



A HUMAN RIGHTS DEFENDER TOOLKIT  
**FOR PROMOTING BUSINESS  
RESPECT FOR HUMAN RIGHTS**



ISHR

INTERNATIONAL SERVICE  
FOR HUMAN RIGHTS

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The International Service for Human Rights (ISHR) is an independent, international non-governmental organisation (NGO) which promotes and protects human rights by supporting human rights defenders and strengthening human rights standards and systems. We achieve this through a strategic combination of research, advocacy, monitoring, coordination and capacity building.

Founded in 1984, and with offices in Geneva and New York, ISHR has a proven track record of achieving human rights change: from facilitating global civil society input to the Vienna Declaration and Programme of Action (1993), and leading the development of the United Nations (UN) Declaration on Human Rights Defenders (1999), to contributing to the establishment of the UN Human Rights Council (2006), and catalysing and coordinating the adoption of the Yogyakarta Principles on Human Rights and Sexual Orientation and Gender Identity (2007).

Faced now with a trend of increasing attacks against human rights defenders who advocate for corporate accountability – whether in relation to labour rights, land rights, indigenous rights or otherwise – ISHR is working to better equip these defenders to continue their essential work. This Human Rights Defender Toolkit for promoting business respect for human rights is intended to be a helpful resource in this regard – providing an overview of the existing legal and policy framework related to business and human rights, as well as tools for strategic engagement with business stakeholders.

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**States have a legal obligation to respect, protect and fulfil human rights** set out in the international human rights conventions they ratify. This means they must refrain from interfering with or curtailing the enjoyment of human rights, and protect individuals and groups against human rights abuses, including by business.<sup>1</sup> **Businesses should respect human rights**; avoid infringing on the human rights of others whether through direct impacts of their operations or through political pressure, harassment, or otherwise; and address and remedy adverse human rights impacts with which they are involved.<sup>2</sup> Notwithstanding these obligations, business-related human rights abuses against individuals and communities continue to a disturbing degree, and legal, policy, and practical barriers often challenge **access to adequate remedy**.

This handbook aims to provide **human rights defenders** (HRDs) with an overview of the existing legal and policy framework and emerging global norms adopted by both governments and businesses to protect human rights in the context of business operations. It also seeks to give defenders **tools for strategic engagement** with stakeholders, at each stage of project development and in a range of sectors.

Not all the guidance offered in this handbook will be applicable to all HRDs in all contexts. For this reason, readers are encouraged to be selective in determining which approaches and actions make the most sense in their particular setting. **HRDs should design their engagement strategies in line with their needs and their local knowledge of the business, political and social context**. At all times during business engagement, defenders should be sensitive to security risks and make efforts to mitigate danger to themselves, their families, and the organisations and communities with whom they work.

This handbook is not intended to provide a comprehensive outline of the human rights obligations of business. Nor does it profess to offer a comprehensive analysis of the positive or negative outcomes of the case studies used to illustrate good practices. ISHR in no way condones human rights violations by business, nor

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1 United Nations Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, (New York and Geneva, 2012), [www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).

2 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 11, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

considers that the obligation to ensure business protects human rights lies with HRDs; the primary obligation lies with States.

What this handbook is intended to do is to introduce a business and human rights framework to non-governmental organisations (NGOs) and HRDs who may come from different backgrounds, work in different areas, or have limited familiarity with the international human rights system; respond to and seek to minimise the power differentials between companies, governments, and HRDs; and spur constructive engagement between and among companies and HRDs to build a groundwork for mutual benefit from the protection and promotion of human rights.

The work of HRDs seeking to engage with business takes place in a variety of settings. Some HRDs are active in countries where the rule of law, the press and public opinion can be brought to bear effectively on companies who violate human rights. Many others, however, operate in jurisdictions where they cannot rely on the existence or implementation of protective laws, where public opinion is openly disregarded, where there may be collusion between business and government, and where attempts by HRDs to protect the rights of others are often met with brutal retaliation, economic and property damage, threats, violence and even murder. It would be naive to attempt to write a handbook that could address such a diversity of situations universally. It is crucial therefore that HRDs using this resource be mindful of the circumstances and risks associated with their activities, in their particular setting.



***Increasingly, many global multi-national corporations have committed to conducting their business in a way that respects human rights. There is, however, more to be done, with human rights abuses still occurring and many NGOs and other human rights defenders finding themselves targeted and persecuted in many countries. Addressing such abuses in a meaningful way is obviously a significant concern for civil society across the globe, as well as for any business that wants to conduct its operations in a responsible way.***

*Owen Larter, Microsoft, and Nicolas Patrick, DLA Piper*



# DÉCLARATION DES Droits DE L'Homme

**PRÉAMBULE** que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits et libertés fondamentales constitue le fondement de la liberté, de la justice et de la paix dans le monde.

**ARTICLE 1** que la reconnaissance et le respect des droits de l'homme sont essentiels à la dignité et au bien-être de l'individu, à la tranquillité de la société et au développement de la liberté de pensée, de conscience, de religion, de conviction ou de culte, de la liberté de l'individu et de la liberté de la nation, et à la réalisation, comme le plus haut but de l'homme, du bien-être, de la paix et de la liberté.

**ARTICLE 2** que tout être humain a droit à la reconnaissance, en tant qu'individu, de tous les droits énoncés dans la présente Déclaration, sans distinction aucune, fondée sur la race, la couleur, le sexe, la langue, la religion, l'opinion politique ou toute autre conviction, l'origine nationale ou sociale, la fortune, la naissance ou toute autre condition.

**ARTICLE 3** que tous les êtres humains ont droit à la vie, à la liberté et à la sécurité de leur personne.

**ARTICLE 4** que nul être humain ne sera tenu en esclavage ni en servitude; l'esclavage et la traite des êtres humains, y compris le trafic des êtres humains, sont interdits.

**ARTICLE 5** que nul être humain ne sera soumis à la torture, ni à des peines ou à des traitements dégradants.

**ARTICLE 6** que tout être humain a droit à la reconnaissance en tant qu'individu devant la loi.

**ARTICLE 7** que tous les êtres humains sont égaux devant la loi et ont droit à une égale protection de la loi; ils ont droit à une égalité de traitement devant la loi.

**ARTICLE 8** que tout être humain a droit à un recours effectif et à réparation adéquate de la part de la justice dans le cas où les droits énoncés dans la présente Déclaration ont été violés.

**ARTICLE 9** que nul être humain ne peut être arbitrairement détenu.

**ARTICLE 10** que tout être humain a droit à un procès équitable et à une audience publique dans un tribunal indépendant et impartial.

**ARTICLE 11** que tout être humain a droit à la présomption d'innocence; tout individu accusé d'un crime a droit à un procès équitable.

**ARTICLE 12** que nul être humain ne sera l'objet d'interférences arbitraires ou d'attaques à son honneur et à sa réputation.

**ARTICLE 13** que tout être humain a droit à la liberté de mouvement et à quitter son pays, ainsi qu'à revenir dans son pays.

**ARTICLE 14** que tout être humain a droit à l'asile dans d'autres pays, en cas de persécution.

**ARTICLE 15** que tout être humain a droit à la nationalité.

**ARTICLE 16** que tout être humain a droit à se marier, à fonder une famille, à jouir de la liberté de choix de son conjoint et à l'égalité de droits.

**ARTICLE 17** que tout être humain a droit à la propriété individuelle ou collective.

**ARTICLE 18** que tout être humain a droit à la liberté de pensée, de conscience, de religion, de conviction ou de culte.

**ARTICLE 19** que tout être humain a droit à la liberté d'opinion et d'expression; ce droit implique la liberté de rechercher, de recevoir et de répandre des informations et des idées par tous les moyens de communication.

**ARTICLE 20** que tout être humain a droit à la liberté de réunion pacifique et à la liberté d'association.

**ARTICLE 21** que tout être humain a droit à la participation, à l'échelle nationale et internationale, à la vie culturelle, à la vie politique, à la vie économique, à la vie sociale et à la vie publique.

**ARTICLE 22** que tout être humain a droit à la réalisation de son bien-être matériel, à la sécurité, à la santé, à l'éducation, à la culture et à la participation à la vie culturelle, à la vie politique, à la vie économique, à la vie sociale et à la vie publique.

**ARTICLE 23** que tout être humain a droit au travail, à la liberté de choisir son emploi, à des conditions équitables et satisfaisantes de travail et à la sécurité.

**ARTICLE 24** que tout être humain a droit à des vacances payées.

**ARTICLE 25** que tout être humain a droit à un niveau de vie suffisant pour assurer sa santé, son bien-être et celui de sa famille, notamment en ce qui concerne l'alimentation, le logement, les vêtements, l'énergie, le chauffage et le transport.

**ARTICLE 26** que tout être humain a droit à l'éducation; l'éducation doit être gratuite, au moins en ce qui concerne l'enseignement élémentaire et fondamental; l'éducation technique, professionnelle et supérieure doit être accessible à tous; l'éducation doit promouvoir le développement de la personnalité humaine et le respect des droits de l'homme et des libertés fondamentales; elle doit favoriser la compréhension, la tolérance, l'amitié entre les nations, la paix, la liberté et la justice.

**ARTICLE 27** que tout être humain a droit à la participation à la vie culturelle, à la science, à l'éducation et à la culture.

**ARTICLE 28** que tout être humain a droit à un ordre social et international dans lequel les droits énoncés dans la présente Déclaration puissent être pleinement réalisés.

**ARTICLE 29** que tout être humain a des devoirs envers la communauté internationale dans laquelle seul le libre développement de sa personnalité est compatible avec le développement des autres; ce droit implique le respect des droits et libertés d'autrui.

**ARTICLE 30** que rien ne peut être invoqué pour justifier l'abus des droits et libertés énoncés dans la présente Déclaration.

# CHAPTER I    CONTEXT

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## What are human rights?

Every individual is entitled to enjoy human rights without discrimination. On 10 December 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR). The UDHR sets out basic civil, political, economic, social and cultural rights that all human beings should enjoy and has been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil and Political Rights, its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the so-called International Bill of Human Rights.<sup>3</sup>

International human rights are expressed by international law (treaties) and general principles of customary international law.<sup>4</sup> International human rights law creates obligations for States to act in certain ways or refrain from certain acts to promote and protect the human rights and fundamental freedoms of individuals or groups;<sup>5</sup> it generally does not impose direct legal obligations on business.

However, it is now widely accepted that business has the 'responsibility to respect' human rights in every country in which it operates (see page 5). Additionally, national law, including where international instruments are adopted into domestic law, often defines legal liability of business.<sup>6</sup>

Business' responsibility to respect human rights does not diminish the imperative of State obligations to protect, promote, and fulfil human rights, and exists over and above compliance with national laws and regulations.

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## Who are human rights defenders?

A Human Rights Defender (HRD) is someone working for the promotion and protection of human rights, whether the rights of individuals or groups, and whether working individually or in association with others. HRDs can be of any gender and age, from any part of the world and from any professional background.

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3 United Nations Office of the High Commissioner for Human Rights, "International Human Rights Law", [www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx).

4 United Nations Office of the High Commissioner for Human Rights, "What are human rights?", [www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx](http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx).

5 *Ibid.*

6 United Nations Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, (New York and Geneva, 2012), [www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).

They are active in every part of the world, working at local, national level or international levels to secure respect for human rights without resorting to violence. HRDs range from intergovernmental and non-governmental organisations to individuals working within local communities. They may also be government officials, civil servants or members of the private sector.<sup>7</sup>

### *(A) Risks faced by HRDs*

Many **HRDs face significant risks to their lives and livelihoods** on a daily basis. They work under threats of abductions, surveillance, intimidation, violence and sometimes death, as a result of their efforts to defend human rights in the face of harmful business activities.<sup>8</sup> The continuing trend of attacks and acts of intimidation by State and non-State actors against those protesting against actual and potential adverse impacts of business operations and major development projects is of grave concern. The problem has been recognised by relevant United Nations (UN) officials, including the Special Rapporteur on the situation of Human Rights Defenders in his 2015 reports to the Human Rights Council and the General Assembly.<sup>9</sup>

The potential of HRDs in preventing, mitigating and addressing human rights violations in the context of business operations is increasingly well recognised, as are the State obligations and business responsibility to protect them. Nonetheless, implementation of these duties remains patchy.<sup>10</sup>

There is a strong business case for respecting and protecting human rights proactively – on the basis that **it protects a company's reputation, customer and investor base**, assists a company to attract and retain employees and **reduces operational and legal costs**. See chapter 2 for further analysis.

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7 United Nations Office of the High Commissioner for Human Rights, "Who is a defender", [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx).

8 See, for example, recent articles and reports from the UN Special Rapporteur on HRDs ([www.ishr.ch/news/supporting-and-protecting-defenders-who-work-business-and-human-rights](http://www.ishr.ch/news/supporting-and-protecting-defenders-who-work-business-and-human-rights)), Human Rights Watch ([www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects](http://www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects)), Global Witness ([www.globalwitness.org/campaigns/environmental-activists/how-many-more/](http://www.globalwitness.org/campaigns/environmental-activists/how-many-more/)) and FIDH ([www.fidh.org/en/issues/human-rights-defenders/archives-human-rights-defenders/annual-reports/16546-we-are-not-afraid](http://www.fidh.org/en/issues/human-rights-defenders/archives-human-rights-defenders/annual-reports/16546-we-are-not-afraid)). The threats faced by defenders are clearly documented in the UN Working Group on Business and Human Rights' report, submitted to the Human Rights Council in June 2014. Communications received by the Working Group have addressed alleged murders of, attacks on, and acts of intimidation against HRDs who campaign against the adverse impacts of extractive company operations and allegations regarding the impact of mining and hydroelectric projects on indigenous peoples.

9 See the report to be presented to the 70th Session of the General Assembly and the report from the 28th session of the Human Rights Council, [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx).

10 Michael K Addo, "Full implementation of the Guiding Principles means protecting HRDs", 25 November 2014, [www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf](http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf).

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## International human rights standards relevant to business and human rights

### (A) *International initiatives*

Globalisation has increased the reach and impact of business on human rights, such that it has been placed on the agenda of the UN. This has marked a move away from the traditional position where international human rights standards were solely the responsibility of governments. It has also clarified the roles and responsibilities of governments and business with regard to the protection of human rights articulated in a number of resources over the past decade, including:

- the **ILO Declaration on Fundamental Principles and Rights at Work** (ILO Declaration)<sup>11</sup> – adopted in 1998, places obligations on all member States to protect and promote fundamental principles and rights at work, including: freedom of association and the right to collective bargaining; the abolition of child labour and forced labour; and non-discrimination regarding employment.
- the **United Nations Global Compact**<sup>12</sup> in 2000 (Global Compact) – a strategic policy initiative for businesses committed to aligning operations and strategies with **ten universal-accepted principles** in the areas of human rights, labour, environment and anti-corruption;
- the **Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises 2011** (OECD Guidelines)<sup>13</sup> – non-binding principles for responsible global business conduct consistent with applicable laws and international standards, setting out recommendations by governments to multinational enterprises operating in or from adhering countries;
- the **United Nations Protect, Respect, Remedy Framework**<sup>14</sup> (Framework) comprising three pillars:
  - **State's duty to protect** those within its jurisdiction from adverse human rights impacts, including by corporations
  - **Corporations' responsibility to respect human rights**, including by acting with due diligence to avoid infringing the rights of others and addressing adverse human rights impacts
  - The need for greater **access to effective remedies** for those affected by adverse human rights impacts, including non-judicial remedies.
- the **United Nations Guiding Principles on Business and Human Rights 2011** (Guiding Principles)<sup>15</sup> – established to implement the Framework; articulate what human rights are; how business and its activities may affect them; and how to

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11 [www.ilo.org/declaration/lang--en/index.htm](http://www.ilo.org/declaration/lang--en/index.htm).

12 [www.unglobalcompact.org/what-is-gc/mission/principles](http://www.unglobalcompact.org/what-is-gc/mission/principles).

13 [mneguidelines.oecd.org/text/](http://mneguidelines.oecd.org/text/).

14 [www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf](http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf).

15 [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

ensure business prevents or mitigates the risk of adverse impacts. The Guiding Principles stipulate that companies should engage with HRDs for the purpose of conducting due diligence and human rights impact assessment and must also refrain from interfering with defenders rights to freedom of expression, association and assembly.<sup>16</sup> The **Working Group on the issue of human rights and transnational corporations and other business enterprises**,<sup>17</sup> consisting of five independent experts, promotes effective and comprehensive implementation of the Guiding Principles.

- the **Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**<sup>18</sup> (known as IGWG), established in June 2014 by the UN Human Rights Council, was mandated to draft an 'international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'. During the first two sessions, the IGWG will discuss the content, scope, nature and form of the future international instrument. The first session of the working group was held in July 2015.<sup>19</sup> It is essential that civil society is part of the negotiations for the treaty and that HRDs remain at the core of the treaty process and its outcome.<sup>20</sup>

More detail on these initiatives is set out in Annex I.

### **(B) Multi-stakeholder initiatives**

Various stakeholders have established frameworks asking corporations to look beyond their legal obligations and make a genuine commitment to respecting human rights, including:

- the **Equator Principles**<sup>21</sup> – a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects they fund;
- the **Voluntary Principles**<sup>22</sup> – designed to provide guidance to the resources sector in balancing security and safety requirements with human rights responsibilities; and
- the **International Code of Conduct for private security service providers (ICOC)**<sup>23</sup> – sets out human rights based principles for the responsible provision of private security services.

More detail of these initiatives is set out in Annex I.

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16 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

17 [www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx).

18 [www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx](http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx).

19 *Ibid.*

20 [www.ishr.ch/news/first-meeting-igwg-binding-treaty-business-and-human-rights-closes-geneva](http://www.ishr.ch/news/first-meeting-igwg-binding-treaty-business-and-human-rights-closes-geneva).

21 [www.equator-principles.com/](http://www.equator-principles.com/).

22 [www.voluntaryprinciples.org/what-are-the-voluntary-principles/](http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/).

23 [icoca.ch/en/the\\_icoc](http://icoca.ch/en/the_icoc).

### *(C) Commitments to human rights by companies*

As will be discussed further in chapter 3, companies are increasingly developing policies that detail a company's values and set out commitments to protecting human rights. An example includes Microsoft's **Global Human Rights Statement**.<sup>24</sup> Such a commitment creates an important advocacy opportunity; HRDs can push a company to fulfil the commitments it has established itself, which may be more likely to influence a company to respect human rights than seeking that it complies with, for example, multi-stakeholder initiatives.



24 [www.microsoft.com/en-us/download/details.aspx?id=41958](http://www.microsoft.com/en-us/download/details.aspx?id=41958).



### Impacts of business on the human rights of individuals and communities

Guiding Principle 12 provides that the responsibility of business to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those in the International Bill of Human Rights and principles concerning fundamental rights in the ILO Declaration.<sup>25</sup>

Because business enterprises can have an impact on the entire spectrum of human rights, their responsibility to respect applies to all such rights. This responsibility of business is distinct from legal liability, which remains defined largely by national law (as set out below in (B) Indirect impacts). In practice, some rights are at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention.<sup>26</sup>

Business enterprises may also need to consider additional standards, including the rights of individuals belonging to specific groups, due to adverse human rights impacts on them. In this respect, UN instruments have elaborated further on the rights of groups such as indigenous peoples, women, children, and HRDs.<sup>27</sup> Moreover, in armed conflict business should respect international humanitarian law.<sup>28</sup>

#### (A) Direct impacts

Some business operations can directly impact on human rights. The purchase of land for agriculture or industrial use; the conditions of employment in a directly-owned or managed factory; and the pollution of natural water resources by hazardous chemical wastes linked to mining are a few examples. In the case of direct impacts, the company may itself either commit human rights violations directly, or enable the violation through non-action (e.g. the failure to implement adequate fire safety infrastructure resulting in the deaths of factory workers).

#### (B) Indirect impacts

In an increasingly globalised economy, direct impacts of multinationals are decreasing. Instead, violations may occur one, two, or five tiers down the supply chain. The international community and relevant stakeholders continue to debate ways to measure the degree of responsibility held by different actors in supply chains.

25 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 12, [www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf).

26 *Ibid*, Commentary to Article 12, p 14.

27 *Ibid*, Commentary to Article 17, p 18.

28 *Ibid*, Commentary to Article 12, p 14.

The Global Compact says a business is complicit in human rights abuse if by its own actions, or failure to act, it allows another person or business to carry out a human rights abuse, in the knowledge that the act or omission could facilitate human rights abuse.<sup>29</sup>

Business may be, or be perceived as being, 'complicit' in the abuses committed by another party, if they are seen as having benefited from the outcome of the abuse.<sup>30</sup> An example includes a company occupying land from which the government forcefully displaced a community.

Civil or criminal legal sanction will generally only result where it can be established that, in respect of the human rights abuse, the company:

- *caused* or contributed to the abuse by enabling, exacerbating or facilitating it;
- *knew* or should have foreseen that the abuse would be likely to result from its conduct; and
- was *proximate* to the abuse either geographically or through the strength or duration of its relationships.<sup>31</sup>

A company and/or representative may attract legal liability depending on the jurisdiction and the law used to bring the claim (e.g. environmental or corporate). The Guiding Principles require companies to conduct due diligence including considering legal and non-legal, and actual or potential instances of complicity.<sup>32</sup>

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## Impacts of human rights abuse on business

The **risks associated with violating human rights** and the advantages for business in **adopting and implementing a positive approach to the protection of human rights**, can be used by HRDs as leverage points to encourage business to respect human rights. These include:

- reputational harm;
- loss of licence to operate;

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29 UN Global Compact, "Principle Two: Human Rights", [www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle2.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle2.html).

30 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), p 18, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

31 International Commission of Jurists, "Volume I: Facing the Facts and Charting a Legal Path" in *Corporate Complicity and Legal Accountability*, Geneva 2008, [icj.wengine.netdna-cdn.com/wp-content/uploads/2012/06/Vol.I-Corporate-legal-accountability-thematic-report-2008.pdf](http://icj.wengine.netdna-cdn.com/wp-content/uploads/2012/06/Vol.I-Corporate-legal-accountability-thematic-report-2008.pdf).

32 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Commentary to Article 17, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf); International Commission of Jurists, "Volume I: Facing the Facts and Charting a Legal Path" in *Corporate Complicity and Legal Accountability*, Geneva 2008, [icj.wengine.netdna-cdn.com/wp-content/uploads/2012/06/Vol.I-Corporate-legal-accountability-thematic-report-2008.pdf](http://icj.wengine.netdna-cdn.com/wp-content/uploads/2012/06/Vol.I-Corporate-legal-accountability-thematic-report-2008.pdf).

- operational costs;
- legal costs;
- shareholder and Investor challenges; and
- employee dissatisfaction.

### (A) Reputational harm

There appears to be a correlation between reputation and share price, which is influencing company policy.<sup>33</sup> Surveys indicate that while **consumers** may not seek to find out if production occurred in accordance with ethical standards, they will be **influenced by reports of a company's involvement in human rights abuse**.<sup>34</sup> As a result, business is increasingly vulnerable to accusations of wrongdoing.<sup>35</sup> Adverse publicity can lead to reduced profitability, which leads to shareholder dissatisfaction, which in turn leads to pressure for change.

#### PRACTICAL EXAMPLE

Canadian oil company Talisman Energy's share price fell by 15% following a commitment by its government to launch an investigation into 'human rights irregularities' surrounding its Sudanese operations. A large number of pension funds publicly divested their stock.<sup>36</sup> Companies such as Shell <sup>37</sup> and BP <sup>38</sup> have experienced similar impacts.

