Shift

Putting Principles into Practice

Embedding the Corporate Responsibility to Respect Human Rights within Company Culture

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Shift

Shift is an independent, non-profit center for business and human rights practice. It is staffed by a team that was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights, and is chaired by the author of the Guiding Principles, Professor John Ruggie.

Shift provides the expert knowledge and guidance for businesses and governments to put the UN Guiding Principles into practice. Based on lessons from this work, Shift develops public guidance materials to support improved practices for the respect and protection of human rights globally.

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EXECUTIVE SUMMARY

After unanimous endorsement by the United Nations Human Rights Council (UNHRC) on June 16, 2011, the United Nations Guiding Principles on Business and Human Rights became the first authoritative guidance on the corporate responsibility to respect human rights. The Guiding Principles set forth expectations for enterprises to exercise human rights due diligence to identify, prevent, mitigate, and account for potential and actual adverse impacts. By adhering to these processes, companies can know and show that they are respecting human rights.

Yet, the ability to exercise adequate human rights due diligence depends on the extent to which respect for human rights is embedded in company culture. Personnel should be aware of the human rights risks related to their functional responsibilities, be empowered and incentivized to conduct their work in a manner that respects human rights, and accept respecting human rights as a core element of company values. The challenge of embedding new values within company culture is not exclusive to human rights. The field of change management and environmental, health, and safety management processes both seek to transform corporate cultures that are insufficiently responsive to issues that inhibit improved business performance. **To help companies strengthen the development and implementation of their human rights strategy, this study seeks to answer the following questions:**

1. In comparison to environmental, health, and safety management, what are the current gaps in embedding respect for human rights and how do gaps inhibit companies' ability to exercise human rights due diligence?

2. How can companies adapt practical approaches from change management and environmental, health, and safety management to more effectively embed respect for human rights in company culture?

Based on twelve interviews with company representatives and corporate sustainability advisors spanning four continents, **this study identifies four common gaps in progress towards embedding respect for human rights in corporate culture:**

‣ **Abstract language used to frame human rights:** Although the International Bill of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work enumerate internationally recognized human rights and can be an important reference point for corporate-level policies, personnel's national and professional cultures shape their understanding of how human rights relate to their business activities. If human rights issues are not described in a manner that is consistent with their national and professional background, people fail to appreciate the scope of applicable human rights and the scale of individuals and communities that can be affected by their work. Consequently, corporate-level commitments will not be incorporated into operational practices.

‣ **Excessive "happy talk":** Companies publicize their positive human rights performance and community leadership internally. Yet, employees are only exposed to potential and actual human rights impacts through such happy talk. The geographic distance of desk-based staff from vulnerable individuals and the narrow functional responsibilities of operational-level staff prevent adequate recognition of the human rights risks linked to their professional conduct. Without explicit guidance, training, or incentives to consider the connection between business practices and human rights, internal happy talk fosters a culture of complacency regarding human rights risks.

- **Delegated impact-ownership:** While human rights specialists are needed to provide expertise, the responsibility for human rights compliance is rarely shared between specialists and the appropriate functions or business units. The dependence of both business unit managers and operational-level staff on such specialists separates the responsibility for exercising due diligence from the actual function or business unit associated with the risk. When this responsibility is delegated almost entirely to specialists, the effectiveness of human rights due diligence processes depends on their ability to convince business functions to modify their conduct. Yet, they often lack the necessary seniority and influence internally to do so.

- **Toothless cross-functional committees:** Cross-functional working groups are intended to facilitate the coordinated implementation of human rights commitments but several company representatives reported no involvement by business unit management. The participation of business units provides such committees with the influence, credibility, and expertise needed to change operational-level conduct. Human rights working groups should function as an oversight body that coordinates human rights strategy and implementation. Yet, without the involvement of corporate-level managers, these working groups can only communicate each department's efforts to encourage business units to adopt new approaches more aligned with the corporate commitment to respect human rights.

An in-depth analysis of change management literature, and environmental, health, and safety consultancy guidelines reveals processes that have been successful in promoting the shared ownership of other forms of due diligence. **Companies can apply the following five lessons on embedding to more effectively exercise human rights due diligence:**

- **Consistently communicate human rights in accessible terms:** By communicating the responsibility to respect human rights as a necessary component of already embedded values, personnel develop an appreciation for the importance of exercising human rights due diligence. The articulation of human rights within the language of "zero harm" allows for value alignment with existing safety norms. Similarly, expressing the importance of respecting human rights in terms of return on investment is rooted in the values of environmental approaches. When understood in this terminology, respecting human rights is no longer an abstract concept but instead a critical element of effective management.

- **Expose relevant personnel to human rights performance:** The recognition that company operations can cause or contribute to adverse impacts is not sufficiently informative for personnel to incorporate such considerations into their practices. By requiring specific functions to review social performance data such as social audits, ombuds statistics, and employee surveys, companies communicate actionable information. The exposure to social performance not only fosters peoples' appreciation for the relevance of human rights to their function but also an understanding of how their decisions can affect certain vulnerable individuals or communities.

- **Consult with personnel to incorporate function-specific risks into human rights guidelines:** Corporate-level human rights commitments should be translated into operational-level guidelines that are specific to each function. Operational best practices are often based on perceptual skills learned through years of experience. Only by engaging with experienced functional staff can corporate responsibility specialists convert these previously unshared operational considerations into formal guidance materials. Greater cooperation permits a candid discussion about the relationship between professional behavior and human rights. By assuming a more collaborative approach, human rights specialists can assist personnel

operating in high-risk functions to brainstorm ways in which their work can cause or contribute to adverse impacts and how to mitigate those risks.

‣ **Develop leading human rights indicators:** Leading indicators focus peoples' attention on the consequences of their own decisions and practices. By converting guidelines into leading indicators, personnel in high-risk operating contexts will become more focused on their professional behavior and discipline. People are therefore more likely to correct existing conduct that can cause or contribute to adverse impacts because they perceive the mitigation of adverse impacts as within their control. The shift in attention from outcomes to behavior minimizes the likelihood that personnel in high-risk functions perceive the risk of adverse impacts as either highly improbable or entirely out of their control.

‣ **Create broad-based performance evaluation criteria for exercising due diligence**: Peoples' sense of professional responsibility is reinforced by explicit incentive and accountability measures. To dispel the perception that fulfilling social performance guidelines is a tick box exercise, personnel should be evaluated on broader measures of social performance which include behavioral elements. Instead of assessing peoples' performance based on the absence of adverse impacts or their attendance at community meetings, behavioral assessments account for the quality of peoples' engagement in human rights due diligence. By incorporating these leading human rights indicators into individual, department, and executive performance evaluations, individual functional responsibility can evolve into an enterprise-wide shared responsibility.

These lessons demonstrate that the successful embedding of human rights occurs neither unintentionally nor as the result of a single incident. Rather, embedding involves a deliberate set of processes that incrementally foster a company culture that respects human rights.

1. Introduction

Leading companies have developed systems to both adapt to the challenges of managing global operations and respond to stakeholders' environmental, health, and safety concerns. To build knowledge on how companies can embed respect for human rights in corporate culture, this paper seeks to address the following questions:

1. In comparison to environmental, health, and safety management, what are the current gaps in embedding respect for human rights and how do gaps inhibit companies' ability to exercise human rights due diligence?

2. How can companies adapt practical approaches from change management and environmental, health, and safety management to more effectively embed respect for human rights in company culture?

The wave of corporate globalization in the 1990s amplified the risk that business operations cause or contribute to human rights violations.[1] At that time, governments and multinational corporations either lacked the capacity or the will to prevent adverse impacts on workers, communities, and consumers. Common human rights challenges emerged in a variety of sectors.

Table 1 – Common Human Rights Challenges, by Sector[2]

INDUSTRY	COMMON CHALLENGES	EXAMPLE
Food & Beverage	• Child labor • Depletion of local water supply • Consumer health	Chocolate companies such as Mars, Nestlé, and Hershey's source cocoa from Côte d'Ivoire where the U.S. State Department estimates that about 15,000 children work on plantations
Electronics	• Sourcing of conflict minerals • Excessive working hours • Pollution of water supply	Electronics companies struggle to trace the source of minerals such as tantalum, tin, tungsten, coltan and gold which may be produced by armed groups in conflicts
Footwear & Apparel	• Unsafe working conditions • Forced labor • Anti-union discrimination	More than 100 people died in a 2012 fire at the Tazreen Fashion factory in Bangladesh that supplied apparel for companies including Walmart and Li & Fung
Extractives	• Harassment and abuse by security providers • Forced evictions of local communities • Worker health and safety	In 2009, local police in Papua New Guinea forcibly evicted families and destroyed some of their homes in a special mining lease area where the Porgera Joint Venture operates a gold mine

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[1] Ruggie, John Gerard. Just Business: Multinational Corporations and Human Rights (New York: W. W. Norton & Company, 2013): Introduction.

[2] Figure 1 was created in reference to Business & Human Rights Resource Centre, "Information Technology: The Power and Responsibility of Business." February 2014; Castan Centre for Human Rights Law, International Business Leaders Forum, and Office of the United Nations High Commissioner for Human Rights (2008), "Human Rights Translated: A Business Reference Guide"; and The UN Global Compact, "Human Rights and Business Dilemmas Forum, http://human-rights.unglobalcompact.org/.

