

A PRIMER ON HUMAN RIGHTS AND BUSINESS

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**A Primer on Human Rights and Business: A guide for Companies
2017**

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MESSAGE

रामदास आठवले
RAMDAS ATHAWALE



सत्यमेव जयते



एक बच्चा एकता की ओर

सामाजिक न्याय और अधिकारिता राज्य मंत्री
भारत सरकार

MINISTER OF STATE FOR
SOCIAL JUSTICE & EMPOWERMENT
GOVERNMENT OF INDIA

21st April, 2017

MESSAGE

I am happy to know that Change Alliance Private Limited, New Delhi, has developed 'A Primer of Human Rights and Business' to make companies aware of their human rights responsibilities and provide guidance on their implementation. The Primer is also likely to help companies understand the various approaches for the prevention and mitigation of human rights impacts, and equip them with practical guidance on the same.

I extend my heartiest greetings for the successful publication of its report, which will be launched on 25th April, 2017 at Park Hotel, New Delhi and wish Change Alliance Private Limited, all success in its future activities.


(RAMDAS ATHAWALE)

FOREWORD



In today's world, there is a certain level of discomfort to discuss Human Rights. It is somehow only linked to social activists, the perceived show stoppers! I think this is a narrow world view.

Human Rights are rights inherent to all human beings, regardless of gender, age, nationality, place of residence, sex, ethnicity, caste, religion, race, color and so on. Thus, human rights are non-discriminatory, meaning that all human beings are entitled to them and cannot be excluded from them. Of course, while all human beings are entitled to human rights, in reality not all human beings experience them equally. For example, if we apply it to women in a society where there are rigid social hierarchies that inherently give permission to discriminate then we need certain agreed standards and policies to promote equality.

Thus Human Rights are basic standards aimed at securing dignity and equality for all and the duty bearers play an important role in leading the way. The aim of the Human Rights and Business primer, drawn from the UN Guidelines on Business and Human Rights is an aid in promoting a culture of agreed Human Rights standards by Businesses in the Indian context.

I hope that this primer will be of ample use to companies, government and civil society for understanding the challenges, risks and opportunities that companies face in India while developing human rights policies, implementation and reporting.

This journey has already begun with the leadership from the Indian businesses and I hope the Primer will give impetus to such efforts and help build a body of knowledge and best practices.

I wish this new journey of Indian businesses all success.

Best wishes,

Dr. Belinda Bennet
CEO

FOREWORD

PRAXIS

Institute for Participatory Practices



Primer on Human Rights and Business

The concepts of equal opportunity and non-discrimination as enshrined in the Constitution of India are rooted in the universal principles of human rights, fundamental freedoms and equality. The obligations of states with regard to implementing Human Rights are increasingly being complemented by instruments that call upon the corporate sector to be responsible and accountable for its impact on larger society. One of these instruments is the 2011 UN Guiding Principles on Human Rights and Business for implementing the UN “Protect, Respect and Remedy”

Framework. For the first time a global standard for preventing and addressing the risk of adverse impacts on Human Rights linked to business activity has been put in place. Such instruments assume special significance given that large corporations have gained unprecedented power and influence and are shaping economies across the world. They often operate beyond the reach of national governments.

Set against this context, the primer sheds light on the significance of the principles of the National Voluntary Guidelines that call for companies to be responsive to the “interests of all stakeholders”; “respect and promote Human Rights” and; “support inclusive growth and equitable development”. The principles require companies to recognise their responsibilities towards building an equitable society and encourage them to be responsible for, accountable to and aware of the needs and aspirations of all stakeholders.

With the intention to equip companies with the know-how and practical guidance on the various approaches to prevent and address the impacts of Human Rights abuses, this primer is an invitation to companies to join the Human Rights agenda proactively and provide for a rights enabled space for all its stakeholders.

Tom Thomas
Chief Executive

FOREWORD



Global Compact
Network India



I am glad that Change Alliance with experts has come up with a well thought out Primer on Human Rights and Business.

The UN Global Compact India promotes tools and resources aligned with the UN Guiding Principles on Business and Human Rights. We also offer engagement opportunities to help businesses respect and support human rights.

This primer will contribute to Sustainable Development Goals (SDGs) and also help in bringing together various stakeholders on a common grounding on Human Rights agenda in India.

I hope that this primer will help the companies to understand and also inspire them to respect and promote Human Rights in their businesses for inclusive growth.

I congratulate Change Alliance and wish them all the success in their future endeavours to address Human Rights in Business.

Mr. Kamal Singh ED

PREFACE

Human Rights have increasingly become an integral part of the corporate responsibility discourse, wherein the minimum responsibility of all businesses, irrespective of their size, ownership, nature of business and geography of their activities, is to respect human rights. The release of the United Nations Guiding Principles (UNGPs) in 2011 has undoubtedly led to increased attention and focus by Governments and Companies across the globe to their human rights related responsibilities.

In India, the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVEGs) released in 2011 by Ministry of Corporate Affairs, Government of India, reiterated this basic tenet through a specific Principle on Human Rights.

Whilst a growing number of multinational companies from developed economies have taken steps to implement the UNGPs, Indian companies, with the exception of a few leadership companies, have yet to do so. This Primer is designed to make companies aware of their human rights-related responsibilities, and provide guidance on their implementation, and also provide useful resources for companies interested in more detailed information on commitment to intersection of human rights and business

The contributors anticipate that this Primer will be an important contribution towards strengthening rights based approach that will help businesses in addressing its impact on all its stakeholders, especially the vulnerable, marginalised and excluded.

VIRAF M. MEHTA
Consultant and Advisor

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LIST OF ACRONYMS

ABBR:	Annual Business Responsibility Reporting
BHR:	Business and Human Rights
CAO:	Compliance Advisor Ombudsman
CoP:	Communication of Progress
CSR:	Corporate Social Responsibility
EIA:	Environmental Impact Assessment
EICC:	Electronic Industry Citizenship Coalition
EITI:	Extractive Industry Transparency Initiative
ESG:	Economic, Social and Governance
ESG:	Environmental, Social, and Governance
ETI:	Ethical Trading Initiative
EU:	European Union
FLA:	Fair Labour Association
GCNI:	Global Compact Network India
GDP:	Gross Domestic Product
GNI:	Global Network Initiative
GPs:	Guiding Principles
GRI:	Global Reporting Initiative
HRCA:	Human Rights Compliance Assessment
HRIA:	Human Rights Impact Assessments
IBLF:	International Business Leaders Forum
ICCPR:	International Covenant on Civil and Political Rights, 1966
ICESCR:	International Covenant on Economic, Social and Cultural Rights, 1966
IFC:	International Finance Corporation
ILO:	International Labour Organization
LOR:	Letter of Representation
MNEs:	Multi-National Enterprises
MSI:	Multi-Stakeholder Initiatives
NAP:	National Action Plan
NCP:	National Contact Points
NGO:	Non-Governmental Organisations
NGT:	National Green Tribunal
NHRC:	National Human Rights Commission
NHRIs:	National Human Rights Institution
NVGs:	National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Businesses

OECD: Overseas Economic Countries Development
PRI: Principles for Responsible Investment
RSPO: Roundtable on Sustainable Palm Oil
SEBI: Securities and Exchange Board of India
SEZs: Special Economic Zones
SMEs: Small and Medium Enterprises
SRSG: UN Special Representative of the Secretary General
SSA: Social Impact Assessment
TNCs: Trans National Corporations
UCIL: Union Carbide India Limited
UDHR: Universal Declaration on Human Rights
UNCTAD: United Nations Conference on Trade and Development
UNGC: UN Global Compact
UNGPs: United Nations Guiding Principles
VP: Voluntary Principles on Security & Human Rights

EXECUTIVE SUMMARY

Human Rights have increasingly become an integral part of the corporate responsibility discourse, wherein the minimum responsibility of all businesses, irrespective of their size, ownership, nature and geography of their activities, is to respect human rights. Yet, for many businesses, embedding human rights, in their day-to-day operations, remains a challenge.

In today's world, there is certain level of discomfort to discuss Human Rights. It is somehow only linked to social activists, the perceived show stoppers! I think this is a narrow world view. Human rights are rights inherent to all human beings, regardless of gender, age, nationality, place of residency, sex, ethnicity, caste, religion, race, color and so on. Thus, human rights are non-discriminatory.

Dr. Belinda Bennet
CEO, Change Alliance

In June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business & Human Rights. The United Nations Guiding Principles (UNGPs) were developed to put the “Protect, Respect and Remedy” Framework into operation, and became established as the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

The Protect, Respect and Remedy Framework

1. The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
2. The corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved; and

3. The need for greater access by victims to effective remedy, both judicial and non-judicial.

At the same time, the National Voluntary Guidelines on Social, Environmental and Economic responsibilities of business (NVGs) was released by the Ministry of Corporate Affairs in India. The NVGs reiterated this basic tenet of respecting human rights through a specific Principle (#5) devoted to Human Rights. Whilst a growing number of multinational companies from developed economies have taken steps to implement the UNGPs, Indian companies, with the exception of a few leadership companies, have yet to do so. As has been the case with other important issues, companies require guidance and support in meeting their human rights responsibilities.

This Primer is designed to make companies aware of their responsibilities related to human rights, and provide guidance on their implementation. In addition, it provides useful resources for companies interested in more detailed information on the human rights and business intersect.

The Primer is also intended to help companies understand the various approaches for the prevention and mitigation of human rights impacts, and equip them with practical guidance on the same.

The Primer is structured into four chapters:

Chapter 1 aims at familiarizing the reader with the concept of human rights, particularly in the context of business. It explains that human rights are basic standards aimed at securing dignity and equality for all. It elaborates that the companies have both kinds of impacts – positive and negative.

The key takeaway is that a company must respect all human rights, and no particular right is greater than the other. The chapter presents the business case for investing in human rights, and argues that embracing human rights is good for businesses as it can produce a number of positive outcomes including: enhanced stakeholder relations; improved employee recruitment, retention and motivation; improved risk assessment and management; reduced risk of consumer protests; enhanced corporate reputation and brand image; a more secure license to operate; strengthened shareholder confidence, sustainability and long-term gains.

Chapter 2 outlines the emergence of the business and human rights agenda globally. Its key argument is that the business and human rights discourse is not new - human history has experienced both – violation of rights as well as development of means for remediation. It takes the reader through the key developments since the '70s and introduces the emergence of important UN initiatives, including the Global Compact and the Guiding Principles on Business & Human Rights. While the chapter highlights the State responsibility to protect, corporate responsibility to respect human rights and also the need for greater access to remedy to the victims of corporate abuses – it emphasizes that the work of each had to complement that of the other two.

Chapter 3 situates the business and human rights discourse in India, and elaborates upon the theme that has deep roots in ancient and modern times alike. There are several legal acts and regulations in India that protect human rights and lay special emphasis on labour rights, stakeholder's

participation in management, human rights, responsibility towards communities, and consumer rights. The chapter further dwells upon the NVGs that provide for the country's national framework on business responsibility, and also guidance on the implementation of and reporting on a set of nine principles, including human rights that offer businesses an understanding and approach to inculcating responsible business conduct.

Chapter 4 provides practical guidance for implementing the corporate responsibility to respect human rights. With the Foundation Principles of the UNGPs as its basis, it provides guidance on human rights policy commitment, human rights due diligence and remediation. The chapter provides an overview of the principles and steps that put these three key steps into practice. It stresses the role of the company's governance structure and leadership in setting direction, and also that this commitment must percolate through the various functions and operations of the companies. It further establishes the need for human rights due diligence and the steps involved in putting the same into effect. Human rights due diligence needs to be a continuous, ongoing process and must include stakeholder engagement and consultations as key ingredients. The chapter also provides an overview of the steps to be taken to operationalize the process, noting however, that companies may need extra guidance and support while implementing each step, for example – once they decide to develop a human rights policy – the current primer can help set parameters to develop a credible approach towards a human rights policy – but companies may need further elaboration and guidance on the steps involved in its development, roll-out, implementation and review.



