

# **BUSINESS AND HUMAN RIGHTS**

## **GUIDELINES FOR BUSINESSES IN PAKISTAN**

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## Purpose and Scope

This document serves to provide guidance to businesses in Pakistan in light of the corporate responsibility to respect human rights under the United Nations Guiding Principles on Business and Human Rights (UNGPs). These guidelines focus on two aspects: the general duty which applies to businesses at an international level to respect human rights, and on the concept of Human Rights Due Diligence (HRDD). HRDD is a significant component of the corporate responsibility to respect human rights and is the mechanism through which businesses not only identify the adverse impact that their business activity may have on human rights, but also find ways to mitigate these impacts.

The UNGPs divide HRDD into four steps:

1. Identifying and assessing – to gauge the types and severity of the risks (Principle 18)
2. Integrating and acting upon findings – to prevent and mitigate adverse impacts (Principle 19)
3. Tracking effectiveness – to verify whether risks are being assessed (Principle 20)
4. Communicating action – to account for how a business addresses their impacts (Principle 21)

While the concept of HRDD in Pakistan has not been integrated within any legislation or regulatory policy, it is pertinent for Pakistani businesses to become aware of the concept to keep up with international markets. A global shift has been observed towards the protection of human rights within business activity, in pursuance of which states and regional organizations are seeking to determine ways in which businesses can be required to conduct impact assessment in relation to human rights while conducting their operations.

Thus, it is not only essential to understand the concept of HRDD and its increasing importance, but to also as a starting point identify the responsibilities that businesses are subject to under the global business and human rights framework. Section One of this Guide thus, focuses on the general duty and the elements of the corporate responsibility to respect human rights whereas all subsequent Sections focus on the need to conduct HRDD, reporting on due diligence, identifying different levels of diligence in large-scale projects and public procurement and the need for state owned businesses to take the lead and set examples for all to follow.

This Guide is the product of three-tiered research wherein international guidance, international best practices, and the Pakistani context have been observed to provide guidelines for businesses operating in Pakistan to bring their activities in line with international requirements and with the National Action Plan on Business and Human Rights launched by the Ministry of Human Rights in 2021 as a result of extensive efforts to bring Pakistan's business culture at par with international market requirements.

The NAP on BHR identifies target areas for the State to take action in. However, it also establishes expectations that the state has from businesses operating within its jurisdiction. In light of this, it is pertinent for businesses in Pakistan to identify their significant role in efforts to realize the complete enforcement of human rights standards in the country.

## The Corporate Responsibility to Respect Human Rights

The intersection between business and human rights has been recognized under the UNGPs. The BHR framework recognizes that while business can have positive impacts, they possess the capacity to infringe human rights affecting workers, employees and end users of services or products<sup>1</sup>.

### International Guidelines on Corporate Responsibility

#### 1. United Nations Guiding Principles

Based on three pillars, the UNGPs require businesses to understand the impact that they make on the rights of those around them and seek to mitigate any adverse impacts that may arise. More specifically, the guiding principles pertaining to pillar two are in relation to the corporate responsibility to respect human rights. The UNGPs require businesses to do the following:

- Avoid infringing human rights of others and address relevant adverse human rights impacts.
- Respect all human rights found within the International Bill of Human Rights, International Labour Organization's Declaration on Fundamental Principles and Rights at Work etc.
- Address their human rights impacts in conducting their activities.
- Mitigate adverse human rights impacts that are directly linked to their operations.
- Introduce policies and processes appropriate to their size and circumstances to respect human rights. This should include a HRDD process policy and a remediation policy as well.
- Make a commitment to respect human rights which is endorsed at the most senior level.
- Conduct HRDD depending on the size of the business and its activities.
- Identify and assess any actual or potential adverse human rights impacts which may result through their own activities or as a result of their business relationships.
- Integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.
- Communicate their findings externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them.
- Remediate adverse impacts on human rights through legitimate processes.

These obligations have been subjected to a gender lens by the UN Working Group on Business and Human Rights as well. It finds that business enterprises have a responsibility to protect the rights of women which can be achieved through establishing mechanisms to ensure equal access to employment, end sexual harassment, curtail the gender pay gap that exists within the business context

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<sup>1</sup> 'How Can Businesses Impact Human Rights? : UN Guiding Principles Reporting Framework' (Ungpreorting.org, 2021) <https://www.ungpreorting.org/resources/how-businesses-impact-human-rights/>

and to acknowledge women specific issues with regards to the workplace which include personal hygiene facilities, and a working environment which is menstruation friendly.

There are various other instruments which supplement the UNGPs and establish guidance for businesses to ensure that their activities do not adversely impact human rights, and instead are compliant with international human rights standards. These include:

## **2. OECD Guidelines for Multinational Enterprises**

The Organization for Economic Cooperation and Development (OECD) has adopted Guidelines for Multinational Enterprises<sup>2</sup> which introduces a set of non-binding guidelines to ensure that multinational corporations are held responsible for the way they are conducting their activities in respect of human rights.

The OECD guidelines establish a responsibility on States to disclose all information regarding their structure, activities, financial conditions, performance, ownership and also about their relationships with workers, stakeholders and the environment. Companies have widely developed voluntary codes of corporate conduct, in committing to work towards and respect the protection of environment, human rights, labour standards, consumer protection etc.

## **3. OECD-FAO Guidance for Responsible Agricultural Supply Chains**

The OECD-FAO Guidance for Responsible Agricultural Supply Chains<sup>3</sup> holds significance in the context of Pakistan due to Pakistan's stake in the agricultural sector. The agricultural sector contributes almost 22.8% to the economy of Pakistan<sup>4</sup> and is also a largely undocumented area of business with instances of human rights violations. This reflects a need for business enterprises in the agricultural sector to protect human rights. The OECD-FAO guidelines state that enterprises should implement a five-step framework to undertake risk-based due diligence along agricultural supply chains. The steps are:

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<sup>2</sup> 'OECD Guidelines for Multinational Enterprises' (oecd.org, 2011)

<sup>3</sup> 'OECD library | OECD-FAO Guidance for Responsible Agricultural Supply Chains' (Oecd-ilibrary.Org)

<sup>4</sup> 'Distribution of Gross Domestic Product (GDP) Across Economic Sectors Pakistan 2017' (Statista 2019)

Establish strong enterprise management systems for responsible agricultural supply chains.

Identify, assess and prioritise risks in the supply chain.

Design and implement a strategy to respond to identified risks.

Verify supply chain due diligence. -

Report on supply chain due diligence.

#### 4. OECD Guidelines for Responsible Supply Chains in the Garment and Footwear Sector

The OECD Due Diligence Guidelines for Responsible Supply Chains in the Garment and Footwear Sector<sup>5</sup> also identify the need to protect human rights from adverse impacts and sufficient remedies must be provided to those who have been subjected to violations of their human rights.

#### 5. UN Global Compact

The UN Global Compact<sup>6</sup> has been established to support companies to align their strategies and policies to ensure compliance with the ten principles as established by the Global Compact which relate to human rights, labor, environment, and anti-corruption. These principles are derived from the Universal Declaration of Human Rights,<sup>7</sup> the International Labor Organization's Declaration on Fundamental Principles and Rights at Work,<sup>8</sup> the Rio Declaration on Environment and Development,<sup>9</sup> and the United Nations Convention Against Corruption.<sup>10</sup> The aim of the Global Compact has been to ensure attainment of the Sustainable Development Goals and thus members are supported in taking actions to ensure compliance with principles of human rights.

The principles are as follows:

- Businesses should support and respect the protection of internationally proclaimed human rights; and make sure that they are not complicit in human rights abuses.

<sup>5</sup> OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (OECD 2017)

<sup>6</sup> Homepage | United Nations Global Compact (unglobalcompact.org)

<sup>7</sup> 'Universal Declaration of Human Rights' (United Nations 2015)

<sup>8</sup> 'The Text of the Declaration and Its Follow-Up' (International Labor Organization)

<sup>9</sup> 'The Rio Declaration on Environment and Development (1992)' (Unesco.Org)

<sup>10</sup> United Nations Convention Against Corruption' (UNODC)

- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.
- They should ensure the elimination of all forms of forced and compulsory labour.
- They should strive to achieve the effective abolition of child labour; and elimination of discrimination in respect of employment and occupation.
- Businesses should support a precautionary approach to environmental challenges.
- They should undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.
- Businesses should work against corruption in all its forms, including extortion and bribery.

## **6. Global Network Initiative**

The Global Network Initiative has also been established to protect the freedom of expression and privacy in the Information and Communications Technology (ICT) Industry. The GNI Principles establish the protection of freedom of expression and identify privacy as a human right which must be protected by participating companies.<sup>11</sup>

## **7. Fair Labor Association**

The Fair Labor Association has also been established at the international level to combine the efforts of businesses and civil society organizations to promote the implementation of worker's rights and to improve working conditions by establishing compliance with international standards.<sup>12</sup>

## **8. World Bank Group**

The World Bank Group<sup>13</sup> has also developed Environmental, Health and Safety Guidelines documents which provides companies with industry-specific guidance for developing human rights compliant policies.

A look into the international laws, guidelines and principles that have been promulgated for the protection of human rights reflects the need for corporate entities to not only establish express policy commitments for the protection of human rights, but to also embed human rights protection mechanisms within their management systems. HRDD has also received great significance which reflects the need for companies to ensure that they carry out impact assessments to assess whether their activities adversely impact human rights or not. Thus, complicity in human rights abuses by business enterprises must also lead to consequences, be they of a legal or non-legal nature.

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<sup>11</sup> 'Our Mission' Global Network Initiative ([globarnetworkinitiative.org](http://globarnetworkinitiative.org))

<sup>12</sup> 'Mission & Charter | Fair Labour Association' ([Fairlabor.Org](http://Fairlabor.Org))

<sup>13</sup> 'World Bank Group - International Development, Poverty, & Sustainability' (World Bank)



## International Best Practices for the Protection of Human Rights in Business Activity

Many countries have taken steps to ensure that business enterprises respect human rights in the form of legislation, policies and other mechanisms including national action plans.

### CASE STUDY 1

#### United Kingdom

The UK Government formulated its inaugural National Action Plan on Business and Human Rights entitled ‘Good Business – Implementing the UN Guiding Principles on Business and Human Rights’ (NAP) in September 2013. Subsequently, it produced an Updated National Action Plan entitled ‘Good Business – Implementing the UN Guiding Principles on Business and Human Rights – Updated May 2016.’<sup>14</sup>

To ensure that businesses comply with their responsibility under Pillar 2 of the UNGPs, the State has:

- Introduced amendments in the Companies Act with the aim of strengthening it. The Act now requires certain companies to report on material human rights impacts, where relevant for an understanding of the business, as part of their annual reports, and

#### Section 414CB<sup>15</sup>; Contents of non-financial and sustainability information statement

(A1) The non-financial and sustainability information statement (of the report) must contain the climate-related financial disclosures of the company.

- (1) It must contain information, to the extent necessary for an understanding of the company’s development, performance and position and the impact of its activity, relating to, as a minimum—
- (a) environmental matters (including the impact of the company’s business on the environment),
  - (b) the company’s employees,
  - (c) social matters,
  - (d) respect for human rights, and
  - (e) anti-corruption and anti-bribery matters.

<sup>14</sup> “Good Business” <<https://globalnaps.org/wp-content/uploads/2017/11/uk-2016.pdf>>

<sup>15</sup> Companies Act 2006, Section 414C

- Provided guidance to companies on the transparency in supply chains requirement of the Modern Slavery Act 2015.

### **Section 54; Transparency in supply chains**

(1) A commercial organisation must prepare a slavery and human trafficking statement for each financial year of the organisation.

(5) An organisation's slavery and human trafficking statement may include information about—

- (a) the organisation's structure, its business and its supply chains;
- (b) its policies in relation to slavery and human trafficking;
- (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- (f) the training about slavery and human trafficking available to its staff.

## CASE STUDY 2

### Denmark

The Danish Institute of Human Rights (DIHR) has developed sector specific checklists for business enterprises to assess their human rights impacts. These checklists allow businesses to formulate a general overview of the human rights risks involved in their operations and subsequently identify their impacts to mitigate any negative effects they may have on human rights protections. One of these checklists is the Human Rights Compliance Assessment (HRCA). This is a diagnostic tool designed to help companies detect potential human rights violations caused by the effect of their operations on employees, residents and all other stakeholders. The entire tool runs on a database of over 350 questions and 1,000 corresponding human rights indicators, developed from the Universal Declaration of Human Rights, the 1966 Dual Covenants and



over 80 other major human rights treaties and conventions. These indicators serve as minimum standards which are used to assess compliance with human rights protections.

The checklist also has a quick version,<sup>16</sup> comprising of approximately 10% of all the questions contained in the entire HRCA database and relates to some of the most essential human rights issues a company must consider in relation to its activities.

For example, in relation to child labor, the following indicators have been created which can serve as guidance to companies in assessing their human rights impacts:

- The company has a clear policy regarding the minimum age of employment, which complies with national laws, but is no less than 15 years of age.
- The company requires candidates to provide copies of birth certificates or other official forms of identification to verify their age before being hired by the company.
- Hiring managers are aware of the forms of identification forgery commonly used in the country of operation and they are able to spot such forgeries.

<sup>16</sup> “Human Rights Compliance Assessment Quick Check” (*The Danish Institute for Human Rights* June 7, 2016) <<https://www.humanrights.dk/publications/human-rights-compliance-assessment-quick-check>> accessed July 10, 2022

- In countries where birth certificates are not common, or are frequently falsified, the company has a procedure for estimating the age of employment for young candidates, such as average height or knowledge of historic events.
- The company conducts research when classes are held in local schools, and ensures that children who have not passed the age of compulsory schooling are not hired by the company.
- The company does not fire any person under the age of 18 to perform work that interferes with their education.

With regards to workplace health and safety, the following indicators have been established within the assessment tool to guide companies to assess their impacts:

- The company documents accidents and adjusts its processes to prevent recurring problems.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- The company has a procedure of process for receiving and responding to health and safety complaints such as designating a health and safety representative committee.
- Responsibilities for health and safety tasks are clearly outlined at all levels of the company and there is a system for monitoring the accountability of tasks.
- Workers and managers are trained to respond to workplace emergencies and first aid kits are readily available.
- Escape exits are free from obstruction.
- Work premises and equipment are maintained and kept clean.
- The workplace has sufficient and suitable ventilation with fresh or purified air, appropriate for the climate and industry of operation.

### **CASE STUDY 3**

#### **Netherlands**

Many states, subsequent to the development of their NAPS on BHR, have started introducing the concept of mandatory HRDD via legislative initiatives. Netherlands adopted the Child Labor Due Diligence Act,<sup>17</sup> in 2019 which obliges companies operating in the Dutch market to conduct due diligence related to child labour and to submit a statement to a public authority, declaring that they have investigated risks of child labour in their activities and supply chains.

The Act imposes an affirmative due diligence obligation. Under these, companies must investigate whether there is a reasonable suspicion that the goods or services to be supplied to Dutch end-users

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<sup>17</sup> Child Labour Due Diligence Act 2019.

have been produced using child labor.<sup>18</sup> A company that is subject to the Act generally must prepare a declaration indicating that it exercises due diligence in order to prevent the goods and services that it sells or supplies to Dutch end-users from being produced using child labor.

## CASE STUDY 4

### Germany

In February 2021, the German government reached an agreement on the implementation of a Supply Chain Act. The Act requires German companies to take measures to address compliance with human rights standards throughout their supply chains globally. This means that if companies conduct operations outside of Germany as well, they must ensure that human rights standards are being complied with.

The Act is currently scheduled to enter into force at the beginning of 2023 and will initially apply only to companies which have their head office, principal place of business, administrative headquarters or registered seat in Germany and employ more than 3,000 employees (currently more than 600 companies in Germany).

Under the Act, companies will be required to implement the following due diligence measures:<sup>19</sup>

- Develop a policy statement with respect to human rights.
- Conduct risk analysis, i.e., implementing procedures to identify potential adverse impacts on human rights.
- Employ a risk management system (including remedial measures) to avoid potential adverse impacts on human rights.
- Ensure the availability of a grievance mechanism to allow for the reporting of potential human rights violations which must then be investigated by the company; and
- Ensure documentation and transparent reporting towards the public with regards to their activities and their impact on human rights.

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<sup>18</sup> “Dutch Child Labor Due Diligence Act Approved by Senate – Implications for Global Companies” (*Ropes & Gray*) <<https://www.ropesgray.com/en/newsroom/alerts/2019/06/Dutch-Child-Labor-Due-Diligence-Act-Approved-by-Senate-Implications-for-Global-Companies>>

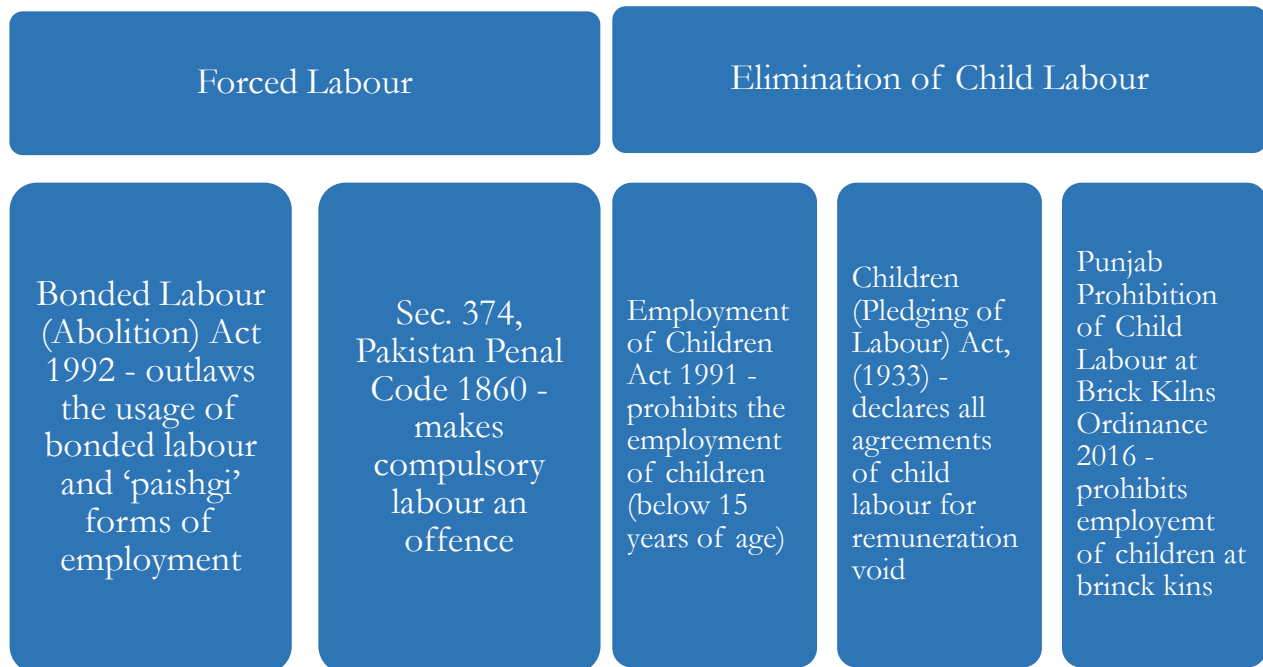
<sup>19</sup> “Germany: Mandatory Human Rights Due Diligence” (*Debevoise*, May 3, 2021) <<https://www.debevoise.com/insights/publications/2021/04/germany-mandatory-human-rights-due-diligence>>

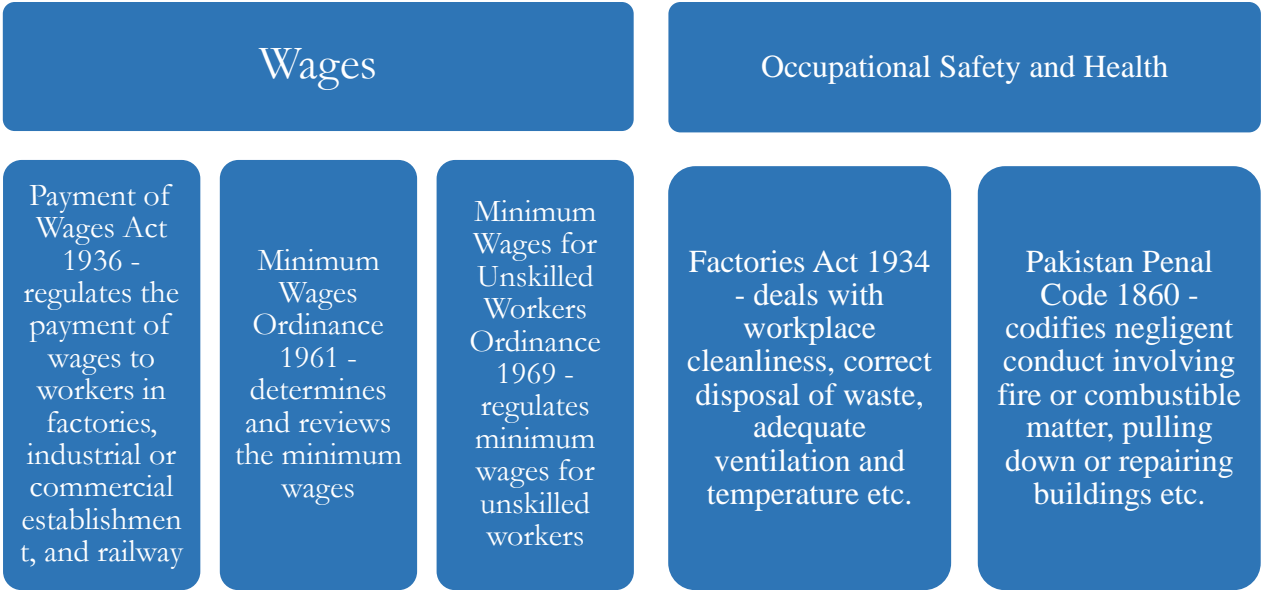
## Corporate Responsibility to Respect Human Rights in Pakistan

To keep up with the global market, companies in Pakistan must welcome the introduction of human rights policies within their management systems. This Section will identify the current measures through which companies in Pakistan respect human rights. Within the Pakistani context, human rights commitments are primarily reflected in CSR initiatives. These target different thematic areas based on company priorities and primarily target socio-economic rights.

A wide range of rights have been recognized under Pakistani law which seek to protect employees and seek to regulate the employer-employee relationship. These include issues such as child labor, forced labor, slavery, minimum wage, employment without any discrimination, protection from workplace harassment etc. These are targeted under several articles of the Constitution of Pakistan. Examples include Article 11 (Prohibition of Forced Labour), Article 27 (Non-Discrimination in relation to Service), Article 34 (Full Participation of Women in National Life) Article 37 (Promotion of Backward Classes) and Article 38 (Promotion of the Social and Economic Well Being of People).

Additionally, there are numerous statutes that have been introduced at both Federal and Provincial level by Pakistan. These include:





In addition to the laws that have been introduced within this area, various initiatives have been undertaken as well to ensure that companies comply with the minimum human rights standards which have been recognised within Pakistan’s domestic framework.

## CASE STUDY

### Eliminating Child Labour in Sialkot's Football Industry<sup>20</sup>

Prior to the Atlanta Agreement, the football stitching industry in Sialkot was largely a home-based family activity involving 60% of working women and children in the industry. The football industry remained considerably less hazardous and exploitative for child workers. However, the Pakistani sporting goods manufacturers faced negative media coverage and had to comply with the requirements of their international partners such as Adidas, Reebok, Puma etc. The Sialkot Chamber of Commerce and Industry undertook the initiative to eliminate child labour through the help of the International Labor Organization. The ILO targeted manufacturers to ensure grass-root level changes to extinguish child labour in this industry. The Agreement focused on two major issues: prevention and removal of child labour, and prevention and rehabilitation of those children who had been involved in child labour.

To achieve this ILO established workplace monitoring systems to carry out visits of sites where child labour had prevailed, and further emphasized upon social protection schemes to provide rehabilitation to child laborers. Additionally, through the project, UNICEF focused on rehabilitating adult stitching family members and introduced employment opportunities for women along with the development of a savings credit scheme. Through this formalization of an informal sector which was primarily dependent upon labor as a part of family activity, production became efficient, and workers became more aware of their rights.

From a business perspective, the project helped in protecting Pakistan's sports manufacturers from being internationally banned, and regularized employment for 32,500 households in the process. The Atlanta Agreement then remains a seminal example of the way in which the adverse impact of business activity on human rights can be extinguished as it not only prevented and eliminated child labour but also regularized a largely informal sector which had long lasting impacts on the protection of human rights. By October 1999, at the end of the first phase of the project, the objective of preventing and eliminating child labour had been achieved through regulation of stitching centers. Manufacturers in the football industry had voluntarily participated in the project and opened themselves to ILO monitoring to ensure efficient production and increased exports. As a result of the project 6000 children who had been involved in labor, were provided non-formal education and other social protection policies such as health care, credit savings and vocational training. The impact of the project has been long lasting not only for the protection of children, but also for manufacturers who have been able to establish ethical trading practices as a result and have developed a positive reputation in the international market.

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<sup>20</sup> 'Elimination of Child Labor in The Soccer Ball Industry in Sialkot, Pakistan Pak/97/Mo1/USA' (Ilo.Org)



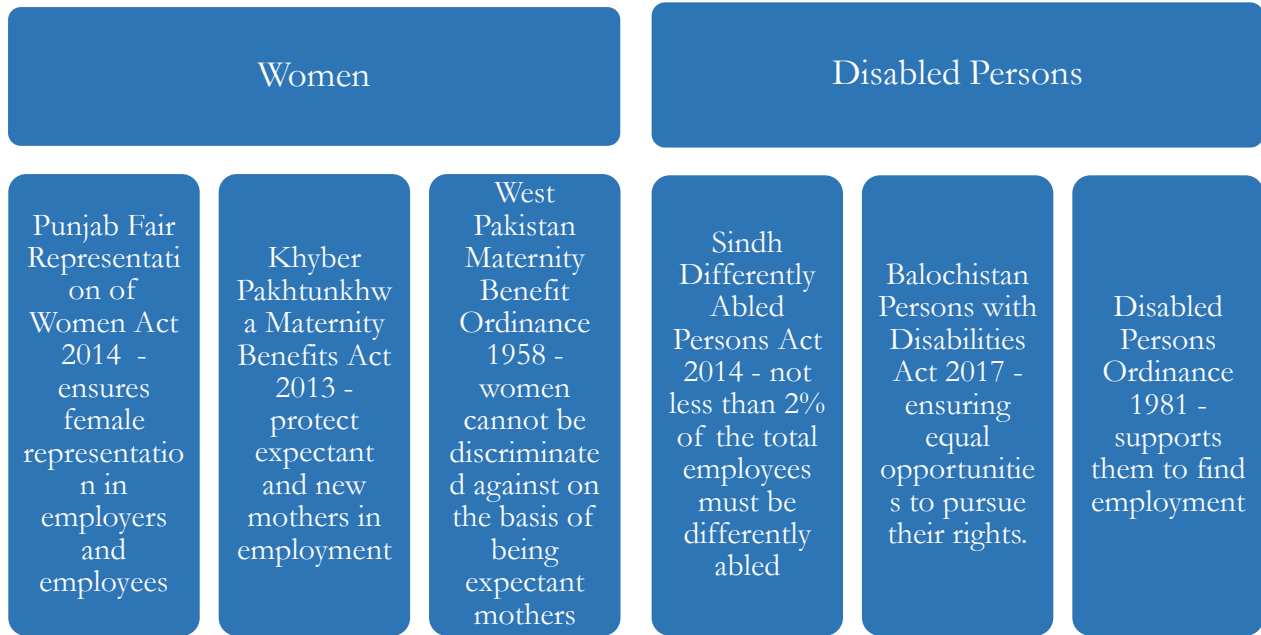
## **CASE STUDY**

### **Minimum Wage in the Garment Industry**

The leading issue of working conditions in the garment sector in Pakistan led to widespread protests in 2017 by workers of a leading clothing brand. The protests highlighted major violations of international standards and domestic laws and addressed widespread problems within human rights protection mechanism in the garment industry. During the protest, the workers complained of inhumane working conditions, mistreatment, arbitrary dismissal, long working hours and payment of salaries below the statutory minimum wage. The protests began when the brand fired 32 workers for demanding minimum wage. Worker's brought forward grievances related to the lack of formal mechanisms of remediation for violations of their fundamental rights. The Company in its official statement denied all allegations, clarifying its position. However, the labour rights organization National Trade Union Federation (NTUF) refused to accept the brand's statement. The matter reached a settlement when the NTUF and the brand reached an agreement where the brand committed to comply with labour laws. This reflects the importance that must be attached to the protection of labour laws specifically those relating to minimum wages. Companies in Pakistan must ensure that they are cognizant of the law governing minimum wage and comply with it as well.