Information & Communications Technology	• Censorship • Surveillance and repression • Privacy violations	Yahoo! complied with a Chinese government request for the account information of journalist Shi Tao who was subsequently arrested and detained in 2005

The UN Guiding Principles became the first authoritative global guidance on the corporate responsibility to respect human rights after unanimous endorsement by the Human Rights Council on June 16, 2011. The Guiding Principles' "Protect, Respect and Remedy" framework is commonly referred to as the "Ruggie Rules" in acknowledgment of Professor John Ruggie's work as the Secretary-General's Special Representative. The framework details the state duty to protect human rights, the corporate responsibility to respect human rights, and the need for victims to have access to effective remedy.

2. Background on Embedding Respect for Human Rights

The Guiding Principles make clear that companies should embed the corporate responsibility to respect human rights throughout their core business practices. Specifically, Principles 11 through 15 define the corporate responsibility to respect human rights, while Principles 16 through 22 and 29 describe the policies and processes required for an enterprise to fulfill its responsibility. However, the substance of a company's policies and procedures depends on the nature of its operations, size, culture, and existing management systems. Early company experiences suggest that how the responsibility to respect human rights is put into practice – horizontally across business functions and vertically from corporate policies down to operational decision-making – determines whether a company has effectively implemented the Guiding Principles.

Following the Human Rights Council's unanimous endorsement, advisors to the Special Representative established Shift, a non-profit, to help governments, businesses, and stakeholders put the Guiding Principles into practice. In 2012, Shift hosted its first Business Learning Program workshop to discuss how companies were embedding the corporate responsibility to respect within their culture. The Interpretive Guide on the Corporate Responsibility to Respect Human Rights defines embedding, in the context of respecting human rights, in its commentary on Guiding Principle 19:

> "Embedding" is the macro process of ensuring that all personnel are aware of the enterprise's human rights policy commitment, understand its implications for how they conduct their work, are trained, empowered and incentivized to act in ways that support the commitment, and regard it as intrinsic to the core values of the workplace. It is one continual process, generally driven from the top of the company.[3]

A variety of internal embedding mechanisms shape and reinforce company values, such as the issues senior leaders choose to regularly pay attention to, measure, and control (see Annex A for Edgar Schein's complete list of such mechanisms).[4] For human rights, this process involves the internalization of an enterprise's responsibility to respect such that it assumes a "taken-for-granted quality" within company culture.[5] Indeed, Professor Ruggie explains that the embedding process requires that respect for human rights becomes part of

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[3] United Nations Office of the High Commissioner of Human Rights, "The Corporate Responsibility to Respect Human Rights: An Interpretive Guide," 2012: 46 – 47.

[4] Schein, Edgar H. Organizational Culture and Leadership (Jossey-Bass, 2010): 236.

[5] Ruggie, 129.

a company's DNA.[6] Such normative change enables the successful integration of human rights due diligence into a company's core business practices:

> "Integration", as used in Guiding Principle 19, is the micro process of taking the findings about a particular potential impact, identifying who in the enterprise needs to be involved in addressing it and securing effective action. It is repeated as each new impact is identified and will often be driven from the department with responsibility for human rights. If the embedding process has been successful, the potential for a successful integration of findings and timely and sustainable responses to them is greater, and human rights risks are reduced.[7]

While there has been increasing attention to aspects of human rights due diligence as articulated in the Guiding Principles,[8] little work has been done to study effective approaches in embedding respect for human rights in company culture. Indeed, one of the emerging recommendations from Shift's first Business Learning Program workshop was to research the extent to which environmental, health, and safety (EHS) functions serve as models for embedding the corporate responsibility to respect within company culture. At Shift's request, this report explores company experiences in embedding human rights, with a particular focus on alignment with existing environmental, health, and safety cultures.

An extensive change management literature provides structured processes to facilitate the organizational change needed to achieve desired business outcomes. This research also investigates the extent to which change management processes can inform the embedding process for human rights. The ultimate objective of this study is to identify present gaps in the embedding process and evaluate lessons from change management and environmental, health, and safety management that can be applied to more effectively embed respect for human rights in company culture.

3. Methodology

This report employed qualitative analytical methods using data collected through desk-based research and in-depth interviews. The desk-based research included a literature review on organizational culture and change management, publicly available information on corporate management systems, and external guidelines for managing social and environmental impacts. Targeted interviews included discussions with both corporate-level managers and corporate responsibility thought-leaders.

The desk-based research provided background on the structure of general corporate management systems and best practices for conducting social and environmental due diligence. This report relied on EHS-related consultancy guidelines, external reviews of company safety and environmental management systems, and publications on company efforts to embed respect for human rights. Collectively, these sources reveal the progress and continuing challenges within EHS-related functions and the expectations set forth for how companies should exercise human rights due diligence. In addition, an extensive amount has been written in

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[6] Shift, "Embedding Respect for Human Rights Within a Company's Operations." Shift Workshop Report No. 1, June 2012: 2.

[7] United Nations Office of the High Commissioner of Human Rights, "The Corporate Responsibility to Respect Human Rights: An Interpretive Guide," 2012: 47.

[8] For more resources on human rights due diligence, visit the UN Global Compact's guidance material webpage on business and human rights at www.unglobalcompact.org/issues/human_rights/tools_and_guidance_materials.html.

the change management literature about how to create organizational change that enables the realization of particular business results. In essence, change management ultimately seeks to embed a desired quality within company culture. This literature serves as a framework to evaluate areas in which embedding respect for human rights is occurring and where companies are falling short in exercising adequate due diligence.

The substantive themes that emerged from this desk-based research informed the development of an interview protocol – a standardized, but flexible set of open-ended questions for interview subjects (see Annex B). In-depth interviews were held between November 2013 and February 2014 both in-person and over the phone. The interviews sought to capture valuable insights into the key drivers and barriers behind the embedding process and the evolution of company human rights due diligence programs. Industry coalitions and trade associations compile surveys and annual reports on company social and environmental initiatives, key partnerships, and organizational structure. Such sources provide useful background information on general successes and challenges in managing impacts. Yet, they fail to capture the core contributing factors such as corporate culture, legacies of individually driven initiatives, leadership and governance changes, and business objectives. Interviews were therefore essential in uncovering these contributing factors that drive or impede embedding respect for human rights.

A total of twelve individuals, from four different continents, participated in the interviews. Interviewees included company representatives from leading extractive, footwear and apparel, food and beverage, and electronics companies, and thought leaders from non-profits and corporate responsibility consultancies. They were informed about the purpose of the research, and that their responses would remain confidential so that nothing they said would be attributed to either them or their employer in this report. Interviewee responses were organized within the protocol's substantive topics. Once categorized, the responses were analyzed comparatively to identify findings. Interviewees' individual comments were subsequently anonymized. The themes that emerged from these interviews reflect the common gaps in company advancement towards embedding respect for human rights within their company culture.

The remainder of the report is divided into three sections. The next section describes the key interview findings on current gaps in embedding respect for human rights in company culture. Section 5 presents the best practices from change management and EHS management frameworks in fostering a sense of shared ownership for exercising due diligence. Finally, Section 6 analyzes how specific approaches from the change management and EHS management frameworks can be adapted to better embed respect for human rights and thereby strengthen human rights due diligence processes.

4. Interview Findings on Embedding Respect for Human Rights

Based on interviews with company representatives and issue experts from non-profits and sustainability consultancies, the following section describes the prominent challenges in embedding respect for human rights within company culture. These findings reflect the barriers to embedding that were most frequently identified by interviewees who are actively engaged in mainstreaming human rights due diligence. The gaps discussed below inhibit companies from exercising adequate human rights due diligence.

4.1 Abstract language used to frame human rights

Although the International Bill of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work enumerate internationally recognized human rights, their meaning and their connection to business activities are not widely understood within the business community. The Guiding Principles represent significant

progress in clarifying the corporate responsibility to respect but considerable work remains to educate people about how human rights relate to their business function. Indeed, the connotation of a human rights impact varies across the diversity of national and professional cultures present within multinational enterprises. The language used to define a company's commitment to human rights can determine how senior leadership and operational-level personnel alike perceive the relevance of human rights, the scope of activities required to respect them, and the resources needed for those activities.

Figure 1 – Excerpts from Company Human Rights Commitments [9]

> PepsiCo respects the dignity of our workers in the workplace and we work to ensure our associates' rights to personal security, a safe, clean and healthful workplace, and freedom from harassment or abuse of any kind.

> We seek to ensure that Rio Tinto's presence fosters sound relationships and avoids civil conflict wherever we are. Rio Tinto respects and supports the dignity, well being and human rights of Group employees, our families and the communities in which we live, as well as others affected by the Group's operations.

> Samsung's basic HR policy is summarized in the following statement: "The workers and the company will cooperate for mutual advancement based on the principles of co-existence, co-prosperity and harmony."

