



# The “State of Play” of Human Rights Due Diligence

Anticipating the next five years

Volume One: General Overview



Institute for  
**Human Rights and Business**

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**The Institute for Human Rights and Business** is dedicated to being a global centre of excellence and expertise on the relationship between business and internationally proclaimed human rights standards. The Institute works to raise corporate standards and strengthen public policy to ensure that the activities of companies do not contribute to human rights abuses, and in fact lead to positive outcomes.

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# Contents

<b>Executive Summary</b>	1
<b>Introduction</b>	5
<b>The Current State of Play</b>	11
Issues in approaching human rights due diligence	12
Human rights policy	15
Assessing risks and impacts	18
Integration	24
Tracking and reporting performance	28
<b>Looking Ahead: the next five years</b>	33
Prognosis of human rights due diligence in five years	35
Prognosis for each element of human rights due diligence	38
<b>Conclusion</b>	41
<b>Appendices</b>	43
Appendix A: Research questions interviews	43
Appendix B: Response by Brent Wilton of the IOE on SMEs	44
Appendix C: Background corporate responsibility to respect	46
Appendix D: The business case for human rights	49
Appendix E: The inhibitors for business	51

# Executive Summary

Companies have a responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others. This is the message the UN Human Rights Council sent to all actors in 2008 as part of adopting unanimously the *Protect, Respect and Remedy* policy framework for business and human rights put forward by John Ruggie, the UN Special Representative for Business and Human Rights.

The protection of human rights, including where it relates to business, is the primary obligation of the state. However, in many parts of the world, and in specific contexts, governments continue to be unable or unwilling to live up to all their duties. Companies have the responsibility to respect human rights, but there have been several instances where companies have failed to live up to international standards or expectations. In cases of state inability and failure, the onus increasingly falls on companies to be more proactive in the field of human rights.

It is against this background that the UN Human Rights Council sought to clarify the obligations for states and the responsibilities of business by adopting the Special Representative's framework. In addition to the corporate responsibility to respect – states have a duty to protect against human rights abuses by third parties, including business; and the need for greater access for victims to effective remedies, both judicial and non-judicial.

*But what does the corporate responsibility to respect mean in practice? And how effectively are companies already doing human rights due diligence? What should we expect in the next five years?*

This report seeks to answer these questions through a state of play review of human rights due diligence of over 20 leading multinational companies. It builds on confidential interviews, follow-up roundtables with a broader range of stakeholders, and numerous written responses. **The first key message of the report is clear: for businesses committed to doing so, human rights due diligence is possible.** The report is unambiguous in its conclusion that, although no business has fully integrated concern for human rights into all aspects of its management, significant progress is being made.

**The other key message of this report, however, is sobering: there are still too few companies seriously engaging with human rights.** Of the millions of companies in the world, of which some 80,000 operate internationally, and the thousands that have signed up to the UN Global Compact, only a very small number – some 250 companies according to available information – have publicly stated policy positions on human rights. These 250 companies are indeed amongst the world's largest and most influential corporate actors, but they are only a very small fraction of corporations engaged in business globally.

At the heart of this report is a range of evidence-based propositions following the four elements comprising human rights due diligence, as outlined by the Special Representative. These elements are – developing policies, assessing impact, integration, and tracking and monitoring performance.

In relation to the development of *Policy*, the experiences of companies studied indicate that it matters less if a company has a comprehensive stand-alone human rights policy, or whether it has integrated different aspects of human rights into existing policies. It is more essential that a number of key elements are put in place at the policy level: that all internationally-recognised human rights are understood as being relevant; that clear responsibilities are established specifying who within the company is accountable for overall human rights policy; that the most relevant functional areas and existing policies are identified; that the company’s human rights reporting commitments are well-defined; and that conflicts between local practice or law and international human rights standards are understood and are being proactively managed.

In relation to *Assessing Impacts*, the report concludes that human rights risk assessment is currently of varying quality and it is in the interest of business and civil society to ensure that assessments of country risk are as publicly available as possible. There are real benefits for business to be able to operate from shared objectives, and commonly-accepted set of data when trying to meet social and human rights relevant expectations. On the issue of impact assessment, the report does not recommend that a new category of human rights impact assessment is always needed. Instead, it argues that existing methodologies of environmental and social impact assessments need to be continually monitored to ensure compatibility with human rights. The report offers some criteria for making such assessments.

None of the businesses interviewed claim to have achieved full *Integration* of human rights across all business functions. Much more work in this area is required. Key methods of reinforcing human rights in business culture and systems include raising rights awareness through training and emphasising the importance of human rights due diligence within recruitment, hiring, training and appraisal processes, besides developing clear incentives and disincentives to encourage good performance and discourage bad behaviour with regard to human rights. Businesses need to look more rigorously across all their contractual relationships: not just in the value chain but also in terms of host-government agreements, public-private partnerships and joint ventures, to ensure that their conduct is consistent with human rights standards.

*Tracking and Reporting* of human rights performance has largely been limited to supply chains, or specific issues such as security. This is changing and the growing expectations of states as well as some investors will require increasing human rights reporting across more business areas. In particular, more transparency is needed on 'impact' or 'outcome' indicators to supplement many of the more 'process-oriented' approaches to human rights reporting currently under development.

Looking ahead in the area of human rights due diligence over the next five years, there are two fundamental challenges – achieving growth and deepening understanding. There has to be an exponential increase in the rate of engagement by business in relation to human rights due diligence. And second is the need to foster much deeper human rights due diligence in companies, including increasing awareness of human rights impacts; developing effective systems for avoiding human rights abuse; and having in place more effective remedies should they occur.

With these challenges in mind, the report concludes by providing a prognosis of how human rights due diligence will evolve in the next five years. This includes five overarching themes: (1) Developing human-centred approach to business management; (2) Establishing clarity about the explicit use of human rights terminology, standards and language; (3) Integrating human rights in contractual relationships; (4) Setting up accountability and grievance-mechanisms; and (5) Ensuring transparency.

The Institute for Human Rights and Business welcomes feedback from all actors – business, governments, and civil society. The task of developing the framework, methodology, tools, guidance, and principles for human right due diligence is too important for any single player. We are all in this together.



# Introduction

Human rights are rights and freedoms to which all human beings are entitled, and every individual and every organ of society is expected to respect human rights of all. Operating within the human rights framework is a nearly universally accepted standard of conduct, and respecting rights is the way an organisation shows respect for people. The first two Principles of the Global Compact concern human rights, and the impact on human rights is among the criteria against which companies' contributions to society are assessed, measured and evaluated. Companies increasingly face pressure from external actors to take into account human rights considerations. However, companies can make commitments relating to human rights even where there is little or no outside pressure to do so. These factors contribute to 'social licence to operate' that every company needs, in order to maintain the viability of its operations and commercial activities.<sup>1</sup>

## **The history of the business and human rights debate**

The human rights impacts of companies has slowly emerged as a business concern over the past 30 years. During the course of the 1990s and in early 2000, coinciding with a few major incidents involving large companies and human rights abuses, there were increasing demands for companies to operate within human rights standards, drawn from international human rights law. Several companies began to study the framework when aiming to understand human rights and their responsibilities. A small number of companies started to incorporate human rights into their codes of conduct and operational policies.

Companies grappled with implementation questions: How do codes work in practice? How do companies engage with partners in joint ventures? How are human rights implemented in global value chains and supply chains? To find answers to these questions, companies started to engage in initiatives such as the Voluntary Principles on Security and Human Rights, the Fair Labour Association, the Business Leaders' Initiative for Human Rights, the Extractive Industry Transparency Initiative, and the UN Global Compact networks.

## **The past five years**

In 2005, then Secretary-General of the UN, Kofi Annan nominated Professor John Ruggie as his Special Representative for business and human rights. At that time, business and human rights was still a relatively marginal topic within the corporate responsibility agenda.

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<sup>1</sup> The full list of factors cited as part of the 'business case for human rights' is included in the Appendix.

Ruggie’s appointment followed the so-called Draft Norms, developed at the United Nations Sub-Commission for the Promotion and Protection of Human Rights in 2003. The Norms had become a lightning rod, attracting strong opinion, for and against, extending human rights responsibilities to business. Reactions were perhaps as emotive as they were analytical. The descriptive content of the Norms was perhaps non-controversial<sup>2</sup> but on substantive parts, such as those of direct responsibility and accountability, the implications of what the Norms proposed were unclear for many. The Norms appeared to assign state obligations to non-state actors, and there was no appetite among States to proceed with a document that many saw as confusing the role of states and non-state actors (such as companies).

The Special Representative moved quickly in 2005 to take the debate beyond the Norms, and established a new dialogue that was conceptually fresh, following an evidence-based approach, based on “principled pragmatism.”

### **Protect, Respect and Remedy: A Framework for Business and Human Rights**

In 2008, Special Representative Ruggie issued his final report of the first half of his mandate. It presented to the Human Rights Council the “Protect, Respect and Remedy” framework.<sup>3</sup> The Council welcomed the framework, and requested the Special Representative to operationalize it further.<sup>4</sup> The framework, which was the result of three years of intensive stakeholder consultations and research, consists of three pillars:

1. The **State duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
2. The **corporate responsibility to respect** human rights, which means to act with due diligence to avoid infringing on the rights of others; and
3. Greater **access for victims to effective remedy**, judicial and non-judicial.

The Human Rights Council unanimously adopted the report. The framework has subsequently been welcomed and endorsed by a wide range of stakeholders, including the world’s leading business organizations,<sup>5</sup> leading academics, and many civil society organizations. The Special Representative was asked to continue his mandate for another three years. He is currently developing a series of guiding principles, among other documents.

<sup>2</sup> Note, for example, the road-testing of the Norms by the Business Leaders Initiative on Human Rights, ([www.blihr.org](http://www.blihr.org)).

<sup>3</sup> Ruggie, John (2008), “Protect, Respect and Remedy: a Framework for Business and Human Rights” *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, UN Document: A/HRC/8/5, 7 April. Available at: [www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf](http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf).

<sup>4</sup> See Article John Ruggie in Ethical Corporation at: <http://198.170.85.29/Ruggie-response-Ethical-Corp-5-Jun-2008.pdf>.

<sup>5</sup> The *International Chamber of Commerce (ICC)*, *International Organization of Employers (IOE)*, and *Business and Industry Advisory Committee to the OECD (BIAC)*, issued several statements in support of Ruggie’s work. See: [www.reports-and-materials.org/Letter-IOE-ICC-BIAC-re-Ruggie-report-May-2008.pdf](http://www.reports-and-materials.org/Letter-IOE-ICC-BIAC-re-Ruggie-report-May-2008.pdf).