One of the most important features of human rights protections within business activity includes equality and non-discrimination. In Pakistan, their importance is reflective from the fact that these have been incorporated within constitutional protections as well. Significant provisions in this regard are to be found within Article 17 (Freedom of Association), Article 25 (Equality of Citizens), Article 33 (Parochial and other Similar Prejudices to be Discouraged) and Article 36 (Protection of Minorities).

Both; the principles of equality and non-discrimination are also enshrined in various federal and provincial laws as well. Some of them have been listed below:



### CASE STUDY

#### **E.F.U. General Insurance Ltd. v. Sindh Labour Court No. V, 2007 PLC 500 Karachi High Court Sindh**

The case was related to the dismissal of a female employee which had been done following inquiry into complaints of her misconduct and habitual late attendance. Upon inquiry by the Labour Court into the facts of the case, it was revealed that the employee had arrived late for work by 15 minutes while she was pregnant, and for this permission had been granted to her by the administration in charge. She had also applied for maternity leave, but her application had been denied. A charge sheet for misconduct and habitual absence had been created against her which led to an inquiry. The question for the Court to decide was whether willful and habitual absence as under Sec. 15(3)(e) of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968 could be satisfied on the facts of the case. The Court declared that the action taken was in contravention of the law.

While the legal framework with regards to labor rights is extensive, its enforcement has been subject to various impediments. Issues relating to child labor, forced and bonded labor, unequal access to employment, discrimination and harassment continue to prevail despite various legislative and policy interventions. Moreover, occupational health and safety concerns remain prevalent despite extensive media coverage of the various accidents which have taken place.

## CASE STUDY

### Factors to determine whether a Company is respecting Human Rights

Company A employs 5000 workers and has a large garment factory which has been set up in Faisalabad. Company A has hired a compliance officer to identify whether they are in line with their human rights obligations or not. In order to ascertain whether the company is respecting human rights as a minimum standard, the compliance officer must identify legal, policy and regulatory requirements which apply within Pakistan. Moreover, he should then expand his approach and observe the way company operations are conducted to ascertain the extent to which human rights concerns are integrated within in.

The compliance officer develops the following checklist:

#### Legal Requirements:<sup>21</sup>

1. Does our company comply with requirements related to prohibition of forced labour found under Article 11 of the Constitution of Pakistan?
2. Does our company comply with provisions relating to freedom of assembly, freedom of trade, business and profession under Articles 16 and 18 of the Constitution of Pakistan?
3. Does our company comply with the requirements laid under the Punjab Industrial Relations Act 2010?<sup>22</sup>

Requirements under the law	Compliance
Right to form trade unions and exercise freedom of association (Section 3)	Yes/No
Prohibition on unfair labour practices on part of employers (Section 17)	Yes/No

4. Does our company comply with health and safety requirements laid under the Factories Act 1934?<sup>23</sup>

Requirements under the law	Compliance
Cleanliness (Section 13)	Yes/No
Disposal of waste (Section 14)	Yes/No
Ventilation and Temperature (Section 15)	
Dust and fumes (Section 16)	

<sup>21</sup> These represent a non-exhaustive list of legal requirements and companies must conduct an exercise in identifying all legal requirements that apply to them.

<sup>22</sup> The Act defines an industry as, “any business, trade, manufacture, calling, service, employment or occupation of producing goods or services for sale excluding those set up for charitable purposes.”

<sup>23</sup> The Act defines a factory as, “means any premises, including the precincts thereof whereon [ten] or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on [or is ordinarily carried on with or without the aid of power]”

Artificial humidification (Section 17)	
Overcrowding (Section 18)	
Lighting (Section 19)	
Drinking Water (Section 20)	
Washrooms (Section 21)	
Precautions against contagious or infections disease (Section 23)	
Compulsory vaccinations (Section 23-A)	
Welfare Officer (Section 24-A)	
Precautions in case of fire (Section 25)	
Employment of young persons on dangerous machines (Section 28)	
Prohibition of employment of women and children near cotton openers (Section 32)	
Safety requirements for hoists and lifts (Section 33-A)	
Protection of eyes (Section 33-G)	

5. Has the Punjab Government developed any additional rules relating to health and safety in addition to those mentioned above?
6. Has the Punjab Government developed any rules relating to prohibition of admission of a particular class of children?
7. Does our company comply with requirements related to working hours for adults laid under Chapter IV of the Factories Act 1934?
8. Does our company comply with the special provisions for adolescents and children laid under Chapter V of the Factories Act 1934?
9. Does our company comply with minimum wage requirements which have been updated in 2022 to PKR 25,000?<sup>24</sup>
10. Does our company comply with child labour requirements under Pakistani law?
11. Has our company established a Committee under the Protection Against Harassment at the Workplace Act 2010?
12. Does our company comply with all other requirements under the Protection Against Harassment at the Workplace Act 2010?
13. Is our company in compliance with all environmental laws in Pakistan?

<sup>24</sup> Notification No. SO(D-II)MW/2011(Vol-VI) on Minimum Wages in Punjab, available at: [https://labour.punjab.gov.pk/system/files/Punjab%20Minimum%20Rates%20of%20Wages%20Notification%202022\\_0.pdf](https://labour.punjab.gov.pk/system/files/Punjab%20Minimum%20Rates%20of%20Wages%20Notification%202022_0.pdf)

### Policy Requirements:<sup>25</sup>

The corporate responsibility to respect under the National Action Plan on Business and Human Rights requires companies to take some steps to protect human rights which must be considered as well.

1. Does our company comply with the standards relating to implementation of all domestic laws and availability of corrective redressal mechanisms under the NAP on BHR?
2. Does our company conduct human rights due diligence?
3. Does our company prohibit child or forced and bonded labour?
4. Does our company prevent, monitor, and address all forms of workplace discrimination and harassment?
5. Has our company developed a human rights policy?
6. Has our company integrated the human rights policy in all its operations?
7. Has the policy been communicated to all employees, and any capacity building trainings conducted?

This case study provides a list of non-exhaustive factors which companies must consider when determining the extent to which they are complying with their responsibility to respect human rights in Pakistan. Considering legal, policy and regulatory factors will ensure that whenever the process of considering its human rights responsibilities is initiated by a business, a holistic approach is taken, and any rights are not arbitrarily left behind.

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<sup>25</sup> This is not an exhaustive list and companies must conduct an exercise to identify the standards integrated within the NAP on BHR which are relevant to their operations, and identify any other requirements under for example, the labour policy or child labour policies which they must comply with as well.

## **Guidelines**

These general guidelines provide a benchmark for businesses in Pakistan to meet their responsibility to respect human rights. These guidelines are voluntary, and businesses must attempt to achieve them to the extent possible, depending on their size, and nature of business operations.

### **Guideline 1**

Business should be cognizant of Pakistan's NAP on BHR, including its priority areas, actions pledged by the Government of Pakistan, and its expectations of businesses as stated in the NAP.

### **Guideline 2**

Businesses should be cognizant of their corporate responsibility to respect human rights under the UNGPs and should conduct internal trainings to raise awareness of the UNGPs amongst their staff, including senior management.

### **Guidelines 3**

Businesses must establish a clear policy for the protection of human rights within their operations. This may take the form of a voluntary code of conduct to establish a commitment to respect human rights within their activities and must be approved and endorsed by senior management.

### **Guidelines 4**

Businesses must conduct an exercise to identify the human rights risks and impacts that their activities have and must, at the minimum, strive to priorities those rights which have been identified in Pakistan's NAP on BHR.

### **Guideline 5**

Businesses should conduct HRDD as a corporate best practice within their operations and across their value chains, which must be contextualized to the specific locations or unique operating context of their activities. To this end, tools such as self-assessment checklists, and guidelines developed at an international level must be used.

### **Guideline 6**

Businesses should identify the potential impact that their operations and value chains may have on the rights of local communities and should take efforts to consult local communities in decisions which impact their rights.

### **Guideline 7**

Businesses should establish effective redressal mechanisms to provide remedies in cases where they have caused or contributed to human rights impacts throughout their operations and value chains.

### **Guideline 8**

Businesses operating in conflict or post-conflict areas should conduct heightened HRDD.<sup>26</sup>

### **Guideline 9**

Businesses must present annual strategic reports highlighting the material human rights impacts that have taken place and how they have dealt with it. These reports may be aligned with the Sustainable Development Goals as well to identify which activities have been conducted in pursuance of a specific goal.

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<sup>26</sup> Read more at: <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>

## Human Rights Due Diligence

The need for HRDD has been manifested in various international instruments which encourage corporate entities to not only assess the risks of adverse impacts on human rights as a result of business activity, but to also report on such assessments to mitigate the risk of violations and encourage complete protection of human rights.

HRDD is the process through which businesses conduct an assessment of their activities and their direct and indirect, actual or potential impact on human rights. This must be conducted with regards to the rights of their employees, rights of those who reside in the communities in which they operate and based on the environment and context of the location in which they operate.

HRDD ensures that a human rights-based approach is employed in relation to business activity as well so that any negative impacts of business operations on human rights can be effectively mitigated. HRDD primarily involves the following phases:



Sustainable and responsible business practices require incorporating HRDD into policies, decisions, and strategies. All businesses worldwide are expected to respect human rights, regardless of their size or sector. The UNGPs substantiate this responsibility – as businesses must ensure that they do not infringe directly or indirectly upon the fundamental rights of any individual through their operations and supply chains.



## International Guidelines on HRDD

Guidance has been provided by international instruments on the process which must be used to conduct HRDD. Human rights risk and impact assessment helps a business manage human rights issues in an efficient and effective manner by identifying, prioritizing, and addressing human rights risks at the initial stages. Human Rights Risk Assessment (HRRRA) and Human Rights Impact Assessment (HRIA) reflect different approaches to HRDD for a business.

### Human Rights Due Diligence

A human rights assessment is one part of a broader system of ongoing human rights due diligence.



### 1. Human Rights Risk Assessment

An HRRRA is a mechanism through which human rights risks which may stem out of business activity are identified. This process requires businesses to identify the human rights risks attached to their operations. This can be done by identifying the context in which they operate, the size and structure of the business etc. An HRRRA usually serves as the basis for conducting a full-scale HRIA as if a significant risk is identified, then the business may have to launch a full scale impact assessment to identify ways in which it can be mitigated.<sup>27</sup>

A 10-point criteria has also been developed by the Danish Institute for Human Rights for guidance in conducting human rights impact assessments.<sup>28</sup> This includes:

- Participation of affected or potentially affected right holders during all stages of impact assessment.

<sup>27</sup> "Human Rights Risk Assessment (HRRRA)" (*NomoGaia*, February 25, 2020) <<http://nomogaia.org/human-rights-risk-assessment-hrra/>>

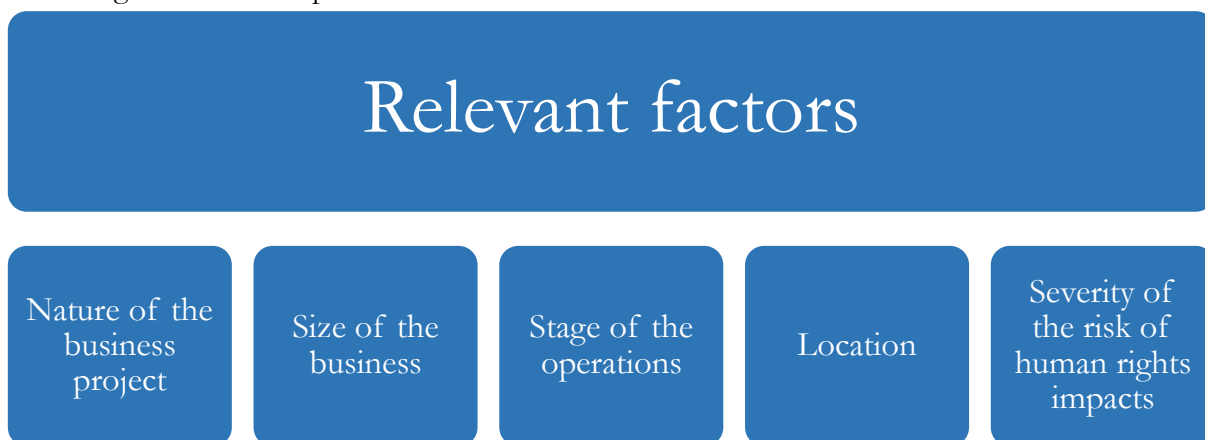
<sup>28</sup> Human Rights Impact Assessment Guidance and 'Toolbox' (The Danish Institute for Human Rights 2016)

- Non-discrimination in the engagement and consultation processes.
- Empowerment of marginalised groups.
- Transparency ensuring that the impact assessment findings are publicly communicated.
- Accountability in terms of the role of human rights experts, management team etc.
- International standards as a benchmark for impact assessment.
- Assessing the scope of actual and potential human rights and impacts caused directly or indirectly by business activities.
- Assessing the impact severity according to their human rights consequences.
- Impact mitigation measures ensuring that all human rights impacts are addressed.
- Access to remedy.

## 2. Human Rights Impact Assessment

Many companies in Pakistan address human rights issues in their codes of conduct, health, safety and environment policies and non-discrimination policies etc. However, these policies or codes of conducts, can be general, building on moral values of the society. Human Rights Impact Assessment, on the other hand, is more specific as an adequate HRIA would include compliance with international law instruments, assessing rights linked to business activities and stakeholders, and involvement of human rights expertise.<sup>29</sup>

An HRIA is a part of all responsible businesses. It is becoming an integral part of businesses’ strategies for new product development, market entry and other key business decisions. Guiding Principle 17 and 18 of the UNGPs iterate on identifying, preventing and mitigating adverse human rights impacts. These Guiding Principles require businesses to set international human rights standards as a benchmark and consider the full scope of their impacts. Factors that may contribute to assessing human rights risk and impacts include:



<sup>29</sup> 'Report of the Special Representative of The Secretary-General on the Issue Of Human Rights and Transnational Corporations and Other Business Enterprises' (United Nations General Assembly 2007)

## Principle 17 - UNGPs

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:

- (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;
- (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;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

## Principle 18 – UNGPs

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.

Conducting HRDD requires businesses to follow a structured process so as to ensure that not only human rights risks are identified but these are also mitigated, tracked periodically and communicated upon as well, while ensuring community engagement and transparency. The case study below will help businesses in identifying the processes they must follow in conducting HRDD within their operations.

This case study is based on steps which are followed by businesses internationally.<sup>30</sup>

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<sup>30</sup> Statkraft, "Six Steps to Human Rights Due Diligence" (*Statkraft*) <<https://www.statkraft.com/sustainability/our-commitments/human-rights/six-steps-to-human-rights-due-diligence/>>

## CASE STUDY

### Best Practice in conducting HRDD

Company A owns a garment factory. It adhered to a human rights policy developed by the company and approved and endorsed by its senior management. The human rights policy requires the company to conduct HRDD when entering into new business arrangements and to conduct continued HRDD with regards to all business operations as well. Company A wishes to enter into an agreement with Company B to buy raw materials including cotton, silk, spandex and yarn. Company A recognises that entering into an arrangement with Company B may include human rights risks as Company B has the potential to adversely impact human rights of their employees, and of the community in which they operate.

During the negotiation stage, Company A notifies Company B of their internal requirement to conduct HRDD and requests permission for their compliance officer to visit Company B with an aim to meet their representatives, and also conduct an on-site visit.

Company B grants the permission, and Company A's compliance officer schedules a visit to Company B. He meets with the Head of HR as Company B has not designated a compliance officer for human rights purposes, and requests him to complete a form which requires information on whether Company B has a human rights policy or a commitment to protect human rights, the number of employees they have hired, the number of female employees that work for Company B, whether equal opportunity and equal remuneration is provided, whether minimum wage standards are complied with, whether Company B complies with all other requirements laid down under labour laws, whether Company B has established mechanisms to ensure complete compliance with occupational health and safety requirements, whether Company B reports on the human rights standards it adheres to, whether Company B engages with the community before starting a project or during their business operations. The form also requires Company B to identify any suppliers they may have. This form is a simple checklist which the Head of HR completes.

The next step for the compliance officer is to conduct a field visit. Considering Company B has its own production plant, the compliance officer cannot identify any suppliers and thus, limits his investigation to Company B and its operations only. While the officer cannot visit all fields that Company B owns and operates, he randomly picks two fields to visit to determine the human rights standards applicable there. During his visit he observes that 60% of the workers on the field are women. Company B has provided all workers with safety equipment such as masks and gloves and suitable shoes to wear in the field. It has also installed portable washrooms near the fields for their workers with separate washrooms for their female workers. The compliance officer observes that two children are also on the field and makes a note of this.

After the field visit, he sends an email to the Head of HR requesting information on the presence of two children on the field. The Head explains that one of female workers does not have access to a day care facility and as she is the primary care taker of the children, they spend their day after school with their mother on the field. The Head also explains that the children are provided with a snack when they arrive at the field, however due to the nature of the work they have not been able to build a day care on site.

The compliance officer requests permission to conduct another on site visit to collect more information regarding the presence of the children. Permission is granted, and he visits the same field again to speak with the female employee and validate the information given to him by the Head of HR. The female employee shares the same information as well and explains that her children are kept away from the actual operations and thus, remain safe.

The compliance officer is satisfied with the human rights standards that Company B adheres to and thus, presents a positive report to the senior management after which a contract is entered into between Company A and Company B. After 6 months, the compliance officer requests Company B permission to conduct a follow up of the due diligence he had conducted prior to the contract between Company A and B.

He meets with the Head of HR again and requests him to fill another form which requires updated information on the initial form that he had completed, and also requests permission to conduct an on-site visit. The Head of HR identifies the name of a supplier within the form. He explains that a supplier has been engaged by Company B to provide them with cotton as their cotton field was damaged. The compliance officer requests the Head of HR to share the due diligence form with the supplier firm as well and requests that all information within the form is shared with Company A as soon as possible. The Head of HR emails the form to Company C which is Company B's supplier, and also requests permission to conduct an on-site visit so that Company A can complete its HRDD process.

While waiting for permission, the compliance officer conducts an on-site visit of Company B's field and observes that one of the children who he had met 6 months before, was now helping his mother on the field. He makes a note of this, and requests information from the Head of HR with regards to this development. The Head reveals that the family was in financial trouble due to which they needed money. He explained that the mother had begged the Company to employ her son so that he could make money as well. The compliance officer clarified that this was against Company A's policies as they adhered to a strict no child labour policy and thus, Company B had to remedy this situation, or Company A would have to terminate their relationship.

The compliance officer from Company A and the Head of HR from Company B work together to identify a solution. Company B had established a charitable fund three years prior to this incident with the aim of helping employees when needed. They talked to the female employee who stated

that she had to return a debt of PKR 50,000 otherwise she would lose her house. Company B told her that they would pay the debt on her behalf and her son could continue with his education instead of working at the field. The employee accepted and the matter was resolved. During the next due diligence follow up, the compliance officer conducts another interview with the female employee to ascertain whether she has received the money and whether her son is involved in working for Company B or not. She provides that she promptly received the money and paid her debt off, and thus, her son has been able to continue his education instead of working for Company B which satisfies the compliance officer and ensures that progress on this issue is tracked effectively.

After this, the compliance officer follows up on the email sent by Company B to Company C and receives a completed due diligence form, but his request for permission is denied. To validate information in the form, he undertakes research on his own and tries to find news reports and other publicly available material to determine whether Company C adheres to human rights standards or not. He also conducts private interviews with the community around Company C to see if there are any complaints against them. Based on the form completed by Company C and publicly accessible information, the compliance officer comes to the conclusion that Company C enforces human rights standards within their operations, and thus, the agreement with Company B continues.

After a year passes, this process is conducted again and the compliance officer drafts a report explaining the due diligence process that was carried out, and the resulting findings as well. This report is published on Company A's website which mentions that they track progress annually after the first year as during the first year of any agreement they conduct due diligence processes twice to ensure that any human rights concerns and risks are caught earlier on in the process.

This case study explains the way in which HRDD must be conducted by businesses. Some salient features that must be highlighted are:

- Ensuring that HRDD is conducted when entering into a new agreement or starting a new project.
- Developing checklists or assessment tools to conduct HRDD that are simple, and easy to complete.
- Supplementing checklists with other tools such as on-site visits, interviews, requests for information or as a last resort by using publicly accessible information such as news reports specially where permission to visit is not available.
- Conducting HRDD as a continuous or ongoing process and not as a one-off event during the period of the agreement or the project.
- Tracking progress on any issues flagged during the HRDD process.
- Ensuring that HRDD is extended to the supply chain and not just to the immediate partner under contract or within a project.

- Reporting on the HRDD process conducted, and the lessons learned in a transparent and engaging manner so as to keep the community informed and involved.

## Reporting Requirements within HRDD

Principle 21 of the UNGPs states that to account for how they address their human rights impacts, businesses must be prepared to communicate this externally. This principle forms the basis of the international requirement on businesses to ensure that they report on HRDD measures and ensure complete transparency when dealing with human rights standards. Moreover, guidance to businesses on reporting and standardization of management functions and routines is provided through the International Organization for Standardization (ISO), the Global Reporting Initiative (GRI) and other platforms, such as the UNGPs Reporting Framework as well.<sup>31</sup>

Communication is the fourth step of the HRDD process. It requires businesses to report on the risks and impacts that their activities pose, and on the steps that they have taken or will take to prevent, mitigate and address identified adverse human rights impacts.

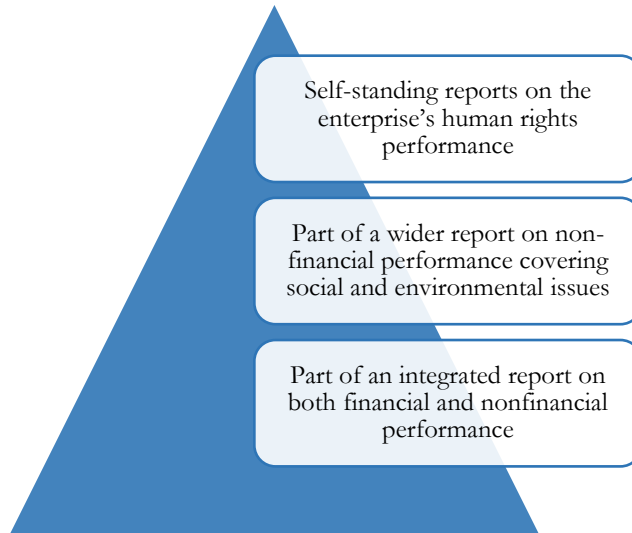
Under Principle 21 of the UNGPs, business enterprises whose operations or operating contexts pose risks for severe human rights impacts should report formally on how they address them. Communications should:

- Be of a form and frequency that reflect an enterprise's human rights impacts
- Should be accessible to intended audiences
- Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved
- Not pose risks to affected stakeholders or personnel; not include names/locations that could disclose identities of rightsholders who may face retaliation
- Not pose risks to legitimate requirements of commercial confidentiality

Where the enterprise poses risks of severe human rights impacts, they should produce formal public reports on the actions the business is taking. Formal reports may include:

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<sup>31</sup> 'HRDD Training Facilitation Guide | United Nations Development Programme' (UNDP, 2022) <<https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>> accessed 3 August 2022



To facilitate reporting, many companies use the Global Reporting Initiative (GRI) reporting standards; the UN Global Compact's Communication on Progress framework or; the UNGP Reporting Framework. Notably, neither the GRI nor the UN Global Compact reporting framework are considered fully aligned with the UNGPs. The benefits of transparency and disclosure should also be carefully weighed, as consumer loyalty or brand distinction are either heightened or damaged by the quality of reporting on any adverse human rights impacts. Strong communication can bring attention to the issue and call for contributions from other stakeholders (government and other industry leaders) or lead to platforms for dialogue with civil society organizations, National Human Rights Institutions, and trade unions.

- Quality Indicators of good corporate human rights reporting

Some indicators that businesses may use to ensure that quality information is collected and reported on are as follows:<sup>32</sup>

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<sup>32</sup> "Training Facilitation Guide on HRDD" (UNDP) <<https://www.undp.org/>>



**1. Governance:** Does the reporting explain how the company's governance structures support the management of human rights risks?

**2. Specific processes:** Does the reporting go beyond high-level statements of policy and commitment and discuss specific processes for implementing respect for human rights?

**3. Specific Impacts:** Does the reporting refer to specific impacts that occurred within the reporting period and are associated with the company's operations or value chain?

**4. Clear examples:** Does the reporting provide clear, relevant examples of how the company's policies and processes have influenced practice and outcomes within the reporting period?

**5. Stakeholder perspectives:** Does the reporting explain how the company gains perspective of stakeholders who are negatively impacted?

**6. Challenges:** Does the reporting discuss complex or systemic human rights challenges and how the company grapples with them?

**7. Metrics:** Does the reporting include specific data, key performance indicators or other metrics that offer clear and relevant evidence to support the narrative?

**8. Forward focus:** Does the report include information about the company's plans for advancing its efforts to respect human rights?

**9. Strategic initiatives:** If the reporting references particular initiatives, for example, projects, third-party assessments or participation in industry or multi-stakeholder organisations, does it make clear how these initiatives help the company advance its own management of human rights risks?

**10. Improving disclosure:** Where this is not the first year of human rights reporting for the company, does the reporting show improvements in the quality of its disclosure in comparison with previous years, taking into account the indicators set out above?

## International Best Practices on Conducting HRDD

Many states have introduced legislation pertaining to HRDD. Regional bodies like the European Union have also highlighted the importance of HRDD as the European Commission recently proposed a directive<sup>33</sup> on corporate sustainability due diligence.

### CASE STUDY 1

#### France

France passed the Duty of Vigilance Act<sup>34</sup> in 2017 pursuant to which enterprises must develop vigilance plans assessing potential human rights impacts of their operations and failure to do so would lead to sanctions. The relevant portion of the law has been reproduced below:

**Art. L. 225-102-4. – I<sup>35</sup>.** – Any company that at the end of two consecutive financial years, employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad, must establish and implement an effective vigilance plan.