DEVELOP HUMAN RIGHTS POLICY

1. Involve senior management
2. Establish a cross-functional team
3. Review and evaluate existing policies & commitments
4. Identify potential human rights risks
5. Consult and engage internal and external stakeholders
6. Develop statements of policy on human rights
7. Communicate policy to internal and external stakeholders



CONDUCT HUMAN RIGHTS DUE DILIGENCE

1. Conduct human rights risk mapping
2. Prioritise human rights risks & actions to mitigate
3. Engage leadership, assign responsibility
4. Include human rights through policies & processes
5. Leverage to mitigate human rights impacts
6. Develop indicators to measure performance
7. Track performance of suppliers & other business relationships
8. Verify performance using various instruments



PROVIDE ACCESS TO REMEDY

1. Map existing grievance mechanisms
2. Use the criteria for non-judicial grievance mechanisms
3. Map ways to extend grievance mechanisms to external stakeholders
4. Improve grievance mechanisms

CHAPTER 1

HUMAN RIGHTS AND BUSINESS – AN INTRODUCTION

1.1 HUMAN RIGHTS

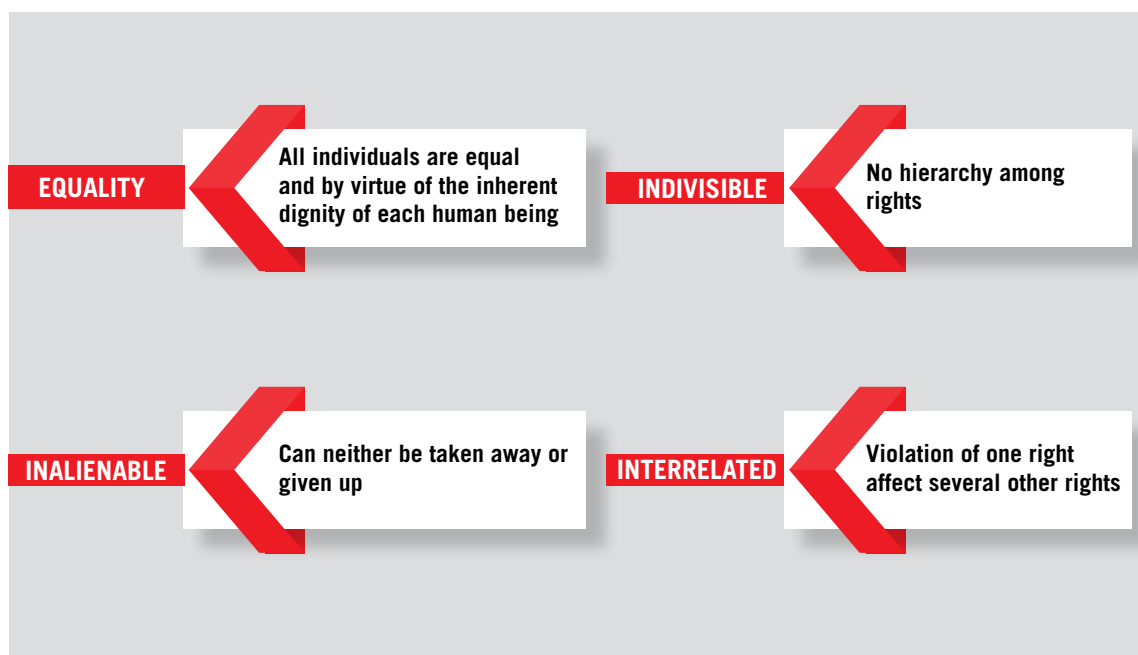
Human rights are the basic rights inherent to all human beings, irrespective of race, colour, sex, language, religion; political or other opinion, national or social origin; status acquired by birth, property or otherwise. These are the basic norms or principles or standards aimed at securing dignity and equality for all.

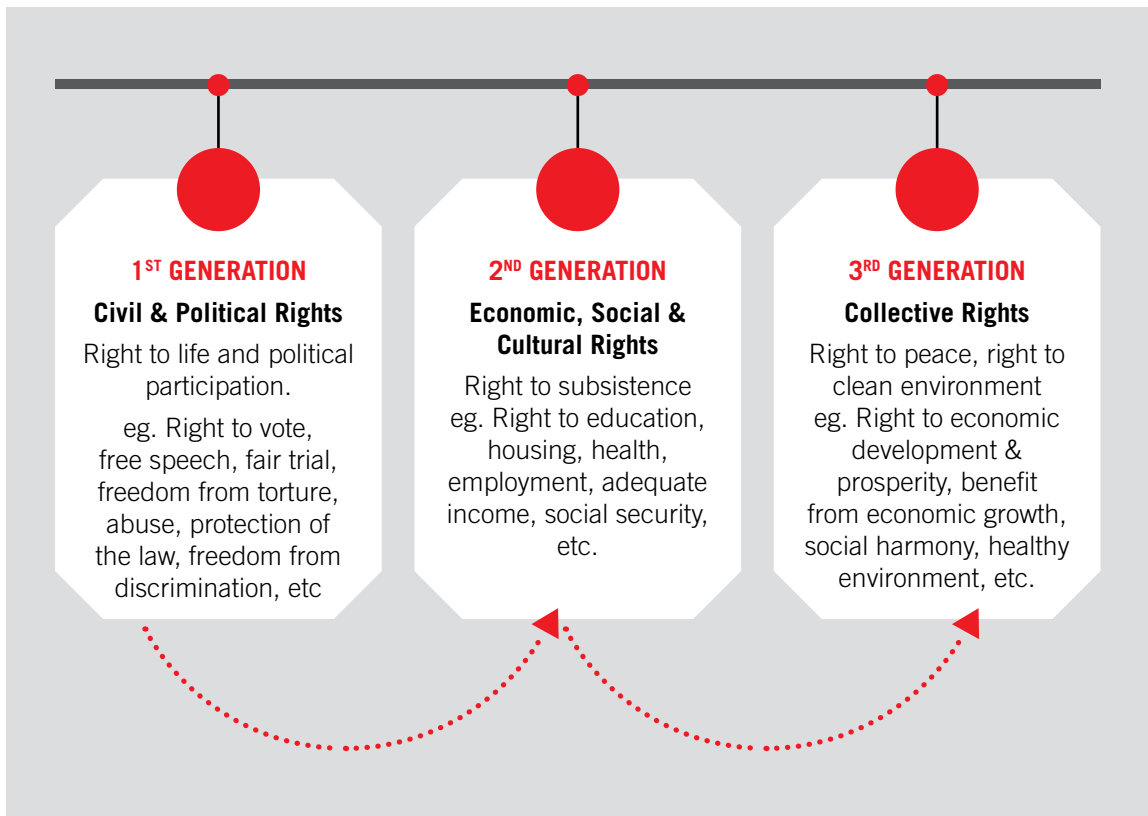
The rights are universal, meaning that they are applied to everyone, irrespective of any status, and egalitarian as same for everyone. Human rights are inalienable, in that no one can have his or her human rights taken away.

The rights are indivisible because denial of one right invariably impedes the enjoyment of

other rights, for instance, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights such as the right to health or right to education.

Human rights are interdependent and interrelated because each one contributes to the realization of human dignity through the satisfaction of his or her physical, social, developmental, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information. In other words, violation of one right could affect several other rights.





1.2 THE INTERNATIONAL BILL OF HUMAN RIGHTS

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 December, 1948 as a common standard of achievements for all people and all nations. The Declaration was drafted in response to the human rights abuses and violations of the Second World War and described as ‘the foremost statement of the rights and freedoms of all human beings’.

Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the UDHR represents the first international agreement on the basic principles of human rights. India was an active participant in drafting of the Universal Declaration on Human Rights. The Indian delegation to the United Nations, led by Hansa Jivaraj Mehta, made important contributions in the drafting of the Declaration, particularly emphasizing the need for reflecting on gender equality. Hansa Mehta drew on her experience in social activism to ensure that the first clause in the UDHR expressly stated that all

human beings and not just *men* are treated not created equal in dignity and rights.

The UDHR consists of thirty articles, which have been elaborated in subsequent international



treaties, economic transfers, regional human rights instruments, national constitutions, and other laws. It has inspired more than 80 international conventions and treaties, numerous regional conventions and domestic laws, and has been the catalyst for an expanding system of human rights protection for marginalised and vulnerable groups such as people with disabilities, indigenous peoples and women.

The UDHR in itself bears no force of law, but is codified in international law by the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). Together with the Universal Declaration of Human Rights, these two covenants comprise what is known as the “International Bill of Human Rights.” Through signing and ratifying the human rights treaties, states have agreed to be the primary duty bearers for human rights. States hold each other to account on these agreements

through periodic reviews of their human rights performance.

1.3 HUMAN RIGHTS IN THE CONTEXT OF BUSINESS

Traditionally, respecting human rights was seen as the responsibility of governments, including human rights treaties that directly address only governments. While the primary responsibility lies with the states, the UDHR recognizes duties of every organ of the society, including corporates. Moreover, given its enormous global impacts in recent years, the emphasis have been on the role of the private sector in respecting and promoting human rights.

One of the key developments, in the last decade, that has the potential to change the way business is done and created the need for a shift towards immediate action, is the United Nations Guiding Principles (UNGPs)¹. The UNGPs provide a global standard for preventing and addressing the risk of adverse impacts on human rights, linked to business activity.

Unanimously endorsed by the UN Human Rights Council in June 2011, the Guiding Principles (GPs) establish an authoritative global standard on the respective roles of businesses and governments, that help to ensure that companies respect human rights, in their own operations and through their business relationships. The UNGPs sought to strengthen human rights reporting and accountability among companies, whilst making it clear that the primary duty, of protecting and fulfilling rights, rests with the state.

1.3.1 Why Should Businesses care for Human Rights

There is strong evidence to support that embracing human rights is good for businesses, and ignoring them would only add to the material and financial risks. For example, it is estimated² that company-community conflicts can cost the average world-



¹For details on UNGPs, please refer chapter 2

²Davis, Rachel and Daniel M. Franks. 2014. “Costs of Company-Community Conflict in the Extractive Sector.” Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School.

class mining project a staggering USD20 million per week in lost productivity through delays. This makes a compelling case for investment in engaging with affected communities, with accessible grievance redressal mechanisms and fair and swift remediation, if abuses are identified.

There are moral, financial, legal and other considerations, affecting the company's bottom line, that provide incentives to take human rights seriously. The businesses could benefit, in many



ways, by respecting human rights, some of which are mentioned below:

- **Reduce risks and costs to business :** There are increasing costs to businesses when they fail to respect human rights. Disregarding human rights could lead to huge material

consequences for companies themselves as much as violating the rights of affected communities. Studies have shown that customer boycotts of products, tainted by human rights abuses, cost demonised companies around GBP 2.6 billion a year. Human rights due diligence mitigate such risks and reduce costs to the companies.

- **Sustainable performance:** The business case, for integrating human rights principles with business practices, is as strong as is the moral and ethical one. According to a study undertaken by the Harvard Business School, companies that have adopted a

POSCO, a Korean conglomerate signed a Memorandum of Understanding with the State Government of Odisha in 2005 to construct a USD 12 billion steel plant. The project met with stiff on-the-ground resistance by local communities. Issues around land acquisition, forest rights, impact assessment, violence, compensations, and conditions in rehabilitation areas remain of great concern. In April 2016, the company announced the scrapping of the project.

Embracing Human Rights has been reported to result in:

- Enhanced stakeholder relations,
- Improved employee recruitment, retention, and motivation,
- Improved risk assessment and management
- Reduced risk of consumer protests,
- Enhanced corporate reputation and brand image,
- More secure license to operate and strengthened shareholder confidence

Failure to respect Human Rights: Risks & costs to Businesses

- Increased project financing costs or withdrawal of financing
- Litigation costs from lawsuits related to human rights abuses
- Losses and costs due to workers' strikes
- Difficulties with employee recruitment and retention
- Restricted opportunities for growth (reluctance of governments to grant new licenses to operate)
- Restricted access to equity capital markets as a result of concerns of socially responsible investors
- Increased public relations and brand image costs to the companies

comprehensive set of corporate policies related to the environment, employees, community, products, and customers, *"significantly outperform their counterparts over the long-term, both in terms of stock market as well as accounting performance"*.

