

HUMAN RIGHTS REPORTING IN FRANCE

Two Years In: Has the Duty of Vigilance Law
led to more Meaningful Disclosure?

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Shift, New York.
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ABOUT SHIFT

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights.

Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries, and redefine corporate practice, in order to build a world where business gets done with respect for people's dignity, everywhere and all the time. Shift is a non-profit, mission-driven organization, headquartered in New York City. Visit shiftproject.org and follow us at @shiftproject.

INTRODUCTION

In Phase 1 of this study, Shift analyzed the human rights reporting of the 20 largest French companies from 2017 and early 2018, before companies were required to comply with the Duty of Vigilance Law. In this second phase, we examine their first vigilance plans and implementation reports from 2018 and 2019.

This two-part study aimed to uncover whether France's Duty of Vigilance Law, which imposes mandatory human rights due diligence and reporting, would have any influence on the maturity of the companies' public disclosure, as measured against the expectations of the UN Guiding Principles on Business and Human Rights (UNGPs). Since the process of improving public reporting frequently motivates more attention by companies to their underlying performance, we also considered whether improvements in companies' human rights policies, processes and practices might be inferred from any progress in their disclosure.

We hope the key findings from this study can guide companies towards better alignment with the intent of the Duty of Vigilance Law, and the UNGPs, as well as highlight opportunities for ensuring similar legislation fully achieves its intended impact.



**READ PART 1
of this study at
www.shiftproject.org/vigilance**

METHODOLOGY

In Phase 2 of the study, we reviewed the Registration Documents and vigilance plans of the top 20 companies listed on the CAC 40.

20

The 20 companies analyzed are:

Airbus, Air Liquide, AXA, BNP Paribas, Danone, Engie, Essilor, Kering, L'Oréal, LVMH, Orange, Pernod Ricard, Safran, Saint-Gobain, Sanofi, Schneider Electric, Société Générale, Total, Vinci and Vivendi.

Shift's unique methodology analyzes human rights reporting according to maturity scales based on the UNGPs and the UNGP Reporting Framework. The reporting of each company is analyzed against the key elements of the responsibility to respect human rights, as well as three cross-cutting indicators of good reporting, and is assigned an overall maturity score. Each company analyzed is given a level of maturity on a scale ranging from '0 - Negligible' to '5 - Leading'. The individual results of the maturity analysis are anonymized and trends are discussed at the group level. The focus of this study is entirely on companies' reporting, recognizing that this is distinct from analysis of their actual human rights performance. For more information about our methodology, refer to Phase 1 of this study.¹

1. In light of the various useful studies that others have been publishing in this space, we made the strategic choice to focus our resources on the maturity analysis. Hence, different from last year's approach, the disclosure that serves as the basis for our analysis will not be available in the UNGP Reporting Database.

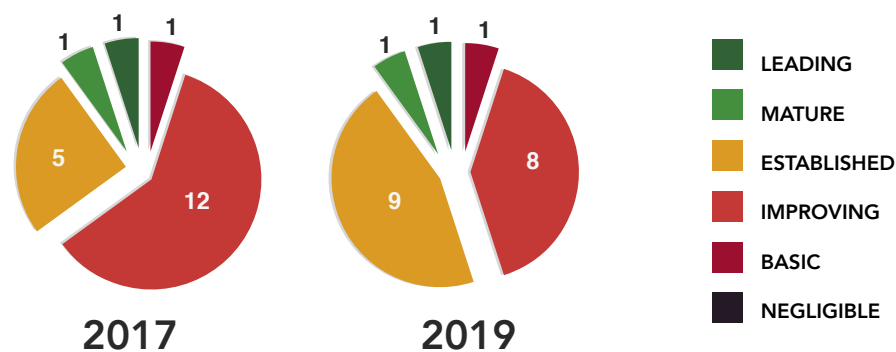
KEY FINDINGS



OVERALL MATURITY

- **While reporting remains relatively immature, it appears that the requirements of the Duty of Vigilance Law have pushed companies to improve their reporting.** In certain areas, such as governance and risk identification, it would appear that the improved reporting may also reflect some improvements in underlying performance, reflecting better alignment with the UNGPs.
- **Overall, 55% of companies slightly improved the maturity of their disclosure, with an average overall score of 2.58/5, up from 2.45/5 before the entry into force of the Law.** The average company went from reporting mainly about its commitment to respect human rights and processes to manage health and safety risks and diversity, to reporting some level of action to identify broader human rights impacts and mitigate them.