“The plan shall be drafted in association with the company stakeholders involved, and where appropriate, within multiparty initiatives that exist in the subsidiaries or at territorial level. It shall include the following measures:

“1° A mapping that identifies, analyses and ranks risks;

“2° Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship;

“3° Appropriate action to mitigate risks or prevent serious violations;

“4° An alert mechanism that collects reporting of existing or actual risks, developed in working partnership with the trade union organizations representatives of the company concerned;

“5° A monitoring scheme to follow up on the measures implemented and assess their efficiency.

“The vigilance plan and its effective implementation report shall be publicly disclosed and included in the report mentioned in Article L. 225-102.

**Art. 225-102-5.** – According to the conditions laid down in Articles 1240 and 1241 of the Civil Code, the author of any failure to comply with the duties specified in Article L. 225-102-4 of this code shall be liable and obliged to compensate for the harm that due diligence would have permitted to avoid.

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<sup>33</sup> “Just and Sustainable Economy: Commission Lays down Rules for Companies to Respect Human Rights and Environment in Global Value Chains” (*European Commission - European Commission*) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145)>

<sup>34</sup> Duty of Vigilance Act 2017.

<sup>35</sup> *ibid*

A Vigilance Plans Reference Guidance<sup>36</sup> has also been developed to further assist businesses. The guidance provides the following:

- Cross-cutting principles: content, scope, and perimeter of the duty of vigilance
  - A formalized, accessible, transparent, exhaustive, and sincere Vigilance Plan is made public in a visible way on the company’s website and communicated within the group as well as to its commercial partners. It is updated regularly and in case of a major event.
  - The Plan should contain relevant information that has led them to determine that they are covered by the Law, in particular, the list of direct and indirect subsidiaries considered for the calculation of the number of employees during the last two financial years, the number of employees per entity included and their location.
  - The Plan must also identify the organizational perimeter of the obligation of vigilance i.e., companies on which diligence will be exercised.
  - The company liable for the obligation should list the human rights it must respect, determine their content and potential breaches in the different countries where the group operates.
  
- Vigilance measures to be established, implemented, and published
  - The Plan should contain the methodology for identifying risks within the scope of the Plan and the tools used or to be used by the company.
  - The company should report on the methodology used for risk analysis, assessment, and prioritization.
  - The company must set up preventive, mitigation and remediation measures with stakeholders based on the prioritization of risks and the company's human, technical and financial resources.
  - The company should set up decentralized mechanisms according to the scope of the duty of vigilance, and mechanisms for reporting information at a global level or for centralization to ensure that the Plan is updated as necessary.
  - The establishment of indicators for each vigilance measure and for each severe risk or violation, in order to demonstrate both the effectiveness and efficiency of the measures.

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<sup>36</sup> “Vigilance Plans Reference Guidance ”<[https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa\\_VPRG\\_EN\\_WEB-VF-compressed.pdf](https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-VF-compressed.pdf)>

## CASE STUDY 2

### European Union

On 10 March 2021, the European Parliament passed a resolution (the “EP resolution”) calling upon the Commission to prepare and submit legislative proposals for EU-wide “mandatory supply chain due diligence” and setting out a number of suggestions as to what that legislation should contain.<sup>37</sup>

**Article 1 -** (The Commission) Considers that voluntary due diligence standards have limitations and have not achieved significant progress in preventing human rights and environmental harm and in enabling access to justice; considers that the Union should urgently adopt binding requirements for undertakings to identify, assess, prevent, cease, mitigate, monitor, communicate, account for, address and remediate potential and/or actual adverse impacts on human rights, the environment and good governance in their value chain; believes that this would be beneficial for stakeholders, as well as for businesses in terms of harmonisation, legal certainty, a level playing field and mitigating unfair competitive advantages of third countries that result from lower protection standards as well as social and environmental dumping in international trade; stresses that this would enhance the reputation of Union undertakings and of the Union as a standard setter; stresses that the framework should be based on an obligation for undertakings to take all proportionate and commensurate measures and make efforts within their means;

**Article 16 –** (The Commission) Stresses that due diligence obligations should be carefully designed to be an ongoing and dynamic process instead of a ‘box-ticking exercise’ and that due diligence strategies should be in line with the dynamic nature of adverse impacts; considers that those strategies should cover every actual or potential adverse impact on human rights, the environment or good governance, although the severity and likelihood of the adverse impact should be considered in the context of a prioritisation policy; believes that, in line with the principle of proportionality, it is important to align existing tools and frameworks as much as possible; emphasises the need for the Commission to carry out a robust impact assessment in order to identify types of potential or actual adverse impacts, to investigate the consequences on the European and global level playing field, including the administrative burden on businesses and the positive consequences on human rights, the environment and good governance, and to design rules that enhance competitiveness, the protection of stakeholders and of the environment, and are functional and applicable to all actors on the internal market, including high risk and publicly listed small and medium-sized undertakings; stresses that that impact assessment should also consider the consequences of the future directive concerning global value chain shifts with regard to affected individuals and undertakings, and concerning comparative advantages of developing partner countries;

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<sup>37</sup> European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), available at [www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html).

**Article 23** – (The Commission) Considers that, to enforce due diligence, Member States should set up or designate national authorities to share best practices, carry out investigations, supervise and impose sanctions, taking into account the severity and repeated nature of the infringements.

**Article 25** – (The Commission) considers that a grievance mechanism at the level of an undertaking can provide effective early-stage recourse, provided they are legitimate, accessible, predictable, equitable, transparent, human rights-compatible, based on engagement and dialogue, and protect against retaliation.

### CASE STUDY 3

#### Germany

In February 2021, the German government reached an agreement on the implementation of a Supply Chain Act. The Act requires Germany-based entities to take measures to address compliance with human rights standards throughout their supply chains on a global scale.

The Act is currently scheduled to enter into force at the beginning of 2023 and will initially apply only to companies which have their head office, principal place of business, administrative headquarters or registered seat in Germany and employ more than 3,000 employees (currently more than 600 companies in Germany).

Under the Act, companies will be required to implement the following due diligence measures:<sup>38</sup>

- A policy statement on respect for human rights;
- Risk analysis, i.e., implementing procedures to identify potential adverse impacts on human rights;
- A risk management system (including remedial measures) to avoid potential adverse impacts on human rights;
- A grievance mechanism to allow for the reporting of potential human rights violations which must then be investigated by the company; and
- Ensure publication of documentation and transparency in reporting.

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<sup>38</sup> “Germany: Mandatory Human Rights Due Diligence” (*Debevoise* May 3, 2021)  
<<https://www.debevoise.com/insights/publications/2021/04/germany-mandatory-human-rights-due-diligence>>

## International Best Practices on Reporting

It must be noted that HRDD is not merely about the process, but is a practice required to ensure that adverse impacts of business activity on human rights can be effectively identified and mitigated.<sup>39</sup> Reporting is simply the final step in the process of identifying, assessing, and addressing human rights risks, and tracking the effectiveness of those responses. For reporting to be both useful and legitimate, it should be based on effective due diligence that follows both a preventative and remedial approach. Disclosure or reporting alone should not be mistaken for HRDD and while ‘sustainability reporting is assumed to drive organizational change within companies,’<sup>40</sup> further research is needed on the positive link between corporate reporting and corresponding systemic change to corporate practices that would prevent harms occurring in the first place.<sup>41</sup> A 2020 report examining the modern slavery statements of 79 asset management firms in the UK, acknowledged the potential leverage investors may have to advocate for stronger action in encouraging companies to go ‘beyond policies and commitments to providing evidence of due diligence measures but found that less than one-third conduct some form of due diligence on human rights in their portfolio companies.’<sup>42</sup>

In 2016 the German government issued its National Action Plan (‘NAP’) to implement the UNGPs.<sup>43</sup> As part of this NAP the German government indicated that it did not wish to introduce legislation on HRDD if at least half of all businesses in Germany with more than 500 employees had adequately integrated the core elements of HRDD into their business processes in a verifiable manner by 2020. The survey in 2020 found that only 13–17 percent of businesses were able to document that they were adequately meeting the NAP requirements on HRDD.<sup>44</sup> As a consequence, the German government introduced legislation in 2021, the German Corporate Due Diligence in Supply Chains Act 2021, to remedy this lack of action by businesses.

The ability to assess the current state of HRDD practice is heavily dependent upon public disclosures made by businesses, which in turn are dependent on the information businesses are relying on to formulate such reporting. In terms of the information gathered to support HRDD disclosures, research suggests that supplier audit is the one of the most prominent methods employed to identify human rights risks.<sup>45</sup> This is unsurprising given how the prevalence of social (or ethical) compliance

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<sup>39</sup> Narine (2015).

<sup>40</sup> Ford and Nolan (2020).

<sup>41</sup> Lozano R, et al. Elucidating the relationship between sustainability reporting and organisational change management for sustainability. *J Clean Prod.* 2016;125:168–188.

<sup>42</sup> Walk Free, WikiRate, Business and Human Rights Resource Centre (2020) Beyond compliance in the financial sector: a review of the statements produced by asset managers under the UK Modern Slavery Act. [https://cdn.walkfree.org/content/uploads/2021/03/18184928/WalkFree\\_BeyondComplianceInTheFinanceSector\\_210318.pdf](https://cdn.walkfree.org/content/uploads/2021/03/18184928/WalkFree_BeyondComplianceInTheFinanceSector_210318.pdf).

<sup>43</sup> German Federal Foreign Office, National Action Plan for Business and Human Rights (2016).

<sup>44</sup> Virtual conference of the Federal Ministry of Labour and Social Affairs: ‘Global Supply Chains—Global Responsibility’ (October, 2020)

<sup>45</sup> McCorquodale R, Smit L, Brooks R, Neely S. HRDD in law and practice: good practices and challenges for business enterprises. *Bus Human Rights J.* 2017;2(2):195–224

auditing has increased as a tool to address exploitative labor conditions, particularly those evident in supply chains.<sup>46</sup>

Social auditing is a process by which a company verifies supplier compliance with human rights standards. It is contemplated by the UNGPs and other international standards, yet it is ascribed a reasonably limited role and is referred to ‘solely in the context of tracking, noting that it may be one of an array of tools used to assess the effectiveness of a company’s response to its human rights impacts.’<sup>47</sup> Indeed, ‘an audit is designed to focus on information representing symptoms, rather than the root cause of the problems,’<sup>48</sup> and thus, while it may be a method to gather information for HRDD, it should not be the main means to implement HRDD. HRDD is fundamentally different from social auditing in its approach, scope, and ambition. Hence, the ongoing reliance on social auditing by businesses reflects a very limited vision of HRDD and may result in cosmetic or self-legitimizing compliance-oriented responses by businesses to address and reduce the potential for harm. In addition, there is now a growing body of evidence indicating that social auditing is, in and of itself, an ineffective tool for achieving meaningful and consistent human rights improvements. New laws and regulations that mandate HRDD should not equate social audits with HRDD or see them as a substitute.<sup>49</sup>

Despite the various impediments that continue to serve as a bar to HRDD, various companies continue to follow due diligence processes in the context of human rights voluntarily and report on their findings as well. For example, Unilever has announced that it will pay a living wage by 2030 to all those working in directly supplying goods and services to Unilever.<sup>50</sup> Also, some businesses have incorporated independent human rights evaluations in their human rights assessment, and HRDD is a core element of some industry initiatives.<sup>51</sup>

There is, though, a large gap between businesses which are supportive of HRDD and those which put HRDD into action in a substantive way. It is evident, that after 10 years of implementation of HRDD, its effectiveness in business practice remains limited. As a means of prevention of human rights abuses by business, the essentially voluntary nature of HRDD and the current flexibility it offers business in determining its scope, has meant that there is still some distance to go before HRDD may be effective. Its potential reliance on social auditing to gather information to identify and assess potential risks is

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<sup>46</sup> Terwindt C, Armstrong A. Oversight and accountability in the social auditing industry: the role of social compliance initiatives. *Int Labour Rev.* 2019;158(2):245–272.

<sup>47</sup> Nolan J, Frishling N. HRDD and the (over) reliance on social auditing in supply chains. In: Deva S, Birchall D, editors. *Research handbook on human rights and business*. Cheltenham: Edward Elgar Publishing; 2020. pp. 108–129

<sup>48</sup> Ibid 3

<sup>49</sup> Business & Human Rights Resource Centre (2021a) Social audit liability. Hard law strategies to redress weak social assurances. [https://media.business-humanrights.org/media/documents/2021\\_CLA\\_Annual\\_Briefing\\_v5.pdf](https://media.business-humanrights.org/media/documents/2021_CLA_Annual_Briefing_v5.pdf).

<sup>50</sup> Unilever (2021) A living wage. <https://www.unilever.com/planet-and-society/raise-living-standards/a-living-wage/>.

<sup>51</sup> International Council on Mining and Metals (2012) Integrating HRDD into corporate risk management processes. [https://www.icmm.com/website/publications/pdfs/social-performance/2012/guidance\\_human-rights-due-diligence.pdf](https://www.icmm.com/website/publications/pdfs/social-performance/2012/guidance_human-rights-due-diligence.pdf).

also problematic. Thus, there is increasing pressure on states to implement legislation requiring businesses to undertake HRDD that is both substantive and sustainable.

Furthermore, research on companies in the London Stock Exchange FTSE 100 index shows many do not meet existing reporting requirements or report on significant human rights impacts.<sup>52</sup> The European Commission estimates that only 2,500 out of the 42,000 large European Union (EU) companies formally disclose non-financial information each year.<sup>53</sup> Much of the information available is not comparable or consistent. Reporting is currently focused on the needs of investors, and even then, the current lack of transparency and accessibility of information does not help the development of good quality, socially responsible investment practices. There is insufficient recognition of the need for companies to be accountable to society more broadly, including workers, producers, and consumers.

Access to information for stakeholders (consumers, communities affected by economic activity, trade unions, governments, NGOs, etc.) is essential to prevent, monitor, and punish abuses. Corporate non-financial reporting is not an end in itself; it must be based on specific indicators, which are reliable, relevant, and comparable. For example, the Mexican labor rights organization CEREAL, partner of CIDSE member CAFOD (England & Wales), has identified that repeated use of agencies and temporary contracts is a significant feature of global information and communications technology supply chains, having one of the biggest impacts on the rights of electronics workers.

Companies therefore need to be more transparent about such business practices and models, for example by reporting on the presence of independent trade unions, collective contracts with inactive unions and key performance indicators relating to the proportion of workers on temporary contracts and/or employed via agencies.<sup>54</sup> For reporting to be credible, there should be a formal requirement to incorporate the opinions of stakeholders including civil society organizations and trade unions. Its scope must also include application of the transparency obligation to subsidiaries.

Where legislation exists on reporting, implementation and enforcement are key for effective results. For example, in France the 2010 Grenelle II Act included a measure to improve the company reporting requirements in place since 2001. However, the 2011 decree implementing the Act provided two separate sets of reporting indicators for companies listed on the stock exchange and non-listed companies, encouraging companies subject to the more restrictive set not to disclose, and policy measures for effective implementation limiting comparability. The decree also removed the requirement for companies to publish information about the social and environmental impacts of

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<sup>52</sup> The Reporting of Non-Financial Information in Annual Reports by the FTSE100 prepared by Professor Adrian Henriques, Middlesex University, for the CORE Coalition, 2010

<sup>53</sup> European Commission, 'Disclosure of non-financial and diversity information by certain large companies and groups (proposal to amend Accounting Directives)', 16 April 2013

<sup>54</sup> See 'CAFOD and CEREAL Feedback on the draft Guidance for the ICT industry on implementing the Guiding Principles on Business and Human Rights,' February 2013.



activities of their global subsidiaries, precisely where most violations occur. The decree thus undermined the intention of the original legislation and the credibility of company reporting.

As well as providing accurate, publicly available information, reporting requirements can play a part in helping to prevent human rights abuses. Understanding that the business is legally required to report on its risks and impacts can encourage a virtuous circle of feedback within the company. With more systematic identification of current impacts on human rights and potential risks plus analysis of the effectiveness of existing policies, senior management will be better informed and able to take mitigating action before problems occur.

### CASE STUDY

#### **United States: Reporting on conflict minerals in supply chains, and on human rights and environmental impacts in Myanmar**

In the United States, the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502 requires companies to report on their due diligence with respect to conflict minerals in their supply chains originating in the Democratic Republic of Congo, with the goal of helping to end human rights abuses caused by the conflict. A company that ends conflict minerals in its supply chain must determine and disclose whether those minerals directly or indirectly financed or benefited armed groups.<sup>55</sup>

The 2013 Burma Responsible Investment Reporting Requirements establish that as a condition for receiving a license to operate in Myanmar, U.S. companies in all sectors investing more than \$500,000 must submit reports, with the objective of addressing impacts on economic development and political reform following the easing of U.S. sanctions in 2012. Reports must provide information on human rights, labour rights, land rights including the details of land transactions, community and stakeholder engagement, environmental protection, anti-corruption, security arrangements, and risk prevention and mitigation.

### CASE STUDY

#### **European Union: Reporting on human rights and environmental impacts**

In the spring of 2013, the European Union began consideration of a legislative proposal requiring mandatory reporting by corporations on their human rights and environmental impacts. In their review of the proposal, European governments and the European Parliament will need to consider experience with existing measures, including the weak, minimal results of the Danish ‘comply or explain’ model and the lack of effective implementation of the requirement in France.

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<sup>55</sup> ICAR, ECCJ and CNCA (2012), Human Rights Due Diligence: The Role of States (HRDD expert report) pp. 46-47.

## Changes needed for robust EU requirements on non-financial reporting:<sup>56</sup>

- There needs to be a more explicit wording linking the requirement for companies to report on environmental matters, social and employee-related matters, respect for human rights, anti-bribery and corruption matters to the risks and impacts of the particular business,
- Reporting on significant risks and harm in supply chains needs to be included. In the wake of the horsemeat scandal and the death toll from recent incidents in garment factories in Bangladesh, it is clear that problems with supply chains can represent a significant risk to companies, the communities in which they operate and customers. Companies need to know what is happening in their supply chains and show that they are aware of and are managing risks appropriately,
- There needs to be greater coverage of businesses. As UN Special Representative John Ruggie explicitly recognized in the Guiding Principles, businesses of all sizes can have an impact on human rights.<sup>57</sup> However the definition of 'large' companies proposed in the current draft regulation is those with more than 500 employees. At the very least, it would be better to use the usual EU definition of companies with more than 250 employees. Subsidiaries must be covered by the transparency requirements,
- Key Performance Indicators are important for getting clear, comparable data. Good quality guidance for businesses and enforcement mechanisms at the member state level are also needed for these measures to be effective.

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<sup>56</sup> Making EU Corporate Reporting Work for People, Planet and Companies,' European Coalition for Corporate Justice position paper, July 2013

<sup>57</sup> Ibid

## HRDD in Pakistan

The role played by human rights in the context of business activity has recently gained significance in Pakistan. At an international level, Pakistan is a party to the 8 core UN Conventions, and the Conventions introduced by the ILO. Pakistan also enjoys a GSP+ status with the European Union, which requires the State to ensure compliance with 27 Conventions which form part of the human rights, and good governance framework as envisioned by the EU. In the context of businesses as well, Pakistan must ensure that human rights obligations which apply to it are being fulfilled. Although efforts to ensure the protection of rights have been undertaken, for instance, Sialkot's sporting industry managed to eradicate child labor and improve working conditions, and an unparalleled compensation agreement was won by victims of the Ali Enterprise factory fire; the scope of HRDD in the constitutional framework and corresponding domestic laws, at a federal and provincial levels remains non-existent.

According to the Ethical Trading Initiative, Pakistan's labor force is estimated to be the ninth largest in the world, numbering at 68 million people. This labor market remains characterized by informal and precarious employment, which operates without giving due regard to the fundamental rights of individuals. In addition to labor rights, business activities may adversely affect the fundamental rights of individuals who are tangentially linked to such activities. For example, home-based workers who form a major part of Pakistan's domestic production industry are not directly employed by businesses, as they are hired by middlemen, thus not entitled to any benefits. In most cases, they do not have a formal contract as well.

The concept of due diligence requires businesses to carry out impact assessments to comprehend the ways in which they may adversely impact human rights within their operations and supply chains. According to a report by the Society for the Protection of the Rights of the Child, it is estimated that there are 2.4-3.2 million children and over two million bonded laborers in Pakistan's workforce. Furthermore, the Pakistan Bureau of Statistics reveals that gender parity in the employment sector prevails and the wage gap between men and women is approximately 58%. Moreover, an estimated 37% of workers in the garment industry, who are mostly women, are paid below minimum wage. With the prevalence of such bleak circumstances, it is essential for businesses to be held responsible for the effect of their activities on human rights and are under an obligation to respect human rights throughout all forms of business activity.

## A few Best Practices

### **Sapphire Diamond Fabrics Limited & Sapphire Dairies Limited: Reporting on Human Rights and Environmental Impacts**

Sapphire Diamond Fabrics Limited & Sapphire Dairies Limited is a textile and retail company based in Lahore, Pakistan, which has a chain of stores nationwide. It is one of the companies in Pakistan that is actively trying to comply with the international human rights standards.

Some best practices employed by the company in ensuring that labour laws, as well as human rights standards are enforced within their operations include:

- **Recruitment Process:** All potential employees are to go through a screening process to ensure no one is underage and forced labour is not taking place, a written contract is provided to explain the legality of their requirements and to identify whether the job is compliant with minimum wage standards.
- **Chain Management:** When females are being inducted, it is important to consider appropriate infrastructure wherein women may have segregated areas ie. washrooms, prayer rooms, dining spaces and a day-care within the facility, in order to provide a safe and comfortable working environment.
- **Training:** Sapphire's HR policy requires that every potential employee undergoes women rights and anti-harassment training prior to their joining, with a stronger emphasis on male recruits.

The company has also maintained due diligence standards by way of updating risk assessments and responding to changes where need be, by tracking shifts in the operating environment, for example:

- **"Tweaking" of Policies:** Where normally no two siblings are permitted to work in the same department, the company has altered this policy to allow comfort and support to its employees ie. females traveling alone, working in a new environment etc.
- **Audits and Inspections:** an array of scheduled and unscheduled inspections take place within the factory to guarantee fundamental human rights and labour rights are being followed ie., health and safety of the work environment, access to clean facilities and drinking water etc.

Fundamental to upholding human rights standards, is also acknowledging how the company is working within a pre-existing system and impacting the dynamics and environment accordingly. To prevent harm, Sapphire Ltd. is taking the following provisions:

- **Environment Protection:** Considering an array of chemicals are used by the factory, any water flowing out is first treated through the company's water treatment plant to ensure there are no chemical remnants before discharging it. Experts are also doing consistent research and using those chemicals which cause the least amount of damage so no extra harm is caused to the environment. Furthermore, the consumption of water has decreased by 45% in the last couple of years.
- **Community Engagement:** Sapphire Ltd, has taken ownership of the school next to the factory and is providing the children of the workers with education, and are then offered

jobs within the factory through a generational cyclic process. More job opportunities have been created for the community there via direct employment (1 unit of employment for 6000 people) and indirect employment (twice the size of direct). The company also conducts wellness programs for employees about healthy eating, exercising, and even seminars on mental health. These discussions are then generated throughout the community in the area. Lastly, one of the components of HRDD is stakeholder engagement, therefore Sapphire Ltd. ensures its employees are cognizant of their human rights by providing access to address and remediate any potential violations through redressal mechanisms such as:

- A compliance committee is set in place with both males and females in order to ensure all human rights standards including within labour laws are being complied with.
- A company email address is open for complaints, alongside complaint boxes for those who do not have such access. There is also a direct telephone hotline through walk-in access on the factory premises.

While HRDD has been applicable internationally, within Pakistan it is a fairly new concept and thus, businesses must initiate the process of identifying their responsibilities in conducting HRDD. Many businesses have established policies internally which adopt some elements of HRDD, however these must be expanded and all steps of the HRDD process must be integrated effectively by all companies. For example, the policy implemented by Sapphire wherein they conduct a filtering process during recruitment to identify the age of potential employees, and whether any forced labor is being conducted or not is a good starting point in conducting HRDD. This reflects the priorities that the company has and the risks which may stem from their operations i.e., minimizing child labor and forced labor along with the mechanisms in place to mitigate such impacts.

However, identification of risks within Pakistani businesses must be expanded to include all human rights standards under domestic and international legislation, and labor standards as well.

## Due Diligence policy under the National Action Plan on Business and Human Rights

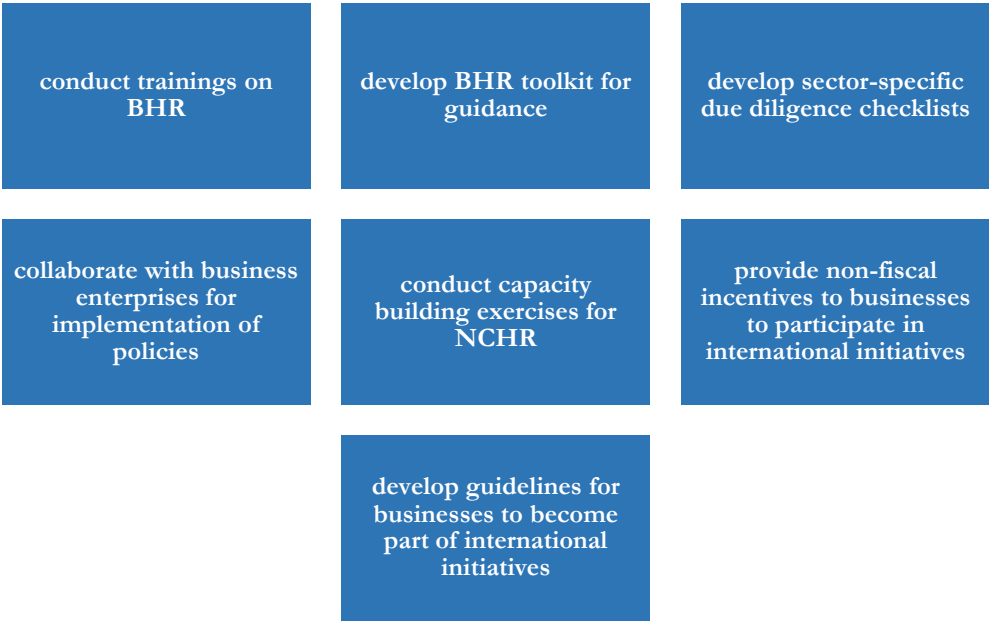
- State Expectations from Business Enterprises

The only policy that exists relating to HRDD in Pakistan is that which is mentioned under the NAP. Through the NAP, the country intends to implement the UNGPs and ensure that the rights of citizens are protected against any adverse human rights impacts within business activity. In addition to this, the NAP also aims to strengthen grievance mechanisms to ensure that victims are granted adequate remedies where business activities interfere with or violate human rights. While the NAP relates primarily to the State's obligations regarding the protection of human rights, it also specifies its expectations from business enterprises. This is both in relation to the respect of human rights throughout business operations and the provision of adequate remedies in cases of adverse impacts. To facilitate and guide business enterprises in ensuring compliance with and supporting the effective implementation of the NAP priority areas and the UNGPs, 14 expectations from business enterprises are listed in the NAP:

comprehensive human rights commitment policy	awareness of international guidelines	open to certifications by the International Organisation for Standardization	Key performance indicators policy
communication of human rights commitments to employees	formal contract of employments	adequate HRDD mechanisms to assess internal and external risks	be open to voluntary human rights compliance
consider human rights impacts by using UNDP HRDD tool	compliance with domestic laws	develop and implement redressal mechanisms	take direction from international guidelines for redressal mechanisms
	make available remediation for human rights abuses in supply chain	open-door policy to ensure access to remedy	

- State Facilitation of Business Enterprises

To aid in the fulfilment of establishing human rights commitments and the enforcement of the BHR agenda as established in the NAP, the State commits to 7 objectives:



## **Guidelines**

### **Guideline 1**

Businesses should commit to protect human rights within their business operations and value chains regardless of the existing national or provincial legislative or regulatory requirements in Pakistan. This may take the form of a corporate code of conduct establishing a commitment to respect human rights within their business operations.

