



United Nations Global Compact

A STRUCTURED PROCESS TO PRIORITIZE SUPPLY CHAIN HUMAN RIGHTS RISKS

A Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group on 9 July 2015

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The United Nations Global Compact is a call to companies everywhere to voluntarily align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of UN goals and issues. In June 2006, the Global Compact Board established a Human Rights Working Group. In light of the growing recognition that labour rights are human rights and in order to ensure a coherent approach, the Chairs and members of the Human Rights Working Group and Labour Working Group merged to create the Human Rights and Labour Working Group in 2013. The goal of the Working Group is to provide strategic input to the Global Compact's human rights and labour work. The following is one of an ongoing series of notes on good business practices on human rights endorsed by the Working Group. Rather than highlighting specific practices of individual companies, Good Practice Notes seek to identify general approaches that have been recognized by a number of companies and stakeholders as being good for business and good for human rights.

¹ Enodo Rights is a business and human rights consulting firm that blends legal expertise and stakeholder engagement experience to design corporate human rights strategy. Enodo advises companies across sectors on the legal implications of the *Guiding Principles on Business and Human Rights*, structured human rights due diligence, innovative stakeholder engagement, and effective system design. Further information and publications are available at enodorights.com.

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I. EXECUTIVE SUMMARY

Over the past few years, human rights have taken an increasingly prominent place in corporate responsibility² (CR) programs. Respect and support for human rights have, of course, long been central tenets of CR—as demonstrated by their place in the Global Compact’s ten principles of corporate sustainability (*GC Principles*).³ More recently, however, the UN’s “protect, respect and remedy” framework, as elaborated in the *Guiding Principles on Business and Human Rights*⁴ (*Guiding Principles*), has provided practical guidance on how companies of all types and in all locations can operationalize respect for human rights. The *Guiding Principles* are now widely accepted as the globally authoritative standard for how businesses should respect human rights.⁵

This Good Practice Note (the “Note”) centers on integrating respect for human rights in supply chain management.⁶ The topic is vast, with a host of issues ranging from policy design to practical implementation. Our focus in this Note is on one issue: what process should companies follow to identify their priority supply chain⁷ human rights risks in a way that aligns with the *Guiding Principles*? Effective prioritization is critical when companies face a host of potential adverse human rights impacts to which they cannot respond simultaneously.⁸

We propose one structured process, derived from the *Guiding Principles*, that companies can use to identify the *right* supply chain human rights priorities. The efficacy of the prioritization process turns on gathering the right information through due diligence. Under the *Guiding Principles*, human rights due diligence includes four related stages: impact assessment, integration, tracking,

² Over time, the Global Compact has used a variety of terms to describe its main focus area—corporate citizenship, corporate responsibility, and, more recently, corporate sustainability.

³ UN Global Compact, [Ten Principles](#).

⁴ Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework \(“Guiding Principles”\)](#).

⁵ The *Guiding Principles* were unanimously endorsed by the UN Human Rights Council. They have also been incorporated in the [OECD Guidelines for Multinational Enterprises](#) and the [IFC Performance Standard guidance materials](#), which emphasize that Performance Standard 1, concerning Assessment and Management of Environmental and Social Risks and Impacts, “reflects the ‘respect’ and ‘remedy’ aspects of [the Principles]”. Other examples of alignment include the [European Commission Communication on Corporate Social Responsibility](#).

⁶ Supply chain management is the process of systemically optimizing the corporate supply chain to meet the company’s primary goals, with a view to improving the company’s performance as well as that of entities within the supply chain. See John Mentzer, et al., “Defining Supply Chain Management” (2001), *Journal of Business Logistics*, Vol. 22, No. 2, at 18 (“The systemic, strategic coordination of the traditional business functions and the tactics across these business functions within a particular company and across businesses within the supply chain, for the purposes of improving the long-term performance of the individual companies and the supply chain as a whole.”); see also, Michael Hugos, *Essentials of Supply Chain Management* (Hoboken: John Wiley & Sons, 2003), Chapter 1 (“Supply chain management views the supply chain and the organizations in it as a single entity. It brings a systems approach to understanding and managing the different activities needed to coordinate the flow of products and services to best serve the ultimate customer. This systems approach provides the framework in which to best respond to business requirements that otherwise would seem to be in conflict with each other.”).

⁷ “A supply chain is a network of facilities and distribution options that performs the functions of procurement of materials, transformation of these materials into intermediate and finished products, and the distribution of these finished products to customers.” Ram Ganeshan and Terry P. Harrison, “[An Introduction to Supply Chain Management](#)” (1995), Department of Management Sciences and Information Systems, Penn State University).

⁸ *Guiding Principles*, Commentary to II.A.24 (“While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed responses may affect remediability.”).

and communication.⁹ A properly informed and structured impact assessment is essential for a company to decide on its supply chain human rights priorities. Our proposed process turns on structuring the impact assessment to identify supply chain human rights impacts precisely so that companies can respond appropriately. It has three broad stages:

- (1) **Understand the practical meaning of all recognized human rights:** The *Guiding Principles*, reflecting the *GC Principles*, provide that business responsibility for human rights applies to all internationally recognized human rights. These include, at a minimum, the International Bill of Rights¹⁰ and the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work (ILO Declaration).¹¹ An understanding of all these rights, and what they mean for business, is the cornerstone of an effective human rights program in general, and prioritization in particular.
- (2) **Conduct impact assessment using meaning of rights and types of “involvement”¹²:** Once a business understands the meaning of all human rights it is in a position to conduct a structured impact assessment. From the array of all human rights, the assessment should seek to identify the particular rights impacts with which the company is actually or potentially involved. Businesses are expected to (a) address adverse impacts that they cause or contribute to and (b) seek to mitigate or prevent those that are “directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”¹³ The way a business conducts the impact assessment reflects how it respects human rights. Stakeholder engagement, social dialogue and industrial relations are therefore critical to the impact assessment process. A company should seek to obtain as complete a picture as possible of its suppliers as part of the impact assessment; however, where it is infeasible to conduct due diligence across the entire supply chain, companies should prioritize first the areas of the supply chain where the risks of adverse human rights impacts are most significant.
- (3) **Prioritize response based on severity of rights impact:** Effective prioritization turns on these prior two stages. In theory, prioritization is only necessary where a company is unable to address every one of its adverse human rights impacts simultaneously.¹⁴ In practice, prioritization of responses will often be essential for companies with extensive

⁹ *Id.*, II.A.17 (“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. *The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.*”)(emphasis added).

