



# **CORPORATE IMPLEMENTATION OF THE GUIDING PRINCIPLES**

A GUIDE ON HOW TO REVIEW COMPANY PERFORMANCE AND  
IMPLEMENT THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN  
RIGHTS

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

**INCAS IN PRACTICE SERIES 01/2012**

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## ACKNOWLEDGEMENTS

INCAS Consulting Ltd thanks Baiba Rubesa (Statoil), Kathryn Dovey (Global Business Initiative on Human Rights), Turid Arnegaard (Royal Ministry for Foreign Affairs, Norway), and Vicky Bowman (Rio Tinto) for their feedback on this Review Methodology. Responsibility for the content of this publication remains with INCAS Consulting Ltd. All comments should be directed at us and us alone.

## ABOUT THE REVIEW, METHODOLOGY AND AUTHORS

The Review Methodology is born out of work for various corporate clients that INCAS Consulting has carried out in 2011-2012. It is the first INCAS in Practice Series publication for 2012, and part of INCAS Consulting Ltd's commitment to promote debate on good practice in the field of business and human rights. The Review Methodology has benefited from significant additional research and consultations with human rights experts. It aims to be practical and hands-on, enabling other practitioners to build upon the lessons learnt from our work on human rights reviews for companies.

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## ACRONYMS

|          |  |
|----------|--|
| BLIHR    | Business Leaders Initiative on Human Rights  |
| CAT      | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment     |
| CBO      | Community-Based Organisation   |
| CEDAW    | Convention on the Elimination of All Forms of Discrimination against Women                   |
| CERD     | Convention on the Elimination of All Forms of Racial Discrimination                          |
| CRC      | Convention on the Rights of the Child  |
| CSO      | Civil Society Organisation   |
| CSR      | Corporate Social Responsibility  |
| GP       | Guiding Principles   |
| HR       | Human Rights   |
| HRBA     | Human Rights-Based Approach  |
| HRRA     | Human Rights Risk Assessment   |
| HSE      | Health, Safety and Environment   |
| HURIST   | Human Rights Strengthening Programme   |
| ICCPR    | International Covenant on Civil and Political Rights   |
| ICESCR   | International Covenant on Economic, Social and Cultural Rights                               |
| ILO      | International Labour Organization  |
| MDG(s)   | Millennium Development Goal(s)   |
| MoU      | Memorandum of Understanding  |
| NGO(s)   | Non-Governmental Organisation (s)  |
| NHDR(s)  | National Human Development Report(s)   |
| NHRAP(s) | National Human Rights Action Plan(s)   |
| OECD     | Organisation for Economic Co-operation and Development                                       |
| OHCHR    | Office of the (UN) High Commissioner for Human Rights  |
| TOR      | Terms of Reference   |
| UDHR     | Universal Declaration of Human Rights  |
| UN       | United Nations   |
| UNHRC    | United Nations Human Rights Council (replaced the United Nations Commission on Human Rights) |

# INTRODUCTION

## The Guiding Principles on Business and Human Rights

The United Nations Human Rights Council endorsed the Special Representative's "Guiding Principles on Business and Human Rights" (referred to hereafter as "the Guiding Principles") on 16 June 2011. The Guiding Principles were developed to facilitate implementation of the "Protect, Respect, and Remedy" Framework (referred to hereafter as "the Framework") presented to the Council in June 2008, which rests on three core principles; the State duty to protect against human rights abuses by third parties, the corporate responsibility to respect human rights, and the need for more effective access to remedy in cases of business-related human rights abuse.

The Framework and Guiding Principles settle that corporations are not tasked to protect human rights, as this is the duty of government, but rather have a responsibility to respect them and remedy adverse impacts that their activities may have. They also state that beyond causing or contributing to adverse human rights impacts through their own activities, and addressing such impacts when they occur, companies should actively seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services — and by their business relationships — even if they have not contributed to those impacts.

INCAS Consulting Ltd is among the first to assist large companies review their operations in light of the Guiding Principles. Given limited practical guidance and precedents on how to assess company governance and operations relevant to the Guiding Principles, an important part of our work has involved the development of review methods.

Several companies have now initiated or concluded reviews of their operations in relation to the Guiding Principles. These reviews importantly set the stage for how companies will implement the Guiding Principles in practice. There is still no agreement, however, on what constitutes "good practice" in such review processes — and this lack of a good practice base is likely to remain a key challenge for the effective roll-out of the Guiding Principles.

As a contribution to the Guiding Principles' progress, INCAS Consulting Ltd now shares the Guiding Principles review methodology with a broader audience.

In addition to drawing from our own experience, this review methodology has also benefited from post-implementation reflections, feedback from clients, insights from discussions with other companies that have reviewed/are reviewing their operations in light of the Guiding Principles, and inputs from human rights experts.

## What do the Guiding Principles ask of businesses?

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### United Nations “Protect, Respect and Remedy” Framework

1. State duty to **protect** human rights
  2. Corporate responsibility to **respect** human rights
  3. Access to **remedy**
- 

In 2008, the United Nations Human Rights Council endorsed the “Protect, Respect and Remedy” Framework which, as shown above, rests upon three pillars. The Guiding Principles have been drawn up to facilitate implementation of this Framework and ensure that it does not remain theoretical.

Though it is the state that is tasked with protecting human rights, in practice, responsibility for the duties identified in the three pillars above can lie with several actors. For example, businesses performing public functions such as the provision of water must bear the responsibility to protect as much as respect human rights. The blurring of responsibilities is even more evident in conflict situations where effective government is absent. In such instances, the home country of the business should conduct effective oversight to protect human rights. Of the three pillars above, then, this report speaks first and foremost to the Guiding Principles’ effort to operationalise the corporate responsibility to respect human rights and ensure greater access to proper remediation.

In total, 14 of the 31 principles detailed in the Guiding Principles on Business and Human Rights speak to businesses specifically. Detailed under the heading ‘II. The corporate responsibility to respect human rights’, these principles are:

- Businesses should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- Human rights are understood, at a minimum, as those expressed in the International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.
- Businesses should avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur. They should also seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
- This applies to all businesses although the way businesses meet that responsibility may vary according to size, sector, operational context, ownership and structure and the severity of the enterprise’s adverse human rights impacts.
- Businesses should have a policy commitment to meet their responsibility to respect human rights; a human rights due-diligence process

to identify, prevent, mitigate and account for how they address their impacts on human rights and processes to enable remediation of any adverse human rights impacts they cause or to which they contribute.

- Commitment should be expressed in a statement of policy that: is approved at the most senior level of the business enterprise; is informed by relevant internal and/or external expertise; stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; is publicly available and communicated internally and externally to all stakeholders; and is reflected in operational policies and procedures necessary to embed it throughout the business.
- Businesses 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. This should be ongoing and recognise that human rights risks may change over time.
- To identify and assess any actual or potential adverse human rights impacts, businesses should: draw on internal and/or independent external human rights expertise; and involve meaningful consultation with potentially affected groups and other relevant stakeholders.
- Businesses should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action to prevent and mitigate adverse human rights impacts.
- In order to verify whether adverse human rights impacts are being addressed, businesses should track the effectiveness of their response.
- Businesses should be prepared to communicate externally how they address their human rights impacts.
- Where businesses identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.
- Businesses should always comply with all applicable laws and respect internationally recognised human rights, wherever they operate.
- Where it is necessary to prioritise actions to address actual and potential adverse human rights impacts, businesses should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

## What the Methodology is

The methodology presented here has been crafted to be sufficiently generic and broadly applicable to the extractive sector and beyond.