**Business-to-business relationships are also affected by reputational concerns.** Increased pressure is imposed on companies and governments to conduct human rights due diligence on suppliers, subcontractors and business partners.<sup>39</sup> Many government

33 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

34 GlobeScan, "Re:Thinking Consumption - Consumers and the Future of Sustainability", (Report, 27 November 2012), [www.globescan.com/component/edocman/?view=document&id=51&Itemid=591](http://www.globescan.com/component/edocman/?view=document&id=51&Itemid=591); UNEP, "The Business Case for the Green Economy: Sustainable Return on Investment" (Report, 2012), [www.unep.org/greeneconomy/Portals/88/documents/partnerships/UNEP%20BCGE%20A4.pdf](http://www.unep.org/greeneconomy/Portals/88/documents/partnerships/UNEP%20BCGE%20A4.pdf), SustainAbility and UNEP, "Buried Treasure: Uncovering the Business Case for Corporate Sustainability" (Report, 2001).

35 *Ibid.*

36 SustainAbility and UNEP, "Buried Treasure: Uncovering the Business Case for Corporate Sustainability" (Report, 2001), p 15.

37 Shell UK's disposal of a used oilrig in June 1995 into the North Atlantic, was approved by regulators, but was halted as a result of community opposition incurring considerable costs (estimated to be US\$200 million) and plummeting employee morale. Boycotts against Shell service stations led to lost sales, 50 service stations were vandalised, two firebombed, and one raked with gunfire.

38 *The Guardian* reported that after an oil spill in the Gulf of Mexico in 2010 caused by a leak stemming from careless handling of equipment, BP's share price plummeted by up to 36%. See [www.theguardian.com/business/2010/jun/02/bp-oil-spill-shares-fall-further](http://www.theguardian.com/business/2010/jun/02/bp-oil-spill-shares-fall-further).

39 The Centre For Social Justice and Unseen, "Further Information Transparency in UK Company Supply Chains Bill", [www.medaille.co.uk/Further%20information%20on%20the%20Transparency%20in%20Supply%20Chains%20campaign.pdf](http://www.medaille.co.uk/Further%20information%20on%20the%20Transparency%20in%20Supply%20Chains%20campaign.pdf).

and commercial procurement contracts or legislation now stipulate strict human rights criteria.<sup>40</sup>

Understanding reputational risk of allegations of human rights abuses and acting to **eliminate or minimise risks before they arise** is an important aspect of 'brand protection' and increasingly viewed by key stakeholders – including shareholders, customers, employees, investors and local communities – as the mark of a forward-thinking and well-managed business.<sup>41</sup>

### **(B) Loss of licence to operate**

**Formal government licences** will often be required before a company can operate in a particular jurisdiction.<sup>42</sup> Involvement in human rights abuses can jeopardise such a licence.<sup>43</sup>

A '**social licence to operate**' refers to a company's acceptability in the community within which it operates, the satisfactory nature of its goods and services and behaviour within society. Business needs the continuing support of its stakeholders, including the local community, to prosper; and governments are increasingly looking to responsible business practice as a measure of suitability to operate in their territory.<sup>44</sup>

To attain and protect its social licence to operate, a company must maintain the confidence and trust of NGOs, local communities and the public.<sup>45</sup> Companies implicated in human rights violations anywhere find it harder to gain and maintain this trust.<sup>46</sup> Generally, stakeholders will be more willing to engage constructively with a company with an existing human rights policy, and will be more inclined to talk with the company before considering other action - such as boycotts or litigation.<sup>47</sup>

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40 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

41 Rachel Nicolson, Dora Banyasz and Anna McMahon of Allens, "The duty and business case for corporations to engage constructively with HRDs", 16 November 2014, [www.ishr.ch/news/duty-and-business-case-corporations-engage-constructively-human-rights-defenders](http://www.ishr.ch/news/duty-and-business-case-corporations-engage-constructively-human-rights-defenders).

42 Ruggie, John Gerard, *Just business: multinational corporations and human rights* (New York: W. W. Norton & Co, 2013), pp 10-11.

43 *Ibid.*

44 The Centre For Social Justice and Unseen, "Further Information Transparency in UK Company Supply Chains Bill", [www.medaille.co.uk/Further%20information%20on%20the%20Transparency%20in%20Supply%20Chains%20campaign.pdf](http://www.medaille.co.uk/Further%20information%20on%20the%20Transparency%20in%20Supply%20Chains%20campaign.pdf).

45 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

46 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

47 *Ibid.*

## PRACTICAL EXAMPLE

Shell Petroleum Development Company's (Shell) oil production in Nigeria since the 1950s caused not only environmental damage but also affected Ogoniland communities' livelihoods through pollution of land and water. In the 1970s, Ogoni Chiefs wrote letters of complaint to Shell and the military governor for River States. However their action only led to civil unrest.<sup>48</sup> Shell attempted to address the tension by establishing community development programmes, however these benefited one group and alienated another. Shell's relationship with the Ogoniland community continued to deteriorate. Following protests by the Ogoni Population in 1993, Shell withdrew from the Ogoniland territories. 15 years later Shell also lost its legal license to operate.<sup>49</sup>

### (C) Operational costs

Failing to embed human rights considerations into business activities can have **negative cost** consequences. Environmental impacts and social and economic issues, such as the distribution of project benefits or the quality of on-going consultation, will affect the relationship with the community and often lead to increased costs.

## PRACTICAL EXAMPLE

PT Freeport has one of the largest copper and gold mines in the world, in Indonesia. In 2011, a three-month strike, the longest in Indonesian industrial history, was held by 70% of the workforce at the mine. The operations of the mine have been involved with human rights abuses and environmental degradation since operations began in the 1960s.<sup>50</sup> In addition to continued civil unrest and poor relations with the community (which continues to cripple production today), the cost of the strike was 25% of annual revenue and the agreement of a 40% wage increase over a two-year period.<sup>51</sup>

Operational costs may increase due to a failure to consider human rights, including costs associated with recruitment, absenteeism, production interruption, security, insurance and con-

48 Ruggie, John Gerard, *Just business: multinational corporations and human rights* (New York: W. W. Norton & Co, 2013), pp 10-11.

49 *Ibid.*

50 School of International Service American University, "International Financial Flows: Best Practices for Transnational Investment in Extractive and Land Use Sectors", 2013, p 17, [www.american.edu/sis/gep/upload/WRI-AU-Practicum-Final-Report-5-31-2013.pdf](http://www.american.edu/sis/gep/upload/WRI-AU-Practicum-Final-Report-5-31-2013.pdf).

51 *Ibid.*, p 35.

flict management.<sup>52</sup> Other costs include project modification, material damage, lost productivity and redress.<sup>53</sup> These costs, including from staff time being diverted to operations, are often overlooked.

Security costs to protect staff and facilities, particularly in conflict zones or unstable regions, can be prohibitive. While human rights policies do not remove the need for security precautions, good practice on human rights and adhering to international guidelines governing security arrangements have been shown to lessen the incidence of sabotage, kidnappings, and therefore costs.<sup>54</sup>

Research conducted by SHIFT<sup>55</sup> found that the greatest cost to business is lost revenue from unharnessed future project opportunities, expansion plans or sales.<sup>56</sup> SHIFT estimated that a major mining project with capital expenditure of between US\$3-5 billion will suffer costs of roughly US\$20 million per week in delayed production in Net Present Value terms, largely due to lost sales.<sup>57</sup>

#### PRACTICAL EXAMPLE

**A nine-month delay during construction in 2010 resulted in US\$750 million additional project costs for a Latin American mine, while community conflict led to stoppages that cost another company US\$100 million per year.<sup>58</sup>**

#### (D) Litigation costs

For many companies human rights litigation costs, including those of out of court settlements, are becoming too high to ignore. Winning back trust following litigation is also costly, and sometimes, unobtainable. Companies can seek to avoid these costs by having policies and practices recognising and addressing human rights challenges.<sup>59</sup>

52 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

53 Rachel Davis and Daniel M. Franks, "Costs of Company-Community Conflict in the Extractive Sector", *Corporate Social Responsibility Initiative Report No. 66*. (Cambridge, MA: Harvard Kennedy School, 2014), p 15, [www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict\\_Davis%20%20Franks.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf).

54 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

55 SHIFT is an independent non-profit center on business and human rights that works with companies, governments, international organisations and stakeholders to put the Guiding Principles on Business and Human Rights into practice.

56 Rachel Davis and Daniel Franks, "Costs of Company-Community Conflict in the Extractives Sector", *Corporate Social Responsibility Initiative Report No. 66*. (Cambridge, MA: Harvard Kennedy School, 2014), p 6, [shiftproject.org/sites/default/files/Costs%20of%20Conflict\\_Davis%20%20Franks.pdf](http://shiftproject.org/sites/default/files/Costs%20of%20Conflict_Davis%20%20Franks.pdf).

57 *Ibid*, p 8.

58 *Ibid*, p 19.

59 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

To date, most human rights cases against companies have been prosecuted under the *US Alien Tort Claims Act* (ATCA), although the recent *Kiobel* Supreme Court decision may slow the flow of such cases (discussed further on page 71).<sup>60</sup> Legal proceedings have also been commenced for extraterritorial human rights violations in the United Kingdom, Belgium, Canada, and Australia.

## PRACTICAL EXAMPLE

In 2007, Chiquita admitted to paying the United Self-Defense Forces of Colombia (USDF), labelled a terrorist group, between 1997 until 2004. Chiquita paid a US\$25 million fine for the criminal complaint. Further, a series of lawsuits alleged that Chiquita had been complicit in extrajudicial killings, torture, forced disappearances, crimes against humanity and war crimes carried out by USDF.<sup>61</sup> One claim, brought on behalf of banana workers, trade unionists, social activists and political organisers targeted by USDF, was filed in a US federal court in 2007 under the ATCA. The claim was consolidated with three other similar cases in other federal courts in 2007.

In 2008, an additional lawsuit was filed concerning payments Chiquita admitted making to another paramilitary group, the Revolutionary Armed Forces of Colombia (FARC), also labelled a terrorist group, alleging that Chiquita supported acts leading to the death of five missionaries.<sup>62</sup>

In 2011, two additional lawsuits were filed concerning USDF and FARC on behalf of 931 people. The same year, the cases against Chiquita were consolidated into one large case with allegations concerning the killing of 4000 Colombians. The Court denied Chiquita's application for the case to be dismissed.

In 2012, the Judge held that the Court could examine claims under Colombian law, however Chiquita's appeal of this decision was successful. A Court of Appeal then held that they did not have jurisdiction to decide the case as the relevant conduct occurred outside of the US.<sup>63</sup>

In 2014, the plaintiff sought that the case be re-heard by the Court of Appeal. The US Supreme Court declined to

*continued on next page*

<sup>60</sup> *Ibid.*

<sup>61</sup> Business & Human Rights Resource Centre, "Chiquita Lawsuits (re Colombia)", [business-humanrights.org/en/chiquita-lawsuits-re-colombia](http://business-humanrights.org/en/chiquita-lawsuits-re-colombia).

<sup>62</sup> *Ibid.*

<sup>63</sup> Lawrence Hurley, "U.S. top court rejects Colombian Chiquita human rights suit", Reuters, 20 April 2015, [www.reuters.com/article/2015/04/20/us-usa-court-rights-idUSKBN0NB11520150420](http://www.reuters.com/article/2015/04/20/us-usa-court-rights-idUSKBN0NB11520150420).

hear the case in April 2015.<sup>64</sup> Notwithstanding the decision not to hear the case, this was the first case after the Kiobel decision to have reached the Supreme Court.<sup>65</sup>

## PRACTICAL EXAMPLE

In 2008 and 2009 two large oil spills occurred in Bodo, Ogoniland, Nigeria. Shell did not take responsibility for the spills until 2011, as it claimed the spills occurred through sabotage. The timing as well as the volume spilled was disputed. Shell claims it did not know about the first oil spill until two months after it occurred. In a preliminary judgement in 2014 it was held that Shell may be held liable for damages and clean-up costs. After six years of disputes and a three-year legal battle, the Bodo community received an out of court settlement of £55 million, after an initial offer of £4000. £35 million was paid to affected individuals and £20 million was put back into the community.<sup>66</sup> The settlement was one of the largest ever paid for environmental damage, and the first compensation payment to individuals following an oil spill in Nigeria.<sup>67</sup>

### (E) Shareholder and investor challenges

Financing institutions need to understand and assess business risks – including human rights exposure – of businesses they fund. A human rights policy, risk assessment and management procedures minimise risk and build the confidence of investors.<sup>68</sup> The World Bank, the International Finance Corporation (IFC), the Asian Development Bank, and the European Bank for Reconstruction and Development refer to these risk assessment mechanisms in governance requirements,<sup>69</sup> creating awareness in organisations they fund.

In 2013, a group of banks entitled the Thun Group (Barclays, BBVA, Credit Suisse, ING Bank, RBS Group, UBS, UniCredit), published a Discussion Paper interpreting the Guiding Principles for financial activities: “UN Guiding Principles on Business and

64 Business & Human Rights Resource Centre, “Chiquita Lawsuits (re Colombia)”, [business-humanrights.org/en/chiquita-lawsuits-re-colombia](http://business-humanrights.org/en/chiquita-lawsuits-re-colombia).

65 Lawrence Hurley, “U.S. top court rejects Colombian Chiquita human rights suit”, Reuters, 20 April 2015, [www.reuters.com/article/2015/04/20/us-usa-court-rights-idUSKBN0NB11520150420](http://www.reuters.com/article/2015/04/20/us-usa-court-rights-idUSKBN0NB11520150420).

66 Leigh Day, “Shell agrees £55m compensation deal for Niger Delta community”, 7 January 2015, [www.leighday.co.uk/News/2015/January-2015/Shell-agrees-55m-compensation-deal-for-Nigeria-Del](http://www.leighday.co.uk/News/2015/January-2015/Shell-agrees-55m-compensation-deal-for-Nigeria-Del).

67 *Ibid.*

68 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

69 *Ibid.*

Human Rights, Discussion Paper for Banks on Implications of Principles 16-21".<sup>70</sup>

More than 30 major global banks and financial institutions have adopted the **Equator Principles**, which require businesses to adopt internal policies and processes in order to receive project financing from a financial institution that has adopted the Principles.<sup>71</sup> Further, more than 1300 investment institutions (asset owners, investment managers and professional service providers) have adopted the UN-backed **Principles for Responsible Investment** (UNPRI).<sup>72</sup> The Principles, established in 2006, are intended to develop and promote best practice in responsible investment by signatories that commit to incorporate environmental, social and governance issues into investment analysis and decision-making.<sup>73</sup>

Stock exchanges also increasingly require listed companies to publicly disclose environmental, social, governance, and in some cases human rights related, information.<sup>74</sup>

Finally, there are increasing efforts to assist investors and shareholders in making informed decisions as to the 'human rights value' of their investments, such as the **Corporate Human Rights Benchmark** project, which seeks to assess the 'human rights policy, process and performance' of leading companies.<sup>75</sup>

#### *(F) Employee dissatisfaction*

Responsible business practices, including transparency and appropriate human rights policies, increasingly persuade employees to choose one company over its competitors.<sup>76</sup>

Companies committed to human rights receive more unsolicited employment applications than companies that do not.<sup>77</sup> Additionally, negative reputation is likely to deter applicants. In the aftermath of governance and human rights scandals, companies often report an upsurge in probing questions on human rights during job interviews and falling numbers of job applications.<sup>78</sup>

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70 The Thun Group of Banks, "UN Guiding Principles on Business and Human Rights, Discussion Paper for Banks on Implications of Principles 16-21", October 2013.

71 Equator Principles, "About the Equator Principles", [www.equator-principles.com/index.php/about-ep/about-ep](http://www.equator-principles.com/index.php/about-ep/about-ep).

72 Principles for Responsible Investment, "Signatories to the Principles for Responsible Investment", [www.unpri.org/signatories/signatories/](http://www.unpri.org/signatories/signatories/).

73 Rory Sullivan, Will Martindale, Nick Robins and Helene Winch, "Policy Framework for Long-term Responsible Investment: The Case for Investor Engagement in Public Policy", [www.unpri.org/wp-content/uploads/PRI\\_Case-for-Investor-Engagement.pdf](http://www.unpri.org/wp-content/uploads/PRI_Case-for-Investor-Engagement.pdf).

74 Sarah K Orr, "Emerging Trends In Corporate Sustainability Reporting", *Law360*, New York, 24 February 2014, p 2.

75 [business-humanrights.org/en/corporate-human-rights-benchmark](http://business-humanrights.org/en/corporate-human-rights-benchmark).

76 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005) [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

77 *Ibid*, p 5.

78 *Ibid*.

Many companies also report pressure from employees and representatives to be 'good corporate citizens'.<sup>79</sup> Employees who believe their workplace has high ethical credentials have confidence to display their loyalty and act as enthusiastic ambassadors for the business.<sup>80</sup>

#### PRACTICAL EXAMPLE

**HESTA, one of Australia's largest superannuation funds, recently divested from Transfield, a company operating offshore detention centres. HESTA sold its 3% stake in Transfield valued in excess of \$18 million.<sup>81</sup> Some of HESTA's members had lobbied to blacklist Transfield through direct contact and social media, creating the 'HESTA divest campaign'.<sup>82</sup>**

79 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), p 5, [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

80 The Centre For Social Justice and Unseen, "Further Information Transparency in UK Company Supply Chains Bill", [www.medaille.co.uk/Further%20information%20on%20the%20Transparency%20in%20Supply%20Chains%20campaign.pdf](http://www.medaille.co.uk/Further%20information%20on%20the%20Transparency%20in%20Supply%20Chains%20campaign.pdf).

81 Sally Rose, "HESTA divests Transfield citing detention centre abuses", *Financial Review*, 18 August 2015, [www.afr.com/news/hesta-divests-transfield-citing-detention-centre-abuses-20150818-gjl1krb](http://www.afr.com/news/hesta-divests-transfield-citing-detention-centre-abuses-20150818-gjl1krb).

82 See more at [hestadivest.net/contact.html](http://hestadivest.net/contact.html).



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## BASELINE EXPECTATIONS OF BUSINESS FOR THE PROTECTION OF HUMAN RIGHTS

Business can minimise risks associated with direct and indirect human rights violations through a variety of interventions. HRDs can play a key role in assisting to develop and implement these interventions, in particular by providing essential information about the human rights situation on the ground.

These mechanisms include:

- human rights **due diligence**;
- human rights **policy** and **disclosure**;
- human rights **impact assessment**;
- human rights **reporting** and **monitoring**;
- community and stakeholder **consultation** and **engagement**;
- company **grievance mechanisms** (see page 71).

This section provides the baseline for what business should be doing to comply with international guidelines on business and human rights. It is intended to assist HRDs when engaging with business to encourage the adoption of these practices, including by advising businesses of practices adopted by peers.

### Human rights due diligence

Human rights due diligence is a process that companies should undertake to identify, prevent, mitigate and account for their impacts on human rights, and includes:

- **identifying and assessing** actual and potential adverse human rights impacts of activities and associated relationships on rights holders;
- **integrating** human rights findings from impact assessments across internal processes;
- **tracking** human rights performance to verify whether adverse impacts are being effectively addressed; and
- **communicating** publicly, including formal reporting, on company responses to actual and potential human rights impacts.<sup>83</sup>

Accurately and systematically assessing the risk of human rights violations associated with a company's operations is critical to being able to address impacts and build mitigation mechanisms into ongoing activities.<sup>84</sup> The quality of risk assessments depends

<sup>83</sup> United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 17, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>84</sup> *Ibid*, p 18.

upon the sharing of credible, up-to-date information – in a transparent fashion – between local and national governments, security companies, multilateral institutions and civil society.<sup>85</sup> HRDs can play a crucial role by providing up-to-date information regarding the local situation, community interests and **the impact the company’s operations will have, and have had, on the community** (e.g. when expanded operations require additional land, HRD’s can assist the company to identify the impact on local communities and explore project designs minimising this impact).<sup>86</sup>

For instance, in the context of land acquisition and resettlement, due diligence conducted by business should include reference to the following:

- determining likely impacts on local community members;
- collecting information on persons who will be affected by temporary or permanent land access;
- ascertaining legal and customary land rights, including addressing local land disputes regarding customary land rights;
- conducting appropriate land baseline studies (such as environmental studies); and
- planning for livelihood restoration on resettlement.<sup>87</sup>

When considering whether to enter into arrangements with new suppliers, joint venture partners or host States, a company should conduct due diligence on the proposed partner’s:

- human rights policies (discussed below); and
- reputation and historical activities within relevant communities, including disputes or litigation.<sup>88</sup>

## PRACTICAL EXAMPLE

### Rio Tinto Exploration, Democratic Republic of the Congo

Rio Tinto Exploration (RTX) is part of a joint venture, the Orientale iron ore project, exploring for iron ore in the Democratic Republic of the Congo (DRC).

As Rio Tinto had no previous presence in the DRC, it implemented a ‘New Country Entry’ process, which included a detailed assessment of human rights risks, with the assistance of external experts.<sup>89</sup> The Danish Institute

85 The Secretariat for the Voluntary Principles on Security and Human Rights “Risk Assessments”, [www.voluntaryprinciples.org/voluntary-principles/risk-assessment](http://www.voluntaryprinciples.org/voluntary-principles/risk-assessment).

86 International Finance Corporation, “Guiding Note 5, Land Acquisition and Involuntary Resettlement”, 1 January 2012, p 1.

87 International Finance Corporation, “Guiding Note 5, Land Acquisition and Involuntary Resettlement”, 1 January 2012.

88 *Ibid.*

89 Rio Tinto, “Human Rights training in the DRC”, [www.riotinto.com/sustainabledevelopment2011/governance/human\\_rights.html](http://www.riotinto.com/sustainabledevelopment2011/governance/human_rights.html).

for Human Rights (DIHR) conducted a desktop human rights risk assessment for DRC operations, identifying the legacy of human rights abuse in the region as posing a major risk.<sup>90</sup> Other human rights issues were also flagged, including security arrangements, the need for a complaints procedure, and engagement with indigenous peoples. DIHR recommendations were integrated into management plans that included proactive mitigation strategies.<sup>91</sup>

RTX also engaged an external consultant with experience in the DRC mining context to conduct human rights training, attuned to employee needs.<sup>92</sup>

*Note: The above example was taken from sources prepared by Rio Tinto.*

## Human rights policy

Businesses should have a human rights policy expressing their commitment to respect human rights.<sup>93</sup> Broadly, a human rights policy publicly sets out a company's responsibilities, commitments, and expectations regarding human rights and should be appropriate to the size and circumstances of the business.<sup>94</sup> The policy could govern:

- relations with local communities and with human rights defenders;
- land acquisition required for operations;
- security required for operations; and
- labour rights and standards for employees and contractors required for operations.<sup>95</sup>

The Guiding Principles provide that this policy should:

- be **approved at the most senior level**;
- be **informed** by relevant internal and/or external **expertise**;
- stipulate the business' **human rights expectations** of personnel, business partners and others linked to its operations, products or services;
- be **available publicly** and **communicated** internally and externally to all personnel, business partners and relevant parties;

90 Rio Tinto, "UN Global Compact, Communication on progress 2009" Report, 2012, p 4, [www.riotinto.com/sustainabledevelopment2013/\\_pdf/ungc\\_2009.pdf](http://www.riotinto.com/sustainabledevelopment2013/_pdf/ungc_2009.pdf).

91 *Ibid.*, p 5.