- **Improves Stakeholder Relationships:**

Respecting human rights through the sphere of influence helps improve relationship with stakeholders, including shareholders, customers, employees and others. Case studies have documented how child labour, in the supply chain of a footwear and apparel company, posed risks to its reputation. Though accused of using sweatshops since the early 1970s, Nike was heavily criticised throughout the 1990s for selling goods produced in sweatshops - claims it denied initially. However, later, the company's Director, Todd Mc'Kean agreed publicly that it was an irresponsible attitude, and that companies have leverage and responsibility in their supply chains. In 2005, protesters at over 40 universities demanded that their institutions

Human Rights in Business

- Increase sustainable performance
- Reduce risks and costs of the business
- Promotes brand reputation
- Help build and strengthen stakeholder relationships
- Make it attractive to investors, banks and financial markets

endorse companies who use "sweat-free" labour, unlike Nike. It took years and a lot of money for the company to re-build its image and reputation, but more importantly valuable relationship with stakeholders. Similarly, Yahoo's former policy, of sharing personal records of its users with Chinese authorities, infamously led to the arrest, alleged torture and lengthy prison terms of at least four people. Yahoo faced a public backlash, lawsuits, and a Congressional hearing as a result. Google, on the other hand, pulled out of China in 2010 over censorship attempts, and claimed appreciation among stakeholders.

Lemon Tree Hotels, an Indian hotel chain has been awarded the prestigious Shell Helen Keller Award 2010 for policies, practices and belief in equal rights and gainful employment for Persons with Disabilities. Similarly, a coffee chain employs people with disabilities across its centres. The chain does not provide just means of income to the people with disabilities, but also undertakes orientation and sensitization workshops for other employees to provide an enabling environment. The company boasts of very low attrition rate and high incidences of repeat customers.

In both the cases, while stakeholder relationships were visibly improved, the brand reputation also increased multi-fold.

CHAPTER 2

EMERGENCE OF THE BUSINESS & HUMAN RIGHTS AGENDA

The business and human rights discourse is not new. Human history has experienced both – violation of rights as well as development of means for remediation. Abomination of the transnational trade in slaves and harsh working conditions, associated with industrial revolution, are classic examples of the social and environmental implications of commercial activities in the past. The same era has witnessed the development of means to safeguard from corporate's negative human rights impacts including birth of the trade union movement followed by recognition of fundamental workers' rights by establishment of the International Labour Organization (ILO) at the end of the First World War, and adoption of the Universal Declaration of Human Rights after the Second World War.

2.1 BUSINESS & HUMAN RIGHTS-HOW DID WE GET HERE

Decolonization in the post-war era witnessed emergence of newly independent states, and their need to engage in trade and economy internationally. Subsequently, developing countries concern grew about their involvement and position in the international trade. In response to developing countries, call for the convening of a full-fledged conference, focussed on tackling

these problems and identifying appropriate international actions, the first United Nations Conference on Trade and Development (UNCTAD) was held in Geneva in 1964. Simultaneously, the developing countries established the Group of 77 to voice their concerns (the G77 now has 131 members).

The 70s and 80s

The 1970s and 1980s saw the first steps towards socially responsible investment with the Sullivan Principles³ and MacBride Principles⁴ that were brought forth to address companies' conduct in apartheid South Africa and Northern Ireland respectively. The Organization for Economic Co-operation and Development Guidelines for Multi-National Enterprises (MNEs) were concluded in 1976 and addressed issues such as employment relations, environment, science and technology, competition and consumer protection.

The 1980s and the 1990s saw an increasing number and size of Trans-National Corporations (TNCs). With this, emerged global supply chains and Special Economic Zones (SEZs). Manufacturing sites can now be relocated according to labour costs and tax advantages that lead to establishment of SEZs designed to attract MNEs.

³Developed by the African-American preacher Rev. Leon Sullivan, the Sullivan principles are the names of two corporate codes of conduct that promote corporate social responsibility: The original Sullivan principles were developed in 1977 to apply economic pressure on South Africa in protest of its system of apartheid. For more details, see here: <http://hrlibrary.umn.edu/links/sullivanprinciples.html>

⁴The MacBride Principles — consisting of nine fair employment principles — are a corporate code of conduct for United States companies doing business in Northern Ireland and have become the Congressional standard for all US aid to, or for economic dealings with, Northern Ireland. For more details, see here: <http://hrlibrary.umn.edu/links/macbride.html>

With globalization, increased stakeholder attention – particularly on corporate supply chains.

The 90s

The **90s** saw both - increased attention to the abuses and violations by the corporates, as well as developments to hold companies accountable.

Incidences such as the execution of Ogoni Nine in Nigeria, Nike and sweatshop labour in Vietnam, oil spill by Shell in Niger Delta sparked widespread outrage around the world and crystalized public concerns about corporate impunity.

In the early 90s, the UN Economic and Social Council requested the Secretary General to constitute a Group of Eminent Persons “to study the Impact of Multinational Corporations on Economic Development and International Relations”. The Group recommended setting up a Commission with the goal of formulating a corporate code of conduct for TNCs. The Code was meant to establish a multilateral framework to define the rights and responsibilities of transnational corporations and host country governments in their relations with each other. Despite efforts for almost two decades, the group was unable to ratify an agreeable code due to disagreements between developed and developing countries, and therefore dissolved in 1994.

In August 1998, the UN Sub-Commission on the Promotion and Protection of Human Rights established a Working Group on Transnational Corporations. The Working Group published “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (the Norms) in 2003. While the Norms received support from NGOs, it encountered significant opposition from the businesses and several states due to polarized opinions of various stakeholders. The Commission

on Human Rights, in its 2004 session, resolved that the UN Norms had ‘no legal standing’.

The 2000s

At the World Economic Forum in January 1999, the former UN Secretary General Kofi Annan floated the idea of UN Global Compact (UNGC). The Compact, which was officially launched in 2000, comprises ten principles in the areas of human rights, labour, environment and anti-corruption. The UN Global Compact’s Ten Principles are derived from: the Universal Declaration of Human Rights, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

The Indian chapter of UNGC, Global Compact Network India (GCNI), formed in November 2000, was registered in 2003 as a non-profit society. At present the India Network ranks among the top 10, out of more than 90 Local Networks in the world. Functioning within a globally recognized and established initiative, with a pan-India membership base, GCNI provides a vehicle for Indian companies, academic institutions and civil society organizations to work together to strengthen responsible business initiatives.

2005 drew a great impetus on business and human rights by the then UN Secretary-General, Kofi Annan. He invited a group of the world’s largest institutional investors to join a process to develop the Principles for Responsible Investment (PRI). The Principles are based on the notion that economic, social and governance (ESG) issues, such as climate change and human rights can affect the performance of investment

The Bhopal gas tragedy of 1984, in which over forty tons of the poisonous gas methyl-isocyanate leaked into the community surrounding a Union Carbide India Limited (UCIL) pesticide plant in Bhopal, India. It is estimated that twenty-four thousand died and more than five thousand were injured during the gas leak. The victims and survivors of gas tragedy are fighting for justice and adequate compensation, even today.

The GCN-India has currently 230 leading business and non-business members and 341 signatories, strengthening their commitment to the UN Global Compact Principles.

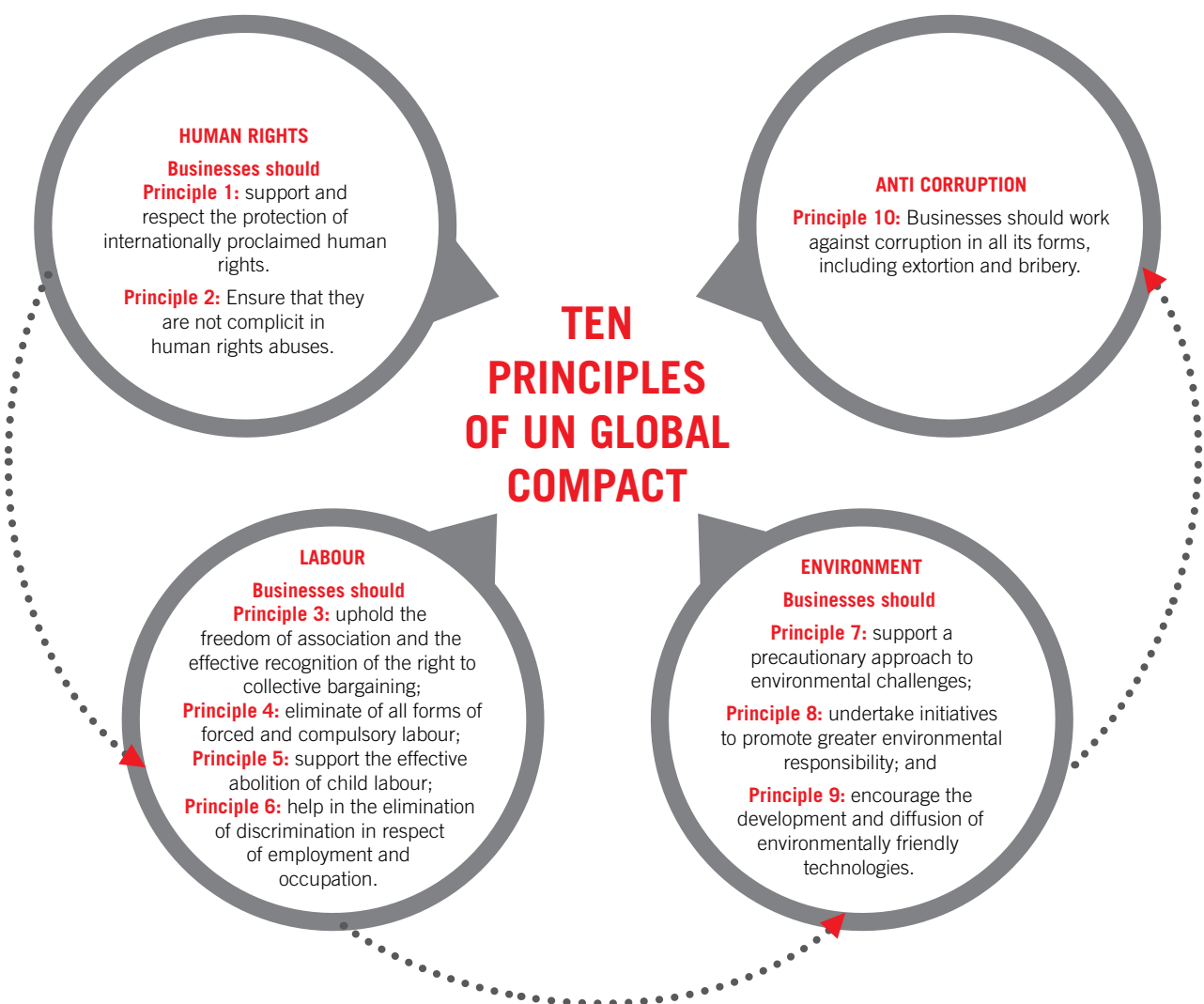
portfolios and should, therefore, be considered alongside more traditional financial factors, if investors are to properly fulfil their fiduciary duty. The six principles provide a global framework for mainstream investors to consider these ESG issues. The principles were launched in April 2006 at the New York Stock Exchange.

Kofi Annan also appointed Professor John Ruggie of Harvard University, as a Special Representative

to “identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights.” With the aim of devising a framework that would “reduce corporate-related human rights harms to the maximum extent possible in the shortest possible period of time”, the UN Special Representative of the Secretary General (SMSG) on the issue of human rights and transnational corporations and other business enterprises, Professor Ruggie sought to apply an approach of “principled pragmatism” to his mandate. He conducted extensive research and consultations with governments, civil society and businesses in five continents.

At the end of his first three years mandate, in 2008, the SMSG presented the “Protect, Respect

Figure 2.1: The Ten Principles of United Nations Global Compact



Principles for Responsible Investment

PRINCIPLE 1

We will incorporate Economic, Social and Governance (ESG) issues into investment analysis and decision-making processes.

PRINCIPLE 2

We will be active on owners and incorporate ESG issues into our ownership policies and practices.

PRINCIPLE 3

We will seek appropriate disclosure on ESG issues by the entities in which we invest.

PRINCIPLE 4

We will promote acceptance and implementation of the principles within the investment industry.

PRINCIPLE 5

We will work together to enhance our effectiveness in implementing the Principles.

