

# Communicating Performance

## What do the UN Guiding Principles Expect?

- ▶ Companies need to be prepared to communicate externally in order to account for how they address their impacts, particularly when concerns are raised by, or on behalf of, affected stakeholders.
- ▶ Companies that may have severe human rights impacts should report formally on how they address them.

## Why is this Important?

- It is by knowing and showing that they respect human rights in practice that ICT companies build trust in their performance, demonstrate their reliability as partners, and gain a sustainable “social license to operate”. More widely, it is part of being accountable for how they do business, not least to those who may be impacted.
- Increasingly, shareholders and civil society stakeholders expect companies to provide information on their human rights performance; companies and governments pay attention to these issues when deciding who to do business with; and regulators and stock exchanges look for meaningful non-financial reporting.

## What are the Steps Involved?

**A** Building a Systematic Approach to Communicating

**B** Deciding Who Communicates What, to Whom, and How

**C** Considering and Improving Formal Reporting

### Example: Supplier Disclosure Lists

One device manufacturer discloses an alphabetised listing of their suppliers and information about their corporate responsibility reporting practices, including whether they publish a stand-alone report and/or use GRI criteria in their reporting. It also includes links to the suppliers' own statements about their responsibility. These suppliers represent more than 95% of the company's procurement spending for materials, manufacturing, and product assembly. The list includes contract manufacturers, electronic manufacturing services providers, original design manufacturers, and commodity suppliers.



## Building a Systematic Approach to Communicating

### Key Points for Implementation

- ▶ The purpose of communicating is to provide an appropriate level of transparency and accountability about how the company addresses its human rights impacts.
- ▶ To communicate effectively, a company needs to have the necessary information available – drawing on all the earlier phases of the due diligence process.

### Possible Approaches

- **Adopting consistent approaches to communication:** Companies need to be prepared to respond to the concerns of affected stakeholders. It may be helpful for ICT companies to define some general criteria for deciding what to communicate to whom, when and how. This can help establish a predictable and consistent approach and ensure that communication with key groups does not get forgotten in the midst of handling a particular issue.

It can also be useful to have clear criteria for any decision not to communicate in response to an allegation of a human rights impact. This can be a legitimate choice, but there remains the risk that a lack of communication will strengthen stakeholder views that the allegation is correct.

- **Balancing transparency and confidentiality:** It will generally be easier for companies to build trust in their efforts to address human rights impacts if they can be open about problems and show that they take responsibility when things go wrong. If a company makes broad assumptions about the need for confidentiality or the legal risks of disclosure, it may miss opportunities to disclose information that can further reinforce that trust. It may therefore be useful to set the default assumption in favour of disclosure, with a justification needed to withhold information, rather than the reverse.

A number of developments illustrate the growing movement towards more disclosure, including:

- Disclosure by some equipment manufacturers of direct supplier lists;
- Reporting of aggregated and anonymised information by some Web-based services and software companies on government and copyright holder requests;
- Publication by some telecommunications companies and device manufacturers of their human rights country risk maps/lists, or details of sales due diligence processes;
- Communication by companies with customers or users through blogs or SMS messages in real time (or close to it) about specific incidents;
- The [Principles for Responsible Contracts](#) developed under the mandate of the former UN Special Representative, which recommend disclosure of the terms of investment contracts, such as the licensing agreements between telecommunications services companies and host states, and provide that any exceptions require “compelling justifications”.

There may nevertheless be legitimate reasons for the non-disclosure of information, notably:

- Potential risks to affected stakeholders or staff (including arising from the disclosure of personal information);
- The legitimate requirements of commercial confidentiality, which may include, for example:
  - > Commercially-sensitive information during negotiations regarding a significant business transaction;
  - > Information legally protected against disclosure to third parties;
  - > Sensitive investigations and internal discussions regarding alleged involvement in human rights impacts;
- The confidentiality required by legitimate law enforcement operations.

There is often particular interest from stakeholders in a company's assessments of its human rights impacts. Equally, companies may be concerned about communicating the results of these assessments. This may be due to risks to individuals identified in the assessments; sensitive views expressed about other companies, governments or organisations; concerns about unknown future legal implications; or a combination of all three.

Where a company judges it difficult to share information from these assessments, there may be other ways it can provide stakeholders with some assurance. For example it might:

- Invite an independent third party to review the company's assessment processes and report publicly (or to a relevant multi-stakeholder initiative) on them;
- Invite an independent third party to do their own public assessment of a particular product, service or technology's impacts, to which the company can respond;
- Participate in a credible multi-stakeholder initiative that requires such assessments as a condition of membership.