The methodology takes a *risk-based approach* to the Guiding Principles, rather than a normative approach. We believe that a risk-based approach makes the Guiding Principles a valuable tool for companies to better manage and prevent adverse human rights impacts in their operations, while also serving as a better platform for building corporate consensus around the Guiding Principles. This approach, however, is not limited to assessing risks to the business, but also the human rights risks of potentially impacted individuals and communities.

The methodology, with its series of clear steps, is *implementation oriented*, enabling users to carry out a review of company performance in relation to the Guiding Principles and create action plans for implementation of the Guiding Principles.

The methodology reflects our preference for *actionable recommendations* – its application should therefore yield tangible measures that, if implemented, will place the company in a better position to manage its human rights exposure.

The methodology is designed for use by external consultants, as we believe that the perspectives they provide ensure a balanced review of corporate performance in relation to the Guiding Principles. We believe, however, that internal capacities within companies also need to be built for effective implementation – and that such internal capacity building would necessarily be part of most action plans.

Given the importance of broader company stakeholder buy-in for post-review implementation of the Guiding Principles, the methodology is designed to foster broader company buy-in during the review process itself. The methodology is also designed to engage relevant external stakeholders such as local communities at regular intervals.

Beyond its use as a resource document to inform the Guiding Principles review process, the methodology seeks to *promote debate* on the practical challenges of implementing the Guiding Principles.

## What the Methodology is Not

The application of this methodology does not “*Ruggie-proof*” a company. Rather, it sets the stage for the implementation of the Guiding Principles over time, a journey that is similar to the ones that follow efforts to reach HSE targets, or good supply chain management.

What follows is *not a one-size-fits-all model*. Though we have strived to make it as broadly applicable as possible, companies should consider how the methodology could be adjusted to meet their specific needs. Similarly, the time frame of each of the steps will differ from company to company.

Finally, this methodology is *not a finished, polished product*. In the spirit of encouraging debate, we would welcome feedback on any part of this methodology.



## Component Parts

The methodology is divided into three main phases; preparation, review, and follow-up. Each phase involves four or five steps. Steps coloured in grey are for the commissioning company to tackle, while the rest are for the external consultant(s). For ease of use, we have made each step as concrete and practical as possible, while also introducing tables and other resource material that may be useful. The next chapter provides an overview of the methodology.

# METHODOLOGY OVERVIEW

## PREPARATION

Understanding Context

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## REVIEW

Assessing Performance

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## FOLLOW-UP

Moving Towards Implementation

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## PREPARATION

Preparation for a corporate review of the Guiding Principles involves several important decisions for the company that determine the scope of the review, composition of the review team, corporate buy-in strategy, and mobilisation for the exercise. For the consultant(s) deployed for the review, preparation involves understanding the overall business architecture, current corporate exposure to human rights, other policies that the company is committed to, how peer-companies are approaching the Guiding Principles, and the “translation” of the Guiding Principles into actionable and company-specific measures that can be assessed. These steps enable the subsequent smooth implementation of the actual review as well as the later follow-up steps.

### STEP 1 COMMISSIONING

The first step of commissioning a review of company governance and operations in light of the Guiding Principles involves several key choices. These include taking a decision on whether to conduct a review; if so, then the parameters and process of the review are determined; these inform preparation of the terms of reference for the consultants; once the terms of reference are agreed, mobilisation for the review starts along with the deployment of the consultants.

#### Step 1.1 Deciding on a review

Why should a company decide to undertake a review of its operations in light of the Guiding Principles? Beyond a recognition that the Guiding Principles are quickly becoming the main global bench-

mark in the context of business-related impact on human rights, here a “yes” answer to any or more of the three questions below is likely to warrant a review:

- Does the company have operations that impact the human rights of staff, workers, or specific communities?
- Is the company planning an expansion into activities or areas of business where adverse human rights impacts are known to occur?
- Is the company setting up business or sourcing from countries where human rights violations are common?

#### Step 1.2 Deciding on review parameters and process

Deciding on the review parameters and process involves answering seven key questions:

##### 1. Where do we stand on human rights in our business?

The company may already have done significant work on human rights, and feels that a Guiding Principles review should be focused on “tidying up” or tightening corporate governance to reflect the requirements laid out in the Guiding Principles. Or the company may have existing human rights challenges or expansion plans that are likely to increase its human rights exposure. There may be a feeling that a Guiding Principles review would therefore equip the company to better address these existing and future human rights challenges.

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#### USEFUL RESOURCES

For a summary of the successes and the continuing points of weakness in terms of company performance that is relevant to the GPs, detailed examples can be found in the following report: [https://www.globalreporting.org/resource/library/Human\\_Rights\\_analysis\\_trends.pdf](https://www.globalreporting.org/resource/library/Human_Rights_analysis_trends.pdf)

Commissioned by the Global Reporting Initiative and its partners, this analysis demonstrates how efforts in this area can attract positive attention to a company and inaction can draw negative attention.

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## **2. What is our ambition level for a Guiding Principles review?**

Does the company want to simply assess how it measures up to the Guiding Principles? Or should a review flag strengths and weaknesses, while also offering recommendations for improvements? If recommendations are needed, should these be focused on how to fully implement the Guiding Principles, or inform partial or phased implementation of the Guiding Principles?

For a simple assessment of how a company measures up to the Guiding Principles, stopping at step 10 of this methodology will be sufficient. If the ambition level goes beyond a review to requiring recommendations for implementation, then steps 11-14 should be added.

## **3. How should we ensure corporate buy-in to the review findings?**

This is a discussion focused on how to ensure that the review process itself generates internal ownership of what it uncovers. This buy-in may be created by establishing a Review Committee consisting of key internal stakeholders who will provide feedback on findings at different intervals, and/or by appointing “human rights champions” to work with the review consultant(s) in those parts of the business that have significant human rights exposure issues. Here one also discusses internal communication strategies for the review and, once it is completed, for the review findings.

## **4. What resources can we deploy to support the review process?**

The company should at this stage start thinking about the resource implications of different levels of ambition — and take basic steps to ensure that nec-

essary resources can be mobilised when a Guiding Principles implementation plan emerges from the review exercise. A Guiding Principles review process can be intensive – and if the company is large, with partially or fully independent business units, it will also involve work that goes beyond headquarters to business units in other locations. Which staff members will work with the consultant(s)? How long should the review process take? What locations should the consultant(s) visit and which processes should they participate in? These are important questions, and the answers will also determine the qualifications and number of consultants deployed for the review exercise.

## **5. What types of consultants are needed for the review process?**

The size/complexity of the company, its human rights risk exposure, review ambition level, and the internal support that can be put in place to support the review process will determine the consultant(s) profile. A “gold standard” process for a large company is likely to require a team of three consultants; a human rights expert, someone who understands the industry and how human rights issues unfold “on the ground”, and someone who knows the company (and how it works) well.

## **6. What do the consultants require to gain proper insight into how the company works?**

Beyond a review of corporate governance documents, site visits and staff interviews, is it valuable (for both the consultants and the company) to provide the consultants with participant-observer insights? As a participant-observer in company processes, the consultants will understand how these processes work in practice, while also providing

additional services to the company. The company may, for instance, decide that certain meetings are important for consultant observation because they relate to key risk areas, decision-making processes, fire-fighting efforts or pressure points.

## **7. What peer-review (internal and external) process will enhance the quality of the review?**

A peer-review process (internal and external) adds to the quality of analysis and is particularly important in companies that run complex operations. Internal peer-reviews strengthen the accuracy and comprehensiveness of the review, while an external review may help spots gaps and weaknesses in the analysis. What this peer-review process looks like, and who becomes part of it, needs to be determined from the outset.