¹⁰ The International Bill of Rights is comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹¹ To be clear: whenever we use “human rights” in this Note, we include labor rights. While the International Bill of Rights is the minimum, businesses may need to consider additional instruments depending on the context. *Guiding Principles*, Commentary to II.A.12 (“depending on the circumstance, business enterprises may need to consider additional standards...For instance, the human rights of individuals belonging to specific stakeholder groups or populations that require particular attention.”).

¹² “Involvement link” is used in this Note to refer to the types of relationship between businesses and adverse human rights impacts identified in II.A.13: “causing and contributing to” and “directly linked to”.

¹³ *Guiding Principles*, II.A.13. In this Note, any reference to “cause or contribute to” and “directly linked to” includes potential future impacts.

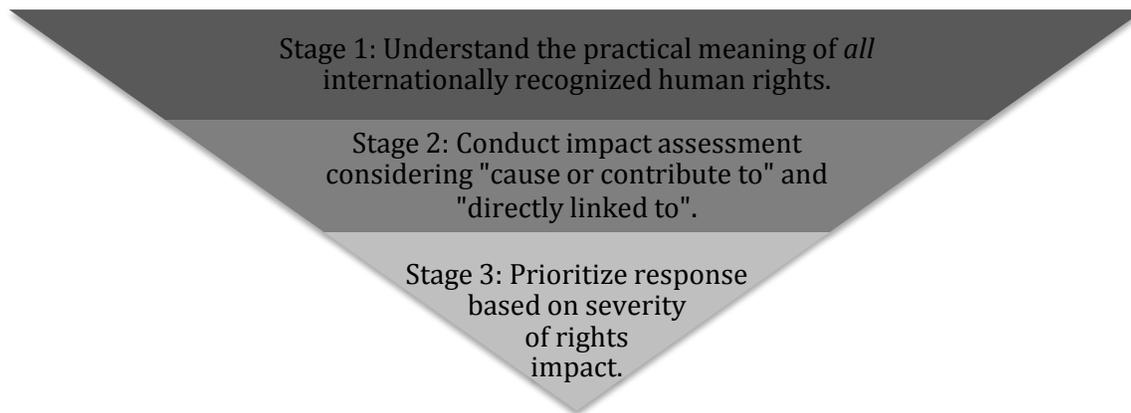
¹⁴ *Id.*, Commentary to II.A.24 (“While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed responses may affect remediability.”).

supply chains. This prioritization is independent of the involvement link between the business and the impact. Rather, prioritization of responses should be driven exclusively by the severity of the rights impact on stakeholders, which turns on “scale, scope and irremediable character”—regardless of *how* the business is involved with the impact.¹⁵ This prioritization must be the product of due diligence, not the driver of it.

COMMON ERROR	<p>This structured prioritization process contrasts with the flawed (from a <i>Guiding Principles</i>’ perspective) process that some of the best-intentioned companies currently follow. <i>First</i>, they identify priority human rights issues based on media interest or prominent stakeholders’ concerns. <i>Second</i>, they determine which of these rights issues should be the focus of due diligence based on “relevance” to the company—a concept that turns on company risk, level of stakeholder concern, and assumptions about the company’s possible involvement in certain types of rights impacts. <i>Third</i>, they prioritize their due diligence regarding particular specific suppliers based on the extent of corporate risk, before attempting to identify the risk to rights holders. In short, the flawed approach leads to prioritizing <i>before</i> conducting due diligence.</p>
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Good practice should involve a progressive narrowing of focus *through* the impact assessment. The result would be a corporate human rights supply chain strategy that is both practical and principled.

Figure 1: Structured Prioritization of Supply Chain Human Rights Risks



¹⁵ *Id.*, Commentary to A.II.14 (“Severity of impacts will be judged by their scale, scope and irremediable character.”); *see also*, *Interpretive Guide* at 19 (“This means that the gravity of the impact (its scale) and the number of individuals that are or will be affected (its scope) will both be relevant. ‘Irremediability’ is the third relevant factor, used here to mean any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact.”). The expected *response*, however, i.e. whether the company is expected to cease and/or remediate the impact or to seek to mitigate or prevent it, using its leverage, differs between impacts that the company causes or contributes to and impacts that it does not cause, but that are directly linked to its operations, products or services through its business relationships.

II. INTRODUCTION

Integrating respect for human rights in supply chain management is a complex project—complicated by both the array of issues and the range of suppliers involved in any extended supply chain. Meeting the challenge effectively requires companies to construct a system of policies and procedures tailored to align with the *Guiding Principles* while remaining practical. The crux of the challenge is identifying supply chain human rights priorities. This Note is written to help with that process.

We have chosen this focus based on the corporate challenges revealed in our research.¹⁶ The best-intentioned companies struggle with how to identify supply chain human rights priorities. That struggle can lead to prioritization based on untested assumptions about “relevant” rights and “plausible” involvement links—to the detriment of the company and its stakeholders. The challenge such companies face is to translate what the *Guiding Principles* say about the scope of business responsibility to respect rights into a practical decision-making process.

We aim to bridge that gap with a structured prioritization process. The result is an unconventional Good Practice Note. We do not rely only on existing corporate approaches. Rather, we elaborate on the elements of a prioritization process derived from the *Guiding Principles*, drawing on examples of existing practice to illustrate how they fit within it. We also identify errors that companies commonly, if inadvertently, make. In other words, the Note’s focus is on what companies should be doing rather than what they currently do.

The *Guiding Principles* provide the Note’s backbone for three reasons.

- *First*, while our research revealed elements of good practice, the dominant finding was that businesses struggle to identify and prioritize human rights impacts systematically.
- *Second*, understanding good practice requires a reference for expected practice, so that companies can appreciate what they should be aspiring to accomplish; this is particularly important in the field of business and human rights, where practice is quickly evolving.
- *Third*, the *Guiding Principles* provide the globally authoritative framework to understand business responsibility for human rights across industries, including in the supply chain, and have been widely endorsed by the public, private and non-profit sectors as well as the UN Global Compact.

III. METHODOLOGY

We have based the guidance in this Note on (i) a review of relevant supply chain management literature, particularly relating to human rights; (ii) an analysis of the *Guiding Principles*; and (iii) case studies and interviews of six multinational companies with vast supply chains and one non-profit that provides an information-sharing platform to support companies in supply chain management.¹⁷

¹⁶ Our research methodology is discussed in Section III, below.

¹⁷ The case studies were conducted on a non-attribution basis to ensure candor. The six multinationals are all among the largest in their respective industries and included: a food and beverage company; a mining company; an oil and gas company; a pharmaceutical company; an industrial manufacturing company; and a conglomerate with an array of industrial and consumer products and services. All of the companies are headquartered in Europe or North America with global supply chains.

