

Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163)

Corporate human rights due diligence: emerging practices, challenges and ways forward

Background and focus

The unanimous endorsement of the [Guiding Principles on Business and Human Rights](#) by the United Nations Human Rights Council in 2011 represented a watershed moment in efforts to tackle adverse impacts on people resulting from globalization and business activity in all sectors. They provided, for the first time, a globally recognized and authoritative framework for the respective duties and responsibilities of Governments and business enterprises to prevent and address such impacts.

The Guiding Principles clarify that all business enterprises have an independent responsibility to respect human rights, and that in order to do so they are required to exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights.

In its [report to the General Assembly](#), the [Working Group on Business and Human Rights](#)* highlights key features of human rights due diligence and why it matters; gaps and challenges in current business and Government practice; emerging good practices; and how key stakeholders — States and the investment community, in particular — can contribute to the scaling-up of effective human rights due diligence.

What is corporate human rights due diligence?

Human rights due diligence is a way for enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved. It involves four core components: (a) *Identifying and assessing actual or potential adverse human rights impacts* that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) *Integrating findings from impact assessments across relevant company processes* and taking appropriate action according to its involvement in the impact; (c) *Tracking the effectiveness of measures* and processes to address adverse human rights impacts in order to know if they are working; (d) *Communicating on how impacts are being addressed* and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.

Enterprises should identify and assess risks by geographic context, sector and business relationships throughout own activities (both HQ and subsidiaries) and the value chain.

The prevention of adverse impacts on people is the main purpose of human rights due diligence. It concerns risks to people, not risks to business. It should be ongoing, as the risks to human rights may change over time; and be informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations. Risks to [human rights defenders](#) and other critical voices need to be considered.

Increasing uptake at policy level

Since 2011, corporate human rights due diligence has become a norm of expected conduct. It has been integrated in other policy frameworks for responsible business, such as the recent OECD Due Diligence Guidance for Responsible Business Conduct that provides concrete guidance for due diligence in practice. The human rights due diligence standard is increasingly reflected in government policy frameworks and legislation, including mandatory disclosure of risks of modern slavery in supply chains. In the 20 [national action plans on business and human rights](#) that have been issued to date, Governments have reaffirmed the expectation that business enterprises exercise human rights due diligence.

A growing number of investors are starting to ask enterprises how they manage their risks to human rights. Also, among business lawyers there is a growing recognition that they should advise corporate clients to exercise human rights due diligence. In the world of sports, human rights due diligence processes have become an integral part of the selection process for mega sporting events.

Among business enterprises, a small but growing number of large corporations in different sectors have issued policy statements expressing their commitment to respect human rights in line with the Guiding Principles. Several such enterprises are developing practices that involve ongoing learning and innovation around the various components of human rights due diligence to prevent and address impacts across operations and relationships, including in supply chains.

Business practice: gaps and challenges

Assessments by benchmark and ranking initiatives highlight that the majority of companies do not demonstrate practices that meet the requirements set by the Guiding Principles. This may indicate that risks to workers and communities are not being managed adequately in spite of growing awareness and commitments. The Working Group notes gaps in current practice in corporate disclosure of risk assessments and human rights due diligence processes, as well as the “taking action” and “tracking of responses” components of human rights due diligence. Similarly, connections between human rights due diligence and the remediation of actual impacts are not being made in practice. Beyond a 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. Translating corporate policies into local contexts is a challenge across sectors.

Gaps in Government practice

A lack of government leadership in addressing governance gaps remains the biggest challenge. A fundamental issue is that host Governments are not fulfilling their duty to protect human rights, either failing to pass legislation that meets international human rights and labour standards, passing legislation that is inconsistent, or failing to enforce legislation that would protect workers and affected communities. While some home Governments have introduced due diligence or disclosure legislation, such efforts also remain patchy or uncoordinated. Governments are not providing enough guidance on human rights due diligence and support tailored to national business audiences, including small and medium-sized enterprises. A lack of policy coherence in government practice is part of the overall picture, and Governments are not leading by example in their own roles as economic actors.

Overall assessment

While a small group of early adopters are showing the way and good practices are building up, considerable efforts are still needed, as the majority of enterprises around the world remain either unaware of their responsibility, or unable or unwilling to implement human rights due diligence as required of them in order to meet their responsibility to respect human rights. The fundamental challenge going forward is to scale up the good practices that are emerging and address remaining gaps and challenges. That will require concerted efforts by all actors. Evidence of what constitute some of the strongest drivers for changing business practice suggests that governments and investors have a key role to play. For Governments in particular, addressing and closing market and governance failures is an inherent part of their duties.

Key message to business enterprises: just get started

In spite of slow progress overall, the good news is that effective due diligence can be done. Practice examples are building up, which can provide a starting point for a wider group of companies. This, together with the development of numerous tools and resources for business in recent years, means that enterprises can no longer cite a lack of knowledge as an excuse for not getting started.