### **Step 1.3 Drawing up Terms of Reference**

The terms of reference (TOR) for the review will reflect the answers to the questions above. It may also be valuable for the TOR to outline the envisaged review process and methodology. An outline of terms of reference appropriate for a Guiding Principle Review is given in Annex A.

### **Step 1.4 Mobilisation and Deployment**

Mobilisation involves preparing the company for a review and contracting consultants.

Company mobilisation involves following up on the decisions made in previous steps relating to the ambition level, the chosen buy-in strategy (who needs to be given the heads up that recommendations from the review will be made about their work?), appointing consultant counterparts and deciding on participant-observation processes, working with company procurement to arrange consultant contracts, creating travel itineraries, and identifying internal/external peer-reviewers.

Another important aspect of company mobilisation involves pulling together corporate governance documents and other written material for the consultants. By beginning to compile these, the company can accelerate step 2 and facilitate the more detailed work to be done in step 6. Documents that will typically be put together at this stage will include corporate policies, processes, guidelines and system descriptions.

Once consultants are identified and contracted, deployment follows. In the deployment phase, it is important that the consultants' review work plan is developed to guide the review process and set dates for feedback to be given either by the Review Committee or internal peer-reviewers.

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#### **USEFUL RESOURCES**

The Business and Human Rights resource centre has compiled 15 introductory reports, speeches, interviews and guidebooks from a range of sources to help a company 'get started' with an overview of business & human rights issues. <http://www.business-humanrights.org/GettingStartedPortal/15reports>

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## **STEP 2      UNDERSTANDING BUSINESS ARCHITECTURE**

Understanding the business architecture is a critical first step for consultants undertaking a Guiding Principles review. The business architecture of a company (its structure and how it conducts its business) can be complex, which influences how the review process is subsequently implemented. Here the consultant needs to understand both the overall structure and key “under the bonnet” processes. This often takes time, and a proper understanding will develop as the review process unfolds. However, carrying out this step in some depth early in the process facilitates an understanding of corporate governance and how the firm operates. The understanding which the consultant develops here may be modified or deepened at later stages of the review, such as when conducting interviews with staff.

Asking the following (non-exhaustive list of) questions can be helpful in understanding the business architecture:

### **Overarching structure**

- Are corporate governance documents applied coherently and consistently between headquarters and business units/assets?
- How is the company structured – and what role do different departments/parts of the business play in developing, implementing and monitoring operations?

- What is the ownership structure of the company? Who are the main shareholders and what do they expect from the company?

### **Under the bonnet**

- How does the company get to an investment decision, and from an investment decision to implementation (e.g. project development)?
- How does the company assess and manage risk? What types of risk are of greatest concern to top management?

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#### **USEFUL RESOURCES**

Together with step 1, this will provide an initial gauge of the corporate climate with respect to the GP. The Global Compact Self Assessment Tool could be another useful resource in starting to develop this understanding. Available here: <http://www.globalcompactselfassessment.org/>

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## STEP 3 IDENTIFYING CORPORATE IMPACT EXPOSURE AREAS

Identifying corporate human rights impact exposure areas is an important step in a risk-based approach to the Guiding Principles. It is a “steering step” that determines many subsequent steps in the review phase. Identifying these areas will allow the consultants to hone in on particular governance documents, departments and business units/assets important for the company from a human rights impact exposure perspective.

### Step 3.1 Determining types of impact by sector

As is recognised in the Guiding Principles, “the way businesses meet [their] responsibility may vary according to size, sector, operational context, ownership and structure”. Though parts of the approach taken here may change according to sector, those differences are obvious in this sub-step. It is crucial, however, that types of impact are identified at this early stage. Consultants carrying out the review must therefore look to examples of human rights violations and risks identified by others in the sector, be it mining, oil and gas, food production, banking, power or telecommunications.

In the extractive sector for example, human rights

impact can be mapped under four different (but related) headings.

#### Functional human rights impact

The different “functions” (supply chain, HSE, human resources, etc) of a company will have different human rights impacts. These may often be seen primarily as “functional” issues, rather than human rights issues — and it is important to clarify early that business functions may have direct or indirect human rights impacts (e.g. an accident leading to fatality is an HSE problem, but also a human rights impact).

#### Country/location human rights impact

Businesses that operate in or source from countries or locations where human rights violations are frequent, may have impacts by virtue of doing business in those places.

#### Relational human rights impact

Complicity in human rights violations may follow different relationships that the business has with its partners, suppliers/contractors, and with government. Identifying relationships that create or may lead to complicity in human rights violations is an important part of mapping company exposure.

#### Human rights exposure “magnifying” activities

There are some business activities that “magnify”

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#### USEFUL RESOURCES

The word impact here need not necessarily refer to adverse effects of operations which have occurred. The Guiding Principles distinguish between three types of impacts: those a business causes, those a business contributes to and those a business is linked to. Moving along this continuum, a company’s ability to deal with a particular situation will change (leverage) but some response/system may still be expected and necessary. [www.redflags.info/](http://www.redflags.info/) lists activities which should raise a ‘red flag’ to companies of possible legal risks, and the need for urgent action. The site lists activities drawn from a review of existing international law and court cases in more than a dozen jurisdictions.

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#### USEFUL RESOURCES

For another example from the extractive industry, The International Council on Mining and Metals (ICMM) has produced a guide to assist mining companies in reviewing their existing risk management processes, identifying how they can build on them to ensure they are adequately addressing human rights and whether their existing processes are consistent with the UN Guiding Principles. Available here: <http://www.icmm.com/document/3299>

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the other types of impact (functional, country, and relational). In the oil and gas sector, this may include laying pipelines or engaging in shale gas production in densely populated areas, etc.

Once this mapping is done, the consultants can now hone in on particular governance documents, departments and business units/assets that deal with important human rights exposure risks. The table below illustrates how such an exposure map, with related company “exposure owners” and governance documents/processes, can be drawn up.

| <b>Human Rights Exposure</b>                            | <b>Potential Human Rights Impacts</b>  | <b>Exposure “Owner”</b> | <b>Governance Document/Process</b>    |
|---|--|-------------------------|---------------------------------------|
| Functional<br>HSE                                       | Loss of life<br>Loss of livelihood     | HSE Department          | HSE Policy, HSE Guidelines            |
| Country/Location<br>Iraq                                | Impacts associated with armed conflict | Iraq Business Unit      | Security contractor selection process |
| Relational<br>Myanmar Government/<br>Ministry of Labour | Forced labour<br>Arbitrary arrest      | Myanmar Business Unit   | Labour Standards Policy               |



## Step 3.2 Determining types of impact by sector

A process should then begin that draws out the worst-case human rights scenarios associated with different company operations. Drawing out these scenarios early – and flagging potential human rights violations that may occur – helps sensitise staff to the value of a Guiding Principles review. This also begins the process of defining the types of risks/impacts that implementing the review findings would help the company prevent or manage. The hypothetical example/template given below can be used for guidance.

| Worst Case Scenario - Location/Operation X   | Human Rights Violation  |
|--|---|
| <p>During the project development phase in Location X, government-armed security is deployed. As these security forces are known to have committed atrocities in the area, there is a build-up of tension between local groups and the security forces stationed there. Demonstrations follow, shots are fired, and several demonstrators are wounded.</p>                         | UDHR: Article 3   |
| <p>The influx of external labour to develop the asset puts a strain on local resources, particularly water and health services, while driving food prices up in the area. Some local families are unable to feed themselves due to the increased cost of living.</p>   | UDHR: Article 22, 25  |
| <p>Given weak labour legislation and regulation in Country X, many migrant workers who arrive to develop the asset are paid below the minimum wage and have their travel documents confiscated. Poor working conditions mean that workers' health is badly affected and accidents regularly occur in the work place. Under-age workers are also employed and paid irregularly.</p> | UDHR: Article 4, 23; ILO Conventions: Protection of Wages Convention, 1949 (No. 95); Abolition of Forced Labour Convention, 1957 (No. 105); Hours of Work (Industry) Convention, 1919 (No. 1) |

### USEFUL RESOURCES

A series of detailed case studies which may help with drawing up scenarios are available here: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/EHRBIII.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/EHRBIII.pdf)

Examples used in this document published by the UN Global Compact, relate specifically to some of the vulnerabilities which companies may encounter from policies to communications.