92 Rio Tinto, "Why human rights matter" Report, January 2013, p 64, [www.riotinto.com/documents/ReportsPublications/Rio\\_tinto\\_human\\_rights\\_guide\\_-\\_English\\_version.pdf](http://www.riotinto.com/documents/ReportsPublications/Rio_tinto_human_rights_guide_-_English_version.pdf).

93 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 16, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

94 *Ibid.*

95 *Ibid.*, Commentary to Article 16.

- be **reflected in operational policies and procedures** necessary to embed it throughout the business enterprise, and
- **ongoing compliance should be monitored.**<sup>96</sup>

Good practice also involves taking steps to ensure a company's own human rights policy is incorporated into third party agreements.<sup>97</sup> For example, in the area of labour standards, in addition to the ILO Declaration principles,<sup>98</sup> this might include:

- ensuring employees throughout the supply chain can join trade unions and bargain collectively regarding conditions of employment;
- ensuring suppliers and third parties have appropriate procedures to prevent hiring minors, and monitor work conditions to ensure they do not amount to forced labour; and
- requiring suppliers and third parties to implement policies and procedures leading to the elimination of discrimination in employment and work conditions.

A business should monitor its contractors' performance against its human rights policies, and take steps to manage gaps in compliance.<sup>99</sup> HRDs can play a key role in assisting companies to conduct this monitoring.

In his recent report presented to the UN General Assembly in 2015, the Special Rapporteur on the situation of HRDs made a number of recommendations to both States and businesses to respond to the particular vulnerability of HRDs working in the field of business and human rights.<sup>100</sup> Both States and businesses should engage HRDs in human rights impact assessment and due diligence processes for major projects, on the basis that effective up-front engagement can avoid human rights risks and costs.

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96 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 16, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

97 *Ibid*, Commentary to Article 16, p 17.

98 Freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; elimination of discrimination in respect of employment and occupation.

99 Sheldon Leader, David Ong, editors, *Global Project Finance, Human Rights and Sustainable Development*, (Cambridge University Press, September 2013).

100 See the report to the 70th Session of the General Assembly, [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx).

## PRACTICAL EXAMPLE

The 2010 Californian Transparency in Supply Chains Act requires retailers and manufacturers operating in California earning above \$100 million in annual gross receipts to disclose efforts to eradicate slavery and human trafficking from direct supply chains for goods offered for sale. The disclosure must be posted on the retailer's or manufacturer's website, linked conspicuously and easily with the homepage.<sup>101</sup> However, in practice, this requirement is not always met.<sup>102</sup>

### Human rights impact assessment

Human Rights Impact Assessments (HRIA) are a powerful and effective part of the due diligence process. An HRIA identifies, measures, and/or prevents the actual or potential impacts on human rights brought about by a specific investment project or business activity, or resulting from policies, laws, or government programmes.<sup>103</sup> An HRIA measures the discrepancy between the commitments made by the State (human rights in theory) and the real possibility for individuals, groups and communities to realise these rights (human rights in practice).<sup>104</sup> An HRIA may be used to evaluate both activities of which the specific aim is to improve a human rights situation, and activities that may have a positive or negative human rights impact without this being part of their objective.<sup>105</sup>

*Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (a study commissioned by the Nordic Trust Fund and the World Bank in February, 2013) analyses existing literature on HRIA tools to identify the essential elements of an HRIA.<sup>106</sup> For the purpose of this paper, it is worth noting that one essential element of an HRIA tool is the requirement of effective participation of rights holders.

101 The Corporate Social Responsibility Newswire, "85 firms still 'silent' on California Transparency in Supply Chains Act", [www.csrwire.com/press\\_releases/36712-85-firms-still-silent-on-California-Transparency-in-Supply-Chains-Act](http://www.csrwire.com/press_releases/36712-85-firms-still-silent-on-California-Transparency-in-Supply-Chains-Act).

102 *Ibid.*

103 "Human Rights Impact Resource Centre: Overview," accessed 19 November, 2013, [www.humanrightsimpact.org/hria-guide/overview/](http://www.humanrightsimpact.org/hria-guide/overview/); "Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development" (Commissioned by the Nordic Trust Fund and the World Bank, February 2013); NomoGaia, "Human Rights Impact Assessment Tools", accessed 14 January 2014, [nomogaia.org/tools](http://nomogaia.org/tools).

104 Human Rights Impact Resource Centre. "Introduction to Human Rights Impact Assessment", [www.humanrightsimpact.org/fileadmin/hria\\_resources/Introduction\\_to\\_Human\\_Rights\\_Impact\\_Assessment.pdf](http://www.humanrightsimpact.org/fileadmin/hria_resources/Introduction_to_Human_Rights_Impact_Assessment.pdf).

105 "Human Rights Impact Resource Centre: Overview," accessed 19 November, 2013, [www.humanrightsimpact.org/hria-guide/overview/](http://www.humanrightsimpact.org/hria-guide/overview/); "Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development" (Commissioned by the Nordic Trust Fund and the World Bank, February 2013); NomoGaia, "Human Rights Impact Assessment Tools", accessed 14 January 2014, [nomogaia.org/tools](http://nomogaia.org/tools).

106 *Ibid.*, for a summary see "Evaluating Human Rights Impact Assessments of Projects", [projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf](http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf), p 50.

Participation is essential not only for the quality of the HRIA, but also so that all stakeholders consider its results legitimate.<sup>107</sup>

## PRACTICAL EXAMPLE

Rights & Democracy Canada has developed a community-based HRIA tool called 'Getting it Right', which offers a bottom-up approach with a focus on affected communities' concerns and viewpoint on human rights realisation. Oxfam and other NGOs, community organisations, and communities have completed pilots using 'Getting it Right' as an accessible, practical, and interactive guide.<sup>108</sup>

## PRACTICAL EXAMPLE

### TVI Resource Development's community engagement in the Philippines<sup>109</sup>

TVI, a Canadian-based mining company, had a long history of conflict with indigenous communities near a copper mine in Mindanao. The community believed their informed consent to development had not properly been obtained. TVI then developed a mechanism using traditional community structures to address grievances.

Under the mechanism, community members can raise grievances with the Tribal Council of Elders, a traditional community council who then invites company representatives to attend a Council meeting.<sup>110</sup> TVI then investigates the complaints, engaging independent consultants, if necessary. Disagreements have arisen in regards to land rights, indigenous peoples' rights to ancestral domains, loss of livelihood and displacement.<sup>111</sup> Ongoing disputes are resolved through Council hearings, or the Philippine legal system.

The company claims this process has increased trust between TVI and the local community.<sup>112</sup>

*Note: It is important to note that there have been a significant number of extra-judicial killings of human rights defenders in the region in which TVI operates and that the grievance mechanism discussed above is entirely*

107 "Evaluating Human Rights Impact Assessments of Projects", [projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf](http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf), p 50.

108 Oxfam America, "Community-based Human Rights Impact Assessment Initiative", [policy-practice.oxfamamerica.org/work/private-sector-engagement/community-based-human-rights-impact-assessment-initiative](http://policy-practice.oxfamamerica.org/work/private-sector-engagement/community-based-human-rights-impact-assessment-initiative).

109 International Institute for Environment and Development, "Dispute or Dialogue? Community perspectives on company-led grievance mechanisms", 2013, pp 121-126, [pubs.iied.org/pdfs/16529IIED.pdf](http://pubs.iied.org/pdfs/16529IIED.pdf).

110 *Ibid*, p 124.

111 *Ibid*, p 125.

112 *Ibid*, p 126.

113 Mark A Cadiz, "Philippines: A blind eye to human rights violations", *The Philippine Reporter*, 22 December 2014, [philippinereporter.com/2014/12/22/philippines-a-blind-eye-to-human-rights-violations/](http://philippinereporter.com/2014/12/22/philippines-a-blind-eye-to-human-rights-violations/).

*inadequate to address such violations.<sup>113</sup> In such cases, the State has a legal obligation to ensure that killings are fully and independently investigated and perpetrators held accountable. For its part, TVI has a legal obligation to undertake due diligence and take all such steps as are necessary to ensure that it is not involved, directly or indirectly, in such killings and that it cooperates fully with any investigation.*

## Human rights monitoring and reporting

### Monitoring and evaluation

Monitoring and evaluation is essential to:

- **measure compliance** and progress with internal and external policies, standards, and commitments;
- **assess** whether **human rights impacts have occurred**, whether on a systemic basis, their consequences and whether they are being addressed;
- identify **whether risk mitigation measures are being effective**, and if not, determine the cause and provide a basis for corrective actions;
- identify whether 'early warnings' of human rights violations are **communicated to management**, and if not, advise on how to resolve these challenges;
- provide **transparency and accountability** to those affected.<sup>114</sup>

HRDs encourage companies to ensure this monitoring is credible, ideally conducted by evaluators approved and trusted by concerned communities. Companies using only internal mechanisms may be harder to engage. They may also be more susceptible to questions regarding the authority and credibility of their monitoring practices. Financial institutions that have adopted the Equator Principles may be subject to independent compliance reviews of a project's compliance with the Principles and ongoing monitoring and reporting over the life of a loan.<sup>115</sup>

### Human rights reporting

Companies should regularly report, internally and externally, on positive and negative aspects of their human rights practices, facilitating human rights dialogue and increasing accountability.<sup>116</sup>

114 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), pp 14 -15, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

115 Equator Principles, "What Steps do Equator Principles Financial Institutions Take to Ensure the Equator Principles are Followed?", [www.equator-principles.com/index.php/about-ep/governance-and-management/42-about/frequently-asked-questions/23-what-steps-do-equator-principles-financial-institutions-take-to-ensure-the-equator-principles-are-followed](http://www.equator-principles.com/index.php/about-ep/governance-and-management/42-about/frequently-asked-questions/23-what-steps-do-equator-principles-financial-institutions-take-to-ensure-the-equator-principles-are-followed).

116 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 21, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

Businesses may be reluctant to report publicly on human rights impacts and due diligence processes due to commercial sensitivities, potential legal liability, and/or reputational risks. Nevertheless, the UN Guiding Principles state that 'business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them'.<sup>117</sup> Further, if the company is a signatory to the UN Global Compact, it is required to make an annual **public** disclosure to stakeholders on its progress in implementing the Compact principles.<sup>118</sup>

External reporting must be accessible and provide sufficient information for stakeholders to evaluate human rights performance.<sup>119</sup> Communication strategies should ensure information is made available through various mediums and languages; culturally appropriate; gender sensitive; can be accessed by all stakeholders; and does not pose a risk to affected parties.<sup>120</sup>

The increasing demand for corporate transparency on human rights has led to a corresponding trend of using non-financial reporting obligations to pursue accountability for human rights violations. Several governments have adopted or modified legislation requiring companies to report on these issues. The United Kingdom amended its *Companies Act* to require companies to report on human rights issues in annual reports;<sup>121</sup> as identified above, stock exchanges, including the NYSE Euronext and NASDAQ, now ask listed companies to disclose environmental, social and governance information;<sup>122</sup> the *US Dodd Frank Wall Street Reform and Consumer Protection Act*, requires all oil, gas and mining companies registered with the Securities and Exchange Commission (SEC) to publicly report payments to foreign governments, and to disclose of measures to exercise due diligence in supply chains.<sup>123</sup> Some of the amendments have been highly controversial and the SEC, the subject of heavy lobbying, has thus far failed to issue necessary regulations to implement these obligations.<sup>124</sup>

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117 *Ibid.*

118 United Nations Global Compact and Stichting Global Reporting Initiative (GRI), "Making the Connection: Using the GRI G4 Guidelines to Communicate Progress on the UN Global Compact Principles", p 4, [www.globalreporting.org/resourcelibrary/UNGC-G4-linkage-publication.pdf](http://www.globalreporting.org/resourcelibrary/UNGC-G4-linkage-publication.pdf).

119 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), pp 23-24, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

120 *Ibid.*, p 20.

121 Business and Human Rights Resource Center, "United Kingdom", [business-humanrights.org/en/united-kingdom?issues%5B%5D=10842](http://business-humanrights.org/en/united-kingdom?issues%5B%5D=10842).

122 Aarti Ramachandran, "Reporting on Human Rights Performance, a new era?", 7 October 2014, [www.contextsustainability.com/reporting-on-human-rights-performance-a-new-era/](http://www.contextsustainability.com/reporting-on-human-rights-performance-a-new-era/).

123 U.S. Securities and Exchange Commission, "Specialized Corporate Disclosure", [www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml](http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml).

124 Business & Human Rights Resource Centre, "Lobbying 'seeking to undermine' Dodd-Frank conflict minerals legislation", [business-humanrights.org/en/conflict-peace/conflict-minerals/lobbying-seeking-to-undermine-dodd-frank-conflict-minerals-legislation](http://business-humanrights.org/en/conflict-peace/conflict-minerals/lobbying-seeking-to-undermine-dodd-frank-conflict-minerals-legislation).

## PRACTICAL EXAMPLE

In April 2014, the European Parliament published guidelines on the disclosure of non-financial and diversity information by certain large companies and groups. It requires companies to disclose in their management report information on policies, risks and outcomes on environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, as well as diversity in their board of directors. It is intended that this will provide investors and other stakeholders with a more comprehensive picture of a company's performance.

The new rules will only apply to some large companies with more than 500 employees. This includes listed companies as well as other public-interest entities, such as banks, insurance companies, and other companies that are so designated by Member States because of their activities, size or number of employees. The scope includes approximately 6 000 large companies and groups across the European Union.

The directive leaves significant flexibility for companies to disclose relevant information in the way that they consider most useful, or in a separate report.

## PRACTICAL EXAMPLE

In June 2013, the US Government launched the 'Burma responsible investment reporting requirements', a set of requirements developed in light of reforms by the Government of Myanmar, which aim to be a model for responsible investments, and propagate positive change in Myanmar.

### There are two main requirements:

- 1** Any US person (legal entity or individual) undertaking new investments or exercising rights under an agreement drafted in connection with Myanmar Oil and Gas Enterprise (MOGE), must brief the Department of State on the agreement;
- 2** If a US person carries out an investment over \$500,000, two reports must be submitted:
  - (a) A public report including information about human rights and environmental impact, information concerning the use of security providers, the acquisition of land, financial reports; and
  - (b) A report issued to the US Government with the addition of risk prevention and mitigation as well as any communications with military or paramilitary groups.<sup>125</sup>

The initiative was welcomed by NGOs, however concerns remain including the counter productive labelling of confidential information, the threshold amount for the report, the reporting of policies and guidelines without a basis in practice, the lack of requirements to report on business partners, the ability of companies to bypass reporting due to inadequate language, and the insufficient reflection of international standards especially regarding land rights.<sup>126</sup>

SHIFT conducted research and consultation regarding company reporting to external stakeholders as part of its Human Rights Reporting and Assurance Frameworks Initiative (**RAFI**). It suggested that a company's failure to meet its responsibility to respect human rights is 'material' for all stakeholders, including investors and rights-holders, and should be included in company reporting and review.<sup>127</sup>

<sup>125</sup> U.S Department of State, "Fact Sheet: Burma Responsible Investment Reporting Requirements", 19 June 2013, [www.humanrights.gov/dyn/fact-sheet-burma-responsible-investment-reporting-requirements.html](http://www.humanrights.gov/dyn/fact-sheet-burma-responsible-investment-reporting-requirements.html).

<sup>126</sup> Accountability Council et al, "Joint Comment on the Proposed Reporting Requirements on Responsible Investment in Burma", 25 March 2013, [www.earthrights.org/sites/default/files/Burma-Reporting-Requirements-Joint-NGO-Submission-March-25-2013.pdf](http://www.earthrights.org/sites/default/files/Burma-Reporting-Requirements-Joint-NGO-Submission-March-25-2013.pdf).

<sup>127</sup> *Ibid*, p 43.

'Materiality' is a fundamental principle of financial reporting in the US. It refers to information that is important to disclose in order to truly reflect the financial situation and operational performance of a corporation.<sup>128</sup> According to the Supreme Court of the US, information is material if it presents 'a substantial likelihood that disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available'.<sup>129</sup>

From a public interest perspective, an informed civil society can use information from human rights impact reporting to strengthen its strategies for demanding corporate accountability.<sup>130</sup>

#### PRACTICAL EXAMPLE

The Sustainability Accounting Standards Board has created and disseminated norms for companies trading on US stock exchanges requiring disclosure of material information on sustainability for the benefit of investors and the public. It aims to advance the quality and utility of sustainability reporting by developing specific standards derived from the particular materiality issues associated with a given industry."<sup>131</sup>

#### PRACTICAL EXAMPLE

In August 2007, Anglo American, BHP Billiton and Xstrata (owners of the Cerrejon coal mine in Colombia) commissioned a 'social review' of Cerrejon's past and current social engagement by a panel of independent experts to provide an assessment of the mine's social impact. The panel's recommendations provided insight into the resolution of a number of legacy issues, notably regarding concerns and grievances over the forcible removal and resettlement of the Tabaco community in 2000 - 2001.<sup>132</sup>

In 2008, the company responded with an action plan to address the findings.<sup>133</sup> Each year since, the company has published a progress report on its commitments. HRDs

*continued on next page*

128 Alejandro González, *Evaluating the Human Rights Impact of Investment Projects, background, best practices and opportunities* (Poder, December 2014, Mexico/ New York), p 107, [projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf](http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf).

129 *Ibid*, p 31.

130 *Ibid*, p 27.

131 *Ibid*, p 42.

132 International Council on Mining and Minerals, "Human Rights in the Mining and Metals Industry: Handling and Resolving Local Level Concerns & Grievances" (Report, October 2009), [www.icmm.com/document/691](http://www.icmm.com/document/691), p 20.

133 Carrejon, "Independent third party review information", [www.cerrejon.com/site/english/sustainable-development-%E2%80%A2-social-responsibility/performance/third-party-review-of-social-programs.aspx](http://www.cerrejon.com/site/english/sustainable-development-%E2%80%A2-social-responsibility/performance/third-party-review-of-social-programs.aspx).

say there has been some success with the social review including improvement in resettlement policies. However, the recommendations have not been implemented satisfactorily and there has been no construction of new housing.

As mentioned in a report by DanWatch in May 2010 ‘to this day, many of Tabaco’s 350 families still live as internally displaced people...’<sup>134</sup>

## PRACTICAL EXAMPLE

BP identified human rights risks associated with the provision of security around its operations in Azerbaijan and Georgia. It commissioned an international law firm to conduct regular, independent assessments of its implementation of the Voluntary Principles. Each assessment involved gathering evidence from the field and interviewing representatives from government, security, NGOs, local communities and BP. The assessments are published on BP’s website.<sup>135</sup>

### Community and stakeholder consent, consultation and engagement

Companies must ensure they engage appropriately and consult with local communities, particularly with indigenous peoples, who must give **free, prior and informed consent** for dealings with their land.<sup>136</sup>

To ensure effective communication with the community, a company may need to provide access to unbiased expert advice or engage a credible third party. HRDs can assist with this communication.

Adopting a human rights based approach assists to ensure consultation is meaningful. Such an approach would be **participatory; non-discriminatory; transparent**, in that information is shared openly with the community; **accessible**, in that it is in various formats (including verbal where literacy is low), languages and locations convenient and non-threatening to diverse groups within the community;<sup>137</sup> and **accountable**. Engagement would be **on-going**,

134 DanWatch, “The Curse of Coal: our coal consumption causes diseases, pollution, and poverty in Colombia”, May 2010, [www.multiwatch.ch/cm\\_data/100505\\_danwatch\\_cerrejon.pdf](http://www.multiwatch.ch/cm_data/100505_danwatch_cerrejon.pdf).

135 BP, “Voluntary Principles on Security and Human Rights Implementation Guideline”, p 20, [www.bp.com/content/dam/bp/pdf/sustainability/group-reports/VPs\\_Implementation\\_Guideline\\_Extended\\_Summary.pdf](http://www.bp.com/content/dam/bp/pdf/sustainability/group-reports/VPs_Implementation_Guideline_Extended_Summary.pdf).

136 The Guiding Principles reference the importance of consulting with affected stakeholders at several key moments: in identifying and assessing actual and potential human rights impacts; in tracking and reporting on company efforts to prevent and manage those impacts; and in designing effective grievance mechanisms and remediation processes.

137 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, (New York and Geneva, 2011), pp 19-20, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

**two-way**, in **good faith** and **responsive** and involve stakeholder mapping (discussed briefly at on page 40).<sup>138</sup>

Companies may also engage other stakeholders such as:

- labour organisations representing its employees – themselves HRDs – regarding managing labour standards and related human rights issues;
- national human rights institutions (NHRIs), particularly those complying with the Paris Principles,<sup>139</sup> who can advise on local community and conflict dynamics, identify human rights issues associated with operating in an area, and partner on human rights training.



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<sup>138</sup> *Ibid.*

<sup>139</sup> Principles relating to the Status of National Institutions (The Paris Principles) are a set of international standards which frame and guide the work of national human rights institutions. See [www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx).



## CHAPTER 4 STRATEGIC ENGAGEMENT

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This section discusses a range of strategies to engage and influence companies and other relevant stakeholders on issues of business and human rights. The discussion is informed both by the extensive experience of those commercial law firms which provided input to this publication in working with and advising corporate clients, and ISHR's 30 years of experience working with and advising human rights defenders. The strategies discussed are not exhaustive and their relevance and application will vary according to the contexts within which human rights defenders work and the overall objectives they are seeking to achieve.

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### **How to engage with a view to preventing and mitigating human rights violations by business**

#### *(A) Assessing the context*

Before seeking to engage with business regarding a perceived human rights abuse, HRDs are encouraged to carefully consider the risks to themselves and others. What do you know about this business and its operators? how has it responded to criticism in the past? What do you know about local law enforcement agencies and their willingness to protect individuals? Are you aware of, or concerned about, corruption in local law enforcement or government agencies? How free is the media in your local community to comment critically on matters that might be embarrassing to a company or government? The answers to these questions will be central to the steps that need to be taken to address human rights abuses.

Various strategies can be adopted to engage effectively with business. The most effective will depend on many factors including the operational environment, the company, and the attitude of the individual you are seeking to engage with. This section provides some tools for engagement with business on human rights issues. In some circumstances it may be beneficial initially to attempt informal engagement with business, to try and bring about change cooperatively, prior to attempting to apply pressure through the use of external means (press, or formal, judicial actions).

These tools are also relevant when engaging with shareholders and States.

#### *(B) Lobbying*

Lobbying business, including directors, and potentially parent companies and investors in another jurisdiction, is a tool often adopted by HRDs to effect change in human rights practice.

This could include:

- **Letters:** letters politely raising concerns and asking for specific action can be sent to local government officials, editors of newspapers, or embassies and company officials in host countries. Numerous letters can demonstrate the extent of awareness and concern in society; individually written letters can demonstrate depth of knowledge and personal concern; letters from eminent people can have a large impact.
- **Petitions:** whilst the common use of petitions means they may have lost their former impact, they can still be effective tools for voicing concern. They provide focus for groups and public activities, are a simple and inexpensive (in particular online petitions) way to express support and illustrate the level of public/community concern.
- **Public events and protests:** street protests and demonstrations are an important lobbying technique at the local or group level (i.e. multiple coordinated protests in countries in which a company operates, including the country in which it is registered). To ensure an event is effective and as safe as possible, it is important to be clear about the risks and what you are trying to achieve.
- **Alternative summits:** these have been successfully used to create awareness of an issue. NGOs can organise alternative forums at meetings of international or intergovernmental organisations, to lobby the official meetings and set out their human rights agenda.
- **Coordinated and extensive campaigning** amongst civil society.

