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BUSINESS AND HUMAN RIGHTS IN CAMBODIA 2021

A compendium of instruments and materials



PART II

HUMAN RIGHTS DUE DILIGENCE: The Management of Human Rights Risk



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WALLENBERG
INSTITUTE**
OF HUMAN RIGHTS AND HUMANITARIAN LAW

BUSINESS AND HUMAN RIGHTS IN CAMBODIA

A compendium of instruments and materials

Photo

Tailors work on a production line in a garment factory in Cambodia

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INTRODUCTION TO COMPENDIUM

The subject covered in this Compendium has developed very fast in the last 20 years. The idea that businesses have social responsibilities is not new; it has been discussed in universities since the 1960s under the name ‘business ethics’. The notion of corporate social responsibilities (CSR) however became prominent in the 1990s as a response to criticism that economic globalization is not fair in how it spreads benefits and risks. Therefore ideas of CSR, corporate accountability, corporate citizenship, responsible business conduct and corporate sustainability, have attracted wide support, initially from civil society groups and then from some leading businesses and industry associations as well as governments and international organizations.

‘Business and human rights’ (BHR) is a smaller, specialized part of the broader CSR idea: it is focused on negative impacts from business activities without denying positive impacts, it is based on the authoritative international standards developed by states in human rights treaties, and often emphasizes the importance of legal accountability of businesses and states. Since it emerged in the early 1990s, BHR has emphasized the core idea that human rights are minimum entitlements for individuals and communities grounded in human dignity as well as principles necessary to create societies that are more just. Thus human rights grounded in international law have produced the necessary and globally relevant discourse of ethics and justice to challenge and guide business conduct. As this compendium shows, human rights are relevant to all industries, in all countries. They apply to the workplace (e.g. working hours, health and safety) and surrounding communities (e.g. right to land, right to security), and are meant to protect men, women and all groups in society at higher risk of harm (e.g. children, people with disabilities).

Some protections against business abuses already exist in national laws. When these laws are effective, BHR merely reinforces the importance of compliance with local laws. However, legal systems are not perfect as the laws have gaps and more often are not adequately enforced for a multitude of reasons. What makes BHR important is to put the spotlight on how businesses take advantage of these gaps (resulting in business impunity) at both international law and domestic law levels. BHR then stresses that such regulatory and governance gaps should be closed to ensure access to justice for victims and corporate compliance with human rights norms. This Compendium points to recent policy developments in international organizations (e.g., in the UN), in regions (e.g. the EU), and in advanced economies which all point to the conclusion that governments are increasingly willing to play a stronger role in promoting CSR and regulating businesses.

This is a significant change in the last 10 years. At the international level, the UN SDGs (2015) emphasize the role of the private sector in achieving the development goals and the importance of human rights as both means and ends of development. The UN has adopted the UNGPs (2011), marking the first time the UN member states have agreed to a CSR instrument. In another notable change, international economic agreements – both investment and trade agreements – that have been crucial to the liberalization of the global economy are increasingly referring to labour and human rights, and responsible business conduct. Also in this last decade, the European Union – the largest trading block in the world – is emerging as the most active regulatory space with a direct impact on transnational corporations (TNCs) based there and their global value chains. Finally, industrialized states where TNCs are domiciled have for some time promoted and supported the voluntary uptake of CSR and some seem ready to regulate CSR through incentives and sanctions. In this shifting legal and policy landscape, the UN is currently negotiating a BHR treaty that can harmonize and further enhance regulations in BHR.

Remarkable as they are, the solution to corporate unaccountability is not only a legal one. Many agree that law is part of the solution but much more is needed to achieve in practice responsible business conduct and effective enjoyment of human rights. There are many reasons why the law is a limited tool in BHR; one of them is that TNCs or global supply chains are so complex, dynamic, and mobile that they make a very difficult regulatory target. That means that they can and sometimes do escape jurisdiction of their home and host states, can successfully exploit competition among states for trade and investment, and have the resources and power to defend their interest against lawmakers and civil society critics. Nevertheless, businesses make their own calculations and respond to legal, economic and social pressures. That means business compliance with human rights norms and applicable laws depends on how strong these three sources of influence are and whether they reinforce each other or not. This explains why for the last 30 years some TNCs adopted CSR voluntarily, engaged in self-regulation, entered into multistakeholder initiatives and partnerships for development, and sometime even supported new laws on BHR. So understanding and teaching BHR often requires not only attention to law and legal expertise, but insights from other disciplines to understand how regulations emerge (the process of law-making and norm-making) and whether and how businesses respond to these norms (compliance with law and observance of human rights in practice). It is essential to recall that the entire BHR movement happened because of pressure from civil society organizations; which documented abuses and increased the visibility of corporate and governmental wrongdoing among fellow citizens, consumers, investors, companies themselves and the media.

Therefore, understanding and teaching BHR is often about placing the law, and compliance with it, in its proper context. From declaring human rights at the UN or in a national constitution to people actually enjoying their human rights that are affected by businesses is a long way that lawyers, political scientists, management scholars, sociologists and media specialists might want to travel together. This is why the Compendium has in mind teachers from these five academic disciplines. We hope the selection of materials is accessible and understandable to all five of them and that BHR can be a theme that can stimulate cross-disciplinary teaching and collaborations.

Aim and audiences of the compendium

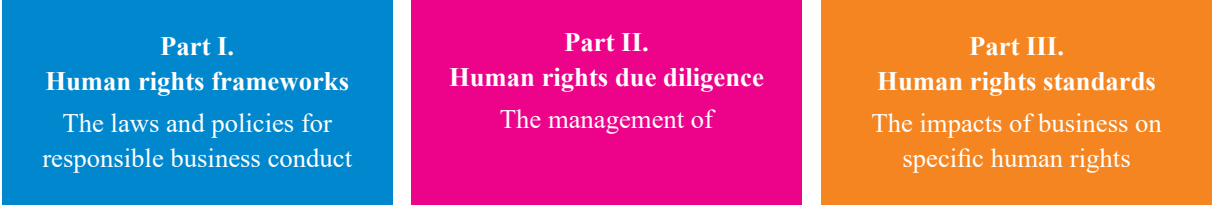
The compendium is meant to be an aid for lecturers to prepare classes and seminars on business and human rights in Cambodia. A secondary audience could be *researchers* that are new to the topics but look for authoritative reference points from which to start reading and researching human rights aspects. Expected users are teachers from five disciplines: lecturers not only from law faculties, but also from political science, business administration, sociology, and media & communications.

Size and structure of the compendium

The Compendium is a ‘cases and materials’ type of book, and not a textbook. Therefore it is a resource not meant for students who would benefit from a more explanatory, introductory type of book.

The compendium runs for around 800 pages. As may be clearer from the introduction above, BHR is a recent, extremely diverse and highly dynamic area. It’s an emerging scientific field in itself that combines many bodies of law (human rights law, constitutional law, labour law, civil law, criminal law, even environmental law and many others), covers all industries, all human rights, and all countries. The legal framework for BHR is only beginning to emerge now and it will take a long time to do so. Meanwhile one must account for business practice and civil society activism, which will allow one to understand what the specific responsibilities in BHR are, how they are implemented by businesses, and what monitoring mechanisms are being created. There is a lot of experimentation taking place, often by leading businesses, civil society and even governments working together. Academic works sometimes even struggle to keep pace with developments on the ground.

The compendium has 3 parts and 28 chapters. Part I covers the highly diversified legal framework in BHR, Part II is a deep dive into the systems companies set up to respect human rights, and Part III further contextualizes what corporate responsibility entails regarding specific human rights each of them with their own specificities. Each chapter is split into two sections – International materials and Cambodian sources – to ensure maximum relevance for teachers and students.



With so much material to cover and with due regard to the complexity of the issues, the authors of the compendium made some careful choices.

Compendium size: One choice was to allow the compendium to take its space and grow to 800 pages, but we advise the teachers to begin by reading only the chapters which are the most interesting for them. We could have produced a much smaller compendium instead of delivering 28 chapters out of which half are dedicated to specific human rights. For example, we could have eliminated some of those 14 chapters altogether, but that would also have reduced the choice for teachers with widely different backgrounds. Teachers should therefore use the compendium more as an encyclopedia and therefore ‘pick and choose’ materials as required by their teaching situation.

Chapter size: Another choice was to also let each chapter take its space and go to 20-30 pages if needed. We carefully selected materials for high quality: we aimed only for most recent materials from authoritative sources. But again, giving systematically a voice to 4 groups of sources – government, business, civil society, and academia – unavoidably took space. We worked systematically and included, for example, 1 – law and policy (international conventions, soft law instruments, reports from UN treaty body and special rapporteurs, national laws, judicial decisions); 2 – documents from businesses (e.g. corporate policies, examples of systems, CSR reports, industry guidance); 3 – materials from NGOs (e.g. case studies of corporate abuses, analysis, advocacy campaigns, collaborations with businesses); 4 – academic writings. These sources are referred to as ‘Instruments’ in the structure below



Selection of passages: Yet another choice was in how we selected the most relevant and important part from each material. Far from an arbitrary and rushed selection, we tried to identify important and original ideas/data; we would expect teachers to find these worth highlighting in presentations and class discussions. We encountered a trade-off when making the selections: if too short, they become incomprehensible (leading the teacher either to the original source or more likely to stop using the compendium) and if too long, the compendium would grow vastly beyond its current significant length.

Structure of chapters: we chose to standardize the format of each chapter to create familiarity for teachers. The same components as well as the same order are used consistently throughout the chapters.

<p>Introduction (summary of chapter by the compendium authors)</p>
<p>Main aspects (bullet points on key issues covered in the chapter)</p>
<p>Background (general and accessible information about the topic of the chapter)</p>
<p>Instruments (from 4 sources)</p>
<p>Questions (for class discussions)</p>
<p>Further readings</p>

Support for teachers

In sum, each instrument was carefully selected for relevance and quality, and passages were excerpted to give the reader key aspects that should not be missed from any lecture/seminar. These key aspects and sources are the ‘building blocks’ and interesting bits – it is up to the teacher to select, emphasize and combine building blocks in the best way for their audience and academic discipline.

Taking these choices together, the major priority for the authors was to enable the teachers’ choice of topics and angles, and to through careful selection highlight the most important aspects that would in our estimation save 50%-70% of preparation time for the teacher.

Further priorities have been about the searchability of the compendium. The compendium is long at around 800 pages. It will be uploaded on-line as an open access publication. The e-compendium will be available in PDF format enabling searches through keywords and possibly in Website format for easier and speedier navigation through chapters.

To increase usability and reader-friendliness we omitted references (footnotes and endnotes) in order to simplify and shorten the text. Readers are invited to consult the original materials to access all references.

Contributions and quality assurance

Radu Mares has drafted the sections containing international materials in all chapters. Cambodia-based authors, as identified in each chapter, have drafted the sections containing Cambodia-related materials. The sections containing Cambodia-related materials have benefited from internal peer review coordinated by Prof. Kenneth Paul Charman and Soy Kimsan, with contributions from Sao Socheata. An evaluation of the Compendium from a teacher perspective has also taken place during the 9th Annual Ten December Academy - Training School on Business and Human Rights organised by the RWI in December 2020. Sen Mostafa, programme officer at RWI, has organised and coordinated the entire process that lead to the development of Cambodia-related sections. Elina Hammarström, research assistant at RWI, has proofread and formatted the entire manuscript.

PART



HUMAN RIGHTS DUE DILIGENCE

THE MANAGEMENT OF HUMAN
RIGHTS RISKS

8. CODES OF CONDUCT

Prom Savada, Naim Sakona, Radu Mares

Introduction

Businesses began adopting codes of conduct in the 1990s as reports about child labour, exploitative working conditions, land evictions and environmental degradation began to surface more and more. Such codes soon acquired a bad reputation for several reasons. They contained vague formulations and were not based on human rights and labour standards contained in international law. Often such codes were not even implemented in practice as companies failed to develop the needed procedures and systems. The codes therefore became a shorthand for nothing more than PR-driven attempts to deflect criticism and to ‘whitewash’ bad reputations. Such corporate ‘self-regulation’ carries risks that it could preempt public regulation as companies imply they can handle problems by themselves, voluntarily. As globalization gained speed in the 1990s, codes came to be associated with ineffective self-regulation and problematic de-regulation. Since then, codes have however become more rigorous. Today, codes are either adopted by multistakeholder initiatives for their member companies or designed by a company individually. Hundreds of codes adopted by TNCs now refer to international standards in human rights and environmental conventions. Civil society groups and experts are involved in the formulation of codes. Corporate codes are often accompanied by detailed guidelines for staff explaining what the provisions mean and entail in practice. Given that international soft law instruments (chapter 2) have in the last 10 years aligned with the UNGPs, there is now sufficient clarity on the general societal expectations businesses should address through their codes. From all the steps involved in human rights due diligence (chapters 8-14), codes of conduct are the least difficult one as general policies are easy to formulate but much more difficult to successfully implement in practice (see chapters 9-14).

In Cambodia, global brands such as Nike and H&M have taken measures to ensure compliance with their codes and impose requirements on their local suppliers. To evaluate supplier compliance, on-going reviews and investigations are conducted by those multinational global brands and/or third parties when necessary. The Cambodian government has supported several industry-level initiatives to create codes of conduct, for example, in the publishing sector to protect women’s and children’s right to privacy, and in the recruitment sector to protect migrant workers’ rights. Additionally, laws and regulations exist requiring Cambodian companies to adopt internal regulations to protect the rights of workers and maintain decent working conditions.

Main Aspects

- ✓ Types of codes of conduct (company codes, trade association codes, multi-stakeholder codes)
- ✓ Coverage of codes (own activities, suppliers, sub-contractors)
- ✓ Effects of codes (public relations or protection of human rights)

- ✓ Reasons for adopting codes of conduct
- ✓ Policy commitment to human rights (criteria for good quality)
- ✓ Corporate coherence (between respect for human rights and other business goals)
- ✓ Management systems (integrating commitment into corporate functions)
- ✓ Self-regulation
- ✓ Corporate voluntarism and relation to law (complementarity, conflict, positive interaction)
- ✓ Working hours (overtime)
- ✓ Harassment in the workplace
- ✓ Audit of suppliers
- ✓ Industries (extractives, garment, electronics, beverage)

Background

Jenkins, Corporate Codes of Conduct: Self-Regulation in a Global Economy²³³

The 1990s saw a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. These emerged in the aftermath of a period that saw a major shift in the economic role of the state, and in policies toward transnational corporations (TNCs) and foreign direct investment. Whereas in the 1970s many national governments had sought to regulate the activities of TNCs, the 1980s was a decade of deregulation and increased efforts to attract foreign investment. A similar trend occurred at the international level, where efforts at regulation had been unsuccessful.

It is in this context that the recent wave of voluntary codes of conduct must be situated. US companies began introducing such codes in the early 1990s, and the practice spread to Europe in the mid-1990s. Voluntary codes of conduct range from vague declarations of business principles applicable to international operations, to more substantive efforts at self-regulation. They tend to focus on the impact of TNCs in two main areas: social conditions and the environment. A variety of stakeholders, including international trade union organizations, development and environmental NGOs and the corporate sector itself have played a role in the elaboration of codes of conduct for international business.

Several changes in the global economy have contributed to the growing interest in corporate social responsibility and codes of conduct. The growth of “global value chains”, through which Northern buyers control a web of suppliers in the South, has led to calls for the latter to take responsibility not only for aspects such as quality and delivery dates, but also for working conditions and environmental impacts. At the same time, the increased significance of brands and corporate reputation makes leading companies particularly vulnerable to bad publicity. Changing public attitudes are also an important part of the context in which corporate codes of conduct have been adopted. Companies in the North can no longer ignore the impact of their activities on the environment with impunity. Developments in global communications, which have enabled corporations to control production activities on an ever-widening scale, have also facilitated the international transmission of information about working conditions in their overseas suppliers, increasing public awareness and facilitating campaigning activities. (...)

Codes of conduct can be divided into five main types: company codes, trade association codes, multi-stakeholder codes, model codes and inter-governmental codes. Codes vary considerably in scope. Many do not even cover all of the International Labour Organization’s core labour standards. Company codes and trade association codes often have a more limited scope than those developed in conjunction with other stakeholders. There are also

233 Rhys Jenkins, *Corporate Codes of Conduct: Self Regulation in a Global Economy*, UNRISD (2001) www.unrisd.org/80256B3C005BCCF9/search/E3B3E78BAB9A886F80256B5E00344278.

differences in the coverage of codes. Although many do cover the firm's suppliers, they often do not extend all the way along the supply chain, and very rarely cover home-based workers. Provisions for the implementation of a particular code, and for effective monitoring, are crucial if it is to have any real impact. Here, too, one finds weaknesses, with only a small proportion of codes making provision for independent monitoring.

In evaluating corporate codes of conduct, several limitations need to be pointed out. Some of these are practical, arising from the way codes have (or have not) been implemented up to now. Others are inherent to corporate codes as an instrument, and therefore go beyond constraints related to the way codes have been applied in the past. Despite the recent proliferation of codes, their implementation remains relatively limited. Other shortcomings relate to the limited number of issues they address, and who such codes apply to. More deep-seated structural limitations of codes of conduct relate to the "drivers" that gave rise to their proliferation during the 1990s. Not only are they limited to particular sectors, where brand names and corporate image are important, but they are also mainly applied to firms engaged in exporting. Finally, there is a tendency for codes to focus on particular issues—those regarded as potentially highly damaging for companies to be associated with. In other words, issues that have a high profile in developed countries are likely to figure prominently in most codes.

Notwithstanding the limitations of codes, they can and have generated positive benefits for stakeholders. Examples where working conditions have improved show that codes can provide leverage on corporate behaviour. Furthermore, because of codes of conduct, firms increasingly accept responsibility for the activities of their suppliers as well as their own subsidiaries.

There is a danger, however, of codes being seen as something more than they really are, and used to deflect criticism and reduce the demand for external regulation. In some cases, codes have led to a worsening of the situation of those whom they purport to benefit. Concern has also been expressed that they may tend to undermine the position of trade unions in the workplace.

The limitations and dangers of codes of conduct identified in this paper are undoubtedly real. It is thus important to develop strategies to ensure that codes are complementary to government legislation and provide space for workers to organize. They are most likely to do so when they are multi-stakeholder codes, rather than when they are unilaterally developed by companies or trade associations. Codes of conduct should be seen as an area of political contestation, not as a solution to the problems created by the globalization of economic activity.

Rio Tinto, *Why Human Rights Matter*²³⁴

Respecting human rights helps to underpin our business success. Rio Tinto understands that not doing so poses very real risks to the company such as operational delays, legal disputes, reputational harm, investor challenges, loss of social licence to operate and employee dissatisfaction. On the other hand, the actions we take in support of human rights help us to build enduring and positive relationships across the community and the world.

Instruments

UN, *Guiding Principles on Business and Human Rights*²³⁵

Policy commitment

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

234 Rio Tinto, *Why Human Rights Matter* (2013) www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf.

235 Human Rights Council, *UN Guiding Principles on Business and Human Rights*, Seventeenth Session (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

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

Commentary

The term “statement” is used generically, to describe whatever means an enterprise employs to set out publicly its responsibilities, commitments, and expectations. (...)

The statement of commitment should be publicly available. It should be communicated actively to entities with which the enterprise has contractual relationships; others directly linked to its operations, which may include State security forces; investors; and, in the case of operations with significant human rights risks, to the potentially affected stakeholders.

Internal communication of the statement and of related policies and procedures should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions.

Just as States should work towards policy coherence, so business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.

Through these and any other appropriate means, the policy statement should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.

UN High Commissioner of Human Rights, An Interpretive Guide²³⁶

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

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

- (a) Demonstrates both inside and outside the enterprise that management understands this is a minimum standard for conducting business with legitimacy;
- (b) Clearly communicates the expectation of top management as to how all personnel, as well as business partners and others the enterprise works with, should act;
- (c) Triggers the development of internal procedures and systems necessary to meet the commitment in practice;
- (d) Is the first essential step for embedding respect for human rights into the values of the enterprise.

²³⁶ UN Office of the High Commissioner of Human rights, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

Unilever, Human Rights Policy Statement²³⁷

We believe that business can only flourish in societies where human rights are protected and respected. We recognise that business has the responsibility to respect human rights and the ability to contribute to positive human rights impacts.

This is an area of growing importance to our employees, workers, shareholders, investors, customers, consumers, the communities where we operate and civil society groups. There is therefore both a business and a moral case for ensuring that human rights are upheld across our operations and our value chain. This Human Rights Statement contains over-arching principles which we embed into our policies and systems.

Our Policy

In line with the UN Guiding Principles on Business and Human Rights, we base our human rights policy commitment on the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. We follow the OECD Guidelines for Multinational Enterprises and are a founding signatory to the United Nations Global Compact. We are committed to respecting all internationally recognised human rights as relevant to our operations.

Our principle is that where national law and international human rights standards differ, we will follow the higher standard; where they are in conflict, we will adhere to national law, while seeking ways to respect international human rights to the greatest extent possible. (...)

Responsible Sourcing

We have a large and diverse extended supply chain and we recognise the critical role our suppliers play in helping us to source responsibly and sustainably. Our Responsible Sourcing Policy sets out our expectations with regards to the respect for the human rights, including labour rights, of the workers in our extended supply chain.

We will only work with suppliers who implement our Responsible Sourcing Policy. They must agree to ensure transparency, to remedy any shortcomings, and to drive continuous improvement.

Our Responsible Sourcing Policy contains clear requirements and guidance on grievance mechanisms.

Our Governance

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

Rio Tinto, Human Rights Policy²³⁸

Rio Tinto respects and supports the dignity, well being and human rights of our employees, the communities in which we live and those affected by our operations.

²³⁷ Unilever, *Human Rights Policy Statement* (undated) https://www.unilever.com/Images/unilever-human-rights-policy-statement_tcm244-422954_en.pdf.

²³⁸ Rio Tinto, *Human rights policy* (2015) www.riotinto.com/documents/Human_rights_policy.pdf.

Our approach to human rights is based upon the Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights. We undertake due diligence activities to identify, prevent and mitigate adverse human rights impacts of our operations. This includes conducting stand-alone studies where necessary, as well as integrating human rights into existing corporate processes.

Wherever we operate, we engage with communities to understand the social, cultural, environmental and economic implications of our activities. We provide communities with easily accessible complaints mechanisms and we listen to and take actions to address complaints. We work to optimise the benefits and reduce the negative impacts of our activities, both for local communities and the countries where we operate.

We acknowledge and respect Indigenous peoples' connections to lands and waters, consistent with the UN Declaration on the Rights of Indigenous Peoples.

We reject any form of slavery, forced or child labour.

We support and implement the Voluntary Principles on Security and Human Rights and ensure relevant employees and contractors are trained in accordance with these principles. We impose strict controls on the use of force and limit the use of firearms on our sites as far as possible. We work with external stakeholders, as well as public and private security forces to promote understanding and implementation of the Voluntary Principles and avoid security arrangements at our sites contributing to human rights harm, including through misuse of our equipment and facilities.

Through appropriate contractual arrangements and procurement principles, we make our consultants, agents, contractors and suppliers aware of and expect their compliance with our human rights commitments. We strive to ensure our joint venture partners and non-controlled companies in which we participate also respect our commitments to uphold human rights.

This policy provides the foundation to our human rights approach. Our policies on Employment; Health, Safety, Environment and Communities and Inclusion and Diversity also contain human rights commitments.

BHP Billiton, Code of Business Conduct ²³⁹

Respecting human rights

BHP Billiton supports human rights consistent with the United Nations Universal Declaration of Human Rights. We seek to build mutually beneficial relationships and opportunities for inclusion and to respect the rights of our employees and individuals contracted by us, members of our host communities and other stakeholders directly impacted by our operations.

We believe that our contribution to development and community programs can further contribute to the realization of human rights.

We acknowledge our activities have the potential to impact on human rights and address this through our core business practices. This includes labour conditions, activities of security forces, resettlement and local community programs.

Our Community GLD is based on the UN Guiding Principles on Business and Human Rights.

We engage with communities and seek to understand the social, cultural, environmental and economic implications of our activities so that we can respond to concerns, reduce negative impacts and optimise benefits for the local community and the overall economy.

²³⁹ BHP Billiton, *Working with integrity - Code of Business Conduct* (2014) http://www.bhpbilliton.com/~media/bhp/documents/aboutus/ourcompany/code-of-business-conduct/160310_codeofbusinessconduct_english.pdf?la=en

We undertake a human rights impact assessment at our assets to identify and understand our potential impacts and implement management plans to mitigate or eliminate them. We also have local complaints and grievance channels in place and undertake appropriate remedial actions where required.

We recognise the traditional rights of Indigenous peoples and acknowledge their right to maintain their culture, identity, traditions and customs. We encourage cultural sensitivity and recognise and respect sites, places, structures and objects that are culturally or traditionally significant.

Our commitment

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

Our commitment is satisfied by the completion of host government processes or compliance with domestic laws where they are generally consistent with the principles of the ICMM Position Statement, including jurisdictions that follow International Labour Organisation Convention No. 169.

We are committed to maintaining the safety and security of our operations in a manner that upholds respect for human rights. Our security procedures are consistent with our commitment to the Voluntary Principles on Security and Human Rights.

Private security providers engaged by BHP Billiton must be signatories to, or agree in writing to align with, the International Code of Conduct for Private Security Service Providers. Written advice is given to our security providers outlining our commitment to the Voluntary Principles and our expectations of security providers.

If resettlement is required, it is undertaken in accordance with the International Finance Corporation Performance Standard 5: Land Acquisition and Involuntary Resettlement.

We have human rights related zero-tolerance requirements for suppliers of goods and services, including in relation to child labour, inhumane treatment of employees and forced or compulsory labour.

Always

- Consider the human rights implications of all our Company activities.
- Be prepared to adapt your behaviour according to local behaviours, practices and customs, providing it does not breach human rights or Our Charter.
- Report evidence of any human rights breach to your Corporate Affairs or Human Resources representative.
- Investigate human rights concerns and complaints and report outcomes to relevant stakeholders.
- Undertake due diligence on our partners and contractors to assess their alignment with human rights.

Never

- Employ public or private agencies to provide security to a BHP Billiton site without confirming their compliance with the requirements and intent of the Voluntary Principles on Security and Human Rights.

Anglo American, Human Rights Policy²⁴⁰

Anglo American has a strong commitment to human rights. Respect for human rights informs our guiding values as a business, and is stated explicitly in our Business Principles. Our commitment to human rights is further expressed through our being a signatory to the United Nations Global Compact and the Voluntary Principles on Security and Human Rights (VPSHR), and through being a supporter of the UN Guiding Principles on Business and Human Rights. Human rights principles are embedded in a number of internal policy documents, including those related to employment practices, exploration, environmental practices, social performance and security.

We accept and support the corporate responsibility to respect human rights and actively seek to avoid involvement with human rights abuses. We aim to identify, assess and minimize potential adverse human rights impacts that we cause or contribute to, or that are linked to our business, through on-going due diligence and appropriate management, as stated in the UN Guiding Principles on Business and Human Rights. We also recognise that our host governments have a duty to protect the human rights of everyone within their jurisdiction and, where appropriate, we will work with states to build capacity in support of that objective.

Respected rights

Our commitment to respect human rights includes recognition of all internationally-recognised human rights, in particular: those contained in the International Bill of Human Rights (which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights); the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work; and international humanitarian law, where applicable.

We commit to address both adverse human rights risks and impacts and to contribute positively to an enabling environment for human rights to be respected. We are also committed to paying special attention to the rights of potentially vulnerable groups.

We recognise that the nature of mining operations, from the earliest stages in the life of our mines, creates the potential for a wide range of human rights risks and we seek to mitigate the risk of any breaches. As part of our commitment to respect human rights and to a comprehensive approach, we will also undertake appropriate due diligence throughout the lifecycle of mining operations. Where we have caused or contributed to adverse human rights impacts we will contribute to their remediation as appropriate. We will inform and engage appropriately with affected and potentially affected persons on risks, impacts and management measures and keep them involved in monitoring performance.

We will make particular effort to ensure that we engage with those most vulnerable, in particular where they encounter challenges in voicing their opinions or having them heard, and to identify any additional specific measures to avoid, prevent or mitigate impacts on them.

Delivery and implementation

We commit to embed this policy into our corporate culture and practices. Our efforts will be guided by the relevant sections of the UN Guiding Principles on Business and Human Rights and will include:

- actively communicating this policy to internal and external stakeholders, including awareness raising and training on human rights related issues;
- incorporating ongoing human rights due diligence into relevant business processes as appropriate, such as impact assessments;

²⁴⁰ Anglo American, *Human Rights Policy* (2014) www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/approach-and-policies/social/hr-policy-document-english.pdf.

- engaging with relevant, potentially affected stakeholders in assessing and addressing impacts;
- including human rights-related requirements within contractual arrangements with business partners and host governments as appropriate; and
- collaborating with or providing access to remedy through effective complaints and grievances procedures.

We will continue to play an active and constructive role in relevant human rights-related multi-stakeholder initiatives, including the VPSHR whose continued implementation is an important pillar of the human rights approach set out in this policy.

Anglo American will always comply with applicable laws and respect the rule of law. In situations where there is a conflict between domestic legal requirements and international human rights norms, we shall seek to uphold our company values. In doing so we will consider all options; this may include refraining from new, or exiting from existing, investments in the respective jurisdiction.

Scope and governance

This policy applies to our relationships with our employees, contractors and other public and private sector business partners in what they do on our behalf. In those situations where Anglo American does not have full management control, we will exercise our available leverage to influence compliance with this policy. This policy has been approved by Anglo American's Corporate Committee and will be reviewed periodically. Accountability for implementation of this policy lies with the Group Chief Executive and with the Chief Executives of the business units. In case of questions, or for guidance on reporting on suspected / alleged human rights-related incidents, please contact Group Government and Social Affairs.

International Council on Mining & Metals, ICMM Principles²⁴¹

Membership of ICMM requires a commitment to our ICMM 10 Principles. These serve as a best-practice framework for sustainable development in the mining and metals industry.

We expect all member companies to implement the principles in full and to transparently report on performance.

To ensure their robustness, the principles have been benchmarked against leading international standards. These include: the Rio Declaration, the Global Reporting Initiative, the Global Compact, OECD Guidelines on Multinational Enterprises, World Bank Operational Guidelines, OECD Convention on Combating Bribery, ILO Conventions 98, 169, 176, and the Voluntary Principles on Security and Human Rights.

3. Respect human rights and the interests, cultures, customs and values of employees and communities affected by our activities

- Ensure fair remuneration and work conditions for all employees and never use forced, compulsory or child labour.
- Engage constructively with employees on matters of mutual concern.
- Implement policies and practices designed to eliminate harassment and unfair discrimination in all our activities.
- Ensure all employees, including security personnel, are provided with appropriate training and guidance on cultural issues and human rights.

²⁴¹ International Council on Mining & Metals, *Sustainable Development Framework - ICMM Principles* (2015) https://www.icmm.com/website/publications/pdfs/commitments/reviised-2015_icmm-principles.pdf.

- Minimise involuntary resettlement, and compensate fairly for adverse effects on the community where resettlement cannot be avoided.
- Respect the culture, customs and heritage of local communities, including indigenous peoples.

9. *Pursue continual improvement in social performance and contribute to the social, economic and institutional development of host countries and communities*

- Engage at the earliest practical stage with all likely affected parties to discuss and respond to issues and conflicts concerning the management of social impacts.
- Ensure that appropriate systems are in place for continual interaction with affected parties; ensure that minorities and other marginalised groups have equitable and culturally appropriate means of engagement.
- Contribute to community development from exploration to closure in collaboration with host communities and their representatives.
- Encourage partnerships with governments and non-governmental organisations to ensure that programmes (such as community health, education, local business development) are well designed and effectively delivered.
- Enhance social and economic development by seeking opportunities to address poverty.

10. *Proactively engage key stakeholders on sustainable development challenges and opportunities in an open and transparent manner. Effectively report and independently verify progress and performance*

- Report on economic, social and environmental performance and contribution to sustainable development.
- Provide timely, accurate and relevant information.
- Engage with and respond to stakeholders through open consultation.

Fair Labor Association, Code of Conduct²⁴²

Preamble

The FLA Workplace Code of Conduct defines labor standards that aim to achieve decent and humane working conditions. The Code's standards are based on International Labor Organization standards and internationally accepted good labor practices.

Companies affiliated with the FLA are expected to comply with all relevant and applicable laws and regulations of the country in which workers are employed and to implement the Workplace Code in their applicable facilities. When differences or conflicts in standards arise, affiliated companies are expected to apply the highest standard.

The FLA monitors compliance with the Workplace Code by carefully examining adherence to the Compliance Benchmarks and the Principles of Monitoring. The Compliance Benchmarks identify specific requirements for meeting each Code standard, while the Principles of Monitoring guide the assessment of compliance. The FLA expects affiliated companies to make improvements when Code standards are not met and to develop sustainable mechanisms to ensure ongoing compliance.

The FLA provides a model of collaboration, accountability, and transparency and serves as a catalyst for positive change in workplace conditions. As an organization that promotes continuous improvement, the FLA strives to be a global leader in establishing best practices for respectful and ethical treatment of workers, and in promoting sustainable conditions through which workers earn fair wages in safe and healthy workplaces.

242 Fair Labor Association, *Code of Conduct* (2011) www.fairlabor.org/our-work/labor-standards.

Employment Relationship

Employers shall adopt and adhere to rules and conditions of employment that respect workers and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations.

Nondiscrimination

No person shall be subject to any discrimination in employment, including hiring, compensation, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, social group or ethnic origin.

Harassment or Abuse

Every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.

Forced Labor

There shall be no use of forced labor, including prison labor, indentured labor, bonded labor or other forms of forced labor.

Child Labor

No person shall be employed under the age of 15 or under the age for completion of compulsory education, whichever is higher.

Freedom of Association and Collective Bargaining

Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.

Health, Safety and Environment

Employers shall provide a safe and healthy workplace setting to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employers' facilities. Employers shall adopt responsible measures to mitigate negative impacts that the workplace has on the environment.

Hours of Work

Employers shall not require workers to work more than the regular and overtime hours allowed by the law of the country where the workers are employed. The regular work week shall not exceed 48 hours. Employers shall allow workers at least 24 consecutive hours of rest in every seven-day period. All overtime work shall be consensual. Employers shall not request overtime on a regular basis and shall compensate all overtime work at a premium rate. Other than in exceptional circumstances, the sum of regular and overtime hours in a week shall not exceed 60 hours.

Compensation

Every worker has a right to compensation for a regular work week that is sufficient to meet the worker's basic needs and provide some discretionary income. Employers shall pay at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by law or contract. Where compensation does not meet workers' basic needs and provide some discretionary income, each employer shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does.

Fair Labor Association, Compliance Benchmarks²⁴³

Employment Relationship (ER)

Workplace Code Provision: Employers shall adopt and adhere to rules and conditions of employment that respect workers and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations. (...)

ER.27 Work Rules and Discipline

- ER.27.1 Employers shall have written disciplinary rules, procedures and practices that embody a system of progressive discipline (e.g. a system of maintaining discipline through the application of escalating disciplinary action moving from verbal warnings to written warnings to suspension and finally to termination).
- ER.27.2 Employers shall ensure managers and supervisors are fully familiar with the workplace disciplinary system and in applying appropriate disciplinary practices.
 - ER.27.2.1 The disciplinary system shall be applied in a fair and nondiscriminatory manner and include a management review of the actions by someone senior to the manager who imposed the disciplinary action.
 - ER.27.2.2 Employers shall maintain written records of all disciplinary actions taken.
- ER.27.3 Disciplinary rules, procedures and practices shall be clearly communicated to all workers. Any exceptions to this system (e.g. immediate termination for gross misconduct, such as theft or assault) shall also be in writing and clearly communicated to workers.
 - ER.27.3.1 Workers must be informed when a disciplinary procedure has been initiated against them.
 - ER.27.3.2 Workers have the right to participate and be heard in any disciplinary procedure against them.
 - ER.27.3.3 Workers must sign all written records of disciplinary action against them.
 - ER.27.3.4 Records of disciplinary action must be maintained in the worker's personnel file.
- ER.27.4 The disciplinary system shall include a third party witness during imposition, and an appeal process.

Ethical Trading Initiative, The ETI Base Code²⁴⁴

The Ethical Trading Initiative (ETI) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Our vision is a world where all workers are free from exploitation and discrimination, and enjoy conditions of freedom, security and equity.

6. Working hours are not excessive

- 6.1 Working hours must comply with national laws, collective agreements, and the provisions of 6.2 to 6.6 below, whichever affords the greater protection for workers. Sub-clauses 6.2 to 6.6 are based on international labour standards.
- 6.2 Working hours, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week.*

243 Fair Labor Association, *Workplace Code of Conduct and Compliance Benchmarks* (2011) http://www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf.

244 Ethical Trading Initiative, *The ETI Base Code* (2014) <https://www.ethicaltrade.org/resources/eti-base-code>.

- 6.3 All overtime shall be voluntary. Overtime shall be used responsibly, taking into account all the following: the extent, frequency and hours worked by individual workers and the workforce as a whole. It shall not be used to replace regular employment. Overtime shall always be compensated at a premium rate, which is recommended to be not less than 125% of the regular rate of pay.
- 6.4 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by clause 6.5 below.
- 6.5 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
- this is allowed by national law;
 - this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
 - appropriate safeguards are taken to protect the workers' health and safety; and
 - the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 6.6 Workers shall be provided with at least one day off in every seven day period or, where allowed by national law, two days off in every 14 day period.

* International standards recommend the progressive reduction of normal hours of work, when appropriate, to 40 hours per week, without any reduction in workers' wages as hours are reduced.

Responsible Business Alliance, Code of Conduct²⁴⁵

The Responsible Business Alliance (RBA), formerly the Electronic Industry Citizenship Coalition (EICC), Code of Conduct establishes standards to ensure that working conditions in the electronics industry or industries in which electronics is a key component and its supply chains are safe, that workers are treated with respect and dignity, and that business operations are environmentally responsible and conducted ethically. (...)

Participants must regard the Code as a total supply chain initiative. At a minimum, Participants shall also require its next tier suppliers to acknowledge and implement the Code.

Fundamental to adopting the Code is the understanding that a business, in all of its activities, must operate in full compliance with the laws, rules and regulations of the countries in which it operates. The Code also encourages Participants to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility and business ethics. In no case can complying with the Code violate local laws. If however, there are differing standards between the RBA Code and local law, the RBA defines conformance as meeting the strictest requirements. In alignment with the UN Guiding Principles on Business and Human Rights, the provisions in this Code are derived from key international human rights standards including the ILO Declaration on Fundamental Principles and Rights at Work and the UN Universal Declaration of Human Rights. (...)

245 Responsible Business Alliance, *Code of Conduct* (2018) <http://www.responsiblebusiness.org/standards/code-of-conduct/>.

E. Management Systems

Participants shall adopt or establish a management system whose scope is related to the content of this Code. The management system shall be designed to ensure: (a) compliance with applicable laws, regulations and customer requirements related to the participant's operations and products; (b) conformance with this Code; and (c) identification and mitigation of operational risks related to this Code. It should also facilitate continual improvement.

The management system should contain the following elements:

1) Company Commitment

A corporate social and environmental responsibility policy statements affirming Participant's commitment to compliance and continual improvement, endorsed by executive management and posted in the facility in the local language.

2) Management Accountability and Responsibility

The Participant clearly identifies senior executive and company representative[s] responsible for ensuring implementation of the management systems and associated programs. Senior management reviews the status of the management system on a regular basis.

3) Legal and Customer Requirements

A process to identify, monitor and understand applicable laws, regulations and customer requirements, including the requirements of this Code.

4) Risk Assessment and Risk Management

A process to identify the legal compliance, environmental, health and safety³ and labor practice and ethics risks associated with Participant's operations. Determination of the relative significance for each risk and implementation of appropriate procedural and physical controls to control the identified risks and ensure regulatory compliance.

5) Improvement Objectives

Written performance objectives, targets and implementation plans to improve the Participant's social and environmental performance, including a periodic assessment of Participant's performance in achieving those objectives.

6) Training

Programs for training managers and workers to implement Participant's policies, procedures and improvement objectives and to meet applicable legal and regulatory requirements.

7) Communication

A process for communicating clear and accurate information about Participant's policies, practices, expectations and performance to workers, suppliers and customers.

8) *Worker Feedback, Participation and Grievance*

Ongoing processes, including an effective grievance mechanism, to assess employees' understanding of and obtain feedback on or violations against practices and conditions covered by this Code and to foster continuous improvement.

9) *Audits and Assessments*

Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the Code and customer contractual requirements related to social and environmental responsibility.

10) *Corrective Action Process*

A process for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.

11) *Documentation and Records*

Creation and maintenance of documents and records to ensure regulatory compliance and conformity to company requirements along with appropriate confidentiality to protect privacy.

12) *Supplier Responsibility*

A process to communicate Code requirements to suppliers and to monitor supplier compliance to the Code.

Coca-Cola, Human Rights Policy²⁴⁶

Respect for Human Rights

Respect for human rights is a fundamental value of The Coca-Cola Company. We strive to respect and promote human rights in accordance with the UN Guiding Principles on Business and Human Rights in our relationships with our employees, suppliers and independent bottlers. Our aim is to help increase the enjoyment of human rights within the communities in which we operate. (...)

The Human Rights Policy is overseen by The Coca-Cola Company's Board of Directors, including the Chief Executive Officer.

Land Rights and Water Resources

We recognize the significant implications regarding respect for human rights that land use and water use across our value chain may have, which we address through specific policy and action.

While we do not typically purchase ingredients directly from farms, we are compelled, based on our values as a major buyer of several agricultural commodities, to take action and to use our influence to help protect the land rights of local farmers and communities.

We respect the human need for sustainable water supplies, safe drinking water, and protection of both ecosystems and communities through proper sanitation. Through our water stewardship program, we pursue a rights-based approach to water that mitigates risk by assessing local water risks, consulting and partnering with governments, communities and other stakeholders to develop water stress solutions where and when needed, and also implementing source water protection plans at our facilities.

246 Coca-Cola, *Human Rights Policy* (2014) <https://www.coca-colacompany.com/our-company/human-rights-policy>

We are committed to providing transparent nutrition information and a range of beverage options to enable consumers to make informed choices consistent with a healthy lifestyle.

Egels-Zandén, Do Codes of Conduct Improve Worker Rights in Supply Chains?²⁴⁷

The rise of private regulation of sustainability in global production networks has led to intensive debates about the impact of this regulation at the point of production. Yet, few empirical studies have systematically examined this impact in practice. Based on multiple factory audits of 43 garment factories conducted by the multi-stakeholder initiative Fair Wear Foundation (FWF), we show that codes of conduct improve (although marginally) worker rights on an overall level but that few significant results are found for specific worker rights. Our findings also lend support to the widespread argument that codes have uneven impact. Furthermore, we show that even rigorous multi-stakeholder factory audits are unable to identify process rights violations (such as those affecting freedom of association and discrimination), and that auditing is thus more fundamentally flawed than assumed in previous research. (...)

If codes only have limited overall impact, why do companies (and multi-stakeholder initiatives) continue to invest in codes and auditing? Are corporate managers knowingly investing in codes and auditing with limited impact simply to minimize brand risk and avoid activist campaigns? Although this is a possibility, a less cynical interpretation is that sustainability managers and representatives of multi-stakeholder initiatives actually perceive that codes and auditing do make a difference at the point of production. (...)

The finding that suppliers move in and out of compliance shows that the main problem with codes and auditing is not that they are incapable of addressing non-compliance, since our results show that they actually do exactly this. Instead, the main problem is that codes and auditing are unable to sustain compliance, i.e., unable to make a compliant supplier stay compliant. One interpretation of this finding is that codes and auditing are unable to hinder contradictory tendencies in the garment industry such as flexibilization of labor markets, declining purchasing prices, and shorter lead times. In other words, as these tendencies increase, they undermine the effects of codes and audits by turning compliant suppliers into non-compliant suppliers. This opens the door to the positive interpretation that codes and auditing potentially either mitigate this performance decline and/or improve areas not affected by contradictory tendencies. (...)

Another interpretation of why codes are perceived as improving worker rights while this and other studies find no or limited improvements is that codes mainly have a pre-first-audit impact on worker rights. In other words, managers correctly perceive that suppliers improve, but this improvement is made between the initial informal contact with the supplier and the first formal factory audit. Both these interpretations reconcile the contradictory finding in previous research that suppliers exposed to codes show better worker rights compliance, even though codes either fail to improve worker rights over time or only improve worker rights to a limited extent, as shown in our FWF study.

For managers, the findings are both positive and distressing, since they present a somewhat more positive picture than Locke et al., but still question the ability of even the most rigorous codes and factory auditing to, at least in the garment industry, substantially improve worker rights in global production networks. It is therefore likely that the less rigorous codes and audits that most companies, in the garment and other related consumer industries, invest in have similarly limited impact. Managers have to decide if they should move beyond the compliance model of codes into, for example, more cooperative models, although such cooperative models also face criticism; whether they should abandon codes for other forms of private regulation (such as certifications); or whether there are ways to make codes effective. Regardless of the chosen path forward, managers are well advised not to accept the status quo since codes and factory auditing in the present form have difficulties in substantially improving worker rights.

²⁴⁷ Niklas Egels-Zandén, Henrik Lindholm, *Do Codes of Conduct Improve Worker Rights in Supply Chains? A Study of Fair Wear Foundation* (2014) (Note: references in text were removed) https://fek.handels.gu.se/digitalAssets/1494/1494749_egels-zanden-and-lindholm--2014----do-codes-of-conduct-improve-worker-rights-in-supply-chains.pdf.

Mares, Global Corporate Social Responsibility, Human Rights and Law²⁴⁸

Corporate social responsibility (CSR) is often understood as an inherently voluntary corporate endeavour that inhabits the area stretching ‘beyond compliance’ with law. However, a growing number of writers and practitioners deem this understanding of CSR inaccurate and unproductive. In this article, the notion of CSR as ‘beyond compliance’ is questioned on logical, descriptive and normative grounds; once freed from its conceptual straitjacket, CSR research is encouraged to look more deeply into the mutual interaction between corporate voluntarism and law. (...)

Corporate voluntarism and law coexist and interact to shape regulatory regimes. A great part of what counts in CSR is about the practices of leading businesses actually defining and helping to shift the legal baselines applicable to other companies. In the last 10 to 15 years, leading companies and their stakeholders have engaged in a bottom-up process of rule-making around the corporate and the governance baselines. ‘CSR’ is not merely about persuading each and every company to ‘self-regulate’. It is about proactive companies that, through successful self-regulatory efforts and lessons learned from unsuccessful ones, legitimise and specify slowly emerging norms that interact with law and facilitate good governance dynamics. The law—in host states, in home states and at the international level—has a crucial role to play in the institutionalisation of these two baselines.

It is unproductive to hold an unrealistic assumption about law at both its formative and implementation stages, particularly in developing countries, and to overlook dynamics that can strengthen the functioning of legal regimes. CSR as ‘beyond compliance’ misrepresents the nature of CSR (emphasising voluntarism instead of discretion), deceives on the *range of policy instruments* compatible with CSR that are available to policymakers (acknowledging public policies as part of CSR but not hard law), and *forecloses the analysis* of law-CSR interactions.

CSR as ‘beyond compliance’ is not untrue because it captures well the scenario of companies acting exclusively, with no or minimal discretion, because of the deterrent power of law. But it is partial because it remains oblivious to the dynamics and effects of CSR and law-making and it is wrong in discouraging a fuller examination of CSR from a regulatory perspective. Because CSR is a broad concept applicable to both developed and developing countries and covering areas as diverse as social, environmental and economic impacts with their particular challenges and solutions, sensitivity to context is paramount. Most notably, the specific context of respecting human rights in developing countries throughout the operations of large corporate networks such as MNEs requires an attuned concept of CSR and an informed understanding of CSR’s relation to law. A view of CSR as ‘beyond compliance’ obscures the interaction between CSR and law-making and thus fails to grasp the role of leading businesses in institutionalising the effective protection of rights.

Once the polarised voluntary-mandatory view of dealing with MNEs and the limiting concept of CSR as ‘beyond compliance’ are overcome, a start can be made—as this article has sought to do—on the systematic examination of the mutual interaction between CSR and law through which responsible business practices strengthen the operation of regulatory regimes and law reinforces the CSR goal of respect for human rights.

Background (Cambodia)

Human Rights Now, Call for Improvements among Global Sportswear Brands²⁴⁹

Human Rights Now has released a statement expressing our deep concerns with the working conditions among global sportswear brands, such as ASICS, Puma and Nike following mass fainting by female workers at factories. (...) After the release of the Danwatch report, ASICS, Puma, and Nike publicly released their policies on working environments. For example, ASICS announced that in its Global Code of Conduct it promises to provide a safe and sanitary environment and requires global business partners to provide the same for their workers by maintaining a decent temperature and ventilation system. However based on the findings of the investigation, these policies were evidently not being enforced in the factories where successive faintings took place. (...)

248 Radu Mares, *Global Corporate Social Responsibility, Human Rights and Law* (2010) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2920759.

249 Human Rights Now, *Cambodia: HRN calls for improvements in working conditions and prevention measures among global sportswear brands, such as ASICS, Puma and Nike following mass faintings by female workers at factories* (2018), https://hrn.or.jp/eng/news/2018/03/06/cambodia-mass-faintings/#_ftn21.

Instruments (Cambodia)

Cambodian Labour Law²⁵⁰

Article 22. Every employer of an enterprise or establishment, set out in Article 17 above, who employs at least eight workers shall always establish an internal regulation of the enterprise.

Article 23. Internal regulations adapt the general provisions of this law in accordance with the type of enterprise or establishment and the collective agreements that are relevant to the sector of activity of the aforementioned enterprise or establishment, such as provisions relating to the condition of hiring, calculation and payment of wages and perquisites, benefits in kind, working hours, breaks and holidays, notice periods, health and safety measures for workers, obligations of workers and sanctions that can be imposed on workers. (...)

Article 25. The articles of internal regulations that suppress or limit the rights of workers, set forth in laws and regulations in effect or in conventions or collective agreements applicable to the establishment, are null and void.

The Labour Inspector shall require the inclusion of enforceable provisions in virtue of laws and regulations in effect.

Joint Prakas, Media Code of Conduct for Reporting on Violence against Women²⁵¹

Article 1. The purpose of the joint Prakas is to establish a media Code of Conduct for reporting on violence against women, including physical, mental, sexual and economic violence, in order to prevent reporting of violence against women for entertainment or comical purposes and to change social attitudes towards the elimination of violence against women, to be in compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Neary Rattanak Strategic Plan IV and the National Action Plan to Prevent Violence Against Women (NAPVAW) 2014-2018.

Article 2. Reporters shall not report in a way that describes in detail, shows or depicts in detail violent acts related to violence against women or rape that causes unnecessary distress to the victim, viewers or those involved. (...)

Article 7. Reports shall respect the privacy and dignity as well as ensure the protection and safety of victims/survivors no matter where the images or videos are sourced from, including:

- Avoid graphic images/videos of death, injury, naked bodies or shock resulting from violence against women,
- Not reveal names and specific locations where violence against women occurs,
- Not show images/videos of victims/survivors of violence against women or reveal information that could lead to the identification of victims/survivors, including the names and address of victims/survivors or their relatives etc, and not divulge the address of victims or perpetrators. For example, when violence occurs in commune „A“ or district „B“ the commune or district is named if necessary rather than the specific address or specific village).

250 Cambodia, *Labour Law* (1997) http://www.cambodiainvestment.gov.kh/the-labor-law-of-cambodia_970313.html.

251 Cambodia, *Joint Prakas on Media Code of Conduct for Reporting on Violence Against Women* (2017), <http://ngocedaw.org/wp-content/uploads/2014/10/Media-Code-of-Conduct-for-Reporting-on-Violence-Against-Women-English-Translation.pdf>.

Association of Cambodian Recruitment Agencies, Code of Conduct²⁵²

1. Introduction

To ensure more responsible and ethical recruitment practices, support sustainable business development, and to further develop the positive reputation and prestige of private recruitment agencies, the Association of Cambodian Recruitment Agencies (ACRA), and the Manpower Association of Cambodia (MAC), have developed and adopted this Code of Conduct (CoC), with the cooperation of and technical support from the MoLVT and ILO. The CoC is to be used by Cambodian Private Recruitment Agencies to effectively manage recruiting, training and sending workers for overseas employment. The CoC plays an important role in ensuring accountability, by requiring private recruitment agencies to comply to the national law and international labour standards. The application and implementation of the CoC will improve the experiences of Cambodian migrant workers overseas, by protecting and promoting their rights, and it will greatly benefit agencies' business development.

The MoLVT highly appreciates the establishment and implementation of an ethical and professional CoC and encourages agencies to fully apply the principles of the CoC. The Ministry considers that the application of the CoC is an important indicator in evaluating and ranking the performance of private recruitment agencies. It is also an opportunity for agencies to improve their practices, and in doing so, potentially expand their domestic and international presence. (...)

2. Operational Principle of the Code of Conduct

Consisting of 12 articles

- 1) Respect for, and implementation of, national laws, and fundamental principles and rights at work.
- 2) Respect for, and communication of, reality and transparency in advertising.
- 3) Respect for, and reduction of, costs and fees for migration.
- 4) Respect for, and enforcement of, recruitment and employment contracts.
- 5) Respect for, and protection of, confidentiality and data.
- 6) Respect for, and recognition of, skills and qualifications.
- 7) Respect for, and delivery of, migration information and pre-departure orientation requirements.
- 8) Respect for, and provision of, dispute settlement mechanisms.
- 9) Respect for, and operation within, the Memoranda of Understanding agreements endorsed by the relevant authorities.
- 10) Respect for, and protection of, workers' rights, while employed in destination countries.
- 11) Respect for, and support during, repatriation and reintegration.
- 12) Respect for, and safeguard of, freedom of movement at all stages of migration.

²⁵² Association of Cambodian Recruitment Agencies and Manpower Association of Cambodia, *Code of Conduct for Cambodian Private Recruitment Agencies* (2020), https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--sro-bangkok/documents/publication/wcms_735867.pdf

Kimmarita, Ministry Launches Code of Ethics to Protect 1.2M Migrant Workers²⁵³

The Ministry of Labour and Vocational Training on Wednesday launched a code of ethics for private recruitment agencies to follow in order to better protect migrant workers. Minister Ith Sam Heng said during the event that the ministry was ready to support the recruitment agencies to implement the code of ethics in an effective manner to promote and protect the rights of all migrant workers. “This code of ethics must be put in place beginning with the agencies themselves, who must constantly follow it and care about the rights of migrant workers,” he said.

Although this code of ethics does not provide for any punishment, MAC president Orn Bunhak said it would contribute to strengthening all agencies before the law. “This code of ethics will be a tool and a reference point to be used in daily operations of private recruitment agencies in their recruiting, training and managing of workers in a responsible manner,” he said.

Bridge JC Co Ltd CEO Mar Chansim, who sends workers to Japan, said the code can play a role in supporting accountable and competitive work by the agencies in line with the law. Chansim said he is worried that not all agencies will follow the code in its entirety. He suggested that authorities make sure they do.

Anna Engblom, the International Labour Organisation’s senior manager for the Triangle Programme in the Asean region, said it is still too costly for many migrant workers to find work aboard. She said once tallied, the expenses sometimes eat up nine months of their salaries or more. This is why the code is important as it will ensure expenses are reduced, she said. “To make this code of ethics valuable, we have to have a system to monitor and evaluate it, which we will create next year,” she said.

FLA, Fast Retailing: Assessment for Accreditation²⁵⁴

In 2017, Fast Retailing [Japan-based company²⁵⁵] contacted the FLA with concerns of the potential closing of a factory in Cambodia. FLA requested further information to understand the situation and provided recommendations on ensuring workers receive their legally owed severance packages. In the end, the factory ownership decided not to close its operations; however, FLA also had inquired about Fast Retailing’s responsible exit strategy. The FLA provided guidance materials on how to strengthen the strategy and recommended Fast Retailing discuss with other accredited FLA brands on how they have implemented their own responsible exit strategies to mitigate risks of retrenchment and closures. Following receiving the guidance materials and having calls with other accredited FLA brands, Fast Retailing improved its responsible exit strategy and included it in its Responsible Purchasing Practices Policy. Additionally, this strategy is used by the Business Ethics Committee when decisions to exit or to significantly reduce business volume a facility need to be made. The exit strategy is also included in Fast Retailing’s training on responsible purchasing practices. (...)

Cambodia: To address risks of Child Labor and improve age verification programs at factories, Fast Retailing is engaging with the Asia Society for Social Improvement and Sustainable Transformation (ASSIST) Cambodia. Additionally, Fast Retailing is engaging with ACT Cambodia to better understand issues of fair compensation and collective bargaining. Fast Retailing has also supported with the FLA’s and American Apparel & Footwear Association’s (AAFA) engagement with the Cambodian government to voice concerns for civil society and workers’ rights. Fast Retailing’s member joined a meeting with the FLA and AAFA in Cambodia that set the foundation for the FLA and AAFA to more strongly express concerns later in 2018 about the labor conditions and the criminal charges against members of civil society.

253 Long Kimmarita, ‘Ministry Launches Code of Ethics to Protect 1.2M Migrant Workers’, Phnom Penh Post (2020) <https://www.phnompenhpost.com/national/ministry-launches-code-ethics-protect-12m-migrant-workers>.

254 Fair Labour Associatiyon (FLA), *Fast Retailing Co., Ltd. Assessment For Accreditation* (2019), https://www.fairlabor.org/sites/default/files/documents/reports/fast_retailing_accreditation_report_public.pdf.

255 Fast Retailing Group, *Code of Conduct for Production Partners, available in Appendix A of Fair Labour Associatiyon (FLA)*, Fast Retailing Co., Ltd. Assessment For Accreditation (2019) https://www.fairlabor.org/sites/default/files/documents/reports/fast_retailing_accreditation_report_public.pdf.

Workplace Standards

In 2016, following affiliation with the FLA, Fast Retailing aligned its Production Partners Code of Conduct with the FLA Workplace Code of Conduct. Fast Retailing revised its standards on Nondiscrimination, Harassment/Abuse, Health, Safety & Environment (HSE), and Compensation from its original 2004 code of conduct. To operationalize its code of conduct, Fast Retailing utilizes draft compliance benchmarks in their audit tool and supplier training materials. FLA verified the draft compliance benchmarks are implemented in the current FR monitoring program, further discussed under Principle 5.

Principle 3: Supplier training

Supplier Commitment

All Fast Retailing factories are required to sign Fast Retailing's Code of Conduct for Production Partners, in which factories agree to be assessed by third party audits and undertake corrective actions. Fast Retailing allows audits by approved third-party service providers, including FLA assessments. In addition to the Code of Conduct of Production Partners, suppliers receive the Fast Retailing Supplier Guidebook. The Supplier Guidebook explains the Fast Retailing workplace standards, FLA affiliation, and the FLA assessment process. The FLA verified the use of the supplier agreements and Supplier Guidebook, maintained for each supplier through Fast Retailing's online sustainability platform. The FLA has observed the Fast Retailing Supply Chain Labor Management Team regularly communicate with its suppliers regarding FLA standards and assessment methodology.

Conditioning Future Business on Suppliers' Improvement of Working Conditions

The Fast Retailing Code of Conduct for Production Partners agreement includes a policy that if a production facility does not agree to corrective actions for identified labor violations, the production partner can be found in violation of the agreement. The FLA verified the agreement also allows Fast Retailing to cancel orders or terminate the business relationship if a production partner is found in violation of the agreement. Fast Retailing established the Business Ethics Committee to review cases in which production partners are found in violation of the supplier agreement and to determine how to address suppliers that fail to uphold their commitment to workplace standards. The Business Ethics Committee Chairperson is the Sustainability Group Senior Vice President and the committee includes representatives from Fast Retailing Production, Merchandising & Design and legal departments, and statutory auditors as observer. (...)

Workplace Standards Training & Accessibility for Workers

Fast Retailing provides translations of its code of conduct in Arabic, Bahasa, Bengali, Bulgarian, Burmese, Chinese, Creole, English, French (EU), Hindi, Italian, Japanese, Khmer (Cambodia), Korean, Malagasy, Malay, Mauritian Turkish, Portuguese (Brazilian), Sinhalese, Spanish (Peru), Spanish (EU), Romanian, Thai, Urdu, and Vietnamese. The FLA verified these translations cover all employee languages spoken in Fast Retailing's Tier 1 sourcing countries. To confirm workers, managers, and supervisors are trained on Fast Retailing's workplace standards, Fast Retailing Sustainability staff conduct audits with worker interviews to verify training and training effectiveness. Through the audit field observations, the FLA observed Fast Retailing began to incorporate the FLA's recommendation that auditors ask more detailed questions on worker training. The Fast Retailing supplier guidebook notes the company provides workplace standards training to all workers during orientation and annually.

C&A, Sustainability Report²⁵⁶

Our Supplier Code of Conduct

What we expect of suppliers is clearly laid out and communicated through our Supplier Code of Conduct and checked using regular audits by our Sustainable Supply Chain (SSC) team, which comprises nearly 90 people worldwide, including 36 auditors and 25 development officers. We update the standards expected within the Supplier Code of Conduct as appropriate, such as we did in 2017, when we made our standards on fire safety, environment, and working hours more stringent. When there are breaches of our Supplier Code of Conduct, we invite suppliers, C&A employees, and workers in our supplier's factories to let us know through our Fairness Channels, where breaches can be escalated to management anonymously. All our suppliers are required to sign our Code of Conduct as part of our contractual relationship and purchasing agreements. Records are kept and documented in our supplier management systems, where each supplier is asked to reconfirm their acceptance of the terms at least annually. (...)

Incentivising our employees to support social and environmental stewardship

As part of how we ensure that our code of conduct is followed and improvements are made, we rate suppliers across a number of performance areas including social and environmental compliance. Supplier ratings are used in the performance review as the basis for bonus compensation of key individuals like our sourcing and buying teams. Currently, social and environmental performance is weighted at 25% in the supplier rating and is translated into the annual bonus scheme. (...) Our Supplier Code of Conduct describes in more detail what C&A expects from our suppliers regarding legal compliance, labour practices, environmental performance, and anti-corruption. (...)

Validating our programme

Our Sustainable Supply Chain (SSC) team is made up of expert practitioners and located in different sourcing hubs – including Bangladesh, Brazil, Cambodia, China, Hong Kong, India, Myanmar, Mexico, Pakistan, and Turkey. (...) In 2015, C&A set up a third-party relationship with a professional services provider to carry out ongoing human rights due diligence in our supply chain, using the UN Guiding Principles for Business and Human Rights to verify whether the current SSC programme is fit for purpose against the requirements outlined in the C&A Supplier Code of Conduct. (...)