The case studies were conducted in the following stages: (1) we sought volunteer companies who would be willing to discuss the underpinnings of their sustainability-related supply chain management policies and practices (the window to volunteer was open from February 2013 to February 2014); (2) we sent to each volunteer company a preliminary questionnaire to understand the broad elements of its supply chain human rights strategy; (3) in tandem with the answers to the preliminary questions, we reviewed corporate policies on sustainability, business ethics, supply chain, and human rights; (4) lastly, based on the review, we prepared targeted questions for each company and conducted interviews with relevant corporate personnel.

The sample size of case-study companies is limited by time and self-selection. That sample size also limits the scope of practical approaches we can highlight. To complement this primary research with information on a wider array of companies, this Note references the findings of a few recent studies on best practices regarding human rights and supply chain management. The most notable of these are Shift's *Respecting Human Rights Through Global Supply Chains*¹⁸ and *State of Play: The Corporate Responsibility to Protect Human Rights in Business Relationships*¹⁹, a joint report by the Institute for Human Rights and Business and Global Business Initiative on Human Rights. These reports provide valuable information on current business efforts to respect human rights throughout the supply chain. We aim to build on these reports by applying their findings and ours to the prioritization question, with specific reference to the information a company should seek before identifying a limited array of supply chain human rights priorities.

¹⁸ Shift, [Respecting Human Rights Through Global Supply Chains](#), (October 2012).

¹⁹ Institute for Human Rights and Business and Global Business Initiative on Human Rights, [State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#) (2012) at 7, ("State of Play").

IV. WHY THE *GUIDING PRINCIPLES* MATTER FOR SUPPLY CHAIN MANAGEMENT

The first step in obtaining the relevant supply chain human rights information is selecting a framework to understand business “respect for human rights”. The meaning of the phrase is not self-evident. Neither the International Bill of Rights nor UN General Comments explains business’s specific human rights obligations. The *Guiding Principles* offer the most comprehensive and widely accepted guidance on the processes through which a company can meet the responsibility to respect *all* internationally recognized human rights.²⁰ That framework should define the process to identify and prioritize corporate human rights impacts, in and beyond the workplace, throughout the supply chain.

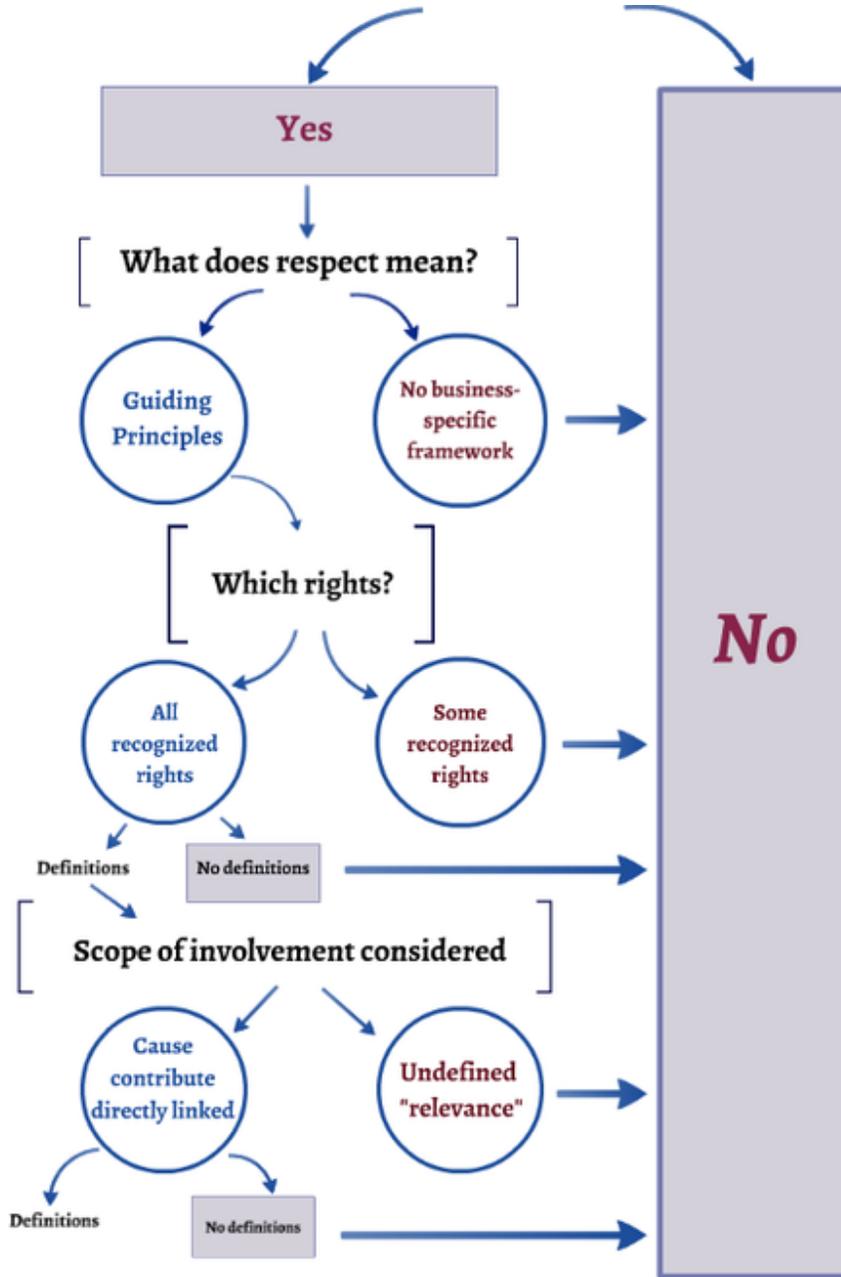
COMMON ERROR	Certain companies, while committing to respect human rights, still fail to recognize the relevance of the <i>Guiding Principles</i> to their human rights policies in general, and supply chain management in particular. While common, this is nonetheless poor practice. The <i>Guiding Principles</i> provide the authoritative reference for companies to understand three critical issues regarding supply chain human rights impacts: (1) which human rights impacts to consider; (2) how to conduct due diligence to identify human rights impacts throughout the supply chain; and (3) what the appropriate corporate response should be based on the company’s involvement in the adverse human rights impact.
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The diagram below provides a simple illustration of how a company can determine whether it has in place an adequate framework to respect human rights in the supply chain.

