

# **THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS**

## **AN INTERPRETIVE GUIDE**



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# I INTRODUCTION

In June 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles for Business and Human Rights presented to it by the Special Representative of the UN Secretary-General (SRSG), Professor John Ruggie.

This unprecedented move established the Guiding Principles as the global standard of practice that is now expected of all governments and businesses with regard to business and human rights. While they do not by themselves constitute a legally binding document, the Guiding Principles elaborate on the implications of existing standards and practices for States and businesses and include points covered variously in international and domestic law.

## **The UN „Protect, Respect and Remedy“ Framework**

The UN Guiding Principles are based on six years of work by the former SRSG, including in-depth research; extensive consultations with businesses, governments, civil society organizations, affected individuals and communities, lawyers, investors and other stakeholders; and the practical road-testing of proposals. They were developed to „operationalize“ the UN „Protect, Respect and Remedy“ Framework presented by the SRSG to the UN in 2008. This three-pillar Framework consists of:

- The State Duty to Protect Human Rights
- The Corporate Responsibility to Respect Human Rights
- The need for greater Access to Remedy for victims of business-related abuse.

The „Protect, Respect and Remedy“ Framework was welcomed by the UN High Commissioner for Human Rights. According to the High Commissioner, the Framework set:

“both a new and clear benchmark and represents an important milestone in the evolving understanding of human rights in our societies... Clarity about the baseline expectations of business with regard to human rights is a first important step towards developing appropriate and effective responses to such problems”.<sup>1</sup>

## **The UN Guiding Principles on Business and Human Rights**

The UN Guiding Principles reflect and build upon the three-pillar structure of the „Protect, Respect and Remedy“ Framework. They comprise 31 Principles, each followed by a brief commentary. Together, the Guiding Principles outline steps for States to foster business respect for human rights; provide a blueprint for companies to manage the risk of adversely impacting human rights; and offer a set of benchmarks for stakeholders to assess business respect for human rights.

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<sup>1</sup> Navanethem Pillay, “The Corporate Responsibility to Respect Human Rights: A Human Rights Milestone”, 2009 International Labour and Social Policy Review.

The UN Guiding Principles have gained extensive support from businesses and civil society organizations as well as governments. A number of other international and regional organizations have reflected them in their own standards, and more are expected to do so in the months and years to come. Many businesses around the world are already looking at how they can implement the Guiding Principles in their operations.

The Office of the UN High Commissioner for Human Rights (OHCHR) has supported the six-year long process that led to the Principles under the stewardship of the Special Representative. Before their endorsement by the Human Rights Council, the High Commissioner stated that:

“the UN Guiding Principles clarify the human rights responsibilities of business. They seek to provide the first global standard for preventing and addressing the risk of adverse human rights impact linked to business activities. If endorsed, the Guiding Principles will constitute an authoritative normative platform which will also provide guidance regarding legal and policy measures that, in compliance with their existing human rights obligations, States can put in place to ensure corporate respect for human rights.”<sup>2</sup>

As Professor Ruggie has stated, the UN Guiding Principles will not bring all human rights challenges to an end, but their endorsement marks the end of the beginning. They provide a solid and practical foundation on which more learning and good practice can be built.

The first task now is to ensure their effective implementation. This interpretive guide, which was developed in full collaboration with the former Special Representative, is designed to support this process.

### **The purpose of this Interpretive Guide**

This Guide in no way changes or adds to the provisions of the UN Guiding Principles, nor to the expectations that they set for businesses. Its purpose is to provide additional background explanation to the Guiding Principles that could not be included in the UN document itself due to space constraints, but which supports a full understanding of its meaning and intent. The Guide’s content was the subject of numerous consultations during the six years of Professor Ruggie’s mandate and was reflected in his many public reports and speeches, but has not previously been gathered together in one place.

The Guide is not a manual that will give those at the operational level in businesses the „answer“ to exactly how to put the Guiding Principles into practice. Further work will be needed to develop such operational guidance, which will vary depending on sector, operating context and other factors. The UN Working Group on Business and Human Rights will play a central role in this regard. In addition, other organizations with particular sectoral or issue-based focuses are already preparing their own

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<sup>2</sup> UN High Commissioner for Human Rights, Statement to the Annual Labour Conference, Employers Group, June 2011.

thinking on implementation. As they do so, it is hoped that this Guide will assist them by explaining further the intent behind the Guiding Principles that address the corporate responsibility to respect human rights. As such it is a resource not just for businesses, but also for governments, civil society organizations, investors, lawyers and others who engage with business on these issues.

While this Guide focuses on the corporate responsibility to respect human rights, it in no way reduces the equally important duty of States to protect human rights against abuse by third parties, including business.

### **The structure of this Interpretive Guide**

The Guide is divided into five main sections of which this Introduction is the first. Section II sets out some key concepts used in the Guiding Principles and offers a brief definition of each. Sections III and IV are the body of the Guide, focused on the substance of those Guiding Principles that address the corporate responsibility to respect human rights. Section V contains annexes with useful reference material that is discussed during earlier sections.

Sections III and IV of this Guide take each Guiding Principle in turn and follow it with a series of basic questions and answers related to interpretation of the Principle, its intent and implications for its implementation. Section III covers the five „Foundational Principles“ of the corporate responsibility to respect human rights, which are the basis for all the „Operational Principles“ of Section IV that follow. The „Operational Principles“ elaborate on the policies and processes businesses need to have in place in order to ensure that they respect human rights. They follow the same four sub-sections as the Guiding Principles:

- A. Policy Commitment
- B. Human Rights Due Diligence
- C. Remediation
- D. Issues of Context

The Guiding Principles address the issue of remediation both under their second pillar – the corporate responsibility to respect – and under their third pillar on „access to remedy“. Those Guiding Principles on access to remedy that are relevant to businesses are included here under the „Remediation“ section, for completeness. The final sub-section on „Issues of Context“ focuses on dilemma situations where the operating context of a business seems to preclude or limit its ability to respect all human rights in practice.

### **The status of this Interpretive Guide**

The formal commentary provided in the UN Guiding Principles document itself is not reproduced in this Guide, although it is at times quoted. The questions and answers provided here go beyond that commentary to provide additional detail and assistance in understanding the Guiding Principles. As such, they complement the commentary but should in no way be taken to replace or supercede it.

This Guide has been prepared by OHCHR with the full support and involvement of Professor. Ruggie.<sup>3</sup> As he has commented: “It is impossible to distil six years of research, consultation and reflection into a document the length of the Guiding Principles. This Interpretive Guide is a means to provide some further explanation of those Principles that relate to the corporate responsibility to respect human rights. As work continues to elaborate the implications of this responsibility for different sectors, issues and situations, I hope that this Guide will help ground those efforts soundly and squarely on the original meaning and intent of the Guiding Principles themselves.”

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<sup>3</sup> Special thanks go to Ms. Caroline Rees of the Harvard Kennedy School of Government, who served as a senior advisor of the Special Representative’s team and is the Founder of *Shift*, an independent, non-profit centre for business and human rights practice.

## II KEY CONCEPTS

### **Actual human rights impact**

An “actual human rights impact” is an adverse impact that has already occurred or is occurring.

### **Adverse human rights impact**

An “adverse human rights impact” occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

### **Business relationships**

Business relationships refer to those relationships the business enterprise has with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services. They include indirect business relationships in an enterprise’s value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures.

### **Complicity**

Complicity has both legal and non-legal meanings. As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.

As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

Examples of non-legal complicity might include a situation where a business enterprise is seen to benefit from abuses committed by others, such as when it reduces costs because of slave-like practices in its supply chain or fails to speak out in the face of abuse related to its own operations, products or services, when there are principled reasons for it to do so. Even though enterprises have not yet been found complicit by a court of law for these kinds of involvement with abuses, the court of public opinion sets the bar lower and can inflict significant costs on the enterprise. The human rights due diligence process should uncover risks of non-legal (or perceived) as well as legal complicity and generate appropriate responses.

### **Due diligence**

Due diligence has been defined as “Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case”. In the context of the Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in

light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights,

### **Gross human rights abuses**

There is no uniform definition of gross human rights violations in international law, but the following practices would generally be included: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, enforced disappearances, arbitrary and prolonged detention, and systematic discrimination. Other kinds of human rights violations, including of economic, social and cultural rights, can also count as gross violations if they are grave and systematic in scope and nature, for example violations taking place at a large scale or targeted at particular population groups.

### **Human rights and international crimes**

Some of the most serious human rights violations may constitute international crimes. International crimes have been defined by States under the Rome Statute of International Criminal Law. They include genocide (“acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”), crimes against humanity (widespread and systematic attacks against civilians that include murder, enslavement, torture, rape, discriminatory persecution etc.), war crimes (as defined by international humanitarian law) and the crime of aggression.

### **Human rights risks**

A business enterprise’s human rights risks include any risks that its operations may lead to one or more adverse human rights impacts. They therefore relate to its *potential* human rights impacts. In traditional risk assessment, risk factors in both the consequences of an event (its severity) and the probability of it occurring. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritize the order in which potential impacts are addressed in some circumstances (see „severe human rights impacts“ below). Importantly, human rights risks are separate from any risks to the enterprise that may flow from its involvement with human rights impacts. However, the two are increasingly related.

### **Leverage**

Leverage is a form of advantage that gives power to act effectively. In the context of the Guiding Principles it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.

### **Mitigation**

The mitigation of adverse human rights impacts refers to actions taken to reduce the extent of an impact, with any residual impact then requiring remediation. The mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain adverse impact occurring.

### **Potential human rights impact**

A “potential human rights impact” is an adverse impact that may occur but has not yet done so.



**Prevention**

The prevention of adverse human rights impacts refers to actions taken to avoid such impacts occurring

**Remediation/Remedy**

Remediation and remedy refer to both the *processes* of providing remedy for an adverse human rights impact and to the substantive *outcomes* that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, including apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

**Salient human rights**

The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to the enterprise's sector and operating context. The Guiding Principles make clear that an enterprise should not focus exclusively on the most salient human rights issues and ignore others that might arise. But the most salient rights will logically be the ones on which the enterprise concentrates its primary efforts.

**Severe human rights impacts**

The commentary to the Guiding Principles defines severe human rights impacts in reference to their scale, scope and irremediable character. This means that the gravity of the impact and the number of individuals impacted at present or in the future (for instance from the delayed effects of environmental harm) will both be relevant considerations. „Irremediability“ is the third relevant factor, used here to mean any limits on the ability to restore those impacted to a situation at least the same as, or equivalent to, their situation before an adverse impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

**Stakeholder/affected stakeholder**

A stakeholder refers to any individual who may affect or be affected by an organization's activities. An affected stakeholder refers here specifically to individuals whose human rights may be affected by an enterprise's operations, products or services.

**Stakeholder engagement/consultation**

Stakeholder engagement or consultation refers here to an on-going process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond, including through collaborative approaches to their interests and concerns.

**Value chain**

A business enterprise's value chain encompasses the activities that convert inputs into outputs by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services or (b) receive products or services from the enterprise.

### III FOUNDATIONAL PRINCIPLES

#### 1. GUIDING PRINCIPLES 11 AND 12

##### GUIDING PRINCIPLE 11

**Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**

##### GUIDING PRINCIPLES 12

**The responsibility of business enterprises to respect human rights refers to internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.**

#### 1.1 What are human rights?

The idea of human rights is as simple as it is powerful: that people have a right to be treated with dignity. Human rights are inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Every individual is equally entitled to enjoy human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

The 1948 Universal Declaration of Human Rights (UDHR) was drawn up by representatives from many nations to prevent a recurrence of World War II era atrocities and is the cornerstone of modern human rights law. At the World Conference on Human Rights in Vienna in 1993, all 171 participating countries reaffirmed their commitment to the aspirations expressed in the Declaration.

The Universal Declaration is codified in international law through two 1966 treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Each of the Covenants

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has been ratified by over 150 States. Collectively all three documents are known as “the International Bill of Human Rights”.

In the sphere of human rights for workers, the International Labour Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work commits all Member States of the ILO to the principles concerning the rights in the 8 ILO Core Conventions. These conventions include principles and rights in four categories: freedom of association and the right to collective bargaining; the elimination of compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

Together these documents constitute the minimum reference point for what the Guiding Principles describe as „internationally-recognized human rights”.

## **1.2 How are human rights relevant to States?**

States have the legal obligation to respect, protect and fulfil the human rights set out in the international human rights conventions they ratify. Similar responsibilities, though usually not legally binding, result from human rights declarations and other such political commitments States make.

The obligation of States to respect human rights means that they must refrain from interfering with or curtailing the enjoyment of human rights. Their obligation to protect human rights requires them to protect individuals and groups against human rights abuses, including by business enterprises. Their obligation to fulfil human rights means that States must take positive action to facilitate the enjoyment of basic human rights.

## **1.3 How are human rights relevant to businesses?**

International human rights treaties generally do not impose direct legal obligations on business enterprises. Issues of legal liability and enforcement for the infringement by business of international human rights standards are therefore defined largely by national law provisions.<sup>4</sup> However, the actions of business enterprises, just like the actions of other non-state actors, can affect the enjoyment of human rights by others, either positively or negatively. Enterprises can affect the human rights of their employees, their customers, workers in their supply chains or communities around their operations. Indeed experience shows that enterprises can and do infringe on human rights where they are not paying sufficient attention to this risk and how to reduce it.

The International Bill of Human Rights and the core ILO Conventions provide basic reference points for businesses in starting to understand what human rights are; how their own activities may affect them; and how to ensure that they avoid or [mitigate](#) the risk of being involved with adverse impacts. The Office of the UN High

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<sup>4</sup> This said, it is important to note that national law provisions, and some contract provisions reflecting human rights requirements, may result from or be heavily influenced by international human rights treaties.

Commissioner for Human Rights has issued a publication in collaboration with the International Business Leaders Forum, Monash University and the UN Global Compact that provides a range of examples under each human right.<sup>5</sup> (See also [Box B](#) for examples of different ways in which enterprises may be involved in adverse human rights impacts.)

#### **1.4 What additional human right standards may be relevant?**

Depending on the circumstances of their operations, enterprises may need to consider additional standards beyond the International Bill of Human Rights and core ILO Conventions, in order to ensure that they act with respect for human rights: for instance where their activities might pose a risk to the human rights of individuals belonging to specific groups or populations that require special attention. Certain United Nations human rights instruments have elaborated on the human rights of persons belonging to such groups or populations, recognizing that they may need particular accommodation or protection in order to fully enjoy human rights without discrimination (See [Box A](#)).

#### **BOX A**

##### **United Nations human rights instruments elaborating on the rights of persons belonging to particular groups or populations.**

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

In most instances, the rights in these instruments relate to the *individuals* in the groups they address. The Declaration on the Rights of Indigenous Peoples addresses both the human rights of indigenous individuals and the collective rights of indigenous peoples.

These instruments also reflect the fact that individuals from such groups and populations may face particular human rights challenges and vulnerabilities. Vulnerable individuals, groups and communities are those who face particular risks of being exposed to discrimination and other adverse human rights impacts. People who

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<sup>5</sup> "Human Rights Translated: A Business Reference Guide", published by the Office of the UN High Commissioner for Human Rights, the International Business Leaders Forum, Monash University and the UN Global Compact, 2008.

are disadvantaged, marginalized and excluded in society are often particularly vulnerable. Examples of these groups can include children, women, indigenous peoples, people belonging to ethnic or other minorities, or persons with disabilities.

Vulnerability can depend on context. For example, while women in some contexts are more vulnerable to abuse than men, they are not necessarily vulnerable in all contexts. Conversely, in some situations women from marginalized groups may face double vulnerability based both on that marginalization and on their gender.

In situations of armed conflict, the standards of international humanitarian law apply to business enterprises as well as to others. On the one hand international humanitarian law grants protection to business personnel – provided they do not take part directly in armed hostilities – as well as to the assets and capital investments of enterprises. On the other hand it imposes obligations on managers and staff not to breach international humanitarian law and exposes them – and the enterprises themselves – to the risk of criminal or civil liability in the event that they do so. The International Committee of the Red Cross has developed guidance on the rights and obligations of business enterprises under international humanitarian law.<sup>6</sup>

### **1.5 How can all internationally-recognized human rights be relevant to business?**

The corporate responsibility to respect human rights applies to all internationally-recognized human rights, because business enterprises can have an impact – directly or indirectly – on virtually the entire spectrum of these rights. Even rights such as the right to a fair trial, which is clearly directed at States, can be adversely impacted if, for example, an enterprise obstructs evidence or interferes with witnesses. In practice, some rights will be more relevant or „salient“ than others in particular industries and circumstances and will be the focus of heightened company attention. For example, the [human rights risks](#) that are most salient for enterprises in the apparel sector with products made by workers in factories across multiple countries, will differ from those of enterprises in the extractive sector that have to relocate an indigenous communities. But there is nothing *in principle* that precludes any enterprise from causing or contributing to adverse impacts on any internationally-recognized human right. It is therefore not possible to limit the application of the responsibility to respect human rights to a particular sub-set of rights for particular sectors.