Case study

Recent years have seen unrest in the Cambodian garment industry. Protesters have taken to the streets, clashing with security forces and union leaders have been dismissed as they planned to organise strikes. Unions have repeatedly described repression of workers' rights by company management and anti-union crackdowns. Engaging with suppliers on freedom of association and collective bargaining is a high priority for us. (...)

In 2018, C&A convened two roundtable meetings with suppliers in Cambodia to discuss freedom of association, collective bargaining and wages. Together with our previous round tables, we have now held eight round table discussions on the issue of freedom of association, focusing on building healthy labour/management relations with senior management representatives all of our Cambodian suppliers. During the round tables, we emphasised that C&A aims to work only with production units that fully comply with our Supplier Code of Conduct. We encourage suppliers to enable open communication to solve disputes amicably and are willing to support them with technical knowledge if they have difficulties resolving a dispute.

²⁵⁶ C&A, *Global Sustainability Report 2018 – Global Supply: Raising Standards and Building Capacity* (2018), <https://sustainability.c-and-a.com/uk/en/sustainability-report/fileadmin/pdf-sustainability/generate/globalsustainabilityreport2018/en/chapter-sustainablesupply-en.pdf>.

CENTRAL et al, *Bestseller: Lack of Transparency and Workers' Rights*²⁵⁷

The research provided a test on how well the suppliers performed in meeting the Bestseller's own "Sustainability Commitment", the Cambodian and Indian Labour Law and ILO's Core Conventions. (...) Bestseller must speed up its engagement on several issues dealt with in this report. However, some core problems at the factories concerned urgently need to be resolved. Based on Article 73 of the Cambodian Labour Law (1997), workers with two years' seniority have the right to permanent employment. Looking at the length of the employment relationship of workers interviewed at Bestseller's Cambodian supplier, all the short-term contracts of the workers appear to be illegal.

Bestseller should immediately, in cooperation with independent trade unions, identify the prevalence of FDCs [Fixed Duration Contract] - legal or illegal - at their suppliers. The brand should announce a zero tolerance policy for illegal contracts and monitor the rapid implementation of permanent contracts for workers engaged beyond two years at the same facility. Clear timelines for contract conversion need to be set and communicated to workers' representatives. Only by taking this step will workers at the Cambodian supplier enjoy a minimum of predictability regarding their employment. The same policy and practice should be implemented at all of Bestseller's suppliers as the continuation of illegal contracts is violating the Cambodian Labour Law. As well, Bestseller should declare its non-tolerance policy to attempts by the factory management to silence or put pressure on workers, using the threat of non-renewal of short term contracts.

Bestseller's current Code of Conduct says nothing about workers' contracts apart from the following sentence "A signed working contract must be available for all employees, which is provided by the supplier in a language that is understandable to the employee." The multinational brand must immediately, as a minimum, adjust its Code to Ethical Trading Initiative's Code, which states that: "To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice. Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub- contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment."

Human Rights Watch, *Work Faster or Get Out*²⁵⁸

The primary responsibility to improve labor conditions in the Cambodian garment industry rests with the Cambodian government. But a number of other influential actors—brands, Better Factories Cambodia (BFC), the Garment Manufacturers Association of Cambodia (GMAC), and unions—play an important role in ensuring that working conditions in factories adhere to the Labor Law and international standards. While paying attention to individual labor rights concerns, the structural issues that underlie a range of labor rights problems—hiring practices, union-busting strategies, and unauthorized subcontracting—need urgent attention. The vast majority of workers are women and the issues affecting women workers are of particular concern. (...)

Recommendation: To International Brands

On transparency and approach to subcontractor factories

- (...)
- Revise the Code of Conduct for Suppliers to protect workers in subcontractor factories.

257 Central et al, *Bestseller – a Good Deal for All?: Lack of Transparency and Violations of Workers' Rights at Two of Bestseller's Suppliers in Cambodia and India* (2017), https://www.central-cambodia.org/wp-content/uploads/2017/05/Bestseller_a-good-deal-for-all.pdf.

258 Human Rights Watch, *Work Faster or Get Out* (2015), https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry#_ftn316.

On labor compliance and industrial relations

- (...)
- Review the Code of Conduct for Suppliers and, if not already specified in the code, add provisions on the following:
 - A clause that forbids illegal use of casual contracts and FDCs [Fixed Duration Contracts], including as a method of bypassing labor protections.
 - Language limiting the use of FDCs to seasonal or temporary work for all workers and incentivizing the adoption of undetermined duration contracts. Communicate with all suppliers that primarily employing male workers only on short-term FDCs is discriminatory.
 - A clause drawing a distinction between reasonable and unreasonable production targets that disregard worker rights. (...)

Brand response

Gap prohibits modifying or terminating worker contracts to avoid paying benefits in its Vendors' Code of Conduct. Gap did not provide specific information about the use of FDCs in its supplier factories in Cambodia or how the brand's 700 performance indicators integrated these in factory audits. Nevertheless, Gap confirmed that "FDCs are a common practice in Cambodia" and reiterated its commitment to the Arbitration Council's ruling limiting use of short-term contracts.

H&M's Code of Conduct does not explicitly prohibit the repeated use of short-term contracts. But its 2008 Guidance for Implementation of Good Labour Practice, which is currently being updated, advises that the "employment contract must never include clauses stating conditions that are below the legal requirements," "may not be used as a means to restrict the worker's right to compensation and or employment security," and that "short-term contracts may not be used as a measure to deprive workers of social benefits."

The Armani Supplier Social Code of Conduct states that "the use of contract, temporary or other non-full-time employment schemes shall not be used to systematically avoid the payment of worker benefits."

The 2009 Supplier Code of Conduct of Loblaw Ltd., which owns Joe Fresh, states that suppliers "should reflect the commitment of Loblaw to fair and reasonable labour and employment practices" and "are expected to comply with all local and applicable labour laws and employment standards." As of mid-January 2015, it carries no explicit prohibition against the repeated use of short-term contracts or casual hiring arrangements that can be used to defeat other labor rights protections.

Adidas representatives explained that retaliation against workers for providing information to the brand is treated as a "threshold issue" in their code of conduct enforcement guideline. They said that they would examine the facts of each case and decide about the nature of protection needed but emphasized early intervention to prevent retaliation.

CENTRAL et al., When 'Best' Is Far from Good Enough²⁵⁹

H&M is not only one of the leading fast fashion brands, but also has a long record of verbal commitments in the field of ensuring better working conditions for the workers stitching their clothes. Before entering a business relationship with H&M suppliers and business partners have to sign the brand's Sustainability Commitment which holds legal requirements. (...)

259 Joel Preston, CENTRAL and Carin Leffler, Future In Our Hands, *When "best" is far from good enough: Violations of workers' rights at four of H&M «best-in-class» suppliers in Cambodia* (2016), <https://cleanclothes.org/resources/national-cccs/when-best-is-far-from-good-enough-violations-of-workers-2019-rights-at-four-of-h-m-best-in-class-suppliers-in-cambodia>.

H&M's Sustainability Commitment

H&M started to work with their Code of Conduct in 1997. The Code has been revised several times since, probably due to external pressure leading to internal policy change and external reputation management. In early 2016 the Code was replaced by the H&M “Sustainability Commitment” comprising three areas: “Healthy workplaces”, “Healthy ecosystems” and “Animal welfare”. H&M outlines the idea behind their commitment: “We want to make sustainability an integrated part of all our global business relationships and work closely with our suppliers and business partners in order to achieve long lasting impacts across our entire value chain. Signing our Sustainability Commitment is mandatory for any supplier or business partner before entering a business relationship with H&M.”

H&M further states that “Compliance with the law is the fundamental level for all businesses” and has introduced two levels of commitment in their new code: The fundamental level “... is the basic compliance level that is expected of all business partners before doing business with H&M” whereas the aspirational level “... shows where we want to go long term, and that compliance is only the first step in creating a sustainable business. This means going beyond compliance with legal requirements and focusing on constant improvements.”

H&M has made it a precondition for doing business that its suppliers comply with national legislation. However, our research shows that H&M has a long way to go before its suppliers can be said to comply even with this most fundamental level of compliance. (...)

Ways forward

H&M have made several commitments under their various sustainability initiatives. Is it time for those commitments to become a reality, for relevant laws to be respected and for real and tangible benefits to be realized by H&M supply chain workers. (...)

Freedom of Association

The problem: Lack of independent unions at suppliers, lack of freedom of association, illegal deduction of membership fee.

Recommendation: H&M must make sure that workers at all their suppliers in Cambodia and elsewhere «... have the right to join or form a trade union of their own choosing and to bargain collectively» as stated in H&M's Sustainability Commitment and safeguarded in ILO's core conventions. H&M should communicate explicitly to its suppliers that the brand has zero tolerance to any obstacles blocking the formation of independent unions, or blocking workers from joining a union of their own choice, or any other legal union activity. (...)

Contracts

The problem: Illegal use of fixed duration contracts. There are reasons to believe that two of H&M's suppliers, both classified as platinum suppliers, are engaging workers on fixed duration contracts (duration of two to six months). This is also the case where workers have been working beyond two years. Such practice is obviously violating H&M's code of conduct regarding employment. It also shows that the management of the same factories falls short of offering all workers permanent employment in line with the H&M's aspirational commitments.

Recommendation: H&M should immediately and in cooperation with workers' representatives identify the prevalence of FDC [Fixed Duration Contract] - legal or illegal - at their suppliers. The brand should announce a zero tolerance policy for illegal contracts and monitor the rapid implementation of permanent contracts for workers engaged beyond two years at the same facility. Clear timelines for contract conversion need to be set and communicated to workers' representatives. Contract conversion at Eastex and Vanco factories should be a priority, and should be completed before 1 October 2016. (...)

Deductions from wages

The problem: Unfair deductions from wages for arriving late.

Recommendation: H&M should, in line with their Sustainability Commitment, demand that standard penalties applied when workers arrive late to work are abolished with immediate effect. In other words, H&M's suppliers should be asked to follow best practice from the industry. Reactions concerning repeated, serious delays should be dealt with in discussions between the factory management and the local union.

van Cranenburgh, Heineken and Cambodian 'Beer Promoters'²⁶⁰

In 2000 a few local NGOs drew attention to the spread of HIV in Cambodia, including among what they called "indirect sex-workers", such as beer promoters. One NGO, Sirchesi, told the media that beer promoters were pressured by male clients to sit down and drink alcohol in exchange for tips. Most beer promoters found this difficult to resist because of the highly competitive working environment. The NGO also said that beer promoters were being underpaid by the major international beer companies.

When Heineken learned about the pressure from the organisation, it first asked its local partners, the employers of the beer promoters, to respond. They said the working environment for beer promoters was not "unusual or problematic" in Cambodia. But Heineken global headquarters felt the need to respond, even though it did not directly hire the beer promoters. Heineken launched a programme aimed at creating safer workplaces by training and informing the beer promoters about dealing with harassment and other risks on the job. The company also installed female supervisors and provided them with health insurance. (...)

After documenting this case, I conclude that Heineken and the NGO never managed to converge on finding solutions. Heineken's managerial responses were motivated by their global policies and corporate values and identity. This made the company willing to improve worker conditions. But complying with all the activists' demands did not make sense for Heineken, which said the wages for beer promoters were competitive, and HIV treatments were already widely and freely available in the country. (...)

As a solution I propose that businesses shift from the traditional stakeholder model to a new model of corporate responsibility that puts sustainable development, or the SDGs, at the heart of managerial decision making. In this model the company is just one of the stakeholders that contributes to the SDGs in a certain area, and together with other stakeholders they form the spokes that keep the sustainable development wheel spinning.

Questions

1. Why are corporate codes of conduct important for the protection of human rights and understanding corporate responsibilities?
2. What are the advantages and disadvantages of corporate codes of conduct versus national regulations?
3. Do codes of conduct have any legal effects?
4. What are the main points that should be given priority in codes of conduct in Cambodia?
5. Do codes of conduct adopted by multinational companies interfere with Cambodia's national sovereignty?

²⁶⁰ Katinka C. van Cranenburgh, *How Heineken Got into Hot Water by Helping Cambodian 'Beer Promoters'* (2016), <https://www.reutersevents.com/sustainability/analysis-how-heineken-got-hot-water-helping-cambodian-beer-promoters>.

Further Readings

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9 ■ HUMAN RIGHTS IMPACT ASSESSMENTS

Vann Yuvaktep, Radu Mares

Introduction

The impact assessment is a widely accepted method for risk management as well as a legal requirement, such as in environmental law requiring companies to conduct environmental impact assessment (chapter 28). Human rights impact assessments help businesses, especially in large infrastructure projects (chapter 25), to very early on identify the possible impacts of their operations on human rights and prepare mitigation measures to minimize negative impacts (chapters 10-14). One cannot manage risks without understanding them first and impact assessments are therefore essential for understanding the exact risks of harm and putting safeguard mechanisms in place. Environmental impact assessments have become part of national laws since 1970s in the US and are now commonly found in all legal systems. In the 1990s, social impact assessments emerged either as standalone or as part of environmental impact assessments. Human rights assessments can complement social assessments and are different by being based on international human rights standards and thus by screening risks of harm against a comprehensive checklist of such rights. As a difference from environmental assessments, which are mandated by law in order to obtain a permit, and social impact assessments, which are mandated by financial lenders (such as development banks, e.g. World Bank) as a condition to obtain finance, human rights impact assessments are still voluntary. It can happen that commercial banks and investors require a human rights impact assessment, as in the Goldcorp mining project below. Such assessments could easily be made a requirement under national laws with extraterritorial effects, such as the forthcoming due diligence law in the EU (chapter 4). Only around a dozen of such human rights impact assessments are currently available on the internet although many more have been conducted as part of corporate risk management processes. Companies usually do not release them publicly given the sensitivity of the problems uncovered. There is currently no universally accepted methodology for conducting human rights assessments even though guidance is available and work to develop methodologies fully is continuing apace. Finally, it is not only companies that perform such assessments. Other economic decision-makers - for example negotiators forging international trade and investment agreements - need to understand better the impact of their economic policies on the enjoyment of human rights.

In Cambodia, the general concept of ‘human rights impact assessments’ is very new and can be misconstrued in one of two ways. The first is that one could understand it as the assessment reports NGOs produced for ongoing projects in their role as ‘watchdog’ via ‘assessment and evaluation’. The other way could be that to see it as similar to social-environmental impact assessments (ESIA). However, the correct understanding of a ‘human rights impact assessment’ clarifies that it is a process of identifying risks to human rights, which is not restricted to only the ex post, but can also take place ex ante (i.e. prior to the start of the project), and which can if needed be done more than once and at any stage of the project life cycle. Some projects (e.g. digital sectors) are less likely to trigger an “ESIA” (which attracts more toward projects of ‘physical impacts’), human rights impact assessments would become a useful tool of regulation, better risk management for businesses, and human rights law compliance.

In Cambodia as in other countries, obligations to assess some human rights impacts might arise from the local regulatory framework on EIAs and involuntary resettlement, as well as ‘social performance standards’ imposed by major multilateral development banks for financing a proposed project. Nevertheless, because human rights are interdependent and some harms are not immediately visible, a dedicated human rights impact assessment could be needed to make a comprehensive and proper evaluation of risks.

Main Aspects

- ✓ Impact assessments – environmental, social and human rights assessments
- ✓ Impact assessments – integrated or stand-alone assessments
- ✓ Impact assessments – ex ante and ex post assessments
- ✓ Impact assessments – state and corporate conduct
- ✓ Principles of human rights impact assessments
- ✓ Cumulative impacts
- ✓ Inter-dependence of human rights
- ✓ Human rights due diligence
- ✓ Sectors: security, tourism, dairy products, finance, trade and investment

Background

Oxfam, Community-Based Human Rights Impact Assessment²⁶¹

Environmental Impact Assessment (EIA) is a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both positive and negative. The United Nations Environment Program (UNEP) defines an EIA as a tool used to identify the environmental, social and economic impacts of a project prior to decision making. It aims to predict environmental impacts at an early stage in project planning and design, to find ways and means to reduce adverse impacts, and to shape projects to suit the local environment and present the predictions and options to decision-makers. By using EIA both environmental and economic benefits can be achieved, such as reduced cost and time of project implementation and design, avoided treatment/cleanup costs and impacts of laws and regulations.

Social Impact Assessment (SIA) is an overarching framework that embodies the evaluation of all impacts on humans and on all the ways in which people and communities interact with their socio-cultural, economic and biophysical surroundings. SIA includes the processes of analyzing, monitoring, and managing the intended and unintended social consequences (both positive and negative) of planned interventions, and any social change processes invoked by those interventions. Its primary purpose is “to bring about a more sustainable and equitable biophysical and human environment”. SIA assumes that social, economic and biophysical impacts are interconnected. SIA covers indicators such as poverty, health, education and gender equality. SIAs can include interesting indicators on the environmental impacts (biological diversity, etc.). It can be applied in different contexts and for different purposes, and it can be ex ante (before an activity takes place) as well as ex post (after the activity has taken place). SIA has strong links with a wide range of specialist sub-fields and therefore cannot normally be undertaken by a single person, but requires a team approach.

²⁶¹ Oxfam, *Community-Based Human Rights Impact Assessment: The Getting it Right Tool – Training Manual* (2011) https://www.oxfamamerica.org/static/media/files/COBHRA_Training_Manual_-_English.pdf.

Human Rights Impact Assessment (HRIA) is a process to measure the gap between the human rights commitments of the state (human rights in principle) and the actual enjoyment of these rights by rights-holders (human rights in practice). By calling on the participation of all stakeholders involved in the project, the assessment seeks to identify the rights that are not respected, or indications that they might not be respected in the future, so that satisfactory solutions can be found. HRIA is based on the normative framework of international human rights law described in international instruments such as the Universal Declaration of Human Rights, the International Covenants on Civil and Political rights, and on Economic, Social and Cultural Rights. HRIAs examine a wide range of different activities from the human rights perspective, including the impact of development programs of foreign governments on beneficiary countries, the impact of government policy and legislation on domestic protection of human rights, the human rights impact of multinational companies, and the extent to which human rights-related NGOs have achieved their policy aims and objectives. A main benefit of HRIA is that it helps users to collect data in a structured way, making a clear link with international human rights standards, to analyze the effects of a policy, and to bind governments [and companies] to action and trigger improvements with regards to affected communities' human rights situation. HRIAs are part of a larger advocacy process. They should be seen as a means, and not an end. Therefore, follow-up activities should be thought about from the onset.

EU, Guidelines on Human Rights Impact Assessments for Trade Agreements²⁶²

Impact assessments and evaluations are policy tools which provide a structured approach to gathering and analysing evidence that will be used to support policy making. (...)

An impact assessment is meant to bring to the attention of policy-makers the potential impacts of the different options under consideration and thus, to support sound policy-making. An impact assessment should verify the existence of a problem, identify its underlying causes, assesses whether EU action is needed, and analyse the advantages and disadvantages of available solutions. It is not intended to pass a judgement on the actual human rights situation in a country, nor to decide whether a country is eligible for a trade agreement. This is an important distinction to keep in mind when writing the impact assessment.

Instruments

UN, Guiding Principles on Business and Human Rights²⁶³

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

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

Commentary

The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In this process,

²⁶² EU, *Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives* (2015) http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf

²⁶³ Human Rights Council, *UN Guiding Principles on Business and Human Rights, Seventeenth Session* (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.

While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.

Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

UN High Commissioner of Human Rights, *An Interpretive Guide*²⁶⁴

What is meant by “human rights risks”

An enterprise’s human rights risks are the risks that its operations pose to human rights. This is separate from any risks that involvement in human rights impact may pose to the enterprise, although the two are increasingly related.

How should human rights impact be assessed?

Standard approaches to risk assessment may suggest that the probability of an adverse human rights impact is as important as its severity. However, if a potential human rights impact has low probability but high severity, the former does not offset the latter. The severity of the impact, understood as its “scale, scope and irremediable character”, is paramount (see Guiding Principle 14). Equally, human rights risks cannot be the subject of a simple cost-benefit analysis, whereby the costs to the enterprise of preventing or mitigating an adverse impact on human rights are weighed against the costs to the enterprise of being held to account for that harm.

How far afield should an enterprise look when assessing human rights impact?

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

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

²⁶⁴ UN Office of the High Commissioner of Human rights, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

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

Ruggie, Human Rights Impact Assessments - Key Methodological Questions²⁶⁵

Distinctiveness of Human Rights Impact Assessments: A Different Approach

22. The clearest difference between HRIAs [Human Rights Impact Assessments] and ESIA [Environmental and Social Impact Assessments] is that, while following the impact assessment methodology and principles described above, HRIAs should be framed by the International Bill of Rights, which consists of the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.
23. In addition to the legal and regulatory requirements described in paragraph 12, HRIAs should catalogue the relevant human rights standards, including those set out in international conventions to which the home and host countries are signatories (perhaps also noting human rights conventions those countries have not ratified), other standards such as indigenous customary laws and traditions (for example those that govern the distribution and ownership of land), and international humanitarian law, where there might be armed conflict.
26. HRIAs should deviate from the ESIA approach of examining a project’s direct impacts, and instead force consideration of how the project could possibly interact with each and every right. For example, the ESIA approach might not result in any discussion of freedom of expression, whereas an HRIA could envision a community protest against the project being suppressed by State forces. While there is currently no global consensus about the roles and obligations of companies under international human rights standards, this exercise can be undertaken without normative assumptions, like scenario planning or other similar exercises.
27. HRIAs might draw upon the Human Rights Based Approach (HRBA) used by development agencies such as the United Nations Development Programme. (...) The HRBA requires an analysis of the rights-holders and their needs and entitlements and the corresponding duty-bearers and their obligations. This analysis is meant to include an assessment of the causes of the non-realization of rights, and of the capacity of the rights-holders to claim their rights and the duty-bearers to fulfil their obligations. Such an analysis could be extremely helpful to private sector investment. (...)

Arla, Human Rights Assessment²⁶⁶

As Arla continues to expand its business activities in African markets, it is essential to the long-term success of our business that the company’s growth is achieved in a responsible way that does not bring unintentional negative consequences for the local dairy sector and its related communities. As part of Arla’s commitment to respecting human rights, as outlined in the UN Guiding Principles on Business and Human Rights, the company has the responsibility to assess and address our human rights impacts. The purpose of this human rights assessment is,

²⁶⁵ John Ruggie, *Human rights impact assessments - resolving key methodological questions*, Report of the Special Representative of the Secretary-General, A/HRC/4/74 (2007) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/14/PDF/G0710614.pdf?OpenElement>.

²⁶⁶ Arla, *Human Rights Assessment in Senegal* (2015) https://www.arla.com/globalassets/arla-global/company---overview/responsibility/human-rights/arla-human-rights-assessment-in-senegal-november-2015_1.pdf

therefore, to identify whether Arla's activities actually or potentially cause, contribute or are linked to a deterioration of human rights in Senegal with a specific emphasis on working opportunities, working conditions and adequate living standards for local farmers who depend on raw milk production, processing, distribution, marketing and sales of dairy products.

During our stakeholder consultation process, widespread concerns were expressed regarding the potential negative impact of Arla's future business model in Senegal. Since Arla's business model in its first stage will be based primarily on imports and repacking of imported milk powder, the major concerns are related to its potential negative impact on development of the domestic dairy sector and thereby contributing to adverse human rights impact on small-scale farmers. (...) The chosen business model relies entirely on repackaging, distribution and sales, with a facility based in the city of Dakar, thus employing people from the respective area. As the company will not rely on local sourcing and will not be involved in processing, there is no business link to local producers or small to medium dairies. (...)

The main questions to be discussed in this report will be used to assess the potential impact of Arla's business activities on the right to adequate living and other related human rights of the local dairy farmers and their dependants in Senegal:

- Does Arla's sales and distribution of milk powder outcompete locally produced dairy products and thereby adversely impact small-scale dairy farmers' income and livelihoods of farmers and their dependants?
- Is the sale of milk powder from Arla a barrier to unlocking the potential of local dairy production and thereby a barrier for development?
- Does the import of milk powder lead to lack of government incentives to invest in sufficient infrastructure to build the local dairy sector?
- Some of the concerns raised need to be understood in a broader perspective⁹, namely whether Arla contributes and/or hinders sustainable development of the domestic dairy sector by the exclusive focus on distribution and sales?
- What are the concerns and aspirations made by the stakeholders we consulted during our field study and what are our findings based on our field observations, together with the literature reviewed?

Capacity of actors

The dairy sector in Senegal faces a lot of structural barriers to its development. The challenges can be summed up as:

1. Low yield due to genetic potential for milk production from local cattle (White Fulani, milk is a by-product of cattle)
2. Inefficient pastoralist production methods (milk is a by-product of cattle, cattle are perceived as a bank rather than business, production is scattered, long distance to cities)
3. Limited success with cross-breeding
4. High cost of inputs (fodder, medicine, services)
5. Lack of access to processing facilities (cold chains, storage and processing) is a barrier to business development
6. Widespread cattle diseases and lack of veterinary services
7. Scarcity of water and breeding
8. Climate changes and increasing pressure on grazing land leading to increasing land conflicts
9. No legal framework to support cross-border cattle breeding

10. Lack of governmental investments in basic infrastructure (roads, water, electricity)
11. Lack of well-organised production and processing units (cooperatives)
12. Competition from import of milk powder (cheaper price, availability, regular delivery, higher food safety standards and easy storage)
13. Lack of standards and equipment for quality control of local fresh milk and milk products (consumers do not trust local fresh milk)
14. Lack of training of farmers and personnel to handle milk production and processing on a broad scale
15. Lack of access to credit and/or subsidises to support dairy producers
16. Lack of commercial players to source and process local produced raw milk in an industrial and safe way (no business case, lack of business investment to boost the sector)
17. Lack of sufficient investment in the dairy sector to stimulate dairy production
18. Lack of access to supermarkets with cooling facilities (limits the opportunity to sell fresh milk)
19. Huge gap between demand and supply (milk powder is needed to meet demand)
20. NGO-funded mini-dairies break down due to no money for repairing and investment (no sustainable business models to build up the sector)

On Common Ground Consultants, HRIA of Goldcorp's Marlin Mine²⁶⁷

The primary objective was clarified to determine whether the mine's presence and activities were affecting human rights, and to review whether the company's policies, procedures, and practices address those impacts and respect human rights. The terms of the MOU were modified to further clarify that the assessment was intended to improve the company's performance in respecting human rights, not to improve Goldcorp's ability to operate profitably in Guatemala.

The MOU's three principles of transparency, independence and inclusivity were defined as:

- **Transparency:** Information on the assessment mechanisms, stages and processes will be made available to all stakeholders in a timely and understandable manner.
- **Independence:** The assessment process and the assessor(s) chosen to perform the assessment will be independent. Independence means that there shall be no material relationship (other than performance of the assessment) between the assessor and the stakeholders and that the assessor is free from external control in the performance of the assessment.
- **Inclusivity:** The assessment will engage, to the best of the assessor's ability, all the various stakeholders impacted by the company's activity in Guatemala.

(...) the following approach was developed for the analysis of information and to make a determination of impacts and company compliance:

- Seven priority issue areas were identified from concerns raised by stakeholders: consultation, environment, land acquisition, labour, economic and social investment, security, and access to remedy. These serve as the framework for this report. (...)
- For each issue area, the relevant human rights standards were identified based on the Universal Declaration of Human Rights, and international human rights and labour conventions. (...)

²⁶⁷ On Common Ground Consultants Inc., *Human Rights Assessment of Goldcorp's Marlin Mine* (2010) http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf.

- To determine the criteria for compliance with international human rights standards, the relevant questions and indicators from the Danish Institute for Human Rights (DIHR) Human Rights Compliance Assessment (HRCA) tool were identified and assessed for each of the issue areas. To permit a more detailed analysis of the mine's operations, performance was reviewed in relation to international good practice standards applicable to mining (...)

... the finding of company performance in terms of respect for rights [was], based on the following classifications:

- Violation: Action or inaction by the State results in human rights of individuals or groups not being protected or fulfilled;
- Infringement: Action by the company results in a proven worsening of the human rights situation for a person or group of people;
- Failure to Respect: Inaction by the company results in potential for or worsening of the human rights situation for a person or group of people. This may also cover situations in which the company has not safeguarded or provided sufficient due diligence against complicity or involvement in violations by the State or by others, such as contractors;
- Respect: Actions/due diligence by the company results in managing the risks of harm to human rights; and
- Enhancement: Actions by the company result in the proven improvement of the human rights situation for a person or group of people.

Oxfam, Community Voice in Human Rights Impact Assessments²⁶⁸

Human rights impact assessments (HRIAs) are intended to minimize human rights risks, lessen adverse impacts, and strengthen positive outcomes of business investments on affected populations. For an HRIA to fulfill this purpose, it must consider the perspectives of everyone affected by a company's operations, project, products, or services. But all too often, companies ignore this critical input, instead opting for top-down tools that fail to capture communities' assertions. In doing so, they forfeit the opportunity to minimize human rights violations and costly conflicts.

Danish Institute, Human Rights Impact Assessment: Guidance and Toolbox²⁶⁹

In the business context, HRIA can be defined as a process for identifying, understanding, assessing and addressing the adverse effects of a business project or activities on the human rights enjoyment of impacted rights-holders such as workers and community members. (...)

HRIA involves several phases or steps, all of which need to be included to ensure a comprehensive assessment. In this Guidance and Toolbox the phases have been divided into:

1. Planning and scoping
2. Data collection and baseline development
3. Analysing impacts
4. Impact mitigation and management; and
5. Reporting and evaluation.

268 Oxfam, *Community Voice In Human Rights Impact Assessments* (2015) https://www.oxfamamerica.org/static/media/files/COHBRA_formatted_07-15_Final.pdf

269 Danish Institute for Human Rights, *Human Rights Impact Assessment - Guidance and Toolbox* (2016) https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria_toolbox/hria_guidance_and_toolbox_final_may22016.pdf_223795_1_1.pdf.

10 Key Criteria for Human Rights Impact Assessment

These ‘key criteria’ relate to both the process and content of HRIA, and reflect what is unique about HRIA, as well as emphasising aspects which may to a lesser or greater degree be reflected in other impact assessment methodologies but which arguably warrant heightened attention from a human rights perspective. These aspects can be grouped into five key criteria relating to process and five key criteria relating to content.

Process criteria

1. Participation - Meaningful participation of affected or potentially-affected rights-holders during all stages of the impact assessment process, including scoping, data collection and baseline development, impact analysis, and design implementation of measures to prevent, mitigate and remediate impacts.
2. Non-discrimination - Engagement and consultation processes are inclusive, gender-sensitive and take into account the needs of individuals and groups at risk of vulnerability or marginalisation.
3. Empowerment - Capacity building of individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.
4. Transparency - The impact assessment process is as transparent as possible to affected or potentially affected rights-holders, without causing any risk to security and well-being of rights-holders or other participants such as NGOs and human rights defenders. Impact assessment findings are appropriately publicly communicated.
5. Accountability - The impact assessment team is supported by human rights expertise, and the roles and responsibilities for impact assessment, mitigation and management are assigned and adequately resourced. The impact assessment identifies the entitlements of rights-holders and the duties and responsibilities of relevant duty-bearers, for example, the company, contractors and suppliers, local government authorities and so forth.

Content criteria

1. Benchmark - Human rights standards constitute the benchmark for the impact assessment. Impact analysis, assessment of impact severity and design of mitigation measures are guided by international human rights standards and principles.
2. Scope of impacts - The assessment includes actual and potential impacts caused or contributed to by the business, as well as impacts directly linked through operations, products or services through business relationships (contractual and non-contractual). The assessment includes cumulative impacts as well as legacy issues.
3. Assessing impact severity - Impacts are addressed according to the severity of their human rights consequences. This includes considering the scope, scale and irremediability of particular impacts; taking into account the views of rights-holders and/or their legitimate representatives.
4. Impact mitigation measures - All human rights impacts are addressed. Where it is necessary to prioritise actions to address impacts, severity of human rights consequences is the core criterion. Addressing identified impacts follows the mitigation hierarchy of ‘avoid-reduce-restore-remediate’.
5. Access to remedy - Impacted rights-holders have avenues whereby they can raise grievances regarding the impact assessment process and outcomes. Impact assessment and management ensure that the business provides for or cooperates in access to remedy for impacted rights-holders.

OHCHR, Human Rights Impacts of Infrastructure Investment²⁷⁰

Infrastructure serves as the backbone of our society and economy. Infrastructure should not be thought of as a single object, but rather, a sophisticated network linking multiple infrastructure assets and corridors to streamline the movement of goods, data and people, for commercial, economic and social benefit. (...) This kind of connectivity differs from past infrastructure programs in terms of its geographical expanse, scale, and complexity, and its power to fundamentally alter economic, social and political organization. Of these plans, the regional master plans, such as China's Belt and Road Initiative (BRI), the Programme for Infrastructure Development in Africa (PIDA), and the Infrastructure in South America Initiative that is now part of the South American Council for Infrastructure and Planning (COSIPLAN-IIRSA), aspire to connect infrastructure within a region or across regions (see Annex 1 for the maps of the relevant regions depicting these plans). There are also sub-regional plans, such as the Master Plan on ASEAN Connectivity 2025. Some large national plans can be just as ambitious, such as the Masterplan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI) with six economic corridors. India has five huge economic corridors, and the Mausam Project, called "India's answer to China's Maritime Silk Road," is currently in various stages of preparation and implementation.

Regional infrastructure plans are intended to facilitate growth and economic integration; however, they face serious challenges. Many suffer from design flaws, reflecting outdated industrial models that connect extractive industries to power sources via thermal or hydropower plants and transmission lines, and to port facilities via roads, railways, and pipelines. The benefits of connectivity frequently elude the poor, vulnerable and marginalized communities. Important issues such as affordable access to energy, water, sanitation, and waste management are often relegated to the sidelines. Climate change mitigation and resilience of infrastructure are rarely given sufficient attention in the design of regional plans. In addition, and closely related to the fundamental design flaws of this kind, public consultation and participation in project selection and design has generally been weak if not absent. As a result, the plans lack democratic legitimacy, accountability, and may generate increased risks of social conflict. Violence against human rights defenders, environmental activists and union leaders who speak out on infrastructure projects continues to mount around the world.

To understand the complex interplay between mega-infrastructure projects and human rights, this baseline study classifies potential negative human rights impacts into three levels - micro-, meso- and macro-levels. This classification helps signal to decision makers the wide-ranging and multi-level human rights impacts that infrastructure projects can bring about, and that impacts may extend well beyond those typically covered in the MDB safeguard policies, which address mostly the micro-level impacts. It also underscores the fact that impacts that are not readily identified as human rights and those that may seem diffuse or abstract will often, in fact, have explicit human rights underpinnings and accountability consequences.

The analysis focuses on regional, sub-regional and national master plans in the energy, transport and water sectors (...). The study classifies and analyses impacts at three levels:

- *micro-level impacts*, which are potential impacts on people and the environment arising from the physical activities of implementing the plans;
- *meso-level impacts*, which are potential impacts on the consumers of infrastructure services arising from the operation of the relevant infrastructure assets; and
- *macro-level impacts*, which are impacts on the general population and society arising from government acts and omissions or broader financial, fiscal, macro-economic or other public policy implications of infrastructure plans or projects.

270 Office of the UN High Commissioner for Human Rights, *Baseline Study on the Human Rights Impacts and Implications of Mega-Infrastructure Investment* (2017) www.ohchr.org/Documents/Issues/Development/DFI/MappingStudyontheHRRiskImplications_MegaInfrastructureInvestment.pdf.

Not every land acquisition, resettlement, fee hike, or other negative human rights impact discussed below will necessarily constitute a human rights violation. The determination of a violation is a matter of expert judgment guided by evidence and applicable law and, depending on the facts and parties involved, may not be a straightforward matter even for courts or other bodies charged with this purpose. But where internationally recognized human rights are at stake, serious negative impacts cannot be dismissed as trade-offs for a greater good. Trade-offs between different interests are inevitable in policy-making. The human rights framework helps to inform and frame difficult trade-offs, ensuring that interests protected by an internationally recognized human right (or rights) are prioritized over other competing interests, that all voices are heard in the process, and that effective and accessible grievance redress mechanisms are in place where human rights are violated. The risk of a potential human rights violation should trigger strengthened due diligence by all relevant parties, taking into account all available country-specific/contextual and sector/project-relevant information and analysis from international and regional human rights bodies.

Myanmar Center for Responsible Business, Tourism Impact Assessment²⁷¹

Sector-wide impact assessments

The SWIA [sector-wide impact assessment] draws on established environment and social impact assessment methodologies, but applies a human rights lens. The scope of a SWIA goes beyond a particular project. It is about a whole sector and involves assessing not only impacts on individuals and groups that may arise from particular projects, but also the potential for the sector's impact on society as a whole. It therefore looks at impacts on three levels. Firstly, it examines sector level impacts; these cover the aggregate impacts of the sector and paint the "bigger picture" of the interaction between the sector and Myanmar society. Secondly, it looks at project level impacts over eight areas: stakeholder consultation, engagement and grievance mechanisms; community impacts; land; labour; groups at risk; culture; physical security and the environment. Thirdly, it considers cumulative level impacts. Given the concentration of tourism activities in particular destinations, these are inevitable. They will arise from the combined impacts of tourism – and potentially other economic – activities in the same area or timeframe.

Some issues emerged strongly from the sector-wide impact assessment. The first is that some of Myanmar's flagship sites such as Bagan, Inle and Kyaiktiyo, are already under environmental and social pressure from the effects of tourism. This is impacting on livelihoods and the long-term viability of these places as tourism destinations. That pressure comes as much from a rise in domestic tourists as it does from foreign tourists. Domestic tourists greatly outnumber foreign tourists, particularly at certain pilgrimage sites. It highlights the need – already mentioned in the Tourism Master Plan – for destination management plans, drawn up with the participation of local groups as well as all relevant government authorities and tourism businesses, which should inter alia address the question of carrying capacity, before steps are taken to actively market the destination further or expand hotel room capacity. These plans will need destination management organizations, led by local government, which should include representatives of public, private and civil society organizations. They should promote grassroots participation in tourism planning and decision making.

The frequent findings from field research of negative impacts caused by 'hotel zones' – areas of land compulsorily acquired and set aside for concentrated hotel development – are a consequence of the above-mentioned absence of participatory destination management. They also reflect the fact that land is possibly the most complex challenge any business investing in Myanmar with a land footprint will face. The reform of the land policy and laws in Myanmar is incomplete. It is characterised by a patchwork of old and new laws and regulations that leads to overlap, contradiction and confusion that can, and has been, used to deprive people of their land. Land is often the most significant asset for most rural families, but they are vulnerable to exploitation and have limited protection under the existing and even new land laws.

²⁷¹ Myanmar Centre for Responsible Business, *Tourism Sector-Wide Impact Assessment* (2015) <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/Tourism/00-Myanmar-Tourism-Sector-Wide-Assessment.pdf>

A further common finding of the sector-wide assessment for tourism (and that for the oil and gas sector), was that engagement and genuine two-way communication and transparency by business with stakeholders has historically been almost completely absent. This has led to mistrust, misunderstanding and occasionally conflict. Businesses, whether those already present or investing for the first time, need an in-depth understanding of local priorities and concerns, through greater engagement with, and accessibility to, workers, local communities, national level stakeholders and the local and national media.

Human Rights Concerns Regarding Cumulative Impacts

Cumulative impacts are areas of concern from a human rights point of view for a number of reasons:

- Cumulative impacts are often much *harder to predict* than singular impacts from one project. (...)
- Cumulative impacts *can be severe* – both in terms of the type of impact (e.g. the cumulative burden on poor infrastructure causes it to collapse) or the widespread nature of the impact (e.g. cumulative water use due to tourism development reduces water tables, resulting in drought with widespread effect on food security in the local community) (...).
- Even where a responsible party can be identified in the case of a singular negative human right impact, there are often *challenges in holding the responsible party* accountable; where cumulative impacts are involved, responsibility for impacts is even more dispersed, making it even harder to identify parties responsible for prevention, mitigation and remediation, and hold them accountable. (...)
- Companies *may not consider themselves responsible* for cumulative impacts as they make only a contribution to these impacts. This may especially be the case where their activities individually fit within acceptable regulatory limits, but the regulatory regime is not advanced enough to take account of accumulation of impacts over time or space. (...)
- Populations *most at risk* are affected by cumulative impacts, as they are likely to have the least resilience to respond and the least capacity to demand a response from the authorities or businesses.
- Cumulative impacts are sometimes slow and may build up incrementally over time. Accordingly, it may be more *difficult to draw attention* to the issues and prompt action from responsible parties.

Human Rights and Business Dilemmas Forum, Cumulative Human Rights Impacts²⁷²

When conducting human rights due diligence, human rights risks are considered from the perspective of the actual or potential impact on stakeholders. After identifying that stakeholders are experiencing an adverse impact, and that the company is involved in that impact, responsible companies will then attempt to remedy the impact. However, in certain circumstances stakeholders may identify and report impacts that are the cumulative result of the:

- The concurrent, collective impacts of multiple companies (and other actors)
- The cumulative impacts of a company/companies (and other actors) over time

As such, identifying the source of an adverse impact may not be as straightforward as simply linking it back to a single company. For example, a community relying on a water source may find that the source is polluted or depleted. The impact may arise, not from one company's excessive water use or emissions, but from the cumulative effect of four companies and several local farmers drawing from, or discharging into, the same source. Whilst each actor on their own is not causing an impact, the cumulative result of all of the water withdrawals may impact the right to life, health, property or livelihood of the community. Similarly, whilst one company advertising high sugar foods or beverages to children may not create a human rights impact on its own, several companies, over time, targeting high-sugar foods and drinks at children can have a cumulative impact on child obesity and the right to health.

²⁷² Human Rights and Business Dilemmas Forum, *Cumulative Human Rights Impacts*, accessed 25 January 2021, <https://hrbdf.org/dilemmas/cumulative-impacts/#.WwvaAe6FPDA>.

Multiple companies sourcing raw ingredients for products such as medicines or food and beverages in the same geographical area can cumulatively impact local communities' right to food. Although each individual company may source only a reasonable amount of the natural resource in question, such as local wild flora, the cumulative effect on total local supplies can be serious.

Corporate impact assessments seldom consider the pattern of land acquisition, lease or expropriation (i.e. from which they benefit) in the area surrounding their proposed or actual operations. However, the acquisition, lease or expropriation of land by several companies in the same area can have a significant cumulative impact on the freedom of movement and right to an adequate standard of living of local communities, among others. For example, as outlined above, following a critical number of corporate land purchases for mineral exploration in an Asian state, nomadic herders found their access to grazing lands restricted and communities complained of being pushed outwards into areas with limited access to essential services.

Access to water raises risks of impacts to the right to an adequate standard of living and the right to health, among others. (...) Stakeholder concerns around corporate water impacts include the following: depletion (...) pollution (...) access and affordability (...) conflict (...) gender-related impacts (...). In many cases, the adverse effects experienced by communities are as the result of the incremental contributions of many different actors drawing from the same watershed, or discharging into the same water bodies.

The effect of a single company advertising a high-sugar or high-fat product to children (or their parents) may be negligible. However when many companies do so – and such advertising becomes more pervasive – it may contribute to a broader cumulative impact on childhood obesity and the right to health. Similarly, evidence suggests that the regular portrayal of the ideal of a skinny figure in women's magazines has an effect on the prevalence of eating disorders – and thus may also impact on the right to health. (...)

DCAF & ICRC, Security and Human Rights Challenges in Complex Environments²⁷³

Impact Assessments should consider the following aspects:

Inclusiveness

- Collect information about the potential impact of a project on communities in consultation with women, men, indigenous peoples, migrants, members of different socioeconomic, caste, ethnic and religious groups and community organisations.
- Consult with specialised organisations working with vulnerable groups.
- Adopt a gendered perspective, as women and men may be affected differently by company operations.
- Obtain information about child rights impacts from adults who have close contact with children or expertise in children's rights.
- Arrange separate meetings for the women of the community, conducted by female members of the assessment team.

Methodology

- Use participatory research methods that actively engage community members in the assessment (e.g. focus groups, public perception studies, multi-stakeholder meetings).

²⁷³ Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the International Committee of the Red Cross (ICRC), *Addressing Security and Human Rights Challenges in Complex Environments – Toolkit* (2016) <https://www.securityhumanrightshub.org/toolkit>.

- Explain the purpose of the assessment and how the information gathered will be used.
- Ensure that participants can express their views in their local language. Interpreters should be independent of the company (and, if possible, of local communities) to avoid bias.
- Publically report results of the impact assessment, if this has been mutually agreed upon with the community.

Content

- Consider all direct and indirect impacts of the company's operations on local communities, including: in-migration, displacement, loss of land, loss of livelihood, loss of biodiversity, all forms of pollution, prices of goods, services and accommodation, rise in violence and crime, effects on community health, damage to religious, spiritual or cultural sites of significance, and increased socio-political tensions, strife or conflict.
- Record and follow up on all concerns voiced by community members.

Legitimacy

- Ensure that the assessment team is familiar with the local setting and make sure that your team generates trust and confidence among affected communities.
- Work in partnership with reputable third parties that know the history and relations of local communities. "Relevant partners can be local and international civil society organizations, development agencies, or think tanks and universities."

Extent and Scope

- Consider impacts throughout the various stages in the life cycle of the project.
- Update the impact assessment regularly and before any new stage of the project.

de Schutter, Principles on Human Rights Assessments of Trade & Investment²⁷⁴

1. All States should prepare human rights impact assessments prior to the conclusion of trade and investment agreements.

Commentary

- 1.1 By preparing human rights impact assessments prior to the conclusion of trade and investment agreements, States are addressing their obligations under the human rights treaties. First, since States are bound by these pre-existing treaty obligations, they are prohibited from concluding any agreements that would impose on them inconsistent obligations. Therefore, there is a duty to identify any potential inconsistency between pre-existing human rights treaties and subsequent trade or investment agreements, and to refrain from entering into such agreements where such inconsistencies are found to exist.⁴ Human rights impact assessments are a tool to ensure consistency and coherence between the obligations of States under international law and other international agreements to which they are parties, and thus to overcome, or at least mitigate, the problems resulting from the fragmentation of international law. (...)

²⁷⁴ Olivier de Schutter, *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, Report of the Special Rapporteur on the right to food, A/HRC/19/59/Add.5 (2011) http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf.

3. Human rights impact assessments of trade and investment agreements should be prepared prior to the conclusion of the agreements and in time to influence the outcomes of the negotiations and, if necessary, should be completed by ex post impact assessments. Based on the results of the human rights impact assessment, a range of responses exist where an incompatibility is found, including but not limited to the following: (a) Termination of the agreement; (b) Amendment of the agreement; (c) Insertion of safeguards in the agreement; (d) Provision of compensation by third-State parties; (e) Adoption of mitigation measures.

Commentary

- 3.3 Not all the impacts of the entry into force of a trade or investment agreement can be anticipated. Therefore, ex ante human rights impact assessments should be complemented by human rights impact assessments performed ex post, once the impacts are measurable. A human rights impact assessment should be conceived of as an iterative process, taking place on a regular basis, for instance, every three or five years. Safeguard clauses should be inserted into the trade or investment agreement to ensure that, should such ex post assessments lead to the conclusion that the State is unable to comply with its human rights obligations within the constraints of the agreement, it should be released from such constraints to the extent of the incompatibility.
6. States should use human rights impact assessments, which aid in identifying both the positive and negative impacts on human rights of the trade or investment agreement, to ensure that the agreement contributes to the overall protection of human rights.

Commentary

- 6.1 Each State retains the prerogative in setting its priorities, which often requires balancing different competing priorities. Trade and investment agreements may benefit certain groups, making them better off, while hurting others, whose situation will worsen as a result. Delicate choices will have to be made about the priorities that the State seeks to pursue, for instance, where trade and investment agreements contribute to economic growth and thus may facilitate the ability of the State to realize certain rights by mobilizing budgetary resources to finance certain public goods and services in various areas, including education, food, health and housing, while at the same time negatively affecting the State's capacity to protect the rights of certain groups, such as workers in the least efficient sectors of the economy. (...)
- 6.2 Human rights impact assessments seek to clarify the nature of such choices, and to ensure that they are made on the basis of the best information available. The question of which trade-offs are acceptable is to be decided at the level of each country, through open and democratic processes, which the human rights impact assessment seeks to inform. However, the process of setting priorities and of managing trade-offs, as well as the substance of the outcome, must comply with certain conditions. (...)

EU, Guidelines on Human Rights Impact Assessments for Trade Agreements²⁷⁵

On 25 June 2012 the Council adopted a Strategic Framework on Human Rights and Democracy accompanied by an Action Plan. The Action Plan called on the Commission to “incorporate human rights in all impact assessments on an on-going basis” (point 1) and to develop by 2014 “a methodology to aid consideration of the human rights situation in third countries in connection with the launch or conclusion of trade and/or investment agreements” (point 11a).

In response to these commitments DG Trade has developed in-house guidelines in order to help with examination of the potential impacts of a trade-related initiative on human rights in both the EU and the partner country/ies.

²⁷⁵ European Commission, *Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives* (2015) http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf.

These guidelines focus in particular on the methodology to be followed when carrying out impact assessments (IAs), which are conducted before the European Commission proposes a new policy initiative, such as the opening of a trade negotiation; and sustainability impact assessments (SIAs), which are carried out in parallel with major bilateral and plurilateral trade negotiations. However, the principles and approach described are applicable throughout the entire policy cycle of an initiative. They could therefore be used for ex post evaluations, which are carried out after (eg.) a trade agreement has entered into force and after sufficient time has passed to gather a robust body of data and evidence; or when evaluating the impact of other types of trade policy initiative, such as a regulation. (...)

The Commission has an integrated approach to the assessment of impacts which is designed to ensure that all the likely economic, social, environmental, and human rights impacts are analysed and presented together in a single document. Integrated impact assessments thus provide the most effective way of making a balanced assessment of the potential impacts of any proposed legislative or non-legislative initiative. (...)

Analysis of the human rights impacts of a trade-related initiative sets out to assess – against the normative framework of human rights obligations as set out in the Charter of Fundamental Rights of the European Union (CFR) and a number of international sources – how trade measures which might be included in a proposed trade-related policy initiative are likely to impact: either on the human rights of individuals in the countries or territories concerned; or on the ability of the EU and partner country/ies to fulfil or progressively realise their human rights obligations. (...)

Scope and depth of the analysis

Analysis of the possible human rights impact of a trade-related initiative should look at the potential impact of the proposed initiative on human rights in both the EU and the partner country/ies, and should include consideration of civil, political, economic, social, cultural and core labour rights. (...)

The depth and scope of the assessment should be calibrated to the type of trade measures included in the initiative, as well as to the magnitude of the expected human rights impacts. It is, however, always important to keep in mind that human rights are interdependent and interrelated; and therefore to consider the likely multiple impacts that a particular trade measure might have.

The analysis of human rights impacts undertaken in IAs (which are carried out in support of Commission initiatives that are likely to have significant and clearly identifiable impacts) should be comprehensive, participative, balanced and transparent. (...)

Screening

Screening is a means to narrow down the measures which need to be assessed, identifying the key human rights issues as well as the related individual elements of the policy initiative which should be focused on for further analysis.

In particular, the screening of the proposed initiative aims at identifying:

- (a) which particular trade measures under consideration have the potential for significant human rights impacts;
- (b) which specific human rights would be likely to be affected (and with respect to which population groups);
- (c) whether the rights in question are absolute rights²¹, which cannot be limited or restricted under any circumstances.

To identify the list of rights on which the impact of trade measures will require additional analysis, the following criteria should in particular be considered:

1. “Direct vs indirect”: it is important to focus on those areas which are more directly trade related and likely to be directly affected by the proposed options.
2. “Major vs minor”: the analysis should focus on major impacts; a direct, but really minor impact, might not be relevant for the assessment.

Scoping

The trade measures identified in the screening process should be described in detail, explaining how they would actually operate and which particular elements or aspects might give rise to human rights impacts. For each measure identified, the likely impact on human rights should be described, indicating whether the impact is expected to be beneficial (promotion of human rights) or negative (limitation of human rights).

Detailed assessment

A detailed assessment should then provide evidence-based information about the extent to which the particular measures foreseen in the policy initiative may enhance or impair the enjoyment of the relevant rights of individuals; and/or may strengthen or weaken the ability of the EU and partner country/ies to fulfil or progressively realise their human rights obligations.

Baseline scenario

The analysis of the baseline scenario (not pursuing a new EU trade agreement with a country) should also take into account potential opportunity costs: for example, would the failure of the EU to conclude an agreement with the partner country leave space for the expansion of activities by other economic partners whose companies abide by less stringent codes of conduct than European companies?

Stakeholder consultation

The consultants carrying out the SIA are responsible for ensuring a dynamic, far-reaching and open consultation of all relevant stakeholders in the EU and in partner country/ies; including social partners (workers’ and employers’ organisations), businesses, experts, NGOs, and other civil society organisations.

Additional analytical elements

The assessment needs to identify potential interferences with human rights. In particular, the analysis should consider whether possible negative impacts on human rights are justified in terms of necessity and proportionality (limitations on rights must be: provided by law, and respect the essence of the rights concerned; necessary to achieve an objective of genuine public interest or social need, or to protect the rights and freedoms of others; and proportionate to the aim pursued).

The analysis should also consider dynamic trends, and draw attention to situations where human rights impacts in the short term might differ from those in the long term (eg, a trade agreement may generate growth and therefore contribute to improved human rights conditions over the long term, but have negligible impacts in the short term).

Walker, Human Rights in the EU–Tunisia Free Trade Agreement²⁷⁶

This article critically examines the integration of human rights in the trade and sustainability impact assessment of the proposed Deep and Comprehensive Free Trade Agreement between the EU and Tunisia. The main contribution of this article is to list the basic requirements of a human rights impact assessment methodology in the form of a list of questions as a means to evaluate impact assessments of trade agreements. Using this list, the article demonstrates how the EU–Tunisia assessment meets many of the formal requirements of human rights impact assessment but that the underlying human rights analysis and recommendations were weak and that the approach to consultation and participation of individuals and groups in the assessment process needs review and strengthening. The article recommends the continued professionalization of human rights impact assessment of trade agreements and concludes by noting that the 2015 adoption by the European Commission of Guidelines on the analysis of human rights impacts in impact assessments of trade-related policy initiatives provides a clearer framework to guide and improve future assessments.

Götzmann, Principles and Approaches to Human Rights Impact Assessment²⁷⁷

A key point is that HRIA seeks to provide detailed and evidence-based analysis that takes into account different perspectives and contributes to decision-making about business activities that may impact on people's enjoyment of their human rights. It can provide a structured approach through which to ...:

- identify adverse human rights impacts, including understanding these from the perspectives of impacted rights-holders;
- contribute to effective HRDD by determining measures to address any adverse human rights impacts identified through prevention, mitigation and remediation;
- analyse the human rights implications of specific legal, regulatory and policy measures concerning business activities;
- facilitate meaningful dialogue between stakeholders in a given context, including business actors, rights-holders and other relevant parties (in particular, human rights actors);
- facilitate participation and learning of those stakeholders involved in the impact assessment, including through awareness-raising of respective rights, responsibilities and duties;
- enhance the accountability of state actors and businesses through documenting the impacts that have been identified and the actions proposed to address these, including
- by empowering rights-holders to hold state actors and businesses to account for adverse business-related human rights impacts; and
- build partnerships between the stakeholders involved to address human rights impacts, including through developing joint actions to address cumulative impacts or legacy issues.

276 Simon Walker, 'Human Rights in the Trade and Sustainability Impact Assessment of the EU–Tunisia Free Trade Agreement', *Journal of Human Rights Practice*, 10:1 (2018), pp. 103–124 <https://academic.oup.com/jhrp/article/10/1/103/4958805>.

277 Nora Götzmann, 'Introduction to the Handbook on Human Rights Impact Assessment: Principles, methods and approaches', in Nora Götzmann (ed.), *Handbook on Human Rights Impact Assessment*, Edward Elgar Publishing (Northampton, Cheltenham, 2019) www.researchgate.net/publication/337558738_Handbook_on_Human_Rights_Impact_Assessment.

Background (Cambodia)

Xia, EIA in Governing Hydro-Power Projects in Cambodia²⁷⁸

4. *Imperfect Land Law and Expropriation Law Exasperate Illegal Evacuations*

Local residents are often reported in recent years as the victims of the rapid development in the country. At all levels of environmental planning and management, management of natural resources is the cornerstone for the peace and security of a society. Land Law and Expropriation Law have the utmost impact on EIA in Cambodia. As is discussed in this section, the flaws in land and expropriation laws no doubt are to be blamed for the difficulties in EIA implementation, and should be amended through legislative procedures.

4.3. *Expropriation Law*

(...) The Law on Expropriation sets out the conditions and procedures under which legitimate owners and possessors may be legally deprived of their land if it is required for a public interest project. (...) In addition, the law brought forth ideas of publicly conducted survey by a to-be-established Expropriation Committee with detailed descriptions about the owner and/ or rightful owner of the real estate and other properties which might need for compensation. It stipulates that the Expropriation Committee shall conduct a detailed interview with all concerned parties about the issues of immovable property affected by the public physical infrastructure project. Within 30 working days after completing the survey, the Committee shall provide a report with recommendations and propose for the government's approval. More importantly, the Expropriation Committee shall determine the fair and just compensation; set a deadline for complaint; send the declaration accompanying a copy of the Expropriation Law to all owners and/ or rightful owners; disseminate the declaration via media; post the declaration at relevant commune offices where the public physical infrastructure is going to take place. (...)

As illustrated above, what may need amendments for EIA in Cambodia are two keystone statutes in resource management: the land law and expropriation law. Meanwhile, more and area-specific guidelines with unified version used by all project owners will greatly stimulate the efficiency and credibility of EIA report compiled by consultants.

Instruments (Cambodia)

Sub-Decree on Environmental Impact Assessment Process²⁷⁹

Article 6: A project owner must conduct an Initial Environmental Impact Assessment (IEIA) in order to comply with the EIA requirement as stated in the annex of this Sub-decree.

Article 7: A project owner must apply to the MoE [Ministry of Environment] for reviewing their IEIA report and report of pre-feasibility study.

Article 8: A project owner must apply to the MoE for reviewing their full report of EIA report and pre-feasibility study, in case a project tends to cause a serious impact to the natural resources, ecosystem, health and public welfare.

[See Annex to see projects subjected to IEIA]

278 Han Xia, *The Role and Problems of Environmental Impact Assessment in Governing Hydro-Power Projects in Cambodia* (2020) https://www.researchgate.net/publication/341545968_The_Role_and_Problems_of_Environmental_Impact_Assessment_in_Governing_Hydro-Power_Projects_in_Cambodia.

279 Cambodia, *Sub-decree on Environmental Impact Assessment Process*, 72 ANRK.BK (1999) [http://sithi.org/admin/upload/law/72%20on%20the%20Environmental%20Impact%20Assessment%20Process%20\(1999\).ENG.pdf](http://sithi.org/admin/upload/law/72%20on%20the%20Environmental%20Impact%20Assessment%20Process%20(1999).ENG.pdf).

Prakas on Classification of EIA for Development Project²⁸⁰

Article 4: The project category that is required to prepare environmental protection contracts refers to projects that have minor environmental and social impacts, as stated in the Annex. If these projects have medium or serious impacts on the environment and society, then the Ministry of Environment requires the project owner to prepare initial [EIA] or full [EIA]. (...)

Sub-Decree on Land Acquisition & Involuntary Resettlement²⁸¹

V. Social Impact Assessment

87. The assessment of social impacts (ASI) is a process to identify the social impacts of the project due to involuntary resettlement. The ASI is carried out as part of resettlement planning through a SES [Socio-Economic Survey] and an inventory of displaced persons and loss of assets. It is not a stand-alone report and no separate report on social impact assessment is necessary. (...)

D. Impact on Poor and Vulnerable Group

95. The ... Questionnaire will identify displaced persons who are poor and living the below the poverty line and groups that are vulnerable. The data will be collected on a disaggregated basis to identify the types of vulnerable groups and the potential impacts on them from the project. The specific concerns expressed during the one to one/house to house consultations with these groups of displaced persons will provide a more informed basis for the assessment of the social impacts on them. Based on the results of the assessment, targeted measures to avoid or mitigate the adverse impacts will be developed. The key objective is to improve their status and livelihood sources as much as possible through additional compensation package for livelihood restoration. The table below provides general guidance on the types of vulnerable groups and measures that could be taken into consideration.

Resettlement Planning Considerations for the Vulnerable Groups

No.	Vulnerable Group	Resettlement Planning Considerations
1	Poor Households (below poverty line as defined nationally),	The objective is to provide sufficient protection during the transition phase and improve their source of livelihood to move out and remain above the poverty level in the medium to long term. Various options that could be considered during the preparation of mitigation measures: <ul style="list-style-type: none"> • Additional Income Support for a specific period of time without creating a dependency syndrome • Financial support for upgrading of skills to improve opportunities for employment or engage in other alternative livelihood sources
2	Women Headed Households with dependents	The objective is to ensure that this vulnerable group is not disadvantaged and their specific needs are satisfied. The planning considerations under 1 will be considered for this category if the household living below the poverty line. In addition, the following could be considered: <ul style="list-style-type: none"> • Where land is provided, the title must include the name of the women • Women will be the recipient of any financial assistance • Preference for temporary employment opportunities for women during the implementation of the project. • Assistance in seeking gainful employment

280 Cambodia, Prakas No. 021 on the classification of environmental impact assessment for development projects, (2020), [in Khmer] https://data.opendevopmentcambodia.net/en/laws_record/prakas-no-021-on-the-classification-of-environmental-impact-assessment-for-development-projects.

281 Cambodia, Sub-decree on The Promulgation of the Standard Operating Procedures For Land Acquisition and Involuntary Resettlement For Externally Financed Projects in Cambodia (22 February 2018) https://www.mef.gov.kh/documents/laws_regulation/LAR-SOP-Final-13032018.pdf.

3	Elderly headed Households with no means of support	Same considerations as under 1 will be considered for this category of household.
4	Disabled Headed Households	The social impacts on this group of vulnerable people are more severe particularly if they are relocated. There will be a need to involve the provincial social welfare and other agencies to develop the most appropriate measures. The options may include: • Ensure they have access to the package of social welfare assistance provided under any RGC national or provincial program. • Provide additional financial support for the transition period. • Identify sources of livelihood that they are able to participate in and provide the necessary financial support to acquire the skills for alternative sources of livelihood.
5	Customary land users and indigenous peoples without formal titles	Acquisition of customary land must be avoided but in exceptional case when this becomes necessary, a separate and more detailed study will be carried out in conjunction with the SES and an Indigenous People Plan (IPP) will be prepared to mitigate against all social impacts. • The IPP will spell out the assistance package including additional financial support for re-establishing the livelihood.