²⁰ There are, of course, a host of other instruments that have addressed business responsibility for human rights (see, in particular, the [ILO Tripartite Declaration on Multinational Enterprises and Social Policy](#) for a document dealing with the labor dimension of corporate responsibility) The *Guiding Principles* are unique in their breadth and widespread endorsement (see footnote 5, above).

Figure 2:

DOES YOUR COMPANY HAVE AN ADEQUATE FRAMEWORK TO RESPECT ALL INTERNATIONALLY RECOGNIZED HUMAN RIGHTS IN THE SUPPLY CHAIN?



V. A STRUCTURED PROCESS TO PRIORITIZE SUPPLY CHAIN HUMAN RIGHTS RISKS

Stage 1: Understand the practical meaning of all human rights

Good practice in identifying supply chain human rights priorities depends on understanding the meaning of *all* relevant rights. Principle 1 of the *GC Principles* refers to “internationally proclaimed human rights”, and the *Guiding Principles* provide that the responsibility to respect human rights “refers to internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights and the ... International Labor Organization’s Declaration on Fundamental Principles and Rights at Work.”²¹ There is no subset of rights that a business can exclude when assessing its actual or potential impacts.

COMMON ERROR

A number of businesses still seem to limit the scope of their human rights due diligence prematurely: “Few companies have internalized or operationalized the idea that they should consider all human rights, rather than a selected number, in their human rights assessments.”²² Using a cursory review of issues raised by prominent stakeholders, buyers generally focus on select rights considered to be particularly relevant to their operations and business relationships.²³ Interviews with the case-study companies revealed that this limited focus is generally on labor rights and happens for two reasons: (1) businesses have much more developed in-house expertise with labor rights than with other human rights; and (2) businesses tend to assume, before conducting any impact assessment, that they do not cause or contribute to, and that their operations, products or services are not directly linked to, adverse human rights impacts beyond the workplace.²⁴ In other words, a common error is for companies to seek to determine which rights are relevant to their operations before determining what rights actually mean.

²¹ *Guiding Principles*, A.II.12. In this Note, we will refer to the Declaration on Fundamental Principles and Rights at Work as the ‘1998 ILO Declaration’. While the International Bill of Rights and the 1998 ILO Declaration identify the “core internationally recognized human rights”, the *Guiding Principles* clarify that, “[d]epending on the circumstances, business enterprises may need to consider additional standards. ... In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.” (*Guiding Principles*, Commentary to A.II.12.) The 1998 ILO Declaration covers four fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation.

²² *State of Play* at 10.

²³ *Id.* at 46. This is not to suggest that desk-based reviews are without value. Rather, such reviews cannot be limited to a reading of a few reports by prominent stakeholders. As discussed in Stage 2, below, a sophisticated analysis can be conducted based on a desk review, as long as the starting point is an understanding of the business’s own operations and the entire spectrum of relevant rights.

²⁴ A common refrain in the interviews was that only extractive-sector businesses need to address impacts on communities or non-labor rights. Not only does this position ignore the effect that all companies can have directly through their operations, products and services. It also neglects the fact that extractives companies themselves are part of almost all multinational companies’ supply chains.

i. *Business can impact all internationally recognized human rights*

The desire for a business to identify priority supply chain human rights impacts is understandable and legitimate.²⁵ But any narrowing of focus should be based on actual and potential rights impacts, not assumptions. In addition to labor rights,²⁶ companies can be involved in adverse impacts on all internationally recognized human rights.²⁷ For example, a company or its suppliers can violate the “right to life” and the “right to liberty and security of the person” by violently suppressing community dissent.²⁸ Businesses can also affect human rights in other ways, such as impacting on the “right to freedom of movement” by expanding factory premises, or developing an extractive project, such that a community is forced to relocate.²⁹ Other business impacts on rights include air and soil pollution and water contamination, which impact on an array of human rights directly and indirectly.³⁰ Even industries that by design seem to have an impact only on a specific subset of human rights may affect a much wider array. Information, communications and telecommunications companies, for instance, can certainly impact the “right to freedom of expression” and the “right to privacy”; the potential impacts may also be more widespread, extending to liberty and security of the person and the prohibition on torture.³¹

ii. *Rights have non-obvious meanings*

Understanding the meaning of all internationally recognized human rights asks more than simply scanning the text of international instruments. Human rights are terms with specific legal and practical meanings found in international commentary and jurisprudence.³² They can be narrower or broader than they appear from the text of the right alone. The right to freedom of expression, for instance, does not mean that a person can express herself in any way and any time over any medium. It means that coercion cannot be used to harass, detain, arrest, try or imprison an individual for expressing an opinion or belief, except in very limited circumstances justified by law.³³ Similarly, the right to equality before the law as contemplated in the ICCPR does not mean that all distinctions between groups are illegitimate: “not every differentiation of treatment will

²⁵ Shift at 8 (“As a practical reality, most large companies will almost certainly need to prioritize the management of human rights risks within their supply chain.”).

²⁶ Respect for workers’ rights itself remains a significant human rights challenge, particularly in the supply chain context. For a detailed understanding of potential corporate impacts on labor rights, and how to respond to them, there are myriad helpful resources on the [ILO website](#), which address the meaning of the 1998 ILO Declaration and the role of governments, employers’ and workers’ organizations. The [ILO Helpdesk for Business on International Labor Standards](#) provides tailored advice on how to align business practices with the 1998 ILO Declaration, as well as responding to specific questions (contact: assistance@ilo.org). The joint UNGC-ILO publication, “[The Labour Principles on the UN Global Compact: A Guide for Business](#)”, is another helpful resource for business to understand and apply the fundamental principles and rights at work from which the *GC Principles’* labor principles are derived.

²⁷ See [report](#) by the former Special Representative of the UN Secretary-General on business and human rights, John Ruggie, on the scope and patterns of alleged corporate-related human rights impacts.

²⁸ See, e.g., Global Compact, OHCHR, Monash University, and International Business Leaders Forum, “[Human Rights Translated: A Business Reference Guide](#)” (2008) at 10.

²⁹ *Id.* at 32.

³⁰ *State of Play* at 102.

³¹ See “[Libyans file suit against French tech firm over torture](#)”, AFP, 15 January 2013.

³² There is no definitive guide to the meaning of all internationally recognized human rights, particularly in the business context. Practical guidance can be found in the UN Human Rights Committee’s General Comments as well as in the jurisprudence of national, regional and international courts. One helpful reference as a starting point for businesses is “[Human Rights Translated: A Business Reference Guide](#)”.