### **1.6 What does “avoid infringing” on human rights mean?**

This means that enterprises can go about their activities, within the law, so long as they do not cause harm to individuals’ human rights in the process. For example, if a factory or a mine pollutes the water source of the surrounding communities such that people don’t have the same access to safe drinking water as before, it has infringed on the enjoyment of the right to safe drinking water. Or if the enterprise evicts a community without due process, consultation and compensation, it will infringe on the right to adequate housing.

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<sup>6</sup> “Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law”, International Committee of the Red Cross, 11-09-2006, Publication Ref. 0882

### **1.7 Is the responsibility to respect human rights optional for business enterprises?**

No. In many cases the responsibility of enterprises to respect human rights is reflected at least in part in domestic law or regulations corresponding to international human rights standards. For instance, laws that protect people against contaminated foods or polluted water, or that mandate workplace standards in line with the ILO conventions and safeguards against discrimination, or that require individuals’ informed consent before they take part in drug trials, are all different ways in which domestic laws can regulate the behaviour of enterprises to help ensure that they respect human rights.

The responsibility to respect human rights is not, however, limited to compliance with such domestic law provisions. It exists over and above legal compliance, constituting a global standard of expected conduct applicable to all businesses in all situations. It therefore also exists independently of the enterprise’s own commitments with regard to human rights. It is reflected in soft law instruments such as the OECD Guidelines for Multinational Enterprises. There can be legal, financial and reputational consequences for enterprises failing to meet the responsibility to respect. Such failure may also hamper an enterprise’s ability to recruit and retain staff, to gain permits, investment, new project opportunities or similar benefits essential to successful, sustainable business. As a result, where business poses a risk to human rights, it increasingly poses a risk also to its own long-term interests.

### **1.8 Do enterprises have any additional human rights responsibilities?**

The Guiding Principles set the baseline responsibility of all enterprises as *respect* for human rights wherever they operate. Beyond that, enterprises may voluntarily undertake additional human rights commitments – such as the *promotion* of certain human rights – for philanthropic reasons, to protect and enhance their reputation, or to develop new business opportunities. National laws and regulations may require additional activities by enterprises regarding human rights in some situations, as may contracts with public authorities for particular projects. For example, a contract with a government for the provision of water services may require a business enterprise to help fulfil the human right to water. Operational conditions may also lead enterprises to take on additional responsibilities in specific circumstances. For example, enterprises may identify a need to make social investments, such as in local health care or education, in order to achieve or maintain support for its operations from surrounding communities (a so-called „social license to operate”). Supporting human rights also form part of the commitment undertaken by signatories to the United Nations Global Compact.

Debate continues over whether there may be a *responsibility* for some enterprises in some situations to go beyond respect for human rights and also to seek to promote them. This falls beyond the scope of the UN Guiding Principles, which constitute a global standard of responsibility for *all* businesses in *all* situations and therefore focus on the responsibility to respect human rights. Respect for human rights is about an enterprise’s core operations – how it goes about its daily business. It is not about voluntary activities outside its core operations, however welcome these may be.

It is also important to note in this context that there is no equivalent of a „carbon off-set“ for a harm caused to human rights: a failure to respect human rights in one area cannot be cancelled out by a benefit provided in another.

## **2. GUIDING PRINCIPLE 13**

**The responsibility to respect human rights requires that business enterprises:**

- a. Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**
- b. Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts**

### **2.1 How can enterprises be involved in adverse human rights impacts?**

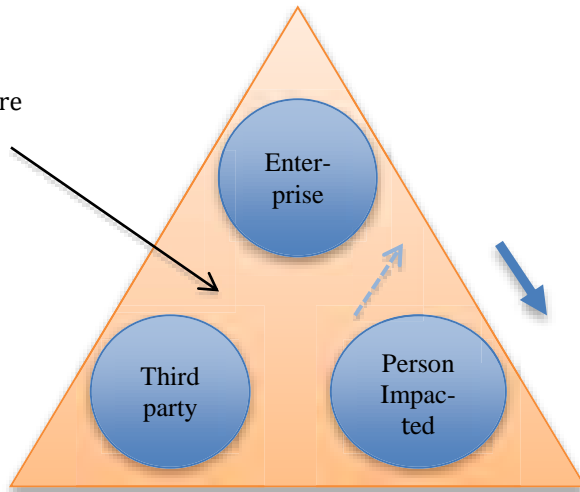
There are three basic ways in which an enterprise can be involved in an adverse impact on human rights:

- a) it may cause the impact through its own activities.
- b) it may contribute to the impact through its own activities – either directly or through some outside entity (government, business or other).
- c) it may neither cause nor contribute to the impact, but be involved because the impact is both carried out by an entity with which it has a business relationship and is linked to its own operations, products and services.

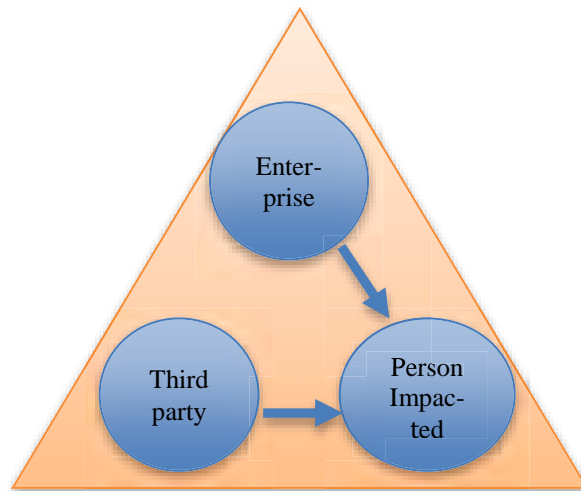
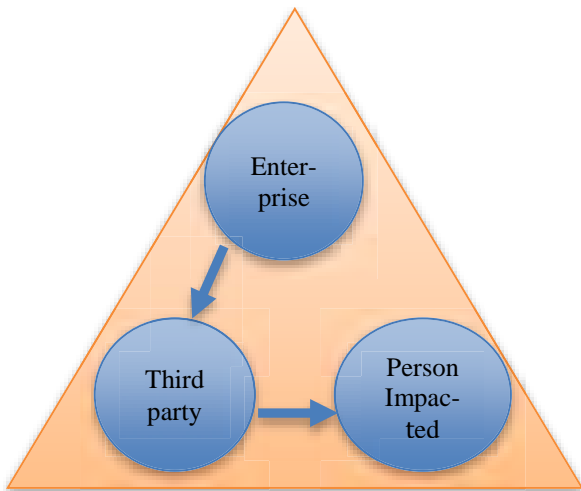
Each scenario has different implications for the nature of the enterprise’s responsibilities, which are discussed in question 2.3 below and further elaborated under [Guiding Principle 19](#).

## I. Cause

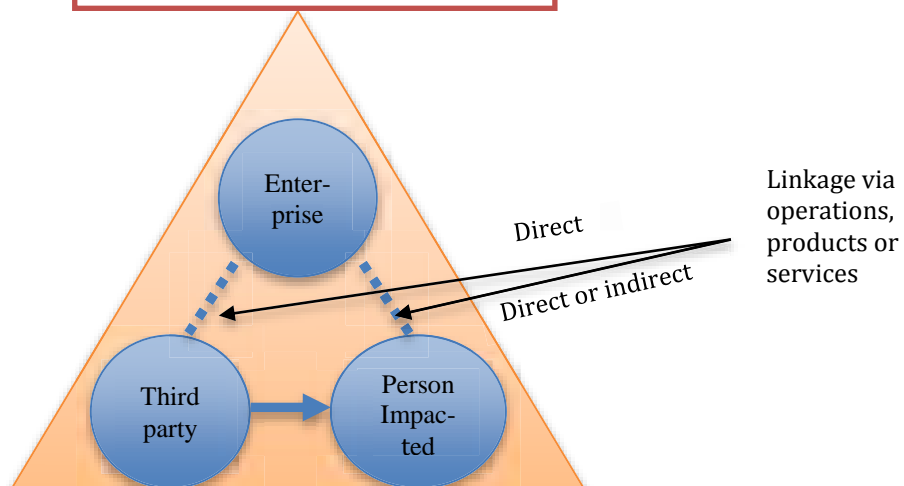
Possible pressure  
or other third  
party  
contribution



## II. Contribution



## III. No contribution, but linkage



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## BOX B

### ILLUSTRATIVE EXAMPLES OF BUSINESS IMPACTS ON HUMAN RIGHTS

Examples of situations where business enterprises may be deemed to have caused adverse human rights impacts include:

- routine racial discrimination by a restaurant in its treatment of customers
- exposure of factory workers to hazardous working conditions without adequate safety equipment;
- being the sole or main source of pollution in a community's drinking water supply due to chemical effluents from production processes.

Examples of enterprises being accused of contributing to adverse human rights impacts include:

- providing data about internet service users to a government that uses the data to trace and prosecute political dissidents contrary to human rights;
- performing construction and maintenance on a detention camp where inmates were allegedly subject to inhumane treatment;
- targeting high-sugar foods and drinks at children, with an impact on levels of child obesity.
- Changing product requirements for suppliers at the eleventh hour without adjustment to production deadlines and prices, pushing suppliers to breach labour standards in order to deliver.

Examples of adverse impacts that are directly linked to an enterprise's operations, products or services by their business relationships, but where the enterprise itself may not to have contributed to them, include:

- providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities;
- embroidery on a retail company's clothing products being sub-contracted by the supplier to child laborers in homes, counter to contractual obligations;
- Use of MRI machines by medical institutions to screen for female fetuses, facilitating their abortion in favour of male children.

Further examples of how business enterprises can be involved in adverse impacts on human rights are included in "Human Rights Translated", which is available on-line at:

[http://www2.ohchr.org/english/issues/globalization/business/docs/Human\\_Rights\\_Translated\\_web.pdf](http://www2.ohchr.org/english/issues/globalization/business/docs/Human_Rights_Translated_web.pdf)

## **2.2 What is meant by "adverse human rights impacts"?**

An "adverse human rights impact" occurs when an action reduces the ability of an individual to enjoy his or her human rights.

The Guiding Principles distinguish between „actual“ human rights impacts and „potential“ human rights impacts. „Actual“ impacts are those that have occurred or are occurring. „Potential impacts“ are those that may occur but have not yet done so.

Actual impacts require remediation (see Guiding Principle 22). Potential impacts - or [human rights risks](#) – require action to prevent the risk from materializing into an actual impact, or at least to mitigate (reduce) as far as possible the extent to which it may do so (see Guiding Principles 17-21 on human rights due diligence). Where some residual impact on human rights is unavoidable, then this in turn requires remediation.

## **2.2 What should enterprises do if they are at risk of involvement with adverse human rights impacts?**

The appropriate responses in these different situations are explored in some detail under [Guiding Principle 19](#). In summary:

- a. Where an enterprise is at risk of causing or contributing to an adverse human rights impact through its own activities, it should cease or change the activity that is responsible, in order to prevent or [mitigate](#) the chance of the impact occurring or recurring. Where an impact nevertheless takes place, the enterprise should engage actively in its remediation either directly or in cooperation with others (be it the courts, the government, other enterprises involved or other third parties).
- b. Where an enterprise is at risk of involvement with an adverse impact solely because the impact is linked to its operations, products or services by a business relationship, it does not have responsibility for the impact itself: that responsibility remains with the entity that caused or contribute to it. The enterprise therefore does not have to provide for remediation (although it may choose to do so for reasons of reputation or other considerations). However, it has a responsibility to use its leverage to encourage the entity that caused or contributed to the impact to prevent or mitigate its recurrence. This may involve working with the entity and/or with others who can help.

### **3. GUIDING PRINCIPLE 14**

**The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.**

#### **3.1 What is the relevance of the “severity” of an enterprise’s human rights impacts in relation to other factors listed here?**

The severity of an enterprise’s potential adverse human rights impacts is the most important factor in determining the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is respecting human rights. The processes must therefore first and foremost be proportionate to the [human rights risks](#) of its operations.

#### **3.2 What is meant by a „severe“ human rights impact?**

The commentary to this Principle states that “severity of impacts will be judged by their scale, scope and irremediable character”. This means that the gravity of the impact (its scale) and the number of individuals impacted at present or in the future (its scope) will both be relevant. „Irremediability“ is the third relevant factor, used here to mean any limits on the ability to restore those impacted to a situation at least the same as, or equivalent to, their situation before an adverse impact.

It is not necessary that an impact have more than one of these characteristics to be reasonably considered “severe”, although it is often the case that the greater the scale or the scope of an impact, the less it is „remediable“.

The concept of „severity“ is discussed further under [Guiding Principle 24](#), including in the context of risk assessment.

#### **3.3 How is the size of an enterprise relevant to its responsibility to respect human rights?**

All enterprises have the same responsibility to respect human rights as they go about their business. However, size will often influence the kinds of approaches they take in order to meet that responsibility.

A large enterprise will have more employees, typically undertaking more activities and engaged in more relationships, than a small enterprise. This may increase its [human rights risks](#). Large enterprises are also likely to have more complex systems and procedures in place for decision-making, communications, control and oversight. They are more likely than small enterprises to have operations, value chain relationships, clients or customers that span multiple countries, making the

implementation and monitoring of standards more challenging. They may have longer and more complex value chains with multiple forms of relationship, some of them entailing more human rights risks than others.

The policies and processes that a large enterprise needs in order to ensure respect for human rights by the enterprise as a whole will need to reflect all these factors. They will need to extend to all those in the enterprise who deal with the activities and relationships with which its human rights risks are associated. The significance of embedding respect for human rights across all relevant functions and units of the enterprise is discussed further under [Guiding Principle 16](#).

Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. With less employees, communications across functions may be easier and less formal. Internal systems and oversight functions will typically be less complex.

In many instances, the approaches needed to embed respect for human rights in a smaller enterprise's operations can mirror the lesser complexity of its operations. However, size is never the only factor in determining the nature and scale of the processes necessary for an enterprise to manage its human rights risks. The severity of the enterprise's actual and potential human rights impacts will be the more significant factor. For instance, a small company of less than 10 staff that trades minerals or metals from an area characterised by conflict and human rights abuses linked to mining, has a very high human rights risk profile. Its policies and processes for ensuring that it is not involved with such abuses will need to be proportionate to that risk.

The guidance to [Guiding Principle 16](#) discusses further how external expertise and pooled resources can assist all enterprises, and particularly small and medium-sized enterprises, in conducting human rights due diligence that is both effective and proportionate to their human rights risks and their resources.

### **3.4 How is an enterprise's sector and operational context relevant to its responsibility to respect human rights?**

All enterprises have the same responsibility to respect all internationally-recognized human rights (see [Guiding Principle 12](#)). This said, an enterprise's sector and its operational context will typically determine which human rights it is at greatest risk of impacting in the normal course of its operations. Engagement with local [stakeholders](#) will often enable a better understanding of the context in which business enterprises operate.

An enterprise's sector determines many of the activities it engages in, some of which may carry particular human rights risks. For example, agribusiness enterprises often invest in land for new agricultural activities, which may be inhabited or used for livelihood purposes by communities, whether or not they are recognised as having legal title. This creates a particular risk of impacting the right to an adequate standard of living of the individuals concerned. An information and communications technology company may be at particular risk of impacting the rights to privacy and/or information of its users as a result of data sharing or censorship. Enterprises

in sectors that work routinely with toxic products, such as chemical companies, many manufacturing companies, as well as mining companies and others, may pose a particular risk to the right to access clean water. (These are illustrations, and should not be read as implying that these are the only rights at particular risk in these sectors.)

An enterprise's operational context can also make a significant difference. If labour laws are poorly implemented and enforced by state authorities, then working with suppliers from that region will carry higher risks of involvement with labour rights abuses. If the area is affected by, or prone to, conflict, there may be particular risks, for instance with regard to security, the right to life and ethnic discrimination. If the region suffers from water scarcity, then the risk of adverse impacts on rights to access clean water will be particularly heightened. If affected communities include indigenous communities, then their rights, including cultural rights, may be at particular risk of impact.

These factors of sector and operational context are therefore particularly relevant, or [salient](#) in determining which human rights are at greatest risk from a particular enterprise's operations. As stressed above, this does not mean they should become its exclusive focus. But they will likely need to be the subject of the most systematised and regular attention.

### **3.5 How is an enterprise's ownership relevant to its responsibility to respect human rights?**

All enterprises have the same responsibility to respect human rights. Their ownership has no bearing on this responsibility. It applies whether they are publicly listed, privately owned, state-owned, joint ventures or have some other, or hybrid, form of ownership.