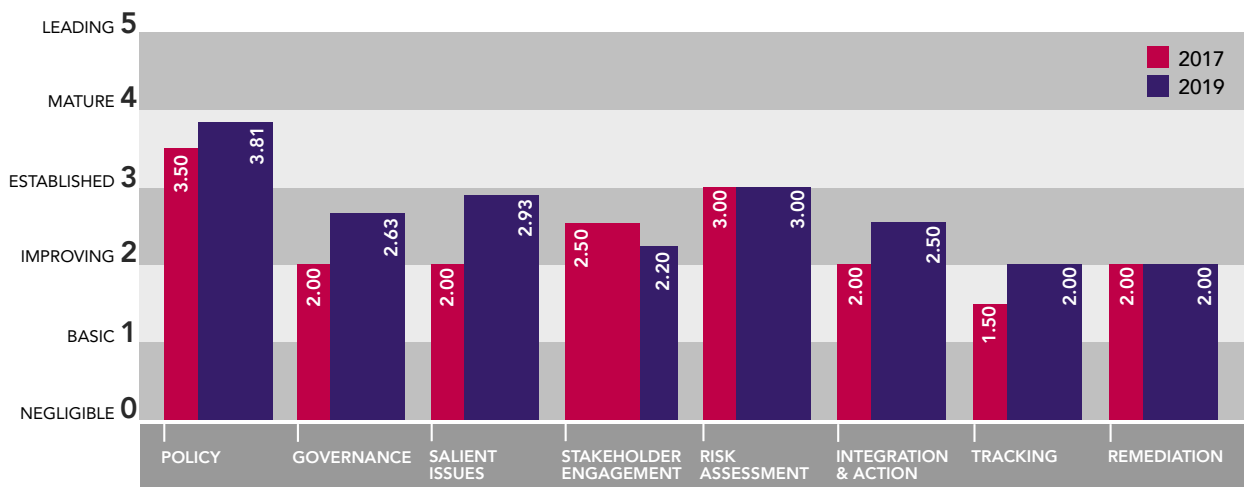
NUMBER OF COMPANIES PER LEVEL OF MATURITY



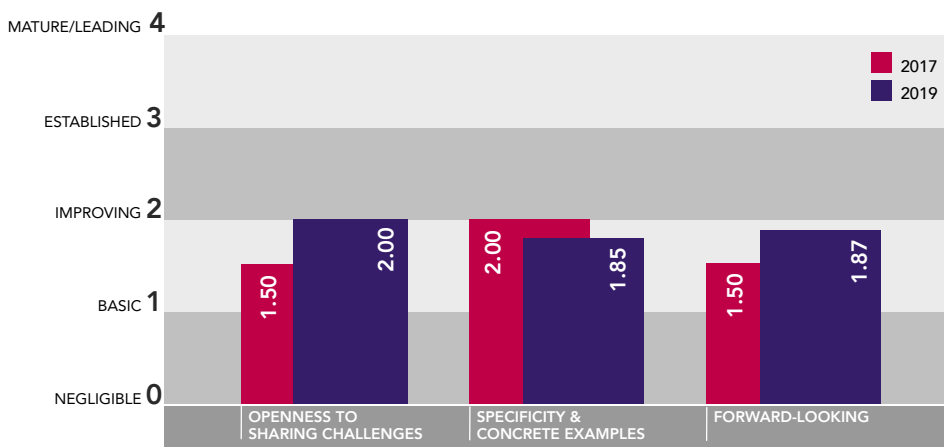
REPORTING ON KEY ELEMENTS OF THE UNGPS

The following findings are based on the 20 French companies covered in this study:

- **POLICY COMMITMENT** is by far the **most mature area of disclosure** with an average of 3.81/5 ('Established'). Four out of the 20 companies have improved in their disclosure since the Duty of Vigilance Law came into force, bringing to 70% the companies who commit to respect all internationally recognized human rights and extend the commitment to their business relationships.
- On **GOVERNANCE**, the average score is up to 2.63/5 ('Improving'/'Established') compared with 2.28/5 ('Improving') before the Law. **More than half of companies now identify more or less clearly who is responsible for human rights risks within the company**, often mentioning a working group involved in developing and implementing the vigilance plan.
- **45% of the companies provided more human rights-specific information** such as day-to-day management, responsibilities for specific issues, and the cross-functional structures or business-wide human rights groups they created to manage the vigilance plan and better embed human rights within relevant parts of the organization.
- **Most interesting perhaps is the correlation between improvement in the area of governance and other key elements of the UNGPs:** the eight companies that have improved their reporting on governance have also improved in their reporting on either or both risk identification and actions taken to mitigate risks.



AVERAGE SCORE ON THE KEY ELEMENTS OF THE UN GUIDING PRINCIPLES



AVERAGE SCORE ON THE CROSS-CUTTING INDICATORS OF GOOD REPORTING

- The most significant improvement is in reporting on **RISK IDENTIFICATION, ASSESSMENT AND PRIORITIZATION**.
 - 50% of companies reviewed went up at least one level in the maturity scale by more clearly highlighting which human rights issues they considered relevant to their business.
 - Two new companies reached the highest level of maturity by identifying their salient human rights issues – the human rights at risk of the most severe adverse impact – and explaining their process. In sum, **25% of companies reviewed now conduct their human rights risk mapping based on the severity of risks to people, which should be judged by their scale, scope and remediable character.**
 - **Despite these improvements, companies' explanations of their risk mappings remained relatively weak for the most part, providing no insight into how the issues identified as risks actually materialize in the company's operations and value chain.** Disclosing a set of specific human rights risks and then describing general, high-level risk management processes does not meet the expectations of the UNGPs, nor would it appear to comply with the Duty of Vigilance law.
- Reporting on **INTEGRATION AND MITIGATION** – that is, what the companies do to address the risks in practice – tended to be generic and disconnected from the risks identified in the risk mappings.
 - The majority of companies described enterprise-wide risk management processes; the development of training sessions related to human rights, without describing how these sessions address identified risks; and/or the adoption of 'action plans', without further details.
 - Importantly, the companies reviewed did not share enough concrete examples of how they managed specific risks to demonstrate actual implementation. **Experience points to the importance of disclosing examples, especially when disclosure is otherwise focused on policy, structure and process, to provide the reader with confidence that company approaches to human rights are more than 'skin deep'.**

- **PERFORMANCE TRACKING** remains one of the most poorly reported areas, although 35% of companies improved slightly, including two companies that mentioned being in the process of developing indicators for their vigilance plan. The majority of companies continued to use traditional indicators like the proportion of women in the workplace, fatalities and accidents, and the number of supplier audits. Some glimpses of improvement include companies developing issue-specific indicators such as on modern slavery, breaking down the number of grievances received by human rights issue, or incorporating qualitative indicators alongside quantitative ones. **Meaningful tracking should especially look at the effectiveness of the company's actions to manage its salient human rights issues.**
- **GRIEVANCE MECHANISMS AND REMEDIATION** is the area of reporting with the most companies at Level 1 ('Basic'), albeit we noticed a slight improvement in 35% of companies reviewed. **Half the companies reviewed describe a generic hotline available to employees only.** The Duty of Vigilance Law does not mention whom the alert mechanism should be available to, but the UNGPs state that a grievance mechanism should be accessible to all individuals and communities who may be adversely impacted by the business. A hotline is not the singular solution but it can play a role within a broader eco-system of channels for remedy.
- **STAKEHOLDER ENGAGEMENT** appears to be the area where disclosure has actually become weaker, with four companies having slightly regressed, and an average score going down to 2.2 from 2.5/5 before the Duty of Vigilance Law.
 - Despite the fact that engagement with stakeholders is required by the Law, most vigilance plans and implementation reports do not mention stakeholder engagement at all, or are restricted to vague statements about being 'in constant dialogue with stakeholders'. Information about dialogue with unions can generally be found in other parts of the Registration Document, although a connection is rarely made with the vigilance plan.
 - This raises the question of whether the specific requirements of the Duty of Vigilance Law are incentivizing companies to treat stakeholder engagement as a formality and predominantly about policy-level stakeholders, rather than a process that – if meaningfully undertaken – can lead to better-informed decisions and a reduction in the severity of impacts.