National culture influences how personnel perceive their professional responsibility to respect human rights. Interviewees from multinational firms with operations that span the globe and companies limited to domestic operations alike reported how national cultural perceptions shape peoples' understanding of how human rights relate to their job. One company representative explained that their firm's national culture does not understand human rights as inalienable fundamental rights but rather as interpersonal considerations:

> *"The translation of human rights in [my company's national language] is different. It is better understood as having consideration for others within the company."*

The human rights language included in this company's policy commitment is understood differently within the company relative to the meaning intended by international human rights instruments. This cultural interpretation of human rights blinds the company's senior leadership and operational staff from comprehending the scope and scale of their responsibility. Since respecting human rights is understood as displaying concern for the feelings and circumstances of others, employees in this company often fail to appreciate the scope of their functional responsibility. For example, they may not consider that operations and products can impact the right to health of workers, consumers, and local communities among their professional duties. This cultural interpretation also limits the scope of employees' perceived responsibility to respect only the human rights of their colleagues. Consequently, the rights of those employed by subsidiaries, contractors, and suppliers, and potentially impacted communities fall beyond the sphere of this perceived responsibility. Despite the company's public commitment to respect human rights, personnel understand this policy as a responsibility to be considerate of their coworkers.

Another interviewee described how the national culture of their company associates human rights with atrocities committed by states. This cultural attitude complicates efforts designed to educate personnel throughout the enterprise about the corporate responsibility to respect. Peoples' state-centric understanding of what constitutes a human rights impact hinders their ability to reflect on how their activities can affect human rights:

> *"The language of human rights is very politicized in this country. If I asked a manager how their work impacts human rights, they would immediately react defensively arguing that they did not torture anyone."*

Other interviewees voiced similar frustrations about the limited understanding within their company about human rights and their relevance for business operations. Interview subjects emphasized that, in comparison to safety and environmental issues, human rights issues are particularly sensitive due to their association with mass atrocities rather than professional responsibilities. Consequently, senior leaders may be reticent to acknowledge that there are indeed human rights risks linked to their operations.

Since human rights are not included in the academic curriculum of many professions, employees' professional background also shapes their understanding of their functional responsibility to respect human rights. Interviewees described how people tend to disregard human rights when such issues are described beyond the context of their specific functional training:

> *"Engineers do not understand the abstract concepts of human rights. Speaking the language of an NGO undermines the legitimacy of a CSR practitioner with business personnel."*

Indeed, the professional training required for many business functions, from product design to logistics, often omits considerations for related human rights issues. If they do not understand peoples' professional background and their functional pressures, human rights specialists lose internal credibility. The language that is used to translate a company's human rights commitment into operational policies therefore influences whether personnel accept accounting for human rights risks as a core responsibility.

The Guiding Principles make clear that the responsibility to respect applies to the conduct of all business personnel. Guiding Principle 16 explains the importance of a policy statement that stipulates the enterprise's human rights expectations of personnel. Yet, if personnel do not appreciate the relevance of human rights to their functional responsibilities, they are unlikely to incorporate human rights considerations into their daily conduct. The human rights policy statement will not serve as a basis for embedding respect for human rights with language that describes respecting human rights in terms that are too abstract for personnel to understand.

4.2 Excessive "happy talk"[10]

A majority of interviewees described the insufficient internal awareness of human rights risks as a primary challenge in embedding the responsibility to respect human rights in company culture. People are instead only aware of human rights through "happy talk" or unwarranted internal praise that is detached from actual performance. Management, administrators, and operational staff alike are unexposed, unprepared, or insufficiently incentivized to identify human rights risks. Lacking either the ability or motivation to recognize such risks, personnel too infrequently consider the possibility that current business practices can conflict with their company's human rights commitment.

While all of the companies interviewed have adopted a formal human rights policy, many interviewees acknowledged that most of their employees are unaware of the human rights risks involved in their business practices. Desk-based personnel are too far removed from potentially affected individuals and communities to consider the possibility that their activities and decisions may contribute to adverse human rights impacts. For operational-level staff, narrow functional responsibilities often prevent them from recognizing the human rights risks linked to their professional actions. Without explicit guidance, training, or incentives to address potential human rights impacts, personnel are often unaware that such high-level policy statements are applicable to their daily responsibilities.

This internal lack of awareness is exacerbated by publicized corporate responsibility commitments and the perception that a corporate responsibility department alone is sufficient to manage social performance. Companies publicize their positive human rights performance and community leadership internally. Some companies claim to be leaders in human rights while others boast about their contribution to improved social and environmental conditions in local communities. One interviewee articulated the common theme that employees are often blind to their company's actual human rights performance:

> *"Employees do not connect their activities with human rights commitments. They believe that they work for a good company and do not know that they may be harming people."*

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[10] "Happy talk" phrase coined in Kotter, 41.

For personnel who are neither directly involved in these programs nor engaged with vulnerable employees, supply chain workers, communities, and consumers, internal communications highlighting positive social impacts are their only source of exposure to potential and actual human rights impacts. Personnel with concerns about potential adverse human rights impacts can also be falsely comforted by the knowledge that their corporate responsibility colleagues are tasked with accounting for these issues. Even if personnel recognize the importance of corporate-level human rights commitments, this acceptance of the status quo is reinforced by such happy talk.

The combination of a lack of exposure to human rights risks and internal communications about human rights leadership can encourage a culture of complacency. Absent any sense of urgency, management and operational-level personnel accept their core business policies and processes as sufficient to prevent the company's involvement in human rights abuses. Another interviewee warned that this complacency influences how companies interpret few or no grievances reported by workers and communities. In one instance, compliance staff expressed confidence that their newly established community hotline reflected the company's supposedly exceptional community relations. Yet, they neglected to consider whether the hotline was being utilized by local communities.

Companies increasingly depend on internal and external grievance mechanisms for early warnings of human rights concerns among their workers, their suppliers' workforce, and communities in which they operate. Yet, due to internal happy talk and the ensuing complacency around human rights risks, personnel neglect to consider whether vulnerable individuals and communities view the grievance mechanism as safe and effective. Consequently, staff mistakenly interpret the absence of reported grievances as evidence of satisfactory human rights performance:

> *"If [companies] are not visibly engaged in the community and available to discuss peoples' concerns, [their] grievance mechanism won't function as an early warning system. Since people don't know whether a hotline will be effective, they won't report a formal complaint because they aren't pissed off enough yet."*

Guiding Principle 16 emphasizes the importance that the human rights policy statement is reflected in operational policies and procedures. However, personnel are unlikely to assume such guidelines as a core responsibility when they are unaware that their conduct can cause or contribute to adverse human rights impacts. Moreover, they are likely to interpret existing data, such as the lack of reported community grievances, as validation of adequate human rights performance.

4.3 Delegated impact-ownership

A commonly expressed challenge among interviewees was business unit managers, site-level managers, and operational-level staff who are dependent on human rights specialists or a corporate responsibility department to manage human rights risks. Several interviewees reported that these impact owners – that is, people with the authority to make decisions that can impact human rights – are not assigned the responsibility for addressing

human rights risks and impacts connected to their function or business unit. Rather, the ownership for their potential and actual impacts is often delegated almost entirely to a corporate responsibility function.

Human rights specialists perform the critical role of supporting business functions to better mitigate human rights risks and prevent adverse impacts. All of the companies involved in this study employed such issue experts. However, few interviewees expressed confidence that the responsibility for human rights compliance is shared between specialized employees and the appropriate function or business unit most related to potential impacts. On-site construction managers in extractive companies make decisions that can impact the human rights of local communities. Yet, the responsibility to engage with the vulnerable community is instead delegated to a separate community engagement employee. One company representative described the relationship between corporate-level specialists and on-site construction management in addressing community concerns:

> *"[On-site construction] managers typically rely on specialists for community engagement. They're too focused on their functional responsibilities to actually engage in the community [themselves].*

 When specialists are the only personnel evaluated on human rights performance, operational-level personnel involved in activities that present human rights risk can neglect to acknowledge respecting human rights as a core responsibility. If personnel are not exercising adequate due diligence, corporate responsibility staff must therefore persuade these employees to change how they conduct their work. In these circumstances, the effectiveness of human rights due diligence processes depends on the ability of specialists to convince business personnel to modify their conduct.

The partitioned management of environmental, health, safety, and human rights impacts further complicates this diminished responsibility caused by the delegated ownership of human rights impacts. While some companies manage all human rights-related impacts under a single integrated sustainability department, many companies staff separate departments for environmental and social impacts. As the management of these impacts becomes increasingly independent, there is greater potential that such issues will be managed in silos.[11] Consequently, separate environmental and social impact specialists communicate independently with impact owners to persuade them to exercise environmental and social due diligence.

Functional silos can therefore exacerbate the ambiguity of who is ultimately responsible for managing particular human rights risks if environmental and social impact specialists fail to coordinate their guidance to business units. For example, another interviewee described asking senior management for clarity regarding which department is responsible for implementing the corporate commitment on conflict minerals. No single employee or department was assigned the responsibility to mitigate the risk of sourcing conflict minerals. Due to the confusion about which department was ultimately responsible, the conflict mineral policy had not been implemented. In practice, the ownership of managing this particular human rights risk was delegated from procurement, which possessed the actual decision-making authority, to separate environmental and social impact functions.

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[11] Galbraith, Jay R. Designing Matrix Organizations that Actually Work: How IBM, Proctor & Gamble, and Others Design for Success (San Francisco: Jossey-Bass, 2009): 1 – 20.

By delegating the ownership of human rights risk entirely to specialists, companies separate the responsibility for exercising due diligence from the actual function or business unit associated with the risk. The partitioning of social and environmental impacts between specialized departments generates even greater ambiguity about who is ultimately responsible for particular human rights risks. Without clearly assigned ownership, those most directly involved in high-risk operations do not perceive respecting human rights as a core functional responsibility. Delegating impact-ownership exclusively to specialists therefore impedes the effective implementation of Guiding Principle 19 because the responsibility to address specific risks is not assigned to the appropriate level and function within the enterprise.