#### PRACTICAL EXAMPLE

The Public Eye Award, created in response to the World Economic Forum, places a critical light on business practices. The Award serves to remind companies around the globe that the social and economic consequences of their business practices hurt not only people and the environment but also their reputations. It developed from a conference to a trendsetting online campaign with global reach.<sup>140</sup>

#### PRACTICAL EXAMPLE

In 2002, international trade union federations and labour rights organisations formed the Play Fair Alliance asking the sporting goods industry to improve working conditions in factories. The Alliance ran public campaigns and produced reports setting out ways brands could improve workers' lives.

This led to a meeting in 2007 in Hong Kong between the Alliance and major sporting goods companies to discuss

<sup>140</sup> See more at [publiceye.ch/about-us/](http://publiceye.ch/about-us/).

wages and working conditions. The meeting identified the need to move from a high level, to a practical 'what will work on the ground' discussion.

A workshop was then held in Jakarta in 2009, facilitated by a rights activist. The local trade unions set out the main agenda points. While the brands did not agree to all the unions' requests, they committed to delivering improvements in the exercise of the right to freedom of association, including developing a joint protocol between unions, brands and suppliers to better define workplace activities of unions; supporting the reduced use of contract labour by suppliers; and investigating and developing approaches to improve pay. An action plan was developed at the end of the workshop to progress the agreement reached.<sup>141</sup>

### (C) Media

The media can amplify voices not otherwise heard. When pitched well, media coverage can contribute to mobilising a response and influence those responsible for public policy. It can provide an important alternative narrative to the official State-sanctioned line. By making a human rights violation public, HRDs can exert pressure, and hold both business and governments accountable. They can also change societal attitudes by informing people about what is happening on the ground.

In addition, journalists can be defenders of defenders. They document and report violations against HRDs, and as a result frequently become targets themselves. As such, it should be remembered that 'the media' is not a separate, protected dimension; it is made up of individuals who, at the national level, can themselves be highly vulnerable.

Media advocacy requires a carefully planned strategy, effective messaging, an understanding of relevant media outlets, and an awareness of which media tools will best suit the strategy.<sup>142</sup> A **media strategy** should be developed prior to any communication with the media, the specific issue isolated, a set of possible solutions determined, suggestions regarding steps that can be taken to achieve those solutions discussed, and the people who can take those steps identified.<sup>143</sup>

Organisational steps can facilitate effective media advocacy, including designating a spokesperson – an individual within an organisation selected to communicate with the media.<sup>144</sup> The fewer peo-

141 Adidas Group, "Sustainability review 2009", p 30, [www.adidas-group.com/media/filer\\_public/2013/08/26/adidas\\_online\\_review\\_2009.pdf](http://www.adidas-group.com/media/filer_public/2013/08/26/adidas_online_review_2009.pdf).

142 The Advocates for Human Rights, "Chapter 7: Advocacy", p 106, [www.theadvocatesforhumanrights.org/uploads/ch\\_7\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/ch_7_2.pdf).

143 *Ibid*, p 106-107.

144 *Ibid*.

ple communicating with media, the more likely the message will be presented consistently and clearly.

The following are some of the media tools that could be used by HRDs:

**Investigative journalism:** this is one of the most effective media tools. If you believe you have information that could lead to a good investigative piece, identify the journalist or news media outlet you think would be interested in the story and contact them. Succinctly outline the story and provide them with the information and contacts they will need to prepare their reporting. A thorough journalist will want to investigate both sides of the story, which could mean also contacting the relevant business or government representatives.

**Media briefings:** in-depth background briefings for a small number of journalists can help to develop knowledge and understanding of key issues or events and ensure that awareness of the human rights dimensions of a company's activities.

**Interviews:** in preparing for a media interview you should familiarise yourself with the format and style of the programme and the angle of the story and prepare to counter arguments in a professional and credible manner.

**Press releases:** these can be a good way to grab attention for human rights issues. Well written, informed press releases may more likely be published if they provide journalists or editors with ready-made content, which requires little work from them.

**Media/press conference:** is an established way of generating coverage which can be held virtually anywhere, but generally requires the media to make more effort as reporters or television crews will need to attend. This means a strong story, which the media will regret missing, will be required for them to make this effort.

**Letter to the editor:** letters that are concise, link human rights to local issues, and refer to stories the newspaper or magazine has already published are more likely to be selected.

**Op-eds:** by allowing an author to address an issue in greater depth than a letter to the editor, an op-ed (opinion editorial) invests more authority in a viewpoint. Publications often provide guidelines for op-eds and HRDs can gain clarity on expectations from the publication's staff if necessary. HRDs may also seek to publish op-eds signed by an influential business, opinion head or UN expert.

**Social media:** increasingly social media is being used to keep people informed, and influence the views of the public, governments and business about human rights violations. The speed at which a story progresses through social media assists to mobilise a response. Advocacy through social media facilitates collaborative statements by numerous organisations, as well as support – such as by re-tweeting or sharing a publication from another organisation.

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## Whom to engage when seeking to prevent and mitigate human rights violations by business

### (A) Assessing the context

When engaging with business, it is essential to identify all of the relevant stakeholders through a mapping process. In particular, a power map, which is a visual tool starting with a person or institution you want to influence, can be useful. Mapping processes can identify the project's sphere of influence and the scope of business activities. A stakeholder mapping process can assess stakeholder power, influence, rights, interests, proximity and needs; it also identifies duty-bearers and their obligations.

#### *If the context is dangerous*

If you are operating in a situation where neither the rule of law, nor the press nor public opinion are likely to be mobilised, either to bring about change or to protect you in your activities, it is imperative that you assess your risk and increase your security,<sup>145</sup> and consider seeking collaboration with organisations or groups external to your community. Such collaboration serves several important functions.

- Firstly, it protects you by ensuring that the point of contact with the business comes from outside the community, and is therefore less vulnerable.
- Secondly, it provides you with some protection in that, even if you are identified as the 'whistleblower', you will be seen to be connected to a larger, external body, which is less likely to be silenced by threats or intimidation, than may be the case with an individual. Such increased visibility may discourage threats or intimidation.

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<sup>145</sup> See for instance Protection International's *New Protection Manual for Human Rights Defenders* (Belgium, 2009), [protectioninternational.org](http://protectioninternational.org) or Frontline Defenders' security trainings at [humanrightsdefenders.org/security-training](http://humanrightsdefenders.org/security-training).

- Thirdly, a larger, external group is likely to have access to resources, expertise and contacts, which may enable it to be more effective than an individual or small local group in bringing about change.

Groups that may be contacted include:

- national or international NGOs or human rights bodies, such as Frontline Defenders, the International Service for Human Rights, Human Rights Watch or FIDH;
- national or international trade unions, such as the International Trade Union Federation or, for example, in the agricultural sector, the International Union of Food and Agricultural Workers;
- international press organisations, for example the Committee to Protect Journalists, Reporters without Borders, or the Foreign Correspondents Club in the relevant country.

### *If the context is not dangerous*

If you assess that it is safe to seek to engage with business yourself, or via a local human rights group, and there is reason to believe local action may be effective, then consider the following questions before proceeding:

- What is the framework of international support for human rights in contexts such as this one? For example the OECD Guidelines, the Framework and Guiding Principles, Equator Principles or Voluntary Principles (see pages 6-7 and Annex 1).
- What are the obligations of the business in this context? For example, to conduct human rights due diligence, develop a human rights policy, conduct human rights monitoring and reporting, or consult with the community.
- How can my group or I influence the business to operate in a manner that is respectful of human rights? For example engaging with the business and speaking to them about the negative impacts on the business of not respecting human rights, including increased costs, loss of licence to operate, shareholder and investor challenges and employee dissatisfaction.
- What will be my/our course of action if the business will not listen to my/our recommendations? For example seeking to engage with international NGOs or politicians, or raising awareness of the issue through the media.

### *(B) Engagement with civil society*

Many NGOs have significant experience developing coalitions with civil society that share their thematic concerns. Others become part of broader umbrella networks or coalitions that unite globally to achieve a common objective, often with exact or similar branding and the use of joint letters. However, in the area of business and human rights it is useful to consider coalitions across sectors, and among NGOs who may not have the same specific focus but will each benefit from the achievement of the policy goal.

## PRACTICAL EXAMPLE

In Indonesia and Malaysia, palm oil plantations are key sources of employment and exports. However, they are often isolated, characterised by high vulnerability to labour and other human rights abuses. The practice of clear-cutting to expand plantations also has negative impacts on environmental and climate change objectives. In March 2015, a diverse coalition of NGOs, both global and local, launched a guide on 'Free and fair labour in palm oil production' that was possible largely because of the influence and buy-in of labour, human rights, anti-trafficking, and environmental organisations.<sup>146</sup>

### (C) Engagement with companies

A challenge faced by business is that engaging directly with HRDs might, in certain situations, harm or jeopardise their relations with governments or private partners.

Where possible, directly engaging with a company and establishing a good working relationship can be an effective way to protect human rights. HRDs can engage directly with business to provide education about its human rights obligations, and build capacity to address human rights impacts, for example, through providing training on human rights impacts and effective engagement with the community.

This approach can:

- help companies better **understand the human rights risks** their business gives rise to;
- help companies better **understand the human rights standards** they are expected to uphold;
- assist companies to **avoid risks** associated with human rights abuses;
- assist companies to **respect and uphold its human rights obligations** on an ongoing basis;
- assist companies to **internalise human rights knowledge** and extend it to other projects and/or departments. Where human rights policies extend across the entire company, there may be a better chance it will adopt recommendations by HRDs (where representatives in home countries with higher standards of respect for human rights adopt the recommendations).

<sup>146</sup> Liliانا Giffen, "Organizations Seek Stronger Labour Protections, Corporate Responsibility in Palm Oil Industry", 3 March 2015, [humanityunited.org/wp-content/uploads/2015/08/Palm\\_oil\\_guide\\_press\\_release\\_030315.pdf](http://humanityunited.org/wp-content/uploads/2015/08/Palm_oil_guide_press_release_030315.pdf).

It is an unfortunate reality that in many situations businesses focus on profit above human rights. As such, they do not respect, and even knowingly violate, the human rights of their employees and local communities. It is therefore crucial to assess, in the first instance, whether the company in question is amenable to cooperative engagement. Sometimes, even an informal approach to a company by a HRD may result in retaliation or intimidation. As such, it is also imperative that HRDs apply their local knowledge to assess the personal risk of seeking to engage informally. Risky situations may call for HRDs to collaborate with national or international bodies, or seek protective accompaniment, such as from unions or international NGOs. Alternatively, moving to a strategy of where formal mechanisms are used may be preferable.

Whom you engage within a business will depend on the circumstances, including the human rights issues sought to be addressed (i.e. project specific or systemic across an international business), the size of the company (local, national with numerous projects, or international with numerous projects worldwide), the company and/or industry, an assessment of how you could gain the most, and risks to workers and the local community.

Mapping the role of the person with whom it would be best to engage will assist to bring about a response in the company. For example you may want to:

- discuss big picture issues, such as commitment to human rights programmes across an entire international organisation, or formation of sector-specific human rights initiatives or business coalitions: **business owner** or **chief executive office**;
- discuss specific needs and challenges e.g. preventive human rights measures: **chief compliance officer**;
- encourage respect for human rights to improve a company's corporate identity: **external affairs**, the person responsible for creating and maintaining the corporate identity of a company;
- discuss systematic abuses of a particular project: **managing director**;
- offer in-house training and support: **training departments**;
- discuss labour issues, whistle-blower protection and anonymous reporting channel: **trade union** or **staff committee**.

It may be useful to leverage any existing contacts in the business community to gain greater understanding of how engagement may be most effective. This information should then be fed into your long-term planning and strategy. Such a conversation may indicate:

- how receptive the company/industry is to engaging with HRDs;
- whether there is a lack of awareness of human rights generally that needs to be addressed before more substantive engagement can occur;

- what are likely to be the most persuasive arguments for the particular audience or business;
- what it is reasonable to ask for in the first instance.

## USEFUL TIPS FOR APPROACHING AND ENGAGING COMPANIES

- Before approaching a business **be clear about what you want** it to do and the results you expect from its action.
- Carefully **assess your scope for influence** and impact, to ensure you are not co-opted and used to ‘greenwash’ a process or consultation without being able to impact on it.
- Seek to engage companies at the **earliest possible opportunity**, where decisions are made and before decisions are made.
- Consider releasing damaging, evidence-based **reports** as a useful way to bring companies to the negotiating table, always ensuring your safety in the first instance. It is of course imperative that such reports are well researched, documented and credible.
- Base approaches on a systematic, well-informed exchange. Do your **research on the company**, including its geographical and activity profile and its human rights related policies/procedures. It is important to do as much strategic corporate research as possible, to know exactly ‘how business enterprises operate, to understand the incentives for investing in a specific project through a comprehension of the concept of risk, how risk is measured and how it impacts investment decisions’.<sup>147</sup>
- The best method to engage in dialogue with a business is to **arrange meetings with them**.
- Aim to **establish positive dialogue** appealing to the purported values of the company.
- Try to ensure approaches are **personally addressed** to the most relevant business manager. Approaches that are not personally addressed are less likely to be effective.
- Seek to obtain full **disclosure and access to information**, which is vital to constructive, informed engagement. Only **ask for things** that are **likely to be achievable**.
- **Highlight your independence** from political parties and governments (if considered necessary), and that your involvement is strictly based on a human rights mandate derived from international human rights standards.
- Inquire about the company’s **ethical codes/standards**, as this might prompt a discussion on human rights.
- Remind the company of its **corporate responsibility to respect human rights**, including the Guiding Principles and other initiatives, and potential adverse human rights impacts.
- Highlight that the **cost for companies** of not engaging with rights holders, including HRDs, can be higher than if they do engage.
- **Link follow-up** to simple tasks which you and the company will do, even if it is only to circulate further information.

<sup>147</sup> Alejandro González, *Evaluating the Human Rights Impact of Investment Projects, background, best practices and opportunities* (Poder: Mexico/New York, December 2014), p 3; [projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf](http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf).

It is useful to have a series of general discussion prompts ready, which will depend on your purpose in engaging with a particular business.

### GENERAL DISCUSSION PROMPTS

- What are the **company's views on human rights** and its role in respecting human rights?
- Does the company have a code of ethics or a human rights policy? If so:
  - > Who is **responsible for its implementation**?
  - > **How is it implemented** – for example, is it used when training managers?
  - > **How is it monitored**?
- How are **human rights incorporated into its code of ethics**?
- How does the business **contribute to promoting and protecting HRDs**?

It is important to be realistic about what a company will do. Business people are usually more willing to commit to taking concrete steps within their own sphere of responsibility – such as policies affecting their employees in the areas of discrimination and affirmative action, health and safety, and adherence to international labour standards – than they would be to use their influence to try to affect the broader human rights situation. On this basis:

- **Begin with modest and reasonable requests**, such as 'accept some documents or reports we have prepared which, for example, outline the human rights situation on the ground' or 'meet with us'.
- Then **request steps within their sphere of responsibility** that positively affect the human rights of their employees and suppliers, or to ask the person to talk about human rights with other company officials or trade organisations in their own countries.
- Lastly, **attempt to enlist them as advocacy allies**; they may then be willing to encourage the governments of States where they have business interests to end human rights violations.

#### *Strategic partnerships with business*

Entering into strategic partnerships with business can be an effective way for HRDs to influence business human rights policies and practice, and encourage business to protect human rights. But given the business-related human rights abuses against individuals and communities, not all companies are suitable partners. Due diligence should therefore be conducted before establishing such a relationship.

If a company lacks interest in engaging, you could seek to bring its business peers on-board and publicly name those supportive of human rights policies and protection, thereby creating peer pressure.

#### PRACTICAL EXAMPLE

H&M has announced a partnership with Civil Rights Defenders (CRD), a Swedish non-profit organisation that works to support human rights around the world. H&M says it will donate 4 million SEK (US\$600 thousand) to support CRD's work for human rights.<sup>148</sup> According to CRD, the strategic partnership was entered in early 2014, after thorough consideration as to whether there would be any negative implications; such as jeopardising the independence and integrity of the organisation. The partnership neither hinders investigations or advocacy towards H&M about its human rights performance, nor does money provided come with conditions as to how it is to be expended. The partnership has enabled CRD to share human rights concerns with H&M about countries in which it has or develops operations, including Cambodia, Ethiopia, Myanmar and Russia. CRD has also been able to share concerns and give recommendations on addressing emergencies and individual cases, and to introduce key human rights defenders in those regions to H&M.<sup>149</sup>

#### *Human rights training*

Conducting or involvement in human rights training can be an effective way for HRDs to engage with business and promote learning of tools and methods to implement respect and commitment to human rights.

Human rights training can also be conducted for rights-holders who may be at risk of having their human rights violated by business. Educating affected persons and communities improves the ability of rights-holders to engage with companies and hold them to account.

148 Civil Rights Defenders, "Civil Rights Defenders supported by H&M", 7 January 2014, [www.civilrightsdefenders.org/news/civil-rights-defenders-supported-by-hm](http://www.civilrightsdefenders.org/news/civil-rights-defenders-supported-by-hm).

149 *Ibid.*

## PRACTICAL EXAMPLE

In 2013, the Finnish Export Credit Agency approached the Finnish Human Rights Centre to conduct human rights training. The training included an introduction to human rights values and standards, the Guiding Principles, and children's rights and business. It involved around 50 participants from various organisations, including the Export Credit Agency, the Government Ministry for Commerce and the Ministry for Foreign Affairs. The training was said to be a useful forum for opening dialogue between the Human Rights Centre and key Finnish financial and business actors.<sup>150</sup>

## PRACTICAL EXAMPLE

Shell has been in a partnership with the Danish Institute for Human Rights (DIHR) since 1999. They collaborate in four areas to assist Shell to respect human rights; community impacts, employee relations, procurement and security. DIHR has devised a training programme for Shell Nigeria, and since 2005, approximately 6000 staff, contractors and community leaders have been trained. The Institute has also carried out evaluations of Shell's internal policies and processes to ensure they are in line with human rights standards.<sup>151</sup> Shell says it trains its employees to follow its code of conduct and to respect human rights. It offers online human rights training as well as extensive training for regions or business sectors with poor human rights records.<sup>152</sup>

150 Nora Götzmann and Claire Methven O'Brien, *Business and Human Rights: A Guidebook for National Human Rights Institutions* (Report, International Coordinating Committee of National Human Rights Institutions (ICC) and Danish Institute for Human Rights (DIHR), November 2013), [humanrights.dk/files/media/dokumenter/udgivelser/bhr\\_guidebook\\_for\\_nhris\\_2013\\_eng.pdf](http://humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf), p 33.

151 The Danish Institute for Human Rights, "Shell Partnership", [www.humanrights.dk/projects/shell-partnership](http://www.humanrights.dk/projects/shell-partnership).

152 Shell, "Training Tools and guidelines", [www.shell.com/global/environment-society/society/human-rights/training-tools-guidelines.html](http://www.shell.com/global/environment-society/society/human-rights/training-tools-guidelines.html).

### *Producing/sharing human rights tools*

Human rights tools for business and those monitoring business activities can be used in conjunction with human rights training to help ensure that learning is implemented and maintained.

#### PRACTICAL EXAMPLE

In 2011, Rio Tinto and the Danish Institute for Human Rights entered a three-year partnership to create human rights tools for international business, which would also help evolve Rio Tinto's human rights policies and practices.<sup>153</sup> The partnership included Rio Tinto helping to fund and develop a Human Rights and Business Country Guide - a free website to be used by companies to identify, assess and address their human rights impacts.<sup>154</sup>

#### PRACTICAL EXAMPLE

The Human Rights Commission of Sierra Leone developed a human rights monitoring tool, prompted by a formal investigation by the Commission into mining-related human rights abuses in the Bumbuna, Tonkolili District in 2012. The tool can be used in investigations and dialogues with companies, and other actors, to assess company conduct against human rights standards. It also includes specific questions and indicators, and outlines relevant human rights laws and standards, including human resources, environment and communities, security, government relations and procurement.

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## Engagement with States

### *(A) Engagement with the Host State as a way to influence business activities*

As already noted, the Guiding Principles denote that **States have a duty to protect against human rights abuse by third parties, including business, within their territory and/or jurisdiction.**<sup>155</sup> This requires appropriate steps to prevent, investigate, punish and redress abuse through policies, legislation, regulations and adjudication. States must also ensure the legitimate activities

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153 Rio Tinto, "Rio Tinto partners with DIHR on Human Rights", 11 April 2011, [www.riotinto.com/media/media-releases-237\\_1212.aspx](http://www.riotinto.com/media/media-releases-237_1212.aspx).

154 See the webpage "Human Rights and Business Country Guide" for more info, [hrbcountryguide.org/](http://hrbcountryguide.org/).

155 United Nations Office of the High Commissioner for *Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), Article 1, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

of HRDs are not obstructed.<sup>156</sup> HRDs have an important role to play in helping States identify whether laws aligned with their human rights obligations are being effectively enforced, and in providing guidance on human rights to State institutions.

States may be in breach of international human rights law obligations where abuse can be attributed to them, or when they fail to take appropriate steps to prevent, investigate, punish and redress violations perpetrated by private actors.<sup>157</sup> While governments generally have discretion in deciding upon these steps, HRDs can encourage them to consider the full range of preventative and remedial measures. States also have a duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and providing for adequate accountability, legal certainty, and procedural and legal transparency.<sup>158</sup>

As such, HRDs could seek that Host States:

- **develop a National Action Plan on Business and Human Rights (NAP)** in consultation with HRDs. The NAP should implement and embed the Guiding Principles and other business and human rights standards into national laws and policies, in light of the Declaration on HRDs, and identify the role of HRDs, including in the implementation of individual action points within the NAP and overall follow-up (see pages 51-55);
- set out clearly the **expectation that all business enterprises domiciled** in their territory and/or jurisdiction **respect human rights** throughout their operations;
- implement obligations under international human rights treaties and enforce laws that require business to respect human rights, and periodically assess the adequacy of and address any gaps in such laws;
- **ensure laws and policies governing** the creation and ongoing operation of businesses, such as corporate law, do not constrain but rather enable business respect for human rights;
- provide **effective guidance to business** on how to respect human rights throughout their operations;
- **encourage**, and where appropriate require, business enterprises to communicate how they address their human rights impacts;
- take **steps to protect against human rights abuse** by businesses either owned or controlled by the Host State,<sup>159</sup> or that

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156 As outlined in the commentary to Guiding Principle 26; Michael K Addo, "Full implementation of the Guiding Principles means protecting HRDs", 25 November 2014, [www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf](http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf).

157 Michael K Addo, "Full implementation of the Guiding Principles" means protecting HRDs, 25 November 2014, [www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf](http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf).

