



PERSPECTIVES

Human Rights: A New Roadmap for Global Business

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

UNGPs 10+ ROADMAP FOR THE NEXT DECADE OF BUSINESS AND HUMAN RIGHTS

The Human Rights Council of the United Nations Guiding Principles on Business and Human Rights (UNGPs) marked its tenth anniversary in 2021. Now, to assess the implementation of UNGPs to date and set a course of action for the next decade, the UN Working Group on Business and Human Rights launched the UNGPs 10+ project and issued *the UNGPs 10+ Roadmap for the next decade of business and human rights* in November 2021.¹

The roadmap addresses eight action areas to be taken by nations and businesses as well as stakeholders. One of the key areas is to establish the respect of human rights by the business community as a core element that will result in sustainable development strategies. The goal is to create practices that “achieve tangible results for affected individuals and communities,” and also contribute to “socially sustainable globalization.” Mandatory human rights and environmental due diligence laws, along with other human rights-focused legislation, are being strengthened in countries such as the United States, the United Kingdom, Germany, and Australia. These countries’ legislative and regulatory developments fully align with the stated goals of the UNGPs.

So, what can companies do to meet these expectations for human rights and work towards achieving tangible results over the next decade? This paper discusses some of the important steps they should take.

OECD DUE DILIGENCE

To successfully implement the UNGPs, the Organization for Economic Co-operation and Development (OECD) has

issued the OECD Due Diligence Guidance for Responsible Business Conduct which recommends the following²:

- Embed responsible business conduct into policies and management systems
- Identify and assess adverse impacts in company operations, supply chains, and business relationships
- Cease, prevent, or mitigate adverse impacts
- Track implementation and results
- Communicate how impacts are addressed
- Provide for or cooperate for remediation of adverse impacts

Embedding Sustainability Objectives into Policies

The first area to consider is embedding sustainability objectives into policies and management systems and committing to environmental, social, and governance (ESG) values. This requires an understanding of where the preservation of human rights fits into a company’s overall objectives and purpose. While one company alone cannot eradicate the issue entirely, it can focus on understanding where its value chain exists, where it holds responsibility for the impact its operations have on society and where it can make a meaningful contribution for effective change.

Conduct Supply Chain Mapping

To embed sustainability goals, it is necessary to understand the entire operational jurisdiction of an organization which starts with the supply chain. Maintaining transparency on supply is a major challenge, especially considering the complexity of supply chains operating across multiple jurisdictions and economies. As a result, companies often end up focusing on working with their Tier 1 suppliers to assist in mapping out the lower tiers of their supply chain. While this can provide a foundation for analysis, companies are now expected to be culpable for identifying, preventing, and seeking to address risks beyond Tier 1.

To reach those lower tiers, questionnaires can act as a starting point. But given the number of suppliers and the complexity of components, raw materials, and human capital, a company will need to initially

¹ <https://www.ohchr.org/Documents/Issues/Business/WG/ungps10plusroadmap.pdf>

² <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

identify and prioritize high-risk suppliers. This process requires examining risk by factors such as country, type of commodity, number of employees, attributes of employees, transaction volume and frequency, supplier category risk, and stakeholders.

Consider the Impact of NGOs and Determine Action

One study shows 97% of companies see reputational risk resulting from worker abuse in the supply chain or company operations as the biggest driver for taking action on human rights issues³. Reputational risk often arises from perceptions created by traditional media or social media, and particularly non-governmental organizations (NGOs) who are monitoring these issues and whose role it is to create awareness and calls for action to address social concerns. NGOs can be extremely powerful in raising public awareness of an issue which informs investors, funders, consumers, and business partners who, in turn, will assess a company's reputation based on the information they are being given. The more aligned a company claims to be towards social good, the more scrutiny it will be subjected to in terms of whether its statements are being actively implemented on the ground. As such, the ability to respond to NGO criticism is an important consideration for companies exposed to heightened social risk.

Should any issues be raised, companies will first need to investigate any allegations being made to assess the validity and the extent of the problem. Understanding the NGO itself is also important – what kind of organization it is, how are they funded, what kind of connections or leverage they may have, what tactics they use, and an assessment of potential impact. Companies should then determine a strategy for response based upon information collected. To further assess its reputational risk, companies may require project monitoring activities to ensure that there is no further escalation of issues.

Although there are some NGOs intent on public shaming, the majority understand they need to partner with corporations to make effective changes. Thus, companies should not necessarily consider NGOs as enemies but consider them as potential collaborators. There are many examples of collaborative initiatives that have been successful in focusing on social change and on assisting companies with remedial actions.

HUMAN RIGHTS DUE DILIGENCE

The conduct of Human Rights Due Diligence on supply chains requires a risk-based approach and, where needed, to be able to answer the following:

- Who are the people we are doing business with? How do they operate and what are their activities?
- Who controls their operations? Who else do they work for? Where do their staff come from?
- What are their hiring practices? How do they treat their staff? How do they ensure compliance?
- Do they adhere to local regulations? Have they had previous issues?
- Any labour issues/human rights issues? Are there local unions? Any local industry bodies or NGOs who know them? How are they viewed in the community?