³³ UN Human Rights Committee, General Comment 34 (“Freedom of opinion and expression”), CCPR/C/GC/34.

constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”³⁴

iii. Structured prioritization depends on the right expertise

Good practice begins with ensuring the company has the expertise to understand the meaning of rights by reviewing relevant jurisprudence and commentary to properly assess if they might be adversely impacted. To be clear, this does not mean simply following local law. It means considering and respecting *international* human rights standards (unless local law offers greater protection to rights holders). The understanding of rights should be widely shared with those whose decisions could have a rights impact and those whose rights might be impacted. In the supply chain context, that includes purchasing managers and contract negotiators as well as contractors and supplier employees. In practice, not every manager, officer or director of a business will have an in-depth understanding of the *Guiding Principles* or of human rights. The expertise may reside in one subdivision or corporate department. In that case, the key is for the relevant human rights experts to play a role in impact assessment and corporate decisions that may impact human rights.

iv. Stakeholder engagement in understanding rights

Stakeholder engagement is a critical element of a *Guiding Principles*-aligned due diligence process. It serves distinct roles at distinct stages of the supply chain risk prioritization process. (We discuss in Stage 2, below, the role of stakeholder engagement in impact assessment.) Stakeholder concerns and rights impacts are not necessarily synonymous. Companies should seek to understand what rights mean before engaging with stakeholders regarding specific social impacts to ensure that the company can consider those impacts through a *Guiding Principles* lens. But stakeholders can also play a critical role in shaping the language of engagement by helping companies understand the practical meaning of rights. In the first stage of the prioritization process, engaging with rights-knowledgeable individuals and organizations, including relevant workers’ representatives and organizations, can be invaluable for a company to build a language for continuous engagement.

Good practice examples in understanding human rights

Two practical approaches may be effective as companies strive to understand the proper scope of rights. Both turn on obtaining the right expertise, as required by the *Guiding Principles*. One is to rely on relevant external expertise, the other on the right internal expertise. Both approaches are contemplated by the *Guiding Principles*. The common ground between the approaches is ensuring that the human rights dimension of the CR program (i) is comprehensive by covering all human rights (not just labor rights) and (ii) captures the practical meaning of the relevant rights, so that potential impacts may be properly identified.

External expertise

One company, a multinational food and beverage business, has partnered with independent business and human rights experts to design and implement its human rights due diligence, including in the supply chain. The organizations are renowned for their expertise in different

³⁴ UN Human Rights Committee, General Comment 18 (“Non-discrimination”), HRI/GEN/1/Rev.9 at ¶13.

human rights issues, so are able to advise on relevant indicators to conduct comprehensive human rights due diligence. In addition to sharing the relevant indicators, the independent experts are involved in conducting impact assessments and assist in later prioritization of issues for due diligence and response. In this context, the important element is that the independent experts are brought in from the outset of program design, as the blueprint shapes eventual implementation.

This company also highlights the potential to engage with stakeholders early in the impact assessment process to ensure due diligence is based on a shared language. As the company noted, using the Guiding Principles framework for engagement has contributed to more fruitful discussions with stakeholders regarding its impacts and how best to mitigate or avoid them.

Internal expertise

Another good practice is to involve legal counsel, whether as part of the in-house counsel's staff or as part of another department related to CR, in the impact assessment process. Properly used, legal expertise can be beneficial because the definitions of human rights are generally found in legal commentary and jurisprudence.³⁵ That does not mean that human rights decisions should lie only with legal counsel or even that in-house counsel should necessarily spearhead corporate efforts to respect human rights. Rather, once the company has committed to implementing the Guiding Principles, lawyers can play a critical role in ensuring that the implementation is effective.

Whereas most case-study companies developed their programs internally, only two relied substantially on attorneys for the process: one of these is a multinational conglomerate with a range of consumer and industrial products and services; the other is a major resource company with operations around the world. Both companies mentioned that involving counsel enabled them to think about human rights as a compliance issue that was fundamental to the business, rather than a voluntary add-on, particularly because the attorneys could complement advocacy efforts with corporate leadership. The attorneys played a critical role in developing corporate policies, training executives and staff, and designing due diligence processes. The resource company was the only case-study company that had devoted time (i) to addressing gaps between national and international definitions of human rights and (ii) to developing consistent definitions of the Guiding Principles' core terms, including "cause and contribute to" and "directly linked to".

A number of interviewees remain skeptical of counsel's involvement in CR decisions because of a traditional resistance by lawyers to implementing CR measures. This is a common, and serious, challenge. Fortunately, the landscape on this front is changing, both because of emerging legal risks and because of changing ethical expectations within the legal profession.³⁶ The case-study companies that integrated counsel in human rights decisions

³⁵ This is not to suggest that non-attorneys are unable to develop the relevant human rights expertise. Given the subject matter of business and human rights, however, involving attorneys in understanding business responsibility is often beneficial.

³⁶ See, Yousuf Aftab, "The Intersection of Law and Corporate Social Responsibility: Human Rights Strategy and Litigation Readiness for Extractive-Sector Companies," 60 Rocky Mt. Min. L. Inst. 19-1 (2014); John F. Sherman III, "[The UN Guiding Principles: Practical Implications for Business Lawyers](#)," *In-House Defense Quarterly* (Winter 2013); Cheryl Joseph and Julia Cherlow, "[Developing Corporate Human Rights Policies and the Role of Legal Counsel](#)," *UN Global*

made best use of their lawyers' specific expertise by giving them a human rights mandate, with particular reference to the *Guiding Principles*. That mandate, combined with the lawyers' human rights expertise, allowed them to focus precisely on the underlying issues—including the meaning of rights and the meaning of the types of involvement with adverse impacts—necessary to integrate the *Guiding Principles* effectively.

- *Workers' Organizations*: In identifying relevant internal expertise, businesses should also pay heed to workers' associations, as they may be best-positioned to help businesses understand the meaning of labor rights.

Stage 2: Understanding business involvement with adverse rights impacts

i. The relevance of understanding different types of 'involvement' with adverse impacts

The second stage of our proposed prioritization process is the impact assessment. The responsibility to respect encompasses both (1) impacts that the business causes or contributes to and (2) those that are directly linked its operations, products or services through its business relationships.³⁷ The impact assessment should therefore be structured to ensure that businesses consider both these types of involvement.³⁸ Identifying the way in which the company is involved with a potential or actual adverse impact is essential because this informs *how* it is expected to respond according to the *Guiding Principles*.³⁹

ii. Scope of supply chain impacts "directly linked to" the business

In the supply chain context, "directly linked to" remains a challenge for businesses to operationalize. In the *Guiding Principles*, the "directly linked to" category of impact does not turn on any causal link between the business itself and the impact. As clarified by the Office of the High Commissioner for Human Rights "[the business] may neither cause nor contribute to the impact, *but be involved because the impact is caused* by an entity with which it has a business relationship *and* is linked to its own operations, products or services."⁴⁰ For example, an apparel company may be directly linked to an adverse impact on children's rights if one of its suppliers, contrary to the apparel company's standards and expectations, subcontracts elements of clothing construction to child laborers in homes.⁴¹ As this example demonstrates, businesses cannot simply consider the impacts caused by their immediate suppliers. Relevant supply chain business relationships extend

Compact Good Practice Note; International Bar Association, [Business and Human Rights Guidance for Bar Associations with Commentaries](#) (2014).

