

Tracking Performance

What do the UN Guiding Principles Expect?

- ▶ Companies need to track their responses to actual and potential human rights impacts to evaluate how effectively they are being addressed.
- ▶ Tracking should be based on appropriate qualitative and quantitative indicators and draw on internal and external feedback, including from affected stakeholders.

Why is this Important?

- Tracking how well the company is managing its human rights risks is the only way the company can really know it is respecting human rights in practice.
- Tracking is a crucial dimension of continuous improvement – it helps the company identify trends and patterns; it highlights recurring problems that may require more systemic changes to policies or processes, as well as good practices that can be shared across the company.
- Tracking is also essential for the company to be able to communicate accurately to all its stakeholders about what it is doing to meet its responsibility to respect human rights.

What are the Steps Involved?



Example: Tracking Performance on Privacy

One telecommunications company tracks the implementation of its privacy-related policies through a privacy risk management system that is run by local privacy officers. The company requires its local officers to report annually and quarterly to the company's chief Privacy Officer, including on compliance with the company's policy on responding to law enforcement requests. This information is then included in reporting to the Board. The company also conducts reviews of individual markets on a regular basis, both at an operational level and at a governance level.

IV A

Building a Systematic Approach to Tracking

Key Points for Implementation

- ▶ Processes for tracking can be designed just for human rights, or can be integrated into the company's processes and systems for tracking other issues.
- ▶ Tracking processes should draw on relevant internal and external sources in order to build as accurate a picture as possible; they should include both quantitative and qualitative indicators.

Possible Approaches

- **Benefiting from the company's other tracking systems:** A number of ICT companies report that they find it challenging to track how well they are respecting human rights in practice. It may be helpful either to learn from or build upon any existing systems a company has for tracking performance in areas related to human rights. Examples include:
 - Health and safety;
 - Environmental impacts management;
 - Ethics and compliance (including with export control and sanctions regimes);
 - Internal control audits;
 - Supplier monitoring and auditing results;
 - Customer or user surveys;
 - Media monitoring;
 - Quarterly business reviews;
 - Regular dialogues with trade unions;
 - Reviews of staff satisfaction surveys and whistle-blowing systems.

Some of these processes or systems will already track how the company manages certain human rights risks. Similarly, companies may be tracking human rights issues as part of their compliance with home or host state regulations, with the requirements of stock exchanges, or with reporting standards they have chosen to follow. The company could map the issues being tracked against its leading human rights risks to see whether and where there are gaps that need to be filled.

As in other areas of human rights due diligence, it is important to keep in mind the distinct features of human rights. For example, tracking processes should take full account of stakeholder perceptions of the company's human rights performance, and not just of "facts" as determined by the company. This requires particular attention to feedback from affected stakeholders (see [Section IV-C](#) below).

- **Tracking at site and corporate levels:** For ICT companies with country offices or operations, much of the information for tracking performance will be at the site level. For larger companies, information may also come through engagement at the corporate level with international NGOs, global or regional trade unions or socially responsible investors (SRIs). Companies will want to ensure that this information is brought together and evaluated in order to have an overview of how the company is responding to its human rights impacts.
 - **Anonymity and tracking:** The issue of anonymity when communicating on the Internet is complex. One view is that people should be responsible for what they express, speak, or post online, and anonymity can be abused in order to bully others, target and exploit children, and enable harassment of minority groups. On the other hand, in many countries, especially but not only those with a poor human rights record, those who express themselves openly may face serious consequences and so have legitimate reasons to conceal their identity. This may be the case for journalists, human rights defenders, trade union leaders, opposition politicians, whistleblowers, and others.
- Some **Web-based services companies** allow for anonymity for their users. However, they still need to be able to track the effectiveness of their efforts to address their impacts over time. Identifying ways to do this within the framework of anonymity will require particular attention and dialogue with key stakeholders.
- **Tracking requests related to personal information or content:** **Telecommunications and Web-based services companies** often face requests to remove or block access to content or services, or to share a customer or user's personal information. Many of these will be legal under domestic law and in line with international human rights law. However, rigorous systems are needed to track requests, and how they are addressed, because of the potential human rights risks involved in requests that do not meet these criteria, as discussed in [Section III-A](#) above.

Elements of a robust internal approach include:

- Tracking the number of requests received, the identity and location of the requesting entity, the nature of the request, and the form of the request (e.g., if it is from a government, is it a court order or police request);
- Aggregating requests received through all channels, including ones that do not follow the company's official procedures, to provide a complete picture;
- Tracking action taken in response to requests, including where initial decisions were subsequently reversed and the reasons why;
- Taking a monthly sample of decisions and reviewing them;
- Seeking to identify relevant, observable trends over time in requests.