E. Impact on Indigenous Peoples

96. Any land acquisition and resettlement involving indigenous people is avoided to the maximum extent possible. (...) A separate study on the social impacts will be carried out on how the indigenous peoples use their land, how they conduct their economic activities, and how they organize their social activities.
97. A separate Indigenous Peoples Plan (IPP) is prepared to mitigate the social impacts, develop the compensation and resettlement package that will be offered, and set out implementation arrangements. The customary practices will need to be taken into consideration during the consultation process. (...)

Prakas on General Guidelines for Developing Initial and Full EIA Reports²⁸²

Annex 1: Environmental Impact Assessment

3. Content of the General Guidelines, Chapter 4: Description of Existing Environment

The chapter provides description of the natural environment and socio-economic aspects (based on primary and secondary data) within and in the surrounding environment of the project location including: (...)

4.2 Socio-economic aspects

- Demography and settlement;
- Economic status: employment and income (primary and secondary);
- Land use;
- Water use;
- Energy use;

²⁸² Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Report (2009) <http://www.sustinatgreen.com/uploads/document/prakas-on-general-guideline-for-conducting-iee-and-eia-reports-376-2009-en.pdf>.

- Infrastructure;
- Education;
- Public health and well-being;
- Cultural heritages, historical monuments, ancient temples, pagodas, customs/ traditions, ethnic minority or indigenous people, etc; and
- Tourism destinations.

Ministry of Environment, Guidebook on EIA in Cambodia²⁸³

b. Project Screening

Generally, project screening is determined by MoE based on laws or sub- decrees regarding project types and size that will require initial or full environmental impact assessment report.

In case an investment project is not mentioned in the annex list of the legal instruments, MoE can use an alternative list to determine impact size. This list shows whether a project is required to conduct an EIA or not as described in details below:

- For project with serious environmental impact, project owner is required to prepare a full EIA report; or
- For project with medium environmental impact, project owner is required to prepare an initial EIA report; or
- Project owner is not required to prepare an EIA report. There are three types of such project:
 1. Project determined by the government as special and urgently needed;
 2. Required Environmental Management Plan (EMP);
 3. Required environmental protection contract for projects not stipulated in the annex of sub-decree but the project has minor environmental impacts such as garment factory, etc. (...)

d. Environmental Impact Assessment

To analyze environmental impact in the initial or full EIA, analysis needs to be made on three things: (1) Type of impact, (2) Prediction of possible scale and scope of impact, and (3) Determine impact notions.

Environmental impact can change the existing form of environment and it could be direct, indirect or cumulative impact. These changes can be seen in different ecological system (types of ecological system) and social levels (from individual to community) which may vary beyond limitation or time of the study and include both negative and positive impacts.

Direct impacts include changes in environmental components caused by direct interaction between the environment and project activities. Indirect impacts are caused by indirect interaction between the environment and its indirect causes. Cumulative impacts include combination of environmental changes caused by human activities (Ex. past, present and requested activities including the project under current EIA). Environmental damages can cause extreme changes to relevant existing resources and place more burden on human and animal health as well as create disaster for now and future.

²⁸³ Ministry of Environment, *Guidebook on Environmental Impact Assessment in the Kingdom of Cambodia* (2012) <http://ngoforum.org.kh/files/4cb32e-a424c264c674c054ba18d2ffe8-Final-PK-official-eia-booklet-21-11-2012-Eng.pdf>.

AIIB, Environmental and Social Framework²⁸⁴

Annex: Environmental and Social Policy [ESP] and Environmental and Social Standards [ESS]

Requirements

C. Environmental and Social Assessment

26. Environmental and Social Assessment. Generally, the Bank requires the Client to adopt an integrated approach to the process of assessment, given the complex interrelationships of environmental and social risks and impacts in both public- and private sector Projects. However, the Bank recognizes that in some countries the legislation and procedures require separate environmental and social documents, making the preparation of an integrated environmental and social assessment difficult to achieve. (...)
28. Elements of the Environmental and Social Assessment. The Bank requires the Client to undertake an environmental and social assessment that consists of the following elements in varying degrees, depending on the categorization of the Project: (a) description of the Project; (b) policy, legal and administrative framework, including the international and national legal framework applicable to the Project; (c) scoping, including stakeholder identification and consultation plan; (d) analysis of alternatives, including the “without Project” situation; (e) baseline environmental and social data; (f) evaluation of environmental and social risks and impacts; (g) public consultation and information disclosure; and (h) development of mitigation, monitoring and management measures and actions in the form of an ESMP or ESMPF. The assessment considers Project and design alternatives, to avoid or minimize physical and/or economic displacement and impacts on Indigenous Peoples.
29. Scope of Analysis. The scope and depth of analysis is proportional to the nature and magnitude of the Project’s potential environmental and social risks and impacts. The environmental and social assessment applies a mitigation hierarchy to: (a) anticipate and avoid risks and impacts; (b) where avoidance is not possible, minimize or reduce risks and impacts to acceptable levels; (c) once risks and impacts have been minimized or reduced, mitigate them; and (d) where residual risks or impacts remain, compensate for or offset them, where technically and financially feasible. (...)
30. Involuntary Resettlement. The Bank screens each Project to determine whether or not it involves Involuntary Resettlement... Where it is not feasible to avoid Involuntary Resettlement, the Client is required to ensure that resettlement activities are conceived and executed as sustainable development programs, providing sufficient resources to enable the persons displaced by the Project to share in Project benefits.
31. If the Project involves Involuntary Resettlement, the Bank requires the Client to prepare a resettlement plan or RPF (as applicable) that is proportional to the extent and degree of the impacts. The degree of impacts is determined by: (a) the scope of physical and economic displacement; and (b) the vulnerability of the affected people. The resettlement plan or RPF complements the broader coverage of social risks and impacts in the environmental and social assessment and provides specialized guidance to address the specific issues associated with Involuntary Resettlement, including land acquisition, changes in land use rights, displacement and need for livelihood restoration.
32. The Bank does not endorse illegal settlement; however, it recognizes that significant populations already inhabit both urban and rural land without title or recognized land rights in its countries of operation. Given this situation, the Bank requires the Client to ensure that displaced persons without title to land or any recognizable legal rights to land, are eligible for, and receive, resettlement assistance and compensation for loss of non-land assets, in accordance with cut-off dates established in the resettlement plan, and that they are included in the resettlement consultation process.

²⁸⁴ Asian Infrastructure Investment Bank, *Environmental and Social Framework* (2019) https://www.aiib.org/en/policies-strategies/_download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf.

33. **Indigenous Peoples.** The Bank screens each Project to determine whether or not it would have impacts on Indigenous Peoples. In conducting this screening, the Bank seeks the technical judgment of qualified social scientists with expertise on the social and cultural groups in the Project area. The Bank also consults the Indigenous Peoples concerned and the Client. If the Project would have impacts on Indigenous Peoples, the Bank requires the Client to prepare an Indigenous Peoples plan or IPPF. The level of detail and comprehensiveness is proportional to the degree of the impacts. The degree of impacts is determined by evaluating: (a) the magnitude of the impact on Indigenous Peoples' customary rights of use and access to land and natural resources; socioeconomic status; cultural and communal integrity and heritage; health, education, livelihood systems and social security status; and indigenous knowledge; and (b) the vulnerability of the affected Indigenous Peoples. The Indigenous Peoples plan complements the broader coverage of social risks and impacts in the environmental and social assessment and provides specialized guidance to address specific issues associated with the needs of affected Indigenous Peoples.

BSR, Human Rights Impact Assessment: Facebook in Cambodia²⁸⁵

Project Overview and Methodology

Facebook commissioned BSR to undertake a human rights impact assessment (HRIA) of the company's presence in Cambodia. The objectives of the HRIA are to:

- » Identify and prioritize actual and potential human rights impacts, including both risks and opportunities.
- » Recommend an action plan to address the impacts by avoiding, preventing, or mitigating risks, and by maximizing opportunities.
- » Build capacity of relevant staff to lead constructive dialogue with rightsholders and stakeholders and to improve the management of human rights.

BSR undertook this HRIA between October 2018 and December 2019, using a methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs). The majority of the primary research was conducted during October and December 2018, and as such this assessment principally reflects the human rights context, insights, and rightsholder experiences gathered at that time. This methodology included a documentation review, direct consultation with around 35 potentially affected rightsholders and stakeholders during one visit to Cambodia by BSR staff, and interviews with relevant Facebook employees. This HRIA was funded by Facebook, though BSR retained editorial control over its contents. (...)

Actual and Potential Human Rights Impacts

BSR prioritizes the following actual and potential human rights impacts based on their severity for rightsholders. It should be noted that, while we have segmented impacts this way in the assessment, these rights are highly interdependent and interrelated, with the improvement or deprivation of one right significantly affecting the others.

- » **Security:** As specified in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 20 of the International Covenant on Civil and Political Rights (ICCPR), everyone has the right to life, liberty, and security of person, and advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence should be prohibited by law. This may include arrests and prosecution of users for content posted on Facebook, even if that content does not violate Facebook's Community Standards.

²⁸⁵ BSR, *Human Rights Impact Assessment Executive Summary: Facebook in Cambodia* (2019) https://about.fb.com/wp-content/uploads/2020/05/BSR-Facebook-Cambodia-HRIA_Executive-Summary2.pdf; see also similar links at <https://www.bsr.org/en/our-insights/blog-view/a-human-rights-impact-assessment-of-facebook-in-cambodia>.

- » Privacy: As specified in Article 12 of the UDHR and Article 17 of the ICCPR, no one shall be subjected to arbitrary interference with his or her privacy, family, home, or correspondence, nor to attacks upon his or her honor and reputation, and everyone has the right to the protection of the law against such interference or attacks. This may include data requests from law enforcement agencies, content that violates the privacy rights of users (such as personal photos, passwords, and bank details) being posted on Facebook, or the hacking of private information by malicious actors.
- » Freedom of Expression, Assembly, and Association: As specified in articles 19 and 20 of the UDHR and Article 19 of the ICCPR, everyone has the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. These rights include the freedoms to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. This may include users exercising self-censorship, content not violating Community Standards occasionally being removed in error, or the potential for government restrictions on content or access. (...)

Daniels & Korm, Impact Assessment for ‘The Harbour Bay’²⁸⁶

1. Introduction

This [Social and Human Rights Impact Assessment (SHRIA)] report aims to present the findings before the project has commenced. In particular, it highlights the most important social, economic, environmental and human rights issues that were found to be associated with the design, construction and operational aspects of The Harbour Bay Project. (...)

3. Scope of the Project Report

The report is rapid in its nature and is not a full EIA, SIA nor HRIA. The report was unable to assess many potential impacts due to the GYTG not sharing their plans or wanting to be involved in the research process. The research that produced this report was designed to address the most vulnerable groups and as such, some information is considered only representative and not wholly accurate. As this report is ‘rapid’ in its nature, due to it being time-sensitive, it is not conclusive and provides conclusions on what other information is required in order to for the project to move forward. (...)

7. Project Description

The project will develop the Phnom Penh Autonomous Port (PPAP) and a formerly public park, about 9.25 hectares of riverside land, into a commercial complex, comprising of roughly of 19 buildings, 18 of which are over 40 stories high, as well as the construction of a floating market, a “public space”, a cultural centre, and some infrastructure. The Chean Chhoeng Thai Group (CCTG), a subsidiary of GYTG, which is a Chinese developer, will be developing the area. (...)

Chapter Six: Impact Assessment

6.3.2.1 Article 25 Right to Housing

The loss of any area to dock boats will affect boat owner’s ability to live in the area. Further, the loss of the formerly public park will affect homeless persons that used the park as an area to sleep and rest.

²⁸⁶ Issac Daniels & Chanraksmey Korm, *Rapid Social and Human Rights Impact Assessment Report for ‘The Harbour Bay’ Built by Guangzhou Yuetai Group in Phnom Penh, Cambodia* (2019) https://www.conftool.com/landandpoverty2019/index.php?page=downloadPaper&ismobile=true&filename=06-10-Daniels-324_paper.pdf&form_id=324&form_version=final.

6.3.2.2 Article 26 Right to Education

Children of boat operators/owners, who are growing-up on boats and attending schools in the area, will likely be affected should relocation of boats mean that they will have to move schools or stop studying.

Bugalski & Thuon, HRIA of Hoang Anh Gia Lai Economic Land Concessions²⁸⁷

2.1.2 The human rights assessed in the report

(...) The right to health

The right to the enjoyment of the highest attainable standard of physical and mental health is recognized in article 12 of the ICESCR and article 24 of the CRC. The right to health is closely related to and dependent upon the realization of the right to an adequate standard of living as well as other human rights. It is also intimately connected to the natural environment, especially for people who derive their food, water and medicines directly from their natural surroundings. The UNDRIP recognizes the right of indigenous peoples to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants.

3.2 Method of Data Collection Methods

Both primary and secondary data collection methods were applied. Desk research was used to gather background information about the concessions and villages as well as information on relevant laws and policies. The primary data was collected during four trips to Ratanakiri between November 2013 and March 2014 through a range of tools including key informant interviews, participatory community mapping, focus group discussions, including separate women focus groups, and household interviews. The full set of primary data collection tools were applied in the eighteen villages already affected or expected to be affected by concessions known to be owned by HAGL, as well as in the three villages affected by Hoang Anh Lumphat. (...)

Chapter 6: Impacts on the Right to Health

(...) Given the adverse impacts on the environment and natural resources, some affected people have reported changes in their physical health and to their system of health care. Moreover, the sudden loss of resources for basic needs and abrupt changes in the village due to the company's presence has provoked feelings of stress and anxiety, affecting the mental health of some, especially women. (...)

Key findings:

In some villages, people have experienced a retrogression in the enjoyment of the right to health, but some people have also had improved access to medical care:

- Adverse health impacts are mainly perceived to be due to pollution and destruction of the local environment and, relatedly, deterioration in the quantity and/or quality of food. Pollution of streams is viewed as a major cause of health issues.
- Women, in particular, are reporting health impacts due to changes in food consumption.
- Women are experiencing higher levels of stress and anxiety due to livelihood concerns and security issues, with potential implications for their mental health.
- HAGL's medical program has provided much needed services to communities, with notable positive impacts for those who have received treatment for visual impairment and eye disease.

287 Natalie Bugalski & Ratha Thuon, *A Human Rights Impact Assessment: Hoang Anh Gia Lai Economic Land Concessions in Ratanakiri Province, Cambodia* (2014) <https://www.inclusivedevelopment.net/wp-content/uploads/2017/03/rubberhriawebfinal.compressed.pdf>.

Questions

1. What is the importance of human rights impact assessment in Cambodia?
2. How is Cambodia's environmental impact assessment relevant to human rights impact assessments?
3. What development sectors in Cambodia require human rights impact assessments?
4. Are there any examples of ex ante human rights impact assessments in Cambodia? What are the scope and methods of such assessments?
5. Are there any examples of ex post human rights impact assessments in Cambodia? What are the scope and methods of such assessments?

Further Readings

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10. DUE DILIGENCE AND MANAGEMENT SYSTEMS

Prom Sovada, Naim Sakona, Radu Mares

Introduction

Due diligence is a familiar notion to business executives as they commonly perform due diligence checks when they buy another business (mergers and acquisitions) in order to understand the exact assets and liabilities involved. Lawyers also are familiar with due diligence as a defense in court cases that enables them to show their client acted with reasonable care. The UNGPs were developed strategically to build on this familiarity: when they emphasize the idea of human rights due diligence (HRDD) as the concrete way in which a company respects human rights, the UNGPs speak the language of business. This emphasis makes corporate responsibilities appear more reasonable and feasible, and impresses upon companies that they should manage human rights in the same systematic and proactive way as any other risks. At the same time, the UNGPs emphasize that these are risks to human rights, and not risks to business reputation and operations; so the management response should be adjusted for this purpose. The UNGPs further simplify the idea of due diligence by showing the concrete steps a company should take (chapters 7-14) in order to call itself a responsible company. The approach of the UNGPs is consistent with other approaches such as those employed by the World Bank (chapter 25) and the OECD (chapter 28), as they all draw on the ‘plan-do-check-act’ classic approach in risk management. Advocacy groups also use the due diligence approach in the UNGPs in order to assess and demand improvements in corporate performance. Furthermore, legislators can make due diligence a legal requirement, as was done in France (chapter 4) and as the UN negotiations on a treaty on corporate accountability are trying to do now (chapter 1). Several bodies in the UN system – such as treaty bodies and special rapporteurs – use the human rights due diligence in the UNGPs to draw attention to the responsibilities of the private sector on many human rights issues (chapter 29). With these advances regarding due diligence, a company that merely adopts a code of conduct, and does not back it up with a proper risk management system, is likely to suffer a blow to its reputation and be seen as stuck in the 1990s, when adopting a code of conduct was the main and insufficient corporate response to criticism (chapter 8). However, even today corporations rarely release detailed information about their due diligence systems (chapter 13).

In Cambodia, the conduct of some form of due diligence, primarily socio-environmental impact assessments, is legally mandatory for some businesses in certain sectors. In addition to that, some international financing institutions such as the Asian Development Bank, the World Bank Group and other multilateral and bilateral donors to Cambodia, also started to impose some diligence requirements for the projects financed by them. International brands also perform checks on their potential suppliers/partners in Cambodia as part of their sustainable business policies. In Cambodia as elsewhere in the business world, companies generally conduct due diligence on their potential business partners before entering into business relationship in order to evaluate regulatory compliance, financial health and risks that might affect the businesses. Though this due diligence requirement is not mandatory, companies do it anyway to protect their interest. Although new to Cambodia, this same idea will be applied increasingly to improve human rights protections.

Main Aspects

- ✓ Free trade agreements (FTAs)
- ✓ Risks (to rightsholders and to the company)
- ✓ Circle of HRDD and continuous improvement
- ✓ Severe impacts, prioritization and enhanced HRDD
- ✓ Integrated assessment (of human rights impacts)
- ✓ Conflict between national law and international standards
- ✓ Embedding HRDD (in corporate structures, processes and management systems)
- ✓ Business functions (procurement, production, legal, human resources, sales)
- ✓ Environmental and Social Management Systems
- ✓ Company Culture
- ✓ Communication, collaboration and persuasion (within the company)
- ✓ Supply chain management
- ✓ Selection of suppliers (and pre-audits)
- ✓ Contracts with suppliers (human rights clauses)
- ✓ Social audits (factors affecting social auditors' ability to identify problems)
- ✓ Negligence (relation to HRDD)
- ✓ Regulatory strategies (to promote HRDD)
- ✓ Stakeholder engagement (participation) as a tool for HRDD
- ✓ Corporate reporting (transparency) as part of HRDD

Background

Shift, Human Rights Due Diligence in High Risk Circumstances²⁸⁸

Human rights due diligence consists of the processes that a business uses to become aware of and manage its actual and potential impacts on individuals' human rights. (...) This focus on affected stakeholders (those who would suffer the impacts) differentiates human rights due diligence from more traditional risk and materiality analyses. In traditional analyses, the risk to the business is paramount. In human rights due diligence, the risk to stakeholders is paramount.

Diagnostic Questions to Identify Risk Factors

A. Key questions to ask about the operating context

- To what extent are human rights protected in domestic law and to what extent are those laws enforced?
- Do domestic laws conflict with international human rights standards?

²⁸⁸ Shift, *Human Rights Due Diligence in High Risk Circumstances* (2015)

www.shiftproject.org/media/resources/docs/Shift_HRDDinhighriskcircumstances_Mar2015.pdf

- Are there systematic social practices that impact on human rights?
- To what extent do local populations have access to justice?
- Is there active conflict, or are there pre or post conflict dynamics?
- Is corruption systemic at one or more levels?
- Is extreme poverty present amongst affected stakeholder groups?
- Are any types of civil society organizations weak, absent or under sustained threat?
- Are there significant legacy impacts (impacts that predate the company's involvement) that could affect stakeholders' actions or attitudes?
- Are operations likely to be seen as linked to particular political or other institutional interests?
- Are there third parties whose actions may create risks related to the business (e.g., local power brokers threatening suppliers or trade unions, media that stoke ethnic conflict, etc.)?

E. Key questions to ask about management systems

- Does the business have the necessary policies and processes in place to prevent and address identified risks?
- Does the business have the staff capacity to implement those policies and processes effectively?
- Has the business allocated the necessary budget?
- Has the business allowed sufficient time for adequate due diligence?
- Has the business appropriately understood external perspectives?
- Has the business appropriately informed and engaged potentially affected stakeholders?

Instruments

UN, Guiding Principles on Business and Human Rights²⁸⁹

Human rights due diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:
- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
 - (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
 - (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

²⁸⁹ Human Rights Council, *UN Guiding Principles on Business and Human Rights, Seventeenth Session* (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Commentary

Human rights due diligence can be included within broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence. (...)

Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually. (...)

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

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

(a) Effective integration requires that:

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

Commentary

The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon. (...)

UN High Commissioner of Human Rights, An Interpretive Guide²⁹⁰

Q 27. What should the scope of human rights due diligence be?

²⁹⁰ UN Office of the High Commissioner of Human Rights, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

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

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

Q 83. How should an enterprise deal with conflicting requirements?

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

An enterprise’s human rights due diligence process should reveal where it may be faced with this kind of dilemma and what measures could prevent or mitigate the risk. If there is a direct conflict of requirements, the challenge is to find ways of honouring the principles of internationally recognized rights. As with other issues, there is no blueprint for how to respond. (...)

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

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

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

Q 86. Where can an enterprise seek help in assessing and addressing challenges that arise in difficult contexts?

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

Q 88. What would count as “severe” impact?

The commentary to Guiding Principle 14 states that the severity of human rights impacts “will be judged by their scale, scope and irremediable character”. This means that both the gravity of the impact and the number of individuals that are or will be affected (for instance, from the delayed effects of environmental harm) will be relevant considerations. “Irremediability” is the third relevant factor, used here to mean any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

Q 87. Why does this [to prioritize actions based on severity of human rights impacts] matter?

There is no hierarchy in international human rights law. Rather, human rights are treated as indivisible, interdependent and interrelated. However, it may not always be possible for an enterprise to address all adverse human rights impact immediately. Many enterprises operate in different contexts and have complex supply chains and a multitude of partners. They may be at risk of involvement in a range of adverse human rights impacts, and there may be legitimate resource and logistical constraints on the ability of the enterprise to address them all immediately.

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

International Finance Corporation, Performance Standards²⁹¹

Overview

1. (...) The Performance Standards are directed towards clients, providing guidance on how to identify risks and impacts, and are designed to help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities.
3. Performance Standard 1 establishes the importance of (i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects; (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them; and (iii) the client’s management of environmental and social performance throughout the life of the project. Performance Standards 2 through 8 establish objectives and requirements to avoid, minimize, and where residual impacts remain, to compensate/offset for risks and impacts to workers, Affected Communities, and the environment.

Performance Standard 1

1. (...) An effective Environmental and Social Management System (ESMS) is a dynamic and continuous process initiated and supported by management, and involves engagement between the client, its workers, local communities directly affected by the project (the Affected Communities) and, where appropriate, other stakeholders.¹ Drawing on the elements of the established business management process of “plan, do, check, and act,” the ESMS entails a methodological approach to managing environmental and social risks and impacts in a structured way on an ongoing basis.

²⁹¹ International Finance Corporation, *Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts* (2012) (footnotes omitted) https://www.ifc.org/wps/wcm/connect/115482804a0255db96fbff1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

5. The client, in coordination with other responsible government agencies and third parties as appropriate, will conduct a process of environmental and social assessment, and establish and maintain an ESMS appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts. The ESMS will incorporate the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review.

OECD, Due Diligence Guidance for Responsible Business Conduct²⁹²

Characteristics of Due Diligence

Due diligence involves multiple processes and objectives.

(...) Due diligence should be an integral part of enterprise decision-making and risk management. In this respect it can build off (although it is broader than) traditional transactional or “know your counterparty” (KYC) due diligence processes. Embedding RBC [responsible business conduct] into policies and management systems helps enterprises prevent adverse impacts on RBC issues and also supports effective due diligence by clarifying an enterprise’s strategy, building staff capacity, ensuring availability of resources, and communicating a clear tone from the top.

Due diligence is dynamic.

The due diligence process is not static, but ongoing, responsive and changing. It includes feedback loops so that the enterprise can learn from what worked and what did not work. Enterprises should aim to progressively improve their systems and processes to avoid and address adverse impacts. Through the due diligence process, an enterprise should be able to adequately respond to potential changes in its risk profile as circumstances evolve (e.g. changes in a country’s regulatory framework, emerging risks in the sector, the development of new products or new business relationships).

Due diligence does not shift responsibilities.

Each enterprise in a business relationship has its own responsibility to identify and address adverse impacts. The due diligence recommendations of the OECD Guidelines for MNEs are not intended to shift responsibilities from governments to enterprises, or from enterprises causing or contributing to adverse impacts to the enterprises that are directly linked to adverse impacts through their business relationships. Instead, they recommend that each enterprise addresses its own responsibility with respect to adverse impacts. In cases where impacts are directly linked to an enterprise’s operations, products or services, the enterprise should seek, to the extent possible, to use its leverage to effect change, individually or in collaboration with others.

Box 2. Collaboration in Carrying Out Due Diligence

Enterprises can collaborate at an industry or multi-industry level as well as with relevant stakeholders throughout the due diligence process, although they always remain responsible for ensuring that their due diligence is carried out effectively. For example, collaboration may be pursued in order to pool knowledge, increase leverage and scale up effective measures. Cost sharing and savings is often a benefit to sector collaboration and can be particularly useful for SMEs. (...)

²⁹² OECD, *Due Diligence Guidance for Responsible Business Conduct* (2018) <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

While in many cases, enterprises can collaborate on due diligence without breaching competition law, enterprises, and the collaborative initiatives in which they are involved, are encouraged to take proactive steps to understand competition law issues in their jurisdiction and avoid activities which can be seen as breach of competition law. (...)

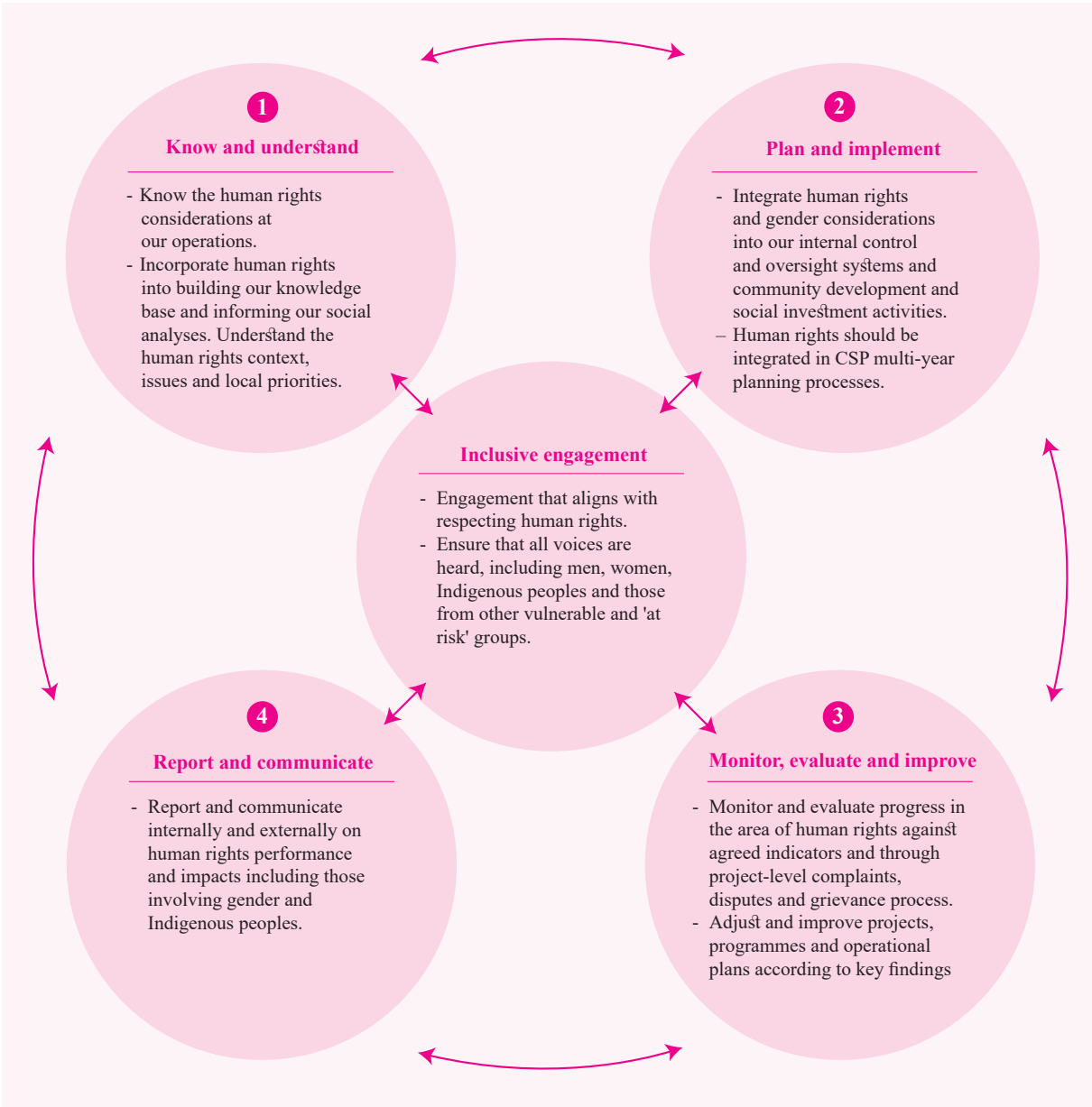
Each jurisdiction will have different rules with respect to competition law issues; however, there are some guiding questions enterprises may consider when assessing concerns under competition law with regard to their RBC initiatives. For example:

- Does the collaboration or initiative involve an agreement between competitors?
- Can the collaboration or initiative be viewed as a per se violation of competition law? (i.e. does it involve price fixing, bid rigging (collusive tenders), output restrictions, and market division (or sharing)?)
- Does the collaboration or initiative have an anti-competitive effect (i.e. impacts on consumer markets such as higher prices or limiting availability of goods/services), regardless of the fact that it does not seek to restrict competition?
- On balance, do the pro-competitive effects of the collaboration or initiative outweigh the anti-competitive effects?
- Are there public interest benefits produced by the collaborative or initiative that can be included in or override a balancing test?

Table 3. Examples of Indicators of Scale, Scope and Irremediable Character [of human rights impacts]

ADVERSE IMPACT	EXAMPLES OF SCALE	EXAMPLES OF SCOPE	EXAMPLES OF THE IRREMIEDIABLE CHARACTER
Labour	<ul style="list-style-type: none"> • Extent of impact on workers health or safety • Whether the violation concerns a fundamental right at work 	<ul style="list-style-type: none"> • Number of workers/ employees impacted • Extent to which impacts are systemic (e.g. to a particular geography, industry or sub-sector) • Extent to which some groups are disproportionately affected by the impacts leg, minorities, women, etc.) 	<ul style="list-style-type: none"> • Extent to which the impact can be rectified (e.g. through compensation, reinstatement, etc.) • Whether the workers affected can be restored to the prior enjoyment of the right in question • The extent to which intimidation of workers for forming or joining a trade union will effectively deny workers the right to representation
Environment	<ul style="list-style-type: none"> • Extent of impact on human health • Extent of changes in species composition • Water use intensity (% use of total available resources) • Degree of waste and chemical generation (tons; % of generation) 	<ul style="list-style-type: none"> • Geographic reach of the impact • Number of species impacted Environment 	<ul style="list-style-type: none"> • Degree to which rehabilitation of the natural site is possible or practicable • The length of time remediation would take

Rio Tinto, Why Human Rights Matter²⁹³



AngloAmerican, Socio-Economic Assessment Toolbox²⁹⁴

Developing a Social Management Plan

A Social Management Plan (SMP) is a framework that details an operation’s planned approach to managing social performance. It should identify the key activities and resources required to proactively manage an operation’s social issues and impacts, as well as deliver socioeconomic benefits. SMPs are a requirement for all Anglo American managed operations. Unlike a SEAT report, an SMP is primarily an internal document and is updated annually. It is not intended for external publication, although it may be shared, in part or in full, with key stakeholders. (...)

293 Rio Tinto, *Why Human Rights Matter* (2013) www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf.
 294 AngloAmerican, *SEAT toolbox, Socio-Economic Assessment Toolbox* (2012) <http://www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/communities/seat-v3-jan-15-2.pdf>.

Section 7: Resources and Accountabilities

This section of the SMP should present the overall human and financial resources required to deliver the SMP for the year ahead. It should summarise, in full-time equivalents, the number of staff required to deliver the SMP alongside the required budget to implement any actions.

Additionally, it should set out the reporting lines and accountabilities within the operation and Business Unit. In developing the resource plan for the SMP, the individuals and organisations responsible for implementing the management actions should be identified. Responsible individuals may be situated in a wide range of business functions, depending on the issue or impact being managed. For instance, an action relating to local procurement may need to be addressed by Supply Chain with input from other functions (e.g. social performance, finance, safety and sustainable development, etc.).

Fair Labor Association, Principles of Fair Labor and Responsible Production²⁹⁵

1. Workplace Standards: Company Affiliate establishes and commits to clear standards.
2. Responsibility and Head Office Training: Company Affiliate identifies and trains specific staff responsible for implementing workplace standards, and provides training to all head office staff.
3. Production Staff Training: Company Affiliate trains all management staff and employees at owned production sites on workplace standards and tracks effectiveness of training.
4. Functioning Grievance Mechanisms: Company Affiliate ensures workers have access to functioning grievance mechanisms, which include multiple reporting channels of which at least one is confidential.
5. Monitoring: Company Affiliate conducts workplace standards compliance monitoring.
6. Collection and Management of Compliance Information: Company Affiliate collects, manages, and analyzes workplace standards compliance information.
7. Timely and Preventative Remediation: Company Affiliate remediates in a timely and preventative manner.
8. Responsible Production Practices: Company Affiliate aligns sales and planning practices with commitment to workplace standards.
9. Consultation with Civil Society: Company Affiliate identifies, researches, and engages with relevant labor non-governmental organizations, trade unions, and other civil society institutions.
10. Verification Requirements: Company Affiliate meets FLA verification and program requirements.

Global Compact, Human Rights Due Diligence Info Portal²⁹⁶

5 Steps towards managing the human rights impacts of your business

Step 3 - Identify existing processes and steps

²⁹⁵ Fair Labor Association, *Principles of Fair Labor and Responsible Production* (2015) <http://www.fairlabor.org/our-work/principles>.

²⁹⁶ Global Compact Network Germany, *Twentyfifty, Human Rights Due Diligence Info Portal* (2016) <http://mr-sorgfalt.de/en>.

Objectives of this step

- Map the management processes your company has in place to address potential impacts and identify gaps and further information needs
- Reach out to others in your business to refine your initial mapping (...)

Approach & possible activities

You can start with making a list of key business functions that most likely need to be involved when addressing the human rights impacts identified previously and what processes to look into:



III. Overview of selected relevant corporate functions and issue areas covered by them

This can help you when engaging your colleagues:

- Look out for meeting formats/structures already in place such as CSR meetings or workshops you could build on to engage your colleagues. If possible, try to organise a cross-functional workshop, a discussion round or provide feedback opportunities via mail or telephone. If feasible, meet with your colleagues in person.
- To prepare your meetings, it might help to collect some arguments why addressing human rights issues is important to your business. (...)
- When introducing the topic use vocabulary which is familiar to your colleagues. This means, you don't necessarily have to talk about 'human rights' with each of them. Fairness, respect, corporate values, integrity, health and safety, product security or being a responsible businessman could be entry points for different counterparts within your business. Short introductory videos on business & human rights or providing visuals of relevant affected groups/ examples of human rights impacts relevant to your sector can also help you make the topic more tangible for your colleagues.

- Convey the message to your colleagues that their input and expertise is needed for moving forward and ultimately for remaining a well performing and responsible business. No one wants to have negative impacts on other people through their job. If you make colleagues aware of existing risks and practical opportunities for improvement, they will most likely be responsive.
- Remember to keep your colleagues involved in the identification of next steps and to communicate progress towards them – respecting human rights will only work if everybody in the business watches out for potential impacts in daily business practice. (...)

Map existing management processes and identify gaps

With your colleagues' help refine your list of potential impacts and gain an overview about the management processes your company has in place to address them. Are they aware of the potential impacts you have identified? Would they add others to your list? Do they know of past incidents or near misses pointing to potential impacts? How do they prevent negative impacts from occurring in the context of their daily work? What checks and processes does your company have? Is there an indication about how well they perform and where there might be gaps? (...) Human rights due diligence is not about being perfect from the beginning, or not making mistakes, but having thorough checks in place and aiming for continuous improvement.

The Human Rights Capacity Diagnostic can help you to assess your management capacity related to major elements of the corporate responsibility to respect human rights. (...) The HRCDC is a self-assessment instrument with 23 questions centred on the major elements of the corporate responsibility to respect human rights as outlined in the UN Guiding Principles. The corporate responsibility to respect is a global standard of expected conduct for all businesses regardless of size or where they operate. Fulfilling this basic social expectation requires embedding respect for human rights within the business through adequate policies and structures, due diligence and remediation processes. The HRC Diagnostic can be used to shed light on whether that embedding is underway, and what steps to take to further strengthen it.

Corporate Human Rights Benchmark²⁹⁷

In order to offer a truly rigorous and credible proxy measure of corporate human rights performance, the Benchmark seeks to assess companies' human rights performance at several levels. These include

- the governance and policy level (Measurement Theme A),
- the systems and process level (Measurement Themes B and C),
- the performance level, including specific practices (Measurement Theme D) and responses to allegations (Measurement Theme E), as well as
- a final level focusing on a company's overall transparency (Measurement Theme F).

A. Governance and Policy Commitments

This Measurement Theme focuses on a company's human rights related policy commitments and how they are governed. It includes two related sub-themes:

- *Policy Commitments:* These indicators aim to assess the extent to which a company acknowledges its responsibility to respect human rights, and how it formally incorporates this into publicly available statements of policy.

297 Corporate Human Rights Benchmark, *Methodology, For the Agricultural Products, Apparel and Extractives Industries* (2018) www.corporatebenchmark.org/sites/default/files/CHRB%202018%20Methodology%20Web%20Version.pdf

- *Board Level Accountability:* These indicators seek to assess how the company’s policy commitments are managed as part of the Board’s role and responsibility.

These sub-themes are broken down into the following indicators and weightings:

A.1 Policy commitments (5%)

- A.1.1 Commitment to respect human rights
- A.1.2 Commitment to respect the human rights of workers
- A.1.3 Commitment to respect human rights particularly relevant to the industry
 - A.1.3.a Land and natural resources - Agricultural products industry
 - A.1.3.b People’s rights - Agricultural products industry
 - A.1.3 Apparel industry
 - A.1.3 Extractives industry
- A.1.4 Commitment to engage with stakeholders
- A.1.5 Commitment to remedy
- A.1.6 Commitment to respect the rights of human rights defenders

A.2 Board level accountability (5%)

- A.2.1 Commitment from the top
- A.2.2 Board discussions
- A.2.3 Incentives and performance management

B. Embedding Respect and Human Rights Due Diligence

This Measurement Theme assesses the extent of a company’s systems and processes established to implement the company’s policy commitments in practice. It includes two related sub-themes:

- *Embedding:* These indicators seek to assess how the company’s human rights policy commitments are embedded in company culture and across its management systems and day-to-day activities, including within the management systems covering their business relationships.
- *Human rights due diligence:* These indicators focus on the specific systems the company has in place to ensure that due diligence processes are implemented to assess the real-time risks to human rights that the company poses, to integrate and act on these findings so as to prevent and mitigate the impacts, and to track and communicate those actions. These indicators are aligned to the human rights due diligence steps in the UN Guiding Principles on Business & Human Rights.

These sub-themes are broken down into the following indicators and weightings:

B.1 Embedding respect for human rights in company culture and management systems (10%)

- B.1.1 Responsibility and resources for day-to-day human rights functions
- B.1.2 Incentives and performance management

- B.1.3 Integration with enterprise risk management
- B.1.4 Communication/dissemination of policy commitment(s)
 - B.1.4.a Communication/dissemination of policy commitment(s) within Company’s own operations
 - B.1.4.b Communication/dissemination of policy commitment(s) to business relationships
- B.1.5 Training on human rights
- B.1.6 Monitoring and corrective actions
- B.1.7 Engaging business relationships
- B.1.8 Approach to engagement with potentially affected stakeholders

B.2 Human rights due diligence (15%)

- B.2.1 Identifying: Processes and triggers for identifying human rights risks and impacts
- B.2.2 Assessing: Assessment of risks and impacts identified (salient risks and key industry risks)
- B.2.3 Integrating and Acting: Integrating assessment findings internally and taking appropriate action
- B.2.4 Tracking: Monitoring and evaluating the effectiveness of actions to respond to human rights risks and impacts
- B.2.5 Communicating: Accounting for how human rights impacts are addressed



HP, Supplier Social & Environmental Responsibility Agreement²⁹⁸

This Agreement is intended to supplement any and all contracts and agreements between HP and Supplier for the supply of goods or services by Supplier to HP (“Supply Contracts”). (...)

1. *Supplier Responsibility*

- 1.1. Supplier confirms that it has read HP Supplier Code of Conduct (also known as the HP Electronic Industry Code of Conduct or HP EICC Code of Conduct) and HP’s General Specification for the Environment and agrees with its statement of requirements.
- 1.2. Supplier will be responsible for identifying any areas of its operations that do not conform to HP’s Supplier Code of Conduct and HP’s General Specification for the Environment and for implementing and monitoring improvement programs designed to achieve HP Supplier Code of Conduct and HP’s General Specification for the Environment.
- 1.3. Upon request by HP, Supplier will submit a report to HP describing actions taken and progress made by Supplier to meet the requirements of HP’s Supplier Code of Conduct and HP’s General Specification for the Environment.
- 1.4. Supplier will provide HP, or its nominated representative, on reasonable notice, access to Supplier’s relevant records insofar as they relate to Supply Contracts, in order to verify information provided in Supplier’s report.

2. *HP Responsibility*

- 2.1. HP agrees that the report and records referred to will only be used for the purposes of assessing the Supplier’s progress in accordance with HP’s Supplier Code of Conduct and HP’s General Specification for the Environment and will not be disclosed to any third party without Supplier’s prior written consent.

3. *Scope of Agreement*

- 3.1. This Agreement applies to all existing Supply Contracts. (...)

BIICL, The Components of Effective Supply Chain Management²⁹⁹

Supplier on-boarding

Most companies indicate that their leverage is strongest at the point before entering into a relationship with a supplier, also known as “supplier on-boarding”. At the “pre-onboarding” stage, companies frequently use questionnaires, database searches and other forms of desktop research to gain more knowledge about the supplier’s actual or potential human rights impacts. Where a certain supplier or a country, region or sector poses particularly high human rights risks, this screening will be escalated into more thorough investigations.

As part of this initial process, the supplier is frequently expected to do most of the information-gathering. Interviewees noted that small suppliers frequently do not have a web presence, and do not have their past activities documented online. This requires the company to ask more questions of the supplier, including through self-

²⁹⁸ HP, *Supplier Social & Environmental Responsibility Agreement* (undated) <http://h20195.www2.hp.com/V2/GetDocument.aspx?docname=c04900239>.

²⁹⁹ British Institute of International and Comparative Law (BIICL), *The components of effective supply chain management* (2018) <http://human-rights-due-diligence.nortonrosefulbright.online> (footnotes omitted).

assessment, and of others who have knowledge about their practices. In order to receive answers which reflect reality, questions frequently avoid the use of broader human rights language. Instead, specific questions are asked, such as whether recruitment agencies are used, or there is a request to see specific documents, such as a written child labour policy. One interviewee had recently started asking questions of a supplier after potential human rights impacts were highlighted during the initial screening process. They indicated that the supplier was “fairly defensive”, adding that one can “pretty quickly start to see from the responses that there are issues you should look into.”

One interviewee highlighted the usefulness of integration of human rights into tender documents. They included a human rights annex in two recent calls for tenders. The companies which submitted tenders accordingly had to show how they were going to undertake HRDD [human rights due diligence] in their own operations and in their relationships with further business partners.

Interviewees indicated that they have refused to engage with suppliers based on human rights concerns which showed up during their pre-onboarding screening. One interviewee indicated that such refusal would be based on “situations where we likely cannot find mitigation for the human rights impacts, or the potential impacts are egregious, or the management capacity of the [supplier] or their [suppliers] to deal with the impacts are weak.” In other instances, a company may enter into a contract with the relevant supplier, but insist that various human rights standards be included in the contract and embedded into operations.

Short et al, Monitoring Global Supply Chains³⁰⁰

Firms seeking to avoid reputational spillovers that can arise from dangerous, illegal, and unethical behavior at supply chain factories are increasingly relying on private social auditors to provide strategic information about suppliers’ conduct. But little is known about what influences auditors’ ability to identify and report problems. Our analysis of nearly 17,000 supplier audits reveals that auditors report fewer violations when individual auditors have audited the factory before, when audit teams are less experienced or less trained, when audit teams are all male, and when audits are paid for by the audited supplier. This first comprehensive and systematic analysis of supply chain monitoring identifies previously overlooked transaction costs and suggests strategies to develop governance structures to mitigate reputational risks by reducing information asymmetries in supply chains.

BSCI, Sustainability Intelligence Dashboard³⁰¹

The Business Social Compliance Initiative (BSCI) is a leading supply chain management system that supports companies to drive social compliance and improvements within the factories and farms in their global supply chains. (...)

The amfori Sustainability Intelligence Dashboard is a new tool designed to assist companies in tackling the complexity of supply chain management and support their efforts to improve its sustainability performance.

Through this tool, amfori offers companies an online platform providing a single access point to all their supply chain performance information. Connecting amfori members’ supply chain information gathered in the amfori BSCI and amfori BEPI databases, the dashboard provides a 360 degree view of their producers’ performance through interactive data visualisation by country, sector, industry, audit results and much more.

Updated daily, information can be customised and transformed into rich charts and reports tailored to business needs, providing increased visibility and insights into supply chains and allowing for strategic decisions to be made after extensive analysis of wide-ranging KPIs and metrics.

300 Jodi L. Short et al, *Monitoring Global Supply Chains*, Harvard Business School Technology & Operations Mgt. Unit Working Paper (2015) http://www.hbs.edu/faculty/Publication%20Files/ShortToffelHugill2016SMJ_4746e9b3-c482-4d09-b5aa-f2861fd1010f.pdf

301 Business Social Compliance Initiative (BSCI), *amfori Sustainability Intelligence Dashboard*, www.amfori.org/sustainability-intelligence

UN Working Group, Report on Human Rights Due Diligence³⁰²

25. (...) Often human rights due diligence is not understood properly, resulting in:
- (a) Misconstruction of risk, namely, when companies operate with a mindset of risk to the business and not risk to rights holders, such as workers, communities and consumers. Related to that, there is a lack of understanding on how better human rights due diligence will also improve the overall risk management approach. Reluctance or even pushback from traditionally oriented legal counsel, both in-house and external, fearing disclosure is a key obstacle to uptake by companies;
 - (b) Failure to address the most significant risks to human rights first and focusing instead on risks that may be relatively easy to address or that are getting attention in a given context, such as modern slavery or diversity, rather than doing an objective assessment of the most significant and likely risks to people affected by the activities and business relationships of the enterprise;
 - (c) Too many human rights impact assessments done as exercises to tick the box, without meaningful engagement with stakeholders, including engagement with vulnerable or at-risk groups and critical voices such as human rights defenders;
 - (d) Most business enterprises still being mostly reactive, instead of proactively trying to identify potential human rights impacts before they arise, including through early-stage meaningful engagement with potentially affected stakeholders.
26. Performance seems to be particularly weak on the “taking action” and “tracking of responses” components of human rights due diligence set out in the Guiding Principles. Similarly, connections between human rights due diligence and the remediation of actual impacts are not being made in practice. The inadequate integration of a gender lens is a notable gap.
27. A common observation is that beyond the small group of early adopters — mostly large corporations based mainly, but not exclusively, in some Western markets — there is a general lack of knowledge and understanding of the corporate responsibility to respect human rights, especially among smaller companies. In addition, the experience gained from national-level dialogues indicates that many business enterprises, in particular small and medium-sized enterprises, view due diligence expectations as a burden.
28. Translating corporate policies into local contexts, for example in subsidiaries, is a challenge across sectors. There is typically a disconnect between the corporate level and implementation on the ground as well as gaps in internal alignment between functions and incentive structures. An observation in this regard is that companies are prioritizing general training, so that they can “tick the box” on human rights training, without tailoring those trainings to specific functions.
29. An apparent gap in current supply chain management is that human rights due diligence tends to be limited to tier-one companies. Efforts to go beyond tier one tend to happen only when the issue has been brought to light by the media or non-governmental organizations (NGOs). Few companies appear to be asking tier one suppliers to demonstrate that they — and their suppliers in the tiers below — fulfil the responsibility to respect human rights by requiring assessments of the risks to and impacts on human rights. Practices in place before the creation of the Guiding Principles are still common, for example, situations in which companies typically ask suppliers to meet predefined performance criteria in relation to a limited set of human rights, mostly labour rights. However, there have been some positive developments in terms of:
- (a) More meaningful collaborative approaches to joint leveraging efforts;

³⁰² UN Working Group on the issue of human rights and transnational corporations, *Report on human rights due diligence*, A/73/163 (2018) https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163.

- (b) Efforts to trace impacts beyond tier one, such as in mineral supply chains, 18 mostly through industry or multi-stakeholder platforms.
30. In the context of the sustainable development agenda, there is a risk that corporate engagement on the Sustainable Development Goals is being conflated with human rights due diligence. Overemphasis on business opportunities overshadows the understanding that the most significant contribution the majority of business enterprises can make to realizing the Goals is to respect human rights.
36. Other challenges for expanding the uptake of human rights due diligence by businesses may be categorized as market failure issues, such as:
- (a) The “first-mover challenge”, in which business enterprises that are transparent about risks and challenges are criticized for not doing enough whereas less responsible competitors go below the radar of NGOs and journalists. In some cases, NGOs and journalists expect too much of companies that are “merely” linked to the human rights abuse as opposed to the enterprise or government agency that is causing the abuse;
 - (b) Lack of available expertise on the Guiding Principles among the majority of consultancy firms advising on “corporate social responsibility” and lack of integration of business and human rights into the core advisory services of corporate law firms;
 - (c) Insufficient incentive structures for addressing impacts on people as there is currently a lack of systematic mechanisms for investors, public agencies interacting with the private sector and regulators to reward good practices. While Governments and investors are increasingly putting a price on environmental impacts, they are lagging behind in implementing similar approaches for impacts on people;
 - (d) Lack of common understanding about which metrics and indicators to use to track and evaluate performance, both within companies and by other stakeholders, such as investors. The consequences may be that companies gather and publish information that gives “little insight into how their business actually affects the basic dignity and welfare of people. And markets are left rewarding often poor or inadequate behaviors, while leading practice can go unrecognized and undersupported”

Bonnitcha & McCorquodale, The Concept of ‘Due Diligence’³⁰³

The concept of due diligence, understood as a standard of conduct required to discharge an obligation, can be traced to Roman law. Under Roman law, a person was liable for accidental harm caused to others if the harm resulted from the person’s failure to meet the standard of conduct expected of a diligens (or bonus) paterfamilias – a phrase that translates roughly as a prudent head of a household. This was an objective standard, which allowed a defendant’s conduct to be assessed against an external standard of expected conduct, rather than in light of the defendant’s own intentions and motivations. It was also fact specific, in that what could be expected of a prudent person was dependent on the circumstances of the case. Elaborating in the 6th century AD, Justinian argued that an individual may be liable for harm where ‘what should have been foreseen by a diligent man was not foreseen’.

The standard of diligens paterfamilias influenced the development of the tort of negligence in many legal systems. The tort of negligence has common elements across different legal systems – duty, breach, causation and harm – although they are often classified differently. In determining whether a defendant has been negligent, the central question is whether the defendant has met a standard of expected conduct. The diligens paterfamilias standard was directly incorporated into Roman-Dutch tort law as the relevant standard of conduct. It also became the basis for the development of the ‘reasonable man’ test in the English law of negligence and for similar standards in civil law legal systems. As such, due diligence, understood as a standard of conduct, and negligence are closely related: ‘[T]he opposite of negligence is diligence.’

303 Jonathan Bonnitcha and Robert McCorquodale, ‘The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights’, *The European Journal of International Law* (2017) https://www.researchgate.net/publication/311493238_The_Concept_of_‘Due_Diligence’_in_the_UN_Guiding_Principles_on_Business_and_Human_Rights (footnotes omitted).

de Schutter, Human Rights Due Diligence: The Role of States³⁰⁴

Drawing on State practice and international standards, the Report finds the following:

First, the Report confirms that the origins of due diligence are neither a creation of the United Nations Human Rights Council nor a voluntary measure for corporate social responsibility. Due diligence originates from legal tools that States are already using to ensure that business behavior meets social expectations, including standards set in law.

The Report establishes that the regulatory due diligence procedures found in a variety of legal systems are consistent with processes described in the Guiding Principles and other international instruments.

The Report describes how the concept of due diligence requirements are found in areas of law that are either analogous to or directly relevant to human rights, such as labor rights, environmental protection, consumer protection and anti-corruption.

The Report also establishes that due diligence requirements can be used to ensure that business enterprises can be held accountable for violations of law, by, for example, overcoming obstacles to effective regulation posed by complex corporate structures or their transnational activities.

The options described in the Report indicate at least four main regulatory approaches through which States can ensure human rights due diligence activities by business. Usually these approaches co-exist within the same jurisdictions and legal systems.

The first approach imposes a due diligence requirement as a matter of regulatory compliance. States implement rules that require business enterprises to conduct due diligence, either as a direct legal obligation formulated in a rule, or indirectly by offering companies the opportunity to use due diligence as a defense against charges of criminal, civil or administrative violations. For example, the courts use business due diligence to assess business compliance with environmental, labor, consumer protection and anti-corruption laws. Similarly, regulatory agencies regularly require business due diligence as the basis upon which to grant approvals and licenses for many business activities.

The second regulatory approach provides incentives and benefits to companies, in return for their being able to demonstrate due diligence practice. For example, in order for companies to qualify for export credit, labeling schemes or other forms of State support, States often require due diligence on environmental and social risks.

A third approach is for States to encourage due diligence through transparency and disclosure mechanisms. States implement rules that require business enterprises to disclose the presence or absence of due diligence activities and any identified harms that their activities may create, such as the presence of child labor in a company's supply chain. Market participants will then attempt to constrain any identified harms on the basis of a company's disclosures. For example, securities laws, consumer protection laws and reporting requirements for corporate social responsibility operate on the logic that information serves the interests, and will prompt action by consumers, investors, regulators, and people who might be adversely affected by a business activity.

A fourth category involves a combination of one or more of these approaches. States regularly combine aspects of these approaches in order to construct an incentive structure that promotes respect by business for the standards set down in the rules and ensures that compliance can be assessed in an efficient and effective manner. (...)

304 Olivier de Schutter et al., *Human Rights Due Diligence: The Role of States*, International Corporate Accountability Roundtable (2012) <https://www.icar.ngo/publications/2017/1/4/human-rights-due-diligence-the-role-of-states>

Background (Cambodia)

Kong, Business and Human Rights in ASEAN³⁰⁵

4 *Is the State using corporate governance measures to require or encourage respect for human rights?*

4.1 *Is the State requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights?*

There are no specific provisions in the Cambodian laws requiring or encouraging directors of business enterprises to exercise due diligence in ensuring that their business enterprises respect human rights, but the Law on Commercial Enterprises provides a provision of duty of care for directors and officers.

4.1.1. *What are the general legal due diligence obligations that directors have to comply with?*

Article 289 of Law on Commercial Enterprises states that every director and officer in exercising his duties shall i) act honestly and in good faith with a view to the best interest of the company; and ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

4.1.2. *Do directors have specific legal obligations to consider their business enterprises' human rights impacts in carrying out their duties?*

There are no specific legal obligations that directors have to consider their business enterprises' human rights impacts in carrying out their duties, but under the labour law, directors are civilly liable regarding violations. Therefore, it can be held that directors shall consider human rights impacts on labour relations resulting from their business enterprises.

CCHR, Business and Human Rights Handbook for Cambodia³⁰⁶

3.4 *Applying the Guidelines in the Cambodian context*

MNEs are not just expected to follow the OECD Guidelines' recommendations in their own operations; an important part of the OECD Guidelines system is the expectation that MNEs will exercise due diligence to identify, prevent and reduce any negative impacts that might arise as part of their supply chain or through activities to which they are linked by a business relationship. This is of particular relevance in the Cambodian context where, for example, Cambodian factories and plantations are sources of manufactured or raw products, such as garments or sugar, for foreign MNEs. Where MNEs do not carry out adequate due diligence, they may be failing to comply with their responsibilities under the Guidelines, which could form the basis of a campaign by CSOs, or a complaint to the relevant NCP.

The OECD, in consultation with business, trade unions and civil society, has produced sets of guidance for MNEs on how to implement the OECD Guidelines. For MNEs to carry out due diligence to ensure their supply chains do not cause any negative impacts, including to human rights they should:

1. Establish strong company management systems. For example, each MNE should have a clear company policy on the standards of responsible business conduct that they commit to upholding, such as human rights and environmental policies.

305 Phallack Kong, 'Cambodia' in Human Right Resources Center, *Business and Human Rights in ASEAN: A Baseline Study* (2013), <http://hrca.org/wp-content/uploads/2015/09/03.-BHR-Cambodia.pdf>.

306 Cambodian Center of Human Rights (CCHR), *Business and Human Rights Handbook for Cambodia* (2016), https://cchrcambodia.org/admin/media/report/report/english/2016_Handbook_BHR_English.pdf.

2. Identify, assess and prioritize risks of negative impacts in the supply chain. How this is carried out in practice will depend on the sector in which the MNE operates. A company that sources textile products from an independently owned factory in Cambodia will face different challenges in trying to identify risks than does a company that controls land in Cambodia and operates the plantation itself.
3. Design and implement a strategy to respond to identified risks. If an MNE discovers that its supply chain or business partners may be creating a risk(s) of negative human rights impacts (for example, forced eviction or abuses of labor rights), it should put in place appropriate measures to mitigate these harms – for example, by engaging with the local community, providing adequate compensation, or refusing to deal with a local supplier until its practices conform to labor standards.
4. Verify supply chain due diligence – for example, through a system of independent third party audit.
5. Publicly report on supply chain due diligence

What adequate due diligence requires will not be the same for every MNE and should be tailored to the particular industry and context in which they operate. As of today the OECD has produced guidance on a number of different areas of business operations, from the extractives industry to the financial sector, but those likely to be of most relevance in holding to account MNEs that operate in Cambodia are the OECD-FAO Guidance for Responsible Agricultural Supply Chains, which also includes a specific annex on engaging with indigenous peoples; and the draft Guidance on Responsible Supply Chains in the Garment and Footwear Sector. These can be a valuable resource for CSOs, by setting out in concrete terms the internationally recognized best practices by which MNEs are expected to abide.

Instruments (Cambodia)

Labor Law³⁰⁷

Article 233. Visits to establishments and inspections of the enforcement of the legislative provisions and regulations regarding health, working conditions and safety shall be made by Labor Inspectors and Labor Controllers. Labor Medical Inspectors and experts in work safety shall collaborate to achieve these inspection missions. After inspection, if infractions are found, the Labor Inspector shall serve notice on the manager of the establishment by indicating all point that do not conform to the provisions of Chapter VIII of this labor law and the Prakas for its implementation.

Article 344. The Labor Inspection shall have the following missions:

- a) to ensure enforcement of the present Labor Law and regulatory text that is provided for, as well as other laws and regulations that are not yet codified and that relate to the labor system;
- b) to provide information and technical advice to employers and to workers on the effective ways of observing the legal provisions;
- c) to bring to the attention of the competent authority any improprieties or abuses that are not specifically covered by the existing legal provisions;
- d) to give advice on issues relating to the arrangement or restructuring of enterprises and organisms that have been authorized by the administrative authorities and covered by Article 1 of this law;
- e) to monitor the enforcement of the legal provisions regarding the living conditions of workers and their families.

307 Cambodia, *Labour Law* (1997) http://www.cambodiainvestment.gov.kh/the-labor-law-of-cambodia_970313.html.

Sub-Decree on Environmental Impact Assessment Process³⁰⁸

Article 1. The main objectives of this sub-decree are:

- To determine an Environmental Impact Assessment (EIA) upon every private and public project or activity, and it must be reviewed by the Ministry of Environment (MoE), prior to the submission for a decision from the Royal Government.
- To determine the type and size of the proposed project(s) and activities, including existing and ongoing activities in both private and public prior to undertaking the process of EIA.
- Encourage public participation in the implementation of EIA process and take into account of their conceptual input and suggestion for re-consideration prior to the implementation of any project.

Article 3. The MoE has responsibilities as following:

- a) scrutinize and review the report of the Environmental Impact Assessment in collaboration with other concerned ministries;
- b) follow up, monitor and take appropriate measures to ensure a Project Owner will follow the Environmental Management Plan (EMP) while project construction is taking place and accede to their EIA report's approval.

Sub-Decree on Economic Land Concessions³⁰⁹

Article 4. An economic land concession may be granted only on a land that meets all of the following five criteria:

1. The land has been registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration.
2. Land use plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
3. Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects.
4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.
5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.

Law on Environmental Protection and Natural Resource Management³¹⁰

Article 6. An environmental impact assessment shall be done on every project and activity, private or public, and shall be reviewed and evaluated by the Ministry of Environment before being submitted to the Royal Government for decision.

308 Cambodia, *Sub-Decree on Environmental Impact Assessment Process*, no. 72 ANRK.BK (1999) [http://sithi.org/admin/upload/law/72%20on%20the%20Environmental%20Impact%20Assessment%20Process%20\(1999\).ENG.pdf](http://sithi.org/admin/upload/law/72%20on%20the%20Environmental%20Impact%20Assessment%20Process%20(1999).ENG.pdf).

309 Cambodia, *Sub-Decree on Economic Land Concessions*, #146 (2005) http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html.

