

# DISSECTING HUMAN RIGHTS DISCLOSURE

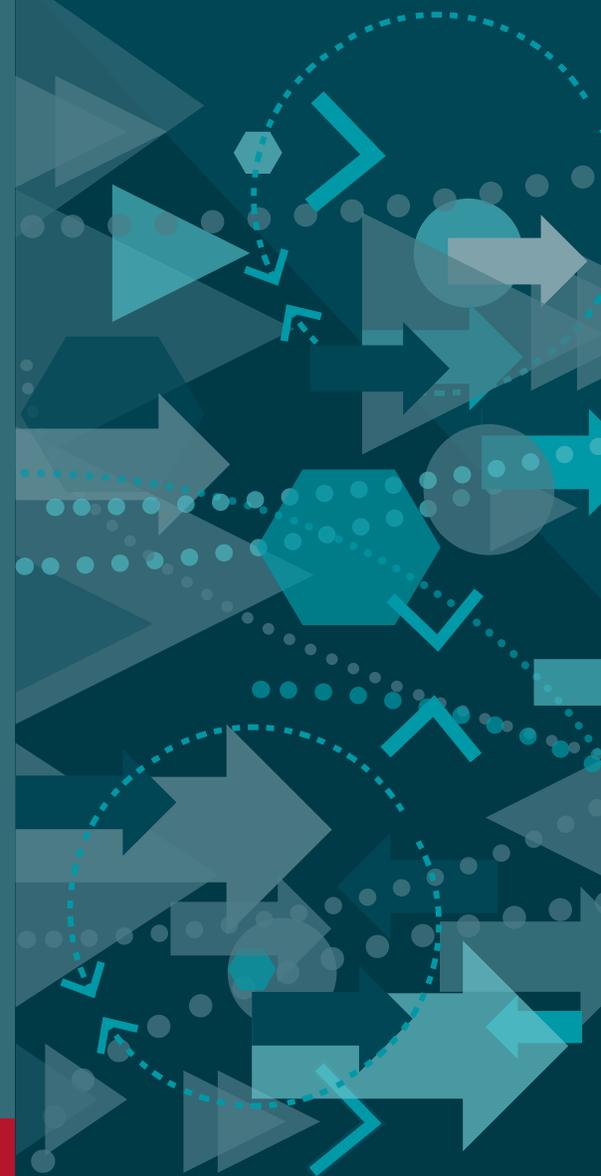
A TOOL FOR INVESTORS

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DRAWING FROM COMPANY REPORTING ON:

3

RISK IDENTIFICATION



***Shift***

# DISSECTING HUMAN RIGHTS DISCLOSURE

## A TOOL FOR INVESTORS

Drawing from Company  
Reporting on: Risk Identification

Shift, New York.  
July 2020



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## ABOUT SHIFT

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

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# INTRODUCTION

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It is important for investors to know that the companies in which they invest understand, prioritize, manage, and report on the risks connected with their business. COVID-19 has highlighted the many ways in which people across a company's workforce and value chain can be at risk of harm from business decisions and actions. It has also brought into sharp relief companies' own dependence on these same people in their workforce, supply chain, retail outlets, delivery providers, customer base and local communities.

A company's most acute potential or actual impacts on people are those that affect their basic dignity and equality: their human rights. The UN Guiding Principles on Business and Human Rights make clear that a company should prioritize for action those human rights impacts that would be most severe: that is, the human rights impacts that would be most grave, widespread or difficult to remedy. These are the company's 'salient human rights issues.' These are also the risks to people that most consistently and strongly converge with risks to the business itself.

Companies' disclosure on how they identify and prioritize human rights risks can provide investors with an important insight into how well these issues are understood and likely to be managed. Shift has reviewed the human rights reporting of over 150 companies and assessed their alignment with the expectations of the UN Guiding Principles. Even though the vast majority of these companies commit to respecting human rights, **only approximately 15% disclose that they determine important or priority human rights issues based on the severity and likelihood of risks to people.** Many discuss a handful of human rights-related issues, but do not say why these were chosen for inclusion in their reporting, nor whether they were selected with a focus on risks to people or solely risk to the business.

This report examines five excerpts from reporting by five different companies in relation to their identification and prioritization of human rights risks. Our focus is not on profiling the latest or leading practices in addressing human rights risks – though many do reflect such leadership; rather, we aim to highlight facets of reporting that can provide readers with some confidence that a company is thinking in meaningful ways about human rights challenges and its role in addressing them. The excerpts are selected for their relative strengths in this regard, and a brief analysis in each case highlights the insights a reader can glean from the disclosure, and therefore what to look for in other companies' reporting.