Such systems provide the foundation for the company to communicate appropriately on its efforts to manage human rights risks arising from such requests, including through publishing appropriately anonymised information on a regular basis. Communicating raises additional legal and human rights concerns of its own and is discussed in [Section V](#) below.

- **Conducting root cause analysis:** Where a severe human rights impact has occurred, or lesser impacts occur repeatedly, ICT companies should consider a deeper analysis of the underlying or "root causes" of the incident. Initial

Example: Anonymity and Children

One **Web-based services company** providing online games for children enables users to be anonymous by not collecting personal information during registration or at other points in the service. The company relies on staff moderators and on complaints from other users to identify instances where a user should be flagged for concerning or suspicious behaviour on the site. The company tracks these flags as well as what action has been taken (e.g., a user ban, or escalation to head office which may make the decision to notify law enforcement authorities, at which point a user can be located using their IP address). The moderators then use this information to improve security measures and inform ongoing training of staff, without needing to know the identity of the user. When a case has involved law enforcement authorities, managers try to communicate any positive outcomes (such as a child in danger being rescued) back to staff so that they know their efforts contribute directly to preventing or addressing negative human rights impacts.

impressions may suggest that the company's own actions or decisions had nothing to do with the impacts, but in some cases a deeper analysis might reveal that it did in fact play a role, and show how it could help prevent the same thing from recurring. Such analyses can also help identify where other actors are contributing to actual or potential impacts, who may then become potential partners to collaborate with in addressing underlying causes.

- **Designing tracking systems to encourage company-wide engagement:** Tracking systems can be a tool that encourages other departments to engage actively in responding to identified impacts. For example:
 - A tracking system may provide data that shows cause and effect between increased demands by procurement and code breaches by suppliers, or between a change to privacy settings and increased complaints from users. This evidence can help engage the relevant departments in rectifying problems and avoiding their recurrence;
 - A tracking system might automatically require that a function or department be given responsibility for investigating an impact, create automatic deadlines for a response or update, and elevate the issue to senior management if deadlines are missed. This can help stimulate active engagement from those concerned.

Systematising tracking in this way can help drive home the relevance of human rights issues for the whole company. It can encourage staff to think preventatively and not just in terms of responding when issues arise.

- **Linking human rights performance data to staff performance assessments:** Good human rights performance data can help drive continuous improvement within an ICT company. This may be most effective where that data is factored into performance assessments for functions/departments as well as individual staff, across all the parts of the business that influence human rights risks. For example:
 - The company might require a country-level manager to sign-off on an annual review that includes human rights performance;
 - If an investigation shows that the actions of certain staff contributed to a severe human rights impact, this could lead to an appropriate sanction, whether financial or non-financial;
 - Where actions by staff help prevent a severe human rights impact, this could be the subject of a financial or non-financial reward, demonstrating that the company values attention to human rights issues.

IV B

Developing Indicators

Key Points for Implementation

- ▶ Quantitative indicators offer precision and can often fit more easily with existing systems for tracking company performance.
- ▶ However, because respect for human rights is about impacts on people, qualitative indicators will also be important. This includes feedback from potentially affected stakeholders wherever possible.

Possible Approaches

- **Sources of inspiration for indicators:** Indicators need to make sense in the local contexts where ICT companies are operating. Useful sources can include:
 - Identifiable trends or patterns, such as repeat types of incidents. These might be in one country context, suggesting local lessons, or across a number of contexts, offering lessons for the company as a whole;

- Feedback from local staff, who may see and hear things that management cannot (taking into account safety considerations);
 - Feedback from affected stakeholders (including appropriate ways of gathering this when a company has highly dispersed customers or users) that can help the company understand how it is perceived;
 - The identification of differential impacts on women and men (for example with regard to particular issues of women's health in a factory setting) or on vulnerable or marginalised individuals or groups.
- **Balancing quantitative and qualitative indicators:** Good quantitative indicators can be useful in conveying concisely how well a company is managing human rights risks. They may be particularly helpful in ICT companies where many staff have engineering backgrounds and are most comfortable with numerical data. However, qualitative indicators will often be essential in helping an ICT company interpret quantitative data on human rights performance. For example, a relatively low number of complaints raised through a company grievance mechanism may reflect a reduction in incidents, or a lack of trust in the mechanism. Feedback from potential users of the mechanism will be essential to understand which interpretation is correct.
 - **Balancing outcome-focused and process-focused indicators:** Many indicators will look at incidents or impacts that have already occurred. These will certainly be relevant to tracking performance. However, process indicators are also important in interpreting data. For example, an indicator that shows worker satisfaction is better understood when reviewed against a process indicator that shows how worker consultation is conducted.
 - **Indicators for training:** Many ICT companies place an emphasis on training staff in human rights compliance. It may therefore be valuable to develop measures that test the effectiveness of training, beyond simply tracking the number of staff trained. This might focus on assessing how well participants understand what they learned and how far they put the learning into practice in their work. This could be assessed, for example, using baseline surveys pre and post-training, and at a follow-up point some months later.