### **Guideline 2**

Businesses should develop and make public a corporate human rights framework, including a human rights policy and HRDD plan applicable to their operations and value chains.

### **Guideline 3**

In cases of extended and complex value chains, businesses should undertake efforts to conduct discussions with their business partners and stakeholders in different tiers and share their human rights expectations with them.

### **Guideline 4**

Businesses should suspend agreements with any partners who are repeatedly found responsible for causing human rights abuses and violations and do not make any credible efforts to take corrective action.

### **Guideline 5**

Senior management of businesses should ensure the protection of human rights as a core business ethic.

### **Guideline 6**

Businesses should conduct HRDD as an ongoing exercise and not as a one-off event, and HRDD plans should be periodically updated in light of evolving operating circumstances and human rights contexts.

### **Guideline 7**



Businesses must ensure that those individuals are appointed to high level positions within the businesses who endorse the protection of human rights, and will undertake efforts to mitigate adverse impacts of business activities on human rights.

#### **Guideline 8**

It must be recognised that conducting HRDD is not a one-off event and thus, businesses must include—as a matter of policy—obligations to conduct HRDD before a new project begins, or a new product is launched.

#### **Guideline 9**

Businesses must ensure that their HRDD policy is updated with changing operations, priorities, or human rights impacts. This allows for a business to keep up with the need to respect human rights throughout the extent of their operations.

#### **Guideline 10**

When a business frequently conducts HRDD and identifies new human rights risks, then this must be supplemented with a human rights impact assessment to identify ways in which new risks may be mitigated.

#### **Guideline 11**

Businesses should integrate reporting and communications mechanisms within their human rights policy and HRDD processes.

#### **Guideline 12**

Businesses should routinely and transparently report and publicly communicate the activities they undertake for the upholding of human rights standards, including HRDD processes.

#### **Guideline 13**

Businesses should also share lessons learned through their HRDD processes to contribute to public knowledge and build peer-learning and support systems across the business community to strengthen their responsible business practices and capacities.

#### **Guideline 14**

Businesses should report on how they include and engage relevant stakeholders, including local communities, during the HRDD process. Relevant stakeholders besides local communities include civil society organizations, human rights defenders, labor union representatives, representatives of vulnerable and marginalized communities, and so forth.

#### **Guideline 15**

Businesses should consult relevant stakeholders during the reporting process for their feedback on perceived or actual human rights impacts and incorporate their feedback towards strengthening their HRDD practices.

#### **Guideline 16**

Businesses should be transparent in their human rights reporting and clearly communicate the outcomes of their human rights impact assessments and actions taken to address human rights impacts they may have caused, contributed, or are linked to.

## HRDD in Large-Scale Projects

Large-scale projects can be defined as those projects which comprise a wide range of activities, numerous business relations and large and complex supply chains. These may include projects that are entirely public-funded, entirely private-funded, involve public-private partnerships or partnerships between the State and multilateral funding institutions or other States. As a result, HRDD in large-scale projects requires coordinated efforts by the State, businesses and investors.

In Pakistan, public-private partnership projects have been prevalent in the energy, power generation and transportation sectors. In the fiscal year 2019–2020, 17 infrastructure projects involving private investment reached financial closure.<sup>58</sup> In recent years, the government has expressed a commitment to expanding large-scale public-private partnership projects to many more sectors, including aviation, technology, healthcare, tourism and others.<sup>59</sup>

## International Guidelines for HRDD in Large Scale Projects

Given that large-scale projects involve a variety of actors, including the State, private entities and investors, international guidelines for actors are different. The following sub-section highlights relevant international guidelines from the UNGPs for each of these different stakeholders.

### 1. States

#### **What is the State-business nexus?**

This includes situations where a State owns or controls a company, or where it contracts or otherwise engages with companies to provide services that may have an impact on the enjoyment of human rights. Finally, it covers States' commercial transactions, notably procurement.

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

Pillar I of the UNGPs highlights the State's duty to protect human rights. While the UNGPs do not differentiate guidance based on the scale of projects, the recommendations to State-owned enterprises can be adapted to large-scale projects. For State-owned enterprises involved in large-scale projects, the UNGPs hold that these enterprises should "take the lead" with human rights policies and "implement HRDD process", and provide remediation when adverse impacts are identified (Principle

<sup>58</sup> World Bank, PPI Snapshot: Pakistan, <https://ppi.worldbank.org/en/snapshots/country/pakistan>.

<sup>59</sup> Mubarak Zeb Khan, 'Govt envisages 'robust' PSDP plus to stimulate growth', DAWN, 15 December 2019, <https://www.dawn.com/news/1522352/govt-envisages-robust-psdp-plus-to-stimulate-growth>.

4). States must also fulfil this duty when they work with multinational institutions (including project funders like the World Bank and Asian Development Bank) and other States (Principle 9).

**United Nations Guiding Principles on Business and Human Rights:  
Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar I. The State Duty to Protect

The State-business nexus

Guiding Principle 4: States should 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 HRDD.

Commentary: States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective HRDD is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require HRDD by the agencies themselves and by those business enterprises or projects receiving their support. A requirement

for HRDD is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.

**United Nations Guiding Principles on Business and Human Rights:  
Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar I. The State Duty to Protect

The State-business nexus

Guiding Principle 9: States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

Commentary: Economic agreements concluded by States, either with other States or with business enterprises – such as bilateral investment treaties, freetrade agreements or contracts for investment projects – create economic opportunities for States. But they can also affect the domestic policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

Large-scale projects undertaken entirely by the State or under public-private partnerships operate on a larger scale than smaller projects and, therefore, have the potential to lead to more human rights violations than other projects. While the guidance to States regarding implementing HRDD policies is the same, regardless of the size of a project, States must be cognisant of the greater reach of the impact of these projects and must ensure that HRDD to each part of the project. The duty is also on States to take the lead with this responsibility as they have significant leverage over businesses.

**What does the State duty to protect look like in practice?**

States can require companies to conduct due diligence of their business relationships, such as overseas suppliers, by, for example, requiring them to report globally on how they ensure compliance with labour standards in their supply chain, or by making due diligence a condition for receiving certain types of State support, such as export credit.

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

## 2. Businesses

HRDD under the UNGPs requires companies to proactively identify where they may or do have adverse impacts on human rights and ensure that they take adequate measures to prevent, mitigate and, where needed, remediate them. HRDD is a proactive measure for companies to systematically identify, assess, prevent and address harm to individuals, whether that be through their business structures, policies, processes or the day-to-day behaviour and decision-making of managers and employees. Entrenching respect for human rights is a continuous learning process that varies for each company, depending on its size, structure, location, products, and business relationships.

### **If the Guiding Principles are not a legal instrument, does that mean HRDD requirements for businesses are just voluntary?**

[W]hile HRDD and the remediation of harm may not always be legally required, they are necessary if a company is to know and show that it is meeting its responsibility to respect human rights. Failure to do so can subject companies to the “court of public opinion”—comprising employees, communities, consumers, civil society, as well as investors. So there can be legal, financial and reputational consequences if companies fail to respect human rights as set out in the Guiding Principles.

[In addition] the term “responsibility” to respect, rather than “duty”, indicates that respecting rights is not an obligation that current international human rights law generally imposes directly on companies, although elements of this responsibility will often be reflected in domestic laws [or may be reflected in domestic laws in the future].

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership, and structure (Principle 14). The scale and complexity of actions to fulfil human rights responsibilities will vary according to the severity of the company’s human rights impacts (Principle 14). Given the vast impact of large-scale projects, it is likely that businesses involved in such projects will need to employ substantial and complex means to meet the needs of their adverse human rights impacts.

**What does it mean that a company’s human rights actions should vary according to the severity of its human rights impacts?**

**Example**

A gold trading company with 20 employees buying gold from countries affected by conflict and where human rights abuses are linked to minerals or are prevalent will have a significant risk of its products, operations or services being linked to adverse human rights impact through its business relationships. Its policies and processes to ensure that it is not involved in such abuses will need to be proportionate to this risk. This may necessitate comprehensive and formal systems. The company may also, for example, need to bring in external expertise in human rights and HRDD processes, as it may not have such expertise in-house.

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

Businesses may be involved with adverse human rights impacts either through their activities or as a result of business relationships with other parties.<sup>60</sup> As per Principle 13, businesses must seek to protect human rights beyond their “sphere of influence”.<sup>61</sup> This means that businesses must consider human rights impacts through their “activities” (including both acts and omissions) and “business relationships” (including relationships with business partners, entities in the value chain, and any other non-State or State entity directly linked to its business operations, products or services). Given the complex nature of large-scale projects, companies will likely be engaged in a wide range of activities, have numerous “business relationships” and have large and complex supply chains, requiring especially diligent tracking of adverse human rights impacts. This is especially the case as “business relationships” is broadly defined and will include “entities in its supply chain beyond the first tier and indirect as well as direct business relationships.”<sup>62</sup>

**Definition: Value chain**

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.

<sup>60</sup> United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>61</sup> The concept of a company’s sphere of influence is sometimes used to define the boundaries of its social responsibility, but it is not used in the Guiding Principles.

<sup>62</sup> UN OHCHR, Frequently Asked Questions about the Guiding Principles on Business and Human Rights (2014), [https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf).

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

The UNGPs relating to HRDD obligations of businesses (Principle 17, 21, 24) are reproduced below:

**United Nations Guiding Principles on Business and Human Rights:  
Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar II. The Corporate Responsibility to Respect Human Rights

HRDD

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 HRDD. 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. HRDD:

- (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;
- (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;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.

Commentary: This Principle defines the parameters for HRDD, while Principles 18 through 21 elaborate its essential components.

Human rights risks are understood to be the business enterprise’s potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

HRDD can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

HRDD should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context,



the particular operations, products or services involved, or other relevant considerations, and prioritize these for HRDD.

Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a nonlegal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise’s alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.

Conducting appropriate HRDD should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.

### **United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar II. The Corporate Responsibility to Respect Human Rights

HRDD

Guiding Principle 21: In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality

Commentary: The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect

human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.

Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.

### **United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar II. The Corporate Responsibility to Respect Human Rights

Issues of Context

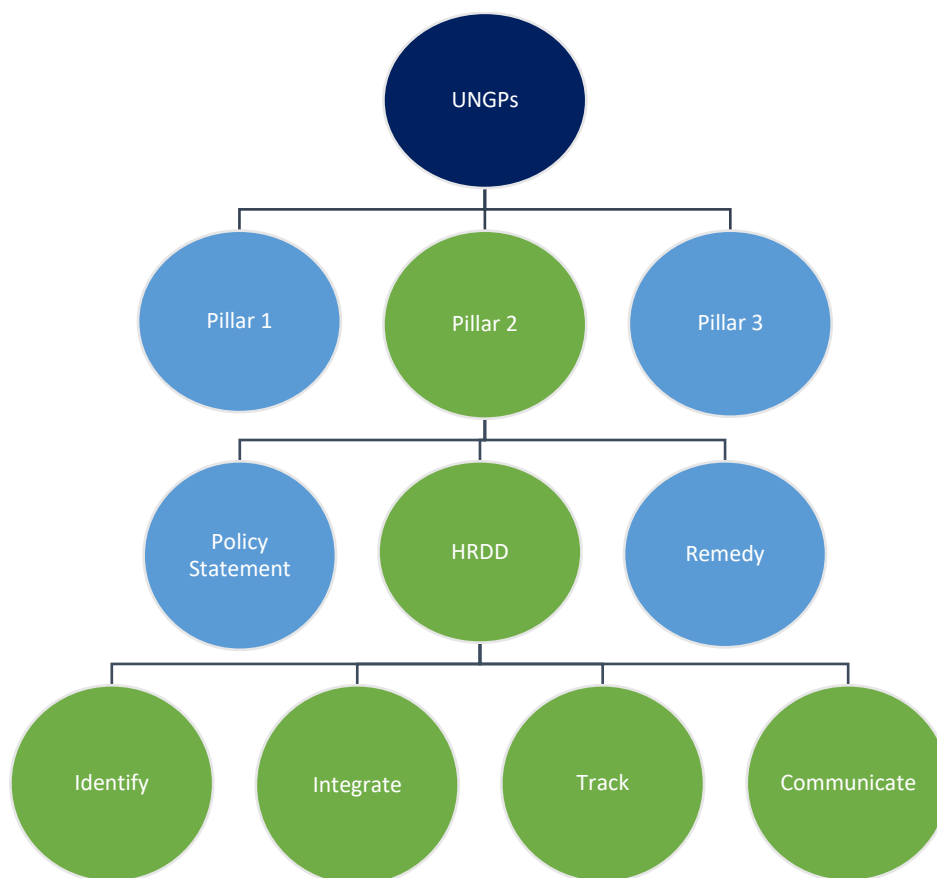
Guiding Principle 24: Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable

Commentary: While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.

### **Stages of HRDD Process for Businesses**

The UNGPs divide HRDD into four steps:

1. Identifying and assessing – to gauge the types and severity of the risks (Principle 18)
1. Integrating and acting upon findings – to prevent and mitigate adverse impacts (Principle 19)
2. Tracking effectiveness – to verify whether risks are being assessed (Principle 20)
3. Communicating action – to account for how a business addresses their impacts (Principle 21)



**FIGURE 1: CHART DEMONSTRATING HOW HRDD FITS INTO THE UNGPS**

**Identifying and assessing (Guiding Principle 18)**

The first step in HRDD is gauging human rights risks. This involves identifying and assessing actual or potential adverse human rights impacts through companies’ actions and business relationships. Importantly, this step involves multi-stakeholder engagement, which includes understanding the concerns of stakeholders by consulting them directly. Large-scale projects will often impact many different stakeholders, making identifying all relevant stakeholders affected by a large-scale project and engaging in consultations with all relevant groups essential.

**Definition: Human rights risks**

A business enterprise’s human rights risks are any risks that its operations may lead to one or more adverse human rights impacts. They therefore relate to its potential human rights impact. In traditional risk assessment, risk factors in both the consequences of an event (its severity) and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritize the order in which potential impacts are addressed in some circumstances (see “severe human rights impact” below). Importantly, an enterprise’s human rights

risks are the risks that its operations pose to human rights. This is separate from any risks that involvement in human rights abuse may pose to the enterprise (for example, legal liability or reputational damage), although the two are frequently related (for example, legal liability or operational costs resulting from the company's involvement in the abuse).

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

### **Whose human rights are relevant?**

An enterprise's operations may pose risks to the human rights of various groups. Direct employees are always a relevant group in this regard. But potentially affected stakeholders may also be communities around the enterprise's facilities, workers of other enterprises in its value chain (insofar as they can be affected by its own actions or decisions), users of its products or services, others involved in product development (such as in product trials) and so forth. It is important for enterprises to look beyond the most obvious groups and not assume, for instance, that the challenges lie in addressing impact on external stakeholders while forgetting direct employees; or assume that those affected are employees alone, ignoring other affected stakeholders beyond the walls of the enterprise. Individuals from population groups that are more vulnerable to human rights impact require particular attention.

Source: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN OHCHR (2012)

The UN Interpretive Guide on Corporate Responsibility to Respect Human Rights elaborates on how businesses can assess human rights impacts. A business entity may choose to have a self-standing assessment of its human rights impact or integrate human rights considerations into wider social and environmental impact assessments. In the context of large-scale projects, it may be necessary for enterprises to conduct an independent assessment as the large-scale project differ significantly from the general activities of a business. Where due diligence on every individual business relationship is impossible to conduct, as may be the case with large-scale projects, businesses should identify general areas where the risk of adverse human rights impacts is most significant.

Engagement with stakeholders is an essential part of this process as it enables an enterprise to identify whether stakeholders have the same or different perspectives (than the enterprise and each other) on what constitutes an impact on their human rights and on how significant an impact may be.<sup>63</sup> For

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<sup>63</sup> OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012), [https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf).

example, with large-scale infrastructure projects, damage to the land on which a tribal community depends but is not farmed or otherwise used for economic purposes may represent a low-level impact on the right to property. In contrast, a tribal community may consider that there is a far greater impact because of their connection to the land.

**Definition: Stakeholder/affected stakeholder**

A stakeholder refers to any individual who may affect or be affected by an organization's activities. An affected stakeholder refers here specifically to an individual whose human rights have been affected by an enterprise's operations, products or services.

**Definition: Stakeholder engagement/consultation**

Stakeholder engagement or consultation refers here to an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches.

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

The text of Guiding Principle 18 is reproduced below with its commentary from the UNGPs:

**United Nations Guiding Principles on Business and Human Rights:  
Implementing the United Nations 'Protect, Respect and Remedy' Framework**

Pillar II. The Corporate Responsibility to Respect Human Rights

HRDD

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.

Commentary: The initial step in conducting HRDD is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified

In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.

While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.

Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.

In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

The assessment of human rights impacts informs subsequent steps in the HRDD process.

### **Integrating and acting upon findings (Guiding Principle 19)**

Next, businesses should integrate the findings from their impact assessments across relevant internal functions and processes. In the context of large-scale projects, if an enterprise's activities may contribute to adverse human rights impacts, the enterprise should integrate that finding across relevant project departments that generate activity that is essential to address the risk. One way to incorporate findings in large-scale projects is by requiring or creating incentives for parties to respect human rights in contracts or other formal agreements.

Where large-scale projects are being planned, early communication between staff that draft contracts with external parties, departments involved in the execution of contracts and those who have oversight of human rights issues, can prevent problems later on in the project timeline. This is because an

enterprise undermines its capacity to meet its responsibility to respect human rights once a contract locks in terms that could increase human rights risks or constrain an enterprise's ability to address them.

**What does it mean to cause or contribute to an impact and for an impact to be “directly linked” to a company’s operations, products or services?**

Examples

A company may cause an adverse impact if it denies workers the right to organize themselves. A company may contribute to an adverse impact if it provides financing to a construction project that will entail forced evictions or agrees a purchasing order with a supplier whose timeline for completion makes it impossible for the supplier

to adhere to international labour standards. A company’s operations, products or services may be directly linked to an adverse impact through a business relationship if one of its suppliers subcontracts work, without its prior knowledge, to contractors that use forced labour. In this last example, the company has not caused or contributed to the issue, but once made aware of it, it still has a responsibility to act to seek to prevent and/or mitigate it.

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

**Definition: Leverage**

Leverage is an advantage that gives power to influence. In the context of the Guiding Principles, it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.

Source: Frequently Asked Questions about the Guiding Principles on Business and Human Rights, UN OHCHR (2014)

**Assessing Leverage:**

	Have leverage	Lack leverage
Crucial business relationship	<p><b>A.</b></p> <ul style="list-style-type: none"> <li>➤ Mitigate the risk that the abuse continues/recurs</li> <li>➤ If unsuccessful</li> </ul>	<p><b>B.</b></p> <ul style="list-style-type: none"> <li>➤ Seek to increase leverage</li> <li>➤ If successful, seek to mitigate risk that the abuse continues/recurs</li> <li>➤ If unsuccessful, consider ending the relationship;** or demonstrate efforts made to mitigate abuse, recognizing possible consequences of remaining</li> </ul>
Non-crucial business relationship	<p><b>C.</b></p> <ul style="list-style-type: none"> <li>➤ Try to mitigate the risk that the abuse continues/recurs</li> <li>➤ If unsuccessful, take steps to end the relationship*</li> </ul>	<p><b>D.</b></p> <ul style="list-style-type: none"> <li>➤ Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs</li> <li>➤ If impossible or unsuccessful, consider ending the relationship*</li> </ul>

\* Decisions on ending the relationship should take into account credible assessments of any potential adverse human rights impact of doing so.

\*\* If the relationship is deemed crucial, the severity of the impact should also be considered when assessing the appropriate course of action.

The text of Guiding Principle 19 is reproduced below with its commentary from the UNGPs:

**United Nations Guiding Principles on Business and Human Rights:  
Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar II. The Corporate Responsibility to Respect Human Rights

HRDD

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.



Commentary: The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon.

In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts—those that have already occurred – should be a subject for remediation (Principle 22).

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 a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

Where the relationship is “crucial” to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

## Tracking effectiveness (Guiding Principle 20)

To verify whether adverse human rights impacts are being addressed, business enterprises are recommended to track the effectiveness of their response. This tracking should be based on appropriate qualitative and quantitative indicators and draw on feedback from “both internal and external sources, including affected stakeholders.”<sup>64</sup>

The text of Guiding Principle 20 is reproduced below with its commentary from the UNGPs:

<p style="text-align: center;"><b>United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework</b></p> <p>Pillar II. The Corporate Responsibility to Respect Human Rights</p> <p>HRDD</p> <p>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:</p> <ul style="list-style-type: none"><li>(a) Be based on appropriate qualitative and quantitative indicators;</li><li>(b) Draw on feedback from both internal and external sources, including affected stakeholders.</li></ul> <p>Commentary: Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.</p> <p>Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.</p> <p>Tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant. Operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise’s HRDD from those directly affected (see Principle 29).</p>
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## Communicating action (Guiding Principle 21)

Business enterprises should communicate how they will assess their human rights impacts externally, especially when concerns are raised by or on behalf of affected stakeholders, to show how they are

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<sup>64</sup> United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

meeting their responsibility to respect human rights. At a minimum, this involves having internal information-gathering and accountability systems.<sup>65</sup>

The text of Guiding Principle 21 is reproduced below with its commentary from the UNGPs:

<p style="text-align: center;"><b>United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework</b></p> <p>Pillar II. The Corporate Responsibility to Respect Human Rights</p> <p>HRDD</p> <p>Guiding Principle 21: In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:</p> <ul style="list-style-type: none"><li>(a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences;</li><li>(b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved;</li><li>(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality</li></ul> <p>Commentary: The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.</p> <p>Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.</p> <p>Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.</p>
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<sup>65</sup> OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012), [https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf).

#### 4. Investors

##### **Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations -guidance for negotiators**

The principles for responsible contracts identify 10 principles to help States and business investors integrate the management of human rights risks into investment project contract negotiations. Each principle is explained in brief, along with its key implications and a recommended checklist for negotiators. The guide was developed through four years of research and inclusive, multi-stakeholder dialogue carried out under the mandate of the Special Representative of the Secretary-General for Business and Human Rights, Professor John Ruggie. It reflects the collective experiences of experts involved in major investment projects from Government, commercial enterprises, non-governmental organizations and lending institutions.

The 10 principles are:

1. Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
2. Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
3. Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
4. Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
5. "Additional goods or service provision": Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
6. Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
7. Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
8. Project monitoring and compliance: The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.

9. Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
10. Transparency/Disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

Source: A/HRC/17/31/Add.3. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Addendum, UN HRC (25 May 2011)

### **International Best practices for HRDD in Large Scale Projects**

This sub-section adapts best practices from the United Nations system, national human rights institutions, and other intergovernmental bodies. The following guidance was relied upon in the drafting of the following sub-section:

- The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN OHCHR (2012)
- HRDD Training Facilitation Guide, UNDP Business and Human Rights in Asia (2021)
- OECD Guidelines for Multinational Enterprises, Organisation of Economic Cooperation and Development, (May 2011)
- Adapted from: 5 Steps Towards Managing the Human Rights Impacts of your Business, Global Compact Network Germany (2015)

Each of the steps of the HRDD process requires businesses to consider the circumstances in which the project is operating. This might include special considerations for the geographic region of the project, the industry or sector of the project and the nature of links with partner organisations.<sup>66</sup>

### **Identifying and assessing (Guiding Principle 18)**

#### **Questions to Ask**

- What internal and external individuals or groups are at risk of being adversely affected by our project? Are any of them particularly vulnerable in any of our operating environments?

<sup>66</sup> UNDP Business and Human Rights in Asia, HRDD Training Facilitation Guide (2021), <https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>.

- What processes do we have in place into which we might integrate additional steps to help us assess human rights impact? Are they strong, well-tested processes that can be made fit for this added purpose?
- Are there circumstances in which we should do stand-alone human rights impact assessments, including where there are heightened human rights risks?
- What other processes and sources can we draw on as part of our ongoing assessment of the impact of our large scale project: media, expert reports, feedback from staff and stakeholders, grievance mechanism?
- Can we reasonably review all our business relationships to identify the risk of our being involved, through them, in adverse human rights impact? If not, where are the greatest risk areas across our business relationships, and how can we at least ensure full due diligence with regard to those risks?
- Can we engage directly with those groups we potentially have an impact on? If not, what other credible sources can help us understand their likely perspectives and concerns?
- What written resources or experts could help us test our assumptions about whom we may have an impact on and how?

Source: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN OHCHR (2012)

### **First Steps: Identifying human rights risks**

Identifying all human rights risks associated with public procurement can be difficult as human rights risks are specific to each situation. The following is a non-exhaustive list of human rights risks by category to help businesses and the State begin the process of identifying risks in large-scale projects:

- Labour – fair wages, forced labour, child labour, occupational health and safety, and stigma and discrimination
- Environment and land – impact of toxics and pollutants, land rights and land use regulation
- Voice – freedom of association, collective bargaining and trade union membership
- Gender – sexual harassment, discrimination and violence against women
- Marketing and advertising – gender stereotyping, minority stereotyping, insensitivities towards groups that have suffered legacies of marginalization

- Product development and product use – surveillance technology, dual use products and safety
- Government relationships and security – corruption, intimidation and abuse by private security forces
- Indigenous/Tribal peoples – Free, Prior and Informed Consent and preserving culture and ways of life
- Digital rights and security – privacy rights, hate speech, intimidation and harassment, child protection

Source: HRDD Training Facilitation Guide, UNDP Business and Human Rights in Asia (2021)

In large-scale projects, it is not always easy to conduct consultations with potentially affected rights holders. Carrying out truly representative consultations may require large investment of time and resources. Businesses can seek external expertise to locate legitimate stakeholders and address stakeholder engagement challenges.<sup>67</sup> NGOs with substantial experience in the region where the project is being implemented are a great resource. The following extract from the OECD Guidelines provides useful context for what effective stakeholder engagement can look like.

### **OECD Guidelines for Multinational Enterprises**

Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.

### **First Steps: Compiling a List of Stakeholders**

Compiling a complete list of stakeholders is difficult as there are numerous, but they would generally include:

- Workers or employees
- Workers of supply chain partners
- Consumers

<sup>67</sup> UNDP Business and Human Rights in Asia, HRDD Training Facilitation Guide (2021), <https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>.