4.4 Toothless cross-functional committees

To mitigate the potential for functional silos, many companies have organized cross-functional committees to coordinate and oversee the implementation of human rights commitments. Senior managers from functional departments are typically members of these working groups. Each department representative is tasked with synchronizing their department's involvement in human rights due diligence with other functional departments and business units within the company.

Yet, several company representatives reported no involvement by business unit managers in such cross-functional working groups. One interviewee who works with a variety of consumer goods companies on social compliance issues suggested that the degree of business unit involvement is associated with their proximity to vulnerable individuals and communities:

> *"Business unit and management participation is much more common at the factory and farm level because they face the concerns of workers every day. At the brand level, these issues are…theoretical."*

These cross-functional groups are intended to improve how personnel in high-risk markets exercise human rights due diligence. Corporate-level business unit involvement is especially critical because employees in headquarters are the furthest removed from potential and actual adverse impacts. Without participating in corporate-level committees, these key impact owners are not regularly informed about the connection between their business unit's practices and ongoing human rights conditions in high-risk markets. If business unit leaders are not involved, cross-functional groups lack the influence, credibility, and expertise needed to translate human rights commitments into operational procedures and accountability structures. One particular interviewee admitted losing confidence in the company's human rights working group:

> *"The promotion of human rights is organized by a cross-functional committee at the headquarter-level. They really don't seem to do much but communicate progress on human rights."*

Since business unit management is not involved, this company's working group cannot exercise oversight over the implementation of the enterprise-wide human rights commitment. Members of the human rights committee can only communicate their department's efforts to encourage business units to adopt approaches more aligned with the corporate commitment. Consequently, such human rights working groups end up functioning as a communication mechanism rather than an oversight body for coordinated human rights strategy and implementation.

According to Guiding Principle 19, the integration of findings across relevant functions requires that internal decision-making, budget allocations, and oversight processes enable effective responses. Cross-functional committees will struggle to oversee this implementation of human rights commitments if corporate-level business managers are not involved. Since business unit and market-level managers are not regularly informed about human rights risks, they are less likely to provide the procedural guidance and resources needed to exercise adequate human rights due diligence. As a result, company culture does not enable effective responses to identified impacts.

5. Existing Embedding Frameworks

The findings detailed in the previous section are not unique to embedding respect for human rights. While the Guiding Principles make clear that companies should adequately account for their involvement in human rights issues, this is far from the lone expectation of company conduct. In a number of other areas, company leaders encounter similar challenges when attempting to change business as usual to improve performance.

A diverse group of shareholders and stakeholders voice their preferred manner in which companies should pursue their business objectives. Ultimately, publicly-held corporations are obligated to deliver a fair rate of return for their shareholders' investment. To meet this duty in the face of the macroeconomic forces of globalization, businesses have lowered costs, improved the quality of products and services, located new opportunities for growth, and increased productivity.[12] As companies tried to cope with these challenges, the field of change management emerged offering frameworks and processes to adapt to the changing business environment.

Simultaneously, public scandals and environmental disasters, coupled with growing stakeholder expectations, compelled companies to address a range of social and environmental impacts associated with their business operations. In response, leading companies began to establish management systems designed to reduce the probability that their operations adversely impact workers, communities, consumers, and the environment. To meet these expectations, several industries have established internal management systems that govern circumstances involving environmental, health, and safety impacts. In the United States, the passage of the Occupational Safety and Health Act in 1970 led to the establishment of workplace safety and health standards for issues such as chemical exposure and the use of personal protective equipment.[13] During the same year, the creation of the Environmental Protection Agency catalyzed a regulatory focus on public health and environmental quality.[14] Although many industries had long established systems to manage particular impacts,

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[12] Kotter, John P. Leading Change (Boston: Harvard Business School Press, 1996): 3.

[13] United States Department of Labor, "OSHA History Timeline," accessed 4 February 2014, https://www.osha.gov/osha40/OSHATimeline.pdf.

[14] Andrews, Richard N.L. Managing the Environment, Managing Ourselves: A History of American Environmental Policy (New Haven: Yale University Press, 2006): 227.

formal EHS management systems finally emerged as a response by the chemical industry to the 1984 Bhopal disaster when Union Carbine's negligent safety management contributed to the leaking of toxic gases that killed more than 3,000 people.[15] By the 1990s, companies began to merge EHS management programs within a formalized EHS management function tasked with governing related impacts across all operations.[16]

This section presents the prominent features of these two different embedding approaches: change management and environmental, health, and safety management. By comparing these embedding frameworks, this section is designed to highlight the best practices in fostering a sense of shared ownership that allows for adequate due diligence. Together, both approaches demonstrate how existing processes can be strengthened and new processes can be introduced to close the gaps in embedding respect for human rights identified in Section 4.

5.1 Change Management

Academics and practitioners within the field of change management offer a variety of processes designed to transform organizational culture. The framework presented below summarizes the common elements featured in the approaches recommended by leading change management thinkers.[17]

ELEMENTS	DESCRIPTION
Global Commitment Supported by Aggressive Broad-Based Goals	Regardless of the desired outcome, companies must first embrace a global commitment that applies to the conduct and performance of all personnel and business partners associated with that outcome. While commitments align enterprise-wide priorities, aggressive objectives are needed to foster a sense of urgency in fulfilling those pledges. Too often, the responsibility for achieving such goals is ambiguous. Personnel are too concerned with their narrow functional responsibilities to account for how company-wide commitments relate to their daily practices. Instead, broad-based goals linked to the commitment must be incorporated into the responsibilities of all applicable personnel.

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[15] Sharma, Sanjay and Mark Starik. Stakeholders, the Environment and Society (Edward Elgar Publishing, 2004): 239.

[16] National Association for Environmental Management, "What is the History of the EHS Profession?" accessed 4 February 2014, http://www.naem.org/?page=What_is_EHS.

[17] This general framework is not intended to be an exhaustive summary of change management models but rather to outline their key characteristics. The books and articles referenced in the creation of this framework include those authored by Drucker, Peter F. Management Challenges for the 21st Century (New York: HarperCollins, 1999); Heineman, Ben W. High Performance with High Integrity (Boston: Harvard Business Review Press, 2008); Kotter, John P. Leading Change (Boston: Harvard Business School Press, 1996); Power, Michael. Organized Uncertainty: Designing a World of Risk Management (Oxford: Oxford University Press, 2009); and Schein, Edgar H. Organizational Culture and Leadership (Jossey-Bass, 2010).

Two-Way Communication of the Commitment and Associated Plans	In a transnational company, the commitment must be communicated clearly, frequently, and in multiple settings. Personnel must encounter the commitment in meetings, newsletters, and daily interactions so that they develop a consistent understanding of both the commitment and its rationale. To ensure a serious reflection on progress towards the commitment, top-down communications must avoid unjustified praise and instruct managers to translate the goals into concrete plans and budgets for their department or business unit. By publicizing ongoing progress and refining annual department and business unit goals, leadership can sustain momentum behind the commitment. Bottom-up communication processes are also necessary to ensure that the commitment is implemented appropriately. Both prior to and during implementation, managers should consult with personnel about opportunities and challenges in aligning their practices with the commitment. Annual bottom-up reviews that involve all levels of the corporate hierarchy and business functions help to share best practices and expose persistent gaps alike.
Cross-Functional Leadership	Those tasked with implementing the enterprise-wide commitment must be sufficiently influential within the enterprise to mobilize necessary cooperation. Companies frequently establish cross-functional committees with a mandate to propose changes to policies, processes, and procedures required for the fulfillment of the commitment. In addition to functional department heads, committee members must also include key business unit managers to promote the necessary changes. To maximize the committee's influence, membership should reflect the diversity of the firm's functions, businesses, and markets.
Operational Guidance and Training	To operationalize the company's stated commitment, managers should develop guidance materials for their personnel with the assistance of a diverse group of company leaders. Accompanying trainings designed to build the needed internal capacity are most effective when framed as preparation for greater responsibilities rather than instilling newly mandated procedures. By focusing on appropriate behaviors and capabilities, trainings foster the ability to handle tensions and ambiguities and thereby achieve greater acceptance.

Identify Red-Flags and Continuously Monitor Behavior	Leadership must identify both desired and at-risk behaviors associated with the stated goals to monitor progress and implementation gaps. By incorporating these behavioral measurements into core detection systems, leadership clearly communicates to personnel that they are expected to adopt these behaviors. The repeated assessment of these behaviors provides greater feedback about the factors that enable and impede the desired outcome. Progress-related data empowers company leaders to refine their implementation of the commitment.
Incorporate Goals into Performance Evaluation	Accountability and incentives that are aligned with the realization of the company-wide goal reinforce desired behaviors. The performance evaluation criteria for personnel at all relevant levels and functions should reflect these broad-based goals to clearly establish individual responsibility. Equally so, employees should be rewarded for fulfilling these objectives by including them as a basis for bonus pay and career advancement. The likelihood of meeting these ambitious objectives is greatest when accountability and rewards reflect behavior, in addition to outcomes. To generate active support and demonstrate dedication to achieving the desired outcome, executives should lead by example and incorporate progress benchmarks into their own performance evaluation criteria.
Review Progress	In addition to assessing personnel and executive performance, it is important to evaluate the ongoing effectiveness of the implementation plans and progress towards the commitment. While the extent to which the commitment has been realized is an essential metric, related evaluations can better reveal progress. Annual employee surveys, audit data, the incidence of correcting non-compliant behavior, and comparative assessments of group companies or competitors all provide valuable feedback about progress towards the enterprise-wide goals.