310 Cambodia, *Law on Environmental Protection and Natural Resource Management* (1996) <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93402/109144/F367799135/KHM93402%20Eng.pdf>.

Article 7. All investment project applications and all projects proposed by the State shall have an initial Environmental Impact Assessment or an Environmental Impact Assessment as specified in Article 6 of this law. The Ministry of Environment shall review and provide recommendations on initial Environmental Impact Assessment or the Environmental Impact Assessment to the competent organization within the period determined in the Law on Investment of the Kingdom of Cambodia.

Article 9. The Ministry of Environment, in collaboration with concerned ministries, shall conduct research, assess the environmental impacts on natural resources, and provide the concerned ministries with recommendations to ensure that the natural resources as specified in article 8 are conserved, developed and managed (and) used in a rational and sustainable manner.

Electricité du Cambodge, Resettlement Due Diligence Report³¹¹

A. Project Background

5. The Asian Development Bank (ADB) is working with Cambodia's national electric utility, EDC, to develop a Grid Development Project. The Grid Reinforcement Project (the project) will support EDC, the state-owned power utility, in improving transmission network capacity and stability. The project will (i) expand and reinforce the electricity transmission infrastructure by constructing 115 kilovolt (kV) and 230 kV transmission lines and associated substations in Phnom Penh, Kampong Chhnang, Kampong Cham, and Takeo provinces; and (ii) introduce the first utility-scale battery energy storage system to enhance power reliability and grid stability accompanied by an increase in electricity generated from renewable energy sources. Project implementation consultants (PIC) will complement existing staff of EDC, thus ensuring a high degree of implementation efficiency of components financed under the project. (...)

B. Rationale for Due Diligence

10. A full feasibility study has been prepared for the Grid Reinforcement Project. Since preparation and submission of adequate social safeguards documents is a condition for ADB's approval of subproject loan, each component/subproject has been carefully reviewed in terms of its involuntary resettlement and indigenous peoples impacts. In accordance with the ADB's 2009 SPS, and the Bank's OM Section F1/OP (October 2013) field validation and due diligence has confirmed that the above subprojects have no land acquisition and hence does not trigger the involuntary resettlement safeguard, and Indigenous People safeguards. However, in order to ensure that the project impacts are well managed, this Due Diligence Report (DDR) is prepared to serve as a social safeguard document of the above-listed subprojects.

11. In addition, the following projects, namely (i) 230 kV GS5 substation, (ii) 115 kV Olympic substation, and (iii) the underground cable from NCC to Toul Kork and Beung Kok, are considered associated facilities of TPP1, TTP3, and SPP3, respectively. As per ADB 2009 SPS and 2012 A Planning and Implementation Good Practice Sourcebook (para. 21), for a project that is not funded by ADB and may cause involuntary resettlement but is critical to the design or implementation of the ADB project, ADB will carry out due diligence on involuntary resettlement that results from such projects by obtaining information on how the adverse impacts will be identified and addressed. Therefore, due diligence has been conducted to ensure that the land acquisition activities of these projects are in compliance with the SPS 2009 requirements and Cambodian land laws and regulations. The due diligence review of these projects is discussed in Section G below. (...)

D. Methodology of Resettlement Due Diligence

52. The following methods were utilized for the purpose of this DDR, including:

³¹¹ Electricité du Cambodge, *Resettlement Due Diligence Report: Grid Reinforcement Project (Cambodia)* (2020) <https://www.adb.org/sites/default/files/project-documents/53324/53324-001-sddr-en.pdf>.

- i. desk study method: the consultant reviewed feasibility study report for subproject features and scale;
- ii. field trips were conducted to observe and assess the subproject impacts; and
- iii. public consultation with the stakeholders.

Fast Retailing, Assessment for Accreditation FLA Board of Directors Meeting³¹²

Fast Retailing Supply Chain & Fla Due Diligence Activities from 2016-2018

As of 2018, Fast Retailing sources from 617 factories in 28 countries; China, Vietnam, and Bangladesh are its countries with the highest production volume. Fast Retailing sources from China, Vietnam, Bangladesh, Japan, Cambodia, and Indonesia. From 2016 to 2018, Fast Retailing received 60 FLA Independent External Assessments (IEAs); 57 SCI Assessments and three SCI Verification (SCIV) Assessments. These assessments covered 16 sourcing countries. Remediation progress from these assessments is included throughout this report. Prior to accreditation, Fast Retailing received two audit field observations: the first in China in 2016 and the second in Vietnam in 2018. Fast Retailing also received a training field observation in China in 2016. The FLA conducted the HQ Assessment at Fast Retailing's headquarters in Tokyo, Japan in February 2018.

Principle 3: Supplier training

Supplier Commitment

All Fast Retailing factories are required to sign Fast Retailing's Code of Conduct for Production Partners, in which factories agree to be assessed by third party audits and undertake corrective actions. Fast Retailing allows audits by approved third-party service providers, including FLA assessments. In addition to the Code of Conduct of Production Partners, suppliers receive the Fast Retailing Supplier Guidebook. The Supplier Guidebook explains the Fast Retailing workplace standards, FLA affiliation, and the FLA assessment process. The FLA verified the use of the supplier agreements and Supplier Guidebook, maintained for each supplier through Fast Retailing's online sustainability platform. The FLA has observed the Fast Retailing Supply Chain Labor Management Team regularly communicate with its suppliers regarding FLA standards and assessment methodology.

Pre-Sourcing Factory Assessments

Fast Retailing details their pre-sourcing and production processes through the Working Conditions Monitoring Program Manual. First, Fast Retailing brand production departments ask the Supply Chain Labor Management Team to assess a potential facility. A full audit to determine the facility's grade is conducted by a third-party audit company; the Monitoring Program Manual includes a comprehensive workflow with decision trees dependent on pre-sourcing audit grades, and whether Fast Retailing should proceed with production. For example, the lowest audit grade (E) or (D) does not authorize the facility for production; a C-grade allows for the purchase order (PO) to be placed for pre-sourcing assessments.(...)

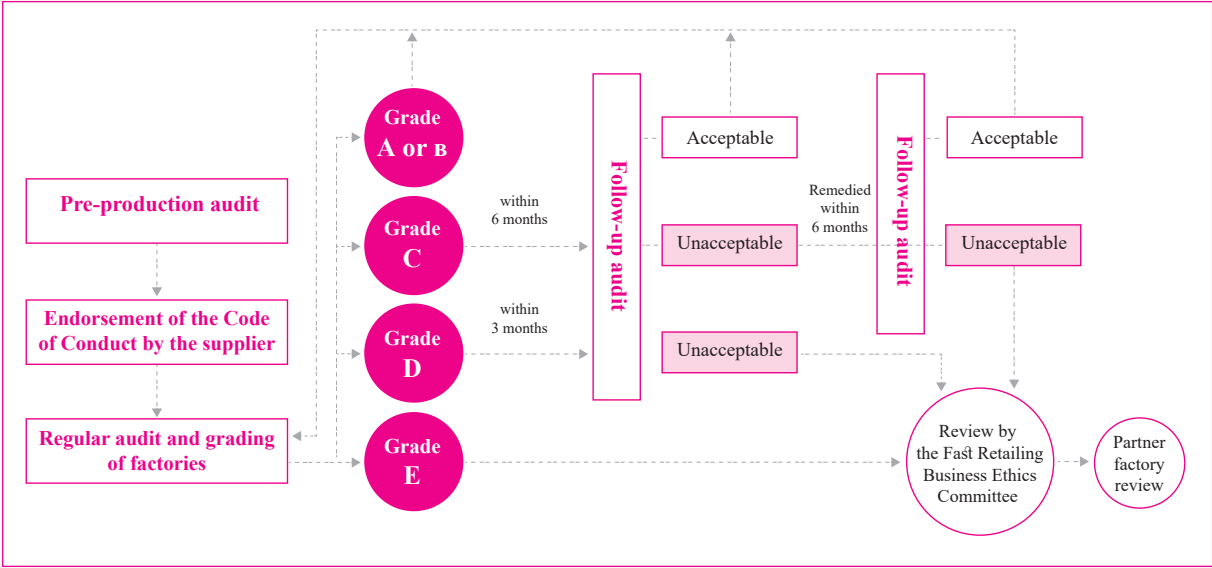
Assessing Factory Conditions

Fast Retailing's monitoring program includes regular audits and follow-up audits for sewing facilities and their subcontractors and core mills; at minimum, facilities receive one annual audit. Depending on the grade of the audit, the Supply Chain Labor Management Team will schedule a follow-up audit as defined in Fast Retailing's Monitoring Program Manual. Similar to the pre-sourcing audit process, for regular audits, the manual includes a comprehensive decision tree to determine the scheduling of the follow-up audit; with low grades (C and D) requiring follow-up audits to verify remediation progress. Facilities that receive an E-grade or fail to show remediation progress during the follow-up audit are subject to review by the Business Ethics Committee, described under Principle 3.

312 Fast Retailing Co., Ltd., *Assessment for Accreditation FLA Board of Directors Meeting* (2019) https://www.fairlabor.org/sites/default/files/documents/reports/fast_retailing_accreditation_report_public.pdf

Fast Retailing, Monitoring and Evaluation of Production Partner Factories³¹³

Workplace Monitoring System



Fast Retailing conducts regular workplace audits, assigning partner factories a letter grade from A to E. The Fast Retailing audit tool and Monitoring Program Manual include processes to conduct worker interviews, consult with unions and worker representatives, review collective bargaining agreement terms, conduct management interviews, review documents, conduct visual inspections, and review occupational health and safety(...)

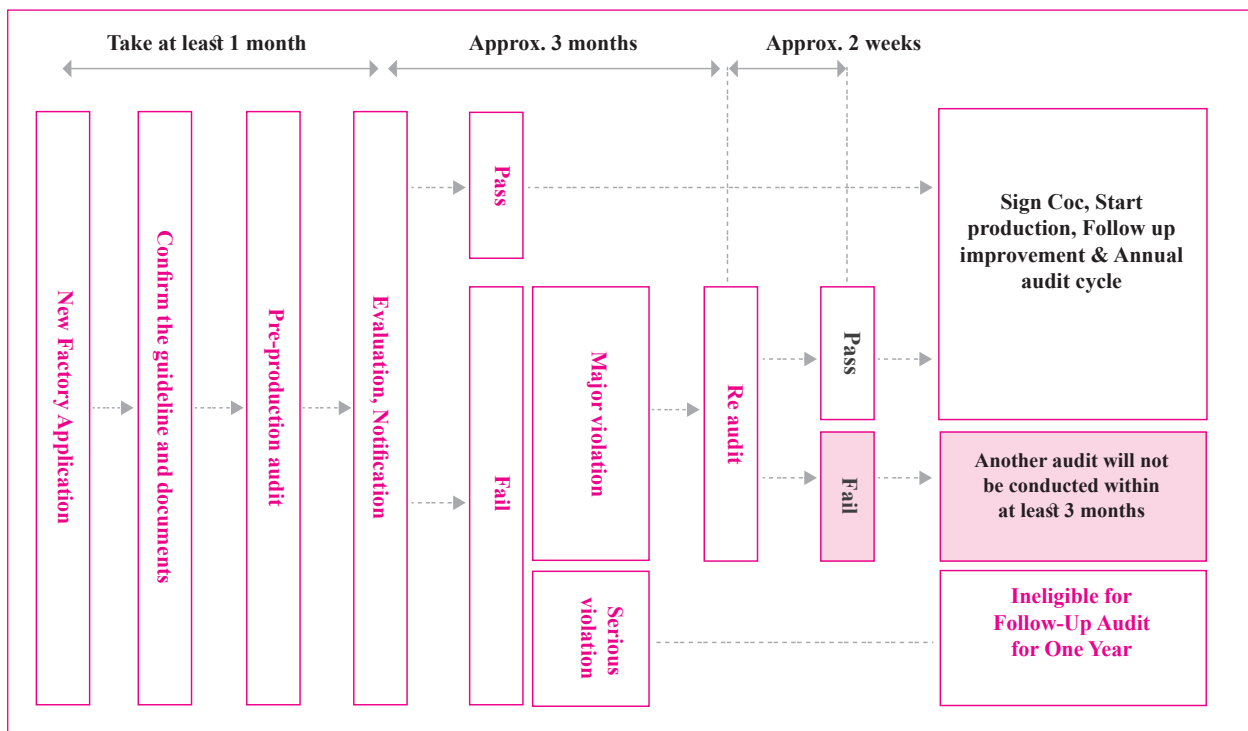
We also analyze labor violation trends by country and individual brands, including how many facilities are passing or failing the Fast Retailing audit. We have developed specific country strategies for Bangladesh, Cambodia, China, Indonesia, Myanmar, and Vietnam. Countries priorities have been defined through stakeholder engagement and aligned with business strategies.

Due Diligence for New Production Partners

Monitoring Potential New Production Partners Prior to Commencing Business

We conduct a due diligence at any potential new partner prior to commencing business with them. This process ensures potential partners comply with our Code of Conduct for Production Partners. We only do business with those partners confirmed to meet standards for commencing new business relationships. Partner factories that receive a grade of D during the audit are asked to make corrections within three months and we start our business only once corrections are confirmed in a follow-up audit. Partner factories who had serious violations are not eligible to do business with Fast Retailing. During fiscal 2019, we initiated business relationships with 86.6 percent of potential partners.

313 Fast Retailing Co., Ltd., *Monitoring and evaluation of production partner factories* (2020) <https://www.fastretailing.com/eng/sustainability/labor/partner.html#02>.



The Association of Banks in Cambodia, Cambodian Sustainable Finance Principles³¹⁴

Principle 1. We will assess and manage environmental risks relating to climate change, pollution and waste management and the protection of our critical natural resources.

1.1. Overview and rationale of the Principle

In implementing this Principle, a bank/MFI will incorporate into its decision-making processes an approach that systematically identifies, assesses and manages the environmental risks and potential impacts associated with its clients and transactions, and will determine whether relevant environmental standards have been adequately applied. Where avoidance of environmental impacts is not possible, a bank/MFI should seek to engage with its clients to minimise the identified risks and impacts.

A bank/MFI will consider whether as a result of its Business Activities there are potential negative impacts to the environment, particularly relating to:

- climate change;
- pollution (including soil, water and air);
- waste management; and
- the protection of Cambodia's critical natural resources (water, natural forests & habitats, biodiversity).

The above-listed environmental issues have been identified as currently the most pressing in the Cambodian context, in relation to which banks/MFIs could have a positive influence.

³¹⁴ The Association of Banks in Cambodia, *Cambodian Sustainable Finance Principles - Implementation Guidelines* (2019) <https://www.ifc.org/wps/wcm/connect/8ce9ddc0-2422-4e69-aa8b-e4f3c8cc3eec/Cambodia+SF+Principles+-+Implementation+Guidelines.pdf?MOD=AJPERES&CVID=mGdMKuz>.

1.2. Implementation guidelines

Banks/MFIs assess and manage environmental (and social) risk and issues through an Environmental and Social Management System (ESMS), customised according to their specific business activities, operations, client base, the types of products and services they provide. (...)

1.5. Demonstrating progress

In order to demonstrate progress in implementing this Principle, a bank/MFI should seek to develop and implement an environmental risk management system. This could include, but is not limited to, the following:

- Development of environmental risk reporting framework and criteria (relevant key performance indicators (KPIs) to monitor and report on progress against the bank/MFI's environmental commitments);
- Ensuring that the necessary systems are in place to collect the relevant data;
- Developing E&S policies (general E&S Policy and specific E&S policies, as applicable), approved by top management, that adequately address environmental issues;
- Developing E&S Procedures that reflect environmental considerations, with clearly articulated roles & responsibilities, and include them (or summaries thereof) in the external reporting;
- Establishing E&S governance structures, aligned with the existing operating model for the management of other risk categories – particularly credit risk, transaction approval and new client acceptance;
- Implementing the E&S policies and procedures into the bank/MFI's Business Activities and Business Operations, in particular including environmental considerations and criteria in due diligence and business decision-making processes for potential clients and transactions. This includes, among others, screening clients and transactions for E&S issues, performing E&S risk categorisation, carrying out E&S risk assessments of clients and transaction, taking E&S risk-mitigating measures such as requiring clients as part of the loan agreements to comply with E&S corrective action plans, developing a framework to monitor the environmental risk management performance of clients; (...)

BFC, Annual Report: An Industry and Compliance Review³¹⁵

Occupational Safety and Health

The cluster covering Occupational Safety and Health (OSH) requirements is the largest cluster with eight different compliance points covering a total number of 60 compliance questions. Consistent with last year's findings, many areas related to OSH continue to be a challenge for garment factories and are often the result of a lack of proper policies, procedures and division of roles and responsibilities on OSH. This suggestion is supported by the analysis in this report that links factories' performance on legal OSH matters to the quality of their OSH management systems. This analysis suggest that the better factories do on their OSH management systems, the lower their non-compliance on legal OSH issues. This is not an issue that is typical just for Cambodia, but a general situation in the global supply chain for garment production. Non-compliance levels in the OSH cluster remain high and in general have gone up slightly in most of the compliance points.

Management Systems and OSH Compliance

Better Work has in-depth experience in assessing occupational safety and health in hundreds of garment factories in different countries. This experience has taught us that factories struggle to sustainably improve their performance on

³¹⁵ Better Factories Cambodia, *Annual Report 2018: An Industry and Compliance Review* (2018) <https://betterwork.org/wp-content/uploads/2018/12/BFC-Annual-Report-2018.pdf>.

occupational safety and health since often improvements made are ‘quick fixes’ that are not necessarily supported with proper management systems and training of those involved in ensuring safe and healthy workplaces. As a result, Better Work has started to look at the quality of management systems relating to OSH in factories. All Better Work programmes, including BFC, have introduced factories performance on management systems in 2015 as a way to link compliance with the quality of their systems. For factories to do well on occupational safety and health, they should have proper policies and procedures in place that are known and understood to all management and workers so that they can be applied every moment, every day. Although management systems are not legal requirements, there is a strong correlation between performance on OSH management systems and performance on legal OSH related issues. This confirms that proper OSH management systems uphold compliance. This section provides an analysis that underpins those findings. There are six OSH management system questions that BFC looks at during its assessment as an information question:

1. Does the employer adequately assign accountability to management for carrying out health and safety responsibilities?
2. Does the employer adequately communicate and implement OSH policies and procedures?
3. Does the employer adequately investigate, monitor and measure OSH issues to identify root causes and make necessary adjustments to prevent recurrence?
4. Is there an adequate emergency preparedness procedure?
5. Is there an adequate hazard/risk management and control procedure?
6. Is there an adequate accident investigation procedure?

Beban et al, From Force to Legitimation: Rethinking Land Grabs in Cambodia³¹⁶

We found a similar dynamic in the case of the Directive 01 land titling campaign, where in some cases the promise of titles on small areas of land inside ELCs had the effect of legitimating much larger areas of land acquired prior to and during the titling campaign (examined in case study 1 below). ELCs are also legitimated through narratives of responsible investment (examined in case study 2). Certification schemes that obligate practices of ‘due diligence’ — such as the Roundtable for Sustainable Palm Oil (RSPO) — have become a central legitimating narrative for agribusiness firms in Cambodia and around the world that are looking to access Western markets. Certification by Western governments allows firms to ‘discursively re-signify the crop as a “response-able” phenomenon in the face of food-, energy/climate- and development-related problems’. In many instances, these schemes do not question the overall logic of plantation expansion in the global South; they can constitute a ‘green grab’ if narratives of ‘due diligence’ cover violent processes of extraction, but they can also make concessionaires more wary of bad publicity that comes with land disputes (...)

Cases of Legitimation: Directive 01 and Corporate Due Diligence Legitimizing Exclusion through Corporate Due Diligence

The promotion of corporate social responsibility within the private sector— externally imposed standards, voluntary commitments and certification schemes — is relatively new in the Cambodian natural resource extraction sector. Our second case examines the MRICOP investment group’s oilpalm ELC in Southern Cambodia, the first Cambodian ELC to receive the Roundtable on Sustainable Palm Oil (RSPO) certification. This case shows how corporate and state actors engage in legitimation of ELC policy through ‘greening’ investment. Concessionaires’ due diligence seems to be at odds with Cambodian tycoons’ heavy involvement in land acquisitions and their ability to exploit the state’s monopoly of violence to reinforce their claims. However, this form of corporate ‘due diligence’ fits well within established ideas of benevolent leadership as the state provides territory to the Oknha

316 Alice Beban, Sokbunthoeun So and Kheang Un, From Force to Legitimation: *Rethinking Land Grabs in Cambodia*, International Institute of Social Study (2017) <https://onlinelibrary.wiley.com/doi/epdf/10.1111/dech.12301>

and the Oknha reinforces the power of the state through public works and development in ELC areas, including relocation of existing settlements, building of roads, construction of schools and health centres — all of which are the functions of the state but are fulfilled by a private entrepreneur within the ELC. This maintains the notion of the ‘benevolent leader’ in Cambodian society, and therefore further supports the power of informality. At the local level, though, this case also reveals a cautiously optimistic potential for people to negotiate terms of engagement with concessionaires.

Questions

1. In what respects is human right due diligence similar and different from regular corporate due diligence?
2. What are the purposes of human right due diligence?
3. Why should a business conduct human right due diligence on their business partners?
4. How is due diligence conducted? Please raise one example of human right due diligence exercise conducted by an international brand or an international financing institution on a Cambodian based entity or project.
5. What are the sanctions – legal and societal – for breaching such the responsibility to perform human right due diligence?

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11. CORRECTIVE ACTIONS

Prom Savada, Naim Sakona, Radu Mares

Introduction

Once a company has made a commitment to respect human rights by adopting a code of conduct (chapter 8) and conducted an impact assessment to understand the harms its operations might create (chapter 9), the company should take corrective actions to minimize harms. One of the most significant contributions of the UNGPs is to spell out – although at a general level – the expected conduct depending on how a business is involved in harm: whether it is causing, contributing to, or is linked to harm through its supply and distribution networks. This makes it clear that a company is responsible for what happens in its global value chains and not only its own workplace. The UNGPs also clarify the expected actions: for example, a company should eliminate an abusive supplier from its supply chain only as a last resort, before which it should act to help, persuade or compel its supplier to improve its conduct. As another concrete example, a company is not expected to repair harms that it is merely linked to (meaning the company did not cause or contribute to those harms) but should take other preventative and corrective actions. With that, the UNGPs introduced a significant change in supply chain management, which previously indicated that a company should act only where it had influence, usually on the direct contractors, and should not concern itself with abuses deeper in the supply chain (at the level of sub-suppliers and sub-contractors). As important as these contributions of the UNGPs are, they are still rather general. There is a growing amount of guidance and good practice to define specific corrective actions suitable for a specific human right and industrial setting. Furthermore, it is now common for companies to agree with their suppliers on ‘corrective action plans’ with specific measures and timelines. This introduces the needed element of precision and specificity that the UNGPs could never achieve. Furthermore, the attention is increasingly given to root causes of abuses that require more systemic analysis and responses often in partnership with other stakeholders (chapters 5 and 14).

In Cambodia, local suppliers in garment and footwear industry, for example, are often bound by their buyers’ codes of conduct and purchase agreements. In this way, suppliers have to accept and implement corrective actions agreed with the buyers or a designated third party once issues are identified. This is a condition to maintain their business relationship. Corrective actions are seen as an effort to increase compliance and avoid terminating the contractual relationship, which should be last resort measure. This chapter will further illustrate the process of how corrective actions are developed and imposed on local suppliers/partners, how corrective actions are implemented, and introduce relevant stakeholders who are contributing to the enforcement of those corrective actions.

Main Aspects

- ✓ Involvement in abuses (causation-contribution-linkages to impacts)
- ✓ Leverage (different forms of influence)
- ✓ Ending the relationship (disinvestment, cutting links with suppliers)
- ✓ Responsible disengagement
- ✓ Restructuring of supply chains
- ✓ Control points (“choke points” in supply chains)
- ✓ Purchasing practices (contribution of brands to negative impacts)
- ✓ Correction action plans
- ✓ Chain of responsibilities in supply chains (‘cascading strategy’)
- ✓ Symbolic responses and window-dressing (decoupling)
- ✓ Industry collaboration (and multistakeholder partnerships)
- ✓ Lobbying and public policy advocacy (and support for government)
- ✓ Root causes (and complex factors of risk)
- ✓ Social audit (shortcomings and ‘beyond-audit’ approaches towards suppliers)

Background

UN High Commissioner of Human Rights, An Interpretive Guide³¹⁷

Questions to ask:

- What lines of responsibility and accountability exist for addressing our findings of potential human rights impact?
- What systematized approaches might help us integrate findings from our assessments across the relevant business units or functions, so that we can take effective action?
- Should we have one or more cross-functional groups to liaise on ongoing human rights challenges or cross-functional communication requirements before certain decisions or actions?
- Can we build scenarios or decision trees for action across the company so that we are prepared to respond to the most likely or severe potential impact? Do staff need training and guidance on these issues?
- How can we best integrate measures to address potential impact at the contract stage of new projects, partnerships or activities?
- If we find that human rights impact is linked to our operations, products or services, are we equipped to address the risk of its continuation or recurrence appropriately and swiftly? How will decisions be made? What credible sources can we turn to for advice?

³¹⁷ UN Office of the High Commissioner of Human Rights, *The Corporate Responsibility to Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

- How do we assess our leverage in business relationships, especially those in areas of heightened risk to human rights? How can we maximize that leverage from the start of relationships? What opportunities for exercising or increasing our leverage can we see?
- Do we have any “crucial” business relationships? How should we respond if these relationships lead to adverse human rights impact being linked to our operations, products or services? Are we equipped in terms of internal and external advice for this situation?

Shift, Oil and Gas Sector Guide on Implementing the UN Guiding Principles³¹⁸

Systems for monitoring and auditing suppliers are common in many industries. They can provide useful and necessary “snap-shot” data about suppliers’ performance. However they are also seen to have a number of limitations:

- They often miss issues due to their brief nature;
- They may fail to grasp the bigger picture or root cause of repeated human rights impacts;
- Suppliers who wish to manipulate records often do so successfully;
- Workers may exercise self-censorship in audit interviews, due to intimidation or fear;
- These processes have a poor record in generating sustainable improvements across a range of human rights over time.

There has therefore been a move among consumer goods industries towards more “partnership-based” and collaborative approaches to their suppliers. These complement, and may in some instances even replace, audits. They often include:

- Supporting or analysing the root cause(s) of significant impacts. This can test the conclusions drawn from audits and find any underlying problems;
- Assessing not only suppliers’ compliance with internationally-recognised human rights in terms of “outcomes” achieved, but also the quality of their forward-looking management systems to identify and address their own human rights risks;
- Sharing the buying company’s own experience in managing human rights risks, including lessons for effective indicators and tracking systems;
- Sharing data that helps suppliers see the business case for addressing human rights risks in their own operations.

Instruments

UN, Guiding Principles on Business and Human Rights³¹⁹

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

³¹⁸ Shift and the Institute for Human Rights and Business, *Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (2012) www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide_O&G.pdf.

³¹⁹ Human Rights Council, *UN Guiding Principles on Business and Human Rights, Seventeenth Session* (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

- (b) Appropriate action will vary according to:
- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
 - (ii) The extent of its leverage in addressing the adverse impact.

Commentary

Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.

Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences. (...)

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

Where the relationship is "crucial" to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

UN High Commissioner of Human Rights, An Interpretive Guide³²⁰

The commentary to Guiding Principle 19 sets out the issues that need to be considered in responding appropriately to this situation. These can be represented, in general terms, in the following decision matrix:

320 UN Office of the High Commissioner of Human rights, *The Corporate Responsibility to Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

	Have leverage	Lack leverage
Crucial business relationship	<p>A.</p> <ul style="list-style-type: none"> ➤ Mitigate the risk that the abuse continues/recurs ➤ If unsuccessful 	<p>B.</p> <ul style="list-style-type: none"> ➤ Seek to increase leverage ➤ If successful, seek to mitigate risk that the abuse continues/recurs ➤ If unsuccessful, consider ending the relationship; ** or demonstrate efforts made to mitigate abuse, recognizing possible consequences of remaining
Non-crucial business relationship	<p>C.</p> <ul style="list-style-type: none"> ➤ Try to mitigate the risk that the abuse continues/recurs ➤ If unsuccessful, take steps to end the relationship* 	<p>D.</p> <ul style="list-style-type: none"> ➤ Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs ➤ If impossible or unsuccessful, consider ending the relationship

* Decisions on ending the relationship should take into account credible assessments of any potential adverse human rights impact of doing so.

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

- Whether there is a degree of direct control by the enterprise over the entity;
- The terms of contract between the enterprise and the entity;
- The proportion of business the enterprise represents for the entity;
- The ability of the enterprise to incentivize the entity to improve human rights performance in terms of future business, reputational advantage, capacity-building assistance, etc.;
- The benefits of working with the enterprise to the entity’s reputation and the harm to its reputation if that relationship is withdrawn;
- The ability of the enterprise to incentivize other enterprises or organizations to improve their own human rights performance, including through business associations and multi-stakeholder initiatives;
- The ability of the enterprise to engage local or central government in requiring improved human rights performance by the entity through the implementation of regulations, monitoring, sanctions, etc.

OECD, Due Diligence Guidance for Responsible Business Conduct³²¹

1. *Embed responsible business conduct into policies and management systems*

- 1.3 Incorporate RBC expectations and policies into engagement with suppliers and other business relationships. (...)

Practical Actions

- a. Communicate key aspects of the RBC policies to suppliers and other relevant business relationships.
- b. Include conditions and expectations on RBC issues in supplier or business relationship contracts or other forms of written agreements.
- c. Develop and implement pre-qualification processes on due diligence for suppliers and other business relationships, where feasible, adapting such processes to the specific risk and context in order to focus on RBC issues that have been identified as relevant for the business relationships and their activities or area(s) of operation.
- d. Provide adequate resources and training to suppliers and other business relationships for them to understand and apply the relevant RBC policies and implement due diligence.
- e. Seek to understand and address barriers arising from the enterprise's way of doing business that may impede the ability of suppliers and other business relationships to implement RBC policies, such as the enterprise's purchasing practices and commercial incentives.

3. *Cease, prevent and mitigate adverse impacts*

- 3.1 Stop activities that are causing or contributing to adverse impacts on RBC issues, based on the enterprise's assessment of its involvement with adverse impacts (...). Develop and implement plans that are fit-for-purpose to prevent and mitigate potential (future) adverse impacts. (...)

Practical Actions

- b. In the case of complex actions or actions that may be difficult to stop due to operational, contractual or legal issues, create a roadmap for how to stop the activities causing or contributing to adverse impacts, involving in-house legal counsel and impacted or potentially impacted stakeholders and rightsholders.
- 3.2 Based on the enterprise's prioritisation (...), develop and implement plans to seek to prevent or mitigate actual or potential adverse impacts on RBC issues which are directly linked to the enterprise's operations, products or services by business relationships. Appropriate responses to risks associated with business relationships may at times include: continuation of the relationship throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, disengagement with the business relationship either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. A decision to disengage should take into account potential social and economic adverse impacts. These plans should detail the actions the enterprise will take, as well as its expectations of its suppliers, buyers and other business relationships. (...)

³²¹ OECD, *Due Diligence Guidance for Responsible Business Conduct* (2018) <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

Practical Actions

- a. Assign responsibility for developing, implementing and monitoring these plans.
- b. Support or collaborate with the relevant business relationship(s) in developing fit-for-purpose plans for them to prevent or mitigate adverse impacts identified within reasonable and clearly defined timelines, using qualitative and quantitative indicators for defining and measuring improvement (sometimes referred to as “corrective action plans”). (...)
- h. Consider disengagement from the supplier or other business relationship as a last resort after failed attempts at preventing or mitigating severe impacts; when adverse impacts are irremediable; where there is no reasonable prospect of change; or when severe adverse impacts or risks are identified and the entity causing the impact does not take immediate action to prevent or mitigate them. Any plans for disengagement should also take into account how crucial the supplier or business relationship is to the enterprise, the legal implications of remaining in or ending the relationship, how disengagement might change impacts on the ground, as well as credible information about the potential social and economic adverse impacts related to the decision to disengage. (...)

Enterprises can identify control points (sometimes referred to as “choke points”) by taking into consideration:

- key points of transformation in the supply chain where traceability or chain of custody information may be aggregated or lost.
- the number of actors, for example where there are relatively few enterprises that process or handle a majority of inputs that they pass further down into a supply chain.
- the greatest point of leverage of enterprises towards the end of a supply chain.
- points where schemes and audit programmes already exist to leverage these systems and avoid duplication.

‘Control point enterprises’ will likely have greater visibility and/or leverage over their own suppliers and business relationships further up the supply chain than enterprises closer towards consumers or end-users. Conducting due diligence on control point enterprises to determine whether they are in turn conducting due diligence in line with this Guidance provides some comfort that risks of adverse impact directly linked to suppliers have been identified, prevented and mitigated. Identification and engagement with control points may be carried out through: including requirements in contracts with supplier and business relationships that control points be identified (on a confidential basis); and by asking suppliers/business relationships to source from the control point enterprises that meet the expectations of this Guidance, by using confidential information-sharing systems on suppliers and/or through industry wide schemes to disclose actors further up the supply chain.

OECD, Common Approaches for Export Credits³²²

The environmental and social impact assessment (ESIA) report typically includes the following items: (...)

7. *Management Programme*: consists of the set of mitigation and management measures to be taken during implementation of the project to avoid, reduce, mitigate, or remedy for adverse social and environmental impacts, in the order of priority, and their timelines. May include multiple policies, procedures, practices, and management plans and actions. Describes the desired outcomes as measurable events to the extent possible,

³²² OECD, *Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”)* (2016) www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282016%293&doclanguage=en.

such as performance indicators, targets or acceptance criteria that can be tracked over defined time periods, and indicates the resources, including budget, and responsibilities required for implementation. Where the buyer/project sponsor identifies measures and actions necessary for the project to comply with applicable laws and regulations and to meet the international standards applied to the project, the management programme will include an Action Plan, which is subject to disclosure to the affected communities and on-going reporting and updating.

International Finance Corporation, Performance Standards³²³

Supply Chain

27. Where there is a high risk of child labor or forced labor in the primary supply chain, the client will identify those risks consistent with paragraphs 21 and 22 above. If child labor or forced labor cases are identified, the client will take appropriate steps to remedy them. The client will monitor its primary supply chain on an ongoing basis in order to identify any significant changes in its supply chain and if new risks or incidents of child and/or forced labor are identified, the client will take appropriate steps to remedy them.
28. Additionally, where there is a high risk of significant safety issues related to supply chain workers, the client will introduce procedures and mitigation measures to ensure that primary suppliers within the supply chain are taking steps to prevent or to correct life-threatening situations.
29. The ability of the client to fully address these risks will depend upon the client's level of management control or influence over its primary suppliers. Where remedy is not possible, the client will shift the project's primary supply chain over time to suppliers that can demonstrate that they are complying with this Performance Standard.

OECD, Due Diligence Guidance for Responsible Supply Chains³²⁴

Components of a CAP [correction action plans] for the enterprise's own operations

Corrective action plans should have clear timelines for implementation and follow-up. They generally include a combination of policy, training, facility upgrading and strengthening of management systems.

- **Policy:** The policy lays out the enterprise's commitment to uphold international standards and is the foundation for further action, such as training, facility upgrades, etc.
- **Training:** While the objectives, audience and content of training should be fit-for-purpose, training is a critical component of most corrective action plans. In most cases training should cover information on the risk, the rights of the worker and the role of the trainee on preventing or mitigating harms.
- **Facility upgrading:** Some harm may only be prevented by investing in facility and equipment improvements. Such investments may include: lighting, ventilation, access to fire exits, new machinery, etc.
- **Management systems:** Management systems may be strengthened to (i) better track information and flag risks before harm occurs or (ii) establish systematic measures to mitigate risk of harm in the first place. For example, a spinning mill may strengthen its prequalification of private labour recruiters in order to prevent forced labour and child labour. For example, a factory may move towards automated payments to prevent unfair deductions in wages.

323 International Finance Corporation, *Performance Standard 2 – Labor and working conditions* (2012) https://www.ifc.org/wps/wcm/connect/115482804a0255d-b96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

324 OECD, *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (2017) www.oecd-ilibrary.org/docserver/9789264290587-en.pdf?expires=1532695820&id=id&accname=ocid177253&checksum=818B31E05AC72D66A0A7A131BE6CDE73.

- Rights of workers: In relation to labour impacts, the enterprise should incorporate due diligence on the rights of workers to form and join a trade union and to bargain collectively into the corrective action plan. Trade unions and representative organisations of the workers' own choosing play an important role in preventing harmful impacts on-site through collective bargaining agreements, ongoing monitoring and helping workers to access grievance mechanisms, or providing a form of grievance mechanisms themselves. For this reason, these rights are considered enabling rights.

Prevent contribution to harm through responsible purchasing practices: Recommendations for retailers, brands and their buying intermediaries

The purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts – such as excessive and forced overtime and low wages – in some cases. This is most notably the case when orders are changed, cancelled, placed late, rushed (particularly during peak times or holidays) or when lead times are set shorter than feasible. Late or delayed payment for products may also contribute to suppliers delaying payment of wages to their workers. An enterprise's price negotiations may contribute to cost-cutting and therefore labour, human rights or environmental impacts. The enterprise should strengthen its management systems to prevent contributing to harm through its purchasing practices. Specifically, the enterprise is encouraged to assess whether its purchasing practices are contributing to harm, implement control measures and track red-flags for risk of harm.

Assess whether purchasing practices are contributing to harm:

- The enterprise is encouraged to engage with its supplier to understand if and how its purchasing practices may be contributing to harm. Recognising that suppliers may be reluctant to provide such feedback candidly, the enterprise may seek to collect information from its suppliers anonymously (e.g. annual survey) or partner with a third party that aggregates the data and presents findings.
- The enterprise should track relevant indicators of actions that lead to harm. Examples include: percentage of orders placed late, percentage of orders changed after order is placed; number of days between the last change and shipment. Systems should be established to track such information on an ongoing basis.
- If the enterprise identifies through its tracking that the above practices (e.g. changes in orders) are common, it should seek to identify why. Team members responsible for the placement of orders should be included in the analysis. (...)

Control measures to prevent contribution to harm:

- The enterprise is encouraged to implement control measures to prevent contributing to harm through its purchasing practices regardless of whether it has identified specific contributions to harm.
- The enterprise should develop pricing models that account for the cost of wages, benefits and investments in decent work. The above considerations should be reflected in freight on board (FOB) prices together with traditional pricing considerations such as quantities being purchased, cost of materials, skill requirements, etc.
- Additional control measures may include:
 - Set final order placement dates with the supplier.
 - Communicate the deadlines to everyone in the purchasing teams.
 - Share the purchasing plan with suppliers and communicate updates in a timely manner.
 - Improve forecasting alignment, which involves coordination across geographies, categories and product designs to get the right information and decisions made at the right time.
 - Optimise the sourcing base to handle fluctuations in capacity and to adopt and implement the technologies needed to respond to the demand for emerging styles and products.

Adidas, Workplace Standards³²⁵

(...) we expect our partners – contractors, subcontractors, suppliers, and others – to operate sustainably and to conduct themselves with the utmost fairness, honesty and responsibility in all aspects of their business.

We use the adidas Workplace Standards as a tool to assist us in selecting and retaining business partners who follow business practices consistent with our policies and values. As a set of guiding principles, the Workplace Standards also help identify potential problems so that we can work with our business partners to address issues of concern as they arise. Business partners will develop and implement action plans for continuous improvement in factory working conditions. Progress against these plans will be monitored by the business partners themselves, our internal monitoring team and external independent monitors. (...)

Adidas is committed to respecting human rights and will refrain from any activity, or entering into relations with any entity, which supports, solicits or encourages others to abuse human rights. We expect our business partners to do the same, and where there is any perceived risk of a violation of human rights to duly notify us of this and of the steps being taken to avoid or mitigate such a breach and, where this is not possible, for the business partner to provide for the remediation of the adverse human rights impact where they have caused or contributed to this. (...)

Adidas, Factory Termination Procedure³²⁶

Many opportunities are given to a supplier to remedy compliance issues before SEA recommends to Sourcing that they should terminate a business relationship. The termination of a supplier solely for poor compliance is therefore infrequent and is usually the result of long-term nonperformance or the breach of specific Zero Tolerance issues. (...)

No matter what the reason for the termination of a supplier relationship, or however it is phrased (i.e. downsizing the supply chain, phasing out, or consolidation), the SEA team should always be notified in advance as it may result in substantial lay-offs or the closure of a factory. Poorly managed closures may trigger worker protests or trade union action.

Poorly handled closures or downsizing may lead to complaints to government agencies, to international bodies such as the ILO or the OECD, or trigger NGO or activist campaigns all of which will lead to adverse publicity and impact on the reputation of the adidas Group and its family of brands. Responsible planning with SEA engagement will minimise this risk.

The purpose of this SOP is to describe the key requirements to be followed when terminating a business relationship and to ensure that the actions are undertaken in a transparent and ethical manner. (...)

3. Procedure

3.2 Letter of Expectations

If the planned termination or downsizing is likely to result in worker lay-offs or factory closure, SEA will normally issue a letter to the supplier, asking them to investigate all possible alternatives to lay-offs or closure, and detailing both our expectations and legal requirements for the ethical treatment of workers. Our expectations include:

1. Ensure laid-off workers are selected objectively. Criteria for selecting employees to be laid off must not infringe upon accepted international or national labour standards. These include union membership or activity, pregnancy, race, sex, age, or religion. Criteria generally accepted to be fair include length of service, skills and qualifications.

325 Adidas, *Workplace Standards* (2016) https://www.adidas-group.com/media/filer_public/23/b4/23b41dce-85ba-45a7-b399-28f5835d326f/adidas_workplace_standards_2017_en.pdf.

326 Adidas, *Factory Termination Standard Operating Procedure* (2007) www.adidas-group.com/media/filer_public/2013/07/31/termination_sop_en.pdf.

2. Ensure workers receive full and timely payment of all monies owed to them (wages, unused leaves, social security, severance, retirement, etc.) by the date of termination, in accordance with contract terms and local law.
3. Notify workers in advance of the factory closure, both orally and in writing. Communication must include the anticipated closure date and relevant factory policies and procedures surrounding the closure, as well as worker rights and responsibilities under the process.
4. Suppliers shall ensure that the factory maintains all required and relevant documentation necessary to demonstrate and verify compliance with contract terms and local law for worker wages, worker benefits and termination practices.
5. Where relevant, worker representatives should be consulted on all aspects of the factory closure.
6. While the factory continues to operate, the supplier must meet the compliance requirements outlined in the adidas Group Workplace Standards.

AngloAmerican, Responsible Sourcing: Standard for Suppliers³²⁷

Implementation and expectations

In selecting suppliers we will, in conjunction with parallel evaluation criteria, show preference to those suppliers that demonstrate commitment to responsible supply.

Suppliers must ensure the full implementation of these standards within their organisation as well as the cascading into their supply chain, including agents, contractors and suppliers.

Suppliers must maintain effective management systems that are based on sound business and scientific principles, which include establishing appropriate objectives and targets, regularly assessing performance, and practicing continual improvement.

Self-assessment: Suppliers are required to complete a self-assessment questionnaire (SAQ) based on this Standard. The aim of the SAQ is to support the identification of management processes and controls.

Independent 3rd party verification audit: On a sample basis, suppliers will be required to conduct an independent responsible sourcing audit at operational facilities. Follow-up audits may be requested to ensure that recommended corrective action has been undertaken to mitigate risk.

Remediation: Where a review of this Standard, the self-assessment questionnaire or verification audits have indicated non-compliances, we expect suppliers to develop a remediation plan with realistic timeframes to close-out issues, and communicate that plan to Anglo American.

Anglo American is committed to supporting suppliers enhance their understanding and implementation of this Standard. We reserve the right to disengage from suppliers who deliberately refuse to comply with legal requirements, this Standard, or are unable to provide appropriate evidence of steps undertaken to remediate any non-compliance issues.

³²⁷ AngloAmerican, *Responsible Sourcing – Standard for Suppliers* (2016) www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/responsible-sourcing-standard-for-suppliers-november-2016.pdf.

Fair Labor Association, Workplace Monitoring Report³²⁸

This is a report of a workplace assessment conducted by Fair Labor Association assessors following FLA's Sustainable Compliance methodology (SCI), which evaluates a facility's performance in upholding fair labor standards through effective management practices throughout the entire employment life cycle.

This report identifies violations and risks of noncompliance with the Fair Labor Association Workplace Code of Conduct in its assessment of the employment functions, and includes a description of the root causes of violations, recommendations for sustainable and immediate improvement, and the corrective action plan for each risk or violation as submitted by the company. (...)

[Definition] Root causes: a systemic failure within an employment function, resulting in a "finding." Findings are symptoms of underlying problems or "root causes." Consider, for example, the case of workers not wearing hearing protection equipment in a high noise area. The most expedient conclusion might be that the worker did not use the hearing protection equipment because such equipment was not provided by management. However, upon a more thorough evaluation of available information, the assessor might find that the worker was indeed supplied with hearing protection equipment and with written information about the importance of wearing hearing protection, but was not trained on how to use the equipment and that use of the equipment was not enforced in a consistent manner by management.

[Definition] Company action plan: a detailed set of activities outlined by the sourcing company and/or direct employer to address FLA findings.

Hours of work

Root Causes

1. Factory management is implementing a four-year (2016-2019) working hour reduction plan, reducing weekly working hours from 58 to 49 hours. At the time of the assessment, it is based on 55.5 hours per week for the 2016 plan. Thus, that still means an average of 62 hours of overtime per month.
2. Most workers accept overtime as a way to increase their income.
3. The central government publishes a holiday schedule, which often combines some holidays with working days for an extended holiday, using subsequent Saturdays and Sundays to make up for the lost working days. Factory management prefers to offer an extended holiday for workers ,especially during Chinese New Year, considering that 50.5% of the workers are not local.
4. Factory management does not have a good command of the local law regarding pregnant workers. Furthermore, their understanding of the one-hour-rest requirement it is just the lunch hour (one hour).

Company action plans

1. The company is making efforts together with the factory to reduce working hours gradually within three years, in order to meet local laws and FLA requirements.
2. The factory work together with CSR and HR dept. to create feasible production plan, and ensure regular overtime working hours are not included in the production plan. The factory implements the production plan strictly according to FLA fair labor and responsible production practice code of conduct.

³²⁸ Fair Labor Association, *Workplace Monitoring Reports - Chenfeng Group* (2016) <http://portal.fairlabor.org/fla/go.asp?u=/pub/zTr5&tm=5&Rid=1813&Fd-n=13&Fna=AA0000002007%5F2016%2Epdf>.

3. The company has established a policy to track the situation of pregnant workers and put into practice. The factory informs the workers during the orientation training that: When the workers are sure that they are pregnant after check, they should submit the Pregnancy test report to the factory HR department for record; The HR staff track according to the report regularly every month. If the pregnancy period is 28 weeks, the HR staff should report to the supervisor and the factory manager to monitor the worker not to work overtime and should rest one hour during work time every day.
4. The company conducts annual internal audit to track the remediation progress.

Verite, Fair Hiring Toolkit³²⁹

I. A Guide to Corrective Action & Systems Improvement Planning³³⁰

Forced labor and human trafficking are crimes under international human rights law and in most countries around the world. A case of this abuse discovered in the supply chain – among the worst forms of exploitation in the world of work – will demand immediate corrective action on the part of the brand, its supplier and the recruiter involved. Abuse of this kind will always be treated as a major breach of code compliance.

Corrective action will need to be comprehensive and systematic, involving both short and long term strategies. It should be focused on the needs and well-being of the trafficking victim(s) first and foremost, and involve key stakeholders such as victim service providers, health care professionals, and other public or civil society organizations, wherever necessary. This is a clear case where brands and their suppliers should strongly consider joint multi-stakeholder engagement in the best interests of the workers concerned.

Immediate action

If a case of forced labor or human trafficking is identified in the supply chain (for example as a result of a social audit or another means of assessment), it is essential that the brand respond immediately and unequivocally. This should involve an immediate investigation and site visit by brand representatives, a clear identification of the workers affected, and a full understanding of the nature of the abuse. The brand will need to determine the extent and form of the problem before it can institute the full protective measures that will be required.

It will be necessary for the brand to act quickly to remediate the problems that have occurred and to reverse the cycle of abuse. Workers may need to be paid back wages; excessive recruitment fees may need to be reimbursed; and passports may need to be returned. Whatever the nature of the abuse, the brand will need to monitor this process closely to ensure that comprehensive corrective action is taken. To help with this process (and to ensure a full and timely response), it may be necessary to draw up a plan of action – a corrective action/performance improvement plan – that identifies priorities, responsibilities and timelines for each of the actors involved: the brand, supplier and recruiter. (...)

Addressing root causes: from correcting problems to preventing them

To fully address an issue like forced labor, it isn't enough to take immediate and short-term measures like these, as important as they are. It is also essential to consider the longer-term actions that should be taken to ensure that the problem does not recur.

The brand will need to consider a few things. First, how is it that forced labor and human trafficking are present in the facility in the first place, and do they exist elsewhere in the brand's supply chain? Second, what needs to be done to ensure that these problems are solved and the brand is no longer at risk?

³²⁹ Verite, *Fair Hiring Toolkit*, 2018 (2011) <http://helpwanted.verite.org/helpwanted/toolkit>.

³³⁰ Verite, 'A Guide to Corrective Action & Systems Improvement Planning', *Fair Hiring Toolkit*, <http://helpwanted.verite.org/node/708>.

To answer these questions, it will be necessary to look beyond the supplier in question and the specific case of abuse. The brand will need to take a thorough look at its own systems and protocols, policies and assessment procedures, and other aspects of its social responsibility program to determine the root causes of what went wrong and where. As part of this, it may be advisable to conduct a thorough review and risk assessment across the supply base.

Whatever the nature of the abuse, a review of this kind will lead to stronger policies and procedures, and move the brand away from piecemeal, reactive engagement towards proactive and preventive engagement. Responding in this way and developing new protections for migrant workers to promote fair hiring and recruitment, will promote a cycle of continuous improvement that will benefit both the brand and its supplier. (...)

Long-term engagement: tackling complex causes

Corrective action taken to address a specific incident of forced labor or human trafficking is likely to be immediate and time-bound. The brand will seek to identify the problem and its root cause(s) and address it quickly, working with its supplier and the recruiter in question.

For some “red flags” of forced labor, this is an appropriate strategy. The company can work through the problem directly, address the key issues, develop new policies and procedures, prohibit bad practice and thereby ensure greater protection for migrant workers. In other cases, however, problems are too complex for a “quick fix” approach and will demand a more nuanced and long-term strategy. In these cases, the brand may need to look beyond its own operations and those of its suppliers to address broader, industry-wide or even nation-wide concerns. This will involve tackling the fundamental causes of workplace or recruitment-based problems, and necessitate a multi-stakeholder or partnership approach. The following case from the Gap illustrates longer-term thinking in developing systems solutions.

Developing a Strategy for Corrective Action and Systems Improvement Planning³³¹

This tool sets out the steps that brands and their suppliers can take to develop and implement plans to address identified cases of forced labor and human trafficking in the supply chain. (...) The material herein is drawn from Verité’s in-depth training on Problem Solving and Decision-Making for Social Responsibility. (...)

Step 2: Analyze the problem

Companies should analyze the identified problems or gaps for root causes that may underlie them. Many non-conformance issues in the supply chain are manifestations or symptoms of larger problems. In addressing compliance violations, it is important to tackle not only the symptom but the root cause as well. Approaches that do not address root causes may prove inadequate, leaving underlying issues unaddressed and resulting in the recurrence of old problems and the creation of new ones.

There are many tools available to help you with systemic analysis, including:

- Fishbone Diagram (or Cause and Effect Analysis);
- Force Field Analysis;
- KATTAR root cause analysis;
- 5Ws/2Hs (Who, What, Where, When, Why & How Many, How Often);
- Fault Tree Analysis; and
- 5 Whys

331 Verite, ‘Developing a Strategy for Corrective Action and Systems Improvement Planning’, *Fair Hiring Toolkit*, <http://helpwanted.verite.org/node/709>.

Company ABC identified several causes for the passport retention issue. It also found that one of these causes – the fear of workers “running away” from the facility – was driven by the threat of government penalties to the facility in the event that migrant workers overstayed their visas. (The facility was the visa sponsor for the migrant workers.) This concern was also found to be the root of the practice of securing deposits and forced savings.

Step 3: Brainstorm possible changes and improvements to solve the problem

Once it is clear where a problem comes from, brands should act on the most immediate causes, working with their supplier to do so. Many problems have more than one root cause and, in most cases, companies may need to address more than one issue to inspire real change. When brainstorming these improvements, make sure there is a broad cross-section of people involved from different parts of the company and levels of the supply chain, with different perspectives and expertise. (...)

Step 5: Develop a plan for implementing the decisions

Having identified an effective change and improvement option, you should work with your supplier to:

1. Identify whether policies and procedures need to be developed or revised to support the change;
2. Identify “change owners” at policy, procedural and task levels;
3. Discuss a realistic timeframe for implementing the change;
4. Identify performance indicators to measure effectiveness of the change; and
5. Revise or design a complementary monitoring mechanism. (...)

*A Guide to Public Policy Advocacy*³³²

Public policy engagement by brands against forced labor, human trafficking and the worst forms of exploitation linked to international labor migration is emerging as a key form of engagement in Corporate Social Responsibility (CSR). (...)

The unregulated nature of the recruitment industry in many parts of the world and the lack of legal and regulatory protections available to migrant workers in host countries are among the key issues frequently addressed by brands in dialogue with public policy actors. Other key issues in policy dialogue include:

- Restrictive policies that sometimes regulate residency permits and work visas, and effectively tie migrant workers to a single employer;
- Restrictions in some countries that prohibit migrant workers from joining or forming trade unions;
- Legal jurisdictions that require employers to withhold migrant workers’ travel documents or passports; and
- Laws – or a lack thereof – regulating the charging of recruitment fees to workers.

Public policy engagement can take different forms: advocacy, awareness raising, even public private partnership. Brands have a number of options available to them to positively influence the social policy environment in which they operate, whether in home or host countries, or at the international level.

332 Verite, ‘A Guide to Public Policy Advocacy’, *Fair Hiring Toolkit*, <http://helpwanted.verite.org/node/714>.

- Brands can advocate at national level for ratification of relevant UN and ILO Conventions that have not been ratified by the countries in which they operate.
- Brands can lobby sending and receiving countries to adopt better laws and enhanced protection for migrant workers by:
 - Supporting sending country governments in improving the legal and regulatory environment that governs labor recruiters and labor mobility, and ensuring adequate protection for migrants prior to their departure; and
 - Working with receiving country governments to improve laws and strengthen enforcement mechanisms to ensure protection of migrant workers on the job and in their adopted communities.
- Brands can encourage the adoption and enforcement of bilateral labor agreements between governments that extend labor and social protection to migrant workers. Such agreements facilitate better migration management by ensuring that it takes place according to agreed-upon principles and procedures.
- Finally, brands can also consider direct participation in networks and forums for international and regional policy dialogue such as the Global Forum for Migration and Development.

Shift, Advancing Human Rights in Global Supply Chains³³³

There are many reasons why the traditional audit paradigm has struggled to produce sustainable improvements in these and other key areas of social performance, with each of the following playing their respective roles:

- A lack of disclosure by suppliers of accurate information on their performance during some audit processes, calling into question the value and validity of information gathered;
- A lack of capacity among suppliers to address issues that have been identified for remediation in a sustainable way;
- A lack of perceived incentives among suppliers, both external and internal, to address social performance issues, and a corresponding lack of commitment to invest in sustainable improvements;
- Systemic challenges that are beyond the control of individual suppliers, including social context, regulatory environments, and industry-wide issues;
- The purchasing practices of global brands and retailers, and a need to recognize and improve upon the role they themselves may play in contributing to impacts on workers.

The first part of the report begins by identifying 10 leading trends and elements that form this new generation of social compliance programs for supply chains:

- 1) The shift from pass/fail compliance to comprehensive continuous improvement programs;
- 2) Replacing audits with collaborative assessment and root cause analysis;
- 3) The role of grievance mechanisms in improving social performance;
- 4) The integration of capacity-building approaches for suppliers;
- 5) Different forms of partnerships between global brand companies and civil society organizations;
- 6) Providing commercial incentives to suppliers for improvements in social performance, such as price, volume, duration, and supplier preference;

³³³ Shift, *From Audit to Innovation: Advancing Human Rights in Global Supply Chains* (2013) www.shiftproject.org/media/resources/docs/Shift_audittoinnovationsupplychains_2013.pdf.

- 7) Developing metrics to help suppliers identify the business case for better social performance;
- 8) Efforts by brands to use their leverage to address systemic issues;
- 9) Industry-wide collaboration to tackle systemic issues; and
- 10) Aligning internal purchasing practices with social commitments made by global brands and retailers

Short et al., Improvement in Global Supply Chain Working Conditions³³⁴

Worker rights advocates seeking to improve labor conditions in global supply chains have engaged in private politics that led transnational corporations (TNCs) to adopt codes of conduct and to monitor their suppliers for compliance, but it is not clear whether or when these organizational structures can actually raise labor standards. We [conditions] under which codes and monitoring are more likely to go beyond mere symbolism and to be associated with improvements in supply chain working conditions. At the institutional level, we find that suppliers improve working conditions more when they face greater exposure risk from their domestic civil society, and when their buyers are more sensitive to such exposure. At the program design level, we find that suppliers improve more when the monitoring regime signals a cooperative approach and when auditors are highly trained. (...)

Private political strategies seek to change the behavior of private market actors like corporations by mobilizing activism to target those actors directly. An extensive private politics literature has focused on activists' targeting strategies, companies' motivations for submitting to activists' demands, and the organizational structures corporate targets have adopted in response to private political activism. Studies reveal, for instance, that that private political activism has prompted firms to adopt "impression management tactics", public "concessions" to conform to activists' demands, policies sanctioning certain brands targeted by activists, and corporate social responsibility (CSR) officer positions or board committees. However, private politics research has not sought to determine whether these organizational structures are related to positive changes in organizational behavior that align it more closely with activists' normative goals. (...)

We suspect that this focus is at least partly an artifact of the decoupling literature, which strongly suggests that organizational structures adopted in response to corporate-targeted activism are likely to be symbolic, or decoupled from organizational activities. First, there is a strong consensus in the literature that organizational structures adopted to gain legitimacy with external stakeholders rather than to satisfy the task-related efficiency demands of production will tend to be implemented symbolically and decoupled from practices. Second, symbolic structures are more likely to be decoupled in contexts where efficiency demands are strong and not tempered by countervailing institutional pressures. Finally, resource constraints impede substantive implementation of formal organizational structures. Suppliers to global value chains are subject to all three of these constraints: they face intense efficiency demands to produce high volume at low cost and codes of conduct threaten to raise the cost of labor, a key source of competitive advantage; many are in countries with weak regulatory institutions and lax enforcement of labor standards; and many lack the resources to effectively implement formal structures like codes and monitoring. Thus, the axioms that emerge from the decoupling literature suggest that organizational structures like codes and monitoring are likely to be ceremonial window dressing "implemented, evaluated, and monitored so weakly that they do little to alter daily work routines" in ways that might improve conditions for workers.

While research in this domain has mostly theorized and documented decoupling, a growing stream focuses on the conditions under which organizational structures adopted symbolically are actually implemented substantively or become coupled with organizational practices. Consistent with the decoupling literature, most studies that do find coupling attribute it to coercive institutional pressures, particularly to forms of state power, such as regulatory inspection and enforcement. Other studies identifying successful coupling of symbolic structures have been of voluntary programs implemented in the context of broader, legally backed state regulatory regimes such as US antidiscrimination law or environmental law. Similarly, studies specifically investigating suppliers' compliance

334 J. Short et al., *Beyond Symbolic Responses to Private Politics: Codes of Conduct and Improvement in Global Supply Chain Working Conditions*, Harvard Business School Working Paper (2018) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2806966# (references omitted).

with labor codes of conduct have found that codes and monitoring tend to be associated with better working conditions when combined with government regulatory efforts. In addition to the coercive power of the state, studies have found that institutional pressures from civil society actors like unions, a free press, NGOs, and brands can induce suppliers to couple their symbolic commitments to codes and their labor practices.

Recent studies have expanded the decoupling literature's traditional focus on coercive institutions to investigate how the activities of individual organizational actors can create contingencies that promote coupling. (...) In a study of Indonesian apparel and footwear factories, Bartley and Egels-Zandén find that the coupling of labor codes of conduct and supplier labor practices was contingent on local union members' ability to leverage ties with brands, international NGOs, and global unions to pressure suppliers to live up to their commitments to codes of conduct.

Collectively, the literature on coupling and decoupling contains important insights into the challenges and contingencies of coupling organizational structure and practice, but it also contains gaps that have hindered dialogue with the private politics literature. First, the decoupling literature's traditional focus on the coupling power of state-based and other coercive institutional pressures has limited its ability to explain variation in substantive outcomes observed among corporate targets of private political activism that adopt organizational structures in environments where coercive institutions are weak or lacking. But these are precisely the types of environments in which private political campaigns operate. Thus, coupling research must address coupling contingencies outside of the traditional channels if it is to tackle the contexts in which private political strategies are most likely to be deployed. (...)

BIICL, The Components of Effective Supply Chain Management³³⁵

Codes of conduct and contractual clauses

Many interviewees mentioned that using human rights provisions in a contract or an accompanying code of conduct is useful for communicating the human rights standards required or to “start a conversation about human rights”. Such contractual expectations are often coupled with penalty clauses, termination rights and investigatory rights. Interviewees indicated that it is important to include such control mechanisms in the contract, to ensure that the company's HRDD standards are clearly part of the supplier's ongoing performance requirements. (...)

Our interviews showed a few examples of where contractual human rights provisions were enforced, such as through termination of a contract or requirement of action plan implementation. In some cases, interviewees indicated that the option for enforcement exists, although they have not yet needed to exercise this option. In some cases, the contract does provide for termination based on human rights violations. In these cases the company usually exercises what leverage it has for the duration of the contract, and refuses to renew the contract or place any new orders going forward.

On the whole our evidence also suggests that contractual provisions have less impact on suppliers when used on their own than if they are complemented by the entire package of HRDD components, including ongoing monitoring of compliance with the code of conduct, human rights policies and action plans embedded in the suppliers' operations, human rights training, and active and open engagement with the supplier on the realities of improving conditions.