PRINCIPLE 6

We will each report on our activities and progress towards implementing the Principles.

and Remedy: a Framework for Business and Human Rights to the UN Human Rights Council. The framework provided conceptual architecture and outlined respective roles and responsibilities of the governments and businesses for human rights

The UN Human Rights Council unanimously welcomed SRSG's report. The Council extended

The Protect, Respect And Remedy Framework

The "Protect, Respect and Remedy" Framework rests on three pillars:

- The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication
- The corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur
- Greater access by victims to effective remedy, both judicial and non-judicial.

Professor Ruggie's mandate by three years to operationalize the UN Protect, Respect and Remedy Framework and to provide guidance on steps that states, businesses and others should take to implement it. In furtherance of the above, the SRSG held regional consultations in different parts of the world. The first of these consultations took place in New Delhi, India, in February 2009. The consultation included representatives from states, corporations, civil society, academics and legal practitioners from 16 countries.

2.2 THE UN GUIDING PRINCIPLES ON BUSINESS & HUMAN RIGHTS

In 2011, Professor Ruggie presented the UN Guiding Principles on Business and Human

Figure 2.2: UN Processes (2005-2011)



Source: OHCHR, December 2013

Rights, resting on the three pillars of Protect, Respect and Remedy Framework. The Guiding Principles (GPs) are a set of 31 principles, directed at states and companies, that clarify their duties and responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities. These principles form the first globally agreed framework for preventing and addressing adverse human rights impacts linked to business activities.

The UN Human Rights Council, unanimously, endorsed the Guiding Principles (for operationalizing the Protect, Respect, and Remedy Framework in Resolution 17/4. This marked a watershed moment in the field of business and human rights. The GPs provide a universally-accepted and agreed upon expectation that business should respect human rights (do no harm) and that businesses need to have in place appropriate policies, due diligence processes, and remedial mechanisms to manage risks to human rights.

2.2.1 The State Duty to Protect Human Rights

The state duty to protect, calls upon the states to protect against abuses by third parties, including businesses, within their jurisdiction. The GPs does not necessarily require states to develop new regulatory acts or provisions. In fact, states' general laws, directly or indirectly, require businesses to respect human rights while following codes of conduct and performance with respect to areas such as health and safety, environment, anti-

The Guiding Principles affirm the state duty to respect – but do not create new legal obligations – the obligations already exist in accordance with national and international commitments of the states

corruption, labour, etc. However, the GPs require states to assess the gaps and shortcomings in existing legal and policy framework that may

FOUNDATION PRINCIPLE

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

result in human rights abuses and violations by businesses.

The GPs further provide guidance on four specific areas to meet these obligations by the states.

In particular, the GPs expect states to:

- **Develop National Action Plans:** The UN Working Group strongly encourages all states to develop, enact and update a National Action Plan (NAP) on business and human rights, as part of the state responsibility to disseminate and implement the Guiding Principles on Business and Human Rights. The NAPs⁶ are expected to articulate priorities and actions to be taken by the states to support the implementation of national, regional and international commitments and obligations related to businesses and human rights.

States must prevent, mitigate and address through policies, legislation, regulation and adjudication.

UK was the first country to develop its NAP on BHR (Business and Human Rights) and till date 12 countries have developed their NAPs, while many are underway.

- **Provide effective guidance:** The states already provide guidance to companies on various

⁵United Nations Human Rights Office of the High Commissioner, Guiding Principles on Business & Human Rights, 2011. HR/PUB/11/04. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶UN Working Group on Business & Human Rights, "Guidance on National Action Plans on Business & Human Rights". 2014. http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf

1 The states should enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.

2 The states should ensure that other laws and policies governing the creation and on-going operation of business enterprises, such as corporate law, do not constrain but enable business to respect human rights.

3 The states should provide effective guidance to business enterprises on how to respect human rights throughout their operations.

4 The states should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

issues such as health and safety, labour, environment, etc. However, the GPs require states to provide exclusive guidance to companies on how to respect human rights, and in particular how to conduct human rights due diligence. The European Union, for example has published human rights guidance for employment and recruitment agencies, the information and communication technology, oil and gas sectors and for the SMEs.

are owned or controlled by the state, or that receive substantial support and services from state agencies. The GP4 require states to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the state, or that receive substantial support and services from state agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

- **Promoting Corporate Reporting on Human Rights:** The states must encourage companies to report on their social and environmental impacts. *Government of India took a step early in 2011, when it launched National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Businesses (NVGs)*⁷. The NVGs encourage companies to disclose responsible practices on comply or explain basis. The NVGs are, though, voluntary in nature, the reporting, to Stock Exchange Bureau of India, has been mandatory for listed companies.
- **Prevent misuse by State and Businesses:** The Operational Principle, GP4 requires states to take additional steps to protect against human rights abuses by business enterprises that
- **Private delivery of public services:** The State's duty to protect human rights remains, even when it privatises or contracts with the private actors for provision of public services. The GPs require, as a necessary step, the relevant service contracts or enabling legislation which should clarify the state's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms." Services such as health, housing, education, water, transport, immigration and security are often privatised or contracted by the government to private actors. However, the governments must ensure human rights due

⁷For details on NVGs, see chapter 3.

diligence in the context of public-private partnerships and privatisation.

- **Public procurement:** The GP6 mentions “States should promote respect for human rights by business enterprises with which they conduct commercial transactions”. Government remains to be one of the key procurement agencies for goods and services, accounting for an average of 12% of GDP across OECD countries and about one fifth of the GDP in the EU. Government thus yields great influence over ensuring respect for enjoyment of human rights among goods and service providers including suppliers in the global supply chains.
- **Conflict-affected areas:** The GP7 calls upon states to take specific steps in relation to businesses operating in conflict-affected areas. It requires states to help businesses identify, prevent and mitigate the human rights-related risks of their activities and business relationships by providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, particularly gender-based and sexual violence, while denying public support to any business enterprise involved with gross human rights abuses and which refuses to cooperate in addressing the situation. The Voluntary Principles on Security and Human Rights, the International Code of Conduct for Private Security and Kimberley Processes are initiatives in this direction.
- **Ensuring policy coherence:** The GPs 8-10 call upon states to ensure policy coherence across all policy areas at national, bilateral, regional and international level with respect to human rights commitments. In other words, the GPs call upon states to map human rights impacts of businesses via state organs and practices that influence business practices, agreements concluded with other states or businesses (GP9); and membership of multilateral institutions (GP10). In this context, NAPs and national baseline assessments can be an important tool for promoting both “vertical” coherence, that is, consistency between

international human rights obligations and domestic law, policy and practices, and “horizontal” coherence, in other words, consistency with human rights across functional units of national and sub-national government.

2.2.2 The Corporate Responsibility to Respect Human Rights

The corporate responsibility, to respect human rights under Pillar II of the UNGPs, require businesses to avoid infringing human rights and to address adverse human rights impacts they may be involved in. The GP13 calls upon businesses to prevent or mitigate impacts that they have caused or contributed to, as well as those directly linked to their operations, products or services through their business relationships, both contractual and non-contractual.

With the Guiding Principles, United Nations member states (including India) have affirmed that business enterprises have an independent responsibility to respect human rights, distinct from obligations of states.

Corporate Responsibility to Respect

- Apply to all companies
- Respect - Do no harm and address impacts
- Scope: All rights
- Avoid causing or contributing, and prevent or mitigate impacts by business relationships
- Implications on policies and processes

In specific, under the corporate responsibility to respect human rights, the GPs call upon companies to:

- Formulate human rights policies;
- Undertake human rights due diligence;
- Conduct human rights impact assessment;
- Respond to human rights impacts and provide remediation;

- Ensure supply chains respect human rights;
- Be transparent, accountable and report;

The above-mentioned sections have been elaborated in chapter IV, Implementing the Corporate Responsibility to Respect.

2.2.3 Access to Remedy

The third pillar of the GPs calls upon the states to take appropriate steps to provide access to remedy when abuses occur within its jurisdiction. The GPs state that the remedies should be such that helps investigate, punish and redress business-related human rights abuses when they do occur. The GPs explain that remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

The term grievance mechanism is used to indicate any routinized, state-based or non-state-based, judicial or non-judicial process through which grievances, concerning business-related human rights abuse, can be raised and remedy can be sought.

As per the GPs, “grievance is understood to be a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.”

Access to remedy through judicial mechanisms:

The GPs call upon states to prevent barriers that avoid legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable.

The GPs assert that the ability to address business-related human rights abuses depends

on mechanism’s impartiality, integrity and ability to accord due process.

The GPs state that the victims may seek remedy in the state where the perpetrator company is domiciled. For example, the survivors and families of the victims of the Bhopal Gas Tragedy have filed case against the Union Carbide in USA. However, the GPs do not impose any duty upon states to assume responsibility for regulating the extraterritorial activities of businesses domiciled in their territory by adjudicating such cases; on the other hand, they maintain, that the international law does not prohibit states from doing this, “provided there is a recognized jurisdictional basis.”

State based non-judicial grievance mechanisms:

The GP27 states that, “States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive state-based system for the remedy of business-related human rights abuse”. In other words, the GPs advocate the usage of administrative, legislative and other non-judicial mechanisms to complement and supplement judicial mechanisms. The non-judicial mechanisms may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes – or involve some combination of these – depending on the issues concerned, any public interest involved, and the potential needs of the parties.

Various provisions of law, including constitutional law, criminal law, civil law, administrative law, could be used to provide access to remedy to the victims.

Courts are increasingly hearing claims that companies are responsible for human rights abuses in their business partners, suppliers and subsidiaries, not just in companies’ own operations. Examples: Forced labour in Eritrea – Nevsun mining lawsuit in BC, Canada; KiK sued in German court for supplier factory fire in Pakistan; Vinci sued in France for forced labour at Qatar construction subsidiary.

The GPs highlight the role of National Human Rights Institutions (NHRIs) in this context. The National Human Rights Commission of India has developed a specific approach to responding to suspected bonded labour, using a combination of its powers to trigger inspections by relevant agencies, alternatively to inspect businesses itself and, where needed, issue discharge certificates to free workers and organize their rehabilitation, and take legal action against employers.

State based non-judicial mechanisms can include labour tribunals, NHRIs, National Contact Points (OECD), ombudsperson and complaints.

Non-state based grievance mechanisms

The GPs realize the barriers that victims may face while accessing remedy. These barriers may be legal, procedural, administrative or practical and could delay the justice. GP28 establishes that states are to facilitate access to these, and GP31 sets out eight criteria for ensuring the effectiveness of such mechanisms: legitimacy, accessibility, predictability, fairness and equitability between parties, transparency, rights compatibility, continuous learning and the requirement that such mechanisms be based upon engagement and dialogue as a means for addressing the grievance and delivering effective remedy. The GPs promote two types of non-state-based grievance mechanisms

- a) Those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group.
- b) Regional and international human rights bodies.

They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Multi-Stakeholder Initiatives (MSIs) have been successful in establishing standards and codes

of conduct for business to comply with social and environmental dimensions. Some of the key MSIs in business and human rights are Ethical Trading Initiative (ETI), Extractive Industry Transparency Initiative (EITI), Voluntary Principles on Security and Human Rights (VPs), Electronic Industry Citizenship Coalition (EICC), Global Network Initiative (GNI) and Roundtable on Sustainable Palm Oil (RSPO).

It is to be noted that the first and the second pillar of the Guiding Principles are only meaningful if there is an effective access to remedy. The three pillars of the GPs, just like Human Rights are indivisible, interdependent and interrelated. No one pillar has hierarchy over the other, and absence or inefficacy of one pillar will affect the other pillars of the GPs. For example, even where institutions operate optimally, disputes over adverse human rights impacts of company activities are likely to occur. If so, victims must seek access to remedy. For redressal, states must take appropriate steps to investigate, punish and redress; and more importantly lay down policies and regulations. The mechanisms at the companies, on the other hand, will provide early warning and resolve grievances before they escalate.

United Nations Guiding Principles on Business & Human Rights

State duty to protect

- Policies
- Regulation
- Adjudication

Corporate responsibility to respect

- Act with Due Diligence to avoid infringement
- Address adverse impacts on Human Rights

Access to remedy

- Effective access for victims
- Judicial and non-judicial

The Guiding Principles reflect the differentiated, but complementary roles of states and companies with regard to human rights. They clarify that ensuring corporate respect for human rights requires not only that companies themselves take action, but also that states provide an appropriate policy and regulatory environment to foster business respect for human rights and accountability for adverse impact.