5.2 Environmental, Health, and Safety Management

Over the past several decades, companies across a range of industries have developed internal management systems to minimize adverse environmental, health, and safety impacts. While some companies have created separate functions to manage environmental issues, and health and safety issues, others have incorporated all three issues within an integrated EHS function.[18]

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[18] ARPEL, "Frequently Asked Questions when implementing Integrated Environmental, Health, and Safety Management Systems." ARPEL Environment, Health and Safety Management Report No. 5: April 2012.

The underlying logic behind the structure of EHS management systems is rooted in the Plan-Do-Check-Act (PDCA) continuous-improvement model.

Table 2 – Steps of the Plan-Do-Check-Act Cycle

PLAN:	Identify all activities that could impact the environment, health, or safety, establish performance objectives needed to achieve associated policy commitments, and devise procedures with clear responsibilities and a concrete timelines.
DO:	Guide adequately trained personnel to implement the procedures.
CHECK:	Collect information on personnel performance and progress towards the objectives through audits and assessments.
ACT:	Take corrective action for identified instances of noncompliance and refine objectives, procedures, and training to address instances of systemic noncompliance.

Figure 2 – Plan-Do-Check-Act Continuous-Improvement Model[19]
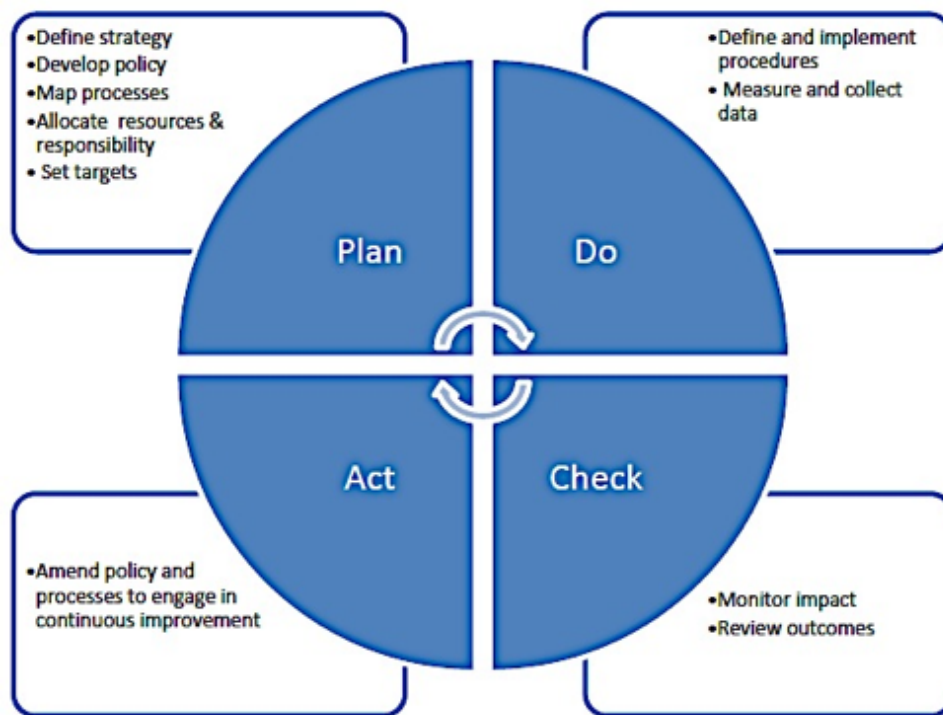
This basic model served as the foundation for quality management systems. Today, the ISO 14000 environmental management standards[20] and OHSAS 18001 occupational health and safety standard use the PDCA approach.[21]

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[19] Global Social Compliance Programme, "Reference tool on Social & Labour Management Systems for Suppliers." September 2013: 9.

[20] International Organization for Standardization, "ISO 14000 Family of International Standards." Environmental Management: 2009.

[21] National Standards Authority of Ireland, "OHSAS 18001." Occupational Health and Safety Management Detailed Guide.

Leading companies have built upon this basic model to develop increasingly robust and sophisticated management systems for environmental, health, and safety issues. The following elements reflect the best practices for embedding the enterprise-wide ownership of management systems recommended by companies and consultancies recognized for environmental, health, and safety excellence.[22]

ELEMENTS	DESCRIPTION
Management Leadership and Commitment	The company specifies its commitment to environmental, health, and safety issues in policies that are aligned with corporate values. Senior management provides guidance on how to achieve the commitment by setting measurable goals with corresponding action plans. Management demonstrates its dedication to these commitments through personal accountability and consistent communication at all levels of the enterprise.
Integrated Accountability and Responsibility	A corporate-level management committee assigns clear roles, responsibilities, and procedures to all relevant personnel regarding the implementation of the management system. Senior management establishes associated committees for all business units and market-level operations to ensure that all facilities and activities operate in accordance with these procedures. Two-way formal lines of communication enable the vertical and horizontal sharing of best practices and systemic challenges.
Audits and Assessments	Established audit processes collect information on the implementation of environmental, health, and safety policies and resultant conditions. Assessments are periodically conducted by multidisciplinary teams to document the effectiveness of audit procedures at all levels of the enterprise. Additional processes are in place to evaluate impacts associated with new procedures, standards, activities, facilities, business partnerships, and changes to existing policies and processes.
Risk Management	Audit and assessment information is analyzed to assess the probability and severity of potential impacts. Risk assessments are updated in response to changing circumstances. Management of each risk is assigned to specific personnel appropriate to the nature of the risk. A formalized process is in place to verify that adequate action is being taken to manage the risk.

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[22] A variety of guidance documents and company management systems were referenced in the development of this summary. The framework draws most on DuPont Sustainable Solution's 12 Elements of Safety Culture and ExxonMobil's Operations Integrity Management System.

Continuous Training	Employees are screened and selected based on their qualifications and abilities to manage the operational risks association with their functional responsibilities. Initial and ongoing functional trainings prepare personnel with the capabilities and awareness needed to appropriately recognize and mitigate hazards and risks. Employees are consistently assessed and provided with ongoing feedback on their performance in addressing potential and actual environmental, health, and safety incidents.
Specialized EHS Staff	Personnel with specialized experience in environmental, health, and safety issues coordinate and review the performance of the management system. EHS experts advise senior leadership on the ongoing performance of and needed improvements to the management system. These specialists also support site-level managers and operational staff with the implementation of related procedures.
Incident Investigation & Analysis	In anticipation of noncompliance incidents or significant near misses, a formal process is in place to address adverse impacts. Each incident is investigated, analyzed, and documented to inform any improvements to practices, procedures, and the management system itself. Lessons drawn from the incident are shared with all relevant units in the company to prevent recurrence.
Personnel Awareness and Motivation	Clear performance standards related to environmental, health, and safety procedures are incorporated into employee performance assessments. Individual contributions to effective EHS management are similarly a significant consideration for bonus pay criteria and career advancement.

Both approaches to embedding – those encountered in change management theory and in EHS management systems – intend to foster an employee culture that internalizes a shared sense of responsibility within an existing set of company values. To do so, they utilize similar methods to align goals, spell out responsibilities, motivate commitment, and promote consistent and candid communication. While change management proposes tactics that allow companies to alter any particular behavior or mindset that impedes a desired business outcome, EHS management emerged to transform company cultures that were insufficiently responsive to these specific impacts. Collectively, these embedding frameworks reveal particular processes that can be used to promote the shared ownership of the responsibility to respect human rights.

6. Lessons from Existing Embedding Frameworks

The findings presented in Section 4 demonstrate that significant gaps remain in embedding the responsibility to respect human rights in company culture. In the absence of collective enterprise-wide ownership of the responsibility to respect, companies cannot exercise adequate human rights due diligence. The change

management and EHS management frameworks described in Section 5 offer methods to stimulate collective responsibility for certain issues. This section analyzes interview findings to identify how specific approaches, which have been effective for embedding the management of other types of impacts, can be adapted to better embed respect for human rights.

6.1 Consistently communicate human rights in accessible terms

Interviewees acknowledged the effectiveness of framing human rights in the vernacular of safety, the environment, or other issues that are considered core values within the company. Nearly all people who participated in interviews agreed that illustrating the parallels with existing corporate values produces the greatest chance that business personnel embrace human rights as a core responsibility. Indeed, change management emphasizes the importance of aligning company-wide values and commitments. If personnel understand the responsibility to respect human rights as a component of an existing duty, they are more likely to perceive the implications for their work as both feasible and a priority.

Respect for human rights can become a salient consideration for personnel performing their professional responsibilities when its relevance is articulated in terms of existing shared values. These behavioral norms within a corporate culture reward conformity and thereby shape both group concerns and conduct.[23] Consequently, new initiatives and priorities insufficiently anchored within corporate values stagnate once urgency wanes. The articulation of human rights within the language of "zero harm" allows for value alignment with existing safety norms. Similarly, expressing the importance of respecting human rights in terms of return on investment (ROI) is rooted in environment-based approaches and can be successfully aligned with values-based arguments.