None of the excerpts is put forward as a perfect model nor should be taken as guaranteeing that all human rights risks are being prioritized and managed in alignment with the UNGPs by the companies concerned. Reporting is a window into performance, not a mirror of that performance. Moreover, some of the companies concerned have taken further action, and indeed published further reporting, since the publication of the disclosure excerpted here. Readers who are interested in the latest developments should check the companies' websites for any updates.



**A lot of company reporting today falls below the quality demonstrated in these excerpts. With regard to reporting on the identification of human rights risks, particular red flags to look out for are:**

- **The company only reports on issues it deems material to the business.** This signifies the company only uses the lens of risk to business and may ignore the lens of risk to people. This not only leads to blind spots for certain human rights risks, but often for business risks in the longer term.
- **Where the only indicated external input for the human rights issues the company prioritizes is a generic survey.** Surveys often do not enable stakeholders to surface problems that they see and also raise questions about how representative of potentially affected stakeholders the respondents are. Without supplemental engagement with credible experts and input from complaint channels and other feedback loops throughout the year, annual surveys are insufficient in identifying and prioritizing risks to people.
- **Where a company's list of material issues includes both individual human rights and a category of 'human rights.'** This indicates a failure to understand that the specific issues (for example 'forced labor', 'health and safety', 'privacy', 'labor rights') are themselves human rights issues, and does not inspire confidence that the category labeled 'human rights' has any additional meaning or relevance for the company internally.
- **Human rights issues are listed in company disclosure without further explanation of how these relate to the business's own operations and value chain.** Companies often list issues without providing information about how they understand the connection of these issues to their business, nor what systems are in place to ensure the listed issues are being managed. This leaves no sense that the assertion of these issues means anything for the company in practice, and provides no confidence that these issues are being tackled.

## TOTAL

# Regular reconsideration of salient human rights issues

“In 2016, we held a series of consultations with our internal and external stakeholders to identify the salient human rights issues associated with our activities and business relationships, based on the UN Guiding Principles (UNGPs) Reporting Framework. The process enabled us to identify six salient issues across our three broad, focal human rights areas.

More recently, we have continued to learn extensively from observations and key findings in:

- Human rights assessments carried out in selected Total business units across the world with the support of independent third party organizations such as the Danish Institute for Human Rights.
- A global ethical assessment program carried out in selected Total business units across the world with the support of independent third party organization, GoodCorporation.
- Issues raised in our Group’s Ethics Committee and Human Rights Coordination Committee.
- The internal Total Survey, a biennial company-wide confidential survey to gather employee views and expectations regarding professional and

social issues relating to workplace conditions and perceptions. In 2017, about 70,000 employees from 124 countries were invited to participate in the survey.

- The Annual FAIR Committee Review meetings held to monitor the implementation of the Corporate Social Responsibility Total Global Agreement signed with IndustriAll Global Union in January 2015. Participants at the review include labor union representatives from across the Group. FAIR stands for: “Facilitate the Application, Involvement of all and regular measurement of the Results of the agreement.”
- The Annual Business Ethics Day in 2016 and 2017.

We have also further engaged with various stakeholders in relation on our salient human rights issues. Based on those conversations, findings, observations and reflections, we consider that the salient human rights issues identified in our Human Rights Briefing Paper – July 2016 remain the salient human rights issues relating to our business activities and business relationships...

### ANALYSIS

This excerpt briefly refers to Total’s 2016 process to identify its salient human rights issues, with the involvement of internal and external stakeholders. The company shows that the exercise was not a one-off exercise or detached from its on-going human rights risk assessment. The excerpt demonstrates that the company has continued to engage a broad range of stakeholders

to understand the evolving nature of human rights risks in its operations and value chain. The fact that these include potentially affected stakeholders such as employees, and trade union representatives who can represent these and other workers in the company’s value chain adds valuable insight, given the importance of these perspectives to an analysis of potential impacts.

The reporting also refers to Human Rights Impact Assessments (HRIAs) carried out by an expert organization as a further input to the company’s risk assessment. Elsewhere in its reporting, Total shares the key findings and recommendations from one of these HRIAs.