In the case of state-owned enterprises, where the State controls the enterprise or where the enterprise's acts can otherwise be attributed to the State, an abuse by the business enterprise may entail a violation of the State's own international law obligations.<sup>7</sup> Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. The legal obligations of the State to respect and protect human rights are additional to the enterprise's own responsibility to respect human rights and do not diminish it in any regard.

In the case of joint ventures with significant [human rights risks](#), it is particularly important to ensure that the legal and other agreements underpinning the venture provide the necessary basis to ensure that human rights are respected in its operations.

### **3.6 How is an enterprise's structure relevant to its responsibility to respect human rights?**

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<sup>7</sup> See Guiding Principle 4 under the „State Duty to Protect“, not covered in this publication.

Business enterprises can have various structures. For instance, some are wholly separate – legally and functionally – from any other enterprise; others follow a franchise model with greater or lesser degrees of contractual constraint on franchisees; others are part of cooperatives or create a holding company to link a group of enterprises. Some others operate as a parent company and subsidiaries, with varying degrees of control exercised by the parent and correspondingly varied levels of devolved authority to the subsidiaries.

In terms of the responsibility of business enterprises to respect human rights, the corporate group structure does not make any difference to *whether* entities within the group have to respect human rights. It simply affects *how* they go about ensuring that rights are respected in practice, for instance through their contractual arrangements, internal management systems, governance or accountability structures. In the event that human rights abuses occur, it will be national law in the relevant jurisdictions that determines where liability falls.

#### **4. GUIDING PRINCIPLE 15**

**In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:**

- a. A policy commitment to meet their responsibility to respect human rights;**
- b. A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- c. Processes to enable the remediation of any adverse human rights impacts they cause or contribute to.**

##### **4.1 Why are policies and processes required if this is just a question of avoiding harm?**

Respecting human rights is not a passive responsibility – it requires positive action on the part of businesses. It is relatively easy for an enterprise to say that it respects human rights – and it may do so in the genuine belief that that is the case. But to make that claim with legitimacy, any enterprise needs both to know and to be able to show that it is indeed respecting human rights in practice. That in turn requires that it have certain policies and processes in place. The Guiding Principles define these as a statement of policy commitment, a human rights due diligence process, and processes to enable remediation.

The guidance to the following Guiding Principles elaborates on the factors enterprises should take into consideration in developing these policies and processes and ensuring that they collectively meet the objective of enabling the enterprise to manage its human rights risks effectively. Specifically, guidance to [Guiding Principle 16](#) elaborates on the policy commitment, guidance to Guiding Principles [17 to 21](#) elaborates on human rights due diligence, and guidance to Guiding Principles [22, 29 and 31](#) elaborates on remediation. Finally, guidance to Guiding Principles [23 and 24](#) elaborates on issues and challenges arising in particular contexts.

#### **4.2 What makes policies and processes “appropriate to size and circumstances”?**

There is no single answer to this question. It will depend on all the factors discussed in [Guiding Principle 14](#), with greatest attention due to the severity of the enterprise’s adverse human rights impacts.

Good policies and processes are not necessarily resource intensive. Where a business’s human rights risk profile is low, its processes for addressing them may be correspondingly simple. Moreover, any business may benefit from drawing on external resources to keep the costs manageable (see Box D and Annex B).

#### **BOX D**

Many business enterprises – not just small and medium-sized ones – will benefit from external expert resources that can support and assist their efforts to meet their responsibility to respect human rights. The primary focus should be on the credibility of such resources – written, audio-visual or human. There may be various ways of assessing this. For instance:

- Is there evidence of their successful use by other business enterprises?
- Were they developed by an individual or organization that is trusted by relevant stakeholders and respected in this field?
- Are they referred to, used or trusted by other respected individuals or organisations (in the industry, academia, civil society, including human rights experts, etc.)?

#### **4.3 How fast can an enterprise be expected to achieve all this?**

It is relatively easy for an enterprise to assert that it respects human rights, or that it is committed to doing so. Meeting that commitment can be notably more complex, particularly in large companies that have vast numbers of personnel, multiple and complex business relationships, and operate across different locations. It is also challenging for enterprises for which these issues are

relatively new. Moreover, maintaining respect for human rights will often require constant work as new challenges arise.

An enterprise may therefore face a tension between an immediate recognition of its responsibility to respect human rights, and the reality that it may take time to know and show that it is meeting that responsibility in practice. Managing this tension can be a challenge. An enterprise should avoid trying to do so by suggesting that its policy commitment is merely aspirational. This has the almost inevitable effect of suggesting that the commitment is fluid or negotiable, and lowering expectations and incentives among personnel and business partners for its achievement. Moreover, the responsibility to respect human rights exists independently of the enterprise: the enterprise's own commitment to meet that responsibility does not create the responsibility.

An enterprise is well-advised to be transparent about the processes it undertakes to manage the transition as it develops or adjusts the policies and processes it needs. It might, for example, provide public information on the timelines it has set for various stages in implementation. It might choose to engage a group of independent experts – respected individuals from civil society, a national human rights institution, academia or other fields – to advise it on the development of these new processes or provide oversight of its efforts to do so. Where it uses a stakeholder or expert panel of this kind, some independent reporting from the panel can provide important transparency and credibility to the on-going efforts.

In short, where the enterprise is able to demonstrate that it has serious processes underway to translate its policy commitment into practice, this can help create the space it needs to develop the internal policies, procedures and practices to deliver on that commitment. Indeed, where an enterprise's human rights challenges are changing over time and will require adjustments in the systems that address them, approaches of this kind may be of on-going benefit.



## **IV. OPERATIONAL PRINCIPLES**

### **A. POLICY COMMITMENT**

#### **5. GUIDING PRINCIPLE 16**

**As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:**

- a. Is approved at the most senior level of the business enterprise;**
- b. Is informed by relevant internal and/or external expertise;**
- c. Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;**
- d. Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;**
- e. Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.**

#### **5.1 Why does this matter?**

The term „policy commitment“ is used here to mean a high-level and public statement by an enterprise that sets out its commitment to meet its responsibility to respect human rights. It makes this commitment a clear, overarching policy of the enterprise that will determine its actions. The policy commitment is distinct from the operational policies and procedures referred to in sub-point (e) of this Guiding Principle, which are typically not public, are more detailed in nature, and help translate the high-level commitment into operational terms.

A policy commitment to meet the enterprise's responsibility to respect human rights:

- a. demonstrates both inside and outside the enterprise that management understands this is a minimum standard for conducting business with legitimacy;

- b. clearly communicates the expectation of top management as to how all personnel should act, as well as business partners and others the enterprise works with;
- c. triggers the development of internal procedures and systems necessary to meet the commitment in practice;
- d. is the first essential step for embedding respect for human rights into the values of the enterprise.

This Principle states that the policy commitment should stipulate the enterprise's human rights expectations also of business partners and other parties directly linked to its operations, products or services. Doing so provides a starting point from which the enterprise can better leverage respect for human rights within these relationships, should this be necessary. For example, it can facilitate the inclusion of provisions for the respect of human rights in contracts with suppliers and partners; and it can provide the basis for auditing or monitoring performance and for factoring the results into decisions on future business relationships. Conversely, if it is not clear that these expectations with regard to human rights are a firm policy of the enterprise, they can easily become „negotiable“ and be sidelined in particular relationships or circumstances. This weakens the ability of the enterprise to ensure it is not involved in human rights abuses by others, which in turn increases its own risks.

## **5.2 How detailed should a policy commitment be?**

The policy commitment will typically remain static for an extended period of time, without precluding that it may be updated in light of learning. It is a constant reference point for employees, parties with which the enterprise works, and its wider [stakeholders](#). It sets the foundational expectation from which the operational policies and processes for its implementation then follow. It therefore is not the place to include details of policy and process that are likely to shift frequently with time and circumstances.

Beyond this, the degree of detail included in a policy commitment may vary. It may simply be expressed as a general commitment to respect all internationally-recognized human rights and an expectation that others the enterprise works with do the same. It might also include a summary of those human rights the business recognizes as likely to be most [salient](#) for its operations, and information on how it will account for its actions to meet its responsibility to respect human rights. Regardless, the policy should reflect a commitment to respect *all* internationally-recognised human rights even where some are highlighted as being particularly salient. It should not imply exclusivity of the policy to any specific rights highlighted.

## **5.3 How do you understand which human rights issues are most salient to your business?**

Those responsible for developing the human rights policy commitment and processes will want to be aware of which human rights the enterprise is most likely to impact – that is, which rights that are most „salient“ to its operations – while also ensuring that these do not become its exclusive focus. Question 3.4 explores the frequent linkage between „salient“ human rights and an enterprise's sector or operational context.

For instance, one of the most typical risks for a toy or footwear brand will be involvement with labour rights abuses through its supply chain. For a beverage or food company, typical risks include both labour rights and impacts related to water and/or land usage and consumer health. For a pharmaceutical company, the right to health will be particularly salient; as will freedom of expression and rights to privacy for an information and communications technology enterprise.

Where an enterprise is typically or regularly operating in contexts that increase the risks to human rights, these may add to the list of „salient“ human rights that its policy commitment could highlight. For instance, a forestry or construction company that often operates in areas inhabited by indigenous peoples will need a particular focus on understanding the impacts these peoples may suffer; an electronics goods company sourcing largely from a state or region where labour laws are weak or weakly enforced will need to take that into account; an oil company developing new fields in conflict-affected areas may highlight security-related risks in its policy commitment.

#### **5.4 What relevant expertise can an enterprise draw upon?**

There are various sources an enterprise can turn to in order to help it work out which human rights issues it might highlight in its overarching policy commitment and how. In the first instance, the enterprise’s own past experience will be an important indicator of the most salient issues, albeit not the only one. The enterprise may have internal human rights expertise to draw on as well. Looking beyond the enterprise itself, various resources are available, many of them without cost, examples of which are listed in Annex B.

In many situations, particularly for large enterprises or those with significant [human rights risks](#), there will be considerable benefit in consulting individuals who are representative of those stakeholder groups most likely to be affected by the enterprise’s operations. They can bring important perspectives on how the enterprise might impact human rights and the potential significance of those impacts. They will also be able to reflect how the language of the draft policy commitment is likely to be viewed by these important stakeholders groups.

#### **5.5 How does the public policy commitment relate to internal policies and procedures?**

The implications of the overarching policy commitment need to be understood internally and reflected in relevant internal policies and procedures. It is through these policies and procedures that the commitment is translated into practice and can be embedded in the values of the enterprise.

In a small enterprise with very limited [human rights risks](#), it may be sufficient to provide a policy note to staff highlighting the responsibility to respect human rights and key issues for their attention (for example, non-discrimination); what that means for staff practices and what accountability there will be (including the consequences for breaches).

In a large enterprise, it will often be necessary to have additional internal human rights policies that elaborate in more detail the implications of the policy commitment. These might be particular to different departments, such as procurement, human

resources, production, sales etc. It will also be necessary to make sure that other policy areas and procedures are aligned with those related to human rights. Where such alignment does not take place, it can be much more difficult for the enterprise to ensure that its responsibility to respect human rights is met when problems arise.

For instance, in a toy company, if the buying division makes decisions without regard to how they may impact the ability of suppliers to comply with labour rights standards, the enterprise risks contributing to adverse human rights impacts. If a construction company rewards operational staff purely on their speed in building new infrastructure and without regard to whether they harm communities in doing so, it is likely to incentivise behaviours that lead to adverse human rights impacts. If an internet company's staff automatically defer to every government request for information about users, regardless of human rights implications, they may run the risk of being involved with any human rights abuses that result.

A range of factors is likely to influence the extent to which internal policies and procedures are effective in embedding respect for human rights across an enterprise. Existing systems in the enterprise may provide relevant and effective models, for example systems related to health and safety or non-discrimination that can be built upon. Senior management attention and accountability for human rights risk management can also help the process of embedding respect for human rights, as can the availability of training for staff. The inclusion of indicators related to human rights policies and procedures in the performance assessments of staff across *all* relevant functions – not just those that lead on human rights – can be particularly important.

### **Questions to ask**

What elements does our statement of policy commitment to respect human rights need to include in order:

- (a) to set clear expectations for the behaviour of personnel, business partners and other relevant parties linked to our activities?
- (b) trigger the necessary internal attention, resources and action for its delivery?
- (c) be credible in the eyes of our key stakeholder groups?

What sources can we use to help us identify our key human rights risks?

With whom can we test our ideas about which human rights risks are most salient in our sector and in the areas where we operate?

How can we make sure that in focusing on the most salient human rights we don't forget the possibility that we might impact on others?

Which credible experts could we ask to comment on our draft policy commitment, perhaps as part of a group of external stakeholders?

What additional, internal policies and procedures are we going to need to translate this policy commitment into practice?

Which departments need to have understanding and ownership of these policies and procedures, and how can we involve them in their development?

Who should sign off on the final policy commitment at the top of the enterprise, to send the signal to all personnel that this is a priority?

How will we communicate our policy commitment publicly, bearing in mind the different ways our stakeholders are able to access information?

## **B. HUMAN RIGHTS DUE DILIGENCE**

### **6. GUIDING PRINCIPLE 17**

**In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:**

- a. Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**
- b. Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;**
- c. Should be on-going, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.**

#### **6.1 Why does this matter?**

It is through human rights due diligence that an enterprise identifies the information it needs in order to understand its specific human rights risks at any particular point in time and in any particular operating context, as well as the actions it needs to take to

prevent and [mitigate](#) them. “[Human rights risks](#)” refers to the risks of having an adverse impact on human rights, as against risks to the enterprise itself, although the former increasingly leads to the latter.

Human rights due diligence is not a single prescriptive formula. Different size enterprises in different industries, with different corporate structures and in different operating circumstances will need to tailor their processes to meet those needs. However, the key elements involved in human rights due diligence – assessing; integrating and acting; tracking; and communicating – when taken together with remediation processes, provide the management of any enterprise with the framework it needs in order to know and show that it is respecting human rights in practice.

## **6.2 What is the necessary scope of human rights due diligence?**

As the Guiding Principles state, human rights due diligence “should cover adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships”. See [Guiding Principle 13](#) for more on these three possible forms of involvement with adverse human rights impacts.

The focus of due diligence is on identifying and addressing impacts on human rights. The relevant impacts – those that should be the subject of human rights due diligence – are the impacts connected to the enterprise’s own activities and business relationships. Those activities and business relationships therefore set the necessary scope of human rights due diligence.

“Business relationships” refer, as defined in the Guiding Principles, to the relationships the enterprise has with “business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”. The focus when looking at business relationships is not on the risks the related party poses to human rights *in general*, but the risks that it may harm human rights *when acting in connection with the enterprise’s own operations, products or services*.

## **6.3 In what ways may size and other characteristics of the enterprise affect its human rights due diligence process.**

Human rights due diligence is necessary for *any* enterprise to know and show that it is respecting human rights in practice. That due diligence will need to include all the elements set out in this Guiding Principle: assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. However, the scale and complexity of these processes will vary according to the size of the enterprise, as well as its sector, operational context, ownership and structure. The single most important factor, however, in determining the processes needed will be the severity of the enterprise’s human rights impacts. The guidance under [Guiding Principle 14](#) sets out these distinctions more fully, while [Guiding Principle 24](#) explores further the concept of ‘severity’.

#### **6.4 Why should human rights due diligence be “on-going”?**

Human rights due diligence is intended to help the enterprise know and show that it is respecting human rights throughout its operations and over time, including when there are changes in its operations or operating contexts. Except where those operations and contexts do not significantly change, this therefore requires on-going or iterative processes, rather than a one-off undertaking.

#### **6.5 What is the role of [stakeholder engagement](#)?**

Human rights due diligence is about people. It reflects the entitlement of every human being to be treated with dignity. It therefore involves relationships – between the enterprise and those whom it may impact.

Hence, the key to human rights due diligence is the need to understand the perspective of potentially affected individuals and groups. Where possible and appropriate to the enterprise’s size or human rights risk profile, this should involve direct consultation with those who may be affected or their legitimate representatives, as discussed further under [Guiding Principle 18](#).

#### **6.6 What capacity does the enterprise need to conduct human rights due diligence?**

There is no single answer to this question. If an enterprise does not meet its responsibility to respect human rights, this implies risk to the enterprise as well as risk to people. As with any other risk, an enterprise needs to allocate the necessary internal capacity to manage it effectively. This should be commensurate with the enterprise’s human rights risk profile. For a small enterprise with limited [human rights risks](#), it will likely be a task that can be allocated to an existing member of staff, requiring some limited proportion of his or her time. For an enterprise with significant human rights risks, proportionately more dedicated staff time as well as budget resources will be required.

For many enterprises, there will be existing processes in place for other forms of due diligence (environmental, health and safety etc.) that can be drawn on or built upon to provide for human rights due diligence. Care should be taken to ensure that such systems are adapted as necessary to ensure they are effective for the particular task of managing human rights risks. For all enterprises, it is important to ensure that the personnel who are responsible for human rights due diligence have the necessary skills and training opportunities to perform this role effectively. They also need to have sufficient influence within the organization to gain the attention of other divisions.