More specifically, this report is a useful resource for a company trying to understand the business case for pursuing this methodology, "Transparency on these questions also allows society at large a clearer understanding of the way that companies relate to these issues, aiding a process of demystification in an area (public perception of companies in relation to environmental and social issues) where balanced perspective and clarity of motive and substance are sorely lacking."

## Relevant Articles of the Universal Declaration of Human Rights (UDHR):

**Article 3.** Everyone has the right to life, liberty and security of person.

**Article 4.** No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 22.** Everyone, as a member of society, has the right to social security [...].

**Article 23. (1)** Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 25. (1)** Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

## Relevant Core International Labour Organisation Conventions:

**Protection of Wages Convention, 1949 (No. 95)** Wages shall be paid in legal tender at regular intervals; in cases where partial payment of wages is in kind, the value of such allowances should be fair and reasonable. Workers shall be free to dispose of their wages as they choose. In cases of employer insolvency, wages shall enjoy a priority in the distribution of liquidated assets.

**Abolition of Forced Labour Convention, 1957 (No. 105)** This fundamental convention prohibits forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes; and as a means of racial, social, national or religious discrimination.

**Hours of Work (Industry) Convention, 1919 (No. 1)** Provides that working hours of public and private employees should not exceed eight in the day and forty-eight in the week unless the exceptions explained in this text are present.

## **STEP 4      CONTEXT: POLICY AND BENCHMARKING**

The Guiding Principles are relatively new, and are part of a broader set of policies and guidelines that have been developed by companies, multilateral agencies and governments. They can therefore be understood as one part of a “human rights toolbox” that enables companies to improve their social and human rights performance. Being new also means that there are few industry-specific (oil, gas, mining, retail, etc.) or generic benchmarks on how to implement the Guiding Principles. This step is therefore focused on mapping the company’s external policy environment, and aligning the review/implementation of the Guiding Principles to what peer companies are undertaking. It is important in showing that being in line with the Guiding Principles is not incompatible with being competitive.

### **Step 4.1      External Policy Context**

There has been much external policy alignment already to the Guiding Principles in both governmental and multilateral processes. However, each company will often have a unique set of policies, principles and guidelines that it adheres to. These may have been set by industry and multilateral bodies, e.g. “Voluntary Principles on Security and Human Rights” (2000), the OECD “Guidelines for Multinational Enterprises” (2008), Global Reporting Initiative guidelines (G3.1; particularly on human rights and labour issues, 2010), etc. They may also have been set by governments, the latter reflecting (often host) governments’ expectations of companies, or government requirements for companies

listed on national stock exchanges.

The identification of key (national and international) policies/guidelines adhered to by the company and how these have been integrated into company governance and operations, helps ensure coherence between previous work on human rights and the Guiding Principles review. It also ensures that review recommendations respond to policy priorities previously set by the company.

### **Step 4.2      Benchmarking**

It is important for the company carrying out a Guiding Principles review to understand how peer-companies are approaching these questions. Here, the consultant can approach peer companies to discuss methodological issues, emerging challenges in reviewing company operations from a Guiding Principles perspective, ambition levels, and benchmarks on specific issues (e.g. disclosure and reporting). It is useful to integrate findings from this benchmarking exercise in progress updates to the company, and in internal communications on the Guiding Principles review exercise.

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#### **USEFUL RESOURCES**

A paper published by the Harvard Law School titled ‘Benchmarking Corporate Policies on Labor and Human Rights in Global Supply Chains’ provides an overview of how some companies are dealing with human rights issues.  
[www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasionalpapers5.pdf](http://www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasionalpapers5.pdf)

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## STEP 5 GP CORPORATE TRANSLATION AND BASIC DEFINITIONS

Though the Guiding Principles are themselves clear, different industries and even different companies within the same industry may have a different understanding of what the Guiding Principles mean in terms of specific corporate measures. This step is therefore a 'translation' step, where relevant Guiding Principles are unpacked into specific corporate measures/actions that can be assessed. The table below provides an example of how this can be done and some basic terminology is also provided in Annex B of this methodology. This translation of the Guiding Principles into corporate measures will need to be cleared by the company's legal department.

| Guiding Principle   | Interpretation of corporate measures required to implement the Guiding Principle  |
|---|---|
| <p><b>Guiding Principle 13.</b> The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.</p> | <ul style="list-style-type: none"><li>- A <b>policy statement</b> on human rights that is coherently reflected in relevant policies and procedures of the enterprise.</li><li>- A <b>due diligence tool or process</b> (either stand alone or integrated into broader risk management systems) that covers adverse human rights impacts that the enterprise may cause or contribute to.</li><li>- A <b>clear corporate policy</b> on what the enterprise does when entities it has a relationship with cause or contribute to adverse human rights impacts.</li></ul> |

In addition to this 'translation' exercise, it is valuable to prepare an overview of definitions used for the review. Terms such as "due diligence", "complicity", "grievance mechanisms", etc. will not necessarily be familiar to the company and its staff, or may have specific business meanings that may differ from what is intended.

# CHECKLIST 1

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## END OF PREPARATION PHASE CHECKLIST

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| TO BE COMPLETED   | IN PLACE?                | SEE STEP |
|---|--------------------------|----------|
| AGREEMENT (The consultants should have received the go-ahead to begin a thorough review of company performance with respect to the Guiding Principles)  | <input type="checkbox"/> | 1        |
| CLARITY (The expectations of what a review will entail and, depending on the ambition level, how far it will go, should by now be explicit on both sides)   | <input type="checkbox"/> | 1        |
| DNA DOCUMENT (The result of analysing corporate architecture, this is an essential document for the consultants as they go forward to the second and, where relevant, third phases of the methodology)  | <input type="checkbox"/> | 2        |
| EXPOSURE AREAS (This list serves as an important sounding board for the later findings, not least because it contains first impressions about risk scenarios the review recommendations should address) | <input type="checkbox"/> | 3        |
| BACKGROUND PAPER (Details the external context of assessing and managing human rights risks, both in terms of policy and peer company practices)  | <input type="checkbox"/> | 4        |
| GPs AND CORPORATE IMPLEMENTATION (Translates the Guiding Principles into concrete measures for the company and is the baseline for the review)  | <input type="checkbox"/> | 5        |

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## REVIEW

The review phase is focused on understanding corporate governance and operations both on paper and in practice. Based on this understanding, a set of core issues are identified that relate to the company's risk exposure and implementation of the Guiding Principles. The corporate risk assessment and management system is then mapped out to evaluate how the company is able to assess and manage core issues identified. The different outputs that follow these steps are then drawn into the actual review report.

### STEP 6 CORPORATE GOVERNANCE ON PAPER

Based on initial material prepared during step 1.4, the consultants review corporate governance documents. The focus here is to deepen the understanding of the business architecture (step 2), get a sense of how human rights have been internalised by the company to date, and do a "first-cut" analysis of how governance and operating systems stand in relation to identified exposure areas (step 3) and Guiding Principles implementation requirements.