IN ADDITION TO OUR SALIENT HUMAN RIGHTS ISSUES, OUR PROCESS IDENTIFIED THE FOLLOWING OTHER TOPICS WHICH ARE BECOMING MORE IMPORTANT FOR OUR GROUP:

- Human rights and the UN Sustainable Development Goals (SDGs);
- Anti-corruption and human rights;
- Climate change which remains a shared global challenge, where we believe we can be part of the solution.”

*Total's Human Rights Briefing Paper Update 2018, pp. 17, 20*

#### QUESTIONS FOR INVESTORS

- Does the disclosure give any indication that the company **follows-up on its initial identification of salient issues**, ensuring the process of risk identification and prioritization is revisited on a regular basis?
- If the company conducts HRIAs, does the company's disclosure give any insight into how the **findings, recommendations, and lessons learned from its HRIAs** feed into the company's review of human rights issues at the corporate level?
- Does the disclosure suggest that the company adopts a broad lens to **consider how it may be connected emerging human rights issues beyond its salient issues?**

This excerpt also demonstrates the company's consideration of a range of broader topics that have human rights implications – in this case the Sustainable Development Goals, anti-corruption, and climate change. This suggests that they may be alert to emerging human rights risks that are not yet 'salient' for the company.

By sharing the insights received from stakeholders through various channels, as well as related issues it is keeping track of, the company's reporting allows readers to understand how the company reached the conclusion that its original list of salient human rights issues remains valid, and provides confidence in this conclusion.

## Integrating stakeholder perspectives in salient issue identification

“Once consolidated internally, the list of salient human rights issues was presented and discussed at the Nestlé stakeholder convening that we organised in Washington DC, USA, in December 2015. Participants in the human rights breakout session represented some of the leading non-governmental organisations (NGOs), UN organisations, law firms, business associations and experts from academia on the topic of business and human rights.

The stakeholders proposed the following changes, which have all been reflected in the final version of the salient human rights issues:

- Split child labour and forced labour, which were initially combined as one salient issue. These two issues have different geographical scopes and different root causes, and should, therefore, be looked at and dealt with separately; and

- Add discrimination as an issue that cuts across all the salient human rights issues. While stakeholders understood that – based on our own data, results and experience – discrimination may not have been identified as a salient issue, they strongly suggested that this issue be incorporated into the action plans that will be developed for the 11 salient issues next year.

While all stakeholders agreed on the growing importance of data protection and privacy, some of them challenged the salience of this issue for a company like Nestlé, in particular compared to IT companies, for example. However, based on further internal considerations, we decided to keep this issue on the list mainly because of its scale (risk to all our employees and consumers).”

*Nestlé in society – Creating Shared Value and meeting our commitments 2015, p. 229*

### ANALYSIS

This excerpt highlights how the salient human rights issues identified by Nestlé were verified with some relevant stakeholders, and not just through an internal headquarters-based exercise. While this reporting suggests one channel for engagement on these issues rather than a number, and focuses on experts rather than including affected stakeholders and their representatives, it does convey diversity in the backgrounds and expertise of the stakeholders involved, which provides some confidence that there was rigor of review. Moreover, as with other excerpts in this resource, the company is clear that it is looking at its salient human rights issues – that is, the most severe potential impacts on people connected with the business – and not just human rights issues that pose a risk to the business itself.

This excerpt is particularly insightful because it provides transparency regarding the stakeholder feedback received on the salient issues, and how that feedback was integrated. Many companies report that they, or a third party, have issued a survey to ‘stakeholders’ regarding what is material for the company, which both lacks clarity on the range and expertise of those involved and the insights they provided. This excerpt reflects specific issues raised by stakeholders that the company engaged directly in conversation and how those were integrated into its final decisions on its salient issues. In addition, the excerpt discusses a decision not to take on a recommendation from some stakeholders, and why. It suggests the company’s engagement with stakeholders constituted a constructive and substantive dialogue that was seen as more than a tick-box exercise.

This type of disclosure suggests to readers a degree of openness to feedback, a certain strength of relationship with expert stakeholders, and a willingness to be transparent about what the company has learned.

### QUESTIONS FOR INVESTORS

- Does the disclosure give any insight into whether the company involved relevant experts from diverse backgrounds in the determination of its salient issues, and whether these included individuals who could represent the perspectives of potentially affected stakeholders?
- Does the disclosure illustrate the types of feedback received from relevant stakeholders in its review of human rights risks and demonstrate how the company integrated this feedback into its salient issue identification and prioritization process?