In the first instance, the enterprise’s overall human rights risk profile will have been assessed in developing its human rights policy commitment and any supporting policies and procedures. But the enterprise should keep under review any shifts that might change that general profile. Such a shift might flow from a number of factors, for example if the enterprise moves into a new geographic area with rule of law or conflict challenges or into new product lines, requiring sourcing from regions with known labour rights problems. It might result from the development of new services



for clients who have linked to human rights abuses or from long-standing products or services that start to be used for unintended purposes.

Surveying these and other relevant developments will help highlight emerging issues that will change the enterprise's general risk profile and may require the allocation of greater resources to address any increase in risks.

## **6.8 How does human rights due diligence relate to remediation?**

Human rights due diligence aims to prevent and [mitigate](#) *potential* human rights impacts with which an enterprise might be involved. Processes for remediation aim to put right any actual human rights impacts that an enterprise causes or to which it contributes. The two processes are separate but inter-related. For example, an effective grievance mechanism through which those directly affected can raise concerns about how they are or may be harmed can be a good indicator of potential and recurring human rights impacts. Tracking the effectiveness of the enterprise's responses to human rights impacts will similarly benefit from feedback via an effective grievance mechanism as well as from wider stakeholder engagement processes. And enterprises should be in a position to communicate, as appropriate, both on how they address [human rights risks](#) in general and how they have remediated significant human rights impacts.

## **6.9 Can human rights due diligence or parts of it be carried out by external experts?**

It is certainly possible to use external experts to carry out some human rights due diligence processes, and may at times be both reasonable and necessary. However, this should always be done with due care. Respect for human rights relates to an enterprise's core operations. The best way to ensure it is achieved sustainably over time is for it to be embedded in the values of the enterprise. The more the enterprise uses third parties to carry out some key due diligence processes, the less this "embedding" into the enterprise can take place. It is particularly important that any findings regarding the enterprise's human rights impacts that are identified through the work of external experts are effectively internalized and integrated across the enterprise in order to enable effective action (see [Guiding Principle 19](#)).

It is also ill-advised for an enterprise to delegate engagement with its potentially affected stakeholders entirely to external experts, since this undermines its capacity to truly understand the perspectives of those it may impact and to build trusting and productive relationships with them. However, involving local third parties in the enterprise's own engagement efforts may help to bridge cultural gaps. In particular, where relationships with affected stakeholders already have a history of distrust, it may well be important to identify a neutral third party who can support and assist such stakeholder engagement, at least at the initial stages.



### **Questions to ask**

What existing systems do we have that provide models on which we might build as we develop our human rights due diligence processes?

Are these systems effective and fit for the purpose of addressing human rights risks? What changes may be needed to make them fit for this purpose?

Are there circumstances in which we will need separate processes for human rights?

Who should lead on human rights due diligence? Who needs to have oversight?

What departments will most likely need to be involved in aspects of human rights due diligence? How might we involve them in the development of the processes? How might we structure and motivate collaboration?

What external expertise are we likely to need? Where we use external experts, how can we ensure that this supports, rather than detracts from, the embedding of respect for human rights in our internal values and practices?

How and at what points in the human rights due diligence process should we be seeking to engage with our directly affected stakeholders or their representatives? If we cannot do so, how else can we gain an understanding of their likely concerns and perspectives?

How will we make sure that we keep our human rights due diligence up to date, recognizing when changes occur that may require renewed assessments of and responses to our impacts?

## **7. GUIDING PRINCIPLE 18**

**In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:**

- a. Draw on internal and/or independent external human rights expertise;**
- b. Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.**

### **7.1 Why does this matter?**

For any enterprise, gauging its [human rights risks](#) is the starting point for understanding how to translate its human rights policy statement – and therefore its responsibility to respect human rights – into practice. It is the prerequisite to knowing how to prevent or [mitigate](#) potential adverse impacts and remediate any actual impacts that it causes or to which it contributes. It is therefore the essential first step in human rights risk management.

### **7.2 What is meant by “human rights risks”, and whose human rights are relevant?**

Much of human rights due diligence is focused on human rights risks – or the *potential* impacts on human rights with which an enterprise may be involved. *Actual* human rights impacts are a matter primarily for remediation, though they are also an important indicator of potential impacts. It is worth highlighting again that an enterprise’s human rights risks are the risks that its operations pose to human rights. This is separate from any risks that involvement with human rights impacts may pose to the enterprise, although the two are increasingly related.

An enterprise’s operations may pose risks to the human rights of various groups. Direct employees are always a relevant group in this regard. But potentially affected stakeholders may also include communities around the enterprise’s facilities, workers of other enterprises in its value chain (insofar as they can be affected by its own actions or decisions), users of its products or services, others involved in the process of developing products (such as in product trials) and so forth. It is important for enterprises to look beyond the most obvious groups and avoid assuming, for instance, that the challenges lie in addressing impacts on external stakeholders while forgetting direct employees; or assuming that those impacted are employees alone, ignoring other affected stakeholders beyond the walls of the enterprise itself. Individuals from groups of populations at heightened risk of vulnerability to human rights impacts

require particular attention (See question 1.4 for more on vulnerable populations and groups.)

#### **7.4 When should impacts be assessed?**

Human rights due diligence requires on-going processes to assess human rights impacts in order for the enterprise to maintain a true picture of its [human rights risks](#) over time, taking into account changing circumstances. This cannot be accomplished through one single human rights impact assessment unless the enterprise's operations and operating context remain largely unchanged. The commentary to this Guiding Principle makes clear that repeat assessments are likely to be necessary at various critical moments: "prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship".

It is most effective to begin to assess impacts as early as possible in the lifetime of a particular activity or relationship. The terms of contracts at the start of new investments or business relationships can often dictate how easy or difficult it will be to ensure respect for human rights for their duration. An early exercise to gauge human rights risks can help set the right terms of contract to enable respect for human rights.

Similarly, where an enterprise is involved in a merger or acquisition that brings new projects, activities and relationships into its portfolio, its due diligence processes should include human rights due diligence, beginning with an assessment of any human rights risks it is taking on. Moreover, where an enterprise acquires another enterprise that it identifies as being, or having been, involved with human rights abuses, it acquires the responsibilities of that enterprise to prevent or [mitigate](#) their continuation or recurrence. Where the enterprise it is acquiring actually caused or contributed to the abuses but has not provided for their remediation, and no other source of effective remedy is accessible, the responsibility to respect human rights requires that the acquiring enterprise enable effective remediation itself, to the extent of the contribution involved. Early assessments will be important in bringing such situations to light.

## BOX E

### **Principles for Responsible Contracts: integrating the management of human rights risks into State-investor contract negotiations - guidance for negotiators**

The Principles for Responsible Contracts identify 10 Principles to help States and business investors integrate the management of human rights risks into investment project contract negotiations. Each principle in this guide is explained in brief, along with its key implications and a recommended checklist for negotiators. The guide was developed through four years of research and inclusive, multi-stakeholder dialogue carried out under the Mandate of the Special Representative of the United Nations Secretary-General for Business and Human Rights, Professor John Ruggie. It reflects the collective experiences of experts involved in major investment projects from government, commercial enterprises, non-governmental organizations and lending institutions.

The 10 principles are:

1. Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
2. Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
3. Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
4. Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
5. "Additional goods or service provision": Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
6. Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
7. Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
8. Project monitoring and compliance: The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
9. Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
10. Transparency/Disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

The full guide on Responsible Contracts, is available at: <http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf>.

## 7.5 How should human rights impacts be assessed?

Standard approaches to risk assessment may suggest that the *probability* of an adverse human rights impact is as important as its *severity*. However, if a potential human rights impact has low probability but high severity, the former consideration does not balance the latter. The severity of the impact is paramount, understood as the “scale, scope and irremediable character” of the impact (see [Guiding Principle 24](#)). Equally, [human rights risks](#) cannot be the subject of a simple cost-benefit analysis, whereby the costs to the enterprise of preventing or mitigating an adverse impact on human rights are weighed against the costs to the enterprise of being responsible for that harm.

As the commentary to this Guiding Principle explains, the process of assessing actual and potential adverse human rights impacts typically includes, “assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified”.

An enterprise may choose to do self-standing assessments of their human rights impacts or to integrate human rights considerations into wider social and environmental impact assessments. It may be necessary to do a stand-alone assessment of human rights impacts where the enterprise’s activities or operating context pose a heightened risk to human rights. A number of tools and methodologies for human rights impact assessments have been and will continue to be developed. However, as noted, this Principle does not aim at a single such assessment, but at an on-going process of assessing impacts that will draw on various sources.

Other than formal assessments initiated by the enterprise itself, other sources may provide inputs to the process of assessing impacts. For example a grievance mechanism through which affected stakeholders can raise concerns may provide indications of actual or potential human rights impacts. News or expert reports on particular operating contexts or industry developments will likely be another source. Campaigns by NGOs or other third parties may well be another. All these sources can feed into an on-going process of assessing impacts.

When assessing their actual or potential human rights impacts, companies should pay particular attention to marginalized or vulnerable groups. In some societies, inherent patterns of discrimination can be pervasive (but are not necessarily apparent to outsiders). While companies are not responsible for such wider discriminatory practices, they should pay particular attention to the rights and needs of, and challenges faced by, these vulnerable and marginalized groups in order to ensure that their enterprise does not contribute to, or exacerbate such discrimination.

In sum, the processes for assessing human rights impacts should be systematic such that the various elements add up to a coherent overview of actual and potential human rights impacts associated with the enterprise’s activities and relationships and can accurately inform the subsequent steps in the due diligence process.

## **7.6 How far afield should an enterprise look when assessing human rights impacts?**

The purpose of assessing impacts is to identify any adverse impacts with which the enterprise might be involved. As set out in [Guiding Principle 13](#), this includes impacts it may cause or contribute to through its own activities, and impacts to which it has not contributed, but which are linked to its operations, products or services by a business relationship. Therefore, when assessing actual and potential human rights impacts, an enterprise should look both at its own activities and at its [business relationships](#).

## **7.7 What does it mean to assess impacts that occur through the enterprise's own activities?**

An enterprise may either cause or contribute to an adverse human rights impact through its own activities. It may contribute to an impact, for example, if it keeps employees at work until late at night in an area where it is unsafe for women to walk home after dark, and some women are subsequently attacked going home; or if it loans vehicles to security forces that use them to travel to local villages and commit atrocities.

## **7.8 What does it mean to assess impacts with which the enterprise is involved as a result of business relationships?**

This Guiding Principle is not intended to require that enterprises assess the human rights record of every entity with which they have a relationship. It is about assessing the risk that those entities may harm human rights when acting in connection with the enterprise's own operations, products or services.

For instance, where an enterprise's facilities will be protected by state security forces, the enterprise is not being asked to assess the general human rights record of the security forces or the State, but the risks that human rights abuses may occur as a result of the security forces' presence at the enterprise's facilities. While their past human rights record will be one consideration, other factors will include general stability and rule of law in the area in question; local circumstances, including any current or likely tensions among communities, between communities and local authorities or between communities and the enterprise; local attitudes to the government or armed forces; and, of course, the training and skills of the armed forces in handling such situations in line with human rights.

In multi-tiered and complex value chains, and for companies with thousands of suppliers even in their first „tier“, it becomes even less feasible to assess every individual business relationship. The same may be true for a small or medium-sized enterprise with a large number of business relationships relative to its own resources. However, this does not reduce the enterprise's responsibility to respect human rights: not knowing about human rights abuses linked to the enterprise's operations, products or services is unlikely *by itself* to satisfy key stakeholders, and may be challenged in a legal context, if the enterprise should reasonably have known of, and acted on, the risk through due diligence.

As the commentary to [Guiding Principle 17](#) explains, in such circumstances where due diligence on every individual relationship is impossible, “business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers” or clients” operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence”. This would include, for example, agricultural products sourced from suppliers in an area known for child labour; security services provided by contractors or forces in areas of conflict or weak governance and rule of law; and drug trials conducted through partners in areas of low education, literacy and legal safeguards. In the event that abuses do occur where they could not reasonably have been foreseen, the enterprise’s stakeholders will assess it on its response: how well and how swiftly it takes action to prevent or [mitigate](#) their recurrence and to provide for or support their remediation (see [Guiding Principles 22](#) and [29](#)).

### **7.9 What is the role of internal and external expertise in the process of assessing human rights impacts?**

This Guiding Principle states that the process of assessing adverse human rights impacts should “draw on internal and/or independent external human rights expertise”. Even where an enterprise has internal expertise on human rights, those personnel will need to consult with external sources that reflect evolving understanding of how enterprises in their sector can impact human rights, best practice in the process of assessing impacts, as well as information on changes in the enterprise’s operating environments and their implications for human rights. Many of these sources will be in written form and publicly available. Insights and advice from individual experts in government, academic, practitioner and civil society circles are also frequently available and accessible.

These kinds of resources can also be of particular importance in helping small and medium-sized enterprises, which will rarely have internal human rights expertise, to keep the resource implications of meeting the responsibility to respect human rights proportionate to the human rights risk that they need to address. Where direct consultation with affected stakeholders is not possible (see question 7.10), expert resources of this type take on increased importance, as do the insights offered by organisations or individuals that legitimately convey the perspectives – or likely perspectives – of those who may be affected by the enterprise’s activities or relationships.

### **7.10 What is the role of consultation with directly affected groups and other relevant stakeholders in the process of assessing human rights impacts?**

This Guiding Principle states that processes for assessing adverse human rights impacts should “involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation”. As the commentary makes clear, enterprises need to understand, as far as possible, the concerns of those who may be directly affected by the enterprise’s operations. This is particularly important in the case of enterprises whose operations or operating contexts suggest they will have significant human rights risks.



Engagement with stakeholders plays a number of roles. It enables the enterprise to identify whether stakeholders have the same or different perspectives (than the enterprise and than each other) as to what constitutes an impact on their human rights, and how significant an impact may be. For instance, damage to land that belongs to an indigenous community but is not farmed or otherwise used for economic purposes, might seem to the enterprise to represent a low-level impact on the right to property that can easily be addressed through financial compensation or the provision of alternative land; whereas an indigenous community may consider that there are far greater impacts related to the role of that land in their culture, traditions and beliefs. Changes to factory shift hours that seem to make sense to the management of an enterprise may have particular impacts on women with childcare responsibilities or individuals with whose religious practices the new hours would interfere. It is often only through talking to those who may be impacted that these issues come to light and can be addressed.

This Guiding Principle also recognizes that for many small and medium sized enterprises, consultations with directly affected stakeholders may not be feasible, whether due to legitimate financial, geographical or other constraints. The Guiding Principles point to other ways of maximizing the information the company can obtain about its human rights impacts and how they are perceived, including through sources of external expertise, as discussed under question 7.9.

**BOX F**  
**ENGAGEMENT WITH POTENTIALLY AFFECTED GROUPS AND  
OTHER RELEVANT STAKEHOLDERS**

Engaging with potentially affected groups and other relevant stakeholders provides important insights into their perspectives and concerns regarding the enterprise's operations and the implications these have for human rights. Effective engagement can also help demonstrate that the enterprise takes stakeholders' views and their dignity, welfare and human rights seriously. This can help to build trust and make it easier to find ways to address impacts in an agreed and sustainable way, avoiding unnecessary grievances and disputes.

Consultation with potentially affected stakeholders can require particular sensitivity. It necessitates attention to any barriers – linguistic, cultural, gender or other – that stakeholders may face in speaking openly to the enterprise's representatives. It requires sensitivity to cultural differences and perceived power imbalances, where these exist. Some individuals or groups may be at risk of exclusion from the consultation process if due attention is not paid to their voices. There may be competing views among and within stakeholder groups about the relative significance of certain impacts. Where there is a legacy of distrust between the enterprise and stakeholders, there may be a need for a neutral, trusted individual to facilitate the engagement process.

A number of tools exist that look in more detail at how to conduct stakeholder engagement in a manner most likely to meet the objectives of identifying a full picture of the enterprise's potential adverse human rights impacts, as perceived by all involved. Many of these are available on the UN Global Compact's website at: [http://www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html#stakeholder](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html#stakeholder)



### **Questions to ask**

What internal and external individuals or groups are at risk of being adversely impacted by our operations? Are any of them at heightened risk of vulnerability in any of our operating environments?

What existing processes do we have in place into which we might integrate additional steps to help us assess human rights impacts? Are they strong, well-tested processes that can be made fit for this added purpose?

Are there circumstances in which we should do stand-alone human rights impacts assessments, including where there are heightened human rights risks?

What other processes and sources can we draw on as part of our on-going assessment of our impacts: media, expert reports, feedback from staff and stakeholders, grievance mechanism?