- Shareholders and investors
- Service contractors
- Communities near or downstream from a factory plant or plantation
- Civil society actors
- Transportation professionals
- Other vulnerable groups including women and girls, people with disabilities and indigenous peoples

Source: HRDD Training Facilitation Guide, UNDP Business and Human Rights in Asia (2021)

### **Integrating and acting upon findings (Guiding Principle 19)**

#### **Questions to Ask**

- What lines of responsibility and accountability exist for addressing our findings of potential human rights impact?
- What systematized approaches might help us integrate findings from our assessments across the relevant areas of the large scale project, so that we can take effective action?
- Should we have one or more cross-functional groups to liaise on ongoing human rights challenges or cross-functional communication requirements before certain decisions or actions?
- Can we build scenarios or decision trees for action across the project so that we are prepared to respond to the most likely or severe potential impact? Do staff need training and guidance on these issues?
- How can we best integrate measures to address potential impact at the contract stage of new partnerships or activities in the project?
- If we find that human rights impact is linked to our project, are we equipped to address the risk of its continuation or recurrence appropriately and swiftly? How will decisions be made? What credible sources can we turn to for advice?
- How do we assess our leverage in business relationships, especially those in areas of heightened risk to human rights? How can we maximize that leverage from the start of relationships? What opportunities for exercising or increasing our leverage can we see?



- Do we have any “crucial” business relationships? How should we respond if these relationships lead to adverse human rights impact being linked to our project? Are we equipped in terms of internal and external advice for this situation?

Source: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN OHCHR (2012)

### Tracking effectiveness (Principle 20)

#### Questions to Ask

- Do we already have tracking systems into which we could effectively integrate some or all aspects of tracking our human rights impact and responses? If so, are they fit for this additional purpose?
- What measures should we use?
  - Are there established and widely accepted indicators we can draw on?
  - Are there quantitative metrics that can be applied?
  - What qualitative measures do we need to ensure we are interpreting quantitative data correctly and to give us a full picture?
  - What indicators can we reasonably include to help us see how our responses to impact relate to women and men separately, and to vulnerable groups?
- What means do we have for gaining feedback from directly affected stakeholder groups or their legitimate representatives? Can our wider stakeholder engagement processes or our grievance mechanism(s) contribute to this process?
- In what kinds of situations should we conduct deeper root cause analyses of impact and our response to it as part of tracking? How can we ensure that lessons are learned across the enterprise?

Source: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN OHCHR (2012)

### Communicating action (Principle 21)

#### Questions to Ask

- Do we have the necessary internal communications and reporting systems to gather all relevant information on how we address the adverse human rights impact of the project? If not, what additional systems do we need?
- What different groups can we envisage we may need to communicate to and about what types of issues?
- What means of communication do we need for those different groups, taking account of how they can access information, and what will be the most effective?
- Should those communications be driven by a set timetable, be in response to particular events or both?
- What processes do we have in place to make reasoned and defensible judgements on when we should communicate publicly?
- If our project poses significant risk to human rights, how do we provide formal public reporting on how we address that risk?
- If we are not in a context of heightened human rights risk and are not required to report publicly on our human rights performance, would there nevertheless be other benefits to formal public reporting?

Source: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN OHCHR (2012)

Large-scale projects often continue for many years and are rolled out in different phases. To ensure effective HRDD in large-scale projects, it is necessary to establish continuous due diligence practices. The following table highlights what ongoing HRDD may require and examples of what this might include for businesses engaged in large-scale projects:

Ongoing due diligence is likely to require...	Implementation examples of what this might include
Assigning clear responsibility and ensuring ongoing focus for the human rights topic	<ul style="list-style-type: none"> <li>• Assign responsibility to an individual (human rights focal point) or working group with clear reporting lines to top management. This person/group can act as an internal consultant, a coordinator or a spokesperson on human rights in the project. Your focal point should continue the engagement process started</li> </ul>

	and communicate progress to employees, partners and affected groups.
Assessing your actual human rights impacts	<ul style="list-style-type: none"> <li>• Obtain further information about the situation of people potentially affected by your project eg. Partners' employees or affected communities</li> <li>• Try to engage with business partners and workers in the project chain or communities eg. When travelling to the project site</li> <li>• Find out more about multi-stakeholder initiatives gathering information on the ground</li> <li>• Asking your partners about their practices to ensure labour and human rights are respected</li> </ul>
Reviewing key management processes in light of risks and gaps identified	<ul style="list-style-type: none"> <li>• Changing enterprises you contact with, or the way you conduct a particular project activity to avoid a risk or prevent an impact</li> <li>• Developing a code of conduct for business partners including a requirement to respect human rights</li> <li>• Integrating human rights in existing risk analysis processes</li> </ul>
Actively seeking feedback and input from external stakeholders and affected groups to understand more about your impacts and potential grievances and improve your grievance handling	<ul style="list-style-type: none"> <li>• Establish contact with trade unions and civil society representatives</li> <li>• Reconsider how affected groups can reach out to your business in case of grievances or complaints related to negative human rights impacts and how you could improve their access to these mechanisms</li> <li>• Post a relevant article to your project website</li> <li>• Attend relevant industry association meetings or trainings</li> </ul>
Adapted from: 5 Steps Towards Managing the Human Rights Impacts of your Business, twentyfifty, Global Compact Network Germany (2015)	

## HRDD in Large Scale Projects in Pakistan

### 1. Assessment of Law on Environmental Due Diligence

An example of a due diligence mechanism ordained by the State exists under Section 12 of the Pakistan Environmental Protection Act (PEPA) 1997,<sup>68</sup> which requires that any infrastructural project must precede an initial environmental examination (IEE) or, where required, an environmental impact assessment (EIA) after which, the federal agency will approve the commencement of the project. The

<sup>68</sup> Environmental Protection Act 1997 (No. XXXIV of 1997) December 3, 1997 (Pak-1997-L-84577)

same has been incorporated within the provincial statutes after the 18<sup>th</sup> amendment: Section 12 of the Punjab Environmental Protection Act 2012; Section 15 of the Balochistan Environmental Protection Act 2012; Section 17 of the Sindh Environmental Protection Act 2014; and Section 13 of the Khyber Pakhtunkhwa Environmental Protection Act 2014.

A very clear system has been established for the IEE and EIA application process. According to the Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations, 2000, projects requiring an IEE fall under Schedule I (Regulation 3) and projects requiring an EIA are listed in Schedule II (Regulation 4).

However, the list is not restricted. Regulation 5(1) allows for projects other than those mentioned under Schedules I and II to file an IEE or EIA. Hence, an EIA can be filed if the project is likely to cause adverse environmental effect or if guidelines have been issued by a federal or provincial agency which require an application for approval. All these regulations are subject to the above-mentioned Section 12 of PEPA. Once applications for an IEE or EIA are reviewed, they are then approved if they satisfy the conditions for approval given in Regulation 13.

The laws and regulations have been tailored in a way that facilitates a fast-track and effective due diligence process for approval of projects to ensure that adverse environmental impacts are avoided. The judicial response to this due diligence process not only depends on the legal provisions of environment laws but also on fundamental human rights, which have largely been used to fight cases where adverse environmental impacts have existed.

In **Shehla Zia v WAPDA [PLD 1994 SC 693]**, although the significance of the case was focused towards the expansion of the right to life to include the right to healthy environment, the case is also important in terms of the directions given to WAPDA. The facts related to the construction of a grid station that could potentially cause hazard to life due to the magnetic field effect. At the time of the filing of the case, the PEPA 1997 did not exist and so an IEE or EIA could not be filed as per a statute. Hence, NESPAK was appointed as a commissioner by the Supreme Court to examine and study WAPDA's plan so that an impact assessment could be made regarding the dangers to health of the residents in the area. It was also decided that issuing of public notices before undertaking of such projects would be required in the future. After the case, when NESPAK conducted their assessment, it was reported that the grid project had sufficient mitigation measures in place to render any potential environmental impacts negligible.

Recent case law has shown that the courts have put the legislation and regulations to good use. For example, in **United Feeds vs Provincial EPA [2018 CLD 1454 Punjab Environmental Tribunal Lahore]** a factory was accused of violating Section 12 of the Punjab Environmental Protection Act 2012, and thus failing to apply for approval from the provincial EPA on two occasions. The factory argued that they were not required to file an IEE or EIA as their project was not mentioned in the respective schedule under the regulations. However, this was deemed incorrect by the tribunal, since

the schedule indeed mentioned repacking, formulation, or warehouse of agricultural products. Therefore, the tribunal held that filing of an IEE and EIA is mandatory and cannot be avoided especially where there were allegations of damage to the environment. It was held that there was no illegality in the act of the provincial EPA taking cognizance and issuing and impugned order.

In a recent case, **Rindz Mari vs Province of Sindh through Secretary Mines and Mineral Development Department [2021 CLD 1195]**, the court acknowledged that mining operations and crushing industries cause significant pollution in the atmosphere, and thus should be made subject to all factors of sustainable development and not without proper IEEs and EIAs (Section 17 of Sindh Environmental Protection Act (SEPA) 2014) as well as public hearings (Section 31 of SEPA 2014). The stone quarries in this particular case fall under the definition of a project mentioned under Section 2(xlii) of SEPA. Hence, as per Section 17, the construction or operation of a project cannot be commenced without an application for IEE or EIA and subsequent approval from the EPA. In this case, the stipulated process was not followed by the respondent and unfortunately the Mines Department had also overlooked it, which according to the court, constituted criminal negligence by the official respondents and should make them answerable as per Section 24 SEPA.

It was held that before allocating a site for the stone quarry, an IEE and subsequent EIA should be filed by the authorities following a public hearing. The area allocated should have been properly demarcated with the help of revenue authorities. The Karachi High Court set aside permit/license issued in favour of respondent as it has been issued without fulfilling necessary codal formalities. Additionally, the that crushing machine/plant functioning at a nearby quarry was deemed illegal as it was also working without proper permission. The court directed the authorities to remove the machine if the respondent failed to do so.

In **Ayaz Ahmad Malik vs Environmental Protection Agency, Govt of Punjab [2022 CLD 184 Punjab Environmental Tribunal]**, the construction of a school was alleged to have an adverse impact on the environment and human health by residents of the area. They argued that once the school became functional, the flow of traffic would increase, and the environment would be affected but this effect was not quantified or ascertained. The tribunal found that such an apprehended effect was not violative of the right to life (Article 9) unless it could be shown through irrefutable evidence that it would lead to hazardous effects on the environment and human life. After assessing the impact of the project by strictly complying with Section 12 of the Punjab Environmental Protection Act 2012, the project was approved.

These cases reveal that IEEs and EIAs are required to be filed under the law, and where people fail to do so, the court enforces the law and directs authorities to ensure proper implementation.

## 2. HRDD policies of Business Enterprises in Different Sectors<sup>69</sup>

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<sup>69</sup> Taken from National Baseline Assessment

### **a. Coal & Petroleum:**

The petroleum companies in Pakistan that have been assessed reflect detailed policies pertaining to the protection of human rights. Shell Pakistan Ltd. has a detailed CSR policy which aims to create a sustainable working environment whereas the code of conduct outlines the protection of basic human rights. To encourage ethical behaviour Shell Pakistan has established anti-corruption and anti-bribery policies and has introduced a detailed human rights policy as well whereby conducting business activities in a way that respects human rights is imperative. Furthermore, the company has established a human right working group, the goal of which is to provide facilities to employees. It has recognized the climate change challenge and the role that corporate entities can play in reducing carbon emissions.

The Mari Petroleum Company Ltd. has also introduced an intensive CSR policy focusing on health, equal opportunity, non-discrimination etc. In a recently conducted assessment, MPCL received advanced level of performance in compliance with global guidelines of ISO 26000, becoming the only company in Pakistan which has been formally assessed for ISO 26000 CSR guidelines. The company also has a detailed health, safety and environment (HSE) policy which in accordance with their policy statement is consistent with internationally recognized standards. MPCL has received ISO standards and IMS certification in 2007 and has brought five new facilities of Sujawal Gas Field, Halini Production Facility, Zarghun Gas Field, Rig Mari-3 and Mari Seismic Unit (MSU) under international standards and certifications.

In addition to these companies, Hascol Petroleum Limited has also developed a detailed CSR policy which emphasises on health, safety, security, and environment. In 2018 it received the 3rd prize for best Human Resource practice by the Employer's Federation of Pakistan. The company has ensured that principles of non-discrimination and equality of opportunity are reflected in their policy commitments.

### **b. Mining**

The Global Mining Company mentions the protection of the environment and the alleviation from poverty in its vision statement however, formal policies which take the form of a code of conduct or a CSR policy have not been introduced. The Alavir Minerals and Mining Company has established a code of business conduct which outlines ethical principles that must be followed by employees however human rights and the rights of employees have not been mentioned. Most mining companies have not made any official human rights commitments or initiated CSR activity which is one of the reasons that this industry is one of the most notorious for human rights violations.

### **c. Electrical**

Companies in this sector reflect a wide-ranging policy commitment that exists. Most private companies in the Electrical industry have committed to the protection of health, safety and

environment and require compliance with domestic laws under the same. Principles of non-discrimination, and freedom from harassment underline the policy commitments in this sector. Philips Electrical Industries stands out in this regard as it has developed a detailed CSR and Human Rights policy which focuses on inclusion and diversity in the workplace. This company has also made explicit commitments to support the UN Every Women Every Child Initiative in 2014, and in 2018 the company formulated a detailed human rights policy which pledges compliance with the fundamental rights as found in the UDHR and the rights that have been introduced by ILO Conventions. This is the first policy in this desk review which explicitly mentions compliance with international human rights principles and goes on to provide for human rights impact assessments as well. A detailed due diligence policy has also been introduced which requires the company to assess the adverse impacts of its activities on human rights, which is followed by the publication of a human rights report.

The policies established by Philips Electrical Industries are to be commended as a detailed code of conduct has also been promulgated which emphasises on principles of non-discrimination, freedom from harassment and lays down a complete prohibition on child labour. Interestingly, this sector has been found to be the only one in which companies have expressly protected the freedom of association for its employees as well.

In addition to this, Siemens (Pakistan) Engineering Co. Ltd. also reflects strong policy commitments in the area of human rights. It provides financial support to education, and the environment by understanding the climate change challenge and pledging to reduce carbon emissions. Furthermore, the company policies reflect principles of non-discrimination, freedom from intimidation and harassment, prohibition on child labour, and uniquely refers to the provision of compensation in relation to breaches of such principles as well. The policies also aim to ensure the fundamental rights of employees by expressly vowing to protect the freedom of association and collective bargaining.

#### **d. Sugar**

A review of the sugar industry reveals the existence of varying policy commitments by companies which form part of this sector. 88% of the companies assessed in this desk review have a general code of conduct which seeks to implement principles of non-discrimination and the prohibition of child labour. Health, education and provisions for a secure environment for employees is an underlying element of 44% of the policies promulgated by companies in this sector.

The policy commitments of Crescent Sugar Mills and Distillery Ltd. stand out in this sector as they seek to reflect compliance with international standards as well. The company focuses on human rights training for its employees as well, and its 2015 Annual Report reveals that the company maintains health and safety standards for its employees at their plants and offices. All activities undertaken in their campuses are required to conform to international standards certified by ISO 14001 and OHSAS 18001. In 2014 the company was ranked third in the Employer's Federation of Pakistan's 10th Best Practices award on Occupational Health, Safety and Environment.

The company has also introduced a CSR policy and works in cooperation with the WWF for the protection of the environment. In addition to this, Kohinoor Sugar Mills Ltd. in Pakistan has also undertaken many CSR projects and works in close cooperation with The Citizens Foundation for the protection of the right of education on underprivileged children in Pakistan. Furthermore, it works with Shaukat Khanam Cancer Hospital and the Sindh Institute of Urology and Transplantation for the protection of the right of health for the citizens of Pakistan.



## **Guidelines**

### **Guideline 1**

When starting a new project, businesses must determine whether the project is large-scale and involves a range of activities, numerous business relations or complex supply chains. If such a project is to be conducted, businesses must, as a matter of policy, conduct human rights due diligence to identify the impact of the project on the rights of those residing in the community in which the project is to operate.

### **Guideline 2**

If a business is state-owned it must report findings of human rights due diligence to the concerned government department and initiate the process of mitigation.

### **Guideline 3**

When conducting large-scale projects, businesses must engage in meaningful consultations with affected stakeholders to understand the human rights risks associated with the project and must find alternative ways in which business goals may be achieved without adverse impacts on human rights.

### **Guideline 4**

When implementing large-scale projects with specific impacts on communities, businesses should communicate outcomes of human rights impact assessments and actions taken with the public and relevant stakeholders including those directly affected by the project.

### **Guideline 5**

Businesses should engage in heightened due diligence when engaging in large-scale projects in particularly vulnerable industries (e.g., the minerals industry) or areas of high risk such as conflicted-affected areas.

### **Guideline 6**

Businesses must ensure that efforts to mitigate adverse impacts on human rights are tracked throughout the life of the large-scale project so as to ensure that such efforts are not only limited to the initial stages of the project and affect compliance with human rights standards throughout. The identification of human rights risks and impacts must also be an ongoing process so that human rights risks and impacts that emerge later in the project lifecycle are not overlooked.

## HRDD in Public Procurement

Public procurement refers to “the purchase by governments and State-owned enterprises of goods, services and works” and is an essential aspect of public administration.<sup>70</sup> The public procurement process consists of a sequence of actions starting with “the assessment of needs through awards [through] to contract management and final payment.”<sup>71</sup> Public procurement accounts for hundreds of billions of dollars each year. It amounts to a substantial proportion of Gross Domestic Product (GDP), approximately 12% of GDP in OECD member countries<sup>72</sup> and 13.3% in the European Union.<sup>73</sup> This figure is often higher in developing countries; for example, in Pakistan, public procurement accounts for approximately 19.8% of GDP.<sup>74</sup>

The subject matter of procurement can be divided into three categories: i) goods (supply of products); ii) services; and iii) works (construction). The range of goods and services bought by public authorities varies widely, from “large-scale infrastructure and urban development projects...to commissioning of essential public services in the health and social care sector, and to buying common goods such as stationery, furniture, and foodstuffs.”<sup>75</sup>

The State holds significant influence over markets and can incentivise respect for and enjoyment of human rights through its procurement strategies. Where States focus on procuring at the lowest possible cost without adequate HRDD mechanisms, State bodies can sustain and be implicated in systematic human rights violations through their activities and relationships.

This sub-section will consider how the UNGPs and other international legal frameworks apply to public procurement with a specific focus on HRDD. The sub-section will also provide guidance and tools for integrating HRDD into public procurement law and activities through case studies.

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<sup>70</sup> OECD.org. Public Procurement -OECD. [online] Available at: <https://www.oecd.org/governance/ethics/public-procurement.htm>

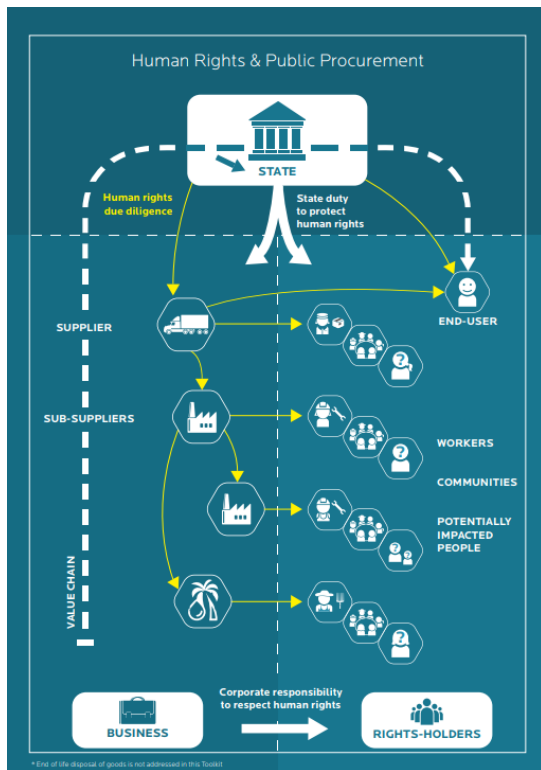
<sup>71</sup> OECD.org. Public Procurement -OECD. [online] Available at: <https://www.oecd.org/governance/ethics/public-procurement.htm>

<sup>72</sup> OECD.org. Public Procurement -OECD. [online] Available at: <https://www.oecd.org/governance/ethics/public-procurement.htm>

<sup>73</sup> European Commission, Public Procurement Indicators (2017), <https://ec.europa.eu/docsroom/documents/38003>.

<sup>74</sup> Simeon Djankov, Asif Islam & Federica Saliola, How Large is Public Procurement in Developing Countries? Peterson Institute for International Economics (7 November 2016), <https://www.piie.com/blogs/realtime-economic-issues-watch/how-large-public-procurement-developing-countries>.

<sup>75</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).



## International Guidelines for HRDD in Public Procurement

Pillar I of the UNGPs suggests that States have a duty to take all necessary steps to prevent business-related human rights abuses.<sup>76</sup> These include general duties to ensure an adequate regulatory framework for business activities and provide guidance and information to businesses on how to respect human rights. Under the heading of ‘the state-business nexus in Pillar I, Guiding Principle 6 addresses the State’s role and impacts when government and public authorities engage in commercial transactions, including public procurement.

### United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework

Pillar I. The State Duty to Protect Human Rights

Guiding Principle 6: States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

<sup>76</sup> United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

Commentary: States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.

In addition, Guiding Principle 5 elaborates that where States engage in privatisation or “contracting out” services that could have an impact on human rights, they must ensure “adequate oversight”, for example, by ensuring that contracts communicate the State’s requirement that service providers respect the human rights of citizens.

**United Nations Guiding Principles on Business and Human Rights:  
Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

Pillar I. The State Duty to Protect Human Rights

Guiding Principle 5: States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Commentary: States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State’s human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation 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.

These principles establish a link between the State’s obligations to respect, protect and promote human rights and public procurement. This is interpreted as extending a State’s obligations to protect human rights in its own supply chains.<sup>77</sup> As mega-consumers, governments have the purchasing power to set standards for human norms or practice, and to exercise leverage over supplies contributing to adverse human rights impacts.

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<sup>77</sup> Olga Martin-Ortega, Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry, *Business and Human Rights Journal*, 3 (2018), 75-95, <https://web.law.columbia.edu/sites/default/files/microsites/public-integrity/div-class-title-public-procurement-as-a-tool-for-the-protection-and-promotion-of-human-rights-a-study-of-collaboration-due-diligence-and-leverage-in-t.pdf>.

## Best Practices for HRDD in Public Procurement

This sub-section adapts best practices from the United Nations system, national human rights institutions, and other intergovernmental bodies. The following guidance was relied upon in the drafting of the following sub-section:

- Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)
- Public Procurement and Human Rights: a Survey of Twenty Jurisdictions, International Learning Hub on Public Procurement and Human Rights (July 2016)
- OECD Due Diligence Guidance for Responsible Business Conduct, OECD (2018)
- OECD Guidelines for Multinational Enterprises, Organisation of Economic Cooperation and Development, (May 2011)
- 5 Steps Towards Managing the Human Rights Impacts of your Business, twentyfifty, Global Compact Network Germany (2015)

States must first consider whether there is any relevant HRDD guidance (including references in the State's NAP on BHR) for the procurement context in their jurisdiction.

### Questions to Ask:

Has the government or any other relevant official body (national human rights institution) issued dedicated guidance on HRDD in the procurement context?

Source: Public Procurement and Human Rights: a Survey of Twenty Jurisdictions, International Learning Hub on Public Procurement and Human Rights (July 2016)

## Public Procurement Process

The public procurement process can be divided into four main phases:

1. Pre-tender planning
2. Pre-award measures
3. Post-award measures
4. Contract management

The following sub-section provides good practices for States in each of the above phases of the public procurement process.

### Pre-tender planning

Pre-tender planning generally involves three components: human rights risk identification and assessment, market testing and engagement, and increasing leverage.<sup>78</sup>

- **Human rights risk identification and assessment**

States should assess whether there are any human rights abuses associated with the goods and services to be procured. This requires identifying relevant risks associated with specific geographic regions, sectors or individual businesses. Risk identification and assessment in public procurement should be an ongoing process based on international human rights standards. Risk identification should focus on the human rights risks to individuals and groups including service-users, contractors' staff and workers rather than the procuring body, the State, or its suppliers. Risk assessment should also extend to the full life-cycle of goods and services, including raw materials production, manufacturing, transport, service delivery and end-of-life disposal.<sup>79</sup> States should also consider how risks to the environment from their activities may have consequences on human rights (including pollution of water sources, air pollution and habitat destruction affecting livelihood).

**Questions to Ask to help identify more severe human rights risks:**

- Is the value chain completely mapped? Are all sub-contractors known? Do subcontractors regularly change?
- Are there known actual or potential human rights issues in the value chain, based on reports on human rights abuses according to country, sector or specific businesses? Or based on links to known-high risk areas, such as conflict and post-conflict zones?
- Do the products or services procured rely on high risk forms of labour, such as manual labour, mass production, home production, use of hourly, unorganised, migrant, unskilled or seasonal labour?
- Does the nature of any activity, including production, delivery, and disposal of goods or services procured, anywhere in the value chain, create a heightened risk of human rights abuses for workers, end-users/ service-users or the public? For example, will workers come in to contact with harmful chemicals in the production or disposal of a product? Will

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<sup>78</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).

<sup>79</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).

workers in the value chain transport commodities through conflict zones? Does the value chain generate waste, for instance electronic waste, which if not disposed of properly may result in harm to human health or the environment?

- Do goods or services procured carry inherent risks? For example, are security guards employed who carry firearms? Are individuals' sensitive personal data gathered and stored?

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Market testing and engagement**

Market testing is the mechanism through which the State can hear the market's reaction to the inclusion of human rights requirements in public procurement. It is important as there may be very few or no suppliers able to answer a call for tender if the State sets too onerous requirements. Market testing and engagement can take the form of a wide range of activities including: identification and analysis of existing industry or sector standards relating to human rights, inviting potential suppliers to discussion events, feedback forms and questionnaires.

**Questions to be addressed through market testing and engagement:**

- Is the market ready and capable to deliver what is required? Do potential suppliers have sufficient technical and management capacity to deliver on relevant requirements?
- How many suppliers could meet the proposed terms and requirements: will the procurement be sufficiently competitive? It is important that requirements do not implicitly single out one supplier, or unfairly impact specific suppliers or groups suppliers (SMEs, for example);
- Are there other, better approaches or solutions that have not been considered? Human rights requirements can be included in different stages of the procurement. Which stage is the most effective, considering desired outcomes, to address the risks in question?
- Are there any disadvantages to the proposed approach? Could the requirements proposed be excessive or redundant in addressing underlying risks?
- Could the proposed approach encourage the progressive realisation of human rights requirements and development of the supplier base? Even if the market is not yet ready to meet the requirements, is it possible to create awareness and incentivise suppliers by including human rights considerations as award criteria?

- How much information can be shared with the public buyer through reporting requirements? Are there contractual limitations in the sector which would prevent full disclosure of documentation?
- • What labels or certificates relating to human rights, environment, and transparency are used within the sector?
- What support would be required or desirable, to help suppliers meet human rights requirements? What form should support take? Should support should focus, for example, on SMEs, or other categories of suppliers?