## Identifying business areas linked to salient issues

“Our products and services have an impact on society. We directly affect the lives of over 5 million people, as a service provider and as an employer. Indirectly, in our role as a lender and in providing investment services and products, our impact is even larger.

To explain our impact more clearly, we have framed this report around these four roles: service provider, employer, lender, and investment services provider...

In our four roles, we directly or indirectly have an impact on human rights.

Our salient issues and roles:

- Privacy: Abuse or loss of client data, by ABN AMRO or third parties
- Discrimination: In the provision of services to (potential) clients or against ABN AMRO staff
- Land-related human rights: Local communities and indigenous peoples in relation to corporate clients or companies we invest in on behalf of private clients
- Labour rights: ABN AMRO’s own workforce, and the supply chain workforce of corporate clients and companies we invest in on behalf of private clients.”

*ABN AMRO Human Rights Report 2016, pp. 6, 10*

### ANALYSIS

Many companies that identify their salient human rights issues simply list the issues without providing further explanation of how these actual or potential impacts relate to their business.

By framing its report on human rights issues around the four roles it plays as a bank, ABN AMRO shows that it is looking across the full range of its activities and business relationships, upstream and downstream, to assess how they can lead to impacts on different stakeholders in different ways. By showing this inclusive approach to its risk analysis, the company provides greater confidence that it started from a full understanding of potential risks across its business before identifying those that are most salient.

The company describes its direct and indirect relationship to each of its salient issues. By describing how and through what activities and relationships these salient issues can arise, it enables people inside the company to see how these issues connect to their own roles. It enables investors and other readers of its disclosure to better engage with the specific situations where impacts may arise, which can support a more practical dialogue. And, finally, it suggests that the risk identification process may be well connected to thinking about how the risks can be addressed in practice.

### QUESTIONS FOR INVESTORS

- Does the disclosure suggest that the company has considered potential human rights impacts both in its **core operations and in its upstream and downstream value chains?**
- Does the disclosure provide confidence that there is **internal understanding within the company of which areas of business are most relevant** for each of its identified human rights issues and how their activities can be connected to the issues?
- Does the disclosure give insight into **how the company manages each of its salient human rights issues**, and which functions are involved in such management?

## Systematic integration of human rights risks into business decisions

● “We recognize that sustainability risks are business risks, and our strategy focuses on integrating key sustainability considerations – human rights, water, energy and climate change, to name a few – into all stages of the mine lifecycle and informing business decisions...

● Over the past few years, we have strengthened this framework with the implementation of our Integrated Management System (IMS), which has improved how we capture, track and report our sustainability risks...

To reflect the rapid changes in the human rights space, we updated our global Human Rights Standard during the year. The updated standard, which incorporates lessons learned from three years of site implementation, requires new projects, or significant changes to existing operations, to integrate an evaluation of human rights impacts into assessments (social, risk, etc.). ●

*Beyond the Mine: 2018 Social and Environmental Performance Report, pp. 6, 30*

### ANALYSIS

● While many companies report separately on sustainability risks and business risks, and imply that few if any of the former are seen as material to the company, this disclosure suggests that Newmont takes a more integrated approach that understands the connection and convergence between the most severe risks to people (as well as climate change, energy and water risks) and risk to the business. The excerpt’s reference to integrating these four areas into business decisions at all stages of the mine lifecycle gives some greater confidence that sustainability issues are not siloed – as often happens – within a sustainability function, such that they do not permeate the wider management of business risks. While brief and summary, this also provides a basis for investors or others to explore this further with the company if they wish to understand how it plays out in practice.

● By discussing the established systems for capturing, tracking, and reporting sustainability risks, the company provides greater confidence to readers that human rights issues are being reviewed on an ongoing and systematic basis. Many reports note the importance of human rights and other sustainability issues, but few provide information about how systems have been established to better ensure human rights are raised and integrated in broader risk management conversations.

● Finally, the company shows it is responsive to changes in human rights risks and expectations by updating its Human Rights Standard. It also suggests some continuing improvement in practices by disclosing that it has added a requirement for human rights impacts to be evaluated in any new or significantly changing projects. Both this and the prior paragraph suggest a strengthening of systems, which provides the reader with some evidence that the management of human rights risks is becoming increasingly embedded within the company’s decision-making.