Can we reasonably review all our business relationships to identify the risk of our being involved, through them, in adverse human rights impacts? If not, where are the greatest risk areas across our business relationships, and how we can we at least ensure full due diligence with regard to those risks?

Can we engage directly with those groups we are potential impacting? If we cannot, what other credible sources can help us understand their likely perspectives and concerns?

What written resources or experts could help us test our assumptions about whom we may impact and how?

## **8. GUIDING PRINCIPLE 19**

**In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.**

**a. Effective integration requires that:**

- i. Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;**
- ii. Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.**

**b. Appropriate action will vary according to:**

- i. Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;**
- ii. The extent of its leverage in addressing the adverse impact.**

### **8.1 Why does this matter?**

The larger the enterprise, the more likely it is that the individual or team responsible for assessing human rights impacts sits apart from the personnel conducting the activities or overseeing the relationships that typically generate those impacts. So those assessing the impacts do not control the decisions and actions that can prevent, [mitigate](#) or remediate impacts. The departments that do control those decisions and actions therefore have to be involved in identifying and implementing solutions. Integration enables this to happen.

The speed and ease with which an enterprise can respond to potential human rights impacts can be decisive for its effectiveness in managing its [human rights risks](#). This is where the success of the enterprise in embedding its human rights policy commitment throughout the enterprise makes a significant difference.

„Embedding“ is the „macro“ process of ensuring that all personnel are aware of the enterprise’s human rights policy commitment, understand its implications for how they conduct their work, are trained, empowered and incentivized to act in ways that support the commitment, and regard it as intrinsic to the core values of the workplace.

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It is one continual process, generally driven from the top of the company. „Integration“, as used in this Guiding Principle, is the „micro“ process of taking the findings about a particular potential impact, identifying who in the enterprise needs to be involved in addressing it, and securing effective action. It is repeated as each new impact is identified and will often be driven from the department with responsibility for human rights. Where the embedding process has been successful, the potential for the successful integration of findings and timely and sustainable responses to them is greater, and human rights risks are reduced.

### **8.3 What processes will be most appropriate for enabling integration?**

This will depend on the size of the enterprise and the regularity or predictability of the human rights issues that arise, among other factors. In a small enterprise where communication between personnel is relatively easy and day-to-day interaction is frequent, the integration process may occur naturally. In enterprises that lack such ease of interaction due to size or dispersion of staff, it will likely require a more systematized approach. A systematized approach is also likely to be most effective where an enterprise faces an on-going high probability of a particular human rights impact. This may involve structured collaboration across departments; clear internal reporting requirements; regular interactions with external experts; collective action with others in industry or government; or similar. By developing up-front a shared understanding of the key [human rights risks](#) identified and of how to prevent or [mitigate](#) their materialization, the enterprise will be best positioned to respond to specific cases as they arise.

### **8.4 How does integration relate to business relationships?**

Where an enterprise’s own activities may contribute to a human rights impact, integrating that finding across to those departments that generated the activity is essential to be able to address that risk. Equally, those individuals or departments that determine the terms of the enterprise’s relationships with business partners, suppliers and others are essential to the integration process. The provisions of contracts or other formal agreements can play an important role in requiring or creating incentives for those other parties to respect human rights. Moreover, where these provisions have been put in place, the ability of the enterprise to [leverage](#) appropriate behaviour by that other party is increased.

Indeed, where a new activity or project will be governed by a negotiated contract with external parties, early communication between the staff that draw up the contract, those departments that will be involved in its execution and those who have oversight of human rights issues, can help to avoid problems later on. Where a contract locks in terms that increase human rights risks or constrain the enterprise’s ability to address them, the enterprise places in jeopardy its own capacity to meet its responsibility to respect human rights.

This said, concluding terms of contract that require or incentivize respect for human rights absent reasonable evidence that the other party is both willing and able to meet the requirements renders this less meaningful both as a preventative mechanism and in terms of leverage, and leaves the enterprise exposed in terms of human rights risks. (See [Box E](#) for more on Principles for Responsible Contracts with regard to State-investor contracts.)

## 8.5 What kinds of action need to be considered in response to human rights risks that are identified?

As the commentary to this Guiding Principle explains, “where a business enterprise causes or may cause an adverse human rights impact, it should take action to cease or prevent the impact”. Where it contributes or may contribute to such an impact, it should similarly take action to cease or prevent the contribution, and also use its leverage to [mitigate](#) any remaining impact (by other parties involved) to the greatest extent possible. In this context, „leverage“ means the ability to effect change in the wrongful practices of the party that is causing or contributing to the impact (see Box G). In both these cases, additional action will be required to enable remediation, which is addressed under [Guiding Principle 22](#).

### BOX G

“Leverage” over an entity (business, governmental or non-governmental) in this context may reflect one or more of a number of factors, such as:

- (a) whether there is a degree of direct control between the enterprise and the entity;
- (b) the terms of contract between the enterprise and entity;
- (c) the proportion of business the enterprise represents for the entity;
- (d) the ability of the enterprise to incentivize the entity for improved human rights performance in terms of future business, reputational advantage, capacity-building assistance etc.;
- (e) the reputational benefits for the entity of working with the enterprise, and the reputational harm of that relationship being withdrawn;
- (f) the ability of the enterprise to engage other enterprises or organizations that in incentivizing improved human rights performance, including through business associations and multi-stakeholder initiatives;
- (g) the ability of the enterprise to engage local or central government in requiring improved human rights performance by the entity through implementation of regulations, monitoring, sanctions etc

The more complex situation is where an enterprise identifies a risk of adverse human rights impacts linked to its operations, products or services and caused by a party with which it has a business relationship. In this situation, the enterprise has the least direct control or influence over whether that impact occurs.

This situation arises, for example, where a supplier acts contrary to the terms of its contract and uses child or bonded labour to manufacture a product for the enterprise, without any intended or unintended pressure from the enterprise to do so; or where an agribusiness enterprise gains a concession from a government to develop land, and the government then contracts another company to clear that land of individuals who have traditionally used it, without due consultation or compensation, and contrary to the clear understanding that no such action would be necessary. As in these examples, it is often the occurrence of an *actual* abuse of this kind that highlights the risk of its continuation or recurrence.

The commentary to this Guiding Principle sets out the issues that need to be considered in responding appropriately to this situation. These can be represented, in general terms, in the following decision matrix:

	Have Leverage	Lack Leverage
Crucial Business relationship	<p><b>A.</b></p> <ul style="list-style-type: none"> <li>➤ Mitigate the risk that the abuse continues/recurs.</li> <li>➤ If unsuccessful</li> </ul>	<p><b>B.</b></p> <ul style="list-style-type: none"> <li>➤ Seek to increase leverage.</li> <li>➤ If successful, seek to mitigate risk that the abuse continues/recurs.</li> <li>➤ If unsuccessful, consider ending the relationship**; or be able to demonstrate efforts made to mitigate abuse, recognising possible consequences of remaining.</li> </ul>
Non-crucial Business relationship	<p><b>C.</b></p> <ul style="list-style-type: none"> <li>➤ Try to mitigate the risk that the abuse continues/recurs.</li> <li>➤ If unsuccessful, take steps to end the relationship*</li> </ul>	<p><b>D.</b></p> <ul style="list-style-type: none"> <li>➤ Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs</li> <li>➤ If not possible or not successful, consider ending the relationship*</li> </ul>

\* = decisions on ending the relationship should take into account credible assessments of any potential adverse human rights impacts of doing so.

\*\* = where the relationship is deemed crucial, the severity of the impact should also be considered when assessing the appropriate course of action.

For the purposes of this model, a relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. In this situation, ending the relationship raises particular challenges. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, as the Guiding Principles state, "for as long as the abuse continues and the

enterprise remains in the relationship, the enterprise should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection”.

The above applies to existing business relationships. In some situations an enterprise may be considering entering into a *new* relationship with a third party, which it identifies has been involved with human rights abuses in the past. In this case, the enterprise should first assess whether it is likely to be able to use its relationship to [mitigate](#) the occurrence of such abuse in connection with its own operations, products or services and try to ensure – through the terms of contract or other means – that it has the leverage to do so. If it assesses that this is possible, then the risks of entering the relationship may be deemed acceptable, provided the enterprise then pursues action to mitigate them. If it assesses that it will not be able to mitigate the risk of human rights abuses by the other party, or that the risks to human rights are simply too high, it will be ill-advised to enter the relationship.

### **8.6 How should an enterprise approach complex situations where there are no obvious or easy solutions?**

In some situations it will be relatively straightforward to prevent or mitigate a potential human rights abuse that has been identified. In others, it may be more difficult. Where complex challenges arise, they will often necessitate greater involvement of senior management in reaching decisions on appropriate action. Decision processes in these cases should draw on all the relevant expertise available within the enterprise; and in many cases the enterprise will benefit from opening up to independent, trusted expert advice from outside in helping it reach decisions that are credible, and will be seen by others as credible, including from a human rights perspective. Respected sources of advice might come from within government, national human rights institutions, civil society organizations, multi-stakeholder initiatives or similar sources. Where direct engagement with those impacted is feasible without exposing them or others to increased human rights abuse, this should be pursued.

#### **Questions to ask**

What lines of responsibility and accountability exist for addressing our findings of potential human rights impacts?

What systematized approaches might help us integrate findings from our assessments across the relevant business units or functions, so that we can take effective action?

Should we have one or more cross-functional groups to liaise on on-going human rights challenges; or cross-functional communication requirements prior to certain decisions or actions?

Can we build scenarios or decision trees for action across the company so that we are prepared to respond to the most likely or severe potential impacts? Do we need training and guidance for staff on these issues?

How can we best integrate measures to address potential impacts at the contract stage of new projects, partnerships or activities?

If we find that human rights impacts are linked to our operations, products, or services, are we equipped to respond appropriately and swiftly in addressing the risk of their continuation or recurrence? How will decisions be made? What credible sources can we turn to for advice?

How do we assess our leverage in business relationships, especially those in areas of heightened risk to human rights? How can we maximize that leverage from the start of relationships? What opportunities to exercise or increase our leverage can we see?

Are there any situations where we might have a 'crucial' business relationship? How should we respond if these relationships lead to adverse human rights impacts being linked to our operations, products or services? Are we equipped in terms of internal and external advice for this situation?

## **9. GUIDING PRINCIPLE 20**

**In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:**

- a. Be based on appropriate qualitative and quantitative indicators;**
- b. Draw on feed-back from both internal and external sources, including affected stakeholders.**

### **9.1 Why does this matter?**

It is generally recognized that “what gets measured gets managed”. Tracking how the enterprise has responded to both potential and actual adverse human rights impacts is essential if personnel are to be able to account for the enterprise’s success in respecting human rights, whether internally to management or also externally to shareholders and wider stakeholders. [Guiding Principle 21](#) looks at the separate question of how much of the information obtained through a tracking process the enterprise should communicate externally. Regardless, by maximizing the information it has available about its human rights performance, the enterprise enables both robust internal accountability and the basis for whatever external communication is required or advisable.

Tracking human rights issues and responses will also help an enterprise to identify trends and patterns. This provides senior management and others with the “big picture”: it highlights repeat problems that may require more systemic changes to policies or processes; and it brings out best practices that can be disseminated across the enterprise to further reduce risk and improve performance.

## **9.2 How should the effectiveness of responses be tracked?**

There is no single answer to this question. The tracking processes must make sense within the enterprise’s wider systems and culture if they are to contribute to embedding respect for human rights. There may be other tracking systems within the enterprise that offer relevant and effective models – perhaps in the area of health and safety or environmental performance. Where processes for tracking responses to human rights impacts are integrated into other tracking systems, this may bring benefits in „normalising“ attention to human rights. It may also bring risks if those systems do not allow for the kinds of qualitative feedback – including, where possible, feedback from those potentially affected – that are necessary when addressing impacts on human rights.

Where there are human rights issues that result from environmental impacts – for example related to water and health – there may be established and quite precise international as well as national standards that offer ready metrics. This does not necessarily mean that those who believe they are being harmed trust those standards or trust the enterprise (or any third party paid by the enterprise) to be honest in the measurements it provides. In situations such as these, the enterprise should consider the scope for agreeing with affected stakeholders on an individual or organisation that all concerned will trust to provide accurate assessments. Alternatively, joint fact-finding by company and community representatives may be possible. This will often require either that affected stakeholders are able freely to identify an expert to represent them in that process, or that one or more of the affected stakeholders are themselves trained so they have the necessary expertise to participate in the joint process.

## **9.3 How far should the tracking system go?**

A system for tracking the enterprise’s responses to human rights impacts may simply review how the enterprise has responded to potential impacts identified, and whether – or to what extent – these responses prevented the impacts from occurring. But wherever a significant human rights impact has occurred, the enterprise is well-advised also to undertake a root cause analysis or equivalent process to identify *how* and *why* it occurred. This kind of process can be important if the enterprise is to prevent or [mitigate](#) its continuation or recurrence. A root cause analysis can help pinpoint what actions by which parts of the enterprise, or by which other parties related to the enterprise, played a role in generating the impact, and how. Where the evidence is sufficiently clear, linking this kind of analysis to staff performance incentives and disincentives – whether in terms of financial compensation, promotion or other rewards – can play an important role in helping to embed respect for human rights into the practices of the enterprise.



## **9.4 What indicators should the enterprise use?**

When identifying appropriate indicators, much will depend on the combination of human rights issues that the enterprise is typically having to address; whether there are already well-established indicators for those issues; what data can reasonably be obtained by the enterprise; how easy it is to solicit direct feedback from affected stakeholders, and so forth. In the area of labour rights, for example, audit processes and indicators are relatively well-established. In other areas such as health and safety and environmental impacts, technical standards also exist, including at the international level, though there may be differing views on which standards to use. With regard to community consultation and community resettlement there is also increasing guidance from international organisations and other credible bodies on how to assess performance.

These types of guidance can help an enterprise to craft appropriate indicators to track the effectiveness of its response to adverse human rights impacts. For large enterprises or those with significant [human rights risks](#), it will be important to include indicators that track how the enterprise is addressing the different impacts it may have on women and men and on individuals from any particularly vulnerable groups.

Some indicators will be quantitative and others qualitative. There can be advantages to quantitative indicators, given the precision they offer and the ease with which they can be integrated into, or correlated with, indicators used in other areas of the business. However, since respect for human rights is about the dignity of people, qualitative indicators – that include, as far as possible, the perspectives of affected stakeholder groups – will always be important. In some situations, qualitative indicators will be important for the accurate interpretation of quantitative ones: for instance assessing whether a reduction in reports of worker safety breaches reflects a reduction in such incidents, a lack of faith that it is worthwhile to report such incidents, or intimidation that prevents reporting.

## **9.5 What is the appropriate role of feedback from internal and external sources?**

The purpose of engaging with relevant “internal and external sources, including affected stakeholders” in the tracking process is to build as accurate a picture as possible of how well the enterprise is responding to human rights impacts. It helps reduce the risk of bias that may arise when those being measured do the measuring.

Various sources may be useful. It may be that individuals within the enterprise have seen or heard things that provide evidence of how well the enterprise is doing, and it can be valuable to provide a channel for them to raise their voices (of course, without fear of retaliation if that feedback is negative). Expert observers (local authorities, civil society actors etc) and directly affected stakeholders outside the enterprise may also have valuable insights. In the case of a small enterprise with limited impacts, a simple means for people to give feedback may be sufficient, such as a known and accessible email address or phone number. For enterprises with more significant [human rights risks](#), a more proactive approach to solicit feedback will likely be appropriate.

A company-level grievance mechanism can also play an important role in this regard. Such a mechanism can provide a channel for feedback on whether human rights

impacts are being addressed effectively from the perspective of affected stakeholders. Equivalent mechanisms for internal employees can be similarly important with regard both to impacts on their labour or other human rights, and in enabling them to speak up when they see problems with how the enterprise is responding to impacts on the human rights of individuals outside the enterprise. To maximise their effectiveness, such mechanisms should meet the minimum criteria set out in [Guiding Principle 31](#) and discussed later in this document.

## **9.6 How can the credibility of a tracking system be demonstrated?**

Tracking systems must be credible and robust if they are to help an enterprise know and show that it is respecting human rights. The clearer the indicators and the more comprehensive the processes for gathering information about the enterprise's effectiveness, the better placed it will be to respond to criticism, should it either need or choose to do so. Where the enterprise has involved respected, independent external experts or stakeholders in providing input to its tracking processes, this can also help reinforce the credibility of the resulting information.

### **Questions to ask**

Do we have existing tracking systems into which we could effectively integrate some or all aspects of tracking our human rights impacts and responses? If so, are they fit for this additional purpose?

What measures should we use?