India, as a UN member state, and having endorsed Guiding Principles at the UN Human Rights

Council has an obligation to take appropriate steps to implement the UN Guiding Principles within its territory. While the country already boasts of robust policies, acts and regulations on various areas concerning corporate impacts on human rights including environmental and social impacts, the civil society of the country is advocating for a National Action Plan. The spirit of the Guiding Principles is reflected in the NVGs and reporting frameworks.

THE BUSINESS & HUMAN RIGHTS DISCOURSE IN INDIA

The Indian ethos has promoted respect for human rights as a part of its social philosophy since centuries. A founding signatory of the UDHR, India has ratified a number of international human rights instruments, which, among other requirements, necessitate the government to guarantee that businesses, operating within its territory or jurisdiction, do not violate human rights. A detailed list of international human rights instruments signed and ratified by India, is provided in Annexure I.

The human rights and business is not a new discourse in India. The country has seen one of the worst industrial disasters in the Bhopal Gas Tragedy, as well as the landmark Supreme Court ruling on the Vedanta case, resulting in a great victory for indigenous and land rights.

3.1 CONSTITUTION OF INDIA

The Constitution of India guarantees most of the human rights contained in the UDHR. The first set of rights enunciated in Articles 2 to 21 of the UDHR, are incorporated under the part III of the Indian Constitution that contains Fundamental Rights (Articles 12 to 35). The second set of rights, enunciated in Articles 22 to 28 of the UDHR, is incorporated in the Part IV of the Indian Constitution under Directive Principles of State Policy (Article 36 to 51). Furthermore, the Supreme Court has read several other rights – such as the environment, shelter, clean drinking water, privacy, legal aid and speedy trial – within the meaning of ‘life’ under Article 21 of the Constitution. Constitutional Law has both a direct and an indirect bearing on the Business and Human Rights discourse. Apart from the potential

Part III of Indian Constitution includes:

- Right to social security
- Right to work
- Right to free choice of employment
- Right to just and favourable conditions of work and protection against unemployment
- Right to equal pay for equal work
- Right to existence worthy of human dignity
- Right to rest and leisure
- Right to freely participate in the cultural life of the community, promotion of welfare of people
- Right to equal justice and free legal aid

Part IV of Indian Constitution includes:

- The right to equality before the law
- Right to freedom of expression,
- Freedom to form associations or join unions
- Freedom to assemble peacefully
- Right to life and personal liberty, protection against double jeopardy
- Right to education, freedom of religion
- Prohibition of discrimination
- Prohibition of trafficking of human beings and forced labour
- Prohibition of employment of children below the age of 14 in any factory, mine or hazardous employment
- Protection against unlawful arrest and detention.

The Government of India in April 2017 ratified the International Labour Organisation (ILO) Convention 182 on the worst forms of child labour and Convention 138 on Minimum Age of employment in 2017. The Worst Forms of Child Labour prohibited under Convention 182 are:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The ILO convention 138 prescribes the minimum age of employment for children, which is set as fourteen years or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

This remarkable moment also provides with an opportunity for the country to make renewed commitment for ending forced labour, modern slavery and human trafficking.

'horizontal application'⁸ of the provisions related to fundamental rights and directive principle of state policy, provisions, dealing with constitutional remedies, also have relevance for the conduct of businesses⁹.

3.2 OTHER LAWS & REGULATIONS IN INDIA

There are several other legal regimes in India that are relevant in the context of human rights and business. These lay special emphasis on aspects such as labour, environment, land acquisition, forest rights, access to information, stakeholder's participation, responsibility towards communities and consumer rights. Annexure II provides an indicative list of laws and acts that facilitate corporate responsibility to respect.

India has a total of 44 central and over 100 state labour laws, focussing on aspects such as working conditions, wages and remuneration, retrenchment and lay-offs, employment, health and welfare and post-retirement benefits.

Section 166(2) of the Companies Act imposes an explicit duty on company directors to 'act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment'. This provision, thus, tries to take the Indian corporate law beyond the 'shareholder primary' model. In addition to this general provision, applicable to all companies, the Companies Act 2013, also lay down special Corporate Social Responsibility (CSR) provisions for large companies of certain sizes¹⁰.

⁸ Horizontal' application means that human rights under a given constitution could also be invoked against non-state actors such as companies.

⁹Deva, S. (2015). Background paper on India's national framework on business & human rights pp.20-31. Ethical Trading Initiative.

¹⁰Companies Act 2013 - Ministry of Corporate Affairs, <https://www.mca.gov.in/ministry/pdf/companiesAct2013.pdf>

3.3 NATIONAL VOLUNTARY GUIDELINES ON SOCIAL, ENVIRONMENTAL AND ECONOMIC RESPONSIBILITIES OF BUSINESS

The Ministry of Corporate Affairs released India's National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs) in July 2011, after an exhaustive

Responsible Business Conduct

“Commitment of businesses to operate in an economically, socially and environmentally sustainable manner while balancing the demands of shareholders and other interest groups”.

process of consultations with business and civil society organisations, as well as with other ministries. The NVGs provide for the country's national framework on business responsibility, and guidance on the implementation of and reporting on a set of nine principles that offer businesses an Indian understanding and approach to inculcating responsible business conduct.

Principle 5 calls upon the businesses to respect and promote human rights, in some ways taking a step further than the UNGPs, in recognising of the recent mandating of Corporate Social Responsibility. The NVGs call upon businesses, not just to respect human rights, but also to support realization of rights through affirmative action.

The NVGs serve as a guidance document for businesses of all size, ownership, sector, and geography to achieve the triple bottom line. The NVGs also provide guidance on implementation of its principles and core elements. It delineates that the NVGs be adopted through:

1. **Leadership:** the commitment and role of leadership
2. **Integration:** the weaving-in of the principles and core elements into the very DNA of the business

9 principles of NVGs

Principle 1: Businesses should conduct and govern themselves with ethics, transparency and accountability.

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.

Principle 3: Businesses should promote the wellbeing of all employees.

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

Principle 5: Businesses should respect and promote human rights.

Principle 6: Businesses should respect, protect, and make efforts to restore the environment.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.

Principle 8: Businesses should support inclusive growth and equitable development.

Principle 9: Businesses should engage with and provide value to their customers in a responsible manner.

3. **Engagement:** continuous engagement with relevant stakeholders,
4. **Reporting:** measuring the impact of business activities on all the nine principles and communicating these to their stakeholders.

In 2012, subsequent to the release of the NVGs, the Securities and Exchange Board of India (SEBI) mandated the Annual Business Responsibility Reporting (ABRR), a reporting framework based on the NVGs. As the title indicates, the NVGs are voluntary, however, reporting on NVGs to SEBI is mandatory.

3.4 INSTITUTIONAL MECHANISMS FOR ACCESS TO REMEDIES

There are a number of remedial institutions

available in India, both state based judicial and non-judicial mechanisms. The following table provides a list of various remedy mechanisms in India:

Table 3.1: Guiding Principles and Access to Remedy Mechanisms in India

Type of Remedial Mechanisms under the GPs	Examples of Mechanisms in India
State-based judicial mechanisms [Principles 25–26]	Supreme Court, High Courts, Civil/Criminal Courts, Labour Courts, Consumer Courts
State-based non-judicial grievance mechanisms [Principles 27 and 31]	NGT, Administrative Tribunals, NHRC, State HRCs, Special Commissions related to Women/Child Rights/Backward Classes, Gram Panchayats, NCPs under the OECD Guidelines
Non-state-based grievance mechanisms [Principles 22, 28–30, and 31]	Arbitration, Mediation, International Finance Corporation’s Compliance Advisor Ombudsman (CAO), World Bank’s Inspection Panel, complaints to the Fair Labour Association (FLA) and Ethical Trading Initiative

Source: Background paper on India’s National Framework on Business and Human Rights, 2015.

IMPLEMENTING THE CORPORATE RESPONSIBILITY TO RESPECT

Traditionally, international human rights law is limited to state actors, wherein the state enacts and enforces regulations that protect the rights of people in its jurisdiction. In most cases, the national laws require respect of human rights. The UNGPs have, however affirmed that business enterprises have an independent responsibility to respect human rights, distinct from the obligations of states. The responsibility to respect extends to the impacts caused by operations, products and services of the businesses, and through their relationships.

Corporate responsibility to respect human rights is enumerated under Principle 11-31 of the UNGPs. Foundation Principles 11-15 illustrate the corporate's responsibility to respect human

rights, while Principle 16-31 are the Operational Principles elaborated which have upon the Foundation Principles.

The responsibility to respect means that a company should not infringe on the rights of others in the course of doing business, as outlined by the universal standards embedded in human rights instruments.

There is no hierarchy in international human rights law, and therefore companies must address all human rights. The responsibility to respect human rights applies in all contexts. It is a uniform standard, reflecting its roots in the universal expectation that enterprises should not harm the dignity of people as they go about their

1**FOUNDATION PRINCIPLE 11-12:**
Policy Commitment**2****FOUNDATION PRINCIPLE 13:**
Human Right Due Dilligence**3****FOUNDATION PRINCIPLE 14:**
Remediation

Figure 4.1: Guidance for companies to respect human rights



Businesses can impact all human rights, both positively and negatively. The UNGPs require businesses to undertake appropriate steps to avoid and address negative impacts of their business operations and their relationships.

business¹¹. This provides predictability for both enterprises and their stakeholders. However, the human rights risks related to an enterprise's activities and business relationships will often vary, depending on the specific contexts in which it operates. Those contexts may pose particular challenges or dilemmas for enterprises in their efforts to meet the responsibility to respect human rights, for example, when local requirements appear to compel a business to act in a manner that is contrary to internationally recognized human rights.

The companies, at a minimum, are expected to respect the rights enumerated in the International Bill of Human Rights and the principles set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, namely:

- Freedom of association and effective recognition of the right to collective bargaining;
- Elimination of all forms of forced or compulsory labour;
- Effective abolition of child labour;
- Elimination of discrimination in respect of employment and occupation.

Facilitating the Corporate Responsibility to Respect

The Guiding Principles provide the baseline expectations for all companies everywhere – meaning, they apply to all the companies, irrespective of size, industry, country of operation or domicile, ownership structure.

4.1 HUMAN RIGHTS POLICY COMMITMENT

The starting point, for ensuring corporate responsibility to respect, is the policy commitment by a company, whereby, it lays its commitments and expectations on human rights.

¹¹Corporate Responsibility to Respect Human Rights, An Interpretive Guide. United Nations Human Rights Office of the High Commissioner, New York & Geneva, 2012.

Step 1: Human Rights Policy Commitment

Prof Ruggie says that “respecting human rights is not a passive responsibility: it requires action on

Policy Commitment – Foundation Principles

Guiding Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Guiding Principle 12: The responsibility of business enterprises 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 principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

the part of businesses”. The first step towards that action is to delineate a clear policy commitment to respect human rights. A business enterprise must develop a human rights policy not just to illustrate its commitment to human rights, but also to provide legitimacy to embedded responsibility to respect through all its functions and units.

The term “policy commitment” is used in the UNGPs to mean a high-level and public statement by an enterprise to set out its commitment to meet its responsibility to respect human rights. It makes this commitment a clear, overarching policy that will determine its actions.

Companies often challenge the need for a stand-alone human rights policy, arguing that various human rights are being referred to in their code of conduct, human resource policy etc. However, a publicly available stand-alone human rights policy:

- endorses a company’s commitments to a rights-based approach as opposed to being philanthropic in nature;
- provides clarity to its stakeholders of what they may expect from the company’s human rights performance;
- assists in setting benchmarks for the external stakeholders and suppliers for their human rights commitments;
- sets minimum standard for conducting business with legitimacy;
- provides internal and external stakeholders with a starting point for engaging in a discussion on human rights with the company.