### Core features of the corporate responsibility to respect human rights<sup>6</sup>

- The responsibility to respect is a standard of expected conduct recognized by virtually every voluntary and soft law initiative.
- “Respect” means avoiding the infringement of the rights of others and addressing adverse impacts that may occur.
- Its scope is determined by a company’s actual and potential impacts through its own activities and those of its relationships (business partners, governments, customers); these may vary with particular country and local contexts.
- The corporate responsibility to respect applies to all internationally recognized human rights as outlined in the International Bill of Rights and the ILO Core Conventions.
- It is a baseline responsibility, which means it cannot be off-set: human rights harm in one place cannot be compensated by doing good elsewhere.

### Human rights due diligence

While the Special Representative has made it clear that his framework addresses both states and companies, and that both have their independent but complementary roles, this report focuses on the second pillar – the corporate responsibility to respect. It has some core features (see box), but central to company’s meeting their responsibilities is the concept of human rights due diligence, “whereby companies become aware of and address the human rights harm they cause.”<sup>7</sup>

The Special Representative has outlined human rights due diligence with four elements:

- **“A statement of policy** articulating the company’s commitment to respect human rights;
- **Periodic assessment of actual and potential human rights impacts** of company activities and relationships;
- **Integrating** these commitments and assessments into internal control and oversight systems; and
- **Tracking and reporting performance.**”<sup>8</sup>

<sup>6</sup> Ruggie, John (2010b), “Business and Human Rights: Further steps toward the operationalization of the “protect, respect and remedy” framework,” *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, UN Document: A/HRC/14/27, 9 April. Available at: [www.reports-and-materials.org/Ruggie-report-2010.pdf](http://www.reports-and-materials.org/Ruggie-report-2010.pdf). 2010 Ruggie report, para. 54-65.

<sup>7</sup> Ruggie (2010b), para. 87.

<sup>8</sup> Ruggie, John (2010a), “Keynote Address by SRS John Ruggie,” speech at conference *Engaging Business: Addressing Respect for Human Rights*. Atlanta, 25 February. Available at: [www.hks.harvard.edu/m-rcbg/CSRI/newsandstories/Ruggie\\_Atlanta.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/newsandstories/Ruggie_Atlanta.pdf).

The Special Representative has also explored the importance of grievance mechanisms, and stated that an effective grievance mechanism is part of the responsibility to respect: According to the Special Representative, they can perform two functions: “Under the tracking and reporting component of due diligence, they provide the company with feedback that helps identify risks and avoid escalation of disputes; they can also provide remedy.”<sup>9</sup>

### **Moving forward**

The consensus forged by the Special Representative has laid the ground for further progress in the second half of his mandate and beyond. The wide support for the ‘Protect, Respect, Remedy’ Framework suggests that it will increasingly serve as the baseline, creating a permanent and prominent foundation upon which to develop, assess, and operationalise better governance, responsibility and accountability. It therefore provides a tremendous opportunity to investigate what more can be done to bring the Framework to scale globally – across all business sectors and in all parts of the world. The Institute for Human Rights and Business wants to explore how business can be supported and challenged in using the concepts of human rights due diligence to ensure ever greater respect by companies for human rights. This report intends to start this process.

### **About the set up of this report**

The Institute for Human Rights and Business has chosen to take a snapshot of the current state of human rights due diligence at companies, in order to build a solid foundation for its recommendations to challenge companies and others to achieve the goal of greater uptake of the Framework. In the following chapter, the Institute reports on the observations of the research. The third chapter section offers a prognosis of where human rights due diligence will be in five years – what depth and breadth in the human rights due diligence will companies be expect to exhibit. The report concludes with final section provides a series of concrete goals for business and others by describing the road ahead and setting a series of milestones, building on short-, medium-, and long term actions.

This report is based on an intensive process with over 20 multinational companies<sup>10</sup> named earlier. The interviewees were senior company representatives in a wide range of countries and industries. There were two group roundtable discussions with

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<sup>9</sup> Ruggie (2010b), para. 83.

<sup>10</sup> The companies were those that responded to an open invitation that was issued by the Institute for Human Rights and Business via the United Nations Global Compact Human Rights working group in October 2009. It includes two national companies: a Colombian mining company and a Dutch power utility; all the rest being multi-national companies from business sectors such as oil and gas, mining, apparel and clothing, food and beverage, agriculture, information technology, health products, pharmaceuticals, transport and engineering. Most, but not all, the companies are signatories of the UN Global Compact.

additional stakeholders (including non-government organisations, and government representatives), as well as several written submissions. It also builds on learning from the work of the Business Leaders Initiative on Human Rights and the Business and Human Rights Initiative of the Global Compact Network in the Netherlands.

The project was carried out through confidential interviews and the round-tables were held under the Chatham House Rule<sup>11</sup>. The report has been written independently by the Institute for Human Rights and Business, with no external editorial control or influence. The Institute, therefore, accepts full responsibility for its content.

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<sup>11</sup> The Chatham House rule facilitates open discussions based on the assurance that no remark would be attributed to a specific participant or the organisation. See: [www.chathamhouse.org.uk/about/chathamhouserule](http://www.chathamhouse.org.uk/about/chathamhouserule).



# The Current State of Play

## Research aims and methodology

The Special Representative first referred to human rights due diligence in his 2008 report, and it is as such a new concept. The Institute for Human Rights and Business wanted to know the extent to which companies carried out human rights due diligence and the nature of the analysis that informed their exercise. This overview of the current 'state of play' aims to offer an initial assessment about how effective such a due diligence approach to human rights might be, based on real business experience. This report does not attempt to offer an assessment of actual human rights impacts of business, either positive or negative: rather, it examines how the methods of applying human rights due diligence are evolving. The second aim is to suggest what due diligence might look like in practice in future, and the role of different actors to dramatically increase business action in this area.

The Institute's researchers did not steer the conversation in any specific direction while interviewing and discussing corporate human rights due diligence (See Appendix A for research questions). Instead, open-ended questions were asked, enabling the interviewees and round table participants to give their own understanding of human rights due diligence.<sup>12</sup> This almost always led to a discussion on how companies could reduce and avoid risks of affecting people adversely, such as employees, suppliers, and contractors, customers, communities or other groups.

## Summary of some of the key findings

- Companies use a wide range of paradigms or frameworks by which they undertake human rights activity. These include business ethics, community relations, public policy, and compliance;
- When companies analyse their policies, they discover that many have significant policies in place covering a wide range of human rights topics (e.g. health and safety, diversity and inclusion, working conditions). However, they do not traditionally see these activities through a human rights lens. It is critical for companies to know precisely the additional requirements that a human rights approach brings even to issues that at first sight seem familiar.
- Human rights discourse is part of an external rather than internal language for companies. Few executives speak of human rights explicitly with their colleagues in other departments inside their company.
- None of the surveyed companies feels it has fully integrated human rights into all its management systems, and is yet fully reporting on the human rights impacts of their activities.

<sup>12</sup> In some long conversations, the words "due diligence" never appeared, even though the conversation was about human rights due diligence.

In this chapter, we report the observations drawn from our research. They are factual and meant to reflect the overall trends among the companies participating in this research. Where differences of practice and/or opinion remained, this is indicated as much as possible within the space available. They are organized along each of the four elements of human rights due diligence with an introductory session for the overall approach. Note that the observations do not necessarily apply to an individual company of the research.

## Issues in Approaching Human Rights Due Diligence

The Institute for Human Rights and Business wished to know from companies how they approached human rights due diligence. What are the key drivers? What are the barriers faced? This section reports on the general approach to human rights by companies.

### **Each company needs its own business case for human rights, but human rights due diligence provides a more uniform response**

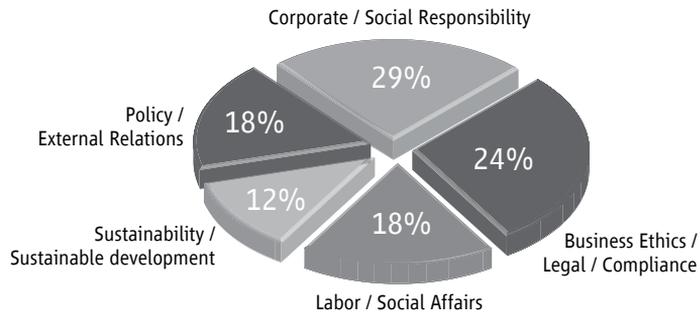
Each company needs to make an internal case as to why human rights matter to its business. Some of the key factors mentioned during the interviews are listed in the Appendix D. Most, companies agree that the ‘Protect, Respect, Remedy’ framework, and in particular the methodology of human rights due diligence provides the intellectual basis for any business to adopt as it begins to address human rights risks and impact. Different companies face different legal, reputational, strategic or pragmatic reasons for taking action on human rights. But the notion of due diligence offers the basis to provide a more common response.

### **Human rights is an issue of increasing strategic concern for business and it is not solely driven by specific incidents**

Many companies have embraced the human rights agenda because of specific incidents involving them or their industry, and due to external pressure. Companies state they hope to strive for a more strategic and pro-active approach to human rights, including looking at the human rights impacts of future business decisions and major investments. Companies seek to mitigate risks in advance, and they start seeing human rights as a business opportunity through the effective management of risk. There is evidence that some companies now start seeing human rights in these terms.

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### Main function responsible for human rights due diligence among companies in this research



### The approach to human rights remains mainly risk-based, but this is seen as risks to the company, not necessarily risks to the potential victims of human rights abuse

For most companies the main approach to human rights is from a risk perspective, with an emphasis on the risk to business, and not necessarily risk to human rights. Most businesses interviewed understand that traditional business risk approaches are not adequate in understanding the risks people face, in particular those most vulnerable. In the medium or long-term, business risks and societal (or human rights) risks may converge – a business will eventually lose the ‘social licence’ or even the ‘legal licence’ to operate if it is routinely abusing the rights of those within or around its operations.

In the shorter term many of businesses interviewed expressed an awareness that traditional business risk factors and those risks faced by the most vulnerable people in any society do not necessarily converge. Many of those interviewed feel this is where a ‘rights-aware’ approach to day-to-day business is essential. It means the company should consider the impacts of its undertaking through a human rights lens, and include the perspectives of the most vulnerable when assessing risks or the impact of operations.

### Human rights due diligence is both seen as an art and a science, but there is no consensus on what is the most effective approach

There is a variation between companies in the degree and mix of qualitative and quantitative approaches to human rights due diligence. There have been many attempts to be as rigorous, systemic and scientific as possible by creating key performance indicators on human rights. At the same time, many companies stress the importance of approaching human rights qualitatively. It is the local manager on the ground that

is best placed to make decisions in light of the complexity of relationships and business factors involved. There is no consensus on this issue, but most of those interviewed said both are needed.

### **Companies accept that all human rights are relevant**

Not a single company interviewed disagrees with the Special Representative's position that business should consider all human rights when doing human rights due diligence.<sup>13</sup> However, both from a realistic and practical perspective it is important for the company to find focus. This is not only the way business works, but it is needed for ensuring respect for human rights: the quicker the company can focus its resources on critical issues, the more effective actual mitigation methods can be employed.<sup>14</sup>

Companies find many ways to focus: prioritising particular countries, specific activities or business functions. The challenge lies when things are left unclear, such as why the company has chosen to take a specific focus to one issue over another. Frequently, companies also choose to focus on particular rights-areas (e.g. labour rights in the workplace or the supply chain); however, they often do so without clarifying why those particular rights areas are considered more relevant or material than others. Moreover, companies are often not transparent about their methods, making it difficult for external stakeholders to evaluate the robustness of the approach.