158 *Ibid.*

159 'Host State' is understood as the state in which business operations take place.

receive substantial support and services from State agencies, such as export credit agencies and investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

### **(B) Engagement with the Home State as a way to influence business activities**

HRDs can also engage with Home States<sup>160</sup> to seek their protection and support when engaging with business. Home governments can protect and support HRDs including by:

- documenting and reporting on the situation of HRDs worldwide;
- maintaining regular contact with HRDs in countries where their businesses operate, including engagement at the ambassadorial level and by a designated human rights officer and other embassy personnel;
- advancing multilateral instruments that protect HRDs, such as the UN Declaration on HRDs;
- working with like-minded governments, the UN, and regional and/or international organisations to address specific threats to HRDs and discourage laws that restrict the freedoms of assembly, association, or expression, or otherwise constrain the operating space of HRDs;
- amplifying the voices of HRDs through public diplomacy and local initiatives to highlight their work;<sup>161</sup>
- developing National Action Plans on business and human rights.<sup>162</sup>

Home States can support HRD engagement with businesses registered in their territory by:

- implementing the kinds of actions outlined in the EU, Norwegian, Swiss or US guidelines on human rights defenders, ensuring their effective application in cases where the HRDs at risk are working on projects with investment from their State;
- encouraging host governments to engage constructively with HRDs;
- protecting HRDs in host countries through emergency assistance (both technical and financial), which may include visiting HRDs

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160 'Home State' is understood to be the State in which a business operating abroad is domiciled.

161 The US raised the profile of HRDs through its annual HRD Award and International Women of Courage Award and its celebration of Human Rights Week. United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), articles 2 and 7, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

162 See recommendations included in submissions prepared by ISHR on the Irish, United Kingdom and United States NAP, pp 53-55 of this publication.

- in prison or under house arrest, or the families of imprisoned HRDs and attending hearings and observing trials of HRDs;<sup>163</sup>
- helping HRDs obtain protection, when requested, through international organisations, NGOs or governments;
- regulating to ensure business respects and does not undermine the work of HRDs in the host State, and encourage business to speak out in support of a safe and enabling environment for HRDs in the countries it operates.

***(C) Engagement with government on National Action Plans on business and human rights***

The development of strong National Action Plans on business and human rights (NAPs) is essential to the protection of HRDs.<sup>164</sup>

The fact that the Guiding Principles are non-binding requires further State action. NAPs articulate how the State:

- has implemented the Guiding Principles and other business and human rights frameworks;
- aims to address gaps in implementation going forward.

The UN Working Group on Business and Human Rights has adopted a roadmap to support the development of NAPs.<sup>165</sup> The Working Group considers four essential criteria to be indispensable for effective NAPs, including that they:

- be founded on the UN Guiding Principles, reflect obligations under international law and promote business respect for human rights, underpinned by principles of non-discrimination and equality;

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163 An example includes the Front Line Defenders Emergency Support programme, which assists HRDs in immediate risk. The emergency service gives HRDs an option to speak to someone who will be able to mobilise rapid international support and action. Urgent actions can include faxed or phoned appeals to the relevant authorities, raising the case through the European Union or individual government representatives, practical help with temporary relocation, and/or assistance with medical or legal expenses. [www.frontlinedefenders.org/emergency](http://www.frontlinedefenders.org/emergency).

164 In June 2014, the International Corporate Accountability Roundtable (ICAR) released a joint report with the Danish Institute for Human Rights, entitled "National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks". The "NAPs Toolkit" is intended to guide and assist governments and other actors in producing both National Baseline Assessments of current State implementation of business and human rights frameworks, including the UN Guiding Principles, and actual NAPs on business and human rights. It also presents a mapping and analysis of options at the international and regional levels for monitoring and review of NAPs once they are developed in order to improve governance, regulation and, ultimately, respect for human rights. The NAPs Toolkit is available at [accountabilityroundtable.org/analysis/napsreport/](http://accountabilityroundtable.org/analysis/napsreport/).

165 The Working Group expects national authorities to use their NAPs to ensure HRDs who focus on business-related impacts are not obstructed, but instead given adequate protection against threats and harassment. The process of developing such plans should ensure that the voices of all relevant parties, including HRDs, are heard and accounted for. While there is an emerging good practice in this regard, we look to States currently in the process of preparing NAPs to raise the bar in this regard. (UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, December 2014, [www.ohchr.org/Documents/Issues/Business/UNWG\\_%20NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf)).

- be context-specific and address the country's actual and potential adverse corporate human rights impacts;
- be developed in inclusive and transparent processes;
- include processes which are regularly reviewed and updated to respond to changing contexts.<sup>166</sup>

NAPs help States to:

- identify gaps in existing laws that may put HRDs at risk;
- provide an opportunity for civil society to hold States accountable for existing policies and programmes to protect and support HRDs;
- commit to plans to address violations against HRDs.<sup>167</sup>

## PRACTICAL EXAMPLE

### In the United Kingdom's 2013 NAP, HRDs are referenced in 3 sections:

**New Actions Planned:** (xi) *Instruct our embassies and high commissions to support human rights defenders working on issues related to business and human rights in line with EU Guidelines on human rights defenders.*



**Actions taken to support business implementation of the UN Guiding Principles:** (v) *instructed our embassies and high commissions to work with host governments, local and UK business, trade unions, NGOs, human rights defenders, academics, lawyers and other local experts so we can help inform companies of the human rights risks they face;*

**Action for Government to promote access to remedy:** (iv) *support projects through the FCO Human Rights and Democracy Programme Fund relating to work on remedy procedures in other countries, including:*

- **help to States** wishing to develop their human rights protection mechanisms and reduce barriers to remedy within their jurisdiction;
- **support to civil society** and trade union efforts to access effective remedy and promote protection of human rights defenders who are actively engaged on issues relating to business and human rights;
- **support to business** efforts to provide, adopt or participate in effective grievance mechanisms.<sup>168</sup>

<sup>166</sup> UN Working Group on Business and Human Rights, "Guidance on National Action Plans on Business and Human Rights", December 2014, p ii, [www.ohchr.org/Documents/Issues/Business/UNWG\\_%20NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf).

<sup>167</sup> *Ibid*, pp 28-29.

<sup>168</sup> United Kingdom, "Good Business: Implementing the UN Guiding Principles on Business and Human Rights", September 2013.

In developing a NAP, States must ensure effective participation by all relevant stakeholders, including HRDs.<sup>169</sup> Importantly, the process must be fully transparent and involve consultation reinforcing the legally enforceable mechanisms regulating such engagement, including the guarantee of free, prior, and informed consent of all representatives of the community.<sup>170</sup> HRDs can advocate for NAPs to go beyond the standard set by the Guiding Principles, especially where those Principles have been shown to be inadequate. For example, this would include mandatory due diligence and effective access to remedy.

NAPs are a promising avenue for implementing and embedding the Guiding Principles and other business and human rights standards into national laws and policies. They provide a constructive forum to address the many violations that continue to be committed against HRDs and the communities they represent.<sup>171</sup>

For additional guidance on recommendations regarding the protection of HRDs in NAPs see ISHR's submissions to the governments of Ireland,<sup>172</sup> the United Kingdom<sup>173</sup> and the United States.<sup>174</sup>

### ISHR RECOMMENDATIONS for the NAP of the United States



ISHR prepared a submission to the United States Government, which recommended that its NAP include specific deliverables to help empower HRDs, protect and expand civil society space, and hold *government* and businesses accountable to their human rights obligations:

- **recognise** the essential role of, and the risks faced by, HRDs and civil society specifically in the area of responsible business conduct, and ensure coherence with related policy agendas;
- **protect and promote** the work of HRDs through policies, including public procurement, and provision of adequate funding support by the government to defenders and civil society working on business and human rights;
- **improve** access to information for both civil society and

169 Sara Blackwell and Katie Shay, "The role of National Action Plans on Business and Human Rights in protecting HRDs"; 15 November 2014, [www.ishr.ch/news/role-national-action-plans-business-and-human-rights-protecting-human-rights-defenders](http://www.ishr.ch/news/role-national-action-plans-business-and-human-rights-protecting-human-rights-defenders).

170 *Ibid.*

171 *Ibid.*

172 [www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_to\\_ireland\\_on\\_bhr\\_nap\\_v2.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_to_ireland_on_bhr_nap_v2.pdf).

173 [www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_to\\_uk\\_on\\_review\\_of\\_its\\_bhr\\_nap\\_final.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_to_uk_on_review_of_its_bhr_nap_final.pdf).

174 [www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_-\\_u.s.\\_nap.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_-_u.s._nap.pdf).

the private sector on human rights risks in host countries;

- **address** recommendations made by relevant UN experts in relation to business and human rights and HRDs in this context;
- **put in place** expectations for proactive business engagement to promote human rights and protect HRDs and civil society space.<sup>175</sup>

### ISHR RECOMMENDATIONS for the NAP of Ireland

ISHR prepared a submission to the Irish Government, which recommended that the NAP should:



- **clearly articulate** the obligation of corporations to respect and support HRDs and their work, including by not interfering directly or indirectly with their exercise of the human rights to freedom of expression, association, assembly and protest, and foresee appropriate monitoring mechanisms and sanctions to enforce this obligation;
- **promote consultation** with and the protection of HRDs in host States;
- **encourage businesses** to publicly support HRDs and their protection, including by supporting State action in that regard;
- **encourage businesses** to fully consult with civil society organisations and HRDs, including in the design and implementation of projects, in conducting human rights impact assessments, developing due diligence policies, and in the design of grievance mechanisms;
- **encourage investors** to consult with HRDs and ensure that investors do not invest in projects that result in violations of human rights or undermine the rights of HRDs and affected communities, including their rights to freedom of expression, assembly and of association.<sup>176</sup>

<sup>175</sup> [www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_-\\_u.s.\\_nap.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_-_u.s._nap.pdf).

<sup>176</sup> [www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_to\\_ireland\\_on\\_bhr\\_nap\\_v2.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_to_ireland_on_bhr_nap_v2.pdf).

## ISHR RECOMMENDATIONS for the review and revision of the NAP of the United Kingdom



ISHR prepared a submission to the Government of the United Kingdom, which recommended that the revised NAP should:

- **expand the list** of people expected to be consulted to explicitly include HRDs and generally promote consultation with and the protection of HRDs in both home and host States;
- **detail the steps and measures** it will take to encourage businesses to fully consult with civil society organisations and HRDs in the design and implementation of projects, in order to guarantee the free, prior and informed consent of affected communities;
- **detail the Government's expectation** of business to put in place processes to meet its obligations to respect and support HRDs and their work, including by not interfering directly or indirectly with their exercise of the human rights to freedom of expression, association, assembly and protest, and foresee appropriate monitoring mechanisms and sanctions to enforce this obligation;
- **encourage businesses** to publicly support HRDs and their protection, including by supporting State action in that regard, setting a clear expectation that companies speak out publicly against local laws that restrain and restrict the work of HRDs, or that contribute to a climate of impunity for attacks against them;
- **encourage investors** to consult with HRDs, and ensure that investors do not invest in projects that result in violations of human rights or undermine the rights of HRDs and affected communities, including their rights to freedom of expression, assembly and of association.<sup>177</sup>

### Engagement with UN bodies

Working with UN agencies (OHCHR, ILO, UN Environment Programme, UN Development Programme and UN Industrial Development Organisation) can facilitate stronger dialogue on human rights and business at the national level and with relevant regional institutions.

This could involve bringing human rights abuses to the attention of global human rights bodies, such as the UN Working Group on Business and Human Rights or the UN Human Rights Council. Advocacy at the Human Rights Council can build political pressure to end and remedy human rights violations. Raising an issue in a

<sup>177</sup> [www.ishr.ch/sites/default/files/article/files/ishr\\_submission\\_to\\_uk\\_on\\_review\\_of\\_its\\_bhr\\_nap\\_final.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_submission_to_uk_on_review_of_its_bhr_nap_final.pdf).

public statement, or organising a side event on the issue, can create awareness amongst NGOs and other States, who may then put pressure on the State in which the violation is occurring or on the businesses involved.

## PRACTICAL EXAMPLE

### UN Working Group on Business and Human Rights, Azerbaijan

At the conclusion of its visit to Azerbaijan in August 2014,<sup>178</sup> the UN Working Group on Business and Human Rights issued a statement<sup>179</sup> expressing concern ‘that a number of prominent civil society actors were placed in pre-trial detention just before our visit and that human rights organisations face problems with accessing bank accounts and registering.’

The statement followed a call by ISHR for the Working Group to ensure the situation of HRDs was a key priority during the Group’s visit. The statement also affirmed the importance of the work of HRDs to economic and social development, calling on the Government to ‘ensure that the legitimate and peaceful activities of HRDs are not obstructed’.

In response, ISHR made a public statement urging the Working Group to maintain a strong focus on the situation of HRDs in all aspects of its mandate and to speak out strongly against any restrictions or reprisals associated with their work.<sup>180</sup>

Michael Addo, member of the Working Group, has said the Group will continue to focus attention on the critical issue of the role and security of HRDs.<sup>181</sup>

## Engagement with financiers and investors

Access to finance is highly competitive. As discussed on pages 17-18, institutional investors (including pension funds, investment managers, insurance companies) and managers responsible for their funds are increasingly interested in the responsible business practices of companies in which they invest.<sup>182</sup> This is due to the

178 And in advance of a detailed report submitted to the Human Rights Council in June 2015.

179 [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14969&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14969&LangID=E).

180 International Service for Human Rights, “Azerbaijan: UN Working Group concerned at situation of HRDs”, 28 August 2014, [www.ishr.ch/news/azerbaijan-un-working-group-concerned-situation-human-rights-defenders](http://www.ishr.ch/news/azerbaijan-un-working-group-concerned-situation-human-rights-defenders).

181 Michael K Addo, “Full implementation of the Guiding Principles means protecting HRDs”, 25 November 2014, [www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders](http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders).

182 Lucy Amis, Peter Brew and Caroline Ersmarker, *Human Rights: It Is Your Business – The case for corporate engagement* (International Business Leaders Forum, 2005), [commdev.org/files/1154\\_file\\_Human\\_Rights\\_It\\_Is\\_Your\\_Business.pdf](http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf).

impact on long-term asset value (such as litigation), financial penalties for non-compliance with regulations and reputational risks associated with human rights abuse.<sup>183</sup>

Investors are well placed to have a significant impact in shaping corporate practice in favour of respecting human rights. As such, engaging with the financiers and investors of a business regarding human rights abuses can be an effective way for HRDs to influence the conduct of that business. This may be an especially useful strategy in the case of 'mega-projects'. From the business perspective, a human rights violation can be a risk for investment. If human rights impacts elevate investment risk, then these risks should be assessed and made known to the relevant stakeholders, who in turn can influence the decisions made by the company.<sup>184</sup>

HRDs can encourage investors to do the following to influence corporate behaviour:

- enhance mainstream investment processes to incorporate consideration of company performance on human rights;
- engage with public policy makers and stakeholders to encourage regulation that addresses the underlying causes of human rights problems. For example, investors played a leading role in the Extractive Industries Transparency Initiative (EITI), which is a global standard developed to promote open and accountable management of natural resources, and of which investors are identified as one of the key supporters;<sup>185</sup>
- require HRIAs for projects as a requirement for receiving funding. Highlight the importance of understanding and presenting human rights violations as risk factors. In other words, linking the human rights impacts to the company's assessment of material risk can be an effective strategy for influencing decision makers within the company as well as investors. Require the results of the HRIA to be shared with internal and external stakeholders, including rights-holders, employees and shareholders;<sup>186</sup>
- encourage businesses receiving funding to engage with and respect HRDs and rights-holders.

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183 *Ibid.*

184 Alejandro González, *Evaluating the Human Rights Impact of Investment Projects, background, best practices and opportunities* (Poder: Mexico/New York, December 2014), p 85, [projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf](http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf).

185 Investors are identified by the EITI, as one of its core supporters. There is an investor statement in support of the EITI and investors are one of the stakeholder groups on the EITI's board. See [eti.org/supporters/investors](http://eti.org/supporters/investors).

186 Alejandro González, *Evaluating the Human Rights Impact of Investment Projects, background, best practices and opportunities* (Poder: Mexico/New York, December 2014), p 86, [projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf](http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf).

## PRACTICAL EXAMPLE

In 2008, a number of NGOs, including Amnesty International and Oxfam, began a campaign against Vedanta in relation to its proposed Indian bauxite mine which would involve forced eviction of communities (Vedanta previously evicted several villages in connection with another project).<sup>187</sup> The campaign involved pressuring institutional investors to hold Vedanta to account by withdrawing investments. As a result, in 2007 the Council on Ethics for the Norwegian Government Pension Fund undertook a comprehensive review of Vedanta's operations and withdrew US\$13 million of investments; in 2008, Scottish Investment Group Martin Currie sold its £2.3 million stake, stating that 'it is fundamental that we expect companies to behave both within the law and morally';<sup>188</sup> in 2010, institutional investors formed a coalition to investigate allegations of human rights abuse in Vedanta's India operations;<sup>189</sup> in August 2010 the Government of India publicly refused environmental permission for the mine.<sup>190</sup>

### Engaging with shareholders

Shareholders can use their power as owners of companies to facilitate change. HRDs can engage with shareholders to encourage and support them to raise human rights concerns with business.

Typical human rights proposals by shareholders have called on companies to create or amend policies to comply with international human rights standards.<sup>191</sup> Shareholders now request that companies proactively consider the human rights impacts of their activities, assess the risks that their operations will lead to abuses, and change their practices where activities adversely affect or violate human rights.<sup>192</sup> Annual General Meetings may be covered by the media, which can further help to raise awareness of human rights issues.

187 ActionAid, "Vedanta: latest news and action", [www.actionaid.org.uk/vedanta-mining-poverty/vedanta-latest-news-and-action](http://www.actionaid.org.uk/vedanta-mining-poverty/vedanta-latest-news-and-action).

188 Urgewald, "Briefing on Vedanta and the Niyamgiri Hills", p 6, [www.banktrack.org/manage/ems\\_files/download/briefing\\_on\\_vedanta\\_and\\_the\\_niyamgiri\\_hills/vedanta.pdf](http://www.banktrack.org/manage/ems_files/download/briefing_on_vedanta_and_the_niyamgiri_hills/vedanta.pdf).

189 Elena Moya, "Vedanta investors look into human rights issues in India", *The Guardian*, 6 September 2010, [www.theguardian.com/business/2010/sep/06/vedanta-human-rights-issues-india](http://www.theguardian.com/business/2010/sep/06/vedanta-human-rights-issues-india).

190 [www.actionaid.org.uk/vedanta-mining-poverty](http://www.actionaid.org.uk/vedanta-mining-poverty).

191 Amol Mehra, Esq. and Stephen Winstanley, "Respecting Human Rights: Shareholders Shift From Policy to Action", 22 April 2013, [www.csrwire.com/blog/posts/812-respecting-human-rights-shareholders-shift-from-policy-to-action](http://www.csrwire.com/blog/posts/812-respecting-human-rights-shareholders-shift-from-policy-to-action).

192 *Ibid.*

In some jurisdictions, shareholders may have rights that can be very valuable for activism, such as request of information, inspection of the books, expressing concerns in meetings, or appointing and/or removing directors.

### Access to remedy

This section is intended to give a brief outline of potential remedies available to HRDs in the event that their rights are violated. It is not exhaustive, nor does it contain sufficient detail to gain an understanding of how to effectively engage with these remedies, but it does offer a starting point from which to seek justice.

The Guiding Principles require that States and businesses give greater access to effective remedy for victims of business-related human rights abuses, through:

- State-based judicial mechanisms;
- State-based non-judicial mechanisms (labour tribunals, National Contact Points under the OECD Guidelines, or State-run Ombudsman offices);
- non-State-based grievance mechanisms provided by business, industry associations, multi-stakeholder groups and international bodies.<sup>193</sup>

### ACTIONS HRDS CAN TAKE

**Broadly, in relation to judicial and non-judicial remedies, HRDs can do the following to promote access to remedy for victims of business related human rights abuses:**

- > provide outreach and advice on how to access judicial remedies in home and host countries;
- > facilitate access to available non-judicial mechanisms through outreach, education and referral;
- > participate in dialogue with the State, judiciary and legal profession on topics related to judicial remedies, such as complicity and relevant extraterritorial application of laws;
- > support the complaints-handling function of the local National Contact Point<sup>194</sup> through sharing information on cases and dispute resolution methodologies;
- > develop guidance material for business on the development and implementation of project-level grievance mechanisms.

193 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), pp 27-28, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

194 See C) National Mechanisms, p 69, for a description of National Contact Points.

## **(A) International and multilateral mechanisms**

Although UN human rights complaints procedures are directed towards State conduct, they can address business human rights abuses tolerated by the State.

### **UN treaty-based mechanisms**

Each core international human rights treaty has a committee of independent experts ('treaty body') that monitors the implementation of the treaty. Every country that is party to a treaty must submit regular reports to the treaty body about its human rights situation and how it is complying with its obligations under the treaty.<sup>195</sup> The periodic reporting process provides an important opportunity for HRDs to provide the UN experts with specific, credible reports of human rights violations or lack of progress on human rights policies by submitting a report detailing the government's implementation of its obligations. In their report, HRDs can for instance explain whether a State has developed a NAP and to what extent it has implemented (or has failed to implement) the UN Guiding Principles.<sup>196</sup> HRDs can also report on business-related human rights violations in which the State has been involved, complicit or failed to act. A number of treaty bodies recently have issued recommendations calling on States to regulate and remedy the human rights impacts of businesses operating within the State's jurisdiction.

HRDs can also be involved in the development of international human rights treaties. This can help to ensure that corporate respect for human rights and the HRDs' activities are incorporated into future treaties.<sup>197</sup> In this regard, HRDs can participate in the development of a new business and human rights treaty (see above on the IGWG, page 7).

### **Special procedures of the Human Rights Council**

'Special procedures' are a set of independent experts established to monitor, advise and publicly report on human rights situations in specific countries (country mandates), or on major human rights themes worldwide.<sup>198</sup> As of 27 March 2015 there are 41 thematic and 14 country mandates.<sup>199</sup> With the support of the Office of the High Commissioner for Human Rights (OHCHR), mandate-holders undertake country visits, conduct thematic studies, convene expert consultations, contribute to the development of international human rights standards, engage in advocacy, raise public awareness, and provide advice for technical cooperation.<sup>200</sup>

195 ISHR, *Simple Guide to the UN treaty bodies*, (Geneva, 2015), p 5, [www.ishr.ch/sites/default/files/article/files/ishr\\_simpleguide\\_eng\\_web.pdf](http://www.ishr.ch/sites/default/files/article/files/ishr_simpleguide_eng_web.pdf).

196 *Ibid*, p 39.

197 *Ibid*, p 56.

198 International Justice Resource Center, "Special Procedures of the UN Human Rights Council", [www.ijrcenter.org/un-special-procedures](http://www.ijrcenter.org/un-special-procedures).

199 Report of Special Procedures for the period 1 January to 31 December 2014, presented to the UN Human Rights Council at its 28th session.

200 *Ibid*.

Most mandate-holders receive information on individual cases of violations, and ask States for clarification.<sup>201</sup> These experts may write to States seeking information about new developments, submitting observations or following-up on recommendations. In 2014, the special procedures addressed a total of 553 communications to 116 States.<sup>202</sup>



## SUBMITTING A COMPLAINT TO THE SPECIAL RAPPORTEUR ON THE SITUATION OF HRDS

**Complaints to the Special Rapporteur on the situation of HRDs should contain the following information, which can be presented in the form of a list or as a letter:**

- The name of the alleged victim or victims and whether consent of the victim to the communication has been provided;<sup>203</sup>
- The kind of human rights activity in which the person was engaged<sup>204</sup>
- The violation(s) that occurred, when and where it took place and the current situation of the HRD;<sup>205</sup>
- Any information available about the perpetrator or witnesses;<sup>206</sup>
- Whether the authorities are aware of the situation, whether they have acted and whether the information has been made public;
- The link between the violation and the victim(s) human rights work;
- Details of who is providing the information, which can be submitted by organisations or individuals, including contact information (which will remain confidential);

Any updates on the situation subsequent to submitting the complaint should be sent to the Special Rapporteur as quickly as possible.

