

# Black Lives Matter

## PUTTING HUMAN RIGHTS AT THE HEART OF CORPORATE RESPONSES

July 2020

The progressive responses by some businesses to the Black Lives Matter protests, and the systemic racism they are calling attention to, have been framed as voluntary commitments of socially conscious companies. In fact, all businesses have an ironclad responsibility to address their connections to these underlying inequalities, as set out in the UN Guiding Principles on Business and Human Rights. This briefing note sets out some of the implications of this responsibility.

For over six years, the Black Lives Matter (BLM) movement has consistently called attention to the severe human rights harms to Black communities from police and

other forms of state-sanctioned brutality and from the underlying structural inequalities in the US persisting since the era of slavery and compounded by Jim Crow laws and subsequent government policies. The movement builds on a long history of work by a wide range of groups and organizations to prevent and address these impacts.

Following the recent protests in support of BLM, catalyzed by the terrible deaths of George Floyd, Breonna Taylor, Ahmaud Arbery and many others, as well as the unequal impacts of COVID-19 on Black communities in the US, a growing number of companies are taking steps to respond ►►

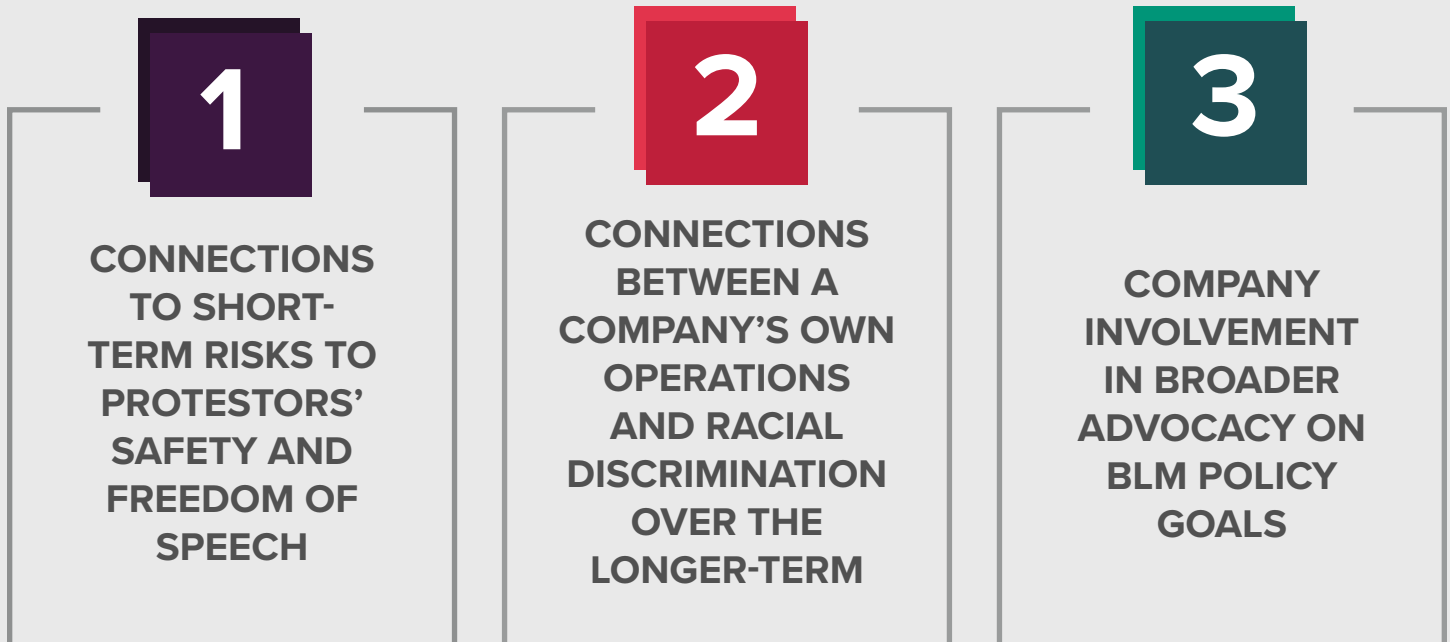
Words without action ring hollow. At Shift, we are applying this same lens of responsibility to ourselves, recognizing that every organization should be clear about how it may have benefited from structural inequality and about its role in dismantling it. We are conscious that we lack the benefit of Black lived experience among our current team. We have opened up a dialogue among our leadership, across our team and with our Board to understand how we can take meaningful action and contribute to positive change as an organization in our own operations, in our business relationships and as individuals in the communities in which we live. For a start, we are examining our recruitment, retention, internal communication and procurement practices to identify ways in which we are connected to structural racism, or discrimination more generally. We will then set goals and take steps to address these – recognizing that this requires a commitment to longer-term action.