Resources on Indicators:

To date there are no publicly-available indicators that fully reflect the UN Guiding Principles. Existing resources that may be of relevance to the sector include:

- ▶ [Global Reporting Initiative, G4 Sustainability Reporting Guidelines](#)
- ▶ [Fair Labor Association, Workplace Code of Conduct and Principles of Fair Labour and Responsible Sourcing](#)
- ▶ [GNI, Principles on Freedom of Expression and Privacy and Implementation Guidelines](#)

IV C Incorporating Stakeholder Perspectives

Key Points for Implementation

- ▶ External perspectives on the company's performance can provide important verification of its own evaluation, and may identify indicators it would otherwise miss.
- ▶ The perspectives of potentially affected stakeholders are particularly important for understanding how well the company is managing the risks of impacting their rights.

Possible Approaches

- **Involving stakeholders:** There will always be subjective elements to evaluating how well a company is meeting its responsibility to respect human rights in practice. Involving stakeholders directly in tracking processes can be an important means of testing the company’s assumptions on how well it is doing, as well as bringing credibility to the conclusions reached.

ICT companies could consider a number of possible approaches, including:

- Working with trade unions locally or at the global level (potentially through a Global Framework Agreement, see the Box in [Section I-D](#) above), and with other civil society actors, to monitor workers’ human rights and assess the effectiveness of existing auditing approaches;
 - Seeking direct feedback from customers and users on how the company could improve its management of its human rights risks;
 - “Energising” an online community to help the company address problems;
 - Working with a credible multistakeholder initiative in monitoring and verification processes;
 - For larger companies, forming national or international advisory panels consisting of experts and civil society representatives to provide periodic, formal reviews of performance. These can also incorporate feedback from affected stakeholders;
 - Where there is a history of distrust with affected stakeholders (including workers), identifying an individual or organisation that all parties will trust to provide accurate assessments of the company’s efforts to address its impacts.
- **The role of operational-level grievance mechanisms in tracking:** Grievance mechanisms provide an important channel for external affected stakeholders (such as customers and users) to express any concerns about impacts and how they are being addressed. Equivalent mechanisms for workers can play a similar role. Workers can be important sources of feedback regarding both impacts on their own human rights, and other impacts the company may have. As always, such mechanisms must not undermine the role of legitimate trade unions. (For more on grievance mechanisms, see [Section VI](#).)

The company’s human rights tracking processes will benefit from integrating this information, while respecting confidentiality and taking steps to prevent retaliation.

IV D Tracking through Business Relationships

Key Points for Implementation

- ▶ When a company’s business partners see that it follows up on their human rights performance, this makes clear that the terms of their contracts or codes are not just “lip service” but an important part of how the company does business.

Possible Approaches

- **The role of contracts:** Including monitoring requirements in contracts can be an effective way of tracking how business partners are managing the risks of human rights impacts. Joint venture agreements can incorporate provisions on monitoring and reporting to partners on certain topics, including human rights. Contracts with suppliers can provide for auditing or assessments of their compliance with internationally-

recognised human rights. Once the company has this information, it can use it to seek any necessary improvements with business partners.

- **Securing meaningful audit data about suppliers:** Systems for monitoring and auditing **suppliers** are common in many industries. They can provide useful and necessary “snap-shot” data about suppliers’ performance. However they are also seen to have a number of limitations:
 - They often miss issues due to their brief nature;
 - They may fail to grasp the bigger picture or root cause of repeated human rights impacts;
 - Suppliers who wish to manipulate records often do so successfully;
 - Workers may exercise self-censorship in audit interviews, due to intimidation or fear;
 - These processes have a poor record in generating sustainable improvements across a range of human rights over time.