### **Building from risk management, human rights can also be seen as protecting business value**

Some companies look at human rights as part of their value chain. This then raises the question about the relation between business value and societal value. If a company is engaged in the management or provision of food, medicines or energy, what does human rights due diligence offer in understanding these relationships between the company, government and other societal actors from the creation of greater shared value? The answer seems to be that human rights due diligence is about value protection. Companies mentioned the importance of contractual relationships when understanding these associated risks and the opportunities that arise through managing that risk. This included relationships with preferred suppliers, major customers, joint ventures and governments (often in terms of public-private partnerships). These same companies also flagged very clearly that such relationships remained one of their greatest human rights due diligence risks and that much more work needed to be done to fully integrate human rights into such approaches.<sup>15</sup>

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<sup>13</sup> This is a departure from the pre-2005 environment when it was quite common for businesses to defend an approach where they took interest in some human rights (e.g. worker rights and labour standards) and not other human rights.

<sup>14</sup> See for more on this, *Assessing Risks and Impacts*.

<sup>15</sup> The human rights due diligence process can be seen as value protection through the management of risk.

### **Conclusion on approach**

The companies interviewed for this report have come to human rights in different ways, but they see the methodology of human rights due diligence as the most appropriate way forward. The risk management paradigm remains the strongest driver in most companies, but some companies also mentioned more strategic and value-based responses that can arise out of the successful management of these risks. Due diligence itself, however, should be regarded as the protection of value.

## **Human Rights Policy**

The Special Representative has stated that in developing their statement of policy on human rights, “companies should clearly set and communicate their responsibilities, expectations, and commitments.”<sup>16</sup> The Institute for Human Rights and Business was interested to know how companies do this and how they expect to implement the core elements of the Protect, Respect and Remedy framework in their policy statements.

### **Relatively few companies have an explicit statement on human rights, but the number is growing steadily**

The number of human rights policies in the public domain are somewhere above 250, as listed on the Business and Human Rights Resource Centre website.<sup>17</sup> This remains a small percentage of the estimated 80,000 multinational companies in the world, but the 250-odd companies include many of the world’s biggest companies. A number of reasons for this slow but steady rate of uptake were cited by the companies interviewed, including:

- The requests of specific investors that the company should adopt a human rights policy.
- The increasing prominence of human rights in sustainability rating indices. (FTSE4Good index now requires companies in particular sectors, notably the extractive industry, to have a human rights policy or risk delisting, and the Dow Jones Sustainability Index has also placed significant focus on human rights policies and performance indicators in its questionnaire.)
- The direct influence of the work of the UN Special Representative.
- Internal business specific rationale for giving human rights much greater visibility at the level of group policy.

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<sup>16</sup> Special Representative Consultation Forum, 15 May 2010. Available from: [www.srsconsultation.org](http://www.srsconsultation.org) (“Statement of Policy”).

<sup>17</sup> A criterion for inclusion in this list is that a company has adopted a formal company policy statement explicitly referring to human rights. Companies that only reference human rights in relation to their employees or suppliers are not included. See: [www.business-humanrights.org/Documents/Policies](http://www.business-humanrights.org/Documents/Policies).

### **Companies experience intensified pressure from external stakeholders to develop and publish a stand-alone human rights policy**

Companies experience pressure from investors, NGOs and others to adopt separate statements on human rights. There may also be inherent good reasons for companies to adopt stand-alone human rights policies: they can drive internal change, sharpen minds towards a common goal, and become an entry point to start discussions with stakeholders and critics of the company. Companies stressed that a policy is not just seen for internal guidance, but also to obtain recognition from stakeholders that it is taking human rights seriously. This attention from outside is often instrumental in raising awareness to move the company from being reactive, responding to incidents, to developing a more integrated approach, including its setting of policy.

### **Core features of a statement of policy aligned with the Protect, Respect, and Remedy framework<sup>18</sup>**

- The Special Representative has stated that all internationally recognized human rights can apply to companies; therefore, a policy cannot prima facie exclude particular rights as irrelevant;
- For the content of human rights, the policy should refer to the International bill of rights (UDHR and the Two Covenants),<sup>19</sup> ILO core conventions, and other standards, as appropriate;
- The policy should clarify the company's position in the face of dilemmas, such as the occasions when national law conflicts with international standards so that policy-users know what they should do in such situations;
- While not a requirement per se, a company may want to follow human rights due diligence framework in the policy and explain how each element is implemented in practice;
- The Special Representative has said that besides aspirational statements, the policy should contain detailed guidance in specific functional areas;
- Since the content of human rights is likely to be reflected in many other policies (e.g. health and safety, anti-discrimination policy), a cross-reference to those policies and how they relate is crucial to give clear guidance to employees.

<sup>18</sup> While this project was running, several initiatives were conducting research on what constitutes a human rights statement of policy that is a) aligned with the framework of the Special Representative; b) reflects best practice, and c) is likely to be most effective in supporting a company to ensure respect for human rights. Note that the Special Representative has not prescribed a particular format for the statement of policy. Suggestions provided build on: Business & Human Rights Initiative (2010), "How to Do Business with Respect for Human Rights: A Guidance Tool for Companies," The Hague: Global Compact Network Netherlands. Available at [www.gcnetherlands.nl](http://www.gcnetherlands.nl), and Global Compact (2010), Guide on How to Develop a Human Rights Policy, Available at: [www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html)

<sup>19</sup> The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

### **Most of the companies believe that the best human rights policies are those integrated into other existing policies**

While there are good and legitimate reasons for having a stand-alone policy, companies shared that actual implementation makes most chance of being successful if it is aligned to and integrated with other policies. Participants in this research nearly unanimously agreed that in the long run an integrated policy is more effective because it becomes part of existing business operations and compliance systems.

#### **“The Dilemma of Normalization”**

“Making human rights a standard part of enterprise risk management should reduce the incidence of corporate-related human rights harm. However, it could also give companies a false sense of security that they are respecting rights if they lose sight of what makes rights unique. Human rights risk management differs from commercial, technical and even political risk management in that it involves rights-holders. Therefore, it is an inherently dialogical process that involves engagement and communication, not simply calculating probabilities.”<sup>20</sup>

### **The essential elements of a human rights policy statement include a public commitment, references to other policies, and direction for accountability, monitoring and reporting**

If most of the companies interviewed preferred to sign-post and integrate human rights into existing human rights policies as much as possible, what then do they see as the essential components of something new and stand-alone? The following were most often cited by the companies themselves as the essential components of any explicit policy position on human rights:

- Each company has a public commitment to all human rights and across all its operations;
- That the human rights policy (or statement) clearly directs the reader to all the other business policies and procedures where more specific references might be found. Any significant gaps will be addressed by new policies or the human rights policy itself;
- Clear management accountability for implementation is shown;
- There is also clear reference regarding how human rights will be monitored and reported, and where the company’s own grievance mechanism is located and how it can be accessed.

<sup>20</sup> Ruggie (2010b), para. 85

### **Conclusion: human rights policy**

Some companies have extensive stand-alone human rights policies. Others have shorter human rights policy statements that direct the reader to other existing policies. The companies interviewed feel that both approaches are valid provided that all human rights are dealt with somewhere and that there are a number of key basic policy components that are publicly stated and explicitly labelled human rights.

## **Assessing Risks and Impacts**

The corporate responsibility to respect (not infringing on the rights of others) is not a passive responsibility. It involves taking proactive steps to understand how existing and new activities have an impact on human rights. Such assessments can take all sorts of forms and can be both stand-alone and be integrated into other approaches, such as social and environmental impact assessments. As situations can change, including by the company’s actions, the impact assessments should take place regularly through the life cycle of activity.

### **Methodologies for human rights risk and impact assessments remain incomplete**

Companies express a need for solid, publicly available sources for information about human rights risks in particular countries and sectors.<sup>21</sup> Consolidation and convergence of methodologies to develop sound risk assessments businesses is one of the primary needs companies have.

Participants in this research, including most companies believe the information on which assessments can be made should be freely available and be publicly accessible – to allow communities, workers and NGOs to draw from the same data-set as the companies themselves. This is seen to be in the enlightened self-interest of business itself as expectations might then be more realistic and solutions more open to be discussed. Companies interviewed are aware that some of the information regarding risks will be sensitive to specific host or home governments. Therefore, any open source materials would need to be objectively and independently managed (like for example the Transparency International Perceptions of Corruption Index).<sup>22</sup>

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<sup>21</sup> Some existing human rights risks mapping tools aimed at the business market demand heavy fees and are incomplete and sometimes even misleading, according to companies in this research. Furthermore, investment risk reports by consulting firms do not have information on human rights, and freely-available reports of human rights organizations are state-centric and do not provide the information that businesses require.

<sup>22</sup> The Danish Institute for Human Rights has started a project to expand its country human rights and business reports and make it publicly available. See: [humanrightsbusiness.org/?f=country\\_risk\\_portal](https://humanrightsbusiness.org/?f=country_risk_portal).

### **Some views from independent experts of human rights assessment**

“My personal opinion is that this terrain is murky because companies outsource their Human Rights Impact Assessments to consultancies, if they even do them. While we would like to think they use internal resources to conduct the impact assessment, this is often not the reality. It is the involvement of consultants or intermediaries that plays a large role in creating the confusion between different methodologies and the lack of a systematic approach.”

“There is plenty of information out there, and it’s free. It just takes time. The data for Country Risk Assessments needs to come from multiple sources, which is probably a good thing so that one perspective doesn’t out rule others. It takes work to put it together and draw conclusions – which it should.”

### **It is sometimes necessary to do stand-alone human rights impact assessments; at other times it is more effective for human rights to be integrated in environmental and social impact assessments**

While doing environmental and, increasingly, social impact assessments is commonplace for large-scale projects with a large potential footprint, stand-alone human rights impact assessments remain rare. Moreover, companies reported that even existing social impact assessments often do not have an explicit human rights perspective. Interestingly social aspects under common social impact assessments address a few core human rights areas such as the right to work, the right health, the right to clean water and sanitation, the right to education, the right to adequate housing, indigenous peoples rights, health and safety and non-discrimination. However they seldom frame the issues from a human rights perspective.

Companies have found several methods to find focus and scope for their human rights due diligence. For example, some have chosen particular countries to do a human rights compliance assessment based on a combination of human rights risk and size of operations. Others have chosen to ‘zoom in’ on a particular functions such as supply chain or sourcing of raw materials. Some companies have matrices that determine when and where they should focus, for others it is purely a matter of judgement.