## Deciding Who Communicates What, to Whom and How

### Key Points for Implementation

- ▶ Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders and formal public reports.
- ▶ Communication needs to be appropriate to the company's impacts in terms of its form, frequency, accessibility, and the adequacy of information provided.
- ▶ Formal reporting is necessary where risks of severe human rights impacts exist.

### Possible Approaches

- **Communicating general or specific information:** The focus of communicating is on explaining the company's approaches to addressing human rights impacts. This can include both its on-going responses to existing issues and its efforts to improve prevention. Different types of information are likely to be appropriate to different audiences, for example:
  - Communicating with affected stakeholders about a particular incident or risk and how the company is dealing with it. Timely and accurate information will be particularly important when an incident may have an immediate effect on stakeholders or where they are exposed to danger;

- Communicating with broader stakeholder groups, for example international NGOs or trade unions as well as shareholders, about the company's response to a significant human rights issue;
- Communicating with shareholders and the wider public about the company's general policies and processes to respect human rights, illustrated by examples and relevant statistics and other indicators.

Some **Web-based services companies** regularly engage with their users and **telecommunications companies** usually maintain a billing relationship with customers. These companies may be better positioned to engage directly with customers or users when it comes to informing them about identified risks. For others, such as **software companies**, it will be important to think through how they can best reach potentially affected users and customers through appropriate publicity in the case of a specific incident.

Social dialogue structures can provide an optimal means of communicating with the company's own workforce.

- **Distinguishing between communication and consultation:** Communicating how a company addresses its human rights risks can be a one-way exercise, for example:
  - Providing an update on developments of interest to affected stakeholders;
  - Providing periodic statistics on the company's performance on health and safety;
  - Providing feedback on the outcomes achieved through an operational-level grievance mechanism.

This kind of communication is distinct from consultations with potentially affected stakeholders for the purposes of assessing or addressing impacts. Meaningful consultation requires two-way dialogue, with the company listening and responding to the concerns of potentially affected stakeholders, rather than just conveying information (see [Section II-E](#) above). It is also distinct from broader stakeholder engagement, designed to build relationships and mutual understanding, without any particular agenda for discussion.

- **Deciding who communicates:** The objectives of traditional public relations are different from the objectives of communicating how the company handles human rights risks. Communicating on human rights is first and foremost about accountability. It is often best to empower those who engage daily with workers, customers, users, or other affected stakeholders to take a role in communicating the company's efforts to address impacts. Controlling this information centrally can be damaging to these relationships. It can also lead to a perception that an ICT company is inconsistent in its messages between different departments or between the site or country and corporate/headquarters levels. This may undermine confidence in what the company is saying and its motives for saying it.
- **Fitting form to purpose:** The form of an ICT company's communications should fit the purpose. For example:
  - If the purpose is to communicate with affected stakeholders, then an in-person meeting may be the most appropriate - or individualised communication where that is not feasible;
  - If the purpose is to explain to shareholders and others how the company is addressing a specific risk, or human rights risks generally, then communication via an annual general meeting, website updates or electronic mailing lists may all be relevant.
- **Communicating with individual customers and users:** **Telecommunications and Web-based services and software companies** need to be able to urgently alert users when their security measures have been breached and personal information compromised. In addition, it is important that such companies put in place a series of steps to take when access to specific content will be blocked or removed or where the user's personal information will be disclosed. Taking into account issues of safety and legitimate law enforcement considerations, companies will want to consider:
  - Providing clear and timely notice to customers or users, including information about the request and its legal basis;
  - Providing information at the same time about channels to challenge or complain about company decisions;
  - If a decision is reversed, notifying the individual and wherever possible providing the reasons for the reversal of the decision.

Where ICT companies are operating in high-risk contexts, such as states with poor human rights records, and are generally prohibited from informing users when they have turned personal information over to law enforcement authorities, companies may want to consider whether there are steps they may appropriately take to alert users, particularly those in a position of heightened vulnerability or marginalisation.

## V C Considering and Improving Formal Reporting

### Key Points for Implementation

- ▶ Formal reporting is likely to be appropriate for those ICT companies where significant human rights risks can arise from misuse of their products, services or technologies and/or companies that operate in high-risk contexts.

### Possible Approaches

- **The case for formal reporting:** Formal reporting by ICT companies is usually led by the public affairs function or the function that leads on sustainability/corporate responsibility. It can provide a valuable opportunity to:
  - Engage other parts of the company in a review of its human rights performance;
  - Raise awareness of the need for clear data and analysis;
  - Present information in ways that gives both internal and external readers of the report a clear and meaningful picture.

In some countries ICT companies will be required to report on their non-financial performance either by law or by the terms of a stock exchange on which they are listed. The number of countries where this is the case is growing, and human rights are increasingly named as one of the areas that should be included in reports. Even where ICT companies are not required to report formally on their non-financial performance, doing so can carry benefits, for example by enhancing investor confidence, strengthening relationships with key stakeholders and enhancing trust in the company's brand and in its products, services or technologies.