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

## CASE STUDY

### Driving Change Through Public Procurement

Region Stockholm engaged potential suppliers at an early stage prior to a new procurement of ICT equipment through a series of hearings. The invitation to the first hearing was publicly announced and open to all interested parties. During the hearing, Region Stockholm presented the goals of the procurement and identified human rights risks that the proposed requirements were aimed to address. Participants were invited to comment on the proposal. They were also given an opportunity to sign up for a second round of individual hearings, in case some suppliers felt reluctant to discuss sensitive issues in front of competitors. During the hearings, the suppliers provided insight on the relevance and ambition level of proposed requirements. They also commented on possible means of verification of proposed requirements. After the second round of hearings, Region Stockholm partially modified the requirements before publishing a final call for tender. By involving the supplier base at an early stage, Region Stockholm reduced the risk of legal challenges the requirements. One year later, after eight ICT procurements had been conducted, Region Stockholm invited suppliers to a roundtable discussion to get feedback on their experience of both the tender process and requirements.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Increasing leverage**



States can exert leverage in public procurement over their actual and potential suppliers and these suppliers can then exert leverage over their actual and potential subcontractors.

- **Pre-award measures (The procurement process)**

Procurement processes can be divided into pre-award and post-award stages which each have different legal scopes with respect to the requirements that businesses respect human rights and the form such requirements should take. Pre-award measures enable the State to communicate their expectations that a supply respects human rights and increase the likelihood of excluding suppliers that do not meet the human rights expectations of the State. It also ensures a level playing field at the outset which rewards potential suppliers which have implemented or are implementing HRDD.

- **Exclusion grounds**

Exclusion grounds are applied to prevent potential suppliers from tendering based on previous or continued problems in their operations, including human rights abuses.<sup>80</sup> The aim of exclusion grounds within public procurement however, is not to exclude potential suppliers per se but to encourage suppliers to increase respect for human rights. The State may employ either mandatory (a potential supplier must be excluded from tendering) or discretionary (a potential supplier may be excluded from tendering) exclusion grounds. States must give excluded suppliers the opportunity to demonstrate that sufficient measures to remedy previous human rights abuses and prevent further occurrences have been integrated in their supply chain (“self-cleaning”)

- **Technical specifications**

Technical specifications are used to define the characteristics of goods and services the State seeks to procure. These may relate to the process or production or another stage in the life-cycle of a product. Technical specifications in tenders should be drafted to avoid artificially narrowing competition by including requirements that favour a specific supplier. This could happen in the case where a requirement refers to a specific supplier’s processes.

## CASE STUDY

### Driving Change Through Public Procurement

The EU Procurement Directives establish that a contracting authority may refer to a specific label (Article 43) when:

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<sup>80</sup>Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).

- The label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject matter of the contract;
- The label requirements are based on objectively verifiable and nondiscriminatory criteria;
- The labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and nongovernmental organizations, may participate;
- The labels are accessible to all interested parties;
- The label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

The Directive further provides that contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements. In addition, contracting authorities may not exclude suppliers not in possession of any such label if there is not sufficient time for the supplier to attain the label before the tender deadline.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Selection criteria**

Selection criteria allows the State to stipulate minimum human rights standards, capabilities, and experience a potential supplier must have to be considered in a public tender. Potential suppliers must meet the criteria to be considered in a procurement at all.

## CASE STUDY

### Driving Change Through Public Procurement

Region Stockholm applies the selection criteria that its potential suppliers of rubber gloves must be able to report on:

- The traceability of the rubber gloves to the factories where they are produced;
- The methods the supplier uses to follow-up on compliance with contractual clauses relating to health and safety, working conditions, human rights and the environment at factories within its value chain;
- Whether migrant workers are present in factories within its value chain, and the percentage of migrant workers at factories producing rubber gloves supplied to Region Stockholm;

- The supplier’s policies relating to forced labour and, if migrant workers are present, policies to ensure there are no recruitment fees;
- An action plan on how the supplier will work towards ensuring such policies are enforced, listing specific steps to be taken.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Contract award criteria**

Contract award criteria can take the form of a list of weighted criteria.<sup>81</sup> Tenders are evaluated according to the criteria and given an overall score on the basis of which the contract is awarded. Human rights can be integrated into the contract award criteria to satisfy HRDD requirements in the public procurement process. However, for human rights criteria to be effective, the weight given to their must be sufficient to influence the final award decision. Contract award criteria can for example relate to the scope and quality of suppliers’ due diligence procedures.

## CASE STUDY

### Driving Change Through Public Procurement

In 2010 Region Stockholm developed a methodology where the price quoted by a supplier could be treated as if it were up to 30% cheaper if they met all award criteria (e.g. tenderer 1 offers the products for 100 SEK and tenderer 2 offers the products for 120 SEK but tenderer 2 meets all the award criteria. A fictitious reduction of 30% allows tenderer 2’s offer to be treated as if it was 84 SEK and they would win the contract). Initially, this method was applied only to environmental criteria. However, in 2018, it was extended to human rights criteria including, for example:

- The level of supply chain disclosure, where contractors were offered a price reduction in relation to how many stages of their supply chain they were able to disclose;
- If risk assessments had been conducted on the sub-contractors disclosed, and mitigation plans implemented;
- If the supplier could demonstrate that worker participation was ensured and encouraged, for example, through worker committees and continuous dialogue on working conditions with management;

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<sup>81</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w ebaccessible.pdf).

- If the products supplied were produced by a manufacturer applying the methodology of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Depending on the level of disclosure and verification in each of the above-mentioned areas, suppliers were awarded a certain level of price reduction. This approach has since been applied to 9 procurement exercises relating to information and technology, and other procurement exercises relating to surgical instruments, rubber gloves and other medical products.

For the procurement of rubber gloves in Region Stockholm, award criteria require potential suppliers to report:

- The identified risks in the supply chain and how these risks were assessed;
- The results of ‘code of conduct’ audits of factories where the gloves are manufactured, which must be performed by third parties in accordance with current and relevant audit standards and methods such as SA8000, SMETA IV-Pillar methodology, BSCI 2.0 or an equivalent third-party audit methodology. Reported audits must not moreover be more than two years old.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Notice to suppliers**

States must then provide notice to suppliers at the pre-award stage to highlight to potential contractors the human rights risks which they should be aware of and about which they should prepare mitigation measures. While States are not legally required to notify potential contractors of human rights risks, they can be a useful way to ensure that a supplier takes into account a particular risk.<sup>82</sup>

- **Post-award measures**

Post-award measures are those actions taken after a contract has been awarded and is limited to the supplier or suppliers that have been awarded the contract. Through post-award HRDD measures, suppliers can develop measures that meet the State’s human rights requirements over the contract period, usually leading to higher human rights standards.

- **Conditions for performance of contracts**

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<sup>82</sup>Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).

Contract performance clauses take effect after the contract is awarded. Suppliers must meet the terms in contract performance clauses and States usually evaluate a supplier's compliance with them across the term of the contract.

### Example

Contract performance conditions can take many forms. For example, they may require a supplier:

- To demonstrate that it has established specific policies or procedures relating to human rights and the subject matter of the contract;
- To disclose the performance of sub-contractors working under the contract in question to the public buyer on a continuous basis;
- To disclose, for instance, incident and/or remediation reports on labour issues, discrimination, harassment, issues with regulators;
- To conduct audits
- To implement capacity building initiatives, such as worker education.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

### CASE STUDY

#### Driving Change Through Public Procurement

Electronics Watch evaluates supplier compliance with contract performance clauses as a means of assessing compliance with the Electronics Watch Code of Labour Standards. Supplier obligations under the Code include:

- Complying with all applicable labour, anti-slavery and human trafficking laws;
- Exercising due diligence to identify and mitigate the risk of potential breaches of the code;
- Including provisions obliging sub-contractors to produce goods in accordance with the code;
- Implementing an appropriate system of training of employees to ensure compliance with the code;
- Using reasonable and proportionate measures to ensure that subcontractors engage with Electronics Watch in remedying adverse impacts and preventing breaches of the code

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Sub-contracting**

States must ensure that the requirements to actual and potential employers trickle down the value chain and apply to sub-contractors. This can be done through cascading contractual requirements for suppliers to their sub-contractors.<sup>83</sup> Cascading contractual requirements may include transparency requirements that require disclosure from different tiers of the value chain.

### CASE STUDY

#### Driving Change Through Public Procurement

Electronics Watch includes specific requirements relating to subcontractors in contract performance conditions applicable to main contractors. If a sub-contractor is found in breach of the Electronics Watch code of labour standards, main contractors are required to collaborate with the contracting authority and Electronics Watch to obtain access for monitors to the factories where there has been an actual or potential breach and provide the contracting authority and Electronics Watch with a full written report of the findings.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Contract management**

Two elements of the UNGP due diligence cycle relate to the contract management phase: monitoring the effectiveness of measures taken to address human rights risks and communicating about this internally and externally. These two elements are essential to ensure accountability in the public procurement process as they ensure that human rights requirements in a particular procurement are actually implemented in practice.

- **Supplier performance monitoring**

The State can require a range of different monitoring practices from suppliers in the exercise of HRDD as recommended by the UNGPs and suppliers can in turn impose requirements on their sub-contractors.

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<sup>83</sup>Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf)

## CASE STUDY

### Driving Change Through Public Procurement

Copenhagen Municipality in Denmark previously monitored compliance with contractual labour clauses through unannounced site visits executed on a random basis. On this basis, it was found that 5.5% of workers were not paid in line with minimum wage requirements. In 2018, the municipality transitioned to a risk-based approach, targeting unannounced visits on types of works analysed as having a higher risk of subcontracting and reliance on migrant workers and other vulnerable groups. Applying this new method of monitoring, Copenhagen Municipality identified that 70% of the workers present during the visit were not receiving the agreed minimum wage. As a result of its findings, affected workers were paid an average compensation of 15.700 DKK (roughly €2,100) each.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Supplier reporting**

Supplier reporting requires communications back to the higher tiers of the supply chain or to the procurer. States have options on what they may require with respect to supplier reporting including reporting on key performance indicators of compliance; reporting of raw data from audits or self-analysis questionnaires, employee interviews and surveys; or reporting of certification statements that formally attest to compliance and that may in addition entail liability for noncompliance.

- **Remedy**

The UNGPs stipulate that business enterprises have a responsibility to ensure access to effective grievance mechanisms. In the public procurement context, States can consider including requirements for suppliers to provide access to an effective operational-level grievance mechanism.<sup>84</sup>

- **Enforcement and termination of contracts**

States must have a range of sanctions at their disposal for non-compliance to ensure that human rights considerations are enforceable and effective. One such sanction is the option to terminate contracts

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<sup>84</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf)

and clauses related to the enforcement and termination of contracts provide States the ability to cut ties with suppliers which do not respect human rights. States can turn to other sanctions measures (dialogue, stopping work or suspension of the contract) before resorting to termination.

### **When to terminate a contract with a supplier**

Where no other options are viable, the public buyer can include provisions regarding termination of the contract. Grounds for termination might include:

- A supplier's unwillingness to implement corrective actions, entailing noncompliance with requirements of the contract;
- When severe human rights abuses are found, which would have constituted grounds for exclusion had they been known before awarding the contract;
- Repeated violations of the terms of the contract.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

- **Empowering Vulnerable and At-Risk Groups**

The main focus of HRDD in public procurement is to ensure that suppliers “respect human rights and address the risk of human rights abuses occurring in the State value chains.”<sup>85</sup> However, States can also use HRDD in public procurement as a means to realise the rights of vulnerable groups by favouring businesses which support, employ or are owned by members of at-risk groups in public procurement processes.<sup>86</sup> This can be used to further women's empowerment and realise SDGs.

### **Example**

In 2008, the Dominican Republic adopted a law setting out a programme of preferential purchasing to support SMEs and legislated that 20% of purchases through this programme should be from businesses run by women, who have a shareholding or share capital of more than 50%.

Source: Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners, Danish Institute for Human Rights, (March 2020)

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<sup>85</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).

<sup>86</sup> Danish Institute for Human Rights, Driving Change Through Public Procurement: a Toolkit on Human Rights for Procurement Policy Makers and Practitioners (March 2020), [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr\\_toolkit\\_public\\_procurement\\_2020\\_w\\_ebaccessible.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/dihr_toolkit_public_procurement_2020_w_ebaccessible.pdf).



## Public Procurement in Pakistan

### B. Assessment of Law on Public Procurement

#### a. Domestic Scope<sup>87</sup>

Public procurement is the process through which the Government obtains various products and services from the private sector. The laws related to public procurement are given below:



The Public Procurement Regulatory Authority Ordinance, 2002 defines ‘public procurement’ as acquisition of goods, services or construction of any work financed wholly or partly through State funds.<sup>88</sup> The entire process of public procurement is to be managed by the Public Procurement Authority that has been established as a federal and provincial level with the authority to assess procedures and take measures to improve governance, management, transparency, and accountability of all work related to public procurement.<sup>89</sup> The Authority specifically has the mandate to make regulations relating to the code of ethics of public procurement.<sup>90</sup> Should any changes require specific laws or rules; the Authority can recommend new laws and policies to the State to be enacted.<sup>91</sup>

The Public Procurement Rules (2004), made under the Authority lay down the various powers that it can exercise during the procurement process. The Authority can engage in pre-qualification of bidders in order to ensure that only those enterprises participate in the process that meet certain standards required of them.<sup>92</sup> Furthermore, at any stage of the procurement process, the authority can require information from contractors/suppliers if they wish to ascertain legal standards are

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<sup>87</sup> National Baseline Assessment on Business and Human Rights in Pakistan

<sup>88</sup> Sec. 2(l) - Public Procurement Regulatory Authority Ordinance 2002

<sup>89</sup> Sec. 5(1) - Public Procurement Regulatory Authority Ordinance 2002

<sup>90</sup> Sec. 5(2)(d) - Public Procurement Regulatory Authority Ordinance 2002

<sup>91</sup> Sec. 5(2)(c) - Public Procurement Regulatory Authority Ordinance 2002

<sup>92</sup> Rule 16 – Public Procurement Rules 2004

being met by them.<sup>93</sup> Additionally, public procurement laws lay down procedures to be followed to ensure a fair and just procurement process, but none relate to protection of human rights. However, there are provisions that provide the authorities the power to promulgate rules for the protection of human rights if that is required.

For example, the Securities and Exchange Commission of Pakistan (SECP) passed the Public-Sector Companies (Corporate Governance) Rules in January 2013 in order to improve the corporate governance framework of public sector companies. These are the only rules that are unique to public-sector companies in Pakistan. The rules relate to the corporate structure of public-sector companies. They lay down steps required to be followed by directors, CEOs and other senior position holders of the companies. Whilst these Rules lay down provisions that require public-sector companies to be operated in a prudent, transparent manner with integrity,<sup>94</sup> nothing relates to the duty of public-sector companies to ensure that all their business activities and processes are compliant with human rights obligations.

#### **b. Corruption and the Procurement Process<sup>95</sup>**

Corruption remains a significant obstacle to business in Pakistan and companies operating in the state regularly encounter corrupt practices, and activities involving bribery. The Pakistan Penal Code applies to individuals and makes it illegal to offer, pay or accept a bribe. Companies can be held civilly liable under the Prevention of Corruption Act and the National Accountability Bureau Ordinance. Facilitation of payments and gifts are prohibited but are common practice. The GAN Business Anti-Corruption Portal's<sup>96</sup> country report on Pakistan reveals that corruption is widespread in all sectors and institutions. The World Economic Forum's Global Competitiveness Report<sup>97</sup> sheds light on corrupt activities involving the judiciary in Pakistan and indicates that over two-thirds Pakistanis accepted that they had paid bribes while interacting with the Courts in Pakistan. In terms of commercial activity, a 2018 report reveals that enforcing a contract takes 1096 days and speedy justice is negatively impacted due to corruption.

Businesses which deal with ministers and public officials in relation to land, taxes, customs etc. have to deal with practices riddled with bribery and corruption. The public procurement process remains at a high risk of corruption as diversion and exploitation of public funds are common. Bribes and irregular payments in the process of Government contracts are very common, which can be traced back to a lack of effective and adequate procurement rules, and institutional capacity to combat corruption. The World Bank Groups Enterprise Survey of 2013 reveals that eight out

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<sup>93</sup> Rule 17 – Public Procurement Rules 2004

<sup>94</sup> Rule 2A(a) – Public Sector Companies (Corporate Governance) Rules 2013

<sup>95</sup> National Baseline Assessment on Business and Human Rights in Pakistan

<sup>96</sup> Compliance Resources | Business Anti-Corruption Portal<sup>1</sup> (GAN Integrity)

<sup>97</sup> 'The Global Competitiveness Report 2018' (World economic forum)

of ten companies expect to give bribes to Government officials to secure contracts. Several laws and regulations exist to curb corrupt practices and activities involving bribery:<sup>98</sup>

Pakistan Penal Code 1860
Prevention of Corruption Act 1947
Prevention of Corruption Act 1947
Islamabad Capital Territory Local Government Act 2015
Enforcement of Shariah Act 1991
Pakistan Airforce Act 1943
Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012
Anti-Money Laundering Act 2010
National Accountability Bureau Ordinance 1999
Eradication of Corrupt Business Practices Ordinance 1998
Punjab Local Government Ordinance 2001
Punjab Civil Administration Act 2017
The Punjab Local Government Act 2013
NWFP Removal from Service (Special Powers) (Amendment) Ordinance, 2001
KP Local Government Ordinance 2002

Similarly, enforcement mechanisms have also been established to ensure the effective implementation of the laws and regulations prohibiting such practices. For example, the National

<sup>98</sup> National Baseline Assessment on Business and Human Rights in Pakistan.

Accountability Bureau (NAB) has been established to ensure the enforcement of laws and to investigate and prosecute crimes of corruption. In recent years, the independence of NAB has been strengthened to ensure that all cases of corruption and financial misrepresentation are thoroughly investigated. In this regard, the Federal Investigation Agency (FIA) and the Federal Board of Revenue supplement the work of the NAB to ensure that criminal actions involving corruption are adequately addressed.

Provincial Anti-Corruption Establishments have also been set up to investigate offences of corruption by public servants. Further, the Public Procurement Regulatory Authority has also been established at a Federal and Provincial level to assess procedures and take measures to improve governance, management, transparency, and accountability of all work related to public procurement. Should any changes require specific laws or rules, the Authority can recommend new laws and policies to the State to be enacted.

Pursuant to Pakistan's grey-listing by FATF, several laws and guidelines relating to AML/CTF have been passed. The Financial Monitoring Unit has been set up to investigate cases of suspicious transactions. The regulations and policies promulgated by the State in this regard aim to enhance financial transparency of different business entities

### **c. NAP Priority Area<sup>99</sup>**

Pakistan faces several challenges with respect to financial transparency and corruption in public procurement contracts. The implementation of human rights standards in the context of business operations can be encouraged in public procurement processes by requiring the promotion and protection of human rights as part of the bid. In addition to this, financial transparency of companies should also be considered as a condition for the approval of a bid. Lack of financial transparency especially in relation to corruption and bribery remain pervasive in Pakistan's business sector. These have a direct correlation with human rights as lack of financial transparency can contribute to money laundering, terror financing and tax evasion, which negatively impact social development programmes and human rights.

Hence, 'Financial Transparency, Corruption and Human Rights Standards in Public Procurement Contracts' is one of priority areas under the NAP. Accordingly, five proposed actions have been identified, at both the Federal and Provincial levels, to aid in the fulfilment of this priority area.

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<sup>99</sup> National Action Plan on Business and Human Rights in Pakistan, 2021

I

Pass the Whistle-blower Protection and Vigilance Commission Bill 2019 to ensure protection of whistle-blowers disclosing information related to financial discrepancies and corruption.

II

Develop and implement guidelines to ensure that in making procurement contracts, human rights standards are considered and priority is given to businesses that demonstrate respect for human rights.

III

Develop a model Code of Conduct for businesses that are State owned, controlled or which work with the State.

IV

Further strengthen judicial processes and create awareness on issues relating to Anti-Money Laundering/Counter Terror Financing (AML/CTF) to encourage financial transparency.

V

Review and update the Public Procurement Regulatory Authority Rules in accordance with international best practices and incorporate HRDD requirements within these Rules.

## **Guidelines**

### **Guideline 1**

Businesses bidding for public procurement contracts should ensure that they have made a commitment to respect and protect human rights as this indicates their interest in supporting the State towards creating a business environment that respects human rights.

### **Guideline 2**

Businesses bidding for public procurement contracts through joint-ventures or as part of consortiums should ensure that all stakeholders involved in the bidding process comply with the above principles in a coherent and consistent manner.

### **Guideline 3**

Businesses seeking to secure public procurement contracts should ensure that their HRDD mechanisms trickle down their value chains and apply to all their sub-contractors. This can be achieved through cascading contractual requirements by businesses for their sub-contractors.

### **Guideline 4**

Where the activities of sub-contractors are found to have adverse human rights impacts, businesses should collaborate with the State to obtain access to information relating to the adverse human rights impacts and to provide a report of their findings.

### **Guideline 5**

Businesses applying for public procurement contracts must ensure that they respect and promote the rights of vulnerable and at-risk groups involved in or affected by their business activities. They must engage in a transparent manner with such communities to mitigate adverse human rights risks and impacts.

### **Guideline 6**

Businesses seeking to gain public procurement contracts must ensure that they have effective grievance mechanisms to remedy any adverse human rights impacts that have resulted from their business activity.

## Small and Medium Sized Enterprises

Small and Medium-sized Enterprises (SMEs) may be defined as companies that fall below a certain threshold in terms of its employees, value of assets or generated revenue. SMEs play a major role in the economy of developing countries, as they account for about 90% of businesses, and more than 50% of employment worldwide.<sup>100</sup> Consequently, SMEs considerably affect the industrial, economic, and social development of a nation. SMEs are one of the main vehicles utilized to reduce poverty and expand the national economy by creating jobs, generating income, and increasing wealth.

The exact parameters of what constitutes an SME has been the subject of much academic debate. The World Bank defines it as a registered business with less than 250 employees, and assets/annual sales of up to \$100,000. The European Union has defined it as a firm with employees less than 250, and an annual turnover of less than fifty million euros.<sup>101</sup> However, nations have adopted their own criterion to determine which businesses may be categorized as an SME. For instance, France and Ireland define an SME as having less than 500 employees, Indonesia and Germany have set the limit at 100 employees, whereas Hong Kong has set the limit as low as fifty employees.<sup>102</sup> Comparatively, in some nations, each industry has developed its own set of standards for determining whether a business is an SME or not. In Japan, wholesale enterprises have categorized an SME as an organization with less than a hundred employees, or capitalization less than thirty million yen. Retail businesses have defined it as one with less than fifty employees or capitalization less than thirty million yen. Contrastingly, the transportation, mining and manufacturing sectors have set the parameters at 300 employees or invested capitalization less than a hundred million yen.<sup>103</sup> Moreover, in countries like the United Kingdom and Vietnam, there is no fixed definition of an SME.

The World Bank notes that SME's make up 98% of all businesses in Asia and are responsible for the provision of two out of three private sector jobs within the region. Owing to this widespread representation of SME's in the economic market, it is essential for these companies to understand their human rights impacts as well. The UNGPs provide that businesses are responsible for the protection of human rights regardless of their size, as whatever its size, a business has the potential of adversely impacting human rights. However, SME's continue to struggle with significant challenges including lack of financial resources, limited budgets for research and development, bars to financial

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<sup>100</sup> "World Bank SME Finance: Development News, Research, Data" (*World Bank*)

<<https://www.worldbank.org/en/topic/sme/finance>>

<sup>101</sup> Ardic OP, "Small and Medium Enterprises A Cross-Country Analysis with a New Data Set"

<<https://documents1.worldbank.org/curated/en/967301468339577330/pdf/WPS5538.pdf>> accessed December 30, 2022

<sup>102</sup> Ardic OP, "Small and Medium Enterprises A Cross-Country Analysis with a New Data Set"

&lt;<https://documents1.worldbank.org/curated/en/967301468339577330/pdf/WPS5538.pdf>&gt; accessed December 30, 2022

<sup>103</sup> "Germany: Mandatory Human Rights Due Diligence" (*Debevoise* May 3, 2021)

<<https://www.debevoise.com/insights/publications/2021/04/germany-mandatory-human-rights-due-diligence>> accessed December 29, 2022

inclusion, under developed sales channels etc.<sup>104</sup> This may limit their capacity to make sustained efforts for the protection of human rights within their operations and supply chains as well.

Nonetheless, SME's like all businesses have a responsibility to ensure that they identify their adverse human rights impacts, and find solutions that may fit within the challenges that they may face as well. This Section seeks to identify international guidelines and best practices which have been developed to support SME's for the protection of human rights, and develop guidance for such businesses in Pakistan as well.

## International Guidelines on SME's and BHR

### 1. European Commission's Guidance on Human Rights

Guidance on human rights specifically tailored to the needs of SMEs has been developed by the European Commission.<sup>105</sup> The guide lists the six basic steps SMEs should undertake to understand the negative impact their business may have on human rights.