While these methods are sophisticated and impressive, and processes should always be tailor-made to a particular operational context, many of the current processes have been based on methods of trial and error. Companies realize they need to move towards an improved, more sophisticated approach to country and risk assessments.

### Two company perspectives

“Human rights due diligence processes, particularly the impact assessments, should not be viewed in isolation of broader social risk issues, and by extension, social risk management framework of a company. Human rights and social issues – and ways to manage them – are often inter-connected. Being part of a social risk management framework helps to make the assessment and management process integrated and durable. If a social risk or performance management system does not exist, the human rights due diligence can serve as a building block to develop a new system or strengthen an existing one.”

“Many businesses are looking at the ‘sustainability’ footprint of their operations – which combine the social as well as environmental and economic impacts. We need to be careful that we don’t give the impression that ‘human rights’ is *the* priority – and that it is dealt with independently. Most companies are also looking at integrated reporting.”

### The contractual relationships between a company and the state, or directly with other companies, is increasingly a key area of focus for human rights due diligence

Several companies immediately equated ‘general due diligence’ with Mergers & Acquisitions (M&A) processes. M&A teams and departments have until recently received relatively little human rights attention, particularly from the perspective of impact assessments. It was striking that a large majority of interviewed companies mentioned this on their own, as an area that they had only recently started considering. They identified two aspects:

- *Before the deal*: can companies uncover any legacy issues related to human rights, and what costs will be required to bring this company in compliance? Does it affect the bidding price?
- *Integration*: how do companies bring the acquired companies in compliance with human rights standards as soon as possible?

A smaller number of companies also mentioned human rights in relation with Public-Private Partnerships (PPPs) and Joint Ventures (JVs) – these were both characterised as being of particular vulnerability in human rights terms. The challenge increases when the company with a human rights policy has a minority stake in a PPP or JV with one or more other companies that do not undertake any human rights due diligence.

**List of the human rights tools, assessment methodologies and overviews cited by companies and their advisors in the research for this report**

<i>Organization</i>	<i>Tool/Methodology</i>
Aim for Human Rights	<ul style="list-style-type: none"> <li>• Guide to Impact Assessments</li> <li>• General Support</li> </ul>
Business Leaders Initiative on Human Rights	<ul style="list-style-type: none"> <li>• Human Rights Matrix</li> <li>• BLIHR Essential Steps</li> </ul>
Control Risks	<ul style="list-style-type: none"> <li>• Social and political risk maps</li> <li>• In-country risk assessments</li> </ul>
Danish Institute for Human Rights	<ul style="list-style-type: none"> <li>• Human Rights Compliance Assessment</li> <li>• Country Risk Assessment Reports</li> <li>• General Support</li> </ul>
Foley Hoag (Boston and Washington, DC)	<ul style="list-style-type: none"> <li>• Human Rights Impact Assessments</li> <li>• General Support</li> </ul>
International Business Leaders Forum, International Finance Corporation, and United Nations Global Compact	<ul style="list-style-type: none"> <li>• Guide to Human Rights Impact Assessment and Management</li> </ul>
National Human Rights Institutions	<ul style="list-style-type: none"> <li>• South African Human Rights Commission, Kenyan National Human Rights Commission, Danish Institute for Human Rights, Scottish Human Rights Commission</li> </ul>
Maplecroft	<ul style="list-style-type: none"> <li>• Human Rights Risk Index</li> <li>• UN Global Compact Dilemmas Forum</li> </ul>
McGrigors Rights, McGrigors Law LLC (London)	<ul style="list-style-type: none"> <li>• Human Rights Impact Assessments</li> <li>• General Support</li> </ul>
Multi stakeholder Initiatives	<ul style="list-style-type: none"> <li>• Fair Labour Association</li> <li>• Ethical Trading Initiative</li> </ul>
Office of the High Commissioner for Human Rights	<ul style="list-style-type: none"> <li>• Thematic and Country reports</li> <li>• Universal Periodic Review to Human Rights Council</li> <li>• Special Procedures</li> <li>• Reports to Treaty Bodies</li> </ul>
Rights and Democracy	<ul style="list-style-type: none"> <li>• Human Rights Impact Assessments for Foreign Investment Projects</li> </ul>
Transparency International	<ul style="list-style-type: none"> <li>• Corruption Perceptions Index</li> </ul>
United Nations	<ul style="list-style-type: none"> <li>• Human Development Index</li> <li>• ILO reporting mechanisms, Better Work Program and International Labour Conference resolutions</li> <li>• Millennium Development Goals Country</li> <li>• Development Plans</li> <li>• UN Sanctions</li> <li>• UNAIDS, UNEPFI, UNDP</li> </ul>
Various national government reports	<ul style="list-style-type: none"> <li>• African Union, Council of Europe, Organization of American States, UK Foreign and Commonwealth Office, US State Department</li> </ul>
Various NGO human rights reports – both thematic and country-specific	<ul style="list-style-type: none"> <li>• Amnesty International, Fédération internationale des droits de l'homme (FIDH), Freedom House, Global Witness, Human Rights Watch, Open Society Institute, Oxfam International</li> </ul>

### **There is no quality control or enough disclosure on methods of assessing risks and impacts**

Many companies remain reluctant to place the full results of audits and complaints processes related to human rights into the public domain. The same caution exists with the results of human rights impact assessments. There have been few human rights impact assessments in the public domain, and one assessment cited often was published only in summary form.<sup>23</sup> Moreover, companies or their expert advisors do not often share their methods regarding the way they decide on which countries or business units they prioritise for human rights assessment, which business units to target for human rights training, or which suppliers to screen before engaging in a contract.

### **The need to understand the different types of “impact” a company can have**

Some companies also report that there are various types of ‘impact’ that are important. Companies have used the term ‘impact assessment’ from the predictive perspective (i.e. the likely impact a project will have). Many stakeholders are also interested in ‘resultant impact’ – the actual effect a project has on the people – which should be captured in the monitoring and reporting activities of a company. It is also vitally important that both types of impact also include secondary considerations that might be outside the immediate focus of a project, i.e.:

- What are the human rights impacts of not going ahead with a specific project?
- Are there specific communities or groups within the population which are being excluded from the project due to inherent marginalisation or discrimination within the society or any other reason including negligence?
- How well represented are the interests of women and other possibly vulnerable groups in the project as planned?

### **Methods of community engagement in impact assessments or resettlement programmes are not always disclosed or necessarily legitimate**

Participants in this research project believe that impact assessments are not credible and effective without community engagement. “How can you know the impact on people if you do not consult with them?,” asked one participant. Companies are also not always clear about who they should be consulting with.<sup>24</sup>

<sup>23</sup> It concerns the human rights impact assessment for the BP Tangguh project. Materials can be found at: [www.bp.com/sectiongenericarticle.do?categoryId=9004774&contentId=7009150](http://www.bp.com/sectiongenericarticle.do?categoryId=9004774&contentId=7009150).

<sup>24</sup> For example it is not always clear who the stakeholders are, who they are represented by; there are often various stakeholder groups that have competing interest.

### Perspective from an expert

“One important element that I always hear from companies is that it is so difficult to identify the right stakeholders and especially their representatives (who represents who?).”

There are a number of challenges involved when selecting the appropriate counter-parts for such engagement:

- Companies report they need clear and explicit processes for deciding who represents the best interests of any community. Is this the traditional or formal leadership; or, in addition, should represents of marginalised groups also be proactively sought?
- Communities might not articulate their concerns in human rights language, but that does not mean they are not human rights issues. The company needs skilled facilitators to understand and interpret the true intentions of the community.
- In countries with repressive governments, communities can be very cautious about discussing all their real concerns or anything that might appear too political or critical of existing power structures.
- Companies often require the assistance of credible NGOs who understand community interests and are able to articulate the needs and interests of the most vulnerable sectors of any society.

### **Impact assessment tools and methodologies often serve additional purposes, such as awareness raising and input for training**

Companies stressed the multiple functions human rights risk or impact assessments can have, in particular how the process and outcome help raise awareness within the company, including those participating in the assessment, as well as senior management and the company intermediaries. This function is not to be underestimated both as a powerful way in which to mainstream human rights within the business, and also to build capacity among staff in recognizing and picking up human rights issues that are not immediately tracked by the assessment. Some companies will therefore choose to undertake explicit human rights impact assessments in specific parts of the business with the hope that it will help the local management build in human rights to a much wider range of specific processes and decision-making.

### Conclusions relating to assessing risks and impacts

Companies are engaging with a number of methodologies and approaches for assessing their human rights risks and impacts. In terms of country risk assessments, much of the necessary human rights data is actually freely available from a number of sources. The major constraint is the time and expertise required to synthesize the necessary data into formats relevant to specific companies in specific locations. In terms of impact assessment, there is much less available in the public domain, with a number of competing methodologies – some freely available, others requiring payment. Companies lack clarity as to when they should undertake bespoke human rights impact assessments as opposed to better integration into existing social and environmental approaches.

## Integration

The Special Representative has observed in his research that in many companies the different departments do not always synchronise their work. This leads to inconsistencies in policies on human rights and their application. For example, while the community relations department is working diligently to foster constructive engagement with neighbours, business operations could lead to pollution in the local well; or while the sustainability programme supports suppliers in upholding rights of their workers, the procurement department applies high pressure on the same suppliers to meet unrealistic deadlines cost reductions. The Special Representative states:

*“The intent of integration is to make respecting human rights part of the parameters within which business is conducted – like ethical behavior, compliance with the law, or ensuring safe conditions for employees. To that end, companies should ensure leadership from the top to embed respect for human rights, include human rights in relevant training, and develop the capacity to respond to unforeseen situations in a manner that respects human rights.”<sup>25</sup>*

Companies that participated in the Institute’s research agree that while training and positive messages are an important driver for integration, these are in and of themselves not enough. Some stressed the need to look at their performance and oversight systems and ensure that managers and other employees are provided with incentives that encourage respect for human rights, or at least not detrimental.

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<sup>25</sup> Special Representative online forum: [www.srsgconsultation.org](http://www.srsgconsultation.org) (“Integration”)

### Examples of management practices to achieve integration

*There are several methods and instruments that companies employ to implement the human rights policy and accelerate integration:*

- Include criteria related to the human rights commitments in human resources processes like recruitment, hiring, and performance appraisal;
- Train employees on business principles and code of conduct, including sharing dilemmas on human rights and understanding impact of certain business decisions;
- Develop long term incentives, including non-financial appraisals and bonuses (e.g. making bonus dependent on lowering the number of complaints over time or improving employee engagement score);
- Install strong disincentives for conduct that is out of line with the human rights policy (i.e. impose disciplinary measures when someone is responsible for a human rights abuse);
- Organize capacity to cope with human rights dilemmas and improve performance (e.g. training for specific employees, corporate risk and responsibility committee, ethics committee);
- Make human rights part of oversight systems, including supporting policies, procedures, monitoring and other oversight mechanisms (see also next section on tracking performance);
- Include human rights principles in contracts with business partners (eg. suppliers, joint venture partners, contractors) and train and monitor the company's own buyers in these relationships.