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

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

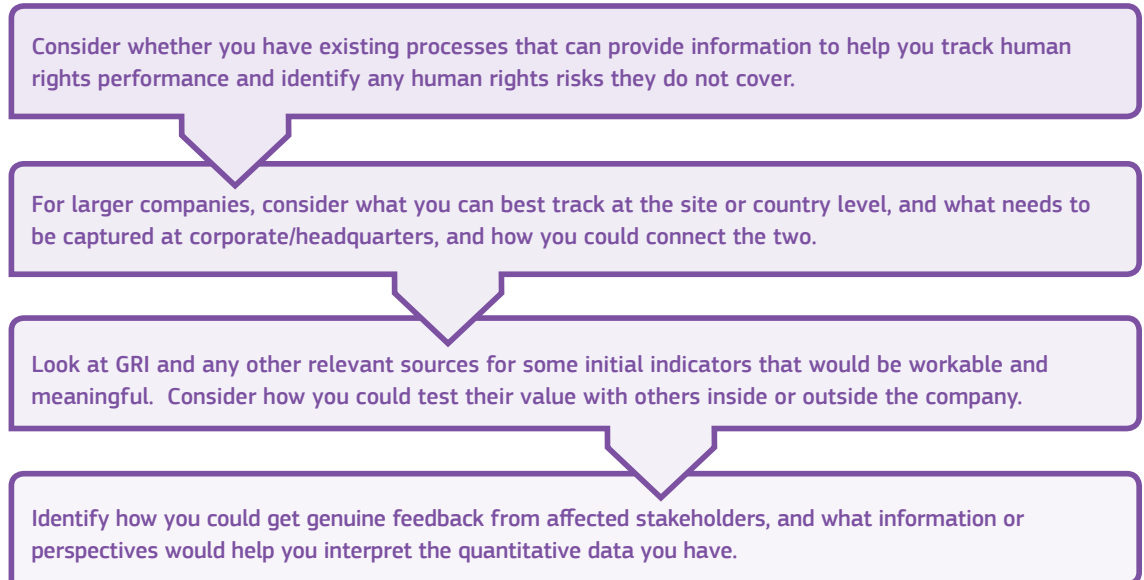
These efforts can be resource-intensive. Given the sheer number of suppliers that any large company may have, it may be most productive to focus them on suppliers that have the greatest human rights risks, due to the nature of their products, services or operating context. ICT companies can benefit from experience in other sectors as they develop or refine their own approaches to monitoring human rights in the supply chain.

Example: Engaging in In-depth Analysis of Suppliers’ Performance

One device manufacturer was concerned by public reports of conditions at several of its contract manufacturer’s facilities, including several fatal accidents. The company worked with the suppliers and an expert multi-stakeholder initiative to conduct a thorough investigation of the facilities. This went far beyond a typical compliance audit and involved an in-depth examination of the suppliers’ operations over several months. The suppliers and the company agreed to a range of remedial measures, with the multi-stakeholder initiative taking on the role of verifying their implementation on an on-going basis.

Where to Start

For companies that are just starting to focus on tracking their human rights performance, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B, C and D above. They should help test the extent to which the company's tracking processes are consistent with the Guiding Principles:

IV-A	<p>Building a Systematic Approach to Tracking</p> <ul style="list-style-type: none"> ▶ How do we ensure that our indicators of performance are adequate and complete and that we have a true picture of our performance on human rights over time? ▶ Are the systems we have in place to track requests from government and others effective? ▶ How do we take the sensitive nature of personal information into account in developing and implementing appropriate systems? ▶ How do we integrate lessons we learn from tracking our performance into our policies and processes as part of continuous improvement?
IV-B	<p>Developing Indicators</p> <ul style="list-style-type: none"> ▶ What sources do we look to for indicators that will help build a true picture of our performance? ▶ How do we relate process-focused indicators to outcome-focused indicators, and qualitative indicators to quantitative indicators, to ensure we are interpreting data accurately? ▶ Do our indicators capture our responses to impacts on vulnerable or marginalised individuals or groups and, where possible, differential impacts on men and women?
IV-C	<p>Incorporating Stakeholder Perspectives</p> <ul style="list-style-type: none"> ▶ How do we draw external perspectives, such as those of affected stakeholders or civil society groups, into our evaluation and understanding of our human rights performance? ▶ Where we have operational-level grievance mechanisms, how do we draw on the learning they offer as part of our wider efforts to track performance?
IV-D	<p>Tracking through Business Relationships</p> <ul style="list-style-type: none"> ▶ To what extent are we able to build provisions for tracking into contracts with business partners, including suppliers, resellers/distributors and joint venture partners? ▶ How might we supplement our audits of suppliers that pose the greatest risks to human rights with initiatives to support improvements over time?