- Are there established and widely accepted indicators we can draw on?
- Are there quantitative metrics that can be applied?
- What qualitative measures do we need to ensure we are interpreting quantitative data correctly, and to give us a full picture?
- What indicators can we reasonably include that would help us see how our responses to impact relate to women and men separately, and to vulnerable groups?

What means do we have for gaining feedback from directly affected stakeholder groups or their legitimate representatives? Can our wider stakeholder engagement processes or our grievance mechanism(s) contribute to this process?

In what kind of situations should we be conducting deeper root cause analyses of impacts and our response to them as part of tracking? How can we ensure that lessons learned are taken on board across the enterprise?

## **10. GUIDING PRINCIPLE 21**

**In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:**

- a. Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;**
- b. Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;**
- c. In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.**

### **10.1 Why does this matter?**

The concept of accountability is familiar to enterprises. They typically recognize the importance of internal accountability for achieving business objectives, and – in the case of publicly traded companies – of accounting also to shareholders for the company's performance. When it comes to how enterprises address their actual and potential impacts on human rights, wider issues of public interest arise with additional implications for accountability.

Businesses therefore need to be able to show that they are meeting their responsibility to respect human rights in practice. That means, at a minimum, having internal information-gathering and accountability systems and being able to account externally for the enterprise's actions if faced with allegations of human rights abuse.

### **10.2 How much is an enterprise expected to communicate?**

The focus of this Guiding Principle is on *being able to* communicate how the enterprise addresses its adverse human rights impacts. This means having the information available so that it is in a position to communicate. The timing, recipients and means of that communication are then the subject of separate decisions.

This Principle does not propose that the enterprise reveal publicly all the issues identified in its on-going assessments of human rights impacts or the steps it takes to [mitigate](#) every risk identified. It is first and foremost about being able to communicate the enterprise's general approaches to addressing its [human rights risks](#), and may include, in some instances, communication on its specific responses to particular human rights impacts.

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Where the enterprise has significant human rights risks, the heightened public interest dictates a need for more formal and regular public reporting to account for the systems the enterprise has in place to mitigate those risks and to address any harms that may occur.

### **10.3 What should an enterprise *be able to* communicate?**

The prior steps in the human rights due diligence process enable the enterprise to identify its actual and potential human rights impacts, to act on the findings and to track how effectively it is responding. These processes and their results provide the body of information an enterprise needs to have available to it in order to communicate as and when appropriate.

Some communications may focus on the enterprise's general approaches to addressing human rights risks, in particular potential impacts on those human rights that are most salient to the enterprise's operations. For instance, a brand retail company should be able to communicate how it addresses potential or actual human rights abuses in its supply chain. Enterprises with high water usage should be able to communicate how they address the related risks to human rights. Pharmaceutical companies should be able to communicate how they ensure that drug trials are conducted safely and with adequate information and consent.

Some communications may be specific to individual impacts and how they were or will be addressed. For instance, a mine with a spill from a tailings pond should be able to communicate how it has addressed, or is addressing, the potential or actual human rights impacts of that incident. Where security forces that guard an oil and gas company's installations attack local villagers, the enterprise should be able to communicate how it is addressing the resulting human rights abuses and the risk of their recurrence.

### **10.4 What form or forms should communications take?**

The form of the communication should fit the purpose.

If the purpose is to communicate to potentially affected stakeholders how the enterprise is addressing a human rights risk it has identified, then the communication might be limited to that group and should take account of literacy, language, and cultural communication barriers (for instance whether verbal communications are considered more respectful than written communications). In-person meetings with the groups involved or their legitimate representatives may be most appropriate and successful.

If the purpose is to account also to shareholders and other interested parties, including civil society organizations, how the enterprise is addressing a specific risk or risks in general, then documents and presentations at an annual general meeting, web updates, messages to listservs of those who self-identify as interested parties, or similar means of communication might be appropriate.

The question then arises as to when an enterprise should produce formal public reports on how it is addressing human rights. As the Guiding Principle makes clear, those enterprises whose operations or operating contexts pose risks of severe human

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rights impacts should necessarily report formally on how they address them. The case here is clearest: a wider public interest is engaged wherever the enterprise is at risk of involvement with human rights impacts that are extensive in scale or scope or are irremediable in nature (see [Guiding Principle 14](#)). Public reporting is therefore appropriate.

There may, however, be reasons for some enterprises with lesser human rights risk profiles also to include information on their human rights performance in regular, formal public reports. For instance, the internal process of writing a report can help to embed within an enterprise an understanding of human rights issues and of the importance that respecting human rights holds for the business itself. The additional transparency that reporting of this kind provides can help protect the enterprise's reputation and build wider trust in its efforts to respect human rights. These strengthened stakeholder relationships may be helpful if or when the enterprise needs to deal with unforeseen challenges.

Formal reports may be self-standing reports on the enterprise's human rights performance alone, part of a wider report on non-financial performance covering social and environmental issues, or part of an integrated report on both financial and non-financial performance. Where the enterprise is able to integrate reporting on human rights into its financial reports, with appropriate metrics, this can start to demonstrate that respecting rights is understood as truly integral to the business and relevant to its bottom line. Reports may be in hard copy, electronic form or both (and these choices should reflect an awareness of the report's accessibility to its intended readers). They may be produced on a predetermined timeframe (annually or more frequently), when particular impacts arise, or both.

### **10.5 When is external communication required?**

Where an enterprise identifies actual or potential impacts on human rights about which the affected individuals or groups need to know in the interests of their safety and welfare, this should be communicated to them as directly and quickly as possible. The enterprise should also inform them as to how it is seeking to address the impact. It should not await a request for such information before taking these steps.

When an enterprise is challenged by external parties on how it is addressing its alleged human rights impacts, the enterprise should consider whether and what it can reasonably communicate to address that concern. Where the parties raising the challenge are themselves claiming to be directly impacted by the enterprise, or are the legitimate representatives of these individuals or groups, the case for direct communication is most compelling. A lack of communication carries risk for the enterprise and will often be taken to imply that the allegation is correct or that the enterprise does not have the processes in place to know and show that it is not involved in the alleged impact.

There may be times when an enterprise concludes that an external party raising a concern lacks legitimacy and that it is not necessary or appropriate to respond. Absent any legal requirements, that is a judgment for the enterprise to make. Even if it chooses not to communicate in response to an allegation, it should take that decision based on internal knowledge of the situation and clear criteria.

## **10.6 What makes the external communication of information „sufficient“?**

All communications, including formal reporting, should be accurate and honest. Where the information being communicated relates to specific impacts on stakeholders, it should convey all the facts necessary for those affected to make informed decisions regarding their own interests.

Communications that are obviously an exercise in obfuscation or self-promotion will not reap the benefits of transparency, and risk leading to criticism and distrust of the enterprise. Conversely, enterprises that have pushed the boundaries of transparency to discuss the human rights challenges they face and the kinds of human rights impacts they are trying to address are generally seen as more credible in their claims of respecting human rights. This in no way precludes the possibility of refuting claims or allegations of human rights impacts that the enterprise has clear grounds to reject – wherever possible explaining those grounds.

## **10.7 What is meant by the risks communications may pose to affected stakeholders, personnel or the legitimate requirements of commercial confidentiality?**

Some kinds of information about how human rights impacts are being addressed could pose risks to affected stakeholders or personnel. This may be because they would reveal, by implication, the identity either of a complainant or of individuals responsible for actions that are judged harmful, making them the potential targets of retaliation. Publicizing information about discussions with a government, police or security forces aimed at halting or preventing harmful action against individuals might jeopardize that process. However, care should be taken that blanket assumptions about such risks do not become an easy resort to avoid the sharing of information that can legitimately be made public.

The legitimate requirements of commercial confidentiality would typically extend to confidentiality of information crucial to negotiations regarding a significant business transaction, for the duration of those negotiations. They would also include information legally protected against disclosure to third parties.

Where there are no risks to these groups or requirements, other considerations on whether, when and how to communicate will be the subject of decisions based on the kinds of factors previously discussed.

## **10.8 How does communication relate to general stakeholder engagement?**

As noted, it can be particularly important for an enterprise to engage directly with potentially affected stakeholders about how it addresses its human rights impacts. This might be to explain how the enterprise is addressing potential impacts in general terms, or how it is addressing a particular impact that has occurred.

For any enterprise with significant risks of human rights impacts, this is just one of the ways in which it should engage with potentially affected stakeholders. For these enterprises, stakeholder engagement should feature also as a part of the enterprise's efforts to assess its impacts and to gain feedback on how effectively it has responded to impacts. More generally, it is an important means of understanding the concerns

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and interests of affected stakeholders and of building effective relationships with these crucial groups on an on-going basis.

### **Questions to ask**

Do we have the necessary internal communications and reporting systems to gather all relevant information on how we address our adverse human rights impacts? If not, what additional systems do we need?

What different groups can we envisage we may need to communicate to, and about what types of issue?

What means of communication do we need for those different groups, taking account of how they can access information, and what will be most effective?

Should those communications be driven by a routine timetable, be in response to particular events, or both?

What processes do we have in place to make reasoned and defensible judgments on when we should communicate publicly?

If our operations or operational contexts pose significant risk to human rights, how do we provide formal public reporting on how we address those risks?

If we are not in a context of heightened human rights risk, and are not required to report publicly on our human rights performance, would there nevertheless be other benefits to formal public reporting?

How will we ensure that our communications do not pose a risk to individuals inside or outside the enterprise?

How might we solicit feedback on our public communication to test how it is viewed and see whether there are ways to improve?

## C. REMEDIATION

### 11. GUIDING PRINCIPLE 22

**Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.**

#### 11.1 Why does this matter?

An enterprise cannot, by definition, be meeting its responsibility to respect human rights if it causes or contributes to an adverse human rights impact and then fails to enable its remediation.

Having systems in place to enable the remediation of such impacts in no way implies that the enterprise does not intend to respect human rights. On the contrary, it demonstrates a recognition that impacts may occur despite its best efforts, and an intent to ensure that respect for human rights is restored as swiftly and effectively as possible if this should happen.

#### 11.2 Does this apply even when allegations are unfounded?

No. This Guiding Principle is limited to situations where the enterprise *itself* recognizes that it has caused or contributed to an adverse human rights impact. It is in these situations that the enterprise is necessarily expected to enable the remediation of the impacts concerned. It may identify that it has caused or contributed to adverse impacts through its own impact assessments, grievance mechanism, or other internal processes; or the impact may be brought to the enterprise's attention by other sources and confirmed by its own investigations.

#### 11.3 When should the enterprise provide directly for remediation?

When the enterprise recognizes it has caused or contributed to an adverse human rights impact, it will in many cases be well-positioned to play a direct role in providing timely and effective remedy. Remedies can take a variety of forms, and it will be important to understand what those impacted would view as effective remedy, in addition to the enterprise's own view. This may include an apology, provisions to ensure the harm cannot recur, compensation (financial or other) for the harm, cessation of a particular activity or relationship, or some other form of remedy agreed by those involved.

In some circumstances, it may be most appropriate for remediation to be provided by an entity other than the enterprise. For instance where a court process or some other state-based proceeding is underway, it may be necessary or appropriate for the

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enterprise to defer to that process rather than pursuing direct remediation. As the commentary to this Principle makes clear, such deferral is likely to be necessary where crimes are alleged. Wherever possible, those affected should have the opportunity to make an informed decision about how they wish to proceed, based on an understanding of the alternatives.

Where the enterprise has contributed to the impact but another entity (for instance a contractor, supplier or the armed forces) is the primary cause and is either providing remediation or being held to account through a legitimate state-based mechanism, it will typically be appropriate to defer to that process whenever a parallel remediation process would undermine it. Such state-based mechanisms might include an ombudsman office, labour office, a National Contact Point or National Human Rights Institution, where these exist. In these and similar cases, the enterprise should cooperate in the remediation process.

#### **11.4 What kind of remediation processes should the enterprise provide for?**

The focus of this Principle is on achieving the outcome of remediation. That said, the means of providing for remediation can influence the effectiveness of that outcome. For instance, if an enterprise relies entirely on ad hoc processes to remediate any impacts it has caused or contributed to, there is unlikely to be a shared understanding within the enterprise as to what kind of response is appropriate. This creates a risk of internal dispute over how to proceed and delays in remediation.

Some enterprises may have formalized processes for specific adverse impacts that are a particular risk for their operations – for instance if a pollutant escapes into a waterway or if someone in its workforce is injured. The risk of this issue-specific approach is that there is no clear process available when a less foreseeable impact occurs.

It is therefore generally preferable to have in place agreed processes for remediation of adverse human rights impacts arising in any area of operations, even if this requires more than one type of process (for instance for direct employees and for external stakeholders).

In many instances, the most effective and efficient way to provide for remediation processes is through an operational-level grievance mechanism. A grievance *mechanism* is not just an internal administrative procedure for handling impacts or grievances. Whereas an internal procedure is typically passive – waiting for problems to arise and then responding – a grievance mechanism is active: it aims to facilitate the identification of grievances and address them as early as possible. It does so by ensuring it is known to, and trusted by, those stakeholders for whose use it is intended. The key processes provided by the mechanism are public, as are the general timelines it provides for handling grievances and the ways in which individuals can register their concerns. There is transparency of communication with complainants and accountability to them for the provision of a fair process. A grievance mechanism of course also requires some internal procedures, but these are just part of the larger process it provides.

Grievance mechanisms and criteria for their effectiveness are discussed further under the Guiding Principles [29 and 31](#).

### **11.5 What kind of “legitimate processes” might provide remediation other than the enterprise itself?**

There may be one or more kinds of state-based mechanism with an appropriate role in providing remediation in the event that the enterprise cannot or should not do so itself. These obviously include the courts and may also include state ombudsman or complaints offices (sometimes specific to an industry); a labour standards office, a National Contact Point (in States that have signed up to the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development), a National Human Rights Institution, or any other state-administered or statutory body empowered to take on this kind of role. They may also include local, traditional mechanisms used by indigenous or other communities. In some instances, a mechanism administered by a multi-stakeholder initiative might have a role, including, for example, where complaints involve a supplier of contractor to more than one of its corporate members.

Not all these mechanisms are present or effective in all States. An enterprise will need to seek expert advice on the extent to which such mechanisms in their local operating environment are likely to be able to perform this role in practice, free of corruption or manipulation, and with sufficient credibility in the eyes of complainants for outcomes to be sustainable.

### **11.6 What if the enterprise agrees that it has caused or contributed to an impact but does not agree with those impacted on the appropriate remedy?**

Where the enterprise and those impacted cannot reach agreement on the appropriate remedy, it may prove necessary either to involve a neutral third party as a mediator or to turn to adjudication.

Any third party mediator should be freely accepted by all involved. The mediator’s role is to assist the parties in the search for an agreed solution and no party to a mediation can be forced to accept a particular outcome. Where they do agree on an outcome, the parties are free to agree also that it will be binding on them.

Adjudication does not require the parties’ agreement to the outcome, and is often binding. It might take place through the courts, a governmental or statutory body such as an ombudsman or a national human rights institution, or another mechanism that has jurisdiction or is agreed upon by the enterprise and those impacted.

### **11.7 What if the enterprise does not accept that it has caused or contributed to a human rights impact?**

Where the enterprise contests an allegation that it has caused or contributed to an adverse impact, it cannot be expected to provide for remediation itself unless and until it is obliged to do so (for instance by a court). Nevertheless, in the event that credible

opportunities are available for seeking an agreed resolution of the resulting dispute, whether through negotiation or mediation, an enterprise is often well-advised to cooperate in these efforts.

### **Questions to ask**

What processes do we already have in place for remediating any adverse impacts we cause or to which we contribute?

How effective have those processes proven to be in the past? Do they involve all relevant parts of the enterprise? Can they be strengthened to make them more effective?

Do they cover all the areas where adverse impacts may arise? If not, what gaps do we need to cover with the existing or additional processes?

Can we systematize these processes within one or more operational-level grievance mechanisms?

What judicial and non-judicial remedial processes exist in the state(s) where we operate? How effective are they and to what extent can or should we typically defer to them when they are underway? Who can provide us with expert advice in this regard?

Have we had past situations where we could have benefited from a neutral third party to help us agree with those impacted on solutions and remedies? Can we envisage future such situations? If so, where would we find expert mediators who could assist us in this way, and who might be acceptable to all involved?

## **12. GUIDING PRINCIPLE 29**

**To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.**

### **12.1 Why does this matter?**

As noted under [Guiding Principle 22](#), an enterprise cannot, by definition, be meeting its responsibility to respect human rights if it causes or contributes to an adverse human rights impact and then fails to enable its remediation. One of the most systematic ways for an enterprise to provide for the remediation of such impacts is through an operational-level grievance mechanism.

Unlike many state-based mechanisms (courts, ombudsman offices and so forth), an operational-level grievance mechanism does not have to wait until an issue amounts to an alleged human rights abuse or a breach of other standards before it can address it. It can receive and address concerns well before they rise to that level and before an individual's or community's sense of grievance has compounded and escalated.