### **There is no consensus about whether more qualitative or quantitative approaches are the best drivers for integration**

Companies do not have a uniform opinion about the best way to integrate human rights in their operations. Some emphasize the qualitative component by arguing that awareness-raising, training, and engagement are sufficient. They argue that the subjective nature of human rights, including interpersonal aspects, means that the issue of human rights does not lend itself to a tick-the-box exercise. Employees need to become aware of what the impacts of their actions are and take these into account when executing their tasks.

Other companies agree with the premise that human rights are not easy to capture in terms of quantitative targets and key performance indicators (KPIs). However, they stress that strong incentive systems such as targets, bonuses and strong disincentives are necessary. It is particularly important to have KPIs on human rights performance (see also next section), and the fact that there are so few KPIs shows a real weakness.

“In companies, the recipe requires top management support, making sure all departments have the right incentives to change and pedagogic imagination to explain what human rights are and how they relate to each person’s daily tasks. Change will not happen overnight. The hardest part is showing and proving progress to the outside world, especially to NGOs who demand instant results.”

– Company representative

### **There is currently a lack of sufficient expertise and experience for fully integrating human rights due diligence within many companies**

Companies reported that they are not able to integrate human rights fully in their operations without the necessary experience at the relevant levels of authority in the business. Individuals who have worked on human rights issues and built knowledge and expertise are often shifted to other departments (or they leave the company). It is therefore of utmost importance to have systematized human rights tools that have evolved over time and survive beyond the career path of specific key individuals.

While companies consider some tools to be useful, no common criteria could be distilled regarding evaluation of human rights tools. Businesses stressed the need for clarity in determining quality principles. Some companies stated that they would like the Special Representative to put forward principles for effective due diligence.

### **Companies are still developing the capacity to view their activities through a “human rights lens”**

Many companies have begun to work on human rights issues, such as health and safety, human resources, and community engagement without explicitly seeing them as “human rights issues”. Companies reported that when they considered the full range of all human rights as set out in the Universal Declaration of Human Rights and the two main Covenants,<sup>26</sup> they were already well under way. But the companies acknowledged that they have not necessarily viewed their activities through a human rights lens, nor do they have the necessary capacity to do so.

### **Human rights should be embedded in all relevant parts of the company but functional champions are needed to drive the process**

There is near consensus among companies that integration, and not a stand-alone approach, is the best way to achieve integration. Adding a whole new separate process that has a lot of overlap with many existing processes, will find much resistance, and risks people making overlapping efforts.

<sup>26</sup> The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

However, companies also stated that it is critical to have a functional champion who drives the agenda within the company. This champion, (or a team of champions), needs full support from corporate leadership and direct access to the main business functions: operations, human resources, the legal counsel, procurement and supply chain, marketing, finance, and capital allocation.

### **Leadership at Board and Executive level is essential for full integration**

While it is not easy to obtain top management buy-in and approval, companies stressed that such backing is crucial for integrating human rights. Human rights due diligence is, in essence, a process of change management, and as such the support of top management is absolutely necessary. A board member or other senior official taking personal ownership of the topic is particularly helpful. In practice, such support may be easier to obtain when specific business units in the company have already informally signalled their support for integrating human rights, or at least not demonstrated significant resistance. Therefore, senior management can be engaged as a result of either a 'top-down' or 'bottom-up' integration processes.

“In our company any human rights issue will go straight to senior management, whether the business likes it or not.” – **Company representative**

### **Powerful incentives and disincentives are essential for strong integration**

It is important for companies to train employees in human rights. However, that in itself is not enough to realise full integration. Companies recognize the need for incentives for good behaviour – rewarding managers who do well – and disincentives to discourage neglecting human rights. Aware of not wanting to lose what is unique about human rights, there was also recognition that human rights need to be integrated into regular management processes. In most companies human rights awareness has not fully trickled down to key staff, such as middle managers and procurement staff, who are often closest to the actual human rights impacts.<sup>27</sup>

### **Conclusion: integration**

Many companies find integration the hardest part of the due diligence process. Few, if any, claim to be anywhere near a state where they can confidently say that human rights are respected throughout their organization. Training, tools, bonuses, dilemma-solving, oversight systems all need to be further developed to fully embed human rights principles. Companies particularly disagree over whether human rights concerns demand a more qualitative or quantitative approach.

<sup>27</sup> NB: note that incentives do not always have to be monetary or based on quantitative criteria. An evaluation about “ethical behaviour” could be made by a manager and/or Human Resources person, and this could be a factor in promotion policies.

## Tracking and Reporting Performance

Tracking performance is the process of monitoring outcomes of the due diligence process and making improvements where necessary. While not designed for that purpose, company-level grievance mechanisms can be an important way of tracking performance because they can be one source of data to evaluate the effectiveness of human rights due diligence. For companies that need to demonstrate that they respect human rights, reporting is an important element in order to enable stakeholders to engage with companies and compare performance.

### **At the current time, companies do not usually track and report on human rights performance as a stand-alone matter, but integrate it into other elements of their sustainability or CSR performance measures**

Many businesses are looking at human rights in the context of the ‘sustainability’ footprint of their operations, which combine the social as well as environmental and economic impacts. Human rights become among the several issue areas of a larger process of measurement and reporting. Within the sustainability framework, the human rights component remains underrepresented and underdeveloped.

Sustainability reporting has blossomed for nearly ten years now. The latest trend is a push towards integrated reporting. Many of the companies interviewed have already made such a step and many more are considering it. If human rights reporting is properly integrated in these reports, it could fall within the purview of corporate governance regulations, as such reporting, including sustainability data, need verification from an external accountant. This move may just provide more external assurance for the data.

### **Key Performance Indicators (KPIs) are seen to be critical for success but remain underdeveloped for the moment**

Participants stressed that human rights performance cannot always be measured numerically, and that qualitative analysis is necessary. If not, there is a risk that companies will look for issues that are easy to measure instead of those that are most important to evaluate.

Notwithstanding, companies stress that formulating, measuring and comparing KPIs is important to drive human rights within the organization and making the issue mainstream. Companies are seeking ways in which to combine qualitative and quantitative measures, but it has not been easy. External guidance, such as from the Global Reporting Initiative, does not meet the needs companies have.

### **Many current human rights indicators are process indicators (in that they assess the capacity to deal with human rights issues) as opposed to measuring the impact directly**

The qualitative nature of human rights often makes it difficult to measure. This fact may partly explain why many indicators used in various CSR instruments focus on processes.<sup>28</sup> For example, seven out of nine indicators of the current version of the GRI human rights indicators are process indicators and the proposed update has only three out of 12 performance indicators that could be regarded as focusing on outcome or impact rather than process.<sup>29</sup> The assumption behind this is that the right process leads to a predictable outcome. That is often the case, but not always.

### **Examples of how companies track, report and improve performance on human rights**

- Gathering data on human rights through data questionnaires, employee surveys, self-assessments, hotlines reports;
- Formulating KPIs and comparing results between years and with industry peers;
- Monitoring and auditing of suppliers, reporting on the results, devising improvement plans, and building capacity to improve their performance;
- Reporting on human rights issues, dilemmas and challenges through corporate responsibility and sustainability reports; may include cases studies, quantitative data, and descriptions of processes (e.g. stakeholder engagement, etc.);
- Establishing meaningful engagement with stakeholders who could bring issues to the attention of the company (eg. grievance mechanisms), and making such engagement a part of the performance evaluation process.

### **Companies are reluctant to report on human rights violations, but some companies increasingly share such information publicly, especially in relation to their supply chain**

In general, companies do not report human rights violations they may have found for fear of legal or reputational consequences.<sup>30</sup> In fact, very few do or do so only in the aggregate. Notwithstanding, some companies, notably in the electronics and apparel industries, have been more open in recent years about violations they found in their

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<sup>28</sup> The other, of course, being the sensitive nature of making public human rights violations. However, the research did not reveal that companies have many substantive KPIs that they do not share with the public because of legal sensitivities.

<sup>29</sup> See [www.globalreporting.org/humanrights](http://www.globalreporting.org/humanrights)

<sup>30</sup> It should be noted that companies that participate in the Voluntary Principles process give an undertaking that they would report human rights violations when these occur, and raise concerns with local security forces and/or appropriate authorities.

supply chains. While initial reactions may be negative,<sup>31</sup> companies shared that over time the results have been mostly positive.<sup>32</sup>

Companies also report that they increasingly share publicly data on whistleblower or other grievance mechanisms and give a breakdown of the issues found. Companies say that issues defined in explicit human rights terms often form only a small portion of the total complaints received, but this might be due to under-reporting or limited interpretations of what constitutes a ‘human rights issue’.

### Some examples of commonly used KPIs

#### *Process/inputs*

- Percentage of employees trained in Code of Conduct (including human rights)
- Number of safety walks held per business unit
- Comparison of zero-tolerance vs. limited tolerance issue (supply chain program)

#### *Outcome/impacts*

- Number and breakdown of code violations (e.g. respectful treatment, discrimination, collective bargaining, employee relations, employee privacy, right to organize, working hours)
- Lost time injury rate
- Number of contracts cancelled due to incompatibility with human rights standards<sup>33</sup>

### Effective grievance mechanisms can enable better performance as they create a unique and human-centred data-set

Many companies shared that they see grievance mechanisms as the most innovative component of the *Protect, Respect and Remedy* framework. Some of them now require all operational sites to institute grievance mechanisms designed according to the Special Representative’s Principles for effective grievance mechanisms. Companies view them as a way to gather important operational data, which can serve as input to management reviews and decisions.

<sup>31</sup> See for example the reactions to the recent supply chain report by Apple: Moore, Malcolm (2010), “Apple admits using child labor,” *The Telegraph*, 27 February. Available from: [www.telegraph.co.uk/technology/apple/7330986/Apple-admits-using-child-labour.html](http://www.telegraph.co.uk/technology/apple/7330986/Apple-admits-using-child-labour.html).

<sup>32</sup> Companies like Gap and HP have reported violations found at their suppliers; the response to this move from many civil society organizations has been positive.

<sup>33</sup> This indicator must not necessarily be seen as positive. Cancelling contracts can often have detrimental consequences for human rights (e.g. the best response after the use of child labour is discovered is to ensure that the child goes to school; stopping employment outright could force the child into even worse conditions).

**Conclusion: tracking and reporting performance**

Some companies felt that the fact that so many social performance indicators currently focus on 'process' rather than 'impact' could simply reflect the inherent qualitative nature of human rights. However, others felt it could also indicate that the idea of measuring and tracking performance is relatively new. The example of health and safety – a clearly qualitative field, still with clear targets – demonstrates this could change. But the main issue with objective and quantifiable measures of human rights impact is that, on the one hand, they can all too easily become too simplistic; or, on the other, be extremely sensitive to the company.