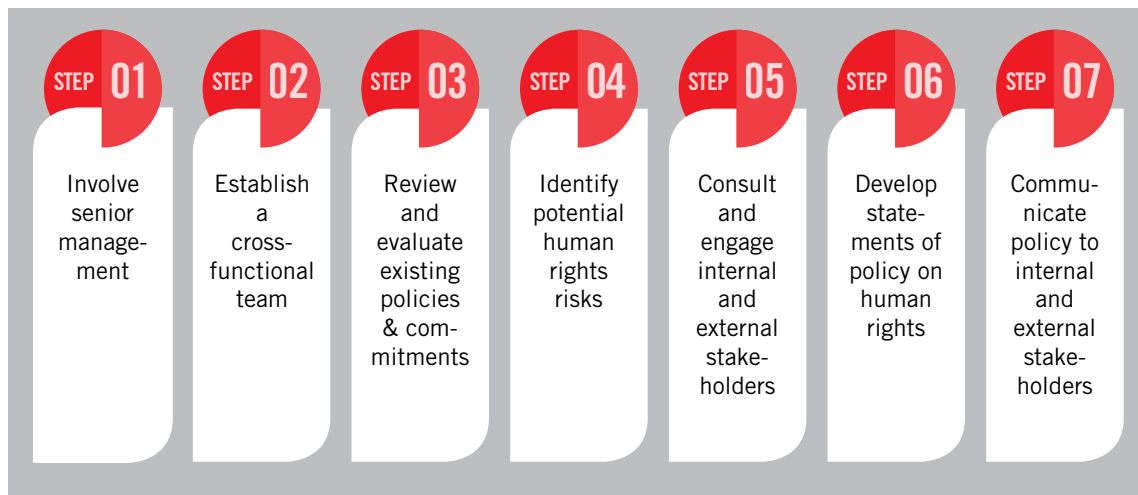
The human rights policy should express both, companies’ commitment to human rights and guidance for implementation, monitoring and review. More importantly, the drafting process should be an all inclusive and consultative, and tailor-made for each business enterprise.

The figure below illustrates the steps a company could follow to develop human rights policy.

The key steps highlighted in the figure 4.2 to develop human rights policy include:

- **Involve Senior Management:** The human rights commitment must come from the leadership and top executives. Top-down approach demonstrates leadership’s commitments to human rights, thereby encouraging staff to comply with the statement of policy. Early buy-in from senior management also ensures provision of both financial and non-financial resources for effective implementation of the human rights policy.
- **Establish a cross-functional team:** The next step is to identify individuals from various business operations to constitute an in-house team to steer the process. The businesses must capture in-house knowledge from across various business units and functions. The business operations would help ensure that the human rights statement is a reflection of the company’s mission and vision, while the human resource and legal/auditing team identify strengths and weakness of

Figure 4.2: Step by step guidance to develop human rights policy



existing policy and guidelines. Investor relations and CSR teams could help bring stakeholders' perspective to the discussions, while communication teams could help communicate human rights statement to both internal and external stakeholders. The cross-functional teams would also reinforce that human rights is not restricted to a particular department or business unit or functions, but transpires through out the business enterprise.

- **Review and evaluate existing policies and commitments:** As mentioned before, business enterprises are likely to refer to human rights in their existing policies, standards and codes of conduct. For example, a health and safety policy will inevitably refer to human rights and what must be done, for example to provide just and favourable conditions, at work. An assessment of existing policies, issues covered, their implementation and efficacy could help companies understand gaps in the existing documents, which can then be used to draft comprehensive statements. It could also be helpful in bringing some of the best practices to the table while developing new policies.
- **Identify potential human rights risks and impacts:** It is as crucial for a company to understand where the greatest risks to people exist across its business as it is to realize where rights-related risks to the business are likely to be found. Certain risks to human rights can be integral to what a company does, where it is situated, how it is structured and the way it makes decisions -

a manufacturing company would have direct impact on product safety (right to health) and its impacts on workforce, whereas a mining company would have impacts, not just in its own operations, but also on the environment and local communities. The focus can only be expressed in the policy if the company has done a preliminary assessment of its main risk areas for human rights.

- **Consult and engage internal and external stakeholders:** Stakeholder engagement is a key step in drafting human rights statement, and the businesses must consult and engage with all its stakeholders. Typically, groups of stakeholders include employees (internal stakeholders); shareholders, investors, customers, business partners, suppliers, and regulators (known as 'external market

Yahoo has formally established a dedicated Business and Human Rights Program (BHRP) in order to lead their efforts to make responsible decisions in the areas of free expression and privacy.

The BHRP has created a virtual, cross functional team in order to draw upon the expertise of Yahoo employees across the company to continue its centralized leadership on global strategy, industry initiatives, business decision-making, and internal and external stakeholder engagement. The virtual team is comprised of senior - level employees in product, law enforcement, security, public affairs, corporate affairs, investor relations and global policy. The virtual team also includes employees in different geographies, including Asia, Europe, Latin America and the Middle East.

stakeholders’); civil society, community members, international organisations, and non-governmental organisations (‘external non-market stakeholders’).¹² Internal stakeholders’ consultations should not be restricted to CSR departments or the like, but must include inputs from other operations. Involvement of cross-functional personnel from human resources, legal, procurement, and marketing will help build understanding, know-how and their impacts on human rights. Consultations with external stakeholders help businesses understand their salient human rights risks and impacts, areas of concerns among stakeholders and could possibly throw insights into the solutions.

- **Develop statements or policy on human rights:**

After preparing its “Approach to Human Rights” document, Cadbury reported that “the inspirational language used throughout the document helped motivate employees and stakeholders to show their support for the new vision.” Cadbury

*Lauren Gula and Ye Jin, “Cadbury and human rights: finding the best approach”, in Embedding Human Rights in Business Practices III**

The steps mentioned above will inform the human rights commitments of the companies, and will inform the drafters about the level at which companies would like to include reference to human rights. Companies could make reference to human rights in their mission and vision documents and values, or may wish to develop an elaborate standalone statement, outlining expectations and responsibilities with respect to human rights. The language of the human rights

statement should be clear, concise, practical and jargon-free. While some companies have aspirational language (e.g., Unilever), others have a more operational one (e.g., Coca-Cola).

More than 340 companies have published a human rights policy, and a growing number of companies worldwide are

comprehensively reporting on their human rights performance. Indian companies, too, are developing stand-alone human rights policies, examples being the ones developed by ITC, Tata Motors, and more recently the Aditya Birla Group.

- **Communicating policy to internal and external stakeholders:** The companies, at this stage, should decide whether they would like to make the statement on human rights policy public or restrict to internal stakeholders with limited outreach to relevant stakeholders. Whatever the case may be, it is crucial that the company communicates the policy and its elements to internal and external stakeholders with guidance on functional areas, instructing managers and ensure that it is integrated in existing and relevant policies.

4.2 HUMAN RIGHTS DUE DILLIGENCE

Human rights due diligence helps companies understand their specific human rights risks at any specific point of time and in any specific operating context, as well as the actions they need to take to prevent and mitigate them. GP17 defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components.

The due diligence is aimed at identifying human rights risk to the companies that could occur directly or indirectly through their activities or as a result of their business relationships. The process should be on-going, and engage all stakeholders, as it is aimed at understanding the perspective of potentially affected individuals and groups. It is to be noted that much of human rights due diligence is focussed on human rights risks—or the potential impact on human rights in which an enterprise may be involved. Actual human rights impact is a

* (United Nations Global Compact, 2009), p.44 See: https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/EHRBIII.pdf

¹²B. Dubach and M. T. Machado – The importance of stakeholder engagement in the corporate responsibility to respect human rights. International review of the Red Cross, Volume 94 Number 887 Autumn 2012

Guiding Principle 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. Human rights due diligence:

1. (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
2. (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
3. (c) Should be on-going, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

matter primarily for remediation, although it is also an important indicator of potential impact.

Step 2: Human Rights Due Diligence:

Human rights due diligence is generally understood to include four key steps:

2.1. Conduct human rights impact assessments to identify actual or potential adverse human rights impacts that may occur through the company's activities or business relationships;

2.2. Develop internal policies and practices to address the identified risks, with approval at the executive level, and ensure that the policies are understood and implemented company-wide;

2.3. Continuously track company's progress on human rights issues, drawing on feedback from internal and external sources, including affected stakeholders;

2.4. Communicate company's efforts externally in a frequent and comprehensive manner, noting that independent verification of human rights reporting can strengthen its content and credibility.

The following sections highlights the critical steps that businesses must undertake to conduct human rights due diligence.

STEP 2.1 Human Rights Impact Assessment: Assessing human right impacts is the key step in

Figure 4.3: Step by step guidance to conduct human rights due diligence



human rights due diligence. The process in itself shouldn't stop at identification of companies' human rights impacts – whether actual, adverse or potential on individuals and communities, but should result in setting priorities for action to mitigate the risks. Human Rights Impact Assessments (HRIA) are intended to pro-actively help a company identify potential consequences of its business activities on human rights. Many companies are already assessing and addressing relevant human rights issues in a variety of ways, such as by enacting non-discrimination policies, enforcing supplier codes of conduct and factory audits, conducting site-level social impact assessments, and engaging with communities. In the context of the Guiding

“Our stakeholders include a diverse range of groups, organisations and individuals, whom we see as our partners on our journey to drive Africa’s growth. While stakeholders are significantly affected by our operations, they also have the ability to affect our business, and the achievement of our vision and purpose. We strive to understand what matters to them, to build trust, and to create long-lasting value for all our stakeholders. For these reasons, stakeholder engagement is important and takes place on a day-to-day basis across the bank with different stakeholders and about different matters”¹³

—Standard Chartered

Principles, human rights due diligence comprises of an on-going management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights. The ultimate aim of the Human Rights Impact Assessments (HRIA) is to minimize negative effects and increase positive impacts of companies' operations.

HRIA could be conducted before, during or after the business operations are set up, but it is important that it remains a continuous process. These impacts could be direct or indirect; immediate, on-going or may occur in the future; and may not necessarily be for all businesses and their operations or units.

Actual Human Rights Impact is an adverse impact that has already occurred or is occurring.

An Adverse Human Rights Impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

A Potential Human Rights Impact is an adverse impact that may occur but has not yet done so.

Guiding Principle 18 states that the process of assessing adverse human rights impact should “draw on internal and/or independent external human rights expertise”. Similar to

Guiding Principle 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:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

development of human rights policy, HRIA has to be a consultative and inclusive process as various business functions could bring a set of expertise and value to the process. The CSR or sustainability department could provide human rights expertise and spearhead impact assessment, while risk management teams could provide inputs on

¹³Standard Bank's Report to Society, 2015. http://sustainability.standardbank.com/pdf/Our_stakeholders.pdf

human rights risk mapping and integrate human rights into main risk management processes. Departments, particularly exposed to human rights such as human resources management and supply chain management, could provide support in outlining actual and adverse human rights impacts.

It is important to ensure that companies consult all stakeholders, including external, particularly when the community is composed of different groups with different interests. The stakeholder engagement needs to be participatory and meaningful; to be able to take on board the human rights risks, and effectively mitigate them. More importantly, impact assessments should be done in a transparent manner to increase the level of accountability and improve the relationship with the community.

HRIA simplifies the complexity of managing human rights by providing companies with a consistent, efficient, and systematic way to identify, prioritize, and address human rights risks and opportunities at a corporate, country, site, or product level.

The figure below outlines some critical steps companies could follow to assess human rights impacts.

2.1.1 Distinguish various processes of assessing impacts: Companies often conduct impact assessments, particularly for large-scale projects, when they need clearances from government or other financial institutions. Companies also choose themselves to carry out such assessments

for the reasons of risk management to the company. Depending on the company's activities, relationships, and the context in which it operates, one instrument may be more suitable than another. It should be noted that, relatively, very few explicit human rights impact assessments are known to exist, though many other types of impact assessment contain implicit and explicit human rights elements. The table on the next page provides an overview of which processes serve which purpose, as well as some examples of the tools and guidance available.'

2.1.2 Conduct a human rights risk mapping:

Human rights risks are the risks posed to the rights of people, and may constitute or result in a risk to the company. For companies, gauging human rights risks is the starting point for understanding how to translate its human rights policy statement—and therefore its responsibility to respect human rights—into practice. It is the prerequisite for knowing how to prevent or mitigate potential adverse impact and remedy any actual impact that it causes or contributes to. When assessing actual and potential human rights impact, a company should look both at its own activities and at its business relationships.