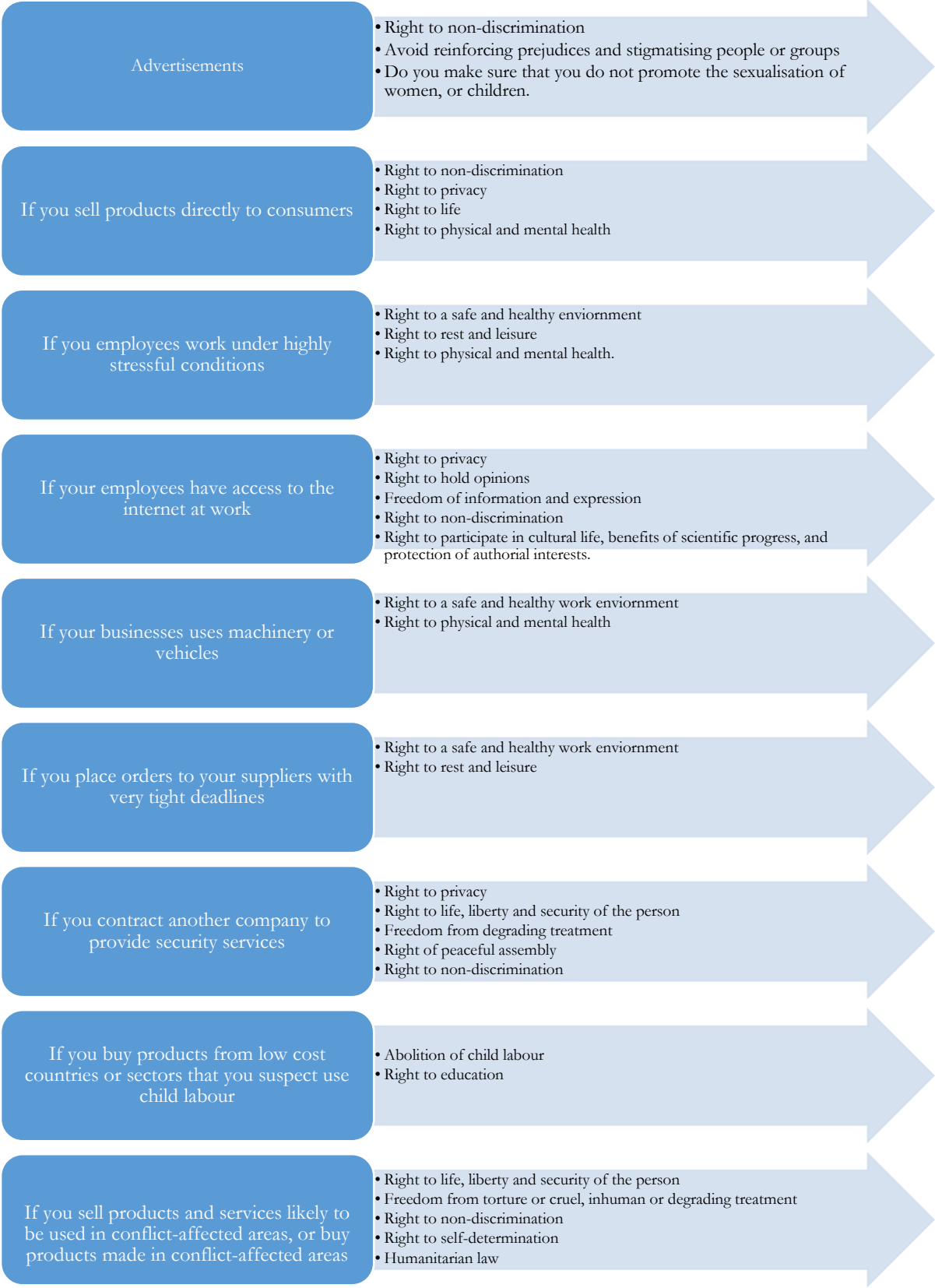
However, it is made clear that abiding by the above-mentioned six steps is not sufficient in itself. The European Commission has given another list of fifteen considerations, and subsequent questions, that

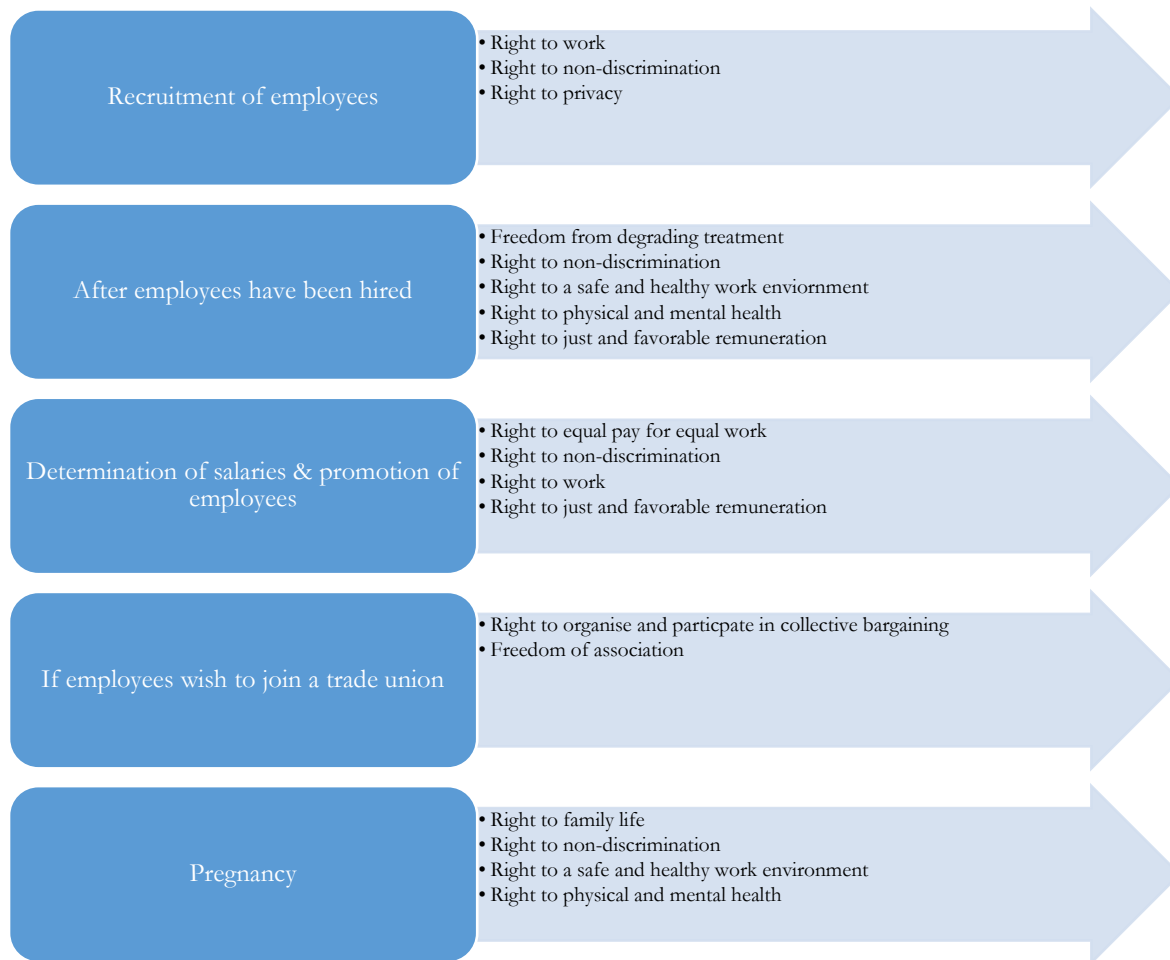
<sup>104</sup> “Major Challenges Facing Small and Medium-Sized Enterprises in Asia and Solutions for Mitigating Them” <<https://www.adb.org/sites/default/files/publication/182532/adbi-wp564.pdf>>

<sup>105</sup> “A Guide to Human Rights for Small and Medium-Sized Enterprises” (*Business and Human Rights*) <<https://media.business-humanrights.org/media/documents/files/documents/SME-BHR-guide-EU.pdf>>



SMEs should address to help mitigate the negative impact their business operations may have on human rights. The considerations and consequent rights at risk and questions that each SME should be cognizant of have been compiled below.





## 2. UN Guiding Principles on Business and Human Rights

A Guide on Corporate Social Responsibility and Human Rights has been published,<sup>106</sup> which provides that a UNGPs-aligned policy commitment should include five elements:

- The highest governing body at the SME should adopt the commitment to respect human rights on behalf of the enterprise.
- The commitment should be informed by the necessary internal and/or external human rights expertise.
- The commitment should stipulate the expectations of the business in terms of human rights for their employees, business partners and other stakeholders that are directly linked to through the business.

<sup>106</sup> “A Guide on CSR and Human Rights” <[https://www.itcilo.org/sites/default/files/inline-files/A\\_Guide\\_on\\_CSR\\_and\\_Human\\_Rights\\_FINAL.pdf](https://www.itcilo.org/sites/default/files/inline-files/A_Guide_on_CSR_and_Human_Rights_FINAL.pdf)>

- The policy commitment should be made public and should be communicated internally and externally to employees and business partners.
- Finally, the policy commitment should be reflected within the company's other policies and procedures.

A significant exercise in identifying human rights risks and impacts is human rights due diligence (HRDD). Conducting HRDD means that the following should be taken into account:

- Identify and assess the nature of the actual and potential human rights impacts with which the company might be involved.
- Integrate the findings from their impact assessments across internal functions and processes.
- Take appropriate action.

The scale and complexity of the HRDD process may vary according to the business' size, sector, operational context, ownership, structure and the severity of the adverse human rights impacts. However, the company should identify the actual and potential adverse impacts it may cause or contribute to an ongoing basis i.e., at regular intervals.

Furthermore, SMEs should provide access to remedy through effective grievance mechanisms to ensure that the negative impacts do not occur again. The grievance mechanisms established by the SMEs should be:

- 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 inductive timeframe 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;

- Based on engagement and dialogue: 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.

## International Best Practices on integrating BHR within SMEs

### CASE STUDY 1

#### United Kingdom

In the UK, at the end of 2021 it was reported that SMEs account for 99.9% of the business population.<sup>107</sup> However, the 2013 National Action Plan on Business and Human Rights (NAP), made limited reference to SMEs. Nonetheless, in the ‘Further Actions’ section, it was stated that government guidance that is “accessible and helpful to especially SMEs” will be developed.<sup>108</sup> In the 2016 NAP, the government highlighted the importance of human rights, and the need to comply with related obligations. With regard to SMEs, it only stated that the implementation of such principles will have to be “progressive and compatible with the resource limitations” of SMEs.<sup>109</sup> Thus, the NAP recognized that challenges faced by SMEs are unique and a “one size fits all” approach cannot be taken.

### CASE STUDY 2

#### Germany

In Germany, 99.6% of companies are SMEs.<sup>110</sup> It was reported that SMEs account for more than half of the jobs in the country.<sup>111</sup> In the 2016-2020 NAP, the Federal Government stated that it would increase its support to aid SMEs in understanding how to implement a due diligence system.

Through the European Social Fund (**ESF**) promotion scheme for “social responsibility in SMEs”, more than 3,000 SMEs received advice and training in social responsibility, and regional Corporate Social Responsibility (**CSR**) networks have been made permanent.<sup>112</sup> Numerous specialized events have been staged in the framework of the CSR Forum to advise enterprises on the exercise of due

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<sup>107</sup> “Business Population Estimates for the UK and Regions 2021: Statistical Release (HTML)” (*GOV.UK*)  
<<https://www.gov.uk/government/statistics/business-population-estimates-2021/business-population-estimates-for-the-uk-and-regions-2021-statistical-release-html>>

<sup>108</sup> “Good Business Implementing the UN Guiding Principles on Business and Human Rights”  
<<https://globalnaps.org/wp-content/uploads/2017/11/uk-2013-nap-bhr.pdf>>

<sup>109</sup> “Good Business Implementing the UN Guiding Principles on Business and Human Rights”  
<<https://globalnaps.org/wp-content/uploads/2017/11/uk-2013-nap-bhr.pdf>>

<sup>110</sup> “The German Mittelstand: Facts and Figures about German Smes”  
<[https://www.bmwk.de/Redaktion/EN/Publikationen/wirtschaftsmotor-mittelstand-zahlen-und-fakten-zu-den-deutschen-kmu.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmwk.de/Redaktion/EN/Publikationen/wirtschaftsmotor-mittelstand-zahlen-und-fakten-zu-den-deutschen-kmu.pdf?__blob=publicationFile&v=4)>

<sup>111</sup> “The German Mittelstand: Facts and Figures about German Smes”  
<[https://www.bmwk.de/Redaktion/EN/Publikationen/wirtschaftsmotor-mittelstand-zahlen-und-fakten-zu-den-deutschen-kmu.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmwk.de/Redaktion/EN/Publikationen/wirtschaftsmotor-mittelstand-zahlen-und-fakten-zu-den-deutschen-kmu.pdf?__blob=publicationFile&v=4)>

<sup>112</sup> “National Action Plan Implementation of the UN Guiding Principles on ...” <<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

diligence.<sup>113</sup> Furthermore, in cooperation with business networks, ‘practice days’ for SMEs are offered nationwide. These sessions provide support, information, and exchanges with other enterprises on responsible supply chain management and high-quality sustainability reporting.

On 30<sup>th</sup> April 2022, the Supply Chain Act 2022 was adopted that mandated human rights due diligence for large companies. In the event of non-compliance, the Act has established substantial fines and exclusion from public tenders as penalties.<sup>114</sup> When it enters into force in 2023, it will only apply to enterprises that have more than three thousand employees.<sup>115</sup> In 2024, it will be applicable to all companies with 1,000 or more employees.<sup>116</sup> Although the German “Lieferkettengesetz” proposal suggested that the new law should apply to SMEs in high-risk sectors,<sup>117</sup> the Supply Chain Act excluded SMEs from the ambit of the new legislation, realizing that SMEs may require more time and effort to align their activities with the UNGPs due to the challenges faced by them.

### CASE STUDY 3

#### Japan

99.7% of the total companies in Japan are categorized as SMEs. The Government has developed the Basic Plan on Human Rights Education and Human Rights Awareness Raising pursuant to the Act on the Promotion of Human Rights Education and Human Rights Awareness-Raising (Act No. 147 of 2000). Under the Plan, human rights education and awareness-raising seminars for SMEs have been organized across Japan to create awareness of business and human rights among businesses.

Future measures planned include continued awareness raising for SMEs and providing Support for Human Resources Development in SMEs. Furthermore emphasis is laid on the following three areas:

- a. Provide information to SMEs through the portal site on business and human rights.
- b. Conduct seminars targeting SMEs in cooperation with economic organizations and civil society.
- c. Include policies regarding business terms and conditions and improvement of business practices.

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<sup>113</sup> “Germany: Mandatory Human Rights Due Diligence” (*Debevoise* May 3, 2021) <<https://www.debevoise.com/insights/publications/2021/04/germany-mandatory-human-rights-due-diligence>> accessed December 29, 2022

<sup>114</sup> “Germany: Mandatory Human Rights Due Diligence” (*Debevoise* May 3, 2021) <<https://www.debevoise.com/insights/publications/2021/04/germany-mandatory-human-rights-due-diligence>> accessed December 29, 2022

<sup>115</sup> Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Lieferkettensorgfaltspflichtengesetz – LkSG)

<sup>116</sup> Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Lieferkettensorgfaltspflichtengesetz – LkSG)

<sup>117</sup> “National Mandatory Human Rights Laws and Legislative Proposals in Europe” <<http://corporatejustice.org/wp-content/uploads/2021/03/eccj-mandatory-hredd-comparative-table-december-2020-.pdf>>

## CASE STUDY 4

### Italy

In the 2016-2021 Italian NAP on Business and Human Rights, the OECD National Contact Point (NCP) identified six areas that would be placed on a priority. The first point addresses the promotion of “human rights due diligence processes” that are aimed at identifying, preventing and mitigating potential risks, with “particular” focus on SMEs.<sup>118</sup> The NCP developed tools to make international standards operational especially for SMEs such as the “Due Diligence Guidance for SMEs” and activities for awareness raising and pilot projects with the aim of spurring a proactive responsible supply chain management through training, information and assistance.<sup>119</sup>

### SMEs in Pakistan

In Pakistan, SMEs play a vital role in the functioning of the economy by creating jobs, and subsequently wealth. The Government of Pakistan established a Small and Medium Enterprise Development Authority (SMEDA) in October 1998 with the aim of developing this sector. SMEDA reported that there are more than five million SMEs in Pakistan. SMEs contribute 40% to the GDP of the nation, and account for about 25% of exports.<sup>120</sup>

However, there is no uniform definition of SMEs. The SME Bank, SMEDA, Pakistan Bureau of Statistics (PBS) and State Bank of Pakistan (SBP) have defined SMEs in different ways.

Institution	Criteria	Medium Scale	Small Scale
SMEDA	Employees	36-39	10-35
	Productive Assets	PKR 20-40 million	PKR 2-20 million

<sup>118</sup> “National Action Plan on Business and Human Rights” <[https://globalnaps.org/wp-content/uploads/2017/11/national-action-plan-on-business-and-human-rights\\_.pdf](https://globalnaps.org/wp-content/uploads/2017/11/national-action-plan-on-business-and-human-rights_.pdf)>

<sup>119</sup> Rocchi MM, “NCP Italy National Contact Point” (*NCP’s tools and guidances*) <<https://pcnitalia.mise.gov.it/index.php/en/tools-for-business/ncp-s-tools-and-guidances>>

<sup>120</sup> “Challenge Fund for SMEs - SBP.ORG.PK” (*State Bank of Pakistan*) <<https://www.sbp.org.pk/sme/d/circulars/2022/C4-Annex-A.pdf>> accessed December 30, 2022

SECP	Income/revenue less than PKR 200 million	A non-listed company which is not a:	Other than a non-listed public company:
		<ul style="list-style-type: none"> <li>i. Public interest company; or</li> <li>ii. Large sized company or</li> <li>iii. Small sized company other than a non-listed public company.</li> </ul>	<ul style="list-style-type: none"> <li>i. Paid up capital not exceeding PKR 25 million and</li> <li>ii. Turnover not exceeding PKR. 100 million.</li> </ul>
SME Bank Federal Bureau of Statistics	No. of Employees	N/A	Less than 10 employees
	Total Assets	Over PKR 100 million	Less than 100 million
SBP	Manufacturing	No. of employees	Less than 250 employees
		Assets	Less than PKR 100 million assets
	Trade/Services	No. of employees	Less than 50 employees
		Assets	Net sales less than PKR 50 million

Under the Third Schedule (Section 224) of the Companies Act 2017, large, medium and small companies have also been defined.<sup>121</sup>

<sup>121</sup> Companies Act, 2017



Section 224:

“A large sized company (LSC) is divided into the following sub-categories:

- a. Non-listed company with:
  - i. Paid-up capital of PKR 200 million or more, or
  - ii. PKR 1 billion turnover
  - iii. More than 750 employees.
- b. A foreign company with turnover of PKR 1 million or more
- c. Non-listed company that has a gross revenue of PKR 200 million or more

A medium sized company (MSC) is sub-categorized into the following:

- a. Non-listed company with:
  - i. Paid-up capital less than PKR. 200 million
  - ii. Less than PKR 1 billion turnover,
  - iii. Between 250 and 750 employees.
- b. Private company with:
  - i. Paid up capital of greater than PKR 10 million, but not more than PKR 200 million
  - ii. Turnover greater than PKR 100 million, but not exceeding PKR 1 billion
  - iii. Between 250 and 750 employees.
- c. A foreign company which has a turnover of less than PKR 1 billion.
- d. A non-listed company licensed/formed under Sections 42 or 45 which have an annual gross revenue less than PKR 200 million.

A small sized company is defined as a private company having:

- i. Paid-up capital up to PKR 10 million,
- ii. Turnover not exceeding PKR 100 million,
- iii. Less than 250 employees.”

## Human Rights Challenges

In Pakistan, SMEs have often been accused of disregarding human rights at the workplace. It has been reported that they are failing to protect the rights of women,<sup>122</sup> while the abuse of children in the textile industry has been highlighted often as well.<sup>123</sup> SMEs are more likely to operate informally which gives them leeway to abuse several human rights. The ILO reported the “unsafe conditions of the informal power units in Punjab” where there was limited access to drinking water, deafening industrial noise, the lack of ear protection, and poor ventilation.<sup>124</sup> While SMEs have been aiding in the

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<sup>122</sup> Naveed RT and others, “Small and Medium-Sized Enterprises Failure in Providing Workers' Rights Concerning Sustainable Development Goals-2030 in Pakistan” (*Frontiers*, September 7, 2022) <<https://www.frontiersin.org/articles/10.3389/fpsyg.2022.927707/full>>

<sup>123</sup> “No Room to Bargain” (*Human Rights Watch*, May 27, 2020) <<https://www.hrw.org/report/2019/01/24/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>>

<sup>124</sup> “Human Rights Due Diligence Framework - Ethical Trade”

<[https://www.ethicaltrade.org/sites/default/files/shared\\_resources/eti\\_human\\_rights\\_due\\_diligence\\_framework.pdf](https://www.ethicaltrade.org/sites/default/files/shared_resources/eti_human_rights_due_diligence_framework.pdf)>

economic growth of the country, the sector still faces setbacks which impede the growth and progress of businesses in Pakistan and restricts their ability or willingness to protect human rights as well.

All enterprises, from SMEs to multinational corporations have a responsibility to respect human rights, and conduct human rights due diligence.<sup>125</sup> The UNGPs explicitly state that the “responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership, and structure,” which is referred to as the ‘corporate responsibility to respect human rights’.<sup>126</sup> In the debate on business and human rights, the importance of SMEs has been “largely neglected.”<sup>127</sup> In recent years, there has been a push for guidelines that help SMEs carry out human rights and environment due diligence (HREDD).

A survey conducted by the ILO revealed that companies face numerous challenges with regard to human rights. As expected, a lack of resources is a huge challenge for SMEs. The ILO found that the challenges faced by SMEs were as follows - 46% cited a lack of resources, 36% were uncertain with regard to their obligations, 36% stated that national law was not being enforced in practice, 31% reported it was difficult to operate in situations where fundamental economic, ecological and social standards were not part of their national law and finally, 29% stated it was hard to translate policy commitments into relevant operational procedures.<sup>128</sup>

SMEs form the backbone of national economies and are a part of global supply chains. Moreover, globalization has led to numerous SMEs engaging in transboundary trade and investment. There is a global consensus that the internationalization of SMEs provides the key to creating more sustainable and inclusive global economic growth. Given this reality, the 2015 UN Sustainable Development Goals expressly called for the facilitation of increased access for SMEs to international trade and investment.<sup>129</sup>

Understanding human rights as such is one of the first challenges faced by businesses when assessing human rights impacts. Most businesses have limited knowledge of the rights contained in the International Bill of Human Rights or in the ILO’s Declaration on Fundamental Principles and Rights at Work. According to UNGPs, businesses should assess impacts against all the human rights

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<sup>125</sup> “Working Group on Business and Human Rights - Office of the United ...”

<<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/CompanionNote1DiligenceReport.pdf>>

<sup>126</sup> “Guiding Principles on Business and Human Rights” (*Implementing the United Nations “Protect, Respect and Remedy” Framework*)

<[https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)>

<sup>127</sup> “SMEs and Human Rights What Is the Current State of Play, What Are the Opportunities and Challenges, What Kind of Support Is Needed?” <[http://www2.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---ifp\\_seed/documents/publication/wcms\\_535220.pdf](http://www2.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_535220.pdf)>

<sup>128</sup> “SMEs and Human Rights What Is the Current State of Play, What Are the Opportunities and Challenges, What Kind of Support Is Needed?” <[http://www2.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---ifp\\_seed/documents/publication/wcms\\_117687.pdf](http://www2.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_117687.pdf)> accessed December 30, 2022

<sup>129</sup> “Micro, Small, Medium-Sized Enterprises & Their Role in Achieving the Sustainable Development Goals” <[https://sustainabledevelopment.un.org/content/documents/26073MSMEs\\_and\\_SDGs.pdf](https://sustainabledevelopment.un.org/content/documents/26073MSMEs_and_SDGs.pdf)>

contained in these two international texts. Processes for assessing human rights impacts can be incorporated within other processes that already exist for example, risk assessments or environmental and social impact assessments. SMEs lack the resources and expertise to manage human rights issues. Without regulatory and reputational concerns, there's no business case for small companies to care about human rights or make the heavy investment that would be required for implementing such an initiative.

There are four main challenges that SMEs face in implementing due diligence networks:

1. SMEs have a lower level of leverage due to their size, and the output produced by them usually represents a small part of the total production.
2. SMEs are more likely to be impacted by poor purchasing practices.
3. The cost of carrying out due diligence is extremely high when compared to the position of SMEs in the supply chain, and its financial liquidity.
4. Lack of knowledge and technical capacity to implement due diligence.

In line with other developing countries, the SME sector in Pakistan does not have adequate access to financing from the formal sector and has been primarily relying on the credit facilities from the informal sector, at a cost even higher than the cost paid by those borrowers from SME sector who are able to avail facilities from the formal sources like banks.<sup>130</sup>

## CASE STUDY

### Human Rights Due Diligence and SMEs

A clothing store in Faisalabad employs 25 tailors, 2 administration representatives and 5 miscellaneous staff members. They deal with three suppliers, one of which provides them with cloth, the other provides them with embellishments and the third provides them with patches of embroidery used in the outfits she makes. Since the NAP on BHR was published in Pakistan, the owner has been contemplating actions which can be taken by her store to respect human rights in line with the NAP and is attempting to understand how the UNGPs can be integrated within her business operations.

She understands that as a starting point, she must develop a policy on human rights which can be applied within the store's activities however does not have sufficient funds to hire a lawyer who can draft an effective human rights policy. However, this does not restrict her from identifying what the businesses human rights obligations are so she compiles a list of laws which the store must abide by, and instead of developing a human rights policy, declares a commitment to abide by all human rights standards including those found under labour laws including those relating to work hours,

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<sup>130</sup> "State Bank of Pakistan, SME Financing" (*State Bank of Pakistan*) <<https://www.sbp.org.pk/sme/index.htm>>

minimum wages, formalising contracts etc., and those developed for the protection of women and children at the workplace.

As a next step, she attempts to identify the human rights risks which may arise when business activities are conducted. After conducting an assessment of her direct and indirect operations, she identifies that the greatest risks are attached in relation to activities conducted by her suppliers. This is because Supplier 2 and 3 engage primarily with home-based workers, some of which may include young girls as well. To pursue this and uncover the human rights impacts that these actions may have as a result of her business operations, the owner decided to get in touch with Supplier 2 and 3 to ask them a few questions.

She begins by identifying the number and gender of home-based workers that they work with, the age of the workers, whether formal contracts have been entered into with them, whether minimum wage requirements are met, whether any forced or bonded labour is conducted or not. While Supplier 2 answers all her questions, Supplier 3 refuses to share information regarding the number, gender, and age of the home-based workers they engage and does not give her adequate information on whether formal contracts have been entered into as well.

This raises a concern for the owner as she has little leverage against the Supplier, and also does not want to lose her agreement with them. Thus, she sets up another meeting with a representative of Supplier 3 and explains that the information she is collecting is for the benefit of her business and her suppliers as well as if civil society organisations or the state were to investigate into their operations, they would lose out more money than the profits being made through exploitation of workers, and emphasised on consumer awareness and the levels it has reached in today's modern world. She gives a few examples of her customers who have regularly asked her about the working conditions which exist within her business operations and whether minimum wage was provided or not.

The representative is then persuaded to share information with the owner but reveals that some of the home-based workers they engage with do not have regular contracts and thus, agreements with them may be terminated at any time. He also states that the Supplier is not willing to create formal contracts and there is nothing more that they can do about this.

The owner of the clothing store then engages with a civil society organisation, HomeNet which works to enforce and realise the rights of home-based workers, and sets up a meeting with Supplier 3 in an attempt to rectify the adverse human rights impacts that may arise from establishing informal work relationships with home-based workers. HomeNet is successful in persuading Supplier 3 to regularise contracts with their workers and the owner of the clothing store continues to engage with all Suppliers without fear of impacting human rights adversely.

## **Guidelines**

### **Guideline 1**

SME's regardless of their size or the challenges they may face, must understand the importance of protecting human rights within their business operations. The first step thus, must be to identify their human rights risks and impacts and subsequently identify innovative and workable solutions to ensure protection of human rights and mitigation of existing adverse impacts.

### **Guideline 2**

As a minimum, SME's must ensure compliance with all laws developed for the protection of employees, and especially those relating to women, children, transgender persons and minorities at the workplace. These laws are to be complied with regardless of the size of a business and thus, SME's must ensure their enforcement within their operations as well.

### **Guideline 3**

As part of compliance with existing laws, SME's must ensure that redressal mechanisms required under the law are developed and are effective as well. For example, all SME's must ensure that a committee to investigate complaints relating to harassment at the workplace is established pursuant to the Protection of Women against Harassment at the Workplace Act 2010.

### **Guideline 4**

SMEs should strengthen their management to avoid appointment of various individuals responsible for compliance with human rights standards. Expert individuals in management may allow SMEs to cut costs and require the same individuals to establish policies and ensure compliance pursuant to human rights standards as well.

### **Guideline 5**

SME's must utilize National Human Rights Institutions and civil society organizations to receive free advice on activities which can be undertaken by them to improve the enforcement of human rights within their activities. These may range from communication tools, guidance on protecting human rights etc.

### **Guideline 6**

To deal with the increased costs of implementing such measures, SMEs may use existing internal processes. For example, existing employees may be utilized to conduct compliance checks, establish committees to provide redressal mechanisms etc.