### QUESTIONS FOR INVESTORS

- **Does the disclosure provide confidence that the company integrates its human rights risk identification and prioritization into its business decision-making?**
- **Does the disclosure give insight into what systems the company has in place for identifying and tracking human rights risks over time?**
- **Does the disclosure demonstrate the company has made efforts to integrate lessons learned about managing its human rights risks into its policies and processes?**

“In 2018, the [Public Policy and Sustainability] Committee reviewed the progress of our human rights program, including a deep-dive session where they discussed our human rights strategy as well as emerging human rights trends and risks... As part of this dedicated session, the Committee received a detailed update from our Chief Human Rights Officer on our ongoing work to address our salient human rights issues and other key risks, including excessive working hours in our direct operations and forced labor risks in our supply chain...”

The Human Rights Operating Council (HROC) is comprised of senior corporate and sector representatives from core functions (e.g., Human Resources, Global Sustainability, Global Procurement, Global Operations, Law Department, Public Policy, Risk Management, and Sales) as well as the heads of our due diligence programs. Some of HROC’s key responsibilities include: [...]

- Annually reviewing our business activities, due-diligence findings, and stakeholder feedback to determine our salient human rights issues; [...]

We have a dedicated team in our Law Department that is responsible for driving our human rights strategy, facilitating performance against our goals and managing our salient human rights issues. The team coordinates our Human Rights Operating Council and works closely with the heads of our due diligence programs and other internal stakeholders (e.g., Human Resources, Global Sustainability, Global Procurement, and Public Policy) to help prevent and address issues throughout our value chain.

PepsiCo’s Chief Human Rights Officer and Human Rights Director, who are tasked with delivering our human rights program and managing our salient issues across our value chain, have clear annual performance targets that link their pay with the performance of our program and execution of our human rights commitments. This includes their responsibility for a wide range of issues, including working hours, forced labor, and vulnerable worker populations.”

*PepsiCo Human Rights webpage*

## ANALYSIS

Company disclosure often describes the existence of a ‘sustainability committee’ but provides no clarity as to whether and to what extent such a committee considers human rights risks alongside other sustainability issues, nor whether it has the expertise to do so. This excerpt helps the reader understand the extent to which human rights issues are seriously considered by this committee, by providing specific information about how it was briefed and what it discussed.

While a growing number of companies report in general terms that they have a cross-functional committee or process for discussing, identifying or reviewing the company’s human rights risks, this excerpt shares information about the composition of that committee. It conveys that a diverse range of functions, including core business functions such as procurement and sales, are integrally involved in updating the company’s understanding of its salient issues. The disclosure also makes clear that wider functions are directly involved in

addressing human rights risks. This provides confidence that human rights considerations are being embedded across the business and not handled in a ‘sustainability’ silo or treated as a PR issue.

This excerpt provides clarity on who is responsible and accountable for the company’s management of human rights risks. Information that this is linked to their performance incentives provides further confidence that the management of the salient issues identified

**ANALYSIS** continued

is taken seriously within the organization. The explicit mention of these incentives being linked to risks of forced labor and to ‘vulnerable worker populations’ is also noteworthy. It shows both the specificity of what is expected and evaluated in leaders’ performance, and that the company is looking at workers through the important lens of their vulnerability to impact.

**QUESTIONS FOR INVESTORS**

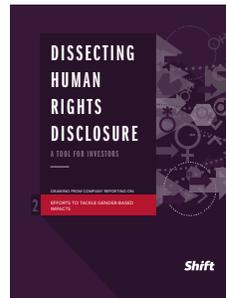
- Does the disclosure provide confidence that **senior leadership are involved in understanding the company’s salient human rights issues** and emerging human rights risks?
- Does the disclosure give insight into how the company uses **cross-cutting convenings of relevant functions to identify and discuss human rights risks** on a regular basis?
- Does the disclosure provide evidence that the company **incentivizes the effective management of human rights issues**?



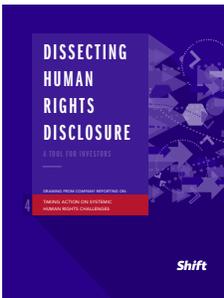
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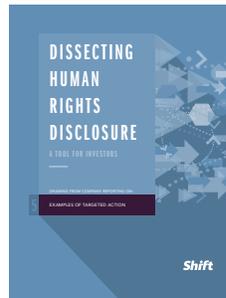
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