³⁷ *Guiding Principles*, A.II.11 (Businesses "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."). Businesses are not responsible for all adverse human rights impacts happening *around* them. The responsibility to respect extends to adverse human rights impacts with which the business is *involved*. Understanding different types of involvement is essential before a business can make any decisions regarding how to respond To be clear: this is a distinct issue from prioritization, which is not based on the involvement link, but only on the severity of the impact on rights holders.

³⁸ *Id.*, A.II.13. For purposes of an impact assessment, "causing or contributing to" are treated as one type of involvement, as the same manner of response from the business is expected under either basis (see *Guiding Principles*, A.II.13 and A.II.18). In addition, from a practical perspective, distinguishing an impact that a company "causes" from an impact to which a company "contributes" is fraught with ambiguity.

³⁹ See *id.*, II.A.13 and II.B.19.

⁴⁰ OHCHR, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) ("*Interpretive Guide*") at 15, (emphasis added).

⁴¹ *Id.* at 17.

to *all* supply tiers: “To meet their responsibility to respect human rights, companies need to understand human rights risks at all levels of their supply chain—not only in the first tier.”⁴²

iii. *Structuring the impact assessment to capture relevant types of involvement with adverse impacts*

Good practice in supply chain human rights impact assessment should therefore be structured to answer two questions:

- *First*, do the company’s own supply chain policies and practices cause or contribute to adverse human rights impacts in the supply chain? This question is sometimes overlooked, and deserves appropriate attention. As noted in *State of Play*:

“Respondents that are themselves suppliers highlighted the pressures suppliers face, especially in seasonal supply chains and when sudden demand peaks oblige their workforces to do extensive overtime. These pressures may force suppliers to balance their ability to fulfill signed contracts against their contractual obligations to maintain agreed working conditions, and price. Companies raised questions about the impact of end consumers’ behaviour and expectations regarding price and lead-time demands and their own resultant human rights impacts.”⁴³

- *Second*, what are the human rights impacts caused by entities at all levels of the company’s supply chain that the company has not caused, but that are directly linked to its operations, products or services? To answer this question, businesses should first aspire to create a map of *all* suppliers at *all* tiers of a corporate supply chain.⁴⁴ They should then seek to identify the potential or actual adverse human rights impacts that (i) those suppliers might cause *and* (ii) are directly linked to the company’s operations, products or services.

Achieving these ends will take time. The questions and objectives above matter to ensure that the impact assessment is designed to identify *rights impacts* by type of involvement throughout the *entire supply chain*. From the entire set of internationally recognized human rights, a properly structured impact assessment should result in a subset of human rights impacts with which the company is actually or potentially involved. These impacts will provide the foundation for supply chain human rights prioritization decisions.

iv. *Practical, prioritized impact assessment*

For companies with vast supply chains, it may be unreasonable in time and resources to assess the human rights impacts of each supplier.⁴⁵ Comprehensive mapping alone will take some time for even the most committed business.⁴⁶ In the interim, the impact assessment process itself may need to be prioritized.⁴⁷ In such cases, the *Guiding Principles* state that companies should identify general

⁴² Shift at 3.

⁴³ *State of Play* at 104.

⁴⁴ This is information the company should *aspire* to obtain before deciding on supply chain human rights priorities. Actually obtaining it may take time.

⁴⁵ See *Guiding Principles*, Commentary to I.L.A.17.

⁴⁶ Shift at 7 (relating the experience of one company’s attempt to map the supply chain with just one of its suppliers).

⁴⁷ Shift at 4 (“However, in most cases, it is simply not feasible for a company to conduct due diligence for the entirety of its supply chain—particularly where supply chain relationships may number into the thousands, tens of thousands, or

areas “where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.”⁴⁸ Prioritization of suppliers during the impact assessment stage is different from the prioritization of *responses* once actual and potential impacts have been identified. At the impact assessment stage, it is intended to ensure that a business focuses its due diligence efforts first where they are most needed. Tailoring the impact assessment process to focus effectively on the right supply chain risks requires a blend of practical approaches, from desk review to onsite monitoring and stakeholder engagement.

a. Informed desk review

A rigorous desk review can go some way to ensuring the company identifies supply chain rights impacts effectively. To illustrate, consider a beverage company that relies heavily on sugar and wishes to assess its sugar cane-related supply chain human rights impacts. A tailored approach may proceed as follows:

- (1) Research into the sugar production industry to map the operations involved (e.g. farming, refining, transportation).
- (2) Research into the social impacts and risks⁴⁹ associated with the operations in the sugar supply chain, with particular focus on the regions relevant to the business’s suppliers.
- (3) Analysis of those social impacts and risks through the lens of rights, with reference to the meaning of rights.

Informed desk research and analysis can be used to map out potential rights impacts of sugar production, such as exploitation of children or dangerous working conditions, by involvement link to the beverage company. The desk research would also provide a foundation for targeted stakeholder engagement and onsite monitoring.

b. Structured stakeholder engagement

Stakeholder engagement is critical to impact assessment under the *Guiding Principles*.⁵⁰ For the process to be practical, however, engagement should be tailored to be “meaningful”—i.e. targeted to stakeholders whose rights are potentially affected and conducted with a sincere intention to understand stakeholder perspectives. Well-designed and informed desk research can provide a blueprint of rights impacts to consider and relevant rights holders with whom to engage. For example, if the beverage company’s desk research revealed that child exploitation (not just as labor) on distribution routes in the Philippines or working conditions at sugar mills were potentially significant human rights risks, the engagement could be targeted to stakeholders with particular expertise on these issues and those most likely to be affected. Essential stakeholders with a unique understanding of corporate human rights impacts will inevitably include workers’

more. Companies therefore often need to prioritize those business relationships for which it is most critical to conduct human rights due diligence. However, as a first step, they need to know who is in their supply chains.”).

⁴⁸ *Guiding Principles*, Commentary to II.A.17.

