

DISSECTING HUMAN RIGHTS DISCLOSURE

A TOOL FOR INVESTORS

DRAWING FROM COMPANY REPORTING ON:

5

EXAMPLES OF TARGETED ACTION

Shift

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Drawing from Company
Reporting on: Examples of
Targeted Action

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Design by Alison Beanland

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

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.

When companies disclose examples of targeted action to address their specific actual or potential impacts on people, they provide investors with an important insight into what the company's approach to managing human rights risks looks like in practice. However, the discussion of specific examples in companies' public communication often falls short. Based on Shift's review of the human rights reporting of over 150 companies, we see many failing to share insightful examples of action to address issues they have identified.

This report examines five excerpts from reporting by five different companies in relation to targeted action. 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 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 examples of targeted action to address human rights issues, particular red flags to look out for are:

- **The company only reports generally on its process for identifying and addressing human rights impacts.** Many companies share general information about their processes, such as audits and corrective action plans, without providing examples that demonstrate how these function in practice, and how the company deals with and learns from challenges it faces in managing human rights impacts. Where companies fail to share specific examples that include what measures were taken to address actual or potential impacts, this may leave investors to wonder about the extent to which their policies and practices are more than words on paper.
- **The company does not report on how the perspectives of affected stakeholders informed its understanding of the impact and its decisions on what action to take.** Where a company shares an example of targeted action without explaining how it engaged with affected stakeholders and how those perspectives informed the action it took, readers may wonder whether the company's approach actually addresses risks to the people concerned, or simply addresses risks to the business.
- **The company talks about engagement with suppliers or other business partners on human rights-related issues in terms of compliance.** Where companies demonstrate a largely compliance-based approach, they may seek to achieve speedy resolution of identified cases without addressing underlying causes. Where a company's disclosure lacks examples of how it engages with business partners more substantively on human rights issues, readers may have questions about whether the risks are being addressed or only the symptoms are being treated.

Role of engagement with affected stakeholder in decision-making process

“Case study: Dakota access pipeline

In 2016, ING was one of 17 banks who entered into financing the Dakota access pipeline, a 1,172-mile-long (1,886 km) underground oil pipeline in the United States. As with all of the projects that we finance, we carefully screened the project according to laws and regulations as well as ING’s environmental and social risk policy framework. As part of this due diligence we reviewed environmental and social project documentation, including third-party reports. These reports did not reveal any material shortcomings.

However, not long after issuing the loan, we learned that the Sioux tribal nation was opposed to the pipeline, under the assertion that the pipeline might threaten sacred burial grounds as well as the quality of water in the area.

On 10 February 2017, we met with the Standing Rock Sioux Tribe and discussed the Tribe’s concern regarding the pipeline’s proposed routing. The Tribe made it clear that it believed its interests and position as a sovereign nation were not properly recognised in the process led by the USA government. In the meeting, we shared with the Tribe our willingness to either continue trying to positively influence the course of the project, or to distance ourselves by selling our stake in the loan.

In response, the Standing Rock Sioux Tribe indicated it would appreciate ING selling its loan in the project, because there is little room for lenders to exert a positive influence on the project once construction resumed, and because it would be a valuable message supporting its call for respectful dialogue.

In response, we sold the loan. We also:

- Publicly expressed our disagreement with the level of respect shown by the companies, our clients.
- Sold the shares we had in the parent companies.
- Decided to stop doing any new business with the companies, not renewing credit facilities that expire, effectively ending the relationship.
- Continually tried to use our influence to resolve this issue in a way that could satisfy all parties.

In this case, we used our leverage as we thought most effective. We engaged with our client, we commissioned additional research, we engaged with the rights holders, and we took action.

Nevertheless, a key lesson has been that our capacity to affect change is dependent on the willingness of the client to act. Our leverage as a bank is in large part limited to the due-diligence phase of the transaction.”

ING Human Rights Report 2018, p. 54

ANALYSIS

In 2016, financial institutions connected to the construction of the Dakota Access Pipeline (DAPL) in the United States were met with protests from Indigenous Peoples and human rights defenders. A number of those banks disclosed that they disengaged from the high-profile construction project once faced with reputational risk. However, few explained how they arrived at the decision to disengage and how the views of affected stakeholders played into that decision. Here, the company’s reporting makes clear that it brought affected stakeholders directly into its process, meeting the Tribe to discuss their concerns and asking whether they preferred the lender stay in the relationship to use its leverage or

sell the loan. Where companies report on the nature and results of their engagement with affected stakeholders in relation to a specific project or activity, this provides additional confidence regarding how this engagement contributes to the company’s due diligence and decision-making.