# Looking Ahead: The next five years

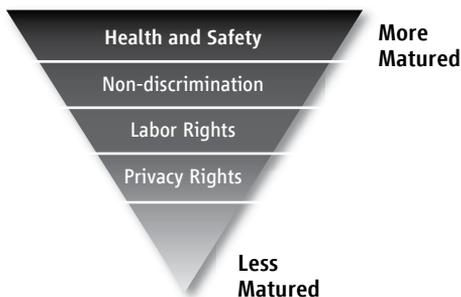
## The road ahead

It emerged from the research that few of the companies had yet found an equilibrium for the level and methods employed for human rights due diligence in their companies. The activities are still being driven by key individuals and key functions in the company – but are rarely fully part of the corporate DNA.

As discussed already, health and safety at work is a human rights issue but not necessarily viewed as such. Its integration into business management culture should be seen as one of the first success stories of human rights due diligence. (Where initially the wearing of hard hats or the reporting of accidents at work in the logbook were seen as alien to mainstream business culture, now plenty of businesses all over the world have instituted it so deeply, and it has become so ingrained, that the immediate 'knee-jerk' response to an accident at work is to record it in the logbook). It no longer requires a specific individual or business function to constantly promote and enforce performance (although this might still help); it has become an automatic response of most of the workforce.

## Which human rights are already integrated into business practice?

(the diagram below is purely illustrative, and not exhaustive of examples)



We are far from realising the full range, or spectrum, of human rights. But human rights due diligence is an important concept to ensure that a company has put in place processes that can act as an assurance mechanism for the company about what it does to respect human rights. While undertaking a due diligence exercise is not an exact science, it provides conceptual clarity and it has received powerful endorsements. A number of companies, including some that have been at the forefront of the business and human rights movement, have been developing elements of an effective due diligence

framework for sometime now. Though far from perfect, none of the companies suggested efforts would be scaled down or be done away with altogether. Companies interviewed by the Institute agree that the issue of human rights is here to stay and developing a robust due diligence framework is the appropriate way forward.

This raises two fundamental challenges for the next five years:

- How to achieve an exponential increase in the rate of engagement by business in relation to human rights due diligence? As of today, only 250 of the world’s 80,000 multinational companies have developed public human rights positions. These are amongst the 250 largest and most influential companies in the world. As the reflections by the International Organization of Employers at the end of this report shows, the millions of small and medium-sized enterprises faced a formidable challenge with regard to human rights due diligence.
- How to achieve much deeper human rights commitment through performance from companies, increase awareness of their human rights impact, and improve systems and processes (both within governments and businesses) to avoid the abuse of human rights, and establish remedies should such abuses occur?

### **When should the majority of companies move on human rights?**

Companies are aware that while there is the “first mover advantage” in business, there is also the “first mover disadvantage.”<sup>34</sup> Being early may give a business the advantage of being more comfortable with the issues involved by the time competitors catch up. But it also means that the business draws attention, and each mistake it may make gets magnified and scrutinised. The question for companies which have yet to engage with the issue of human rights due diligence is precisely that: does it make sense for them to enter this field now?

The Institute for Human Rights and Business believes that now is indeed the time. Some companies may decide to not to conduct due diligence – but that does not mean they will not have to face the consequences of their actions. Committing abuses, or being complicit with abuses is morally unsustainable, legally indefensible, and it could make the company’s “license to operate” practically untenable in the mid to long run.

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<sup>34</sup> See Appendix E for some more inhibitors for business.

## **Prognosis of Human Rights Due Diligence in Five Years**

Based on what the companies told the Institute's researchers in interviews, it is clear that human rights due diligence will mature over time, and it is inevitable that at some point in the near future it will be as mainstream for companies as health and safety and the environment are at the moment.

The remainder of this paper offers a prognosis for governments, business, trade unions and civil society for the next five years. Where might we all be on the issue of business and human rights in five years time? The prognosis offered below is based on a vision of 2015 that is ambitious but not inconsistent with the experiences and views of the companies and others interviewed for this research.

There are perhaps a number of over-arching themes that we might expect to be central to human rights policy and practice in the years ahead:

### **1. A human-centred approach to business management**

At its simplest, human rights approaches to business are those that put the inherent dignity of each human life, and in particular the most vulnerable or marginalized person, at the centre of every major business decision. It appears simple but hard to implement in practice. The challenge business faces is the paradigm that requires that companies place profit maximisation at the centre of the decision-making process, which often means that the interests, concerns, and rights of those whose lives may be impacted negatively become less important.

This is not to suggest that businesses have to cease being commercial, profit-driven organisations, nor that they develop a victim-centred approach. Rather, that strong and effective dialogues with communities, consumers, employees, and other relevant stakeholders will significantly reduce the likelihood of business activities leading to the creation of new victims, or affecting adversely the lives of those already vulnerable. The below diagram has been developed in the course of this project, and is meant to reflect that human rights due diligence has the human at the centre of its focus at all times if it is to be effective in its stated aim of ensuring respect for human rights.

## A human-centred approach to human rights due diligence



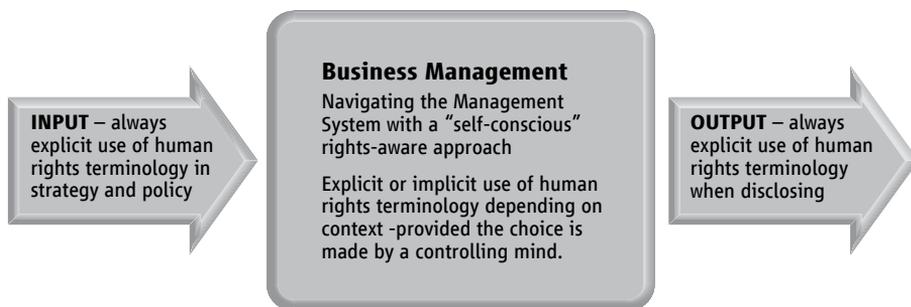
### 2. Clarity about the explicit use of human rights terminology, standards and language

By 2015, there will be clarity about when businesses should talk explicitly about human rights and when it is permissible to use existing management concepts based on corporate responsibility or specific business functions or cultural preferences. This does not mean a 'dumbing down' of human rights, rather that business will understand the full legitimizing potential of human rights better, and that the terms of engagement will be more specific. In essence, the strategic and policy commitments of any company (inputs) and the concrete performance of any business (outputs) will be explicitly and transparently stated in human rights terms. This is shown in the diagram opposite.

Within the business management system itself, however, the Institute proposes that a 'black box' metaphor might apply. What is essential is that a 'self-conscious' rights-aware approach is taken to the issue of when human rights terminology should be explicitly used or not. In other words, the decision as to whether to undertake a human rights impact assessment, as opposed to an existing social or environmental impact assessment, cannot be prescribed generically – it will depend on a number of contextual factors specific to the company, geography, business sector and the moment in time. What matters is that it produces the necessary result – that of enabling human rights performance to be explicitly and effectively tracked and demonstrated.

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**Suggested use of human rights language: input and output of due diligence requires explicit use of human rights language; inside the 'black box' depends on what is most effective as long as it is "self-conscious".**




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### **3. Human rights in contractual relationships**

Contractual relationships are an effective way of enabling the corporate responsibility to respect human rights. These can be between the state and a business, or between two or more businesses directly. State-business contracts include "host-government agreements" (typical for major infrastructure projects) or "public private partnerships" (for major utilities or development projects). By 2015, it is expected that standard human rights safeguards and remedy mechanisms are included in many such agreements as a matter of course. Similar safeguards might also apply to "joint venture" or "preferred supplier" contracts between businesses themselves.

### **4. Accountability and grievance-mechanisms**

The issue of business accountability, and in particular accountability for actions abroad, will remain a critical issue. There will be a sharper focus on business complicity in specific countries of weak governance, and there will be some progress in creating mechanisms to hold a company accountable for its activities abroad. In parallel, rights-based grievance-mechanisms will begin to become a standard part of major state-business and business-business contractual relationships, as well as within companies themselves.

### **5. Transparency**

Apparel manufacturers have faced credible allegations of the use of child labour over the years. Strong, robust commitment to transparency has enabled some companies in dealing with such allegations: one leading international manufacturer was not only able to maintain its position but also have leading trade union leaders and NGOs defend it, because it had a record of transparent conduct with its stakeholders.

These five over-arching themes – a human-centred approach; greater terminological clarity; integration into contractual relationships; greater accountability; and transparency will be key enablers to achieve greater progress in human rights due diligence over the next five years.

This will also now be looked at in terms of the due diligence steps themselves.

## **Prognosis for Each Element of Human Rights Due Diligence**

### **Statements of policy in five years**

There will be more human rights policy statements by companies in the next five years – in quantity and quality terms. The quantity part will be easy to measure; the quality will be measured in terms of their alignment with the ‘Protect, Respect, Remedy’ framework and also in terms of the evidence of effective implementation and accountability.

- There will be an uptake of both stand-alone and integrated human rights policies;
- In certain sectors, not having a human rights policy or at least a reference to human rights in the code of business principles or similar document, will be disadvantageous for the business;
- Company with a statement on policy on human rights will:
  - Explicitly recognize that all human rights are potentially relevant, but also provide insight into the criteria they employ when zooming in on particular rights areas;
  - Have meaningful statements at various levels: part of company mission statement, CSR framework, policy statement, generic employee instruction and specific guidance and instruction for employees;
  - Make a public commitment to all human rights and across all its operations;
  - Direct the reader to all the other business policies and procedures where more specific references might be found. Any significant gaps will be addressed by new policies or the human rights policy itself;
  - Show clear management accountability for implementation;
  - Provide reference to the way the company will monitor and report human rights and ways to access and locate the company’s own grievance mechanism.

### **Assessing risks and impacts in five years**

By 2015, we expect a much greater uptake in human rights assessments – in particular those relating to risk and impact along the extended value chain.

- Companies will periodically carry out a stand-alone or integrated company-wide human rights risk mapping exercise;
- Country information on human rights issues will be publicly available to all parties in the debate: companies, communities, NGOs, consultants, etc.;
- Human rights will be substantially integrated into existing impact assessment instruments (social/environmental);
- There will be a distinct role for stand-alone human rights impact assessments, and criteria for when such an assessment is necessary will be clearer and agreed upon;
- Impact assessment will centre on qualitative and quantitative measures;
- Knowledge for integrating human rights in impact assessments will sit with the business operations at the local level;
- Companies will share and report much more openly about human rights impacts and risk.

### **Integration in five years**

In five years time, companies will have effective mechanisms for fully integrating human rights into business management. The manifestations of this will include the following:

- All relevant entities within a business will have a sense of ownership for human rights;
- Human rights will be a standard part of code of conduct training;
- As the business and human rights debate matures, employees will be familiar with the concept of human rights and use much more explicit human rights language;
- Incentives and tools on human rights will be common and mainstreamed;
- Companies will look significantly closer at their internal integration (e.g. consistency between departments, effects of buyer practices on performance of suppliers);
- Companies will continuously look for gaps in human rights due diligence by doing periodic assessments of human rights, and reorganized their systems to provide greater assurance that human rights risks are identified, prevented, and mitigated;
- Human rights will be seen as part of all major contractual relationships, such as host government agreements, public private partnerships, and joint venture partners;
- Grievance mechanisms will support integration efforts in a variety of ways: input for management decisions, allocation of resources, and stakeholder engagement.