⁴⁹ Businesses can find important information on country-specific labor risks in the reports of the [ILO’s supervisory bodies](#).

⁵⁰ *Guiding Principles*, II.B.18 (“In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should ... (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders”).

organizations, who should be engaged as part of the social dialogue and industrial relations, to ensure that impact assessment is not just a management-driven exercise. The way a business conducts stakeholder engagement reflects how it respects human rights. Thus, with labor rights, social dialogue and industrial relations within the company can provide a mechanism for business to ensure effective recognition of the right to collective bargaining when conducting due diligence.

v. *Targeted onsite assessment and monitoring*

Informed desk research and structured stakeholder engagement can further ensure that companies target the right suppliers for onsite monitoring based on their potential impact on rights holders. In this example, for instance, the results of the research and engagement might suggest that distribution companies and sugar mills should be prioritized for onsite assessment and monitoring, with a particular focus on child exploitation or worker safety. Such targeting would ensure that the beverage company uses its resources most efficiently for supply chain human rights due diligence.

Good practice examples to prioritize supply chain impact assessment

While companies endeavor to identify their involvement in human rights impacts throughout their supply chains, the good practice examples below highlight interim measures to prioritize supply chain impact assessment in a principled way.

Stakeholder Engagement

As mentioned above, stakeholder engagement is a core component of the impact assessment process, informing every element of *Guiding Principles*-aligned due diligence.⁵¹ It should therefore be a part of each of the methods discussed below. Different types of stakeholders may be engaged with at different stages. For instance, before establishing a screening process to prioritize impact assessment, a company may engage with sophisticated international NGOs with specific rights or industry expertise. Once engaging in onsite monitoring, the focus could then shift to local stakeholders, including workers' organizations and community members. Employers' organizations can also play a role in identifying and assessing actual or potential negative impacts and supporting their members in conducting human rights due diligence. What is important to note, however, is that stakeholder engagement is not a discrete part of the impact assessment process—it plays a role throughout the due diligence and response.

An example of how stakeholder engagement fits in throughout the impact assessment and response process is provided by a multinational food and beverage company. This company relies on sophisticated international human rights experts to help define the parameters of its due diligence. It then collaborates with these same experts in conducting onsite impact assessments of individual suppliers. Then, to ensure that it is constantly apprised of potential human rights risks, the company has developed relationships with a number of human rights organizations specializing in a particular industry or a particular geographic area, and engages with them continuously to assess risks at the regional level continuously, so that it may conduct particularized onsite monitoring of individual suppliers where the industry or geographic risk increases.

⁵¹ *Guiding Principles*, Commentary to II.A.18 (“To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly”).

Purchaser Cooperation for Supply Chain Mapping

One of the case-study participants is a non-profit that works with buyers and suppliers around the world to deliver improvements in responsible and ethical business practices. The organization's collaborative platform provides an array of tools and services to promote supply chain sustainability. For the purpose of this Note, however, the organization provides an example of a tool companies can use to expedite supply chain mapping. The company provides a platform for multi-tier supply-chain transparency around ethical and responsible business practices using a centralized self-assessment questionnaire that suppliers can submit for use by multiple purchasers. The platform is illustrative of how purchaser collaboration, using a centralized database, facilitates supply-chain mapping by allowing companies to see through multiple levels of the supply chain.

Division by Supplier Industry (Sectoral Division)

One food and beverage company has taken steps to identify the risk of particular sub-tier supplier human rights impacts by dividing suppliers into product sectors. The company has categorized the types of products it purchases and assessed the types of human rights risks in each sector. While the mapping process for specific sub-tier suppliers is being completed, therefore, the company can turn to a sectoral analysis to understand the types of human rights impacts with which it might be involved. For instance, the company might identify "cocoa" as a supply sector with thousands of suppliers. It would then rely on independent human rights experts to understand the human rights impacts associated with cocoa production and distribution, with a particular focus on the geographic regions from which it purchases cocoa. That analysis of the cocoa sector would help the company determine product-related human rights risks, even when those are associated with the company's sub-tier suppliers. If, for instance, child labor is prevalent in the cocoa production industry in Ghana, then the company can seek to develop responses tailored to that rights impact, possibly with the assistance of regional stakeholders, workers' representatives and child protection experts.

Another case-study company, in the pharmaceutical sector, emphasized the importance of a modular approach that separates out the risk both by commodity and by distinct dimensions of CR—e.g. anti-corruption, health and safety, environment—for supplier assessment. In the first stage of screening, suppliers are categorized by the commodity they supply. Each commodity grouping has been assigned a risk profile based on the CR risks associated with it. Those CR risks are divided by "module", i.e. by CR dimension. If a given supplier falls within a high-risk category, no matter which module, it would trigger a progressively more hands-on review process across all CR dimensions. In other words, if a particular commodity is associated with high anti-corruption risk, the suppliers providing it would be subject to review, including onsite reviews by third parties, for health and safety and human rights as well. The idea behind this approach is that supplier habits can be indicative of risks to stakeholders: a company that is lax with respect to anti-corruption or health and safety is less likely to take human rights seriously than a company that is more diligent about these other CR dimensions.

Geographical Division

A number of companies guide the due diligence process with regional or national information about the countries in which their suppliers operate. Thus, suppliers from

countries with well-developed institutional protection for human rights are not subject to a close inspection of human rights impacts unless specific concerns are raised by purchasing specialists or in the media. The geographical division may be based on indicators of country risk prepared by respected public and private research institutions. As one interviewee noted, however, these screens do not necessarily correlate with the risk of adverse human rights impacts, so should be complemented with human rights intelligence where possible. Such intelligence—specifically when it comes to business impacts on human rights—is not always easily accessible, but sources such as Amnesty International’s annual report, the Business and Human Rights Resource Center (<http://business-humanrights.org>), and the Danish Institute’s Human Rights and Business Country Guide (<http://hrbcountryguide.org>) can provide helpful information.

Prioritizing supplier due diligence by geographic region is better than simply conducting due diligence on suppliers based on their relationship to the business. But it is far from the preferred approach. Businesses in countries with well-developed governmental protection of human rights may still be at risk of adversely impacting them. One interviewee mentioned, in particular, labor rights in the United States. Regional prioritization should therefore be seen, at most, as a complementary measure to assist businesses in gaining human rights visibility into the supply chain.