Human rights risks are any risks that companies' operations pose to human rights, and any risk may lead to one or more adverse human rights impacts. Severity of the risk is the predominant factor in human rights risk assessment, as opposed to traditional risk assessment where the consequences of an event (its severity) and its probability factor in equally. In human rights risk mapping, probability is relevant in helping prioritize the order in which potential impacts are addressed in some circumstances.

Figure 4.4: Steps to follow for assessing human rights impacts



Table 4.1: Based on Lenzen and d’Engelbronner (2009)

Instrument/ Process	Purpose
Human Rights Impact Assessment	Measuring the effect of business activities on the human rights of the corporate stakeholders.
Human Rights Risk Assessment	Measuring the potential operational or reputation risks of becoming involved in human rights violations.
Human Rights Compliance Assessment	The policies of the company measured against the legal framework of human rights
Social Impact Assessment (SIA)	Measuring effects of business activities on societies.
Environmental Impact Assessment (EIA)	Measuring the effects of business activities on the environment.

Human rights risk is separate from any risks that involvement in human rights impact may pose to the enterprise, although the two are increasingly related. – Unable to understand the meaning.

Though human rights risk mapping could be integrated with other risk-mapping processes, it is advisable to conduct a standalone process for human rights. Risks to human rights are

A mining company situated close to an indigenous community, would have multiplicity of impacts on the communities and on the environment (which is crucial particularly where communities are dependent upon environment for livelihood and food). A clothing and textile company, on the other hand, could have labour rights abuses and violations.

different from other risks to the company, and require expertise in human rights. It may be worthwhile to engage and involve the existing risk management function to draw synergies and make the process more robust. While risk mapping should not be left exclusively to be dealt with by the risk management teams as they may lack human review expertise, the process could benefit from learning and experiences of the risk management team.

The process of identifying the salient human rights issues not only helps a company

understand where the greatest risks to people lie across its business, it also helps a company identify where rights-related risks to the business are likely to be found¹⁵. The exercise helps companies to prioritize the human rights risks, and accordingly devise the mitigation plans for the same.

Risk mapping could be done through desk research, complemented with consultations with various stakeholders. External non-market stakeholders, such as local NGOs could play a vital role in risk mapping as they are close to the communities and are expected to have a better understanding of human rights risks associated with the specific sector/industry in a given geographic location.

2.1.3 Prioritize human rights risks: Once salient human rights risks are identified as part of a company’s due diligence, the next step is to

The most salient human rights for a business enterprise are those that stand out as being most at risk. These typically vary according to sector and operating context.

consider how to prevent or reduce them. No one right should be compromised, however, often company resources are limited, therefore, prioritization could help to put certain mitigating activities higher on the agenda than others.

¹⁵Corporate Responsibility to Respect Human Rights, An Interpretive Guide. United Nations Human Rights Office of the High Commissioner

With limited resources available, it is important to prioritize risks that need immediate attention, and the ones that need continuous on-going long-term process. The UN Guiding Principles make it clear that companies should prioritise human rights risks based on their severity, that is, how grave, widespread and hard to remedy they are. The severity of the impact, understood as its “scale, scope and irremediable character”, is paramount (Guiding Principle 14). However, weighing human rights risk is not as easy as risks to the company. Equally, human rights risks cannot be the subject of a simple cost-benefit analysis, whereby the costs to the enterprise of preventing or mitigating an adverse impact on human rights are weighed against the costs to the enterprise of being held to account for that harm.

There are a number of tools available for HRIA. The most commonly tools referred to, include the ones developed by the Danish Institute for Human Rights (“Quick Check” and a Human Rights Compliance Assessment (HRCA) tool), Rights & Democracy in partnership with Oxfam (Getting it right), International Finance Corporation (IFC), in collaboration with International Business Leaders Forum (Guide to Human Rights Impact Assessment ,and Management Road-Testing). In addition to these, many consulting companies conduct Human Rights Impact Assessment, using their own tools and methodologies, or a combination of many.

STEP 2.2 Integration: Once a policy commitment has been made and human rights risks prioritized, the next step is to start putting the processes in place to effectively address and mitigate the risks. However, those assessing the human rights impact in a company may not necessarily control the decisions and actions that can prevent, mitigate or remedy it. The departments that control those decisions and actions, therefore, have to be involved in identifying and implementing solutions. “Integration”, as used in Guiding Principle 19, is the micro process of taking the findings from the human rights impact assessment to identifying who in the company needs to be involved in addressing particular human rights risks and securing effective action respectively. In other words, integration means

implementing human rights into management systems, including training, performance appraisal, bonus systems, the tone at the top, control and oversight systems, etc.

Integration may be required either within the company’s functions or with its business partners and suppliers, or both. If the company’s own

A business enterprise’s value chain encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either

(a) supply products or services that contribute to the enterprise’s own products or services, or (b) receive products or services from the enterprise.

operations contribute to human rights impact, integrating findings across departments, that generate the activity, is essential to be able to address that risk. Companies can also use their influence to reduce risks to human rights occurring through their value chains and other business relationships. These risks could be mitigated through their commercial or business influence, or influence through action with business peers or through their engagement in multi-stakeholder initiatives.

Integration often requires engagement and support from various functions of the company. For instance, the senior management team needs to be involved in setting targets and fostering a human rights culture, while human resource teams would help include human rights into existing policies and processes such as recruitment, training, performance appraisal, etc. The CSR/sustainability teams on the other hand could provide expertise in designing training materials and conducting sessions for the employees and suppliers.

2.2.1 Engage leadership, assign responsibility:

Much like the involvement in developing statement of human rights policy requires leadership from the top, it is essential for the leadership to be involved

Guiding Principle 19

In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

a. Effective integration requires that:

- (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
- (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

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.

in integration. Repetitive messages, endorsing utmost value for human rights from the board, senior management team and others, could help create a human rights culture within the company. Endorsement by seniors would push juniors to imbibe human rights culture in their operations and functions too. While the responsibility has

to be collective, it is crucial to assign a person or department to lead the process and bring everyone else on board. This communication could help in awareness generation among the staff, as well as build their capacity to understand human rights dimension in business operations. The message highlights the company's actions on the implementation of the UN Guiding Principles, as well serves as a reminder of its commitment to respect human rights.

Coca-Cola shares a special message with all its employees on Human Rights Day every year.

The person or the department responsible could also help strengthen the human rights culture within the company by communicating regularly with other employees.

2.2.2 Include human rights through human resource processes:

Respect for human rights can be greatly enhanced by ensuring that people, involved in various processes and functions, exhibit company values, including respect for human rights. The process can start as early as at the time of recruitment. The applicants need not be evaluated on their human rights knowledge and understanding, but could be posed with situations to assess how they intend to balance Key Result Areas and respect for company values. Similarly, sessions on human rights could be included during the orientation of employees. Trainings could also be organized for employees in various functions, for example, training on labour rights or supply chain or migrant labour may be organized for procurement teams. Companies may also think of incentivizing teams/individuals spear heading human rights culture within the company.

Figure 4.5: Guidance to integrate findings from the Human Rights Impact Assessment



2.2.3 Leverage to mitigate human rights impacts:

As the commentary to Guiding Principle 19 explains, “where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact”. Where it contributes or may contribute to such an impact, it should similarly take action to cease or prevent the contribution, and also leverage to mitigate any remaining impact (by other parties involved) to the greatest extent possible. In this context, “leverage” means the ability to affect change in the wrongful practices of the party that is causing or contributing to the impact. Companies could use terms of tenders, contracts or joint venture agreements to set human rights standards, and audit their supply chains to ensure they are implemented. Companies can also help in improving standards and business practices of their suppliers through training, integrating international or industry standards into negotiations, and delivering a consistent message to partners about their approach to human rights across all levels and parts of the company.

STEP 2.3 Tracking performance: As mentioned above, human rights due diligence has to be an on-going process, with scope for revisions and omissions, depending upon severity and improvements. The due diligence could only be effective if actions taken by companies to mitigate the potential and actual adverse human rights are monitored and evaluated regularly. Tracking also helps companies assess and retain their own commitment to respect human rights. While tracking helps companies to communicate to its stakeholders (internal and external) about its human rights performance and expectations from business relationships, it also helps immensely in drawing lessons from the present for the next business cycle or project. For many companies, tracking performances may include monitoring and auditing suppliers, customers and other business partners. It is central to any improvement and change process.

The UN Guiding Principles make it clear that companies should report on how they address severe human rights risks, that is, their salient human rights issues. The Guiding Principles enable companies to publicly explain, how they

meet their commitment to respect human rights, to a wide range of stakeholders in a coherent narrative.

There is an additional guidance available on human rights reporting. Human rights feature significantly in a number of reporting frameworks including Global Reporting Initiative (GRI), Communication of Progress (CoP), Annual Business Responsibility Report, etc.

- **Develop indicators to measure performance:**

Indicators would largely depend upon the specific human rights risks, or combination of more than one human rights risk, identified during the rights risk mapping exercise. In some cases, such as labour rights, audits and indicators are relatively well established, while in others such as environmental impacts – developing indicators could be complicated. Also, the indicators could be either quantitative or qualitative, though, considering human rights is all about dignity of people – measuring them quantitatively could be challenging.

When developing company specific human rights performance indicators, there are three types of information that companies can develop to track and report on their human rights performance: processes/ inputs, incidents, and outcomes/ impacts.

For large enterprises or those with significant human rights risks, it will be important to include

Aditya Birla Group, for example, conducts orientation workshops for its new recruits and employees on human rights.

In 2013, in Peru, six US textile firms urged the Peruvian government to repeal a law that condoned labour rights violations, making it difficult for them to implement their own sourcing codes of conduct.

In 2014, major apparel companies sourcing from Cambodia, condemned the government for its violent crackdown on striking garment workers that resulted in deaths and injuries. This helped bring an end to the violence.

In January 2017, H&M, Inditex, C&A, Next and Tchibo - all of who source clothes from Bangladeshi factories pulled out of Bangladesh garment summit over worker rights concerns.

indicators that track how they are addressing different impacts they may have on women, men, children and on individuals from any particularly vulnerable groups.

Companies could utilize publicly available key performance indicators such as illustrated in the GRI reporting and UNGP Reporting Framework.

- **Track performance of suppliers and other business relationships:** Globalization and shifting patterns of trade have resulted in modern, vast, complex, inherently murky, multi-tiered networks that consist of continuously evolving relationships, involving

Guiding Principle 20

In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

many thousand of suppliers around the world. One of the key concerns companies face is the performance of their relationships, in particular to that of suppliers. To ensure that business relationships prevent human rights

abuse in the production process, companies could set up supplier monitoring programs. These programs usually contain a supplier code of conduct, and follow-up is done by self-assessment and/or auditing by the buyer company or its chosen intermediary. If an abuse is found, the

Most of the companies have supplier code of conduct, e.g., Tech Mahindra Sustainable Supply Chain Management Supplier Code of Conduct¹⁶, Coca-Cola's supplier Code of Business Conduct¹⁷, etc.

supplier is required to develop a time-bound improvement plan. The speed, with which changes have to be made, may depend on the seriousness of the issue, and the specific requirements of the buyer company. The supply chains are not restricted to the manufacturing sector only, but extend to other sectors including agriculture supply chains.

- **Verify performance using various instruments:** While companies could obtain data from various sources, it is essential to verify the accuracy of information through other sources and techniques. In order to obtain assurance from lower-level business units and operations, some companies use a process that involves the signing of a so-called non-financial "Letter of Representation" (LOR). Usually, a business unit or the country director signs a LOR to provide assurance that business is done in line with company values and principles. Human rights performance could also be verified by multi-stakeholder initiatives such as Fair Wear Foundation, Fair Labour Association, Electronics Industry Code of Conduct, ETI base code of conduct.

STEP 2.4 Reporting: When defining 'communicating', the GPs assert that due diligence encompasses a much wider array of ways to convey information to stakeholders than formal reporting alone. Companies may decide to report publicly or keep it to internal stakeholders. Transparency is an important element of human rights due diligence, however, this can be accomplished through ways such as publications, stakeholder dialogues, and other forms of communications.