### Tracking performance in five years

Publicly available tools and guidance materials available for tracking and reporting performance, including key performance indicators, will be much more developed in five years’ time. There has been consolidation of efforts, and the “beyond monitoring approach”<sup>35</sup> has crystallized into a workable approach depending on sector and industry.

- Companies will define both long-term KPIs (aligned with business strategy), and shorter term, project specific KPIs, of both qualitative and quantitative human rights standards;
- Companies will track performance on what is most important to measure, not what is easiest or more popular to measure;
- Companies will have developed the capacity to audit human rights for their own operations, and, where relevant, their business partners (eg. as suppliers);
- Companies will report much more on real incidents and real impacts, both in quantitative measures (e.g. aggregate grievance reports) and qualitative (case descriptions of human rights challenges), using explicit human rights language;
- Tracking and reporting performance will include a greater part of the value chain; for example companies will report on how they deal with known human rights issues several steps into the supply chain;
- Companies will also engage more with employees and customers on human rights to make them aware of the position of the company;
- There will be more companies who have their human rights due diligence independently verified (probably as part of a wider CSR/Sustainability verification process);
- Rights-compatible grievance mechanisms will be integrated throughout company operations; not just for access to remedy, but also to have ongoing streams of information and to drive improvements in performance.

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<sup>35</sup> The beyond monitoring approach recognizes that merely monitoring and auditing often does not lead to improvements. For success, more is needed, in particular capacity building and lending of expertise.

# Conclusion

This review suggests that it is eminently possible for business to conduct human rights due diligence. The 20+ companies included in the research for this report covered a broad range of business sectors. All had begun the journey of implementing human rights: each has developed human rights policy statements and many are still experimenting with the most effective methods of assessing risks and impacts. None of the companies had fully integrated human rights across business and there has been less progress in tracking performance. But over the next five years, these companies will have deepened integration, and their experience will have inspired others to start the journey.

Critical for the next five years is reliable evidence that can demonstrate that human rights due diligence is relevant for businesses, irrespective of size or origin of the company. The challenge is greatest among companies from emerging economies, which are beginning to have their impact around the world, but few companies or industry associations from those regions are active in this debate.

## Human Rights Due Diligence in Emerging Economies

“Introducing human rights policies and management systems in companies that operate in emerging markets may seem difficult, but it is entirely possible. There will always be internal bureaucratic and organizational challenges as well as sensitivities by the institutions of the country where operations take place. But these are normal and can be managed. Genuine cultural shifts are complex processes. But once they happen in a large organization, they permeate the DNA of the systems and the people.

“Brining national and local government officials on board, as well as other local stakeholders is indispensable. There will always be groups committed to democracy and transparency that are willing to work with well behaved companies. You just have to look for them.” – **Alexandra Guaqueta, Cerrejón**<sup>36</sup>

Finally, perhaps the greatest challenge of all will be applying the ‘Protect, Respect, Remedy’ framework to small and medium-sized enterprises (SMEs) across the world. This will often require the direct involvement both in terms of devising the appropriate regulation but also assisting in terms of capacity. States, business associations and trade unions now have the challenge of extending human rights due diligence to SMEs.

<sup>36</sup> Cerrejón is one of the largest open pit coal mines in the world. It is located in La Guajira province, in Colombia. The operation began in the 1970s and is known for its high safety and environmental standards. In 2004, the mine began introducing elements of the Voluntary Principles on Security and Human Rights and in 2006 it introduced a Human Rights policy. Since then, Cerrejón has been developing a human rights due diligence system, in line with the Protect, Respect and Remedy framework.

“Government engagement by providing simple, easy to read information on human rights can be helpful in ensuring compliance with national legal requirements. Perhaps achieving that would of itself be a big step forward for SME engagement on this issue? National Employers organizations can also play a role in the design and distribution of this information, supported by training and other related services to companies. Some thought should be given for tools for such Employers organizations to outreach on compliance.”

– **Brent Wilton, International Organisation of Employers**<sup>37</sup>

The Institute for Human Rights and Business will review progress towards much fuller and wider business uptake of human rights due diligence each year over the next five years, with our first update to the ‘state of play’ in June 2011.

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<sup>37</sup> See Appendix B for full response by Brent Wilton.

# Appendices

## Appendix A: Research Questions Interviews

This was the list of questions that were used for the first phase of the research, which consisted of confidential interviews (mostly conducted by telephone) with over 20 companies.

### (1) YOUR APPROACH TO HUMAN RIGHTS DUE DILIGENCE/ ASSESSMENT

- What are the steps you have taken to apply the corporate responsibility to respect human rights?
- Who has led the process in your company?
- Have you looked at Head Office functions and/or specific operations?
- Are senior management involved and if so how?

### (2) SCOPE OF FOCUS

- What thresholds are you using for levels of due diligence (e.g. size of project, risk of country etc.)?
- When do you consider all human rights, and when do you focus in on specific rights?
- How do you consider which business functions to include? Do they have to be explicitly labeled 'human rights'?

### (3) METHODOLOGY

- Who have you learned from? (other businesses, consultants, others?)
- What specific tools or parts of tools have been useful?
- What are the main methodologies included (risk, business ethics, impact assessment, community relations etc.)?
- Which internal and external stakeholders have been involved?

### (4) INTEGRATION INTO MANAGEMENT SYSTEMS

- Is human rights assessment integrated into social, environmental, health & safety or other existing assessments?
- When does human rights assessment need to stand alone or change existing approaches?
- How are assessments integrated into monitoring, reporting, training and other aspects of the management system?

### (5) GENERAL

- What they think of the Ruggie framework in general, and where they see the greatest opportunity/pitfall? Where they stand with respect to the due diligence concept and what they see as most in need of clarification as it stands.

## **Appendix B: Response by Brent Wilton<sup>38</sup> of the IOE on SMEs**

### **The applicability of human rights due diligence for Small and Medium Enterprises**

SMEs pose a special challenge within the Protect, Respect and Remedy framework and careful thought is needed as to how to address them if we are to avoid the debate becoming simply one for MNE's or even more narrowly MNEs from the north.

SME as a label is generic. However, within that label lies a hugely diverse range of business operations- it covers at times quite large (depending on the SME definition applied) and sophisticated companies in the sense we know them in the north. They may even themselves be MNEs in operating across their national borders. They may possess management structures and policy approaches that may be able to respond to the duty to respect quite well. They may also be a part of a global supply chain

Others though are small, often owner operate without tiers of management, operating internal policies or even thinking beyond the daily needs of sustaining their business. Their human and financial resources are weak and their capacity to take the sort of "ownership" of the issue as larger companies may be able to do is missing. They often operate only within the country's domestic economy. Issues of national culture/ religion etc are also more dominant. They are often very much a part of the society within which they operate and reflect those attitudes in the way they operate their business. National rather than international issues are more important

Even these two preceding paragraphs run the risk of narrowly categorizing the diversity that needs to be understood.

Then there is the informal economy which in many countries constitutes the majority or near majority of economic activity and employment.

So, from this, I think it is important to recognize:

- Few of these companies will be aware of the Special Representative's work and the emergence of the responsibility to respect concept. Many will also argue that as they are focused on the immediate needs required to sustain their business they are unable to be proactive in such issues.
- Simply trying to use due diligence processes as developed by MNEs will pose huge translation challenges given the levels of business sophistication that is a reality within SMEs.

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<sup>38</sup> Brent Wilton is Deputy Secretary General of the International Organization of Employers.

- We need to recognize that a one size fits all approach will be impossible to realize. It may be that the creation of some “principles” rather than a framework with the structure inherent in such a word, may be a better starting point.
- The role of the state and its duty to protect human rights is fundamental here. Government engagement by providing simple, easy to read information on human rights can be helpful in ensuring compliance with national legal requirements. Perhaps achieving that would of itself be a big step forward for SME engagement on this issue? National Employers organizations can also play a role in the design and distribution of this information, supported by training and other related services to companies. Some thought should be given for tools for such Employers organizations to outreach on compliance. Within the IOE we have examples of a variety of services that attempt to do this. I think this is an important way forward within the SME context.
- We also need to think about how the MNEs see the translation of the responsibility to respect through their supply chains. Are there already examples that can be extracted for examination?
- We also need to recognize that many SMEs are not subject to public listing, so reporting requirements, transparency etc cannot be looked at in the same way.
- They are also, in the majority of situations, not exposed to the Human Rights engagement drivers of the larger “brand” companies. The risks to their businesses come from other sources particularly national ones.
- Grievance mechanisms will also be difficult for many SMEs to develop and operate. Again the role of the state in establishing low level, speedy and efficient grievance mechanisms (as a number of countries do for example with labour issues) will be important.
- Looking at the SME s will also, in my view, necessitate a closer look at how states are realizing the state duty to protect. No government will want thousands of different grievance systems operating within their domestic economy. It would be incomplete, often contradictory to each other, and wasteful of economic time and resources and could complicate or even undermine the State duty itself.

**Brent Wilton**

Geneva, 31 May 2010

## Appendix C: Background Corporate Responsibility to Respect

*Excerpts from the 2010 report of the UN Special Representative to the Human Rights Council.<sup>39</sup>*

55. The term “responsibility” to respect, rather than “duty”, is meant to indicate that respecting rights is not an obligation that current international human rights law generally imposes directly on companies, although elements may be reflected in domestic laws. At the international level, the corporate responsibility to respect is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility,<sup>40</sup> and now affirmed by the Council itself.

56. Beyond meeting legal requirements, companies increasingly include human rights elements in CSR initiatives. This practice has grown rapidly over the past decade, stimulating learning and helping to raise the visibility of human rights as a corporate concern. However, as the Special Representative has shown, CSR initiatives often deal with human rights in ad hoc ways that vary considerably across companies; typically they are decoupled from companies’ internal control and oversight systems; and many are weak on external accountability practices.<sup>41</sup> Part of the problem has been that companies have lacked a strategic concept for addressing human rights systematically. The “corporate responsibility to respect” provides such a concept.

### A. Foundations

57. The corporate responsibility to respect human rights means avoiding the infringement of the rights of others and addressing adverse impacts that may occur. This responsibility exists independently of States’ human rights duties. It applies to all companies in all situations.

58. What is the scope of this responsibility? What acts or attributes does it encompass? Scope is defined by the actual and potential human rights impacts generated through a company’s own business activities and through its relationships with other parties, such as business partners, entities in its value chain, other non-State actors and State agents. In addition, companies need to consider how particular country and local contexts might shape the human rights impact of their activities and relationships. Such attributes as companies’ size, influence or profit margins may be relevant factors in determining the scope of their promotional CSR activities, but they do not define the scope of the corporate responsibility to respect human rights. Direct and indirect impacts do.