LESSONS FROM THE DUTY OF VIGILANCE LAW AND IMPLICATIONS FOR LEGISLATIVE INITIATIVES



This section calls out the potential value of more guidance to clarify expectations under France’s Duty of Vigilance Law, as was provided for the modern slavery legislation in the UK and Australia. It also highlights insights for future laws and supporting guidance in other jurisdictions.

The disparities in approaches taken by French companies in their reporting under the Duty of Vigilance Law, and the implied confusion about how to understand its letter or intent, could be mitigated **by aligning the law with the authoritative global standard of the UNGPs – upon which the law is based – or developing guidance to point companies in that direction.**

Additional guidance may be particularly beneficial on:

 <p>What lens and criteria to use in the risk mapping</p>	 <p>Linking the risk mapping with mitigation actions and monitoring</p>	 <p>Reporting on performance with a forward focus</p>
 <p>Explaining the purpose of stakeholder engagement</p>	 <p>Extending the availability of grievance mechanisms beyond company employees</p>	



What lens and criteria to use in the risk mapping

The UNGPs are clear that the notion of ‘risk’ means ‘risks to *people*’, while traditional reporting regulations and frameworks, including some that focus on non-financial reporting, take the lens of risks to *business*. Even with the Duty of Vigilance Law, where the intention of the legislator and the letter of the law are arguably sufficiently clear that the focus should not be business risk, 75% of companies analyzed still mapped risks from the business’ perspective. As a result, they may be overlooking critical issues for their risk management processes, and misallocating scarce resources.



Linking the risk mapping with mitigation actions and monitoring

One of the key observations from this study is the disconnect between the companies’ own risk mappings and the limited mitigation actions they report on, which are usually a small set of traditional issues like safety and diversity. Laws and their guidance should foster strong coherence between companies’ reporting on the salient human rights risks they identify, and on the mitigation measures they take to address the risks, as well as their monitoring of how effectively those measures improve outcomes for people.



Reporting on performance with a forward focus

While it is difficult – and perhaps not desirable – to impose metrics on companies dealing with potentially very different sets of issues and operating contexts, legislative initiatives should require companies to articulate what their targets are, and how they measure progress, especially regarding the human rights they have identified as most severely at risk.



Explaining the purpose of stakeholder engagement

The Duty of Vigilance Law requires companies to ‘develop their vigilance plan in association with their stakeholders’ and ‘establish an alert mechanism... in consultation with the representative trade union organizations’. The purpose and role of such engagement could be clarified and expanded beyond the drafting of the vigilance plan, to reduce the chance that it is treated as a tick box exercise. Guidance could push companies to look across their due diligence processes to identify where and how they can hear directly – or through credible proxies – from people who might be impacted by their activities.



Extending the availability of grievance mechanisms beyond company employees

The Duty of Vigilance Law does not mention who the required ‘alert mechanism’ should be available to, which results in 50% of the companies opening up the mechanism for their employees only (or not making clear that others can also use it). To avoid this situation, legislative initiatives should align with the UNGPs and ensure all stakeholders that are negatively affected by a company’s actions or decisions have access to a grievance mechanism. Guidance can refer to the effectiveness criteria for operational-level grievance mechanisms set out in the UNGPs, namely that they should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on dialogue and engagement.