Companies should just get started. The first step is to identify specific actual or potential adverse impacts related to an enterprise's activities or its business relationships. Each potential impact identified will have to be assessed for its likelihood and severity. Every actual impact identified will need to be addressed. In terms of process, getting started requires leadership from the top to turn human rights policy commitments into reality.

Lessons from “early adopters” on how to get started, the journey of moving from policy to practice, and key milestones are compiled in a companion “practice paper” to the report. The companion paper also identifies good practice elements in relation to a number of aspects of human rights due diligence, including stakeholder engagement, transparency and meaningful reporting on human rights, integrating human rights in supply chain management beyond tier one, exercising leverage, addressing systemic issues and [corporate engagement on the Sustainable Development Goals](#).

Recommendations to business

- (a) If they have not yet implemented human rights due diligence, enterprises should **just get started**, including by **assessing their potential and actual impacts** on human rights, assessing where existing processes fall short and developing an action plan for putting in place **human rights due diligence procedures** for their own activities and value chains, in line with the Guiding Principles, including by learning from good practices emerging in their own industry and in other sectors.
- (b) If they have already adopted human rights due diligence policies and processes based on the Guiding Principles, enterprises should continue on the journey and seek to continuously **enhance approaches by engaging with affected stakeholders**, civil society organizations, human rights defenders and trade unions and by being transparent about the management of potential and actual impacts.
- (c) All enterprises should consider **collective leverage approaches**, especially when faced with systemic human rights issues.

Key message to the investment community: leverage can and should be used

Increasingly, investors are asking questions to companies about human rights policies and human rights due diligence. This practice has moved beyond the niche realm of socially responsible investors to become part of a wider trend of integrating environmental, social and governance considerations into mainstream investment decision-making. There is an increasing recognition of the responsibility of investors and financial institutions, and that proper human rights due diligence improves risk management overall and is good for both people and investments.

Recommendations to the investment community

Entities in the investment community should implement human rights due diligence as part of their own responsibility under the Guiding Principles, more systematically **require effective human rights due diligence by the companies they invest in** and coordinate with other organizations and platforms to ensure alignment and meaningful engagement with companies.

Key message to Governments: use all available regulatory and policy levers

States have a duty to protect people against business-related human rights impacts. They have a range of levers that they can and should use, such as: policy tools and frameworks, including [national action plans](#) in order to enhance policy coherence overall; legislation, regulation and adjudication; economic incentives in “[economic diplomacy](#)” and public procurement; lead by example [in their role as economic actors](#); provision of guidance (including for SMEs); and promotion of multi-stakeholder dialogue.

Recent developments show that action is possible in all these areas, and that government leadership from the top is a critical factor.

Recommendations to Governments

The Working Group recommends that States **use all available levers** to address market failures and governance gaps to advance corporate human rights due diligence as part of standard business practice, ensuring alignment with the Guiding Principles, including by:

- (a) Using **legislation** to create incentives to exercise due diligence, including through mandatory requirements, while taking into account elements to drive effective implementation by businesses and promote level playing fields;
- (b) Using **their role as economic actors** to advance human rights due diligence, including by integrating human rights due diligence into the operations of State-owned enterprises and agencies that promote trade and investment, and into public procurement;
- (c) Promoting greater **policy coherence** within Governments, including by adopting or strengthening the implementation of national action plans on business and human rights;
- (d) Providing **guidance to business** enterprises, including small and medium-sized enterprises, on human rights due diligence tailored to local contexts;
- (e) Facilitating **multi-stakeholder platforms** to promote dialogue on business-related risks to human rights, ways to address them and to strengthen monitoring and accountability, including in a sector

Links

Full report (available in Arabic, Chinese, English, French, Spanish and Russian):

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163

Companion paper I – *Corporate human rights due diligence: Background note and elaborating on key aspects*: www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote1DiligenceReport.pdf

Companion paper II – *Corporate human rights due diligence – Getting started, emerging practices, tools and resources*:

www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf

Working Group's thematic page on human rights due diligence:

www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx

2018 UN Forum on Business and Human Rights: www.ohchr.org/2018ForumBHR

UN Guiding Principles on Business and Human Rights:

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

The Corporate Responsibility to Respect: An Interpretive Guide (Office of the UN High Commissioner for Human Rights):

www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf

Endnote

*) *The Working Group on the issue of human rights and transnational corporations and other business enterprises (known as the Working Group on Business and Human Rights) is mandated by the Human Rights Council to promote worldwide dissemination and implementation of the Guiding Principles on Business and Human Rights (resolutions 17/4, 26/22, and 35/7). The Working Group is composed of five independent experts, of balanced geographical representation, and it is part of what is known as the Special Procedures of the Human Rights Council. Special Procedures mandate-holders are independent human rights experts appointed by the Human Rights Council to address*

either specific country situations or thematic issues in all parts of the world. The experts are not UN staff and are independent from any government or organization. They serve in their individual capacity and do not receive a salary for their work.