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<sup>39</sup> Ruggie (2010b), paras 55-65.

<sup>40</sup> The ubiquity of this norm is documented in A/HRC/11/13, paras. 46-48.

<sup>41</sup> See A/HRC/4/35, paragraphs 66-81.

59. Because companies can affect virtually the entire spectrum of internationally recognized rights, the corporate responsibility to respect applies to all such rights.<sup>42</sup> In practice, some rights will be more relevant than others in particular industries and circumstances and will be the focus of heightened company attention. However, situations may change, so broader periodic assessments are necessary to ensure that no significant issue is overlooked.

60. When conducting such assessments, companies can find an authoritative list of rights at a minimum in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the ILO core conventions.<sup>43</sup> The principles that these instruments embody are the foundational elements of the international human rights regime. Yet, because they are State-based instruments, there has been some confusion over their relevance to companies. Why should companies be concerned with them if they don't impose legal obligations on companies directly? The confusion is easily resolved: companies can and do infringe on the enjoyment of the rights that these instruments recognize. Moreover, those rights are the baseline benchmarks by which other social actors judge companies' human rights practices. In short, companies should look to these instruments as authoritative lists of internationally recognized rights. Further guidance on how companies might impact such rights is provided in the OHCHR publication, *Human Rights Translated: A Business Reference Guide*.<sup>44</sup>

61. Depending on circumstances, companies may need to consider additional standards: for instance, they should also take into account international humanitarian law in conflict-affected areas (which pose particular challenges)<sup>45</sup>; and standards specific to "at-risk" or vulnerable groups (for example, indigenous peoples or children) in projects affecting them.<sup>46</sup>

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<sup>42</sup> The range of company impacts on rights is documented in A/HRC/8/5/Add.2.

<sup>43</sup> The ILO considers eight conventions to be "core" or "fundamental," and they form the basis of the Declaration on Fundamental Principles and Rights at Work. Available from [www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm](http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm).

<sup>44</sup> This report was produced jointly with the Global Compact, the International Business Leaders Forum and the Castan Centre for Human Rights Law at Monash University. Available from [www.ohchr.org/Documents/Publications/Human%20Rights%20Translated\\_web.pdf](http://www.ohchr.org/Documents/Publications/Human%20Rights%20Translated_web.pdf).

<sup>45</sup> International Committee of the Red Cross, "Business and International Humanitarian Law". Available from [www.icrc.org/Web/Eng/siteeng0.nsf/html/business-ihl-150806](http://www.icrc.org/Web/Eng/siteeng0.nsf/html/business-ihl-150806).

<sup>46</sup> The Special Representative thanks the Ethical Globalization Initiative for convening a workshop on integrating gender issues into the framework; see, for information, [www.reports-and-materials.org/Gender-meeting-for-Ruggie-29-Jun-2009.pdf](http://www.reports-and-materials.org/Gender-meeting-for-Ruggie-29-Jun-2009.pdf).

62. A number of stakeholders have asked whether companies have core human rights responsibilities beyond respecting rights. Some have even advocated that businesses’ ability to fulfil rights should translate into a responsibility to do so, particularly where Government capacity is limited.

63. Companies may undertake additional human rights commitments for philanthropic reasons, to protect and promote their brand, or to develop new business opportunities. Operational conditions may dictate additional responsibilities in specific circumstances, while contracts with public authorities for particular projects may require them. In other instances, such as natural disasters or public health emergencies, there may be compelling reasons for any social actor with capacity to contribute temporarily. Such contingent and time-bound actions by some companies in certain situations may be both reasonable and desirable.

64. However, the proposition that corporate human rights responsibilities as a general rule should be determined by companies’ capacity, whether absolute or relative to States, is troubling. On that premise, a large and profitable company operating in a small and poor country could soon find itself called upon to perform ever-expanding social and even governance functions – lacking democratic legitimacy, diminishing the State’s incentive to build sustainable capacity and undermining the company’s own economic role and possibly its commercial viability. Indeed, the proposition invites undesirable strategic gaming in any kind of country context.

65. In contrast, the corporate responsibility to respect human rights exists independently of States’ duties or capacity. It constitutes a universally applicable human rights responsibility for all companies, in all situations.

## Appendix D: The Business Case for Human Rights

*Companies in this research offered the following reasons why they have engaged in human rights (not necessarily in order of prevalence or importance and not an exhaustive list of factors):*

### **Because the law requires it**

Human rights are embedded in national law, as well as international law. While the latter is not directly binding on companies, the Human Rights Council has now affirmed that companies have a responsibility to respect human rights. This means that companies should respect human rights even where the local government is unable or unwilling to enforce its own law. The fact that in practice this is not always easy, does not absolve companies from respecting international human rights principles. This position has been affirmed by international business associations.<sup>47</sup> There is growing risk that companies face allegations of complicity in international crimes in national jurisdictions.<sup>48</sup>

### **Because it helps companies anticipate and mitigate risks**

As the Special Representative has documented in his latest report, there is increasing evidence that companies do not adequately account for losses related to stakeholder concerns (also called “political and social complexity”).<sup>49</sup> In some sectors, value erosion may be significant, which would make it a material issue even in the narrowest definition of “material.” Therefore, human rights risks may very well fall under existing corporate governance regulations, in addition to it helping the company manage other risks and their reputation.

### **Because external stakeholders ask for it**

A wide range of constituents – investors, civil society, consumers, and prospective employees – expect business to respect human rights. In particular, socially responsible investors handle larger portfolios and the past few years have seen a rise in such investments, which are becoming mainstream and major -investors are demanding increasing assurance that non-technical risk, including human rights-related risks, are being addressed by senior management. Companies are expected to see their activities through a human rights lens. A company known for respecting human rights will find that it not only helps maintain customers and investors, it is also able to attract and retain the best talent.

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<sup>47</sup> International Organization of Employers, International Chamber of Commerce, and Business and Industry Advisory Committee to the OECD, “Business proposals for effective ways of addressing dilemma situations in weak governance zones”, 2006. Available from [www.reports-and-materials.org/Role-of-Business-in-Weak-Governance-Zones-Dec-2006.pdf](http://www.reports-and-materials.org/Role-of-Business-in-Weak-Governance-Zones-Dec-2006.pdf).

<sup>48</sup> Ruggie (2010b), para. 74-76.

<sup>49</sup> Ruggie (2010b), para. 69-73.

**Because it is the right thing to do**

Companies state that respect for human rights is the right thing to do. The company does not want to do business if it cannot uphold certain standards. Such companies purposely stay away from certain countries and often have a strong mission statement supporting core values.

**Because it creates value or opportunity for the company**

Companies the Institute spoke with have shared that they increasingly see human rights as a business opportunity. These companies say that in essence they are advancing human rights by virtue of what they do: these include the right to access to water, food, health, freedom of expression. Fulfilling human rights remains an obligation for the state, and is not to be understood as a responsibility or duty for business. Companies see it as an opportunity. As companies become familiar with the human rights language and start understanding that their business is potentially an important vehicle for realization of human rights, they find human rights provides a powerful strategy for legitimizing their business.

## **Appendix E: The Inhibitors for Business**

*Although the need for the business and human rights framework and human rights due diligence is increasingly clear in the eyes of many companies, it is not self-evident to every business. Some companies have encountered significant barriers in finding traction within their organizations. Below is provided an overview of the inhibitors and some suggestions how they may be overcome.*

### **Cultural responses to human rights and human rights language**

The notion of human rights is still being criticised as a ‘western liberal imposition’ on other cultures. This criticism is getting less significant than during the Cold War years, but it remains an issue. Human rights terminology is drawn from the law, and its concepts and language can sometimes seem alien to business cultures in some parts of the world. This is a real barrier. Strategic pragmatism, which focuses on the effects rather than terminological exactitude, may provide a solution. In any case, the argument of cultural relativism is demonstrably false: most governments have signed or ratified the two covenants on human rights, and the Universal Declaration applies to all states – east or west, theocratic or secular, rich or poor, from the global south or industrial north.

### **The ‘first mover’ disadvantage**

Some businesses might feel that while being part of the growing percentage of companies that take human rights seriously is sound, they are still in a minority, and it exposes them to certain risks. Many of the campaigns target companies with well-known brands, and many companies registered in OECD countries remain those most often attacked in the public domain. But this too is changing. As an increasingly percentage of transnational companies are headquartered in the global south, part of the attention of human rights campaigners is shifting there. Businesses gain by moving strategically on human rights, and not waiting to be ‘hit’ by any specific allegation, before acting in a more reactive and less controlled way.

### **Finding the added value when looking at existing sustainability issues**

Some businesses have responded with a sense of fatigue that ‘human rights’ is just another passing trend in the field of sustainability or corporate social responsibility and needs to be observed rather than acted upon over the near future. But human rights have strong roots and a long tradition, and even if the issue is new for business, it deserves serious attention. Moreover, companies report in large numbers that they think human rights is here to stay for the foreseeable future.

**Lack of resources**

Few companies think they have all the resources necessary in preparing to integrate human rights into business practice. However, the level of investment required may be significantly less than perceived. Besides it being the right thing to do, a proactive approach can save the businesses significant costs; for example if it can prevent losing the trust of key stakeholders. Good social performance can also make the company a more attractive employer and increase brand reputation.

**The need for simplicity and clear toolkits for implementation**

The business and human rights sector is a field of experimentation without a single route or agreed methodology to apply human rights due diligence. However, a strong practice-led consensus is emerging and further consolidation is likely. This report does not intend to offer a list of available tools but sets out essential methodological tools.

**Weak governance in areas of operation**

Businesses are aware that the primary obligation to respect, protect, and fulfil human rights rests with states. However, in weak governance zones where the government is absent or not adequately respecting human rights is still a responsibility, if not extremely hard to accomplish. For such contexts, human rights due diligence helps businesses understand the context, and if seen as a proactive business responsibility, it helps companies operate with due diligence.

**No clear boundaries – how much due diligence is enough?**

The Special Representative has moved global thinking from “sphere of influence” to “impact.” This has many advantages, because impact is a tangible concept, which is transparent and measurable. This is an improvement over past proposals which often mixed up the role of business with the state, and was not able to clearly define and delineate responsibilities. The *Protect, Respect and Remedy* framework has provided a much clearer “differentiated but complementary responsibilities.”<sup>50</sup>

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<sup>50</sup> Ruggie (2008), para. 9.

Companies have a responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others. How effectively are companies already applying human rights due diligence? This report examines the efforts of 24 leading multinational companies to put human rights due diligence processes into practice. The aim is to build a solid foundation for recommendations to challenge a broader range of companies and other stakeholders to achieve the goal of greater uptake of the UN Protect, Respect and Remedy Framework over the coming years. A Second Volume of this report will be launched in June 2012 focusing specifically on human rights due diligence in the context of contractual relationships.

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