In order to be effective, codes of conduct also need to be complemented by purchasing practices such as prices and lead times. A recent study found that “[w]hile many companies require suppliers to respect their codes of conduct...and monitor suppliers' labour rights performance, their buying practices often sit at odds with these initiatives.” Codes of conduct place burdens on suppliers but are not always accompanied by resource allocation, financial support and buying practices to enable compliance. The report highlighted that 48% of suppliers receive “no help at all” in implementing the buyer's code of conduct, and there is very little reward for improvements made in terms of the code of conduct. (...)

335 British Institute of International and Comparative Law (BIICL), *The components of effective supply chain management* (2018) <http://human-rights-due-diligence.nortonrosefulbright.online> (footnotes omitted).

Remediation and termination

The approach of the UNGPs is accordingly to exercise and increase existing leverage first, and only if leverage fails to consider terminating the relationship, taking into account the human rights impacts of termination. Companies involved in this study confirmed that this approach is broadly followed. (...)

Before deciding to terminate a relationship, companies often choose to engage with the supplier to put in place action plans for remediating issues and improving policies and conditions. One company which uses this approach indicated that it undertakes return checks to monitor that the supplier adheres to the action plan, and includes this in the follow-up audit. Each action plan has to be completed within a certain period of time, which is usually within six months.

Interviewees indicated that the decision whether to terminate a relationship with a supplier depends on various factors, such as the nature of the violation and the likelihood of improving supplier conditions. Some companies take a risk-averse strict internal position on the decision to terminate, whereas others use a more dynamic ad hoc approach.

For example, some companies have a list of very severe human rights impacts which they will not tolerate in their suppliers, based on the unlikelihood of them being able to improve conditions through leverage. One interviewee indicated that child labour is on their list of “things [that are] absolutely not acceptable to us.” If they detect child labour, they cease working with the supplier “immediately” by simply placing no further orders. It is also highly unlikely that they would work with that supplier again in the future, even if the supplier demonstrates remediation and improvement of practices. It should be noted that this is a company with comprehensive initial screening processes, human rights provisions incorporated into contractual requirements and regular human rights auditing. They indicated that the company’s strict adherence to their human rights standards is intended to signal to suppliers that these requirements are to be taken seriously, and are not simply “guidelines” contained in contractual form. (...)

Other interviewees take a directly contrasting approach to the decision to terminate. They indicated that their companies choose to make ad hoc decisions in each individual case as to how to address the human rights impact. (...) Another interviewee stated that they “try to engage rather than walk away from suppliers”, indicating that “it encourages more transparency if they think we will work through issues with them”. However, they will terminate if they find “similar ongoing problems” after having worked with a supplier to change policies and improve conditions. (...)

Other factors which influence the decision to terminate is the sector, the nature of the activity being undertaken, and the significance of the relevant supplier. For example, an interviewee indicated that once a large and longer-term construction project has started, it is less feasible to simply walk away than it would have been before entering into the relationship. In one instance, they were informed that a construction supplier’s plans failed to respect the cultural heritage of an affected indigenous community. The company took this “extremely seriously”. They instructed the supplier not to build in a particular place, and worked with the supplier to put in place mechanisms for remediation and prevention of similar failures in the future.

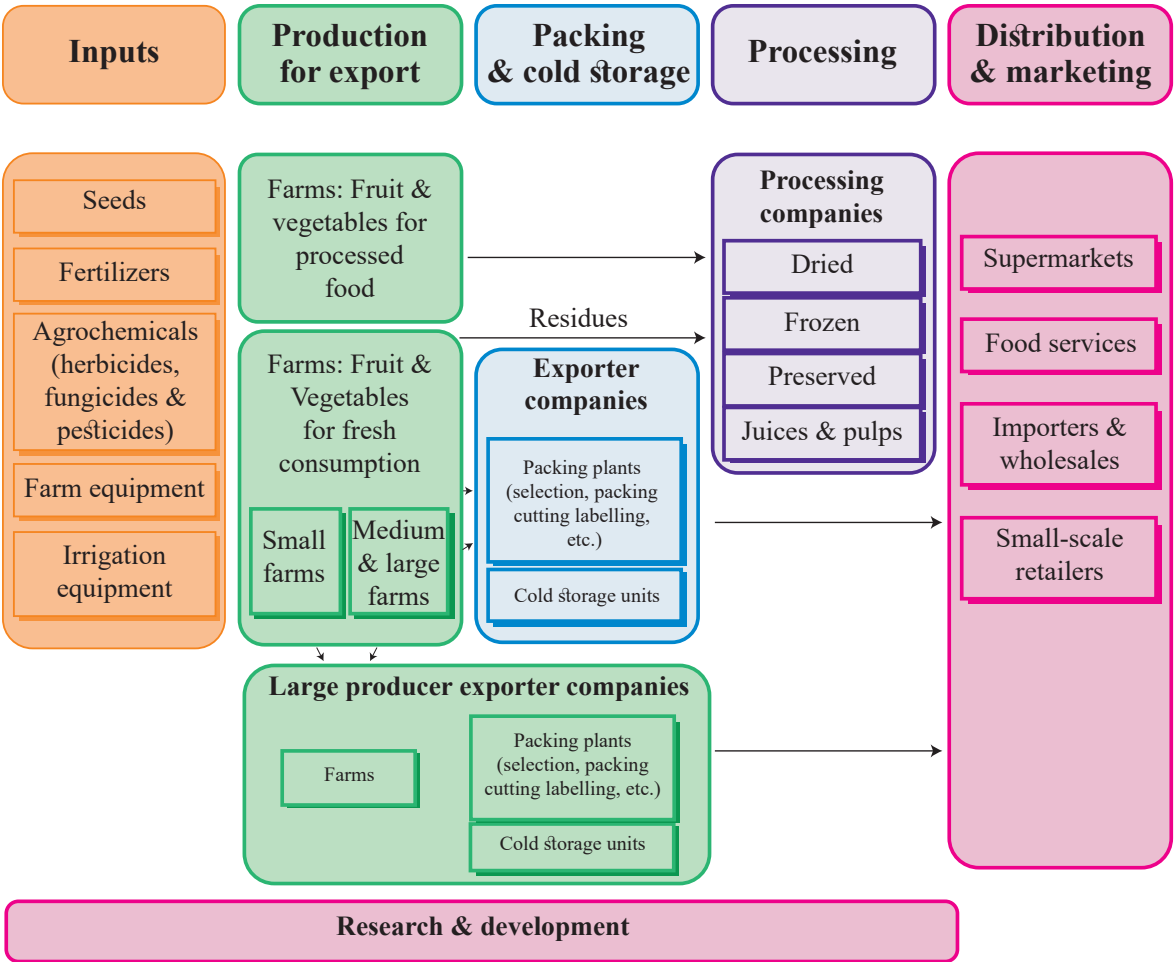
On the other hand, if the supplier provides non-essential products with a short order time that could easily be sourced elsewhere, such as stationary or commodities such as bricks, companies frequently decide to simply not place any further orders, and instead switch to a supplier with a better human rights record. A company’s approach regarding termination, as opposed to remediation, often depends on whether the product is “hard to source from other places”.

Interviewees mentioned that even the threat of termination may improve leverage. In one example, a “very important” large supplier, which was producing the company’s private brand, was being audited every six months “without any progress”. The company’s vice president of sourcing visited the supplier and indicated that unless these human rights issues are “fixed”, the company would cancel its orders. Thereafter, the issues were remediated “within months”.

ILO, Decent Work in Global Supply Chains³³⁶

32. A common feature in global supply chains is that lead firms can coordinate and control the standards of production across different tiers of producers. These private standards can cover a range of technical, quality, product safety, delivery, social and environmental requirements imposed as a condition of supply. The use of such standards is more prevalent in the food sector, where consumer concern over food safety and provenance has led to traceability, sometimes from field to fork. In figure 2.3, for example, all suppliers must meet the standards relevant to their segment established by the final retailers, often large supermarkets. These standards are often stricter than standards pertaining to international trade between countries.

Figure: Simplified value chain in the agri-food industry



336 International Labor Organization (ILO), *Decent work in global supply chains* (2016) www.ilo.org/public/libdoc/ilo/2016/116B09_43_engl.pdf.

Background (Cambodia)

Oka, Accounting for the Gaps in Labour Standard Compliance³³⁷

This article focuses on the unique nature of the Cambodian model that combines semipublic monitoring and private enforcement. Although the ILO is mandated to monitor and report factory compliance with the Cambodian labour law and international labour standards, the ILO has no enforcement power. The Ministry in charge of labour inspection and remediation suffers from incapacity and corruption, which prevents it from effectively enforcing the labour law. Given the lack of government enforcement, buyers often act as a virtual enforcement authority. For modest fees, ILO BFC [Better Factories Cambodia] releases monitoring reports to buyers with the factories' agreement, and buyers demand corrective action from suppliers when important violations are found in the ILO monitoring reports. (...)

Most buyers enforce CoC [Code of Conduct] in their supply chains through pre-order selection and postorder monitoring. Before placing orders, almost all buyers assess the compliance levels of candidate factories either by internal compliance teams or external auditors. If compliance level is deemed unsatisfactory, compliance teams demand corrective action plans. Only when the factory's compliance reaches an acceptable level, can sourcing teams place orders. In this way, buyers' compliance departments play the role of a gatekeeper. After orders are placed, factories are regularly monitored, and once important or persistent non-compliance issues are signalled, buyers ask for corrective action plans. If factories do not rectify the problems within a given time frame, buyers may cancel orders. Although most major buyers have CoC that include the national labour law and international core labour standards, the acceptable level of compliance and the degree of actual enforcement are likely to depend on buyers' vulnerability to negative publicity and thus reputation consciousness.

Instruments (Cambodia)

Law on Environmental Protection and Natural Resource Management³³⁸

Article 20: For any person who commits a violation of Ministry of Environment's requirement as specified in *Article 14* of this law, the Ministry of Environment shall issue a written order requiring:

- Correction of the violating activities immediately or within a specified time period; or
- Cessation of his/her/its activities until the violation has been corrected; or
- Clean-up the pollution immediately.

Article 21: Any person who does not permit or refuse to allow an inspector to enter [and] conduct and examination or inspection on the premises as stated in the paragraph I Article 15 of this law shall be administratively fined from five hundred thousand Riel (500,000 riel) to one million riel (1,000,000 riel). (...)

Law on Construction³³⁹

Article 42: If it is necessary to ensure public security, safety, and order, the competent authority can assign a construction controller to check building or demolition works. The construction owner, construction users, persons involved in building works, including a real estate developer, a builder and a construction certifier shall give cooperation to the construction controller. The competent authority may decide to suspend, modify, halt, or require the demolition of a construction, or take other necessary measures if the building or demolition work has been found not to comply with the building technical regulations and other existing regulations.

337 Chikako Oka, 'Accounting for the Gaps in Labour Standard Compliance: The Role of Reputation-Conscious Buyers in the Cambodian Garment Industry', *European Journal of Development Research* (2010) <https://link.springer.com/content/pdf/10.1057/ejdr.2009.38.pdf>.

338 Cambodia, *Law on Environmental Protection and Natural Resource Management* (1996) <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93402/109144/F367799135/KHM93402%20Eng.pdf>.

339 Cambodia, *Law on Construction* (2017) https://www.google.com/url?sa=t&rect=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjcm-rWyp_rAhUZOisKHxWcA8AQFjAAegQIBRAB&url=http%3A%2F%2Fwww.mlmpc.gov.kh%2Fdownload-file.php%3Fp%3Ditems%2F%26file%3D-612020153529Law%2520on%2520Construction.pdf&usq=AOvVaw12IRUYFg7xY04TztCkyBSA.

Article 49: Construction safety and quality control shall be conducted by construction controllers or certifiers who hold a license granted by the Minister of Land Management, Urban Planning and Construction. Every expense for construction safety and quality control shall be borne by a construction owner. For a co-owned building, the owners of all private units shall be jointly responsible for every expense for construction safety and quality control, in proportion to the sizes of private units.

Royal Government of Cambodia, National Biodiversity Strategy and Action Plan³⁴⁰

Theme 4: Sustainable mining

Based on the NSDS [National Sustainable Development Strategy] 2030 vision, mining should be a sector that exploits minerals without destroying nearby human settlements and landscapes, and without causing serious health and environmental impacts. It should be a sector that economizes the scarce mineral resources and promotes the recycling of metals. Strategically, the ecological and socioeconomic impact of mineral resource exploration, extraction and processing on the status and trends of biodiversity components and functions will be assessed; awareness about this impact will be enhanced; preventive and corrective measures, including ecosystem restoration, will be developed and applied, as appropriate; and the contribution of mining resources to biodiversity conservation, poverty reduction, sustainable development and the well-being of all in Cambodia will be increased. (...)

Association of Banks in Cambodia, Sustainable Finance Implementation Guidelines³⁴¹

I. Protecting the Environment, our People and our Cultural Heritage

When making business decisions, we commit to prioritise the environment, protect our people and preserve our cultural heritage by actively assessing, managing, mitigating, offsetting or avoiding potential risks or negative impacts arising from our clients' business activities, standards or practices. With these principles, our aim is to create a level playing field and raise standards across the sector. (...)

Banks/MFIs assess and manage environmental (and social) risk and issues through an Environmental and Social Management System (ESMS), customised according to their specific business activities, operations, client base, the types of products and services they provide.

E&S [Environmental & Social] Procedures and Tools

E&S Risk Mitigating: based on the overall E&S risk profile and other relevant factors, the bank/MFI may take several risk-mitigating actions, including:

- E&S requirements incorporated into loan documentation; this can include the requirement that a client E&S correction action plan is put in place, to mitigate the identified E&S risks;
- Certain high-risk transactions may involve hiring external E&S expertise and could be subject to higher decision-making authorities (e.g. a Board committee);
- High-risk projects may require regular on-site visits throughout the life of the loan;
- Financing may be approved subject to E&S conditions (precedent or subsequent to disbursement);
- Client risk monitoring performed at shorter intervals.

340 Royal Government of Cambodia, *National Biodiversity Strategy and Action Plan*, Royal Government of Cambodia (2016) <https://www.cbd.int/doc/world/kh/kh-nbsap-v2-en.pdf>.

341 The Association of Banks in Cambodia, *Cambodian Sustainable Finance Principles Implementation Guidelines* (2019) <https://www.ifc.org/wps/wcm/connect/8ce9ddc0-2422-4e69-aa8b-e4f3c8cc3ecc/Cambodia+SF+Principles+-+Implementation+Guidelines.pdf?MOD=AJPERES&CVID=mGdMKuz>.

IFC, Environmental & Social Review Summary: Amru Rice Project³⁴²

Project Description

The proposed loan is up to US\$8-10 million (50/50 split between IFC and the Global Agriculture and Food Security Program - GASFP) to support Amru Rice (Cambodia) Company Ltd. (“Amru or the “Company”) to provide working capital to increase its wet paddy rice sourcing and refinance existing short-term and long-term debt.

Amru is a rice trading company established in 2011. For the last seven years, Amru increased its vertical integration by extending its activities towards rice milling, processing and packaging, beyond its increase of direct paddy sourcing from cooperatives. (...) To strengthen its farmer loyalty, AMRU established in 2018 the Cambodian Agriculture Cooperative Corporation (CACC) in partnership with farmer cooperatives and private investors to provide drying, warehousing and trading services in Kampong Thom Province.

Amru main products are high quality Cambodian jasmine, fragrant and organic rice. In 2018, it processed 59,851 tons of rice of which 90% was exported to 70 countries. Total export volume of rice of Amru in 2017 was 45,000 tons. Amru has been increasingly focusing on sales of organic rice which enjoys increasing demand from China, the USA and Europe. The company has been among the top 5 Cambodian rice exporters since 2013 and the largest miller/exporter of organic rice in 2017/2018. (...)

This is a Category B project based on IFC’s Policy on Environmental and Social Sustainability. The E&S risks and impacts associated with this project are limited, site-specific, and can be readily addressed through generally accepted mitigation measures described in this document and the attached Environmental and Social Action Plan (ESAP). Key E&S issues associated with this investment are:

- i. compliance with applicable Cambodian legal and regulatory requirements, including securing all necessary operational permits;
- ii. effectiveness of Amru’s management competency and capacity to implement the integrated EHS/labor/food safety management systems;
- iii. emergency preparedness and response plan, especially Life and Fire Safety (L&FS);
- iv. resource (energy/water) efficiency and effluent management; point source (stack) air emissions; ambient dust and noise; solid (e.g. bran and rice husk) and hazardous waste management;
- v. supply chain risk assessment and management, including harmful child/forced labor and conversion of natural/critical habitats in paddy rice sourcing areas. (...)

Environmental and Social Mitigation Measures

IFC’s appraisal considered the environmental and social management planning process and documentation for the Project and gaps, if any, between these and IFC’s requirements. Where necessary, corrective measures, intended to close these gaps within a reasonable period of time, are summarized in the paragraphs that follow and (if applicable) in an agreed Environmental and Social Action Plan (ESAP). (...)

PS 1: Assessment and Management of Environmental and Social Risks and Impacts

Based on IFC Global Map of Environmental and Social Risks in Agro-Commodity Production (GMAP), rice production in Cambodia is associated with high risk of harmful child/forced labor, significant occupational safety risks and biodiversity loss due to conversion of natural/critical habitats. To address labor and OHS risks, the

342 International Finance Corporation, *Environmental & Social Review Summary: Amru Rice Project* (2019) <https://disclosures.ifc.org/#/projectDetail/ESRS/41831>.

Cambodian Rice Federation has adopted in 2015 an Ethical Code of Conduct. Amru Rice has also adopted in 2015 its own Supplier Code of Conduct (known as Corporate Social Responsibility Policy) which commit Amru towards environmental protection, no use of harmful child/forced labor, safe working conditions and human rights, among others.

To implement such Supplier Code of Conduct, Amru has developed and implemented a series of supply chain management procedures, including the training of its sourcing team to implement its CSR manual. Specifically, starting in 2013, Amru Rice has implemented Internal Control System (ICS) in each of the existing 48 cooperatives, including individual farmer recording book where risks of harmful child / forced labor and occupational health and safety (use of PPEs and storage/management of pesticides) are being identified through a written questionnaire completed by Amru Rice extension officers. Worthwhile to underline that the Organic and SRP certification requirements also include such provisions. In its Contractual Agreement with each CACC, explicit provisions of prohibition of harmful child / forced labor and safe working conditions to farmers are also indicated. Continuous verification of the effective implementation of such provisions is done through Amru Rice sourcing team, individual cooperative management team and lead farmers.

Independent audit of Amru Rice's organic and SRP sourcing operations is done annually (e.g. 2016 Ecocert ESR audit, 2018 Fair for Life, etc.) and corrective actions identified are rapidly implemented (e.g. reliable system for registering working hours, existence of an annual training plan). (...)

Marks & Spencer, Human Rights Report³⁴³

We have rolled out our health programme to 15 factories in Cambodia since 2012. The programme links in-factory clinics to local health service providers and supports factories in creating management committees to address health rights and policies, and providing a training awareness programme for workers. So far, the programme has reached 20,000 workers, increased factory clinic usage by 40% and reduced anaemia by 60%. There is a strong business case to support adoption of the programme, with factories reporting a drop in absenteeism of 5% and an efficiency gain of 7%. (...)

We are now rolling out a three-year programme (2017-2020) designed to improve on-site health facilities, strengthen HR processes to address health and labour rights, in particular access to sick leave, maternity leave and facilitating workers' return to work after maternity leave. The programme will identify worker health champions and provide them with leadership training to enable them to support workers in accessing their health rights. It will also link the factory programme to local Community Resource Centres to tackle broader community health provision challenges.

We identified that boosting wages in Cambodia would require improvements across multiple issues, as well as the commitment and collaboration of all stakeholders. Importantly, there are also opportunities for M&S to work within its own supply base to help factories boost wages and support workers in making their money go further. We also found that although wages are a fundamental issue for workers, job security is also a key priority in an industry driven by the use of short-term contracts. We identified the opportunity for M&S to engage suppliers on this highly political topic and promote better outcomes for workers.

Marks & Spencer, Modern Slavery Statement³⁴⁴

Audit Case Study examples

(...) In Cambodia, we found that contract machine maintenance workers are generally only used on an annual basis. Normal practice was that the workers were contracted to a third party labour provider and the supplier paid a lump sum to the third party but with no verification of the workers contracts/pay/working hours. We have now

343 Marks & Spencer, *Our Approach to Human Rights* (2017) <https://corporate.marksandspencer.com/documents/plan-a-our-approach/mns-human-rights-report-june2017.pdf>.

344 Marks & Spencer, *Modern Slavery Statement* 2017/18 (2018) <https://corporate.marksandspencer.com/documents/plan-a-our-approach/mns-modern-slavery-statement-june2018.pdf>.

implemented a process that the supplier has to verify the contracts of the workers and there are now contracts between the labour providers and the suppliers including providing evidence of payslips and working hours. In addition the labour provider must sign a contract that they will respect the human rights of all of their contract workers.

Adidas, Summary of Human Rights Complaints Handled³⁴⁵

Complainant*	Factory name	Complaint	Outcome	Status
C.CAWDU – a Cambodian trade union	Cheng Yueh Enterprise Co., Ltd., Cambodia (a former sub-contractor of one of the adidas’ T1 footwear suppliers-. Meng Da)	Adidas exchanged several emails with C.CAWDU regarding the termination and severance payments for 17 union officials and members following the 2017 closure of the Cheng Yueh subcontractor. (...)	Adidas immediately launched an investigation and reached out to the lawyer who had been appointed by Cheng Yueh to handle the factory closure. We also sought advice from the Ministry of Labor. (...)	Ongoing
Central-Cambodia – a Labour Rights NGO based in Phnom Penh Cambodia	Bowker Garment Factory (Cambodia) Company Limited	On August 22, 2018 Central Cambodia (‘Central’) wrote to adidas alleging that Bowker had unlawfully dismissed 3 workers, taken inappropriate disciplinary action against 3 workers and discriminated against union leaders (...)	Adidas shared with Central the result of our investigation and the remedial action taken by the factory: <ul style="list-style-type: none"> • Terminations: (...) • Disciplinary Action: (..) 	Closed
Central-Cambodia	Bowker Garment Factory (Cambodia) Company Limited	On December 3, 2018, Central-Cambodia (‘Central’) raised the following complaints with adidas: (...)	Adidas reviewed the allegations and conducted a follow-up investigation and verification. We shared with Central the result of our investigation and the remedial action taken by the factory: (...)	Closed
Central-Cambodia; Worker Rights Consortium (WRC) – US based labor advocacy group	Chen Cambodia (PCC) - a former supplier to adidas	In September 2018 Adidas was approached by Central-Cambodia (‘Central’), and later by the Worker Rights Consortium (WRC) about PCC.	Despite having no active relationship with PCC, Adidas wrote to Pou Chen urging them to act on the AC ruling. Pou Chen responded stating that they have paid the correct amount of severance and that they had consulted the Ministry of Labor, who had confirmed that the factory’s calculations were in accordance with the labor law. (...)	Ongoing

³⁴⁵ Adidas, *Summary of Human Rights complaints handled by adidas in 2018* (2018), https://www.adidas-group.com/media/filer_public/65/ad/65adad7e-63b8-4400-afaf-e099b8ae6cf7/summary_of_human_rights_complaints_handled_by_adidas_in_2018_web_en.pdf.

Australian NCP, Final Statement: ANZ Group and Phnom Penh Sugar Co.³⁴⁶

2. The Specific Instance alleged non-observance by ANZ of certain parts of the General Policies Chapter and Human Rights Chapter of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) in relation to ANZ's involvement with the developer of a sugar plantation and refinery project in Cambodia. The project is alleged to have forcibly displaced the families and dispossessed them of their land and productive resources. ANZ Royal is a joint venture of ANZ Group and the Royal Group of Companies (based in Cambodia), with ANZ Group holding a 55 per cent interest in ANZ Royal. ANZ is linked to the project as it provided partial financing in 2011 to the developer of the project, Phnom Penh Sugar (PPS) for the refinery construction.

In its letter to the AusNCP of 2 August 2017, ANZ stated that it undertook a review of its human rights standards in 2016. This is in line with an outcome sought by the notifiers that ANZ develop a corporate-level human rights compliant policy on involuntary land acquisition and resettlement, including relevant due diligence procedures. As part of the review it made some upgrades in the following key areas.

- Confirming our 'zero tolerance' for improper land acquisition (incorporated in a public 'ANZ land acquisition position statement')
- Committing to considering remediation processes if we identify we have caused or contributed to adverse impacts, or are linked to adverse human rights impacts via our products and services.
- Confirming our expectation that our customers resolve issues identified where they are associated with adverse human rights impacts (consistent with our 'sensitive sector' policies that were also upgraded in 2015).
- Supporting our business partners to align to these standards, eg clarifying our expectation that our business partners provide a fair and safe working environment, including following our approach to 'no tolerance' for child labour.

Australian NCP, Follow Up Statement: ANZ Group and Phnom Penh Sugar Co.³⁴⁷

ANZ acknowledges its due diligence on the project funded by its loan was inadequate and recognizes the hardships faced by the affected communities. (...) Following dialogue with Inclusive Development International and Equitable Cambodia in 2014, ANZ encouraged its customer to address the adverse human rights impacts caused by the land concession granted for the project. (...)

The agreement includes:

- A contribution by ANZ of the gross profit it earned from the loan to help alleviate the hardships faced by the affected communities and support their efforts toward rehabilitation.
- A commitment by ANZ to review and strengthen its human rights policies, including its customer social and environmental screening processes, and specific grievance mechanism accessible to affected communities.

³⁴⁶ Australian National Contact Point for the OECD Guidelines for Multinational Enterprises, *Final Statement: This Specific Instance was Submitted by Equitable Cambodia and Inclusive Development International on Behalf of 681 Cambodian Families*. (27 June 2018), https://ausncp.gov.au/sites/default/files/inline-files/11_AusNCP_Final_Statement.pdf.

³⁴⁷ Australian National Contact Point for the OECD Guidelines for Multinational Enterprises, *Follow Up Statement: Regarding Complaint Submitted by Equitable Cambodia and Inclusive Development International on Behalf of Cambodian Families* (27 February 2020) https://ausncp.gov.au/sites/default/files/2020-02/Complaint_11_statement.pdf.

FLA, Independent External Assessment Report for Evergreen Enterprises³⁴⁸

Understanding this Assessment Report

This report identifies violations and risks of noncompliance with the Fair Labor Association Workplace Code of Conduct in its assessment of the employment functions, and includes a description of the root causes of violations, recommendations for sustainable and immediate improvement, and the corrective action plan for each risk or violation as submitted by the company. (...)

Finding No.5

1. At least seven personnel files were found with no copy of National ID card on file. At least one worker who was working in the painting section was found using someone else's birth certificate, National ID card and Family book. After various verification channels, the worker provided his own ID and other age proof documents on the second day of assessment that proved that he was not an underage worker. (...)

Company Action Plans

Action Plan no 1.

Description

1. Factory will ensure that workers' proof of age document is properly checked and maintained during the recruitment process.
2. Factory will recheck all workers personal documents and not recruit juvenile workers to employ in the factory.
3. Factory will ensure labor contracts include all information as required by law and provide new contract to workers.
4. Factory will ensure that workers are put on proper probationary period as accordance to the law.
5. Factory will arrange all workers to conduct their health check properly.
6. Factory will arrange all workers to conduct their employment book properly.
7. The factory will establish and maintain the Approved Company internal regulation and rules.

FLA, Independent External Assessment Report for Pou Chen³⁴⁹

Finding No.2

- (...)
 1. The factory provides ongoing training to employees across different employment functions. However, at least 50% of interviewed workers were not fully aware of most of these policies, except for Wage calculation and Working hours. [ER.1, ER.28]
 2. Around 50% of workers interviewed were not aware of the grievance channels and how grievances are handled. The majority of workers interviewed were not aware of freedom of association policy and not aware of who the shop stewards or union leaders are. [ER.1, ER.28]

348 Fair Labor Association, *Independent External Assessment Report for Evergreen Enterprises Inc., Cambodia* (2019) <https://www.fairlabor.org/transparency/workplace-monitoring-reports>.

349 Fair Labor Association, *Independent External Assessment Report for Pou Chen, Cambodia* (2019) <https://www.fairlabor.org/transparency/workplace-monitoring-reports>.

3. No special training on harassment and abuse policy is provided to expatriate leaders. [ER.1, ER.2, ER.17] (...)

Company Action Plans

Action Plan no 1.

Description

1. Review all training materials to ensure all information are updated.
2. Publish all the policy on announcement board in the production area.
3. Make an announcement regarding to updated policy at monthly meeting with workers.
4. Provide friendly workplace training to overseas supervisors quarterly.
5. All supervisors shall sign on no harassment and abuse policy to commit that they will not violet the policy.

AFWA et al., Gender Based Violence in the H&M Garment Supply Chain³⁵⁰

According to the H&M CSR Code of Conduct for suppliers, Section 8.4 on Corrective Action, H&M's role in remediating violations of its Sustainability Commitment is extremely limited. If H&M confirms a case of non-compliance with minimum requirements by a supplier, H&M will send a letter of concern and require a corrective action plan from the supplier. At best, H&M will provide capacity building support to the supplier factory to guide implementation of the corrective action plan. H&M does not work directly with suppliers to remediate violations. (...)

In order to meet even international due diligence standards, H&M must take an active role in addressing violations of decent work in their supply chains. (...)

CARE, Productivity Cost of Sexual Harassment to the Cambodian Garment Industry³⁵¹

1.2. Given the identified gaps in workplace-level protections, CARE recommends garment factories, with the support of the industry body GMAC:

- Develop and/or adopt and implement workplace-level policies (in line with international best practice) which put processes in place to prevent, respond to and monitor sexual harassment.
- Train all management and staff on sexual harassment, gender equality, and bystander intervention to ensure that the workplace-level policy is properly understood and implemented.
- Provide necessary awareness to workers on the workplace policy, and their rights and responsibility to report incidents in the factory to the designated management staff.
- Task appropriate employees with responsibility and expertise in addressing sexual harassment and creating cultural change so that sexual harassment is no longer tolerated. This may involve establishing a sexual harassment committee or explicitly and publicly tasking an existing committee or individuals with this mandate.

350 AFWA, CENTRAL, GLJ, LIPS & SLD, *Gender Based Violence in the H&M Garment Supply Chain, Workers Voices from the Global Supply Chain: A Report to the ILO* 2018 (2018) <https://www.globallaborjustice.org/wp-content/uploads/2018/05/GBV-HM-May-2018.pdf>.

351 CARE International, *"I Know I Cannot Quit": The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry* (March 2017), https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Research_Summary_March_2017.pdf.

- Create linkages, dialogue and reporting mechanisms (where appropriate) between other workplace and community stakeholders, such as unions, commune authorities, landlords, and police to address and prevent sexual harassment that occurs both inside and outside the workplace.

Salmivaara, New Governance of Labour Rights³⁵²

If important or persistent non-compliance is detected, buyers demand corrective action plans. As the sustainability manager of a large European brand described, the approach is one of ‘continuous collaboration and dialogue’, aimed at ‘resolving challenges together’ (interview C2). Cancelling orders or terminating the relationship is the last option. This is in accordance with worker representatives’ wish, as they are ultimately afraid of workers losing their jobs.

Questions

1. Why is the corrective action plan important from the perspective of global brands? What about from the perspective of local suppliers? Can these perspectives be in conflict?
2. Why is terminating business relationship used as the last resort in case a local supplier fails to eliminate or remediate its violation of human rights?
3. If you were a financier and gave a loan to an agribusiness, what would you propose as a corrective action plan in the case of violation of land use right of local farmers?
4. In your opinion, what are the factors that brands should pay more attention to when imposing a corrective action plan on their suppliers?

Further Readings

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- AngloAmerican, *Self-Assessment Questionnaire* (2016) <http://www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/self-assessment-questionnaire-november-2016.doc>.
- Wilmar, *Supply Chain Map* (2018) www.wilmar-international.com/sustainability/supply-chain-map.
- Fair Labor Association, *Workplace Monitoring Reports* (database) www.fairlabor.org/transparency/workplace-monitoring-reports.
- The Accord on Fire and Building Safety in Bangladesh, *Inspection Reports and Corrective Action Plans* (database - 1561 CAPs online by 27.7.2018) <http://accord.fairfactories.org/ffweb/Web/ManageSuppliers/InspectionReportsEnglish.aspx>.
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³⁵² Anna Salmivaara, *New Governance of Labour Rights: The Perspective of Cambodian Garment Workers’ Struggles*, Globalizations (2018) <https://www.tandfonline.com/doi/full/10.1080/14747731.2017.1394069>.

- SOMO, *Should I stay or should I go? Exploring the role of disengagement in human rights due diligence* (2016) <https://www.somo.nl/wp-content/uploads/2016/04/Should-I-stay-or-should-I-go-4.pdf>.
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12. MEASURING AND TRACKING PERFORMANCE

Prom Savada, Naim Sakona, Radu Mares

Introduction

Once a company has made a commitment to respect human rights by adopting a code of conduct (chapter 8), has conducted an impact assessment to understand the harms its operations might create (chapter 9), and has put in place management systems and taken corrective actions to minimize harms (chapters 10-11), the company needs to find out if its systems are working as intended. In other words, have the efforts of the company to address harms been effective or not? The only way to find this out is to collect data and measure performance. Such tracking of performance should be participatory, that is, be done together with stakeholders (chapter 14). Having a complaint mechanism (chapter 7) also offers a company information whether its efforts are reducing discontent or not. Also being more transparent (chapter 13) about its policies and due diligence efforts enables companies to gather feedback from stakeholders and build a relationship based on trust. Measuring human rights performance is a fast developing area with key indicators being developed in recent years. That will enable benchmarking against peers and comparisons among companies in the same sector. Armed with such indicators and comparisons, market actors can more easily reward and punish companies. Not surprisingly, ethical investors and other financial actors are most keen to have such comparative information and have therefore supported the development of rigorous indicators. Lawmakers are already trying to harvest the regulatory potential of markets by passing transparency regulations (chapter 4), often with the encouragement and support of responsible investment funds, which need this type of information. Monitoring performance can quickly become a technical or subjective (value-laden) exercise and therefore ‘participatory monitoring’ – involving local communities and independent experts in addition to business and state representatives – is seen as good practice and as necessary to build trust (chapter 27). This emphasis on participation replicates the emerging practice of participatory impact assessments, which are also about gathering data, but doing so already before a project has commenced (chapter 9).

Cambodia is host to more and more initiatives to measure and track human rights compliance among local suppliers from multinational corporations. Once a corrective action plan is agreed with their local partners, the international brands should establish a reliable follow-up mechanism to monitor the progress of such action plan or to verify whether it was implemented correctly, effectively, and transparently. To measure and track such performance, the brands employ different methodologies to collect necessary data and information from workers and affected people, for example through internal assessments, third party audits, hotlines, surveys, anonymous complaint channels, transparency portals, etc. However, some criticisms has been raised by relevant stakeholders concerning accuracy and reliability of third party assessment reports provided that some assessment visits are announced in advance giving a chance for the suppliers to prepare beforehand and that workers are sometimes not free to give accurate information. The Better Factories Cambodia (BFC) program of the International Labor Organization is a pioneering and long established program in tracking compliance with working conditions in garment and footwear factories in Cambodia. BFC offers both assessment and advisory services and some global brands rely on BFC’s assessment reports to monitor the compliance status of their local suppliers without needing to conduct their own monitoring or engaging another private third party.

Main Aspects

- ✓ Stakeholder participation (feedback)
- ✓ Complaint mechanisms (operational-level grievance mechanism)
- ✓ Indicators (qualitative and quantitative)
- ✓ Participatory monitoring (joint fact-finding)
- ✓ Vulnerable groups
- ✓ Internal audit (review)
- ✓ Review of multistakeholder initiatives
- ✓ Feedback loops (consultation and grievance mechanisms)
- ✓ Human rights due diligence (processes and results)
- ✓ Red flags
- ✓ Severity of impacts and level of tracking
- ✓ Forms of tracking: verification (of requirements being met), monitoring (of situation) and validation (of actions being effective)
- ✓ Company functions involved in tracking (corporate departments playing a role)
- ✓ ‘Choke points’ in the supply chain
- ✓ Tracking regulatory risks
- ✓ Working hours
- ✓ Dams (in extractive industry)
- ✓ Water
- ✓ Minerals

Background

UN High Commissioner of Human Rights, An Interpretive Guide³⁵³

It is generally recognized that “what gets measured gets managed”. Tracking how an enterprise has responded to both potential and actual adverse human rights impact is essential if its personnel are to be able to account for its success in respecting human rights, whether internally to management or externally to shareholders and wider stakeholders. (...)

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

Global Perspectives Project, Doing Business with Respect for Human Rights³⁵⁴

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

353 UN Office of the High Commissioner of Human Rights, *The Corporate Responsibility to Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

354 Global Perspectives Project, *Doing Business with Respect for Human Rights – A Guide* (2016) www.businessrespecthumanrights.org/en/page/383/about.

Rio Tinto, Why Human Rights Matter³⁵⁵

Monitoring and evaluation of human rights impacts and performance is essential in order to:

- measure progress against our commitments to human rights, including the rights of women and Indigenous peoples;
- measure compliance with internal and external policies, standards, and commitments;
- assess whether human rights issues and impacts have occurred on a one-off or systemic basis, including gender and cultural considerations;
- identify whether project management procedures and plans are being implemented and are achieving their objectives;
- identify whether impact and risk mitigation measures are effective;
- determine the cause, and provide a basis for corrective actions if our procedures, plans and activities are ineffective;
- identify any unanticipated human rights issues and impacts that have occurred, their consequences, and the response taken; and
- identify whether management is receiving effective ‘early warnings’ of new human rights challenges, including appropriate advice on how to resolve these challenges.

Instruments

UN, Guiding Principles on Business and Human Rights³⁵⁶

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:
- (a) Be based on appropriate qualitative and quantitative indicators;
 - (b) Draw on feedback from both internal and external sources, including affected stakeholders.

Commentary

Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.

Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.

Tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant. Operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise’s human rights due diligence from those directly affected (see Principle 29). (...)

355 Rio Tinto, *Why Human Rights Matter* (2013) www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf.

356 Human Rights Council, *UN Guiding Principles on Business and Human Rights*, Seventeenth Session (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.

- First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. By analyzing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly
- Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

UN High Commissioner of Human Rights, *An Interpretive Guide*³⁵⁷

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

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

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

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

357 UN Office of the High Commissioner of Human rights, *The Corporate Responsibility to Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

An operational-level grievance mechanism can also play an important role in this regard. Such a mechanism can provide a channel for feedback on whether human rights impact is being addressed effectively from the perspective of the affected stakeholders. Equivalent mechanisms for employees can be similarly important with regard to impact on their own labour or other human rights and in enabling them to speak up when they see problems with the enterprise's response to impact on the human rights of individuals outside the enterprise. (...)

IFC, Performance Standards³⁵⁸

Assessment and Management of Environmental and Social Risks and Impacts: Monitoring and Review

22. The client will establish procedures to monitor and measure the effectiveness of the management program, as well as compliance with any related legal and/or contractual obligations and regulatory requirements. Where the government or other third party has responsibility for managing specific risks and impacts and associated mitigation measures, the client will collaborate in establishing and monitoring such mitigation measures. Where appropriate, clients will consider involving representatives from Affected Communities to participate in monitoring activities.

IFC, International Finance Corporation's Guidance Notes³⁵⁹

GN86. (...) In certain cases (such as projects with potential significant adverse risks and impacts), due diligence conducted by financiers may result in the imposition of additional monitoring and/or verification of client monitoring (for example, as part of the supplemental action plan agreed with the client), including the appointment of qualified and experienced external experts to independently verify monitoring results. Findings of these external monitoring activities should be included in corrective or preventive actions, as appropriate. Participatory monitoring (i.e., involvement of Affected Communities) should be considered where appropriate (projects with potential significant adverse risks and impacts). In these cases, the client should evaluate the capacity of those participating in the monitoring and provide periodic training and guidance as appropriate.

Global Perspectives Project, Doing Business with Respect for Human Rights³⁶⁰

Main company functions likely to be involved in the process

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

358 International Finance Corporation (IFC), *Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts* (2012) https://www.ifc.org/wps/wcm/connect/115482804a0255db96fbfd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

359 International Finance Corporation (IFC), *International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability* (2012) <https://www.ifc.org/wps/wcm/connect/efdaaa8043649142947696d3e9bda932/Guidance+Notes+to+Performance+Standards+on+Environmental+and+Social+Sustainability.pdf?MOD=AJPERES>.

360 Global Perspectives Project, *Doing Business with Respect for Human Rights – A Guide* (2016) www.businessrespecthumanrights.org/en/page/383/about.

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

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

Common pitfalls to avoid

Tracking what can be measured rather than what is important to track

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

Exclusive focus on auditing

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

OECD, Due Diligence Guidance for Responsible Business Conduct³⁶¹

Track implementation and results

- 4.1 Track the implementation and effectiveness of the enterprise’s due diligence activities, i.e. its measures to identify, prevent, mitigate and, where appropriate, support remediation of impacts, including with business relationships. In turn, use the lessons learned from tracking to improve these processes in the future. *See Annex Q41-45*

Practical actions

- a. Monitor and track implementation and effectiveness of the enterprise’s own internal commitments, activities and goals on due diligence, e.g. by carrying out periodic internal or third party reviews or audits of the outcomes achieved and communicating results at relevant levels within the enterprise.

³⁶¹ OECD, *Due Diligence Guidance for Responsible Business Conduct* (2018) <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

- b. Carry out periodic assessments of business relationships, to verify that risk mitigation measures are being pursued or to validate that adverse impacts have actually been prevented or mitigated.
- c. For human rights impacts the enterprise has, or may, cause or contribute to, seek to consult and engage impacted or potentially impacted rightsholders, including workers, workers' representatives and trade unions. See Annex Q8-11
- d. Seek to encourage periodic reviews of relevant multi-stakeholder and industry initiatives of which the enterprise is a member, including their alignment with this Guidance, and their value to the enterprise in helping it identify, prevent or mitigate adverse impacts linked to its business, taking into account the independence of these initiatives. See Annex Q12
- e. Identify adverse impacts or risks that may have been overlooked in past due diligence processes and include these in the future.
- f. Include feedback of lessons learned into the enterprise's due diligence in order to improve the process and outcomes in the future. See Annex Q44

Q41. What information is tracked under due diligence?

Tracking involves first and foremost assessing whether identified adverse impacts have been responded to effectively. In addition to following up on responses to identified adverse impacts enterprises may review their due diligence process, or relevant multi-stakeholder and industry initiatives, more broadly to ensure that they are effective. This can occur periodically or be triggered when tracking activities reveal that significant adverse impacts are not being effectively addressed.

Establishing appropriate qualitative and quantitative indicators can be helpful to tracking. For example, relevant indicators may include:

- Percentage of impacted stakeholders engaged who feel adverse impacts have been adequately addressed.
- Percentage/number of agreed action points that have been implemented according to planned timelines.
- Percentage of impacted stakeholders who feel channels for raising grievances are accessible, equitable and effective.
- Rate of recurring issues related to the identified adverse impact(s).

Indicators may be context specific and vary according the objectives and actions associated with the enterprises due diligence process.

Q43. Who is involved in tracking implementation and results within an enterprise?

Responsibility for tracking implementation and results may be assigned to a number of individuals across business units or offices within the enterprise, as relevant. For example:

- A sourcing office within an enterprise may have the primary responsibility for tracking the implementation of supplier assessments and corresponding corrective action measures.
- An enterprise's buying department may hold the primary responsibility of tracking rates at which orders are placed late, changed, or cancelled – all practices which may contribute to labour risks with their suppliers.

- Operational level staff may seek feedback from impacted stakeholders and rightholders on whether the impacts have been addressed (e.g. through consulting local communities, collecting feedback from people who attend meetings and forums, taking note of issues brought to remediation procedures).

Senior management oversight of an enterprise's progress with respect to implementation and results can provide a more complete picture of the enterprise's progress across the organization as a whole.

For example, systems that collect information at a local level (e.g. supplier assessment data), but then are aggregated at a centralised department (e.g. headquarters or regional office) may help to identify trends more widely and can be used as a basis for sharing lessons learned across the enterprise.

OECD, Due Diligence Guidance for Responsible Supply Chains³⁶²

Expectations under the OECD Guidelines: Track

The OECD Guidelines call for enterprises to account for how impacts are addressed (OECD Guidelines, II, A10). Accounting for impacts means both ensuring that the measures taken have been effective and communicating what steps an enterprise has taken and why.

Important terms

Verification - Confirmation that requirements have been filled. "Requirements" may be agreed-upon actions under a corrective action plan and/or legal regulations. For example, a building inspector may verify that fire exits align with fire safety codes.

Monitoring - The ongoing tracking of the situation on-the-ground in relation to specific risks and the measurement and tracking of indicators of success. Indicators may be direct or indirect. Monitoring generally provides a more comprehensive picture of the situation at the site-level than a one-time assessment. For example, a factory may track the number of hours worked by workers in its sewing and finishing departments during peak periods.

Validation - Determination of whether the actions taken to prevent impacts are indeed effective in preventing impacts. Verification and monitoring data feed into validation. For example, an enterprise may seek to validate that its current training of employees is preventing sexual harassment in the longer term.

4.1 Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's own operations

To the extent possible and reasonable, the enterprise should seek assurances that the actions that it has taken or is taking are preventing and mitigating harm in its own operations.

The enterprise should:

- Verify internally that the enterprise has carried out the actions to which it has committed (for example, under the corrective action plan) within the agreed-upon time period.
- Monitor qualitative and/or quantitative indicators to track progress against goals.
 - Indicators may be direct (e.g. the percentage migrant workers whose passports are confiscated; water consumed; number of hours worked) or indirect (e.g. the percentage of migrant workers who understand their rights).

³⁶² OECD, *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (2017) <https://www.oecd-ilibrary.org/docserver/9789264290587-en.pdf?expires=1532695820&id=id&accname=ocid177253&checksum=818B31E05AC72D66A0A7A131BE6CDE73>.

- While outputs, such as number of people trained, may be the simplest indicator to monitor, enterprises are likewise encouraged to monitor: knowledge levels of workers (e.g. human resources manager knows how to calculate wages), attitude (e.g. worker's feel that grievance mechanisms are legitimate and accessible), conditions of the workplace (e.g. availability of drinking water) and implementation of systems (e.g. policy, prequalification of suppliers) in order to get a more complete picture of whether harms are being prevented.
- The enterprise is also encouraged to monitor red flags that may indicate a higher-risk of impact (e.g. changes in orders during peak season).
- Workers should play an integral role in monitoring progress against goals. This is particularly true for human rights and labour impacts, but is also relevant for environmental impacts and integrity risks in many cases.
- Draw on all known information, including data from ongoing monitoring, internal periodic assessments, issues raised through grievance mechanisms, etc., to validate that the steps taken by the enterprise are preventing and mitigating impacts.

The enterprise may conduct all of the above internally. However, the enterprise is encouraged to seek external support in validating that impacts have been prevented when:

- the impact may cause severe harm if not adequately prevented, (e.g. handling and disposal of hazardous chemicals, fire safety, electrical safety, building integrity, etc.)
- prevention measures require technical expertise that is not available in-house. (...)

4.2 Verify, monitor and validate progress on due diligence and its effectiveness in the enterprise's supply chain

Enterprises should monitor and assess their own progress as well as that of their suppliers. Enterprises should also assess whether the actions they have taken are effective in preventing or mitigating harm.

Auditing-fatigue is a challenge in the garment and footwear sector. At the same time, some form of validation is necessary to give the enterprise confidence that it is preventing harms in its supply chain. Enterprises should therefore seek to balance between assessing suppliers and supporting ongoing monitoring. Enterprises can hold to the general principle that the more severe the impact, the greater the level of assurance the enterprise will need that impacts have been or are being prevented. The following includes high-level guidance on the level of assurance to be applied – verification, monitoring or validation – in various contexts.

- The timing of verification, monitoring or validation should correspond to the severity and nature of the harm. Enterprises should also consider the length of time necessary to implement corrective action plans.
- As above (5.1), where international or domestic standards exist on how to prevent or mitigate harm, verification that such standards are being followed is sufficient to assume that harm has also been prevented.
- Whenever possible, the enterprise should monitor indicators – either direct or indirect – over time to validate that impacts have been or are being prevented. Where the risk of harm affects more than one sector within a particular region, the enterprise is encouraged to coordinate and collaborate across sectors to harmonise indicators tracked. The sharing of data will provide those operating in the region with a more complete picture and therefore enable the enterprise to better target its prevention measures.
- Workers or their representatives should feed into ongoing monitoring. This is particularly relevant for labour and human rights impacts but is also relevant for environmental and integrity risks.

- If through monitoring, the enterprise determines that impacts are not being addressed, the enterprise is encouraged to verify that the actions were taken in the first place.
- As above (5.1), the enterprise is encouraged to engage external experts to verify that corrective action measures were pursued or to validate that harms have been prevented when:
 - the impact may cause severe harm if not adequately prevented, (e.g. handling and disposal of hazardous chemicals, fire safety, electrical safety, building integrity, etc.)
 - prevention measures require technical expertise that is not available in-house
- If the enterprise relies on mid-stream suppliers operating at choke points to conduct due diligence on risks of severe harm upstream, the enterprise is encouraged to conduct an audit of the mid-stream suppliers due diligence practices against this Guidance. Enterprises are encouraged to collaborate at a sector level on the auditing control points. (...)

Shift & Mazaras LLP, UN Guiding Principles Reporting Framework³⁶³

Tracking Performance

Overarching Question: How does the company know if its efforts to address each salient human rights issue are effective in practice?

Supporting Question: C5.1 What specific examples from the reporting period illustrate whether each salient issue is being managed effectively?

Objective

To explain how the reporting company understands if it is successful in reducing risks to human rights in relation to each salient issue, such that it can continuously improve in its efforts to meet its responsibility to respect human rights.

Supporting Guidance

[The] implementation of the corporate responsibility to respect human rights takes time and resources, and the human rights challenges faced by most companies evolve over time, with changes in the company's operations, operating contexts and business relationships. This Framework explicitly recognizes the ongoing nature of implementation, and enables companies to explain their progress along a path, over time.

This section of the Framework therefore focuses on the company's processes and indicators for tracking its performance. Particularly relevant are methods of tracking that go beyond identifying whether certain actions have been taken by the company, and assess their effectiveness in preventing and mitigating potential impacts, or in enabling remedy if actual impacts occur. Information about how the company tracks its own progress is particularly important for demonstrating that it is consistently seeking and appraising improvements in its human rights performance.

³⁶³ Shift & Mazaras LLP, *UN Guiding Principles Reporting Framework with Implementation Guidance* (2015) www.ungpreporting.org/wp-content/uploads/UNGPRReportingFramework_withguidance2017.pdf.

Relevant Information

Relevant information for the company's answer could include:

- Particular processes through which the company assesses its success in addressing each salient issue (e.g., internal review processes, internal audit, supplier audits, surveys of employees or other workers, surveys of external stakeholders, other processes for affected stakeholders to provide feedback, including stakeholder engagement processes and grievance mechanisms, databases that track outcomes when actual impacts or complaints arise);
- Any plans to develop further processes for assessing the company's success in addressing each salient issue;
- Particular qualitative and/or quantitative indicators used to assess how effectively each salient issue is being managed (e.g., indicators developed by the reporting company or by a relevant industry association, multi-stakeholder initiative or in a more general reporting framework);
- Any challenges in assessing the effectiveness of the company's processes to address a salient human rights issue (e.g., due to limited visibility into a supply chain, difficulties in confirming cause and effect; difficulties in gaining qualitative information that would help interpret quantitative data such as a reduction in complaints received). (...)

[5.1 What specific examples from the reporting period illustrate whether each salient issue is being managed effectively?]

Supporting Guidance

(...) The focus here is on examples of the results achieved from the company's efforts to address those impacts. In other words, the response should convey ways in which the reporting company's efforts to reduce the likelihood or severity of impacts on human rights, through its human rights due diligence, have had the desired effect.

It is naturally difficult to demonstrate that an impact would have occurred were it not for the company's efforts. Moreover, the absence of an impact does not, on its own, show that it is being well managed, as the result may be due to luck or other factors. It may be easier to provide evidence of a reduction in the frequency or severity of an impact linked to the company's activities or business relationships, and to demonstrate correlations to the company's own efforts to achieve that outcome.

For example, audits of suppliers may indicate that the occurrence of child labour or the use of contract workers who lack benefits or unionization rights has significantly reduced, with a reasonable basis to believe that capacity building or other work by the company has contributed to that fact. Statistical data may show a reduction in employee injuries, or fact-finding work by respected experts or by the company jointly with local communities may show reduced impacts on health and livelihoods from water extraction or pollution. Again, it will be important to show that there is a credible connection to the company's own efforts to manage those risks.

The expectation of this question is not that the reporting company should, or could, claim direct cause and effect between its own efforts to manage each salient issue and a particular outcome. In some instances, cause and effect will be credible. In many others, it will never be possible to prove such a direct relationship, and improvements may initially be uncertain. Reporting that includes such information, while recognizing that it is tentative or limited to a correlation, has its own value in demonstrating how the company is tracking and thoughtfully analysing results.

There may also be instances in which the approaches on which the company was relying to manage a salient issue have not worked in practice, or have not yet revealed positive results. In other words, the trend has been a negative one, despite the company's efforts or due to developments beyond its control. For example, where democratic freedoms are curtailed or violent conflict increases in a particular operating environment, this may also lead to increased human rights impacts in connection with the company's own operations. (...)

Corporate Human Rights Benchmark, Agriculture, Apparel and Extractives³⁶⁴

B.2. Human rights due diligence

B.2.4 Tracking: Monitoring and evaluating the effectiveness of actions to respond to human rights risks and impacts

The Company tracks and evaluates the effectiveness of actions taken in response to its human rights risks and impacts and describes how it uses that information to improve processes and systems on an ongoing basis.

Score 1 - The Company describes the system(s) for tracking the actions taken in response to human rights risks and impacts assessed and for evaluating whether the actions have been effective or have missed key issues or not produced the desired results OR provides an example of the lessons learned while tracking the effectiveness of its actions on at least one of its salient human rights issues as a result of the due diligence process.

Score 2 - The Company meets both of the requirements under Score 1.

Corporate Human Rights Benchmark, Key Findings³⁶⁵

Results by Measurement Theme

Tracking (B.2.4): The Coca-Cola Company (AG), Mondelez International (AG), Unilever (AG), Anglo American (EX), BHP Billiton (EX), and Royal Dutch Shell (EX) earned the only 2's for this indicator. Each clearly indicates their systems for actions taken in response to their human rights risks, but also provides examples of lessons learned for the due diligence process through tracking effectiveness. (...)

The Corporate Human Rights Benchmark was launched in 2013 as a multi-stakeholder initiative drawing on investor, business and human rights and benchmarking expertise from 8 organisations: APG Asset Management (APG), Aviva Investors, Business and Human Rights Resource Centre, Calvert Research and Management, The EIRIS Foundation, Institute for Human Rights and Business (IHRB), Nordea Wealth Management and VBDO.

Unilever, Human Rights Progress Report³⁶⁶

Tracking

The ability to track and monitor issues is a vital part of measuring progress in remediation and addressing grievances. This is an area where we see different speeds of progress – described for each of our salient issues.

Within our own operations we track reported issues through code breaches, grievances reporting and engagement with worker representatives, supported by regular training and monitoring.

364 Corporate Human Rights Benchmark, *Methodology, For the Agricultural Products, Apparel and Extractives Industries* (2018) <https://www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Methodology%20Web%20Version.pdf>.

365 Corporate Human Rights Benchmark, *Key Findings 2017* (2017) www.corporatebenchmark.org/sites/default/files/styles/thumbnail/public/2017-03/Key%20Findings%20Report/CHRB%20Key%20Findings%20report%20-%20May%202017.pdf.

366 Unilever, *Human Rights Progress Report* (2017) www.unilever.com/Images/human-rights-progress-report_tcm244-513973_en.pdf.

To assist tracking in our extended supply chain, in 2017 we created an Integrated Social Sustainability Dashboard giving the number of non-conformances for each fundamental principle of the RSP, broken down by cluster, category and portfolio. We use this dashboard to capture information on salient issue hotspots, allowing us to prioritise, build guidance, produce webinars, and support regions and portfolios where the need is greatest. Dashboard results are shared with all procurement Vice Presidents, Directors and Managers.

Our Procurement function monitors compliance levels and prioritises where intervention is needed, working with suppliers to ensure effective remediation. We track and verify that corrective action plans have been implemented within the agreed timelines: this requires confirmation from the auditor that the action has effectively addressed the relevant non-conformance. For the most serious Key Incidents, we have a more active, direct participation in agreeing the corrective actions with the supplier and following up on these.

Apple, Supplier Responsibility Report³⁶⁷

Working Hours Falsification

Our Working Hours policy is based on International Labour Organization and Responsible Business Alliance (RBA) standards that limit working hours to no more than 60 hours a week. Also, suppliers can offer overtime only on a voluntary basis and factories must give employees one full day of rest for every six days worked.

We launched a Working Hours Program in 2011 to better manage working hours across our vast supply base. In 2012, the weekly working hours of more than 1 million supplier employees were monitored. Since then, coverage of employees monitored in the program has expanded year over year and, in 2017, the working hours of 1.3 million people were tracked on a weekly basis.

If falsification of employee working hours is discovered, the violation is escalated to the supplier CEO and the supplier is placed on immediate probation. The supplier's ethics policy and management systems are then thoroughly reviewed to identify the root causes and systemically correct them. The supplier is required to undergo regular audits to ensure the reviewed policy is implemented to prevent future violations. In addition, the supplier must revise all records to reflect an accurate accounting of hours worked by their employees. In 2017, we uncovered 38 cases of falsification of working hours data. In all cases, suppliers were placed on immediate probation. Our suppliers' compliance for overall working hours for the year was 94 percent.

Glencore, Sustainability Report³⁶⁸

Product stewardship

Our goal is to provide competitively-priced commodities that meet our customers' needs and contribute to global society, while addressing any associated health, societal and environmental risks.

We work with stakeholders, including civil society, governments and our customers, to promote responsible commodity sourcing. (...) We continue to face growing scrutiny into the potential human health and environmental impacts of the products we sell.

We are developing a Group monitoring system to track emerging regulations, and determine the degree of risk or impact they are likely to have on our different commodity departments. This will help us to better understand and engage with the growing interest from our stakeholders.

367 Apple, *Supplier Responsibility 2018 Progress Report* (2018) www.apple.com/supplier-responsibility/pdf/Apple_SR_2018_Progress_Report.pdf.

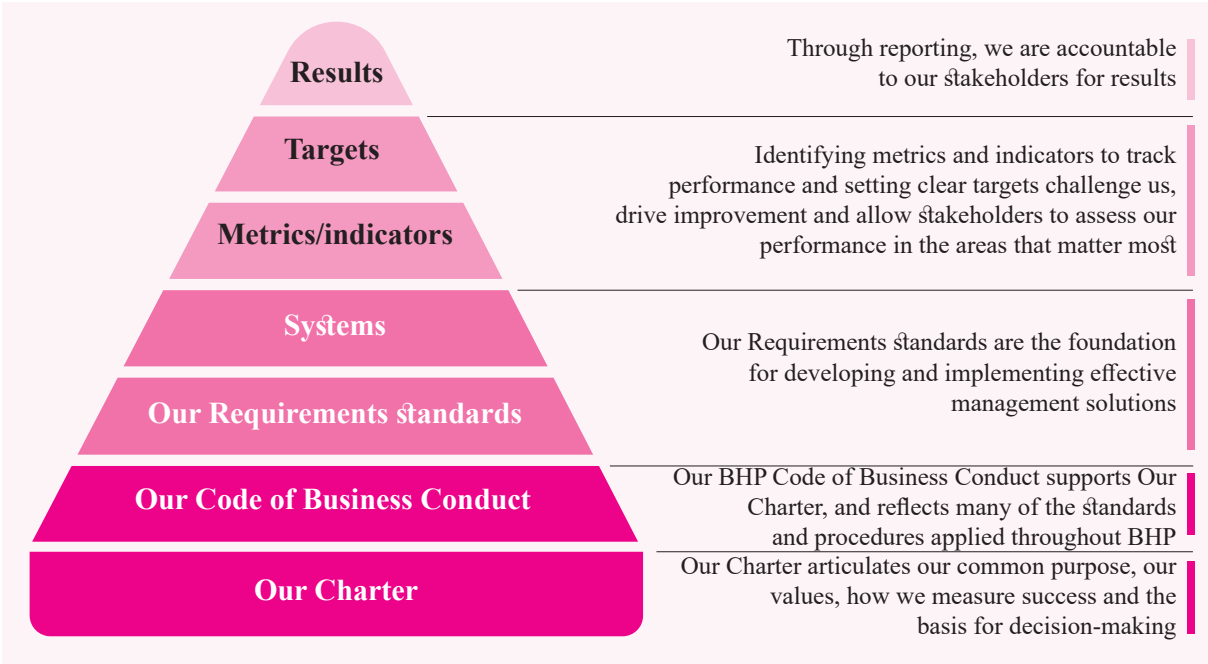
368 Glencore, *Sustainability Report 2016* (2017) www.glencore.com/dam/jcr:61aaaf30-3d39-4e2d-a642-0ed8f908b58b/2016-Glencore-Sustainability-Report.pdf.

We have developed a product stewardship scorecard to help communicate awareness of this discipline’s varied and far-reaching nature, combining disparate fields such as regulation and science. The scorecard covers any new regulatory or product-related development that may affect our business or the markets we work in. We use it to track and rank new developments by priority and potential impact, as well as communicate their significance to senior management. We classify each issue by both commodity department and region. High priority issues are allocated follow-up actions to mitigate or reduce the risk to ensure that our business and our sustainability activities run smoothly.

The Board HSEC committee and our senior management team will oversee the results of this system to ensure that any emerging regulatory risks are factored into business considerations.

BHP, Sustainability Report³⁶⁹

Our Sustainability Framework



Dams and tailings management

A risk review was conducted of all significant dams across our operated assets and the assets of our NOJVs in FY2016, which confirmed the dams to be stable.

Tailings dams require continuous monitoring and maintenance, so our focus has shifted to risk identification, governance and monitoring programs. We have identified opportunities for improvements to dam governance and risk management at our operated assets and at NOJVs. These are detailed in our Annual Report 2017, available online at bhp.com.

BHP has used the lessons from the dam risk review to contribute to a broader tailings storage review by the International Council on Mining and Metals (ICMM). That review has resulted in the ICMM releasing a Tailings Position Statement, including a governance framework and benchmarks, which we intend to adopt.

