

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 O&G 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

Deciding Who Communicates What, to Whom, and How

B

Considering and Improving Formal Reporting

C

V

A

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 O&G 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 incident.

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 an allegation is correct.

- **Balancing transparency and confidentiality:** It will generally be easier for companies to build trust in their efforts to respect human rights 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:

- Increasing expectations with regard to revenue transparency, not least in the context of the [Extractive Industries Transparency Initiative](#);
- Provisions regarding transparency of O&G contracts under the IFC's revised [Policy on Environmental and Social Sustainability](#) and [Access to Information Policy](#);
- National laws on transparency;
- The [Principles for Responsible Contracts](#) developed under the mandate of the former UN Special Representative, which recommend disclosure of the terms of investment contracts and state that any exceptions require “compelling justifications” (see [Section III-D](#)).

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

- Potential risks to affected stakeholders or staff;
- The legitimate requirements of commercial confidentiality which may include, for example:
 - > Commercially-sensitive information during negotiations regarding a significant business transaction;
 - > The necessary protection of intellectual property;
 - > Information legally protected against disclosure to third parties;
 - > Sensitive investigations and internal discussions regarding alleged involvement in human rights impacts.

There is often particular interest from stakeholders in a company's assessments of its potential 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 on them;
- Do their own public assessment of a project's impacts, to which the company can respond.

Key Points for Implementation

- ▶ Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholder 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 local 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 local stakeholders. O&G companies typically have strict response procedures regarding on-site health and safety incidents, which may provide a useful precedent to follow;
 - 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, such as threats to the life of trade unionists or a major oil spill;
 - Communicating with shareholders and the wider public about the company's general policies and processes to respect human rights, illustrated by examples, relevant statistics and other indicators.
- **Distinguishing between communication and consultation:** Communicating how a company addresses human rights risks can be a one-way exercise, for instance:
 - Providing an update on developments of interest to affected stakeholders, such as land acquisitions;
 - 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. The experience of O&G companies shows that it is often best to empower those who engage daily with workers and communities 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 inconsistent messages between community relations and public affairs staff, or between the local and corporate/head office 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 O&G company's communications should fit their purpose. For example:
 - If the purpose is to communicate with affected stakeholders, then an in-person meeting may be most appropriate;
 - 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 appropriate.
- **Communicating with potentially affected stakeholders:** Communicating with potentially affected stakeholders requires sensitivity to how they access and use information. Like stakeholder consultation, it is usually best done by staff at the site level who know the workers or communities in question. Important considerations include:
 - Language barriers, for example where indigenous populations are part of the audience;
 - Literacy barriers, where less educated populations may need information in non-written forms;
 - Cultural barriers, for example where women, ethnic groups or youth workers may be excluded from meetings;
 - Physical barriers, for example if community members are required to travel a long way to a meeting, at the expense of earning their livelihoods.

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



Considering and Improving Formal Reporting

Key Points for Implementation

- ▶ Formal reporting is likely to be appropriate for most O&G companies, given the human rights risks inherent in many of the industry's activities and in many of its operating contexts.

Possible Approaches

- **The case for formal reporting:** Formal reporting by O&G 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 O&G 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 O&G companies are not required to report formally on their non-financial performance, doing so can carry benefits. In their publication [Oil and Gas Industry Guidance on Voluntary Sustainability Reporting](#), IPIECA, API and OGP set out a strong rationale for formal reporting, including:

Resources for formal reporting:

Resources for non-financial reporting for the O&G sector include:

- ▶ IPIECA, API and OGP: Oil and Gas Industry Guidance on Voluntary Sustainability Reporting
- ▶ IPIECA, Sustainability Reporting: Communicating Performance
- ▶ ARPEL: Communications and Reporting Manual
- ▶ US Securities & Exchange Commission, Final Rule Requiring Payment Disclosure by Resource Extraction Issuers

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.