By accompanying the sale with public communication explaining the choice, expressing disagreement with its client’s activities, and announcing it would end current and future relationships with the company, this disclosure shows the company understood it had a range of tools to deploy leverage at its disposal beyond simply selling its loan.

The company’s disclosure also provides greater confidence that it has integrated lessons learned from this public incident by sharing those lessons, including that it needs to maximize the opportunity to use its leverage during the due diligence phase of the transaction.

QUESTIONS FOR INVESTORS

- Does the disclosure make clear how the perspectives of affected stakeholders were taken into consideration in deciding how best to address human rights impacts?
- Does the disclosure demonstrate the company is open to sharing challenges and what lessons it has learned from these challenges?

Targeted action informed by stakeholder perspectives and measured based on outcomes for people

“A Fair Deal for Small Farmers and Workers working with our green beans suppliers and Traidcraft

M&S recognises the challenges around incomes for workers and smallholders in our produce supply chains, which by their nature are seasonal and exposed to volatility associated with the weather, pests and other factors. Between 2013 and 2016, M&S was involved in ‘Kenya Horticulture – A Fair Deal for Small Farmers and Workers’; a project which aimed to improve the livelihoods of Kenyan smallholders and workers involved in the horticultural value chain, focusing on a group of 300 smallholders and the representatives of 3,300 workers. The project brought together Traidcraft, the Kenyan Human Rights Commission, our UK importer, our Kenyan supplier, and members of the M&S buying team. The work centred on improved communications and ways of working along the chain. For smallholders, the project has sought to raise income from horticultural crops and reduce wastage of harvested crop. For

workers, it sought to reduce short notice overtime requests (which has a knock-on effect on childcare) while raising wages. For M&S, the aim was to improve availability (by improving farmer loyalty) and quality.

The programme has included value chain analysis, human rights impact assessment and ‘Ways of Working’ meetings in Kenya and the UK, with a wide range of people including buyers, forecast and inventory planners, smallholders and workers. We learnt that our own ordering pattern created challenges for suppliers, smallholders and workers with regard to M&S’s Global Sourcing Principles. We have amended the way we work along the value chain, including changing the product specification, so that smallholders would be paid for a greater range of green bean lengths, and changing the amount required to be trimmed from the beans, to increase the weight of product purchased. We also confirm a monthly minimum order to provide a level of certainty to smallholders that their crop will be →

ANALYSIS

Many companies simply disclose that they generally engage in auditing and capacity building in their supply chains without providing specific examples that demonstrate whether the company considers the perspectives of affected stakeholders and what change it is achieving in practice. When discussing a specific multistakeholder project in its Kenyan supply chain, M&S’s reporting shows the company recognizes its own practices were part of the problem and needed to change. The company then reports on the particular changes it made

to its own product specification practices and why. By providing some transparency on how the company examined what changes to its own behavior were required to remove barriers to business partners’ respect for human rights, it demonstrates a level of seriousness in its approach. Namely, it demonstrates an ability to integrate lessons learned in assessments and suggests that, where it does engage with local stakeholders, the company does so in a systematic and inclusive way.

Targeted action informed by stakeholder perspectives and measured based on outcomes for people

purchased, and now confirm final orders 72 hours before delivery to M&S depots to reduce short notice overtime requests of packhouse workers.

An independent evaluation report has shown that the programme has increased the capacity of workers and farmers to raise issues, negotiate and bargain, which has led to progress on some issues of concern to these groups. Smallholder profits have increased, and there has been a modest increase in worker wages, as well as a reduction in overtime. Subsequent change in supplier ownership who purchased and packed the smallholders green beans, has refocused their business strategy, unfortunately resulting in packhouse redundancies. It may also have reduced the business' commitment to sourcing from smallholders. Importantly, the smallholders involved in our programme were not affected as our supplier has seen an increase in loyalty, during a particularly challenging drought period in Kenya. Working with our supplier, we have

now appointed an independent facilitator to support us in continuing the dialogue with smallholder farmers and workers within the project, and are working to understand how we can extend the principles to other value chains. We are also sharing the knowledge we have gained with the wider industry, since these problems are not unique to M&S, including via a session at the ETI and the UN Business and Human Rights Forum.”