The responsibility to respect human rights fits within the purview of the "zero harm" approach from safety management. Traditional safety programs focus on outcomes rather than the acts and conditions that enable them.[24] The "zero harm" safety approach shifts the objective of safety management from preventing workplace accidents to preventing at-risk behaviors and conditions. As one interview put it, human rights objectives fit within this safety model:

> *"The focus on behavior and attitude is much more inclusive of human rights. The zero harm approach can integrate human rights issues because the idea of eliminating harm is culturally more palatable."*

By incorporating "do no harm"[25] within the "zero harm" safety approach, a number of aspects of human rights due diligence could fall within the responsibility of safety management. The shared goal to prevent harm can

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[23] Kotter, 148.

[24] Mathis, Terry L. and Shawn M. Galloway. STEPS to Safety Culture Excellence (Hoboken: John Wiley & Sons, 2013): Chapter 5.

[25] Ruggie, John G. "Statement by Prof. John Ruggie, Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises." 63rd Session of the General Assembly, Third Committee. New York. October, 27 2008: "To respect human rights essentially means not to infringe on the rights of other – put simply, to do no harm."

empower corporate responsibility personnel to communicate respecting human rights as an integral element of a company's existing safety culture. "Safety moment" discussions at the beginning of work shifts have become a standard practice in extractive industries. This articulation of respect for human rights as an existing core value, as opposed to a supplemental corporate initiative, legitimizes social performance as a topic in management meetings and daily shift meetings alike.

However, the incorporation of respecting human rights into safety goals is potentially less compelling beyond the context of extractive industries because safety may not be the most prominent corporate value. Several company representatives also acknowledged that the sphere of safety culture is limited to the behaviors and wellbeing of employees. Safety culture often fails to extend beyond "the fence" to influence the attitudes and practices of suppliers and contractors.[26] Given these limitations, an emphasis on the long-term benefits of investing in human rights due diligence may also be needed to account for supply chain risks.

Just as environmental due diligence has been promoted as a means to simultaneously improve brand reputation and reduce energy costs, exercising human rights due diligence can fit within the return on investment model. The concept of a return on human rights investment is distinct from the social return on investment approach that aims to quantify the monetary value of social benefits.[27] Instead, the return on investment in human rights due diligence can demonstrate the long-term added revenue and reduced expenses on the firm's income statement. By investing time, money, and human resources, companies can prevent their involvement in and contribution to human rights harm through effective due diligence.

This is not to suggest that the decision to exercise human rights due diligence should be in any way determined by a cost-benefit analysis. Nor does the use of an ROI analogy imply that human rights impacts should be explicitly quantified. The Guiding Principles unambiguously state that the responsibility to respect human rights applies to all enterprises regardless of their size, operational context, ownership and structure.[28] Rather, the ROI concept can demonstrate the damages associated with unmitigated human rights risks to both corporate-level and site-level managers as part of a broader argument that links the respect for human rights to the company's core values.

Several interviewees, both company representatives and sustainability advisors included, expressed optimism about efforts to couch human rights issues in ROI language. Respecting human rights often leads to a more productive workforce with better quality products and reduces costs associated with community conflict, work stoppages, lawsuits, and reputational damage. As opposed to the "zero harm" concept, this investment rationale not only applies to individuals and communities potentially impacted by a company's direct operations, but also to those who may be impacted by the company's work with suppliers and contractors. However, the limitations of such an approach, as articulated by one interviewee, must be acknowledged:

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[26] This opinion was also expressed by participants at Shift's 2012 Business Learning Program workshop: Shift, 10.

[27] For more information on the social return on investment, visit SROI Network at http://www.thesroinetwork.org/.

[28] United Nations Office of the High Commissioner of Human Rights, "Guiding Principles on Business and Human Rights": Principle 14.

> *"ROI analysis is the cornerstone of environmental programs because the associated costs are fairly easy to measure and track which allows for a technical, numerical target. But human rights are not like turning on a light. The [benefits] of improved workplace conditions like increased productivity, higher quality, lower turnover and absenteeism are harder to pinpoint."*

Another interviewee warned:

> *"Short-termism has a major negative impact on commitments on human rights because commitments to social performance require long-term investments."*

Articulating the benefits of exercising human rights due diligence offers the potential to embed respect for human rights within company values but requires senior leadership's patience in long-term investment. A majority of company interviewees described using pilot projects with a single business unit or in a specific market as a means of demonstrating the benefits of particular human rights due diligence approaches. Few companies aggregate the costs associated with addressing actual human rights impacts that were consequences of a failure to manage risks. Extractive companies, for example, generally do not identify local operating costs related to company-community conflict and aggregate them in a way that would gain the attention of senior management and the Board.[29] Pilot projects can therefore reveal the potential magnitude of these enterprise-wide costs that are currently obscured from the attention of senior management.

Often, a few managers are already receptive to the benefits of social compliance. One company representative explained that managers in markets with a strong core business are typically willing to participate in pilot projects that are aligned with the corporate commitment. Several interviewees agreed that publicizing the narratives from managers involved in these projects is an effective method to share best practices in social performance. Another company produces videos of employees in subsidiaries discussing their personal experience in implementing respect for human rights. This promotion of internal human rights champions bolsters the narrative that human rights due diligence not only improves the core business but is also feasible in the context of existing functional responsibility.

When understood in the terminology of "zero harm" and ROI, the responsibility to respect human rights is no longer an abstract concept, but instead, a critical element of effective management. Fostering this perception among personnel requires consistent and authentic communication. Conveying respect for human rights as a vision consistently in multiple forums, from company newsletters to formal meetings, is an important method to reinforce a new approach as a core value.[30] The authenticity of those communications depends on whether

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

[30] Kotter, 90.

executive conduct and resource allocation reflect the commitment to respect human rights. By communicating respect for human rights as a necessary component of already embedded values, staff develop an appreciation for the importance of exercising human rights due diligence.

6.2 Expose relevant personnel to human rights performance

Even if the corporate-level commitment to respect human rights is communicated effectively, people may still struggle to recognize its relevance to their daily responsibilities. In order for personnel to appreciate the relationship between their professional behavior and the company's social performance, they must encounter evidence of potential and actual human rights impacts. A common theme that emerged during interviews was the need for processes to make human rights risks more visible to people involved in operational decision-making.

The change management literature explains that business as usual persists because employees are not exposed to certain consequences of their everyday conduct.[31] With respect to human rights impacts, interviewees described situations in which procurement staff did not receive social audit results on the suppliers they purchase from; construction managers for a mining company were not involved in consultations with the local community; human resources staff did not participate in a stakeholder convening in a market with a history of discrimination. There is little urgency for personnel in each of these cases to exercise human rights due diligence because they are not explicitly assigned the responsibility to account for this information. To change specific behaviors that impede improved performance, inward-oriented staff should be expected to confront the unseen risks associated with their decisions. This tactic has been described as "counteract[ing] insider myopia with external data."[32]

In each of the aforementioned examples, corporate responsibility specialists are gathering valuable social performance information related to the conduct of personnel in high-risk functions. There are a variety of internal evaluation tools that companies can use to inform personnel in high-risk functions or markets which include, but are not limited to, social audits, ombuds statistics, employee surveys, on-site reviews by a compliance review board, and comparative assessments of group companies.[33] A properly functioning operational-level grievance mechanism that is accessible to individuals and communities who may be adversely impacted provides especially relevant information on human rights risks.[34] However, no formalized process required the procurement, construction, or human resources staff in the aforementioned examples to account for this information when fulfilling their functional responsibilities. Personnel would have a greater sense of how their work relates to human rights impacts if they were expected to review social audits, participate in community consultations, or attend stakeholder meetings.

In many circumstances, companies have difficulty gathering information about impacts on vulnerable individuals and communities. In such cases, partnerships with community-based organizations can reveal human rights risks and actual impacts that are hidden from corporate-level staff. For example, one company representative described partnering with local NGOs to conduct human rights impact assessments in high-risk markets. The assessment findings are shared with the relevant subsidiary's management team to develop a plan to account

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[31] Kotter, 49; and Schein, 366.

[32] Kotter, 49.

[33] Heineman, 96.

[34] United Nations Office of the High Commissioner of Human Rights, "Guiding Principles on Business and Human Rights": Principle 29.

for the identified impacts. A corporate compliance function subsequently reviews the management team's plan to assure that site-level managers understand which practices need to be changed. Despite initially struggling to access accurate social performance information, this company identified credible local sources that exposed relevant employees working in these markets to potential and actual human rights impacts.

It is necessary to differentiate between exposing personnel to human rights risks and actual impacts from efforts intended to simply create an awareness of human rights. These approaches have fundamentally different impacts on peoples' attitude toward the relevance of human rights. An interviewee described the limitations of trainings intended to educate staff about human rights:

> *"In the past five years, there [have] been more awareness building efforts but this doesn't guarantee that people act in accordance with these trainings. A lot of times, they are forced by their boss to attend a short half-day training which is [rarely] specific to their job."*

Generic human rights trainings are designed to educate people about the relationship between business practices and human rights. But the recognition that company operations can cause or contribute to adverse impacts is not sufficiently informative for personnel to incorporate such considerations into their functional practices. Instead, the exposure to human rights performance provides tangible evidence of how their actions relate to previously overlooked social outcomes. By requiring specific functions to review social performance data, companies communicate actionable information. Personnel begin to understand which human rights are relevant to their work and which decisions have the potential to impact the human rights of vulnerable individuals and communities.