In addition, O&G companies will want to look at the GRI Oil and Gas Sector Supplement, v3.1

The GRI and IPIECA, API, OGP reporting frameworks are largely aligned, though there are some differences: see GRI G3.1 OGSS Content Index Cross-Referenced to IPIECA Guidance

- **“enhanced business value** as investor confidence grows in response to evidence that the company is managing important risks and positioning itself to take advantage of emerging opportunities;
 - **improved operations** as employees develop a deeper understanding of a company's sustainability values, and performance indicators provide insight to support continuous improvement;
 - **strengthened relationships** as local community leaders, civil society representatives, government officials and regulators, and other key stakeholders learn how the company responsibly manages sustainability issues; and
 - **enhanced trust and credibility** as customers, suppliers and the wider society understand the company's brand, operations and products.”
- **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.
 - **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 Global Reporting Initiative'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.

- **Improving formal reporting:** There has been growing recognition of the need for better company reporting of non-financial risks. As the IPIECA guidance states: “a report that tends to tell just ‘good news’ is unlikely to be seen as providing a credible and complete picture”. Stakeholders will welcome a more candid explanation that acknowledges challenges the company faces and clearly explains the processes through which it addresses them. This might include more detailed reporting on sites that are a particular focus of concern, or using case studies 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 O&G companies on human rights often focuses largely on social investments. This will be relevant information and 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 relationships, 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 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.

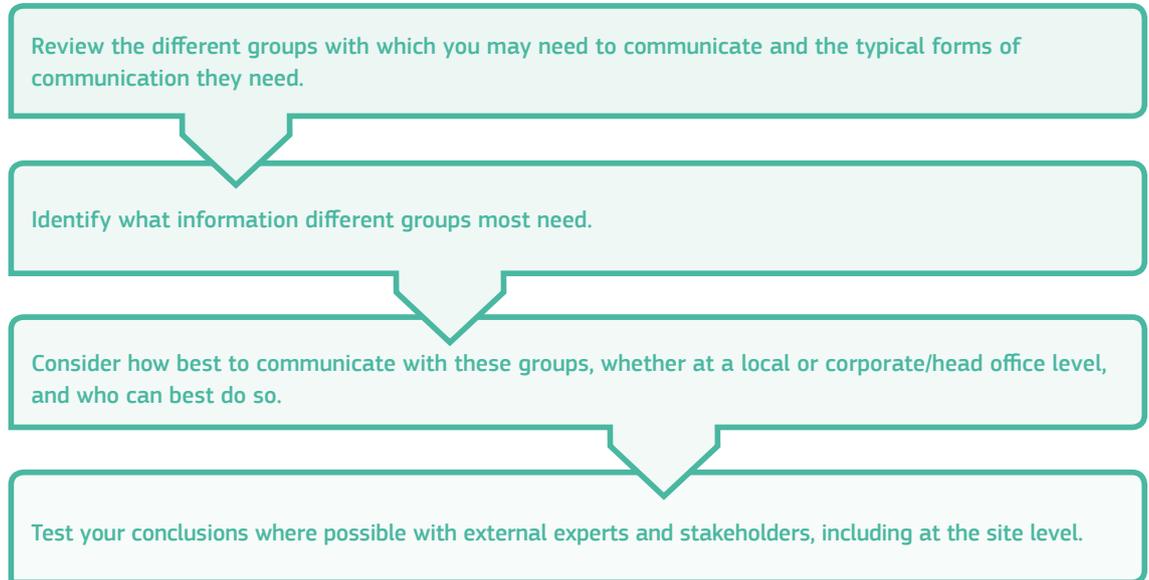
It will take time for any O&G company to implement the Guiding Principles. It can be most helpful to readers for formal reporting to indicate both what has been achieved and any plans to improve or introduce new processes. An ability to compare the company's reporting over time can also be useful. At 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.

The IPIECA guidance, which is widely used by O&G companies that report formally on their performance, recommends:

- Setting the context by explaining the company's high-level vision and strategy, as well as its governance and relevant management systems (providing an opportunity to demonstrate top-level commitment);
- Incorporating data from appropriate indicators into a narrative;
- Paying attention to the consistency of reporting boundaries across operations and relationships, explaining the quality of information contained in the report, and separating upstream from downstream activity reporting;
- Seeking to incorporate stakeholder input to the development of the report at relevant stages from pre-production to post-publication.

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	<p>Building a Systematic Approach to Communicating</p> <ul style="list-style-type: none"> ▶ 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	<p>Deciding Who Communicates What, to Whom and How</p> <ul style="list-style-type: none"> ▶ 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	<p>Considering and Improving Formal Reporting</p> <ul style="list-style-type: none"> ▶ 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?