to these calls. The protests have also drawn attention to the need to address the severe yet distinct effects of racism affecting Indigenous peoples and Latinx communities of color and Asian communities in the US, as well as the intersection of racism with other aspects of identity, including sexual orientation and gender identity.

Some companies have been rightly criticized for taking only superficial action; others are assessing their own performance on diversity and looking at further ways in which their operations may be connected to systemic racism. Yet much of the discussion is still framed as if these responses are voluntary commitments, which business can choose to make or not. That needs to change.

All businesses have a responsibility under the UN Guiding Principles on Business and Human Rights to take action to respect human rights in connection with their own operations and their extended value chain. This responsibility is a globally acknowledged and expected standard of conduct that is increasingly reflected in national laws, the expectations of investors, NGO and trade union advocacy, the standards set by influential industry bodies and the commitments of companies themselves. In the US, the Department of State actively promotes the UN Guiding Principles to US companies.

We see three main ways in which companies need to grapple with these human rights harms – both the immediate risks to protestors as well as the underlying inequalities that the BLM movement is raising . These are:



In this briefing note we focus on the BLM movement specifically and the issues it raises. We recognize that many of the same harms apply to other communities and groups that have been subject to structural discrimination as a result of white privilege and power, in the US and beyond. Companies may therefore find this guidance – particularly section two – relevant more generally.

## 1 CONNECTIONS TO SHORT-TERM RISKS TO PROTESTORS' SAFETY AND FREEDOM OF ASSEMBLY

### MAKE IT CLEAR TO YOUR WORKFORCE: IT IS OK TO PROTEST

- Companies should reassure their own workforce (including contractors as well as employees) that the company respects their right to be part of peaceful assemblies and protests supporting BLM. Messaging from top management and the legal function can be particularly important in conveying this, including by making clear that there will be no reprisals or adverse consequences for people who choose to join.

The right to peaceful assembly protects participation in protests as an important way of raising grievances; any restrictions

on the time, place or manner of assembly need to meet appropriate standards under international law. Companies should be aware of the complexity surrounding how violence may occur in reaction to BLM protests – whether initiated by police, far right groups or others. They should avoid using the mere premise of violence to deny support to individuals who joined with peaceful intent. As the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has noted: “Acts of violence by a few do not make an entire protest violent; nor do they strip other individuals of their right to continue the assembly.” The Special Rapporteur previously critiqued US restrictions in practice on Black protestors’ exercise of the right to freedom of assembly.

### BE READY TO SUPPORT WORKERS WHO JOIN PROTESTS

- If any workers are hurt or detained while taking part in peaceful protests, the company should be prepared to speak up in support of those individual’s rights. Companies should also proactively review any hiring policies they have on criminal records to ensure that workers who are detained or charged in connection with peaceful protest are not penalized. Companies should also be alert to the immigration risks for certain individuals in participating in protests. ➡➡

While the right to peaceful assembly is particularly important for those who are excluded from the right to vote – such as migrants or those with criminal convictions – they may also be most at risk of detention and other punitive actions in response. Consulting with their own workforce can help companies understand the kinds of risks they may face and what the most meaningful responses could look like.

## **SPEAK UP FOR PROTESTORS' RIGHTS**

- Companies should be prepared to speak up more broadly in support of protestors' rights – echoing the three points made by the Movement for Black Lives (M4BL) – and the wider need to end discriminatory police violence against Black communities, as well as against Indigenous and other communities.