- **The form of formal reporting:** Formal reporting on human rights performance can be part of either a self-standing annual Sustainability/Corporate Responsibility Report or of an integrated report on financial and non-financial performance. Including financial and operating information in a non-financial report helps provide important business context for what is said about human rights. Including robust human rights metrics in a financial report can help demonstrate that respecting rights is seen as integral to the bottom line. Forms of formal reporting are evolving from traditional annual reports to include online updates and formats that allow readers to extract information of most interest to them.
- **Conflict minerals reporting:** In the US, the [SEC Final Rule](#) elaborating Section 1502 of the Dodd-Frank Act requires certain companies to disclose their use

### Resources on Formal Reporting:

There is a lack of well-developed ICT-specific reporting guidance.

A number of companies use the Global Reporting Initiative (GRI) criteria.

GRI released the [G4 version](#) of its Sustainability Reporting Guidelines in 2013, which:

- ▶ Recognise the importance of due diligence and identify links to the UN Guiding Principles;
- ▶ Encompass impacts arising throughout a company's value chain;
- ▶ Encourage a focus on the materiality of information being reported.

(GRI developed a pilot version of a [Telecommunications Sector Supplement](#) in 2003.)

Resources on conflict minerals reporting include:

- ▶ [The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals for Conflict-Affected and High-Risk Areas including the 3T and gold supplements](#)
- ▶ [EICC and GeSI, Conflict Minerals Reporting Template](#)

### Example: Reporting on Government and Copyright Holder Requests to Take Down Content and Government Requests to Share Personal Information

One **Web-based services company** includes in its semi-annual reporting the following information:

- ▶ Number of government requests for user information and removal of content;
- ▶ Number of copyright holder takedown requests;
- ▶ Number of requests applying to different products (when applicable) and the stated reasons;
- ▶ The country where the request originated (for government requests, with some exceptions);
- ▶ The number of requests complied with;
- ▶ The number of users affected;
- ▶ In relation to government requests from the company's home jurisdiction – whether the request originated from law enforcement and whether it is backed by a court order.

The company includes both real time and historic data in its reports. It sends copies of copyright requests received to [www.chillingeffects.org](http://www.chillingeffects.org), a joint project of several law school clinics and the Electronic Frontier Foundation.

of conflict minerals (the “3T” minerals and gold) if those minerals are “necessary to the functionality or production of a product” manufactured, or contracted to be manufactured, by those companies. The company's determination (whether or not it concludes that it has conflict minerals in its products or supply chain) must be filed with the SEC and published on the company's website. If the company knows or has reason to believe that it is involved with conflict minerals from the DRC or an adjoining country, the company's due diligence efforts in regard to those minerals must be similarly disclosed. Some companies will also be required to obtain an independent audit and to disclose the audit report.

There are ongoing discussions in the EU context about appropriate approaches to conflict minerals disclosure that ICT companies will want to pay attention to.

- **Materiality in formal human rights reporting:** In the context of formal public reporting, the concept of “materiality” is used to identify issues that are significant enough to require disclosure. In financial reporting, “materiality” has traditionally been defined in terms of information that may affect the decisions of a “reasonable investor”. Definitions of materiality in the context of non-financial reporting – including the GRI's reporting standards – incorporate the perspective of other stakeholders as well by requiring the disclosure of information that would substantively influence their decisions.

The Guiding Principles do not offer a particular definition of materiality in the context of human rights reporting. What matters is that it should be informed by both the severity of impacts (actual or potential) and the perspective of stakeholders, including potentially affected stakeholders.

- **Reporting on government and copyright holder requests:** The risks that can arise from such requests, and the kinds of tracking systems that may be required, are addressed in [Sections III-A](#) and [IV-A](#) above.

This kind of reporting is still in its very early stages in the sector. Approaches include:

- Sharing appropriately aggregated information about such requests on a regular basis;
- Including the number, requesting entity (government or copyright holder), type and legal basis for requests, and broad demographic information about the users who are affected;
- Sharing anonymised examples of particularly challenging or repeat requests and how the company dealt with them.

In tracking and publishing such data, ICT companies need to be alert to the potential risks to individual customers and users' privacy, as well as risks to any staff on the ground.

- **Improving formal reporting:** There has been growing recognition of the need for better company reporting of non-financial risks. A report that tends to tell just “good news” is unlikely to be seen as credible. Stakeholders will welcome a more candid explanation that acknowledges the challenges involved and clearly explains the processes in place to address them. This might include reporting on issues of particular concern, or using case studies (anonymised if necessary to protect staff or stakeholder's safety) to discuss company-wide or repeated challenges. Institutional investors increasingly seek such information in order to be able to meet their own responsibility to respect human rights.