369 BHP, *Sustainability Report 2017* www.bhp.com/-/media/documents/investors/annual-reports/2017/bhpsustainabilityreport2017.pdf.

Our focus for FY2018 will be on:

- the implementation of a stewardship program;
- progressing monitoring and early warning technologies and emergency response preparedness;
- further development of BHP's dams and tailings controls and standards.

Rio Tinto, Why Human Rights Matter³⁷⁰

Monitoring and evaluation are essential learning processes for integrating human rights considerations into our CSP work. They allow us to see both the successes and shortcomings of our work so that we can adjust and improve.

Checklist

- ✓ Does your operation have indicators for tracking performance against key human rights risks that have been identified, including indicators for gender?
- ✓ Are these indicators underpinned by credible data, and are they updated regularly?
- ✓ Do the indicators align with the Millennium Development Goals where appropriate?
- ✓ Does monitoring of the human rights performance of your operation take place in a planned way and on a regular basis?
- ✓ Is responsibility for monitoring and reporting clearly and appropriately allocated?
- ✓ Do human rights monitoring and evaluation processes at your operation involve communities wherever possible including, in particular, vulnerable and 'at risk' groups?
- ✓ Do monitoring and evaluation processes at your operation include requirements for reporting back to communities on findings?
- ✓ Do management systems include procedures for highlighting and responding to any emerging human rights issues, including serious allegations, regardless of whether or not they are well-founded?
- ✓ Are changes and adjustments made to programmes and activities based on the results of monitoring?
- ✓ Does the monitoring and evaluation framework use information from your operation's complaints, disputes and grievance processes?

Distinguishing 'monitoring' from 'evaluation'

- Monitoring is the ongoing measurement of change (positive or negative) against defined indicators.
- Evaluation is the systematic assessment of the effectiveness of management strategies and programmes. Evaluations can focus either on process (how well has the initiative been implemented?) or outcomes (have the desired impacts been achieved?).

World Bank, Participatory Water Monitoring³⁷¹

Participatory Monitoring is a collaborative process of collecting and analyzing data, and communicating the results, in an attempt to identify and solve problems together. It includes a variety of people in all stages of the monitoring process, and incorporates methods and indicators meaningful to the stakeholders concerned.

370 Rio Tinto, *Why Human Rights Matter* (2013) www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf

371 Compliance Advisor/Ombudsman (World Bank Group), *Participatory Water Monitoring - A Guide for Preventing and Managing Conflict* (2008) <http://www.cao-ombudsman.org/howwework/advisor/documents/watermoneng.pdf>.

Traditionally, companies and agencies initiate and undertake monitoring. Participatory monitoring requires changing the dynamic so that a wider range of stakeholders assume responsibility for these tasks and learn and benefit from the results. Participatory monitoring is not only scientific, but also social, political, and cultural. It requires openness, a willingness to listen to different points of view, a recognition of the knowledge and role of different participants, and the ability to give credit where credit is due. (...)

Participatory Water Monitoring uses a participatory approach to monitor water. In the process, it not only generates credible data and information but also builds trust and helps resolve or avoid conflict surrounding perceived or actual impacts. (...)

Monitoring can give people the information they need to understand positive and negative impacts. Several challenges often arise, however, in implementation. Most monitoring efforts are top-down, with the public receiving information that has been collected, analyzed, and reported by experts chosen by the project sponsor or company and presented in a way that they may not understand. In some instances, the information may not even address the real concerns of the community; rather it may be strictly oriented toward a company's interests in compliance with regulations and legal commitments. Communities sometimes become aware of monitoring results so late in the project cycle that they may have lost trust in the company before they receive the results.

In general, people want to participate in decisions that matter to them. Thus the social demand for participatory approaches is often great. In many instances, companies have spent large amounts of money on monitoring programs that may have a high degree of technical credibility, yet that may have no mechanism to generate public trust in the resulting data. In these cases, one of the principal purposes of monitoring is lost.

When implemented early in the project cycle, participatory monitoring can address these challenges by including community members in defining the questions and developing the monitoring design. Furthermore, participatory monitoring and the inherent collaboration required to design and implement a process can strengthen social capital by creating relationships, trust, and understanding (...).

Water monitoring also requires considerable technical capacity and local knowledge. Water resource impact evaluation is a multidisciplinary field that encompasses the basic sciences (chemistry, physics, and biology), engineering, management, and law. In addition, the daily observations and experience of those local people who manage water in the field (including the hydrology of the area and how water is used) can be as important as observations from specialists when developing a thorough understanding of local conditions. The technical nature of assessing impacts to water presents challenges, opportunities for, and, in some cases, limitations to participatory approaches. (...)

ICMM, A Practical Guide to Catchment-Based Water Management³⁷²

Case study: Participatory water quality monitoring in the Athabasca Basin, Canada

The Athabasca Working Group (AWG) is a partnership established to implement an impact management agreement between local communities and uranium mining companies with operations in northern Saskatchewan, Canada. The AWG has a key role in addressing local concerns about potential environmental impacts of mining on the environment, including water quality, and ensures that the uranium mining industry maintains a positive working relationship with the local residents. The AWG comprises representatives from each of the seven communities within a 200km radius of the uranium mine sites and the two uranium mining companies (namely Areva and Cameco Corporation). The AWG programs are funded by the mining companies.

³⁷² ICMM, *Practical guide to catchment-based water management* (2015) https://www.icmm.com/website/publications/pdfs/water/practical-guide-catchment-based-water-management_en.

The AWG has established a community-based environmental monitoring program that assesses many parameters important to local residents, with a focus on local water quality and compares it to both reference locations and water quality guidelines. One of the most important elements of the program is that local residents take part in the sample collections each year, and it is independent of government and industry environmental monitoring. The program enables community members to collect their own environmental samples at the locations that are of most concern to them, which encourages data acceptance and promotes environmental protection, ensuring that water quality standards are maintained.

Quarterly meetings are held where AWG community representatives meet with personnel from the companies to review reports, discuss current community concerns and update the communities on exploration and mining activities and projects in the area. The AWG is part of a larger context of northern community relations undertaken by the uranium mining industry in northern Saskatchewan.

Shift & IHRB, Oil and Gas Sector Guide on the UN Guiding Principles³⁷³

Building a Systematic Approach to Tracking

Balancing quantitative and qualitative indicators

Good quantitative indicators can be useful in conveying concisely how well a company is managing human rights risks. They may be particularly helpful in O&G [oil & gas] companies, where so many staff have scientific/engineering backgrounds and may be most comfortable with numerical data. Just as O&G companies report safety incidents involving on-site employees and contractors and track the number of days since the last incident occurred, they could do the same for incidents affecting local communities. However, qualitative indicators will often be essential in helping an O&G company interpret quantitative data on human rights performance. For example, a relatively low number of complaints raised through a company grievance mechanism may reflect a reduction in incidents, or a lack of trust in the mechanism. Feedback from potential users of the mechanism will be essential to understand which interpretation is correct.

Balancing outcome-focused and process-focused indicators

Many indicators will look at incidents or impacts that have already occurred. These will certainly be relevant to tracking performance. However, process indicators are also important in interpreting data. For example, an indicator that shows community agreement to resettlement plans is better understood when reviewed against an indicator for stakeholder consultation processes. A community's "agreement" will be understood differently – on the one hand where processes allow staff to sign agreements with self-identified leaders who claim to speak for communities; and on the other hand where processes require open, informed and inclusive discussions with communities, together with their leaders.

Designing tracking systems to encourage company-wide engagement

Tracking systems can be a tool that encourages other departments to engage actively in responding to impacts. For example:

- A tracking system may provide data that shows cause and effect between increased demands by procurement and code breaches by suppliers, or between certain activities of construction staff and complaints from communities. This evidence can help engage the relevant departments in addressing problems and avoiding their recurrence;

³⁷³ Shift and the Institute for Human Rights and Business, *Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (2012) www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide_O&G.pdf.

- A tracking system might require that a function or department be given responsibility for investigating an impact, create automatic deadlines for a response or update, and elevate the issue to senior management if deadlines are missed. This can help stimulate active engagement from those concerned.

Systematising tracking in this way can emphasise the relevance of human rights issues for the whole company. It can encourage staff to think preventatively and not just in terms of responding when issues arise.

Example: Empowering Communities to Evaluate Company Performance

One extractive company is using a “Community Scorecard” to achieve a more effective means of listening to and engaging with affected communities. At regular community forums, the company provides updates on its activities, followed by questions and answers with communities. The company then provides performance metrics, based on verifiable data, across five areas the community has rated as a priority: environmental performance, local hiring, safety, transparency and leaving a positive legacy for the community.

During the sessions, communities rate the company’s performance across the five priority areas: ‘exceed expectations’, ‘meet expectations’, ‘below expectations’, or ‘need more information’. The Scorecard uses wireless remote push button technology that allows the company to capture feedback in real time and display it for attendees. They then discuss the feedback they are seeing, and the communities offer ideas on how the company can improve. The results are aggregated and shared publicly, including every six months in local newspapers.

The company holds enough forums to ensure a sample size that reflects the ideas and opinions of the broader communities. Community feedback indicates that members see the voting system as giving them ‘voice’, particularly for people who are normally quiet in public settings on public issues. The company sees these efforts as helping it become the project developer of choice, and adding value to its options for growth.

Background (Cambodia)

Robertson, Pioneering a New Approach³⁷⁴

Monitoring is almost always at the core of any attempt to improve working conditions because it is important to first know what conditions are before they can be improved. Growing skepticism about the idea that self-monitoring and voluntary compliance are sufficient for improvements in working conditions has been fueled, however, by the BFC [Better Factories Cambodia] experience showing that a combination of features is necessary for a successful attempt to improve conditions. Monitoring alone suffers from either insufficient incentives or competing incentives if buyers do not change their behavior in response to audits.

A proliferation of third-party monitoring programs seems to have been one of the responses to this rising skepticism, but the heterogeneity of these approaches seems to have created a web of competing standards--for example different codes might have different height specifications for fire extinguishers. Factories now often complain about “monitoring fatigue” because they have to meet many slightly different standards and this fatigue can distract factories from deeper issues in order to focus on meeting the terms of specific codes on inspection day.

In the sense that BFC started with monitoring, BFC is similar to other auditing programs. Each BFC factory receives a visit approximately every eight months. Unlike some programs, BFC’s audits are unannounced. BFC audits are also different from some other programs because auditors work in teams of at least two people who rarely assess the same factory twice. The audit instrument contains over 200 questions that cover a wide range of conditions and standards. The results of the visits are compared to national law and international standards. Employing local assessors kept assessment costs relatively low. BFC was also able to mobilize the majority of its funding from user fees, which help demonstrate evidence of efficiency and sustainability.

³⁷⁴ Raymond Robertson, *Pioneering a New Approach to Improving Working Conditions in Developing Countries: Better Factories Cambodia* (2020), <http://ft.iza.org/dp13095.pdf>.

One additional benefit of the tripartite approach was to reduce “monitoring fatigue.” The program encourages buyers to rely on BFC audits and the fact that the assessments had tripartite support meant that the assessments were widely accepted, which reduced the need for the buyers’ own monitoring programs.

Better Factories Cambodia, The Business Benefits³⁷⁵

The first programme of its kind, BFC marked the first time in which the ILO became involved in direct monitoring of factory compliance with labour standards and public reporting of factory conditions. In factories that have chosen to receive BFC’s tailored advisory services, BFC has successfully supported improvements in working conditions and social dialogue through worker-management committees and training, pioneering a unique approach to drive change that has inspired the establishment of the Better Work programme in seven other countries.

The development of the Cambodian apparel industry and BFC’s monitoring of factory compliance with labour standards have led to important benefits for the Cambodian economy, including the creation of jobs. Under the US-Cambodia textile agreement, BFC’s monitoring and transparent reporting has led to quantifiable increases in the quota bonuses due to improved compliance. Since the mid-2000s to date, the risk mitigation that the good labour practices and monitoring provided to buyers has led to their increased sourcing from Cambodia.

Instruments (Cambodia)

Law on Environmental Protection and Natural Resource Management³⁷⁶

Chapter VI: Monitoring, Record Keeping and Inspections

Article 14: The Ministry of Environment shall collaborate with concerned ministries to require the owners or responsible persons of factories, pollutions sources, industrial sites or sites of natural resource development activity:

- Install or use monitoring equipment
- Provide sample
- Prepare or maintain and submit for review and record and reports.

Article 15: In order to carry out its responsibilities and in its responsibilities on Natural Protection Areas, the Ministry of Environment, in collaboration with concerned ministries, may enter and conduct inspection in an area, premise, building, on or in a means of transportation or any place etc., in cases when the Ministry of Environment finds that the source is causing harm to environmental quality.

The Ministry of Environment, whenever they find that there has been a criminal violation the inspectors shall immediately report the competent institution so that action can be taken under the law.

Cambodian Labour Law³⁷⁷

Article 179: All employers must keep a register of children aged less than eighteen years old, whom they employ, indicating their date of birth. This register must be submitted to the Labor Inspector for visa, observation and warning.

³⁷⁵ Better Factories Cambodia, *The Business Benefits of Better Factories Cambodia* (2019) <https://betterwork.org/wp-content/uploads/2020/02/The-Business-Benefit-of-BFC.pdf>

³⁷⁶ Cambodia, *Law on Environmental Protection and Natural Resource Management* (1996) <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93402/109144/F367799135/KHM93402%20Eng.pdf>.

³⁷⁷ Cambodia, *Labour Law* (1997) http://www.cambodiainvestment.gov.kh/the-labor-law-of-cambodia_970313.html.

Sub-Decree on Solid Waste Management³⁷⁸

Chapter 4 Monitoring and inspection of hazardous waste management

Article 23. The Ministry of Environment shall take sample of the hazardous waste at every point enumerated in the article 22 of this sub-decree.

The owner or person responsible for the site mentioned in the paragraph one of article 23 of this sub-decree shall collaborate and facilitate the environmental official who come to take the waste sample so that they can carry out their technical task.(...)

Article 25. In the case of finding out that there are an illegal disposal or dumping of the hazardous waste without a permit from the competent institution, the Ministry of Environment in collaboration with concerned ministries, shall conduct the inspection at the places in complying with procedures as follows:

- a- To present his / her identity card and mission letter while entering into the premise or any site of point source of pollution for conducting inspection and taking sample;
- b- To make, at the site of inspection, the primary record and report of the inspection or sample taking with the presence of witness if necessary;
- c- To inquire and require the owner or responsible person of the place to provide them with information and other relevant documents for taking statement or report and for evidence;
- d- To collect and detain evidence of the offence.

Article 26. In case if there are complaint or report that there is storage or disposal of the hazardous waste which causes danger to animal or human health or public property or contaminate the environment, the Ministry of Environment shall make urgent inspection and inform concerned ministries and local authority.

National Environment Strategy and Action Plan³⁷⁹

2.9.3 Top Priority Issues. The RGC has taken several measures to manage and reduce environmental and natural resources pressure and loss, particularly, the designation of a wide network of protected area system and biodiversity conservation corridors, institutional reform and vigorous law enforcement against the passiveness and unsustainable management of the economic land concessions and illegal logging and wood smuggling. More concerted and well-resourced continuous efforts are necessarily required to effectively manage the drivers and impact on the natural capital, especially by addressing limited financial resources and capacities, poor awareness of the value, and vulnerability of the natural capital critical for the country's sustainable development. (...)

In some cases, the lead ministries or institutions for cross-cutting strategies are often seen relatively “weaker” in terms of budget allocation and capacity for ensuring consistent implementation, followup, monitoring and evaluation compliance and enforcement, and the coordination and monitoring. The interplay and coordination among concerned stakeholders during problem and priority identification, formulation, implementation and monitoring, and evaluation need to be further strengthened.

378 Cambodia, *Sub-Decree on Solid Waste Management, no. 36 ANRK.BK* (1999) http://www.cambodiainvestment.gov.kh/wp-content/uploads/2011/09/Sub-Degree-36-on-Solid-Waste-Management_990427.pdf.

379 Royal Government of Cambodia, *National Environment Strategy and action Plan 2016 – 2023* (2017) https://policy.asiapacificenergy.org/sites/default/files/National%20Environment%20Strategy%20and%20Action%20Plan_NESAP_2016-2023.pdf.

Association of Banks in Cambodia, *Cambodian Sustainable Finance Principles*³⁸⁰

Banks/MFIs assess and manage environmental (and social) risk and issues through an Environmental and Social Management System (ESMS), customised according to their specific business activities, operations, client base, the types of products and services they provide. (...)

The E&S Procedures define the parameters for identifying, assessing, categorising, mitigating, monitoring and reporting on the E&S risks associated with its Business Activities.

- E&S Risk Assessment of Clients and Transactions (...)
- E&S Risk Categorisation: (...)
- E&S Risk Mitigating: (...)
- E&S Risk Monitoring & Internal Reporting: E&S risk can be monitored as part of the regular credit risk management cycle, and the monitoring efforts should be commensurate with the E&S risks associated with the borrower/transaction. The bank/MFI needs to monitor whether clients comply with the E&S requirements (e.g. with the requirements stated in the loans and in the E&S corrective action plans) throughout the duration of the loans, and ensure appropriate internal reporting of E&S risk. (...)

H&M, *Supplier List*³⁸¹

For many years, we have worked hard to build strong, long-term relations with our suppliers, based on mutual trust and transparency. This allows us to disclose the names, locations as well as some additional information of their factories without major concerns about the ongoing competition on the best available production capacity in our industry.

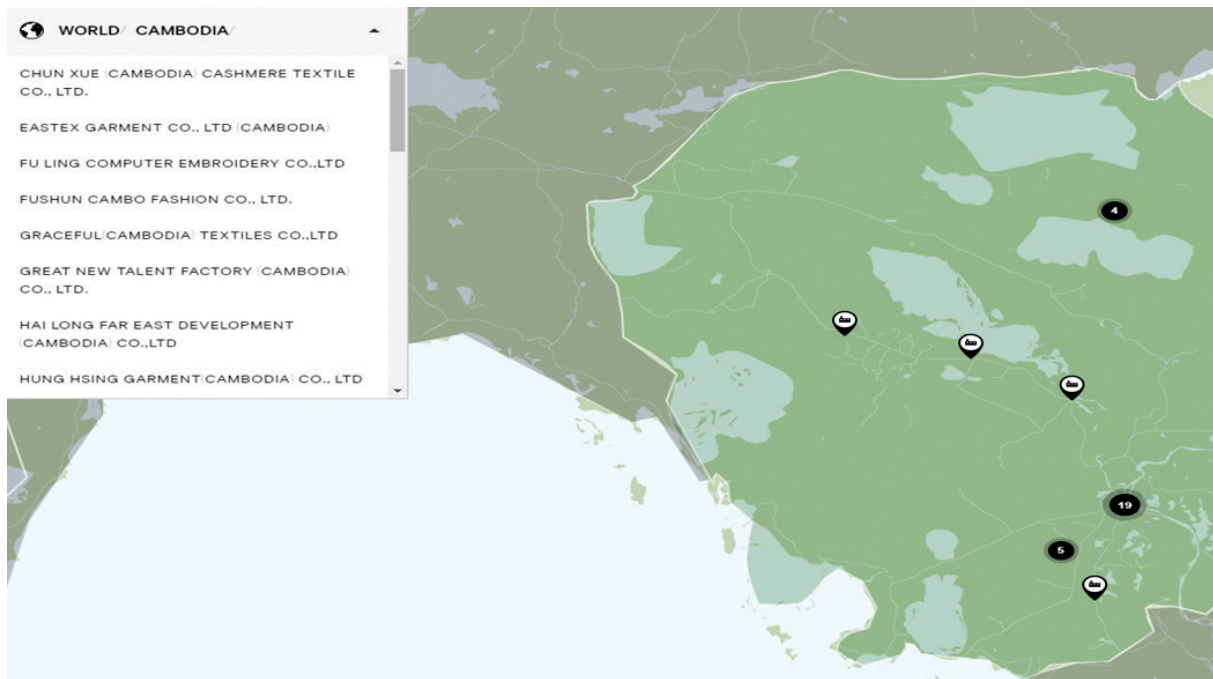
On the contrary, our experience shows that this step incentivises our suppliers for increasingly taking ownership over their sustainability and that it recognises the progress they make. The supplier map includes all our suppliers and their manufacturing and processing factories that account for 100% of all our own products that we sell.

Additionally, it includes the names and locations of the 300 most important mills that provide our suppliers with fabrics and yarns, including spinning, tanneries and fabric dyeing and printing. These account for 67 % of the product volume for H&M Group. By 2021 we aim to disclose 100% of the fabric dyeing and printing locations involved in making our products.

We have signed the Transparency Pledge and included details about product type and number of workers at each factory. We update the public supplier monthly. When business need occur, we onboard new suppliers or factories and occasionally we responsibly phase them out. Such changes will be reflected in the forthcoming update of the supplier list.

380 The Association of Banks in Cambodia, *Cambodian Sustainable Finance Principles Implementation Guidelines* (2019), <https://www.ifc.org/wps/wcm/connect/8ce9ddc0-2422-4e69-aa8b-e4f3c8cc3eec/Cambodia+SF+Principles++Implementation+Guidelines.pdf?MOD=AJPERES&CVID=mGdMKuz>.

381 H&M, *Supplier List*, accessed 14.10.2020, <https://hmggroup.com/sustainability/leading-the-change/supplier-list.html>.



FLA, Assessment for Reaccreditation³⁸²

In Indonesia, Vietnam, Cambodia, and China, adidas suppliers have registered with a service provider, who provide reports to factory management that come through a SMS or app-based service. These reports also identify trends in grievances, which allow for factory management to address rumors that may be spreading throughout the workforce in a more direct and efficient manner. While adidas’ telephone hotline is still available to all workers, this SMS grievance service allows for suppliers to own their confidential reporting channel, address grievances, review trends on grievances, and keep adidas informed.

FLA reviewed adidas’ data on the SMS Worker Hotline from 2016: over 28,000 workers were covered by the SMS Worker Hotline in Cambodia, Indonesia, Vietnam, and China, and over 23,000 grievances were submitted through this hotline. The service provider is also able to track how many workers register in the system, download the application, and how the grievance is submitted (either through SMS or application).

AFWA, Gender Based Violence in the H&M Garment Supply Chain³⁸³

Before entering into a working relationship with a supplier, H&M claims to conduct a ‘minimum requirement assessment’. After this initial assessment, however, H&M reports that further monitoring takes place through supplier self-assessment. H&M reports to require suppliers to self-assess their sustainability performance annually. Self-reports are then scored by H&M, using a Sustainability Index score from zero-100 that reflects both H&M criteria and the Higg Index—an assessment mechanism that aims to assist brands in measuring environmental impacts of their supply chain (...).

382 Fair Labor Association, *Adidas Group: Assessment For Reaccreditation of the Company’s Social Compliance Program* (October 2017) https://www.fairlabor.org/sites/default/files/documents/reports/adidas_reaccreditation_assessment_october_2017.pdf

383 AFWA, CENTRAL, GLJ, LIPS & SLD, *Gender Based Violence in the H&M Garment Supply Chain, Workers Voices from the Global Supply Chain: A Report to the ILO 2018* (2018), <https://www.globallaborjustice.org/wp-content/uploads/2018/05/GBV-HM-May-2018.pdf>.

H&M's CSR measures may look good on paper, but as detailed in Chapters 4 and 5 of this report, they are far from sufficient to address workplace harassment, violence, and violations of decent work standards. Moreover, research shows CSR alone is an insufficient approach because it does not address power imbalances and fear of retaliation among workers who are critical to monitoring and reporting incidents of gender based violence and ultimately transforming workplace practices and culture.

Fast Retailing, Monitoring and Evaluation of Production Partner Factories³⁸⁴

Grievance Mechanisms in Partner Factories

Fast Retailing asks partner factories to establish their own mechanism to address employees' grievances as part of proper business management following FLA's standards. The requirements for grievance mechanisms stipulated in Fast Retailing's Supplier Guidebook include:

- at least one confidential, anonymous grievance channel;
- written procedures and processes to address grievances aligned with local laws, including a non-retaliation policy;
- a tracking system to ensure grievances are addressed; and
- training for workers, supervisors and managers including orientation for new workers and subsequent annual training for all workers on grievance policies and procedures.

We have improved our audit process to assess functionality of factories' grievance mechanisms. For example, in 2018, our audit checklist was expanded to include additional questions on penalties and retaliation and how management logs and tracks grievances and resolutions.

An assessment tool including a worker survey and scoring system to evaluate the performance of grievance mechanisms using these eight criteria, has been developed, tested and reviewed with the support of the Fair Labor Association. In 2020, we aim at assessing our key sewing factories and fabric manufacturers using this tool.

Case 4 (Cambodia)

In 2019, a worker representative organization contacted us regarding potential breach of freedom of association in one of our partner factories. We facilitated a dialogue among worker representatives and factory management with the support of an external mediator so both parties could reach an agreement. Another negotiation was set up by the Provincial Department of Labour and Vocational Training. Since no agreement could be reached, this case was sent to the Arbitration Council. We communicated clearly that Fast Retailing would support the Arbitration Council decision and would expect factory management to follow it. The factory agreed to comply with the Arbitration Council decision.

ECCJ, A Human Rights Review of the EU Non-Financial Reporting Directive³⁸⁵

[According to H&M] "At H&M group, we firmly believe that everyone connected to our business should be treated in a fair and equal way. [This] means making sure our values and respect for human rights are upheld and promoted within our own company and across our supply chain....All our policies and standards are based on international equivalents and well-recognised initiatives, such as ILO Conventions or the UN Guiding Principles on Business and Human Rights. ...Our human rights due diligence is conducted systematically as an integral part of all relevant assessment processes."

384 Fast Retailing, *Monitoring and Evaluation of Production Partner Factories* (2020) <https://www.fastretailing.com/eng/sustainability/labor/partner.html#hotline>.

385 The European Coalition for Corporate Justice (ECCJ), *A Human Rights Review of the EU Non-Financial Reporting Directive* (2019) https://corporatejustice.org/eccj_ccc_nfrd_report_2019_final_1.pdf.

In contrast to H&M's strong policy commitment, its 2017 reporting fails to provide material evidence of effective assessment and management of its salient issues. Firstly, H&M relies heavily on self-reporting mechanisms such as the Sustainable Impact Partnership Programme for measuring social and environmental performance. Yet, suppliers are unlikely to report human rights violations perpetrated within their own factories. Indeed, interviews of 62 workers in 'gold' and 'platinum' H&M suppliers in Bulgaria, Turkey, India, and Cambodia during 2018, found that none of the workers earned a living wage, freedom of association violations occurred, and overtime hours exceeded the legal maximum.

Secondly, despite identifying 10 salient human rights issues, H&M only outlines five key performance indicators (KPIs) that fail to report on progress in a meaningful way. For example, wage levels rather than the KPI of number of factories using the 'Fair Wage Method' would indicate progress towards increasing real take home pay. Similarly, reporting the number of independent and freely formed trade unions or collective bargaining agreements reached would better indicate progress towards freedom of association compared to the KPI of democratic election of worker representatives to worker committees. (...)

Thirdly, H&M's progress on its salient issues is difficult to assess as the reporting fails to disclose the outcomes of its human rights impacts in a material manner. The brand only provides an aggregated figure of the number of investigated and closed incidents during 2017 without detailing the specific human rights issues concerned, if appropriate remedial action was taken, or whether the nature of the issue was incorporated in its human rights due diligence processes going forward. It is also unclear whether these figures include unresolved cases from previous years.

Similarly, it is difficult to track H&M's progress against its living wage ambition, as the brand has deviated from its original target without explanation. In 2013, H&M aimed for 850,000 textile workers to earn a living wage by 2018, while the 2017 report refers only to the number of suppliers using the 'Fair Wage Method'. This shifting target makes it impossible to track progress. However, H&M does publicly disclose its suppliers, covering 98.5% of its garment production and 60% of its fabric production, which helps to trace human rights abuses and impacts within the supply chain.

Australian NCP, Final Statement: ANZ Group and Phnom Penh Sugar Co.³⁸⁶

2. The Specific Instance alleged non-observance by ANZ of certain parts of the General Policies Chapter and Human Rights Chapter of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) in relation to ANZ's involvement with the developer of a sugar plantation and refinery project in Cambodia. The project is alleged to have forcibly displaced the families and dispossessed them of their land and productive resources. ANZ Royal is a joint venture of ANZ Group and the Royal Group of Companies (based in Cambodia), with ANZ Group holding a 55 per cent interest in ANZ Royal. ANZ is linked to the project as it provided partial financing in 2011 to the developer of the project, Phnom Penh Sugar (PPS) for the refinery construction.
6. In concluding this case, the AusNCP recommends that ANZ: (...)
 - further strengthens the application of its due diligence arrangements (including reviewing its screening and monitoring systems) to ensure they are adequate to manage the risks associated with its lending activities – especially in relation to its business with clients in some developing countries where legal and governance frameworks are less developed than in Australia
 - establishes a grievance resolution mechanism (including publication of outcomes) to support the effective operation of its corporate standards in relation to human rights – and as a way of demonstrating that its actions are consistent with community expectations around the accountability of multinational enterprises in this area.

³⁸⁶ Australian National Contact Point, *Final Statement: This Specific Instance was Submitted by Equitable Cambodia and Inclusive Development International on Behalf of 681 Cambodian Families* (2018) https://ausnccp.gov.au/sites/default/files/inline-files/11_AusNCP_Final_Statement.pdf.

BFC, Transparency Database Report³⁸⁷

Better Factories Cambodia (BFC)'s public reporting initiative discloses factory compliance on key legal requirements. This report summarises the following: Critical Issues, Low Compliance Factories and Strike information. BFC has been reporting on these issues and releasing the information publicly since 2014. With the release of cycle 11, the Transparency Database has accumulated information gathered from 1,580 assessment reports covering 579 garment factories that possess an export license in Cambodia since 2014. (...)

Types of public disclosure

- Critical Issues: BFC measures all factories with two or more assessments against 21 critical issues.
- Low Compliance: Factories with three or more BFC assessments are measured against 52 legal requirements. Factories with the lowest compliance levels - those falling two standard deviations below the mean for compliance - are subject for this second level of public disclosure.
- Union Compliance: BFC findings regarding union compliance with strike requirements are published. (...)

Verschuren, Preventing Human Right Violations in the Global Garment Industry³⁸⁸

1.3 The Cambodian Garment Industry – Development and current conditions

What is very interesting to note about the Cambodian garment industry is that in the agreement signed with the US was a clause by which they were conditioned to meet decent labour standards in its factories. Hereby began the later on renamed as 'Better Factories' programme, which was enforced by appointing ILO inspectors to monitor the conditions in the factories on a surprise basis. The main aim of this programme is to monitor and slowly improve the conditions of the garment factories in Cambodia, as to have a sweat-shop-free industry in which workers are not exploited or face bad working conditions. In the monitoring process, not only does the ILO intervene, but the Cambodian government, trade unions and workers organizations also play a role. Dialogues are maintained and solutions for the most urging problems are found through a tripartite structure led by the ILO. At the end of the day however, it is the task of the ILO to monitor the conditions in the factories as to maintain an impartial source. Although the programme has been in place for many years and definitely has achieved betterment in conditions in many factories, it faces many structural problems that do not allow it to function well.

First of all we find that factory owners, in order to evade monitoring, sub-contract other factories that produce at lower wages and in many times deplorable working conditions. Given that these factories are not in the public record, and the brands many times do not know about them either, they are out of the loop and therefore not monitored. Secondly we find that the reports made by the monitors are not for public record, but are only sent to the owners of the factories inspected, whom then have the choice to maintain the records private. This lack of transparency allows the factory owners to disregard the reports and continue work as they had before, facing only very small sanctions, if any. Thirdly, we find that in the cases in which the reports are bought by the brands (as also for them they are not available for free), these many times do not do sufficient to try and change the conditions mentioned in the reports. Many times when brands do decide to act, they do this in a way that is only detrimental to the workers, for example by pulling out of the factory given the bad conditions, instead of trying to pressure the factories into bettering the conditions. These are only some of the obstacles faced with the better factories program, and need to be tackled if any significant changes want to be brought to the industry. (...)

387 Better Factories Cambodia, *Transparency Database Report, 11th Cycle* (2018) <https://betterfactories.org/transparency/uploads/2feef-bfc-transparency-database-report-cycle-11th.pdf>.

388 Maaïke Orta Verschuren, *Preventing Human Right Violations in the Global Garment Industry*, Ca' Foscari University of Venice (2015) <https://repository.gchumanrights.org/bitstream/handle/20.500.11825/320/Orta%20Verschuren.pdf?sequence=1&isAllowed=y>.

a. *The Cambodia Better Factories Program*

The Cambodian Better Factories Program, as already explained in the section on the Cambodian Garment Industry, is a program set up by the US with the help of the ILO to monitor the working conditions in exporting garment factories throughout the country. The program covers all the garment factories that are registered with The Garments Manufacturer Association In Cambodia (GMAC) and the Registry of Commerce (RoC) as exporting factories. Hence, the program covers all the factories that produce from global buyers. The monitoring of the factories is done by the ILO through announced and unannounced visits, during which they look at the degree of respect by the factory for the freedom of association, the conditions under which the trade unions are operating; how their members are treated, how much space they have but it remains strictly private to other parties. Apart from this report, a general report on the industry as such is made. This report is public. The Better Factories program has achieved several positive things for the Cambodian garment industry. First of all, given that the ILO is the monitor, this grants the program an independent stance, not influenced by the corruption that might otherwise take place in the monitoring process. Secondly, though the interviewing process of employees and factory managers the monitors can get a sense of the state of some affairs that are not perceivable for the naked eye, this includes things such as sexual harassment issues and restrictions placed on the trade unions. This however, depends on how much the workers are willing to talk in a free way. The Better Factories program organizes trainings and capacity building workshops to allow for the creation of better social dialogue between the parties. On the other side, there can also be found many limitations on the program, which include the following:

Questions

1. What are the challenges faced by global brands in the monitoring of performance of their local suppliers?
2. What tools do global brands use to monitor and track performance of their local suppliers?
3. What recommendations would you give to improve current BFC's practice in their monitoring work?
4. What are the roles and responsibilities of the government in monitoring and tracking business' compliance of human rights in Cambodia?
5. Why is it important for multinational corporations to monitor and track performance of their suppliers as part of their due diligence and implementation of their codes of conduct?

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13. TRANSPARENCY AND CORPORATE REPORTS

Muhammad M. Ma'aji, Radu Mares

Introduction

Releasing a social report is the last step of the human rights due diligence process. Today, the private sector enjoys a lower level of trust from stakeholders compared to some decades ago, as numerous corporate scandals and human rights abuses have come to light through the influence of 24-hour media, social media, and the internet. Even if a company makes genuine efforts to manage its impacts diligently (chapters 7-12), it will not be taken at its word. It is today increasingly expected that companies publish an honest and informative CSR report and communicate with affected stakeholders in other ways. This need for social reporting has become well recognized since the late 1990s when the Global Reporting Initiative was formed as a multistakeholder initiative (chapter 5) to offer guidance and indicators on how to write a proper CSR report. Despite this early start and other models of reporting, it apparently remains very difficult to strike the right balance: how to deliver a report that captures meaningful information on performance, can be communicated in an understandable manner, with just the right level of specificity and comprehensiveness? After the UNGPs were finalised in 2011, a specific reporting framework just for the UNGPs was launched in 2015, with the aim of promoting the production of those elusive simple yet meaningful corporate reports. Transparency is strategically important not only for building trust with stakeholders, but also as a regulatory technique (chapter 4). Global supply chains are very difficult to regulate with more prescriptive and coercive types of 'strong' regulation (chapters 1 and 6); while in contrast, transparency laws are not as prescriptive and allow for an increasing number of private and public actors to exercise pressure on companies through rewards and sanctions. They are therefore more politically acceptable and may make up an intermediary step towards much stronger regulations to hold abusive companies accountable. Increased transparency is therefore essential: it is a key governance tool that empowers stakeholders to monitor and engage with companies, allows market actors to exercise their leverage, facilitates exposing abuses of power, and creates opportunities for legislatures to shape business conduct in new ways (chapters 16, 28).

Sustainability reporting is a relatively new concept in Cambodia. Most companies and their stakeholders are not aware of the strategic importance of such reporting in generating competitive advantage. Corporate commitment to sustainable development can significantly contribute to raising people's living standards, reducing poverty, and strengthening economic competitiveness. At present, a relatively small number of companies in Cambodia have actively engaged in sustainability reporting. Studies have showed that sustainability reporting by companies in Cambodia had increased continuously over the last ten years. The largest share is accounted for by companies in the financial sector, followed by the tourism and leisure sector and the telecommunications sector.³⁸⁹ However, at present, there is no national standard for sustainability reporting for companies in Cambodia. Nonetheless, companies are involved as stakeholders in the country's development strategy. The majority of Cambodian companies base their sustainability reporting on the internationally recognized and employed GRI framework.

³⁸⁹ Boris Miethlich, 'Sustainability Reporting in Cambodia: The Hidden Champion of ASEAN Countries', *International Journal of Recent Technology and Engineering*, 8(3S2) (2019), pp. 405-409, https://www.researchgate.net/publication/337658379_Sustainability_Reporting_in_Cambodia_The_Hidden_Champion_of_ASEAN_Countries.

According to the G20/OECD Principles of Corporate Governance, a strong disclosure regime that promotes transparency is a pivotal feature of market-based company monitoring and is thus central to shareholders' ability to exercise their ownership rights on an informed basis. Transparency and disclosure practices remain an issue in Cambodia despite the country's implementation of the IFRS standards and that information transparency and disclosure requirements are included in many provisions of the LCE and Prakas No. 013/10 by the SECC on Corporate Governance of Listed Companies. Going forwards, businesses in Cambodia will need to change their mindset on sustainable practices and reporting as expectations on corporate responsibility increase. As transparency becomes more prevalent, companies are recognizing the need to act on sustainability.

Main Aspects

- ✓ Sustainability reporting
- ✓ Forms of reporting
- ✓ Principles of reporting
- ✓ Reporting (process and outcome)
- ✓ International reporting frameworks
- ✓ Salient issues in reporting (severe human rights impacts)
- ✓ Materiality (of information)
- ✓ Freedom of expression
- ✓ Accountability through transparency
- ✓ Stakeholder participation
- ✓ Financial and sustainability reporting
- ✓ Sustainable development goals
- ✓ 'New governance' and regulation

Background

Shift, Human Rights Reporting³⁹⁰

What is the value of reporting? As corporate reporting on "sustainability" or "social responsibility" has become normal practice for leading companies, so too have concerns arisen about the lack of value of that reporting. Many companies complain that these reports are a significant drain on resources and fail to help the company improve its performance. Many readers, including investors and civil society organizations, find these reports offer little real insight into how well a company is managing its impacts on people.

Yet a smart approach to reporting can be a tremendous driver of improved performance. This is as true for reporting on human rights as for other non-financial or financial matters. It requires that the reporting process focus attention and resources on the critical questions the company needs to be able to answer internally, if it is to manage its risks and performance effectively. As such, the process of smart reporting serves as much to improve management systems as to identify information for disclosure. (...)

³⁹⁰ Shift, *Human Rights Reporting: Are Companies Telling Investors What They Need to Know?* (2017) https://www.shiftproject.org/media/resources/docs/Shift_MaturityofHumanRightsReporting_May2017.pdf.

We are living in an era when companies face serious challenges to doing business responsibly. Yet expectations are only rising as increasing numbers of people around the world realize the significant implications – both negative and positive – of corporate conduct toward people and our environment. In 2016 the international community introduced the Sustainable Development Goals, with the ambition for all actors – including companies – to help more people live better lives around the globe. Doing business responsibly – respecting people’s human rights throughout the company’s own operations and value chains – represents the single greatest contribution that companies can make to the social dimensions of the Sustainable Development Goals. This is a potentially transformative opportunity for companies at a major scale – and it begins with doing business with respect for human rights.

With this sharpened focus on the role of business in the world, the value placed on sound information, transparency, dialogue and accountability should increase. As the research and analysis in this report clearly demonstrate, good reporting and good performance are integrally related when it comes to corporate respect for human rights. Good reporting processes bring to light within companies gaps in knowledge and practice that need to be addressed. Good reporting outputs also enable more informed discussions with investors and other stakeholders, which in turn help identify ways to improve systems and practices. And as performance improves, this enables companies to report on their progress and become investments, partners and employers of choice.

Instruments

UN, Guiding Principles on Business and Human Rights³⁹¹

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:
- (a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences;
 - (b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved;
 - (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Commentary

(...) Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include on-line updates and integrated financial and non-financial reports. (...)

Shift & Mazars LLP, UN Guiding Principles Reporting Framework³⁹²

Part A: Governance of Respect for Human Rights

Policy commitment

391 Human Rights Council, *UN Guiding Principles on Business and Human Rights, Seventeenth Session* (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

392 Shift & Mazars LLP, *UN Guiding Principles Reporting Framework with Implementation Guidance* (2015) https://www.ungpreporting.org/wp-content/uploads/UNGPRreportingFramework_withguidance2017.pdf.

What does the company say publicly about its commitment to respect human rights?

A1.1 How has the public commitment been developed?

A1.2 Whose human rights does the public commitment address?

A1.3 How is the public commitment disseminated?

Embedding respect for human rights

How does the company demonstrate the importance it attaches to the implementation of its human rights commitment?

A2.1 How is day-to-day responsibility for human rights performance organized within the company, and why?

A2.2 What kinds of human rights issues are discussed by senior management and by the Board, and why?

A2.3 How are employees and contract workers made aware of the ways in which respect for human rights should inform their decisions and actions?

A2.4 How does the company make clear in its business relationships the importance it places on respect for human rights?

A2.5 What lessons has the company learned during the reporting period about achieving respect for human rights, and what has changed as a result?

Part B: Defining the Focus of Reporting

B1 Statement of salient issues: State the salient human rights issues associated with the company's activities and business relationships during the reporting period.

B2 Determination of salient issues: Describe how the salient human rights issues were determined, including any input from stakeholders.

B3 Choice of focal geographies: If reporting on the salient human rights issues focuses on particular geographies, explain how that choice was made.

B4 Additional severe impacts: Identify any severe impacts on human rights that occurred or were still being addressed during the reporting period, but which fall outside of the salient human rights issues, and explain how they have been addressed.

Part C: Management of Salient Human Rights Issues

Specific policies

Does the company have any specific policies that address its salient human rights issues and, if so, what are they?

C1.1 How does the company make clear the relevance and significance of such policies to those who need to implement them?

Stakeholder engagement

What is the company's approach to engagement with stakeholders in relation to each salient human rights issue?

- C2.1 How does the company identify which stakeholders to engage with in relation to each salient issue, and when and how to do so?
- C2.2 During the reporting period, which stakeholders has the company engaged with regarding each salient issue, and why?
- C2.3 During the reporting period, how have the views of stakeholders influenced the company's understanding of each salient issue and/or its approach to addressing it?

Assessing impacts

How does the company identify any changes in the nature of each salient human rights issue over time?

- C3.1 During the reporting period, were there any notable trends or patterns in impacts related to a salient issue and, if so, what were they?
- C3.2 During the reporting period, did any severe impacts occur that were related to a salient issue and, if so, what were they?

Integrating findings and taking action

How does the company integrate its findings about each salient human rights issue into its decision-making processes and actions?

- C4.1 How are those parts of the company whose decisions and actions can affect the management of salient issues, involved in finding and implementing solutions?
- C4.2 When tensions arise between the prevention or mitigation of impacts related to a salient issue and other business objectives, how are these tensions addressed?
- C4.3 During the reporting period, what action has the company taken to prevent or mitigate potential impacts related to each salient issue?

Tracking performance

How does the company know if its efforts to address each salient human rights issue are effective in practice?

- C5.1 What specific examples from the reporting period illustrate whether each salient issue is being managed effectively?

Remediation

How does the company enable effective remedy if people are harmed by its actions or decisions in relation to a salient human rights issue?

- C6.1 Through what means can the company receive complaints or concerns related to each salient issue?
- C6.2 How does the company know if people feel able and empowered to raise complaints or concerns?
- C6.3 How does the company process complaints and assess the effectiveness of outcomes?
- C6.4 During the reporting period, what were the trends and patterns in complaints or concerns and their outcomes regarding each salient issue, and what lessons has the company learned?
- C6.5 During the reporting period, did the company provide or enable remedy for any actual impacts related to a salient issue and, if so, what are typical or significant examples?

Implementation Guidance

Structure of the UN Guiding Principles Reporting Framework

The Reporting Framework is divided into three parts:

- Part A has two overarching questions, each with one or more supporting questions, which focus on the company's commitment to and governance of human rights risk management.
- Part B provides a filter point for the reporting company to narrow the range of human rights issues on which it will focus the remainder of its reporting under Part C. The focus is on those human rights issues that are salient within its activities and business relationships.
- Part C has six overarching questions, each with one or more supporting questions, which focus on the effective management of each of the salient human rights issues on which the company is reporting.

The overarching questions in Parts A and C focus on general, relevant information about the company's efforts to meet its responsibility to respect human rights. They are designed to enable responses from any company, including small companies and those at a relatively early stage in the process.

The supporting questions highlight more substantial and detailed information that would improve the quality of the reporting company's response to the overarching question. Each company can assess how many of these supporting questions it can answer, and to what extent.

Defining salient human rights issues

The key concept for using the UN Guiding Principles Reporting Framework is the concept of salient human rights issues, since it is these issues on which the reporting company will focus its reporting.

A company's salient human rights issues are those human rights that are at risk of the most severe negative impact through its activities or business relationships.

The focus of salient human rights issues is therefore on the most severe potential negative impacts on human rights. Most severe: defined in the Guiding Principles as those impacts that would be greatest in terms of:

- a) their scale: the gravity of the impact on the human right(s); and/or
- b) their scope: the number of individuals that are or could be affected; and/or
- c) their remediability: the ease with which those impacted could be restored to their prior enjoyment of the right(s).

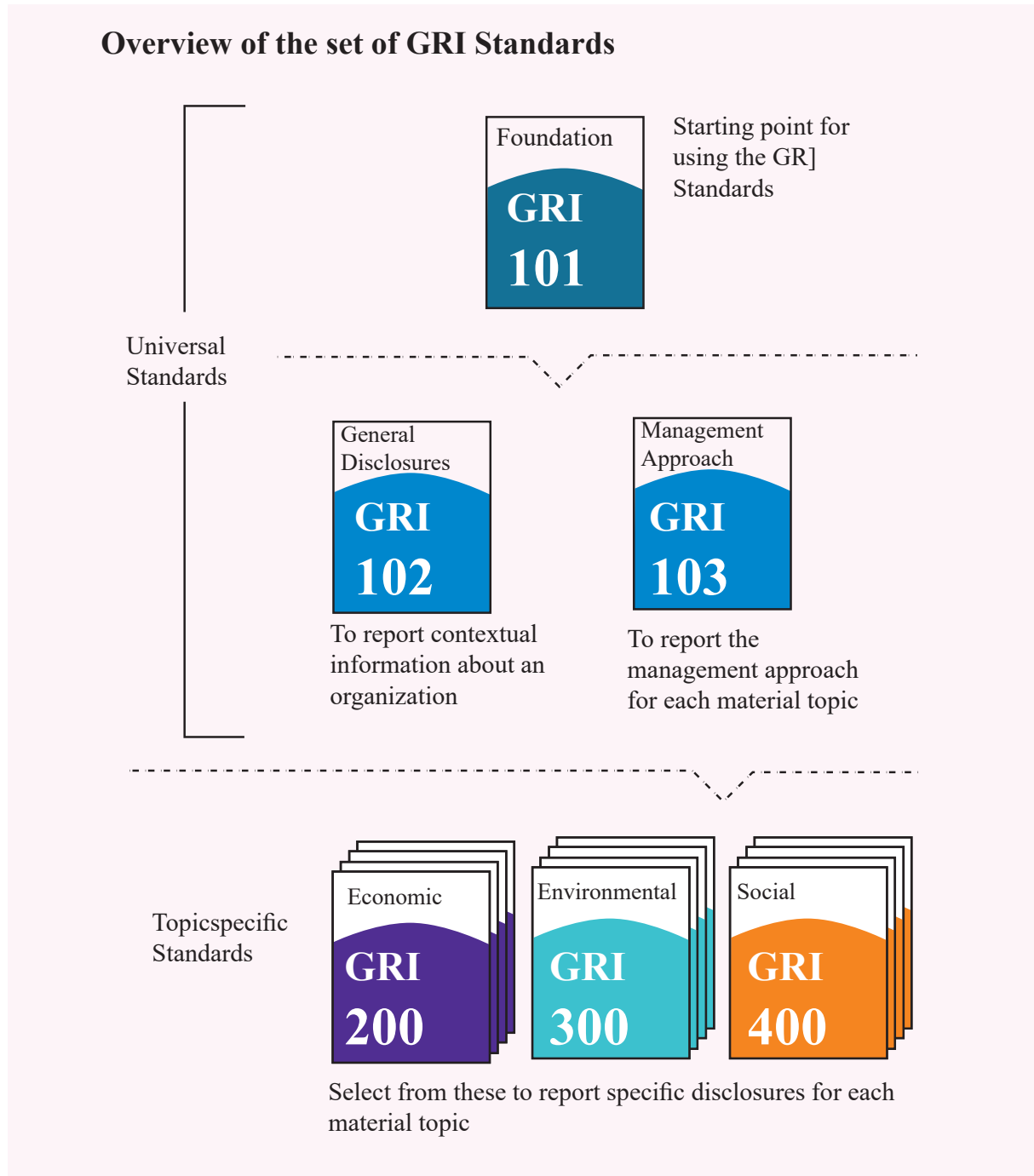
Reporting Principles

There are a number of cross-cutting principles that should guide the use of the UN Guiding Principles Reporting Framework.

- A. Setting human rights reporting in the business context
- B. Meeting a minimum threshold of information
- C. Demonstrating ongoing improvement
- D. Focusing on respect for human rights

- E. Addressing the most severe impacts on human rights
- F. Providing balanced examples from relevant geographies
- G. Explaining any omission of important information

Global Reporting Initiative, Sustainability Reporting Standards³⁹³



³⁹³ Global Reporting Initiative, *Consolidated set of GRI sustainability reporting standards* (2016) <https://www.globalreporting.org/standards/gri-standards-download-center/consolidated-set-of-gri-standards>.

GRI 400: Social

- 401: Employment
- 402: Labor/Management Relations
- 403: Occupational Health and Safety
- 404: Training and Education
- 405: Diversity and Equal Opportunity
- 406: Non-discrimination
- 407: Freedom of Association and Collective Bargaining
- 408: Child Labor
- 409: Forced or Compulsory Labor
- 410: Security Practices
- 411: Rights of Indigenous Peoples
- 412: Human Rights Assessment
- 413: Local Communities
- 414: Supplier Social Assessment
- 415: Public Policy
- 416: Customer Health Safety
- 417: Marketing and Labeling
- 418: Customer Privacy
- 419: Socioeconomic Compliance

Reporting Principles

The Reporting Principles are fundamental to achieving high quality sustainability reporting. An organization is required to apply the Reporting Principles if it wants to claim that its sustainability report has been prepared in accordance with the GRI Standards (...). The Reporting Principles are divided into two groups: principles for defining report content and principles for defining report quality.

Reporting Principles for defining report content	Reporting Principles for defining report quality
<ul style="list-style-type: none"> ● Stakeholder Inclusiveness ● Sustainability Context ● Materiality ● Completeness 	<ul style="list-style-type: none"> ● Accuracy ● Balance ● Clarity ● Comparability ● Reliability ● Timeliness

Materiality

1.3 The report shall cover topics that:

- 1.3.1 reflect the reporting organization's significant economic, environmental, and social impacts; or
- 1.3.2 substantively influence the assessments and decisions of stakeholders.

Guidance

An organization is faced with a wide range of topics on which it can report. Relevant topics, which potentially merit inclusion in the report, are those that can reasonably be considered important for reflecting the organization's economic, environmental, and social impacts, or influencing the decisions of stakeholders. In this context, 'impact' refers to the effect an organization has on the economy, the environment, and/or society (positive or negative). A topic can be relevant – and so potentially material – based on only one of these dimensions.

In financial reporting, materiality is commonly thought of as a threshold for influencing the economic decisions of those using an organization's financial statements, investors in particular. A similar concept is also important in sustainability reporting, but it is concerned with two dimensions, i.e., a wider range of impacts and stakeholders. In sustainability reporting, materiality is the principle that determines which relevant topics are sufficiently important that it is essential to report on them. Not all material topics are of equal importance, and the emphasis within a report is expected to reflect their relative priority.

A combination of internal and external factors can be considered when assessing whether a topic is material. These include the organization's overall mission and competitive strategy, and the concerns expressed directly by stakeholders. Materiality can also be determined by broader societal expectations, and by the organization's influence on upstream entities, such as suppliers, or downstream entities, such as customers. Assessments of materiality are also expected to take into account the expectations expressed in international standards and agreements with which the organization is expected to comply. (...)

It is important that the organization can explain the process by which it determined the priority of topics. (...)

In defining material topics, the reporting organization has taken into account the following factors:

- Reasonably estimable economic, environmental, and/or social impacts (such as climate change, HIV-AIDS, or poverty) identified through sound investigation by people with recognized expertise, or by expert bodies with recognized credentials;
- The interests and expectations of stakeholders specifically invested in the organization, such as employees and shareholders;
- Broader economic, social, and/or environmental interests and topics raised by stakeholders such as workers who are not employees, suppliers, local communities, vulnerable groups, and civil society;
- The main topics and future challenges for a sector, as identified by peers and competitors;
- Laws, regulations, international agreements, or voluntary agreements of strategic significance to the organization and its stakeholders;
- Key organizational values, policies, strategies, operational management systems, goals, and targets;
- The core competencies of the organization and the manner in which they can contribute to sustainable development;
- Consequences for the organization which are related to its impacts on the economy, the environment, and/or society (for example, risks to its business model or reputation) (...)

Reasons for omission

- 3.2 If, in exceptional cases, an organization preparing a sustainability report in accordance with the GRI Standards cannot report a required disclosure, the organization shall provide in the report a reason for omission that:
 - 3.2.1 describes the specific information that has been omitted; and
 - 3.2.2 specifies one of the following reasons for omission from Table 2, including the required explanation for that reason.

International Integrated Reporting Framework³⁹⁴

An Integrated Report

The primary purpose of an integrated report is to explain to providers of financial capital how an organization creates value over time. An integrated report benefits all stakeholders interested in an organization's ability to create value over time, including employees, customers, suppliers, business partners, local communities, legislators, regulators and policy-makers.

The International <IR> Framework (the Framework) takes a principles-based approach. The intent is to strike an appropriate balance between flexibility and prescription that recognizes the wide variation in individual circumstances of different organizations while enabling a sufficient degree of comparability across organizations to meet relevant information needs. It does not prescribe specific key performance indicators, measurement methods, or the disclosure of individual matters, but does include a small number of requirements that are to be applied before an integrated report can be said to be in accordance with the Framework.

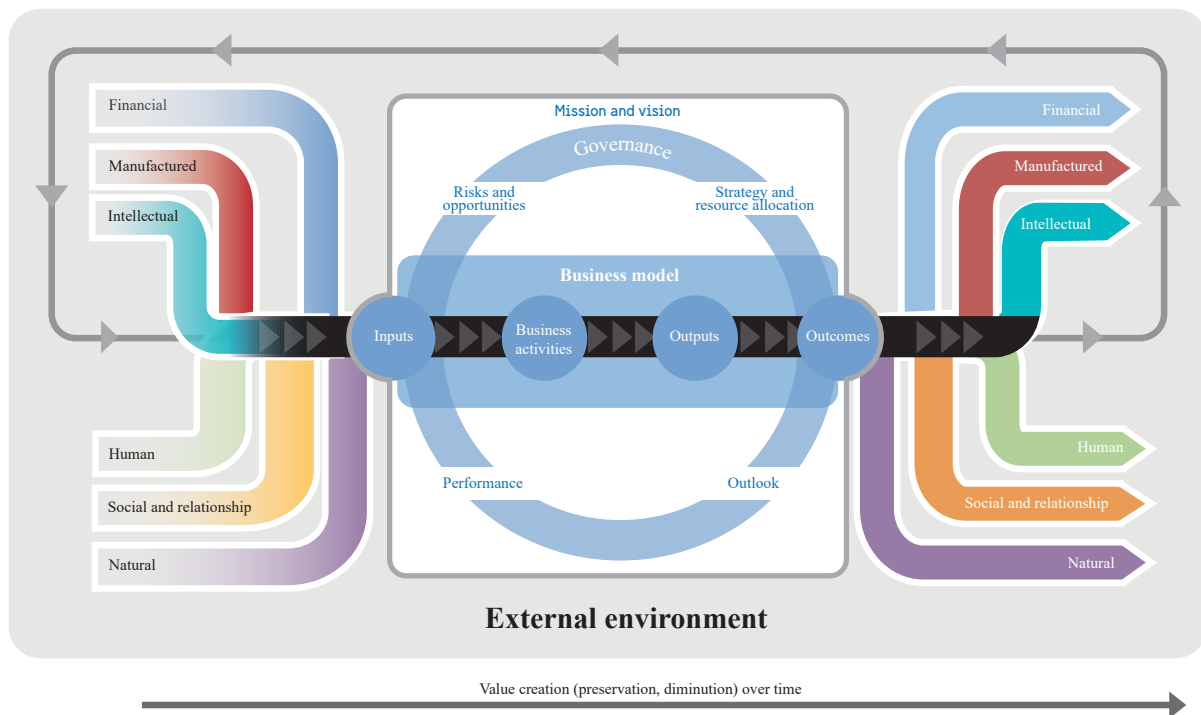
Fundamental Concepts

An integrated report aims to provide insight about the resources and relationships used and affected by an organization – these are collectively referred to as “the capitals” in this Framework. It also seeks to explain how the organization interacts with the external environment and the capitals to create value over the short, medium and long term.

The capitals are stocks of value that are increased, decreased or transformed through the activities and outputs of the organization. They are categorized in this Framework as financial, manufactured, intellectual, human, social and relationship, and natural capital, although organizations preparing an integrated report are not required to adopt this categorization or to structure their report along the lines of the capitals.

The ability of an organization to create value for itself enables financial returns to the providers of financial capital. This is interrelated with the value the organization creates for stakeholders and society at large through a wide range of activities, interactions and relationships. When these are material to the organization's ability to create value for itself, they are included in the integrated report.

³⁹⁴ International Integrated Reporting Council, *International Integrated Reporting Framework* (2013) <http://integratedreporting.org/resource/international-ir-framework/>.



Integrated Report - Content Elements

An integrated report includes eight Content Elements that are fundamentally linked to each other and are not mutually exclusive:

- *Organizational overview and external environment:* What does the organization do and what are the circumstances under which it operates?
- *Governance:* How does the organization's governance structure support its ability to create value in the short, medium and long term?
- *Business model:* What is the organization's business model?
- *Risks and opportunities:* What are the specific risks and opportunities that affect the organization's ability to create value over the short, medium and long term, and how is the organization dealing with them?
- *Strategy and resource allocation:* Where does the organization want to go and how does it intend to get there?
- *Performance:* To what extent has the organization achieved its strategic objectives for the period and what are its outcomes in terms of effects on the capitals?
- *Outlook:* What challenges and uncertainties is the organization likely to encounter in pursuing its strategy, and what are the potential implications for its business model and future performance?
- *Basis of presentation:* How does the organization determine what matters to include in the integrated report and how are such matters quantified or evaluated?

UN Global Compact, Reporting Requirements³⁹⁵

Submitting an annual COP [Communication on Progress] is at the heart of your company's commitment to the UN Global Compact and provides valuable information to your stakeholders. (...) Because our participants are all at different stages in their sustainability journeys, COPs are categorized into three differentiation levels based on the depth of their disclosure. We also collaborate with other frameworks — for example, the Global Reporting Initiative (GRI) — to ensure that the standards are aligned and that meeting the requirements of one framework helps to comply with the others.

Differentiation Levels

Based on a company's self-assessment, each COP falls into one of the following differentiation levels:

- GC Advanced: COPs that qualify as GC Active and, in addition, cover the company's implementation of advanced criteria and best practices
- GC Active: COPs that meet the minimum requirements
- GC Learner: COPs that do not meet one or more of the minimum requirements

COP Minimum Requirements³⁹⁶

Business participants are required to communicate progress annually to stakeholders. A COP is a direct communication from business participants to their stakeholders. For this reason, participants are required to make their COP widely available. While the overall format is flexible, each COP must contain the following three elements:

- a. A statement by the chief executive expressing continued support for the Global Compact and renewing the participant's ongoing commitment to the initiative and its principles.
- b. A description of practical actions (i.e., disclosure of any relevant policies, procedures, activities) that the company has taken (or plans to undertake) to implement the Global Compact principles in each of the four issue areas (human rights, labour, environment, anti-corruption). Note: In cases where a COP does not address one or more of the four issue areas, it must provide an explanation ("report or explain").
- c. A measurement of outcomes (i.e., degree to which targets/performance indicators were met, or other qualitative or quantitative measurements of results).

Shift & Mazars, UNGP Reporting Database³⁹⁷

The Database currently includes 113 companies from 11 sectors. Sectors represented are: apparel and footwear; banking and financial services; food and beverage; ICT; infrastructure, construction and building materials; oil equipment and services; oil, gas and extractives; palm oil; personal care; tobacco; transportation and transport operators. Per sector, we review the largest companies by market capitalization.

The Database is searchable by sector, headquarters location, salient issue, company and question of the Reporting Framework. The results are viewable in your browser or downloadable as an Excel file.

395 Global Compact, *The Communication on Progress (COP) in Brief* <https://www.unglobalcompact.org/participation/report/cop>.

396 UN Global Compact *Policy on Communicating Progress* (2013) https://www.unglobalcompact.org/docs/communication_on_progress/COP_Policy.pdf.

397 Shift & Mazars LLP, *Database & Analysis of Company Reporting* <https://www.ungpreporting.org/database-analysis/>.

Apple, Supplier Responsibility Report³⁹⁸

A supplier employee takes worker voice to new heights

In 2013, Xu Yuexia joined CSMC, an Apple final assembly facility in Jiangsu, China, as an operator. On her first day of work, Xu was trained on local employment laws, as well as Apple's Supplier Code of Conduct.

Through the years, Xu rose up the ranks from management trainee to multifunction employee to supervisor. While developing her career, Xu also worked to develop a team of employees dedicated to providing worker rights advocacy to the over 40,000 employees at CSMC. In 2015, Xu became a member of the Moral Support team. The team acts as a support network for employees, providing a place where they can voice their concerns, which are then brought to management. The Moral Support team also arranges community service projects and team-building activities, and promotes company culture.