Effective grievance mechanisms also help reinforce aspects of the human rights due diligence process. They can help in identifying adverse human rights impacts in a timely manner and tracking the effectiveness of responses to impacts raised through the mechanism. They can also help build positive relationships with stakeholders by demonstrating that the enterprise takes their concerns, and impacts on their human rights, seriously.

## **12.2 What is an operational-level grievance mechanism?**

An operational-level grievance mechanism is a formalised means through which individuals or groups can raise concerns about impacts an enterprise has on them – including, but not exclusively, on their human rights – and can seek remedy. As explained in the commentary to [Guiding Principle 29](#), operational-level grievance mechanisms are:

*“accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.”*

In sum, their primary purpose is to provide an early point of recourse to identify and address the concerns of directly-affected stakeholders before they escalate or lead to otherwise avoidable harm.

These mechanisms are distinct from „whistle-blower“ systems, that enable employees to raise concerns about breaches of company codes and ethics which may or may not harm those individuals, but are of concern to the enterprise as a whole. Operational-level grievance mechanisms are specifically a channel for individuals - whether inside or outside the enterprise - to raise concern about impacts on themselves, and they do not require the individual to show breach of a company code.

## **12.3 Does it have to be called a „grievance mechanism“?**

„Grievance mechanism“ is used in the Guiding Principles and accompanying commentary as a term of art to cover a whole range of mechanisms that address complaints and disputes involving enterprises and their stakeholders. It is possible that the term may have unhelpful connotations in some cultures or contexts, and it is certainly not necessary to label every grievance mechanism with this name. However, it is risky to call a grievance mechanism by a name that its potential users may find inappropriate, for instance one that diminishes or glosses over its real purpose. Doing so may make it more palatable for the enterprise but may leave those with grievances feeling belittled and disrespected.

## **12.4 To whom should an operational-level grievance mechanism be available?**

Most operational-level grievance mechanisms limit their accessibility to individuals or groups who are directly impacted by the enterprise's operations, or to their legitimate representatives, rather than being open to a wider array of groups that may have concerns or criticisms about the enterprise's operations. This should not exclude other means of engaging with the wider array of voices, and it may be in the interests of the enterprise to do so in at least some instances.

As discussed in the context of [Guiding Principle 22](#), it is fairly usual to have separate grievance mechanisms for direct employees and for external affected stakeholders, though it is not always necessary to separate the two. It may also be important to have tailored grievance mechanisms for particular situations, such as community resettlement, or for particular groups, such as indigenous peoples. However, the more streamlined mechanisms can be, the more easily their effectiveness can be monitored, and the more successful they can be at identifying generalised patterns and trends in how the enterprise is addressing its human rights impacts.

## **12.5 What issues should an operational-level grievance mechanism be able to address?**

In order to be fully effective, a grievance mechanism should not be limited to addressing complaints that amount to alleged breaches of human rights or other specific standards. Such limitations will exclude a host of concerns that may, if neglected, become human rights harms or lead to protests or other escalating or violent actions, which in turn may increase the risks of human rights abuses. For instance, communities that find that an enterprise persistently ignores their concerns about noise, dust or work opportunities may feel driven to take action to disrupt the enterprise's operations as the only way to get its attention, perhaps leading to physical confrontation and even risk to life. One of the comparative advantages of an operational-level grievance mechanism over formal third-party mechanisms is precisely its ability to identify and address problems early, before they compound or escalate.

It is reasonable for a mechanism to exclude clearly vexatious complaints, but great care should be taken before concluding that a complaint falls into this relatively rare category. A complaint that appears vexatious may mask other, genuine concerns with potential human rights implications or wider risks to the enterprise. The default should be to take every complaint seriously in the first instance.

## **12.6 Who should oversee the mechanism?**

A grievance mechanism can rarely be effective if there is not adequate senior-level oversight and accountability within the enterprise. In a small enterprise, this may mean a simple reporting line to the head of the enterprise from whomever handles incoming complaints. In a larger enterprise, it will typically entail more formal internal control and oversight systems. The allocation of oversight roles should avoid any conflicts of interest that might arise, for instance, between ensuring the effectiveness of the mechanism and defending the actions or decisions of certain parts of the business.

Where trust between the enterprise and affected stakeholders is low, or where human rights risks are significant, it can be highly beneficial to provide for joint oversight of the mechanism by representatives of both the enterprise and the stakeholder groups concerned. This can help ensure that the mechanism is trusted by its intended user groups, and that it is best tailored to meet their needs in terms of the access and processes it provides. Where joint oversight is not deemed necessary or appropriate, there should at minimum be input to its design or evaluation from the affected stakeholders, as provided under [Guiding Principle 31](#).

### **12.7 How does an operational-level grievance mechanism relate to the enterprise's wider operations?**

The staff or departments in an enterprise that are responsible for human rights and social issues will need to play a key, coordinating role in a grievance mechanism. But the mechanism will fail if it is seen as solely their responsibility. Resolving and remediating impacts will often necessitate the involvement of others across the enterprise. The role of senior management becomes particularly significant in ensuring that this kind of cross-functional response to grievances is feasible and prioritized throughout the enterprise, for example through appropriate incentives to relevant staff.

It may be necessary and appropriate for those personnel or departments within the enterprise whose decisions or actions are relevant to an alleged human rights impact to take a role in initial internal investigations. Where that would be inappropriate – for instance due to a potential conflict of interests or risk to individuals – they will still have a role in providing information to those conducting an investigation. They may have important inputs into crafting possible solutions for remediation – again, where this is appropriate. And they will be essential in ensuring the enterprise absorbs lessons learned so it can prevent or [mitigate](#) repeat impacts.

### **12.8 How does the mechanism relate to wider [stakeholder engagement](#)?**

The Guiding Principles and this Interpretative Guide repeatedly highlight the role of stakeholder engagement in human rights due diligence for any enterprise with significant [human rights risks](#). An effective grievance mechanism is not a substitute for this broad stakeholder engagement. Rather, it is an important supplement and complement. Having a grievance mechanism – however good – without wider stakeholder engagement processes, risks signalling to affected stakeholders that the enterprise wants to hear from them only when they have real problems.

This said, the Guiding Principles also recognise that a small or medium-sized enterprise may not need to engage directly with affected stakeholders if it has limited human rights risks and engagement is a genuine challenge for geographical, financial or other reasons. Such enterprises will look to other means of gathering information and perspectives about their potential human rights impacts, as discussed under [Guiding Principle 18](#). For these enterprises, having a simple but effective grievance mechanism can be one way of ensuring that the enterprise is still able to identify problems raised directly by those who may be impacted.

## **12.9 When might an enterprise “participate in” a grievance mechanism rather than establish one itself?**

It will typically be appropriate for a large enterprise or an enterprise with significant human rights risks to have its own grievance mechanism. Small and medium-sized enterprises with limited human rights risks can also develop grievance mechanisms that are both simple in form and still able to meet the effectiveness criteria set out in [Guiding Principle 31](#). However, enterprises may also consider participating in a grievance mechanism provided by an external organisation, where it can provide similar opportunities for the early identification and remedy of adverse impacts. Examples include a hotline service and remediation process provided by an external organisation – government, business, NGO or multi-stakeholder; or a traditional mechanism run by the local communities or administration as part of their local practices. Such mechanisms should be reviewed to see whether they meet the effectiveness criteria and how any gaps might be addressed.

Alternatively, an enterprise may establish its own mechanism but use external and shared resources to help reduce its costs and/or increase its capacity and effectiveness. Examples include enabling an NGO trusted by stakeholders to act as an access point and to engage with the enterprise in finding solutions to legitimate complaints. Such an NGO might take on this role for more than one enterprise, whether with independent funding or with pooled funding from the enterprises, provided this does not damage its credibility. Legitimate trade unions, where they exist, should play this kind of role with regard, at a minimum, to the workers they represent. A number of enterprises might also pool small financial contributions to support a local institution in providing expert advice to complainants, or to enable the use of mediation in the event that this is needed.

### **Questions to ask**

Do we have an existing mechanism that at least in part deals with grievances?

If so, is it available to all potentially affected stakeholders or does its reach need to be broadened? Is it able to address any kinds of impacts, or does it need to be extended to do so?

Is there senior-level oversight of the grievance mechanism, and accountability for its performance, within the enterprise?

Is there an opportunity or advantage in having joint oversight of the mechanism with representatives of stakeholder groups? If not, how can we at least solicit feedback from affected stakeholder groups on its performance and possible improvements?

Does the mechanism provide for all relevant business units or functions in the enterprise to be involved in investigating and resolving grievances, while avoiding conflicts of interest or risk to individuals?

If resource constraints make it difficult to run a self-standing grievance mechanism, can we benefit from shared resources to make it feasible, or alternatively participate in an effective external mechanism?



### **13. GUIDING PRINCIPLE 31**

**In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:**

- a. Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;**
- b. Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;**
- c. Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;**
- d. Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;**
- e. Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;**
- f. Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;**
- g. A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.**

**Operational-level mechanisms should also be:**

- h. Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

#### **13.1 Why does this matter?**



Both State-based and operational-level grievance mechanisms need to be effective in order to reach the objective of providing remedy to those affected by corporate-related human rights abuse. Where an operational-level grievance mechanism is truly effective, it can generate the kind of benefits discussed under [Guiding Principle 29](#), including the early identification of problems, early and agreed solutions, increased trust, and the avoidance of public protest, litigation or other forms of opposition.

A poorly designed or administered grievance mechanism may distort assessments of how well [human rights risks](#) are being managed. It may raise expectations that concerns will be addressed, without providing the processes to deliver on that expectation. In the worst instances, an ineffective grievance mechanism may compound [stakeholders](#)’ sense of grievance.

It is therefore important that operational-level grievance mechanisms meet certain criteria that help ensure their effectiveness.

### **13.2 Why these criteria?**

The criteria in this Guiding Principle were developed through a process of research, consultation and road-testing. There are other ways in which some of them might be articulated, or in which the issues they cover could be labelled or clustered. But the core elements they reflect provide a baseline set of benchmarks for ensuring that a mechanism can achieve the benefits and avoid the pitfalls identified in response to the question 13.1. These criteria should be taken as a whole as they are inter-related – excluding one will weaken the ability to meet others and make the mechanism as a whole less effective. The individual criteria are explained further in the formal commentary to the Guiding Principles.

As noted above, a grievance mechanism’s effectiveness requires that all relevant departments or functions, as well as senior management, support it in principle and in practice. It will also be beneficial to include relevant personnel or departments in the development of a grievance mechanism so that they understand its aims and the standards it needs to meet, and support the model developed. It is particularly important for personnel to feel that hearing about problems is not a threat, but a constructive and necessary process to enable the enterprise to learn and succeed over time.

### **13.3 How should a grievance mechanism’s effectiveness be assessed?**

It will be important for the enterprise to develop appropriate measurements that can help it assess the mechanism’s effectiveness in practice. There can be advantages to getting stakeholder inputs on what these measurements should include, so as to ensure that their perspective on what „success“ looks like is adequately reflected.

An enterprise should be wary of easy assumptions about what certain numerical indicators might mean. A decrease in the number of complaints over time may indicate that the enterprise is learning from past complaints and preventing their recurrence; it may equally indicate that stakeholders are losing trust in the grievance mechanism and perhaps looking to other ways to vent their concerns. Conversely, an increase in complaints – at least initially or after a major new development – may indicate a good mechanism that is trusted and working or that problems are on the

rise. Qualitative indicators – including feedback from those for whom the mechanism is intended (and not just those who have actually used it) – is important in helping to interpret this kind of data accurately.

### **Questions to ask**

How does any grievance mechanism we have in place measure up against these criteria?

What feedback can we solicit from the intended users of the mechanism as to their views on how well it measures up?

Can any gaps we identify be addressed through adjustments to what we have in place, or is there merit in redesigning a new process? If the latter, can we involve representatives of the intended user groups (affected stakeholders) in the design process?

What measures should we have in place for the long run to assess the mechanism's on-going effectiveness?

How confident are we of how to interpret quantitative data on its performance, and how might this be complemented by qualitative measures?

## **D. ISSUES OF CONTEXT**

### **14. GUIDING PRINCIPLE 23**

**In all contexts, business enterprises should:**

- a. Comply with all applicable laws and respect internationally recognized human rights wherever they operate;**
- b. Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements;**
- c. Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.**

#### **14.1 Why does this matter?**

The responsibility to respect human rights applies in all contexts. It is a uniform standard, reflecting its roots in the universal expectation that enterprises not harm the dignity of people as they go about their business. This provides predictability for both

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enterprises and their [stakeholders](#). However, the [human rights risks](#) related to an enterprise's activities and business relationships will often vary depending on the specific contexts in which it operates. Those contexts may pose particular challenges or dilemmas for enterprises in their efforts to meet the responsibility to respect human rights, for example when local requirements appear to compel a business to act in a manner that is contrary to internationally-recognized human rights. Enterprises need to be prepared with a basic „compass“ for when they find themselves in such situations, since, by definition, there will be no easy or standard answers.

#### **14.2 How does legal compliance relate to respect for human rights?**

Enterprises recognize that their social responsibilities begin with legal compliance. The responsibility to respect human rights is itself often reflected – at least in part – in laws and regulations. The concept of legal compliance requires that enterprises comply with national laws and regulations protecting human rights even where the capacity of the State to effectively enforce such laws is weak.

However, the responsibility to respect human rights extends beyond compliance with national laws and regulations protecting human rights to entail respect for all internationally-recognized human rights. It therefore also applies where national laws and regulations to protect these rights are absent. For the same reason, where national laws and regulations offer a level of human rights protection that falls below internationally recognised human rights standards, enterprises should operate to the higher standard.

In sum, the responsibility to respect human rights, as a global standard expected of all enterprises in all situations, provides clarity, and predictability for enterprises when met with differing expectations and demands. It also means that enterprises should not take advantage of operating environments that provide insufficient protection for human rights by lowering their own standard of conduct accordingly.

#### **14.3 How should an enterprise deal with conflicting requirements?**

In some operating contexts domestic laws, regulations or customs may require (as against merely allow for) enterprises to act in ways that are in conflict with their responsibility to respect internationally-recognized human rights. Such requirements could for example be in relation to women's rights, labor rights, or the right to privacy. This type of situation presents enterprises with a dilemma when having both to comply with all applicable laws and also to meet the responsibility to respect human rights in all contexts.

An enterprise's human rights due diligence process should reveal where it may be faced with this kind of dilemma and what measures might be taken to prevent or [mitigate](#) the risk. Where there is a direct conflict of requirements, the challenge then becomes the identification of ways to honor the principles of internationally-recognized rights. As with other issues, there is no single blueprint for how to respond. However, the more an enterprise has embedded respect for human rights into its values, and the more it has prepared its personnel for ethical dilemmas, through training, scenarios, lessons learned, decision trees and similar processes, the more likely it is to be able to identify appropriate and timely responses.

Understanding the exact nature, scope and implications of the conflicting requirements is an important first step in trying to identify ways of addressing the dilemma. It may be that local requirements are more ambiguous than first appreciated or that the conflict is in some other way overstated. Recognizing this may provide opportunities to mitigate the conflict. It may be possible to seek clarification from the government or local authorities about the scope of the conflicting requirement and even to challenge it. This may both help reduce risks to people and to the company, as well as signaling to stakeholders the commitment of the enterprise to respect human rights. It may also be possible that others within the industry or country have approaches that mitigate the harm to human rights and can be replicated. For example, some enterprises operating in countries where freedom of association is restricted have established parallel processes to engage with workers.

Where no immediate or obvious solutions arise from an enterprise's own efforts, it will be well-advised to engage with relevant expert stakeholders on how to address the dilemma – including, where possible, any groups or individuals whose rights may be affected by the conflicting requirements. At all times, enterprises need to be aware of any risks that a particular course of action may pose to affected stakeholders and take these into account in their decisions.

It is particularly likely that where enterprises face challenges of this type, their conduct will be under heightened scrutiny from stakeholders. Enterprises should be able to account for their efforts to maintain respect for human rights in these situations, and it will often be advisable to report on them, provided that doing so does not increase risks to human rights.

In the rare situations where local law or other requirements put an enterprise at risk of being involved in [gross abuses of human rights](#) such as international crimes, it should carefully consider whether and how it can continue to operate with integrity in such circumstances, while also being aware of the human rights impacts that could result from terminating its activities.

#### **14.4 Why should the risk of being involved in gross human rights abuses be considered a legal compliance issue?**

Where enterprises are at risk of being involved in [gross human rights abuses](#), prudence suggests that they should treat this risk in the same manner as the risk of involvement in a serious crime, whether or not it is clear that they would be held legally liable. This is so both because of the severity of the human rights abuses at stake, and also because of the growing legal risks to companies as a result of involvement in such abuses.