The focus of Guiding Principle 21 is on being able to communicate how an enterprise addresses its adverse human rights impact. This means having the information available so that it is in a position to communicate. The communication could vary as some communications may focus on the enterprise's general approaches to addressing human rights risks, while others may be specific

¹⁶<http://www.techmahindra.com/en-US/wwa/Company/Documents/SSCM-Supplier-Code-Of-Conduct.pdf>

¹⁷<http://www.coca-colacompany.com/our-company/suppliers/supplier-code-of-business-conduct>

to an individual impact and how it is or will be addressed.

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The communication could also vary, depending upon the target audiences. For instance, if the purpose is to communicate to potentially affected stakeholders - then the communication could be limited to that group and should take account of literacy, language and cultural communication barriers. The companies may want to engage NGOs as intermediaries to communicate with the marginalised communities, to ensure

that the severity of the company's human rights risk is appropriately disclosed.

Newsletters, team-meetings, and events (seminars/conferences/workshops) may be best to reach out to the employees. Thematic committees (such as on sexual harassment) and trade unions (where workers are unionized) could also be utilized to communicate with the affected stakeholders, particularly for dialogue and meaningful communication. Similarly, if the purpose is to reach out to shareholders and other interested parties, then documents and presentations at an annual general meeting, web updates, messages to electronic mailing lists might be useful.

There are various reporting frameworks available

The UN Guiding Principles Reporting Framework provides a comprehensive framework for human rights reporting, and a growing number of companies are using it to report on human rights. The Reporting Framework consists of three parts -

Part A: Governance of Respect for Human Rights,

Part B: Defining a Focus of Reporting and

Part C: Management of Salient Human Rights Issues

and the companies are increasingly using these for environmental, social and governance disclosure. Global Reporting Initiative, for example, provides the world's most widely used (10,116 organizations, 37,157 reports) standards on sustainability reporting and disclosure, enabling businesses, governments, civil society and citizens to make better decisions based on information that matters. 92% of the world's largest 250 corporations report on their sustainability performance using GRI Framework. Similarly, UN Global Compact's Communication on Progress framework sets out key information to be submitted by the UN Global Compact members annually. The minimum requirements for each COP are:

- A statement by the chief executive expressing continued support for the UN Global Compact and renewing the participant's ongoing commitment to the initiative.
- A description of practical actions the company has taken or plans to take to implement the Ten Principles in each of the four areas (human rights, labour, environment, anti-corruption).
- A measurement of outcomes

Unilever is the first adopter of the UNGP Reporting Framework and is joined by other early adopter companies including ABN AMRO, Ericsson, H&M, Nestlé and Newmont. As on 31 December 2016, 66 companies have already reported on their human rights performance using the UNGP Reporting Framework.

COPs are made publicly available on the Global Compact website at the moment. They are submitted by the participant, enabling companies to communicate their efforts to support and uphold the UN Global Compact principles.

4.3 REMEDIATION AND GRIEVANCE MECHANISMS

The Guiding Principles use the term ‘remediation’ to refer to the process or act of providing remedy. The affected communities and individuals must have access to remedy, when affected negatively by company’s doing. Different grievance mechanisms could be used for employees and external stakeholders, though it is not always necessary to separate the two. Companies inevitably have mechanisms, including whistleblower policies, complaint processes, etc., for providing remedy to internal stakeholders. UNGPs, however, state that all stakeholders that are affected by a company’s activities, should have access to grievance mechanisms.

Grievance mechanisms can provide support provision of remedy when a company contributes to negative human rights impacts, as well as help identify patterns and trends of negative impacts.

In India, the top 500 listed companies are required to submit Annual Business Responsibility reports, covering their activities related to environment, stakeholder relationships, governance and other areas. These reports are made publicly available on the website of Stock Exchange Bureau of India.

According to Ruggie, grievance mechanisms are a critical and crucial part of the corporate responsibility to respect in two ways: “First, they serve as early warning systems, providing companies with on-going information about their current or potential human rights impacts from those impacted. By analysing trends and patterns in complaints, companies can identify systemic problems and adapt their practices accordingly. Second, these

mechanisms make it possible for grievances to be addressed and remediated directly, thereby preventing harm from being compounded and grievances from escalating.”

- **Map existing grievance mechanism:** Most companies have existing grievance mechanisms, both formal and informal, and for both internal and external stakeholders. The company should review the existing grievance mechanisms in view of the human rights risks outlined during the due-diligence processes. Mapping of the available remedy mechanisms, against the negative human rights impacts, would enable the company to assess gaps in the available system, as well as facilitate in taking full advantage of the existing mechanisms.

- **Use Effective Criteria:** The GPs enumerates a set of criteria for non-judicial grievance mechanisms. The criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice.

The first seven criteria apply to any state-based or non-state -based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

- **Map ways to extend grievance mechanisms to external stakeholders:** It is essential to map existing mechanisms available for ensuring remedy to external stakeholders. The company must devise in absence of such mechanisms. For example, it

Guiding Principle 22

Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Guiding Principle 29

To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

The companies can follow steps outlined below to facilitate access to remedy.

Figure 4.6: Step by step guidance to provide remediation



could establish a specific grievance mechanism for a high-level impact to address issues faced by affected communities. Many companies have entered into industry-wide (sectoral) agreements with provisions for the joint investigation and resolution of complaints and disputes related to the agreement, and for regular dialogue. The Accord on Fire & Building Safety in Bangladesh,

Existing grievance mechanisms in companies

- Whistle-blowing
- Complaints with human resource department
- Thematic committees (non-discrimination, sexual harassment etc.)
- Trade Unions
- Consumer complaints mechanisms
- Code of conduct
- Audit processes

and the Alliance for Bangladesh Workers Safety are such examples

The Road Ahead

Indian businesses have been in one way or another respecting human rights. At times, this

has come from the value statements and initiatives to respect human rights among stakeholders (and beyond), at others through regulatory mechanisms. The mandate for Corporate Social Responsibility (CSR) was formally introduced to the dashboard of the Boards of Indian Companies with the Companies Act, 2013. Indian companies have been undertaking various activities and initiatives to respect human rights, knowingly or unknowingly.

Respecting human rights – Protecting and Enhancing Company Value:

Indian businesses have a long-standing commitment to social welfare, while supporting and promoting rights of the people. The companies, in their value statements, have endorsed values such as “integrity,” “honesty,” “decency,” “respect for people,” which are strikingly similar to the values embedded in the human rights framework, including “dignity,” “equality” and “respect.”

A number of Indian companies are now members of multi-stakeholder initiatives with explicit reference to human rights standards. Thus, even companies that have no explicit mention of

Companies involved with MSIs such as Fair Labour Association and the Round-table on Sustainable Palm Oil, and the internal procedures of the Voluntary Principles on Security and Human Rights provides for the third-party complaints mechanisms.

Table 4.2: Principles of access to remedy

Legitimate	Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
Accessible	Being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access
Predictable	Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation
Equitable	Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms
Transparent	Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake
Rights-compatible	Ensuring that outcomes and remedies accord with internationally recognized human rights
A source of continuous learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms
Dialogue & Engagement	consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

human rights in their policies, recognize indirectly, that acting with respect for human rights, is the right thing to do. Also, Indian companies are increasingly adopting company-wide and industry-wide standards.

Protecting the bottom line:

Indian companies have been monitoring and reporting on their risks related to Environmental, Social, and Governance (ESG) performance. The SEBI mandated reporting, on the NVGs, is a crucial step in this regard.

Few Indian businesses are now reporting on GRI indicators, while others such as Infosys, Mahindra and Jindal steel are conducting Human Rights Impact Assessments.

Raising the bottom line:

CSR and Sustainability can help companies create value. Environmentally responsible business opportunities have demonstrated how this can be done, some examples are energy-saving light bulbs, hybrid cars and carbon off set markets. Socially responsible business has not quite entered the mainstream, but innovative ideas have been applied successfully in the country. For example, skill development and training for factory workers, empowerment of women by selling products in small quantities through informal networks, developing investment opportunities for individuals without access to capital markets through microfinance, and supporting rural farmers in obtaining the highest possible prices for their goods through cell phone communication. The CSR spending has been on increase since the provision was launched.

ANNEXURE

ANNEXURE I

International Human Rights Instruments Signed/Ratified by India

Recently the Government of India in April 2017 has ratified the International Labour Organisation (ILO) Convention 182 on the worst forms of child labour and Convention 138 on Minimum Age of Employment.

INSTRUMENT TITLE	SIGNED ON	RATIFIED ON
International Covenant on Civil and Political Rights 1966		10.04.1979 (accession)
International Convention on Economic, Social and Cultural Rights 1966		10.04.1979 (accession)
Geneva Conventions	16.12.1949	09.11.1950
Convention on the Prevention and Punishment of the Crime of Genocide 1948		27.08.1959
International Convention on the Elimination of All Forms of Racial Discrimination 1965	02.03.1967	03.12.1968
Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)	30.07.1980	09.07.1993
Convention on the Rights of the Child 1989		11.12.1992 (accession)
Convention on the Rights of Persons with Disabilities 2006 (CRPD)	30.03.2007	01.10.2007
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000	15.11.2004	30.11.2005
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000	15.11.2004	16.08.2005
Convention for the Protection of All Persons from Enforced Disappearance 2006	06.02.2007	
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishments 1984	14.10.1997	
Forced Labour Convention 1930		30.11.1954
Equal Remuneration Convention 1951		25.09.1958
Abolition of Forced Labour Convention 1957		18.05.2000
Discrimination (Employment and Occupation) Convention 1958		03.06.1960

Source: Deva, S. (2015). [Background paper on India's national framework on business & human rights](#). Ethical Trading Initiative.

ANNEXURE II

Indicative list of laws in India and acts that facilitate corporate responsibility to respect

→ Principles (briefs)	Labour	Stakeholder participation in management	Human rights	Responsibilities towards communities	Consumer Rights
↓ List of Laws (Indicative)					
Industrial Disputes Act, 1947	✓		✓		
Factories Act, 1948	✓		✓		
Companies Act, 1956		✓			
Trade Union Act, 1956	✓		✓		
Equal Remuneration Act, 1976	✓		✓		
Bureau of Indian Standards Act, 1986					✓
Consumer Protection Act, 1986	✓				✓
Environment (Protection) Act, 1986		✓			
Prevention of Corruption Act, 1988		✓			
Public Liability Insurance Act, 1991	✓			✓	✓
National Commission for Backward Classes Act, 1993	✓		✓	✓	
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995	✓		✓	✓	
Trade Marks Act, 1999					✓
Juvenile Justice (Care and Protection of Children Act), 2000	✓		✓		✓
Designs Act, 2000					✓
New Competition Act, 2000				✓	✓
Prevention of Money Laundering Act, 2002					
National Commission for Minority Educational Institutions Act, 2004				✓	
Commissions for Protection of Child Rights Act, 2005	✓		✓		
National Rural Employment Guarantee Act, 2005				✓	

Right to Information Act, 2005	✓	✓			
Protection of Women from Domestic Violence Act, 2005			✓		
Micro, Small and Medium Enterprises Development Act, 2006		✓		✓	
The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006		✓	✓	✓	
Protection of Human Rights (Amendment) Act, 2006	✓		✓		
Rehabilitation and Resettlement Bill, 2007		✓	✓	✓	
Land Acquisition (Amendment) Bill, 2007		✓	✓	✓	
Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008	✓	✓		✓	✓
The Information Technology (Amendment) Act, 2008			✓	✓	✓
Laws in 'Section A' (Labour Laws)	✓		✓		
Laws in 'Section B' (Environment Laws)					
Laws in 'Section C' (Economic/Finance Laws)				✓	

Source: National Voluntary Guideline, page 44

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Change Alliance (www.changealliance.in) is a social sector consultancy that provides market leading development services to corporate, government and civil society organisations.

Our Vision is about changing lives through inclusive growth and sustainable development for a better tomorrow.

Change Alliance was established as a fully-owned subsidiary of Christian Aid in 2013. It however carries forward a long legacy of more than 15 years old civil society engagement in India and more than 50 years internationally. We partner with like-minded entities to work as catalysts for change, to bridge the social & economic gap and to help deliver inclusive & sustainable growth for communities.

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- Capability for end-to-end CSR outsourcing solutions



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