The recognition that one's conduct has the potential to cause or contribute to adverse human rights impacts is critical in securing peoples' cooperation in exercising human rights due diligence. For example, another interviewee described how procurement's continual exposure to surveys detailing the opinions of their suppliers' workers enabled the company to incorporate these concerns into future purchasing decisions. This degree of human rights awareness provides a strong incentive for business units and high-risk functions to participate in cross-function working groups. Cross-functional support to exercise human rights due diligence is more appealing once people recognize that their current practices may conflict with the corporate-level commitment. The exposure to social performance not only fosters peoples' appreciation for the relevance of human rights to their function but also an understanding of how their decisions can affect certain vulnerable individuals or communities.

6.3 Consult with personnel to incorporate function-specific risks into human rights guidelines

Once personnel recognize how human rights relate to their functional responsibilities, they should be involved in tailoring operational guidelines to their specific function. Several interviewees characterized human rights guidance documents as too broad to be useful for people involved in decisions that can impact human rights. Moreover, as one interviewee described, the dissemination of guidance materials may not be a priority for personnel beyond the corporate responsibility function:

> *"Company people in Geneva, London, or New York who write the policy guidelines understand the importance of respecting human rights. But the actual communication of guidelines trickles down at an incredibly slow pace to impact owners involved in business operations."*

People will struggle to incorporate human rights guidelines into their daily conduct if guidance lacks a clear application to their functional responsibilities.[35] Rather, corporate-level human rights commitments should be translated into operational-level guidelines that are specific to each function. The decisions that involve the greatest human rights risk in a human resources function are entirely different from those in a procurement function. Consultation with personnel in different functions allows for human rights due diligence standards and processes that address function-specific risks.

Regardless of whether they comprehend the concept of human rights, personnel in high-risk functions best understand the factors that influence their operational decision-making. Operational best practices are often based on perceptual skills learned through years of experience.[36] Only by engaging with experienced staff can corporate responsibility specialists reflect previously unrecognized operational considerations in formal guidance materials. Specialists should therefore solicit the expertise of employees whose professional duties can impact human rights to develop tailored human rights guidance.

One company representative expressed skepticism about generic, enterprise-wide human rights guidelines. Instead, the employee met with people in various functions to discuss challenges in their daily work that involve human rights and set goals associated with those challenges. The nature of this shift in approach was articulated by another interviewee:

> *"[You] need to help these people brainstorm ways in which their work can impact social performance. Corporate responsibility departments then move from an implementation role to a coaching role."*

Greater cooperation permits a candid discussion about the relationship between personnel behavior and human rights whereas a compliance-based relationship deters such honesty. By assuming a more collaborative approach, human rights specialists can assist personnel operating in high-risk functions to brainstorm ways in which their work can cause or contribute to adverse impacts. In comparison to generic human rights

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[35] For a more extensive discussion on translating human rights into guidelines and everyday practices, see Haines, Fiona et al, "Contextualising the Business Responsibility to Respect: How Much is Lost in Translation?" *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Leiden: Martinus Nijhoff Publishers, 2012): Chapter 4.

[36] Several examples on defining and training for the recognition of perceptual cues are detailed in Klein, Gary. *Sources of Power: How People Make Decisions* (Cambridge: MIT Press, 1999): 42 – 44.

procedures, this microanalysis of social risk strengthens strategies to mitigate adverse impacts because guidelines are tailored to functional decision-making.

6.4 Develop leading human rights indicators

The development of tailored human rights operational guidelines can be used to develop leading human rights indicators. Both the change management literature and safety consultancy recommendations emphasize the importance of "red flags" that alert managers to at-risk behaviors that can lead to accidents or adverse impacts.[37] Whereas lagging indicators measure harmful outcomes, leading indicators allow managers to intervene before at-risk behaviors become routine and thereby mitigate the risk of an accident. One interviewee insisted that embedding respect for human rights can benefit from the use of leading indicators in safety culture:

> *"You can use the safety pyramid as an analogy. In a company with a strong safety culture, all sites know the number of hours of lost-time injuries. The same concept can be used for the number of days a site has a positive or negative relationship with a community. Then that community relationship isn't taken for granted."*

In safety management, injuries and near misses happen too infrequently to allow people to appreciate the severity of consequences that can result from at-risk behavior. Predictive measures, such as gaps in operational discipline, are utilized to anticipate and mitigate lost-time injuries.

Figure 3 – Safety Pyramid[38]

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[37] See Drucker, Peter F. Managing in a Time of Great Change (Boston: Harvard Business School Publishing, 2009): 91 – 92; Heineman, 61; and ExxonMobil's Operations Integrity Management System.

[38] Poh, Yong Wui. "DuPont's Safety Culture & Confined Space Entry Safety," DuPont Company. 17 July 2008.

With respect to human rights, social audit findings on excessive working hours in a garment factory reflect adverse human rights impacts that have already occurred – hence, they are considered lagging indicators. Yet, tailored guidelines developed in consultation with procurement staff can be translated into leading indicators to predict future working hour violations. For example, procurement staff purchasing from suppliers in a high-risk market may acknowledge that orders with especially high quantities and short lead times can contribute to adverse impacts. Accordingly, one interviewee described the practice of collecting statistics on supplier capacity as a red flag for adverse impacts associated with sub-contracting and forced overtime. By constantly monitoring supplier capacity, the company can anticipate purchasing practices that risk contributing to adverse human rights impacts. Leading indicators focus peoples' attention on the consequences of their own functional decisions and practices. The shift in attention from outcomes to behavior minimizes the likelihood that personnel in high-risk functions perceive the risk of adverse impacts as either highly improbable or entirely out of their control.

While adapting the safety pyramid model's use of leading indicators to mitigate adverse impacts, there are important challenges in developing indicators for human rights issues. Risk management processes are best suited to address risks for which data can be easily collected and the associated risks have objective probabilities.[39] Consequently, predictive indicators for environment and safety due diligence are more commonplace than in human rights due diligence:

> *"Very clear measures can be developed to predict the release of chlorine gas based on types of employee behaviors. But it is not as easy to prevent human rights abuses. In environments where employees can be mistreated, the harsh treatment of employees and use of racially disparaging comments are not [necessarily] human rights violations but can be predictors of future harm."*

Despite the challenge of developing red flags for adverse human rights impacts, these examples illustrate that predictive measures exist. Task-specific guidelines educate personnel about appropriate actions and decisions that mitigate human rights risks. By converting guidelines into leading indicators, staff in high-risk operating contexts will become more focused on their professional behavior and discipline. People are therefore more likely to correct existing conduct that can cause or contribute to adverse impacts because they perceive the mitigation of adverse impacts as within their control.

## 6.5 Create broad-based performance evaluation criteria for exercising due diligence

When people understand how their professional conduct can cause or contribute to adverse impacts, corporate responsibility personnel are less likely to be considered the sole owners of human rights. The resulting sense of professional responsibility to respect human rights can be formalized by incorporating leading indicators into accountability and incentive structures. For example, one interviewee explained that only corporate responsibility personnel are evaluated based on social performance. Staff in other functions may

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[39] Power, Michael. The Risk Management of Everything: Rethinking the politics of uncertainty, (London: Demos, 2004), 30.

understand how their actions impact human rights and feel responsible for minimizing adverse impacts. Nonetheless, they may be obligated to continue business as usual due to existing performance incentives.

The DuPont Bradley Curve illustrates the importance of broadening human rights performance evaluation criteria and evaluating those beyond corporate responsibility personnel. While the tool is designed to assess company progress towards a world-class safety culture, its four stages parallel the phases of maturity in embedding respect for human rights in corporate culture.

Figure 4 – DuPont Bradley Curve[40]
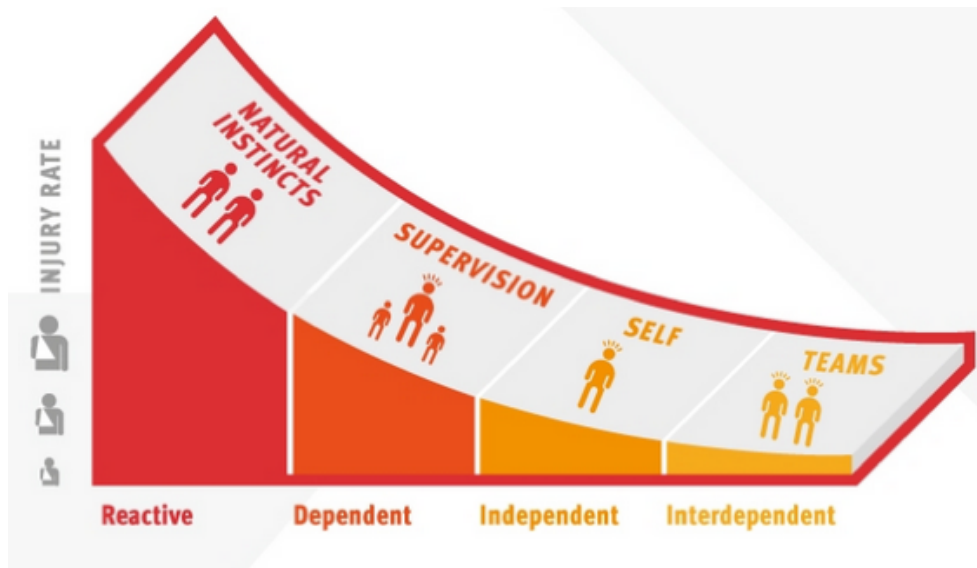
In the reactive stage, the responsibility for human rights performance is delegated entirely and exclusively to a specialized corporate responsibility staff. Management does not account for human rights risks in business plans and operational procedures because human rights are not perceived as relevant. Consequently, the company has a reactive-orientation to adverse human rights impacts. Personnel are only equipped with their natural instincts to address an adverse human rights impact because no standards or procedures exist. Rather than diligently engaging with the community near a mining site or partnering with a garment supplier on human resources management, such companies are forced to react to a community conflict that halts operations or an NGO campaign on forced overtime that tarnishes brand reputation.