Once the complaint is received, and following an investigation as to the validity of the complaint, the Special Rapporteur may commence an investigation, provided the complaint falls within his or her mandate. In taking action the Special Rapporteur can contact the relevant government, either via an *urgent appeal letter* which is sent if the situation is ongoing or about to occur, or a *letter of allegation* which is sent when violations have already occurred and the impact of the HRD

201 International Justice Resource Center, "Special Procedures of the UN Human Rights Council", [www.ijrcenter.org/un-special-procedures](http://www.ijrcenter.org/un-special-procedures).

202 Report of Special Procedures for the period 1 January to 31 December 2014, presented to the UN Human Rights Council at its 28th session.

203 Whether the victim is an individual or an organisation, please provide contact details. If the victim is an individual, also provide information on gender, age, nationality and profession. See more at [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx).

204 Where relevant, please also indicate the city and country in which the victim (person/s, organisation) conducts this human rights work. See more at [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx).

205 If an initial violation leads to other events, please describe them chronologically. For example, if the initial concern is that a human rights defender has been arrested, details should be provided. But if he or she is later detained, other useful information would include the place of detention, the person's access to a lawyer, conditions of detention, the charges, etc. See more at [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx).

206 See more at [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx).

cannot be changed. Both letters include details of the name of the victim and the human rights concern.

By sending the letter the Special Rapporteur hopes the government will launch an investigation and end any violation occurring. If not, the Special Rapporteur will continue to follow up on the case, for example, through meetings at the diplomatic missions in Geneva.<sup>207</sup>

### *UN Human Rights Council complaints procedure*

This procedure aims to examine individual communications regarding consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms anywhere in the world and under any circumstances.<sup>208</sup>

An NGO can lodge a communication provided it has 'direct and reliable knowledge' of the violation.<sup>209</sup> The Working Group on Situations then presents a report to the Human Rights Council making recommendations on a proposed course of action (normally in the form of a draft resolution).<sup>210</sup>

Making use of this procedure requires first that domestic remedies be exhausted, unless such remedies would be ineffective or unreasonably prolonged.<sup>211</sup> The procedure covers actions by States or where a State is complicit in human rights abuse or systematically fails to prevent gross abuse, such as by business.<sup>212</sup>

### *Universal Periodic Review*

Although not strictly a complaints procedure, and related to the information on UN engagement (pages 55-56), HRDs can raise human rights abuses via the Universal Periodic Review (UPR). Under the UPR, the human rights performance of each UN Member State is reviewed by the other Member States, within the framework of the Human Rights Council.<sup>213</sup> States reviewed are encouraged to undertake broad national consultations with all relevant stakeholders, including NGOs, NGO coalitions, NHRIs, HRDs, and business.<sup>214</sup>

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207 Contact details and more information are available at [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx)

208 Office of the High Commissioner of Human Rights, "Human Rights Council Complaints Procedure", [www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCCComplaintProcedureIndex.aspx](http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCCComplaintProcedureIndex.aspx).

209 *Ibid.*

210 Office of the High Commissioner of Human Rights, "Working Group on Situations", [www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/WGSituations.aspx](http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/WGSituations.aspx).

211 Office of the High Commissioner for Human Rights, "Human Rights Council Complaints Procedure", [www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCCComplaintProcedureIndex.aspx](http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCCComplaintProcedureIndex.aspx).

212 *Ibid.*

213 Office of the High Commissioner for Human Rights, "Basic facts about the UPR", [www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx).

214 *Ibid.*

While the UPR is a state-driven exercise, and despite their limited role during the actual review, NGOs have many opportunities to take part and influence the UPR process. They cannot intervene directly during the 'interactive dialogue' session, but they can:

- **participate in the national consultations** held by the State under review;
- **submit information** on the human rights situation in the country to the OHCHR;
- **take part in pre-session briefings** in which they present their findings of the human rights situation in the State being reviewed to other States;<sup>215</sup>
- **lobby members** of the working group (composed of all UN member-States and chaired by the President of the Human Rights Council; the UPR takes place in a working group);
- **take the floor** at the Human Rights Council during the adoption of the report of the working group;
- **organise parallel events** during the review. Through these events, NGOs' recommendations and questions can influence the UPR review;
- **monitor and participate** in the implementation by the State under review of the UPR recommendations.<sup>216</sup>

A useful source of information is UPR-info, an NGO established to promote and strengthen the UPR by raising awareness, providing capacity-building tools, and connecting the different actors of the UPR process.

HRDs can use the UPR to raise awareness of the risks faced by HRDs working on business and human rights and push States to commit to recommendations for the protection of HRDs. HRDs should also use the UPR to demand that States under review be questioned on the measures they have taken to ensure the respect of human rights by companies operating on their territory.<sup>217</sup> This could include questions regarding these measures during the review of national legislation of the country, or the drafting of NAPs.

An example of such interaction can be seen in the briefing paper on the situation of HRDs in Niger.<sup>218</sup> The paper was submitted to the UPR Working Group, scheduled to review Niger in January 2016, by ISHR, the West Africa HRDs Network and Collectif des Organisations de Défense des Droits de l'Homme et de la Démocratie. The paper calls on the Government of Niger to ensure that companies

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215 *Ibid.*

216 [www.upr-info.org/en/how-to/role-ngos](http://www.upr-info.org/en/how-to/role-ngos).

217 Unfortunately, since States submit a national report on the human rights situation in their own country only, the possibility of using the UPR process to raise extraterritorial responsibilities of States, regarding the activities of their companies abroad, may be somewhat limited.

218 [www.ishr.ch/sites/default/files/documents/niger.pdf](http://www.ishr.ch/sites/default/files/documents/niger.pdf).

conducting operations in Niger, including Areva Energy Company, respect human rights and HRDs' activities, in line with the UN Guiding Principles and the UN Declaration on HRDs.

### ***Working Group on Business and Human Rights***

The Working Group on Business and Human Rights consists of five independent experts, and its main task is to promote effective and comprehensive implementation of the Guiding Principles.<sup>219</sup> Through its communications procedure, the Working Group enters into dialogue with States and companies about alleged human rights violations that have been brought to its attention. While the number of communications received and sent is increasing, the Working Group is still seeking to make more strategic use of the communications as a means of strengthening the protection of HRDs.<sup>220</sup>

In seeking to support the work of HRDs, the Working Group acts in close cooperation with other UN entities, including other Special Procedures mandate holders, and the High Commissioner for Human Rights and his Office, in Geneva and through its field presences.<sup>221</sup>

The Working Group welcomes information to support its work and strategy, to identify barriers to the effective implementation of the Guiding Principles and gaps in the protection of human rights in the context of business activities, and to guide recommendations made to States, business, and other actors, on the implementation of the Guiding Principles.<sup>222</sup>

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219 Office of the High Commissioner for Human Rights, "Working Group on the issue of human rights and transnational corporations and other business enterprises", [www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx).

220 Michael K Addo, "Full implementation of the Guiding Principles means protecting HRDs", 25 November 2014, [www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf](http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf).

221 *Ibid.*

222 [www.ohchr.org/EN/Issues/Business/Pages/Submissions.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/Submissions.aspx).



## SENDING INFORMATION TO THE WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

The Working Group is open to receiving information about alleged human rights violations by business in any format.<sup>223</sup> To do so, HRDs should follow the same process and provide similar details as outlined for the Special Rapporteur on the situation of HRDs (see page 61), but be aware that the mandate of the Working Group does not require the existence of a link between the violation and the victim's status as a human rights defender (i.e. the victim's human rights work).

If the case involves a law or a policy that violates human rights, additional information should be provided such as a summary of the draft law or policy and, if possible, a copy of the legislative text in French, Spanish or English, as well as in the original language.

### PRACTICAL EXAMPLE

An alleged human rights violation that occurred near the Owino Uhuru community, Kenya, was reported to the Working Group. Direct and indirect exposure to lead, following the improper management of a lead smelter that operated from 2007 to March 2014, caused serious health problems and human rights violations to community members, including former workers of the smelter.

The allegation stated that community members have continued to suffer adverse effects from the lead exposure over the past seven years and these impacts have not been addressed, nor have the community members been adequately compensated.

In response, the Working Group on Business and Human Rights, the Special Rapporteur on the situation of HRDs, the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on freedom of peaceful assembly and of association, and the Special Rapporteur on human rights and fundamental freedoms while countering terrorism sent a joint communication to the Kenyan Government.<sup>224</sup>

223 Contact details and more information are available [www.ohchr.org/EN/Issues/Business/Pages/Submittingcomplaints.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/Submittingcomplaints.aspx).

224 [spdb.ohchr.org/hrdb/29th/Public\\_-\\_OL\\_Kenya\\_18.12.14\\_\(7.2014\).pdf](http://spdb.ohchr.org/hrdb/29th/Public_-_OL_Kenya_18.12.14_(7.2014).pdf).

### *Compliance Advisor/Ombudsman of the IFC and MIGA*

The Compliance Advisor/Ombudsman (COA) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) works with communities and civil society organisations globally to help resolve issues of concern around IFC/MIGA projects and is responsible for handling complaints from individuals and communities that are adversely impacted by a project financed by these institutions. The COA has also prepared recommendations to the IFC and MIGA to improve their local development impact at the project level.<sup>225</sup> A 2008 advisory note set out recommendations to achieve the following key outcomes: strong corporate-community relationships, a social licence to operate, and strengthened internal processes and incentives to focus on achieving positive impact.<sup>226</sup>

COA provides information online explaining how to file a complaint and what to expect from the process.<sup>227</sup>

### *ILO's supervisory mechanisms*

The ILO's **Committee on Freedom of Association** (CFA) is a global mechanism applicable to all ILO Member States. The CFA handles complaints from government/workers/employers' organisations (not individuals) that allege an ILO Member State, or UN Member State that is a non-member of the ILO, has violated workers' rights to freely associate, organise, and bargain collectively. Member States accused of violating workers' rights are not required to have ratified the relevant conventions.

The **Committee of Experts on the Application of Conventions and Recommendations** (CEACR) issues one extensive document every year reviewing ILO Member States' adherence to obligations under relevant ratified conventions. They take into account government reports and the reports of the 'social partners', trade unions and employers' associations. Based on their findings for each Member State, they then make observations and direct requests.

The **Committee on the Application of Standards** each year selects particular countries that will receive an in-depth review of adherence to international obligations. These must be linked to the ILO Conventions, but in the past trade unions have used creative methods to bring complaints linked to one issue (e.g. discrimination against migrant workers) under the State's obligations to a technical convention (in the case of Thailand, Worker's Compensation and in the case of Qatar, the Labour Inspection Convention).

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225 The Office of the Compliance Advisor/Ombudsman, "The CAOs Three Roles", [www.cao-ombudsman.org/about/ourroles](http://www.cao-ombudsman.org/about/ourroles).

226 The Office of the Compliance Advisor/Ombudsman, "Improving IFC's and MIGA's local development impact at the project level", [www.cao-ombudsman.org/howwework/advisor/documents/improvingifc.pdf](http://www.cao-ombudsman.org/howwework/advisor/documents/improvingifc.pdf).

227 [www.cao-ombudsman.org/howwework/filecomplaint](http://www.cao-ombudsman.org/howwework/filecomplaint).

To use these mechanisms, the buy-in of national or international trade unions that have representative status at the ILO is critical. NGO participation at the formal meetings of the ILO in Geneva is often limited; NGOs can generally observe, but have few opportunities to speak formally. The ILO CFA website is a good starting point for HRDs wishing to use the ILO mechanisms.<sup>228</sup>

### **(B) Regional mechanisms**

#### ***Regional human rights commissions and courts***

The courts associated with regional human rights instruments may provide an avenue for remedy for business-related human rights abuses.

- The **Inter-American Commission on Human Rights** can decide complaints ('petitions') against all 35 Member States of the Organization of American States.<sup>229</sup>
- The **European Court of Human Rights** has jurisdiction to decide complaints ('applications') against all 47 Council of Europe Member States.<sup>230</sup>

#### **PRACTICAL EXAMPLE**

**In *Fadayeve v Russia* the Court found that the Russian Government was in violation of Article 8 of the European Convention on Human Rights by failing to regulate environmental pollution from an iron smelter.<sup>231</sup>**

- The **African Commission on Human and Peoples' Rights** may decide complaints ('communications') against all 53 Member States of the African Union, all parties to the African Charter on Human and Peoples' Rights.<sup>232</sup>
- The **European Court of Justice** has standing and jurisdiction over 'any natural or legal person.' This allows the Court to directly impose not only legal duties, but also human rights duties regarding non-discrimination on companies.<sup>233</sup>

The first three bodies only have jurisdiction to deal with complaints against States. Nevertheless, as mentioned earlier, States are obliged to ensure private actors do not violate the human rights of anyone within their jurisdiction. Therefore, whilst these

228 [www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm](http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm).

229 For more information on submitting a complaint see [www.oas.org/en/iachr/docs/pdf/HowTo.pdf](http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf).

230 For more information on submitting an application see [www.echr.coe.int/Documents/Your\\_Application\\_ENG.pdf](http://www.echr.coe.int/Documents/Your_Application_ENG.pdf).

231 Business & Human Rights Resource Centre, "Fadayeve v Russia (re Severstal smelter)", [business-humanrights.org/en/fadayeve-v-russia-re-severstal-smelter](http://business-humanrights.org/en/fadayeve-v-russia-re-severstal-smelter).

232 For more information on submitting a communication see [www.achpr.org/communications/](http://www.achpr.org/communications/).

233 For more information on submitting a complaint see [ec.europa.eu/atwork/applying-eu-law/make\\_a\\_complaint\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/make_a_complaint_en.htm).

courts cannot exercise jurisdiction over corporations directly, their public recognition and condemnation of corporate-committed human rights violations can mark an important step on the path towards accountability.

### ***Working Group on Extractive Industries, Environment and Human Rights Violations***

The Working Group on Extractive Industries, Environment and Human Rights Violations was established by the African Commission on Human and Peoples' Rights in 2009.<sup>234</sup> The Working Group's purpose is to examine the impact of extractive industries in Africa within the context on the African Charter on Human and Peoples' Rights, including by:

- researching specific issues pertaining to the right of all peoples to freely dispose of their wealth and natural resources;
- undertaking research on the violations of human and peoples' rights by non-state actors in Africa;
- informing the African Commission on the possible liability of non-state actors;
- formulating recommendations and proposals on appropriate measures and activities for the prevention and reparation of violations of human and peoples' rights by extractive industries;
- collaborating with interested donor institutions and NGOs;
- preparing a comprehensive report to be presented to the African Commission.<sup>235</sup>

#### **POSITIVE EXAMPLE**

The Working Group has established a forum for discussion between HRDs and corporations through sub-regional consultations. The consultations are an important initiative because they provide an opportunity for discussion between many different actors including, governmental officials, extractive corporations, local community representatives and NGOs.

ISHR took part in the third such consultation, in Lubumbashi in July 2015, and made a formal submission to the Working Group containing recommendations on how the Working Group, governments, and extractive industry enterprises can work to protect and promote HRDs and civil society space.<sup>236</sup>

234 The African Commission on Human and Peoples' Rights, "148: Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa", [www.achpr.org/sessions/46th/resolutions/148/](http://www.achpr.org/sessions/46th/resolutions/148/).

235 *Ibid.*

236 [www.ishr.ch/news/corporate-accountability-defenders-central-africa-troublemakers-offer-solutions](http://www.ishr.ch/news/corporate-accountability-defenders-central-africa-troublemakers-offer-solutions).

## **(C) National Mechanisms**

### **National Contact Points (NCPs)**

NCPs for the OECD Guidelines provide mediation and conciliation platforms for resolving practical issues arising with the implementation of the Guidelines. NCPs promote the Guidelines and deal with complaints, called 'specific instances', of alleged non-compliance of a business with the Guidelines. However, depending on which home country you will engage with, it is useful to recognise the variation in mandate, authority and resources of the NCP.

Some governments have an NCP that is independent from government ministries, or inter-ministerial. In the Netherlands, the NCP office even includes representation from trade unions and employers' associations. In larger and better-resourced NCPs, NGOs may be able to ask for deeper investigation into the case. However, in others the NCP works more like a focal point, limited to offering their 'good offices'. In other words, if the company in question refuses to acknowledge the problem, or otherwise chooses not to engage in the NCP process, it cannot be compelled through law or regulation to participate in mediation.

### **National human rights bodies and organisations**

National human rights bodies, for example, the New Zealand Human Rights Commission, receive complaints and enquiries on human rights issues and have a statutory mandate to take action on those that relate to unlawful discrimination, including those involving companies. National human rights organisations are also equipped to undertake their own investigations into alleged human rights abuses.

#### **PRACTICAL EXAMPLE**

**The Indonesian Human Rights Commission investigated the gas exploration activities of PT Lapindo Brantas Inc in Porong, Sidoarjo, which displaced thousands of families. The Commission concluded that the State committed human rights violations, as did the corporation, and asked the State to provide a remedy to the victims.<sup>237</sup>**

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237 Business & Human Rights Resource Centre, "Mud volcano in Indonesia: Human rights commission finds violations - may bring cases against state, companies", [business-humanrights.org/en/mud-volcano-in-indonesia-human-rights-commission-finds-violations-may-bring-cases-against-state-companies](https://www.business-humanrights.org/en/mud-volcano-in-indonesia-human-rights-commission-finds-violations-may-bring-cases-against-state-companies).

## PRACTICAL EXAMPLE

In 2005, the Kenyan National Commission on Human Rights undertook a public inquiry into the human rights impacts of salt mining companies. The Inquiry resulted in the publication of a special report, 'Economic interests versus social justice: Public inquiry into salt manufacturing in Magarini, Malindi District' (2006), presented to the President and National Assembly. In 2012, the Commission held follow-up meetings with local communities to identify whether the report's recommendations had been implemented. Subsequently, in 2013, the Commission undertook litigation in the public interest, filing a case against the relevant companies regarding the violations of land rights and the right to a clean environment.<sup>238</sup>

### *Judicial mechanisms*

Within a national jurisdiction, business-related human rights abuses may fall under a range of applicable civil and criminal laws – such as environment, labour, anti-discrimination, anti-bribery and corruption. National courts are increasingly being used to provide remedy for victims of corporate human rights abuses.<sup>239</sup>

## PRACTICAL EXAMPLE

A US federal grand jury recently indicted four employees of Global Horizons, a US-based recruiting company, on charges of forced labour. The company brought hundreds of Thai workers to the US on the belief that if they did not work, they could be arrested and deported.<sup>240</sup>

In some countries HRDs may be able to bring a claim for specific business-related human rights abuses that occurred in another jurisdiction. For example, criminal and anti-bribery and corruption laws frequently apply to the actions of national citizens, even if they occur overseas.<sup>241</sup> However, it is generally difficult to hold businesses accountable for abuses occurring overseas.

238 Nora Götzmann and Claire Methven O'Brien, *Business and Human Rights: A Guidebook for National Human Rights Institutions* (Report, International Coordinating Committee of National Human Rights Institutions (ICC) and Danish Institute for Human Rights (DIHR), November 2013), p 68, [humanrights.dk/files/media/dokumenter/udgivelser/bhr\\_guidebook\\_for\\_nhris\\_2013\\_eng.pdf](https://humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf).

239 United Nations General Assembly, "Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises", John Ruggie, Human Rights Council 17th Session, 21 March 2011, [www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf](http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf).

240 Business & Human Rights Resource Centre, "Global Horizons lawsuits (re forced labour)", [business-humanrights.org/en/global-horizons-lawsuits-re-forced-labour#c18765](https://business-humanrights.org/en/global-horizons-lawsuits-re-forced-labour#c18765).

241 Nora Götzmann and Claire Methven O'Brien, *Business and Human Rights: A Guidebook for National Human Rights Institutions* (Report, International Coordinating Committee of National Human Rights Institutions (ICC) and Danish Institute for Human Rights (DIHR), November 2013, p 24, [humanrights.dk/files/media/dokumenter/udgivelser/bhr\\_guidebook\\_for\\_nhris\\_2013\\_eng.pdf](https://humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf)).

The *Alien Torts Claim Act* (ATCA) in the US, mentioned earlier, is a statute that has been used to sue companies registered there for alleged violations of international law, regardless of where the violation occurred. During the past decade human rights groups have brought many cases against multinational companies, mostly natural resource companies, under the ATCA. However, only a small number of cases have resulted in settlement payments. In the recent Supreme Court decision of *Kiobel v Royal Dutch Petroleum Co*,<sup>242</sup> the Court stated that 'mere corporate presence' does not suffice to apply the ATCA. However, as the Court did not articulate what connection is required for corporations to be held liable under the ACTA, there is room for an argument as to the scope of the ATCA, and potential liability of corporations.

**Given the significant costs involved in litigation, HRDs will likely need pro bono assistance from law firms to represent them in litigation. Law firms offering pro bono assistance include DLA Piper, Allens Linklaters and Freshfields. Firms will provide pro bono assistance if the case falls within its definition of pro bono. Generally, a pro bono case is one where you have no other access to the legal system and/or it raises an issue of wider public policy or public interest; or it involves assistance to charitable and community organisations.<sup>243</sup> By contacting pro bono departments of law firms you can determine whether you are eligible to seek such assistance.**

#### D) Company grievance mechanisms

A grievance mechanism should not substitute or waive access to legal remedy by rights-holders. Notwithstanding this, participation in an operational-level grievance mechanism is considered under the Guiding Principles to be an integral part of a company's human rights due diligence process.<sup>244</sup> Businesses are expected to provide for, or cooperate in, the remediation of any adverse impacts they have caused or to which they have contributed.<sup>245</sup>

HRDs are well placed to assist businesses in designing and implementing grievance mechanisms due to their extensive experience dealing with the impact of business on human rights.

242 133 S.Ct. 1659 (2013).

243 DLA Piper, *The Australian In-House Legal Counsel Pro Bono Guide* (2012), [www.dlapiper.com/~media/Files/Insights/Publications/2012/05/The%20Australian%20Inhouse%20Legal%20Counsel%20Pro%20Bono%20Gu\\_\\_/Files/inhousecounselprobonoguideupdated/FileAttachment/inhousecounselprobonoguideupdated.pdf](http://www.dlapiper.com/~media/Files/Insights/Publications/2012/05/The%20Australian%20Inhouse%20Legal%20Counsel%20Pro%20Bono%20Gu__/Files/inhousecounselprobonoguideupdated/FileAttachment/inhousecounselprobonoguideupdated.pdf).

244 United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York and Geneva, 2011), pp 17-24, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

245 *Ibid*, Article 22.

Companies should ensure they have a grievance mechanism that is:

- **legitimate**, in that it is trusted by the local community and incorporates mechanisms making it accountable for fair conduct of grievance processes;
- **accessible** to and known by community members, including being available in local languages;
- **predictable**, providing a clear procedure for grievance resolution with an indicative time frame for each stage, and clarity on available outcomes;
- **equitable**, in that aggrieved parties have reasonable access to information, advice and expertise enabling them to participate on fair, informed and respectful terms;
- **transparent**, in that aggrieved parties are informed about an investigation's progress, and the community is informed about the overall performance of the mechanism;
- **equally available** to all groups, including all sexes, ages and cultural groups;
- **broad** enough to capture all relevant grievances, including those concerning third parties (for example, a contractor failing to pay community members);
- **rights-compatible**, in that outcomes and remedies accord with internationally-recognised human rights;
- **a source of continuous learning**, enabling the company to take steps to prevent future grievances.<sup>246</sup>

#### PRACTICAL EXAMPLE

The operational-level grievance mechanism of the Newmont Ahafo mine, Ghana, has an escalation procedure linking to the Human Rights Commission, and then the judicial system.<sup>247</sup>

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<sup>246</sup> *Ibid*, Article 31.