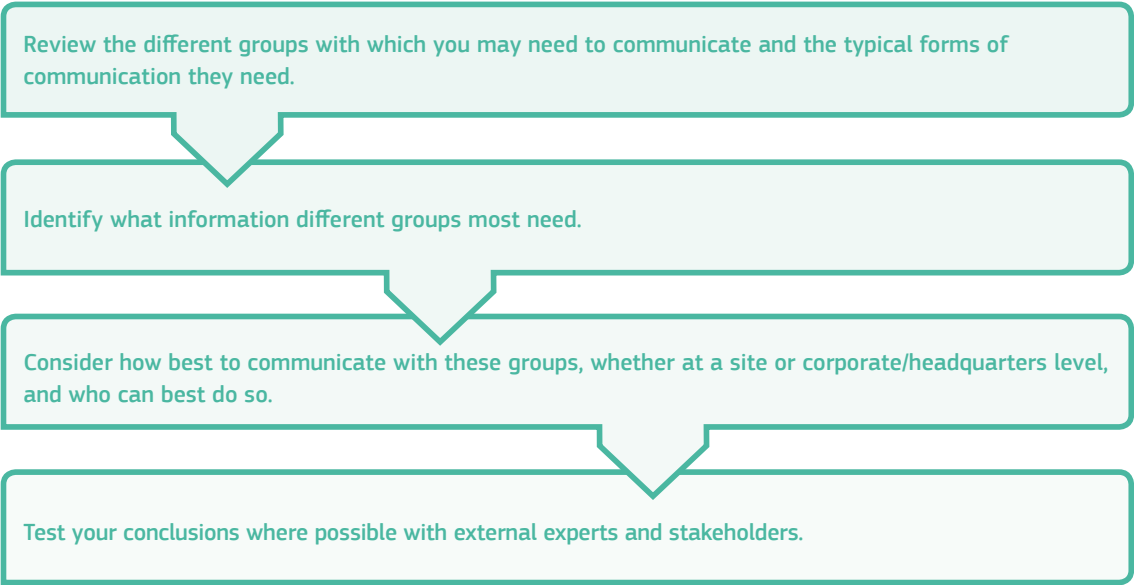
Reporting by companies on human rights often focuses largely on philanthropic or social investments. These investments can make valuable contributions to societies, however, they often relate to the promotion or fulfilment of human rights. They may not provide information about how the company is respecting human rights in its own activities and through its business relationships. Useful information in this respect might include:

- A description of the company's key policies and processes for addressing human rights risks;
- Information on the company's different types of business relationship, and examples of how it reduces any risks that these relationships lead to human rights impacts;
- A description of its grievance mechanisms and/or other remediation processes and statistics or appropriately anonymised examples of the outcomes they have achieved;
- Information on those risks the company has identified as its leading human rights risks and specific information on policies or processes for addressing them;
- Information on severe impacts with which the company has been involved, how they have been addressed and any lessons learned;
- Information on other issues identified as important by key stakeholders, whether affected stakeholders or broader civil society stakeholders and investors.

It will take time for any ICT company to implement the Guiding Principles. Formal reporting should indicate both what has been achieved and any plans to improve or introduce new processes. An ability to compare the company's reporting over time can also be useful. At the same time, reporting frameworks may need to evolve in response to new developments and approaches. Reporting against targets can help demonstrate a commitment to continuous improvement in respecting rights, while recognising that it can be a long-term process.

## Where to Start

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



## Questions to Ask

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

### V-A

#### **Building a Systematic Approach to Communicating**

- ▶ How do we ensure a consistent approach to our communications with stakeholders – both affected stakeholders and others?
- ▶ How do we decide where the boundaries of transparency and confidentiality should lie, and whether we can increase the amount and types of information we share?
- ▶ Where confidentiality is necessary, what other means do we have of providing stakeholders with assurance about our processes and performance?

### V-B

#### **Deciding Who Communicates What, to Whom and How**

- ▶ How do we identify the appropriate ways to communicate with different stakeholder groups, and what factors do we take account of in doing so?
- ▶ How do we make sure that those who lead on communication with stakeholders have the right skill sets for doing so with the different groups concerned?
- ▶ Do we test our approaches to communication with external stakeholders to ensure they are effective and appropriate? If not, how might we do so?

### V-C

#### **Considering and Improving Formal Reporting**

- ▶ What reasons might there be for considering some level of formal reporting on our human rights performance, in particular on our processes for addressing human rights risks?
- ▶ If we report formally, how do we decide what information to include? Are there additional kinds of information that might be relevant and useful?
- ▶ How can we build consistency and comparability in the information we report on over time?