This step is iterative and involves detailed study of governance documents. While reading the initial set of governance documents, the consultants will identify others that need to be accessed, review these, and follow leads as they emerge. Core governance areas that are relevant to human rights are identified, based on human rights exposure areas and the translation of the Guiding Principles into corporate measures (i.e. steps 3 and 5 above).

Relevant documents are studied, in terms of how these address both identified human rights exposure areas and Guiding Principles requirements. A preliminary analysis is then drawn up.

There are three main outputs from this step that are useful for the review process. These together form the "first cut" analysis for the desk-based review.

The first is a 'governance document map' that shows the relationship between different governance and operating areas, and indicates where human rights figure in governance/operating processes. The map's added value is that it provides a birds-eye view of processes that are often complex. It also serves as a useful discussion basis between the consultants and the client on what may be missing from the 'big picture' drawn up, what previous human rights work focused on, effective and challenging governance/operating areas and relationships, and what specific governance areas may hold the most promise for efforts to integrate human rights into operations across the company.

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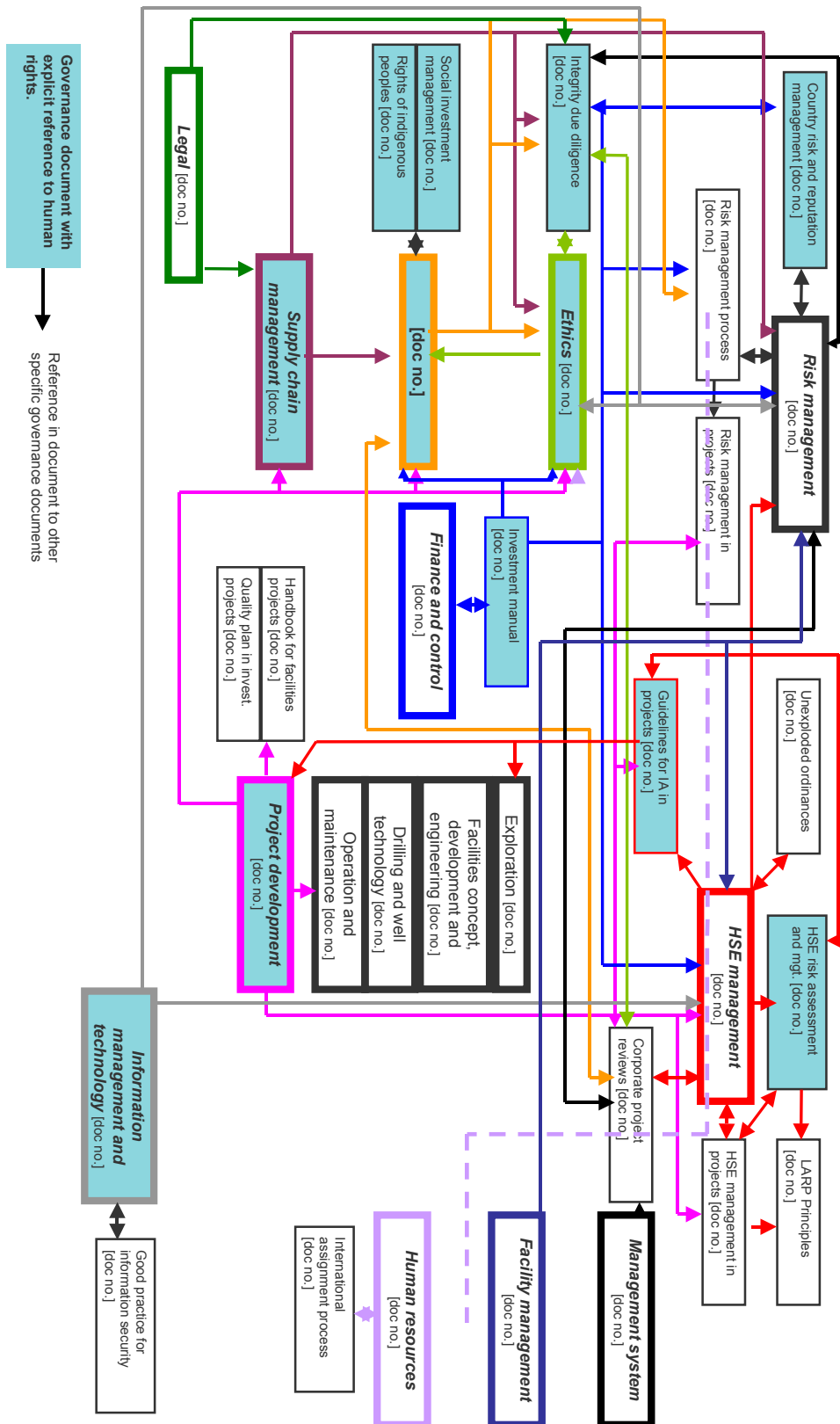
#### USEFUL RESOURCES

For more information on understanding corporate governance issues around human rights see the accountability guide published by the Business Leaders Initiative on Human Rights (BLIHR) and the Kennedy School at Harvard University available here <http://www.blihr.org/Legacy/Downloads/Accountability%20Guide%202008.pdf>

As well as addressing several important challenges such as distinguishing between laws and norms, the report's appendix contains an excellent guide for making a diagnosis on corporate human rights culture.

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**Figure 1. Sample Governance Document Map**



The second output is a table that summarises the status of individual governance documents/operating processes in relation to identified human rights risk exposure, i.e. does the governance document/operating process adequately address the exposure area? For example, do human resources management documents stipulate adequate ways of protecting workers' health in company factories and in relation to identified corporate measures required for Guiding Principles implementation? Does the governance document/operating process adequately reflect relevant policy, tools/mechanisms, and mainstreaming measures required for implementation of the Guiding Principles?

| <b>Functional HR Risk Exposure Area</b> | <b>Governance Document</b>           | <b>Adequate on Potential HR Impacts?</b> | <b>Adequate on GP Implementation Requirements?</b> | <b>Recommended Adjustments</b>   |
|---|--------------------------------------|--|--|--|
| Local content                           | Gov Doc 5 and related work processes | Satisfactory                             | Satisfactory                                       | Section 3.1.11. could add "[...] while maintaining corporate HSE standards and commitments to human rights." |
| Country/Location Iraq                   | Gov Doc 9 and the SCM process        | In need of adjustment                    | Satisfactory                                       | Section 4 could mention "in compliance with [...] and values"  |
| Health and safety                       | Health Doc 7                         | Satisfactory                             | In need of adjustment                              | Section 4 could mention "in compliance with [...] and values"  |

And the third output — critical for the next step — is a list of questions that emerge from the desk review for specific governance document/operating process 'owners'. These questions relate to human rights exposure areas, and are relevant to 'exposure owners', as well as to company stakeholders on specific corporate measures required for Guiding Principles implementation. Examples of such questions are given in Annex C. Importantly, this step naturally flags the issues that you want to know more about and the knowledge that you want to test in terms of accuracy in step 7.

**▲** If business units operate with different governance and operational systems than the parent company, then this step and other relevant previous steps must be repeated for key business units.



## STEP 7 CORPORATE GOVERNANCE IN PRACTICE

This is the most important step in the review process; it is here that the consultants assess how what is 'on paper' is implemented 'in practice'. This assessment is done through a mix of feedback on the "first cut", interviews, workshops, participant observation, and discussions with key company interlocutors. It is a step that requires patience — particularly from those in the company that work with the review team. If previous steps have been well executed, a corporate buy-in strategy will already be getting into gear and a good relationship established between the consultants and staff, which makes this step easier to execute. Moreover, if Step 7 is well executed, then subsequent analysis will be more accurate and less time will be spent on feedback processes later on.