One problem is this information is often not available in the public domain and can be difficult to collect and verify through questionnaires and direct interviews. This is more significant for high-risk suppliers operating in countries where information is vague, unreliable, or non-existent. For these companies, it is important to get answers to the above questions through both public domain research and discreet interviews with professionals who know how to conduct such sensitive investigations and have resources who know the communities, the suppliers, their operations, working methods, and workforce. When processes have been appropriately established for existing suppliers, the onboarding of new suppliers should build efficiencies into this Human Rights Due Diligence process.

Social Audit

Also vital is the use of social audits, which are independent evaluations of the workforce, working conditions, health and safety issues, environmental management, and business ethics. This involves visiting suppliers and manufacturing sites to seek assurances through interviews, observation, review of documents and systems such as contracts, salary slips, and time management systems. Social audits can be focused on key suppliers in areas where risk exposure is considered high. Combining social audit results with input from stakeholders such as

³ Corporate Leadership on Modern Slavery - Hult International Business School Research in partnership with the Ethical Trading Institute

workers, the local community, vendors, and contractors are also effective.

Remediation

At times, remedial action is required to address and make possible changes. Instances and other issues related to child labour and debt bondage may occur due to the economies where products are being sourced, where there is a lack of access to alternative lifestyles and educational opportunities, and where poor wages exist. These often are deep-rooted problems, calling for development of specific solutions. Each situation needs to be addressed according to an understanding where companies can and need to make changes and identify opportunities to collaborate with stakeholders. There are often options for corporate social responsibility (CSR) initiatives which can contribute to change— such as ensuring fair wages, product differentiation to offer pricing policies for ethically sourced products, consumer education and awareness, and outreach to local communities, industry peer groups, and local government agencies.

Better management of the supplier relationship can create incremental changes which can transform the perception and outlook for all stakeholders. Actively demonstrating the standards a company is aspiring to and setting benchmarks can elevate its reputation and encourage other industry players to collaborate and define positive actions for social change.

Reporting

As ESG issues become more important, its reporting often focuses on the quantitative data that can be easily configured and presented—recycling, emission reductions, and energy efficiency, with reporting on human capital mainly linked to internal data such as overtime, diversity figures, and work-life balance. Even so, the broader social impact is more of a challenge and often requires qualitative input and a modern approach as opposed to historical data. A company should be focused on how to demonstrate the positive impact it has made to the communities and society in which its supply chains operate. By carefully doing so, a company will be able to show its commitment to ESG goals as well as the corresponding results of its policies and actions.

CONCLUSION

The UNGPs 10+ roadmap — along with new legislation and regulations in countries around the globe — illustrates the growing movement to have companies shoulder greater responsibility for protecting human rights and establishing ethical supply chains throughout their operations.

Going forward it will be essential for companies to demonstrate the following:

- A well communicated human rights statement that includes wording on human trafficking and modern slavery
- Internal systems and policies and reporting mechanisms
- Prepare and publish sustainable procurement criteria.
- Attach CSR clauses to agreements
- Establish onboarding protocols to include adequate Human Rights Due Diligence
- Establish active audit rights and reporting processes
- Conduct training and education programs for employees, suppliers, and other stakeholders
- Monitor high risk operations
- Hold regular meetings with stakeholders
- Actively engage in communities and industry initiatives
- Establish recruitment/fair wage/housing/ accommodation plans

In summary, there are three main areas for companies to consider:

1. To change or develop relationships with their suppliers to enable a better understanding of their activities, operations, and any potential areas of risk.
2. An effective human rights due diligence process that entails the practice of risk mapping to identify high-risk suppliers.
3. Adequate systems to be implemented which address risk through the entire supply chain ecosystem.

Companies with global interests will find it essential to place strong human rights due diligence policies and procedures for monitoring risk at the forefront of their businesses. Those that take the initiative in these areas will see many benefits: from reducing financial stress and protecting reputational risk in both mainstream and social media, to limiting their litigation exposure and business

interruption of their operations. Furthermore, because of their foresight in implementing UNGPs 10+ goals, these companies will attract a talented workforce, new investment, and other unique opportunities.

ACKNOWLEDGMENTS

We would like to thank Emmy Nagaoka for providing insight and expertise that greatly assisted this research.

Emmy Nagaoka is a managing consultant in J.S. Held's Global Investigations Practice. She manages a broad range of investigative assignments that include business intelligence, investigative due diligence, fraud and corporate investigations, and other business risk consulting assignments. Based in Tokyo, Emmy also provides support for major foreign and Japanese companies doing business globally, assisting them in cross-border disputes, investigations, litigation, and strategy planning and review of compliance programs focused on anti-bribery and FCPA.

Contact Emmy Nagaoka at enagaoka@jsheld.com or +81 80 3175 5674

This publication is for educational and general information purposes only. It may contain errors and is provided as is. It is not intended as specific advice, legal or otherwise. Opinions and views are not necessarily those of J.S. Held or its affiliates and it should not be presumed that J.S. Held subscribes to any particular method, interpretation or analysis merely because it appears in this publication. We disclaim any representation and/or warranty regarding the accuracy, timeliness, quality, or applicability of any of the contents. You should not act, or fail to act, in reliance on this publication and we disclaim all liability in respect to such actions or failure to act. We assume no responsibility for information contained in this publication and disclaim all liability and damages in respect to such information. This publication is not a substitute for competent legal advice. The content herein may be updated or otherwise modified without notice.