M&S Human Rights Report 2017, p. 26

Many companies will describe supply chain-level activities or projects in their disclosure, but do not provide information regarding the outcomes of those efforts for the people affected.

This disclosure conveys the company's efforts to measure progress and impact, and results achieved, while also demonstrating openness to sharing challenges by providing an honest review of setbacks.

QUESTIONS FOR INVESTORS

- Does the disclosure demonstrate how the company's decisions about what actions to take are **informed by engagement with affected stakeholders?**
- Does the disclosure include specific examples of action and **how the company assesses the resulting outcomes for people?**

Using leverage with a business relationship

“Decent working conditions in India

During our due diligence on an agro-processing factory in India, we discovered that the working standards of drivers hired by the transport companies our client is working with were below standard. We now work with our client to improve these conditions.

The drivers transport agricultural products from the farms to the factory. They cover long distances, partly on dirt roads. The client has to wait for several hours between assembly points and the factory before the cargo gets weighed and booked in the company’s electronic system. Sometimes this means that, after arriving at the factory, the drivers can only

return home the next day. We asked our client to investigate the drivers’ working hours, when and how much the transporters are paid and how much time they can spend at home with their families. We also look into their working conditions more broadly.

The assessment identified several areas of improvement. As a result, our client is engaging with transporters to improve driver remuneration. The client has also provided shelter, sanitation and food for drivers arriving in the evening, so that they can refresh themselves and rest before they get back on the road the next day.”

FMO 2017-2018 Human Rights Progress Report, p. 16

ANALYSIS

Few banks report specific examples of targeted action to influence their clients’ respect for workers’ rights in their supply chains, and even fewer share examples of action that target respect for their clients’ downstream workers. In describing the specific context and factors that contribute to human rights impacts on drivers in some degree of specificity, FMO’s reporting of this example educates readers on the potential impacts these stakeholders face in connection to its client’s business. This example also provides some confidence that when the bank’s due diligence process identifies severe risks in its value chain, the bank will respond by investigating the situation and identifying root causes before taking action.

The disclosure suggests the bank has a practice of using leverage with clients to further investigate and address specific issues once they have been identified. By reporting on some changes in its client’s behavior as a result of engaging with the client, the disclosure suggests the bank monitors the results of that engagement. Where a company reports specific examples of how it uses its leverage and monitors the results for affected stakeholders, this provides some confidence that the company’s engagements with its business partners on human rights issues are focused on driving change rather than just process compliance.

QUESTIONS FOR INVESTORS

- Does the disclosure demonstrate the company takes **targeted action to address** specific impacts it has identified?
- Does the disclosure demonstrate whether the company **monitors the results of its action in terms of outcomes for the affected stakeholders?**
- Does the disclosure demonstrate the company’s **targeted action is designed to achieve continuous improvement?**

Ensuring remedy when a harm is identified

● “Last year, our China team conducted an unannounced audit which led to the discovery of a child working in one of our factories in Guangdong province. Further investigation showed that an illegitimate labour provider gave a false copy of identification to the factory, and that the child was from Myanmar.

● We established a close partnership with the Center for Child Rights and Corporate Social Responsibility (CCR CSR), a child rights consultancy in China, to work with our audit team on the ground to implement a remediation strategy. This consisted of applying the child labour remediation process outlined in our policy and working closely with CCR CSR to ensure delivery of remediation and monitoring of the child. The child is enrolled in an engineering programme and the family is being supported with the payment of a living wage to enable the child to stay in education.

● While support for the child and family is a fundamental part of this case, we also recognised the need to raise awareness of the risk of child labour and human trafficking. CCR CSR continued to be a key partner in implementing a training programme on child labour risks within the local community. A total of 28 community members from seven villages in Myanmar participated in the training, where the key focus was to raise awareness of vulnerability related to children working in factories and child trafficking.”