<sup>247</sup> Centre for Social Responsibility in Mining, "Community Complaints and Grievance Mechanisms and the Australian Minerals Industry, Second Discussion Paper", July 2009, pp 30-42.

## PRACTICAL EXAMPLE

In the Philippines, OceanaGold worked with a local council to design a complaints procedure, with explicit involvement of the local community at key stages. The procedure allowed for council member(s) and the complainant to approve or reject solutions proposed by the company.<sup>248</sup> The procedure was intended to function for various concerns, from water access to employment disputes.<sup>249</sup> The company's 2014 Sustainability Report provided that of 55 registered complaints 15 remained unresolved at the end of the year (compared to 55 in the previous year). The company attributed this to the creation of the complaints procedure and its dedicated complaints team.<sup>250</sup>

Things to consider when filing a complaint using a company grievance mechanism:

- **Who can file the complaint:** generally, grievance mechanisms accept complaints from affected individuals, groups and/or their representatives, provided the issue falls within the scope of the mechanism and meets applicable eligibility requirements. Individuals include HRDs, workers, trade unionists and community leaders. Groups include trade unions, peasant associations, local communities, and/or civil society organisations.
- **Timing of filing:** once an actual or potential harm by a company is identified, start investigating whether and when a complaint can be submitted. When dealing with a past issue, not yet adequately addressed or remediated (such as environmental pollution), you may need to assess if there have been changes to the mechanism's procedures and/or the applicable principles and standards.
- **Other parallel proceedings/procedures underway:** although it is possible to file with more than one mechanism, some may put your complaint on hold if there are legal or other types of parallel proceedings concerning the same issue still unresolved.

248 International Council on Mining and Metals, "Human Rights in the Mining & Metals Industry - Handling and Resolving Local Level Concerns & Grievances", October 2009, p 17, [www.icmm.com/document/691](http://www.icmm.com/document/691); Advocates for International Development, Lawyers Eradicating Poverty, "Rights, Regulation and Remedy, The Extractive Sector and Development", 23 March 2012, [a4id.org/sites/default/files/Rights,%20Regulation%20and%20Remedy%20Report.pdf](http://a4id.org/sites/default/files/Rights,%20Regulation%20and%20Remedy%20Report.pdf).

249 Advocates for International Development, Lawyers Eradicating Poverty, "Rights, Regulation and Remedy, The Extractive Sector and Development", 23 March 2012, [a4id.org/sites/default/files/Rights,RegulationandRemedyReport.pdf](http://a4id.org/sites/default/files/Rights,RegulationandRemedyReport.pdf).

250 OceanaGold, "Sustainability Report 2014", p8, [www.oceanagold.com/assets/documents/2014SustainabilityLow-Res.pdf](http://www.oceanagold.com/assets/documents/2014SustainabilityLow-Res.pdf).



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## BEYOND COMPLIANCE: WHAT ELSE SHOULD COMPANIES DO TO RESPECT AND ENGAGE HUMAN RIGHTS DEFENDERS?

### Consistency throughout supply chains

One challenge for HRDs seeking to engage with and obtain progressive actions from businesses is knowing what can be asked for, in particular in the context of global supply chains. Although many multinational corporations have a centralised human rights and 'corporate social responsibility' policy, the extent to which that is implemented throughout their supply chains may be different. The national laws and the social and policy environment in different countries also have an impact on the concrete impacts of a company's actions. For example, the Taiwanese electronics manufacturer Foxconn has production facilities in both Brazil and China. However, the facilities' approaches to wage negotiations, unionisation, and government relations in these countries are quite different, despite the fact that they are each managed by Foxconn.<sup>251</sup>

One solution to this is to seek a commitment to company-wide policies that, in some cases, go further than domestic law in countries of production. Another, pioneered by global union federations, is the evolution of 'global framework agreements' that set the (higher) expectations for consultation, bargaining, etc. for all the businesses linked to a particular company's supply chain. For example, IKEA and Building and Woodworkers International signed an agreement on implementation of the company's Code of Conduct in its facilities. Similarly, Chiquita and the International Union of Farmworkers (IUF) signed an agreement on freedom of association, minimum labour standards, and employment in 2001, although it only applies to operations in Latin America.<sup>252</sup>

### Speaking out against human rights violations

In his report to the General Assembly in 2015, the Special Rapporteur on the situation of human rights defenders recommended that both States and businesses should play an active role in supporting and promoting the role of HRDs working in their sectors.<sup>253</sup>

This should include, for example, speaking out when HRDs are targeted for their corporate accountability work. Businesses must also cease and abstain from supporting any actions, directly or

251 [www.cnet.com/news/could-foxconn-factory-in-brazil-be-a-model-for-apple-production/](http://www.cnet.com/news/could-foxconn-factory-in-brazil-be-a-model-for-apple-production/); [inthesetimes.com/working/entry/13051/apples\\_two\\_faces\\_power\\_gaps\\_between\\_brazil\\_and\\_china\\_foxconn\\_workers](http://inthesetimes.com/working/entry/13051/apples_two_faces_power_gaps_between_brazil_and_china_foxconn_workers).

252 IUF Uniting Food, Farm and Hotel Workers World-Wide, "IUF, Colsiba And Chiquita Sign Historic Agreement On Trade Union Rights For Banana Workers", [www.iuf.org/cgi-bin/dbman/db.cgi?db=default&www=1&uid=default&ID=1111&view\\_records=1&en=1](http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&www=1&uid=default&ID=1111&view_records=1&en=1).

253 See the report to be presented the 70th Session of the General Assembly, [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx).

indirectly, which impinge upon defenders' rights to freedom of expression, association and assembly.<sup>254</sup>

**In a recent article**, Mauricio Lazala and Joe Bardwell of the Business and Human Rights Resource Center (BHRRC) argue that 'businesses benefit when the rules of the game are clear, consumers are empowered, employees are respected, and the judicial system works well. While there are many positive examples of companies speaking out for human rights or even for HRDs and civil society space, far too many remain silent when human rights are at stake in repressive states.'<sup>255</sup> A company's human rights policies are regularly at odds with their inaction and silence in respect of their operations in repressive States, especially where they commit to undertaking human rights due diligence and engaging with stakeholders. BHRRC suggests that this is because 'companies tend to see the risks outweighing the benefits of publicly speaking out.'<sup>256</sup>

**Lazala and Bardwell argue** that 'even where a company has significant leverage over a government, it might be reluctant to use this to further human rights.'<sup>257</sup> An example is the refusal of BP, the largest foreign investor in Azerbaijan, to respond to human rights concerns around its sponsorship of the European Games in June 2015. BP did 'not believe that seeking to influence the policies of sovereign governments could be considered to be a part of its role as a sponsor of the European Games.'<sup>258</sup> However, as the authors note, 'BP would certainly seek to 'influence the policies of sovereign governments' when the company's interests are at stake.'<sup>259</sup>

'Where the protection of human rights clashes with business interests, even some companies with strong human rights commitments show disregard for them.'<sup>260</sup> In a letter in early 2015, 31 Swedish companies set out concerns around the Swedish Foreign Minister's statements which criticised Saudi Arabia's human rights record. The letter sought the protection of economic relationships over and above human rights concerns. Similarly, companies may prioritise market access over human rights considerations in trade negotiations, in circumstances where governments may seek to strengthen labour and environmental protections.<sup>261</sup>

254 *Ibid.*

255 Mauricio Lazala and Joe Bardwell, "'What human rights?' Why some companies speak out while others don't", 17 June 2015, [www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while](http://www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while).

256 *Ibid.*

257 *Ibid.*

258 *Ibid.*

259 [business-humanrights.org/en/government-repression-of-human-rights-activists-when-should-business-speak-out-from-hong-kong-streets-to-the-european-games-in-azerbaijan](http://business-humanrights.org/en/government-repression-of-human-rights-activists-when-should-business-speak-out-from-hong-kong-streets-to-the-european-games-in-azerbaijan).

260 Mauricio Lazala and Joe Bardwell, "'What human rights?' Why some companies speak out while others don't", 17 June 2015, [www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while](http://www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while).

261 *Ibid.*

More positively, there are many instances when companies have spoken out against human rights violations.<sup>262</sup> In January 2014, the Cambodian Government was condemned by clothing companies sourcing from Cambodia, including adidas, Columbia, Gap, H&M, Inditex, Levi Strauss and Puma, for violently cracking down on garment workers that went on strike which resulted in injuries and deaths.<sup>263</sup>

Earlier this year, statements were made by Leber Jeweller, Inc., Tiffany & Co. and Brilliant Earth calling on the Angolan Government to drop charges against journalist Rafael Marques (who had exposed abuses in the diamond industry and was subsequently on trial for defamation).<sup>264</sup> However, it is noteworthy that none of these companies were operating in Angola.

There is certainly evidence that taking a principled approach on human rights can benefit companies. For example, 'firms in the US are discovering that taking an enlightened public stance on social justice issues hasn't hurt their bottom line and makes business sense – it helps attract and retain new customers and the best staff.'<sup>265</sup>

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262 In March 2013, in Peru, six United States textile firms urged the Government of Peru to repeal a law that condoned labour rights violations, making it difficult for them to implement their own sourcing codes of conduct. And in 2009, in response to the coup in Honduras, major apparel companies called for the restoration of democracy. Of course, concerns over supply chains play a big role in these cases. In the ICT sector, Google famously pulled out of China in 2010 over censorship attempts. In the food sector, two Thai seafood associations provided the bail for rights activist Andy Hall, who was imprisoned and charged in 2014 following his investigations into abuses of migrant workers in the food industry in Thailand. In March of this year, 379 businesses and organisations submitted a public statement to the US Supreme Court in support of same-sex marriage, including corporate behemoths such as Coca-Cola, Goldman Sachs, Microsoft and Morgan Stanley. And in the last couple of years, hundreds of companies have publicly expressed their support for the peace process between the Colombian Government and the FARC guerrillas, when in the past most companies in Colombia kept a very low profile in relation to the armed conflict.

More recently, civil society has called on FIFA sponsors to respond to human rights concerns at construction sites for the Qatar 2022 World Cup. So far, adidas, Coca-Cola and Visa have issued statements supporting workers' rights in the country.

263 Mauricio Lazala and Joe Bardwell, "What human rights? Why some companies speak out while others don't", 17 June 2015, [www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while](http://www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while).

264 [business-humanrights.org/en/angola-trial-of-journalist-rafael-marques-to-resume-over-book-on-abuses-in-diamond-mining-tiffany-leber-jeweler-urge-govt-to-drop-charges](http://business-humanrights.org/en/angola-trial-of-journalist-rafael-marques-to-resume-over-book-on-abuses-in-diamond-mining-tiffany-leber-jeweler-urge-govt-to-drop-charges).

265 *Ibid.*



© Flickr, Bread for the World

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## **Spectrum of actions for companies to respect, engage and support HRDs**

Corporations can take a range of actions to respect, protect and support HRDs. Some of these – such as the requirement to desist from direct or indirect attacks against them – are legal obligations; others – such as speaking out publicly in support of HRDs who are at risk – make for good business practice.

### **HOW COMPANIES CAN RESPECT, PROTECT AND SUPPORT HRDS**

#### **Companies must respect and engage with HRDs, such as by:**

- desisting from physical or legal attacks against HRDs, including those exercising their rights to freedom of expression, association, peaceful assembly and protest against the business or its interests;
- meaningfully consulting with HRDs in the design, implementation and evaluation of projects, and in due diligence and human rights impact assessment processes;
- advising clients and educating suppliers as to their obligations in relation to HRDs

#### **Companies should support and partner with HRDs, such as by:**

- providing financial and in-kind resources, support and advice to HRDs and their organisations;
- encouraging Home and Host governments to consult with HRDs in the elaboration of NAPs and to include concrete measures and commitments to support HRDs in such NAPs;
- encouraging Home governments to speak out in support of HRDs through their diplomatic representations in States in which the company operates and HRDs are restricted.

#### **Companies can advocate and seek remedy for HRDs at risk, and against laws and policies that restrict them, such as by:**

- joining or supporting a campaign or coalition in support of HRDs and against attacks and restrictions against them;
- speaking out in general terms in support of HRDs and a safe and enabling environment for civil society;
- speaking out in individual cases of attacks or restrictions against HRDs or in relation to proposed or enacted laws or policies that restrict or criminalise them;
- making private representations to governments in relation to individual cases, laws or policies.



## PRACTICAL EXAMPLES OF ENGAGEMENT

This section sets out some practical examples of potential engagement with business, incorporating the elements discussed above. It indicates the importance of being selective in determining which approaches and actions make the most sense in a particular context, and of designing engagement strategies in line with your needs and the needs of the relevant business.

### Scenario I

A mining company's consultation processes regarding relocation of villages occur with community leaders and property owners who are all men. The company does not specify that it is only willing to engage with men, rather, in this community women are not seen as having a role in the discussions and are discouraged from speaking directly with men, except relatives. The company is ignorant of the community's traditions and its focus is on developing the project as quickly as possible.

Affected stakeholders: who is being harmed? Which human rights?	Women in the community have no voice; they have no right to freedom of expression, no property rights, and in the context of the mining project, it is impossible for them to provide free, prior, and informed consent (FPIC).
Advocacy target: whose actions do you want to change?	Change the actions of the company, to ensure that despite the prevailing cultural norms, it understands the potential impact of their operations on affected women and can take steps to mitigate any risks.
Possible allies: who might help you respond to this practice?	Local NGOs who can navigate community politics. Women who have left the community and can advise on the best way to engage.
What frameworks could you use?	FPIC principles enshrined in domestic law; company code of conduct that focuses on non-discrimination; international human rights law through UN mechanisms, including special procedures, the treaty bodies and the OECD Guidelines.
<b>STEP 1</b> Engaging constructively	Raise awareness within the company of cultural norms in the community; connect the frontline managers with anti-discrimination training.
<b>STEP 2</b> Publicising the issue	Reach out to women's groups who might help serve as go-betweens, or NGOs who have been working with the local community on other issues. Create safe spaces for women to consult, and lobby the company to send women employees to attend.
<b>STEP 3</b> Seeking remedy	Alert the UN Working Group on Discrimination against Women and the Working Group on Business and Human Rights about this issue. Seek to use company grievance mechanisms or the OECD NCP (if applicable) to find a mediated solution.

## Scenario 2

A biomedical engineering company does not employ local indigenous workers as many do not have the required training. Education standards amongst the general population where the company is located are high, however, there is a significant gap in education between the general population and the local indigenous population. The local indigenous population considers opportunities are not available to them and there are no incentives to attempt to get better jobs. The community elders are worried about their youths, who have grown accustomed to discrimination and lack of opportunity.

<p><b>Affected stakeholders:</b> who is being harmed? Which human rights?</p>	<p><b>Indigenous people.</b> The rights to education, to an adequate standard of living, and to adequate just and fair working conditions</p>
<p><b>Advocacy target:</b> whose actions do you want to change?</p>	<p>Change the actions of the company, to ensure that despite the prevailing cultural norms, it understands the potential impact of their operations on affected indigenous populations and can take steps to mitigate any risks.</p>
<p><b>Possible allies:</b> who might help you respond to this practice?</p>	<p>Local NGOs who can navigate community politics. Community elders who have left the community and who can advise on the best way to engage.</p>
<p><b>What frameworks could you use?</b></p>	<p>Company code of conduct that focuses on non-discrimination; international human rights law through UN mechanisms, including special procedures, the treaty bodies and the OECD Guidelines.</p>
<p><b>STEP 1</b> Engaging constructively</p>	<p>Raise awareness within the company of cultural norms in the community. Educate the company on challenges faced by indigenous people in gaining skills for employment and the role of special measures to ensure non-discrimination. Support the company to consider capacity- and skill-development of local indigenous workers to enable them to apply for employment opportunities. This could involve providing scholarships, training and mentoring support. Work with the company to deliver training to its personnel, especially those working in human resources, or non-discrimination and equal opportunities. Work with State or provincial educational institutions to develop courses that are relevant to employment opportunities.</p>
<p><b>STEP 2</b> Publicising the issue</p>	<p>Consider lobbying the company about the issue, through awareness campaigns and petitions. Also consider engaging the media to create awareness.</p>
<p><b>STEP 3</b> Seeking remedy</p>	<p>A complaint could be lodged with the NCP or under the Convention on the Elimination of all forms of Racial Discrimination.</p>

### Scenario 3

A muesli company's supplier fails to provide a safe and healthy working environment for employees, which results in a number of work-related injuries. The supplier is a small family owned company that harvests coconuts. Staff members are expected to climb the trees and retrieve coconuts without any harnesses or protective headwear. The supplier employs approximately 100 staff, but operates on low profit margins. The muesli company's website states that its philosophy is 'to help everyone live a wholesome life'. The muesli company is relatively new and does not have any existing relationships with human rights defenders.

<p><b>Affected stakeholders: who is being harmed? Which human rights?</b></p>	<p><b>Employees.</b> The right to work, and to enjoy just and favourable conditions of work, the right not to be subject to inhumane or degrading treatment, and the right to life.</p>
<p><b>Advocacy target: whose actions do you want to change?</b></p>	<p>Change the actions of the company. Get it to realise the importance and benefits of a safe working environment. Encourage the government to improve labour inspection procedures and working condition regulations.</p>
<p><b>Possible allies: who might help you respond to this practice?</b></p>	<p>Local NGOs who can navigate community politics, national and international trade unions, politicians in your home country and the host country.</p>
<p><b>What frameworks could you use?</b></p>	<p>ILO Declaration; OECD Guidelines.</p>
<p><b>STEP I</b> Engaging constructively</p>	<p>Engage with the company regarding its 'wholesome life' philosophy and how that philosophy is reflected in its supply chains. Discuss the marketing benefits of enhancing its corporate social responsibility profile by ensuring its suppliers provide safe working environments. Educate the company on improving supply chain management in the area of health and safety, for example through including key suppliers in company health and safety training and forums. If it is receptive, consider building a strategic partnership that the company could then use to promote its 'wholesome life' image. For example, through developing a campaign with the muesli company about helping communities provide safe working environments. Alternatively, establish a multi-stakeholder forum involving the company, industry bodies and suppliers to address health and safety. You could offer to conduct human rights training for both the supplier and the parent company.</p>

**STEP 2**  
Publicising  
the issue

Engage with the government on improving regulations and labour inspection procedures to ensure company compliance.

Lobby the company regarding this issue and how it relates to its 'wholesome life' philosophy. For example, by writing to the company, producing reports on the issue, creating awareness campaigns or creating petitions against such human rights abuses. You could also lobby the supplier directly to try and raise awareness of this issue.

Engage the media to expose the practices, for example, through a press release.

**STEP 3**  
Seeking remedy

Make a complaint via the company grievance mechanism.

Assist the workers to raise a complaint with the local NCP, or with the relevant labour organisation, such as the Fair Labour Association, or the ILO Committee on Freedom of Association.



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## Scenario 4

A consumer electronics manufacturer uses rare earth minerals sourced from conflict-affected areas in its products. The company has a human rights policy and regularly engages with HRDs on other issues, such as labour standards and antidiscrimination measures. However, the company has avoided discussions regarding the sourcing of its materials and has repeatedly refused to provide information about this.

Affected stakeholders: who is being harmed? Which human rights?	The community from which the minerals are sourced.
Advocacy target: whose actions do you want to change?	Change the actions of the company.
Possible allies: who might help you respond to this practice?	National and international NGOs, politicians in your home country and in the host country.
What frameworks could you use?	The OECD Due Diligence Guidance for Responsible Supply Chains, to request the company to uphold the relevant due diligence standards relating to sourcing and supply chain management of rare earth minerals potentially coming from conflict-affected areas.
<b>STEP 1</b> Engaging constructively	Assist the company to ensure that its human rights policy is incorporated into agreements with suppliers, such as through contractual measures or memorandums of understating. Provide the company with an independent, detailed and substantiated report on the link between the raw materials and the conflict. Highlight the market and reputational risks to which it might be exposed if consumers become widely aware of the supply chain issues.
<b>STEP 2</b> Publicising the issue	Consider lobbying the company about the issue, through awareness campaigns and petitions. Consider engaging the media to create broader awareness of the issue.
<b>STEP 3</b> Seeking remedy	Consider lodging a complaint with the NCP, or to the relevant regional human rights court (the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights), if applicable.



## INTERNATIONAL HUMAN RIGHTS GUIDELINES RELEVANT TO BUSINESS AND HUMAN RIGHTS

This section will provide a basic outline of international standards, and frameworks established by stakeholders.

### International initiatives

#### (A) *United Nations Declaration on HRDs*

The Declaration, adopted by the UN General Assembly in 1998, defines a HRD as anyone working for the promotion and protection of human rights.<sup>266</sup> This encompasses professional and non-professional human rights workers, volunteers, journalists, lawyers and anyone else carrying out, even on an occasional basis, a human rights activity.

The Declaration articulates existing human rights in a way that makes it easier to apply them to the situation of HRDs. It specifies how the rights contained in human rights instruments, including the rights to freedom of expression, association and assembly, apply to defenders. It also outlines the specific duties of States and the responsibility of every person with regard to defending human rights. For example, Article 10 of the Declaration says, 'no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms'.<sup>267</sup>

In 2000, the UN established the mandate of the Special Rapporteur on the situation of HRDs to monitor and support the implementation of the Declaration. The mandate of the Special Rapporteur has developed the concept of a 'safe and enabling environment', in which defenders can carry out their work free from hindrance and insecurity. This is also the benchmark guiding the work of Working Group on Business and Human Rights on HRDs, as it moves to ensure States and businesses implement their human rights obligations.<sup>268</sup>

#### (B) *The Framework and the Guiding Principles*

The **Framework**<sup>269</sup> and **Guiding Principles**<sup>270</sup> do not identify the specific human rights that corporations have a responsibility

<sup>266</sup> [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx).

<sup>267</sup> *Ibid.*

<sup>268</sup> Michael K Addo, "Full implementation of the Guiding Principles means protecting HRDs", 25 November 2014, [www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf](http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders#sthash.pPCN3Adr.dpuf).

<sup>269</sup> [www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf](http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf).

<sup>270</sup> [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

to respect. These rights are set out in international instruments (the right to life, the right to work, the right to freedom of association and collective bargaining, and the right of indigenous peoples not to be resettled or removed from their land without free, prior and informed consent), which give content to the processes described by the Framework and the Guiding Principles.

In addition to these international instruments, while not discussed in this handbook, customary international law – international obligations arising from established State practice – and international humanitarian law also inform the application of the Framework and the Guiding Principles.

The Framework and the Guiding Principles were endorsed by the Human Rights Council in 2011, and are regarded as the authoritative global standard for preventing and addressing adverse human rights impacts linked to business activity. Further, in June 2014, the Council adopted a significant resolution complementing the Guiding Principles and recognising ‘the valuable role played by civil society, including NGOs, in promoting the implementation of the Guiding Principles and accountability for business-related human rights abuses.’<sup>271</sup>

The **Framework** was elaborated by the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises. It builds on major research and extensive consultations with all relevant stakeholders, including States, civil society and the business community. The Framework comprises three pillars:

- **State’s duty to protect** those within its jurisdiction from adverse human rights impacts, including by corporations;
- **Corporations’ responsibility to respect human rights**, including by acting with due diligence to avoid infringing on the rights of others, and to address adverse human rights impacts;
- The need for greater **access to effective remedies** for those affected by human rights violations, including non-judicial remedies.