### **Guideline 7**

Large companies when dealing with SMEs must also ensure that HRDD requirements imposed by them are proportionate and reasonable, or support is provided to SMEs when conducting HRDD so that they are not overburdened.

## State-Owned Businesses and BHR

The Corporate Finance Institute has defined a State-Owned Enterprise (SOE) as a “body formed by the government through legal means so that it can take part in activities of a commercial nature.”<sup>131</sup> Their primary purpose is to allow the government to take part in commercial activities and these entities account for up to 40% of domestic output in nations around the globe.<sup>132</sup> Given that several SOEs are amongst the largest enterprises in the world, it is empirical that SOEs optimize their efficiency, performance and reputation and ensure protection of human rights within their activities as well.

## International Guidelines on SOEs and BHR

### 1. OECD Guidelines on Corporate Governance of State-Owned Enterprises

The OECD Guidelines on Corporate Governance of State-Owned Enterprises offer recommendations to governments on how to ensure that SOEs run effectively, transparently, and responsibly.<sup>133</sup> To avoid the dangers of both passive ownership and excessive state intervention, they are the internationally accepted norm for how governments should exercise their state ownership function.

The government should use both public and private sector governance norms, including the OECD Principles of Corporate Governance, which also apply to SOEs, to carry out its own duties. Different legal forms from other companies may apply to SOEs.<sup>134</sup> This might represent goals or societal considerations, as well as stakeholders receiving special protection. This especially affects workers whose pay may be determined by regulatory acts or bodies and who enjoy specialized pension entitlements and redundancy insurance on par with that granted to civil servants. Because of their unique legal standing, SOEs are frequently also substantially shielded from insolvency or bankruptcy procedures.

The government, in turn, should play the role of an informed and involved owner, ensuring that SOE governance is carried out with a high level of professionalism and effectiveness. The legal framework in which SOEs operate should be standardized and made simpler by the government. Their

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<sup>131</sup> “State Owned Enterprise (SOE)” (<https://corporatefinanceinstitute.com/>)  
<<https://corporatefinanceinstitute.com/resources/career/state-owned-enterprise-soe/>>

<sup>132</sup> “State-Owned Enterprises” ([ifc.org](http://ifc.org))  
<[https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+cg/topics/state-owned+enterprises](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/state-owned+enterprises)>

<sup>133</sup> “OECD Guidelines on Corporate Governance of State-Owned Enterprises” <<https://www.oecd-ilibrary.org/docserver/9789264244160-en.pdf>>

<sup>134</sup> “OECD Guidelines on Corporate Governance of State-Owned Enterprises” <<https://www.oecd-ilibrary.org/docserver/9789264244160-en.pdf>>

operational procedures should adhere to widely recognized business standards. Secondly, the government should refrain from interfering with SOE administration and grant SOEs complete operational autonomy to accomplish their stated goals. As a shareholder, the government should refrain from changing the goals of SOEs and advocate independence. Furthermore, within the governmental administration, ownership rights should be expressly defined. A single ownership entity should be in charge of exercising all ownership rights; if this is not practicable, a coordinating body should do so. This "ownership entity" ought to be capable of performing its responsibilities well. Thirdly, the ownership entity should have a specified relationship with relevant public entities, such as the state supreme audit institutions, and be held accountable to the appropriate representative bodies. Finally, the state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise:

Representation

Well-structured merit-based and transparent processes

Monitoring and implementation of mandates and objectives

Effective reporting systems

Disclosure policies

Remuneration policies

## **The State**

The starting point here is the extent to which state-owned businesses support the idea of HRDD, as HRDD seeks to draw a compromise between strong regulation of business and deregulation. This is achieved by reaching an optimum compliance.<sup>135</sup> In practice, such a co-regulatory model will only work if businesses implement such practices. The role of the state is critical. Furthermore, HRDD is a tool to mainstream human rights into business operations in line with the UNGP. However, the non-legally binding characteristics of HRDD and the ambiguity of evaluation standards largely restricts the effectiveness of HRDD. Once more, the role of States can be crucial in reinforcing human rights performance and establishing guidance to improve HRDD processes. Additionally, by ensuring that SOEs conduct HRDD, states may lead the process of guiding private sector businesses on identifying their human rights impacts as well.

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<sup>135</sup> Muchlinski P. The impact of the UN Guiding Principles on business attitudes to observing human rights. *Bus Human Rights J.* 2021;6(2):212–226



## 2. International Finance Corporation (IFC)

Corporate governance and financial management are two areas where IFC's initiatives are included into the World Bank Group's larger SOE reform program. In order to do this, it is necessary to evaluate the state of SOE corporate governance in various nations, offer policy suggestions and action plans, and aid in the execution of reforms through advising and lending activities<sup>136</sup>. IFC's corporate governance professionals intervene in collaboration or coordination with World Bank-led teams to:

- **Develop corporate governance frameworks** aimed at strengthening the state's monitoring of SOE governance and performance.
- **Training of SOE board directors** by training members of the board, including state nominees and independent directors, SOEs will be authorized to develop their own practices that will align with international principals and frameworks.
- **Train government officials** of state ownership entities and line ministries as well as SOE managers responsible for preparing and implementing governance reforms on issues such as exercising the rights of the state as shareholder.
- **Design and implement SOE director training and certification**, while partnering with prominent emissaries in markets, business schools, directors of different institutions and SOE-specific academicians.

## 3. International Monetary Fund

In many nations, SOEs have significant fiscal and economic effects. Being the largest corporations in the world today, SOEs are significant participants in the global economic market. However, various SOEs are struggling at the same time as well. The average SOE is underproductive, distorts the market, and may be corrupt. Particularly in developing nations, SOEs have struggled to provide all members of the population with essential services like access to clean water, sanitary facilities, and steady energy. Many have significantly drained the government's finances and, in certain circumstances, have exacerbated fiscal and economic disasters. There is growing concern over the operations of multinational SOEs, which could encourage protectionist policies.

Many nations should strengthen their SOE management and use models. Because SOEs offer essential economic services and may be a key tool in reaching the Sustainable Development Goals, the stakes are very high. Lessons on how to advance are drawn from international experience. Governments should not waste money on interventions that are unnecessary in some situations. When markets are competitive and private businesses efficiently deliver products and services, the justification for SOEs is weak. Enhancing their performance and developing a sustainable business

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<sup>136</sup> "State-Owned Enterprises" (*ifc.org*)

<[https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+cg/topics/state-owned+enterprises](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/state-owned+enterprises)>

model are top concerns in sectors where SOEs predominate, such as public utilities. Since SOEs are unlikely to be able to achieve all development objectives, governments will also need to figure out how to entice private investment to supplement SOE activities.

To guarantee SOEs work effectively and that fiscal costs are kept under control, governments must create good institutions and set suitable incentives. An effective framework would have a detailed ownership policy that was supported by proper government monitoring and sound corporate governance. To increase accountability, SOE activities and their interactions with the government must be transparent.

Moreover, a level playing field for competitors is essential to promote domestic economic efficiency and handle global spillovers in light of the expanding role of SOEs in international trade and investment. Several nations have enacted laws to achieve this. In international trade and investment treaties, several of these topics are also mentioned. However, there is room for a more coordinated worldwide strategy that might profit from global SOE norms being established.

#### **4. Working Group Report**

The Working Group on The Issue Of Human Rights And Transnational Corporations And Other Business Enterprises delivered its 2016 Report to the U.N. Human Rights Council: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (the "2016 WG Report").<sup>137</sup> The focus of the 2016 WG Report was particularly compelling - State Owned Businesses and the U.N. Guiding Principles on Business and Human Rights ("UNGP"). The Report emphasizes upon: "the duty of states to protect against human rights abuses involving those business enterprises that they own or control."

State Owned Businesses are, as a matter of convenience, and within the presumptions of law, sometimes treated as independent juridical persons. Yet the relationship with the state, as "owner" is qualitatively distinct from ownership by non-state actors. It is that "special relationship" that must be harmonized within the logic of the UNGP, a task that is made more difficult precisely because of the dual character of the state with respect to its Businesses. The state serves simultaneously as the "owner" of the State-Owned Business (and an object of law like other owners), and as the regulator of State-Owned Business (the generator of the laws that are applied to State Owned Businesses within their home states).

The 2016 WG Report starts with its conception of the regulatory governance framework within which the state's duty must be understood as aligned with the UNGPs. It states that, "States should do more

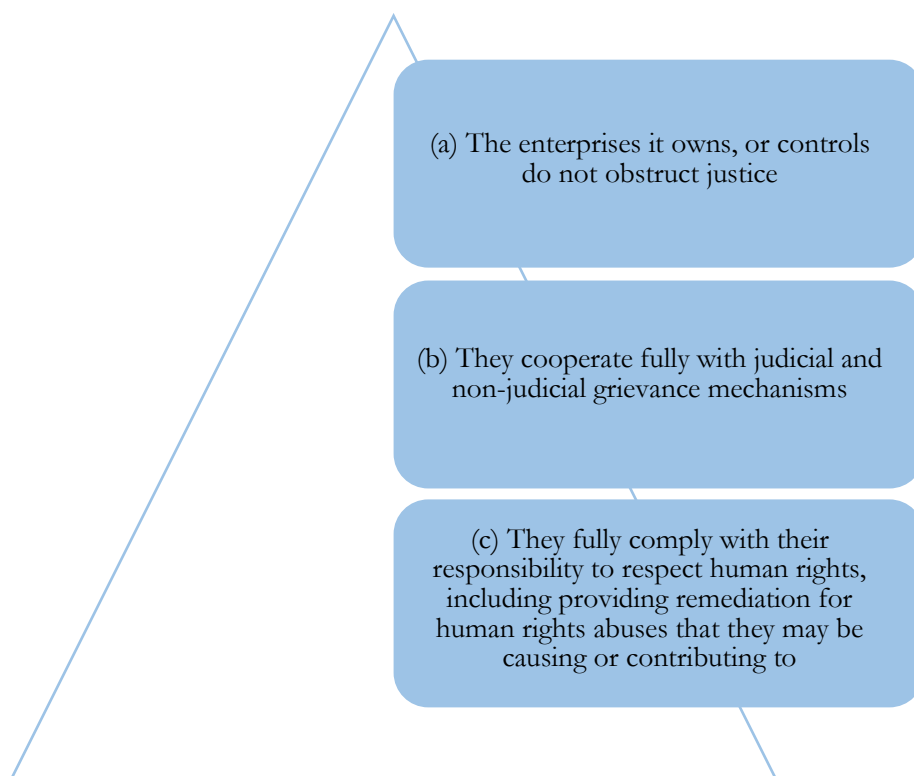
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<sup>137</sup> Working Group On The Issue Of Human Rights And Transnational Corporations And Other Business Enterprise delivered its 2016 Report to the U.N. Human Rights Council: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises A/HRC/32/45(4 May 2016)

than simply treat State-owned enterprises as any other business enterprise.” This “do more than” standard is then embedded within the “additional steps” principle of UNGPs.

The UNGPs “additional steps” raise the question of mandating human rights due diligence for State Owned Businesses. Under Pillar II of the UNGPs which establishes the Corporate Respect of Human Rights, enterprises have a responsibility to conduct HRDD however, there is no legal obligation to do so. States, of course, are free to impose the requirement. Most have not. But the issue becomes acute where the enterprise is state owned. The 2016 WG Report shies away from a recommendation of mandatory HRDD for all State-Owned Businesses as a baseline. Instead, they move back to the traditional encouragement standard. But they also point to regimes where HRDD for State Owned Businesses are mandatory and in addition suggest that States define the criteria under which they will require State Owned Business HRDD. That is an important step in the right direction.

2016 WG Report seeks to chart a middle ground focused especially on the home country relationships between state-owned business and its state owner. The Report then elaborates on the nature of the specific manifestation of that duty with respect to the state-owned business. As the owner of State-owned enterprises, the State should make sure that:



These recommendations are applied to the three main categories of remedial mechanisms provided under the UNGP's Third Pillar. However, with respect to state-based judicial mechanisms the 2016 WG Report notes but does not resolve the issue of sovereign immunity. It suggests a continuing role

for immunity. But it is not clear how preservation of the principle and protections of sovereign immunity-- either running to the State-owned Business or to the state as owner exercising the sort of oversight contemplated in this Report advances in any respect the project of human rights protection. It certainly works effectively to retard the availability of effective remedy; and it reduces any real incentive for states to undertake their duty or for the people (usually victims) to vindicate their rights through judicial mechanisms. Indeed, it is time to consider reversing the traditional premise of sovereign immunity as counter to the spirit of the UNGP.

## International Best Practices

### CASE STUDY 1

#### Switzerland

In Switzerland, the 2020-2023 NAP on BHR establishes the Federal Governments commitment to protect human rights within business activity. Moreover, Swedish law demands that companies who enter into business with the government must protect human rights standards within their activities and must conducted HRDD as a matter of law.<sup>138</sup>

However, it is also recognized that interdepartmental collaboration must be improved to ensure progress of state-owned businesses within the implementation of the UNGPs. A reputational risk to the government could arise if these organizations fail to comply with international norms for HRDD. In pursuance of the NAP on BHR, the Federal Council thus seeks to support state-owned businesses in taking the lead by supporting the sharing of best practices, especially in the areas of risk management, monitoring, and public reporting, and raising awareness of the need for human rights due diligence. This optional measure is primarily intended for companies with ties to the government that conduct business with foreign suppliers and partners.

The government may also run optional training sessions on UNGPs and HRDD for the members of boards of directors and senior management of state-owned businesses

Objective	Indicator
Assist federal government-associated businesses in taking a lead role and encourage them to put in place human rights due diligence procedures.	Examples of human rights due diligence exercised by state-owned businesses  At least one training session held for state-owned businesses

<sup>138</sup> BUENO N and KAUFMANN C, “The Swiss Human Rights Due Diligence Legislation: Between Law and Politics” (2021) 6 Business and Human Rights Journal 542

Moreover, Switzerland has encouraged the development of public-private partnerships to enforce human rights in business activity as well. For example, within the textile industry, to ensure that labor laws and human rights are implemented by enterprises, the ILO provides support to the Swiss government via the ‘Better Work’ program and ‘Sustaining Competitive and Responsible Enterprises’ program. Working together, the ILO, unions, governments, and private sector business, strive towards creating safe working conditions. The instruments and policies developed by them are shared with private sector actors in the hope of increasing compliance with labor standards, and eradicating crimes such as child labor. The government is also providing aid to promote HRDD in the context of stopping the exploitation of Syrian refugees and migrant workers from Lebanon, Turkey, Jordan, and other neighboring nations. Switzerland has also set up public-private partnerships in an attempt to advance efforts against human trafficking as part of its foreign policy. Such policies are implemented to bolster compliance by businesses and prevent exploitation in the agricultural, construction textile industries in developing countries.

Objective	Indicator
Establish partnerships with the private sector to create decent work opportunities in value chains.	Swiss and private sector contributions to the Better Work and SCORE programmes and to projects aimed at protecting migrant workers from exploitation.

## CASE STUDY 2

### Sweden

In Sweden, all state-owned companies managing directors and board chairs have attended seminars the government has held with regards to the government's expectations for how companies should implement the UNGPs. Moreover, a CSR network has been established as well to facilitate businesses in understanding their obligations. At one of the network meetings, the international regulations that companies are required to follow were covered. A workshop on the UN Guiding Principles on Business and Human Rights was also offered for the companies by Government Offices Corporate Management organization.

In Sweden, the Government Offices Corporate Management organization has created a business analysis tool for state-owned businesses that illuminates important CSR topics, such as human rights. The study raises the owner's understanding of the business's potential and hazards, as well as how to handle them. The findings are incorporated into corporate governance and considered when the government regularly communicates with the company, tracks its progress, and appoints board members.

Finally, Swedfund International AB (Swedfund) and the Swedish Export Credit Corporation (SEK), two other state-owned businesses, must adhere to the government's state ownership policy for CSR, as stated above. Additionally, the Riksdag has specifically established social missions for Swedfund and SEK. Swedfund is expected to make sure that its investments are made in accordance with global norms and CSR principles, and that they do so within transparent and reliable corporate frameworks that do not support tax evasion, money laundering, or terrorist funding. In determining its creditworthiness, SEK is expected to consider factors including the environment, corruption, human rights, and working conditions.

### **CASE STUDY 3**

#### **Norway**

The government released a white paper in 2014 on the value of ownership for diversity and value creation, in which it outlines the state's expectations of businesses in which it has a direct ownership interest, including those based on the UNGPs. It is assumed that state-owned businesses will engage in CSR because it is viewed as desirable in and of itself and as contributing to the state's shareholder value. Businesses encounter a variety of difficulties and risk exposure levels. This implies that they can customize their own operations to the "comply or explain" and "materiality" principles. In situations where a company's practice deviates from what the state expects, the "comply or explain" approach is applicable.

According to the materiality principle, businesses should deal with and disclose variables that have a significant impact on how their operations affect people, communities, the environment, and the climate. The government has recognized the need to place more emphasis on the boards' accountability for state-owned companies they oversee and their CSR policies, which include human rights.

Finally, quarterly and/or yearly CSR meetings are used to monitor the performance of CSR and human rights. In unique circumstances, it could be required to pay closer attention to the company's operations. The selection of board members considers the CSR efforts of businesses and boards, including their work on human rights.

## State Owned Businesses in Pakistan

State Owned Enterprises were originally established in order to fill investment gaps and improve service delivery within the public sector. The ways in which these SOEs function are through autonomous bodies, companies registered under the Companies' Ordinance of 1984 and corporations as a whole. The SOEs have been contributing a considerable share to Pakistan's economy, amounting to about 10% of its GDP.<sup>139</sup> However, in recent years it has been identified that these enterprises have in fact making losses and “creating a burden on the fiscal exchequer” and hindering the overall economic growth of the country.<sup>140</sup>

In Pakistan, the public-private partnership laws allow for the Government to seek assistance on projects with private enterprises. These projects primarily relate to construction and infrastructure. The laws relating to public-private partnerships in Pakistan are:

- Public Private Partnership Authority Act, 2017 (Federal)
- Punjab Public Private Partnership Act, 2014
- Khyber Pakhtunkhwa Public Private Partnership Act, 2014
- Sindh Public Private Partnership Act, 2010
- Balochistan Public Private Partnership Act, 2021

The laws related to public-private partnerships on Federal and Provincial levels allow for rules to be made relating to the tendering and accepting of bids from private businesses. However, there is nothing within these laws or rules that relate specifically to protection of human rights by all businesses involved. Nonetheless, each law gives enough power to the Authority formed to formulate such laws to that effect.

Moreover, The Securities and Exchange Commission of Pakistan passed the Public-Sector Companies (Corporate Governance) Rules in January 2013 in order to improve the corporate governance framework of public sector companies. These are the only rules that are unique to public-sector companies in Pakistan. The rules relate to the corporate structure of public-sector companies. They lay down steps required to be followed by directors, CEOs and other senior position holders of the companies. Whilst these Rules lay down provisions that require public-sector companies to be operated in a prudent, transparent manner with integrity,<sup>141</sup> nothing relates to the duty of public-sector companies to ensure that all their business activities and processes are compliant with human rights obligations.

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<sup>139</sup> Cheema FS, “Governance Related Issues of Stated-Owned Enterprises in Pakistan” (<https://agp.gov.pk/>) <<https://agp.gov.pk/SiteImage/Misc/files/Article9Governance%20Related%20Issues%20ofSOEs.pdf>>

<sup>140</sup> Cheema FS, “Governance Related Issues of Stated-Owned Enterprises in Pakistan” (<https://agp.gov.pk/>) <<https://agp.gov.pk/SiteImage/Misc/files/Article9Governance%20Related%20Issues%20ofSOEs.pdf>>

<sup>141</sup> Rule 2A(a) – Public Sector Companies (Corporate Governance) Rules 2013

While there may be no specific policy for State-owned companies regarding business & human rights, many companies have taken initiatives of their own to enact various policies to encourage compliance with human rights laws. These steps are part of their Corporate Social Responsibility programs or through their internal Code of Conduct and business practice policies. These initiatives are evident through various steps taken by State-owned companies and are discussed below.

- Education

Many State-owned companies are actively participating in the spread of education throughout Pakistan. Education is a fundamental right under Article 25 of the Constitution of Pakistan and many companies have initiated projects to help fulfil such rights. Pakistan State Oil (PSO) initiated projects to help underprivileged children in remote areas to have access to schools. Pak Arab Refinery Limited (PARCO) supports many Government schools that provide education for free to its students. Attock Cement also supports schools in the local communities around it. Attock Petroleum offers a variety of educational scholarships to students in need. Many other State-owned companies, such as Sui-Southern Gas, Bolan Mining Enterprise Skyrooms, Pakistan Mineral Development Corporation, Pakistan Steel Mills, Kohinoor Oil Mills, and many others provide financial and other support to improve the access and quality of education in Pakistan.

- Health

Health and safety are important aspects of human rights. Many State-owned companies have taken initiatives on their own to ensure the health of their employees in their business processes. Companies such as Islamabad Electric Supply Company (IESCO), Attock Refinery, Attock Petroleum and many others have stringent health safety measures to ensure protection of their employees. Other State-owned companies, such as Oil and Gas Development Company (OGDCL) take extra initiatives and provide free healthcare services to the inhabitants of communities where the company operates. There are many other State-owned companies that provide assistance to the healthcare of citizens in a variety of ways. National Bank of Pakistan (NBP) provides assistance to different healthcare institutions, both financially and through the provision of equipment. PARCO provides financial support to Basic Health Units and Rural Health Centres to provide basic healthcare to rural communities. Pakistan State Oil has also invested in health focused programs around the country. Bolan Mining Enterprise Skyrooms has invested in health programs and sanitation projects. A number of other companies, including Sui-Southern Gas, Pakistan Mineral Development Corporation, Attock Cement, Pak-Arab Fertilizers and Pakistan Petroleum also provide support in different ways.

- Women Empowerment

State-owned companies actively support the empowerment of women in society and protection from any form of discrimination and harassment. Many State-owned companies have initiated their own projects to meet this end. National Bank of Pakistan has initiated the project “Empowered Women



and Empowered Pakistan” that aims to provide vocational training to underprivileged women, especially those from rural backgrounds. The First Women Bank of Pakistan seeks to instil entrepreneurial skills in women by providing different training and consultation services. PARCO has organised a Sewing and Display Centre for Women in Gujrat in order to provide skills to empower women within that area. Multiple State-owned companies have reiterated their commitment to the rules laid down in the Protection of Women at the Workplace Act (2010). The National Insurance Company has done so by including it in the company’s code of conduct.

- Community Building

Numerous State-owned companies have engaged in community building by improving the living standards of communities around them. Sui-Northern Gas Pipelines has taken the initiative in developing infrastructure, which includes the construction of roads and bridges, as well as providing filtered water supply to communities who don’t have access to clean water. Sui-Southern Gas has installed bio-gas plants in rural communities and also provided solar powered devices and water hand pumps to provide access to electricity and water for communities in need. Many other companies have invested in the development of infrastructure, such as Bolan Mining Enterprise Skyrooms and Attock Cement. Attock Oil Refinery also seeks to employ special persons in order to help minorities in underprivileged communities.

- Environment

Protection of environment is one of the most pressing issues in the modern world and is particularly so for Pakistan which is one of the most affected countries by climate change. Many State-owned companies have taken initiatives to become more environmentally conscious. Pakistan Steel Mills took the initiative of engaging in reforestation by targeting over 20,000 acres of land. Attock Petroleum Limited launched the “We Are Green” campaign and planted more than 600 trees along Kashmir Highway in Islamabad. Sui-Southern Gas has organised a project through which they provide bio-degradable and environment friendly bags to stores as a substitute for plastic bags. National Engineering Services Pakistan specifically provides training to its employees to control and mitigate the risk of their policies on the environment. IESCO also incorporates sustainability impact reports in its policies to assess environment impact. In addition to providing support, countless State-owned companies, including the First Women Bank of Pakistan, Attock Oil Refinery, Kohinoor Mills, PSO, and others have expressed their commitment to energy conservation and environment protection. In addition to the steps taken by various State-owned companies to impact different human rights issues, many State-owned companies incorporate their commitment to human rights in different company instruments. For example, Attock Refinery Ltd has a statement of Ethics and Business Practices which its employees have to abide by. Pakistan Industrial Development Corporation has published policies regarding code of business, whistle blowing, anti-bribery and anti-corruption. National Fertilizer Corporation of Pakistan, in its code of conduct, commits to carrying out its operation in strict compliance of all laws. It also states that it shall not take any business action

that is known to be in violation of law, regulation or corporation policy.

Many companies especially State Owned, and Controlled Entities have taken initiatives of their own as part of their Corporate Social Responsibility programs including education, health, women empowerment, community building, and the environment. The National Industrial Relations Commission (NIRC) has been established with the jurisdiction to resolve industrial disputes and those which relate to unfair labor practices.

Furthermore, the National Commission of Human Rights has been established as an independent State organization with the responsibility to uphold and advance human rights. In addition, it has been given quasi-judicial authority to investigate complaints of human rights abuses or cases brought up on their own.

### **Human Rights Challenges**

Despite efforts being undertaken human rights challenges within state owned businesses continue to exist. This is owed to a lack of compliance with existing legal protections, lack of access to remedy and continued lack of financial transparency and corruption. The various laws and rules that govern public-sector companies include different due diligence matters. However, these relate primarily to due diligence of financial, legal, and technical issues. Thus, the concentration of public-sector businesses and businesses partnering or receiving support from the Government, is to the extent of cost and technical capability, thus, ignoring human rights considerations.

## **Guidelines**

### **Guideline 1**

Routine corporate governance assessments of all the SOEs in Pakistan should be conducted by an impartial third party. Several loopholes have been identified with implementation in the corporate governance rules however, due to which detailed research must be undertaken to develop comprehensive rules on protection of human rights within SOEs.

### **Guideline 2**

The government should take the initiative to appoint experts and professionals on the executive board of SOEs. In turn, they should bear in mind that the Board jurisdiction be limited to policy decisions and not operational affairs.

### **Guideline 3**

Board executives, personnel members and officers in line ministries should undergo specified training programs which will aid in understanding human rights impacts, and establishing mechanisms to mitigate adverse impacts.

### **Guideline 4**

All the enlisted SOEs should submit prospective financial and service delivery goals for the coming year. These goals should then be benchmarked as performance mechanisms for the respective SOEs and must include human rights performance as well.

### **Guideline 5**

In order to establish a more cohesive environment, the government should implement the corporate governance rules rather than pursue their political interests. It should prioritize the improvement of regulatory quality in order to attract more investments from the private sectors. This should also include mandatory human right standards for SOEs which may boost investment from international markets.

### **Guideline 6**

A new culture of corporate governance and human rights protection in utility companies should be enforced throughout the country. Directors should be made cognizant of their duties and responsibilities, and should be held accountable. A further behavioral change is also necessary amongst

the stakeholders in order to uphold democratic values and good governance practices including the protection and enforcement of human rights standards.

### **Guideline 7**

Pakistan should develop dedicated legislations in an attempt to ensure professionalism, accountability and transparency of the SOEs which includes requirements of implementation of human rights standards as well. An SOE law would provide a wider framework for the governance of SOEs, and identify the specific roles and responsibilities of all the stakeholders.

### **Guideline 8**

A holding company may be established wherein SOEs will be subsidiaries of the company. The company may then set performance standards and targets for the SOEs as a compliance mechanism which includes human rights protections as well.