Xu is very dedicated to the Moral Support team and has helped increase their impact significantly. In 2017, she organized over 50 employee forums. As a result of these forums, more than 100 cases were brought to management and workplace improvements were made. Xu and team also work directly with Apple to identify employees with grievances during assessment visits and interviews. Xu finds that her role is always evolving, but she enjoys the challenge of learning new things. She's very proud of the Moral Support team's results and their ability to improve the lives of her fellow employees.

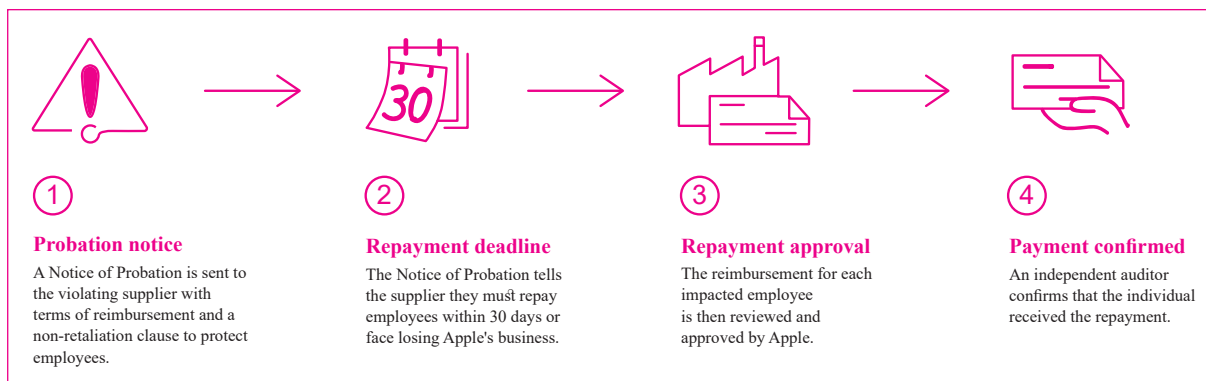
Going further to fight bonded labor

Bonded labor occurs when a person is forced to work in exchange for the repayment of a debt or other obligation — sometimes levied as a fee for receiving a job in the first place. In 2008, we made this a Core

Violation of the Apple Supplier Code of Conduct and limited permissible fees to one month's wages.

In 2015, Apple went even further — leading the way in mandating that zero fees can be charged to supplier employees for recruitment opportunities, even if those fees fall within the legal limits of the supplier's operating country. If bonded labor is discovered, the supplier is required to repay the recruitment fees in full to all impacted employees.

If debt-bonded labor is uncovered, immediate action is taken:

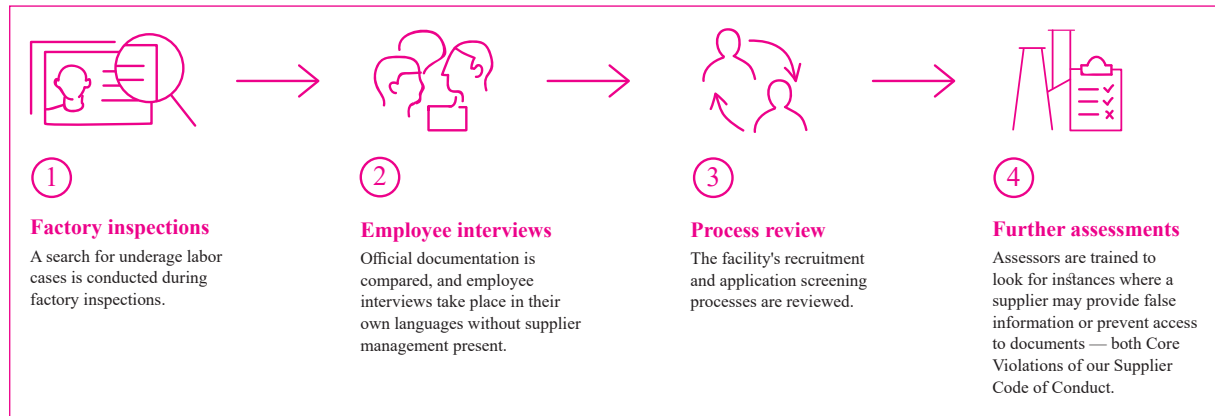


398 Apple, *Supplier Responsibility, Progress report* (2018) https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2018_Progress_Report.pdf.

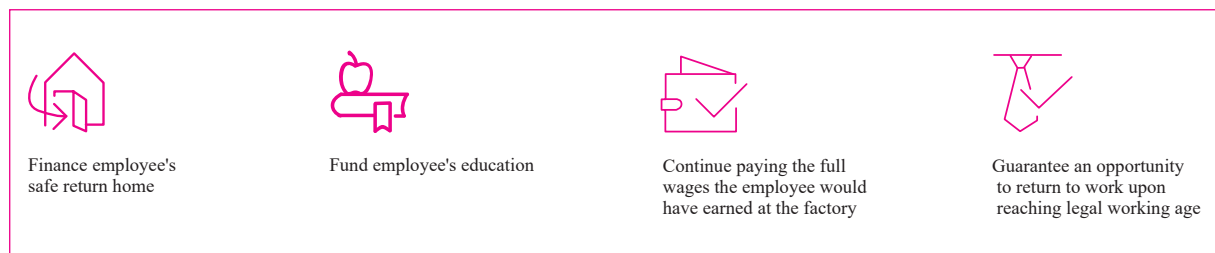
Underage labor is unacceptable

Apple strictly prohibits underage labor in our Supplier Code of Conduct. In addition to a zero tolerance policy, we partner with suppliers to continuously improve training, communication, and detection methods for false identification to eliminate underage labor throughout the supply chain.

How We Identify Underage Labor:



Identifying underage labor is not enough, the supplier must:



Adidas, Annual Report³⁹⁹

Working Conditions in Our Supply Chain

Onboarding

In 2019, we conducted initial assessments (IA), the first approval stage for new entry into our supply chain, in 189 factories (2018: 221), a decrease of 14% compared to 2018, mainly due to our decision to grow in existing factories rather than onboarding new ones. 49 factories (2018: 55 factories) were either rejected directly after the initial assessment identified zero-tolerance issues, or were 'rejected with a second visit' due to identification of one or more threshold issues, which means they were rejected but given the chance to remediate the non-compliance issues within a specific timeframe. The vast majority (84%) of all initial assessments were undertaken in Asia (2018: 90%), with China accounting for 38% of these assessments (2018: 41%).

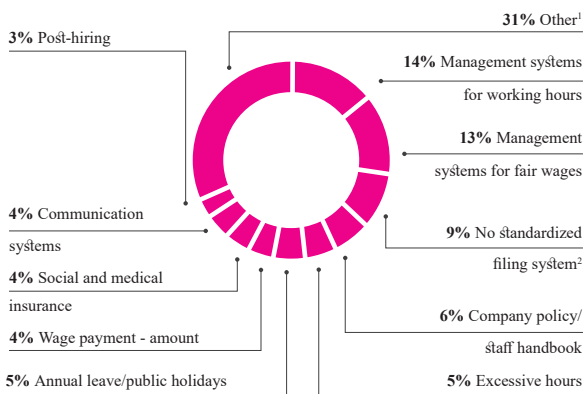
Overall, at the end of 2019, the 'first-time rejection rate' of 34% of all new factories visited was slightly higher than in the previous year (2018: 30%), as was the 'final rejection rate', which increased to 4% in 2019. The latter was due to the rigor applied to the initial assessments. The remediation of factory issues is beneficial for workers as it raises the bar in terms of better and timelier pay, improved benefits, reduced hours, and the legal protection of formal employment contracts, and it results in significant improvements in basic health and safety within the workplace. Suppliers who have threshold issues are normally given three months to remediate those issues before being re-audited for final acceptance.

³⁹⁹ Adidas, *Annual report* (2019) https://report.adidas-group.com/2019/en/servicepages/downloads/files/adidas_annual_report_2019.pdf.

Shortcomings identified in active factories

Our suppliers' factories are evaluated against a number of critical compliance issues. While threshold issues are serious but correctable non-compliances that can be addressed in a specified timeframe through remedial action, zero-tolerance issues – such as forced labor, child labor practices and critical life-threatening health, safety and environment conditions – immediately trigger a warning and potential disqualification of a supplier. We report these non-compliance findings that were identified through performance audits, collaboration audits and self-governance assessments in 2019. We follow up on all cases of non-compliance and seek to remediate them within a given timeframe. As can be seen below, the identified issues in 2019 remained largely the same as those in 2018.

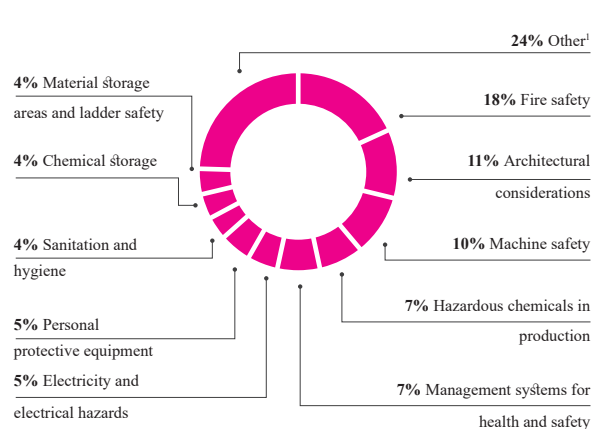
Top 10 shortcomings in the area of labor identified during audits in 2019 49



¹ 'Other' includes, for example, freedom of association issues, and management system for disciplinary practices.

² No standardized filing system² indicates a factory does not keep relevant information/documents and records which demonstrate compliance with laws and regulations.

Top 10 shortcomings in the area of health and safety identified during audits in 2019 50



¹ 'Other' includes, for example, housekeeping, occupational hazard risk assessment, and ergonomics.

Enforcement

Warning letters are an essential part of our enforcement efforts and are triggered when we find ongoing serious noncompliance issues that need to be addressed by our suppliers' factories. We work closely with our suppliers to help them improve their performance. However, where we face situations of severe or repeated non-compliance, we do terminate business relationships with factories.

Warning letters: In 2019, we had a total of 41 active warning letters (2018: 39) across 14 countries. The largest number of warning letters continues to be issued in Asia. Compared to the previous year, the overall number of active first warning letters decreased slightly; the total number of second warnings increased from one in 2018 to six in 2019. Factories that receive second warning letters are only one step away from being notified of possible termination of the manufacturing agreement and receive focused monitoring by the SEA team. The number of third warning letters issued to business partners (which result in factory terminations) remained stable in 2019 (2018: 1). It is difficult to generalize about the grounds for a warning letter as it may be issued for a single unresolved non-conformance or for multiple breaches of our standards. The range of issues that resulted in warning letters in 2019 due to non-compliance regarding fire safety practices, receipt of wages, social and medical insurance, hazardous chemicals management, overtime, deductions, transparency or safety controls in high-risk areas remained the same compared to the previous year.

Terminations: In 2019, we terminated agreements with two suppliers for compliance reasons (2018: 1). In one case there was inadequate progress in remediating serious migrant labor issues and in the other the supplier refused to grant the SEA team access to audit the factory.

While terminations happen at our existing factories, we pre-screen all new factories and if our initial assessments uncover zero-tolerance or threshold issues factories are rejected.

Nike, Sustainable Business Report⁴⁰⁰

Issue Prioritization

At NIKE, we look at sustainability throughout our value chain. This view is vital because most of our environmental and social impacts – as well as our opportunities – occur within our influence, but outside of our direct control. (...)

In FY14/15, we conducted an in-depth quantitative analysis to review and prioritize our key sustainability issues. First, we reviewed multiple ESG standards, frameworks, and rating systems. Next, we added current megatrends, stakeholder feedback, and the priorities of our key coalitions and partnerships to develop a complete universe of issues that would be relevant to NIKE's business model. This netted us upwards of approximately 400 potential topics. Then, we filtered for relevance by looking at location, risk, and other measures to determine 12 priority issues and mapped these against each stage in our value chain.

These results were key to internal strategy conversations and have supported our understanding that the two leading drivers of our environmental and social impacts are:

1. The materials we use in our products, and
2. The outsourced manufacturing of those products.

In FY17, we brought the voices of internal and external stakeholders into this analysis. We reached out to a wide range of stakeholders, including employees, NGOs, academics, investors, suppliers, and corporate peers.

Our survey was designed to identify the most relevant issues at each value chain stage and the impacts most directly linked to those issues. (...)

FY16/17 priority issues

- active kids (previously community impact)
- chemistry
- child labor (previously labor compliance)
- employment
- energy
- excessive overtime
- freedom of association (previously labor compliance)
- GHG emissions
- non-renewable resource depletion
- material waste (new issue)
- occupational health & safety
- total compensation

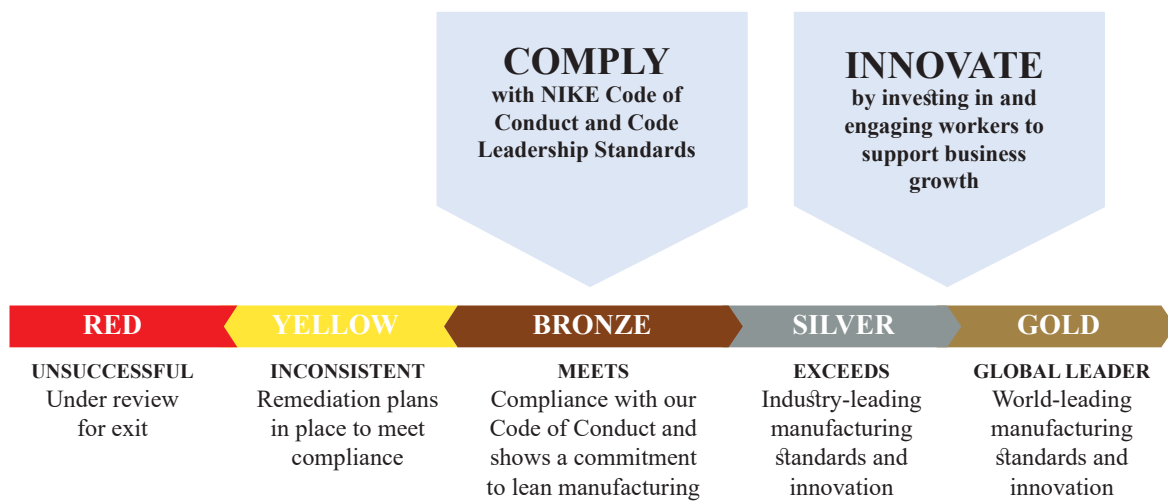
⁴⁰⁰ Nike, *Sustainable Business Report*, FY16/17 https://s1.q4cdn.com/806093406/files/doc_downloads/2018/06/NIKE-FY1617-Sustainable-Business-Report_FINAL.pdf.

- water use
- workforce development

Sustainable Sourcing

In 2011, we established a 2020 target to source only from factories that meet our definition of sustainable, or rate ‘Bronze’ on our Sustainable Manufacturing & Sourcing Index (SMSI). To assess progress, we regularly audit contract factories against our Code of Conduct and Code Leadership Standards, often with the support of independent third-party organizations such as Better Work (a joint program of the United Nations ILO and the International Finance Corporation, a member of the World Bank Group) and the Fair Labor Association (FLA). Results of audits done by these third-party organizations are shared transparently through their sites.

SUSTAINABLE MANUFACTURING & SOURCING INDEX (SMSI)



While 91 percent of our factories now achieving bronze status or higher represents real progress, 10 percent of our contract manufacturers did not meet our required standards for compliance at the end of FY17. When factories fall below compliance, they are given time to correct the issues. Those failing to remediate issues prior to their next audit are placed on probation and re-audited six months later. Failure to meet NIKE’s bronze standard at that point will prompt consideration of a potential responsible exit. If critical issues are found, immediate remediation is required. We continue to review the most frequent areas of non-compliance, such as hours, wages, and benefits to identify ways we can work with our contract factories to strengthen compliance.

BHP, Sustainability Report⁴⁰¹

Our stakeholders

As a global company, we interact with a range of stakeholders. Our methods and frequency of communicating to, and with, stakeholders are also diverse.

- Globally, we communicate via our Annual General Meetings, corporate publications (including the Annual Report, Sustainability Report and other topic-specific reports), our website (bhp.com), releases to the market and media, analyst briefings, speeches and interviews with senior executives.

401 BHP, *Sustainability Report* (2017) <https://www.bhp.com/-/media/documents/investors/annual-reports/2017/bhpsustainabilityreport2017.pdf>.

- At a regional and local level, each asset is required to plan, implement and document stakeholder engagement activities. This includes newsletters and reports; community perception surveys and consultation groups; implementing community complaints and grievance mechanisms; and representation on specific industry association committees and initiatives.
- As a key stakeholder group, we also engage with our people (employees and contractors) via tailored internal channels.

These channels include our intranet; email and newsletters; town halls; and by inviting feedback and comment through employee perception surveys.

Our key stakeholders include:

- business partners
- community-based organisations
- employees and contractors
- governments and regulators
- industry peers and associations
- labour unions
- local and Indigenous communities
- media
- non-government organisations
- shareholders and investment organisations
- society partners
- suppliers and customers

Reporting boundary and scope

This Sustainability Report covers BHP's assets (including those under exploration, projects in development or execution phases, sites and closed operations) that have been wholly owned and operated by BHP and assets that have been owned as a joint operation which are operated by BHP (referred to in this Report as 'assets', or 'operated assets' or 'operations') during the period from 1 July 2016 to 30 June 2017. Our Marketing and Supply business and our functions are also included.

Respecting human rights

Respecting human rights is critical to the sustainability of our business. (...) We are committed to operate in a manner consistent with the United Nations' (UN) Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the Voluntary Principles on Security and Human Rights and the 10 UN Global Compact principles.

We aim to identify and manage human rights-related risks in all our activities. (...) A risk-based approach that includes consideration of human rights and community impact issues is required for our decisions around acquisitions and divestments, new activities in high-risk countries and major capital projects. The most relevant human rights issues for our industry include occupational health and safety, labour conditions, activities of security forces, and the rights of Indigenous peoples and communities near our operations. (...)

We set minimum mandatory requirements for all our suppliers and relevant contractors, including zero tolerance in relation to child labour, forced or compulsory labour, freedom of association, living wage, non-discrimination and diversity, workplace health and safety, community interaction and treatment of employees.

Corporate Human Rights Benchmark

In FY2017, BHP received a score of 69 out of 100 in the inaugural Corporate Human Rights Benchmark (CHRB) published by investors and civil society organisations to create a public benchmark of corporate human rights policy, practice and performance. The CHRB is based on publicly available information.

Among the 98 publicly traded companies assessed, BHP was the highest ranked company overall and the highest ranked of 41 extractives companies. We have carefully reviewed the assessment to identify areas where we may be able to enhance our human rights performance.

Vodafone, Sustainable Business Report⁴⁰²

Supply chain integrity and safety

Our businesses rely on a very large supply chain spanning around 17,000 companies across dozens of countries. We seek to ensure the safety, wellbeing and ethical treatment of all who work with Vodafone in any capacity, anywhere in the world. However, there is a broad range of labour rights and safety and environmental risks inherent with such a complex supply chain, and many of those risks also arise in the business operations under our own direct control.

Digital rights and freedoms

In 2014, we published our first Law Enforcement Disclosure transparency report setting out the details of how we responded to lawful demands for access to our customers' private data from law enforcement and intelligence agencies. The report has been updated and expanded since the initial publication and is now widely considered to be the most comprehensive of its kind in the world. During the year, we decided to move away from a static 'moment in time' annual transparency report in favour of a continuous disclosure model, reflecting the fact that the issues in question tend to emerge and transform rapidly. We have now launched our new online Digital Rights and Freedoms Reporting Centre containing our policies, principles and views on a wide range of topics including law enforcement surveillance, privacy, data protection, freedom of expression, censorship and the digital rights of the child.

Unilever, Human Rights Progress Report⁴⁰³

Our ambition is to embed the respect and promotion of human rights into every function, role and corner of our organisation. As part of meeting that ambition, we made a commitment in 2014 to disclose our efforts and challenges in implementing the UN Guiding Principles on Business and Human Rights.

This report follows our inaugural report on human rights, published in 2015, which was the first report by a business to use the UN Guiding Principles Reporting Framework comprehensively. That first report, 'Enhancing Livelihoods, Advancing Human Rights', contains an in-depth analysis and description of our strategy and the foundational steps we have taken, as well as information on our eight salient human rights issues. (...)

402 Vodafone, *Sustainable Business Report* (2017) <http://www.vodafone.com/content/dam/vodafone-images/sustainability/downloads/sustainablebusiness2017.pdf>.

403 Unilever, *Human Rights Progress Report* (2017) https://www.unilever.com/Images/human-rights-progress-report_tcm244-513973_en.pdf.

Promoting respect for human rights in our business and value chain is an important way of transforming people’s lives and furthering Unilever’s contribution to the UN’s Sustainable Development Goals.

Our Five Focus Areas

We continue to have five areas of focus for our work in embedding human rights across our business:



Salient human rights issues

We define them as the human rights that are at risk of the most severe negative impacts through a company’s activities or business relationships.

We have worked with a range of expert internal and external stakeholders to identify where, and how, our activities could result in risks to human rights, so that we could establish which issues were most salient.

1. Discrimination
2. Fair wages
3. Forced labour
4. Freedom of association
5. Harassment
6. Health and safety
7. Land rights
8. Working hours

Willing to learn

Resolving human rights challenges is often complex, and relies in part on a willingness to listen and learn. In 2016, Oxfam published ‘Labour Rights in Vietnam – Unilever’s Progress and Systemic Challenges’, a follow up to their initial 2013 report on a two-year research project, ‘Labour Rights in Unilever’s Supply Chain’, designed to learn how we could best operationalise the UN Guiding Principles on Business and Human Rights.

Oxfam’s progress update reported considerable improvements against the original report’s recommendations in the areas of supporting workers’ livelihoods, providing human rights training, implementing more ways in which workers can raise areas of concern, and working more closely with suppliers and partners to ensure standards are

met. There had been progress in Unilever’s own factory, for example in the areas of wages and direct employment. There is still more work to do such as increasing the opportunities for female factory workers and continuing to ensure that our engagement with suppliers supports both progress on human rights and the business case for responsible sourcing.

Open, frank dialogue and understanding of the challenges and opportunities, particularly at the local level, have been a key part of this work with learnings on both sides.

Hess, Sustainability Reporting as a Regulatory Mechanism⁴⁰⁴

This chapter encourages academics, policy makers, and others, to consider more fully the system required for sustainability reporting to have a meaningful, positive impact on corporate behavior. In short, we need to remember two things. First, transparency is not an end in itself. Any transparency-based policy initiative designed to improve the performance of corporations with respect to issues of sustainability must be based on a clear understanding of how the required disclosures will lead to improved performance. The New Governance approach to regulation, and the pillars of disclosure, dialogue, and development, provide one way to think through those issues. Second, when considering mandated disclosure of sustainability reports, we must be sure to consider how those reports will be used in practice. There needs to be a clear understanding of how we expect the action cycle to work, where the potential breakdown points of the cycle are located due to various actors’ incentives, and how those breakdowns can be avoided or corrected.

North, Corporate Sustainability Practices and Regulation⁴⁰⁵

Public corporations are increasingly acknowledging their role in society and the need to communicate and engage with their many stakeholders. This broader focus is evidenced by sustainability disclosures in the form of management discussion and analysis, standalone sustainability reports and integrated reports.

The paper reviews the use of soft and hard law rules and the disclosure delivery mechanisms within these developing reporting frameworks. It then considers the purposes and intended audience of sustainability disclosures, the requirement for and benefits of mandatory reporting regimes, and the design of a best practice regulatory structure.

It concludes that best practice corporate sustainability decision making, conduct, and reporting require clear objectives and rules and independent monitoring and supervision. It highlights the need for public confidence and trust in corporations and financial markets and suggest this requires companies to install a culture of continuous disclosure, engagement, and accountability with all investors and other stakeholders, especially during periods of stress or crises.

Hess, The Transparency Trap⁴⁰⁶

Unfortunately, the expectation that general transparency programs will increase corporate accountability and encourage positive organizational change with respect to human rights issues is misplaced, as will be shown in this part. First, there are significant limits on the ability of available metrics to convey a meaningful picture of a company’s performance on human rights issues to external stakeholders. Second, in practice, problems such as selective disclosure, impression management, incomparable disclosures (over time and between companies), and treating disclosure as an end in itself (as opposed to a process that leads to organizational change) limit the effectiveness of these programs. (...)

404 David Hess, *The Future of Sustainability Reporting as a Regulatory Mechanism*, Ross School of Business Working Paper (2014) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2416920.

405 Gill North, ‘Corporate Sustainability Practices and Regulation: The Existing Frameworks & Best Practice Proposals’ in Jean J. du Plessis and Chee Keong Low, *Corporate Governance Codes for the 21st Century* (Springer, 2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2997782.

406 David Hess, ‘The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights’, *American Business Law Journal*, 56:1 (2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3300303.

First, there is the problem that “not everything that can be counted counts, and not everything that counts can be counted.” Reports on the complex issues surrounding the responsibility to respect human rights often include a selection of metrics that are based on data that can be most easily collected, as opposed to the most important. This often results in a focus on company policies and procedures, not performance outcomes. For example, metrics on the percentage of employees receiving human rights training or the percentage of suppliers screened for human right issues are easy to create, but they do not capture the effectiveness of those efforts.¹³¹ This problem, created by an evaluation of corporations based on available data and easy to construct metrics, is an example of the “streetlight effect,” which is the tendency for people to rely upon the most convenient information rather than the most relevant information. (...)

Many of the prior studies on non-financial disclosure relied upon legitimacy theory, which, as used in these studies, claims that corporations often use disclosure to influence external stakeholders’ perceptions of the corporation’s behavior. A company that does not meet societal expectations of responsible behavior may selectively disclose certain non-financial information to present a factually accurate but misleading picture of the company to influence stakeholders’ perceptions. (...)

More recent studies on non-financial disclosure sought to determine whether the increased experience with sustainability reporting, now that it has become more mainstream, has improved the quality of information and reduced strategic behaviors. These studies generally confirm the legitimacy factors of prior studies. For example, a company that suffered a negative event, or is part of an industry facing significant public issues, will often engage in selective positive disclosure.

In addition to the findings on legitimacy theory, this new evidence indicates that non-financial reporting has not improved significantly in terms of quality, comparability, and comprehensiveness. Researchers have not found evidence of improvement, despite the increased use of and experience with the GRI guidelines and non-financial reporting in general. A common problem is that companies seek to gain legitimacy with external stakeholders by simply disclosing an increased quantity of information and claiming to have complied with the GRI, even though a closer examination casts doubt on the quality of the disclosures. For instance, Michelon and colleagues studied 112 UK company reports to determine if a standalone sustainability report produced in accordance with the GRI and receiving external assurance improved the quality of disclosure. They found that the standalone report approach increased the quantity of non-financial information (though it was also diluted with additional irrelevant information), but none of the three factors studied (standalone report, use of the GRI, and external assurance) increased the quality of the information. The authors argued that these conclusions supported the legitimacy theory prediction that corporations simply disclose to manage their corporate image. (...)

Moreover, the information contained in sustainability reports is often not comparable between companies within a given industry. Comparable information is important for allowing stakeholders to determine the leaders and laggards in an industry, and then push the laggards to improve their performance. Boiral and Henri studied the comparability of information in sustainability reports by examining twelve companies from one industry (mining) that all used the same GRI guidelines. Surprisingly, the authors found that “quantitative indicators are not necessarily the most comparable [indicators].” One reason for this result was that companies used different measurement scales for the same issue. A second reason was the different contexts in which the companies operated—a potentially common problem for many human rights metrics. (...)

One consistent finding across the many studies is that non-financial disclosure, including disclosures in standalone reports in accordance with the GRI, continues to focus on positive information and ignore the negative. In the study of socially responsible investing practitioners, almost ninety percent of the interviewees agreed that “the majority of the companies do not publish information that could contribute to tarnishing their reputation.” Thus, to ensure that they have an accurate picture of the company, these practitioners must supplement the information from reports with other sources of information. (...)

Background (Cambodia)

Miethlich, Sustainability Reporting in Cambodia: Hidden Champion of ASEAN⁴⁰⁷

This study aimed to present and analyze the current situation of sustainability reporting in Cambodia to determine whether and in what way sustainable development and its reporting is a concern of Cambodian companies. (...)

The analysis of the GRI Sustainability Disclosure Database showed that sustainability reporting by companies in Cambodia had increased continuously over the last ten years. The largest share is accounted for by companies in the financial sector, followed by the tourism and leisure sector and the telecommunications sector. The companies in the manufacturing sector, most of which are suppliers, do not appear to have sustainability reporting. In terms of company size, it is mainly large companies that carry out sustainability reporting. What is surprising, however, is that SMEs is increasingly disclosing and communicating its commitment to sustainable development. MNEs, on the other hand, only started doing so a few years ago and still make up the smallest share. (...)

Despite the efforts of the Cambodian government to promote sustainable development, only a small proportion of companies in the country communicate their CSR and sustainable development efforts. This is not unusual in the sense that companies are unable to provide sustainability reporting due to the lack of CSR data or available data, associated costs, lack of motivation, or poor corporate performance. (...)

In comparison with the other ASEAN countries, in terms of sustainability reporting, in relation to GDP (PPP), Cambodia is the leader. Thus, it can be said that considering Cambodia's enormous and rapid development to date, the consistent strategy towards sustainable development pursued by the government and especially in relation to current economic performance, Cambodia today could be seen as a hidden champion of sustainability reporting by ASEAN countries and can thus also serve as a role model for other developing countries.

Instruments (Cambodia)

Law on Commercial Enterprises⁴⁰⁸

Financial Disclosure – Article 224: Annual financial statements

At every annual general meeting of shareholders, the directors shall present an annual financial statement to the shareholders. The statement shall include the following: (a) comparative financial statements for the current financial year and the prior financial year. In the first year of the company's existence, the financial statement shall cover the period beginning on the date the company came into existence and ending on a date not more than 6 months before the annual meeting; (b) the report of the auditor; and (c) any further information respecting the financial position of the company and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

SEC of Cambodia, Prakas on Corporate Governance of Listed Companies⁴⁰⁹

Chapter II Shareholders

407 Boris Miethlich, 'Sustainability Reporting in Cambodia: The Hidden Champion of ASEAN Countries' *International Journal of Recent Technology and Engineering* (2019) https://www.researchgate.net/publication/337658379_Sustainability_Reporting_in_Cambodia_The_Hidden_Champion_of_ASEAN_Countries.

408 Cambodia, *Law on Commercial Enterprises* (2005) http://www.cambodiainvestment.gov.kh/wp-content/uploads/2012/03/Law-on-Commercial-Enterprises_English_050517.pdf.

409 Securities and Exchange Commission of Cambodia, *Prakas on Corporate Governance for Listed Public Enterprise*, No. 013/10 (2010) <http://csx.com.kh/laws/prakas/viewPost.do?MNCD=2030&postId=97>.

Article 7. Right to Access Information

The Listed Public Enterprise should have a website which the shareholders and the public can access information. Shareholders shall access audited annual financial statements, operating results, any quarterly financial reports, information about the directors and senior officers, and other information about the Listed Public Enterprise. If the Listed Public Enterprise does not have the website, shareholders may request the hard copies of the above mentioned information and are required to pay reasonable fees for the costs of printing and distribution.

Chapter VIII Stakeholders

Article 44. Protection of Stakeholders' Rights

Creditors, related interest individuals or individuals who have contracted with the Listed Public Enterprise are considered as its stakeholders. All stakeholders' rights shall be protected. The Listed Public Enterprise shall ensure the protection of all stakeholders' rights, including:

1. Shall have a clear strategic management policy to support and protect stakeholders' rights.
2. Shall ensure the compliance with the Labor Law of the Kingdom of Cambodia.
3. Shall not be negligent in its corporate social responsibilities (CSR), such as consumer protection and environmental protection.
4. Shall separate the recognition and protection of individual's rights when he/she is both a stakeholder and a shareholder.

Article 45. Information and Stakeholder's Observation

The Listed Public Enterprise shall provide stakeholders, creditors and employees, with all relevant information necessary to enable them to monitor the performance of the Listed Public Enterprise, and shall protect their rights.

Chapter IX Disclosure and Transparency

Article 46. Corporate Control Through Market Mechanism

The Listed Public Enterprise shall establish a transparent and fair mechanism when there are any actions leading to change in corporate control, such as takeovers, mergers, acquisitions and transfers of business or liquidation in accordance with the law on the General Statute of Public Enterprises and the Anukret on the implementation of law on the General Statute of Public Enterprises.

Article 47. Disclosure and Transparency

The Listed Public Enterprise shall disclose, in an efficient and timely manner, information that is required by Law and regulation and any other information that may influence the decision-making of shareholders and other stakeholders.

Material information concerning corporate governance to be disclosed by the Listed Public Enterprise includes:

1. The composition of the Board, executive directors, non-executive directors, independent directors, board structure, management structure, incentive policies, policies regarding conflicts of interest and the Code of Conduct for directors and senior officers.
2. Rights, roles and duties, and activities of the board's committees.
3. Activities of individual directors and the Board.

Article 48. Format of the Disclosure

The Listed Public Enterprise shall disclose information in an easy-to-understand form, to avoid ambiguous and complicate technical terms. Publicly disclosed information shall be easily accessible and low cost. Where the complicated terms are used in the disclosure, the terms shall be attached with the explanations so that the general public may easily understand.

In the case where the documents to be disclosed is prepared in a foreign language, the Listed Public Enterprise shall translate those documents into Khmer by an agent recognized by the SECC.

The Listed Public Enterprise shall designate an officer to be responsible for disclosed information, include reporting to the market and the SECC by the board, and shall have an internal information control system that can quickly transmit the material information of the Listed Public Enterprise to that officer. To disclose corporate information in a timely, accurate and effective manner, the officer shall have the right to quickly access the information of the Listed Public Enterprise.

ACLEDA Bank, Environmental and Social Sustainability Report⁴¹⁰

Environmental and social sustainability (ESS) mission statement

ACLEDA Bank is committed to achieving strong, sustainable financial returns, while respecting the environment and community within which we live. We subscribe to the concept of triple bottom line ('people, planet, profit') reporting and are constantly developing indicators for measuring and reporting on our performance and impacts on the society and the environment and to implement a reporting structure based on the guidelines of the Global Reporting Initiative. (...)

Community

ACLEDA recognizes that playing our part as good citizens in the community in which we abide is vital to our mutual interests and prosperity. Major initiatives we are taking are:

- Developing and offering appropriate products and services carefully selected and developed for the particular needs of Cambodian society. In 2006 the Bank launched a housing loan scheme, with interest rates fixed for up to 10 years to enable Cambodians, especially in the lower wealth segment, to purchase their own homes.
- Expanding outreach: opening up banking services to new communities in new locations by expanding our network in the provinces and extending online banking services to mobilize savings. The expansion of our 24 hours a day/7 day a week ATM network to all provinces in 2010 has enabled our customers to access their funds at their own convenience, irrespective of the normal opening hours of the Bank or national holidays. In April 2017 we launched 'ACLEDA Unity ToanChet' — a FinTech Application running on Smart Phone, enabling customers to do all ACLEDA Bank services at any time. — Which extends access to financial services in the Khmer language as well as English to every village and commune in Cambodia.
- From November to December 2019, we conducted an annual survey on our small-sized enterprise loan and medium-sized enterprise and corporate loan customers' living standards that get loans at least twice from our branches to test the impact of our credit services. This involved 1,961 respondents (female: 53.34%) randomly selected from our 316,758 active borrowers of whom 66.95% were traders, 21.32%

410 Acleda Bank, *Environmental and Social Sustainability Report* (2019) https://www.acledabank.com.kh/kh/eng/bp_sustainabilityreport.

were farmers/workers and 11.73% were private companies/NGOs/civil servants. The responses indicated that across all sectors there were 92.40% who considered that their wealth had increased as a result of credit provided by ACLEDA Bank, 3.57% who did not detect any noticeable change while only 4.03% had the perception that they were worse off than before.

Income Situation	2019	2018	2017	2016	2015
Growth	92.40%	90.90%	88.13%	94.13%	91.96%
Stability	3.57%	6.23%	7.46%	3.27%	5.44%
Reduction	4.03%	2.87%	4.41%	2.60%	2.60%

(...)

- Transparency and ‘truth in advertising’ are strictly enforced when developing, advertising and selling our products and services and full and detailed information is provided through brochures, our website and other promotional materials. (...)
- In 2019, ACLEDA Bank Plc. took part in important social and humanitarian activities through the following donations:
 - ◉ Education
 - Donation to the ACLEDA-Jardines Education Foundation (AJF) to support the construction of two concrete primary school buildings (Kampong Preah Ent and Pu Cha) in Preah Vihea and Mondulkiri provinces.
 - Donation to the Ministry of Education, Youth and Sport to support their program “Our Business”. (...)
 - ◉ Health Support
 - Voluntary blood donations by ACLEDA Bank staff to the National Blood Transfusion Center to help patients in emergency situations.
 - Donation to the Cambodia Kantha Bopha Foundation. (...)

NagaCorp, Sustainability Report⁴¹¹

NagaCorp [a Cambodian company listed on the Hong Kong’s Stock Exchange] strives to be a good corporate citizen by carrying out business in a socially responsible way and aim at creating long-term values for our stakeholders and contributing to make the world a better place. This report covering the calendar year 2016 is prepared in accordance with the Environmental, Social and Governance (“ESG”) Reporting Guide of the Stock Exchange [in Hong Kong]. It provides an overview of management approach of NagaCorp and its performance relating to ESG. NagaCorp has complied with the “comply or explain” provisions set out in the ESG Reporting Guide for the Year. (...)

411 NagaCorp, CSR Report (2020) https://www.nagacorp.com/eng/csr/nagacorp_corporate.php.

1.1 Workforce Overview

NagaCorp prides itself on providing a safe, fair and healthy workplace for all staff, with a diverse workforce and equal opportunities for all. As at 31 December 2016, the Group had a total of 6,153 employees, representing over 29 nationalities, with 99% of the employees based in Cambodia. Priority is given to developing our Cambodian workforce, which represents 94% of total employees. Employees follow designated working hours, meal breaks and rest days according to a rotating shift schedule prepared by each department on the basis of three 8-hour shifts per 24-hours and six consecutive days or 48 hours per work week. Employees based in Cambodia, are entitled to 1.5 days of paid annual leave for every month of service rendered. (...)

1. Attracting Talent: (...) In 2016, we hired 1,095 employees (2015: 878) while 660 exited (2015: 691). Reductions in attrition have been achieved by focusing on stricter sourcing and selection criteria, providing more training and development opportunities, increased employee engagement and continuous improvement on the work environment and welfare. (...)
2. NagaWorld Olympians: In May 2016, we held the first NagaWorld Olympians. This competitive event provides a platform for employees to showcase their professional skills, attitude, appearance and manners. Future competitions will inspire our employees to achieve further growth and success – not because they are driven to win or lose – but because they are recognised as doing their best at something that they care about. (...)

Naga Academy

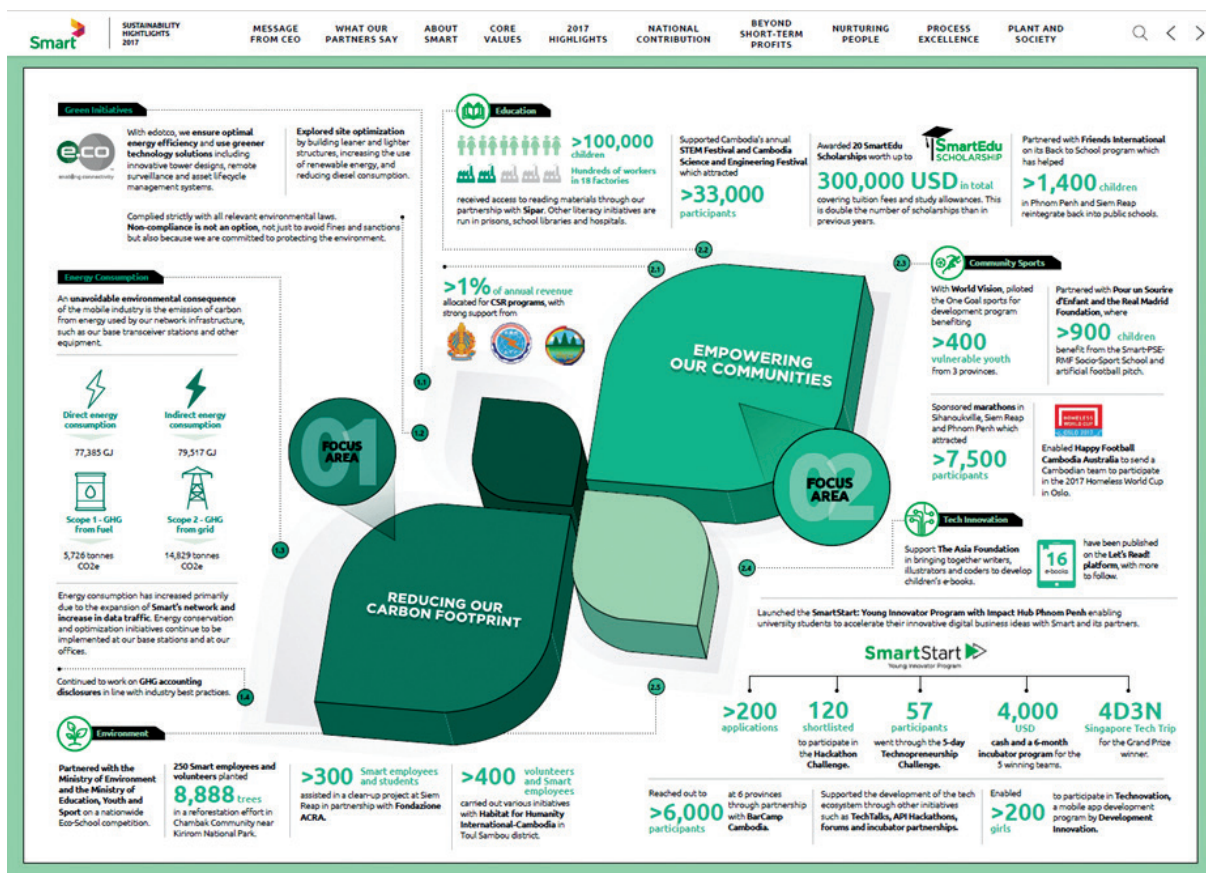
Founded in November 2012, Naga Academy's goal is to be an effective and comprehensive apprenticeship-based hospitality training institute. In 2016, Naga Academy trained 297 interns of whom 246 were in apprenticeship based vocational programs of three months or more duration, of which 43% were hired by NagaWorld. During the Year, Naga Academy provided more than 159,420 total training hours to its interns which included 112 hours of pre-deployment training prior to internship in their department of choice.

Smart, Sustainability Highlights⁴¹²

Our sustainability framework adheres to that of the Axiata Group and guides Smart's sustainability efforts under four key pillars: Beyond Short-Term Profits, Nurturing People, Process Excellence, and Planet & Society. By aligning our practices to the tenets of these four pillars, we can ensure that everything we do is balanced by meeting the needs of all stakeholders who support us in many ways. (...)

We go a step further by empowering Cambodians to look at positive and sustainable ways to help their families and communities through CSR initiatives in the fields of education, community sports, technology and environment. (...)

⁴¹² Smart Cambodia, *Sustainability Highlights 2017: Connecting Cambodia to a Sustainable Future* (2017) https://www.smart.com.kh/media/Sustainability/Smart-Axiata_2017_Sustainability_Report.pdf.



Questions

1. Why do you think companies publish CSR reports even when this is not a legal requirement?
2. What does 'materiality' mean and why is it important in sustainability reporting?
3. Why do you think legislators increasingly favour mandatory reporting as a way to promote responsible business conduct?
4. What makes it so difficult to identify reporting indicators for human rights and labour standards and to make it obligatory for companies to use such indicators when writing their CSR reports?
5. Do investors and shareholders demand only financial information from their companies? If not, why does non-financial information interest profit-seeking investors?
6. Are transparency regulations enough to guarantee corporations respect human rights?
7. Who reads CSR reports?
8. When will CSR reporting become widespread in Cambodia and what factors will be needed for this to become reality?

Further Readings

- Deborah E. Winkler, *How Do Multinationals Report Their Economic, Social, and Environmental Impacts? Evidence from Global Reporting Initiative Data*, World Bank Policy Research Working Paper (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3087667.
- Karin Buhmann, *Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU's Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action*, University of Oslo Faculty of Law Legal Studies Research Paper Series (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3058603.
- Virginia E. Harper Ho, 'Comply or Explain' and the Future of Nonfinancial Reporting', *Lewis & Clark Law Review* (2017) <https://ssrn.com/abstract=2903006>.
- GRI et al., *Shining A Light On Human Rights - Corporate Human Rights Performance Disclosure In The Mining, Energy And Financial Sectors* (2016) <https://blogmaterialityreporting.files.wordpress.com/2016/12/shining-a-light-on-human-rights-2016-gri.pdf>.
- Coca Cola, *Business and Sustainability Report* (2019) <https://www.coca-colacompany.com/reports/business-sustainability-report-2019>.
- UK Government, *Modern Slavery Statement* (2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf.
- OECD, *Corporate Governance Frameworks in Cambodia, Lao PDR, Myanmar and Viet Nam* (2019) <https://www.oecd.org/daf/ca/Corporate-Governance-Frameworks-Cambodia-Lao-PDR-Myanmar-Viet-Nam.pdf>.
- Chen Viol, A journey towards transparency and accountability in Cambodia (2020) <https://www.csostandard.org/nm/a-journey-towards-transparency-and-accountability-in-cambodia/>.
- David J. Norman, 'From shouting to counting: civil society and good governance reform in Cambodia', *The Pacific Review*, 27:2(2014) pp. 241-264, <https://www.tandfonline.com/doi/pdf/10.1080/09512748.2014.882393?needAccess=true>.
- Henk de Jong, Sustainability and entrepreneurship for local Civil Society Organisations (CSOs) and CSO networks in Cambodia, De Jong/Dragonmills Ltd. (2018) https://www.researchgate.net/publication/329059875_SUSTAINABILITY_AND_ENTREPRENEURSHIP_FOR_LOCAL_CIVIL_SOCIETY_ORGANISATIONS_AND_CSO_NETWORKS_IN_CAMBODIA.
- Young Sokphea, 'Practices and Challenges towards Sustainability', in Katherine Brickell & Simon Springer (eds.) *The Handbook of Contemporary Cambodia* (Routledge, 2017) <https://www.taylorfrancis.com/books/e/9781315736709/chapters/10.4324/9781315736709-20>.

14. STAKEHOLDER ENGAGEMENT

Kenneth Paul Charman, Radu Mares

Introduction

Participation and transparency (chapters 4 and 13) are hallmarks of good governance and part of the ‘human rights based approach’ to development. Human rights due diligence as developed in the UNGPs emphasizes stakeholder participation at all stages of preventing and correcting abuses: starting with consulting on corporate policies and codes of conduct (chapter 8), continuing with participatory impact assessments and tracking of performance (chapters 9, 12), going through multistakeholder efforts to implement corrective actions (chapter 11), and finishing with social reports that should provide stakeholders with ‘material’ information (chapter 13) and appropriate remedies agreed with the victims (chapter 7). To achieve such participation, stakeholder engagement is needed and it has therefore become a sub-field of management (stakeholder management). Strategically, engaging with stakeholders is important for preserving the trust of local communities affected by large infrastructure projects (chapters 25-26). Similarly, engaging with the workforce through consultative committees and trade unions is essential for maintaining peaceful labour relations (chapter 19). Having proper processes of consultation is particularly needed with some vulnerable groups such as indigenous people where the international standard of ‘free, prior and informed consent’ is well established (chapter 22). Collaborating with stakeholders is at the heart of multistakeholder initiatives (chapter 5) as an innovative governance mechanism to deal with systemic or intractable problems that each participating organization cannot cope with alone (chapter 2). There is ample guidance and decades of experience, including from leading companies especially in the extractive industries, about what to do and what not to do in stakeholder engagement. Stakeholders are commonly defined as “any group or individual who is affected by or can affect the achievement of an organization’s objectives”⁴¹³. Stakeholder groups include employees, customers, financiers, communities, the environment, and other affiliated groups, such as suppliers, trades unions and professional bodies.

Companies’ responsibilities to protect stakeholder rights in Cambodia are incorporated in the overall legal framework for Corporate Governance (chapter 13). The Prakas on Corporate Governance refer to stakeholder rights but do not refer specifically to stakeholder engagement. Cambodia adheres to international and ASEAN standards that refer to corporate responsibilities for stakeholder engagement. These standards include the International Financial Reporting Standards (IFRS).⁴¹⁴ The legal framework for governance and stakeholder engagement is now in place, and there has been a significant increase in the number of large and small companies producing annual sustainability reports. Cambodia addresses stakeholder engagement within the broader framework of improvements to governance and the overall business climate for investment. Cambodia’s requirements for investment for infrastructure projects are greater than other ASEAN countries. Its capital markets are at an earlier

413 R Edward Freeman & John McVea, *A Stakeholder Approach to Strategic Management* (2001) <https://ssrn.com/abstract=263511>.

414 International Financial Reporting Standards (IFRS), *Stakeholder Engagement Register* (2019) <https://www.ifrs.org/news-and-events/2019/12/ifrs-foundation-publishes-iasb-members-q3-2019-stakeholder-engagement-register/>.

stage of development, Indeed Cambodia is a young market economy and although expanding rapidly still has only five companies listed on the Cambodian Stock Exchange. Virtually all listed companies are owned either by the Government or have a majority ownership by one company or individual. Stakeholder engagement seems high on the list of priorities for publicly owned companies because of this concentration of ownership. Stakeholder engagement is an important issue and the role of the private sector is critical in increasing respect for human rights, labour standards and the environment as Cambodia ranks 126/128 in the World Justice Report Rule of Law Index (2020)⁴¹⁵.

Main Aspects

- ✓ Relevance of stakeholder engagement/consultation (impact assessment, corrective actions, tracking performance, communication, grievance remediation)
- ✓ Role of stakeholder engagement (information, joint action, trust)
- ✓ Forms of engagement (formats such as individual meetings, workshops, public hearings, advisory committees)
- ✓ Scope of engagement (determining relevant stakeholders)
- ✓ Role of third parties (e.g. experts, mediators)
- ✓ Inclusive engagement (marginalization of vulnerable groups)
- ✓ Legitimate representation (leaders representative of communities or not)
- ✓ Elements of stakeholder engagement (stakeholder analysis, dissemination of information, consultation, participation, grievance mechanism)
- ✓ Stakeholder Engagement Plan/Strategy
- ✓ Gender aspects of consultation (views and priorities of men and women)
- ✓ Timing of consultation
- ✓ Accessibility (of information and engagement process)
- ✓ Conflict management
- ✓ Consultations (criteria for meaningful consultation and manipulation)
- ✓ Indicators for stakeholder engagement
- ✓ Partnerships (agreements)
- ✓ Fair wages (living wage)

Background

UN High Commissioner of Human Rights, An Interpretive Guide⁴¹⁶

Stakeholder/affected stakeholder [definition]: A stakeholder refers to any individual who may affect or be affected by an organization's activities. An affected stakeholder refers here specifically to an individual whose human rights has been affected by an enterprise's operations, products or services.

⁴¹⁵ World Justice Report, *Rule of Law Index* (2019) https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf, based on public and legal expert's perceptions of (inter alia) constraints on governmental powers through the judicial system, 'open government' and regulatory enforcement.

⁴¹⁶ UN Office of the High Commissioner of Human rights, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>

Stakeholder engagement/consultation [definition]: Stakeholder engagement or consultation refers here to an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches.

OECD, Due Diligence Guidance for Meaningful Stakeholder Engagement⁴¹⁷

Stakeholder engagement is an expectation of responsible business conduct. It is also an effective activity for identifying and avoiding potential adverse impacts of an extractive operation, appropriately mitigating and remedying impacts when they do occur, and ensuring that potential positive impacts of extractive activities are optimised for all stakeholders. In this sense, stakeholder engagement is an important means of implementing due diligence. Stakeholders themselves can contribute important knowledge to help identify potential or actual impacts on themselves or their surroundings. The values and priorities of impacted stakeholders are vital considerations in evaluating impacts and identifying appropriate avoidance or mitigation steps.

However, if stakeholder engagement activities are not properly supported, developed or executed, their due diligence function may not be realised, and adverse impacts may not be avoided or addressed. Furthermore, poor stakeholder engagement can in and of itself give rise to actual or perceived adverse impacts and jeopardise potential benefits to stakeholders.

Stakeholders are persons or groups who are or could be directly or indirectly affected by a project or activity. From a due diligence perspective priority should be given to those stakeholders for whom the risk of adverse impacts is greatest or the potential adverse impact is severe or could become irremediable. Priorities for engagement could include but are not limited to:

- potentially impacted local communities (...)
- indigenous peoples
- farmers
- workers (including local and migrant workers)
- artisanal miners
- host governments (local, regional and national)
- local civil society organisations (CSOs), community-based organisations and local human rights defenders.

Additionally interested stakeholders that may be important for meaningful engagement may include:

- NGOs
- industry peers
- investors/shareholders
- business partners
- the media.

⁴¹⁷ OECD, *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (2017) www.oecd-ilibrary.org/docserver/9789264252462-en.pdf?expires=1551787131&id=id&acname=ocid177253&checksum=BB16859BBF8819CCB39201C08881169E

Instruments

UN, Guiding Principles on Business and Human Rights⁴¹⁸

3. In meeting their duty to protect, States should: (...)
 - (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Commentary

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. (...) Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities. (...)

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (...)
 - (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Commentary

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should: (...)
 - (b) Draw on feedback from both internal and external sources, including affected stakeholders.
21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. (...) In all instances, communications should: (...)
 - (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; (...)
 - (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Commentary

(...) Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

⁴¹⁸ Human Rights Council, *UN Guiding Principles on Business and Human Rights*, Seventeenth Session (2011) http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include on-line updates and integrated financial and non-financial reports.

23. Issues of context (...)

Commentary

Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). (...) In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation. In assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives.

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Commentary

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multistakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach. (...)

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

Commentary

Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. (...)

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

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (...)

Operational-level mechanisms should also be:

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

Commentary

- (h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

UN High Commissioner of Human Rights, *An Interpretive Guide*⁴¹⁹

Q 30. What is the role of stakeholder engagement?

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

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

Q 33. Can human rights due diligence or parts of it be carried out by external experts?

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

Q 42. What is the role of consultation with directly affected groups and other relevant stakeholders in the assessment of human rights impact?

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

Some individuals or groups may be at risk of exclusion from the consultation process unless targeted efforts are made to reach out to them. There may be competing views among and within stakeholder groups about the relative significance of certain impacts. Where there is a legacy of distrust between the enterprise and stakeholders, there may be a need for a neutral, trusted individual to facilitate the engagement process.

⁴¹⁹ UN Office of the High Commissioner of Human Rights, *The Corporate Responsibility To Respect Human Rights - An Interpretive Guide* (2011) <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

Q 49. How should the effectiveness of responses be tracked?

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

Q 76. How does the mechanism relate to wider stakeholder engagement?

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

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

ISO 26000, Guidance on Social Responsibility⁴²⁰

5.3.3 Stakeholder engagement

Stakeholder engagement can take many forms. It can be initiated by an organization or it can begin as a response by an organization to one or more stakeholders. It can take place in either informal or formal meetings and can follow a wide variety of formats such as individual meetings, conferences, workshops, public hearings, round-table discussions, advisory committees, regular and structured information and consultation procedures, collective bargaining and web-based forums. Stakeholders engagement should be interactive and is intended to provide opportunities for stakeholders' views to be heard. Its essential feature is that it involves two-way communication. (...)

Stakeholder engagement is more likely to be meaningful when the following elements are present:

- a clear purpose for the engagement is understood;
- the stakeholder's interests have been identified;
- the relationship that these interests establish between the organization and the stakeholder is direct or important;
- the interests of stakeholders are relevant and significant to sustainable development; and
- the stakeholders have the necessary information and understanding to make their decisions.

⁴²⁰ International Organization for Standardization, *ISO 26000 - Guidance on Social Responsibility, First Edition* (2010) not available online, only on purchase from ISO, http://www.iso.org/iso/catalogue_detail?csnumber=42546

International Finance Corporation, Performance Standards⁴²¹

5. (...) The ESMS [Environmental and Social Assessment and Management System] will incorporate the following elements: ... (vi) stakeholder engagement...

Stakeholder Engagement

25. Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project's environmental and social impacts. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities. The nature, frequency, and level of effort of stakeholder engagement may vary considerably and will be commensurate with the project's risks and adverse impacts, and the project's phase of development.

Stakeholder Analysis and Engagement Planning

26. Clients should identify the range of stakeholders that may be interested in their actions and consider how external communications might facilitate a dialog with all stakeholders (...).
27. The client will develop and implement a Stakeholder Engagement Plan that is scaled to the project risks and impacts and development stage, and be tailored to the characteristics and interests of the Affected Communities. Where applicable, the Stakeholder Engagement Plan will include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable. When the stakeholder engagement process depends substantially on community representatives, the client will make every reasonable effort to verify that such persons do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents.
28. In cases where the exact location of the project is not known, but it is reasonably expected to have significant impacts on local communities, the client will prepare a Stakeholder Engagement Framework, as part of its management program, outlining general principles and a strategy to identify Affected Communities and other relevant stakeholders and plan for an engagement process compatible with this Performance Standard that will be implemented once the physical location of the project is known.

Consultation

30. When Affected Communities are subject to identified risks and adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the Affected Communities with opportunities to express their views on project risks, impacts and mitigation measures, and allows the client to consider and respond to them. The extent and degree of engagement required by the consultation process should be commensurate with the project's risks and adverse impacts and with the concerns raised by the Affected Communities. Effective consultation is a two-way process that should:
 - (i) begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise;
 - (ii) be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to Affected Communities;

⁴²¹ International Finance Corporation, *Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts* (2012) https://www.ifc.org/wps/wcm/connect/115482804a0255db96bffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

- (iii) focus inclusive engagement on those directly affected as opposed to those not directly affected; [inclusive engagement covers] men, women, the elderly, youth, displaced persons, and vulnerable and disadvantaged persons or groups.
- (iv) be free of external manipulation, interference, coercion, or intimidation;
- (v) enable meaningful participation, where applicable; and
- (vi) be documented.

The client will tailor its consultation process to the language preferences of the Affected Communities, their decision-making process, and the needs of disadvantaged or vulnerable groups. If clients have already engaged in such a process, they will provide adequate documented evidence of such engagement.

Informed Consultation and Participation

31. For projects with potentially significant adverse impacts on Affected Communities, the client will conduct an Informed Consultation and Participation (ICP) process (...). ICP involves a more in-depth exchange of views and information, and an organized and iterative consultation (...). The consultation process should (i) capture both men's and women's views, if necessary through separate forums or engagements, and (ii) reflect men's and women's different concerns and priorities about impacts, mitigation mechanisms, and benefits, where appropriate.

External Communications

34. Clients will implement and maintain a procedure for external communications that includes methods to
- (i) receive and register external communications from the public;
 - (ii) screen and assess the issues raised and determine how to address them;
 - (iii) provide, track, and document responses, if any; and
 - (iv) adjust the management program, as appropriate.

In addition, clients are encouraged to make publicly available periodic reports on their environmental and social sustainability.

Grievance Mechanism for Affected Communities

35. [The grievance mechanism] should seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate and readily accessible, and at no cost and without retribution to the party that originated the issue or concern. The mechanism should not impede access to judicial or administrative remedies. The client will inform the Affected Communities about the mechanism in the course of the stakeholder engagement process.

OECD, Due Diligence Guidance for Meaningful Stakeholder Engagement⁴²²

ANNEX A: Monitoring and evaluation framework for meaningful stakeholder engagement

The Table A.1 represents a deliberately simple, illustrative framework for monitoring and evaluation (M&E) of stakeholder engagement activities. The indicators and assessment criteria are meant to provide guidance to enterprises on the elements that should be considered when conducting M&E of stakeholder engagement processes but are not meant to be prescriptive. (...)

⁴²² OECD, *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (2017) www.oecd-ilibrary.org/docserver/9789264252462-en.pdf?expires=1551784695&id=id&accname=ocid177253&checksum=ACB0808212E374EB0A55B2BE9BBF1D6E.

Assign realistic and appropriate timelines for engagement	<ul style="list-style-type: none"> - Ease of process in adapting timeframes in response to contextual issues - Timing of initial contact with stakeholder groups in relation to project plans - Average length of notice stakeholders are given regarding meetings and other engagement activities 	<p>Good: Timelines are discussed with stakeholders themselves and reflect operational and contextual realities. Some flexibility is built into timelines. Stakeholders are engaged at the earliest possible time, they are given sufficient notice of meetings and sufficient time to consider and internally discuss any proposals or decisions.</p> <p>Moderate: Timelines reflect operational realities but are not discussed with stakeholders ahead of time and thus must be readjusted.</p> <p>Poor: Timelines are unrealistic and inflexible. Stakeholders are not consulted when establishing timelines and thus delays are incurred by the enterprise. Stakeholders do not have sufficient notice or time to adequately engage.</p>
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DCAF & ICRC, Addressing Security and Human Rights in Complex Environments⁴²³

Working with communities

While effective stakeholder engagement requires considerable investment of time and resources, developing good relationships with local communities is essential to the long-term sustainability and success of a project. (...) Community-related security risks are frequently the result of unaddressed concerns, negative impacts, or misunderstandings about non-security related issues such as employment, land, environment, compensation, resettlement, and negative legacies from previous company projects, to name a few. When concerns and grievances go unaddressed or unmitigated, these issues can escalate into tensions and may eventually result in situations of violence.

This chapter therefore adopts both a prevention and a conflict management approach to addressing some of the most common security and human rights challenges related to corporate-community relations. While many good practices will be specific to a situation or context, some key recommendations recur because they are essential to good stakeholder engagement. These include:

- a) Understanding the context and assessing actual and potential risks and impacts thoroughly;
- b) Engaging with communities from the moment the first company representative, contractor or security guard sets foot on the ground. Communities should be considered as hosts and the company as a temporary visitor;
- c) Mapping, analysing and engaging with all relevant stakeholders, ensuring vulnerable groups are included and feel comfortable to participate;
- d) Ongoing and transparent sharing of information, including timely response to enquiries;
- e) Showing respect for local culture and treating communities as partners rather than as a threat;
- f) Listening carefully to concerns and grievances, and involving communities in the development of solutions to address them; and
- g) Investing time in developing strong relationships with local communities and allowing ample time for community consultations and decision-making. (...)