The **Guiding Principles**, which were established to implement the Framework, provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. They set out detailed expectations for States and corporations in relation to business and human rights, and recommend appropriate actions for implementing the Framework.

Corporations are expected to avoid causing or contributing to adverse human rights impacts through their activities, and to prevent or mitigate adverse impacts linked to their business relationships, even if they have not directly contributed to them.

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271 [www.ishr.ch/sites/default/files/article/files/norway\\_resolution\\_bhr\\_final\\_oral\\_revisions.pdf](http://www.ishr.ch/sites/default/files/article/files/norway_resolution_bhr_final_oral_revisions.pdf).

In meeting these expectations, the Guiding Principles recommend that corporations should:

- express their commitment to human rights through a **statement of policy** appropriately informed, communicated and implemented;
- implement effective **human rights due diligence** to identify, prevent and address actual or potential adverse human rights impacts;
- **integrate human rights** considerations across the business;
- enable access to effective **grievance mechanisms** by affected groups and individuals; and
- **monitor and report** on the extent the business has achieved alignment with its human rights policy commitments.

### *(C) UN Global Compact*

The Global Compact has set up ten aspirational principles on human rights, labour rights, the environment and anti-corruption which companies can endorse.<sup>272</sup> In respect of human rights and labour, companies that participate in the Global Compact endorse the following principles:

- Human rights – business should:
  - support and respect the protection of internationally proclaimed human rights;
  - make sure they are not complicit in human rights abuses.
- Labour – business should:
  - uphold the freedom of association and effective recognition of the right to collective bargaining;
  - work towards the elimination of all forms of forced and compulsory labour;
  - work towards the effective abolition of child labour;
  - work towards the elimination of discrimination in respect of employment and occupation.

### *(D) ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy 2006 are guidelines for multinational enterprises, governments, and employers' and workers' organisations in employment, training, conditions of work, and industrial relations.

### *(E) Organisation for Economic Co-operation and Development Guidelines*

The OECD is a forum bringing together governments of 30 democracies to address economic, social and environmental challenges of globalisation, including by discussing policy experience,

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<sup>272</sup> [www.unglobalcompact.org/what-is-gc/mission/principles](http://www.unglobalcompact.org/what-is-gc/mission/principles).

identifying good practice and working to coordinate domestic and international policies. The OECD Guidelines are recommendations for responsible business made by OECD governments to multinational enterprises operating in or from the 46 countries that adhere to them.<sup>273</sup> They cover a range of standards including social, environmental, taxation, and human resources.

The 2011 update of the OECD Guidelines incorporated a stronger human rights chapter fully aligned with the Guiding Principles, and requires countries adhering to the OECD Guidelines to set up NCPs (discussed on page 69). Whilst all OECD countries are required to have an NCP in place, the form and governance of NCPs varies depending on the country.

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### Multi-stakeholder initiatives

There are many voluntary initiatives and guidelines aimed at improving the performance of businesses in terms of respecting human rights. These include voluntary codes of conduct, monitoring and reporting procedures, and socially responsible reporting indexes that ask corporations to look beyond their legal obligations and make a genuine commitment to respecting human rights.

Some of these standards are discussed below.

#### *(A) Equator Principles*

The Equator Principles is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects.<sup>274</sup> It is primarily intended to provide a minimum standard for due diligence to support reasonable risk decision-making. Commercial banks and other financial institutions that adopt the Principles agree to finance only those projects that commit to incorporating the Principles into their business and risk management processes.

The Equator Principles require environmental and social impact assessment, consultation and disclosure to stakeholders, establishment of grievance mechanisms, and independent review and public reporting on alignment with the Principles.

#### *(B) Voluntary Principles on Security and Human Rights*

The Voluntary Principles were designed to provide guidance to the resources sector in balancing its security and safety requirements with its human rights responsibilities.<sup>275</sup> They address risk assessment, interactions between companies and public security, and interactions between companies and private security. The Voluntary Principles have become a mainstream industry standard for project security practices in the resources sector.

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273 [www.oecd.org/daf/inv/mne/48004323.pdf](http://www.oecd.org/daf/inv/mne/48004323.pdf).

274 [www.equator-principles.com](http://www.equator-principles.com).

275 [www.voluntaryprinciples.org/what-are-the-voluntary-principles/](http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/).

### *(C) International Code of Conduct (ICOC) for Private Security Service Providers*

The ICOC is a multi-stakeholder initiative that aims to improve oversight and accountability and clarify international standards for the private security industry. It also aims to improve oversight and accountability of private security companies.

Based on international humanitarian and human rights law, the ICOC sets out human rights based principles for the responsible provision of private security services.<sup>276</sup> These include rules for the use of force, prohibitions on torture, human trafficking and other human rights abuses, and specific commitments regarding the management and governance of private security companies.

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### **Domestic law**

While States are obligated to implement and enforce international human rights treaties to which they have acceded, they are generally not directly enforceable against corporations, unless they have been incorporated into domestic law.

A country that ratifies the UN Convention on the Rights of the Child must take steps to fulfil its commitments under that Convention, although there is discretion in exactly how it does so, such as passing laws establishing the minimum working age as 15.

Some examples of the incorporation of international human rights into domestic laws applicable to business include:

- the Australian *Racial Discrimination Act 1975* (Cth) - International Convention on the Elimination of All Forms of Racial Discrimination;
- the United States *Alien Tort Claims Act 1789*;
- Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights - State of Play (EU Guidelines).<sup>277</sup>

However, many international human rights laws are either not incorporated into domestic laws, or if they are, their human rights obligations are not imposed on private actors.

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<sup>276</sup> [icoca.ch/en/the\\_icoc](http://icoca.ch/en/the_icoc).

<sup>277</sup> [ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8374](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8374).



## WHICH BUSINESSES AND WHICH RIGHTS?

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This handbook considers companies from the following sectors: extractive, information, communication and technology, manufacturing, agriculture, security and banking.

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### Extractive

The social and environmental impacts of extractive projects can have serious consequences for the rights of local communities. Projects frequently spark social conflict with affected communities. Operations which insufficiently benefit the host country and the local community may lead to further disruption of the political, economic and social system.

Extractive operations can be undertaken by joint venture partnerships between a number of international companies or international and national companies. Oil and gas companies are generally wholly or partly State-owned, and for this reason, the State duty to protect human rights is relevant to how business is conducted.

Extractive companies often enter into agreements to jointly bid for the management of a certain asset and then reach a joint operating agreement to share the operational and financial project burdens and risks. One partner will be the operator (often that with the more significant financial investment). When operating outside their Home States, companies are often required to contract with a national company which may then act as the operator, with the international company providing technical or other expertise and/or financial support.

Extractive operations are generally long-term investments (40–50 years), based on agreements with the Host State negotiated during the initial exploration phase. These agreements can influence the State and the company's ability to respect human rights throughout a project, for example, by constraining or enabling meaningful consultations with communities, or setting out

expectations for how joint venture participants should implement a project.<sup>278</sup>

Extractive companies – particularly larger ones – typically have numerous contractor relationships for services. Contractors have their own responsibility to respect human rights, however, in practice, smaller contractors may be less aware of, or lack the capacity to meet, this responsibility. This poses risk to the mining company, and will require increased preventive measures such as human rights training.

International laws require extractive companies to consult with indigenous people regarding the exploitation of resources from, and fair compensation for damage to, their land. HRDs play a crucial role here by seeking to ensure that the rights of the local community are recognised and protected.

Extractive companies can create an economic boost and contribute positively to the community, including creating jobs, health and education opportunities. For example, some based in Africa, including Anglo American and De Beers Botswana Diamond Mining Company, have implemented prevention, education and awareness programmes for HIV/AIDS in the workplace.<sup>279</sup>

Human rights standards now appear in a number of extractive industry standards and frameworks, including the Minerals Council of Australia's Enduring Value Framework, the International Council on Mining and Metals' Sustainable Development Framework, the Extractive Industries Transparency Initiative, the Voluntary Principles and the Conflict-Free Gold Standard. The International Petroleum Industry Environmental Conservation Association (a global oil and gas industry organisation for environmental and social issues) has also developed tools for respecting human rights, as have some regional associations.<sup>280</sup>

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278 For example, some agreements with Host States include 'freezing clauses' which might negate any changes to relevant laws for the life of the investment or another term set out in the agreement. This may disincentivise a government from changing laws to better protect human rights and pursue other social and environmental policies. These types of stabilisation clauses were the subject of a research project conducted for the International Finance Corporation (IFC) and the United Nations Special Representative of the Secretary-General on Business and Human Rights. The research found that freezing clauses, with exemptions from new laws, existed in contracts from Sub-Saharan Africa, Eastern and Southern Europe, Central Asia, and the Middle East and North Africa. It is notable that 4 of the 11 Sub-Saharan African contracts subject to review contained clauses freezing all laws (including environmental and social). In Latin America one partial freezing clause gives specific exemptions for labour laws. See further "Stabilization Clauses and Human Rights: A research project conducted for IFC and the United Nations Special Representative of the Secretary-General on Business and Human Rights", 27 May 2009, [www.ifc.org/wps/wcm/connect/9feb5b00488555eab8c4fa6a6515bb18/Stabilization%2BPaper.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/9feb5b00488555eab8c4fa6a6515bb18/Stabilization%2BPaper.pdf?MOD=AJPERES).

279 De Beers Group, "HIV/Aids Case study 2006", [www.businessfightsaids.org/files/transfers/HIV-AIDS%20brochure.pdf](http://www.businessfightsaids.org/files/transfers/HIV-AIDS%20brochure.pdf).

280 Prospectors and Developers Association of Canada, *Sustainable Development and Corporate Social Responsibility: Tools, codes and standards for the mineral exploration industry* (March 2007), [www.pdac.ca/docs/default-source/public-affairs/csr-sustainable-development.pdf?sfvrsn=8](http://www.pdac.ca/docs/default-source/public-affairs/csr-sustainable-development.pdf?sfvrsn=8).

Extractive companies are also increasingly developing public statements outlining their commitment to human rights, including Alcoa, Anglo American, ArcelorMittal, Areva, Barrick Gold, BP, BHP Billiton, Codelco, ExxonMobil, Freeport-McMoRan, GoldCorp, Gold Fields, Implats, Kinross, Lonmin, Newmont, OceanaGold, OZ Minerals, Philex Mining, Rio Tinto, Vale and Xstrata.<sup>281</sup>

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## Information, Communication and Technology (ICT)

ICT sector actors range from telecommunications services providers and large equipment manufacturers, to small software or web-based start-ups. Devices such as mobile phones are typically made up of a large number of components, so equipment manufacturers and telecommunications services companies can have complex supply chains.

While significant deregulation has occurred in the sector, private telecommunications service companies are often required to partner with State companies to deliver services, or increase service coverage.

A range of human rights are violated by potential use of technology and the supply and production of components and devices. Recent scandals have indicated some associated human rights risks, such as companies selling surveillance programmes used to shut down political opposition and human rights activism.<sup>282</sup>

Despite these risks, the ICT sector has come to play an important role in promoting human rights. For example, mobile banking and remote access to learning and to medical reports have contributed to the reduction of poverty and improvement of health, education and livelihoods. New location technologies have helped save lives in the aftermath of natural disasters. Meanwhile, the development of the online environment and of social media have contributed to democratic movements and the enjoyment of freedom of expression worldwide.

The key human rights related risks in the ICT sector vary between sub-sectors, with the major risk being breaches of the rights to **privacy**<sup>283</sup> and **freedom of expression**.<sup>284</sup> Although under international human rights law an individual's privacy may be subject to certain restrictions by government, telecommunications and web-based service companies will often operate in domestic legal contexts where restrictions are not in line with international

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281 Richard Boele, Diana Kemp and Nora Gotzman, "Incorporating human rights considerations into management decision making in mining" (SR Mining, 2011), p 3, [www.csr.uq.edu.au/Portals/0/11srm\\_cap07\\_p98.pdf](http://www.csr.uq.edu.au/Portals/0/11srm_cap07_p98.pdf).

282 See, for example, FIDH and LDH complaint of October 2011 against the French IT company Amesys. On 21 May 2012, the Paris prosecutor opened an investigation against the company. In January 2013 a French appeals court ruled that a judicial inquiry into the allegations of Amesys' complicity in acts of torture could proceed.

283 UDHR Article 12; ICCPR Article 17.

284 UDHR Article 19; ICCPR Article 19.

human rights law and/or the State fails to protect these rights. It is the company's responsibility to respect human rights in line with internationally recognised law.

## PRACTICAL EXAMPLE

### Government telecommunications surveillance in Ethiopia<sup>285</sup>

The state-owned operator Ethio Telecom has a total monopoly over Internet and telephone services in Ethiopia and the Government is known to engage in surveillance and censorship of its citizens' communications without judicial or legislative oversight. The Government's surveillance practices are seen to violate freedom of expression, association and access to information and target perceived political opponents.<sup>286</sup> People publicly critical of the Government face censorship or arrest and there is a general and widespread level of fear about private communications and the risk of reprisals. Although it alleges to have legitimate security reasons to conduct surveillance activities, concern remains that the methods used are unlawful and that targets are selected on the basis of political views, ethnicity, and participation in lawful activity and/or family connections.<sup>287</sup>

Ethiopia's telecommunications infrastructure, technology and services have largely been developed and supplied by foreign companies and supported by foreign investment. Human Rights Watch has made several recommendations to ICT companies serving Ethiopia. Recommendations have included that companies should take steps to assess the risk that their technologies will be misused to facilitate human rights abuses by the Government, and that service agreements should allow them to withdraw services if they are misused. These recommendations highlight the risk of complicity in human rights abuses where products and services are being used to facilitate illegal activity.<sup>288</sup>

## Manufacturing

Corporations in the manufacturing and garment sectors tend to employ large workforces in countries with weak legal systems. This means human rights protections are not often sufficiently embedded, or at least are not adequately enforced and protected, in

285 Human Rights Watch, *They Know Everything We Do: Telecom and Internet Surveillance in Ethiopia*, (United States, 2014) pp 1-4, [www.hrw.org/news/2014/03/25/ethiopia-telecom-surveillance-chills-rights](http://www.hrw.org/news/2014/03/25/ethiopia-telecom-surveillance-chills-rights).

286 Human Rights Watch Report *They Know Everything We Do: Telecom and Internet Surveillance in Ethiopia*, (United States, 2014), [www.hrw.org/news/2014/03/25/ethiopia-telecom-surveillance-chills-rights](http://www.hrw.org/news/2014/03/25/ethiopia-telecom-surveillance-chills-rights).

287 *Ibid*, p 17.

288 Human Rights Watch Report *They Know Everything We Do: Telecom and Internet Surveillance in Ethiopia*, (United States, 2014), [www.hrw.org/news/2014/03/25/ethiopia-telecom-surveillance-chills-rights](http://www.hrw.org/news/2014/03/25/ethiopia-telecom-surveillance-chills-rights).

national law, such as labour law, non-discrimination legislation, and health and safety regulations. Environmental and social risks associated with manufacturing include direct risks associated with manufacturing plants and indirect risks associated with the stages of the products' life cycle, including raw material extraction, processing and transportation, distribution, and end of life disposal.

As discussed above, the ILO has established four fundamental principles recognised in the ILO Declaration,<sup>289</sup> and the Fair Labour Association and the Ethical Trading Initiative have developed standards, and complaints and investigation procedures, where allegations can be brought against a company that has committed to the relevant standards.

## PRACTICAL EXAMPLE

### Leather tanneries in Bangladesh

The Bangladeshi leather tanning industry in the Hazaribagh area of Dhaka provides leather to major Western garment companies. In a 2012 report, Human Rights Watch described human rights concerns surrounding the industry, including the use of hazardous chemicals, poor labour standards, restrictions of freedom of union association, and child labour.<sup>290</sup> The report recommended that companies sourcing leather from Hazaribagh review tanneries for compliance with international and Bangladeshi environmental and labour laws, and cease trading with those not in compliance.<sup>291</sup>

In April 2013, an eight-story commercial building containing five garment factories for North American, European and Australian brands, collapsed killing more than 1,100 people. That day workers had been reluctant to enter the building due to large cracks appearing in the walls but did so after being told it was safe and allegedly receiving threats from management.<sup>292</sup> The collapse led to widespread discussions about corporate social responsibility in global supply chains.

Human Rights Watch stated its concerns and IndustriALL Global Union, a global union federation representing textile and garment workers' trade unions around the world, launched an online campaign in support of the Bangladeshi unions' demand for labour law reform.<sup>293</sup>

289 ILO, "ILO Declaration on Fundamental Principles and Rights at Work", 1998, [www.ilo.org/declaration/thedeclaration/lang--en/index.htm](http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm).

290 Human Rights Watch, *Toxic Tanneries: The Health Repercussions of Bangladesh's Hazaribagh Leather* (United States, 2012), pp 4–13.

291 *Ibid.*

292 Human Rights Watch, "Bangladesh: Tragedy Shows Urgency of Workers Protections", news release dated 25 April 2013, [www.hrw.org/news/2013/04/25/bangladesh-tragedy-shows-urgency-worker-protections](http://www.hrw.org/news/2013/04/25/bangladesh-tragedy-shows-urgency-worker-protections).

293 IndustriALL Global Union, [www.industriall-union.org/action-on-bangladesh](http://www.industriall-union.org/action-on-bangladesh).

The Institute for Global Labour and Human Rights also established a workers' relief fund for injured workers and surviving family members.<sup>294</sup>

This type of advocacy led to the establishment of the Bangladesh Accord on Fire and Building Safety in Bangladesh. The Accord, signed on 15 May 2013, is a five-year independent, legally binding agreement between global brands and trade unions to ensure a safe working environment in the Bangladesh ready-made garment industry.<sup>295</sup>

However, one year after the tragedy, the compensation scheme (backed by the ILO) had only raised US\$15 million and, at that time, only half of the 38 brands associated with the building had paid into the fund.<sup>296</sup> As the second anniversary of the tragedy approached, the fund was still US\$9 million short of its target (US\$30 million). The Benetton Group agreed to contribute to the fund following an online campaign by more than 1 million people calling for contributions.<sup>297</sup>

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## Agriculture

While environmental issues have been on the agenda for a couple of decades, human rights standards are relatively new in this sector. Agricultural companies, and companies with large agricultural supply chains, face increasing scrutiny from investors and stakeholders concerning human rights-related risks in their supply chains.

Sustainable agriculture covers a wide range of human rights challenges such as the **right to favourable working conditions**, the **right to a healthy and safe work environment** and fair land management. Work is labour intensive and employees often have minimal education, which makes them vulnerable to human rights abuses such as discrimination, systematic denial of women's rights, low wages, violation of freedom of expression and unfavourable working conditions.

Some examples of industry initiatives developed to combat these risks include the Fairtrade Foundation, the Ethical Tea Partnership, and the International Cocoa Initiative.

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294 *Ibid.*

295 Accord on Fire and Building Safety in Bangladesh website, [bangladeshaccord.org/factories/resource-centre/](http://bangladeshaccord.org/factories/resource-centre/).

296 Sarah Butler, "Compensation fund for Bangladesh's Rana Plaza victims barely one third full", *The Guardian*, 16 April 2014, [www.theguardian.com/world/2014/apr/16/compensation-fund-victims-bangladesh-rana-plaza-one-third-full](http://www.theguardian.com/world/2014/apr/16/compensation-fund-victims-bangladesh-rana-plaza-one-third-full).

297 Sarah Butler, "Benetton faces renewed pressure over Rana Plaza victims fund", *The Guardian*, 12 February 2015, [www.theguardian.com/world/2015/feb/12/benetton-pressure-rana-plaza-victims-fund-bangladesh-factory-disaster](http://www.theguardian.com/world/2015/feb/12/benetton-pressure-rana-plaza-victims-fund-bangladesh-factory-disaster).

## PRACTICAL EXAMPLE

### Tobacco farming in Kazakhstan

Tens of thousands of migrant workers from Kyrgyzstan travel to Kazakhstan each year to harvest tobacco for Philip Morris International.

In a 2010 report, Human Rights Watch documented numerous human rights violations these workers suffer, including low wages making them vulnerable to indebtedness to land owners during poor harvests, farm owners retaining identification documentation and workers being exposed to pesticides and fertilisers.<sup>298</sup>

Human Rights Watch recommended that Philip Morris strengthen its contracts with tobacco farm owners and monitor the owners closely to ensure they comply with minimum labour standards and other conditions. Phillip Morris demonstrated its commitment to address the exploitative practice through a press release issued by the company, dated 14 June 2010.<sup>299</sup>

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## Security

Many multinational companies and governments outsource their security requirements to private military and security firms. This has brought risks and challenges, particularly where local communities and employees come up against security providers, in particular those operating in weak governance zones which can lead to gaps in accountability.

The Voluntary Principles and the International Code of Conduct for Private Security Service Providers were developed in recognition of these types of risks. The Voluntary Principles were designed to provide guidance to the resources sector in balancing its security and safety requirements with its human rights responsibilities. The International Code of Conduct for Private Security Service Providers aims to clarify international standards for the private security industry, and to improve oversight and accountability of private security companies.

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## Banking

Through investments, banks and insurers can be indirectly involved in human rights violations. Regardless of the size of an investment, a business relationship exists as soon as such an investment is made.<sup>300</sup>

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298 Human Rights Watch, *Hellish Work: Exploitation of Migrant Tobacco Workers in Kazakhstan*, (United States, July 2010), [www.hrw.org/node/91458/section/2](http://www.hrw.org/node/91458/section/2).

299 Philip Morris International, "Human Rights Watch Report", media release, 14 July 2010, [www.pmi.com/eng/media\\_center/Pages/human\\_rights\\_watch\\_report.aspx](http://www.pmi.com/eng/media_center/Pages/human_rights_watch_report.aspx).

300 [www.responsible-investor.com/home/article/ncp\\_decision\\_analysis](http://www.responsible-investor.com/home/article/ncp_decision_analysis); UN Guiding Principle 14.

Financial institutions may also have contractual relationships with States or State entities, which require a degree of active support for the State (for example, purchasing government bonds). Such a relationship, including where a bank provides funding, would mean the bank may be perceived as complicit in the State's human rights abuse.

The Equator Principles, as mentioned above, are adopted by financial institutions which, by their adoption, agree to only finance projects that commit to incorporating the Principles into their business and risk management processes.

## PRACTICAL EXAMPLE

### **ANZ's lending to a sugar refinery in Cambodia**

In October 2014, two NGOs, Inclusive Development International and Equitable Cambodia, filed formal complaints under the OECD Guidelines against ANZ, an Australian-headquartered commercial and wholesale bank operating throughout the Asia-Pacific region. The complaints alleged that 681 Cambodian families were forcibly displaced and their land acquired without compensation to make way for a sugar refinery financed by ANZ. The complaints alleged that ANZ failed to comply with the OECD Guidelines by failing to ensure that its finance did not contribute to human rights violations. ANZ subsequently cut ties with the sugar company, however, it has been called upon to ensure victims are appropriately compensated for the harm caused.<sup>301</sup>

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301 Oxfam Australia, "ANZ should not leave Cambodian community 'high and dry'", 8 July 2014, [www.oxfam.org.au/media/2014/07/anz-should-not-leave-cambodian-community-high-and-dry-2](http://www.oxfam.org.au/media/2014/07/anz-should-not-leave-cambodian-community-high-and-dry-2).



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