ASOS Modern Slavery Statement 2018-2019, p. 11

ANALYSIS

● If a human rights-related noncompliance is identified through a factory audit, many companies report on how they “remediate” that noncompliance, with the focus on securing changes in the factory’s practices. However, few report examples in which they provide remedy that aims to make victims whole. Here, the company demonstrates an openness to discussing challenges by sharing a specific example of child labor it identified within one of its own factories. The reporting also shows the company’s proactive effort to learn about the root causes, and to address these through collaboration to avoid the impact recurring.

● This example brings to life how a company policy that outlines a child labor remediation process is put into practice. More generally, it provides some confidence that when specific impacts are identified in its own factory operations, the company has a serious approach to ensuring remedy is provided in partnership with experts familiar with the issue and regional context. Where company reporting makes clear who is providing the remedy

described, it can give readers further confidence that the specific instance and the approach more generally are sustainable.

● This disclosure also demonstrates the company looked beyond remedy for the one case it identified to also develop an approach geared to changing the local context and addressing a systemic problem, so that this impact is less likely to recur in its own factories or elsewhere.

QUESTIONS FOR INVESTORS

- Does the disclosure demonstrate that the company has a **serious approach to remedy which it applies in practice**?
- Does the disclosure suggest the company works to **prevent the recurrence of specific impacts** it has identified?
- Does the disclosure describe how the company **works collaboratively to address root causes** of specific impacts, where appropriate?

Sharing process of engagement with a supplier to address human rights impacts

“Our Supplier Audit Findings: Harassment...”

SUPPLIER SNAPSHOT

- During an audit of a supplier in Mexico, workers reported in interviews that some members of the management were being coercive and intimidating.
 - We carried out a further assessment and found that although there had been some process and management practice changes since the audit, workers were still being subjected to sexual and verbal harassment by supervisors. This case was immediately escalated to our Social Accountability team and onward to the respective Procurement Vice President. The supplier engaged at the level of the company President and General Manager to support a process that included an investigation of all allegations, remediation, and training of all supervisors.
 - As a result of the investigation, a supervisor was dismissed. The supplier will now focus on setting up proactive engagements with workers on gender equality and women’s rights, and the effective implementation of a confidential grievance mechanism. The supplier and Unilever have agreed to regular quarterly reviews of progress against these remediation efforts.”

Human Rights Progress Report 2017, p. 47

ANALYSIS

Many companies share some information about their process for auditing and setting corrective action plans for suppliers, and some share the number of audits conducted and resolved during the reporting period with aggregated data on the issues found. However, few provide insight into what those numbers mean, or details or examples that demonstrate how the audit process is used to identify and address specific actual or potential human rights impacts in practice. In this disclosure, after sharing how impacts were identified through engagement with workers and then confirmed despite some changes to processes and management, the company shares who was engaged to address the situation, how it was escalated internally, and names the specific functions and individuals involved on the supplier side. The seniority of

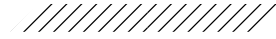
individuals involved internally suggests the company treats such issues seriously. By including this level of detail in an example, this disclosure may give investors a picture of what actually happens in practice, providing some degree of confidence that the company’s audit process surfaces the experiences of affected stakeholders and leads to a credible process for following up and addressing issues that are flagged.

Where impacts identified through audits are discussed in disclosure, few companies share the specific measures taken to address them or how the company will work with the supplier to track progress. In this disclosure, the company provides some clarity on what action was taken and continues to be taken to prevent the recurrence of such impacts, as well as that progress will be

reviewed on a quarterly basis. Through this disclosure, the company provides insight that suggests its approach aims for continuous improvement through longer-term engagement with suppliers, rather than speedy resolution of a case through a compliance-centered approach.

QUESTIONS FOR INVESTORS

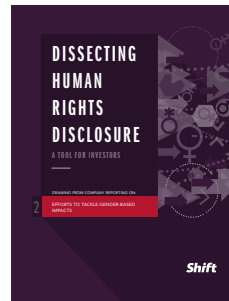
- Does the disclosure suggest the company has an approach to engaging with business partners that aims to ensure continuous improvement in the management of human rights impacts?
- Does the disclosure go beyond aggregated data to provide a picture of how the company identifies and follows up on specific human rights issues identified?



This report is part of Shift's Dissecting Disclosure Series. Other resources in the series are:



Dissecting Disclosure:
Drawing from Company
Reporting on Engagement
with Vulnerable
Stakeholders



Dissecting Disclosure:
Drawing from Company
Reporting on Efforts to
Tackle Gender-based
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