The "first cut" analysis should be shared with the Review Committee in order to verify interpretations, identify missing elements, ensure accuracy, and source interviewees. In this feedback process, the Review Committee should be asked to provide recommendations (if the ambition level requires this) on mainstreaming strategies to help ensure that human rights are reflected across operations. The Review Committee should also be encouraged to offer insights from experiences on mainstreaming in relevant company processes (HSE, anti-corruption, etc.).

Interviews are carried out with individuals identi-

fied in Step 6, using questions that have emerged from the "first cut" analysis and feedback from the Review Committee. The interviews should be used to develop the risk scenarios identified in Step 3, focused on identifying other governance/operating processes and individuals that are relevant, and oriented to bringing out company staff recommendations on how to deal with the human rights challenges identified. Interview answers are documented, also because the totality of interview answers yields new questions. It is therefore important that the consultants ensure that some interviewees are prepared to be approached a second time, and that further interviews are carried out as necessary.

For the company, it is important to select processes that consultants engage in as participant observers, which provide the most relevant insights for the review. These processes are often about how decisions are made, risks assessed, or projects developed. For companies with exposure to locations or countries that have seen human rights violations, participant observation should also be focused on these. This participant observer process should be started early and continued throughout the review process.

As the consultants go through the above exercises, it is important for company interlocutors to discuss emerging findings. These discussions are critical in guiding the interpretation of what emerges during interviews and participant observer processes.

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### USEFUL RESOURCES

For resources on capacity building with respect to human rights and business, the Danish Institute for Human Rights has a dedicated page <http://www.humanrightsbusiness.org/capacity+building>

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**⚠** If business units operate with different governance and operational systems that the parent company, then this step and other relevant previous steps must be repeated for key business units.

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## **STEP 8      CORE ISSUE IDENTIFICATION**

Core issues are those that drive the company's human rights impacts, key strengths/weaknesses of company governance/operating processes in relation to the Guiding Principles, and factors that may facilitate or impede the implementation of the Guiding Principles in the company.

The issues that drive the company's human rights impact exposure are often well known to company staff and can also be identified as common threads in the worst-case human rights scenarios drawn out in Step 7. They could relate to supply chains, armed security, or key relationships, to mention just three. However, these core drivers of human rights exposure are often company- and sector-specific.

The key strengths and weaknesses of company governance/operating processes emerge from steps 6 and 7. Here the main strengths and weaknesses in relation to Guiding Principles requirements on policy, tools and mechanisms, and mainstreaming are identified.

Factors that may facilitate or impede the effective implementation of the Guiding Principles are also identified. Facilitating factors may include top management commitment to human rights, company emphasis on values aligned to human rights (e.g. strong commitment to working with labour unions), and company experiences in implementing anti-corruption measures that can inform Guiding

Principles implementation, to mention just some. Inhibiting factors may include limited participation of social performance personnel in key company decision-making processes, limited staff awareness of human rights, etc.

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### **USEFUL RESOURCES**

With respect to companies working in finance, the United Nations Environment Programme (UNEP) has developed an innovative partnership with the financial sector. As part of this endeavour, one of their CEO briefings focuses specifically on human rights and contains a corporate human rights management framework for financial institutions focusing specifically on how such systems can be aligned with existing systems and processes. <http://www.unepfi.org/fileadmin/documents/CEOBriefingHumanRights.pdf>

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## STEP 9 RISK SYSTEM MAPPING

The last substantive, but often very challenging step before documenting findings, is mapping the company's risk assessment and management system. The aim of this step is to understand the strengths and weaknesses of existing risk assessment/management tools in relation to the core issues that have been identified above.

There are four sub-steps involved in this process:

The first is to map relevant risk assessment and management tools/processes/systems that are relevant to the issues that drive the company's human rights impact exposure, and identify the mechanisms required for the implementation of the Guiding Principles (e.g. due diligence and grievance mechanisms).

The second is to evaluate whether existing risk assessment and management systems are sufficiently robust to identify/tackle specific human rights exposure drivers and predict/help manage/prevent worst-case human rights scenarios.

The third is to judge whether existing risk assessment and management systems add up to all that is required for due diligence, impact assessment, reporting and grievance handling under the Guiding Principles.

The fourth is to identify the factors that facilitate or impede the effective identification, communication, and management/prevention of risk.

Ultimately, these sub-steps will answer two key questions: (a) Do available risk assessment and management systems enable the company to identify, prevent or more effectively manage plausible worst case human rights scenarios? (b) Do available

risk assessment and management systems reflect requirements for due diligence, communicating and grievance handling under the Guiding Principles?

### Step 9.1 Mapping relevant risk assessment and management tools/processes/systems

Mapping relevant risk assessment and management tools/processes/systems is an iterative process. Large companies will often have many of these and these tools/processes/systems are often evolving. The consultants will have to judge which ones are relevant and which are not, based on a mix of the key human rights exposure drivers and requirements outlined in the Guiding Principles. The mapping exercise needs to involve the collection of documents that describe each tool/process/system, their methodologies and implementation processes, and the outputs/outcomes of these.

### Step 9.2 Evaluate robustness — human rights impact exposure drivers and worst-case scenarios

Evaluating the robustness of risk assessment tools/processes/systems is challenging, not least because if not conducted properly, it can be an arbitrary exercise. This can be avoided by looking at methodological, procedural and practical robustness — and answering the following questions:

- Is the tool/process/system **designed** in a way that allows it to capture/assess/prevent/manage targeted risks?
- Is the tool/process/system **applied** well enough to capture/assess/prevent/manage

targeted risks?

- Has the tool/process/system **performed** its function well by capturing/assessing/preventing/managing targeted risks in the real world?

A tool-by-tool evaluation of robustness, however, is likely to be insufficient. The consultants may find that several tools target the same, or parts of, different human rights risks and that no single tool enables the company to capture/assess/prevent/manage specific exposure drivers or worst-case scenarios. It then becomes necessary to evaluate the robustness of several tools applied together.

This, and the next sub-steps, may require interviews with key personnel, following specific risks on a case-study basis through from identification to management, and verifying outcomes on the ground.

### **Step 9.3 Evaluate robustness — Guiding Principles requirements**

Also a challenging sub-step, this involves looking again at methodological, procedural, and practical robustness — but in relation to Guiding Principles requirements (step 5). Here similar questions as those given in sub-step 9.2 above can be used for the due diligence, impact assessment, reporting and grievance handling parts of the Guiding Principles. As with risk drivers/scenarios, it is unlikely that any one tool/process/system covers specific Guiding Principles requirements in their entirety, so evaluating the robustness in this respect of several tools applied together becomes necessary.

### **Step 9.4 Facilitators/blockers — identification, communication, management/prevention of human rights risk**

Understanding the factors that facilitate or block identification, communication, management/prevention of human rights risks is important, as this will enable the consultants to identify those tools/processes/systems that are most effective and/or that need to be better supported.

It also serves to qualify “robustness” and explain why some tools/processes/systems work better than others. Examples of facilitating factors are top management interest, that the tool “speaks to commercial interests” by monetising certain impacts, that risk management procedures are communicated effectively and therefore understood by staff, etc. Blockers may include competition among those who manage specific tools/processes/systems, or misperceptions among staff of what particular tools/processes/systems are for, to mention a few.

The risk system mapping is time-consuming and requires a detailed understanding of often very complex tools/processes/systems. It is critical for the consultants to ensure that they get feedback from those who manage specific tools/processes/systems on the accuracy of the assessment made. It may be useful, particularly when trying to assess whether several tools/processes/systems combined can address a specific human rights risk, to conduct the assessment process with relevant company staff at a workshop.