⁴²³ Geneva Centre for the Democratic Control of Armed Forces (DCAF) & International Committee of the Red Cross (ICRC), *Addressing Security and Human Rights Challenges in Complex Environments* (2016) http://securityhumanrightshub.com/sites/default/files/publications/ASHRC_Toolkit_V3.pdf (references omitted).

Corporate-community relations do not happen in a vacuum. This chapter therefore addresses operational issues that must be analysed within the context of a complex operating environment. Community concerns and grievances targeted at the company will often be the result of weak governance, poor public services, and lack of genuine engagement on the part of the host government. Companies, therefore, must assess how all aspects of their operations, beyond just security measures, interact with the existing context. Critical analysis must be applied to understand whether the company's actions are reinforcing inequalities, increasing competition for resources, and reducing the extent to which community members have a voice in decision-making, or whether, conversely, company actions are reinforcing good governance, respecting human rights, and safeguarding human security. In this respect, while companies cannot and should not replace the government, efforts can be made to support a stronger government role. Furthermore, where national governance is weak, compliance with national legal requirements may not be enough to fulfill the corporate responsibility to respect human rights. In some situations, domestic laws may even conflict with international human rights law and standards. Companies will therefore need to conduct enhanced human rights due diligence and go beyond national legal requirements to ensure respect for human rights in their operations.

4.1. Stakeholder engagement strategy

- B. Communities often comprise multiple sub-groups with different power structures, interests, needs and vulnerabilities. In these situations, inclusive community engagement can be particularly challenging and companies may face the risk of favouring or inadvertently excluding some sub-groups, thus creating or fuelling existing tensions.

Good Practices

Ensure the stakeholder engagement strategy is inclusive

- Prioritise impacted stakeholder groups, and especially individuals who are vulnerable and at risk of marginalisation. The more a stakeholder group is materially affected by a component of the project, the more important it is for them to be properly informed and encouraged to participate in matters that have direct bearing on them, including proposed mitigation measures, the sharing of development benefits and opportunities, and implementation or monitoring issues.
 - Consider that children are among the most vulnerable population groups and “usually less well placed to advocate for their own interests”. (...)
 - Engage with those who oppose the project. Often their opposition may be rooted in legitimate concerns that should be taken into consideration and responded to.
 - Be cautious in engaging with armed groups as this “may expose the company to allegations of bribery, corruption and illegality.” Take into account that the local community and the armed group may be inextricably linked through predatory or positive relationships of their own. (...)
- C. Companies may at times engage with community members who take advantage of their positions to capture benefits without taking into account the interests and needs of the community.

Good Practices

Identify legitimate representatives of the different community sub-groups

- Allow stakeholders to choose their own representatives, but consider intervening in cases where the selection of representatives is clearly biased towards a specific segment of the community (e.g. men, old people, an ethnic group, a family, etc.).

- Ensure representatives reflect the diversity of stakeholder groups, as well as the diversity of interests that may be present. “It is important to keep in mind that not all stakeholders in a particular group or sub-group will necessarily share the same concerns or have unified opinions or priorities.”
- “Be aware that the very act of establishing certain people as the “liaison” between the local population and the project confers upon them a certain degree of power and influence.”
- Combine engagement with representatives with direct engagement with community members
- Follow local decision-making procedures, but, at the same time, make community involvement a condition for any agreements.
- “Engage with both formal and informal leaders”, and reach out to both men and women, youth and elders, all socioeconomic, caste, ethnic and religious groups.
- Consider also engaging with proxy representatives, i.e. “representatives that do not actually belong to a stakeholder group themselves but are in tune with the needs and wants of the group, such as civil society organisations or appointed neutral agents (...). This should only be the case where such representation is requested or authorised by the right-holders in question.”

Seek to ensure the government fulfils its responsibility regarding consultations

- Keep track of government-led consultations on issues related to the project, as they might have implications for future stakeholder relations.
 - o Determine at what stages such engagement took place, what commitments and agreements were made, and what unresolved issues still exist that could impact the relationship with local communities.
 - o Seek to participate in, or at least observe, government-led consultations with stakeholders, being careful not to create the perception of being on the government’s side.
- Endeavour to bring the government on board, as convenor and guarantor of the process, to help define the scope of consultations and, where applicable, Free, Prior and Informed Consent (FPIC).
- Consider providing logistical support (such as travel expenses) to government entities to ensure they are present and able to lead the consultations. To reduce any risk of being perceived as supporting a government that is not operating in the community’s interest, be transparent and clear in indicating to communities that the company is striving to improve the government’s capacity to lead the process in good faith.

Successful engagement is based on some simple, practical principles that represent a blend of ethical considerations and common sense:

- Respect: Be respectful in your contact and communication; how you dress, speak, and act will determine the quality of the relationship you have with community members.
- Honesty: Ensure full, true and plain disclosure of information and your purpose, so as not to raise expectations.
- Inclusion: Be inclusive in the process, so that all parties feel they have an opportunity to share their perspectives. Otherwise, the community will perceive that the company only speaks to those who support the project or are easy to talk to.
- Transparency: Establish and maintain complete transparency in all aspects of the process, so that people trust the process that you are undertaking.

- Communication: Genuinely and actively listen to community members, rather than trying to sell them on the benefits of the project.

Ideally, a good consultation process will be:

- Targeted at those most likely to be affected by the project
- Early enough to scope key issues and have an effect on the project decisions to which they relate
- Informed as a result of relevant information being disseminated in advance
- Meaningful to those consulted because the content is presented in a readily understandable format and the techniques used are culturally appropriate
- Two-way so that both sides have the opportunity to exchange views and information, to listen, and to have their issues addressed
- Gender-inclusive through awareness that men and women often have differing views and needs
- Localized to reflect appropriate timeframes, context, and local languages
- Free from manipulation or coercion
- Documented to keep track of who has been consulted and the key issues raised
- Reported back in a timely way to those consulted, with clarification of next steps
- Ongoing as required during the life of the project

UN, Principles for Responsible Contracts⁴²⁴

Community engagement

Principle 7: The project should have an effective community engagement plan through its life-cycle, starting at the earliest stages of the project.

Key implications of Principle 7 for the negotiations:

- Both the State and business investor should view community engagement as fundamental aspects of creating common expectations for the project, and mitigating risks for themselves, for the project and for individuals and communities impacted by the project.
- The community engagement plan should be inclusive with clear lines of responsibility and accountability. It should be initiated as soon as practicable.
- Consultation with impacted communities and individuals should take place before the finalization of the contract.

⁴²⁴ John Ruggie, *Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators*, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (2011) http://www2.ohchr.org/training/business/8_Support_%20doc_UNPrinciplesForResponsibleContracts.pdf.

- Disclosure of information about the project and its impacts is an integral part of meaningful community engagement.
- The history of any previous engagement efforts carried out by either of the parties with the local community regarding the investment project needs to be known by both parties in order to take this into account in planning.
- Community engagement plans should be aligned at a minimum to the requirements of domestic and international standards. For example, free prior informed consent or consultation with those potentially impacted may be required.

Brief explanation: Community engagement

47. Effective and ongoing community engagement from the initial stages of investment projects is now widely recognized as minimum good practice for successful projects. It is the best way to identify and understand potential negative human rights impacts and identify effective preventative and mitigation measures. Effective engagement helps to manage expectations and foster trust of local communities – both of which are particularly important in the context of long-term investments.
48. Effective engagement is inclusive and designed to facilitate the involvement of all relevant individuals and groups, paying attention to gender differences and to those at heightened risk of vulnerability or marginalization. For example, in places where men may speak for a family or group, it might be more difficult to learn about risks specific to women. Specialized approaches should be developed to understand such risks, and they should be explored from the earliest stages of project execution. For instance, where women are in charge of collecting water for the family, men consulted may not identify the relocation of a community well as having a serious potential impact, whereas it may be critical to the women’s ability to continue to access water safely and as needed.
49. It may not be possible to include detailed plans for engagement in the contract because these will be developed in part with entities and people who may not be party to the negotiation. For example, those individuals and communities who will be impacted (see Principle 2) and perhaps local or regional authorities will contribute to the creation of detailed engagement plans. However, the State and the business investor can define their expectations and responsibilities for carrying out community engagement at the time of contracting. For example, the parties can agree (1) that a plan for engagement will be developed in an inclusive manner before project activities impacting local individuals or communities begin, (2) that specific prevention and mitigation measures will be developed, where possible, with those at risk of being impacted, and (3) to minimum criteria for effective engagement.
50. Sharing information with individuals and communities potentially impacted by the project on the prevention and mitigation of potential negative impacts should be viewed as integral to the overall community engagement plan—including information on security, access to a project-level grievance mechanism and contract terms. Disclosure of monitoring reports, reports on measures to prevent and mitigate adverse impacts and other information relevant to human rights will keep people informed about the project and how it might impact their lives. (...)

Rio Tinto, Why Agreements Matter⁴²⁵

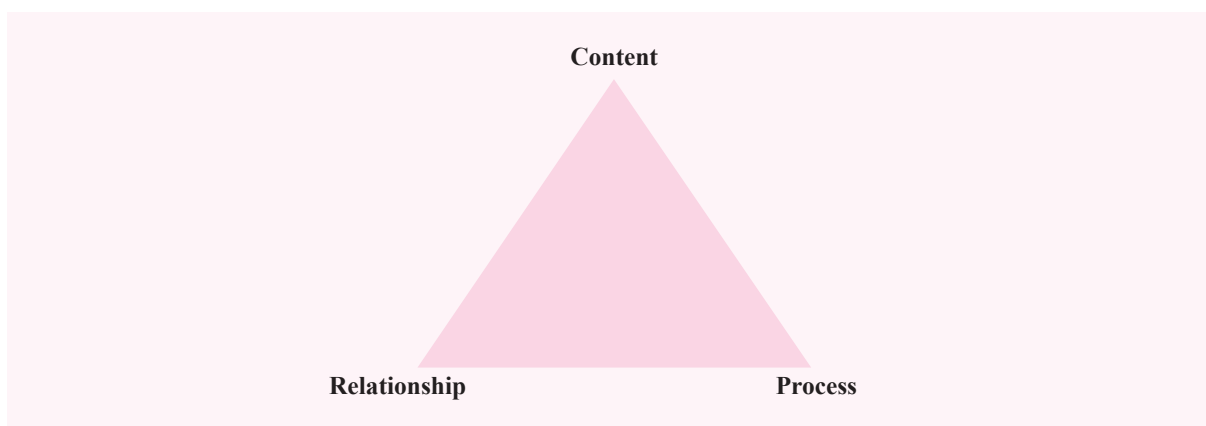
Figure 1: Five dimensions of agreement processes



Engagement for agreements – a three-part process

Agreements require constant attention to three equally important issues: process, relationship and content (see Figure 3). One of the most common mistakes in developing community agreements occurs when parties rush to negotiate content and place too little emphasis on relationships and good process. Processes for negotiating and implementing an agreement should ensure that community members can participate in meaningful ways at appropriate stages. Early, inclusive engagement focuses on strengthening the relationship between the parties. Inclusive engagement underpins sound relationships and good process, which are just as vital as content.

425 Rio Tinto, Why Agreements Matter (2016) www.riotinto.com/documents/Rio_Tinto_Why_Agreements_Matter.pdf



Matters to focus on during early engagement over an agreement

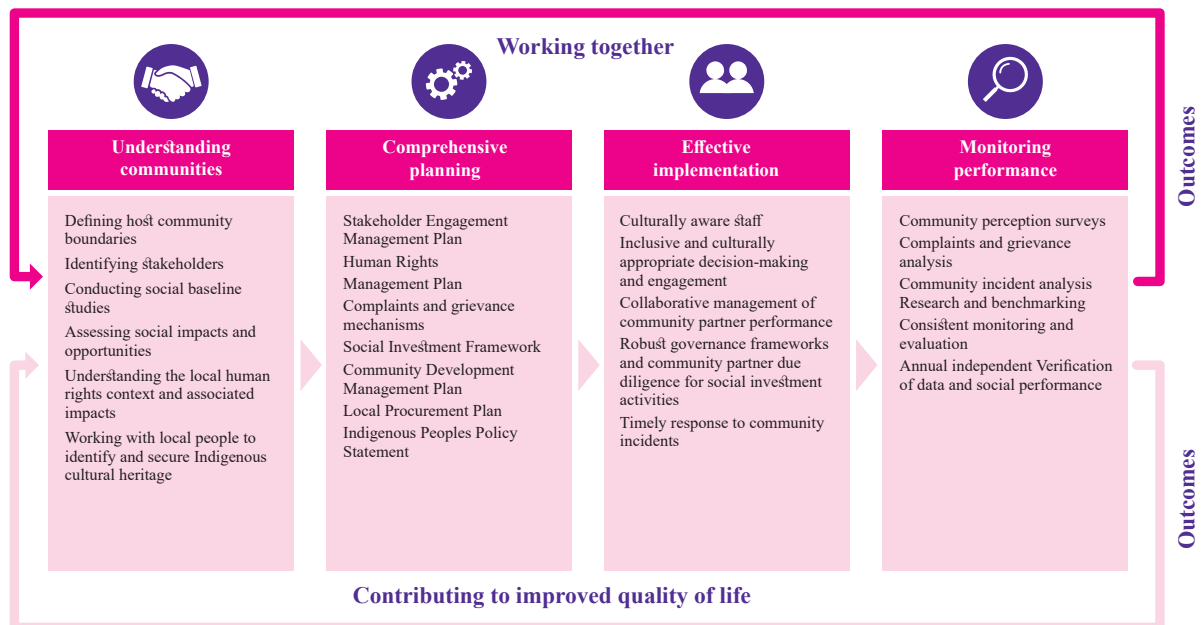
- Identifying parties to the agreement on the basis of their direct interests in the project or operational area and their legal status
- Understanding the role of government in the agreement process; and their expectations of companies
- Engaging broadly and proactively with the full diversity of community groups
- Settling on the agreed parties, representatives of the parties and observers
- Undertaking internal preparations, including risk assessments
- Aligning internal functions by communicating the company's vision, priorities and internal standards for its relationships with communities
- Establishing a negotiating process – sometimes set out in a memorandum of understanding – and other key process matters
- Agreeing on conditions and arrangements where the company agrees to resource the costs of negotiating, especially for disadvantaged parties
- Outlining the agreement drafting process
- Clarifying the communication process so that the members of the groups are fully aware of the terms being negotiated and kept up-to-date with progress
- Setting up a public notification of intent to reach an agreement so that grievances are considered before settlement
- Sharing information to enable genuine informed participation
- Planning an appropriate settlement ceremony

BHP, Sustainability Report⁴²⁶

We aim to build mutually beneficial relationships through regular, open and honest dialogue with host communities. (...) With community input, we undertake actions to understand the social and economic environment, recognise key stakeholders (including those who are vulnerable or disadvantaged) and identify the possible social impacts of our operations. We also work closely with other industry partners to understand our collective impact and the best approach to work together more effectively.

⁴²⁶ BHP, *Sustainability Report 2017* (2017) www.bhp.com/-/media/documents/investors/annual-reports/2017/bhpsustainabilityreport2017.pdf.

Our collaborative community approach



H&M, Sustainability Report⁴²⁷

Our Fair Living Wage Strategy

We believe that well-functioning industrial relations, including collective bargaining, are key to achieve fair living wages and improved working conditions.

Achieving systemic change requires a huge amount of collaboration between stakeholders such as governments, suppliers, brands and trade unions. For solutions to work, they must connect relevant stakeholders at the right time and in the right way – as shown in Fair Living Wage Strategy diagram. For example, because we share suppliers with many other retailers (and factory workers receive the same wage no matter which brand they are making products for), we must build partnerships with other brands to drive sustainable change across the industry.

We also engage with governments and other partners to promote the required legal framework for enabling negotiations between employers and worker representatives. This involves regularly advocating stronger wage legislation in priority countries and meeting with ministers every year.

Another part of the puzzle is facilitating the democratic election of effective employee representation at factories through trade unions or worker committees (dependent on local context and choice of employees). Democratically-elected worker representatives are an essential component of functioning industrial relations, which also forms the base for fairly negotiated wages. By incentivising and enabling factories to create these systems, we can contribute to the building blocks for peaceful conflict resolution and collective bargaining.

It is also important for factories to implement improved wage management systems. The H&M group is currently using the Fair Wage method, which aims to create management systems in which workers know what wages they are entitled to (including overtime compensation and benefits), as well as ensuring they are paid according to their skills, experience and performance. We also need to ensure that our own purchasing practices support our suppliers in implementing fair living wages. Our practices should make it possible to fulfil our business idea and give long-term benefits to workers, suppliers, customers and the environment.

⁴²⁷ H&M, *Sustainability Report* (2016) https://sustainability.hm.com/content/dam/hm/about/documents/en/CSR/Report%202016/HM_group_Sustainability_Report_2016_FullReport_en.pdf.

Kammaing, Company Responses to Human Rights Reports⁴²⁸

How do companies respond to their critics? Are there significant differences in responsiveness between industrial sectors, between the countries in which companies are based and between the companies themselves? Do responses reflect the belief that companies have a responsibility to respect human rights? Do companies that participate in the UN Global Compact react more responsibly than those that don't? This paper attempts to answer these questions by examining company responses to civil society reports contained in the company responses database of the Business & Human Rights Resource Centre. The analysis covers responses to 1877 requests made by the Resource Centre from 2005-2014.

The quintessential non-responding company therefore is a state-owned corporation based in China, India, Israel or Russia that is conducting extractive activities outside its home country. Such a company is most likely to be oblivious to due diligence requirements. Lawmakers, campaigners and scholars are therefore advised to focus priority attention on this category of companies. Unwillingness to respond to human rights reports does not in itself prove that a company has committed human rights abuses. But it does serve as a signal that a company does not take seriously its due diligence obligation to engage with civil society as required by the UN Guiding Principles on Business and Human Rights. A company that repeatedly fails to respond to human rights reports criticizing fundamental aspects of its operations at the very least raises the suspicion that it is not complying with its wider human rights due diligence obligations. Unresponsiveness therefore serves as a flag that closer scrutiny, including qualitative analysis, of a company's conduct is warranted.

Background (Cambodia)

Chou et al, Local Engagement in Programs of Climate Investment Funds⁴²⁹

This case study adds to the growing body of work on local stakeholder engagement (LSE) and explores the benefits and effectiveness of LSE in Climate Investment Funds (CIF) programs in Cambodia.(...)

Key lessons learned

1. Early LSE is Crucial in all Stages of the Investment Plan and Project Implementation Cycle

LSE engagement in all stages of the investment plan and project implementation cycle allows for targeted and useful project development and identifies vulnerabilities and climate risks. The sooner civil society, local governments, private sector, and local communities engage in information sharing, project implementation, and partnership, the more likely is a smooth project implementation. (...)

2. Cooperation with Local Authorities, Especially Commune Councils, Leads to Sustainability

Cooperation with local authorities, especially with commune councils, is crucial as their personal and community networks are trusted by the local stakeholders. These groups have been able to inform local stakeholders, who uniquely understand the local context, making the communes essential to the success of CIF Cambodia projects. Furthermore, engaging commune councils helps to integrate climate resilient programs into commune investment programs (CIPs) and commune development planning (CDPs). This helps to ensure that financial sustainability can be sustained after project completion. Commune councils, however, are generally not aware or have little understanding of project designs early in the process. (...)

428 Menno T. Kamminga, 'Company Responses to Human Rights Reports: An Empirical Analysis', *Business and Human Rights Journal* 1:1 (2016) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2559255.

429 Phanith Chou et al, *Local Stakeholder Engagement in the Programs of the Climate Investment Funds (CIF) in Cambodia* (2019) https://www.researchgate.net/publication/338476553_LOCAL_STAKEHOLDER_ENGAGEMENT_IN_THE_PROGRAMS_OF_THE_CLIMATE_INVESTMENT_FUNDS_CIF_IN_CAMBODIA.

4. *Designing Appropriate Facilitation and Consultation Processes and Clearly Explaining and Sharing them with Local Stakeholders Leads to Better Engagement Outcomes*

To enhance participation and project implementation, it is necessary to design appropriate facilitation and consultation processes, partnership and ownership. It is essential to fully explain from the start the goals of the project to all stakeholders, including targeted vulnerable groups. When all stakeholders receive adequate information, they can prepare themselves to engage and support the project. For example, when Learning Institute explained their project in Battambang (including objective, scope, and budget) to the commune council and local community, all stakeholders actively engaged in the project, especially the commune chief of Wat Tamoeum, as well as the farmers' community for smart agriculture on vegetable growing, which uses a drip-system. The local authorities and community members ensured the effectiveness and sustainability of the project by contributing resources and underscoring the trust that had been built through the focus group discussions held in August 2018 at Wat Tamoeum commune.

5. *Effective LSE Requires a Coordination Team to Ensure a Strong Connection between Vertical and Horizontal Engagement*

LSE requires a coordination team or unit to ensure the vertical and horizontal engagement needed to achieve efficiency, effectiveness, and equity. Since the capacity of local stakeholders is still limited – particularly in the case of CSOs, local authorities, and local communities – consultants or observers could help fill the gaps. This is true for project management and planning; disaster risk reduction; carrying out of VRAs; working on livelihood improvement, small-scale infrastructure, soil and forest conservation, and climate-resilient agriculture. For instance, Plan International played an important role in administering the CSSM under the TA. It was able to cooperate with 19 CSOs to achieve tangible benefits. Furthermore, commune councils and CSOs worked closely with Plan International to integrate project outcomes into commune development planning. In addition, there are several international organizations, CSOs and private sector actors working at the country level on technology transfer that could fill this role.

6. *National CSOs Should Provide More Detailed Training Materials to Local Stakeholders for More Consistent and Better Outcomes*

A useful tool for assessing climate risk and the vulnerability of local people and communities is a vulnerability reduction assessment (VRA). VRAs enable participants to build their adaptive capacity to climate change impacts by helping them better understand climate risks and vulnerabilities. CSOs that conduct VRAs should give more consideration to the criteria used to select participants, tools, and how results are interpreted. Some projects achieved outputs slightly different to what was expected by the VRA, especially those assessing small-scale irrigation or community ponds. Inconsistencies and unexpected results led to questions about criteria and processes used. A detailed VRA manual shared with local stakeholders upfront could have bridged the capacity and knowledge gaps as CSOs carried out the VRAs, bringing more consistency and better results.

Kraing Serei Community Forest, for example, is an association having relatively little understanding of climate change and climate change adaptation strategies. After receiving VRA training with the supporting documents and close mentoring by Plan International staff, this community successfully restored forests and water storage in three villages (Kraing Chress, Kraing Sya, and Tropeang Kroloeng of Kiri Voan commune, Phnom Sruoch district, Kampong Speu province). The use of VRA tools has led to the creation of businesses (water supply, eco-tourism, etc.) that support climate resilient agriculture, water supply, hygiene, and forest restoration even after the project closed in December 2017.

Instruments (Cambodia)

Prakas on Corporate Governance for the Listed Company⁴³⁰

Chapter VI Stakeholders

Article 40. - Protection of stakeholders' rights

Creditors or individuals who have an interest in or have a contract with the listed companies shall be considered stakeholders of the listed companies.

All stakeholders of the listed companies shall be protected by the listed companies as follows:

1. Set up a clear strategic management policy to support and protect stakeholders' rights;
2. Ensure the compliance with the Labour Law of the Kingdom of Cambodia;
3. Recognize and protect the rights of stakeholders separately from the rights of shareholders;
4. Not neglect the corporate social responsibility such as consumer protection and environmental protection.

Article 41. – Stakeholder information and monitoring

The listed companies shall provide stakeholders with the necessary information to monitor the listed companies and protect their rights.

OECD, Corporate Governance in Cambodia, Lao PDR, Myanmar & Vietnam⁴³¹

In the 2018 Doing Business report, CLMV countries are ranked among the low performers in Protecting Minority Investors (see Figure 1.2 and 1.7) (World Bank Doing Business, 2018). CLMV countries are yet to introduce significant reforms in the area of protecting minority investors (World Bank Doing Business 2018) (...) Cambodia is the lowest performer in the Shareholder Right Index. (...)

(...) ASEAN member countries have taken important steps towards developing a region with the free movement of goods, services, investment and skilled labour in addition to freer flows of capital, as outlined in the AEC Blueprint. One instrument supporting capital market integration is the ASEAN Corporate Governance Scorecard, which is developed by the Asian Development Bank (ADB) and the ASEAN Capital Market Forum (ACMF) to assess the corporate governance of publicly listed companies in six Southeast Asian countries using a methodology benchmarked against the G20/OECD Principles of Corporate Governance. Promoting good corporate governance practices and capital market development will help CLMV to capitalise on the benefits of the AEC and regional and international reforms.

The ASEAN Corporate Governance Initiative, composed of the ASEAN Corporate Governance Scorecard and assessment and ranking of ASEAN publicly listed companies (PLCs), is among several regional initiatives of the ASEAN Capital Markets Forum (ACMF). This initiative has been a collaborative effort of ACMF and the Asian Development Bank since 2011. The Scorecard covers the following five areas as identified in the OECD Principles:

⁴³⁰ Securities and Exchange Commission of Cambodia, *Prakas on Corporate Governance for the Listed Company* (2018) <http://www.secc.gov.kh/english/m23.php?pn=2&sn=3&no=43> (also *Prakas on Corporate Governance for Listed Companies, and Prakas on Corporate Governance for The Listed Public Enterprise*).

⁴³¹ OECD, *Corporate Governance Frameworks in Cambodia, Lao PDR, Myanmar and Viet Nam* (2019) <https://www.oecd.org/daf/ca/Corporate-Governance-Frameworks-Cambodia-Lao-PDR-Myanmar-Viet-Nam.pdf>

- (i) Part A: rights of shareholders
- (ii) Part B: equitable treatment of shareholders
- (iii) Part C: role of stakeholders
- (iv) Part D: disclosure and transparency
- (v) Part E: responsibilities of the board.

Minority shareholder rights is an important issue in Cambodia, as there is a high level of concentrated ownership among listed companies.

According to World Bank Doing Business 2018, Cambodia ranks 131 out of 189 economies on the Protecting Minority Investors Index. Doing Business measures a number of important corporate governance elements, including: the protection of minority shareholders; shareholder's rights; level of disclosure; level of director liability; level of ownership and control; ease of creating a shareholder suit; level of corporate transparency; level of conflict of interest regulation; and level of shareholder governance. (...)

Roles and Responsibilities of the Board:

(...)

- Shall ensure that the listed public company communicates effectively with shareholders, and other stakeholders;

(...)

There is also a general lack of awareness on good corporate governance practices in Cambodia. Legal practitioners have not developed noteworthy capacity and knowledge on the topic and foreign legal counsels, which are more familiar with these concepts, have failed to generate demand of corporate governance services domestically. The private sector is unaware of the benefits of corporate governance, and courts are also unfamiliar with the topic and therefore no case law on corporate governance has been developed in Cambodian courts since the adoption of the Law on Commercial Enterprises in 2005.

ASEAN Capital Markets Forum, ASEAN Corporate Governance Scorecard⁴³²

3. Desired Outcomes

The Scorecard and assessment are intended to raise corporate governance standards and practices of ASEAN PLCs, and to showcase top ASEAN PLCs and increase their visibility and investability to global investors. This can improve the liquidity and valuations of well-governed ASEAN PLCs. ASEAN PLCs are encouraged to use the Scorecard as a tool in their ongoing journey to improve their corporate governance practices.

The Scorecard and its results can also be used by regulators as a reference for reviewing corporate governance rules and guidelines in order to enhance corporate governance practices amongst PLCs. It is also hoped that the ASEAN CG Scorecard will facilitate convergence in methodology for assessing the corporate governance of PLCs.

432 ASEAN Capital Markets Forum (ACMF), *The ASEAN Corporate Governance Scorecard* (2015) <https://muhariefeffendi.files.wordpress.com/2017/03/asean-corporate-governance-scorecard-asean-capital-market-forum-acgs-acmf-2015.pdf>.

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C. ROLE OF STAKEHOLDERS

C.1	The rights of stakeholders that are established by law or through Guiding Reference mutual agreements are to be respected.	Guiding Reference
Does the company disclose a policy and practices that address :		
C.1.1	The existence and scope of the company’s efforts to address OECD Principle IV (A): customers’ welfare?	OECD Principle IV (A): The rights of stakeholders that are established by law or mutual agreements are to be respected. In all OECD countries, the rights of stakeholders are established by law (e.g. labour, business, commercial and insolvency laws) or by contractual relations. Even in areas where stakeholder interests are not legislated, many firms make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often requires the recognition of broader interests.
C.1.2	Supplier/contractor selection procedures?	
C.1.3	The company’s efforts to ensure that its value chain is environmentally friendly or is consistent with contractual sustainable development?	
C.1.4	The company’s efforts to interact with the communities in which they operate?	
C.1.5	The company’s anti-corruption programmes and procedures?	
C.1.6	How creditors’ rights are safeguarded?	
C.1.7	Does the company have a separate report/section that discusses its efforts on environment/economy and social issues?	
C.2	Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.	Guiding Reference
C.2.1	Does the company provide contact details via the company’s website or Annual Report which stakeholders (e.g. customers, suppliers, general public etc.) can use to voice their concerns and/or complaints for possible violation of their rights?	OECD Principle IV (B): The legal framework and process should be transparent and not impede the ability of stakeholders to communicate and to obtain redress for the violation rights.

433 ASEAN Capital Markets Forum (ACMF), ASEAN Corporate Governance Scorecard (v.2.0) (2017) https://www.theacmf.org/images/downloads/pdf/asean_cg_scorecard_12_may_2017.pdf.

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C.3	Mechanisms for employee participation should be permitted to develop.	Guiding Reference
C.3.1	Does the company explicitly disclose the policies and practices on health, safety and welfare for its employees?	<p>OECD Principle IV (C):</p> <p>The degree to which employees participate in corporate governance depends on national laws and practices, and may vary from company to company as well. In the context of corporate governance, mechanisms for participation may benefit companies directly as well as indirectly through the readiness by employees to invest in firm specific skills. Examples of mechanisms for employee participation include: employee representation on boards; and governance processes such as work councils that consider employee viewpoints in certain key decisions. International conventions and national norms also recognise the rights of employees to information, consultation and negotiation. With respect to performance enhancing mechanisms, employee stock ownership plans or other profit sharing mechanisms are to be found in many countries. Pension commitments are also often an element of the relationship between the company and its past and present employees. Where such commitments involve establishing an independent fund, its trustees should be independent of the company’s management and manage the fund for all beneficiaries.</p>
C.3.2	Does the company explicitly disclose the policies and practices on governance depends on national and development programmes for its employees?	
C.3.3	Does the company have a reward/compensation policy that corporate governance, mechanisms for participation may accounts for the performance of the company beyond short-term financial measures?	

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C.4	Stakeholders including individual employee and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.	Guiding Reference
C.4.1	Does the company have a whistle blowing policy which includes procedures for complaints by employees and other stakeholders unethical and illegal	<p>OECD Principle IV (E):</p> <p>Unethical and illegal practices by corporate officers may not only violate the rights of shareholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities. It is therefore to the advantage of the company and its shareholders to establish procedures and safe-harbours for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour.</p>
C.4.2	Does the company have a policy or procedures to protect an employee/person who reveals alleged illegal/unethical behaviour from retaliation?	

World Bank, Stakeholder Consultation Plan⁴³⁵

Background

The World Bank Group (WBG) is preparing a new Country Partnership Framework (CPF) with Cambodia for 2019 – 2023. The CPF builds on the Systematic Country Diagnostic (SCD), which was prepared by WBG staff in close cooperation with the government and other stakeholders in Cambodia. The SCD identifies and analyzes the key challenges to and opportunities or pathways for achieving strong, sustainable, and equitable growth ends extreme poverty. The SCD benefitted from extensive consultations with stakeholders across the country, including elected officials, private sector representatives, civil society and development partners.

As part of the CPF development process, the WBG is undertaking public consultations to inform the drafting of its CPF. This will include both face-to-face meetings with key stakeholder groups across the country, as well as a web-based platform to reach a wider group of stakeholders.

Objective of CPF Consultations

The objective of the consultations is to generate a shared understanding of Cambodia’s most pressing development challenges and where the WBG should concentrate its support over the next five years.

Key Stakeholder Groups to Be Consulted

<i>Government and Parliament</i>	Officials from the Ministry of Economy and Finance; Chairmen and Vice Chairmen of specific commissions of the National Assembly; officials and representatives of selected Line Ministries; officials and representatives of public entities such as the Anti-Corruption Unit, National Committee for Disaster Management (NCDM), Council for Agricultural and Rural Development (CARD) and the National Committee for Sub-National Democratic Development (NCDD)
<i>Sub-national Government</i>	Representatives from provincial, district and commune councils
<i>Private Sector</i>	Representatives of domestic and international private sector companies
<i>NGOs and Civil Society</i>	Representatives of community-based organizations, service delivery NGOs, advocacy NGOs and youth organizations
<i>Development Partners</i>	Representatives from Donors and UN agencies

The Consultation Process

Face-to-Face Consultation Meetings

The face-to-face (F2F) consultation meetings with each of the above-mentioned stakeholder groups will be structured either as plenary presentations and discussions or as small focus group discussions. These face-to-face consultation meetings are by invitation and the schedule will be posted on the consultation webpage.

For consultations with NGOs/CSOs, the WBG will partner with three NGO networks – The Cooperation Committee of Cambodia (CCC), NGO Forum and Khmer Youth Association – to identify participants. Each NGO network will be asked to identify both Phnom Penh and province-based NGO/CSO participants for the F2F consultations.

The F2F consultation meetings will be held in Phnom Penh. The WBG will cover the travel costs of invited participants who need financial assistance to travel to the meetings.

⁴³⁵ World Bank, *Stakeholder Consultation Plan: Cambodia Country Partnership Framework* (2019) <https://www.worldbank.org/en/country/cambodia/brief/stakeholder-consultation-plan-cambodia-country-partnership-framework>

<i>Location</i>	<i>Participants</i>
<i>Phnom Penh</i>	Participants from Phnom Penh, Prey Veng, Kampong Cham, Kampong Chhnang, Preah Sihanouk, Takeo, Siem Reap, and Battambang provinces

World Bank Group, Questionnaire on Activities in Cambodia⁴³⁶

The World Bank Group (WBG) and the Government of Cambodia are developing a new Country Partnership Framework (CPF) which will outline WBG's support to the government's development priorities over the next four years (fiscal years 2019 to 2023).

The recent Systematic Country Diagnostic (SCD) prepared by WBG staff in close consultation with national authorities and other stakeholders helped to identify three broad areas of focus on which the WBG should concentrate its support: i) Promoting state efficiency and boosting private sector development; ii) Fostering human development; and iii) Improving agricultural productivity and strengthening the sustainable use of natural resources. In addition, governance and institutions and citizen engagement were identified as crosscutting themes.

The WBG is seeking the views of stakeholders to help develop the CPF -- its strategy to support Cambodia's development -- particularly around these three broad areas.

Cross-cutting Themes: Governance, Institutions, Citizen Engagement

6. In your view, which of the following would contribute most to improving governance, strengthening institutions and promoting citizen engagement in Cambodia? (Please choose no more than three)

- Give more voice to citizens in the design and delivery of government programs
- Strengthen systems for public service providers to respond to citizen feedback on service quality
- Strengthen the overall accountability framework within government
- Have more transparent procurement
- Expand access to information to improve transparency in the use of public funds
- Transfer responsibilities from national to subnational (i.e. district) level to enhance responsiveness to citizens
- Encourage more partnership between government, civil society and the private sector in the delivery of services
- Don't know
- Other:

7. In your view, how can the WBG best involve stakeholders (e.g., youth, CSOs, media, citizens, etc.) in monitoring WBG-supported programs? Please be specific.

⁴³⁶ World Bank Group (WBG), *Share your views – World Bank Group Activities in Cambodia* (2019) https://docs.google.com/forms/d/e/1FAIpQLSdAxwOiw1n-B4XIBeEbFlmBa4J4g_qUgG2ZZ8lkz7u88y42p6A/viewform?vc=0&c=0&w=1.

Ministry of Public Works, Stakeholder Engagement Plan⁴³⁷

Stakeholder Engagement Plan

The Stakeholder Engagement Plan (SEP) seeks to ensure that Project communities, as well as other Project stakeholders, are informed and involved in all the stages of Project preparation and implementation. The Project recognizes the need to seek representative and inclusive feedback and the SEP looks to establish the role of women and vulnerable groups firmly within the consultation process. The Project also recognizes the importance of ensuring affected people are involved in mitigation measures, road safety programs, as well as continuing monitoring of project activities.

The SEP outlines affected stakeholders: those directly impacted by road rehabilitation and interested stakeholders: those with an interest or concern in the project. The SEP describes these different stakeholders and outlines specific methods and timelines to engage them at different stages of the project. The SEP also describes the type of information that will be disclosed, when consultations activities will take place, how stakeholders views will be taken into account and the process for grievance redress.

Stakeholder Consultations

Consultation is a two-way process of dialogue between the CRCIP project and its stakeholders. CRCIP project consultations will provide opportunities to share information about the project and get feedback, including on issues such as working conditions for contractors, engagement of women, and ways to mitigate potential project risks, in particular to vulnerable groups. Some helpful criteria that should guide consultations with local-level stakeholders, in particular affected people, include: (i) Face-to-face consultations should be inclusive of all stakeholder groups for different sections of the roads, such as women, elderly, people living with a disability and other vulnerable persons, including breaking it down by gender and age when appropriate; (ii) One-on-one household interviews and focus groups will be conducted in a locally/culturally sensitive manner and without external interference or pressure so that interviewees can speak freely; (iii) Notices of meetings and surveys should be sufficiently notified in advance at prominent locations and information should be disclosed ahead of time when applicable; (iv) Comments and suggestions received from participants should be collected and incorporated into this SEP, other project documents, and in ongoing project implementation as much as possible, and stakeholders should be made aware how this was done in follow-up meetings/consultations.

Consultations with Indigenous Peoples (if relevant)

This SEP should be coordinated with the IPPF and, if relevant, with IP Plans. If IP groups are found in the MRD project component, it will be assessed if circumstances requiring Free, Prior and Informed Consent (FPIC) apply and/or are desirable. (...)

Methods of Consultations

Depending on the stakeholder, the most appropriate method of consultations will be chosen by the Project. In some cases, national consultations may be the best method to disclose project information, such as when targeting national government ministries (...). Meanwhile, local consultations are essential to inform local people and authorities about the project (...). There are also other forms of consultations that need to be considered and used as relevant. For example, Focus Group Discussions are a good way to get insights into particular issues, such as how the project may be impacting women. Meanwhile, small group trainings – divided by gender if appropriate – are good opportunities to discuss project impacts and mitigation measures, for instance a training on sexually transmitted diseases. (...)

⁴³⁷ Ministry of Public Works and Transport & Ministry of Rural Development, *Cambodia Road Connectivity Improvement Project (CRCIP): Stakeholder Engagement Plan* (2020) <http://documents1.worldbank.org/curated/en/397031586230420580/pdf/Stakeholder-Engagement-Plan-SEP-Cambodia-Road-Connectivity-Improvement-P169930.pdf>.

National Consultations

National Consultations are particularly useful to target government representatives, NGOs and other interested groups who have an interest in the project and may also have an ability to influence it. National Consultations were held by MRD on March 5, 2020, in order to disclose and discuss the draft versions of the RF, IPPF and SEP with interested stakeholders as defined by this SEP. The minutes of the consultation carried out by MRD during project preparation can be found in Annex 3. (...) Stakeholders will also be informed, via email or letter communication, about how suggestions were taken into account and/or incorporated. Further stakeholders' workshops could take place at other stages of the project.

Local-Level Consultations

Local consultations will involve mainly face to face group meetings. In some cases, one-on-one consultations or focus group discussions (FGD) may also be carried out, especially to reach and capture the views of vulnerable or disadvantaged groups. Particular emphasis should be placed in seeking out the voice of women and vulnerable groups, such as through female-only FGDs. In the case of women, the Project will need to ensure consultation activities are conducted at a time that is convenient to them, that activities such as FGDs are run by women (particularly for sensitive topics like health or sexual issues), and that women and/or vulnerable groups are representative. On January 16-17, 2020, MPWT carried out four local consultations at different locations with affected and interested stakeholders as defined by this SEP, to disclose and discuss the project and draft RPs, including options for grievance redress. Additional local consultations were carried out online and over the phone, March 20-April 3, 2020 to disclose this SEP, the BRP and the draft ESMPs. Consultations were not conducted at the provinces due to the COVID-19 Pandemic. Minutes of these meetings are included in Annex 4. Local-level consultations should continue during project preparation and implementation for both MPWT and MRD components, as detailed in this SEP.

Trainings

One important way to engage stakeholders will be through trainings on important topics related to the project such as road safety, gender, labor rights (for both men and women), child labor, HIV/AIDS and STDs and gender-based violence. Since some of these topics are quite sensitive, particular measures may need to be in place, such as ensuring some trainings are done in female-only or male only groups, or that they are facilitated by men or women, as appropriate. Community trainings should also include topics such as the grievance redress mechanism and road safety. Road safety training should also be targeted at key stakeholders such as schools, as well as young men, as they are disproportionately the biggest victims of road accidents in the country. Trainings may be delivered by the ESOs, DDIS/ISWSC or NGOs or CSOs with experience in a particular topic.

Consultations with workers and staff

The project will strive to ensure that unskilled workers come from the community as much as possible, so as to minimize the influx of labor. A proposed target of 15% of female unskilled workers, assuming that women in the area show an interest in being hired, is also recommended. Furthermore, contractors and their staff will need to be well consulted and trained on sensitive issues, including being good neighbors (for staff from outside the project area), Staff Code of Conduct, gender-based violence, gender, labor rights, child labor and HIV/AIDS and STDs. Workers also need to be well aware of construction milestones and to have knowledge and access to a worker's grievance redress mechanism (as per their contract) as well as the project's GRM detailed in this SEP. Contractors and their staff will be mainly consulted through trainings, on-site interviews, and through regular feedback with supervisors and the DDIS/ISWSC consultants. Table 4 summarizes consultations activities.

Le et al, Stakeholder Perceptions and Involvement in Vietnam and Cambodia⁴³⁸

To tackle environmental issues and ensure compliance with regulations, three ports in Vietnam and two ports in Cambodia implemented an Environmental Management System (EMS). The first steps of the EMS were completed during the period 2006e2007, with the establishment of the Port Environmental Policy, the Register of Environmental Aspects and an EMS Programme. Priorities in environmental protection have been identified for each of the ports. The initial assessment of the EMS, based on the documented EMS, was completed by experts from the ECOPORT Foundation, who issued a Port Environmental Review System (PERS) certificate for the ports. This paper presents an assessment of the implementation of the EMS through the eyes of various groups of port stakeholders.

Wellspring Initiative, Multi-Stakeholder Initiatives in Cambodia⁴³⁹

Lessons learned

Need for common language

The triangle actors (i.e. government, civil society, private sector) often do not understand one another's perspective, values and ideas, or strategic objectives. This is a critical problem which MSIs in Cambodia need to overcome. Firstly, the RGC and civil society sometimes find themselves at odds due to historical distrust. Secondly, the private sector can sometimes be doubtful of civil society because they feel the latter do not add sufficient value in local development. Thirdly, civil society sometimes perceive private sector through their own lens of democracy and human rights, which is often ill-fitting. Moreover, each stakeholder group has their own customs, language, values, and ways of operating which are often incompatible with each other. (...)

Dialogue is informal, not formal

In the current context, meaningful dialogue or consultation happens through informal back channels. Civil society, government and development partners tend to organize medium or large scale forums, conferences, and workshops, with the aim of promoting dialogue. Yet in Cambodian culture, these kinds of formal settings are more for satisfying protocols and reinforcing institutional relationships. The real dialogue and relationship building often happens in coffee breaks, over lunch tables, in between meetings, and in adhoc situations that are often unplanned and/or unexpected. (...)

Donor priorities

Most donors or DPs are tied to the priorities, strategies, and sometimes political agendas of their back donors or host country governments. Inasmuch as most DPs share the concern that Cambodia develop a plural, multi-party democracy, they may be likely to insert this agenda into their development assistance. While it is natural to wish to impose conditions upon ODA, it is important to recall that other bi-lateral donors or financiers such as the Chinese government do not have such requirements or restrictions. It is clear in the present political context, moreover, that RGC would like to be in control of their own agenda for development. This is in principle aligned with the Busan Principles for Effective Development Cooperation.

Enabling environment

Most actors in private sector and the government do not recognize or appreciate this term as being something which is useful to them in their work. The enabling environment tends to look at the world from the view of civil society organizations. A more relevant term for MSIs would be an 'Engagement Index' which would measure

438 Xuan Quynh Le et al., 'Stakeholder perceptions and involvement in the implementation of EMS in ports in Vietnam and Cambodia', *Journal of cleaner production*, 64 (2014) pp. 173-193, https://www.researchgate.net/publication/259519322_Stakeholder_perceptions_and_involvement_in_the_implementation_of EMS_in_ports_in_Vietnam_and_Cambodia.

439 Wellspring Initiative, *Multi-Stakeholder Initiatives in Cambodia* (2018) <https://www.shareweb.ch/site/Development-Effectiveness/Documents/EVENTS/2018-09%20Enabling%20Environment%20for%20CSO/2018-09%20SDC%20HEKS%20MSI%20Study%20Cambodia.pdf>

such items as: mutual understanding, willingness to cooperate, degree of shared interest, and existence of common agendas. It would assess how likely, ready, or willing different actors in the triangle would be to work together. This would have the advantage of being seen as a more neutral and supportive term, as ‘enabling environment’ for civil society carries with it the assumption that there might be a disabling environment as well. The responsibility for maintaining the ‘enabling environment’ is also often lodged with the RGC, which could result in mismatched expectations between the two stakeholder groups.

Shifting roles

The RGC has acquired more capacity, political will, and power to manage its own affairs over the last 5 to 10 years. At the same time, the private sector is becoming more prominent through both local investment and FDI. This coupled with the retreat of many development providers means that civil society needs to rethink its role in order to continue to remain a viable development partner to the government. For starters, CSOs need to re-establish themselves as a viable partner to RGC. First steps could be in self-regulation and professionalizing of CSOs in Cambodia. This could be an effective response to LANGO and a voluntary move towards higher standards of service, integration of democratic principles, and accountability to both citizens of Cambodia as well as the RGC.

Power Dynamics

Closely related to the notion of shifting roles are the power dynamics in Cambodia. In a healthy, multi-party democracy, there are checks and balances provided by the distribution of power among different political parties. Moreover, there are institutional checks and balances amongst different branches of government (i.e. executive, judicial, legislative). As of recently, the ruling party has consolidated a near unanimous control of Parliament, and all executive and judicial bodies. However, some political parties civil society organizations, and international actors disagree with the results of the recent parliamentary elections. This leaves them faced apparently with only two choices: 1) collaborate with government and potentially legitimize their standing, or 2) continue to resist and advocate for some type of change to occur. A third way is proposed, that of constructive engagement. As the government is not monolithic (nor is civil society), there are many individuals in each of these stakeholder groups that support peaceful, democratic, just change in Cambodia. The work of DPs and CSOs should be to identify these possibilities for connection, and to build bridges across sectarian, political, religious, gender, ethnic, nationalist lines, in support of this vision. As noted elsewhere, this does not mean abandoning their fundamental commitments to human rights and democracy, yet it suggests that these commitments are not incompatible with an approach of constructively engaging the government.

Trust and relationship building

This is an area which is often written about but is less often operationalized. In the ASEAN context and in particular Cambodia, relationships and trust are of primary importance. In the absence of personal connections and mutual acceptance, it is very difficult for members of civil society to navigate the government bureaucracy and even more challenging to enter into the corporate sector. In particular when engagement concerns sensitive topics such as natural resources or human rights, it is necessary to have trustful personal connections that can facilitate and smooth coordination. In specific, multi-stakeholder initiatives require time to build, to organize, and to sustain in order to become meaningful. They require confidence and trust building measures, or to put briefly, “many, many cups of tea” together. Operationalizing trust in the context of MSIs will require a paradigm shift for both CSOs and DPs alike. This is more fully covered in the support modalities section below.

Differential Engagement

As noted in the definitions section and throughout the report, the experience of CSOs within MSIs depends on their strategic aims as well as their approach to engaging with the government. The RGC have made it explicit that they prefer cooperation with a-political CSOs. This places the “human rights” NGOs in a difficult situation with regards to their advocacy efforts. At the same time, this attitude creates friction between the “development” and the “human rights” NGOs who do not always cooperate well together. As such, there is a need for civil society

organizations to critically reflect on their own approaches and realize their interdependence. What is meant here is that both types of organizations and both types of approaches (i.e. the hot hand and the cold hand) are necessary for progressing change toward the SDGs. (...)

Resourcing

At the present, resourcing approaches of DPs - financing modalities (macro) and funding mechanisms (micro) - tend to be focused on development provider agendas, and to some extent on political priorities of external actors. They tend to be inflexible, short term, outcome focused, and require high levels of administrative oversight and compliance by recipients. While the need for fiscal accountability is understood, there is an even greater need for fluidity, flexibility, creative risk mitigation, incentives for innovation, and mechanisms that promote greater personal, organizational, and institutional trust between providers and recipients of development assistance. Some of the options explored in the section above, such as diaspora bonds, or universal basic income, could be explored as pilot schemes in limited geographic areas. Cutting edge technologies such as blockchain and other similar transparency platforms could be considered for integration into these new funding mechanisms. Moreover, there is a need for more flexibility which encourages CSO partners to take risks, and even to fail, in order that they may innovate and create new ways of meeting shared development goals. In short, financing and funding should focus more on shared accountability, return on investment, and stimulating sustainable, locally owned change.

Support modalities

In order for DPs to support meaningful, social change, a reformation of their modus operandi is needed to become more flexible, responsive, and harmonized. For DPs to truly support constructive engagement between civil society and government will require a reformulation of donor priorities and modalities of institutional and financial support. A greater emphasis on process, capacity development, and relationship building would be highly appropriate. In practice, multi-stakeholder collaboration is exceedingly difficult to plan and implement. This is because engagement between duty bearers and rights holders often takes place in informal settings which are difficult to document and monitor according to standards required by donors. It is often not linear, rational and progressive, like the logical frameworks which guide the majority of development assistance. Rather it is often circular, repetitive and unpredictable. It often requires high levels of diplomacy, tact, quiet cooperation, and even secrecy. This is the nature of engagement work in Cambodia, and it is something for DPs to consider.

REDD+ Cambodia, Consultation Group⁴⁴⁰

The REDD+ Consultation group (CG) (...) [provided] a forum to represent the views of different stakeholder groups. It is intended to be responsible for providing a link between the Cambodia REDD+ Programme and existing networks of stakeholder groups.

The CG consists of 18 members, made up of 2 members representing each of nine stakeholder groups. These groups were derived from the Roadmap and UN-REDD Programme document and based on further discussions with stakeholders. The nine groups are:

- Academia
- International organizations
- National NGOs
- Indigenous Peoples
- CSO

⁴⁴⁰ Reducing Emissions from Deforestation and Forest Degradation (REDD+) Cambodia, *Consultation Group* (2013) <http://www.cambodia-redd.org/governance/consultation-group.html>.

- Private Sector
- Community Forest Groups
- Community Protected Area Groups
- Community Fishery Groups

Consistent with UN-REDD stakeholder engagement guidelines, stakeholders were given the responsibility to self-select their representatives. In the case of Indigenous Peoples, the selection process was based on provincial election meetings in the 15 provinces where there are populations of Indigenous Peoples. This approach was developed through discussions with Indigenous Peoples representatives during and following a stakeholder consultation meeting in September 2012.

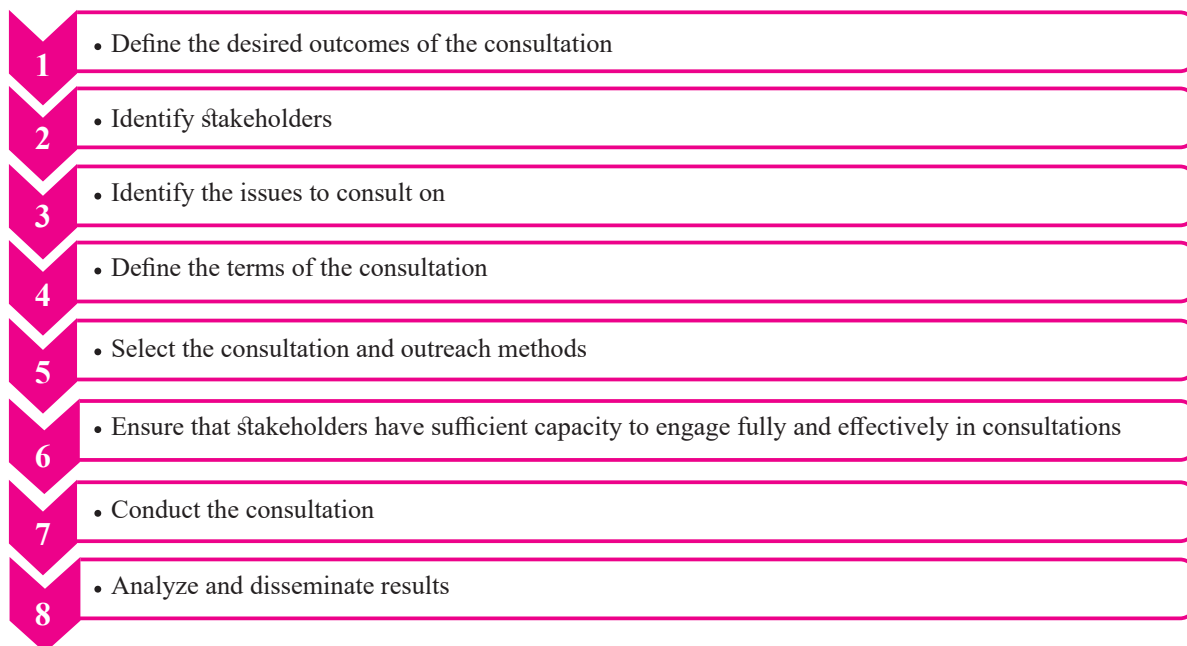
For the other stakeholder groups, in order to avoid any suggestion that the Royal Government of Cambodia (RGC) was directing the process, a “Voluntary Facilitation Committee” (VFC) was established. The nine-member VFC itself was multi-stakeholder by composition and resulted from a nation-wide call for expressions of interest from qualified individuals.

Forest Carbon Partnership Facility, Stakeholder Engagement in REDD+⁴⁴¹

These Guidelines are designed to support effective stakeholder engagement in the context of REDD+ readiness for the Forest Carbon Partnership Facility and the UN-REDD Programme, with an emphasis on the participation of Indigenous Peoples and other Forest-Dependent Communities. The Guidelines contain 1) Relevant policies on indigenous peoples and other forest-dependent communities; 2) Principles and guidance for effective stakeholder engagement; and 3) Practical “how-to” steps on planning and implementing effective consultations.

Schematic of Consultations Steps

Figure 1: Schematic of Consultations Steps



⁴⁴¹ Forest Carbon Partnership Facility and the UN-REDD Programme, *Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities* (2012) <https://www.unredd.net/documents/global-programme-191/stakeholder-engagement-295/key-documents-1095/6862-final-joint-guidelines-on-stakeholder-engagement-april-20-2012-6862/file.html>.

3. Define the issues to consult on

The key issues should broadly correspond to the R-PP components and/or the components of the UN-REDD National Programme Document. In the case of REDD+, issues for consultation may include (but are not limited to):

- Current status of national forests;
- Institutional, policy and regulatory frameworks;
- Main causes and drivers of deforestation and forest degradation;
- Past and present policies to halt deforestation and forest degradation, where they have succeeded and where they have not;
- Rights and needs of indigenous peoples and other forest-dependent communities;
- Type and pattern of land use by indigenous peoples;
- Land rights (user and property rights, traditional, customary), and land tenure systems;
- Rights to carbon;
- Inclusive participation in the design and implementation of REDD+ strategy and development of procedures and enablers throughout the REDD+ cycle;
- Proposed REDD+ strategy;
- Design of benefit-sharing systems for equitable and effective distribution of REDD+ revenues;
- Economic, social and environmental impacts and risks of REDD+ and the mitigation and prevention of risks;
- Design of monitoring systems to keep track of forests and forest emissions as well as environmental and social co-benefits;
- Issues of forest governance and mechanisms to ensure full compliance with social and environmental safeguards, including during REDD+ strategy development;
- Opportunity costs of land use;
- Groups likely to gain or lose from REDD+ activities;
- Role of the private sector.

Dahles et al, Social Entrepreneurship and Tourism in Cambodia⁴⁴²

Tourism scholars agree that social entrepreneurship has an important role to play in the adoption of financially sustainable strategies to achieve social aims and the responsible development of tourism. Yet little is known about how tourism-based social enterprises (TSEs) engage with local communities. This article aims to fill this void by addressing the question of what approaches to community engagement in tourism development are being encouraged by social entrepreneurship.

TSEs contribute to new ways of ensuring that the poorest segments of society receive a greater share of benefits. This typology also captures the diversification of community engagement away from the established role of NGOs to a variety of independent social enterprises. However, due to fluctuations in tourist arrivals and lack of structural support for TSEs, it remains to be seen whether this transformation will advance the sustainable development of Cambodian communities.

442 Heidi Dahles et al., 'Social Entrepreneurship and Tourism in Cambodia: Advancing Community Engagement', *Journal of Sustainable Tourism*, 28:6 (2020) https://www.researchgate.net/publication/338196051_Social_entrepreneurship_and_tourism_in_Cambodia_advancing_community_engagement.

Ratner et al, Multi-Stakeholder Dialogue to Manage Natural Resource Competition⁴⁴³

Rural development or natural resource management program planning and implementation frequently confront challenges of environmental resource competition and conflict, particularly where common pool resources are a major component of rural livelihoods. This paper reports on an approach to multi-stakeholder dialogue, supported by participatory action research, to address the roots of such competition and conflict.

The approach, called “Collaborating for Resilience,” includes principles and guidance on building a shared understanding of risks and opportunities, weighing alternative actions, developing action plans, and evaluating and learning from the outcomes. Working in partnership with government, community and civil society actors, the approach was developed and refined through applications in large lake systems in Uganda, Zambia, and Cambodia.

This paper presents a synthesis of lessons addressing practitioners in government, nongovernmental development organizations, and international development agencies. These lessons include guidance on the context of multi-stakeholder dialogue processes, addressing gender equity, building stakeholder relationships and accountability across scales, and encouraging learning and innovation over time.

Carter et al, Sustainable Tourism as a Development Strategy in Cambodia⁴⁴⁴

Governments in many developing countries endorse sustainable tourism, despite associated practical limitations and challenges as a development strategy. (...) Analysis of 77 documents on Cambodia’s sustainable tourism revealed themes and challenges relating to: (1) an emphasis on nature-based tourism (ecotourism); (2) calls for greater community engagement for sustainable outcomes; (3) stakeholder perceptions and values as drivers of tourism success; (4) cultural heritage as a key tourism attraction; and (5) foreign investment shaping Cambodia’s tourism future.

Unequal emphasis is given to key government policies for tourism development and there is limited practical guidance on how to realise a vision of sustainable tourism. There is a lack of consideration of how the socio-economic and cultural context affects sustainable tourism. The evidence suggests that sustainable tourism in Cambodia is questionable until fundamental economic, social capacity and policy issues are addressed, along with greater emphasis given to the tourism system’s demand side.

Questions

1. What are the main driving forces for stakeholder engagement in Cambodia?
2. How does the business climate of Cambodia compare internationally? (and regionally in ASEAN). What is the impact of the high concentration of ownership on stakeholder engagement?
3. How does stakeholder engagement take place in Cambodia?
4. What are the main obstacles to stakeholder engagement in Cambodia?
5. What are the key factors and considerations to achieving successful stakeholder engagement in Cambodia?

443 Blake D. Ratner, et al., ‘Facilitating Multi-Stakeholder Dialogue to Manage Natural Resource Competition: A Synthesis of Lessons from Uganda, Zambia, and Cambodia’, *International Journal of the Commons*, 11(2) (2017) pp. 733–753, <http://doi.org/10.18352/ijc.748>.

444 Rodney William Carter et al., ‘Sustainable Tourism and Its Use as a Development Strategy in Cambodia: A Systematic Literature Review’, *Journal of Sustainable Tourism*, 23:5 (2015) pp. 797-818, https://www.researchgate.net/publication/277689983_Sustainable_tourism_and_its_use_as_a_development_strategy_in_Cambodia_a_systematic_literature_review.

6. Identify the main stakeholder groups in different industrial sectors in Cambodia (e.g. garments and textiles sector, agriculture, ports and fishing) and compare the relative power of the various stakeholders in each. What type of power does each stakeholder group have?
7. What is the potential of multistakeholder initiatives in Cambodia to protect human rights, and labour rights, or the environment in Cambodia?

Further Readings

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The compendium is an aid for lecturers to prepare classes and seminars on business and human rights in Cambodia. Teachers from several academic disciplines – law, management, political science, social science, and media – will find carefully selected materials and numerous aspects on which to build a rewarding classroom experience. The compendium has three parts. Part I covers the policy frameworks for ‘human rights and business’. Part II is a deep dive into the systems companies set up to ensure responsible business conduct. Part III further contextualizes what the corporate responsibility entails regarding specific human rights.

Part I. Human rights frameworks - The laws and policy frameworks for responsible business conduct

1. International law on business and human rights
2. International soft law on corporate social responsibilities
3. International trade and investment agreements
4. National laws with extraterritorial effects
5. Multistakeholder initiatives (collaborative governance)
6. Access to remedies: judicial mechanisms
7. Access to remedies: non-judicial mechanisms

Part II. Human rights due diligence - The management of human rights risks

8. **Codes of conduct**
9. **Human rights impact assessments**
10. **Due diligence and management systems**
11. **Corrective actions**
12. **Measuring and tracking performance**
13. **Transparency and corporate reports**
14. **Stakeholder engagement**

Part III. Human rights standards - The impacts of business on specific human rights

15. Child labour and Children Rights
16. Forced labour and human trafficking
17. Living wages
18. Working hours
19. Freedom of association and collective bargaining
20. Health and safety
21. Migrant workers
22. Indigenous people
23. Gender
24. Persons with disabilities
25. Land issues and relocation
26. Provision of security
27. Water
28. Environmental protection and human rights