i>Philips</i> and <i>AkzoNobel</i>
March-May	Writing and revising final publication
24 June	Publication formally launched at <i>Global Compact Leaders Summit</i>

* See Chapter 3.5 for an overview of the outcomes of the meeting.

** See Chapter 4.9 for an overview of the outcomes of the meeting.

*** B&HRI is grateful to the organizers for the opportunity to present.

**** See Chapter 3.2 for an overview of the outcomes of the meeting.

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STAFF OF THE BUSINESS & HUMAN RIGHTS INITIATIVE

David Vermijs

Project consultant

David has been leading the process of this publication since November 2008. As part of the *Business & Human Rights Initiative* (B&HRI), David also conducted individual assessments for the participating companies, and organized workshops and seminars. David is currently also a research fellow at the Institute for Human Rights and Business on human rights due diligence. Previously, he worked as a research fellow at Harvard University's CSR Initiative, where his work fed into the mandate of Special Representative Ruggie. He holds a Masters degree in Public Policy from Harvard University's Kennedy School of Government and a BA in Business Communications from Radboud University Nijmegen.

Huib Klamer

Senior project advisor

Huib is senior advisor on CSR for VNO-NCW, the Confederation of Netherlands Industry and Employers. Since the inception of the B&HRI, he has been acting as senior advisor to the Initiative. He is also the secretary of the Global Compact Network Netherlands. Huib has published extensively on CSR, business ethics, leadership and spirituality. He continues to engage on these subjects, most recently in organizing the 2010 Bilderberg Conference on sustainable economic recovery.

Thurid Bahr

Research intern

Thurid joined the B&HRI in May 2009. She assisted in developing and writing the present publication and in conducting research at the participating companies. Thurid completed her studies at University College Maastricht in Liberal Arts with a focus on International Relations, where she is currently working as an assistant teacher. Previous functions include developing and teaching a course on the United Nations and multilateral diplomacy at Radboud University Nijmegen.

Andra Ramos Lopes Almeida

Research intern

Andra supported B&HRI from December 2009 until April 2010 by assisting in the organization of workshops with experts in the field of business and human rights, as well as doing background research and providing input to the text for the final publication. Andra holds a law degree from the University of Sussex, a LL.M. in European Law from Stockholm University and a Masters in Human Rights Law from Nottingham University, where she also recently completed her Legal Practice Course. Andra has held various legal functions in Sweden, the United Kingdom, and at the UNDP.

This publication builds on the *Protect, Respect and Remedy* framework of the UN Special Representative for Business and Human Rights, Professor John Ruggie. Ten multinational companies of the Global Compact Network Netherlands (AkzoNobel, Essent, Fortis Bank Nederland, KLM, Philips, Rabobank, Randstad, Shell, TNT, and Unilever) worked together during one-and-a-half years to form the Business & Human Rights Initiative. They considered and learned from the framework in three cumulative phases:

1. Confidential, individual company assessments
2. Peer-learning through workshops and seminars
3. Development of suggestions for implementation (this publication)

The descriptions, learnings and guidance points collected in this guidance tool build on the experience gained during the course of the Business & Human Rights Initiative. They are intended to help companies implement a commitment to respect human rights in line with the framework of the Special Representative. The Business & Human Rights Initiative hopes they will be useful and inspirational to companies, as well as contribute to the ongoing work of the Special Representative.