## **STEP 10    KEY FINDINGS**

Finally, writing up the key findings gained so far concludes this second phase. This will not only serve to finalise the overall assessment of company performance with respect to the Guiding Principles but also, for those companies with the ambition to do so, serve as the basis for the recommendations to be elaborated in the final phase. Any action plan developed for implementing the Guiding Principles must be taken first and foremost from these key findings which will highlight priorities for the company.

How findings are structured will depend on the company and sector, but a sample outline is provided in Annex D. Once these findings are put together in a document, drafts of initial versions should be shared with key interlocutors to ensure accuracy and comprehensiveness.

## CHECKLIST 2

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### END OF REVIEW PHASE CHECKLIST

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| TO BE COMPLETED   | IN PLACE?             | SEE STEP |
|---|-----------------------|----------|
| A GOVERNANCE DOCUMENT MAP (a birds-eye view of how relevant corporate documents relate to one another)  | <input type="radio"/> | 6        |
| INTERVIEW FINDINGS (an insider's perspective on governance in practice as it relates to human rights)   | <input type="radio"/> | 7        |
| FINALISED SCENARIOS (an assessment of how human rights risks occur/can evolve in operations)  | <input type="radio"/> | 7        |
| DESCRIPTION OF CORE ISSUES (human rights impact drivers, governance strengths/weaknesses, and factors that facilitate/impede GPs)   | <input type="radio"/> | 8        |
| A RISK-SYSTEM MAP (how identified core issues are currently being assessed and managed in the company)  | <input type="radio"/> | 9        |
| KEY FINDINGS (the basis of a final report or, for those companies with a higher ambition level, of a follow-up phase which will include recommendations and an action plan) | <input type="radio"/> | 10       |

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## FOLLOW-UP

This phase speaks to those companies with an ambition level that takes the review forward to creating an action plan. It involves an internal and external peer review process, the elaboration of macro recommendations and an action plan, translating the action plan into an implementation plan, and finally identifying and mobilising resources for implementation. This final phase is essential to ensure that this is not a 'one-shot' exercise. Completing a thorough follow-up helps foster new practices and cultures that enable the company to spot/manage human rights risks and opportunities in the future.

### **STEP 11      INTERNAL & EXTERNAL PEER REVIEW PROCESS**

Testing the validity of the findings that emerge from the end of the review phase requires both internal and external peer-review.

The internal peer-review process needs to involve a mix of soliciting feedback on the review (or specific parts of it) from key company respondents. It should involve presentations of the review findings to key stakeholder groups, including facilitating a group discussion where differences in opinion can be worked out. This internal peer-review process is designed to promote buy-in of findings. Picking up on the designed buy-in process developed in steps 1.2. and 1.4. is therefore important. As with any step in this final phase, it greatly benefits from rigorous work done in earlier steps. Thus, if interviews have been done thoroughly in step 7, the consultant will know who best to approach for internal peer review and these individuals/departments will already

have some awareness of the findings they are looking at, as well as the importance of these findings.

Most companies are apprehensive of sharing review findings with external groups, especially before the company itself has decided what to do with the findings. However, the value of an external peer-review process is that it fundamentally holds the consultants methodologically and substantively 'accountable', thereby ensuring that the review is robust and does not neglect important elements. In most cases, drawing in individual external experts who are both knowledgeable about the Guiding Principles and the sector/countries the company operates in is sufficient. The consultants should draw on their own professional networks as well as those of the company to identify these individuals.

Feedback from both the internal and external peer-review process should be documented. Reasons for rejecting feedback should be made explicit and shared with company interlocutors and the Review Committee. Accepted feedback is integrated into the final version of the review, which is also the analytical basis for elaborating recommendations should the ambition level require this.

## **STEP 12      ELABORATION OF RECOMMENDATIONS (MACRO & MICRO)**

Recommendations based on the review need to be focused on three questions: (a) Will implementing these recommendations/actions enable the company to more effectively identify, prevent and mitigate the worst-case human rights scenarios identified by step 7?; (b) Will implementing these recommendations/actions effectively meet Guiding Principles requirements?; and (c) Will implementing these recommendations/actions ensure that the company is meeting its responsibility to respect human rights?

It may be useful to distinguish between macro-recommendations (broad directions for the company on the Guiding Principles) and micro-recommendations (actions needed specifically to address core issues, risk systems and processes identified earlier).

Macro-recommendations should speak to top management concerns. They can be answers to “what should the company position be on the Guiding Principles?”; “how should the company use the Guiding Principles?”; “how should the company approach the implementation of the Guiding Principles?”; etc. Macro-recommendations also set the stage for coherence in subsequent recommended actions.

Micro-recommendations based on review findings form the action plan that should help the company identify, assess, prevent and manage the worst-case human rights scenarios, while also meeting Guiding Principles requirements and the company’s responsibility to respect human rights. Some of these actions will be about filling gaps,

while others may focus on developing new tools/mechanisms or mainstreaming human rights across the company. It is useful to cross-reference actions identified to relevant sections of the review findings.

There are some basic principles for good recommendations. They should be specific, measurable, attainable, relevant, time-bound (SMART) and properly sequenced. Doing things in the wrong order, too slowly or too quickly can mean that short-term improvements quickly turn out to be long-term setbacks in a company’s efforts to implement the Guiding Principles.

It is important to ensure that the process of developing macro-recommendations and the action plan involves yet more consultation with key internal stakeholders. Such consultations can range from individual interviews on the best course forward, planning workshops where relevant staff members are brought together to plan how to address a set of challenges identified in the review, and feedback from the Review Committee. In short, the dialogue which takes place in step 11 should not be viewed as ‘finished’. Rather, these discussions should continue throughout the review.



## STEP 13 IMPLEMENTATION PLAN

Once the macro-recommendations and action plan have been agreed, the consultants should shift to implementation planning. In essence this step involves proposing a methodology for the actions suggested; i.e. if the action is about reviewing lessons learnt on grievance mechanisms, then the methodology would spell out key steps for doing so, such as interviewing key staff members who have operated grievance mechanisms, writing up a discussion document on lessons learnt, and then bringing these staff members together to discuss and share learning.

The implementation plan should therefore spell out a methodology, timeframe, individuals to be involved and likely resource requirements for each action. As such, the implementation plan also becomes an important progress monitoring document that can be used by the company. The table below illustrates how this can be done.

| Action Item   | Possible Implementation Approaches  | Resource Requirements                          | Implementation Options         | Time Frame |
|---|---|--|--------------------------------|------------|
| Prepare hard-copy version of new human rights policy in Gov Doc X                             | Internal  | CSR staff time, printing and publication costs | Internal                       | 10 days    |
| Update and finalise the Human Rights Risk Assessment (HRRRA) tool and define triggers for use | Review HRRRA and identify updating areas and areas that need completion<br>Update and finalise HRRRA<br>Define "triggers" for HRRRA use (e.g. red flag projects/ operations)<br>Define and agree with Dep X on HRRRA schedule for use in these contexts | Five person-days to finalise HRRRA             | Internal or externally sourced | 1 month    |

### USEFUL RESOURCES

Corporate buy-in will be 'make or break' for the success of any review. In addition to looking at cases where positive corporate cultures have successfully been fostered, consultants should analyse the arguments and rhetoric used by figureheads in the corporate and human rights sphere. See for example, 'Rules On Corporate Ethics Could Help, Not Hinder, Multinationals', Kenneth Roth, Executive Director, Human Rights Watch, in Financial Times, June 21, 2005, <http://hrw.org/english/docs/2005/06/21/global11176.htm>

Detailed information about the business case for implementation and, more broadly this review methodology can be found in 'Human rights - is it any of your business?' published by Amnesty International and The Prince of Wales Business Leaders Forum. Available at [http://www.larrge.eu/uploads/tx\\_larrgeguide/Human\\_Rights\\_-\\_Is\\_it\\_any\\_of\\_your\\_business\\_-\\_Executive\\_Summary\\_2000.pdf](http://www.larrge.eu/uploads/tx_larrgeguide/Human_Rights_-_Is_it_any_of_your_business_-_Executive_Summary_2000.pdf).