# 2

## **CONNECTIONS BETWEEN A COMPANY'S OWN OPERATIONS AND RACIAL DISCRIMINATION OVER THE LONGER-TERM**

### **LOOK WITHIN: HOW ARE MY COMPANY'S PRODUCTS OR SERVICES CONNECTED TO DISCRIMINATION?**

- Companies should look at ways in which their own products and services

are or could be connected to the structural discrimination underlying the BLM movement. They should review whether they have measures in place to address any such connections that are adequate to the severity and ongoing nature of the harms concerned. In particular, companies that supply products or services directly to US police forces, or allow them to use their property, should prioritize those relationships for heightened due diligence and a realistic assessment of the company's leverage in engaging on these issues. Examples of action by companies includes IBM ceasing the sale of general purpose facial recognition or analysis software, and Fuji Bikes' suspension of sales of police bikes.

- Companies that provide platforms for online expression, or purchase advertising space on them, should review whether and how they are being used to express or incite racial hatred and seek to limit such abuse – as many companies are doing through the #StopHateForProfit campaign. Companies should pay close attention to products or services that help reinforce existing discrimination based on race against individuals and communities more widely in society, for example, through discriminatory access to financial services or discriminatory or stereotypical portrayals of individuals or communities through the company's ➡➡

marketing or sponsorships. Examples of action include PepsiCo's decision to remove the "Aunt Jemina" image from packaging and change the brand's name, Mars' decision to evaluate the "Uncle Ben's" brand and sponsors using their leverage with the management of Washington's football team to amend their name and logo.

### CONCRETE ACTIONS SPEAK MORE THAN VAGUE STATEMENTS OF SUPPORT

- Companies should go beyond vague, short-term statements of support and connect their commitments to non-discrimination to tangible actions over a longer time period that are more likely to result in change. Their approach should be grounded in and informed by engagement with affected stakeholders, for example by asking questions of and hearing from their own staff as well as business partners and customers/consumers about what would be meaningful. Responses could include:
  - looking critically at the company's performance on racial diversity and pay equality at all levels, setting more ambitious targets and committing to transparency about both targets and progress towards them using disaggregated data;
  - investing in anti-racism training and building internal awareness about

the need for change at the personal as much as the systemic level as well as evaluating the broader organizational culture and the "racial climate" it creates;

- strengthening procurement and other requirements supporting businesses that are Black-owned or led, building on existing responsible procurement policies and offering capacity-building for such suppliers where needed;
- reviewing how the company's public lobbying funds are spent, including the extent to which they support elected officials with poor voting records on equality and non-discrimination issues and other relevant policy areas (particularly policing);
- reconsidering the company's own taxation strategy as well as any broader public contributions or donations given the need for a substantial increase in public resources supporting Black communities' educational, health and economic needs and opportunities.

### USE YOUR LEVERAGE TO MAKE LONG-TERM STRUCTURAL CHANGE HAPPEN

- Companies will also need to look beyond what they can do in their own ➡➡

operations and business relationships and consider how they can use their leverage to support regulatory change to address the structural inequalities affecting Black individuals and communities. This could include advocating for specific legal reforms, such as those set out in M4BL's Vision for Black Lives, alone or through collaborative efforts. Where companies have a substantial presence in particular states or cities, this could involve engaging local political authorities directly on these issues.

## 3 COMPANY INVOLVEMENT IN BROADER ADVOCACY ON BLM POLICY GOALS

### ENGAGE WITH AFFECTED STAKEHOLDERS

- The responsibility to respect sets the floor for, not a limit on, how companies should act in support of human rights. There are moral and values-based rationales for companies to speak out in support of BLM policy goals that go beyond specific harms connected with their business. However, companies should still base their strategies and actions on dialogue with affected stakeholders to ensure that they are, in

fact, supporting those goals in practice. And if companies have not seriously engaged with their responsibilities under the first two dimensions above, simply engaging in public advocacy is likely to ring hollow.

### ABOUT SHIFT

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries and redefine corporate practice in order to build a world where business gets done with respect for people's dignity. We are a non-profit, mission-driven organization headquartered in New York City.

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