Stage 3: Prioritizing response based on severity of rights impact

The first two stages of our prioritization process identify the adverse human rights impacts with which the business is involved throughout its supply chain. On the basis of this information, the company can determine which actual and potential impacts it should seek to address first. The appropriate corporate response to any given impact will depend on how the business is involved with that specific impact.⁵² But prioritization of which impacts to address first does not turn on the manner in which it is involved. To reiterate: the company should endeavor to address all adverse human rights impacts that it causes or contributes to and seek to prevent or mitigate those that are directly linked to its operations, products or services by a business relationship. In practice, however, this may not always be possible due to limitations of time and resource. Where multiple impacts are identified, a business may need to make decisions about which impacts to address first. As the *Guiding Principles* make clear, good practice at this stage involves prioritizing responses by the severity of the actual or potential adverse human rights impact—not supplier relationship, existing leverage or risk to the business.⁵³

Prioritizing responses to adverse human rights impacts is not an exact science. “Severity” of an impact is judged on three bases: “scale, scope and irremediable character.”⁵⁴ This assessment should be complemented by a consideration of likelihood of that particular impact.⁵⁵ Certain

⁵² *Id.*, II.B.19(b) (“Appropriate action will vary according to: (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; (ii) The extent of its leverage in addressing the adverse impact.”)

⁵³ *Id.*, A.II.24.

⁵⁴ *Id.*, Commentary to A.II.14 (“Severity of impacts will be judged by their scale, scope and irremediable character.”); see also, *Interpretive Guide* at 19 (“This means that the gravity of the impact (its scale) and the number of individuals that are or will be affected (its scope) will both be relevant. ‘Irremediability’ is the third relevant factor, used here to mean any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact.”).

⁵⁵ See, Shift, “[Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks](#)”, Workshop Report (January 2014) at 14.

impacts of massive scope, affecting an entire population, may nonetheless be of limited scale and be remediable, such that they may not take precedence over a rights impact of severe scale on one individual. For instance, a technology company's direct linkage to a government internet shutdown may affect a large population's freedom of expression but be a lower priority than the government's attempt to use that same technology to track and torture one political dissident. A company is unlikely to arrive at a definitive hierarchy of adverse rights impacts for prioritization independent of context. The important element of good practice is that these aspects of potential rights impacts are considered before the company decides on priority supply chain human rights risks.

Good practice example to prioritize responses by risk

Prioritizing by risk

Prioritizing responses to supply chain human rights risks is inevitably linked to the prioritization of due diligence in the first place. At both stages, businesses use a risk-based approach to prioritization. The important element, however, is the nature of the risk considered. The preferred approach in line with the *Guiding Principles* is for the risk of adverse impacts on stakeholders to be the sole driver in prioritizing responses.

Of the case-study companies' prioritization processes, the best approach divided consideration of human rights-related risk into two components: (i) risk to stakeholders of adverse human rights impact; and (ii) legal, commercial, or reputational risk to the company. The company relies on external human rights expertise to help prioritize the risks by potential impact on stakeholders. The starting point of the prioritization process is thus the identification of the most severe impacts on stakeholder rights. Only once these most severe risks to stakeholder rights have been identified does the company consider its own commercial risks. This two-stage process allows the company to approach rights impacts more systematically than an approach that considers commercial risk in tandem with risk to rights. While this does approach does not align with the *Guiding Principles* (because commercial risk does inform the prioritization), the two-stage approach ensures internal transparency and debate in the prioritization process; and the involvement of human rights experts ensures that the right human rights risks are raised for consideration.

VI. CHALLENGES AND RECOMMENDATIONS

Our research revealed that leading companies from a range of sectors are struggling with how to identify supply chain human rights priorities in a structured way. Each of the case-study companies is working diligently to increase supply chain visibility when it comes to human rights. That process is complicated, in part, by the fact that companies are trying to integrate human rights in far more well-developed systems to address other dimensions of CR. This integration sometimes results in a rebranding of labor rights due diligence as human rights due diligence, because of existing expertise and processes. Labor rights are, of course, human rights. But human rights due diligence that aligns with the *Guiding Principles* requires businesses to start with a recognition that they can impact *all* internationally recognized human rights *before* seeking to identify exactly which human rights the particular business actually or potentially impacts.

In designing an effective approach to respect human rights throughout the supply chain, the following key considerations should be borne in mind:

- 1) ***Systematic and segregated analysis:*** Segregating the approach to conducting human rights due diligence—for instance, by understanding what rights mean before determining which ones are relevant to the company—and approaching each stage systematically, is important to avoid focusing on a small subset of rights or prioritizing the response based on inappropriate measures. A business should only conclude that a particular right is not relevant to its operations if the impact assessment reveals that: (i) the business does not, actually or potentially, cause or contribute to an adverse impact on that right; and (ii) the business is not “directly linked to” an actual or potential adverse impact on that right by the operations of an entity in its value chain. Prioritization should follow assessment, not vice versa.
- 2) ***Beyond labor rights:*** The *GC Principles* and the *Guiding Principles* both refer to internationally recognized human rights. Labor rights capture a limited array of human rights. Companies should consider supply chain impacts on all human rights in and beyond the workplace.
- 3) ***Rights expertise:*** Human rights have specific practical meaning found in jurisprudence and international instruments. Companies should therefore turn to the relevant human rights expertise internally or externally to ensure they understand the different ways their operations can be involved with adverse human rights impacts, including through its suppliers. This expertise should then be embedded into organizational culture through systems, processes, and training for consistency in how the company addresses human rights impacts.
- 4) ***Assess impacts by type of involvement:*** The scope of relevant adverse impacts should be considered based on the scope of the responsibility to respect human rights in the *Guiding Principles*: “cause or contribute to” and “directly linked to”. Companies should assess their impacts on human rights through all supply chain tiers based on these links—not based on the vague concept of “relevance”.
- 5) ***Due diligence should respect rights:*** The way a business conducts the impact assessment reflects how it respects human rights. Meaningful stakeholder engagement, social dialogue and industrial relations are critical to understanding a business’s human rights impacts in and beyond the workplace. Such engagement serves to empower vulnerable groups and, in the case of workers, can help ensure effective recognition of the rights to freedom of association and collective bargaining.
- 6) ***Differentiate between type of risk:*** Risk is inevitably a core element in corporate decision-making. In the context of human rights, companies should resist the urge to conflate risk to the business with risk to rights holders. The different dimensions of risk should be assessed separately to ensure transparent and principled reasoning. Risk to rights holders should be paramount in prioritizing human rights risks.
- 7) ***Prioritizing responses based on severity of rights impact:*** In deciding where to devote resources, companies should look first to the severity of the human rights impact—wherever it exists in the supply chain. Leverage may influence the viable response, but it should not be the driver in identifying the human rights focus.