Enterprises can cause gross human rights abuses through their own activities, for example if they use slave labor or if they treat workers in a manner that amounts to cruel, inhuman or degrading treatment. They may also contribute to gross human rights abuses that are committed by other parties, for example security forces. Such indirect contribution to gross human rights abuse can give rise to allegations of either legal or non-legal [complicity](#).

The commentary to [Guiding Principle 17](#) states that, “As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of enterprises in such cases. Typically, civil actions can also be

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based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.” Examples where an enterprise has faced charges of legal complicity include allegations of providing chemicals to another party that then uses them to commit acts of genocide, and providing logistical support to government forces engaged in war crimes.

The recent history of legal action – mostly in the form of civil liability lawsuits – against multinational corporations for involvement in gross human rights abuse reveals an uneven, yet expanding web of potential corporate legal liability. Because of the nature of the [human rights risks](#) involved, but also because of the expanding legal boundaries, including territorial boundaries in some instances, enterprises should treat all cases of risk of involvement in gross human rights abuses as a legal compliance issue, irrespective of the status of the law where the business activity is taking place.<sup>8</sup>

#### **14.5 What situations pose particular risk of business involvement in gross human rights abuses?**

The risks of involvement with gross human rights abuse tend to be most prevalent in contexts where there is an absence of effective government institutions and legal protection or where there are entrenched patterns of severe discrimination. Perhaps the greatest risks arise in conflict-affected areas, though they are not limited to such regions. Such contexts should automatically raise “red flags” within the enterprise and trigger human rights due diligence processes that are finely tuned and sensitive to the higher level of human rights risks involved. Such heightened human rights due diligence should also be seen as essential if the enterprise has, or is considering entering into, business activities in countries that are under sanctions by the United Nations or regional intergovernmental organizations.

#### **14.6 Where might an enterprise seek help in assessing and addressing challenges that arise in difficult contexts?**

When planning or doing business in contexts that pose particular challenges to the ability of an enterprise to respect human rights, such as conflict-affected areas, many enterprises will find it difficult to adequately assess the human rights risks involved. If that is the case, enterprises should seek advice from credible external sources, including civil society organizations working in or reporting from the area in question. Where appropriate, advice may also be sought from Governments, including home States of the enterprise. National human rights institutions can be another valuable source of advice about how to address human rights risks when operating in contexts that pose such challenges. Working with business partners, industry bodies or multi-stakeholder initiatives can also help enterprises in devising approaches that are more finely tuned to the human rights risks posed by complex circumstances. (See Annex B for more examples of external resources).

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<sup>8</sup> The website of the Business and Human Rights Resource Centre maintains a portal with information on lawsuits regarding alleged business involvement with human rights abuses.

### Questions to ask

Are we operating in any contexts where domestic law related to human rights is weak, unenforced or absent? Does our due diligence include assessment of these factors and their implications for human rights risks?

Is it clear to all personnel and to those with whom we have business relationships in those contexts that we work to the standard of respect for all internationally-recognized human rights? Do they understand what that entails?

Are we operating in any contexts where there are conflicting requirements between domestic law and internationally-recognized human rights?

If so, how certain are we that the law and international standards cannot be reconciled? Is there scope to approach the authorities in the search for a solution, without increasing risks to human rights?

Are there any well-established ways of dealing with this conflict of requirements or any successful examples from other enterprises?

Faced with real dilemmas, who would we turn to for help in identifying the best possible response? Is it possible to include representatives of affected stakeholders in this process?

What processes do we have in place to account for our decisions and actions in such scenarios?

Where local requirements place us at risk of involvement in [gross abuses of human rights](#) such as international crimes, through what processes, and with what senior-level involvement, will we determine whether we can remain and, if so, on what terms?

Is the potential of involvement in gross human rights abuses handled within our enterprise as would be a legal compliance issue? Who needs to be involved at what stage to ensure that this is the case?

If we or those with whom we have business relationships are active in conflict-affected areas, do these situations automatically lead to a heightened due diligence process within the enterprise?

How will we assess the human rights situation and its implications for us in such conflict-affected areas, drawing on what resources?

## **15. GUIDING PRINCIPLE 24**

**Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.**

### **15.1 Why does this matter?**

International human rights law does not organize rights according to a hierarchy of more or less important rights. Rather, human rights are treated as indivisible, interdependent and interrelated. However, it may not always be possible for an enterprise to address all adverse human rights impacts immediately. Many enterprises operate in different contexts and have complex supply chains and a multitude of partners. They may be at risk of involvement with a range of adverse human rights impacts, and there may be legitimate resource and logistical constraints on the ability of the enterprise to address them all immediately.

Human rights due diligence and remediation processes aim to help enterprises minimise human rights impacts linked to their operations, products and services. Where not all these impacts can reasonably be addressed at once, the focus must therefore be on those that would cause the greatest harm to people. That means prioritising those impacts that are, or would be, most severe in their scope or scale or where a delayed response would render them irremediable. As soon as the most severe impacts are addressed, the enterprise should turn to those with the next greatest severity, and so on until it has addressed all its actual and potential impacts on human rights (bearing in mind that this is likely to be an on-going exercise that responds to changing circumstances).

### **15.2 What would count as “severe” impacts?**

The commentary to this Guiding Principles states that the severity of human rights impacts “will be judged by their scale, scope and irremediable character”. As explained under [Guiding Principle 14](#), this means that the gravity of the impact and the number of individuals impacted at present or in the future (for instance from the delayed effects of environmental harm) will both be relevant considerations.

„Irremediability“ is the third relevant factor, used here to mean any limits on the ability to restore those impacted to a situation at least the same as, or equivalent to, their situation before the impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

It is not necessary that an impact have more than one of these three characteristics to be reasonably considered “severe”. This said, it is often the case that the greater the scale or the scope of an impact, the less it is „remediable“. In addition, this Guiding Principle highlights the fact that a delay in addressing a certain impact may itself make it less remediable and that this should be taken into account in the prioritisation process. For example, if workers are unfairly dismissed, an extended delay in



remediation may oblige those affected to disperse in search of some other income, making their reinstatement more difficult.

Where an adverse impact is „potential“ rather than „actual“ – meaning that there is a risk that it may occur, but it has not yet done so – standard approaches to risk management will suggest that the *probability* of it occurring becomes a primary factor, alongside its severity. However, a low probability of a severe human rights impact cannot alone justify deprioritizing efforts to [mitigate](#) the risk. Instead, the remediability of the potential impact must be a key factor in determining the legitimacy of delaying such efforts. In sum, in the context of risks to human rights, the „severity“ of actual or potential risks must be the dominant factor.

It may in many cases be self-evident what kinds of impacts are “severe” or “irremediable”, for example impacts on the right to life and health of individuals or which fundamentally affect the welfare of entire groups or communities. And in cases where an enterprise has identified that it risks being involved in [gross human rights abuse](#) addressing this risk should always be given priority.

In other situations it may be less clear what human rights impacts should be considered most severe or what factors might affect their remediability. Moreover, as the commentary to this Guiding Principle states, “severity” should not be seen as an absolute concept, but as relative to the other human rights impacts the enterprise has identified. Where possible, enterprises are advised to engage with those whose rights are at risk in order to ensure they have understood the effects certain impacts may have.

Depending on the operational context, the most severe human rights risks may be faced by persons belonging to groups that are at heightened risk of vulnerability or marginalization. Examples of these groups include children, women, indigenous peoples, or people belonging to ethnic or other minorities. If the enterprise decides it needs to prioritize its responses to human rights impacts, it should take into account the vulnerability of such groups and the risk that a delayed response to certain impacts might affect them in a disproportionate way.

### **15.3 What does this mean for impacts that are not deemed „severe“?**

Addressing the issues deemed as most severe in no way implies that other human rights impacts identified through the enterprise’s due diligence process do not need to be addressed. Rather, this principle is about sequencing responses in the event that not all impacts can be addressed at once. An enterprise is still accountable for addressing *all* its actual and potential human rights impacts. It is also worth keeping in mind that even impacts that initially would not be considered severe may evolve into more serious abuses (or be perceived to do so) if not addressed properly.



### **Questions to ask**

Do we need to sequence our responses to any adverse human rights impacts we have identified, or are they such that we can address them all in parallel?

If we need to prioritize them in order to sequence our responses, do we have a means of assessing the severity of our impacts as the primary basis for doing so?

Do our systems for assessing the severity of impacts take account of the three factors of scope, scale and remediability?

Do they reflect that where the severity of a potential impact is high, it should be a priority for action, regardless of its probability?

Do they pay particular attention to individuals belonging to vulnerable groups who may suffer the most severe human rights impacts?

Do they identify situations where a delay in responding to an actual impact may make it harder to remediate?

Once the most severe human rights impacts have been addressed, do our systems automatically move on to the next most severe impacts until all have been addressed?

## **ANNEX A**

### **List of the rights contained within the International Bill of Human Rights and the ILO Core Conventions**

#### **A. The International Bill of Human Rights**

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR) and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Similar provisions in the two Covenants stipulate non-discrimination and gender equality as overarching principles to be applied in conjunction with the specific rights. The ICCPR and ICESCR recognize and define in more detail the rights in the UDHR in the following manner:<sup>9</sup>

#### **International Covenant on Civil and Political Rights (ICCPR)**

Article 1: Right of self-determination

Articles 2 to 5: Overarching principles

Article 6: Right to life

Article 7: Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment

Article 8: Right not to be subjected to slavery, servitude or forced labour

Article 9: Rights to liberty and security of person

Article 10: Right of detained persons to humane treatment

Article 11: Right not to be subjected to imprisonment for inability to fulfill a contract

Article 12: Right to freedom of movement

Article 13: Right of aliens to due process when facing expulsion

Article 14: Right to a fair trial

Article 15: Right to be free from retroactive criminal law

Article 16: Right to recognition as a person before the law

Article 17: Right to privacy

Article 18: Rights to freedom of thought, conscience and religion

Article 19: Rights to freedom of opinion and expression

Article 20: Rights to freedom from war propaganda, and freedom from incitement to racial, religious or national hatred

Article 21: Right to freedom of assembly

Article 22: Right to freedom of association

Article 23: Rights of protection of the family and the right to marry

Article 24: Rights of protection for the child

Article 25: Right to participate in public life

Article 26: Right to equality before the law, equal protection of the law, and rights of non-discrimination

Article 27: Rights of minorities

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<sup>9</sup> This list of the rights contained in the two Covenants are presented as they appear in the publication « Human Rights Translated – A Business Reference Guide », published jointly by Office of the UN High Commissioner for Human Rights, the UN Global Compact, the Castan Centre for Human Rights Law at Monash University, and the International Business Leaders Forum.

## **International Covenant on Economic, Social & Cultural Rights (ICESCR)**

Article 1: Right of self-determination

Articles 2-5: Overarching principles

Article 6: Right to work

Article 7: Right to enjoy just and favourable conditions of work

Article 8: Right to form and join trade unions, and the right to strike

Article 9: Right to social security, including social insurance

Article 10: Right to a family life

Article 11: Right to an adequate standard of living. (This right has been interpreted to comprise the right to food, the right to adequate housing, including prohibition of arbitrary evictions, and the right to safe drinking water and sanitation.)

Article 12: Right to health

Articles 13 and 14: Right to education

Article 15: Rights to take part in cultural life, to benefit from scientific progress, and of the material and moral rights of authors and inventors

## **B. ILO Core Conventions**

In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. The Declaration committed members to respect the principles and rights in four categories, including: freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and abolition of child labour. Each of these areas is supported by two ILO conventions, which together make the eight ILO Core Labour Standards.

1. Freedom of Association and Protection of the Right to Organise Convention, ILO Convention 87, 1949
2. Right to Organize and Collective Bargaining Convention, ILO Convention 98, 1949
3. Forced Labour Convention, ILO Convention 29, 1930
4. Abolition of Forced Labour Convention, ILO Convention 105, 1957
5. Equal Remuneration Convention, ILO Convention 100, 1951
6. Discrimination (Employment and Occupation) Convention, ILO Convention 111, 1958
7. Minimum Age Convention, ILO Convention 138, 1973
8. Worst Forms of Child Labour Convention, ILO Convention 182, 1999 (support the abolition of child labour)

## ANNEX B

### EXAMPLES OF EXTERNAL EXPERT RESOURCES

- Information and advice on human rights risks is increasingly available from some government offices or agencies, whether in general terms, for particular industries, in particular geographical contexts, or for particular issues such as labour rights or indigenous peoples' rights;
- Authoritative on-line information resources can assist, such as the websites of the Office of the High Commissioner for Human Rights (<http://www.ohchr.org>) and the International Labour Organisation (<http://www.ilo.org>);
- Other credible sources of written or in-person advice may be available, such as many National Human Rights Institutions (<http://www.nhri.net/default.asp?PID=625&DID=0>), the ILO Helpdesk for Business on International Labour Standards (<http://www.ilo.org/empent/Areasofwork/business-helpdesk/lang--en/index.htm>), as well as respected NGOs and academic institutions focusing on business-related human rights issues.
- The Global Compact is the UN's global corporate responsibility initiative. The relationship between the Guiding Principles on business and human rights and the Global Compact is outlined in the following document: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/GPs\\_GC%20note.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf) A range of tools and guidance materials many of which are also relevant to small and medium sized enterprises can be down-loaded directly from the website of the UN Global Compact: [http://www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html). These include, for example:
  - **Business and Human Rights Learning Tool:** Web-based modules integrate exercises and case studies on current trends and expectations towards business on implementation of human rights principles, as reflected in the UN Protect-Respect-Remedy Framework. Upon successful completion of a test of the learning tool content users have the opportunity to obtain a certificate. (UNGC/OHCHR, 2011)
  - **The Human Rights Matrix:** The Human Rights Matrix is an initial self-assessment and learning tool that enables a company to begin to understand and address its human rights performance, by identifying its policies on human rights and the approaches it has taken towards human rights. It will help companies visualize, assess and manage their human rights programmes and performance. (BLIHR/GBI/Credit 360, updated 2010)
  - **How to do Business with Respect for Human Rights:** This publication builds on the Protect, Respect and Remedy framework of the UN Special Representative for Business and Human Rights (SRSG). The descriptions, learnings and guidance points collected in this guidance are based on the experiences of ten multinational companies of the Global Compact Network Netherlands and are intended to help companies implement a commitment to respect human rights in line with the UN Framework. (Global Compact Network Netherlands, 2010)

- **Human Rights Translated: A Business Reference Guide:** The purpose of this publication is to explain universally recognized human rights in a way that makes sense to business. The publication illustrates, through the use of examples and suggested practical actions, how human rights are relevant in a corporate context. (UNGC/OHCHR/Castan Centre for Human Rights Law/IBLF, 2008)
  - **Guide to Human Rights Impact Assessment and Management:** This interactive online tool is designed to provide companies with guidance on how to assess and manage human rights risks and impacts of their business activities. While the Guide may benefit different types of organizations, companies are the main and intended audience of the Guide to HRIAM. The Guide to HRIAM can be accessed free of charge, following registration. (UNGC/IFC/IBLF, updated 2010)
  - **Guide on How to Develop a Human Rights Policy:** Provides instruction on how business can develop and implement a human rights policy within their companies (UNGC/OHCHR 2011)
- The OECD also provides some relevant tools and guidance that are widely used, including its Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones: [www.oecd.org/dataoecd/26/21/36885821.pdf](http://www.oecd.org/dataoecd/26/21/36885821.pdf)
  - Information on human rights impacts for which others in the same industry have been criticised or even taken to court provides a very good indicator of some issues the enterprise should focus on. News coverage can point to the “hot” human rights issues faced by a particular industry. One widely-respected source of such information is the Business & Human Rights Resource Centre (<http://www.business-humanrights.org>).
  - The web pages of various non-governmental organisations that critically assess the activities of enterprises can provide an indication as to relevant issues.
  - There is often relevant experience and advice available within the enterprise’s own industry. Examples of industry initiatives can be found at the website of the Business & Human Rights Resource Centre. Some business associations may also be able to provide guidance to members. Some Global Compact Local Networks have also included human rights in their areas of work and may possess relevant information for enterprises seeking guidance with respect to a particular geographic area (<http://www.unglobalcompact.org/networksaroundtheworld/index.html>)
  - Where respected multi-stakeholder or industry initiatives exist, these can be a particularly valuable source of advice and experience in addressing business and human rights challenges.
  - Collaborative opportunities for addressing shared human rights challenges may exist. For instance, brands and their suppliers may have joint interests in reducing human rights risks in a value chain, enabling the pooling of resources to achieve common objectives.
  - For guidance related to business enterprises operating in conflict affected areas, see “Red Flags: Liability risks for companies operating in high-risk zones”, produced by International Alert and FAFO ([http://www.redflags.info/index.php?page\\_id=14&style\\_id=0](http://www.redflags.info/index.php?page_id=14&style_id=0))