The report also contains detailed case studies from Reebok in Indonesia (relating to freedom of association) to B&Q in India (relating to working conditions)

## **STEP 14    IDENTIFYING RESOURCES**

According to the ambition level set, the company will have already started mobilising resources for the implementation of review recommendations during Step 1.2. With an agreed implementation plan that is approved by top management, the process of mobilising resources starts in earnest. During this step, the company decides on when to start implementation, integrates the action plan elements into staff Key Performance Indicators, and sets aside the necessary budget/human resources for the exercise.

## CHECKLIST 3

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### END OF FOLLOW-UP PHASE CHECKLIST

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| TO BE COMPLETED   | IN PLACE?                | SEE STEP |
|---|--------------------------|----------|
| CONSULTATION REPORT (Comments from internal and external stakeholders integrated into the key findings from the review phase) | <input type="checkbox"/> | 11       |
| RECOMMENDATIONS (Macro and micro-recommendations)   | <input type="checkbox"/> | 12       |
| ACTION PLAN (Prioritised and sequenced recommendations that are SMART)  | <input type="checkbox"/> | 12       |
| IMPLEMENTATION PLAN (How the action plan can be implemented using available resources)  | <input type="checkbox"/> | 13       |

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# ANNEX

## A — SAMPLE TERMS OF REFERENCE

**Goal** - The goal of the review is to assess the status of company X in relation to the United Nations “Protect, Respect, and Remedy” Framework and Guiding Principles.

**Scope of work** - The consultants will need to begin by preparing themselves and the company to effectively implement the Guiding Principles. This **preparation** must include an analysis of the overall business architecture, current corporate exposure to human rights and other policies that the company is committed to that could be affected by this process. The consultants will also be expected to provide information on how peer-companies are approaching the Guiding Principles, and how the Guiding Principles can be translated into actionable and company-specific measures that can be assessed.

With this understanding in place, consultants will need to **review** current corporate governance as it exists on paper and how it is practiced. Consultants will therefore consult key corporate documents and staff to gain this insight, after which they will identify the core issues that relate to the company’s human rights risk exposure and implementation of the Guiding Principles. To see how these core issues are currently being assessed and managed within the company, the consultant will map out corporate risk systems and write up preliminary review findings.

Finally, the consultants will be called upon to assist the company in a review **follow-up** as the company acts on review findings. This will first involve an internal and external peer review process to corroborate and elaborate these findings. Macro and micro recommendations will be delivered which are translated into an action plan, which in turn forms the basis of a more detailed implementation plan.

### Deliverables

| Phase 1  | Phase 2   | Phase 3   |
|--|---|---|
| DNA Document<br>Exposure Areas<br>Background Paper<br>GPs and Corporate Implementation | Governance Document Map<br>Interview Feedback<br>Finalised Scenarios<br>Enumeration of Core Issues<br>Risk-System Map<br>Key Findings | Consultation Report<br>Recommendations<br>Action Plan |

### Timeframe

[Commissioning company determines likely time frame for review exercise]

## B — SELECTED BASIC TERMINOLOGY

| Term                       | Definition   |
|----------------------------|--|
| Human rights               | <p>The Universal Declaration of Human Rights (UDHR) is “a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected” (see <a href="http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx">http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx</a>).</p> <p>The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the so-called International Bill of Human Rights. Human rights are basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status. Human rights include civil and political rights, such as the right to life, liberty and freedom of expression; and social, cultural and economic rights including the right to participate in culture, the right to food, and the right to work and receive an education. Human rights are protected and upheld by international and national laws and treaties.</p> <p>(Amnesty International, <a href="http://www.amnestyusa.org/research/human-rights-basics">http://www.amnestyusa.org/research/human-rights-basics</a>)</p> |
| Business respect of rights | <p>Not to infringe on the rights of others — put simply, to do no harm. “Doing no harm” is not merely a passive responsibility for firms but may entail positive steps — for example, a workplace anti-discrimination policy might require the company to adopt specific recruitment and training programmes.</p> <p>Human Rights Council (7 April 2008), <i>Protect, Respect, and Remedy: A Framework for Business and Human Rights</i>)</p>  |
| Human rights due diligence | <p>The steps a company must take to become aware of, prevent and address adverse human rights impacts. Scope should include: (a) the country contexts in which their business activities take place, to highlight any specific human rights challenges they may pose; (b) what human rights impacts their own activities may have within that context — for example, in their capacity as producers, service providers, employers and neighbours; and (c) whether they might contribute to abuse through the relationships connected to their activities, such as with business partners, suppliers, State agencies and other non-State actors.</p> <p>Human Rights Council (7 April 2008), <i>Protect, Respect, and Remedy: A Framework for Business and Human Rights</i>)</p>  |

| Term                             | Definition  |
|----------------------------------|---|
| Complicity                       | <p>Complicity refers to indirect involvement by companies in human rights abuses, where the actual harm is committed by another party, including governments and non-State actors. The legal meaning of complicity has been spelled out most clearly in the area of aiding and abetting international crimes, i.e. knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.</p> <p>Human Rights Council (7 April 2008), <i>Protect, Respect, and Remedy: A Framework for Business and Human Rights</i>)</p>  |
| Operational grievance mechanisms | <p>Operational-level grievance mechanisms are those that operate at the interface between a business enterprise and its affected stakeholders. They are therefore directly accessible to those who may be impacted. Typically, they are administered by the business enterprise either alone or in collaboration with others, including the affected stakeholders or their legitimate representatives. They may also be provided through recourse to a mutually acceptable external expert or body, such as an externally administered hotline. They can engage the company directly in assessing the issues and seeking remediation of any harm. They do not require that those bringing a complaint first access other means of recourse and they must not preclude access to state-based judicial or non-judicial mechanisms.</p> <p>Caroline Rees (April 2011), <i>Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned</i>. John F. Kennedy School of Government, Harvard University.</p> |

## C — SAMPLE INTERVIEW QUESTIONS

These will not only change from company to company, but also from individual to individual. There is therefore an onus on the consultant to properly research the prospective interviewee before conducting these interviews. The questions below are indicative of how this might be done and the structure of 'general questions', 'specific questions' and 'notes from meeting' can help to ensure the right mix of structure and fluidity to keep the conversation on track, while giving the interviewee the space to discuss any other issues they may feel are important.

### Some General Questions

- Where do you see the greatest risk for human rights violations in this company?
- How do you see this company's current position on human rights, and what value do you see in mainstreaming human rights considerations across the company?
- How would you approach the task of mainstreaming human rights, or promoting compliance to the UN Guiding Principles across this company?

### Some Specific Questions

- What do you see as the key human rights dimensions of document x? Is there value in adding the need to pay attention to other rights to document x?
- How is governance document implemented in practice? What are the challenges and areas that require improvement?
- Document z is a key work requirement from a human rights perspective. What do you see as its strengths and weakness from a human rights perspective, in terms of how it is implemented in this company?

### Notes From Meeting:

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## D — SAMPLE OUTLINE OF FINDINGS

|   |           |
|---|-----------|
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[ INCAS IN PRACTICE SERIES 01/2012 ]

*Published in November 2012*