Companies in the dependent stage have developed general human rights guidelines, which are not tailored to specific functions and markets. Personnel may recognize that company operations can affect the rights of individuals and communities but depend on human rights specialists to exercise adequate due diligence. Due to more pressing performance standards, staff in high-risk functions and markets comply with human rights action plans just enough to appease corporate responsibility personnel.

As people are exposed to actual human rights performance and conferred with to identify human rights risks specific to their function, the embedding process enters the independent stage. Personnel now appreciate how

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[40] DuPont Sustainable Solutions. "The World Class Safety Survey Results Infographic," accessed 12 December 2013, http://www.dupont.com/products-and-services/consulting-services-process-technologies/articles/world-class-safety-survey-infographic.html.

their functional conduct can contribute to or cause adverse human rights impacts. Although they develop a personal commitment to account for social risks, human rights performance is neither included in their specific functional nor department-wide responsibilities.

In the interdependent stage, personnel, regardless of function or market, accept collective ownership of the need to exercise human rights due diligence. Respecting human rights develops into a norm as organizational pride is associated with fulfilling the company's commitment. Personnel conform to the standard practice of anticipating and accounting for human rights risks.[41] Fostering a culture of shared ownership requires formal goals and incentives that stipulate the functional responsibilities to respect human rights.

In practice, this incentive can be created by incorporating leading human rights indicators into performance evaluations. The change management literature regards the conversion of personalized objectives into pay for performance and career advancement as a tool to promote a desired company culture.[42] Peoples' sense of professional responsibility is reinforced by explicit incentive and accountability measures. Yet, as expressed by one interviewee, integrating human rights issues into performance evaluations is especially challenging:

> *"These issues need to be incorporated into annual business plans and performance evaluations. The problem is the follow through. It's a struggle to build into structures that have teeth and consequences."*

The difficulty of individualizing accountability and incentives is also a problem in safety management. For example, the incentive structure on Occidental Petroleum's Piper Alpha platform was too weak to deter employees from cutting corners in safety maintenance procedures.[43] In the Deepwater Horizon oil spill, worker conduct reflected monetary incentives associated with expense and deadline targets.[44] Most recently, the 2013 Metro-North Commuter Railroad accidents resulted from a prioritization of on-time performance to the detriment of adherence to safety and maintenance measures.[45] In each case, there were no formal incentives for managers and employees to act with prudence regarding safety.

To transition from the independent to interdependent stages, personnel should be evaluated on broader measures of social performance, which include behavioral elements. Instead of assessing peoples' performance based on the absence of adverse impacts or their attendance at community meetings, behavioral assessments account for the quality of peoples' engagement in human rights due diligence. The inclusion of quality criteria for respecting human rights, in contrast to exclusively quantitative benchmarks, dispels the perception that fulfilling social performance guidelines is a tick box exercise. For example, a mine construction

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[41] Schein, 21 – 22.

[42] Heineman, 99.

[43] Paté-Cornell, M. Elisabeth, "Learning from the Piper Alpha Accident: A Postmortem Analysis of Technical and Organizational Factors," Society for Risk Analysis, October 1992: 227 – 229.

[44] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, "Report to the President," January 2011: 82.

[45] Federal Railroad Administration, "Operational Deep Dive: Metro-North Commuter Railroad Safety Assessment," Report to Congress, March 2014: 12 – 13.

manager's community relations performance should not be solely evaluated on holding or attending a fixed number of community meetings. To indicate that minimal compliance is not acceptable, the performance evaluation should also include survey results on the community's ongoing perception of company engagement. Measuring performance with broader measures of social performance, not narrow functional processes, is critical to create shared responsibility.[46] Consequently, personnel know that they are not simply accountable for complying with a set of procedures but for exercising adequate human rights due diligence which is in the best interests of the entire company.

The alignment of personal and collective human rights responsibility also involves the creation of general department and unit-wide goals based on both staff attitudes and discipline. People develop a greater sense of shared ownership when they are assessed on the performance of their entire department. Personnel exercise peer accountability when their bonus pay or performance evaluation is based on department-wide achievements. Similarly, collective ownership is strongest when senior management leads by example, such as incorporating the achievement of corporate-level human rights goals into executive bonus pay criteria.[47] One company representative referenced preliminary discussions about adding the management of social risks into the criteria that determine executive compensation. Although financial motivations can encourage certain types of behavior, these incentives are influential because they communicate enterprise-wide priorities and values. Shared goals and genuine executive leadership on human rights demonstrate what really matters to people in a company.

By incorporating leading human rights indicators into individual, department, and executive performance evaluations, individual functional responsibility can evolve into an enterprise-wide shared responsibility. The corporate-level commitment to respect human rights is effectively embedded in the company DNA as employees feel that respecting human rights is simply "the way we do things around here."[48]

7. Concluding Thoughts

The successful embedding of human rights occurs neither unintentionally nor as the result of a single incident. Rather, embedding involves a deliberate set of processes that incrementally foster a company culture that respects human rights.

People begin to understand why respecting human rights is a critical element of effective management when human rights are communicated in a language that is accessible and aligned with existing company-wide objectives. Once personnel are exposed to both potential and actual impacts linked to their job, they recognize the relevance of human rights to their functional responsibilities. Personnel subsequently appreciate the actions and decisions they can undertake to mitigate human rights risks with the assistance of operational guidelines tailored to their function. By monitoring leading human rights indicators, companies can shift peoples' attention from outcomes to their professional behavior and discipline. Individual responsibilities evolve into an enterprise-wide shared responsibility to respect human rights when qualitative measures of social performance are incorporated into performance evaluation criteria.

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[46] Kotter, 40.

[47] Kotter, 95.

[48] Deal, Terrence E. and Allan A. Kennedy. Corporate Cultures: The Rites and Rituals of Corporate Life (Cambridge: Perseus Books, 2000): 4.

Collectively, these steps empower people to uphold human rights commitments in their daily business conduct and decision-making. By applying these lessons, companies can foster a culture that respects human rights and thereby more effectively exercise human rights due diligence.

Annex A: Schein's Embedding Mechanisms

Primary Embedding Mechanisms

- What leaders pay attention to, measure, and control on a regular basis

- How leaders react to critical incidents and organizational crises

- How leaders allocate resources

- Deliberate role modeling, teaching, and coaching

- How leaders allocate rewards and status

- How leaders recruit, select, promote, and excommunicate

Secondary Articulation and Reinforcement Mechanisms

- Organizational design and structure

- Organizational systems and procedures

- Rites and rituals of the organization

- Design of physical space, facades, and buildings

- Stories about important events and people

- Formal statements of organizational philosophy, creeds, and charters

Annex B: Interview Protocol

Interviewees were asked a standardized, but flexible set of open-ended questions that were aligned with the following substantive themes.

- **Structure of management systems:** A company management system establishes rules and procedures for personnel to identify, investigate, document, and respond to potential and actual impacts. While some companies operate independent systems to manage different issues, others operate a fully integrated system to manage material issues.

- **Leadership commitment:** Senior leadership sets priorities for an enterprise to address issues associated with its operations through formal policies and commitments. Management's leadership is reflected in consistent communication, language, personal behavior, and budget allocation aligned with the commitments.

- **Translation of commitments to guidance:** Company commitments are often converted into operational policies and procedures that guide personnel conduct. Guidance can be tailored to specific functions, levels, and operational contexts.

- **Communication:** Senior leadership and management communicate policy commitments and operational guidance downwards throughout the enterprise. Established mechanisms can allow operational staff to communicate best practices, common challenges, and incidents upwards.

- **Impact assessments:** Companies can use lagging and leading indicators to assess potential and actual impacts. Such assessments can be conducted regularly and repeated to evaluate changing conditions. Incident investigations can enable the enterprise to learn from actual impacts and near misses.

- **Accountability and incentives:** Personnel performance evaluations, bonus pay criteria, and career advancement can include adherence to operational policies and procedures associated with issue-based commitments.

- **Capacity building and training:** Personnel are trained to follow operational policies and procedures. Issue-specific trainings can be formalized and incorporated into general professional development for all personnel. Such trainings can be tailored to specific functions, levels, and operational contexts.

- **Business partners and service providers:** While some companies expect suppliers and contractors to operate their own management systems, others require that business partners adopt their own standards and procedures. Companies can inform and prepare businesses linked to their operations of its standards and for its procedures.